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[G.R. No. 181892, September 08, 2015]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY EXECUTIVE SECRETARY EDUARDO R. ERMITA, THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND MANILA INTERNATIONAL AIRPORT AUTHORITY, PETITIONERS, VS. HON. JESUS M. MUPAS, IN HIS CAPACITY AS ACTING PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 117, PASAY CITY, AND PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC., RESPONDENTS.

[G.R. No. 209917]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY EXECUTIVE SECRETARY EDUARDO ERMITA, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, AND MANILA INTERNATIONAL AIRPORT AUTHORITY, PETITIONERS, VS. PHILIPPINE INTERNATIONAL AIR TERMINALS COMPANY, INC., TAKENAKA CORPORATION AND ASAHIKOSAN CORPORATION, RESPONDENTS.

[G.R. No. 209696]

TAKENAKA CORPORATION AND ASAHIKOSAN CORPORATION, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, REPRESENTED BY EXECUTIVE SECRETARY EDUARDO ERMITA, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, MANILA INTERNATIONAL AIRPORT AUTHORITY, AND PHILIPPINE INTERNATIONAL AIR TERMINALS COMPANY, INC. RESPONDENTS.

[G.R. No. 209731]

PHILIPPINE INTERNATIONAL AIR TERMINALS CO., INC. PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, AS REPRESENTED BY EXECUTIVE SECRETARY EDUARDO ERMITA, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, MANILA INTERNATIONAL AIRPORT AUTHORITY, TAKENAKA CORPORATION, AND ASAHIKOSAN CORPORATION, RESPONDENTS.

D E C I S I O N

BRION, J.:

Before the Court are the consolidated petitions for review on *certiorari* assailing the Decision dated August 22, 2013, and the Resolution dated October 29, 2013, of the Court of Appeals *(CA)* in CA-G.R. CV No. 98029; and the petition for *certiorari* assailing the May 3, 2007; May 18, 2008; and January 7, 2008 Decision of the Regional Trial Court *(RTC)* of Pasay City, Branch 117, in Civil Case No. 04-0876.[1]

In CA-G.R. CV No. 98029, the CA ordered petitioners Republic of the Philippines, Department of Transportation and Communications, and Manila International Airport Authority (Government for brevity) to pay the Philippine International Airport Terminals Co., Inc. (*PIATCO*) the amount of $371,426,688.24 with interest at 6% per annum as just compensation for the expropriation of the Ninoy Aquino International Airport Passenger Terminal III (*NAIA-IPT III*).[2]

In Civil Case No. 04-0876, the RTC appointed DG Jones and Partners as an independent appraiser of the NAIA-IPT III, and ordered the Government to submit a Certificate of Availability of Funds to cover DG Jones and Partners' appraisal fee of $1,900,000.00.

For ease of presentation, the Court's discussion shall be under the following structure:

I. The Factual Antecedents

A. The NAIA-IPT IIII Contract and PIATCO

1. The NAIA-IPT III Contract

2. Framework: Eminent domain is an inherent power of the State

   2.a. The power of eminent domain is a fundamental state power that is inseparable from sovereignty

   2.b. Just compensation is the full and fair equivalent of the property taken from the owner by the condemnor

   2.b.1. Fair market value is the general standard of value in determining just compensation

   2.b.2 Replacement cost is a different standard of value from fair market value

   2.b.3. Replacement cost is only one of the standards that the Court should consider in appraising the NAIA-IPT III

   2.b.4. The use of depreciated replacement cost method is consistent with the principle that the property owner should be compensated for his actual loss

3. Construction cost of the NAIA-IPT III

   3.a. The base valuation of the NAIA-IPT III
   3.b. Structural defects on the NAIA-IPT III

   3.b.1. The Court cannot consider the additional evidence submitted by Takenaka and Asahikosan before the Court of Appeals

   3.b.2. Equiponderance of evidence on the alleged structural defects of the NAIA-IPT III favors PIATCO, Takenaka, and Asahikosan

   3.c. The unnecessary areas

4. Attendant cost of the NAIA-IPT III

   4.a. PIATCO's attendant cost
   4.b. The BOC and the RTC's attendant cost
   4.c. The Government's attendant cost

5. Deductions to the Replacement Cost of the NAIA-IPT III

   5.a. Depreciation should be deducted from the replacement cost

   5.b. Rectification for contract compliance should not be deducted from the replacement cost

6. Adjustments to the Replacement Cost

   6.a. The replacement cost should be adjusted to December 2004 values

7. Interests, Fruits, and Income

   7.a. Computation of Interests
   7.b. PIATCO is not entitled to the fruits and income of the NAIA- IPT III

8. The BOC's Expenses

   8.a. Takenaka and Asahikosan should not share in the BOC's expenses

9. PIATCO as the Proper Recipient of Just Compensation

   9.a. Takenaka and Asahikosan's intervention in the case as unpaid subcontractors is proper
   9.b. The property owner is entitled to just compensation
   9.c. A final disposition in the eminent domain case with respect to the order of payment to a particular person shall be final and executory
   9.d. The determination of whether the NAIA-IPT III shall be burdened by liens and mortgages even after the full payment of just compensation is premature

10. The exercise of eminent domain from the perspective of "taking."

10.a. The Government may take the property for public purpose or public use upon the issuance and effectivity of the writ of possession

B. G.R. No. 181892

1. The issue on the appointment of an independent appraiser is already moot and academic

I. The Factual Antecedents

A. The NAIA-IPT III Contract and PIATCO

1. The NAIA-IPT III Contract

On October 5, 1994, Asia's Emerging Dragon Corp. *(AEDC)* submitted an unsolicited proposal to the Government – through the Department of Transportation and Communications *(DOTC)* and the Manila International Airport Authority *(MIAA)* – for the construction and development of the NAIA-IPT III under a **build-operate-and-transfer *(BOT)* arrangement**. The DOTC and the MIAA invited the public to submit competitive and comparative proposals to AEDC's unsolicited proposal in accordance with the BOT Law[3] and its implementing rules.[4]

2. PIATCO

On September 20, 1996, Paircargo Consortium – composed of People's Air Cargo and Warehousing Co., Inc. (*Paircargo*), Philippine Air and Grounds Services, Inc. (*PAGS*), and Security Bank Corporation (*Security Bank*) – submitted its competitive proposal to the Prequalification Bids and Awards Committee (*PBAC*).[5]

Both AEDC and Paircargo Consortium offered to build the NAIA-IPT III for at least $350 million at no cost to the Government and to pay the Government: 5% share in gross revenues for the first five years of operation, 7.5% share in gross revenues for the next ten years of operation, and 10% share in gross revenues for the last ten years of operation. *However, Paircargo Consortium offered to pay the Government a total of P17.75 billion as guaranteed payment for 27 years while AEDC offered to pay the Government a total of P135 million for the same period*.[6]

After finding that Paircargo Consortium submitted a bid superior to the AEDC's unsolicited proposal and after the AEDC's failure to match the competitive bid, the DOTC awarded, through a notice of award, the NAIA-IPT III project to the Paircargo Consortium (that later organized itself as PIATCO).[7]

On July 12, 1997, the Government executed a ***Concession Agreement*** with PIATCO for the construction, development, and operation of the NAIA-IPT III under a ***build-operate-transfer scheme.*** On November 26, 1998, the Amended and Restated Concession Agreement (ARCA) superseded the 1997 Concession Agreement. The Government and PIATCO likewise entered into a series of supplemental agreements, namely: the First Supplement signed on August 27, 1999; the Second Supplement signed on September 4, 2000; and the Third Supplement signed on June 22, 2001.[8]

Under the 1997 Concession Agreement, the ARCA and the Supplemental Agreement (for brevity, *PIATCO contracts*), the Government authorized PIATCO to build, operate, and maintain the NAIA-IPT III during the concession period of twenty-five (25) years.[9]

3. PIATCO and the Services of Takenaka and Asahikosan

On March 31, 2000, ***PIATCO engaged the services of Takenaka***, a local branch of a foreign corporation duly organized under the laws of Japan and doing business in the Philippines, for ***the construction of the NAIA-IPT III*** under an Onshore Construction Contract.[10]

On the same date, ***PIATCO,*** through an Offshore Procurement Contract,[11] likewise ***contracted the services of Asahikosan***, a foreign corporation duly organized under the laws of Japan, for the design, manufacture, purchase, test and delivery of the Plant[12] in the NAIA-IPT III.

In May 2002, ***PIATCO defaulted on its obligation to pay Takenaka and Asahikosan*** pursuant to their respective contracts. To settle the problem, Takenaka and Asahikosan agreed to defer PIATCO's payments until June 2003, conditioned on their receipt of adequate security from PIATCO as stipulated in the Fourth Supplemental Agreement (relating to the Onshore Construction Contract)[13] and the Fourth Supplement Agreement (relating to the Offshore Procurement Contract), respectively.[14]

On November 29, 2002, President Gloria Macapagal Arroyo declared in her speech that the ***Government would not honor the PIATCO***

contracts. On the same day, Takenaka and Asahikosan notified PIATCO that they were ***suspending the construction of the NAIA-IPT III*** for PIATCO's failure to provide adequate security.[15]

B. The *Agan v. PIATCO* Case, G.R. No. 155001

1. The Case and the Decision dated May 5, 2003

On September 17, 2002, petitioners Demosthenes Agan, et al., asked the Court to nullify the PIATCO contracts, and to prohibit the DOTC and the MIAA from implementing these contracts for being contrary to law. The case, entitled *Agan v. PIATCO,* was docketed as **G.R. No. 155001**.[16]

On May 5, 2003, the Court nullified the PIATCO contracts after finding that Paircargo Consortium (that later incorporated into ***PIATCO***) ***was not a duly pre-qualified bidder*** for failure to meet the minimum equity requirements for the NAIA-IPT III project, as required under the BOT Law and the Bid Documents. The Court also ruled that ***Security Bank*** (member of the Paircargo Consortium) invested its entire net worth in a single undertaking or enterprise in gross ***violation of Section 21-B of the General Banking Act*** (which limits a commercial bank's equity investment, whether allied or non-allied, to fifteen percent (15%) of its net worth).[17] The Court further found that the PIATCO contracts contained ***provisions that substantially departed from the draft Concession Agreement***. These substantial modification of the PIATCO contracts violated the public policy for being repugnant to the principle that all bidders must be on equal footing during the public bidding.[18]

2. The Motion for Reconsideration and the Resolution dated January 21, 2004

We denied PIATCO, et al.'s motion for reconsideration in our January 21, 2004 resolution.[19] Significantly, we stated in the resolution that the ***Government should first pay PIATCO as a prerequisite before taking over the NAIA-IPT III,*** to wit:

> This Court, however, is not unmindful of the reality that the structures comprising the NAIA-IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. **For the Government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the Government cannot unjustly enrich itself at the expense of PIATCO and its investors.**[20] (Underlines and emphases ours)

C. The Expropriation Case, Civil Case No. 04-0876[21]

On December 21, 2004, the Government filed a **complaint for expropriation** of the NAIA-IPT III before the RTC of Pasay, Branch 117. The Government informed the RTC that it had deposited with the Land Bank of the Philippines (*Land Bank*) the amount of P3,002,125,000.00, representing the NAIA-IPT III's assessed value.[22]

On the same day, the RTC issued a **writ of possession** in favor of the Government. Citing *City of Manila v. Serrano,*[23] the RTC held that that it had the ministerial duty to issue a writ of possession upon: (1) the filing of the complaint for expropriation sufficient in form and substance, and (2) the Government's deposit of the amount equivalent to the property's assessed value, pursuant to Rule 67 of the Rules of Court.[24]

On **January 4, 2005**, the RTC modified its December 21, 2004 order and directed: (1) the Land Bank to immediately release to PIATCO the amount of US$62,343,175.77[25] that would be deducted from the just compensation; (2) the Government to submit to the RTC a Certificate of Availability of Funds for the payment of just compensation; and (3) the Government to maintain and preserve the NAIA-IPT III pending the expropriation proceedings and the full payment of just compensation. The RTC likewise prohibited the Government from performing acts of ownership over the NAIA-IPT III such as awarding concessions or leasing any part of the NAIA-IPT III to other parties.[26]

The Government sought reconsideration of the January 4, 2005 Order, arguing that Rule 67 of the Rules of Court, and not RA 8974, applied to the case since the NAIA-IPT III was not a national government infrastructure project.[27]

RA 8974 is otherwise known as "An Act To Facilitate The Acquisition Of Right-Of-Way, Site Or Location For National Government Infrastructure Projects And For Other Purposes."

The Government argued that under Section 2, Rule 67 of the Rules of Court, it shall have the right to a writ of possession upon deposit with the authorized government depositary of an amount equivalent to the assessed value of the property for purposes of taxation, which amount

shall be held by the depositary subject to the orders of the court. In contrast, Section 4 of RA 8974, as a rule, requires the Government to immediately pay the property owner the amount equivalent to 100% of the value of the property based on the BIR's relevant zonal valuation and the value of the improvements/and or structures, upon the filing of the complaint and after due notice to the defendant.

On **January 7, 2005**, the **RTC appointed three Commissioners**[28] to determine just compensation without consulting the Government and PIATCO.[29] Due to these successive adverse rulings, the Government sought to inhibit Judge Henrick F. Gingoyon, the RTC's presiding judge, from hearing the case.[30] (The judge was ambushed and killed on December 31, 2005.)[31]

On **January 10, 2005**, the RTC denied the Government's urgent motion for reconsideration and motion for inhibition.[32]

On December 14, 2005, Asahikosan filed a motion for leave to intervene in Civil Case No. 04-0876 (the expropriation case).[33] On the other hand, Takenaka filed a Manifestation dated December 15, 2005,[34] with the attached Manifestation and Motion dated December 14, 2005.[35] Takenaka alleged that the Government impleaded it as an additional defendant in an amended complaint for expropriation of the NAIA-IPT III, but was not served summons. Takenaka thus manifested its voluntary appearance before the RTC.[36]

Takenaka and Asahikosan informed the RTC that they had previously filed two collection cases against PIATCO, docketed as Claim Nos. HT-04-248 and HT-05-269, before the High Court of Justice, Queen's Bench Division, Technology and Construction Court in London, England, (*London Court*) on August 9, 2004.

In both instances, the London Court ruled in their favor. The dispositive part of the judgment award in Claim No. HT-04-248 provides:

> IT IS ORDERED THAT:
>
> 1. Judgment be entered for the First Claimant[37] in the sum of 6,602,971.00 United States dollars, together with interest in the sum of 116,825,365.34 Philippine pesos up to and including 18 February 2005.
> 2. Judgment be entered for the Second Claimant[38] in the sum of 8,224,236.00 United States dollars, together with interest in the sum of 2,947,564.87 United States dollars up to and including 18 February 2005, being a total of 11,171,800.87 United States dollars.
> 3. Save for the costs of and caused by the amendment of the particulars of claim, which will be the subject of a separate Order, the Defendant do pay the First Claimant's and the Second Claimant's costs in the action, to be subject to detailed assessment if not agreed.
>
> DATED this 18th day of February 2005.[39]

On the other hand, the dispositive part of the judgment award in Claim No. HT-05-269 states:

> IT IS ORDERED THAT:
>
> 1. Judgment be entered for the First Claimant in the sum of 21,688,012.18 United States dollars, together with interest in the sum of 6,052,805.83 United States dollars.
> 2. Judgment be entered for the Second Claimant in the sum of 30,319,284.36 United States dollars, together with interest in the sum of 5,442,628.26 United States dollars.
> 3. The defendant to pay the Claimants' costs in the action, to be subject to detailed assessment if not agreed.
>
> DATED this 2 (sic) day of December 2005.[40]

Takenaka and Asahikosan asked the RTC to: (a) hold in abeyance the release of just compensation to PIATCO until the London awards are recognized and enforced in the Philippines; and (b) order that the just compensation be deposited with the RTC for the benefit of PIATCO's creditors.[41]

During the hearing of the motions, the Government clarified that it neither filed an amended complaint for expropriation nor impleaded Takenaka as a necessary party in the case.[42]

The RTC initially denied Takenaka and Asahikosan's respective motions[43] in the August 8, 2006 Order, but subsequently reconsidered its ruling.[44] **In a March 12, 2007 Order, the RTC treated Takenaka's Manifestation with the attached Manifestation and Motion as a**

motion to intervene and allowed Takenaka and Asahikosan to intervene in the case as PIATCO's creditors.[45]

Pending the RTC's resolution of Takenaka and Asahikosan's motions for leave to intervene in the expropriation case, the Government went directly to the Court seeking Judge Gingoyon's inhibition from the case; the nullification of the order of release of the sum of $62.3 million to PIATCO; and the nullification as well of the appointment of the commissioners.

D. The *Republic v. Gingoyon* Case, G.R. No. 166429

1. The Case and the Decision dated December 19, 2005

On January 12, 2005, the Government, et al., filed a petition for certiorari with the Court assailing the validity of the **January 4, 7, and 10, 2005 orders of the RTC in the expropriation case.**[46] The case, entitled *Republic v. Gingoyon,* was docketed as **G.R. No. 166429**.

The Government argued that the RTC should not have ordered the release of $62.3 Million since the NAIA-IPT III's assessed value was only P3 billion. Moreover, the RTC's prohibition against the Government to perform acts of ownership on the NAIA-IPT III was contrary to the essence of a writ of possession. It[47] asserted that Rule 67 of the Rules of Court governed the expropriation of the NAIA-IPT III since it was not a national government infrastructure project.

The Government likewise contended that the commissioners' appointment was void. It claimed that it had been deprived of due process since it was not given the opportunity to contest the appointment of the commissioners. The Government likewise sought Judge Gingoyon's inhibition from the case due to his alleged manifest partiality to PIATCO.[48]

The Court partly granted the petition and rendered the following rulings:

First, under the 2004 Resolution in *Agan*: (a) PIATCO must receive payment of just compensation determined in accordance with law and equity; and (b) the Government is barred from taking over the NAIA-IPT III until just compensation is paid.

Second, RA 8974 applies in the expropriation case *insofar* as the law: (a) requires the Government to immediately pay PIATCO at least the proffered value of the NAIA-IPT III; and (b) provides valuation standards in determining the amount of just compensation.

RA 8974 is the governing law in cases where the national government expropriates property for the purpose of commencing national government infrastructure projects such as the construction of the NAIA-IPT III. However, Rule 67 of the Rules of Court applies in determining the assessed value and the mode of deposit of just compensation if the national government initiates the expropriation complaint for purposes *other than* national infrastructure projects.

Under both Rule 67 of the Rules of Court and RA 8974, the Government initiates the expropriation by filing an expropriation complaint. However, the rules on the mode of deposit differ because Rule 67 of the Rules of Court merely requires the Government to deposit the assessed value of the property sought to be expropriated with an authorized government depositary before the issuance of a writ of possession.

In contrast, RA 8974 commands the Government to make a **direct payment** to the property owner prior to the issuance of a writ of possession. **Under RA 8974, the payment shall be based on: (a) the BIR's zonal valuation in case of land; and (b) the value of the improvements or structures under the replacement cost method. If the completion of a government infrastructure project is of utmost urgency and importance and if there is no existing valuation of the property, the implementing agency shall immediately pay the proffered value of the property.**[49]

We thus observed that Section 2, Rule 67 of the Rules of Court is contrary to our January 21, 2004 Resolution which required the Government to make prior payment of just compensation to PIATCO before it could take over the NAIA-IPT III.

The Court at the same time qualified the applicability of RA 8974 to the expropriation of the NAIA-IPT III. We held that the Congress may legislate on the valuation standards of just compensation and the manner of its payment since these are substantive matters. **We made clear, however, that the Congress cannot legislate on the procedural aspects of expropriation since this power lies with the Court**. In fact, Section 14 of RA 8974 IRR provides that Rule 67 of the Rules of Court shall apply to "all matters regarding defenses and objections to the complaint, **issues on uncertain ownership and conflicting claims**, effects of appeal on the rights of the parties, and such other incidents affecting the complaint."

Third, we held in abeyance the implementation of the writ of possession until the Government directly pays to PIATCO the proffered value of P3 billion. The zonal valuation method under Section 4 of RA 8974 shall not apply since the Government owns the land on which the NAIA-IPT III stands. Consequently, PIATCO should only be paid the value of the improvements and/or structures using the **replacement cost method**.[50] Pending the determination of just compensation, the Government shall pay the sum of P3 billion as the provisional amount of just compensation because there was no expedited means by which the Government could immediately take possession of the NAIA-IPT III.

We also stated that **the replacement cost method is only one of the factors to be considered in determining just compensation. Equity should likewise be considered in determining just compensation.**

***Fourth*, we authorized the Government to perform acts essential to the operation of the NAIA-IPT III as an international airport terminal once the writ of possession becomes effective**. This authority covers the repair, reconditioning, and improvement of the complex; maintenance of the existing facilities and equipment; installation of new facilities and equipment; provision of services and facilities pertaining to the facilitation of air traffic and transport; and other services that are integral to a modern-day international airport. This is consistent with Section 4 of RA 8974 which provides that "the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project" upon fulfillment of certain conditions.

This ruling qualified the Court's statement in its January 21, 2004 Resolution that "[f]or the Government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures." Nonetheless, we clarified that the title to the NAIA-IPT III shall pass to the Government only **upon full payment of the just compensation** since the proffered value is merely a provisional determination of just compensation.

Fifth, we ordered the RTC to complete its determination of just compensation within sixty (60) days from finality of our decision since it was no longer possible for the RTC to determine just compensation within sixty (60) days from the filing of the complaint under Section 4 of RA 8974.

Sixth, the RTC did not gravely abuse its discretion in appointing the commissioners. Neither Rule 67 of the Rules of Court nor RA 8974 requires the RTC to consult the parties in the expropriation case prior to the appointment of commissioners. **We also stated that Rule 67 of the Rules of Court shall apply insofar as it is consistent with RA 8974, the IRR, and the Court's rulings in *Agan*.**

Considering that the expropriation proceedings were effectively suspended seven days after the appointment of the commissioners, the parties may file their objections with the RTC within five days from finality of the decision in accordance with Section 5, Rule 67 of the Rules of Court.

***Seventh*,** there was no ground to order Judge Gingoyon's inhibition since the Government failed to show his alleged partiality.[51]

The dispositive portion of the Decision states:

> WHEREFORE, the Petition is GRANTED in PART with respect to the orders dated 4 January 2005 and 10 January 2005 of the lower court. Said orders are AFFIRMED with the following MODIFICATIONS:
>
> > 1) The implementation of the Writ of Possession dated 21 December 2005 is HELD IN ABEYANCE, pending payment by petitioners to PIATCO of the amount of Three Billion Two Million One Hundred Twenty Five Thousand Pesos (P3,002,125,000.00), representing the proffered value of the NAIA-IPT III facilities;
> >
> > 2) Petitioners, upon the effectivity of the Writ of Possession, are authorized [to] start the implementation of the Ninoy Aquino International Airport Pasenger Terminal III project by performing the acts that are essential to the operation of the said International Airport Passenger Terminal project;
> >
> > 3) RTC Branch 117 is hereby directed, within sixty (60) days from finality of this Decision, to determine the just compensation to be paid to PIATCO by the Government.
>
> The *Order* dated 7 January 2005 is AFFIRMED in all respects subject to the qualification that the parties are given ten (10) days from finality of this Decision to file, if they so choose, objections to the appointment of the commissioners decreed therein.
>
> The *Temporary Restraining Order* dated 14 January 2005 is hereby LIFTED.
>
> No pronouncement as to costs.[52]

2. The Motion for Reconsideration and the Resolution dated February 1, 2006

On January 2, 2006, the Government, et al., filed a motion for partial reconsideration of the Court's December 19, 2005 Decision.[53] Asahikosan, Takenaka, and Rep. Salacnib F. Baterina also filed a motion for leave to intervene and asked the Court's reconsideration of its December 19, 2005 Decision.[54]

The Government raised the question of who — between PIATCO, on the one hand, and Takenaka and Asahikosan, on the other — was the NAIA-IPT III's builder. The Government informed the Court that Takenaka and Asahikosan, as the unpaid contractors in the NAIA-IPT III

project, claimed significant liens on the NAIA-IPT III. The Government opined that it would end up expropriating the NAIA-IPT III with liens and claims in excess of its actual value if the proffered value would be directly released to PIATCO.

As PIATCO's unpaid creditors, Takenaka and Asahikosan intervened in the case. They relied on *Mago v. Court of Appeals*[55] as basis for their intervention. In that case, the Court took the extraordinary step of allowing the motion for intervention even after the challenged order of the trial court had already become final. On the other hand, Rep. Baterina invoked his prerogative as legislator and taxpayer to curtail the payment of just compensation without any appropriation in PIATCO's favor.

The Court denied the motions and held that the alleged liens over the NAIA-IPT III have not been judicially established. Takenaka and Asahikosan were not parties to *Gingoyon* and did not present their claims before the Court. The Court did not make any declaration regarding Takenaka and Asahikosan's rights to any form of compensation for the construction of the NAIA-IPT III.

Moreover, the Court did not recognize the London awards in favor of Takenaka and Asahikosan. Under Section 48, Rule 39 of the Rules of Court, a foreign judgment would not bind Philippine courts unless the judgment is recognized and enforced in this jurisdiction. Philippine courts may annul a foreign judgment for lack of jurisdiction, lack of notice to the party, collusion, fraud, clear mistake of law or fact, or when the foreign judgment is contrary to public policy. Even assuming that PIATCO is indeed liable to other parties, the creditors have other judicial avenues to ventilate and prove their claims against PIATCO.

The Court also categorically stated that PIATCO, as builder of the NAIA-IPT III, must first receive just compensation in accordance with law and equity before the Government may take over the NAIA-IPT III.

The Court likewise denied the motions for intervention for serious procedural errors. Under Section 2, Rule 19 of the Rules of Court, the motion to intervene should be filed before the court's rendition of judgment, and not after the resolution of the case. Moreover, Takenaka and Asahikosan failed to establish their legal interest in the case since their claims against PIATCO have not been conclusively established in this jurisdiction.[56]

E. Proceedings in Civil Case No. 04-0876 after the Finality of the *Gingoyon* Case

1. The Appointment of DG Jones and Partners as an Independent Appraiser

On April 11, 2006, the RTC ordered the BOC to resume its duties. In compliance, the BOC submitted its Inception Report and Inception Framework to the RTC. On April 24, 2007, the parties and the BOC conferred to set the ground rules and procedure in determining the just compensation due to the NAIA-IPT III.

On April 26, 2006, the Government asked the RTC to stop the payment of P3 billion proffered value in view of an alleged supervening event – the collapse of the ceiling of the arrival lobby section of the north side of the NAIA-IPT III on March 27, 2006. The Government claimed that the collapse created a 100-square foot hole in the ceiling and caused heavy asbestos pipes to fall on the floor of the NAIA-IPT III. The Government likewise informed the Court that the MIAA requested the Association of Structural Engineers of the Philippines (*ASEP*) to investigate the cause of the collapse.[57] In its Final Report dated June 2006, the ASEP identified the following factors that contributed to the collapse:

a. Incomplete design coordination as shown by the absence of detailed shop drawings during the construction, an absence described as "unusual" for a BOT project of this size

b. Wrong choice of ceiling and wall components and fixing materials, e.g., use of rivets instead of clips, screws or wire; use of furring channels instead of stronger C channels; use of wall angles thinner than required; and

c. Poor workmanship, e.g., uneven distribution and improper attachment of rivets, lack of ceiling supports in the presence of mechanical fixtures.[58]

The ASEP concluded that the likely cause of the collapse was the "syncretic effect of all these factors working over time since the construction of the ceiling."[59]

Upon the BOC's request,[60] on May 5, 2006, the RTC ordered the engagement of the services of an internationally accepted independent appraiser who shall conduct the valuation of the NAIA-IPT III.[61]

On May 23, 2006, the Government manifested that it engaged the services of: (a) TCGI Engineer to determine the structural integrity of NAIA-IPT III; (b) Ove Arup & Partners Massachusetts, Inc. (*Ove Arup*) to conduct a design and technical review of the NAIA-IPT III and to conduct a peer review of TCGI Engineer's methodology and test results; and (c) Gleeds International to determine the value of the NAIA-

IPT III.[62]

On June 20, 2006, the RTC ordered Land Bank to immediately release the amount of P3 billion to PIATCO. The RTC ruled that the collapse of a portion of the NAIA-IPT III was not a supervening event that would hinder the payment of the proffered value to PIATCO. **In compliance with this order, the Government tendered to PIATCO a P3 billion check on September 11, 2006.** ***On the same day, the RTC reinstated the writ of possession in favor of the Government.***[63]

Thereafter, the Government and PIATCO submitted their list of nominees for the appointment of an independent appraiser.[64] On **May 3, 2007**, the RTC appointed **DG Jones and Partners as independent appraiser.**[65]

On **May 18, 2007**, the RTC directed the Government to submit a Certificate of Availability of Funds to cover DG Jones and Partners' $1.9 Million appraisal fee.[66]

The Government sought the reconsideration of the May 3 and 18, 2007 orders. The Government complained that the appointment of an appraiser apart from those hired by the Government would result in the unnecessary depletion of its funds since it would be compelled to pay two appraisers.[67]

In response, PIATCO argued that the RTC has the inherent power to appoint an independent appraiser pursuant to Section 5 (g), Rule 135 of the Rules of Court. The RTC has wide discretion on how it shall carry its mandate under RA 8974 and Rule 67 of the Rules of Court.[68]

In an **order dated January 7, 2008, the RTC sustained the appointment of DG Jones and Partners.** The RTC ruled that its power to appoint the members of the BOC under Section 5, Rule 67 of the Rules of Court includes the power to appoint an independent appraiser.[69]

The Government directly challenged before the Court the May 3, May 18, and January 7, 2008 orders in a petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. The case was docketed as G.R. No. 181892.[70]

On January 9, 2008, the Court issued a temporary restraining order against the implementation of the May 3 and 18, 2007 Orders as well as the January 7, 2008 Order.[71]

2. The BOC's Expenses

On June 15, 2006, the BOC filed a request for the release of a mobilization fund of P1,600,000.00 to support the discharge of its functions.[72] The RTC approved the request and directed the Government and PIATCO to equally share the BOC's expenses.[73] *The Government and PIATCO complied with this order and tendered the sum of P1,600,000.00 to the BOC.*[74]

On November 24, 2009, the BOC requested additional funds in the amount of P5,250,000.00.[75] On December 7, 2010, the RTC directed the Government and PIATCO to equally defray the BOC's expenses.[76] The Government contested this order and insisted that Takenaka and Asahikosan should likewise shoulder the BOC's expenses as intervenors in the case.[77]

In an order dated March 11, 2011, the RTC ordered Takenaka and Asahikosan to share in the BOC's expenses. The RTC thus ordered each party to pay P1,750,000.00. PIATCO *complied with this order and paid the amount of P1,750,000.00 to the BOC.*[78]

Takenaka and Asahikosan sought the partial reconsideration of this order. They argued that they should not be made to pay the BOC's expenses since "their prayer to defer the release of a portion of the just compensation pending the conclusion of the enforcement proceedings was addressed to the RTC [,] and not to the BOC."[79]

F. The Parties and the BOC's Appraisal of the NAIA-IPT III

After the Court issued the January 9, 2008 temporary restraining order, the parties and the BOC conducted a preliminary conference on April 22, 2010, to adopt an alternative course of action to avoid further delay in the determination of just compensation.[80]

The Government manifested that it was ready to present its own valuation of the NAIA-IPT III and other supporting evidence. PIATCO, Takenaka, and Asahikosan did not object to this manifestation.[81]

On August 5, 2010, the RTC ordered the parties to submit their appraisal reports of NAIA-IPT III with supporting documents and affidavits.[82] The **Government** appraised the NAIA-IPT III at **$149,448,037.00** while PIATCO concluded that its replacement cost was **$905,867,549.47**. On the other hand, **Takenaka and Asahikosan** claimed that the NAIA-IPT III's construction cost amounted to **$360,969,790.82**.

1. The Government's Appraisal

Based on the Gleeds Report dated November 15, 2010, the Government computed the valuation of the NAIA-IPT III as follows: [83]

	December 2002 CCV	December 2004 CCV
Base valuation $USD @3Q01	$300,206,693	$300,206,693
Deterioration $USD @2Q09	$0	$1,738,318
Depreciation $USD 3Q01	$0	$35,076,295
Total Base CCVs $USD	**$300,206,693**	**$263,392,081**
Rectification for Contract Compliance $USD@2Q09		
Not compliant with bid documents	-$30,670,894	-$30,670,894
Inferior quality	-$7,702,640	-$7,702,640
Additional areas to be built (63,490 m^2)	-$75,570,510	-$75,570,510
Total Contract Compliance Deductions $USD	-$113,944,044	-$113,944,044
Total CCVs $USD	**$186,262,649**	**$149,448,037**

- **$300,206,693.00 as base current cost valuation (CCV)**. Based on the Gleeds report, the construction cost of the NAIA-IPT III as of December 2002 was $300,206,693.00, consisting of the cost of constructing the terminal building, aprons, car park, elevated roadways, and other related items.

  Gleeds appraised the NAIA-IPT III by "multiplying the structure's dimensions (i.e., quantities) by a price (i.e., rate) for constructing the works at a designated time and specific location, adding the cost of works in, on, and around the structure, and then accounting for inferior and nonperforming works, and rectification of those works."[84]

- Gleeds arrived at the CCV by considering the rates and prices for the third quarter of 2001, which represented the midpoint of the construction period from June 2000 (the commencement of construction) to December 2002 (the suspension of construction). It claimed that calculating the cost of construction based on its midpoint was a recognized standard practice in the construction industry. The base CCV excluded the following items:

  1. Failed structural elements of the Terminal, as identified in the Arup Seismic Evaluation Report and Gravity Loading and Element Capacity Assessment;
  2. The inferior quality of material used and works, including floor tiling, plasterboard wall finishes and ceilings, internal and external metal paneling;
  3. Constructed areas that are unnecessary to the functioning of an international aiport terminal and therefore of no benefit to the Republic. These areas identified in the Arup Site Observation Report include areas where the requirements stated in the Bid Documents have been grossly overprovided. They also include the multilevel retail mall that, with its own internal circulation, is functionally separate from the Terminal and accessible only through the multi-storey car park (20,465 m^2), and excess retail concession space (1,727 m^2);
  4. The cost of seismic and gravity load structural retrofits for the failed elements in the terminal buildings and multi-storey car park structures, as those retrofits are described in Arup's Drawings listed in Appendix 'B' Drawing List 2 and other rectification works required to bring the terminal to compliance with applicable building and airport codes (as indicated in the Appendices of Arup's Site Observation Report);
  5. The cost of completing the items listed in the JAC project status summary report of 28 February 2003;[85] and
  6. The cost of seismic and gravity load structural retrofits for the failed elements in the elevated roadway structures as those retrofits were described in Arup's Drawings listed in Appendix 'B' Drawing List 3, Arup Review on 'TCGI Report of Civil Design Review and Evaluation' – Elevated Roadway, dated March 2009, and other rectification works required to bring the elevated roadways to compliance with applicable building and airport codes (as indicated in the Appendices of Arup's Site Observation Report).[86]

- **$263,392,081 as total base CCV as of December 2004**. The Government asserted that the NAIA-IPT III suffered from depreciation and deterioration in the sum of US$36,814,612.00 from December 2002 until December 2004. The base value CCV at the time of expropriation should be US$263,392,081.00 after deducting depreciation and deterioration.
- **$113,944,044 as total contract compliance deductions.** The Government further deducted items which were non-compliant with bid documents, including, among others:

  a. FIDS monitors not flat screen
  b. Moving walkways underprovision

c. Sun shading to external glazing
d. Lack of 400hz PC air to loading bridges
e. Completion of testing, commissioning, and operation of the facility
f. Provision of as-built documentation

The Government likewise deducted the replacement cost of inferior quality items and additional areas that the Government had to build to finish the NAIA-IPT III project.[87]

2. PIATCO's Appraisal

PIATCO claimed that the total replacement value of the NAIA-IPT III as of December 31, 2010 amounted to $905,867,550.00.

	Actual Costs @ 2002	**Inflation Rate**	**Base Valuation @ 2004**
I. Materials, Equipment and Labor Engineering & Procurement	360,969,791	1.0971	396,019,958
II. Attendant Costs			
Engineering and Architecture	19,372,539	1.0971	21,253,613
Quality Assurance	6,923,720	1.0971	7,596,013
Construction Supervision	4,302,227	1.0971	4,719,973
Construction Insurance	4,329,272	1.0971	4,749,644
Site Development	8,358,169	1.0971	9,169,747
Other Costs	308,985	1.0971	338,987
Attendant Costs exclusive of Financing Costs	**43,594,911**	**1.0971**	**47,827,977**
Financing Costs	26,602,890		26,602,890
Total Attendant Costs	**70,197,802**		**74,430,868**
TOTAL	**431,167,593**		**470,450,825**

In US Dollars

REPLACEMENT COST	**470,450,825**
Add:	
Interest from 21 Dec 2004 to 11 Sept 2006	104,014,531
Interest from 12 Sept 2006 to 31 Dec 2010	331,402,193
Total Interests	**435,416,724**
Total Replacement Value	**905,867,550**
Less: Payment on 11 Sept 2006	59,438,604
Amount Still Due	**846,428,946**

Computation of Interest in US Dollars

	Period	**Interest Rates**	**No. of Days**	**Amount in USD**
Replacement Cost			**(a)**	**470,450,825**
Interests				
From takeover of NAIA T3 on 21 Dec 2004	December 21 to December 31, 2004	12%	11	1,724,986
	January 1 to December 31, 2005	12%	365	57,448,057
	January 1 to September 11, 2006	12%	254	44,881,488
Total Interest from 21 December 2004 to 11 September 2006			(1)	**104,014,531**
TOTAL AMOUNT DUE AS OF 11 SEPTEMBER 2006			(a) + (1)	**574,465,356**
Less: Amount Paid on 11 September 2006 (Php 3,002,125,000/50.508)				59,438,604
NET AMOUNT STILL DUE AS OF 11 SEPTEMBER 2006			(b)	**515,026,752**
Additional Interests	September 12 to December 31, 2006	12%	112	19,227,665

	January 1 to December 31, 2007	12%	365	65,000,954
	January 1 to December 31, 2008	12%	366	73,109,155
	January 1 to December 31, 2009	12%	366	82,028,472
	January 1 to December 31, 2010	12%	366	92,035,946
Additional Interests up to 31 December 2010			**(2)**	**331,402,193**
AMOUNT STILL DUE AS REPLACEMENT VALUE			**(b) + (2)**	**846,428,946**
			Replacement Cost	**470,450,825**
			Total Interests (1+2)	**435,416,724**
			TOTAL AMOUNT OF REPLACEMENT VALUE	**905,867,550**

- **$360,969,791 as base value**. PIATCO adopted Takenaka and Asahikosan's actual construction cost of $360,969,791 which is supported by As-Built Drawings and Bills of Quantities. PIATCO stated that the Japanese Airport Consultants (JAC), the quality assurance inspector for the NAIA-IPT III project, validated the works of Takenaka and Asahikosan. PIATCO alleged that the Government and PIATCO entered into a Quality Assurance Agreement with JAC.[88]

- **Attendant costs.** Under RA 6957 IRR, the replacement cost includes the "overhead and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures." The items under the attendant costs correspond to these "overhead and other attendant costs" which are necessary to construct an airport project.[89]

  It is necessary to hire quality assurance surveyors to check and monitor the work of Takenaka. PIATCO hired Pacific Consultants, Inc. as construction supervisor in the NAIA-IPT III project. PIATCO claimed that the planning and design consultancy fees are even below the international norms which are in the range of 8.5% to 11.5% of the Construction Contract cost.[90] Financing costs are also "attendant costs" because loans and guarantees were obtained to finance the NAIA-IPT III project.[91]

- **Conversion to 2004 values.** Since the NAIA-IPT III shall be appraised at the time of taking, the total construction cost shall be converted to December 21, 2004 values by considering the **inflation rate of 1.0971**.[92] Inflation was computed using the Consumer Price Index (*CPI*) from 2002 to 2005. The reckoning period was from November 29, 2002, when Takenaka and Asahikosan suspended their works in the NAIA-IPT III project, until December 21, 2004, when the Government filed a complaint for expropriation.[93]

- **Interests on replacement cost**. The twelve (12%) interest rate shall be added to the replacement cost pursuant to the principles of law and equity.[94] In *Benguet Consolidated v. Republic of the Philippines,*[95] the Court ruled that the property owner is entitled to the payment of interest where the payment of compensation does not accompany the taking of property for public use but is postponed to a later date. The interest shall compensate for the Government's delay in the payment of just compensation.[96]

3. Takenaka and Asahikosan's Appraisal

On the other hand, Takenaka and Asahikosan, computed the NAIA-IPT III's replacement cost as follows:

	In US dollars
Total payments of PIATCO	275,119,807.88
Add: Awards by the London Court	84,035,974.44
Award by the Makati Court	1,814,008.50
Total Construction Cost	**360,969,790.82**

- **$360,969,790.82 as total construction cost.** Takenaka and Asahikosan claimed that the initial contract price for the construction of the NAIA-IPT III was $323,753,238.11. Thereafter, changes were made in the course of the construction that increased its construction contract price. Pursuant to the Onshore Construction and Offshore Procurement Contracts, PIATCO paid Takenaka and Asahikosan the amounts of $231,312,441.28 and P1,796,102,030.84 (a total of $275,119,807.88).

