

ORIGINAL DOCUMENTS IN SAFE

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Case No. 1

Date of filing: 6 APR 84

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
_____ pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: Notification of Correction

- Date 6 APR 84
4 pages in English _____ pages in Farsi

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۳ / ۱۱ / ۱۷ 6 APR 1984
No.	1

CASE NO. 1

CHAMBER THREE

AWARD NO. 116-1-3

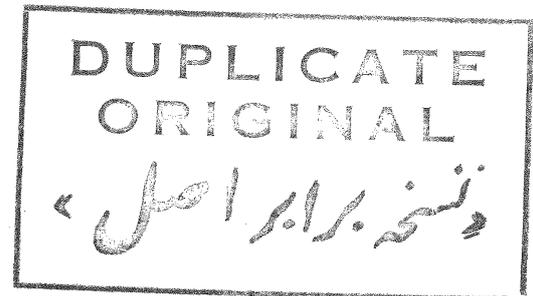
WILLIAM L. PEREIRA ASSOCIATES, IRAN,

Claimant,

and

ISLAMIC REPUBLIC OF IRAN,

Respondent.



CONCURRING OPINION OF RICHARD M. MOSK

NOTIFICATION OF CORRECTION

Attached are the corrected pages 2 and 3 of the English version of the Concurring Opinion of Richard M. Mosk, filed on 19 March 1984, together with an explanatory memorandum.

The Co-Registrars

MEMORANDUM

TO: Co-Registrars
FROM: Richard M. Mosk
DATE: 5 April 1984
RE: NOTIFICATION OF CORRECTION

Attached please find the corrected pages 2 and 3 of the English version of my Concurring Opinion in Case No.1, filed on 19 March 1984.

The corrections made are:

Page 2, line 25: "is" is changed to "are"

Page 3, line 28: "not" is deleted



appeared to have been few disputes between the parties or complaints by the Iranian Medical Center. It seems that it was only when the Iranian Medical Center encountered financial problems that its new management began to conceive of ways to avoid payment. There was no doubt that monies were due. Claimant has had to wait years to obtain compensation. Because of a contractual term, Claimant has only been able to receive 6% interest on its receivable, a rate far below prevailing rates. In order to obtain this award, Claimant has had to undergo a costly and time-consuming proceeding before this Tribunal. Accordingly, the Tribunal should have awarded Claimant its full costs incurred in the arbitration, including its reasonable attorneys' fees. Article 38, Tribunal Rules.

Reduction of Fees

A claimant does not have the burden of proving its claim to an absolute certainty or beyond a reasonable doubt. It need only establish its case by a preponderance of the evidence. The decision by the Tribunal to reject some portions of Claimant's claim suggests that the Tribunal placed too heavy a burden on Claimant to establish its claims. The Claimant introduced more than sufficient evidence to establish those elements of claims rejected by the Tribunal. The Tribunal's decisions on these elements, in my view, are contrary to the weight of the evidence.

The evidence shows that the Claimant and the Iranian Medical Center worked together on a regular basis. The

plans were drafted in response to requests by the Iranian Medical Center. The cost estimates were to be utilized to establish compensation to the Claimant for work requested by the Iranian Medical Center and performed by the Claimant. Clearly, the Iranian Medical Center could not arbitrarily reduce the cost estimates and thereby reduce Claimant's compensation for work requested and performed.

For example, the Iranian Medical Center could not simply take a preliminary cost estimate and arbitrarily reduce its figures, thereby diminishing Claimant's already-earned compensation for Phase I. Yet, on the basis of pure speculation, the Tribunal sanctions the arbitrary reductions of the estimates. Those reductions were contrary to contractual terms and left the Claimant with no opportunity to respond. Indeed, there was written and oral evidence that the Iranian Medical Center agreed to make the contested Phase I payments during Phase II.

With respect to the Basic Sciences Buildings, the evidence is overwhelming that they were not included in the Phase II estimate for the project. They were specifically listed in the Phase I estimate. Thereafter, a separate Phase II estimate for the Basic Sciences Buildings was submitted and approved because work on those buildings was, by agreement, accelerated. Claimant then submitted an invoice for those buildings, and the Iranian Medical Center agreed to pay the invoice. Against the weight of the evidence, the Tribunal assumes that the Basic Sciences Buildings are included in the Planning and Budget