IRAN-UNITED STATES CLAIMS TRIBUNAL

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DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 298
CHAMBER TWO
AWARD NO. 544-298-2

JAMES M. SAGHI, MICHAEL R. SAGHI and ALLAN J. SAGHI,
Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران - ایالات متحده

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تاریخ ۱۳۷۱/۱۱/۲

AWARD

Appearances:

For the Claimants :

Mr. Kevin J. Walsh, Attorney for Claimant,
Ms. Mary Chris Stephen, Attorney for Claimant,
Mr. Hamid Sabi, Attorney for Claimant,
Mr. James M. Saghi, Claimant,
Mr. Allan Saghi, Claimant,
Mr. John Lundgren, Witness,
Mr. Theodore Martens, Witness.

For the Respondent :

Mr. Ali H. Nobari, Agent of the Government of the Islamic Republic of Iran,
Mr. Jafar Niaki, Legal Adviser to the Agent,

Prof. Rudolf R. Dolzer,
Legal Adviser to the Agent,
Mr. Abbas Rahimi,
Legal Assistant to the Agent,
Dr. Ali Fathi-Pour,
Attorney for the Respondent,
Dr. Ahmad Ghatineh,
Legal Adviser to the Respondent,
Mr. Mahmoud Daneshbodi,
Financial Consultant to the Respondent,
Mr. Khayam Dadash-Zadeh,
Consultant to the Respondent,
Mr. Ramin Habibollahi,
Financial Consultant to the Respondent,
Mr. John Allday,
Witness,
Mr. Robert A. Jones,
Witness,
Mr. Abdulhamid Mahallati,
Witness,
Mr. Risto Salama,
Witness,
Mr. Iraj Akbaryeh,
Consultant to the Respondent,
Mr. Ali Sarrafi,
Assistant to the Agent.

Also present :

Ms. Lucy F. Reed,
Agent of the United States of America,
Mr. Micahel F. Raboin,
Deputy Agent of the United States of America.

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I. INTRODUCTION

1. The Claimants, JAMES M. SAGHI and his sons MICHAEL R. SAGHI and ALLAN J. SAGHI, filed a Statement of Claim on 15 January 1982 against THE ISLAMIC REPUBLIC OF IRAN, the Respondent. The Claimants sought U.S.$17,391,000 (later increased to U.S.$19,272,627), plus interest and costs, for the alleged expropriation in August 1980 of Novzohour Paper Industries ("N.P.I.") and Novin Trading & Distributing Paper Products ("Novin"), two Iranian corporations in which they allegedly held a 93.5% equity interest. The Respondent filed its Statement of Defense on 18 October 1982.

2. The Claimants contended that they were all nationals of only the United States. The Respondent asserted that each of the Claimants was a national of Iran and therefore could not present claims against Iran before this Tribunal. The Tribunal addressed the issue of the Claimants' nationality in an Interlocutory Award. It held that James and Michael Saghi were nationals of the United States but not of Iran. It also held that Allan Saghi was a national of both the United States and Iran and that his dominant and effective nationality during the relevant period was that of the United States. Accordingly, the Tribunal concluded that the Claimants were nationals of the United States within the meaning of Article VII, paragraph 1 of the Claims Settlement Declaration ("CSD"). Interlocutory Award No. ITL 66-298-2 (12 Jan. 1987), reprinted in 14 Iran-U.S. C.T.R. 3.

3. A Hearing was held in this Case from 27 February through 1 March 1991.

II. FACTS AND CONTENTIONS[1]

4. James Saghi founded N.P.I. as a sole proprietorship in Iran in 1950, using an established family trade name. Initially, N.P.I. imported and re-sold finished paper products under an agreement with the Kimberly-Clark Corporation ("KCC"). N.P.I. later grew and moved into manufacturing tissue paper products. In 1961, Mr. Saghi incorporated N.P.I. as a private joint stock company. The company operated under a series of license and royalty agreements with KCC. By 1971, Mr. Saghi and other members of his family held 93.5% of N.P.I.'s 1000 shares.

5. In 1974-75, Mr. Saghi negotiated with KCC concerning the purchase by KCC of an equity interest in N.P.I. In June 1975, KCC offered U.S.$2.75 million, plus 45% of the audited net worth of N.P.I., for a 45% share of N.P.I. KCC's offer included certain rights that it would acquire with its equity stake. Negotiations continued for another two months, but Mr. Saghi then rejected KCC's offer.

6. In 1975, the Government of Iran initiated a program to widen ownership of Iranian industry. As part of that program, on 24 June 1975 the Majlis passed the Law for the Expansion of Public Ownership of Productive Units ("Law for Expansion"). The Law required certain industrial and mining companies to offer 49% of their shares for sale to their own employees and to the public. The Law also limited the participation of foreigners in Iranian joint ventures; for the cellulose industry, the limit was 25%.

7. The shareholders of N.P.I. learned in 1976 that the Law for Expansion was to be applied to N.P.I. They then took a

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[1] Additional details of the facts and contentions in this Case are provided, as appropriate, in Section IV infra.

series of steps in preparation for implementation of the Law:

- In November 1976, Novin was established to distribute N.P.I.'s products. According to the Claimants, Novin was spun off from N.P.I. in order to take advantage of the fact that distribution services were not covered by the Law for Expansion. Novin's three shareholders were allegedly nominees of N.P.I.'s shareholders. The Respondent does not deny that Novin's assets came from N.P.I. It contends, however, that Novin's shareholders were the company's actual owners.

- In December 1976, N.P.I. published a notice concerning its first offer of shares to the public at a price of Rials 23,500 per share.

- In July 1977, the shareholders of N.P.I. converted the company into a public joint stock company and split its shares, five-for-one, making the total number of shares outstanding 5000.

- In August 1977, a number of transfers of N.P.I. shares took place: Nineteen of N.P.I.'s employees received between forty-eight and fifty-three shares each -- a total of 963 shares. James Saghi also transferred fifty shares to Ms. Margaret Saginian, his personal executive secretary. In addition, there were transfers of shares among members of the Saghi family.