After PIATCO defaulted on its payments, Takenaka and Asahikosan instituted Claim Nos. HT-04-248 and HT-05-269 in England. The London court ruled in their favor and awarded them the amounts of $81,277,502.50, P116,825,365.34 and £65,000.00 or a total of $ 84,035,974.44.

Thereafter, they filed an action to enforce Claim Nos. HT-04-248 and HT-05-269 before the RTC of Makati which awarded them the sum of $1,814,008.50.[97]

4. The BOC's Appraisal

On March 31, 2011, the BOC submitted its Final Report recommending the payment of just compensation of **$376,149,742.56 with interest at the rate of 12% per annum computed from the time of the taking of the property until the amount is fully paid, plus commissioner's fees equivalent to 1% of the amount fixed as part of the costs of the proceedings.**

In arriving at the replacement cost of the NAIA-IPT III, the BOC proposed the following computation:

Formula	In US Dollars
Amount paid by PIATCO to Takenaka and Asahikosan	275,119,807.88
Add:	
Award in Claim No. HT-04-248 Relating to the Construction Cost of NAIA-IPT III	14,827,207.00[98]
Award in Claim No. HT-05-269 Relating to the Construction Cost of NAIA-IPT III	52,007,296.54[99]
Construction Cost of NAIA-IPT III	341,954,311.42
Add:	
Attendant Cost (10% of the Construction Cost)	34,195,431.14
Replacement Cost of NAIA-IPT III	376,149,742.56

- **$341,954,311.42**. In computing the construction cost, all actual, relevant and attendant costs for the construction of the NAIA-IPT III, including its market price, shall be considered. The BOC divided the construction cost into: (a) the amount paid by PIATCO to Takenaka and Asahikosan for the construction of NAIA-IPT III; and (b) the awards by the London Court in Claim Nos. HT-04-248 and HT-05-269 relating solely to construction cost, excluding interest, attorney's fees, and costs of the suit. The BOC relied on Takenaka and Asahikosan's construction cost since these corporations shouldered the actual cost of constructing the NAIA-IPT III.

- **$34,195,431.14**. According to the BOC, PIATCO failed to substantiate its attendant costs. In pegging the attendant cost at 10% of the construction cost, the BOC relied on the Scott Wilson Report, which states that the accepted industry range for architecture, civil and structural, electrical and mechanical, quantity surveyor and project management cost is 8.5% to 11.5% of the construction cost.

- **Depreciation shall not be deducted from the construction cost**. The BOC explained that the inventory of materials comprising the NAIA-IPT III does not reflect its replacement cost. Rather, it is the actual cost of replacing an existing structure with an identical structure that is considered in the replacement cost method. For this reason, depreciation shall not be deducted from the construction cost; otherwise, the NAIA-IPT III would have been fully depreciated since the Government estimated that the NAIA-IPT III's useful life was only ten years.

- **The replacement cost shall earn interest at 12% per annum from December 21, 2004, until full payment**. The BOC stated that legal interests shall accrue from the time of taking of the property until actual payment of just compensation. The delay in the payment of just compensation is equivalent to a forbearance of money.

- **The commissioner's fees shall be equivalent to 1% of just compensation.** According to the BOC, the commissioner's fees shall be equivalent to 1% of just compensation, *similar to the arbitrators' fees*. Commissioners and arbitrators perform similar responsibilities since both act as independent and uninterested third parties in resolving difficult factual issues.[100]

II. The RTC Rulings in Civil Case No. 04-0876

A. The Main Decision

In a decision dated May 23, 2011, the RTC directed the Government, Takenaka, and Asahikosan to pay the commissioners' fees in the amount of P1,750,000.00 each; and ordered the Government to pay PIATCO **just compensation in the amount of $116,348,641.10**. In determining the amount of just compensation, the RTC adopted the following computation:

Formula	In US Dollars
Just compensation as determined by the Republic	149,448,037.00
Add: Attendant cost (10% of $263,992,081.00, CCV as of December 21, 2004)	26,339,208.10
Just Compensation	**175,787,245.10**
Less: Proffered value paid to PIATCO	(59,438,604.00)
Net Just Compensation	**116,348,641.10**

- **$149,448,037.00**. The RTC adopted the Government's computed just compensation of $149,448,037.00, and ruled that the Government should not pay for the portions of the NAIA-IPT III that were defective. The RTC thus excluded the following from the computation of the CCV:

  (a) failed structural elements in the NAIA-IPT III;
  (b) inferior quality of material works;
  (c) constructed areas that are unnecessary to the use of an international airport terminal;
  (d) cost of seismic and gravity load structural retrofits for the failed elements;
  (e) cost of completing the items listed in the JAC project status summary report of February 28, 2003; and
  (f) cost of seismic and gravity load structural retrofits for the failed elements in the elevated roadway structures.

The RTC rejected PIATCO, Takenaka, Asahikosan, and the BOC's computation for lack of factual and legal basis. The court criticized the BOC's computation of construction cost and stated that the BOC erroneously relied on the amounts allegedly paid by PIATCO to Takenaka and Asahikosan. The RTC pointed out that PIATCO failed to present proof that it had indeed paid Takenaka and Asahikosan the sum of $275,119,807.88. The RTC further posited that the BOC did not take into account the actual cost of the NAIA-IPT III at the time of taking which was in a state of collapse and deterioration.

The RTC stated that just compensation is limited to the value of the improvement at the time of the filing of the expropriation complaint. The payment of just compensation does not include the right to be compensated of the franchise to operate the airport, and the increased value of improvements due to inflation rate.

- $**26,339,208.10**. Similar to the BOC, the RTC pegged the attendant cost at 10% of the CCV at the time of the filing of the expropriation complaint. The RTC agreed with the BOC that the computation of the attendant cost based on the 10% of the CCV was an accepted industry practice.

- **$59,438,604.00**. After deducting the proffered value of $59,438,604.00, the RTC fixed the net compensation at $116,348,641.10, without interest. The RTC stated that no interest shall accrue on the net just compensation since the Concession Agreement was nullified by the Court in Agan.

The dispositive portion of the decision states:

> IN THE LIGHT OF THE FOREGOING, Plaintiffs are hereby ordered to pay respondent PIATCO the amount of US$175,787,245.10 less the proffered value (P3,002,125,000.00) actually paid to and received by defendant, as the just compensation for the improvements of NAIA-IPT III.
>
> Moreover, both plaintiff Republic and intervenors Takenaka and Asahikosan Corporations are directed to pay their proportionate shares of the Commissioners' Fees in the amount of P1,750,000.00 each with dispatch.
>
> Finally, insofar as both intervenors Takenaka and Asahikosan Corporations are concerned, resolution of their claim before this Court is held in abeyance owing to the pendency of the outcome of the appeal on certiorari before the CA, and in any of their claims, as contractors are solely as against defendant PIATCO.
>
> **SO ORDERED**. [101]

PIATCO, Takenaka, and Asahikosan immediately appealed the RTC's decision before the CA while the Government opted to seek partial reconsideration of the attendant costs awarded to PIATCO.[102]

PIATCO, Takenaka, and Asahikosan sought to nullify the RTC decision for alleged violation of their right to due process. They complained that they were only furnished copies of the BOC Final Report only after the promulgation of the May 23, 2011 decision.[103] They averred that the RTC violated Sections 7 and 8, Rule 67 of the Rules of Court which provide that the clerk of court shall serve copies of the commissioners' report on all interested parties, with notice that they be allowed ten days within which to file objections to the findings of the report, if they so desire.[104]

The Government subsequently partially appealed the case to the CA after the RTC denied its motion for partial reconsideration.[105]

B. The RTC's Interlocutory Order on the Validity of the Escrow Accounts

1. The Government and the Creation of an Escrow Account for the Payment of Just Compensation

On July 8, 2011, the Government filed a Manifestation and Motion[106] with the RTC stating that it was ready and willing to pay PIATCO, ***through an escrow account,*** the amount of $175,787,245.10 less the proffered value of P3 billion.

The Government expressed its desire to exercise full ownership rights over the NAIA-IPT III. However, it could not directly pay PIATCO who had various creditors – Takenaka, Asahikosan, and Fraport, among them. The Government asserted that just compensation should only be paid to claimants who are legally entitled to receive just compensation.

The Government thus asked the RTC's leave to deposit the just compensation due in an escrow account that shall be subject to the following conditions:

> 8.1. The claimant(s) shall have been held to be entitled to receive the sum claimed from the "Just Compensation (NAIA Terminal 3) Fund" in accordance with Philippine law and regulation, by a final, binding and executory order or award of the expropriation court;
> 8.2. The claimant(s) shall have been held to have accepted or otherwise become subject to the jurisdiction of the expropriation court and other relevant courts of the Republic of the Philippines, by reason of or in connection with the expropriation of NAIA Terminal 3 by the ROP, directly or indirectly;
> 8.3. The claimant(s) shall have executed a valid and effective quitclaim in favor of the Republic of the Philippines acknowledging that claimant(s) against the ROP or any agency or instrumentality or corporation of the ROP, by reason of, or in connection with, the expropriation of NAIA Terminal 3 by the ROP, directly or indirectly, in any capacity whatsoever;
> 8.4. The claimant(s) has complied with in good faith any condition or undertaking required from it/him/her by the expropriation court by reason of or in connection with the expropriation of NAIA Terminal 3 by the ROP, directly or indirectly, in any capacity whatsoever.[107]

The Government thus prayed:

> 1. Pending determination of the entitled claimants, to allow the Government to deposit just compensation less the proffered value in an escrow account with a reputable bank whose senior unsecured obligations are rated at least 'BBB' by Standard and Poor's Investors Service, Inc. or 'Baa2' by Moody's Service Investors Service, Inc. to be designated by the RTC;
>
> 2. After depositing the amount in an escrow account, to confirm the Government's right to fully exercise any and all acts of ownership over the NAIA-IPT III; and
>
> 3. To order the release of just compensation, or of any portion thereof from the escrow account to the entitled claimants provided that the entitled claimants have fully complied with all the conditions and requirements set forth under paragraphs 8.1 to 8.4 of the Manifestation and Motion.[108]

PIATCO opposed the Manifestation and Motion and argued that the Government could not vary the terms of the May 23, 2011 Decision as well as the Court's rulings in *Agan* and *Gingoyon* commanding the Government to make a direct payment of just compensation to PIATCO. It insisted that the offer to pay through an escrow account is not equivalent to direct payment. PIATCO further denied the Government's allegations that there were several claimants on the just compensation.[109]

On the other hand, Takenaka and Asahikosan agreed with the Government that just compensation should only be paid to entitled claimants. They posited that the Court's directive in Agan (with respect to the direct payment to PIATCO) was premised on the erroneous assumption that PIATCO was the builder of the NAIA-IPT III. Takenaka and Asahikosan insisted that they were the actual builders of the NAIA-IPT III. Nonetheless, they contended that the RTC had no jurisdiction over the Manifestation and Motion because the parties already filed their respective Notices of Appeal before the CA.[110]

2. The Omnibus Order dated October 11, 2011

In an Omnibus Order dated October 11, 2011, the RTC granted the Manifestation and Motion.

The RTC ruled that it has residual jurisdiction to adjudicate the Government's Manifestation and Motion considering that the motion was filed prior to the parties' filing of the Notice of Appeal. The RTC opined that the Manifestation and Motion was akin to a motion for execution pending appeal. The Manifestation and Motion showed the Government's intent to voluntarily comply with the May 23, 2011 decision which was pending appeal before the CA. Under Section 9, Rule 41 of the Rules of Court, the RTC has the residual power to issue orders for the protection and preservation of the parties' rights, and to order the execution of a decision pending appeal. Furthermore, Section 6, Rule 136 of the Rules of Court provides that courts have incidental power to issue orders that are necessary to effectuate their judgments.

The RTC held that the creation of an escrow account conforms with the Court's rulings in *Gingoyon* that just compensation shall be paid in accordance with law and *equity*. Since the Government had no legal obligation to create an escrow account, it could impose conditions for the release of just compensation in the escrow account, including: (a) PIATCO's submission of a warranty that the NAIA-IPT III shall not be burdened by liens and encumbrances and an undertaking that PIATCO shall be solely liable for any claims from third persons involving the NAIA-IPT III; and (b) PIATCO's execution of a Deed of Conveyance of the NAIA-IPT III in favor of the Government. Equity dictated that the Government's payment of just compensation should free the NAIA-IPT III from liens and encumbrances. The Deed of Conveyance should be without prejudice to the appellate court's determination of just compensation.

Conversely, PIATCO had likewise no legal obligation to accept or reject the Government's offer of payment.

The RTC clarified that PIATCO is the sole entity entitled to receive the payment from the Government. The RTC pointed out that the Court has remanded the *Gingoyon* case for the sole purpose of determining the amount of just compensation to be paid to PIATCO.

Moreover, the Government did not raise the alleged dispute in the ownership of the NAIA-IPT III during the expropriation proceedings. The RTC stated that it could not take judicial notice of the allegation that PIATCO was indebted to various creditors, apart from Takenaka and Asahikosan, since these alleged creditors were not impleaded in the expropriation complaint.

The RTC likewise observed that compliance with the Government's conditions under 8.1 and 8.3 for the release of just compensation from the escrow account pending appeal was legally impossible. For this reason, the payment through an escrow account was not the payment that would transfer the title of the NAIA-IPT III to the Government.

The RTC lastly ruled that the payment of just compensation through an escrow account shall be payment of just compensation *within a reasonable time*. Consequently, the Government may exercise full rights of ownership over the NAIA-IPT III upon the creation of an escrow account.[111]

The dispositive portion of this order provides:

> IN THE LIGHT OF THE FOREGOING, plaintiffs' Manifestation and Motion is GRANTED in part:
>
> 1. Plaintiffs' prayer for the court to determine who is/are legally entitled to receive just compensation is DENIED for lack of merit.
>
> 2. Plaintiffs' prayer that they be allowed to deposit the payment of just compensation (less the proffered value) to an escrow account is hereby GRANTED, provided that only the following conditions may be imposed for the release of the money deposited:
>
>   a. PIATCO must submit a *Warranty* that the structures and facilities of NAIA IPT III are free from all liens and encumbrances;
>
>   b. PIATCO must submit an *Undertaking* that it is assuming sole responsibility for any claims from third persons arising from or relating to the design or construction of any structure or facility of NAIA IPT III structures, if any; and
>
>   c. PIATCO must submit a duly executed *Deed* transferring the title of the NAIA IPT III structures and facilities to the Republic of the Philippines, without however, prejudice to the amount which will finally be awarded to PIATCO by the appellate court;
>
>   The Land Bank of the Philippines and the Development Bank of the Philippines are hereby jointly appointed [a]s the Escrow Agents for the above purpose.
>
>   Upon payment of the plaintiffs of the said just compensation in an escrow account, this court recognizes the Republic of the Philippines' right to exercise full rights of ownership over the NAIA IPT III structures and facilities in accordance [with] 2 (c).
>
> 3. Plaintiffs' Formal Offer of Evidence and defendant PIATCO's Comment and Opposition thereto are NOTED.

4. Defendant PIATCO's motion for reconsideration with plaintiffs' comment/opposition of the order of this court denying the motion for inhibition is hereby denied.

SO ORDERED.[112]

The RTC subsequently denied PIATCO's as well as Takenaka and Asahikosan's respective motions for partial reconsideration of the above-quoted order,[113] opening the way for PIATCO's petition for *certiorari* with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction, filed with the CA.[114] This petition was docketed as **CA-G.R. SP. No. 123221**.

III. The CA Rulings

A. CA-G.R. CV No. 98029

In a decision dated August 7, 2013,[115] the CA upheld the validity of the RTC's May 23, 2011 decision. The CA ruled that the parties did not need to be furnished the BOC Final Report since RA 8974 is silent on the appointment of the BOC, as held in *Gingoyon.*

However, the CA modified the RTC rulings and arrived at its own formula of the NAIA-IPT III's replacement cost, to wit:

Construction Cost
Add: Attendant Cost
= Replacement Cost
Add: Equity
Just Compensation
Substituting:

Replacement Cost	=	$300,206,693.00 + 0 (because attendant cost already imputed in construction cost)
	=	$300,206,693.00 + 6% interest from December 21, 2004 to September 11, 2006 less $59,438,604.00 + 6% interest from September 12, 2006 until finality of judgment

	In US dollars
Replacement Cost	300,206,693.00
Less: Proffered value paid to PIATCO	(59,438,604.00)
Just Compensation as of September 11, 2006	240,768,035.00
Add: Interest Due as of July 31, 2013	130,658,653.24
Just Compensation as of July 31, 2013	**371,426,742.24**

The CA justified its computation as follows:

- **$300,206,693.00 as Replacement Cost**. Under Section 10 of RA 8974 IRR, replacement cost shall consist of the construction and attendant costs.

  $300,206,693.00 as construction cost. The CA relied on the Gleeds Report which it characterized as more "particularized, calculable and precise."[116] The Government's construction cost did not vastly differ from the BOC and PIATCO's computed construction costs of $341,954,311.42 and $360,969,791.00, respectively. But the BOC and PIATCO's computed construction costs were unreliable since they lacked detailed proof that the quoted amounts were directly related to the construction of NAIA-IPT III.

  $0 as attendant cost. The CA stated that there was no need to award additional attendant costs since these costs had already been included in the Government's computations under the heading "General Requirements and Conditions." The inclusion of attendant cost in the construction cost was justified since the attendant cost becomes part of the total construction cost once the construction of a project is completed. Based on the Bills of Quantities, the Government provided the following detailed list of attendant costs in the construction of the NAIA-IPT III:

Attendant Cost	In US Dollars
Design	6,439,680
Staff and labour	10,491,139.54
Insurance	925,210.78
PI Insurance	2,200,000.00
Consequential Loss	800,000.00

Setting out	364,647.00
Health and safety	403,224.00
Enviro Management	176,490.00
Design	2,631,100.00
Staff and labour	2,590,774.19
Insurance	71,109.77
Total	**25,293,376.28**[117]

The CA likewise observed that PIATCO's summarized computation of attendant costs was self-serving and unsubstantiated by relevant evidence. On the other hand, the BOC and the RTC's computation of attendant costs at 10% of the construction cost lacked factual and legal support. Pegging attendant costs at 10% of the construction cost was only relevant during the pre-construction stage since the costs of the construction at that time could only be estimated. This estimate carried no relevance at the post-construction stage since the total construction costs, including the attendant costs, could already be determined.

- **Depreciation, costs for noncompliance with contract specifications, and unnecessary areas of NAIA-IPT III shall not be deducted from the replacement cost.** The CA reversed the RTC's finding that the NAIA-IPT III suffered from massive structural defect. The CA opined that the collapse of the portion of the NAIA-IPT III merely relates to "finishing" rather than to "structural" defects. In construction lingo, "finishing" pertains to aesthetics, convenience, and functionality of a built structure while "structural" refers to the very integrity and stability of the built structure.

  The CA disagreed with the RTC's conclusion that depreciation, costs for non-compliance with contract specifications, and unnecessary areas of the NAIA-IPT III, shall be excluded from the computation of construction cost. Depreciation should not be deducted since it merely measures the book value of the property or the extent of use of the property. Depreciation is inconsistent with the replacement cost method since the replacement cost merely measures the cost of replacing the structure at current market price at the time of taking.

  Furthermore, the market price of a building increases over time; thus, if the construction cost of NAIA-IPT III in 2002 was $300,206,693.00, its replacement cost in 2004 should be equal to or higher than $300,206,693.00.

- **Interest**. The CA further held that interest shall be added to just compensation as of September 11, 2006. Citing Gingoyon, the CA explained that law and equity dictated that the Government shall be liable for legal interests as a result of the delay in the payment of just compensation to PIATCO. Since there was no stipulation on interests, the CA fixed the interest rate at 6%. Upon finality of the judgment, the interest shall be 6% until fully paid. As of July 31, 2013, the CA computed the interest as follows:

	In US Dollars
Interest from December 21, 2004 to December 21, 2005 $300,206,693*6%	18,012,401.58
Interest from December 22, 2005 to September 11, 2006 $300,206,693*6%*268 days/365 days	13,225,544.17
Interest from September 12, 2006 to September 12, 2012 $240,768,035*6%*6 years	86,676,492.60
Interest from September 13, 2012 to July 31, 2013 $240,768,035*6%*322 days/365 days	12,744,214.89
Total Interest as of July 31, 2013	**130,658,653.24**

The CA further ordered Takenaka and Asahikosan to share in the expenses of the BOC. Since Takenaka and Asahikosan's inputs on the construction costs of the NAIA-IPT III were heard by the RTC, they should share in the expenses of the BOC.

The CA likewise denied Takenaka and Asahikosan's prayer to set aside in an escrow account a portion of the just compensation corresponding to the amounts owed them by PIATCO. RA 8974 expressly provides that the Government shall directly pay the property owner upon the filing of the complaint as a prerequisite to the issuance of a writ of possession.

The dispositive portion of the CA decision provides:

> **WHEREFORE**, the decision appealed from is MODIFIED. *Just compensation* is fixed at US$300,206,639.00 less US $59,438,604.00 paid in September 2006 or the net sum of US$240,768,035.00 with legal interest at 6% computed as above. The Republic is thus ordered to pay PIATCO *just compensation* as herein determined and which sum has reached the total of US $371,426,688.24 as of 31 July 2014.

> Upon finality of judgment, interest on the sum due by then shall be at 12% until fully paid.
>
> **IT IS SO ORDERED.**[118]

On August 22, 2013, the CA amended its decision in view of the BSP's recent issuance, BSP Circular No. 799, series of 2013, which took effect on July 1, 2013. BSP Circular No. 799 lowered the legal interest rate on loan or forbearance of money, goods or credit to 6% per annum.[119] The CA amended decision provides:

> **WHEREFORE**, the decision appealed from is MODIFIED. *Just compensation* is fixed at US $300,206,639.00 less US $ 59,438,604.00 paid in September 2006 or the net sum of **US$240,768,035.00** with legal interest at 6% computed as above. The Republic is thus ordered to pay PIATCO *just compensation* as herein determined and which sum has reached the total of $371,426,688.24 as of 31 July 2013.
>
> Upon finality of judgment, interest on the sum due by then shall be at **6% per annum** until fully paid **pursuant to BSP Circular No. 799, series of 2013 which took effect on 01 July 2013, and which effectively modified the interest rate rulings in *Eastern Shipping Lines, Inc. v. Court of Appeals*. Eastern Shipping was the basis of the Court's earlier imposition of a 12% interest from finality of judgment**.
>
> **IT IS SO ORDERED**.[120] [Emphasis supplied]

The CA likewise denied the Government's, PIATCO's, Takenaka's, and Asahikosan's motions for partial reconsideration in a resolution dated October 29, 2013.[121]

The CA's denial of their motions cleared the way for the elevation of CA-G.R. CV No. 98029 to this Court through a petition for review on *certiorari*. The Government, PIATCO, and Takenaka and Asahikosan's consolidated petitions are docketed as G.R. Nos. 209917, 209731, and 209696, respectively.

B. CA-G.R. SP No. 123221

In a decision dated October 18, 2014, the CA reversed the Omnibus Order dated October 11, 2011, for having been issued with grave abuse of discretion. The dispositive portion of the decision states:

> **WHEREFORE**, in view of the foregoing, the instant Petition is hereby **GRANTED**. Parenthetically, the Omnibus Order dated 11 October 2011 and Order dated 5 December 2011 of the Pasay City RTC, Branch 117, in Civil Case No. 04-0876-CFM for Expropriation, are hereby **NULLIFIED and SET ASIDE** for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> **SO ORDERED**.[122]

IV. The Action to Enforce the London Awards, Civil Case No. 06-171

On February 27, 2006, Takenaka and Asahikosan filed an action to enforce the London awards in Claim Nos. HT-04-248 and HT-05-269 before the RTC of Makati, Branch 143. The case was docketed as **Civil Case No. 06-171**.[123]

In a decision dated September 6, 2010, **the RTC recognized the validity of the London awards** in Claim Nos. HT-04-248 and HT-05-269 and declared these awards as enforceable in the Philippine jurisdiction. The RTC thus ordered PIATCO to pay Takenaka and Asahikosan the sum of $85.7 million.[124]

PIATCO appealed the case to **the CA**[125] **which affirmed the RTC rulings** in a decision dated March 13, 2012.[126] The CA likewise denied PIATCO's motion for reconsideration in a resolution dated May 31, 2012.[127]

PIATCO responded by filing a petition for review on *certiorari* with this Court assailing the CA's ruling. The case was docketed as **G.R. No. 202166** and is still pending before the Court separately from the present petitions.

To summarize, the cases pending before the Court are the consolidated cases: G.R. Nos. 209917, 209696, 209731, and 181892, and G.R. No. 202166 as a separate case.

G.R. No. 209917 is the Government's petition for review on *certiorari*[128] to partially reverse the CA's August 22, 2013 Amended Decision[129] and its October 29, 2013 Resolution[130] in CA-G.R. CV No. 98029.

G.R. No. 209696 is a petition for review on *certiorari* filed by Takenaka and Asahikosan to partially reverse the CA's August 22, 2013 Amended Decision and its October 29, 2013 Resolution in CA-G.R. CV No. 98029.[131]

G.R. No. 209731 is PIATCO's petition for review on *certiorari* to reverse the CA's August 22, 2013 Amended Decision, and October 29, 2013 Resolution in CA-G.R. CV No. 98029.[132]

G.R. Nos. 209917, 209696 & 209731 originally arose from the Government's complaint for expropriation of the NAIA-IPT III filed with the RTC of Pasay, Branch 117 in Civil Case No. **04-0876**. The main issue before the Court in these petitions is the **valuation** of the just compensation due for the Government's expropriation of the NAIA-IPT III.

G.R. No. 181892 is the Government's petition for *certiorari* with prayer for the issuance of a temporary restraining order,[133] assailing the May 3, 2007, May 18, 2008; and January 7, 2008 orders of the RTC of Pasay City, Branch 117 in Civil Case No. 04-0876.[134]

This petition likewise arose from the Government's complaint for expropriation of the NAIA-IPT III. The main issue in this petition is the propriety of the appointment of DG Jones and Partners as an independent appraiser of the NAIA-IPT III.

G.R. No. 202166 is PIATCO's petition for review on *certiorari*[135] to assail the CA's March 13, 2012 decision[136] and May 31, 2012 Resolution[137] in CA-G.R. CV No. 96502. The petition arose from Takenaka and Asahikosan's action to enforce the London awards before the RTC of Makati, Branch 143 in Civil Case No. 06-171. As previously mentioned, this case was not consolidated with the four (4) cases above and shall thus be separately ruled upon by the Court.

V. The Parties' Positions

A. The Government's Position (G.R. Nos. 209917, 209731, and 209696)

G.R. No. 209917

In G.R. No. 209917, the Government asks the Court to partially reverse the CA rulings and **to deduct from the replacement cost of US$300,206,693.00** the following items: (a) **depreciation** in the amount of US$36,814,612.00; and (b) **PIATCO's non-compliance with contract specifications** in the amount of US$113,944,044.00. The Government also refutes the CA's imposition of a **legal interest** on just compensation.

The Government asserts that the CA did not consider equity in computing the replacement cost of the NAIA-IPT III. Contrary to the Court's pronouncement in *Gingoyon*, the CA computed just compensation based solely on RA 8974 and its IRR. The CCV of $300,206,639.00 only reflects the valuation of the NAIA-IPT III as of November 2002 when PIATCO stopped the construction of the terminal, and did not take into account other factors that lowered its valuation as of December 2004.

The Government posits that there are two standards in measuring the replacement cost. The implementing rules of RA 8974 failed to provide a complete formula to arrive at the replacement cost of an expropriated property.

The *first and common standard* is the **depreciated replacement cost method** which measures the cost of replacing an asset at current prices **but in its actual condition, i.e., adjusted for age, wear and tear**. The Chartered Institute of Public Finance and Accounting defines depreciated replacement cost as "a method of valuation which provides the current cost of replacing an asset with its modern equivalent asset less deductions for all physical deterioration and all relevant forms of obsolescence and optimization" and as "the replacement value of property minus physical depreciation and obsolescence; insurance adjusters estimate the actual cash value of property based on its depreciated replacement cost."[138]

In other words, depreciated replacement cost adjusts the cost of replacing the actual asset in accordance with the asset's age in order to take into account the lower economic utility of an asset that is not brand new. As an asset ages, higher economic cost is required to maintain that asset to the level of utility of a brand new one.

The *second and less common standard* is the **new replacement cost method** which measures the cost of replacing an asset at current prices with no adjustment for age, wear, and tear. It refers to "the cost to replace damaged property with like property of the same functional utility without regard to depreciation (physical wear and tear) and obsolescence."[139]

The Government asks the Court to adopt the depreciated replacement cost method where depreciation is deducted from the replacement cost. The Government asserts that it is an internationally accepted practice to consider depreciation and other forms of obsolescence and optimization in measuring the replacement cost of an asset.

The Government argues that the new replacement cost method usually applies in cases where the property must be rebuilt. For example, an insurance policy for a house would usually use the new replacement cost method because a house, which was destroyed by fire or other natural disaster, must be rebuilt. On the other hand, an insurance policy for an automobile would use the depreciated replacement cost because it presupposes that a new automobile must be purchased to replace the old automobile that suffered from wear and tear.

The Government disputes the CA's opinion that the replacement cost cannot be lower than the actual construction because market prices tend to move upward over time. The Government contends that the replacement cost may be lower than the construction cost if the price of the materials such as steel, cement, and copper used during the construction stage decreases after the construction of the improvement. Moreover, labor productivity and technological advancements affect the replacement cost since these counter-balance inflation. The depreciated replacement cost method is utilized "in setting user rates for public utilities precisely because this standard of value will tend to result in lower prices over time, not higher prices."[140]

The Government likewise disagrees with the CA that the depreciation adjustment "would irrationally result in [a] book value which continues to be lower and lower over time." Since an asset must be maintained, the cost of performing maintenance and repairs increases the asset's replacement cost. Consequently, repairs and maintenance cost counter-balance depreciation. The recognition that an asset depreciates impliedly acknowledges that the owner will spend more costs in maintaining the asset's utility than on a brand new asset.

The Government agrees with the CA that depreciation is a cost allocation method and not a valuation method. However, the Government stresses that depreciation is also an economic cost; depreciation thus recognizes that an asset suffers from wear and tear and would require higher cost to maintain an asset's economic utility. Depreciation, as both economic and accounting concepts, represents cost adjustments to reflect the fair value of the asset due to age, wear, and tear.

The Government adds that the premise of the replacement cost method is "to measure the cost of replacing an asset at current prices with an asset that has the **same economic utility**."[141] Thus, the CA erred when it held that the depreciation adjustment was inconsistent with the replacement cost method for the reason that this method factors in the current market price to measure the cost of replacing an asset.

For instance, if the Government would expropriate a ten-year-old automobile, the new replacement cost method would compensate the owner the amount of an asset that has more economic utility than the ten-year-old automobile. On the other hand, if the Government would use the depreciated replacement cost method, it would only pay the value of an asset that has economic utility of a ten-year-old automobile.

The Government likewise insists that the CA erred in not deducting from the replacement cost the construction costs for deviations from the original contract, the inappropriate and defective structures, and structures that were built in violation of international standards. It asserts that the NAIA-IPT III suffers from structural defects, as evidenced by the following:

(a) In the August 2007 Site Observation Report, Ove Arup found that the NAIA-IPT III suffered from structural defects.

(b) In its Scott Wilson Report, PIATCO admitted that the NAIA-IPT III suffered from structural defects. The relevant portions of the Report provide:

Section 3.3.23. The cracking noted in the 2004 report at the upper storey beam/column interface appears to have worsened particularly in the outer faces of a number of columns at high level adjacent to the internal ramps.
Section 3.3.37. As far as the building structure is concerned the outstanding issues are the Taking Over Inspection Defects List, outstanding Quality Observation Report issues and the Non-Compliance Schedule x x x.[142]

(c) The ASEP made the following observation in its June 23, 2006 Report:

- Results of material tests carried out identified that the materials used were adequate and meet or exceed the ER specification. However, the thickness of the wall angle used (0.4 mm) does not meet the minimum plate thickness for metals to be fastened by power-actuated anchors, which requires a minimum of 0.6 mm (Hilti Catalogue). ASEP recommended further tests.
- ASEP considered that the quality of workmanship of the installation is not considered to be within minimum acceptable practice.
- Structural design of the ceiling system provided by Takenaka and independently assessed by ASEP concluded that the factor of safety of individual components is high. However, ASEP stated that the overall factor of safety of the total ceiling system is expected to be lower due to poor workmanship of the connections. The positioning of the air-conditioning ducts, fire protection system pipes, and other systems above the ceiling has affected the standard spacing of the ceiling hangers and may have contributed to the uneven distribution of loads to the various ceiling components, although without some of the riveted joints failing, the ceiling hangers are still adequate.
- ASEP concluded that a combination of poor workmanship and wrong choice of system in some areas particularly if repeated access is required for inspection and maintenance.[143]

(d) In its June 23, 2006 Report, the ASEP opined that the NAIA-IPT III may be partially opened provided that retrofitting works

are done prior to its full operation. Thus, the MIAA initiated the structural remediation program of the NAIA-IPT III.[144]

(e) TCGI documented the "heaving of homogenous tiles and cracks underneath the slabs in the head house airline lounges (Level 3, Sector 4),"[145] attributable to the 5.4 magnitude earthquake that hit Lingayen, Pangasinan, on November 27, 2008. The earthquake was felt in Pasay with a 3.0 magnitude. PIATCO failed to refute TCGI's findings.[146]

The Government insists that the operation of the NAIA-IPT III is not an implied admission of the nonexistence of structural defects. The Government clarifies that the structurally defective sectors of the NAIA-IPT III remain unoccupied. Out of the 10 Sectors of the NAIA-IPT III, the MIAA fully occupies Sectors 1, 3, 5, and 6, and partially occupies Sectors 2 and 4. The MIAA did not occupy Sections 7, 8, 9, and the car park due to structural issues.

That the Court declared the PIATCO contracts as null and void should not impede the deductibility of construction costs for deviations from the original contract, the inappropriate and defective structures, and structures that were built in violation of international standards. The Government emphasizes that when the Court nullified the PIATCO contracts, the NAIA-IPT III was *almost complete*. Consequently, the Government had every reason to expect that PIATCO would build the NAIA-IPT III according to the agreed specifications. PIATCO, however, acted in bad faith in not complying with the nullified PIATCO contracts. PIATCO should not benefit from its violation of the concession agreements and the gross deviations from the original design of the NAIA-IPT III.

The Government maintains that the imposition of legal interest on just compensation is erroneous.

First, the present expropriation case is *sui generis.* The Government was forced to expropriate the NAIA-IPT III due to PIATCO's violation of the Constitution and the law. To award legal interest to PIATCO is to condone its illegal acts. In *Hulst v. PR Builders, Inc.*,[147] the Court held that the illegality should not be rewarded. In *Valderama v. Macalde,*[148] the Court deleted the payment of interest on the ground that a person should not be allowed to profit from an illegal act. As between two parties, he who, by his acts, caused the loss shall bear the same. He, who comes to court for equity must do so with clean hands.

Second, PIATCO itself caused the delay of the expropriation proceedings before the RTC. PIATCO did not produce the vouchers, purchase orders, and as-built documents which were in its possession despite the Government's filing of a Motion for Production and Inspection of Documents dated May 25, 2006, before the RTC.[149]

Third, in *Eastern Shipping Lines v. CA*,[150] the Court pronounced that unliquidated claims are not subject to legal interest, such as the present case.

Fourth, the law and jurisprudence on the imposition of interest does not address the peculiar situation where the NAIA-IPT III is being expropriated as a direct result of the nullification of the PIATCO contracts. The application of the law and jurisprudence on the imposition of interest would not result in a fair and equitable judgment for the Government. The Court must apply equity in the absence of a specific law applicable in a particular case or when the remedy afforded by the law would be inadequate to address the injury suffered by a party.

