[redacted]AIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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ORIGINAL DOCUMENTS IN SAFE

Case No. 10706 Date of filing: 29 Jan 87

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____

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** CONCURRING OPINION of _____

- Date _____

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** SEPARATE OPINION of _____

- Date _____

_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of Mr Holtzman

- Date 29.1.87

6 pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 10706
CHAMBER ONE
AWARD NO. 291-10706-1

ST. REGIS PAPER COMPANY,
a claim of less than
U.S. $250,000 presented by
THE UNITED STATES OF AMERICA
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

DISSENTING OPINION OF HOWARD M. HOLTZMANN

This Case is one of the thousands of so-called "small claims" (i.e. under $250,000) presented to the Tribunal on behalf of various Claimants. The Award dismisses the claim because it was made in the name of St. Regis Paper Company ("St. Regis"), rather than in the name of St. Regis' wholly-owned subsidiary Span-Deck, Inc. ("Span-Deck"), which, as a corporation organized in the United States, could have and should have been named as the Claimant under the terms of the Claims Settlement Declaration. The Tribunal refuses to allow St. Regis to amend its Claim to cure this technical defect. The Tribunal reaches this rigid result notwithstanding the fact that the Statement of Claim put the Respondent on notice as to all the facts central to the Case, including the date on which the contract was signed, the names of the persons who signed it, the amount

of money involved, and even the invoice number of the bill. While the Statement of Claim did not mention the name of Span-Deck, the pleadings by the Respondent show that it was fully aware that the Contract was with Span-Deck. Moreover, no prejudice to the Respondent has been demonstrated.

I dissent because, in my view, the majority's decision is contrary to the Tribunal Rules that liberally allow amendments to Statements of Claims, is inconsistent with our practice in similar cases of permitting amendments where no prejudice would result, and ignores the practical realities faced by claimants in small claim cases.

I.

The Statement of Claim in this case was filed on 19 January 1982. The claim was presented by the government of the United States of America on behalf of the St. Regis Paper Company. The Statement of Claim was remarkably specific in its factual allegations. It alleged that the Day Construction Company, a large Iranian building concern, had entered a contract for the sale of "spare parts" and claimed $21,507 was owed to it for unpaid invoices for the parts. The Statement of Claim went further, explaining that:

> On January 24, 26, 27, 1977 St. Regis Paper Company shipped spare parts to Day Construction Company 75 Fakhre, Razi, Tehran, Iran pursuant to an agreement dated November 29, 1976 signed by Mike Kozerabsly and Richard Hausman. Shipments were made on Bills of Lading numbered 353045, 353048, 353049, respectively, and were billed on invoice number 3811 dated March 8, 1977.
>
> In April 1979, Day Construction acknowledged the amount owed for the spare parts.
>
> Payment in the amount of $21,507.00, was due in April 1979 and, because of Iran's wrongful acts or omissions, has not been received. This amount, together with related and consequential damages,

> constitutes the basis for the total claim indicated above.

A Supplemental Statement of Claim was filed on 20 June 1984, which provided additional factual information regarding the Claim. This document made it clear that Span-Deck was the contracting party and that St. Regis was merely bringing the claim on its subsidiary's behalf. The factual and legal basis for the Claim remained unchanged. It is difficult to believe that Day did not already know that Span-Deck had signed the contract. Indeed, at no point in these proceedings has Day denied that Span-Deck was the party to these transactions.

The Hearing in this Case took place on 25 November 1986. At the Hearing the United States sought leave to amend the Claim to add Span-Deck as a Claimant. It argued that no prejudice would result to Day because it was well aware of Span-Deck's identity as well as the transaction involved. In such circumstances, the United States argued, the Tribunal Rules allow amendment of the claim.

II.

As the Award notes, Article 20 of the Tribunal Rules broadly allows amendments unless delay, prejudice, or loss of jurisdiction would result. That Rule provides that:

> During the course of the arbitral proceedings either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that it falls outside the jurisdiction of the arbitral tribunal.

The Tribunal has addressed the question of amendments that seek to add additional parties in several cases. In cases

in which the Tribunal considers the amendment to be tantamount to an attempt to file a new claim after the jurisdictional deadline, the Tribunal will refuse to allow the amendment. See, e.g., In re Refusal to Accept the Claim of Raymond International (U.K.) Ltd. (Refusal No. 21), Decision No. DEC 18-Ref 21-FT (8 Dec. 1982). Conversely, when the amendment merely seeks to clarify the identity of the proper Claimant, the Tribunal uniformly allows the amendment. See, e.g., In re Refusal to File Claim of AMF Overseas Corp. (Refusal No. 20), Decision No. DEC 17-Ref 20-FT (8 Dec. 1982).

In determining whether to allow an amendment, a central consideration has been whether the opposing party is likely to be prejudiced by the delay in accurately asserting the claim. For example, in Cal-Maine Foods, Inc. and The Islamic Republic of Iran, Award No. 133-340-3 (11 June 1984), the Tribunal refused to allow an amendment that would have added a claim for certain accounts receivable because of the likely prejudice that would have been suffered by the Respondents due to the delay in asserting the additional claim.