- Also in August 1977, N.P.I. submitted two lists of its shareholders to the Iranian authorities charged with implementing the Law for Expansion. One list provided the "Status of Company's Shareholdings," excluding shares of foreign shareholders. The list included Allan Saghi, with 2412 shares; Ms. Saginian, with 50 shares; the nineteen employees, with a total of 963 shares; and five others, with 325 shares -- a total of

3750 shares. The other list provided the "Status of Foreign Shareholdings"; it showed 1000 shares held by James Saghi, 62 shares held by Michael Saghi and 188 shares held by James Saghi's three daughters -- a total of 1250 shares.

8. In 1979, James Saghi transferred fifty shares each to two officers of N.P.I., Iraj Sepehran and Aris Shahoumian. According to the Claimants, no further transfers of N.P.I. stock were made. According to the Respondent, a further 850 of James Saghi's shares, plus all 188 of his daughters' shares, were transferred to Allan Saghi during the year ending March 1980.

9. The Claimants allege that the nineteen N.P.I. employees, Ms. Saginian, Messrs. Sepehran and Shahoumian and James Saghi's daughters all held their shares as the nominees of the Claimants, with the Claimants thus retaining beneficial ownership of 93.5% of N.P.I.'s shares. The Respondent disputes the validity of beneficial ownership under Iranian law and argues that, in any event, the Claimants' proof of their beneficial interests is inadequate.

10. The Claimants contend that the Respondent expropriated N.P.I. and Novin in 1980. On 13 May 1980, the Organization for National Industries -- an entity within the Iranian Ministry of Industries and Mines -- appointed a "Supervisor" for N.P.I. On 2 September 1980, the Organization appointed Nariman Rezai Mehr as Managing Director of N.P.I. and appointed two other men as temporary members of N.P.I.'s Board of Directors. The Respondent describes these appointments as a proper response to N.P.I.'s alleged insolvency and the alleged abandonment of N.P.I. by its management. The Claimants deny that they abandoned N.P.I. and that the Respondent was justified in appointing temporary managers. They further maintain that, in any event, the government managers took complete control of N.P.I. and Novin, thereby depriving the Claimants of their ownership rights.

11. Both Parties have submitted evidence concerning the value of N.P.I. and Novin during the period of 1979-80.

III. JURISDICTION

12. The Tribunal decided in its Interlocutory Award that the Claimants are nationals of the United States within the meaning of Article VII, paragraph 1 of the CSD. The Respondent has attempted to re-open the issue of the Claimants' nationality, arguing that the Interlocutory Award was invalid because it was signed by only two arbitrators. The Tribunal cannot accept this argument. The Tribunal Rules envisage the possibility of the absence of an arbitrator's signature and make a provision for that occurrence: "Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature." Tribunal Rules, Article 32, paragraph 4. The Tribunal adhered to that provision in this Case. Interlocutory Award No. ITL 66-298-2, at 10; see also id., Comments on the Declaration of Judge Bahrami-Ahmadi. Under Article 32, paragraph 2 of the Tribunal Rules and Article IV, paragraph 1 of the CSD, the Interlocutory Award in this Case is final and binding. See Uiterwyk Corp., et al. and The Islamic Republic of Iran, et al., Partial Award No. 375-381-1, para. 30 (6 July 1988), reprinted in 19 Iran-U.S. C.T.R. 107, 116-17.

13. The Tribunal thus has jurisdiction over the claim in this Case: It is a claim by United States nationals against the Government of Iran, a proper Respondent under Article VII, paragraph 3 of the CSD, in which the Claimants seek compensation for an expropriation that allegedly occurred before 19 January 1981.

IV. REASONS FOR THE AWARD

A. The Claimants' Ownership Interests

14. The Parties do not disagree about the record ownership of N.P.I. as of 15 September 1979, the date of an Annual General Meeting. The list attached to the Minutes of that meeting shows the following shareholders:

Shareholder	Number of Shares	Percentage of Total
James Saghi	900	18.00
Michael Saghi	62	1.24
Allan Saghi	2412	48.24
J. Saghi's three Daughters	188	3.76
Margaret Saginian	50	1.00
Iraj Sepehran	50	1.00
Aris Shahoumian	50	1.00
19 Iranian Employees of N.P.I.	963	19.26
5 Others	325	6.50
TOTAL	5000	100.00%

The Parties dispute whether the record ownership of N.P.I. changed after September 1979. The Respondent alleges that on 2 October 1979, James Saghi transferred 850 of his shares to his son Allan and that at some time after September 1979, James Saghi's three daughters transferred their 188 shares to Allan Saghi. The Claimants deny that these transfers took place.

15. As noted supra, para. 9, the Claimants contend that they are the beneficial owners of the shares registered in the names of Ms. Saginian, Messrs. Sepehran and Shahoumian,

the nineteen employees of N.P.I. and James Saghi's three daughters. The alleged beneficial ownership of N.P.I. may be summarized as follows:

Shareholder	Number of Shares	Percentage of Total
James Saghi	3514	70.28%
Michael Saghi	555	11.10
Allan Saghi	606	12.12
5 Others	325	6.50
TOTAL	5000	100.00%

The Respondent argues that Iranian law does not recognize beneficial ownership and that under Article 40 of the Iranian Commercial Code, the Claimants' alleged division of ownership interests would be ineffective vis-à-vis the company or third parties. The Respondent also challenges the adequacy of the Claimants' proof of their beneficial ownership interests.

16. With respect to Novin, the Parties agree that at the time the claim arose, Novin's shares were registered in the names of three individuals: Iraj Sepehran, Aris Shahoumian and Robert Martin. The Claimants contend that they were the beneficial owners of those shares and that the three registered owners were their nominees. The Respondent asserts that those three individuals were the actual owners of Novin and that the Claimants therefore have no interests in the company.

17. The issues that arise in connection with the Claimants' ownership interests are thus the following:

(1) whether the beneficial owners of property rights affected by measures for which the Respondent is responsible have standing to claim compensation before this Tribunal;

(2) and if so, whether the Claimants have proven their beneficial ownership of shares registered in the names of other persons.