The Government additionally complains that, since November 2002, "long before the institution of the expropriation [complaint] in December 2004," Takenaka and Asahikosan prevented it from entering the NAIA-IPT III.[151]

G.R. No. 209696

The Government alleges that it is willing to pay just compensation to the lawful claimant. However, just compensation should not be set aside in favor of Takenaka and Asahikosan since their claim against PIATCO has not yet been resolved with finality.

The Government disputes the applicability of *Calvo v. Zandueta*[152] in the present case. In that case, the Court allowed Juana Ordoñez to be subrogated to Aquilino Calvo as defendant because Ordoñez obtained a final judgment in her favor which entitled her to levy the land sought to be expropriated. Furthermore, Ordoñez was not a party to the expropriation case.

The Government asserts that Takenaka and Asahikosan should share in the BOC's expenses. Under Section 12, Rule 67 of the Rules of Court, the rival claimants should shoulder their costs in litigating their claim while the property owner should shoulder the costs of the appeal if he appeals the case and the appellate court affirms the lower court's judgment.

To divide the BOC's expenses between the Government and PIATCO would result in unjust enrichment. Under Section 1, Rule 142 of the Rules of Court, the court shall have the power to divide the costs of an action as may be equitable.

Furthermore, Takenaka and Asahikosan actively participated in and benefited from the proceedings before the BOC, which included the London awards in the computation of just compensation. Takenaka and Asahikosan likewise relied on the Final Report in their Appellant's Brief dated October 3, 2012, and in their Reply Brief dated January 20, 2013.

The Government contends that Takenaka and Asahikosan's computations of actual construction cost of the NAIA-IPT III are conflicting.

In their Manifestation dated December 9, 2010, Takenaka and Asahikosan stated that the actual construction cost amounted to $360,969,790.82. However, in his report, Mr. Gary Taylor appraised the actual construction cost at US$323 million, "plus other costs that were incurred by various parties during its conception and construction plus any property appreciation."[153] Mr. Gary Taylor further stated that the "true value of the NAIA-IPT III facility is nearer to US$408 million, given the fact that the Republic's expert, Gleeds, failed to recognize or include any values for [the] design and other consultants (10%) or property inflation based on GRP schedules (15%)."[154] However, Mr. Taylor did not explain how he arrived at the amount of $408 million.

The Government adds that Takenaka and Asahikosan's actual construction cost of $360,969,790.82 is erroneous as the London and Makati awards include interests, attorney's fees and costs of litigation. Furthermore, Takenaka and Asahikosan's "as-built" drawings are not truly "as-built." The drawings do not reflect the quality and exact detail of the built portions of the NAIA-IPT III.[155]

G.R. No. 209731

The Government disputes PIATCO's claim that it was denied due process when it was not furnished a copy of the Final Report. The Government points out that all the parties in the case were not given a copy of the Final Report. Furthermore, PIATCO belatedly raised this issue; it was brought for the first time on appeal before this Court.

The Government also emphasizes that PIATCO immediately filed a notice of appeal a day after its receipt of the RTC decision. This is contrary to PIATCO's claim that it wanted to secure a copy of the Final Report and subject it to clarificatory hearing.

Even assuming that the RTC erred in not furnishing the parties copies of the Final Report, the lapse is merely an "innocuous" technicality that should not nullify the RTC rulings.

The Government claims that PIATCO failed to substantiate the attendant costs. The documents attached to the Compliance dated December 14, 2010, are mostly summary of payments that PIATCO allegedly paid to the consultants. However, PIATCO failed to prove that the alleged consultants rendered actual service related to the construction of the NAIA-IPT III. Reyes Tacandong & Co. merely verified the mathematical accuracy of the schedules, including the computation of the inflation rate. Furthermore, the receipts that PIATCO submitted are not enough to cover its claimed just compensation.[156]

G.R. No. 181892

The Government disputes the RTC's appointment of an independent appraiser of the NAIA-IPT III. It claims that Section 11 of RA 8974 IRR solely authorizes the **implementing agency** to engage the services of an appraiser in the valuation of the expropriated property, while under Section 10 of RA 8974 IRR, it is the **implementing agency** that shall determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method. Pursuant to these provisions, the Government engaged the services of Gleeds, Ove Arup and Gensler for purposes of appraising the NAIA-IPT III.

The Government also argues that the appointment of an independent appraiser would only duplicate the efforts of the existing appraisers. A court-appointed appraiser and the existing appraisers would perform the same task of determining the just compensation for the NAIA-IPT III. Thus, the RTC should have relied instead on the opinion of the internationally-renowned appraisers that the Government hired.

The Government likewise avers that the appointment of an independent appraiser would only render the expropriation proceedings more costly. The Government would be forced to pay for the services of two appraisers, which is not the intention of RA 8974. The court-appointed appraiser, too, would render the BOC's functions useless. Under Rule 67 of the Rules of Court, it is the BOC that is required to receive evidence in the determination of just compensation. Rule 67 of the Rules of Court does not require the appointment of an appraiser in eminent domain cases.

Lastly, the Government complains that the RTC order requiring it to submit a Certificate of Availability of Funds is vague because the RTC did not specify the costs of the expropriation proceeding.[157]

B. PIATCO's Position

G.R. No. 209731

PIATCO argues that the RTC rulings are null and void for the failure of the RTC clerk of court to furnish them copies of the BOC Final Report. Sections 7 and 8, Rule 67 of the Rules of Court require that the parties be given ten days within which to file their objections to the findings of the commissioners.

On its base value of $360,969,790.82, PIATCO insists that its valuation is supported by a preponderance of evidence, particularly by the As-Built Drawings and the Bills of Quantities submitted by Takenaka and Asahikosan. The CA should not have relied on the Government's self-serving evidence in computing the base value of the NAIA-IPT III.

PIATCO also cites the CA's failure to include the attendant costs in the valuation of the NAIA-IPT III as an omission; the CA merely recognized the construction cost valuation of the terminal pursuant to the Gleeds Report. PIATCO alleges that it incurred attendant costs of $70,197,802.00 apart from the construction cost of $360,969,790.82. It also emphasizes that its consultancy fees are even below the international norms, as shown in the Scott Wilson Report. It also claims that site preparation costs, legal costs in planning and constructing the development, and financing costs form part of attendant costs since these costs are indispensable in completing a complex infrastructure project.

PIATCO further alleges that its attendant costs are supported by the attachments in its Compliance dated December 14, 2010, including the summary of payments for incurred attendant costs, official receipts, statements of account, sales invoices, endorsements, insurance policies and other related documents, acknowledgement receipts, agreements, invoices, and bonds. It claims that Reyes Tacandong & Co examined these documents and confirmed that the attendant costs amount to $70,197,802.00 in its Report of Factual Findings dated December 14, 2010.

PIATCO asserts that its submission of the summary computation is justified under Section 3 (c), Rule 130 of the Rules of Court which allows the party to submit non-original copies if the original consist of numerous accounts or other documents that the court cannot examine without great loss of time; the fact sought to be established from these, after all, is only the general result of the whole.

PIATCO likewise argues that the total construction cost of $431,167,593.00 – which is the sum of $360,969,791.00 and $70,197,802.00 – should be converted to 2004 values since the reckoning period of just compensation is the date of taking or the date when the complaint was filed, whichever is earlier. It posits that the amount of $431,167,593.00 should thus be multiplied by 1.0971 – the prevailing inflation rate from November 29, 2002, to December 21, 2004 – for a total amount of $470,450,825.00.

The sum of $470,450,825.00 should further earn an interest rate of 12% per annum beginning December 21, 2004, until full payment. PIATCO maintains that the Government's deposit in an escrow account of a portion of just compensation is not equivalent to payment; hence, interest on the full amount of just compensation shall continue to apply.

PIATCO contends that the CA's reduction of interest rate to 6% is erroneous because the Court, in numerous cases, has consistently imposed 12% interest per annum on just compensation. PIATCO emphasizes that the imposition of interest on just compensation is not based on contract, but on the owner's right to be immediately paid just compensation.

Finally, PIATCO prays that it be paid all income generated from the operations of the NAIA-IPT III, from the date of taking up to the present.[158]

G.R. No. 209917

PIATCO asserts that the NAIA-IPT III does not suffer from massive structural defects; that the Government's reliance on the Ove Arup Report is self-serving. The Government would not have expropriated the NAIA-IPT III if it truly believed that the terminal suffered from massive structural defects. Furthermore, the MIAA's Project Management Office oversaw the construction of the NAIA-IPT III to ensure that the terminal complied with the agreed specifications under the relevant contracts between PIATCO and the Government.

PIATCO contends that the depreciation, deterioration, and costs for non-compliance with contract specifications should not be deducted from the base value of the NAIA-IPT III. The base value of $300,206,693.00 should be the least amount that the Government should pay. The measure of just compensation is the fair and full equivalent for the loss sustained by the property owner, not the gain that would accrue to the condemnor.

PIATCO also asks this Court to strike from the record the affidavit of Kaczmarek and other attachments in the Government's motion for partial reconsideration dated August 22, 2013. The Government should not be allowed to present new evidence on the valuation of the NAIA-IPT III before the CA. PIATCO points out that Kaczmarek was not cross-examined and his identity, knowledge, and credibility were not established before the trial court. The Government is estopped from introducing new evidence before the appellate court since it objected to Takenaka and Asahikosan's introduction of new and additional evidence before the CA.

As its last point, PIATCO posits that Section 10 of RA 8974 IRR does not allow the deduction of depreciation, deterioration, and costs for non-compliance with contract specifications from the replacement cost. Depreciation is merely an accounting concept that facilitates the standard of decreasing asset values in the books of accounts. It is not a method of valuation, but of cost allocation; an asset may still be valuable and yet appear fully depreciated in the financial statements. If at all, depreciation was only relevant after the Government took possession and operated the NAIA-IPT III.[159]

G.R. No. 209696

PIATCO agrees with the CA that just compensation must be directly paid to it as the owner of the NAIA-IPT III. It stresses that RA 8974 and its implementing rules clearly provide that the owner of the expropriated property shall receive the entire amount of just compensation.

PIATCO insists that it would be erroneous to create an escrow account in favor of Takenaka and Asahikosan since the enforceability of Claim Nos. HT-04-248 and HT-05-269 in Philippine jurisdiction has yet to be decided by the Court in G.R. No. 202166. It points out that the main issue in G.R. Nos. 209731, 209917, and 209696 is the amount of just compensation, not the determination of Takenaka and Asahikosan's money claims against PIATCO. Takenaka and Asahikosan's insistence to enforce their money claims against PIATCO in G.R. Nos. 209731, 209917 & 209696 constitutes forum shopping and is still premature.

PIATCO contends that Takenaka and Asahikosan have no standing to demand the creation of an escrow account in their favor. Section 9, Rule 67 of the Rules of Court does not apply in this case because there are no conflicting claims regarding the ownership of the NAIA-IPT III. Furthermore, the Court categorically stated in *Gingoyon* that PIATCO owns the NAIA-IPT III.

PIATCO further argues that the rules on preliminary attachment do not apply to this case. Mere apprehension that PIATCO would abscond from its financial liabilities is not a ground for the attachment of the creditor's assets. Moreover, an artificial entity cannot abscond. PIATCO likewise denies that it refuses to pay Takenaka and Asahikosan's money claims. PIATCO posits that the eminent domain case is not the proper venue for the adjudication of Takenaka and Asahikosan's money claims.[160]

G.R. No. 181892

PIATCO agrees with the RTC's appointment of DG Jones and Partners as an independent appraiser. The determination of just compensation is essentially a judicial function. The trial court's power to appoint commissioners is broad enough to include the power to appoint an appraiser who shall assist the commissioners in ascertaining the amount of just compensation. The latter power is inherent in the court's task to receive evidence and to arrive at a fair valuation of the expropriated property. Section 5 (g), Rule 135 of the Rules of Court allows the court to amend and control its processes and orders so as to make them consistent with law and justice. Furthermore, nothing in RA 8974 IRR that prohibits the trial court from appointing an independent appraiser.

Section 6, Rule 67 of the Rules of Court provides that all parties may introduce evidence on the valuation of the property sought to be expropriated. The trial court is not bound by the report of the commissioners and of the independent appraisers, much less of the findings of the Government-hired appraisers.

PIATCO asserts that the Government is estopped from assailing the appointment of an independent appraiser. The Government voluntarily participated in the nomination of an independent appraiser, and in fact, submitted its own nominees before the trial court.

Contrary to the Government's claim, the RTC did not arbitrarily appoint DG Jones and Partners as an independent appraiser. The RTC in fact required the nominees to submit their written proposals and invited them to personally appear before the commissioners and the trial court prior to the issuance of the May 3, May 18, and January 7, 2008 orders.

PIATCO argues that the Government should solely bear the expenses of DG Jones and Partners. Section 12, Rule 67 of the Rules of Court provides that all costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner.[161]

C. Takenaka and Asahikosan's Positions

G.R. No. 209696 and G.R. No. 209731

Takenaka and Asahikosan argue that law and equity dictate that just compensation of at least $85,700,000.00 should be set aside to answer for their money claims against PIATCO. RA 8974 does not prohibit the creation of an escrow account pending the determination of the parties' conflicting claims on the property and on the just compensation.

Takenaka and Asahikosan allege that PIATCO is a shell corporation with no significant assets, that has repeatedly defaulted on its monetary obligations. They emphasize that PIATCO did not pay Takenaka and Asahikosan despite its receipt of the P3 billion proffered value from the Government. Takenaka and Asahikosan seek the creation of an escrow account to preserve their property rights against PIATCO. They posit that PIATCO may abscond after its receipt of the remaining just compensation from the Government.

PIATCO would profit by at least $155,000,000.00 if it solely receives the entire amount of $431,167,593,000.00 (PIATCO's claimed just compensation as of December 2002). PIATCO has judicially admitted that it has paid Takenaka and Asahikosan only $275,000,000.00.

Takenaka and Asahikosan assert that the interest of justice will be served if the Court allows the creation of an escrow account in their favor. They point out that the lower courts already ruled on the enforceability of Claim Nos. HT-04-248 and HT-05-269. Furthermore, the Court, in *Gingoyon*, merely ordered the direct payment of just compensation to PIATCO in order to ensure that the **builder** of the NAIA-IPT III is compensated by the Government as a matter of justice and equity. Takenaka and Asahikosan underscore that they are the **real builders** of the NAIA-IPT III as PIATCO's subcontractors.

Takenaka and Asahikosan maintain that Section 9, Rule 67 of the Rules of Court apply with respect to the adjudication of the parties' conflicting just compensation claims. The Court did not declare in *Gingoyon* that Rule 67 of the Rules of Court shall not apply to the

payment of *final just compensation*. The Court merely applied RA 8974 in *Gingoyon* insofar as the law prescribes direct payment as a prerequisite for the issuance of a writ of possession in eminent domain cases.

Under Section 9, Rule 67 of the Rules of Court, if there are conflicting claims on the property, the court may order the just compensation *to be paid to the court* for the benefit of the person adjudged in the same proceeding to be entitled thereto. Takenaka and Asahikosan argue that they are the lawful recipients of just compensation as the real builders of the NAIA-IPT III and as the prevailing parties in Claim Nos. HT-04-248 and HT-05-269.

Even assuming that PIATCO is the owner of the NAIA-IPT III, the owner of the expropriated property is not solely entitled to the full amount of just compensation.

In *Republic v. Mangotara*,[162] citing *de Knecht v. CA,*[163] the Court held that just compensation is not due to the property owner alone; the term "owner" likewise includes those who have lawful interest in the property such as a mortgagee, a lessee, and a vendee in possession under an executory contract. In *Philippine Veterans Bank v. Bases Conversion Development Authority,*[164] the Court held that just compensation may be deposited with the court when there are questions regarding the ownership of the expropriated property. In *Calvo v. Zandueta*,[165] the Court deferred the release of just compensation pending the determination of the ownership of the expropriated property, despite the finality of the order allowing the release of just compensation.

Takenaka and Asahikosan refuse to share in the expenses of the BOC. Under Section 12, Rule 67 of the Rules of Court, the costs of the expropriation suit shall be shouldered by the Government. The Government would be unjustly enriched if other parties are required to shoulder the costs of the suit. It would also be unfair to require Takenaka and Asahikosan to share in the expenses of the BOC since they were not furnished copies of the BOC Final Report, in violation of their right to due process. [166]

G.R. No. 209917

Takenaka and Asahikosan argue that deductions for depreciation and deterioration are inconsistent with the concept of replacement cost as a measure of appraising the actual value of the NAIA-IPT III. In exercising the power of eminent domain, the Government takes the property on "as is, where is" basis. Takenaka and Asahikosan point out that the Government has the option not to expropriate the terminal. Consequently, the Government cannot base the value of the building on whether or not the building caters to the Government's needs.

Furthermore, RA 8974 IRR provides that only the costs necessary to replace the expropriated property should be considered in appraising the terminal. Statutes authorizing the deprivation of private property, as in expropriation cases, must be strictly complied with because these are in derogation of private rights. The Court's intent in Agan when it declared that equity should likewise be considered in appraising the NAIA-IPT III is to prevent the Government from undervaluing the property and enriching itself at the expense of private parties.

Takenaka and Asahikosan also insist that a multi-level retail mall is not an unnecessary area. They point out that modern airports are subsidized by income from retail malls and cannot operate profitably without this additional income.

Takenaka and Asahikosan agree with the CA's finding that the NAIA-IPT III is structurally sound. There is no clear evidence that the collapse of the ceiling of the NAIA-IPT III was caused by the terminal's structural defects. The CA correctly concluded that the ceiling's collapse is merely a finishing and aesthetic issue.

They emphasize that Mr. Gary Taylor, their hired appraiser, assailed the qualifications, the methodology, and the findings of Ove Arup in its August 2007 Site Observation Report. Furthermore, Ove Arup made several conflicting findings on the structural soundness of the NAIA-IPT III. Ove Arup concluded that the number of structural members failing the Demand Capacity Rate (DCR) /m.1.10 criteria **was more than those used for the retrofit design.** The DCR measures the capacity of a portion of the NAIA-NAIA-IPT III to carry the load it was designed to bear, with an optimal rate being less than 1.0. It likewise opined that the distance of the gap between the NAIA-IPT III's bridge and building structure had a potential for seismic pounding.

Takenaka and Asahikosan posit that all the structural members of the NAIA-IPT III have a **DCR of less than 1.0** based on the 1992 National Structural Code of the Philippines (*NSCP*), the code applicable when the NAIA-IPT III was designed and constructed. Takenaka and Asahikosan opine that Ove Arup did not use the 1992 NSCP in the August 2007 Site Observation Report.

Ove Arup's finding that the NAIA-IPT III has a potential for seismic pounding is baseless. The terminal is designed and built to address the possibility of seismic pounding, taking into consideration that the NAIA-IPT III is built on Type I soil. Takenaka and Asahikosan claim that Ove Arup's finding was not based on the AASHTO Standard Specification for Highway Bridges (16th Ed., 1996), the code applicable at the time the NAIA-IPT III was designed and built.

Takenaka and Asahikosan likewise argue that Scott Wilson did not admit that the NAIA-IPT III suffered from structural defects. They clarify that the statements in the Scott Wilson report "were merely intended to accommodate [the] changes that the client wished to effect."[167] They also point out that the Government stated in its petition (in G.R. No. 209917) that "additional work is required to complete the terminal structure to make it compliant with the standards of Takenaka and Asahikosan."[168]

To lay the structural issue to rest, Takenaka and Asahikosan consulted Meinhardst (Singapore) Pte Ltd., their Structural Design Consultant, to rebut TCGI's findings. They also hired disinterested American experts in the construction industry – Mr. S.K. Ghosh of S.K. Ghosh Associates, Inc.; Mr. Robert F. Mast, PE, SE of Berger/Abram Engineers, Inc.; and Mr. Mete A. Sozen – to validate Meinhardst's conclusions. These experts unanimously concluded that the NAIA-IPT III's design is structurally sound because it complied with the 1992 NSCP, thus, effectively negating the Government's claim that the NAIA-IPT III suffers from structural defects.

Takenaka and Asahikosan impugn the ASEP Report. They reiterate that they constructed the NAIA-IPT III in accordance with the Onshore Construction and Offshore Procurement Contracts and the prevailing building code at the time of the design and construction of the NAIA-IPT III. The statement in the ASEP Report that "the NAIA-IPT III may be partially opened provided that retrofitting works are done prior to its full operation" does not mean that the terminal is defective. The remediation works were solely **to ensure that the NAIA-IPT III structures are compliant with the current standards,** which were not yet in effect when the construction of the NAIA-IPT III took place.

Messrs. Meinhardt opined that **the scope of the proposed retrofitting works shows that the structural design of the NAIA-IPT III is not defective** because the proposed retrofitting works are not related to the alleged structural defects of the NAIA-IPT III vis-à-vis the 1992 NSCP. He also stated that the proposed retrofitting works are meant to reinforce the NAIA-IPT III which is already compliant with the 1992 NSCP.

Takenaka and Asahikosan likewise engaged the services of AECOM Australia Pty. Ltd. to conduct a technical review of the Review on TCGI Report of Civil Design Review and Evaluation (Elevated Roadway prepared by Ove Arup & Partners HK Ltd. Philippines Branch). AECOM criticized the Ove Arup's review as follows:

a. Ove Arup valuated the NAIA-IPT's Elevated Roadway using the AASHTO Manual of Bridge Evaluation and the FHA Bridge Inspectors Reference Manual, which are irrelevant to any discussion of its design;
b. Ove Arup evaluated the NAIA-IPT III's Elevated Roadway using the Seismic Retrofitting Manual for Highway Structures, which is irrelevant because there is no need for a seismic retrofit of the NAIA-IPT III's Elevated Roadway;
c. Ove Arup's suggestion that an *in-situ* measurement of the geometry data of key structural components be undertaken is unnecessary and irrelevant to a peer review of the design of the NAIA-IPT III's Elevated Roadway;
d. Ove Arup made an incorrect assessment of the type of foundation material with respect to soil bearing capacity;
e. Ove Arup used inappropriate codes for the assessment of the bearings of the NAIA-IPT III's Elevated Roadway;
f. Ove Arup's analysis suggests that 36 pier columns of the NAIA-IPT III's Elevated Roadway are allegedly under strength, but fails to quantify the ratio of the column effect to the corresponding capacity;
g. AECOM objects to Ove Arup's criticism that the value of the soil-bearing capacity used for the length of the bridge of the NAIA-IPT III's Elevated Roadway needs to be justified, since the design of the NAIA-IPT III's Elevated Roadway must be judged on the geotechnical information available to AECOM at the time the bridge was made. No foundation could have been built without the foundation bearing capacity results having been submitted to the relevant overseeing authority and approved thereby;
h. Ove Arup used an incorrect site coefficient for the site's soil type, which resulted in seriously erroneous input data, thus, any conclusions or recommendations derived from these data are rendered invalid;
i. Ove Arup's claim that there are "failures" in the elastomeric bearings/bearing pads is based on an Australian design code which did not exist at the time the NAIA-IPT III's Elevated Roadway was designed;
j. Takenaka and Asahikosan were never provided a copy of the TCGI Report that was used as basis for the ARUP Report;
k. There are serious discrepancies between the Ove Arup Report and the referenced, yet unseen TCGI Report;
l. The NAIA-IPT III's Elevated Roadway complies with the project design codes in force at the time it was designed; and
m. AECOM refutes Ove Arup and TCGI's suggestion that the NAIA-IPT III's Elevated Roadway requires retrofitting or any remedial work.

Takenaka and Asahikosan aver that the Government would be able to lessen its expenses, operate the NAIA-IPT III, and earn revenues sooner as there is, in fact, no need to perform retrofitting works on the terminal.

Takenaka and Asahikosan point out that the design of the NAIA-IPT III is **bilaterally symmetrical** which means the structural system of one area is virtually identical to others. Since the Government opened certain areas of the NAIA-IPT III to the public, it follows that the unused areas are also structurally sound considering that majority of the terminal building share the same structural design.

They also deny that they employed armed guards to prevent the MIAA and DOTC officials from entering the premises of the NAIA-IPT III. They point out that the Government did not raise this issue before the lower courts. They also state that they have provided the parties all documentary evidence necessary in appraising the NAIA-IPT III, such as the Bills of Quantities.[169]

VI. The Issues

In G.R. Nos. **209917, 209696**, and **209731**, we resolve the following issues:

(1) Whether the RTC's May 23, 2011 decision in Civil Case No. 04-0876 is null and void for violation of PIATCO, Takenaka and

Asahikosan's right to procedural due process;

(2) Whether the CA legally erred in computing just compensation in the expropriation of the NAIA-IPT III;
   (a) Whether "fair market value" and "replacement cost" are similar eminent domain standards of property valuation;
   (b) Whether the depreciated replacement cost approach or the new replacement cost approach shall be used in the appraisal of the NAIA-IPT III;
   (c) With respect to the computation of construction costs, the issues are:

      1. Whether the Government's computation of construction cost is supported by a preponderance of evidence
      2. Whether the NAIA-IPT III suffered/suffers from massive structural defects;
      3. Whether the alleged unnecessary areas should be excluded from the computation of construction cost;

   (d) With respect to the computation of attendant costs, the issues are:

      1. Whether PIATCO's claimed attendant cost is supported by a preponderance of evidence;
         a) Whether the Court may accord probative value to photocopied voluminous documents allegedly proving PIATCO's attendant costs;
         b) Whether the Court may accord probative value to the summary report prepared by Reyes Tacandong & Co., which validated PIATCO's computation of attendant costs;
      2. Whether attendant cost may be pegged at 10% of the construction cost;
      3. Whether the Government included the attendant cost in its valuation of the NAIA-IPT III;

   (e) Whether depreciation may be deducted from the replacement cost of the NAIA-IPT III;
   (f) Whether rectification for contract compliance (for failure to comply with bid documents; for inferior quality; and for the additional areas to be built) may be deducted from the replacement cost of the NAIA-IPT III;
   (g) Whether the replacement cost of the NAIA-IPT III shall be adjusted to December 2004 values based on inflation;
   (h) Whether the CA erred in imposing an interest rate of 6% per annum on the replacement cost of the NAIA-IPT III;
   (i) Whether PIATCO shall be entitled to the fruits and income of the NAIA-IPT III;

(3) Whether Takenaka and Asahikosan shall share in the expenses of the BOC;
(4) Whether the owner of the property sought to be expropriated shall solely receive the just compensation due; and
(5) Whether the Government may take property for public purpose or public use upon the issuance and the effectivity of the writ of possession;

In **G.R. No. 181892**, the following issues are relevant:

(1) Whether the appointment of an independent appraiser issue has been rendered moot and academic by the RTC's promulgation of its rulings in Civil Case No. 04-0876; and
(2) Whether the issue of who shall pay the independent appraiser's fees has been rendered moot and academic by the RTC's promulgation of its rulings in Civil Case No. 04-0876.

VII. Our Ruling

A. G.R. Nos. 209917, 209696 & 209731

1. The parties were afforded procedural due process despite their non-receipt of the BOC Final Report prior to the promulgation of the RTC's May 23, 2011 Decision.

Before ruling on the substantive issues posed, we first resolve the issue of whether the CA erred in ruling that the RTC's May 23, 2011 decision is valid.

PIATCO, Takenaka and Asahikosan challenge the validity of the RTC's decision for alleged violation of their right to due process. They point out that the RTC promulgated its decision in Civil Case No. 04-0876 on May 23, 2011, immediately after the release of the BOC's Final Report on March 31, 2011. They complain that since the RTC's clerk of court did not furnish the parties copies of the Final Report, the trial court violated Sections 7 and 8, Rule 67 of the Rules of Court as they failed to object to the Final Report's contents.

Rule 67 of the Rules of Court provides that the clerk of court shall serve copies of the commissioners' final report on all interested parties upon the filing of the report. Each party shall have ten days within which to file their objections to the report's findings.[170]

Upon the expiration of the ten-day period or after all the parties have filed their objections and after hearing, the trial court may: (a) accept the report and render judgment in accordance therewith; (b) for cause shown, recommit the report to the commissioners for further report of facts; (c) set aside the report and appoint new commissioners; (d) partially accept the report; and (e) make such order or render such

judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation; and to the defendant, the just compensation for the property so taken.[171]

We rule that the parties' failure to receive the Final Report did not render the May 23, 2011 Decision null and void.

The essence of procedural due process is the right to be heard.[172] The procedural due process requirements in an eminent domain case are satisfied if the parties are given the opportunity to present their evidence before the commissioners whose findings (together with the pleadings, evidence of the parties, and the entire record of the case) are reviewed and considered by the expropriation court. It is the parties' ***total*** failure to present evidence on just compensation that renders the trial court's ruling void. The opportunity to present evidence during the trial remains to be the vital requirement in the observance of due process.[173]

The record will show that the parties exhaustively discussed their positions in this case before the BOC, the trial court, the appellate court, and this Court. They had ample opportunity to refute and respond to each other's positions with the aid of their own appraisers and experts. Each party, in fact, submitted countervailing evidence on the valuation of the NAIA-IPT III. They also filed numerous and voluminous pleadings and motions before the lower courts and before this Court.

The mere failure of the RTC's clerk of court to send the parties copies of the BOC Final Report is not substantial enough under the attendant circumstances to affect and nullify the whole proceedings. Litigation is not a game of technicalities. Strong public interests require that this Court judiciously and decisively settle the amount of just compensation in the expropriation of the NAIA-IPT III. We cannot further delay this more-than-a-decade case and let interests accrue on just compensation by remanding the case once more to the trial court.

2. Framework: Eminent domain is an inherent power of the State

2.a. The power of eminent domain is a fundamental state power that is inseparable from sovereignty.

Eminent domain is a fundamental state power that is inseparable from sovereignty. It is the power of a sovereign state to appropriate private property within its territorial sovereignty to promote public welfare. The exercise of this power is based on the State's primary duty to serve the common need and advance the general welfare.[174] It is an inherent power and is not conferred by the Constitution.[175] It is inalienable and no legislative act or agreement can serve to abrogate the power of eminent domain when public necessity and convenience require its exercise.[176]

The decision to exercise the power of eminent domain rests with the legislature which has the exclusive power to prescribe how and by whom the power of eminent domain is to be exercised. Thus, the Executive Department cannot condemn properties for its own use without direct authority from the Congress.[177]

The exercise of eminent domain necessarily derogates against private rights which must yield to demand of the public good and the common welfare.[178] However, it does not confer on the State the authority to wantonly disregard and violate the individual's fundamental rights.

2.b. Just compensation is the full and fair equivalent of the property taken from the owner by the condemnor.

The 1987 Constitution embodies two constitutional safeguards against the arbitrary exercise of eminent domain: ***first,*** private property shall not be taken for public use without just compensation;[179] and ***second***, no person shall be deprived of life, liberty, or property without due process of law.[180]

Just compensation is defined as "the full and fair equivalent of the property taken from its owner by the expropriator." The word "just" is used to qualify the meaning of the word "compensation" and to convey the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[181] On the other hand, the word "compensation" means "a full indemnity or remuneration for the loss or damage sustained by the owner of property taken or injured for public use."[182]

Simply stated, just compensation means that the former owner must be returned to the monetary equivalent of the position that the owner had when the taking occurred.[183] To achieve this monetary equivalent, we use the standard value of "fair market value" of the property at the time of the filing of the complaint for expropriation or at the time of the taking of property, whichever is earlier.

2.b.1. Fair market value is the

general standard of value in determining just compensation.

Jurisprudence broadly defines "fair market value" as the sum of money that a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received for a property.[184]

Fair market value is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee. However, these values may serve as factors to be considered in the judicial valuation of the property.[185]

Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape, location, and the tax declarations. **The measure is not the taker's gain but the owner's loss**.[186] To be just, the compensation must be fair not only to the owner but also to the taker.[187]

While jurisprudence requires the "fair market value" to be the measure of recovery in expropriation cases, it is not an absolute and exclusive standard or method of valuation.[188] **There are exceptional cases where the property has no fair market value or where the fair market value of the property is difficult to determine.**

Examples of properties with no or with scant data of their fair market values are specialized properties or buildings designed for unique purposes.[189] These specialized properties bear these characteristics because they are "rarely x x x sold in the market, except by way of sale of the business or entity of which it is part, due to the uniqueness arising from its specialized nature and design, its configuration, size, location, or otherwise."[190]

Examples of specialized properties are churches, colleges, cemeteries, and clubhouses.[191] These also include airport terminals that are specifically built as "a place where aircrafts land and take off and where there are buildings for passengers to wait in and for aircraft to be sheltered."[192] They are all specialized properties because they are not usually sold in the ordinary course of trade or business.

In the Tengson Report dated December 1, 2010, Gary Taylor characterized the NAIA-IPT III as a specialized asset.[193] Tim Lunt also stated in the *Reply to Tengson International Ltd. Report and Response from Takenaka & Asahikosan dated December 7, 2010* that the market value of an airport will not be the same as the market value of other commercial, industrial, and residential buildings within the Metro Manila region.[194]

In cases where the fair market value of the property is difficult to ascertain, the court may use other just and equitable market methods of valuation in order to estimate the fair market value of a property.

In the United States, the methods employed include: (1) the cost of replacing the condemned property, less depreciation; (2) capitalization of the income the property might reasonably have produced; (3) the fair rental value of the property during a temporary taking; (4) the gross rental value of an item over its depreciable lifetime; (5) the value which the owner's equity could have returned, had the owner invested in monetary instruments; (6) the cost of repair or the capitalized cost of inconvenience, whichever is less; and (7) the loss of investment expenses actually incurred.[195] The primary consideration, however, remains the same – to determine the compensation that is *just,* both to the owner whose property is taken and to the public that will shoulder the cost of expropriation.

2.b.2. Replacement cost is a different standard of value from fair market value.

In *Gingoyon,* we held that the construction of the NAIA-IPT III involves the implementation of a national infrastructure project. Thus, for purposes of determining the just compensation of the NAIA-IPT III, RA 8974 and its implementing rules shall be the governing law.

Under Section 10 of the RA 8974 IRR, the improvements and/or structures on the land to be acquired for the purpose of implementing national infrastructure projects shall be appraised using the replacement cost method.

Replacement cost is a different standard of valuation from the fair market value. As we previously stated, fair market value is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy. In contrast, **replacement cost** is "the amount necessary to replace the improvements/structures, ***based on the current market prices*** for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures."[196] We use the replacement cost method to determine just compensation if the expropriated property has no market-based evidence of its value.

2.b.3. Replacement cost is only one of the standards that the Court shall

consider in appraising the NAIA-IPT III.

In using the replacement cost method to ascertain the value of improvements that shall be expropriated for purposes of implementing national infrastructure projects, Section 10 of RA 8974 IRR requires the implementing agency to consider **the kinds and quantities of materials/equipment used**, the location, **configuration and other physical features of the properties**, and the prevailing construction prices, among other things.

Section 5 of RA 8974 in this regard provides that the court may consider the following relevant standards in eminent domain cases:

(a) The classification and use for which the property is suited;
(b) The developmental costs for improving the land;
(c) The value declared by the owners;
(d) The current selling price of similar lands in the vicinity;
(e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;
(f) The size, shape or location, tax declaration and zonal valuation of the land;
(g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
(h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

The Court explained in *Agan* and *Gingoyon* that the replacement cost method is only one of the factors to be considered in determining the just compensation of the NAIA-IPT III. **The Court added that the payment of just compensation should be in accordance with equity as well.**

In *Agan*, we stated:

> This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. **The compensation must be just and in accordance with law and equity for the government cannot unjustly enrich itself at the expense of PIATCO and its investors.** (emphasis supplied)[197]

We also declared in *Gingoyon* that:

> Under RA 8974, the Government is required to "immediately pay" the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the [BIR]; and (2) the value of the improvements and/or structures as determined under Section 7. As stated above, the BIR zonal valuation cannot apply in this case, thus the amount subject to immediate payment should be limited to "the value of the improvements and/or structures as determined under Section 7," with Section 7 referring to the "implementing rules and regulations for the equitable valuation of the improvements and/or structures on the land." Under the present implementing rules in place, the valuation of the improvements/structures are to be based using "the replacement cost method." **However, the replacement cost is only one of the factors to be considered in determining the just compensation.**
>
> **In addition to RA 8974, the 2004 *Resolution* in *Agan* also mandated that the payment of just compensation should be in accordance with equity as well. Thus, in ascertaining the ultimate amount of just compensation, the duty of the trial court is to ensure that such amount conforms not only to the law, such as RA 8974, but to principles of equity as well.** (Emphasis supplied)[198]

The Court's pronouncements in *Agan* and *Gingoyon* are consistent with the principle that "eminent domain is a concept of **equity and fairness** that attempts to make the landowner whole. It is not the amount of the owner's investment, but the 'value of the interest' in land taken by eminent domain, that is guaranteed to the owner."[199]

In sum, in estimating the fair market value of the NAIA-IPT III, the Court shall use **(1) the replacement cost method** and **(2) the standards laid down in Section 5 of RA 8974 and Section 10 of RA 8974 IRR.** Furthermore, we shall likewise consider **(3) equity** in the appraisal of NAIA-IPT III based on the *Agan* and *Gingoyon* cases.

2.b.4. The use of depreciated

replacement cost method is consistent with the principle that the property owner shall be compensated for his actual loss.

The present case confronts us with the question of the specific replacement cost method that we should use in appraising the NAIA-IPT III. The Government advocates the depreciated replacement cost method formula while PIATCO argues for the new replacement cost method formula.

The replacement cost method is a cost approach in appraising real estate for purposes of expropriation. This approach is premised on the **principle of substitution** which means that "all things being equal, a rational, informed purchaser would pay no more for a property than the cost of building an acceptable substitute with like utility."[200]

The cost approach considers the principles of substitution, supply and demand, contribution and externalities.[201] "The value of the land and the value of improvements are determined separately according to their highest and best use."[202] "Buyers assess the value of a piece of property not only based on the existing condition of the property, but also in terms of **the cost to alter or improve the property to make it functional specifically for the purposes of the buyer's use**. This may include building new structures, renovating existing structures, or changing the components of an existing structure to maximize its utility."[203]

There are various methods of appraising a property using the cost approach: among them are the reproduction cost, the replacement cost new, and the depreciated replacement cost.