On the other hand, where no prejudice is likely to result, the Tribunal has freely allowed amendments. For example, in The Austin Co. and Machine Sazi Arak, Award No. 257-295-2 (30 Sept. 1986), the Claimant named as Respondent Machine Sazi Arak ("MSA") in a claim based on a contract for a steel plant and another contract for spare parts. After MSA denied liability for the second contract, the claimant sought to amend the claim to name another corporation, Machine Sazi Pars ("MSP"), as the Respondent for the claim for spare parts. MSP objected to the amendment, arguing that it was an attempt to introduce a new claim after the jurisdictional deadline. The Tribunal rejected this argument and allowed the amendment, even though it noted that the Statement of Claim did not mention MSP. Rather,

specifically citing AMF Overseas, the Tribunal noted that MSP was identified in an invoice and telex attached to the Statement of Claim. Thus the Tribunal concluded that the amendment constituted a "permissible clarification of the identity of the proper Respondent." Id. at 3. See also Kimberly-Clark Corp. and Bank Markazi Iran, Award No. 46-57-2 (25 May 1983) (amendment adding new respondent allowed when no prejudice shown); Harnischfeger Corp. and Ministry of Roads and Transportation, Award No. 175-180-3 (26 April 1985) (amendment adding new respondent allowed when no prejudice shown).

The case at hand presents an even stronger case for amendment since St. Regis does not seek to add a new respondent and Day was well aware of the actual basis for the claim. Thus, unlike the newly-added Respondent in Austin Co., Day cannot claim surprise.

Similarly, in American Int'l Group, Inc. and The Islamic Republic of Iran, Award No. 93-2-3 (19 Dec. 1983), the Tribunal allowed the claim to be amended to add as a claimant a subsidiary of the original claimant. The Tribunal explained that:

> Such amendment does not change the amount sought or the factual or legal basis of the claim and cannot be said to prejudice the Respondent. Article 20 of the Tribunal Rules, even if not directly applicable, gives guidance in deciding this issue. Not to allow the amendment would, in the circumstances of the present case, amount to a degree of formalism which is hard to justify.

Id. at 9 (emphasis added).

Finally, in First Travel Corp. and The Government of the Islamic Republic of Iran, Award No. 206-34-1 (3 Dec. 1985), the Tribunal allowed an amendment in a case quite similar to the one at hand. In that case the claim had been originally filed by Transportation Consultants International

("TCI"), a wholly-owned subsidiary of First Travel Corporation ("FTC"). It later appeared that TCI had transferred its claim to FTC before the claim had been filed. The Tribunal, citing AMF Overseas, allowed an amendment to substitute FTC, the true owner of the claim, for TCI, (which, by that time, had been sold to another corporation). Id. at 9. As in the present claim, the amendment merely conformed the pleading to the actual state of affairs -- which was obvious to all involved. Consequently there was little likelihood of prejudice.

First Travel contradicts the majority's reasoning that we must refuse this amendment because St. Regis is not a proper claimant in this case with or without Span-Deck. Much the same argument could have been made in First Travel. At the time the claim was filed, TCI did not own the claim and consequently was not a proper claimant. Nonetheless, the Tribunal, cognizant of Rule 20, allowed the amendment to substitute FTC for TCI.

As this analysis of the Tribunal's practice makes clear, the Tribunal has liberally allowed claims to be amended to add new claimants, new respondents, and new claims. The touchstone in determining whether such an amendment should be allowed is whether the opposing party is likely to suffer prejudice. In the present case, Day has offered no evidence of prejudice and the Tribunal itself does not find any prejudice. In my view, denying this amendment request amounts "to a degree of formalism which is hard to justify." American Int'l Group, supra, at 9.

III.

In this case there is an additional reason why this amendment request should be granted. Because this claim sought less than $250,000, it was presented on behalf of the Claimants by the United States of America pursuant to

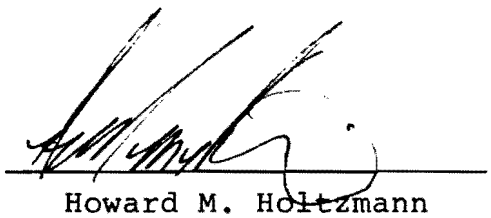
Article III, paragraph 3, of the Claims Settlement Declaration. Altogether the United States presented 2,782 of these small claims on behalf of various claimants. See Annual Report of the Tribunal - 1984/85, at 25 (5 December 1985).

Thus it was necessary for the United States to collect a vast amount of detailed information in a very short time in order to meet the jurisdictional deadline of 19 January 1981. The United States had to rely on information supplied by those on whose behalf it was presenting these small claims. It is understandable that, in the unprecedented circumstances created by the Algiers Accords, these parties were not always aware of technical pleading requirements, and the United States had little opportunity to investigate in advance the facts of each case. In such circumstances, technical imperfections should not bar the Tribunal's consideration of otherwise well-pled claims, particularly when, as here, there was no surprise or other prejudice to the Respondent.

IV.

I cannot agree with this Award because it ignores the Tribunal's Rules, contradicts our practice in allowing such amendments, and disregards the practical problems that existed in preparing pleadings in small claim cases. The result of the Award is to slam the door of the Tribunal to this Claimant and to exclude what appears to be a well-pled claim, for no reason other than hyper-technical pleading requirements. I would allow this amendment and would proceed to consider this claim on the merits.

Dated, The Hague
29 January 1987



Howard M. Holtzmann