1. Claims Based Upon Beneficial Ownership

18. In past awards, the Tribunal has favored beneficial over nominal ownership of property for a variety of purposes. For example, American claimants have proven their control of non-American entities via beneficial ownership in order to establish their standing to bring indirect claims on behalf of those entities under Article VII, paragraph 2 of the CSD. In International Technical Products Corp., et al. and The Islamic Republic of Iran, et al., Award No. 196-302-3 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206 (ITPC), the claimants sought compensation for the expropriation of a building in Tehran. Legal title to the building was held by an Iranian private joint stock company, but the claimants claimed to be the beneficial owners of the company and, hence, of the building. The respondent argued that, under Iranian law, the real owner of a building is the one who holds the title deed. The Tribunal found that the claimants were beneficial owners of 100% of the Iranian company and therefore had standing to claim for the full value of the building. Id. at 34-39; 9 Iran-U.S. C.T.R. at 230-33. The respondent's argument based upon Iranian law was considered "irrelevant to the jurisdictional considerations dictated by the Claims Settlement Declaration." Id. at 39 n.19; 9 Iran-U.S. C.T.R. at 233, n. 32.

19. The Tribunal followed ITPC in Howard Needles Tammen & Bergendoff and The Islamic Republic of Iran, Award No. 244-68-2 (8 Aug. 1986), reprinted in 11 Iran-U.S. C.T.R. 302. Noting that it had "recognized the standing of beneficial owners of a claim to assert that claim before the Tribunal when the legal owners are mere nominees," the Tribunal held that the claimant partnership had standing to present

its indirect contract claims by virtue of its beneficial ownership interest in an Iranian corporation. The record owners were various of the partners, but all of their interests had been purchased with partnership funds. Id. at 18; 11 Iran-U.S. C.T.R. at 313. See also Dames & Moore and The Islamic Republic of Iran, Award No. 97-54-3, at 9-11 (20 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 212, 217-18 (control proven for purposes of indirect expropriation and contract claims); William Bikoff, et al. and The Islamic Republic of Iran, Award No. 138-82-2, at 9-10 (29 June 1984), reprinted in 7 Iran-U.S. C.T.R. 1, 6 (evidence shows transfer of "some authority" but not "the degree of control" required by Art. VII, para. 2); cf. Rondu Holdings Inc. and The Islamic Republic of Iran, et al., Award No. 137-312-2, at 4-5 (29 June 1984), reprinted in 7 Iran-U.S. C.T.R. 26, 28-29 (claimant's "meager" evidence of beneficial ownership and control fails to prove that it was a U.S. national within the meaning of Article VII, paragraph 1 of the CSD).

20. In Foremost Tehran, Inc., et al. and The Islamic Republic of Iran, et al., Award No. 220-37/231-1, at 19-21 (11 Apr. 1986), reprinted in 10 Iran-U.S. C.T.R. 228, 241-42, beneficial ownership was an important element in the claimants' proof that Pak Dairy was controlled by the Government of Iran and was therefore a proper respondent under Article VII, paragraph 3 of the CSD. Foremost is noteworthy in the present context because it involved beneficial ownership by the Financial Organization for the Expansion of Ownership of Industrial Units of shares that had been transferred to workers and farmers pursuant to the Law for Expansion and had been registered in their names. See infra, para. 31.

21. The Tribunal has also awarded compensation in direct claims for "expropriations and other measures affecting property rights" to the beneficial owners of those property rights. For example, in Foremost, the claimants sought compensation for the expropriation of their 31% equity interest in Pak Dairy, as well as for the withholding of two cash

dividends to which they, as 31% owners, were entitled. At issue was the ownership of 910 shares (1% of the total) registered in the name of Mr. Frank Fisher, Foremost Food's representative on Pak Dairy's board of directors. Foremost Foods claimed to be the beneficial owner of those shares. The respondents argued that Article 40 of the Commercial Code of Iran made registration of ownership conclusive; hence, an agreement between Mr. Fisher and Foremost Foods concerning ownership of the shares would not be enforceable against the company or a third party. See Foremost, supra, at 6-7; 10 Iran-U.S. C.T.R. at 232. The Tribunal decided, "as a matter of equity," that Foremost Foods should be considered the "true owner" of the shares because Pak Dairy and relevant government authorities knew that Mr. Fisher held the shares as the "nominee" of Foremost Foods and because a contrary result would be "inequitable and illogical." Id. at 16-17; 10 Iran-U.S. C.T.R. at 239-40. On the merits, the Tribunal decided that no expropriation had occurred before 19 January 1981, but that the withholding of dividends was a measure affecting property rights for which the Government of Iran was responsible. Id. at 21-34; 10 Iran-U.S. C.T.R. at 243-52.

22. In SEDCO, the claimant presented a direct claim for its expropriated 50% interest in SEDIRAN, an Iranian corporation. See SEDCO, Inc., et al. and National Iranian Oil Co., et al., Interlocutory Award No. ITL 55-129-3, at 23-26 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 264-66. One issue in the case was the ownership of two shares in SEDIRAN. These two shares constituted 0.2% of the total outstanding and were owned by SEDIRAN directors who had been appointed by the claimant. The claimant alleged that the two directors had, before the claim arose, assigned legal title to the shares to the claimant. The respondent disputed the validity of the assignments. Id. at 17 & n.2, 9 Iran-U.S. C.T.R. at 260 & n. 14. In its final award, the Tribunal stated that the assignments "appear[ed] valid on their face." The Tribunal did not elaborate upon this

observation, but instead stated that, "[e]ven absent the assignment[s]," it was clear from the evidence that the two directors held their shares as nominees of the claimant. The Tribunal concluded that the claimant "should be considered" the owner of 50% of SEDIRAN's shares in 1979. SEDCO, Inc. and National Iranian Oil Co., et al., Award No. 309-129-3, paras. 264-66 (7 July 1987), reprinted in 15 Iran-U.S. C.T.R. 23, 101. The claimant was awarded U.S.$30,783,090 for its 50% share of SEDIRAN, the disputed 0.2% thus being included. See id. para. 580; 15 Iran-U.S. C.T.R. at 183.

23. Beneficial owners of other property can also claim directly. Cf. Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2 (30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232 (award based upon claimant's proof that he beneficially owned funds paid to and unjustly retained by respondent), and Modern Film Corp. and The Islamic Republic of Iran, Award No. 353-196-2 (16 Mar. 1988), reprinted in 18 Iran-U.S. C.T.R. 150 (unjust enrichment claim dismissed for lack of proof of beneficial ownership of funds at issue).