Reproduction cost is the "estimated current cost to construct an exact replica of the subject building, using the same materials, construction standards, design, layout, and quality of workmanship; and incorporating all the deficiencies, superadequacies, and obsolescence of the subject building."[204] It is the **cost of duplicating the subject property at current prices**[205] or the current cost of reproducing a new replica of the property being appraised using the same, or closely similar, materials.[206]

In the United States, the recognized and used method in eminent domain cases in appraising specialized properties is the **reproduction cost less depreciation approach.**

According to *AmJur,* this valuation method requires the inclusion of all expenditures that reasonably and necessarily are to be expected in the recreation of the structure, including not only the construction itself but also collateral costs, such as the costs of financing the reproduction. "Historical associations and architectural values may enhance the market worth of a property by rendering it a specialty property; if so, the property may fairly be worth the market price for similar properties, plus a premium for its unique aspects. The premium value in such a case may also be determined by the cost of reproduction, minus depreciation. The value assigned has also been described as the total of the land value, plus the specialized value of the improvements, minus depreciation."[207]

Alfred Jahr explains the procedure in appraising a specialized property using this method:

> In the valuation of the improvement or plant, however, market value is no criterion because they have no market value. It is specialty property. The improvements are therefore valued on several properties. First, consideration is given to the original book cost of the improvements, that is, the original cash expenditure paid by the company for making the physical structures and appurtenances. Its purpose is to act as some guide; it is not value, however, and the courts recognize the fact that it is not a value of the physical structures. Second, evidence of reproduction cost new is then considered, for it is an element of value of specialty property. In figuring this cost, all overhead expenses are included. These expenses include engineering, construction, management fees, insurance, legal expenses, office overhead, and interest during construction period. Third, from the reproduction cost new an allowance for depreciation of the improvements must be made. This depreciation is a matter of opinion, formed after a physical examination of the improvements as a whole and is generally not based on a straight-line depreciation according to age. Some authorities, however, have not accepted such an item of depreciation and prefer the straight-line method, at so much per year. Obsolescence and functional depreciation are sometimes deducted in addition to physical depreciation depending on the type of utility involved.[208]

Replacement cost new is "the estimated cost to construct a building with utility equivalent to the appraised building using modern materials and current standards, design, and layout"[209] or "the current cost of a similar new property having the nearest equivalent utility as the property being valued."[210] It is the cost of acquiring a modern, functional equivalent of the subject property and "views the building as if reconstructed with modern methods, design and materials that would most closely replace the use of the appraised building but provide the same utility."[211] Replacement cost does not consider the most common forms of functional obsolescence.[212]

Depreciated replacement cost approach is the "method of valuation which provides the current cost of replacing an asset with its modern

equivalent asset less deductions for all physical deterioration and all relevant forms of obsolescence and optimisation."[213] Depreciated replacement cost is a method of appraising assets that are usually not exposed to the open market.[214] A general formula of this method is as follows:

Cost of constructing the building (s) (including fees)
Plus: Cost of the land (including fees)
= **Total Costs**
Less: Allowance for age and depreciation
= **Depreciated Replacement Cost**[215]

Under this method, the appraiser assesses the current gross replacement of the assets, usually comprised of the land and the building. **If the asset is an improvement**, the appraiser assesses the cost of its replacement with a modern equivalent and deducts depreciation to reflect the differences between the hypothetical modern equivalent and the actual asset. The appraiser has to "establish the size and specification that the hypothetical buyer ideally requires at the date of valuation in order to provide the same level of productive output or an equivalent service."[216]

In appraising the improvement using the cost approach, the appraiser considers the **construction cost, and attendant cost.**

Construction costs are "the costs that are normally and directly incurred in the purchase and installation of an asset, or group of assets, into functional use." On the other hand, ***attendant costs*** are "the costs that are normally required to purchase and install a property but that are not usually included in the vendor invoice."[217]

Under Section 10 of the RA 8974 IRR, construction cost is the current market price of materials, equipment, labor, the contractor's profit and overhead, while the attendant cost is the cost associated with the acquisition and installation in place of the affected improvement.

Once the gross replacement cost or the sum of construction and attendant costs is derived, depreciation shall be deducted.[218] Depreciation is classified into three categories: physical depreciation, functional obsolescence, and external obsolescence.

Physical obsolescence refers to the "wear and tear over the years, which might be combined with a lack of maintenance."[219] Physical depreciation is curable if "capital investment can bring the building to a state in which the degree of obsolescence is mitigated (e.g., standards of finishes and services)."[220] It is incurable if "no amount of capital investment can rectify the [depreciation] (for example, building structural flexibility)."[221] Curable physical depreciation is measured by the cost to cure or retrofitting which could extend the life of the building.[222] Incurable depreciation or deterioration is estimated by a variety of age-life or economic-age calculation methods.[223]

Functional obsolescence "reflects the advances in technology which allow for a more efficient delivery of services and goods from a building of different designs and specifications."[224] "Functional obsolescence arises where the design or specification of the asset no longer fulfills the function for which it was originally designed."[225]

It is "usually related to operational inefficiencies that typically involve either inadequacies or superadequacies. An inadequacy occurs when the asset is not enough (e.g., the asset is too small) for it to operate efficiently. A superadequacy occurs when there is too much of an asset (e.g., the asset is too large) for it to operate efficiently."[226] "To be feasible, the cost of replacing the obsolete item or design fault must be equal to or less than the anticipated increase in value due to its cure. Curable functional obsolescence may require abatement by adding or remodelling or by removing a superadequacy."[227]

Economic obsolescence results from "the impact of changing external macro- and micro-economic conditions on the property and should not include internal factors which affect the profitability of the occupying business, the writing down of such factors to reflect the profitability of the business being a matter for the occupier. Within economic obsolescence, the prospect of extending the life of the building by capital investment should be considered, as well as the fact that lack of maintenance can accelerate the rate of depreciation."[228]

In these consolidated cases, we rule that the depreciated replacement cost method, rather than the new replacement cost method, is the more appropriate method to use in appraising NAIA-IPT III.

Injustice would result if we award PIATCO just compensation based on the new replacement cost of the NAIA-IPT III, and disregard the fact that the Government expropriated a terminal that is not brand new; the NAIA-IPT III simply does not have the full economic and functional utility of a brand new airport.

Adjustments for depreciation should be made to reflect the differences between the modern equivalent asset and the actual asset or the

NAIA-IPT III. The reason is that depreciation involves the loss of value caused by the property's reduced utility as a result of damage, advancement of technology, current trends and tastes, or environmental changes.[229]

This conclusion is consistent with Section 10 of RA 8974 IRR which allows us – and under the NAIA-IPT-III's circumstances effectively direct us – to consider the kinds and quantities of materials/equipments used, configuration and other physical features of the properties, among other things, in determining the replacement cost of a building. To quote Section 10:

> **Section 10. Valuation of Improvements and/or Structures** – Pursuant to Section 7 of the Act, the Implementing Agency shall determine the valuation of the improvements and/or structures on the land to be acquired using the replacement cost method. The replacement cost of the improvements/structures is defined as the amount necessary to replacement improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures. **In the valuation of the affected improvements/structures, the Implementing Agency shall consider, among other things, the kinds and quantities of materials/equipment used, the location, configuration and other physical features of the properties, and prevailing construction prices.** (Emphasis supplied)

Depreciation should be deducted because modern materials and design are assumed in the replacement cost method. In using the depreciated replacement cost method, "[t]he intent is to provide a functionally similar improvement in order to apply a meaningful level of depreciation."[230]

If we adopt the new replacement cost method, PIATCO would be compensated for more than what it had actually lost. We must remember that the concept of just compensation does not imply fairness to the property owner alone. In an eminent domain situation, compensation must likewise be just to the public which ultimately bears the cost of expropriation. **The property owner is entitled to compensation only for what he actually loses; what he loses is only the actual value of the property at the time of the taking**.[231]

Just compensation must not extend beyond the property owner's loss or injury. This is the only way for the compensation paid to be truly just, not only to the individual whose property is taken, but also to the public who will shoulder the cost of expropriation. Even as undervaluation would deprive the owner of his property without due process, so too would its overvaluation unduly favor him to the prejudice of the public.[232]

In using the depreciated replacement cost method of valuation, we do not rely on Kaczmarek's affidavit and other documents not presented before the trial court, and which were belatedly attached to the Government's motion for partial reconsideration dated August 22, 2013.

This Court exercises its judicial function to fix just compensation in eminent domain cases on the basis of the law, the rules, and the evidence – including the appraisal reports and the *embedded formula* on how the parties arrived at the amounts of just compensation – presented by the parties before the trial court and the entire record of the consolidated cases.

The determination of just compensation in eminent domain cases is essentially and exclusively a judicial function. Fixing the formula with definitiveness and particularity in just compensation is not the function of the executive nor of the legislative branches, much less of the parties in this case. Any valuation for just compensation laid down in the statutes may not replace the court's own judgment as to what amount should be awarded and how this amount should be arrived at. Legislative enactments, as well as executive issuances, providing the method of computing just compensation are treated as mere **guidelines** in ascertaining the amount of just compensation.

When acting within the parameters set by the law itself, courts are not strictly bound to apply the formula to its minutest detail, particularly when faced with situations that do not warrant the formula's strict application. The courts may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them.[233]

We clarify, however, that this Court is not confined to the use of the depreciated replacement cost method in determining the just compensation in these cases. Valuation is not exclusively a technical matter used in arriving at a numerical measure of compensation. Rather, valuation in eminent domain is a judicial question based on equitable principles. Thus, this Court shall likewise endeavor to weigh the justness and fairness of compensation between the condemnor and the condemnee, considering the factual circumstances of this case.[234]

3. Construction cost of the NAIA-IPT III

3.a. The base valuation of the NAIA-IPT III

The Government claims that the construction cost or the base valuation of the NAIA-IPT III amounts to $300,206,693.00, itemized as

follows:[235]

	Total $USD in Manila @3Q01
General Requirements and Conditions	$ 36,279,033
Site Development	$ 3,293,967
Terminal North Concourse	$ 6,847,663
Terminal South Concourse	$ 11,169,979
Terminal Head House	$ 60,763,798
Terminal Building Services	$ 54,982,628
Multi Storey Car Park	$ 8,791,857
Special Systems	$ 69,321,503
Airside Infrastructure Works	$ 31,065,288
Landside Infrastructure Works	$ 11,496,552
Terminal Support Facilities	$ 6,194,425
Office Fit-out	$ 0
Builder's Work in Connection with Services	Included
Total $ USD	**$ 300,206,693**

On the other hand, PIATCO, Takenaka, and Asahikosan argue that the construction cost amounts to $360,969,791.00, *viz*:

	In US dollars
Total payments of PIATCO	275,119,807.88
Add: Awards by the London Court	84,035,974.44
Award by the Makati Court	1,814,008.50
Total Construction Cost	**360,969,790.82**

As we had earlier explained, construction cost is the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead. Construction or direct costs is also defined as the costs that are "normally and directly incurred in the purchase and installation of an asset or group of assets into functional use." Construction costs generally take into account the labor used to construct buildings; materials, products, and equipment; contractor's profit and overhead, including job supervision, workers' compensation, fire and liability insurance, and unemployment insurance; performance bonds, surveys, and permits; use of equipment; watchmen; contractor's shack and temporary fencing; materials storage facilities; and power-line installation and utility costs.[236]

We find the Government's computation of construction cost to be more realistic and appropriate. As the CA aptly observed, the Gleeds Report is more "particularized, calculable and precise." Tim Lunt sufficiently explained how he arrived at the value of $300,206,693.00:

2.2 Methodology

2.2.1 Stated simply, valuation of any given structure is derived by multiplying the structure's dimensions, i.e., quantities by a price (i.e., rate) for constructing the works at a designated time and specific location, adding the cost of works in, on, and around the structure, and then accounting for inferior and non-performing works, and rectification of those works.

2.2.2 I have arrived at the CCVs by carrying out the following sequence of tasks:

1) Understanding the project as bid and as eventually constructed.

2) Preparing measured quantities for the major elements of the completed works.

3) Establishing appropriate rates and prices for carrying out the works at that time in Manila, Philippines.

4) Adjusting the quantities and/or rates and prices to take into account the extent of non-performing and/or inferior quality works,

the extent of rectification and remediation of the Terminal to bring it to Code and making it structurally safe, and 22,193 m2 of 'Unnecessary Areas' that was built in the Terminal.

5) Making provision for the cost of remediation on items which deteriorated between December 2002 and December 2004.

6) Making provision for the value of depreciation of Terminal 3 between December 2002 and December 2004.

7) Deducting the cost of rectification to otherwise bring the Terminal to the standards in the Bid Documents, including the cost of building some 63,490 m2 of 'Necessary Operational Areas' that was not built in the Terminal.[237]

2.3 Understanding the Project

2.3.1 I visited the Terminal 3 site between May 9, 2006 and May 12, 2006; May 30, 2006 and June 2, 2006; and June 20 and June 25, 2006, when I held meetings with the Office of the Solicitor General, White & Case, MIAA, Arup, TCGI, and Gensler. I based myself at the Terminal 3 complex during my visits in May and June 2006 and made a number of visits to various areas both internal and external to Terminal 3 to gain a full understanding of the scope of the works performed.

2.3.2 Members of my staff visited the Terminal 3 site between May 30, 2006 and June 25, 2006, and based themselves in the Terminal 3 complex to prepare quantities from construction drawings made available by Takenaka, which, as noted, are not properly designated 'As-built' drawings. To safeguard against error or outdated dimensional information in the drawings, my staff checked certain major dimensions against the structures as constructed and found the dimensions to be substantially accurate. We did not check the drawings for detailed accuracy of the contents in the drawings (i.e., what is within the dimensions).

2.3.3 Members of my staff also visited the Terminal 3 site between February 26, 2008 and March 11, 2007. During that time, they gathered pricing information from local construction contractors to assist with the pricing of the CCVs.

2.3.4 I have examined all of the documents listed in Appendix 'B' and had discussions with each of the Republic's airport architectural and engineering experts on the content of their reports to gain a full understanding of the main issues affecting Terminal 3 and the CCVs.[238]

2.4. Preparing the Quantities

Bills of Quantities

2.4.1 Construction projects are generally priced by construction contractors for the purpose of competitive tendering using a Bill (or Bills) of quantities. Bills of Quantities are defined as:

A list of numbered items, each of which describes the work to be done in a civil engineering or building contract. Each item shows the quantity or work involved. When the procedure of tendering is adopted (as is usual), the Bill is sent out to contractors. Those contractors who wish to do the work return the bill, with an extended price opposite each item. This priced bill constitutes the contractors' offer (or tender to bid) to do the work.[239]

2.4.5 As noted, it was apparent from commencement of preparation of the CCVs that it was doubtful that the set of drawings listed in Appendix "B" that Takenaka provided were "As-built" or approved. Accordingly, because of uncertainty over the accuracy of the "As-built" drawings, and to avoid preparing Bills of Quantities based on potentially inaccurate information, I opted not to produce full Bills of Quantities to form the basis of the CCVs. Instead, I relied on a "Principle Quantities" type approach.[240]

Principle Quantities

2.4.6 The "Principle Quantities" type approach is common in the cost planning and cost estimating of construction projects. CESMM3 describes Principle Quantities as "a list of principle components of the works with their approximated estimated quantities x x x given solely to assist surveyors and estimators in making rapid assessment of the general scale and character of the proposed works prior to the examination of the remainder of the bills of quantities and other contract documents on which construction estimates or tenders will be based." This methodology involves the preparation of quantities for the major elements of the construction works where the costs cannot be estimated accurately from historical data, or for those areas which are known to vary in cost due to the quality or nature of the works. The quantities produced by adopting this approach are what I term "Principle Quantities."[241]

2.4.7 Given the serious concerns over the accuracy of the so called "As-built" drawings, and in order to make some assessment of the dimensional accuracy of the Takenaka drawings, we carried out a number of checks of the plan dimensions against our measurement of the physical dimensions of the structures. Overall dimensions (length and

width) were checked for a single floor plate in each of the Terminal North Concourse, the Terminal South Concourse and the Terminal Head House buildings. Our checks revealed no major discrepancies in respect of the physical plan dimensions of the drawings against the actual dimensions of the overall building floor plans. We therefore decided to use the drawings provided by Takenaka to produce the "Principle Quantities" dimensions required for us to prepare the CCVs.

2.4.8 The 'Principle Quantities' dimensions produced by Gleeds from the drawings made available by Takenaka (listed in Appendix 'B' Drawing List 1) are included in Appendix "G."

2.4.9 It is standard good practice for quantities produced as part of the measurement process to be checked by another member of the team who is not connected to the particular project. The quantities we produced were technically checked by another member of Gleeds for consistency among inter-related items, e.g., consistency between floors and ceilings, and to identify any major items not measured. Another member of Gleeds also checked the accuracy of the gross floor area, or "GFA," calculations for each of the buildings and no significant errors were identified.[242]

2.5. Arriving at the Rates and Prices

2.5.1 In order to derive the rates by which the quantities are produced to arrive at the CCV figures for this project, it is necessary to establish:

- The period of construction;
- The geographical location of the works;
- Access to the site;
- Any physical restrictions that might impede construction of the works;
- The duration for carrying out construction;
- Database of costs;
- The specification of the works;
- The quality of the works as constructed; and
- The extent of works requiring remediation and rectification

2.5.2 All of the above factors have an effect on the CCVs and it is necessary to consider the implications of each to arrive at the CCV figures. General guidance including a number of the above items are referred to in the document titled "Guide to Carrying Out Reinstatement Cost Assessments' published by the Royal Institution of Chartered Surveyors in September 1999.[243]

3. CCV CALCULATIONS

3.1 Calculation of Rates and Prices

3.1.1 The CCVs have been calculated in £UK costs converted to $USD in Manila. x x x

3.1.2 The basic approach to producing the CCV figures entails the following steps:

1) Establish UK pricing levels at 2nd Quarter 2006 (£UK @ 2Q06) (the date when the pricing exercise was initially carried out);

2) Convert the £UK @ 2Q06 prices into £UK at 3rd Quarter 2001 prices (£UK @ 3Q01) (the mid point of construction) using published and recognized indices;

3) Convert the £UK @3Q01 prices into US dollars at 3rd Quarter ($USD @3Q01) (the currency of the Termianl 3 Concession Contract) using published currency exchange rates;

4) Convert the $USD @3Q01 prices to reflect local levels of pricing by applying a Location Adjustment using various methods and sources of information to check the accuracy of the conversion.

Each of these steps is described below.

3.1.3 First, the quantities produced for Terminal 3 were priced using a mixture of current data in Gleeds' Database of costs and published cost data, including Spons, and are priced at 2Q06 prices. These costs are shown in the CCVs as £UK @ 2Q06. The rates used are included in Appendix "D." Support in respect of the reference to the source derivation of each of the rates and prices included in the CCVs are also included in Appendix 'D' in the column headed "Rate Source."[244]

3.1.4 Second, it was necessary to adjust the prices to the midpoint of construction. As such the "£UK @ 3Q01" levels to align them with required base costs for inclusion in both CCVs. This conversion is made by using the BCIS All-in Tender Price Indices

published by the Royal Institution of Chartered surveyors. These costs are shown in the CCV as "£UK @ 3Q01."

3.1.5 Third, the "£UK @ 3Q01" costs were converted from UK pounds to US dollars using an exchange rate of UK£1 = ISD$1.4540. This exchange rate is obtained by averaging the exchange rates recorded for October 1, November 1 and December 3, 2001 (i.e., 3Q01) using historical data from the xrates.com website. These particular dates represent the midpoint of construction which I refer to earlier in this report. The result of this conversion is shown in the column marked "£UK @ 3Q01" in Appendix "D."

3.1.6 Fourth, a "Location Adjustment" of the "$USD @ 3Q01" cost is necessary to account for the local cost of constructing in Manila. Local cost data gathered in Manila by members of my team in February and March 2007 was compared directly with UK prices to establish a ratio between the UK and the Philippines. The cost data gathered in Manila was compared on a like for like basis with 1st Quarter 2007 UK prices. The results of this comparison of rates result in the "Location Adjustment." The Location Adjustments resulting from this calculation which are applied to the CCV are UK£1=$USD0.7576 for the mechanical, electrical and plant elements. The average conversion rate across the CCVs is UK£1=$USD0.5370 or 53.70%.[245]

3.1.7 I double-checked my calculations of the Philippine prices by considering what the conditions in the Philippines construction market were at the time the project would have been bid, and how these conditions changed through to the end of 2002 when works stopped on site.

During the period of 1995 to 2002 the "Construction Materials Wholesale Price Index" ("CMWPI") published by the 'Economic Indices and Indicators Division, Industry and Trade Statistics Department, Philippine National Statistics Office, Manila, Philippines' showed an average increase of 2.8% per annum.

During the periods 2000 to 2001 and 2001 to 2002 the increases where 2.1% and 3.4% respectively. The increases are seen to be at similar levels both in the period during which the works were priced, contracts executed and during construction and in my opinion this would have resulted in no material difference to the pricing level of the onshore works submitted at tender stage when compared with the actual cost incurred.

3.1.8 I also have gathered information from other Chartered Surveyors' published data which also indicate that the Location Adjustment for the Philippines is in the region of 45%. This percentage is in line with the more detailed results obtained as part of my own calculations.[246]

We thus rule in favor of the Government's position and reject PIATCO's claimed construction cost. For one, PIATCO made inconsistent statements with respect to the construction cost of the NAIA-IPT III. The Scott Wilson report states that the construction cost of the NAIA-IPT III amounted to US$338.83 million, exclusive of attorney's fees, cost of the suit, interest rates, etc. This amount is inconsistent with PIATCO's claimed construction cost of **$360,969,790.82** in its pleadings. The relevant portion of the Scott Wilson report states:

2.1.4 When Scott Wilson was providing Lenders Technical Advice to the Asian Development Bank in September 2002, the total value of the construction contracts, estimated by PCI at that time, was as follows:

On-Shore Contract: US$132.35 million
Off-Shore Contract: US$190.08 million
Total US$322.43 million, excluding VAT

2.1.5 The contract priceS under the EPC Contracts are as follows:

On-Shore Contract. US$133,715,911
Off-Shore Contract. US$190,037,328
Total US$323,753,239 excluding VAT

2.1.6 The amounts certified for the costs of construction up to 23 June 2004 in payment certificate no 35 which is the last payment certificate that has been certified by PIATCO, are as follows:

On-Shore US$133.64 Million
Off-Shore US$189.83 Million
VAT US$11.43 Million
ER Changes US $3.93 Million
TOTAL US$338.83 Million

2.2.13 Based on the certified IPC no. 35 for both Takenaka and Asahikosan, the cost of the completed and certified works (as of IPC No. 35) are as follows:

On-Shore US$133.64 Million
Off-Shore US$189.83 Million
VAT US$11.43 Million
ER Changes US $3.93 Million
TOTAL US$338.83 Million

2.2.14 The construction cost stated above x x x is at 2002 prices (no adjustments for inflation/escalation) and are exclusive for all other attendant costs, such as the engineering and architectural service fees, quality assurance service fees, construction supervision service fees, construction insurance, site development costs, financing costs and other associated costs.

2.2.15 We would conclude that the certified cost of construction of US$338 million and the other attendant costs are fair and reasonable. We note that the Gleeds' estimate is close to the figure in 2.2.13 above.

2.2.16 It is noted that in the Gleeds Report entitled Construction Cost Valuation for NAIA IPT3 dated 15th November 2010 the project Base Case CCV is valued at a gross amount of US$334.61 million (US$300.21 million + US$34.6 million deductions). [247]

Furthermore, PIATCO **did not present detailed supporting information** on how the certified construction cost of US$338.83 million was arrived at.[248]

PIATCO's statement that the total sum of $360,969,791.00 is evidenced by the As-Built Drawings is misleading. Takenaka and Asahikosan's computation of construction cost includes items which do not pertain to the construction of the NAIA-IPT III. PIATCO, Takenaka, and Asahikosan erroneously included in the construction cost the **costs of the action, interest rates on the judgment award of $14,827,207.00 and $52,008,296.54, attorney's fees, and litigation expenses.**

These items were not directly incurred in the construction of the NAIA-IPT III. In Claim No. HT-04-248, only $6,602,971.00 and $8,224,236.00 or the sum of $14,827,207.00 can possibly relate to the construction cost of the NAIA-IPT III. On the other hand, in Claim No. HT-05-269, only the amounts of $21, 688,012.18 and $30,319,284.36 or the total sum of $52,008,296.54 can be possibly imputed to the construction cost of the terminal.

In any case, we cannot consider the London awards as evidence of the construction cost of the NAIA-IPT III. To do so in this case is to recognize Claim No. HT-04-248 and Claim No. HT-05-269 when their recognition and enforcement have yet to be decided by this Court in G.R. No. 202166. It is a basic rule that Philippine courts cannot take judicial notice of a foreign judgment or order.[249]

We can only recognize and/or enforce a foreign judgment or order after a conclusive and a **final finding** by Philippine courts that: (1) the foreign court or tribunal has jurisdiction over the case, (2) the parties were properly notified, and (3) there was no collusion, fraud, or clear mistake of law or fact.[250]

PIATCO, Takenaka, and Asahikosan alleged that PIATCO paid Takenaka and Asahikosan the sum of $275,119,807.88 pursuant to the Onshore Construction and Offshore Procurement Contracts. According to the RTC (whose ruling the CA did not reverse), these parties failed to prove the fact of payment of $275,119,807.88.

We add that the alleged payment of $275,119,807.88 does not support their allegations that this amount pertains to the construction cost of the NAIA-IPT III. Takenaka and Asahikosan's admission that the sum of $275,119,807.88 were paid by PIATCO does not bind the Government who is not a party to the Onshore Construction and Offshore Procurement Contracts. If at all, the Court can only recognize the sum of **$66,834,503.54** from PIATCO, Takenaka, and Asahikosan's computation of construction cost, which is **much lower than the Government's computed construction cost of $300,206,693.00.**

Lastly, we note that Takenaka and Asahikosan's claimed construction cost is different from the amount reflected in the Tengson Report. In this Report, Gary Taylor stated the "true value of the NAIA-IPT III facility is nearer to US$408 million, given the fact that Gleeds failed to recognize or include any values for design & other consultants (10%) or property inflation based on GRP schedules (15%)."[251]

3.b. Structural defects on the NAIA-IPT III

The Government contends that that the NAIA-IPT III suffers from structural defects, as follows:

1. Failed structural elements of the NAIA-IPT III, as identified in the Arup Seismic Evaluation Report and Gravity Loading and Element Capacity Assessment;

2. The inferior quality of material used and works, including, for example, floor tiling, plasterboard wall finishes and ceilings, and the internal and external metal paneling;

3. The cost of seismic and gravity load structural retrofits for the failed elements in the terminal buildings and multi-storey car park structures, as described in Arup's Drawings listed in Appendix "B" Drawing List 2 and other rectification works required to bring the Terminal to compliance with applicable building and airport codes as indicated in the Appendices of Arup's Site Observation Report; and

4. The cost of seismic and gravity load structural retrofits for the failed elements in the elevated roadway structures, as described in Arup's Drawings listed in Appendix "B" Drawing List 3, Arup Review on "TCGI Report of Civil Design Review and Evaluation" – Elevated Roadway, dated March 2009; and other rectification works required to bring the elevated roadways to compliance with applicable building and airport codes, as indicated in the Appendices of Arup's Site Observation Report.[252]

Scott Wilson argued that no structural elements of the NAIA-IPT III actually failed.[253] He emphasized that there were varying opinions regarding the integrity of the NAIA-IPT III:

> 3.3.7 The adequacy of the structural frame, individual load bearing elements and foundations under "normal" gravity loads should be able to be readily evaluated. However, there are clearly differences of opinion between all 3 parties who have carried out design and assessments in this regard in terms of the extent of 'apparent failed elements' under the design appraisal which ranges from:
>
> - Meinhardt – zero failures
> - Arup reports under gravity loading – 4% of superstructure elements and less than 1% of all substructure elements
> - Arup reports under seismic loading – less than 1% of all primary RC and composite columns, around 3% of all primary RC beams, around 6% of all shear walls, around 8% of piles (mostly at shear walls) and around 1% of mat footing locations. Differential settlements are considered insignificant to cause any additional distress in the buildings. Pounding between floors of adjacent sectors is not an issue.
> - TCGI – extent not readily identifiable from documents reviewed although within Section 2.0 of the TCGI July 2008 report it states that the evaluation did not yield results pointing to foundation instability as a cause for concern.
>
> 3.3.8 On the basis of discussion in 3.3.6 above it would be reasonable to follow the assessment of the original designer (Meinhardt) who also provided a Letter of Guarantee confirming the adequacy of their design, (ref para3.3.30).

He also disputed the Government's allegations that some portions of the NAIA-IPT III would not be able to sustain strong earthquakes and that some areas of the NAIA-IPT III were built using materials with inferior quality:

> **c. Seismic Activity (Terminal and Multi-Storey Carpark)**
>
> 3.3.12 It is understood from press reports that, since substantial completion of the airport in 2002, Manila has been subjected to a number of earthquakes. It has been reported that on 25 March 2010 a strong earthquake measuring 6.2 on the Richter scale hit Metro Manila according to the government seismology institute. It was further reported that in July 2010 "intense seismic activity persists in the Philippines and Manila continues to be struck by moderate to strong earthquakes of 6.5 to 7.6 magnitude." We can find no record relating to any damage being reported in terms of the structure, finishes or services associated with NAIA Terminal 3 as a result of these occurrences.
>
> x x x x
>
> **3.3.14 Inferior quality of materials used, for example internal finishes.**
>
> 3.3.15 Gleeds do (sic) not define exactly what areas they mean by this. There is a number of finished items where deductions in excess of US$800,000 have been made but the rational for the quantification of the deduction is not explained. If the works were inferior to that specified then this would be reflected in the payments made to Takenaka under the EPC contract.

Scott Wilson likewise supported Takenaka and Asahikosan position that the Government's experts examined the structural integrity of the

NAIA-IPT III using the recent building codes, which were not yet in place at the time the NAIA-IPT III was designed and built.

3.3.18 Seismic and gravity load retrofit and other rectification works required to bring the building to compliance with applicable building and airport codes.

3.3.22 TCGI also provided an option titled "A Government Prerogative" which states:

> Research in earthquake engineering has rapidly progressed to the extent that seismic design provisions for the design of new buildings and procedures for the evaluation of existing ones have drastically evolved. The current edition of the National Structural Code of the Philippines (NSCP) is dated 2001, whereas Meinhardt used the 1992 edition which was applicable at the time the Terminal was designed.
>
> There are new published guidelines for the structural safety assessment of existing buildings from such organizations as the Federal Emergency Management Agency (FEMA) which have evolved into published documents for the structural rehabilitation of existing buildings. TCGI have therefore suggested that MIAA and the Philippine Government may wish to use the more recent published documents to enhance/upgrade the facility.

3.3.23 It would appear from the Arup documents reviewed that they have taken this approach in their assessment of design i.e., consideration of updated documents (NSCP 2001 and UBC 1997) whilst Meinhardt used the relevant codes at the time of design which was NSCP 1992. Consequently any results from assessments carried out to later published codes has no direct bearing on the design of the facility which was carried out prior to the issue of these later standards. As such any assessment and proposed strengthening/retrofit works in this regard is considered to be an enhancement of the design and has no relevance on the value of the NAIA Terminal 3 facility as constructed under the original contract.

On the other hand, the relevant portions of the Tengson Report dated December 2010[254] states:

> In addition, we should note herein that Takenaka's structural designer, Messrs. Meinhardt, concluded that its check on the structural ductility requirements (as questioned by TCGI & Ove Arup) on elements which do not resist lateral forces, is in full compliance of the Philippine Code NSCP 1992 and its originating design code ACI-318 (1989), and this is supported by several members of the American Concrete Institute (ACI). Both Takenaka and other parties (including Meinhardt and members of the ACI), have concluded that TCGI & Ove Arup reports use several conflicting and misunderstood mathematical models. These include but are not limited to the following:
>
> (i) TCGI used larger loadings than those specified in the "Design & Load Schedule Plan."
> (ii) Their modeling for "sector 3" uses incorrect storey elevations and the slab thickness did not match those on the "as built" plans.
> (iii) Beam section sizes do not match those shown on the "as built" plans.
> (iv) TCGI used "Dynamic Analysis" in their modeling, whereas there is no requirement for such an analysis in the Philippine Structural Code – NSCP 1992.
> (v) TCGI & Ove Arup used the updated NSCP 2001 (and UBC1997) Philipine Codes, yet Takenaka's design was based upon the NSCP 1992 code because the 2001 updated was not available when the NAIA 3 designs were completed in 2000.
> (vi) TCGI & Ove Arup reports were based upon a system which incorporates frame beams and columns as primary structural element, whereas the Takenaka design used a building frame system (Sheer Wall System). Two differing design methods will lead to different results.[255]

PIATCO also argued that it is not the sole entity responsible for the completion of and/or compliance with the outstanding items in the JAC project status summary report dated February 28, 2003. The summary report shows that some outstanding items should be performed by the Government.[256]

While Scott Wilson stated that only retrofit works *actually undertaken* should be taken into consideration in the valuation of the NAIA-IPT III,[257] Takenaka and Asahikosan insisted that subsequent rectification works in the NAIA-IPT III were only intended to ensure that the terminal would be compliant with the current building laws and standards.[258] They reiterated that the design of the NAIA-IPT III was compliant with the NSCP 1992, the effective building code when the terminal was designed and built.[259]

3.b.1. The Court cannot consider the additional evidence submitted by Takenaka and Asahikosan before the Court of Appeals

At the outset, we rule that we cannot consider Takenaka and Asahikosan's attachments in their (1) Motion for Submission of Additional

Documents dated July 30, 2013;[260] (2) Supplemental Motion for Submission of Additional Documents dated October 3, 2012;[261] and (3) Second Supplemental Motion for Submission of Additional Documents dated April 11, 2013 in CA G.R. No. CV-98029.[262] These attachments sought to refute the Government's position that the NAIA-IPT III suffered from massive structural defects.

Takenaka and Asahikosan posit that they could have submitted reports before the trial court to show that the design of the NAIA-IPT III was structurally sound if the RTC had only furnished the parties copies of the BOC Final Report and afforded them the opportunity to file a Comment on the Final Report.

Under Section 3, Rule 6 of the Internal Rules of the CA, the CA may receive evidence in the following cases:

> (a) In actions falling within its original jurisdiction, such as (1) certiorari, prohibition and mandamus, (2) annulment of judgment or final order, (3) quo warranto, (4) habeas corpus, (5) amparo, (6) habeas data, (7) anti-money laundering, and (8) application for judicial authorization under the Human Security Act of 2007;
>
> **(b) In appeals in civil cases where the Court grants a new trial on the ground of newly discovered evidence, pursuant to Sec. 12, Rule 53 of the Rules of Court;**
>
> (c) In appeals in criminal cases where the Court grants a new trial on the ground of newly discovered evidence, pursuant to Sec. 12, Rule 124 of the rules of Court; and
>
> (d) In appeals involving claims for damages arising from provisional remedies. (Emphasis supplied)

This provision qualifies the CA's power to receive evidence in the exercise of its original and appellate jurisdiction under Section 9 of BP 129, as amended:

> Sec. 9. Jurisdiction. — The Court of Appeals shall exercise:
>
> x x x x
>
> The Court of Appeals shall have the power to try cases and conduct hearings, receive evidence, and perform any and all acts necessary to resolve factual issues raised in cases falling within its original and appellate jurisdiction, including the power to grant and conduct new trials or further proceedings. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months, unless extended by the Chief Justice.

Since Takenaka and Asahikosan filed an ordinary appeal pursuant to Rule 41 in relation to Rule 44 of the Rules of Court, the CA could only have admitted newly discovered evidence. Contrary to Takenaka and Asahikosan's claim, the attachments to the motions are not newly discovered evidence. Newly discovered evidence is evidence that could not, with reasonable diligence, have been discovered and produced at the trial, and which, if presented, would probably alter the result.[263]

We find it hard to believe that Takenaka and Asahikosan could only have possibly secured the attachments after the trial court had rendered its decision. With the exercise of reasonable diligence, Takenaka and Asahikosan could have produced these documents before the BOC since they were fully aware that the Government presented evidence on the alleged structural defects of the NAIA-IPT III.

In fact, in their *Manifestation/Submission dated November 3, 2009*, Takenaka and Asahikosan attached the "Report and Response from Takenaka & Asahikosan, Contactors for the NAIA 3 Facility and Intervenors in the Expropriation case between the GRP and PIATCO – October 2009" to refute the allegations of structural defects. Moreover, Takenaka and Asahikosan manifested that they were reserving their right to submit additional reports, comments, and memoranda with respect to this issue. The relevant portions of the *Manifestation/Submission dated November 3, 2009* provides:

> 1. The record[s] of this case will show that to date, plaintiffs have submitted various reports prepared by TCGI Engineers, Ove Arup & Partners Massachusetts, Inc. and Gleeds (Bristol) Partnership to this Honorable Court. The TCGI and Ove Arup Reports point out alleged defects on the IPT 3, while Gleeds made an attempt to establish the value of the IPT 3, taking into account the findings of the TCGI and Ove Arup. Intervenors have not given their comments on these reports since they have not been required to do so by this Court.
>
> 2. **With the RTC's permission, intervenors respectfully submit the attached "Report and Response from Takenaka & Asahikosan, Contactors for the NAIA 3 Facility and Intervenors in the Expropriation case between the GRP and PIATCO – October 2009" prepared by Mr. Gary Taylor, in response to the above mentioned reports. Intervenors**

> **respectfully manifest that they are reserving their right to submit additional reports, comments and memoranda in support of this submission and to aid this Honorable Court in determining the true value of the IPT 3**.[264] (Emphasis supplied)

3.b.2. Equiponderance of evidence on the alleged structural defects of the NAIA-IPT III favors PIATCO, Takenaka and Asahikosan.

Nonetheless, even without considering and/or giving probative value to the additional evidence presented by Takenaka and Asahikosan before the CA, this **Court finds that the Government failed to establish by preponderance of evidence that the NAIA-IPT III suffered from structural defects.**

Under Section 3, Rule 131 of the Rules of Court, it is presumed that a person is innocent of wrong;[265] that a person takes ordinary care of his concerns;[266] that private transactions have been fair and regular;[267] and that the ordinary course of business has been followed.[268]

Based on these presumptions, we presume that Takenaka and Asahikosan built the NAIA-IPT III in accordance with the specifications required under the Onshore Construction Contract and Offshore Procurement Contract. We also presume that the NAIA-IPT III is structurally sound and compliant with the applicable building codes and other laws at the time it was designed and built.

However, these presumptions are merely **disputable presumptions** and may be overcome by contradicting evidence. The **burden of proof** lies with the Government to prove by preponderance of evidence that the NAIA-IPT III suffered from structural defects. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of credible evidence."[269]

In determining where the preponderance of evidence or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witness' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability of their testimony, their interest or want of interest, and also their personal credibility in so far as the same may legitimately appear during trial. The court may also consider the number of witnesses, although preponderance does not necessarily lie with the greater number.[270]

The Government's burden of proof to show that the NAIA-IPT III is indeed defective does not shift to its adverse parties. The burden of proof remains throughout the trial with the party upon whom it is imposed.

It is the **burden of evidence** that shifts from party to party during trial.[271] This means that the burden of going forward with the evidence is met by the countervailing evidence of PIATCO, Takenaka and Asahikosan which, in turn, balances the evidence introduced by the Government. Thereafter, the burden of evidence shifts back to the Government.

In the present case, the experts and consultants of the Government, PIATCO, Takenaka and Asahikosa arrived at conflicting findings regarding the structural integrity of the NAIA-IPT III. The Government's experts detailed with particularity the alleged defects of the NAIA-IPT III, which allegations the experts of PIATCO, Takenaka and Asahikosan refuted with particularity.

Under the equiponderance of evidence rule, when the scale of justice shall stand on equipoise and nothing in the evidence inclines a conclusion to one side or the other, the court will find for the defendant. [272]

If the facts and circumstances are capable of two or more explanations, one of which is consistent with the allegations of the plaintiff and the other consistent with the defense of the defendant, the evidence does not fulfill the requirement of preponderance of evidence. When the evidence of the parties is in equipoise, or when there is a doubt as to where the preponderance of evidence lies, the party with the burden of proof fails. [273]

The reason for this rule is that the plaintiff must rely on the strength of his evidence and not on the weakness of the defendant's claim. Thus, even if the evidence of the plaintiff may be stronger than that of the defendant, there is no preponderance of evidence on his side when this evidence is insufficient in itself to establish his cause of action.[274]

In the present case, **PIATCO, Takenaka and Asahikosan, met the Government's allegations regarding the structural integrity of the NAIA-IPT III.**

A reading of the reports of the parties' respective experts shows that each party presented an equally persuasive case regarding the structural soundness or defect of the NAIA-IPT III. The Government's case on the alleged structural defect of the NAIA-IPT III has been met by equally persuasive refutations by the experts of PIATCO, Takenaka and Asahikosan.

As a matter of law and evidence, the Government's case regarding this matter must fail. Since PIATCO, Takenaka and Asahikosan presented equally relevant and sufficient countervailing evidence on the structural soundness of the NAIA-IPT III, the scales of justice tilt in their favor. Neither party successfully established a case by preponderance of evidence in its favor; neither side was able to establish its cause of action and prevail with the evidence it had. As a consequence, we can only leave them as they are.[275]

We thus add to the construction cost the sum of $20,713,901, itemized below:[276]

Item	In Dollars
Surface demolition	1,971,500
Structural retrofit	6,860,660
Elevated road	2,443,276
Miscellaneous	
Alarms	154,460
Defective Ceiling	479,626
CUTE not working	2,774,563
Inferior FIDS	22,020
BHS Inferior Screening Software	957,881
Fire Protection Inferior coverage	924,851
Civil and HV	
Apron Civil	829,619
Taxiway Civil	439,280
Storm Water	2,604,081
HV	252,084
Total	**20,713,901**

Admittedly, the Government did not open to the public certain areas of the NAIA-IPT III because of uncertainties on their structural integrity.[277] The Scott Wilson Report also recognized that some retrofit works should also be undertaken in some of the areas of the NAIA-IPT III. It stated that only retrofit works actually undertaken in the building should be taken into consideration in appraising the NAIA-IPT III.[278]

On August 14, 2012, the DOTC invited construction firms to participate in the P212.3 million NAIA-IPT III structural retrofit project. The structural retrofit of the NAIA-IPT III that was offered for bidding had eleven components: shear wall thickening; slab thickening; application of FRPs to columns, beams and slabs; thickening of flat slab drop; enlarging of column size; enlarging pile cap and footings; steel jacketing; providing shear blocks to pier headstock (elevated access roadway); enlarging of pier footings (elevated access roadway); application of FRP to piers (elevated access roadway); and increasing seismic gap between the elevated access roadway and adjacent structures (sector 1, 2, car park).[279] The Official Gazette further stated:

> Shear wall thickening is meant to fortify the reinforced concrete wall to increase its capacity against horizontal structure movement. At the same time, thickened slabs will increase their bending capacity and resistance against heavy superimposed loadings.
>
> Applying fiber-reinforced polymer (FRP) to columns, beams, and slabs will increase their strength and resistance against excess loads and combined forces of elements. A thicker flat slab drop is meant to strengthen the slab-column connection.
>
> Bigger -sized columns will also increase their capacity against combined stresses, while enlarged pile cap and footings will increase foundation capacity under compression. They also prevent movement of the foundation during earthquakes.
>
> Steel jacketing is meant to resist the additional loads. Shear blocks to pier headstock will provide a bridge interlock is meant to distribute excess load along the carriage way.
>
> Enlarged pier footings will prevent foundation overturning during earthquake events.
>
> Application of FRP to piers will also increase the column capacity and ductility against combined stresses due to earthquake forces.

> Increased seismic gap between the elevated access roadway and adjacent structures will reduce the risk of pounding between the bridge and building structure.[280]

However, no documents regarding the retrofit project exist as part of the record of the case. The retrofit bid took place in 2012, or after the promulgation of the trial court's ruling. Hence, we have to disregard Government claims pertaining to the retrofit project.

3.c. The unnecessary areas

Gleeds excluded "unnecessary areas" from the computation of the base value. These unnecessary areas are **the multi-level retail mall** that is accessible only through the multi-storey car park (20,465 m^2), and the **excess retail concession space** (1,727 m^2).[281]

We find the exclusion of the unnecessary areas from the base value unjustified. Since the Government would expropriate the entire NAIA-IPT III, the Government should pay for the replacement cost of the retail mall and the excess retail concession space. The Government cannot avoid payment simply because it deems the retail mall and the retail concession space as unnecessary in its operation of the NAIA-IPT III. To reiterate, the measure of just compensation is not the taker's gain, but the owner's loss.[282]

Consequently, **we include in the computation of construction costs the excess concession space** in the amount of **$1,081,272.00**, and **the four-level retail complex** in the sum of **$12,809,485.00**.[283]

4. Attendant costs of the NAIA-IPT III

Scott Wilson criticized the Gleeds Report for excluding the attendant costs in the construction cost valuation. He stated:

> 3.1.13 Gleeds do (sic) not show any costs for planning and design consultancy fees preconstruction. In our experience the following percentage ranges of the construction cost would typically be the international norms for these fees.
>
> | | Percentage Range |
> |---|---|
> | • **Attendant Costs** | |
> | • Architecture | 3.0 to 4.0 % |
> | • Civil and Structural | 1.0 to 4.0 % |
> | • Electrical and Mechanical | 2.5 to 3.5 % |
> | • Quantity Surveyor | 1.0 % |
> | • Project Management | 1.0 % |
> | **Total** | 8.5 to 11.5 % |
>
> 3.1.14 On the basis of a construction cost valuation of the order of US$322 million we would expect planning and design consultancy fees preconstruction to be a minimum of US$27 million, based on typical international norms.
>
> 3.1.15 Some preliminary design was carried out by Takenaka prior to the EPC tender design so slight lower planning and design consultancy fees could be expected. It is understood that PIATCO have paid US$19.3 million to the designers PCI, SOM, PACICON and JGC (architect of record) and this therefore appears a fair and reasonable fee.
>
> 3.1.16. In addition there is also the cost of site supervision. In this case there was the independent QA role undertaken by Japan Airport Consultants and construction supervision by PCI. It is noted that the Bid Document suggested that up to 3% of the construction cost should be allowed for the independent QA role. In our experience we would expect QA and construction supervision to cost between 3% and 5% of the construction cost.
>
> 3.1.17 On the basis of a construction cost valuation of the order of US$322 million we would expect the cost of construction supervision to be a minimum of US$9.5 million. It is understood that PIATCO have paid US$7.9 million to the QA Inspectors

(JAC) and US$4.2 million to PCI, SOM, PACICON and JGC and this therefore appears not reasonable.

3.1.18 In summary, PIATCO have paid the following consultancy fees:

• Planning and design consultancy fees preconstruction	US$19.3 million
• QA Inspectors	US$7.9 million
• Construction supervision	US$4.2 million
Total	US$31.4 million

3.1.19 In our opinion these fees are in reasonable range.

Site Preparation Costs

3.1.20 We understand that PIATCO has incurred costs of US$10.3 million for relocation of PAF existing facilities, removal of subterranean structures and site preparation which the Gleeds Base Case CCV has not included.

Legal Costs

3.1.21 We assume that in addition to the above fees PIATCO has incurred legal costs in planning and constructing the development and this is quite normal on BOT concession contracts where contract agreements and responsibilities have to be agreed between a number of different parties.

Overall Summary

3.1.21 PIATCO has incurred consultancy fees and site preparation costs of US$41.7 million (US$31.4 plus US$10.3 million) not included by Gleeds in the Base Case CCV.[284]

In response, Tim Lunt asserted that its CCV of US$300,206,693.00 already includes the attendant costs of US$36,279,033 under the heading "General Requirements and Conditions." The sum of US$36,279,033 represents the General Requirements Section of the Takenaka Bill of Quantities. The "General Requirements and Conditions" is composed of engineering and architectural services fees, quality assurance services fees, construction supervision services fees, construction insurance, and site. Tim Lunt, however, admitted that the "General Requirements and Conditions" exclude financing costs, and other associated costs. He likewise stated that PIATCO's attendant costs have no evidentiary support.

On December 14, 2010, PIATCO attached to its *Compliance* documentary evidence of its claimed attendant costs of US$70,197,802.00. These include **photocopies** of summary of payments for architecture & engineering, quality assurance, construction supervision, construction insurance, site development, other costs and financing costs, official receipts, statements of account, sales invoices, endorsements, insurance policies and other related documents, acknowledgement receipts, agreements, invoices, and bonds.

PIATCO claims that the following entities rendered services in the construction of the NAIA-IPT III:

Services Rendered	Entities that Rendered the Services
Engineering and Architecture	Pacific Consultants International Asia, Inc. Pacicon Philippines, Inc. Architect J. G. Cheng RMJM Philippines, Inc.
Quality Assurance	Japan Airport Consultants I.A. Campbell & Associates
Construction Supervision	Pacific Consultants International Asia, Inc.
Construction Insurance	Gotuaco del Rosario
Site Development	Bases Conversion Development Corporation Skidmore, Owings & Merrill Pacific Consultants International Asia, Inc. Natural Resource Development Corporation Serclan Enterprises Geodesy Services, Inc. Geotechnics Philippines, Inc. Revalu Constructions & Supply N.O. Mercado Construction, Inc.

	Lopez Drilling Enterprises Monark Constructions Illustrious Security and Investigation Agency, Inc. Core Watchmen, Security and Detective Agency Corp.
Other Services	Laguna Lake Development Authority National Telecommunications Commission Prudential Guarantee and Assurance, Inc. Manila Electric Company, Inc. Maynilad Philippine Long Distance Telecommunications, Inc. Myrtle Intergen Exchange Corp.
Financing Services	Dresdner / Kfw / Helaba Banks Fraport AG/FAG Deutsche Bank

Reyes Tacandong & Co. checked the mathematical accuracy of the attendant costs. PIATCO asserts that it engaged the services of various consultants in the construction of the NAIA-IPT III and incurred the following attendant costs:

Attendant Costs	Amount
Engineering and Architecture	US$19,372,539
Quality Assurance	US$6,923,720
Construction Supervision	US$4,302,227
Construction Insurance	US$4,329,272
Site Development	US$8,358,169
Other Costs	US$ 308,985
Financing Costs	US$26,602,890
Total	**US$70,197,802**

The BOC, the RTC, and the CA uniformly found that PIATCO failed to substantiate its attendant costs. The CA observed that PIATCO's summarized computation of attendant costs was self-serving and unsupported by relevant evidence.

Unlike the BOC and the RTC which pegged the attendant cost at 10% of the construction cost as an accepted industry practice, the CA made a finding that the "General Requirements and Conditions" in the Gleeds' Appraisal Report constitutes the attendant costs. The CA stated that there is no need to further recognize and award separate attendant costs because these were already included in the construction cost valuation of US$300,206,693.00. The CA explained that the attendant cost becomes part of the total construction cost once the construction is completed.[285]

4.a. PIATCO's attendant costs

Under the best evidence rule, when the subject of inquiry relates to the contents of a document, no evidence shall be admissible other than the original document itself. In proving the terms of a written document, the original of the document must be produced in court.

The best evidence rule ensures that the exact contents of a document are brought before the court. In deeds, wills, and contracts, a slight variation in words may mean a great difference in the rights and obligations of the parties. A substantial hazard of inaccuracy exists in the human process of making a copy by handwriting or typewriting. Moreover, with respect to oral testimony purporting to give the terms of a document from memory, a special risk of error is present, greater than in the case of attempts at describing other situations generally.[286]

The best evidence rule likewise acts as an insurance against fraud. If a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat. The rule likewise protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.[287]

As exceptions to the best evidence rule, Section 3, Rule 130 of the Rules of Court provides that non-original documents may be produced in court in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
(b) When the original is in the custody or under control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (Emphasis supplied)

Secondary evidence of the contents of writings is admitted on the theory that the original cannot be produced by the party who offers the evidence within a reasonable time by the exercise of reasonable diligence.[288]

PIATCO argues that its non-submission of original documents before the trial court is justified under Section 3 (c), Rule 130 of the Rules of Court. It points out that a party need not submit the original when it consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole. PIATCO insists that the lower courts erred in not giving probative value to the report prepared by Reyes Tacandong & Co., an auditing firm, validating PIATCO's computation of attendant costs. **Significantly, Reyes Tacandong & Co. failed to state that it examined the original documents in validating PIATCO's computation of attendant costs.**

We agree with PIATCO that it need not submit numerous and voluminous invoices, official receipts, and other relevant documents before the trial court to prove the attendant costs that it incurred in the construction of the NAIA-IPT III. The trial court may admit a **summary of voluminous original documents,** in lieu of original documents, if the party has shown that the underlying writings are numerous and that an in-court examination of these documents would be inconvenient. **In other words, Section 3 (c), Rule 130 of the Rules of Court does away with the item-by-item court identification and authentication of voluminous exhibits which would only be burdensome and tedious for the parties and the court.**

However, as a condition precedent to the admission of a summary of numerous documents, *the proponent must lay a proper foundation for the admission of the original documents on which the summary is based*. The proponent must prove that the source documents being summarized are also admissible if presented in court.[289]

In concrete terms, the source documents must be shown to be original, and not secondary. Furthermore, the source documents must likewise be accessible to the opposing party so that the correctness of the summary of the voluminous records may be tested on cross-examination and/or may be refuted in pleadings. In ordinary trial-type proceedings, a proper foundation for the introduction of a summary may be established through the "testimony of the person who is responsible for the summary's preparation, or the person who supervised the preparation of the summary."[290]

The primary reason for these procedural foundations is that the summary of numerous documents is, in strict terms, **hearsay evidence**. The trial court should not haphazardly allow a party to present a summary of numerous documents and immediately admit and give probative value to such summary without sufficiently laying these foundations. If the source documents of the summary are non-original, the trial court would commit a grave error in admitting and/or giving probative value to the summary of non-original documents; the evidence admitted would be **double hearsay.**[291]

Furthermore, when a party invokes Section 3 (c), Rule 130 of the Rules of Court, he does not similarly invoke Section 3 (a), (b), and/or (d), Rule 130 of the Rules of Court. He does not likewise claim that the original documents have been lost or destroyed. *The party merely asserts that the numerous documents cannot be examined in court without great loss of time and that the fact sought to be established from these documents is only the general result of the whole.*

Whenever a party seeks an exemption under the best evidence rule pursuant to Section 3 (c), Rule 130 of the Rules of Court, he asks permission from the trial court to produce a **summary of numerous documents, whose originals are available to the adverse party for inspection. *He does not ask permission from the trial court to present in evidence the numerous non-original documents***. Otherwise, the very purpose of Section 3 (c), Rule 130 of the Rules of Court would be defeated. In that case, every exhibit of non-original documents would be identified, authenticated, and cross-examined, leading to a tedious and protracted litigation.

Thus, if a party desires to present photocopies of the original documents, he must first establish that the presentation of photocopies is justified under *Section 3 (a), (b), and/or (d), Rule 130 of the Rules of Court.* He must establish the presence of all the elements under these provisions.

In the case of lost or destroyed documents, the offeror of non-original documents must first prove the following elements before secondary evidence is admitted before the court: (a) the existence or due execution of the original; (b) the loss and destruction of the original, or the reason for its non-production in court; and (c) the absence of bad faith on the part of the offeror to which the unavailability of the original can be attributed. To conclude otherwise is to allow the party to circumvent the best evidence rule and the requirements under Section 3 (a), (b), and (d), Rule 130 of the Rules of Court by merely invoking Section 3 (c), Rule 130 of the Rules of Court.

In the present case, PIATCO **attached to its Compliance** dated December 14, 2010, the **photocopies of numerous documents**, and the

validation of PIATCO's computation of attendant costs prepared by Reyes Tacandong & Co., among others. PIATCO justifies the non-presentment of original documents pursuant to ***Section 3 (c), Rule 130 of the Rules of Court.***

We affirm the lower courts' uniform findings that PIATCO failed to establish its attendant costs. PIATCO failed to establish that the photocopied documents fall under Section 3 (a), (b), and/or (d), Rule 130 of the Rules of Court. These photocopied documents are hearsay evidence. They are mere scraps of paper and have no weight as basis for the attendant costs of the NAIA-IPT III.

We likewise cannot give weight to the summary prepared by Reyes Tacandong & Co. for being double hearsay. Reyes Tacandong & Co., whose letter was addressed to PIATCO and not to the trial court, did not state in its report that it examined the original documents allegedly proving attendant costs. Moreover, in a letter dated December 14, 2010, Reyes Tacandong & Co stated it does not "express any assurance on the attendant costs:"

> We have performed the procedures agreed with Philippine International Air Terminals, Co., ("the Company") with respect to the Company's attendant costs incurred in building NAIA Terminal 3 from 1997 to 2004. Our engagement was undertaken in accordance with the Philippine Standard on Related Services applicable to agreed-upon procedures engagements.
>
> x x x x
>
> The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, we make no representation regarding the sufficiency of the procedures either for the purpose for which this report has been requested or for any other purpose.
>
> Because the procedures do not constitute either an audit or a review of financial statements made in accordance with Philippine Standards on Auditing, **we do not express any assurance on the attendant costs.** (Emphasis supplied)

4.b. The BOC and the RTC's attendant cost

The CA correctly disregarded the BOC and the RTC's computation of attendant costs, which both pegged the attendant cost at 10% of the construction cost. The BOC and the RTC relied on the **mean percentage range** of attendant cost which appears in the Scott Wilson Report as follows:[292]

Attendant Costs	**Percentage Range**
Architecture	3.0 to 4.0 %
Civil and Structural	1.0 to 4.0 %
Electrical and Mechanical	2.5 to 3.5 %
Quantity Surveyor	1.0 %
Project Management	1.0 %
Total	8.5 to 11.5 %

The BOC and the RTC computed the mean percentage range by adding 8.5% and 11.5% and dividing the result by 2, thus:

$$(8.5 + 11.5)/2 = \mathbf{10\%}$$

The mean percentage range is highly speculative and devoid of any factual basis. As a court of law, we should only measure just compensation using relevant and actual evidence as basis in fixing the value of the condemned property. Just compensation must be duly proven by preponderance of evidence or greater weight of credible evidence.[293] *Bare allegations, unsubstantiated by evidence, are not*

equivalent to proof.[294]

In a case for damages, we allow the party to receive temperate damages in the absence of competent proof on the amount of actual damages. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty.[295]

We cannot adopt the same liberal attitude in an eminent domain case and merely estimate the attendant cost in the total absence of evidence of construction costs. The amount of just compensation must be substantiated by a preponderance of evidence.

An eminent domain case is different from a complaint for damages. A complaint for damages is based on tort and emanates from the transgression of a right. A complaint for damages seeks to vindicate a legal wrong through damages, which may be actual, moral, nominal, temperate, liquidated, or exemplary. When a right is exercised in a manner not conformable with Article 19 of the Civil Code and other provisions on human relations in the Civil Code, and the exercise results in the damage of another, a legal wrong is committed and the wrongdoer is held responsible.[296]

In contrast, an eminent domain case arises from the State's exercise of its power to expropriate private property for public use. The Constitution mandates that the property owner shall only receive just compensation which, of course, should be based on preponderance of evidence. Moreover, the determination of eminent domain being a judicial function, there is no constitutional or statutory provision giving the courts unfettered discretion to determine just compensation based on estimates and conjectures.

4.c. The Government's attendant cost

We affirm the CA's factual finding that the Government's computation of construction cost valuation already includes the attendant costs. In the Gleeds Report dated December 22, 2010, Tim Lunt sufficiently explained:

> 9. I consider that Engineering and Architecture, Quality Assurance, Construction Supervision, Construction Insurance and Site Development are clearly costs which are included for in the CCV. The CCV includes costs associated with the General Requirements (see Appendix D – Summary). The costs of Site Development are also included (see CCV Appendix D – Part 2, page 5 of 38).
>
> x x x x
>
> 25. Scott Wilson states at paragraph 2.2.14 that the constructions costs "are exclusive of all other attendant costs, such as the engineering and architectural services fees, quality assurance services fees, construction supervision services fees, construction insurance, site development costs, financing costs and other associated costs." **This statement is incorrect. It is clear on the inspection of the General Requirements sections of the Takenaka Bills of Quantities that some if not all of these items are included in the assessment of the construction costs made by PIATCO with the exception of 1) financing costs and 2) other associated costs, for which there is no definition.** Scott Wilson makes no reference to the Takenaka Bills of Quantities nor do they use them as documents which they have reviewed in paragraph 1.4.1 of their report. I do not understand how Scott Wilson can ignore the items which are included in the Bills of Quantities under the heading General Requirements and make the suggestion that they are additional costs which should be considered.
>
> x x x x
>
> 36. **In respect of the Engineering Consultancy Fees set out by Scott Wilson, it is clear to me on inspection of the General Requirements section of the On shore and Off shore Bills of Quantities that an element of design fees included as Costs has also been included in the CCVs and should not therefore be included as an addition.** Scott Wilson has not provided any specific information on the actual cost or extent of service provided in respect of engineering consultancy.
>
> x x x x
>
> 39. **The cost associated with the Independent QA role referred to by Scott Wilson is included in the General Requirements section of the CCV.** (Emphasis supplied)

The Government's CCV already includes attendant costs which are incorporated in the "General Requirements and Conditions." On the basis of the Bills of Quantities, Gleeds took into account indirect costs in constructing the NAIA-IPT III, summarized below:

Attendant Costs under General Requirements and Conditions	
Design	$6,439,680.00[297]

Staff and labour	$10,491,139.54[298]
Insurance	$925,210.78[299]
Professional Indemnity Insurance	$2,200,000.00[300]
Consequential Loss Insurance	$800,000.00[301]
Setting out	$364,647.00[302]
Health and Safety	$403,224.00[303]
Environmental management	$176,490.00[304]
Design	$2,631,100.00[305]
Staff and labour	$2,590,774.19[306]
Insurance	$71,109.77[307]
Total	**$27,093,375.28**

5. Deductions from the replacement cost of the NAIA-IPT III

5.a. Depreciation should be deducted from the replacement cost.

In eminent domain cases, it is acceptable that a "deduction should be made to the extent to which the improvement or fixture has depreciated. The cost of the buildings and fixtures, minus depreciation, is a reasonable test of the amount by which they enhance the market value of the land even where the market value of the land itself is not readily quantifiable."[308]

In order for this Court to arrive at a valid indication of the market value of the NAIA-IPT III, we must consider accrued depreciation, which is the loss in value of the terminal.

Contrary to the CA's position, "depreciation" is used in different contexts in valuation and financial accounting. As earlier discussed, **in appraisal**, depreciation "refers to the reduction or writing down of the cost of a modern equivalent asset to reflect the obsolescence and relative disabilities affecting the actual asset"[309] or "loss in value from any cause."[310] It is further defined as "the reduction or writing down of the cost of a modern equivalent asset to reflect the obsolescence and relative disabilities affecting the actual asset."[311]

In contrast, depreciation **in accounting** refers to "a charge made against an entity's income to reflect the consumption of an asset over a particular accounting period."[312] It is the "process of allocating to expense the cost of a plant asset over its useful (service) life in a rational and systematic manner."[313] Accumulated depreciation is reported as a deduction from plant assets and affects the income statement through depreciation expenses. Thus, the cost allocation is designed to match expenses with revenues.

In financial accounting, "depreciation is a process of cost allocation, not a process of asset valuation. No attempt is made to measure the change in an asset's market value during ownership because" it is assumed that plant assets are not held for resale.[314] Book depreciation refers to "the amount of capital recapture written off an owner's books"; it is not market derived.[315] Thus, the **book value** – original cost less accumulated depreciation – of an asset may be different from the market value. Consequently, an asset can have zero book value but still have a significant **market value**.[316]

Simply put, **book depreciation** is measured against the book value or original cost of the property and is the amount of capital recapture written off an owner's books.[317] **Accrued depreciation** is measured against the current market value of the property. [318]

Under the depreciated replacement cost method, accrued depreciation is the difference between the "replacement cost of the improvements on the effective date of the appraisal and the market value of the improvements on the same date."[319]

In the Gleeds Report, Tim Lunt stated:

> **Deterioration**
>
> 3.2.7 The Arup Site Observation Report identifies a number of items which have deteriorated since suspension of the construction of Terminal 3 in December 2002.
>
> 3.2.8 A provisional value has been assessed against the items identified in the Arup report at $1,738,318.
>
> The deterioration items have been costed with a base date of 2Q09. Calculation of this amount is contained in Appendix 'E.' Further examination and costing of each of the identified items are required and, therefore, the costs of these items will require adjustment based on the actual date when the rectification works are carried out.
>
> **Depreciation**
>
> 3.2.0 An Assessment has been made of the depreciated value of the assets from December 2002 when construction was suspended to December 2004 when Terminal 3 was expropriated by the Republic.
>
> 3.2.10 A depreciation value has been assessed at $USD35,076,294 in 3Q01 Manila prices. Calculation of this amount showing the various asset lives assumed is included in Appendix "J."
>
> 3.2.11 Based on the deductions for deterioration and depreciation between December 2002 and December 2004, the Base Value CCV at the time of expropriation is $USD263,392,081.[320]
>
> In the Scott Wilson report, he stated:
>
> 3.7.1 We consider the question of depreciation in this instance to be a financial and legal issue which has to be dealt with in accordance with Philippine law.
>
> 3.7.2 We therefore do not feel qualified to comment on the legal issue except that we do not understand how deterioration in section 3.6 and depreciation can both be applied as surely this means that Gleeds (sic) have double counted the effect of any deterioration. (emphasis supplied)[321]

In response, Tim Lunt argued:

> 14. With respect to PIATCO's hypothetical inclusion of inflation, I do not consider that inflation should be applied to the base value as the replacement cost method establishes the cost of construction when completed in December 2002.
>
> 15. The base values included in the CCVs are the same for the December 2002 and December 2004. The December 2004 base value is not adjusted to account for inflation because the items which make up the construction of NAIA3, i.e., the labour, plant, materials, systems and equipment installed should not be paid for at a higher rate (that takes into account inflation) than the rate which would have been paid when they were purchased at the earlier date. Put simply, it makes no sense to apply December 2004 prices to items bought and used in the construction of NAIA3 sometime between June 2000 and December 2002.
>
> 16. PIATCO do (sic) not consider depreciation. Having explained above why inflation should not be included, it is the application of a similar logic which demonstrates why depreciation should be included. In the case of NAIA3 the materials, systems and

equipment installed are at least two years older as at December 2004 than at the time they were incorporated into the construction of NAIA3. Their value should therefore be less. The method used for assessing this reduced value is that of depreciation.[322]

66. Scott Wilson provide a "Summary of Conclusions on deductions at section 3.11 and my responses to each of the items contained in their "comment" column are as follows:

x x x x

- Deterioration – "Major deduction for baggage system not justified" – The deterioration in the baggage systems is clearly set out in the Arup (and Gensler) Site Observation Report dated August 2007, at section 9.2. The cost deduction is set out in Appendix to the previous CCV report which Scott Wilson do (sic) not appear to have reviewed.

- Depreciation – Scott Wilson states "This issue appears to be a legal issue and should be commented on by legal expert" and offers no technical or cost related comments relevant to the CCV.

On the other hand, Gary Taylor commented:

Gleeds have (sic) assessed a depreciation value of US$35,076,294 (11.68%) to conclude its 4Q04 value. This concept of depreciation is contrary to the GRP's own statistics which shows a Consumer Price Index for Manila ("CPI") increase from 107.8 (Aug 01) to 125.1 (Nov. 04), a 16% increase over the period. The CPI is a conglomerate of all consumer prices in the Manila region and includes property values and is published by the GRP on a monthly basis. In assessing such a depreciation value, Gleeds have (sic) taken an arbitrary life cycle of the building and assumed a write off of asset over that period, then assessed the two (2) year depreciation over the period 3Q01 to 4Q04. Whilst we acknowledge that an airport terminal building is something of a specialized asset and appreciation of value is not always in line with the area's general value assessments, it is still a major structure and appreciation before depreciation (which should be limited to equipment and fittings within the building) should not be discounted. The concept of long term value of an asset on a similar concept is proven out by NAIA Terminal 1, which since its construction more than 30 years ago has maintained a value to this date.[323]

We uphold the Government's computed extent of deterioration and depreciation. In the *Reply to Tengson International Ltd. Report and Response from Takenaka and Asahikosan dated December 7, 2010*, Tim Lunt explained that "[t]he asset lives are taken specifically from experience in preparing Asset Revaluations for Airport properties which are used as an input for annual published accounts, which are in turn audited by appointed Accountants."[324]

Takenaka and Asahikosan should have provided for contrary assumptions with respect to the useful lives of the subject assets if they did not agree with the Government's assumptions. Instead, Gary Taylor merely referred to the valuation of the NAIA Terminal I without any factual basis to support his claim. Moreover, Scott Wilson did not question the assumed useful life of the NAIA-IPT III, but agreed that the question of whether depreciation should be deducted is a legal issue.

Since PIATCO, Takenaka, and Asahikosan failed to present contrary assumptions or estimates with respect to the NAIA-IPT III's useful life, we adopt Tim Lunt's computations with respect to deterioration and depreciation.

5.b. Rectification for contract compliance should not be deducted from the replacement cost.

However, **we hold that the cost for "rectification for contract compliance" should not be deducted from the base value, as the contract, being void, cannot be ratified.**[325]

In the present case, the Court already nullified the PIATCO contracts for being contrary to public policy in Agan. A substantial amendment to a contract awarded through public bidding, when such subsequent amendment was made without a new public bidding, is null and void. The PIATCO contracts contain material and substantial amendments that substantially departed from the bidded contract. If at all, the declaration of nullity of a contract only operates to restore things to their state and condition before the contract's execution.[326]

Moreover, Takenaka and Asahikosan, as subcontractors in the NAIA-IPT III project, were not bound by the nullified PIATCO contracts. Takenaka and Asahikosan were only bound to perform their contractual obligations under the Onshore Construction Contract and Offshore Procurement Contract, respectively. They were not bound by the nullified PIATCO contracts.

If there had indeed been variations from the Onshore Construction Contract and Offshore Procurement Contract, the cause of action for breach of contract and damages lies with PIATCO. For purposes of determining just compensation, the Government cannot rely on the

specifications in the Bid Documents precisely because the concession agreement between PIATCO and the Government had already been nullified. *The Government cannot complain of contract noncompliance in an eminent domain case, whose cause of action is not based on a breach of contract, but on the peremptory power of the State to take private property for public use*.

Consequently, deductions from the base value of the cost of non-compliance with bid documents as well as inferior quality items have no legal basis. Gleeds' reliance on the NAIA-IPT III bid documents is misplaced.

As Scott Wilson correctly pointed out, the decisive factor of the deductibility of items under "noncompliance with bid documents" is whether they are functional. The Scott Wilson report shows that, except for the nonprovision of moving walkway, the alleged noncompliant items are functional.[327] Also, the nonprovision of a moving walkway should not be deducted from the base value. The only consequence of the failure to provide a moving walkway is the need to construct one, which would only increase the construction cost.[328] The increase in the construction cost, however, should not be included as part of just compensation as this Court is only tasked to determine the construction cost of the NAIA-IPT III as of December 21, 2004.

For these same reasons, we cannot allow the deduction in the amount of $75,570,510.00 "additional areas to be built." These are "areas where the minimum requirements stated in the Bid Documents have not been met and are necessary for the operation" of the NAIA-IPT III. These areas include:

- Departure hall 22,462 m^2
- Meeter/greeter hall 14,696 m^2
- Ramp operations 13,640 m^2
- Offices 4,370 m^2
- Hold rooms 3,729 m^2
- Public toilets 2,351 m^2
- Hardstand hold rooms 1,442 m^2
- Delayed flight restaurant 620 m^2 [329]

6. Adjustments to the Replacement Cost

6.a. The replacement cost should be adjusted to December 2004 values.

Gleeds used the Principle Quantities approach in determining the gross replacement cost of the NAIA-IPT III.[330] Gleeds calculated the cost of construction based on the midpoint between June 2000 and December 2002 to arrive at the December 2002 CCV. According to Gleeds, the cost of construction based on its midpoint or the third quarter of 2001 is a recognized standard practice in the construction industry.[331]

Gleeds did not adjust the base valuation of $300,206,693.00 as of December 2002 to reflect the current gross replacement cost as of December 2004. It merely assumed that the gross replacement cost as of December 2002 is the same as the gross replacement cost as of December 2004. It stated that it did not consider inflation in determining the base valuation of the NAIA-IPT III as of December 2004:

> 14. With respect to PIATCO's hypothetical inclusion of inflation, I do not consider that inflation should be applied to the base value as **the replacement cost method establishes the cost of construction when completed in December 2002.**
>
> 15. The base values included in the CCVs are the same for December 2002 and December 2004. The December 2004 is not adjusted to account for inflation because the items which make up the construction of NAIA3, i.e., the labour, plant, materials, systems and equipment installed should not be paid for at a higher rate (that takes into account inflation) than the rate which would have been paid when they were purchased at the earlier date. **Put simply, it makes no sense to apply December 2004 prices to items bought and used in the construction of NAIA3 sometime between June 2000 and December 2002.**[332] **(Emphasis supplied)**

Section 10 of RA 8974 IRR provides that the replacement cost shall be based on the **current** market prices of construction and attendant costs. Under the depreciated replacement cost method, the replacement cost shall be based on the **current** gross replacement cost of the asset.

In its pleadings, the Government itself explained that the cost of replacing an asset under both depreciated replacement cost and new replacement cost methods should be measured at its **current** prices.

In our jurisdiction, the word "**current**" should be equated with ***the date of the taking of the property or the filing of the complaint,***

whichever came first. In the present case, the word "current" should necessarily refer to December 21, 2004, the filing of the complaint for expropriation.

In *National Power Corporation v. Co,*[333] the Court suppletorily applied Section 4, Rule 67 of the Rules of Court in determining the value of the property sought to be expropriated for purposes of implementing national infrastructure projects. Under the Rules of Court, **just compensation shall be determined from the date of the taking of the property or the filing of the complaint, whichever came first. Thus, where the filing of an action precedes the taking of the property, just compensation shall be computed as of the time of the filing of the complaint**.[334]

The **relevant valuation** date when we shall reckon the current gross replacement cost is **December 21, 2004**, or the date of filing of the complaint for expropriation.

The Government's base valuation of $300,206,693.00 is only a measurement of the current gross replacement cost **as of December 2002**. We agree with PIATCO that the gross replacement cost of the NAIA-IPT III as of December 2002 should be adjusted to its cost as of December 2004 for the plain reason that the Government's computed gross replacement cost is not **current**, as required by the Rules of Court and jurisprudence.

Equity **dictates that we should adjust the replacement cost at December 2004 values using the Consumer Price Index (CPI)**.[335] This Court should not be confined and restricted by the use of the depreciated replacement cost method, especially in this case where the calculated base valuation as of December 2004 appears to be not truly reflective of the *current* gross replacement cost of the NAIA-IPT III at the time of the filing of the complaint for expropriation.

In adjusting the gross replacement cost to December 2004 values, this Court takes cognizance of the fact that the cost of goods and services in the Philippines increased from 2002 until 2004. This is shown by the CPI which is used in calculating the inflation rate and the purchasing power of the peso.[336] PIATCO correctly arrived at the inflation rate of 1.0971 using the prevailing CPI from November 29, 2002, or the date of the suspension of works in the NAIA-IPT III until December 21, 2004, or the date when the Government filed the expropriation complaint.[337]

7. Interests, Fruits and Income

7.a. Computation of Interests

To avoid confusion in computing interests, we first distinguish three interrelated concepts in just compensation: (1) the valuation period of just compensation under Rule 67 of the Rules of Court; (2) the reckoning period of interest in eminent domain cases pursuant to Section 9, Article 3 of the 1987 Constitution; and (3) the initial and final payments of just compensation under RA 8974.

Under Section 4, Rule 67 of the Rules of Court, the property sought to be expropriated shall be appraised **as of the date of taking of the property or the filing of the complaint for expropriation, whichever is earlier,** thus:

> **Section 4.** *Order of expropriation.* — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, **upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.**
>
> A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.
>
> After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable. (4a) (Emphasis supplied)

On the other hand, Section 9, Article 3 of the 1987 Constitution provides that "[n]o private property shall be **taken** for public use without **just compensation**." The 1987 Constitution thus commands the condemnor to pay the property owner the **full and fair equivalent** of the property *from the date of taking*. This provision likewise presupposes that the condemnor incurs **delay** if it does not pay the property owner the *full amount of just compensation on the date of taking*.[338]

The reason is that just compensation would not be "just" if the State does not pay the property owner interest on the just compensation from the date of the taking of the property. ***Without prompt payment, the property owner suffers the immediate deprivation of both his land and its fruits or income***. The owner's loss, of course, is not only his property but also its income-generating potential.[339]

Ideally, just compensation should be immediately made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property.

However, if **full compensation** is not paid for the property taken, then the State must pay for the shortfall in the earning potential immediately lost due to the taking, and the absence of replacement property from which income can be derived. Interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness.[340]

Thus, interest in eminent domain cases "runs as a matter of law and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking."[341]

Lastly, RA 8974 requires the Government to pay just compensation twice: **(1)** ***immediately upon the filing of the complaint,*** when the amount to be paid is 100% of the value of the property based on the current relevant zonal valuation of the BIR, and the value of the improvements and/or structures sought to be expropriated (initial payment); and **(2)** ***when the decision of the court in the determination of just compensation becomes final and executory***, in which case the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court (*final payment*).

In case the completion of a government infrastructure project is of **utmost urgency and importance**, and there is no existing valuation of the area concerned, the initial payment shall be the **proffered value of the property.** Section 4 of RA 8974 also states that the initial payment of just compensation is a prerequisite for the trial court's issuance of a writ of possession, to wit:

> **Section 4**. *Guidelines for Expropriation Proceedings.* – Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:
>
> (a) **Upon the filing of the complaint, and after due notice to the defendant**, the implementing agency shall **immediately pay the owner of the property** the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;
>
> (b) In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of the expropriation case, to come up with a zonal valuation for said area; and
>
> (c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.
>
> **Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.**
>
> Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.
>
> In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. **When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court**. (Emphasis supplied)

The Government's initial payment of just compensation does not excuse it from avoiding payment of interest on the difference between the adjudged amount of just compensation and the initial payment.