24. The Tribunal's concern for beneficial interests flows naturally from the terms of the Algiers Accords, in particular, General Principle B which states the purpose of both Parties "to terminate all litigation as between the government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration." Articles II, paragraph 1, and VII, paragraphs 1 and 2, of the CSD give the Tribunal jurisdiction over claims arising out of debts, contracts, expropriations or other measures affecting property rights and define the terms "national" and "claims of nationals" by reference to persons who hold "ownership interests," whether directly or indirectly. The evident purpose of these claims settlement arrangements could not be fully implemented unless the Tribunal's jurisdiction were broad enough to permit the beneficial owners of affected property interests to

present their claims and have them decided on their merits by the Tribunal.

25. The Respondent has argued that Article 40 of the Commercial Code of Iran bars the alleged beneficial ownership.[2] However, the issue here is not the validity vel non under Iranian law of beneficial ownership interests vis-à-vis the company or third parties. Rather, it is whether the Government of Iran is responsible, under international law, to beneficial owners for "expropriations and other measures affecting property rights."

26. The Tribunal's awards have recognized that beneficial ownership is both a method of exercising control over property and a compensable property interest in its own right. This is consistent with the rule requiring continuity of nationality of State claims under public international law. That rule requires that a claim must have been continuously owned by a person (or series of persons) having the

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[2]Article 40 provides:

> The transfer of registered shares must be entered in the share register of the company and the transferor or his attorney or his legal representative should sign such transfer in the share register.
>
> When the total par value of a share is not paid up, the full address of the transferor must be entered in the share register and signed by the said transferor or his attorney and shall be binding in respect of fulfilment of obligations arising from a conveyance.
>
> Any change in domicile should be registered in the same manner.
>
> Any transfer which takes place contradictory to the provisions mentioned above shall be considered as null and void as far as the company and third parties are concerned.

The Commercial Code (M. Sabi trans, 2d Ed. 1977).

nationality of the State that presents the claim. Brownlie, Principles of Public International Law 480-81 (4th ed. 1990). In applying that rule, it is the nationality of the beneficial owner of the claim, rather than that of the nominal owner, that determines the nationality of the claim. As the United States Foreign Claims Settlement Commission put it in Claim of American Security & Trust Co., "the national character of a claim must be tested by the nationality of the individual holding a beneficial interest therein rather than by the nationality of the nominal or record holder of the claim." 26 I.L.R. 322, 322 (1958, II). The Tribunal concludes that the Claimants are entitled to claim compensation for the deprivation of their beneficial ownership interests in N.P.I. and Novin.

2. The Claimants' Proof of Their Beneficial Ownership

27. The various beneficial ownership interests alleged by the Claimants differ somewhat, as does the evidence submitted in support of these allegations. The Tribunal will therefore consider the different groups of shares in N.P.I. and Novin separately.

28. In August 1977, the Claimants transferred a total of 963 N.P.I. shares to nineteen of the company's Iranian employees; each employee received between forty-eight and fifty-three shares. See supra, para. 7. According to the Claimants, each employee received a loan from one of the Claimants that enabled the employee to purchase the shares; each employee then executed an agreement that effectively transferred beneficial ownership in the shares back to one of the Claimants. In this way, James Saghi claims beneficial ownership of 458 shares nominally held by nine of the employees, Michael Saghi claims 150 shares nominally held by three employees, and Allan Saghi claims 355 shares nominally held by seven employees.

29. The Claimants allege that the nineteen shareholder's agreements were registered and filed with the Government; they have submitted copies of the agreements. The Respondent does not dispute that these nineteen agreements were signed, but it denies that they were filed in N.P.I.'s file at the Corporate Registration Bureau. On 15 June 1988, the Tribunal issued an Order directing the Respondent to submit all documents relating to N.P.I. in file No. 7987 of the Corporate Registration Bureau. Had the contents of the file been submitted, it might have been possible to determine whether or not the shareholder agreements had been filed. For example, internal evidence might indicate whether the full contents of the file had been submitted. However, the Respondent did not submit any documents in response to the Tribunal's Order. In the Tribunal's view, however, these agreements need not have been filed with the Corporate Registration Bureau to become effective documents between the Parties.

30. The shareholder agreements are identical in their operative terms: They acknowledge receipt of a purchase money loan from one of the Claimants. Temporary receipts and (when available) share certificates would be left in the custody of the Claimants "until the full repayment of the [loan] in a period not exceeding a full year from the date [of the agreement]." And "all the shares of Mr. ... in [N.P.I.] shall remain with Mr. ... Saghi until repayment of the [loan] and neither Mr. ... nor his appointees may claim same at any time prior to that." The shareholders granted irrevocable powers of attorney to the Claimants, giving the latter, inter alia, the right to transfer the shares while the debts were outstanding. Each agreement concluded:

> Mr. . . . Saghi's rights in this respect shall be similar and equivalent to the owner of said shares in all respects and with no limitation and shall be authorized to tranfser (sic) all or part of said rights to third parties. The Principal waives all rights with regard to termination of said Power of Attorney and undertakes not to

engage in any activity which would hinder or limit the authorities of the Attorney.

31. Whether these agreements transferred beneficial ownership to the Claimants immediately upon their execution is an issue that need not be decided. There is no allegation or evidence that the loans were repaid within the one year specified in the agreements, or indeed later. The passage of a year without repayment extinguished the rights of the nominal owners to become the beneficial owners by repaying the loans. In essence, these agreements gave the nominal owners rights for one year to buy the shares by paying for them, which they did not do. Even during that year, the agreements granted irrevocable powers of attorney, giving the Claimants possession of the shares, with the right to transfer them to others. These shareholder agreements thus resemble those in Foremost that gave the Financial Organization beneficial ownership of shares transferred to workers and farmers pursuant to the Law for Expansion. See supra, para. 20. The Tribunal finds that these nineteen shareholder agreements transferred to the Claimants the elements of beneficial ownership that give them the right under international law to claim compensation for their deprivation.

32. In contrast to the nineteen shareholder agreements, there is meager evidence in support of the Claimants' allegations with respect to the N.P.I. shares registered in the names of Ms. Saginian and Messrs. Sepehran and Shahoumian. James Saghi states in an affidavit that he transferred fifty shares to Ms. Saginian in August 1977, explaining that she had served as his personal executive secretary for nearly twelve years. The transfer occurred at the same time as the transfers to the nineteen employees, but Ms. Saginian did not execute an agreement assigning any rights in the shares to Mr. Saghi. Nevertheless, Mr. Saghi claims beneficial ownership of the shares and has submitted a 1988 affidavit from Ms. Saginian that corroborates his claim.

33. Messrs. Sepehran and Shahoumian received their shares in 1979. Mr. Saghi explains that they were long-time employees whom he trusted and wanted to have on the Board of N.P.I. since it had become difficult for him to travel to Iran. In order to be Board members, they had to be shareholders. He states that his absence from Iran at that time precluded the execution of powers of attorney similar to the nineteen shareholder agreements of 1977; nevertheless, he asserts that it was understood by all parties that the transfers were only a legal formality, leaving beneficial ownership in his hands.

34. The circumstances of the transfer to Ms. Saginian, including the absence of an agreement similar to the nineteen shareholder agreements executed at the same time, suggest that the shares could have been a gift or compensation for her services as Mr. Saghi's secretary. Her affidavit, made much later during the pendency of the present proceedings, fails to undermine this inference. Similarly, the circumstances of the transfers to Messrs. Sepehran and Shahoumian suggest that they received full ownership of their shares. As the Claimants' evidence concerning the Respondent's taking of N.P.I. and Novin shows, these two men represented the Claimants' interests in Iran under very difficult circumstances. Rather than a mere legal formality, the transfers were more likely compensation for their loyal service. Moreover, evidence concerning the ownership of Novin, see infra, para. 39, suggests that they could have provided some written statement about James Saghi's rights in the shares, if he retained any. The Tribunal concludes that the evidence submitted is inadequate to establish that James Saghi had any beneficial ownership rights in the 150 shares registered in the names of Ms. Saginian and Messrs. Sepehran and Shahoumian.

35. James Saghi's three daughters received their 188 shares of N.P.I. stock in August 1977, at the same time that the transfers to Ms. Saginian and the nineteen employees were

made. There is no contemporaneous evidence that the daughters received only nominal ownership of the shares; nor have the daughters provided affidavits for these proceedings. James Saghi simply explains in his affidavit:

> Given the relatively small number of shares involved, and in light of the fact that Iran has never contended before this Tribunal that my daughters are Iranians, I have not obtained affidavits from them affirming my beneficial ownership and authorizing me to seek damages in this proceeding on their behalf. Such affidavits can be provided if necessary.

The size of the shareholdings and the nationality of the daughters are irrelevant to the issue of the shares' ownership. The Tribunal concludes that the Claimants have failed to prove their beneficial ownership of the 188 shares registered in the names of James Saghi's three daughters.

36. The final issues concerning ownership of N.P.I. involve transfers of interests among the Claimants. It will be recalled that, after August 1977, 2412 shares were registered in Allan Saghi's name. See supra, para. 7. According to the Claimants, he beneficially owned only 251 of those shares. Of the remainder, it is alleged that James Saghi beneficially owned 1818 shares and Michael Saghi beneficially owned 343 shares. The Claimants have submitted an affidavit by Allan Saghi dated 21 December 1978 that corroborates their allegation. The Respondent maintains its position that record ownership is conclusive but has not otherwise challenged the validity of this affidavit. However, the Respondent contends that James Saghi transferred 850 of the 900 shares registered in his own name to Allan Saghi on 2 October 1979. The Respondent also asserts that James Saghi's three daughters transferred their 188 shares to Allan Saghi. The principal evidence in support of these contentions is a handwritten note, addressed to N.P.I. and signed by James Saghi, which states: "I, the undersigned, James Saghi, kindly inform you that I transfer 850 (eight

hundred fifty) shares of that Company from my shareholding to my son, Mr. Allan Saghi." James Saghi testified at the Hearing that the signature on the handwritten note appeared to be his, but that he did not remember writing or signing the note. The Respondent has also submitted a list of shareholders, dated 1979-1980 and signed by Messrs. Sepehran and Shahoumian, which shows Allan Saghi as the owner of 3450 shares and James Saghi as the owner of 50 shares and does not include James Saghi's daughters.

37. The affidavit executed by Allan Saghi in 1978 is a contemporaneous document, the authenticity of which has not been contested. The Claimants have not explained why the ownership of N.P.I. shares was distributed in the way described in the affidavit. However, it is not implausible that James Saghi would retain beneficial ownership of a large bloc of shares in a company that he founded and continued to manage. The Tribunal accordingly finds that Allan Saghi's 1978 affidavit described the beneficial ownership of shares that he nominally owned.

38. On the other hand, the Tribunal is not persuaded by the evidence concerning the alleged subsequent transfers. It is unlikely that James Saghi would have transferred a major share of his ownership rights (amounting to over one-sixth of the company) in such an informal fashion. Nor is the shareholder list dated 1979-1980 persuasive, for its provenance is uncertain: Unlike other shareholder lists in the record of this Case, this list is not part of the minutes of a N.P.I. shareholders' meeting. The Tribunal therefore concludes that the record ownership of N.P.I. remained in 1980 that which was shown in the minutes of the 15 September 1979 Annual General Meeting. See supra, para. 14.

39. Finally, there remains the issue of the ownership of Novin. The financial statements and other evidence submitted by both Parties make clear that Novin was created in 1976 and that some of N.P.I.'s assets -- including land and

buildings -- were transferred to it. The Claimants contend that Novin was spun off from N.P.I. because the Law for Expansion did not apply to companies engaged in distribution services. According to the Claimants, N.P.I. could not, under Iranian law, distribute Novin's shares directly to its own shareholders. Instead, it was necessary for N.P.I. to distribute those shares to third parties acting as the agents of N.P.I.'s shareholders. The record shareholders of Novin were Iraj Sepehran (400 shares), Aris Shahoumian (400 shares) and Robert Martin (200 shares); the Claimants allege that these men were nominees of N.P.I.'s shareholders. Thus, the Claimants claim that their 93.5% beneficial ownership of N.P.I. makes them 93.5% beneficial owners of Novin, as well. They have submitted signed statements from each of the men in support of this claim. The statements, which are identical except for the number of shares to which they refer, read as follows in English translation:

> 28 Esfand, 1358 [18 March 1980]
>
> To whom it may concern:
>
> In pursuance to the previous affidavit, once again it is hereby confirmed that the quantity of X shares, registered in the general shareholder's meeting of Novin Company belong to Mr. James M. Saghi and his children.