The initial payment scheme as a prerequisite for the issuance of the writ of possession under RA 8974 only provides the Government flexibility to **immediately take the property for public purpose or public use** pending the court's final determination of just compensation. Section 4 (a) of RA 8974 only addresses the Government's need to immediately enter the privately owned property in order to avoid delay in the implementation of national infrastructure projects.

Otherwise, Section 4 of RA 8974 would be repugnant to Section 9, Article 3 of the 1987 Constitution which mandates that private property **shall not be taken** for public use without **just compensation**. To reiterate, the Constitution commands the Government to pay the property owner no less than the full and fair equivalent of the property from the date of taking.

In the present case, the Government avers that PIATCO is not entitled to recover interest. According to the Government, PIATCO should not be allowed to profit from the void contracts. This contention, however, stems from a mistaken understanding of interest in expropriation

cases.

Contrary to the Government's opinion, **the interest award is not anchored either on the law of contracts or damages; it is based on the owner's constitutional right to just compensation**. The difference in the amount between the final payment and the initial payment – in the interim or before the judgment on just compensation becomes final and executory – ***is not unliquidated damages*** which do not earn interest until the amount of damages is established with reasonable certainty. The difference between final and initial payments ***forms part*** of the **just compensation** that the property owner is entitled from the date of taking of the property.

Thus, when the taking of the property precedes the filing of the complaint for expropriation, the Court orders the condemnor to pay the full amount of just compensation from the date of taking whose interest shall likewise commence on the same date. The Court does not rule that the interest on just compensation shall commence the date when the amount of just compensation becomes certain, e.g., from the promulgation of the Court's decision or the finality of the eminent domain case.

With respect to the amount of interest on just compensation, we decisively ruled in *Republic v. Court of Appeals*[342] that the just compensation due to the property owner is effectively a forbearance of money, and not indemnity for damages.[343] Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*,[344] we awarded a legal interest of 12% per annum on just compensation. The Court upheld the imposition of the 12% interest rate in just compensation cases, as ruled in Republic, in *Reyes v. National Housing Authority,*[345] *Land Bank of the Philippines v. Wycoco*,[346] *Republic v. Court of Appeals*,[347] *Land Bank of the Philippines v. Imperial,*[348] *Philippine Ports Authority v. Rosales-Bondoc*,[349] and *Curata v. Philippine Ports Authority.*[350] *The Court reiterated the Republic ruling in Apo Fruits Corporation and Hijo Plantation, Inc. v. Land Bank of the Philippines,*[351] *Land Bank of the Philippines v. Rivera,*[352] *Department of Agrarian Reform v. Goduco*,[353] and *Land Bank of the Philippines v. Santiago, Jr.*[354]

On June 21, 2013, the BSP issued **Circular No. 799**,[355] pursuant to MB Resolution No. 796 dated May 16, 2013, reducing the legal interest on loans and forbearance of money from 12% to **6%** per annum. **BSP Circular No. 799 took effect on July 1, 2013.**

In the present case, the Government filed a complaint for expropriation of the NAIA-IPT III on December 21, 2004. On the same day, the RTC issued a writ of possession in favor of the Government upon the deposit of P3,002,125,000.00 with the Land Bank. In *Gingoyon*, the Court held in abeyance the implementation of the writ of possession pending the direct payment of the proffered value of P3,002,125,000.00 to PIATCO.

On September 11, 2006, the RTC reinstated the writ of possession after the Government tendered PIATCO a check in this amount.

On April 11, 2012, the MIAA and the Land Bank entered into an escrow agreement in the amount of $82,157,716.73. On the same date, the MIAA and the DBP likewise executed an escrow agreement in the amount of $34,190,924.59.

Based on these factual circumstances, interest shall accrue as follows:

1. The principal amount of just compensation shall be appraised on the date of the filing of the complaint for expropriation or on December 21, 2004. The just compensation *shall not earn interest from December 21, 2004, until September 10, 2006,* since the Government did not take possession of the NAIA-IPT III during this period.

2. The difference between the principal amount of just compensation and the proffered value of P3,002,125,000.00 shall earn legal interest of 12% *per annum from the date of taking or September 11, 2006 until June 30, 2013.*

3. The difference between the principal amount of just compensation and the proffered value of P3,002,125,000.00 shall earn legal interest of 6% *per annum from July 1, 2013, until the finality of the Court's ruling.*

4. The *total amount of just compensation shall earn legal interest of 6% per annum from the finality of the Court's ruling until full payment*.

The execution of the escrow agreements shall not affect the accrual of interest in this case. In its Manifestation and Motion dated July 8, 2011, the Government stated that the escrow accounts shall be subject to the condition that "[t]he claimant(s) shall have been held to be entitled to receive the sum claimed from the 'Just Compensation (NAIA Terminal 3) Fund' in accordance with Philippine law and regulation, **by a final, binding and executory order or award of the expropriation court**."[356]

Clearly, the Government does not intend to pay the just compensation due to either PIATCO or Takenaka and Asahikosan during the pendency of the expropriation case or until the finality of the Court's rulings in G.R. Nos. 209917, 209696 & 209731.

7.b. PIATCO is not entitled to the fruits and income of the

NAIA-IPT III.

PIATCO insists that aside from the interest on just compensation, it is also entitled to all income generated from the operations of the NAIA-IPT III, from the date of taking up to the present.

PIATCO's claim is unmeritorious. The State, by way of interest, makes up for the shortfall in the owners' earning potential and the absence of replacement property from which income can be derived. This is because the interest awarded by the expropriation court is, in reality, the equivalent of the fruits or income of the seized property.[357] In fact, PIATCO itself admitted in its petition in G.R. No. 209731 that the interest on just compensation already answers for the loss of income that the owner suffered as a result of the State's deprivation of the ordinary use of his property.[358]

Thus, we cannot allow PIATCO to profit from the operation of the NAIA-IPT III whose funds are sourced from the public coffers. Otherwise, PIATCO would be doubly compensated and unjustly enriched to the detriment of the taxpayers.

8. The BOC's Expenses

8.a. Takenaka and Asahikosan should not share in the BOC's expenses.

Takenaka and Asahikosan refuse to share in the expenses of the BOC. They argue that pursuant to Section 12, Rule 6 of the Rules of Court, the Government should solely shoulder the costs incurred in the expropriation case.

The Government, on the other hand, asserts that Section 1, Rule 142 of the Rules of Court explicitly authorizes the expropriation court to order the parties to equally share the costs of an action. Hence, the court can require third-party intervenors, *i.e., Takenaka and Asahikosan*, to share in the expenses of the BOC. It points out that PIATCO already shared in the expenses of the BOC and tendered the sum of P2,550,000.00 to the RTC.

We find no merit in the Government's assertion.

The relevant rule is found in Section 12, Rule 67 of the Rules of Court which provides:

> SEC. 12. Costs, by whom paid. — The fees of the commissioners shall be taxed as a part of the costs of the proceedings. **All costs, except those of rival claimants litigating their claims, shall be paid by the plaintiff, unless an appeal is taken by the owner of the property and the judgment is affirmed, in which event the costs of the appeal shall be paid by the owner**. [Emphasis supplied]

This provision specifically deals with the costs of eminent domain cases. Hence, we find that Section 1, Rule 142 of the Rules of Court, more specifically, the statement allowing the court to divide the costs of an action to either party to the case, is inapplicable to the present case.

Based on the clear terms of Section 12, Rule 67, it is the plaintiff – in this case, the Government – not the property owner or third-party intervenors, i.e., *Takenaka and Asahikosan,* who shall shoulder the costs of the expropriation before the court of origin. Since the expenses of the BOC form part of the costs of the suit – as these are expenses necessary in prosecuting or defending an action or a distinct proceeding within an action – the Government solely bears the expenses of the BOC. The **property owner** shall only bear the **costs of the appeal** if he loses in his appeal.

PIATCO, in its pleading, has not questioned its share in the expenses of the BOC before the Court. PIATCO's voluntary sharing in the expenses of the BOC and its non-objection to its payment amount to a waiver of its right not to share in the expenses of the BOC.

In sum, just compensation shall be computed as shown below:

Base Current Cost Valuation (Inclusive of Attendant Cost)	$ 300,206,693.00
ADD:	
Excess Concession Space	$ 1,081,272.00
Four-Level Retail Complex	$ 12,809,485.00
Exclusions due to Structural Issues	$ 20,713,901.00
LESS:	
Depreciation	$ 1,738,318.00
Deterioration	$ 35,076,295.00

REPLACEMENT COST AS OF DECEMBER 2002	**$ 297,996,738.00**
MULTIPLY:	
Inflation Rate of 1.0971	
REPLACEMENT COST AS OF DECEMBER 21, 2004	**$ 326,932,221.26**
ADD:	
Interests from September 11, 2006 to December 2014	$ 242,810,918.54
LESS:	
Proffered Value	$ 59,438,604.00
JUST COMPENSATION AS OF DECEMBER 31, 2014	**$ 510,304,535.80**

Period	Formula	Number of Days	Interest Rate	Principal Amount	Straight Interest
September 11, 2006 to December 31, 2006	principal*rate*(113/365)	113 days	12%	$267,493,617.26	$9,937,571.10
January 1, 2007 to December 31, 2007	principal*rate	365 days	12%	$267,493,617.26	$32,099,234.07
January 1, 2008 to December 31, 2008	principal*rate	365 days	12%	$267,493,617.26	$32,099,234.07
January 1, 2009 to December 31, 2009	principal*rate	365 days	12%	$267,493,617.26	$32,099,234.07
January 1, 2010 to December 31, 2010	principal*rate	365 days	12%	$267,493,617.26	$32,099,234.07
January 1, 2011 to December 31, 2011	principal*rate	365 days	12%	$267,493,617.26	$32,099,234.07
January 1, 2012 to December 31, 2012	principal*rate	365 days	12%	$267,493,617.26	$32,099,234.07
January 1, 2013 to June 30, 2013	principal * rate * (181/365)	181 days	12%	$267,493,617.26	$15,917,702.38
July 1, 2013 to December 31, 2013	principal*rate* (189/365)	189 days	6%	$267,493,617.26	$8,310,623.62
January 1, 2014 to December 31, 2014	principal*rate	365 days	6%	$267,493,617.26	$16,049,617.04
Total					$242,810,918.54

Formula	Principal Amount	Total Interest from September 11, 2006 to December 31, 2014	Just Compensation as of December 31, 2014
Principal Amount + Interest	$267,493,617.26	$ 242,810,918.54	**$510,304,535.80**

9. PIATCO as the Lawful Recipient of Just Compensation.

After determining the amount of just compensation, we next resolve the question of who shall receive the full amount of just compensation.

Takenaka and Asahikosan contend that as actual builders of the NAIA-IPT III, they are lawfully entitled to receive just compensation. They pray that just compensation of at least $85,700,000.00 be set aside through an escrow account or other means, in their favor, to answer for their pending money claims against PIATCO in G.R. No. 202166.

PIATCO, on the other hand, bases its claim for just compensation on its ownership of the NAIA-IPT III and on the ruling in *Agan* and *Gingoyon* that PIATCO should be fully compensated as the builder and owner of the NAIA-IPT III.

For its part, the Government refuses to make further payments to PIATCO. Instead, it created an escrow account in favor of the "entitled claimants" of just compensation. The Government fears that the NAIA-IPT III would still be burdened with liens and mortgages – as a result of PIATCO's indebtedness to other entities – even after it pays PIATCO the full amount of just compensation.

9.a. Takenaka and Asahikosan's intervention in the case as unpaid subcontractors is proper.

The defendants in an expropriation case are not limited to the owners of the property condemned. They include all other persons owning, occupying, or claiming to own the property. Under Sections 8 and 14 of RA 8974 IRR, in relation with Section 9, Rule 67 of the Rules of Court, all persons who claim to have lawful interest in the property to be condemned should be included as defendants in the complaint for expropriation:

> **Section 8 of RA 8974 IRR**. Expropriation. – If the owner of a private property needed by the government implementing agency does not agree to convey his property to the government by any of the foregoing modes of acquiring and/or transferring ownership of the property, then the government shall exercise its right of eminent domain by filing a complaint with the proper Court for the expropriation for the private property.
>
> The verified complaint shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing as far as practicable, the interest of each defendant separately. **If the title to any property sought to be condemned appears to be in the name of the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify the real owners, averment to that effect may be made in the complaint.**
>
> **Section 14 of RA 8974 IRR**. Trial Proceedings. – Within sixty (60)-day period prescribed by the Act, **all matters regarding defences and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court.**
>
> **Section 9, Rule 67 of the Rules of Court**. *Uncertain ownership; conflicting claims.* — If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, **the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.** (9a) (Emphasis supplied)

All persons who have lawful interest in the property sought to be expropriated should be impleaded in the complaint **for purposes of determining who shall be entitled to just compensation.** If a known owner is not joined as defendant, he may intervene in the proceeding. If the owner is joined but not served with process and the proceeding is already closed before he came to know of the condemnation, he may maintain an independent suit for damages.

Consequently, Takenaka and Asahikosan are correct in invoking Section 9, Rule 67 of the Rules of Court for purposes of determining who shall be entitled to just compensation in this case. This rule is likewise their proper basis of intervention in the RTC's March 12, 2007 order in Civil Case No. 04-0876.

Our ruling on this point does not contradict Section 4 (a) of RA 8974 which provides for a scheme of **direct and immediate initial payment to the property owner** in cases involving national government infrastructure projects.

Section 4 (a) of RA 8974 applies only to cases where the issue of ownership of the expropriated property is not disputed. In cases where the ownership is contested; where conflicting claims or interests over the expropriated property exist; or where there are other incidents affecting the complaint for expropriation, the governing rule is Section 9, Rule 67 of the Rules of Court. By creating a separate provision applicable only to the latter cases, Section 14 of RA 8974 IRR[359] necessarily acknowledged that the scheme of immediate and direct initial payment is not an absolute and all-encompassing rule applicable in all circumstances.

We are aware of our pronouncement in the **December 19, 2005 *Gingoyon* decision** directing the Government to directly and immediately pay PIATCO the proffered value of P3 billion. We rendered the December 19, 2005 Decision based on the fact that Takenaka and Asahikosan **were not yet parties to G.R. No. 166429 and Civil Case No. 04-0876 at that time**. The Court denied Takenaka and Asahikosan's motions for leave to intervene in our **February 1, 2006 Resolution** in *Gingoyon* for palpable violation of Section 2, Rule 19 of the Rules of Court which only allows intervention before the rendition of judgment by the court. Moreover, Takenaka and Asahikosan had not yet instituted **Civil Case No. 06-171** (the enforcement case) when we promulgated our rulings in *Gingoyon.*

The RTC's issuance of the March 12, 2007 order, which is binding on the parties and which allows Takenaka and Asahikosan to intervene in the case, changed the factual circumstances of this case. As an incident in our determination of the just compensation, we necessarily should resolve the issue of NAIA-IPT III's ownership and the question of who the recipient of the just compensation should be.

9.b. The property owner is entitled to just compensation.

Citing Agan, Takenaka and Asahikosan argue that the Court intended that the **real builders** of the NAIA-IPT III should be paid just compensation. Takenaka and Asahikosan assert that they are the entities who **actually built** the NAIA-IPT III pursuant to the Onshore Construction and Offshore Procurement Contracts. In *Agan*, the Court declared that PIATCO is the builder of the NAIA-IPT III. The Court stated:

> This Court, however, is not unmindful of the reality that the structures comprising the NAIA IPT III facility are almost complete and that funds have been spent by PIATCO in their construction. For the government to take over the said facility, it has to compensate respondent PIATCO as builder of the said structures. The compensation must be just and in accordance with law and equity for the government cannot unjustly enrich itself at the expense of PIATCO and its investors.[360]

This finding is likewise affirmed in our February 1, 2006 Resolution in *Gingoyon* where we declared:

> The Court is not wont to reverse its previous rulings based on factual premises that are not yet conclusive or judicially established. Certainly, whatever claims or purported liens Takenaka and Asahikosan against PIATCO or over the NAIA 3 have not been judicially established. Neither Takenaka nor Asahikosan are parties to the present action, and thus have not presented any claim which could be acted upon by this Court. The earlier adjudications in *Agan v. PIATCO* made no mention of either Takenaka or Asahikosan, and certainly made no declaration as to their rights to any form of compensation. If there is indeed any right to remuneration due to these two entities arising from NAIA 3, they have not yet been established by the courts of the land.
>
> **It must be emphasized that the conclusive ruling in the Resolution dated 21 January 2004 in *Agan v. PIATCO* (Agan 2004) is that PIATCO, as builder of the facilities, must first be justly compensated in accordance with law and equity for the Government to take over the facilities. It is on that premise that the Court adjudicated this case in its 19 December 2005 Decision.**
>
> **While the Government refers to a judgment rendered by a London court in favor of Takenaka and Asahikosan against PIATCO in the amount of US$82 Million, it should be noted that this foreign judgment is not yet binding on Philippine courts. It is entrenched in Section 48, Rule 39 of the Rules of Civil Procedure that a foreign judgment on the mere strength of its promulgation is not yet conclusive, as it can be annulled on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. It is likewise recognized in Philippine jurisprudence and international law that a foreign judgment may be barred from recognition if it runs counter to public policy.**
>
> **Assuming that PIATCO indeed has corresponding obligations to other parties relating to NAIA 3, the Court does not see how such obligations, yet unproven, could serve to overturn the Decision mandating that the Government first pay PIATCO the amount of 3.02 Million Pesos before it may acquire physical possession over the facilities. This directive enjoining payment is in accordance with Republic Act No. 8974, and under the mechanism established by the law the amount to be initially paid is that which is provisionally determined as just compensation. The provisional character of this payment means that it is not yet final, yet sufficient under the law to entitle the Government to the writ of possession over the expropriated property.**
>
> **There are other judicial avenues outside of this Motion for Reconsideration wherein all other claims relating to the airport facilities may be ventilated, proved and determined. Since such claims involve factual issues, they must first be established by the appropriate trier of facts before they can be accorded any respect by or binding force on this Court.**[361] [Emphasis supplied]

Contrary to Takenaka and Asahikosan's position, in the Philippine jurisdiction, the person who is solely entitled to just compensation is the **owner of the property at the time of the taking**.[362] *As shown below, the test of who shall receive just compensation is not who built the terminal, but rather who its true owner is.*

From the express provision of Section 4 of RA 8974, just compensation shall only be paid to the property owner. We implead persons with lawful interests in the property in order to determine the person who shall receive just compensation. Note that the last paragraph, Section 4 of RA 8974 states: "When the **decision of the court becomes final and executory**, the implementing agency shall pay the **owner** the difference between the amount already paid and the just compensation as determined by the court." This provision thus envisions a situation

where the court determines with finality, for purposes of payment of just compensation, the conflicting claims of the defendants and intervenors.

The cases cited by Takenaka and Asahikosan are inapplicable to justify their right to receive just compensation. The Court did not award just compensation to a non-owner in *De Knecht v. Court of Appeals*.[363] The Court held in that case that a person who had no legal interest in the property at the time of the filing of a complaint for expropriation had no right to intervene in the case. The Court ruled that only persons who have lawful interests in the property may be impleaded as defendants or may intervene in the expropriation case under Section 1, Rule 67 of the Rules of Court. This case thus, at most, support their right to intervene.

In *Calvo v. Zandueta*,[364] the Court stayed the execution of the trial court's judgment ordering the provincial treasurer of Pangasinan to pay Aquilino Calvo just compensation due to the pendency of the interpleader that Juana Ordoñez brought based on her own claim of **ownership** of the expropriated land. Ordoñez asserted that she acquired all rights and interests on the subject land when she purchased it during the execution sale while the expropriation proceedings were still pending.

Philippine Veterans Bank v. Bases Conversion Development Authority[365] further affirms the rule that just compensation shall only be paid to the owner of the expropriated property at the time of taking. In that case, the Court held that the trial court may order the payment of just compensation to itself pending the adjudication of the issue of ownership in other proceedings pursuant to Section 9, Rule 67 of the Rules of Court.

The Court likewise did not award just compensation to a non-owner in *Republic v. Mangotara*.[366] The Court held that the filing of a supplemental complaint for expropriation impleading private parties does not necessarily amount to an admission that the parcels of land sought to be expropriated are privately owned. The Republic merely acknowledged that there are private persons also claiming ownership of the parcels of land. The Republic can still consistently assert, in both actions for expropriation and reversion, that the subject parcels of land are part of the public domain.

The record of the present case show that PIATCO has been the original contracting party commissioned by the Government to construct the NAIA-IPT III based on a build-operate-transfer arrangement and who, in this capacity, contracted out the actual construction to Takenaka and Asahikosan. Thus, when the NAIA-IPT III was built, it was in PIATCO's name and account, although it subsequently owed sums to subcontractors, incurred in the course of the construction. From this perspective, PIATCO has been the owner recognized as such by the Government although the basis of its contractual relationship with the Government was later on nullified. Takenaka and Asahikosan, on the other hand, had always been subcontractors with whom the Government did not have any formal link. These facts indubitably show that PIATCO has been the owner of the NAIA-IPT III entitled to receive the just compensation due. Takenaka and Asahikosan for their part, have not shown that they possess legal title or colorable title to the NAIA-IPT III that would defeat PIATCO's ownership.

To recap and expound on the matter:

First, Takenaka and Asahikosan were mere subcontractors in the nullified NAIA-IPT III project. That Takenaka and Asahikosan actually built the NAIA-IPT III does not make them the owner of the terminal building.

We carefully point out that our finding in this case that Takenaka and Asahikosan are the actual builders of the NAIA-IPT III does not contravene our rulings in *Agan* and *Gingoyon* that PIATCO is the builder of the NAIA-IPT III. **The word "builder" is broad enough to include the contractor, PIATCO, and the subcontractors, Takenaka and Asahikosan, in the nullified NAIA-IPT III project.** Republic Act No. 4566[367] defines a "builder" as follows:

> Section 9 (b) of RA 4566. "Contractor" is deemed synonymous with the term "builder" and, hence, any person who undertakes or offers to undertake or purports to have the capacity to undertake or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building, highway, road, railroad, excavation or other structure, project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith. The term contractor includes subcontractor and specialty contractor.

In *Gingoyon*, the Court loosely used the word "builder" and "owner" interchangeably. We clarify, however, that a builder is different from the owner of the property. As we stated above, a builder includes the contractor and the subcontractor. On the other hand, the "owner" who is constitutionally entitled to just compensation is the person who has legal title to the property. Logically, a builder is not necessarily the owner of the property and vice-versa.

Second, we cannot recognize Takenaka and Asahikosan's claimed liens over the NAIA-IPT III in this just compensation case. Since G.R. No. 202166 is still pending before the Court, we cannot conclusively rule that Takenaka and Asahikosan are unpaid creditors of PIATCO without pre-empting the Court's ruling in the enforcement case.

Even assuming that Takenaka and Asahikosan – as unpaid contractors in the botched NAIA-IPT III construction contract – indeed have liens

over the NAIA-IPT III, PIATCO is still the *property owner* who, as such, should directly receive just compensation from the Government.

We clarify that the expropriation court's determination of the lawful property owner is merely **provisional**. By filing an action for expropriation, the condemnor merely serves notice that it is taking title to and possession of the property, and that the defendant is asserting title to or interest in the property, not to prove a right to possession, ***but to prove a right to compensation for the taking***. The Court's disposition **with respect to the ownership of the property is not conclusive**, and it remains open to challenge through proper actions. The court's resolution of the title to the land at the time of taking has no legal consequences beyond the eminent domain proceedings. The court's decision cannot be pleaded as a defense of res judicata or collateral estoppel in any action ***to determine title to the property***.

As we explained in *Republic of the Philippines v. Samson-Tatad:*[368]

> **However, the authority to resolve ownership should be taken in the proper context. The discussion in Republic was anchored on the question of who among the respondents claiming ownership of the property must be indemnified by the Government:**
>
> Now, to determine the person who is to be indemnified for the expropriation of Lot 6, Block 6, Psd-2017, the court taking cognizance of the expropriation must necessarily determine if the sale to the Punzalan spouses by Antonio Feliciano is valid or not. For if valid, said spouses must be the ones to be paid by the condemnor; but if invalid, the money will be paid to someone else. x x x
>
> **Thus, such findings of ownership in an expropriation proceeding should not be construed as final and binding on the parties. By filing an action for expropriation, the condemnor (petitioner), merely serves notice that it is taking title to and possession of the property, and that the defendant is asserting title to or interest in the property, not to prove a right to possession, but to prove a right to compensation for the taking.**
>
> **If at all, this situation is akin to ejectment cases in which a court is temporarily authorized to determine ownership, if only to determine who is entitled to possession. This is not conclusive, and it remains open to challenge through proper actions. The consequences of Sec. 9, Rule 67 cannot be avoided, as they are due to the intimate relationship of the issue of ownership with the claim for the expropriation payment.** (Emphasis supplied)

9.c. A final disposition in the eminent domain case with respect to the order of payment to a particular person shall be final and executory.

To avoid future litigation, we emphasize that a final disposition in the eminent domain case with respect to the order to pay a particular person shall be final and executory upon the lapse of relevant periods under Rule 39 of the Rules of Court. The recourse of the person claiming ownership over the expropriated property in any *subsequent case* is against the adjudged property owner *in the expropriation case.*

The principle of *res judicata* applies in this particular matter **because the issues on the amount of just compensation and the person to be paid just compensation are the central issues in the second phase of expropriation**. Based on this principle, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit.[369]

There would be no end to litigation in an eminent domain case if we rule otherwise; we would only foment mockery of the judicial proceedings as the order of payment in the eminent domain case would never be truly final and executory. Furthermore, to the detriment of the public, interest would continue to accrue on just compensation if we rule that the order of payment to a particular recipient can be reversed in the subsequent judicial proceedings and is, indeed, reversed in the subsequent case. This would be unfair to the State (and the public) that merely exercised its immutable right to exercise the power of eminent domain.

Contrary to Takenaka and Asahikosan's claim, in *Calvo v. Zandueta*,[370] the Court **did not stay the execution of a final and executory ruling** in the eminent domain case during the pendency of the interpleader case.

A close reading of *Calvo* shows that the order of payment of just compensation in that case was not yet final and executory.

In **November 1924**, the municipality of San Quintin, Pangasinan filed an action for expropriation of a parcel of land owned by Aquilino Calvo and with a Certificate of Title No. 25100.

On **November 25, 1925**, the Court of First Instance *(CFI)* approved the commissioners' valuation of the subject land in the sum of P6,943.25. The municipality of San Quintin appealed the case but subsequently withdrew the appeal on June 23, 1926. *The CFI approved*

*the withdrawal of appeal on **July 20, 1926**.*

In the meantime, Juana Ordoñez levied on the subject land after she obtained a favorable judgment against Calvo. The levy was recorded on the certificate of title on **December 23, 1925**. Thereafter, the sheriff sold the subject land to Ordoñez in an execution sale. On **January 23, 1926**, the sale was duly entered by memorandum on the certificate of title. **On the same date**, *Ordoñez filed a motion for substitution as a defendant in the expropriation case on the ground that she acquired all the rights and interests of Calvo on the subject land.*

On **June 29, 1926**, the CFI declared the November 25, 1925 decision final and ordered the provincial treasurer of Pangasinan to pay Calvo a part of just compensation. The **following day**, Ordoñez filed a motion praying for the revocation of the June 29, 1926 order and for the provincial treasurer of Pangasinan to retain the award of just compensation.

On **July 20, 1926, the CFI revoked the June 29, 1926 order** and ordered the provincial treasurer of Pangasinan to retain the money until further orders of the court. After the CFI denied Calvo et al.'s motion for reconsideration, they filed a petition for certiorari before the Court.

The Court denied the petition. The Court ruled that "***assuming*** *that the judgment of November 25, 1925, constituted a final determination of the petitioners' right to receive the award,"* Ordoñez was not a party to the expropriation case and, therefore, could not be bound by the judgment. Ordoñez' claim that she stands subrogated to Calvo's right to just compensation has the appearance of validity. The judicial determination of her claim may be adjudicated in an action for interpleader which was then pending when the motion for substitution was filed. Consequently, the trial court correctly stayed the execution of the judgment in the expropriation case. "Whenever necessary to promote the ends of justice, courts have the power to temporarily stay executions of judgments rendered by them."

Clearly, the November 25, 1925 decision in *Calvo* was not yet final and executory when the Court suspended the execution of that ruling. *The July 29, 1926 order revoked the June 29, 1926 order which in turn declared the finality of the November 25, 1925 decision of the CFI.* Ordoñez filed a motion for the reversal of the June 29, 1926 order prior to the CFI's withdrawal of appeal on July 20, 1926. Significantly, the CFI approved the withdrawal of appeal on the same date that the CFI revoked the June 29, 1926 order and ordered the provincial treasurer of Pangasinan to withhold the just compensation. **There is thus no basis to Takenaka and Asahikosan's claim that the execution of a final and executory judgment on just compensation may be suspended if there is still a subsisting case regarding the disputed ownership of the expropriated property.**

9.d. The determination of whether the NAIA-IPT III shall be burdened by liens and mortgages even after the full payment of just compensation is still premature.

The determination of whether the NAIA-IPT III shall be burdened by liens and mortgages even after the full payment of just compensation is still premature. The enforceability of Claim Nos. HT-04-248 and HT-05-269 in this jurisdiction has yet to be decided by the Court in G.R. No. 202166. Furthermore, the application of Article 2242 of the Civil Code[371] presupposes that PIATCO declared insolvency or has been declared insolvent. This, of course, should be litigated in insolvency proceedings, not in the present eminent domain case.

The Court cannot pass upon the validity and enforceability of civil claims against PIATCO by creditor/s in an expropriation case or the *existence* of liens on the NAIA-IPT III. Section 114 of Republic Act No. 10142[372] provides:

> **Section 114**. *Rights of Secured Creditors.* – The Liquidation Order shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law. A secured creditor may:
>
> (a) waive his right under the security or lien, prove his claim in the liquidation proceedings and share in the distribution of the assets of the debtor; or
>
> (b) maintain his rights under the security or lien:
>
> If the secured creditor maintains his rights under the security or lien:
>
> > (1) the value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance. If its value exceeds the claim secured, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;
> >
> > (2) the liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or
> >
> > (3) the secure creditor may enforce the lien or foreclose on the property pursuant to applicable laws.

10. The exercise of eminent domain from the perspective of "taking."

10.a. The Government may take the property for public purpose or public use upon the issuance and effectivity of the writ of possession.

To clarify and to avoid confusion in the implementation of our judgment, the full payment of just compensation is not a prerequisite for the Government's effective taking of the property. As discussed above, RA 8974 allows the Government to enter the property and implement national infrastructure projects upon the issuance of the writ of possession. When the taking of the property precedes the payment of just compensation, the Government shall indemnify the property owner by way of interest.

"Taking" under the power of eminent domain means entering upon private property for more than a momentary period, and under the warrant or color of legal authority, devoting it to public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof.[373]

"Taking" of property takes place when: (1) the owner is actually deprived or dispossessed of his property; (2) there is a practical destruction or a material impairment of the value of his property; (3) the owner is deprived of the ordinary use of the property, or (4) when he is deprived of the jurisdiction, supervision and control of his property.[374]

The taking of property is different from the transfer of the property title from the private owner to the Government. Under Rule 67 of the Rules of Court, there are two phases of expropriation: (a) the condemnation of the property after it is determined that its acquisition will be for a public purpose or public use; and (b) the determination of just compensation to be paid for the taking of private property to be made by the court with the assistance of not more than three commissioners.

The ***first phase*** is concerned with the determination of the Government's authority to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. The court declares that the Government has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint.[375]

The ***second phase*** relates to the just amount that the Government shall compensate the property owner. [376]

Whenever the court affirms the condemnation of private property in the first phase of the proceedings, **it merely confirms the Government's lawful right to take the private property for public purpose or public use.** The court does not necessarily rule that the title to the private property likewise vests on the Government.

The transfer of property title from the property owner to the Government is not a condition precedent to the taking of property. The State may take private property prior to the eventual transfer of title of the expropriated property to the State.

In fact, there are instances when the State takes the property prior to the filing of the complaint for expropriation or without involving the transfer of title.[377] In *People v. Fajardo,*[378] the Court ruled that the municipal mayor's refusal to give the property owner the permission to build a house on his own land on the ground that the structure would destroy the beauty of the public plaza amounts to the taking of the property requiring just compensation.

In *National Power Corporation (NPC) v. Spouses Malit,*[379] the NPC's transmission lines had to pass the Spouses Malit's property. The Court ruled that the NPC's easement of right-of-way on the land was equivalent to the taking of property. The limitation imposed by the NPC against the use of the land for an indefinite period deprived the Spouses Malit of the lot's ordinary use. Consequently, the NPC shall give the Spouses Malit just compensation.

The reckoning period, however, of the valuation of just compensation is the date of taking or the filing of the complaint for expropriation, **whichever is earlier**. In either case, it is only after the finality of the second stage and after the payment of just compensation that the title shall pass to the Government. As we have ruled in *Gingoyon*, **the title to the property does not pass to the condemnor until just compensation is paid.**

Under Section 4 of RA 8974, the Government is only entitled to a writ of possession upon initial payment of just compensation to the defendant, and upon presentment to the court of a certificate of availability of funds.

A writ of possession does not transfer title to the Government; it is "a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment."[380] Section 4 of RA 8974 further states that the writ of possession is an order to take possession of the property and **to start the implementation of the project**, to wit:

Section 4. *Guidelines for Expropriation Proceedings*. – Whenever it is necessary to acquire real property for the right-of-way or

location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:

(a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;
(b) In provinces, cities, municipalities and other areas where there is no zonal valuation, the BIR is hereby mandated within the period of sixty (60) days from the date of the expropriation case, to come up with a zonal valuation for said area; and
(c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

In the event that the owner of the property contests the implementing agency's proffered value, the court shall determine the just compensation to be paid the owner within sixty (60) days from the date of filing of the expropriation case. When the decision of the court becomes final and executory, the implementing agency shall pay the owner the difference between the amount already paid and the just compensation as determined by the court. (Emphasis supplied)

The Government is *provisionally* authorized to take the property for public purpose or public use whenever the court issues a writ of possession in favor of the Government. It may take possession of the property or effectively deprive the property owner of the ordinary use of the property. If the court, however, later on determines that the State has no right of expropriation, then the State shall immediately restore the defendant of the possession of the property and pay the property owner damages that he sustained. Section 11, Rule 67 of the Rules of Court:

Section 11. *Entry not delayed by appeal; effect of reversal*. – The right of the plaintiff to enter upon the property of the defendant and appropriate the same for public use or purpose shall not be delayed by an appeal from the judgment. But if the appellate court determines that plaintiff has no right of expropriation, judgment shall be rendered ordering the Regional Trial Court to forthwith enforce the restoration to the defendant of the possession of the property, and to determine the damages which the defendant sustained and may recover by reason of the possession taken by the plaintiff. (11a)

The State's taking of the property is not based on trust or contract, but is founded on its inherent power to appropriate private property for public use. It is also for this reason – to compensate the property owner for the deprivation of his right to enjoy the ordinary use of his property until the naked title to the property passed to the State – that the State pays interest from the time of the taking of the property until full payment of just compensation.

This conclusion is consistent with the dispositive portion of our ruling in *Gingoyon* where we authorized the Government to perform acts that are essential to the operation of the NAIA-IPT III as an international airport terminal upon the effectivity of the writ of possession. The authority granted to the Government encompasses "the repair, reconditioning and improvement of the complex, maintenance of the existing facilities and equipment, installation of new facilities and equipment, provision of services and facilities pertaining to the facilitation of air traffic and transport, and other services that are integral to a modern-day international airport."

The present case involves the second stage of expropriation or the determination of replacement cost of the NAIA-IPT III. The first stage has become final after the promulgation of the December 19, 2005 decision and the February 1, 2006 resolution in *Gingoyon* where we affirmed the Government's power to expropriate the NAIA-IPT III and where we ordered the issuance of a writ of possession upon the Government's direct payment of the proffered value of P3 billion to PIATCO. ***Thus, the reinstatement of the writ of possession on September 11, 2006, empowered the Government to take the property for public use, and to effectively deprive PIATCO of the ordinary use of the NAIA-IPT III.***

B. G.R. No. 181892

1. ***The issue on the appointment of an independent appraiser is already moot and academic.***

In G.R. No. 181892, the RTC, in its order dated May 5, 2006, ordered the appointment of an independent appraiser to conduct the valuation of the NAIA-IPT III upon the BOC's request. Thereafter, the Government and PIATCO submitted their lists of nominees to this position. On May 3, 2007, the RTC engaged the services of DG Jones and Partners as an independent appraiser. On May 18, 2007, the RTC directed the Government to submit a Certificate of Availability of Funds to cover DG Jones and Partners' $1.9 Million appraisal fee.

The Government disputed the May 3 and 18, 2007 orders and argued that the RTC had no power to appoint an independent appraiser. The Government insisted that the RTC should exclusively choose among its nominees pursuant to Section 7 of RA 8974 as well as Sections 10 and 11 of RA 8974 IRR.

The RTC sustained the appointment of DG Jones and Partners in an order dated January 7, 2008. The RTC ruled that its power to appoint the members of the BOC under Section 5, Rule 67 of the Rules of Court was broad enough as to include the appointment of an independent appraiser.

On February 6, 2008, the Government filed a petition for certiorari with prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction before the Court assailing the May 3, 2007; May 18, 2007; and January 7, 2008 orders (G.R. No. 181892).

On January 9, 2008, the Court issued a temporary restraining order against the implementation of the May 3, May 18, and January 7, 2008 orders.

On August 5, 2010, the RTC ordered the parties to submit their appraisal reports of the NAIA-IPT III. The Government, PIATCO, Takenaka and Asahikosan separately hired their own appraisers who came up with their different valuations of the NAIA-IPT III.

On March 31, 2011, the BOC submitted its Final Report recommending the payment of just compensation in the amount of $376,149,742.56. On May 23, 2011, the RTC rendered a decision ordering the Government to pay PIATCO just compensation in the amount of $116,348,641.10. The CA modified the RTC ruling and held that the just compensation as of July 31, 2013, amounts to $371,426,742.24.