40. The Respondent challenges these statements on the grounds that they were not formally notarized and registered in Iran. The Claimants reply that conditions in Iran in March 1980 were dangerous for anyone with a connection to an American citizen and so the Novin shareholders were unwilling to seek assistance from a Government official. The Claimants add that the previous affidavits by the three men, to which these statements refer, were available in the company's corporate records and should have been submitted by the Respondent.

41. The Claimants have also submitted what they assert is a copy of a request for a ruling from the United States Internal Revenue Service ("IRS") that was made at the time of Novin's creation. The request allegedly shows that Novin was spun off from N.P.I., with N.P.I.'s shareholders retaining full ownership of the new company. The Claimants did not submit copies of the IRS's response to their request with their pleadings. In response to a question at the Hearing, they proffered copies of the IRS's ruling. However, the Tribunal decided that the submission of such evidence at that late date was not timely and, therefore, was not acceptable.

42. The Respondent asserts that Novin is an independent company founded by Messrs. Sepehran, Shahoumian, Martin and Mostafa Karimi (who allegedly later sold his shares to Mr. Martin). It denies that the Claimants ever had any ownership interest in the company. The Respondent has submitted affidavits that contradict the Claimants' evidence: In affidavits dated 13 July 1987, Messrs. Shahoumian and Sepehran deny having signed the statements submitted by the Claimants and assert that they, with Mr. Martin, are the actual owners of Novin. In his own affidavit, James Saghi claims that these two affidavits were probably coerced. In the rebuttal round of pleadings, the Respondent submitted two additional affidavits from Messrs. Shahoumian and Sepehran in which they deny that their previous affidavits were coerced. Also submitted was an affidavit from Mr. Martin in which he too contradicts the Claimants' claims.

43. The Respondent has offered no evidence concerning the three alleged owners' participation in the creation of Novin. For example, there is no explanation of how they obtained the capital necessary to acquire Novin's assets from N.P.I. Nor is there evidence showing any involvement by the three men in the company's affairs after 1980. In fact, the Claimants' evidence has shown that these three men were among those excluded by the Respondent from N.P.I. and

Novin between October 1980 and February 1981. See infra, para. 72. Considering all of the evidence, the Tribunal is convinced that Novin was simply spun off from N.P.I. and that N.P.I. and Novin remained, in practice, a unitary entity engaged in manufacturing and distribution. It is more plausible that the owners of N.P.I. also owned Novin; the three shareholders' contemporaneous written statements to that effect are more credible than the later affidavits submitted by the Respondent. The Tribunal concludes that Messrs. Shahoumian, Sepehran and Martin were nominee shareholders and that the actual owners of Novin were the shareholders of N.P.I. There were no transfers of Novin shares corresponding to those concerning N.P.I. shares that occurred in August 1977 and subsequently; hence, the Claimants are entitled to claim for 93.5% of the value of Novin.

44. To summarize with respect to the ownership issues here, the Claimants have proven that they owned -- either directly or beneficially -- 4337 shares of N.P.I., 86.74% of the total outstanding. In addition, they have proven their 93.5% ownership of Novin.

B. The A18 Caveat

45. One of the Claimants in this Case, Allan Saghi, is a dual Iran-United States national. The Tribunal's jurisdiction over his claim is based upon a finding that his dominant and effective nationality during the relevant period was that of the United States. Interlocutory Award No. ITL 66-298-2, supra, paras. 13-17, 14 Iran-U.S. C.T.R. at 6-8. This poses the issue whether the "caveat" in A18 applies to the merits of Allan Saghi's claim. See Case No. A/18, Decision No. DEC 32-A18-FT, at 25-26 (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 265-66.

1. The Full Tribunal's Decision in Case A18

46. The Full Tribunal decided in Case A18 that it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States. Id., at 25, 5 Iran-U.S. C.T.R. at 265. The Tribunal then stated:

> To this conclusion the Tribunal adds an important caveat. In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim.

Id. at 26, 5 Iran-U.S. C.T.R. at 266. [Emphasis added.]

47. Two of the Arbitrators discussed the caveat in their Concurring Opinions. Judge Mosk stated:

> It may be, as implied by the Tribunal, that the use by a United States citizen of his or her Iranian nationality in a fraudulent or other inappropriate manner might adversely affect the claim by that person. Cf. Flegenheimer Case, XIV U.N. Rpts. Int'l Arb. Awds. 327, 298 (U.S.-Ital. Conc. Comm. 1958). But it should be noted that Iranian law imposes Iranian nationality on a broad spectrum of people, makes it very difficult to renounce that nationality and drastically penalizes persons who succeed in doing so.
>
> Thus, some United States citizens have not been able to renounce their Iranian nationality or have not been willing to do so because of their reluctance to give up their properties and forsake their right to visit family in Iran. Their court actions in the United States have been terminated or suspended. These factors should be taken into consideration if and when the use, or alleged misuse, by "dual nationals" of their Iranian nationality is at issue.

Id. Concurring Opinion of Richard M. Mosk at 7-8, 5 Iran-U.S. C.T.R. at 272-73. [Footnotes omitted.]

48. For Judge Riphagen, dual nationality raised questions in this Tribunal "relating to the search for the most relevant nationality within a specific context (including the context of persona standi before this Tribunal)." Id., Concurring Opinion of Willem Riphagen at 2, 5 Iran-U.S. C.T.R. at 274. He continued:

> Thus, e.g., it is -- even within the framework of "diplomatic protection" -- often admitted that, if one State treats a dual national as an alien (i.e. by arbitrarily discriminating against that person as compared with its own citizens) a claim may validly be brought before an international Tribunal on the basis of that persons [sic] other nationality. It is also often admitted that no international protection is given to a dual national as regards rights acquired by him through the use of his "other" nationality, if such rights are validly reserved to its citizens by the other state.
>
> In both cases the merits of the particular claim are involved. (Incidentally, it would not seem that either of those cases is a case where the doctrine of estoppel, as applied in the relationships between private individuals under municipal law, could be applicable by analogy).

Id. at 2-3, 5 Iran-U.S. C.T.R. at 274. Judge Riphagen concluded by noting that the cause of dual nationality -- whether by birth, change of family status or naturalization -- should be taken into account when searching for the "most relevant nationality within a specific context." Id. at 3, 5 Iran-U.S. C.T.R. at 274-75.