These developments render the appointment of DG Jones and Partners as an independent appraiser of the NAIA-IPT III ineffective. An appraiser is a person selected or appointed by competent authority to ascertain and state the true value of goods or real estate.[381] The purpose of appointing DG Jones and Partners as an independent appraiser was to assist the BOC in appraising the NAIA-IPT III. In fact, the BOC **requested** the RTC to engage the services of an independent appraiser because the BOC had no technical expertise to conduct the valuation of the NAIA-IPT III. In turn, the BOC was to recommend to the RTC the replacement cost of the NAIA-IPT III. Under Section 8, Rule 67 of the Rules of Court, the RTC may accept or reject, whether in whole or in part, the BOC's report which is merely ***advisory and recommendatory*** in character.

We find, under the given circumstances, that the propriety of the appointment of DG Jones and Partners and the corollary issue of who should shoulder the independent appraiser's fees moot and academic.

An actual case or controversy exists when there is a conflict of legal rights or an assertion of opposite legal claims between the parties that is susceptible or ripe for judicial resolution.[382] A justiciable controversy must not be moot and academic or have no practical use or value. In other words, there must be a definite and concrete dispute touching on the legal relations of the parties who have adverse legal interests. Otherwise, the Court would simply render an advisory opinion on what the law would be on a hypothetical state of facts. The disposition of the case would not have any practical use or value as there is no actual substantial relief to which the applicant would be entitled to and which would be negated by the dismissal or denial of the petition.[383]

After the BOC submitted its Final Report on the replacement cost of the NAIA-IPT III based on the appraisal reports and other evidence submitted by the parties, the appointment of DG Jones and Partners ceased to serve any purpose. Any subsequent findings of DG Jones and Partners regarding the appraisal of the NAIA-IPT III would cease to have any practical materiality **since the RTC proceedings on the amount of just compensation had already been terminated.**

As with the BOC, the independent appraiser's valuation of the NAIA-IPT III was advisory and recommendatory in character. DG Jones and Partners' valuation was only preliminary and was not by any means meant to be final and conclusive on the parties. In the exercise of its judicial functions, it is the expropriation court who has the final say on the amount of just compensation. Since the RTC has already made a factual finding on the valuation of the NAIA-IPT III, there is no point in appointing DG Jones and Partners as an independent appraiser. To reiterate, valuation involves a factual question that is within the province of the expropriation court, and not the BOC or the independent appraiser. DG Jones and Partners' rule has simply been overtaken by events.

As a final note, while we stated in *Gingoyon* that the RTC may validly appoint commissioners in the appraisal of the NAIA-IPT III, the trial court should have appointed commission members who possessed technical expertise in the appraisal of a complex terminal building. Under Section 5, Rule 67 of the Rules of Court, the BOC's main functions are to ascertain and report to the court the just compensation for the property sought to be taken. The appointment of technical experts as commissioners would have avoided the DG Jones aspect of the controversy as there would have been no need for the trial court to hire an independent appraiser. This would have avoided the duplication of tasks and delay in the proceedings.

To summarize, we rule that:

(1) The May 23, 2011 decision of the RTC in Civil Case No. 04-0876 is valid. The parties were afforded procedural due process since their respective positions, counter-positions, and evidence were considered by the trial court in rendering the decision.
(2) Replacement cost is a different standard of valuation from fair market value. Fair market value is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy. In contrast, replacement cost is the amount necessary to replace the improvements/structures, based on the current market prices for materials, equipment, labor, contractor's profit and overhead, and all other attendant costs associated with the acquisition and installation in place of the affected improvements/structures.
(3) In computing just compensation, the Court shall use the replacement cost method and the standards laid down in Section 5 of RA 8974 as well as Section 10 of RA 8974. The Court shall likewise consider equity in the determination of the just compensation due for NAIA-IPT III.
(4) The use of depreciated replacement cost method is consistent with the principle that the property owner shall be compensated for his actual loss. It is consistent as well with Section 10 of RA 8974 IRR which provides that the courts shall consider the kinds and quantities of materials/equipment used and the configuration and other physical features of the property, among other things, in the valuation of the NAIA-IPT III. The Government should not compensate PIATCO based on the value of a modern equivalent asset that has the full functional utility of a brand new asset.
(5) The amount of just compensation as of the filing of the complaint for expropriation on December 21, 2004, is $326,932,221.26. From this sum shall be deducted the proffered value of $59,438,604.00. The resulting difference of $267,493,617.26 shall earn a straight interest of 12% per annum from September 11, 2006 until June 30, 2013, and a straight interest of 6% per annum from July 1, 2013, until full payment.
(6) PIATCO, as the owner of the NAIA-IPT III, shall solely receive the just compensation. Based on the last paragraph, Section 4 of RA 8974 and the prevailing jurisprudence, it is the owner of the expropriated property who is constitutionally entitled to just compensation. Other claimants should be impleaded or may intervene in the eminent domain case if the ownership of the property is uncertain or there are conflicting claims on the property pursuant to Section 9, Rule 67 of the Rules of Court.
(7) The Government may deprive PIATCO of the ordinary use of the NAIA-IPT III upon the issuance and effectivity of the writ of possession on September 11, 2006. However, the Government shall only have ownership of the NAIA-IPT III after it fully pays PIATCO the just compensation due.
(8) The expenses of the BOC, which are part of the costs, shall be shouldered by the Government as the condemnor of the property pursuant to Section 12, Rule 67 of the Rules of Court. Consequently, Takenaka and Asahikosan shall not share in the expenses of the BOC. PIATCO is deemed to have waived its right not to share in the expenses of the BOC since it voluntarily shared in the expenses of the BOC.
(9) The issues of the propriety of the appointment of DG Jones and Partners as an independent appraiser in the valuation of the NAIA-IPT III and who should shoulder DG Jones and Partners' appraisal fee are already moot and academic. The purpose of appointing DG Jones and Partners as an independent appraiser was to assist the BOC in the appraisal of NAIA-IPT III. As with the BOC, the independent appraiser's recommendation to the RTC was merely recommendatory and advisory in character. Since the RTC has already ruled on the just compensation in Civil Case No. 04-0876, the appointment of an independent appraiser no longer serves any practical purpose.

WHEREFORE, premises considered, we **PARTIALLY REVERSE** the August 22, 2013 amended Decision and the October 29, 2013 Resolution of the Court of Appeals.

1) The principal amount of just compensation is fixed at $326,932,221.26 as of December 21, 2004. Thereafter, the amount of $267,493,617.26, which is the difference between $326,932,221.26 and the proffered value of $59,438,604.00, shall earn a straight interest of 12% per annum from September 11, 2006 until June 30, 2013, and a straight interest of 6% per annum from July 1, 2013 until full payment;
2) The Government is hereby ordered to make direct payment of the just compensation due to PIATCO; and
3) The Government is hereby ordered to defray the expenses of the BOC in the sum of P3,500,000.00.

We **DECLARE** the issue of the appointment of DG Jones and Partners as an independent appraiser of the Ninoy Aquino International Airport Passenger Terminal III **MOOT AND ACADEMIC**. The temporary restraining order issued on January 9, 2008, against the implementation of the May 3, 2007; May 18, 2007; and January 7, 2008 orders of the Regional Trial Court of Pasay City, Branch 117 is hereby made **PERMANENT.**

SO ORDERED.

Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Perez, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

Leonen, J., in the result see separate concurring opinion.

Sereno, C.J., Carpio, Del Castillo, and *Jardeleza, JJ.,* no part.

Reyes, J., on Leave.

[1] In **G.R. No. 209917**, the Government filed a petition for review on certiorari seeking to partially reverse the CA's August 22, 2013 Amended Decision and October 29, 2013 Resolution in CA-G.R. CV No. 98029. In **G.R. No. 209696**, Takenaka and Asahikosan filed a petition for review on certiorari seeking to partially reverse the same CA rulings. In **G.R. No. 209731**, PIATCO filed a petition for review on *certiorari* filed seeking to reverse the same CA rulings.

In **G.R. No. 181892**, the Government filed a petition for *certiorari* with prayer for the issuance of a temporary restraining order assailing the January 7, 2008 order of the Regional Trial Court of Pasay City, Branch 117 in Civil Case No. 04-0876.

[2] *Rollo*, pp. 10-40; penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Rebecca De Guia-Salvador and Samuel J. Gaerlan.

[3] Republic Act No. 6957, as amended by Republic Act No. 7718.

[4] *Agan v. PIATCO*, 450 Phil. 789 (2003).

[5] Id. at 792-793.

[6] Id. at 794.

[7] Id. at 794-795.

[8] Id. at 795-796.

[9] Id. at 795.

[10] This agreement was further supplemented by the following contracts:

(a) First Supplement to the Agreement Re: the Ninoy Aquino International Airport Passenger Terminal III On-Shore Construction Contract dated January 26, 2001;
(b) Second Supplement Agreement Relating to the On-Shore Construction Contract Re: the Ninoy Aquino International Airport Passenger Terminal III On-Shore Construction Contract dated February 21, 2001;
(c) Agreement between Takenaka and Asahikosan and Fraport AG Frankfurt Airport Services Worldwide Relating to the Deeds of Guaranteed Re: Ninoy Aquino International Airport Passenger Terminal III dated February 21, 2001;
(d) Third Supplemental Agreement relating to the Onshore Construction Contract dated April 11, 2002; and
(e) Fourth Supplemental Agreement relating to the Onshore Construction Contract dated September 11, 2002.

See CA *rollo,* Volume XXXII-Q, pp. 10-155, 183-201 and 381-398.

[11] The Offshore Procurement Contract was supplemented by the following agreements:

(a) First Supplement to the Agreement Re: the Ninoy Aquino International Airport Passenger Terminal III Off-Shore Procurement Contract dated January 26, 2001;
(b) Second Supplement Agreement relating to the Offshore Procurement Contract Re: Ninoy Aquino International Airport Passenger Terminal III dated February 21, 2001; and
(c) Agreement between Takenaka and Asahikosan and Fraport AG Frankfurt Airport Services Worldwide Relating to the Deeds of Guaranteed Re: Ninoy Aquino International Airport Passenger Terminal III dated February 21, 2001;
(d) Third Supplement Agreement Relating to the Off-shore Procurement Contract Re: Ninoy Aquino International Airport Passenger Terminal III dated April 11, 2002.
(e) Fourth Supplement Agreement relating to the Offshore Procurement Contract dated September 11, 2002.

See CA *rollo*, Volume XXXII-Q, pp. 183-201 and 238-398.

[12] "Plant," as defined in Part II (ii) of the Offshore Procurement Contract dated March 31, 2001, means machinery, apparatus, materials, articles, intellectual property and things of all kinds to be provided under the Concession Agreement and as specified in the Employer's Requirements and including, but not limited to, those necessary to achieve the Tender Design but excluding any Contractor's Equipment (as defined in the Construction Contract). See CA *rollo,* Volume XXXII-Q, p. 258.

[13] CA *rollo*, Volume XXXII-Q, pp. 214-237.

[14] Id. at 381-398.

[15] *Rollo* in G.R. No. 209696, Volume II, p. 415.

[16] *Supra* note 4, at 797.

[17] The Court ruled in *Agan* that the maximum amount that Security Bank could validly invest in the Paircargo Consortium is only P528,525,656.55, representing 15% of its entire net worth. We concluded that the total net worth of the Paircargo Consortium – after considering the maximum amounts that may be validly invested by each of its members – is P558,384,871.55 or only 6.08% of the project cost. This amount is substantially less than the prescribed minimum equity investment required for the project in the amount of P2,755,095,000.00 or 30% of the project cost.

[18] *Supra* note 4, at 744-841.

[19] *Agan v. PIATCO,* 465 Phil. 545-586 (2004).

[20] Id. at 582.

[21] The case is entitled "Republic of the Philippines represented by Executive Secretary Eduardo R. Ermita, the Department of Transportation and Communications, and the Manila International Airport Authority, *Plaintiffs,* -versus- Philippine Air Terminals Co., Inc., *Defendant.* See G.R. No. 209731, Volume I, pp. 363-383.

[22] *Republic v. Gingoyon*, 514 Phil. 678 (2005). See also RTC *rollo,* Volume II, pp. 1050-1066 and *rollo* in G.R. No. 209731, Volume I, pp. 363-374.

[23] 411 Phil. 754-765 (2001).

[24] Supra note 22, at 678-679. See also RTC *rollo*, Volume II, p. 1072 and *rollo* in G.R. No. 209731, Volume I, pp. 384-385.

[25] The MIAA held guaranty deposits in the sum of $62,343,175.77 with Land Bank for purposes of expropriating the NAIA-IPT III. See *rollo* in G.R. No. 209731, Volume I, pp. 380-382.

[26] *Supra* note 22, at 679–680. See also RTC *rollo*, Volume II, pp. 818-821 and *rollo* in G.R. No. 209731, Volume I, pp. 390-396.

[27] *Supra* note 22, at 680–681. See also RTC *rollo*, Volume II, pp. 823-829.

[28] The RTC appointed Dr. Fiorello R. Estuar, Atty. Sofronio B. Ursal, and Capt. Angelo I. Panganiban. Dr. Estuar and Atty. Ursal were succeeded by Engr. Adam Abinales and Atty. Alfonso V. Tan, Jr., respectively.

[29] *Supra* note 22, at 680–681. See also RTC *rollo*, Volume II, pp.942-943 and *rollo* in G.R. No. 181892, pp. 306-307.

[30] *Rollo* in G.R. No. 209731, Volume I, pp. 397-398; RTC rollo, Volume II, pp. 944-950.

[31] On January 20, 2006, Judge Jesus M. Mupas of RTC-Pasay, Branch 119 was designated by the Supreme Court to replace Judge Henrick Gingoyon in the expropriation case. See RTC rollo, Volume XXVI-A, unpaged.

[32] Supra note 22, at 681. See also RTC *rollo*, Volume II, pp. 958-965 and *rollo* in G.R. No. 209731, Volume I, pp. 399-406.

[33] *Rollo* in G.R. No. 209696, Volume I, pp. 266-286; RTC *rollo*, Volume IV, pp. 4244-4247.

[34] Id. at 229-231; id. at 4224-4226.

[35] RTC *rollo*, Volume IV, pp. 4248-4264.

[36] *Rollo* in G.R. No. 209696, Volume I, pp. 229-231; id. at 4224-4226.

[37] The First Claimant refers to Takenaka Corporation.

[38] The Second Claimant refers to Asahikosan Corporation.

[39] *Rollo* in G.R. No. 209696, Volume I, p. 245; RTC *rollo*, Volume IV, p. 4239.

[40] Id. at 227; id. at 4241.

[41] *Rollo* in G.R. No. 209696, Volume I, pp. 242-243 and 284.

[42] Id. at 332-333.

In a decision dated September 6, 2010, t**he RTC recognized the validity of the London awards** in Claim Nos. HT-04-248 and HT-05-269 and declared these awards as enforceable in the Philippine jurisdiction. The RTC thus ordered PIATCO to pay Takenaka and Asahikosan the sum of $ 85.7 million.

PIATCO appealed the case to the **CA[42] which affirmed the RTC rulings** in a decision dated March 13, 2012.[42] The CA likewise denied PIATCO's motion for reconsideration in a resolution dated May 31, 2012.

[43] RTC *rollo*, Volume X, pp. 7548-7573.

[44] *Rollo* in G.R. No. 209731, Volume II, p. 1788.

[45] *Rollo* in G.R. No. 209696, Volume I, pp. 332-333.

[46] *Supra* note 22, at 681.

[47] For simplicity and ease of reading, the Court shall use "it," instead of "they."

[48] RTC *rollo*, Volume II, pp. 971-1036.

[49] Section 2 of Rule 67 of the Rules of Court provides:

SEC. 2. Entry of plaintiff upon depositing value with authorized government depository. — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if **he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.**

In contrast, Section 4 of Rep. Act No. 8974 states:

SEC. 4. *Guidelines for Expropriation Proceedings.* — Whenever it is necessary to acquire real property for the right-of-way, site or location for any national government infrastructure project through expropriation, the appropriate proceedings before the proper court under the following guidelines:

a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof;

x x x x

c) In case the completion of a government infrastructure project is of utmost urgency and importance, and there is no existing valuation of the area concerned, the implementing agency shall immediately pay the owner of the property its proffered value taking into consideration the standards prescribed in Section 5 hereof.

Upon completion with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

Before the court can issue a Writ of Possession, the implementing agency shall present to the court a certificate of availability of funds from the proper official concerned.

[50] RA 8974 IRR, Section 7.

[51] *Supra* note 22, at 657-719.

[52] Id. at 718-719.

[53] *Republic v. Gingoyon*, 517 Phil. 7-8 (2006). See also RTC *rollo*, Volume V, pp. 4446-4487.

[54] Id. at 7-8; id. at 4547-4579 and 4665-4732.

[55] 363 Phil. 225-338 (1999).

[56] Another related case is *Asia's Emerging Dragon Corp. v. DOTC,* docketed as **G.R. Nos. 169914 & 174166**. In **G.R. No. 169914**, AEDC filed a petition for mandamus and prohibition before the Court: (a) seeking to compel the Government to execute in its favor an approved Draft Concession Agreement for the operation of the NAIA-IPT III; and (b) seeking to prohibit the DOTC and the MIAA from awarding the NAIA-IPT III project to or negotiating into any concession contract with third parties. The case, entitled *AEDC v. DOTC*, was docketed as **G.R. No. 169914**

AEDC contended that it had the exclusive, clear, and vested statutory right to the award of the NAIA-IPT III project on the ground that it remained the unchallenged original proponent of the NAIA-IPT III project as a result of the Court's nullification of PIATCO contracts.

The Court denied the petition.

We noted that AEDC belatedly filed the petition twenty months after the Court's promulgation of Agan in violation of Section 4, Rule 65 of the Rules of Court. Furthermore, the petition was barred by res judicata. The RTC already dismissed Civil Case No. 66213 upon the execution of a compromise agreement by AEDC, on one hand, and the DOTC Secretary and the PBAC, on the other hand.

Under Section 10.6 of the RA 6957 IRR, the Government's "acceptance" of the unsolicited proposal is limited to its commitment to pursue the project and to the recognition of the proponent as the *original proponent*. Thus, the Government's **commitment** is limited to the **pursuit of the project**; it does not award the project to the original proponent. The acceptance of the unsolicited proposal only prevents the Government from entertaining other similar proposals **until** the solicitation of comparative proposals.

Upon the submission of comparative proposals, the original proponent has the right to match the lowest or most advantageous proposal within thirty working days from notice thereof. If the original proponent is able to match the lowest or most advantageous proposal submitted, then the original proponent has the right to the award of the project. The right to be awarded the project, however, is contingent upon the original proponent's actual exercise of his right to match the lowest or most advantageous proposal. In other words, if the original proposal failed to match the most advantageous comparative proposal, then the original proponent has no right to be awarded the project.

AEDC failed to match PIATCO's more advantageous proposal. Consequently, AEDC had no enforceable right to be awarded the NAIA-IPT III project. Moreover, the nullification of the award to PIATCO neither revived the proposal nor re-opened the bidding.

The Court also stated that AEDC's original proposal was to undertake the building, operation, and transfer to the Government of the NAIA-IPT III. This proposal was no longer feasible since the NAIA-IPT III was already substantially built. Furthermore, AEDC was not financially qualified to undertake the NAIA-IPT III project since it then had a paid-in capital of only P150,000,000.00 at the time of the submission of the bids.

In **G.R. No. 174166**, Congressman Baterina, *et al*., filed a petition for *certiorari* opposing the expropriation proceedings on the ground that the NAIA-IPT III is a public property. They posited that PIATCO should not be paid just compensation and was only entitled to recovery on *quantum meruit* as the builder of the NAIA-IPT III.

The Court denied the petition. We held that PIATCO was entitled to just and equitable consideration for its construction of the NAIA-IPT III. Furthermore, the propriety of the expropriation proceedings was already recognized and upheld by the Court in *Agan* and *Gingoyon.*

In a resolution dated April 7, 2009, the Court denied AEDC et al.'s motion for reconsideration. The Court stated that the project would be awarded to the original proponent if there was no other competitive bid submitted for the BOT project. However, if other proponents

submitted competitive bids, then the original proponent must be able to match the most advantageous or lowest bid to enjoy his preferential right to the award of the project.

[57] *Rollo* in G.R. No. 181892, pp. 68-69.

[58] Id. at 74-80.

[59] Id. at 68-69.

[60] Id. at 16 and 61.

[61] Id. at 16.

[62] Id. at 150; RTC *rollo*, Volume VIII, p. 5591.

[63] *Rollo* in G.R. No 209696, Volume I, p. 331.

[64] *Rollo* in G.R. No. 181892, p. 174. After the conduct of a Pre-Final Evaluation of Prequalification of Consultant, the BOC shortlisted DG Jones and Partners as well as Sallmans Far East Ltd. HK. (*Sallmans*) as independent appraisers.

[65] Prior to the appointment, Judge Mupas interviewed the representatives of DG Jones and Partners, and Sallmans. The RTC concluded that DG Jones and Partners was more qualified than Sallmans as independent appraiser since the former submitted a lower appraisal fee of US$1,900,000.00 (*$1.9 Million*). Moreover, DG Jones and Partners has a wide experience and track record in the appraisal of airport facilities. See Prior to the appointment, Judge Mupas interviewed the representatives of DG Jones and Partners, and Sallmans. The RTC concluded that DG Jones and Partners was more qualified than Sallmans as independent appraiser since the former submitted a lower appraisal fee of US$1,900,000.00 (*$1.9 Million*). Moreover, DG Jones and Partners has a wide experience and track record in the appraisal of airport facilities.

See *rollo* in G.R. No. 181892, pp. 64-66.

[66] The appraisal fee is itemized as follows:

Description	Amount in US Dollars
1. Fixed lump sum fee for valuation of work-in-place 2. Fixed lump sum fee for valuation of remaining works to complete 3. Provisional sum for joint survey/inventory	1,400,000.00 200,000.00 300,000.00
Total	1,900,000.00

See *rollo* in G.R. No. 181892, pp. 60 and 358.

[67] The Government further argued that there were no laws or rules that empowered the RTC and the BOC to appoint an independent appraiser. The Government opined that the RTC should exclusively choose among its nominees pursuant to Section 7 of RA 8974 as well as Sections 10 and 11 of RA 8974 IRR. Furthermore, the appointment of an independent appraiser would only result in the duplication of tasks since the BOC and the independent appraiser essentially perform the same function. The BOC would serve no purpose since the appraisal of the NAIA-IPT III would be derived from the findings of DG Jones and Partners.

It opined that the DG Jones and Partners' appraisal fee was unjust and exorbitant. The Government also pointed out that PIATCO manifested its willingness to share one-half of the expenses in the valuation of the NAIA IPT-III during the valuation hearings. The Government further raised doubts on DG Jones and Partners' qualifications since the RTC allegedly appointed the firm without disclosing DG Jones and Partners' qualifications and proposals. See rollo in G.R. No. 181892, pp. 170-182.

[68] PIATCO contended that the Government was estopped from assailing the appointment of DG Jones and Partners. The Government participated in the appointment process by nominating other firms as an independent appraiser. Furthermore, it would be iniquitous for the Government to solely appraise the replacement cost of the NAIA-IPT III. PIATCO asserted that the Government should solely bear the cost of the appraisal. The Government should have anticipated the appointment of an independent appraiser when it filed a complaint for expropriation. See *rollo* in G.R. No. 181892, pp. 183-190.

[69] The RTC stated that it would be grossly unfair to choose exclusively among the Government's nominees; otherwise, the independence of the appraiser would be questionable. The Government pointed out that the government tax assessors' valuation of expropriated property was not even conclusive on trial courts. *In fact, the BOC itself requested the appointment of an independent appraiser since it had no technical expertise to ascertain the just compensation due to PIATCO.*

The RTC also held that the Government was estopped from objecting to the appointment of an independent appraiser since it did not previously object to the engagement of the services of an appraiser. The Government even nominated several firms for the purpose of appointing an independent appraiser, particularly, Gleeds International, Ove Arup, and Gensler.

The RTC likewise imposed on the Government the sole responsibility of paying the appraisal fee of DG Jones and Partners. Under Section 12, Rule 67 of the Rules of Court, the commissioners' fees shall be taxed as part of the costs of the proceedings. The plaintiff shall pay all costs, except those of rival claimants litigating their claims. If the property owner appeals from the expropriation court's judgment, he shall pay for the costs of the appeal. According to the RTC, PIATCO should not shoulder the appraisal fee since it is constitutionally entitled to just compensation.

The RTC also affirmed DG Jones and Partners' independence. The RTC impartially chose this firm upon a thorough review of its qualifications and upon the BOC's recommendation. The Government would likewise not directly communicate with and pay the appraisal fee to DG Jones and Partners. The Government shall deposit the appraisal fee with the RTC who shall in turn pay DG Jones and Partners.

The dispositive portion of the RTC order provides:

> **WHEREFORE**, premises considered, the Orders dated May 3, 2007 and May 18, 2007 are Affirmed without modification. Consequently, Plaintiffs' Omnibus Motion dated June 15, 2007 is denied. This expropriation having been initiated in December 2004, the certificate of availability of funds from Plaintiffs for the necessary full compensation to PIATCO, the costs and the expenses entailed in this expropriation is clearly justified and should be submitted to this Court within 15 days from plaintiffs' receipt of this order.
>
> **SO ORDERED**.

See *rollo* in G.R. No. 181892, pp. 60-63.

[70] *Rollo* in G.R. No. 181892, pp. 2-54.

[71] Id. at 231-232.

[72] Id. at 144.

[73] Id. at 145.

[74] Id. at 146; RTC *rollo,* Volume XVII, pp. 11175-11181.

[75] *Rollo* in G.R. No. 209696, Volume II, p. 576.

[76] Id., Volume I, pp. 80-81.

[77] Id., Volume I, p. 81.

[78] Id.

[79] Id.

[80] Id., Volume II, p. 576.

[81] Id.

[82] Id. at 577.

[83] *Rollo* in G.R. No. 209917, Volume II, pp. 1861-1899.

[84] Gleeds Report dated November 15, 2010, p. 8.

[85] Outstanding Project Works and Tests on Completion Status:

OUTSTANDING ITEMS AS OF 16TH DECEMBER 2002	RESPONSIBLE PARTY
Note: This summary list is not exhaustive	
1. Dedicated PLDT telephone lines for external Hot Lines	PIATCO with MIAA assistance
2. Building Management Systems (BMS) software applications and interfaces	PIATCO
3. Security Systems – CCTV snagging	PIATCO
- ACMS. Door fitting to enable secure door devices to work	
- ACMS. Software applications	
- CCTV/ACMS interfaces	
- CCTV/ACMS/Fire alarm interfaces	
- CTX machines	
- Security barriers	
- Acceptable Security Plan	
- Scanning machines to additional areas	
4. Fire Alarm System – completion of all interfaces and testing thereof, e.g. to BIIS and Security System	PIATCO
5. Emergency lighting incomplete, all areas (and non compliant with lux levels)	PIATCO
6. FIDS installation at Ramp Control	PIATCO
7. Ground to pilot communication system	PIATCO with ATO assistance
8. Generator sets – fuel tanks and pump installations	PIATCO
9. Lighting Lux levels to the following areas:	PIATCO
a) Check-in Hall	
b) Departure road	
c) Car Park (external at grade), areas generally, exists and entry	
d) Service areas	
e) Taxi car park	
10. Seating throughout terminal (gates)	PIATCO

11. Seating (concrete benches Departure Hall) –(omission is a requested Deviation, as yet unapproved)	PIATCO
12. Seating (concrete benches Baggage Overlook) – (omission is a requested Deviation, as yet unapproved)	PIATCO
13. Signage as follows:	PIATCO
- Check-in island signs	
- Room signs and numbering identification	
14. Airfield lighting – Balagbag connection	MIAA
- Control Tower connection	PIATCO with MIAA assistance
15. T2-T3 Access Road - Right of way - MIAA - Construction - PIATCO	MIAA to obtain Nayong Pilipino
16. GSE Parking Areas (omission is a requested Deviation, as yet unapproved)	PIATCO
17. Permanent electric power connection up to the oversize baggage screening equipment	PIATCO
18. Public telephones	PIATCO
19. ATM machines	PIATCO/Their Concessionaires
20. STP generator set-operation	PIATCO
21. Concession Areas, all areas - Fit out	PIATCO and their Concessionaires
- Hoarding off	
22. Permanent MERALCO final connections	MIAA assistance
23. Surface Water Drainage – Detention Pond works	MIAA/PIATCO to resolve
- Outfalls	MIAA/PIATCO to resolve
24. Second West parallel taxiway - Right of way - MIAA - Construction - MIAA/PIATCO to resolve	MIAA to obtain Nayong Pilipino
25. Turntiles to Terminal Fee Kiosks – (omission is a requested Deviation, as yet unapproved)	PIATCO
26. Doors to fixed links – (omission is a requested Deviation, as yet unapproved)	PIATCO
27. Socket and davit maintenance system – (omission is a requested Deviation, as yet unapproved)	PIATCO
28. Air-conditioning system - problems with chiller 3 & 4	PIATCO
- emergency power to 33% chiller power, (omission is a requested Deviation, as yet unapproved)	
29. IT interfaces incomplete (omission is a requested Deviation, as yet unapproved)	PIATCO
30. Tests on Completion (refer separate schedule)	PIATCO
31. Rectification of Non-Compliances (refer separate schedule)	
32. Building Works snagging Works – (refer “Taking-Over” inspection Defect Lists and outstanding QOR lists)	PIATCO
33. Mechanical and Electrical snagging works – refer:	PIATCO

- "Taking Over" inspection Defect Lists	
- Outstanding QOR issues	
- TOC schedule	
- Non-Compliance schedule	
34. Civil Work snagging – refer:	PIATCO
- "Taking Over" inspection Defect Lists	
- Outstanding QOR issues	
- Re-inspection lists / QAI Daily Reports	
- Non-Compliance schedule	
35. All Service Counters	Concessionaires
36. Airline offices	Airlines
37. Government office areas	GRP
38. Airline Lounges	Airlines
39. Airline data installation to all IT systems (CUTE etc.)	Airlines
40. Helipad (omission is a requested Deviation, as yet unapproved)	PIATCO
41. Fuel Hydrant System – Testing at operational velocity and/or camera inspection	PIATCO
42. Access Road Improvements	GRP/MIAA

See CA *rollo*, Volume 32-D, pp. 117-118.

[86] *Rollo* in G.R. No. 209696, pp. 585-586.

[87] Gleeds Report dated November 15, 2010.

[88] *Rollo* in G.R. No. 209731, Volume I, pp. 531-532.

[89] Id. at 532-533.

[90] Id. at 533, citing par. 3.1.13 of Scott Wilson Report Dated December 1, 2010.

[91] Id. at 534.

[92] Id. at 531-532.

[93] Id. at 535.

[94] Id. at 532.

[95] G.R. No. L-71412, August 15, 1986, 143 SCRA 466.

[96] *Rollo* in G.R. No. 209731, Volume I, p. 536.

[97] *Rollo* in G.R. No. 209696, Annex 4, p. 586.

[98] This is the sum of $6,602,971.00 and $8,224,236.00 under the First Judgment of the London Court.

[99] This is the sum of $21,688,012.18 and $30,319,284.36 under the Second Judgment of the London Court.

[100] *Rollo* in G.R. No. 209696, pp. 569-599.

[101] Id., Volume II, pp. 600-610.

[102] *Rollo* in G.R. No. 209731, Volume I, 1089-1097. Takenaka and Asahikosan filed a Notice of Appeal on June 1, 2011 while PIATCO filed a Notice of Appeal on May 26, 2011. See CA rollo, Volume I, pp. 66-75.

[103] Takenaka and Asahikosan were furnished copies of the BOC Final Report on June 21, 2011. On the other hand, the RTC only gave PIATCO access to the BOC Final Report and ordered PIATCO to reproduce the report at its own expense. See Takenaka and Asahikosan's Brief dated October 3, 2012, *rollo* in G.R. No. 209917, Volume II, p. 1917; and PIATCO's Brief dated September 7, 2012, *rollo* in G.R. No. 209917, Volume II, p. 1742.

[104] *Rollo* in G.R. No. 209917, Volume II, pp. 1749-1754 and 1927-1930.

[105] *Rollo* in G.R. No. 209731, Volume II, p. 1617.

[106] Id., Volume I, pp. 1170-1177.

[107] Id. at 1172-1173.

[108] Id. at 1173-1174. On April 19, 2012, the Government manifested that it opened an escrow account with the Land Bank and the Development Bank of the Philippines, as evidenced by the following documents:

1. Escrow Agreement between MIAA and LBP dated April 11, 2012 in the amount of $82,157,716.73[108]
2. Escrow Agreement between MIAA and DBP dated April 11, 2012 in the amount of $34,190,924.59[108]
3. Statement of Outstanding Balance of Investment as of April 13, 2012 issued by DPB, showing the principal amount of $34,190,924.59 deposited on April 11, 2012;[108] and
4. Certification issued by the LBP Trust Banking Group dated April 12, 2012 attesting that MIAA opened an escrow account on April 11, 2012 in the principal amount of $82,157,716.73[108]

See *rollo* in G.R. No. 209731, Volume II, pp. 1388-1402; *rollo* in G.R. No. 209731, Volume I, pp. 10-38.

[109] *Rollo* in G.R. No. 209731, Volume II, p. 1281.

[110] On May 26, 2011, PIATCO filed a Notice of Appeal of the May 23, 2011 decision. On June 6, 2011, Takenaka and Asahikosan likewise filed their Notice of Appeal. See *rollo* in G.R. No. 209917, Volume II, p. 1917.

[111] *Rollo* in G.R. No. 209731, Volume II, pp. 1280-1290.

[112] Id. at 1289-1290.

[113] Id. at 1337-1342, Order of December 5, 2011, and CA *rollo,* Volume I, pp. 90-95.

[114] *Rollo* in G.R. No. 209731, Volume II, pp. 1343-1386.

[115] Id. at 10-38.

[116] Id., Volume I, p. 26.

[117] This amount is a mathematical error since the computed total amount of attendant costs is $27,093,375.28.

[118] *Rollo* in G.R. No. 209731, Volume I, p. 38.

[119] Id. at 41-70.

[120] Id. at 69.

[121] Id. at 72-77.

[122] Decision, pp. 20-21.

[123] Takenaka and Asahikosan's complaint, docketed as Civil Case No. 06-171, was initially raffled to the RTC of Makati, Branch 58. Civil Case No. 06-171 was subsequently re-raffled to RTC of Makati, Branch 143. See *rollo* in G.R. No. 209917, Volume III, pp. 2466-2473.

[124] *Rollo* in G.R. No. 209696, Volume II, pp. 405-427.

[125] The case was docketed in the CA as CA-G.R. CV No. 96502.

[126] *Rollo* in G.R. No. 209696, Volume II, pp. 612-643; and CA rollo, Volume I, pp. 102-134.

[127] *Rollo* in G.R. No. 209696, Volume II, p. 644.

[128] *Rollo* in G.R. No. 209917, pp. 12-81.

[129] Id. at 149-179.

[130] Id. at 180-186.

[131] *Rollo* in G.R. No. 209696, pp. 18-61.

[132] *Rollo* in G.R. No. 209731, pp. 87-148.

[133] *Rollo* in G.R. No. 181892, pp. 2-59.

[134] Id. at 60-63.

[135] *Rollo* in G.R. No. 202166, pp. 48-106.

[136] *Rollo* in G.R. No 206696, pp. 612-643.

[137] Id. at 644.

[138] *Rollo* in G.R. No. 209917, Volume I, pp. 54-55.

[139] Id.

[140] Id. at 58.

[141] Id. at 62.

[142] Id. at 48.

[143] Id. at 48-49.

[144] Id. at 50.

[145] Id.

[146] Id. at 49-50.

[147] 558 Phil. 683-715 (2007).

[148] 507 Phil. 174-193 (2005).

[149] RTC *rollo,* Volume VIII, pp. 5800-5822.

[150] G.R. No. 97412, July 12, 1994, 234 SCRA 78-97.

[151] *Rollo* in G.R. No. 209917, Volume I, p. 30; *rollo* in G.R. No. 209917, Volume I, pp. 12-89.

[152] 49 Phil. 605-609 (1926).

[153] *Rollo* in G.R. No. 209696, Volume III, p. 1003.

[154] Id. at 1003-1004.

[155] Id. at 969-1024.

[156] Id. at 969-1024

[157] *Rollo* in G.R. No. 181892, pp. 2-59.

[158] *Rollo* in G.R. No. 209731, Volume I, pp 87–148.

[159] *Rollo* in G.R. No. 209696, Volume III, pp. 894-941.

[160] Id., Volume II, pp. 835-850.

[161] *Rollo i*n G.R. No. 181892, pp. 261-305.

[162] G.R. Nos. 170375, 170505, 173355-56, 173401, 173563-64, 178779 & 178894, July 7, 2010, 624 SCRA 360.

[163] 352 Phil. 833, 852 (1998).

[164] G.R. No. 173085, January 19, 2011, 640 SCRA 105.

[165] 49 Phil. 605 (1926).

[166] *Rollo* in G.R. No. 209696, Volume I, pp. 18-61; and *rollo* in G.R. No. 209731, Volume IV, pp. 2962-2974.

[167] *Rollo* in G.R. No. 209696,Volume II, p. 872.

[168] Id., Volume I, p. 37.

[169] Id., Volume II, pp. 867-892.

[170] RULES OF COURT, Rule 67, Section 7.

[171] Id., Section 8.

[172] *Arroyo v. Rosal Homeowners Association, Inc.*, G.R. No. 175155, October 22, 2012, 684 SCRA 297, 303.

[173] *National Power Corporation v. Spouses Dela Cruz,* 543 Phil. 64-67 (2007).

[174] *Heirs of Suguitan v. City of Mandaluyong,* 384 Phil. 677-678, 687-689 (2000); and 26 Am Jur 23, § 2.

[175] Id.

[176] 26 Am Jur 23, § 4.

[177] Id. at § 5.

[178] Supra note 175.

[179] 198

7 CONSTITUTION, Article 3, Section 9.

[180] Id. at Section 1.

[181] *National Power Corporation v. Zabala,* G.R. No. 173520, January 30, 2013, 689 SCRA 554, 562.

[182] 29A C.J.S. §96.

[183] 26 Am Jur 23, § 295.

[184] *Republic v. Ker & Company Limited*, 433 Phil. 70, 76-77 (2002), and *Republic v. Court of Appeals,* 238 Phil. 475, 486 (1987).

[185] *National Power Corporation v. Manubay Agro-Industrial Development Corp*., 480 Phil. 471, 480 (2004), citing *Republic v. Ker and Company Limited*, July 2, 2002, 383 SCRA 584; *Republic v. Court of Appeals*, September 30, 1987, 154 SCRA 428.

[186] *Republic v. Asia Pacific Integrated Steel Corp*., G.R. No. 192100, March 12, 2014.

[187] *B.H. Berkenkotter & Co. v. Court of Appeals,* 216 Phil 584, 586 (1992).

[188] 29 A C.J.S. § 136 (3).