2. The A18 Caveat in Tribunal Practice

49. Chamber One has issued several Awards finding that the dominant and effective nationality of dual national claimants was that of the United States. In each of those Awards, Chamber One noted that subsequent proceedings in the cases remained "subject to the caveat" and then quoted the

relevant language from A18.[3] Similarly, in a recent Partial Award, Chamber Three noted that its jurisdictional determination of a claimant's dominant and effective nationality remained subject to the A18 caveat.[4]

50. When Chamber Two adopted the dominant and effective nationality rule, one year before the Full Tribunal's decision in A18, it too added "an important caveat":

> There is precedent for denying jurisdiction on equitable grounds in cases of fraudulent use of nationality. Such a case might occur where an individual disguises his dominant or effective nationality in order to obtain benefits with his secondary nationality not otherwise available to him. See Flegenheimer Case (United States v. Italy), 14 R.I.A.A. 327, 378 (1958) (dicta).

Nasser Esphahanian and Bank Tejarat, Award No. 31-157-2, at 15 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 157, 166. The Tribunal then considered these issues in its determination of Mr. Esphahanian's dominant and effective nationality. It found that the funds used to purchase the check at issue in the case had been "acquired legitimately from activities unrelated to Esphahanian's Iranian nationality." However, the Tribunal stated that it was

> troubled by the evidence that Esphahanian was the nominal owner of a number of shares of stock in the Iran Marine Industrial Co. The beneficial owner was SEDCO, and it is possible, if not

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[3] Mohsen Asgari Nazari and The Islamic Republic of Iran, Interlocutory Award No. ITL 79-221-1, para. 19 (15 Jan. 1991), reprinted in 26 Iran-U.S. C.T.R. 7, 14; Hooshang and Catherine Etezadi and The Islamic Republic of Iran, Partial Award No. 497-319-1, para 20 (15 Nov. 1990), reprinted in 25 Iran-U.S. C.T.R. 264, 271-72; Lilly Mythra Fallah Lawrence and The Islamic Republic of Iran, Interlocutory Award No. ITL 77-390/391/392-1, para. 14 (5 Oct. 1990), reprinted in 25 Iran-U.S. C.T.R. 190, 195.

[4] Reza Nemazee, et al. and The Islamic Republic of Iran, Partial Award No. 487-4-3, para. 37 (10 July 1990).

> certain, that Esphahanian was made SEDCO's nominee because he had Iranian nationality and could be used to disguise the true extent of SEDCO's ownership. This is the kind of use of a second nationality that may cause the Tribunal to deny a claim, but in this case there is no evidence that his allowing his employer to use him as its nominee shareholder was a substantial part of his job. Thus, it does not seem that the Claimant used that subterfuge in a significant way to obtain benefits available only to Iranian nationals for which he is now claiming. This question is more relevant to SEDCO's claim (Case No. 128) and will be considered in that context.

Id. at 17[5], 2 Iran-U.S. C.T.R. at 167.

51. Chamber Two also applied the dominant and effective nationality rule in Golpira, filed the same day as Esphahanian. See Ataollah Golpira and The Islamic Republic of Iran, Award No. 32-211-2, at 5 (29 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 171, 173. Mr. Golpira sought compensation for the expropriation of twenty shares of stock in a Medical Group. The share certificates included references to his Iranian ID card number but, the Tribunal noted, ownership of the stock was open to foreign nationals. Id. at 4, 2 Iran-U.S. C.T.R at 173. Therefore:

> Since shares of stock in the Borzooyeh Medical Group were available for purchase by non-Iranians, the mere fact that Golpira's Iranian ID card number appears on his share certificates does not mean that he concealed his American nationality in order to obtain benefits available only to Iranians.

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[5] In the event, the Tribunal's subsequent disposition of SEDCO's claim obviated the need to consider the question further. See SEDCO, Inc. and Iran Marine Industrial Company, et al., Award No. 419-128/129-2, paras. 4-5, 63 (30 Mar. 1989), reprinted in 21 Iran U.S C.T.R. 31, 33-34, 59-60.

Id. at 6, 2 Iran-U.S. C.T.R. at 174. The Tribunal then held that Mr. Golpira was a national of the United States within the meaning of the Claims Settlement Declaration. This holding was based upon his dominant and effective United States nationality during the relevant period, the fact that the damages were "related primarily to his American nationality, not his Iranian nationality," and the fact that "[a]ll of his actions relevant to this claim could have been done by a non-Iranian." Id.; cf. Esphahanian, supra, at 18, 2 Iran-U.S. C.T.R. at 168.

52. A year and a half after A18, Chamber Two decided in Leila Danesh Arfa Mahmoud and The Islamic Republic of Iran, Award No. 204-237-2 (27 Nov. 1985), reprinted in 9 Iran-U.S. C.T.R. 350, that the claimant had failed to prove that her dominant and effective nationality during the relevant period was that of the United States. The case involved a claim for the expropriation of an interest in land. The claimant had inherited the property in 1970, while still solely an Iranian national. She became naturalized as an American citizen in 1979. Less than one year after her naturalization, her property was allegedly expropriated. At the time of the alleged expropriation, her ownership of the property remained legal, because Iranian law permitted those Iranians who obtained foreign nationality to hold their Iranian real property for up to one year before being obliged to sell it. Accordingly, the Tribunal noted that the claimant "could not be alleged to have made fraudulent use of one nationality." Id. , para. 23, 9 Iran-U.S C.T.R. at 354.[6] However, the claimant had waited a long time before applying for American citizenship. This led the Tribunal to increase the burden of proof:

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[6] It should be noted that, pursuant to the relevant Iranian law, if the one year has passed without a sale, the property is to be sold and the proceeds are to be paid to the dual national, less the costs of sale. See Civil Code of Iran, Article 989.

> [W]here a party makes a deliberate decision to postpone the acquisition of a nationality and within that same period that party has been able to benefit from another nationality with respect to the property at issue, a benefit that could not have otherwise been enjoyed, the evidentiary burden of proof on that party is higher.