[189] Id. Specialized properties are also defined as "Properties that are rarely if ever sold on the (open) market, except by way of a sale of the business or entity of which they are a part, due to their uniqueness, which arises from the specialized nature and design of the buildings, their configuration, size, location, or otherwise. Consequently reliable sales comparables cannot generally be identified for specialized properties. See International Valuation Standards, Sixth Edition, 3.2. Retrieved http://www.romacor.ro/legislatie/22-gn8.pdf.

[190] Royal Institution of Chartered Surveyors. The Depreciated Replacement Cost Method of Valuation for Financial Report Valuation Information Paper 10, page 3, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed on February 27, 2015).

[191] 29 A C.J.S. § 136 (3).

[192] http://www.merriam-webster.com/dictionary/airport (last accessed February 27, 2015).

[193] *Rollo* in G.R. No. 209731, Volume IV, p. 3050.

[194] Id. at 3013.

[195] 6 Am Jur 23 § 302.

[196] IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 8974, Section 10.

[197] Supra note 19, at 582.

[198] Supra note 22, at 695-696.

[199] 26 Am Jur 2d § 224.

[200] International Association of Assessing Officers. Standard on Mass Appraisal of Real Property, page 17, http://katastar.rgz.gov.rs/masovna-procena/Files/2.Standard_of_Mass_Appraisal_of_Real_Property_2013.pdf (last accessed February 25, 2015; and Beckhart, Leslie K. No Intrinsic Value: The Failure of Traditional Real Estate Appraisal Methods to Value Income-Producing Property. Southern California Law Review, page 8, 66 S. Cal. L. Rev. 2251 (July 1993). See also American Society of Farm Managers & Rural Appraisers. COST APPROACH, page 385, http://www2.econ.iastate.edu/classes/econ364/duffy/documents/costapproachfromntbk.pdf (last accessed February 27, 2015).

[201] Babcock, Keith M. Condemnation 101: Fundamentals of Condemnation Law and Land Valuation, page 2 (January 2008).

[202] Babcock, Keith M. Condemnation 101: Fundamentals of Condemnation Law and Land Valuation, page 11 (January 2008).

"Highest and best use" is defined as "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value." See Beckhart, Leslie K. No Intrinsic Value: The Failure of Traditional Real Estate Appraisal Methods to Value Income-Producing Property. Southern California Law Review, pp. 9-10, 66 S. Cal. L. Rev. 2251 (July 1993). See also American Society of Farm Managers & Rural Appraisers. COST APPROACH, page 385, http://www2.econ.iastate.edu/classes/econ364/duffy/documents/costapproachfromntbk.pdf (last accessed February 27, 2015).

[203] Babcock, Keith M. Condemnation 101: Fundamentals of Condemnation Law and Land Valuation, page 11 (January 2008). See also Kabat Thomas & Shultz Valeo. HOTEL VALUATION AND CONSIDERATIONS IN EMINENT DOMAIN, page 6 (January 2002).

[204] Beckhart, Leslie K. No Intrinsic Value: The Failure of Traditional Real Estate Appraisal Methods to Value Income-Producing Property. Southern California Law Review, page 10, 66 S. Cal. L. Rev. 2251 (July 1993).

[205] American Society of Farm Managers & Rural Appraisers. COST APPROACH, page 406, http://www2.econ.iastate.edu/classes/econ364/duffy/documents/costapproachfromntbk.pdf (last accessed February 27, 2015).

[206] Polish Real Estate Scientific Society. Selected Aspects of the Cost Approach in Property Valuation, page 19, http://www.tnn.org.pl/tnn/publik/19/Monografia_XIX_2011.pdf (last accessed February 27, 2015).

[207] 26 Am Jur 2d § 251.

[208] Jahr, Alfred D. Law of Eminent Domain Valuation and Procedure, page 279 (1953).

[209] Beckhart, Leslie K. No Intrinsic Value: The Failure of Traditional Real Estate Appraisal Methods to Value Income-Producing Property. Southern California Law Review, page 10, 66 S. Cal. L. Rev. 2251 (July 1993).

[210] American Institute of Certified Public Accountants, et al. INTERNATIONAL GLOSSARY OF BUSINESS VALUATION TERMS, pp. 48-49, http://www.aicpa.org/InterestAreas/ForensicAndValuation/Membership/DownloadableDocuments/Intl%20Glossary%20of%20BV%20Terms.pdf (last access February 25, 2015).

[211] Appraisal and Valuation, page 406, http://www.dre.ca.gov/files/pdf/refbook/ref15.pdf (last accessed February 25, 2015).

[212] Beckhart, Leslie K. No Intrinsic Value: The Failure of Traditional Real Estate Appraisal Methods to Value Income-Producing Property. Southern California Law Review, page 10, 66 S. Cal. L. Rev. 2251 (July 1993). International Association of Assessing Officers. Standards on Mass Appraisal of Real Property, page 21, http://katastar.rgz.gov.rs/masovna-procena/Files/2.Standard_of_Mass_Appraisal_of_Real_Property_2013.pdf (last accessed February 25, 2015).

[213] The Royal Institution of Chartered Surveyors. THE DEPRECIATED REPLACEMENT OF VALUATION FOR FINANCIAL REPORTING: VALUATION INFORMATION PAPER 10, page 2, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015). INTERNATIONAL VALUATION GUIDANCE NOTE 8. International Valuation Standards, Sixth Edition, page 309, http://www.romacor.ro/legislatie/22-gn8.pdf (last accessed February 25, 2015).

[214] Plimmer, Frances & Sayce, Sarah. Depreciated Replacement Cost – Consistent Methodology, page 1, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 25, 2015).

[215] Plimmer, Frances & Sayce, Sarah. Depreciated Replacement Cost – Consistent Methodology, page 5, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 25, 2015). International Association of Assessing Officers. Standards on Mass Appraisal of Real Property, page 17, http://katastar.rgz.gov.rs/masovna-procena/Files/2.Standard_of_Mass_Appraisal_of_Real_Property_2013.pdf (last accessed February 25, 2015).

The International Valuation Standards further explains the computation:

5.5. **In applying DRC methodology, the Valuer shall:**

5.5.1.1. **Assess the land at its Market Value for Existing Use**
5.5.1.2 **Assess the current gross replacement cost of improvements less allowances to reflect:**

- Physical deterioration
- Functional, or technical, obsolescence
- Economic, or external, obsolescence

5.5.1.3 **Assess physical deterioration in the improvements, resulting from wear and tear over time and the lack of necessary maintenance**. Different valuation methods may be used for estimating the amount required to rectify the physical condition of the improvements.

5.5.1.3.1 Some methods rely on estimates of specific elements of depreciation and contractor' charges;

5.5.1.3.2 Other methods rely on direct unit value comparisons between properties in similar condition.

5.5.1.4 **Assess functional/technical obsolescence caused by advances in technology that create new assets capable of more efficient delivery of goods and services**.

5.5.1.4.1 Modern production methods may render previously existing assets fully or partially obsolete in terms of current cost equivalency.

5.5.1.4.2 Functional/technical obsolescence is usually allowed for by adopting the costs of a modern equivalent asset.

5.5.1.5 **Assess economic/external obsolescence resulting from external influences that affect the value of the subject property**.

5.5.1.5.1 External factors may include changes in the economy, which affect the demand for goods and services, and, consequently, the profitability of business entities.

5.5.1.6 **Estimate all relevant forms of remediable deterioration and obsolescence, including the costs of *optimization* required to rectify the property so as to optimize its productivity.**

5.5.1.7 **Calculate the sum of the *Market Value for Existing Use* of the land and the Depreciated Replacement cost of the improvements (current gross replacement cost of the improvements less allowances for physical deterioration and all relevant forms of obsolescence) as the DRC estimate.**

5.5.1.8 **In the case of plant and machinery, the DRC method of calculation is the same but excludes the land element.**

INTERNATIONAL VALUATION GUIDANCE NOTE 8. International Valuation Standards, Sixth Edition, pp. 313-314, http://www.romacor.ro/legislatie/22-gn8.pdf (last accessed February 25, 2015).

[216] The Royal Institution of Chartered Surveyors. THE DEPRECIATED REPLACEMENT OF VALUATION FOR FINANCIAL REPORTING: VALUATION INFORMATION PAPER 10, page 10, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015).

[217] Dedeaux, Warren H. TREADING ON WATER: PUBLIC UTILITIES, EMINENT DOMAIN, AND JUST COMPENSATION - VALUING THE PLANT. Mississippi Law Journal, page 6, 82 Miss. L.J. 1375 (2013).

[218] The Royal Institution of Chartered Surveyors. THE DEPRECIATED REPLACEMENT OF VALUATION FOR FINANCIAL REPORTING: VALUATION INFORMATION PAPER 10, page 7, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015).

[219] Plimmer, Frances & Sayce. DEPRECIATED REPLACEMENT COST – CONSISTENT METHODOLOGY, page 11, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 27, 2015). Amdur, James. TELECOMMUNICATIONS PROPERTY TAXATION. Federal Communications Law Journal, 46 Fed. Comm. L.J. 219 (March, 1994).

[220] Plimmer, Frances & Sayce. DEPRECIATED REPLACEMENT COST – CONSISTENT METHODOLOGY, page 9, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 27, 2015). See also MARKET VALUE ASSESSMENT IN SASKATCHEWAN HANDBOOK: DEPRECIATION ANALYSIS GUIDE, pp. 5-8, http://www.sama.sk.ca/mvahandbook/6Depreciation.pdf (last accessed February 25, 2015).

[221] Plimmer, Frances & Sayce. DEPRECIATED REPLACEMENT COST – CONSISTENT METHODOLOGY, page 9, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 27, 2015). See also MARKET VALUE ASSESSMENT IN SASKATCHEWAN HANDBOOK: DEPRECIATION ANALYSIS GUIDE, pp. 5-8, http://www.sama.sk.ca/mvahandbook/6Depreciation.pdf (last accessed February 25, 2015).

[222] Plimmer, Frances & Sayce. DEPRECIATED REPLACEMENT COST – CONSISTENT METHODOLOGY, page 10, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 27, 2015). See also MARKET VALUE ASSESSMENT IN SASKATCHEWAN HANDBOOK: DEPRECIATION ANALYSIS GUIDE, pp. 5-8, http://www.sama.sk.ca/mvahandbook/6Depreciation.pdf (last accessed February 25, 2015).

[223] Reilly, Robert F. PERSONAL PROPERTY APPRAISAL REPORT GUIDELINES, American Bankruptcy Institute Journal, 23-6 ABIJ 46, (July 2004). See also Saskatchewan Assessment Management Agency. MARKET VALUE ASSESSMENT IN SASKATCHEWAN HANDBOOK: DEPRECIATION ANALYSIS GUIDE, pp. 5-8, http://www.sama.sk.ca/mvahandbook/6Depreciation.pdf (last accessed February 25, 2015). Fong, Cory. PROPERTY TAX VALUATION CONCEPTS – RESIDENTIAL AND COMMERCIAL PROPERTY,

http://www.nd.gov/tax/property/pubs/guide/conceptsresidentialcommercialproperty.pdf?20150305015052 (last accessed February 25, 2015). See also THE COST APPROACH, https://professional.sauder.ubc.ca/re_creditprogram/course_resources/courses/content/444/materials/R1B44409_chapter05.pdf (last accessed February 27, 2015).

[224] Plimmer, Frances & Sayce. DEPRECIATED REPLACEMENT COST – CONSISTENT METHODOLOGY, page 10, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf (last accessed February 27, 2015). Amdur, James. TELECOMMUNICATIONS PROPERTY TAXATION. Federal Communications Law Journal, 46 Fed. Comm. L.J. 219 (March, 1994).

[225] The Royal Institution of Chartered Surveyors. THE DEPRECIATED REPLACEMENT OF VALUATION FOR FINANCIAL REPORTING: VALUATION INFORMATION PAPER 10, page 22, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015).

[226] Reilly, Robert F. PERSONAL PROPERTY APPRAISAL REPORT GUIDELINES, American Bankruptcy Institute Journal, 23-6 ABIJ 46, (July 2004).

[227] Reilly, Robert F. PERSONAL PROPERTY APPRAISAL REPORT GUIDELINES, American Bankruptcy Institute Journal, 23-6 ABIJ 46, (July 2004). See also Fong, Cory. PROPERTY TAX VALUATION CONCEPTS – RESIDENTIAL AND COMMERCIAL PROPERTY,

http://www.nd.gov/tax/property/pubs/guide/conceptsresidentialcommercialproperty.pdf?20150305015052 (last accessed February 25, 2015). See also THE COST APPROACH, https://professional.sauder.ubc.ca/re_creditprogram/course_resources/courses/content/444/materials/R1B44409_chapter05.pdf (last accessed February 27, 2015).

[228] Plimmer, Frances & Sayce. DEPRECIATED REPLACEMENT COST – CONSISTENT METHODOLOGY, page 10, https://www.fig.net/pub/fig2006/papers/ts86/ts86_01_plimmer_sayce_0268.pdf.page 11 (last accessed February 27, 2015). See also Fong, Cory. PROPERTY TAX VALUATION CONCEPTS – RESIDENTIAL AND COMMERCIAL PROPERTY,

http://www.nd.gov/tax/property/pubs/guide/conceptsresidentialcommercialproperty.pdf?20150305015052 (last accessed February 25, 2015). See also THE COST APPROACH, https://professional.sauder.ubc.ca/re_creditprogram/course_resources/courses/content/444/materials/R1B44409_chapter05.pdf (last accessed February 27, 2015).

[229] The Polish Real Estate Scientific Society, Selected aspects of the Cost Approach in Property Valuation, pp. 19-20, http://www.tnn.org.pl/tnn/publik/19/Monografia_XIX_2011.pdf (last accessed February 27, 2015.)

[230] Masterman, James D., Eminent Domain and Land Valuation Litigation: THE THREE APPROACHES TO VALUE, p. 9 (January 2002).

[231] *The Republic of the Philippines v. CA,* 494 Phil. 495-496, 510 (2005).

[232] *B.H. Berkenkotter & Co. v. Court of Appeals,* 216 Phil 584, 586 (1992).

[233] *Spouses Cabahug v. National Power Corporation,* G.R. No. 186069, January 30, 2013, 689 SCRA 667-668, 675-676; and *National Power Corporation v. Spouses Zabala,* G.R. No. 173520, January 30, 2013, 689 SCRA 554, 562-563.

[234] Jahr, Alfred D., Law of Eminent Domain Valuation and Procedure, pp. 93-94 (1953).

[235] *Rollo* in G.R. No. 209917, Volume I, p. 631.

[236] Dedeaux, Warren H., Mississippi Law Journal. TREADING ON WATER: PUBLIC UTILITIES, EMINENT DOMAIN, AND JUST COMPENSATION -- VALUING THE PLANT, p. 5 (2013).

[237] *Rollo* in G.R. No. 209917, Volume I, p. 588.

[238] Id. at 589.

[239] Id. at 590.

[240] Id. at 592.

[241] Id.

[242] Id. at 593.

[243] Id. at 598.

[244] Id. at 603.

[245] Id. at 604.

[246] Id. at 605.

[247] Id. at 1392-1394.

[248] Id. at 1516.

[249] RULES OF COURT, Rule 129, Sections 1 and 2.

[250] RULES OF COURT, Rule 39, Section 48.

[251] Tengson Report dated December 2010, p. 9.

[252] *Rollo* in G.R. No. 209696, Volume II, pp. 585-586.

[253] Scott Wilson Report, 3.3.2.

[254] Report and Response from Takenaka & Asahikosan, Contractors for the NAIA 3 Facility and Intervenors in the Expropriation Case between the GRP and PIATCO – December 2010, RTC rollo, Volume 32-R, pp. 10-24.

[255] Id. at 10.

[256] *Rollo* in G.R. No. 209917, Volume II, p. 1783.

[257] Id. at 1810, Scott Wilson Report, 3.3.28.

[258] Daisuke Fukamachi, Takenaka's Corporate Representative and Project Director of the NAIA-IPT III project, **summarized** Takenaka's position in his letter dated January 28, 2008, addressed to Mr. Alfonso Cusi, the General Manager of MIAA:

Re: NAIA INTERNATIONAL PASSENGER TERMINAL 3 – STRUCTURAL ISSUES

We write to you in this instance to summarize the position on the above noted issue, following various recent meetings and presentations by both ourselves and our design consultant, Meinhardt. Firstly, we need to summarize the history of this issue to ensure that our position is reiterated and maintained.

After the appointment by you of your consultant TCGI, we received on 2 March 2007, a 91 page document detailing suggestions by TCGI. This document was issued despite the fact that we had (nor have since) accepted the allegation of defective design and despite the fact that no supporting documents were issued by TCGI to support both their allegations and/or their "remediation" suggestions.

Alleged Structural Design Deficiencies

With the exception of "non-supported" calculations in respect of 26 beams and part of the PT Slab, TCGI have always failed to produce structural calculations in respect of their allegation of design deficiencies, even when requested to do so in order that these may be checked by our design consultants and our structural design office in Tokyo. Despite this failure, TCGI continue to maintain its position on these alleged design deficiencies. In our opinion, if allegations are made, proof must be forthcoming; otherwise any allegations should be regarded as erroneous and should be ignored.

We have responded in every way and at every juncture, and provided all details and opinions to support our position, yet you, on the advice of TCGI have not accepted our position despite unequivocal proof that our design is safe and in accordance with the relevant codes and standards. We therefore conclude that TCGI's submission and their position cannot be based on technical grounds.

We have identified and pointed out to you (and TCGI) inaccuracies in TCGI calculations and documents and as yet TCGI have not been able to refute these facts. They have instead tried to redirect the focus of attention onto discussions regarding the ETABS modeling, which, it is important to note, primarily for the structural model analysis of the shear walls within the superstructure (for the Building Frame System adapted for the Head House and Concourse buildings), for which TCGI have again failed to provide any alleged design deficiency calculations.

Our position remains the same, and we and our design consultants cannot accept TCGI's approach on these structural issues, whereby they continue to make unsubstantiated and unproven allegations. We now reiterate that any further discussions on these matters must be subject to TCGI stating in detail what the alleged design deficiencies are, with full and complete supporting calculations for our and Meinhardt's response.

Ductility (Code Interpretation)

We have repeatedly stated and clarified in detail our interpretation of the relevant Sections of NSCP 1992 related to ductility. We have also provided supporting opinions from two members of the American Concrete Institute (ACI), Dr.'s Ghosh and Mast, which state that our interpretation is correct. However, TCGI have refused to accept any interpretation other than their own. Neither have TCGI produced letters from any ACI members, or members from any other recognized institute, supporting their interpretation of the code. It is worthwhile noting here that the NSCP 1992 code is based on the ACI 318 1989 code and therefore such opinions from these ACI members, as obtained by us, should be taken seriously.

We therefore maintain that our designs conform to NSCP 1992, (which is the relevant version of the code for this design) and as such the design is safe and sound.

Regardless of our position, we have, as a gesture of goodwill, and in an attempt to solve the structural issue, proposed beam enhancement to

strengthen the structure, even though we maintain that this is not necessary. Even with this proposal submitted, TCGI continue to question our design professionalism and we understand their advice, you have not as yet accepted this proposal, even though the enhancement would strengthen the building structure. The final version of this proposal is still open to acceptance by you.

PT Slabs

Again, TCGI has made allegations of design deficiencies in this design, without providing substantiation and/or proof of the same, and with the provision of only half the required design calculations. However, we have provided our design calculations for level 2 sector 3, (from our D&C contractor, BBR) which prove there is no design deficiency. BBR has also provided further calculations to show the impact of "overstressing" the PT Slab, and these calculations again prove the adequacy of the design. Yet TCGI continue to make these allegations.

Furthermore, our proposal to carry out load tests on specific slabs, which as TCGI has pointed out have some visible "cracking", has been presented on the basis of testing the worst affected slabs, thus proving that if these worst slabs pass the load test, all others by definition would pass the same test. Therefore we see no need to carry out 14 tests as suggested by TCGI, and still consider 2 tests more than adequate, even though we will add another 9 tests (Maximum) as a gesture of goodwill.

General

Finally, we would make some general points and state a few additional facts and observations:

Both Meinhardt and ourselves have given you adequate design guarantees which you may call upon in the event of any proven design deficiencies. These guarantees are comprehensive and long standing and both parties shoulder a heavy responsibility by issuing these documents especially Takenaka who have a single point responsibility to MIAA and the DOTC.

In Arup's letter to you ref: 131269/RVM/08-0023, dated 15 January 2008, they have described the procedure which is outlined n NSCP 1992, in respect of the required calculations for ductility and structural deformation compatibility. What they fail to state is whether TCGI's interpretation of NSCP 1992 is correct or not, or whether our interpretation is correct or not. They have also made reference to ACI 318 1995, which is not a national code, neither is it one representing the basis of the design. They have failed to conclude this issue even with their own opinion, and we therefore concluded that they cannot state unequivocally that our interpretation of NSCP 1992 is incorrect, a point we have made on numerous occasions in the past.

Both ourselves and Meinhardt have presented all design details and an ETABS modeling presentation to you and TCGI. We have requested on numerous occasions that TCGI present their version of the same calculations and ETABS modeling, without success, with TCGI unable or unwilling to present the same, even though you, as the Employer, have instructed them to do so several times. We now have a "request" (demand) from TCGI to make yet another design and modeling presentation and have had the audacity to present us with their RULES for this presentation, even requiring that we allow filming and photography of the proceedings. This is totally unacceptable. We have therefore concluded that there will be no further presentation to TCGI whilst their attitude remains unchanged, and unless they provide us with full supporting calculations to substantiate their allegations, and even in that event neither Takenaka nor Meinhardt will accept or be subjected to any "rules" for any future presentation, which have been presented recently by TCGI.

We again refer you to the Clause 4.5 of the General Framework Agreement, (GFA) (dated 6 September 2005) which confirms that we have no obligation to approve or confirm your consultant's findings and we have no obligation to be bound by the same. Despite this "no obligation" and despite our position regarding the correctness and safety of the design, we have over the past 9 months discussed various possibilities and scenarios, have submitted numerous presentations and compromise documents and other calculations, and spent large amounts of money to try and convince you and your consultant that our position is correct, where in fact we had no need to do so. If TCGI continue with their present unsubstantiated position we may find our position untenable and would need to discuss our future position on this project with our Senior Management in Tokyo. We also remind you that any design and/or works done by any third party on the Terminal 3 structure would invalidate any single point responsibility and any guarantees we or Meinhardt have given you.

See RTC *rollo,* Volume 32-R, pp. 26-28. For exhaustive discussion of Takenaka and Asahikosan's position with supporting documents, See RTC *rollo*, Volume 32-R and RTC *rollo,* Volume 33-B.

[259] See RTC *rollo*, Volume XXXIII-B.

[260] *Rollo* in G.R. No. 209696, Volume II, pp. 645-659.

[261] Id. at 660-664.

[262] Id. at 671-677.

[263] RULES OF COURT, Rule 37, Section 1(b).

[264] *Rollo* in G.R. No. 209696, Volume I, pp. 334-335.

[265] RULES OF COURT, Rule 131, Section 3(a).

[266] Id., Section 3(d).

[267] Id., Section 3(p).

[268] Id., Section 3(q).

[269] *Ogawa v. Menigishi,* G.R. No. 193089, July 9, 2012, 676 SCRA 15, 22, citing *Amoroso v. Alegre,* G.R. No. 142766, June 15, 2007, 524 SCRA 641-652.

[270] RULES OF COURT, Rule 133, Section 1.

[271] *De Leon v. Bank of the Philippines,* G.R. No. 184565, November 20, 2013,710 SCRA 453-454, citing *Jison v. Court of Appeals,* 350 Phil. 138, 173 (1998).

[272] *Municipality of Candijay v. Court of Appeals,* 321 Phil. 922, 926 (1995).

[273] *Rivera v. Court of Appeals,* 348 Phil. 735, 743 (1998).

[274] *Supra* note 273.

[275] *Supra* note 274.

[276] *Rollo* in G.R. No. 209731, Volume II, p. 1753.

[277] On April 25, 2006, Judge Mupas and the BOC conducted a physical inspection of the NAIA-IPT III. Representatives from PIATCO and the Government formed part of the inspection team. See RTC rollo, Volume XXVI-A, unpaged; and RTC rollo, Volume VI, p. 5356.

[278] See 3.3.28 & 3.3.32 of the Scott Wilson Report.

[279] http://www.dotc.gov.ph/images/SectoralAA_Procurement/miaa/2012/ITB-212M.pdf

[280] http://www.gov.ph/2012/08/14/dotc-reminds-bidders-for-p212-m-naia-t3-retrofit-project-to-submit-bids-by-august-23/

[281] *Rollo* in G.R. No. 209917, Volume I, p. 606.

[282] *Republic of the Philippines v. Asia Pacific Integrated Steel Corp.,* G.R. No. 192100, March 12, 2014.

[283] *Rollo* in G.R. No. 209917, Volume I, p. 1412.

[284] Id. at 1396-1398.

[285] Court of Appeals Amended Decision, p. 22.

[286] *Heirs of Prodon v. Heirs of Alvarez*, G.R. No. 170604, September 2, 2013, 704 SCRA 465-466, 477-479.

[287] Id.

[288] *Republic of the Philippines v. Sandiganbayan*, G.R. No. 188881, April 21, 2014.

[289] 29A Am Jur 2d Evidence § 1072, § 1073, & § 1079.

[290] Id. at § 1077.

[291] Id. at § 1079.

[292] *Rollo* in G.R. No. 209917, Volume II, p. 1863.

[293] *Eulogio v. Spouses Apeles,* G.R. No. 167884, January 20, 2009, 596 SCRA 615, 626.

[294] *Real v. Belo*, 542 Phil. 111, 122 (2007), citing *Domingo v. Robles,* G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; and *Ongpauco v. CA,* G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400.

[295] CIVIL CODE, Article 2224.

[296] *National Power Corporation v. Heirs of Sangkay,* 671 Phil. 570-571, 591-592 (2011).

[297] NAIA-IPT III Bills of Quantities, Volume I, p. 1.2.1.

[298] Id.

[299] Id. at 1.2.2.

[300] Id.

[301] Id.

[302] Id. at 1.1.5.

[303] Id. at 1.1.6.

[304] Id.

[305] Id. at 1.2.1.

[306] Id.

[307] Id. at 1.2.2.

[308] 26 Am Jur 2d Eminent Domain § 263.

[309] Royal Institution of Chartered Surveyors. The Depreciated Replacement Cost Method of Valuation for Financial Report Valuation Information Paper, page 1, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015).

[310] APPRAISAL AND VALUATION, page 408, http://www.dre.ca.gov/files/pdf/refbook/ref15.pdf (last accessed February 25, 2015).

[311] Royal Institution of Chartered Surveyors. The Depreciated Replacement Cost Method of Valuation for Financial Report Valuation Information Paper, page 1, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015).

[312] Royal Institution of Chartered Surveyors. The Depreciated Replacement Cost Method of Valuation for Financial Report Valuation Information Paper, page 1, http://aces.org.uk/uploads/Depreciated_replacement_cost_method_of_valuation_for_financial_reporting_2007.pdf (last accessed February 25, 2015).

[313] Kimmel, P., Weygandt, J., Kieso, D. & Wiley, J. Financial Accounting Tools for Business Decision Making, p. 422 (2004).

[314] Id.

[315] The Polish Real Estate Scientific Society, Selected aspects of the Cost Approach in Property Valuation, p. 37, http://www.tnn.org.pl/tnn/publik/19/Monografia_XIX_2011.pdf (last accessed February 27, 2015.)

[316] Kimmel, P., Weygandt, J., Kieso, D. & Wiley, J. Financial Accounting Tools for Business Decision Making, p. 422 (2004).

[317] The Polish Real Estate Scientific Society, Selected aspects of the Cost Approach in Property Valuation, page 37, http://www.tnn.org.pl/tnn/publik/19/Monografia_XIX_2011.pdf. See also DEPRECIATION UNDER GAAP (FOR BOOK PURPOSES), http://www.aipb.org/pdf/DEPRECIA.pdf (last accessed March 2, 2015).

[318] The Polish Real Estate Scientific Society, Selected aspects of the Cost Approach in Property Valuation, page 37, http://www.tnn.org.pl/tnn/publik/19/Monografia_XIX_2011.pdf (last accessed February 27, 2015.) See also THE COST APPROACH, https://professional.sauder.ubc.ca/re_creditprogram/course_resources/courses/content/444/materials/R1B44409_chapter05.pdf (last accessed February 27, 2015).

[319] The Polish Real Estate Scientific Society, Selected aspects of the Cost Approach in Property Valuation, page 38, http://www.tnn.org.pl/tnn/publik/19/Monografia_XIX_2011.pdf (last accessed February 27, 2015.)

[320] *Rollo* in G.R. No. 209917, Volume I, p. 608.

[321] Id. at 1414.

[322] Id. at 1514.

[323] Gary Taylor Report, p. 4.

[324] *Rollo* in G.R. No. 209731, Volume VII, p. 3097.

[325] CIVIL CODE, Article 1409.

[326] *Filinvest Land, Inc. v. Ngilay*, G.R. No. 174715, October 11, 2012, 684 SCRA 128, citing *Development Bank of the Philippines v. CA, et al.*, 319 Phil. 447, 454-455 (1995).

[327] *Rollo* in G.R. No. 209917, Volume I, pp. 1414-1417.

[328] Id. at 1415.

[329] Id. at 610.

[330] Id. at 592.

[331] Id. at 599.

[332] Id. at 1514.

[333] G.R. No. 166973, February 10, 2009, 578 SCRA 234.

[334] RULES OF COURT, Rule 67, Section 4.

[335] According to Bangko Sentral ng Pilipinas, consumer price index is an indicator of the change in the average retail prices of a fixed basket of goods and services commonly purchased by households relative to a base year. The CPI is used in calculating the inflation rate and purchasing power of the peso. The inflation rate is defined as the annual rate of change or the year-on-year change in the CPI. It is the rate of change in the average price level between two periods. The purchasing power of the peso shows how much the peso in the base period is worth in the current period. It is computed as the reciprocal of the CPI for the period under review multiplied by 100.

See Consumer Price Index, Inflation and Purchasing Power of the Peso, http://www.bsp.gov.ph/statistics/Metadata/CPI_metadata.pdf (last

accessed February 27, 2015).

[336] Consumer Price Index, Inflation and Purchasing Power of the Peso, http://www.bsp.gov.ph/statistics/Metadata/CPI_metadata.pdf (last accessed February 27, 2015).

[337] *Rollo* in G.R. No. 209731, Volume II, p. 1690.

[338] RA 8974 is silent on the reckoning period of interests in the expropriation of property for national infrastructure projects. Pursuant to Section 14 of RA 8974, the Rules of Court suppletorily applies. In this respect, Section 10, Rule 67 of the Rules of Court provides:

> Section 10. Rights of plaintiff after judgment and payment. — Upon payment by the plaintiff to the defendant of the compensation fixed by the judgment, **with legal interest thereon from the taking of the possession of the property**, or after tender to him of the amount so fixed and payment of the costs, the plaintiff shall have the right to enter upon the property expropriated and to appropriate it for the public use or purpose defined in the judgment, or to retain it should he have taken immediate possession thereof under the provisions of section 2 hereof. If the defendant and his counsel absent themselves from the court, or decline to receive the amount tendered, the same shall be ordered to be deposited in court and such deposit shall have the same effect as actual payment thereof to the defendant or the person ultimately adjudged entitled thereto. (10a)

However, even without this provision, interest on just compensation will still accrue on the date of taking since the Section 9, Article 3 of the 1987 Constitution provides that just compensation must be paid on the date of taking.

[339] *Apo Fruits Corporation v. Land Bank of the Philippines,* 647 Phil. 276 (2010).

[340] Id.

[341] Id.

[342] G.R. No. 146587, July 2, 2002, 383 SCRA 623.

[343] Citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, [G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95], we awarded a legal interest of 12% per annum on just compensation. The Court upheld the imposition of the 12% interest rate in just compensation cases, as ruled in Republic, in *Reyes v. National Housing Authority* [443 Phil. 603 (2003)], *Land Bank of the Philippines v. Wycoco* [464 Phil. 83 (2004)], *Republic v. Court of Appeals* [494 Phil. 494 (2005)].

[344] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

[345] 443 Phil. 603 (2003).

[346] 464 Phil. 83 (2004).

[347] 494 Phil. 494 (2005).

[348] 544 Phil. 378 (2007).

[349] 557 Phil. 737 (2007).

[350] 608 Phil. 9 (2009).

[351] Supra note 340, at 257-258, 274-277.

[352] G.R. No. 182431, November 17, 2010, 635 SCRA 285 .

[353] G.R. No. 174007, June 27, 2012, 675 SCRA 187.

[354] G.R. No. 182209, October 3, 2012, 682 SCRA 264.

[355] BSP Circular No. 799 reads in part:

> Section 1. The rate of interest **for the loan or forbearance of any money**, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, **shall be six per cent (6%) per annum**. [emphasis supplied]

[356] *Rollo* in G.R. No. 209731, Volume I, p. 1172.

[357] Supra note 340.

[358] *Rollo* in G.R. No. 209731, Volume I, p. 132.

[359] Section 14 of RA 8974 IRR provides:

Section 14. Trial Proceedings. – Within the sixty (60)-day period prescribed by the Act, all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provision on expropriation of Rule 67 of the Rules of Court.

[360] *Supra* note 19.

[361] *Republic v. Gingoyon*, 517 Phil. 9-10 (2006).

[362] 26 Am Jur 2d Eminent Domain § 182.

[363] 352 Phil. 833-854 (1998).

[364] 49 Phil. 605-609 (1926).

[365] 655 Phil. 104-109 (2011).

[366] G.R. Nos. 170375, 170505, 173355-56, 173401, 173563-64, 178779 & 178894, July 7, 2010, 624 SCRA 360-492.

[367] An Act Creating the Philippine Licensing Board for Contractors, Prescribing Its Powers, Duties and Functions, Providing Funds Therefor, and For Other Purposes.

[368] G.R. No. 187677, April 17, 2013, 696 SCRA 819.

[369] *Mallon v. Alcantara,* 536 Phil. 1049, 1054 (2006).

[370] Supra note 365.

[371] Article 2242 of the Civil Code provides:

Article 2242. With reference to specific immovable property and real rights of the debtor, the following claims, mortgages and liens shall be preferred, and shall constitute an encumbrance on the immovable or real right:

(1) Taxes due upon the land or building;
(2) For the unpaid price of real property sold, upon the immovable sold;
(3) Claims of laborers, masons, mechanics and other workmen, as well as of architects, engineers and contractors, engaged in the construction, reconstruction or repair of buildings, canals or other works, upon said buildings, canals or other works;
(4) Claims of furnishers of materials used in the construction, reconstruction, or repair of buildings, canals or other works, upon said buildings, canals or other works;
(5) Mortgage credits recorded in the Registry of Property, upon the real estate mortgaged;
(6) Expenses for the preservation or improvement of real property when the law authorizes reimbursement, upon the immovable preserved or improved;
(7) Credits annotated in the Registry of Property, in virtue of a judicial order, by attachments or executions, upon the property affected, and only as to later credits;
(8) Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;
(9) Claims of donors or real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated; and
(10) Credits of insurers, upon the property insured, for the insurance premium for two years. (1923a)

[372] An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals.

[373] *Republic v. Castelvi,* 157 Phil. 344 (1974).

[374] *Sy v. Local Government of Quezon City,* G.R. No. 202690, June 5, 2013, 297 SCRA 622-623, 634; and *Republic of the Philippines v. Sarabia,* 505 Phil. 254, 262 (2005).

[375] *Republic of the Philippines v. Legaspi, Sr.*, G.R. No. 177611, April 18, 2012, 670 SCRA 120-121, citing *Municipality of Biñan v. Judge Garcia,* 259 Phil. 1058, 1068-1069 (1989).

[376] Id.

[377] Bernas, J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY, pp. 421-422 (2003 Ed.)

[378] 104 Phil. 443 (1958).

[379] 271 Phil. 1-8 (1991).

[380] BLACK'S LAW DICTIONARY, p. 1444 (5th ed. 1979).

[381] BLACK'S LAW DICTIONARY, 5th Ed., p. 92.

[382] *Arevalo v. Planters Development Bank,* G.R. No. 193415, April 18, 2012, 670 SCRA 262-263.

[383] *Sarmiento v. Magsino,* G.R. No. 193000, October 16, 2013, 707 SCRA 532-533, 543; *Korea Exchange Bank v. Judge Gonzales,* 520 Phil. 691, 701 (2006); *Desaville, Jr. v. Court of Appeals,* 480 Phil. 22, 26-27 (2004); *Royal Cargo Corporation v. Civil Aeronautics Board,* 465 Phil. 719-720, 725 (2004).

CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

I entertain serious doubts about the propriety of the remedy pursued by the government to comply with the Decision of this court in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*[1] The improvements built by Philippine International Air Terminals Co., Inc. through its subcontractors may have been private, but it was the product of a procurement contract that would later be declared as illegal and *void ab initio.*

Thus, in my view, it is not the kind of private property protected under Article III, Section 9[2] of the Constitution. It is not the kind of property that should be the subject of expropriation. Otherwise, the essence of the illegality of the contract will be nullified.

If any, the subsequent payment by government should only be to adhere to a civil law policy against unjust enrichment. Even then, the full application of this concept should also be qualified. The contractor does not stand in the same footing as an ordinary property owner. The improvements had been introduced by virtue of a contract that was subsequently declared illegal.

Nonetheless, the rules on valuation will be different should government be made to pay the owner so that there is no unjust enrichment. Instead of the fair market value of the property at the time of the taking, the government would have had to pay the value of the property based on its utility at present.

However, these issues were not raised, and the government chose the remedy of expropriation. Thus, this court could not adequately address these issues in these cases.

Finally, I reiterate the view that while just compensation must be the value of the property at the time of the taking, the actual amount to be paid should take into consideration the present value of the property. I had occasion to point this out in my Separate Opinions in *Secretary of*

the Department of Public Works and Highways v. Spouses Tecson[3] and *Heirs of Spouses Tria v. Land Bank of the Philippines*.[4]

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[1] 465 Phil. 545 (2004) [Per J. Puno, En Banc]; *See Agan, Jr. v. Philippine International Air Terminals Co., Inc.,* 450 Phil. 744 (2003) [Per J. Puno, En Banc].

[2] Section 9. Private property shall not be taken for public use without just compensation.

[3] J. Leonen, Dissenting Opinion in G.R. No. 179334, July 1, 2013, 700 SCRA 243, 274–279 [Per J. Peralta, Third Division] and J. Leonen, Dissenting Opinion on the Resolution, G.R. No. 179334, April 21, 2015 [Per J. Peralta, Third Division].

[4] G.R. No. 170245, July 1, 2013, 700 SCRA 188, 200–209 [Per J. Peralta, Third Division].