Id., para. 24, 9 Iran-U.S. C.T.R at 354-55. In weighing the evidence, the Tribunal noted again that the claimant had benefitted from her Iranian nationality and concluded that she had failed to prove her dominant and effective United States nationality. Id., para. 26, 9 Iran-U.S. C.T.R. at 355. The Tribunal did not refer to the caveat in its analysis, but elements of the caveat were clearly present.

53. Chamber Two has issued several Interlocutory Awards in which claimants were found to be dominant and effective United States nationals. In two of those awards, Chamber Two concluded by noting that its jurisdictional determination remained "subject to the caveat added by the Full Tribunal in its decision in Case No. A18." The awards continued:

> The Tribunal will therefore in the further proceedings examine all circumstances of this Case also in light of this caveat, and will, for example, consider whether the Claimants used their Iranian nationality to secure benefits available under Iranian law exclusively to Iranian nationals or whether, in any other way, their conduct was such as to justify refusal of an award in their favor in the present Claims filed before the Tribunal.[7]

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[7] Faith Lita Khosrowshahi, et al. and The Islamic Republic of Iran, et al., Interlocutory Award No. ITL 76-178-2, para. 16 (22 Jan. 1990), reprinted in 24 Iran-U.S. C.T.R. 40, 45; Edgar Protiva, et al. and The Islamic Republic of Iran, Interlocutory Award No. ITL 73-316-2, para. 18 (12 Oct. 1989), reprinted in 23 Iran-U.S. C.T.R. 259, 263. [Emphasis added.]

54. Combining the discussions of the caveat in the A18 concurring opinions and in Chamber Two's interlocutory awards (as well as the anticipatory dicta in Esphahanian), the following conclusions can be drawn regarding the application of the caveat to a claim against Iran of a dual national whose dominant and effective nationality was that of the United States.[8] The caveat is evidently intended to apply to claims by dual nationals for benefits limited by relevant and applicable Iranian law to persons who were nationals solely of Iran. However, as indicated by Chamber Two when it referred to other conduct that could justify refusal of an award in their favor supra, para. 53, the equitable principle expressed by this rule can, in principle, have a broader application. Even when a dual national's claim relates to benefits not limited by law to Iranian nationals, the Tribunal may still apply the caveat when the evidence compels the conclusion that the dual national has abused his dual nationality in such a way that he should not be allowed to recover on his claim.

3. Application of the Caveat to Allan Saghi's Claim

55. The Respondent argues that the A18 caveat bars Allan Saghi's claim. The basis for this argument is the Law for Expansion, which limited foreign ownership in the cellulose business to 25%. The owners and managers of N.P.I. learned in 1976 that the Law for Expansion was to be applied to N.P.I. They proceeded to restructure N.P.I. and to alter its shareholdings. See supra, para. 7. Following the share transfers, N.P.I. submitted lists of Iranian and foreign shareholders to the Government. Foreign shareholdings

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[8] The same elements must, of course, be present, mutatis mutandis, in any application of the caveat to a claim against the United States by a dominant and effective Iranian national. See Case No. A/18, supra, at 25 n.13, 5 Iran-U.S. C.T.R at 265, n.1.

amounted to 25% of the total; Allan Saghi, with 48.24% of the total, was included on the list of Iranian shareholders. This, according to the Respondent, was fraudulent within the meaning of the A18 caveat, thus requiring the dismissal of Allan Saghi's claim.

56. The Claimants acknowledge that they took steps to minimize the adverse impact of the Law for Expansion, but they deny that any transfers of shares ever took place pursuant to the Law. They therefore contend that the Law for Expansion was never implemented with respect to N.P.I. before the Law itself was, in effect, abrogated by the Revolution. At any rate, they add, Article 4 of the Law's Regulations meant that the Law's 25% limit on foreign ownership did not apply to companies like N.P.I.[9]

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[9]The Claimants argue that the following regulation, promulgated by the Council for Expansion of Ownership of Producing Units, permitted foreign ownership of N.P.I. to exceed 25%. The "schedule" referred to in the regulation set the limit for foreign ownership in the cellulose industry at 25%:

> ARTICLE 4 - Maximum number of shares belonging to foreign shareholders in each amenable unit shall be determined by the Council, with due consideration to the quality of technique and type of relevant industry and need of foreign investment in accordance with the schedule approved by the Council for Expansion of Ownership and attached to this regulation.
>
> NOTE 1. In case of amenable units which have been registered before the ratification of the Expansion of Ownership Act and a part of whose shares is owned by foreign shareholders, where by offering 49% of the foreign shares the total of the remaining foreign shares is above or equal to the said schedule, only the said 49% shall be offered; where it is less than the percentage mentioned in the above schedule, then based upon the request of such foreign shareholders the number of

(Footnote Continued)

57. The Claimant's argument that Article 4 of the Law's regulations relaxed the 25% limit on foreign ownership is plausible, but the Respondent disagrees, and the issue is less than fully clear. The Claimants argued at the Hearing that Note 1 to Article 4 means that the Claimants could have retained a 47.6% stake in N.P.I. (offering 49% of their 93.5% to the public would leave them with 47.6% of the total), rather than only 25%. On the other hand, the Claimants appear to have believed in 1977 that foreign ownership of N.P.I. was limited to 25%; hence the share transfers that left exactly 25% of N.P.I.'s shares registered in the names of foreigners, with Allan Saghi identified to the Iranian authorities as an Iranian. In view of its finding, infra, para. 59, the Tribunal need not decide which of these two interpretations of the Law and its regulations was correct.

58. The Tribunal notes that in the dual-national Cases cited above, the claimants had either obtained Iranian nationality by birth or were United States nationals, who, upon marriage to an Iranian, automatically assumed Iranian nationality. In the case of Allan Saghi's Iranian nationality the Tribunal faces a different and probably unique set of circumstances which distinguish his Case from the other Cases.

59. Allan Saghi was born in Tehran, Iran, on 17 April 1957, to United States parents and by virtue thereof obtained United States nationality by operation of U.S. law. As noted in the Tribunal's Interlocutory Award in this Case, upon

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(Footnote Continued)

> shares to be offered shall be such that the maximum percentage mentioned in the above schedule could be maintained in which case 49% of the remaining total shares shall be offered.

[Emphasis added.]

reaching the age of 18 Allan withdrew any claim to Iranian nationality he may have had by virtue of his birth in Iran. On 7 June 1975, this withdrawal was recognized by the Government of Iran. However, on 6 January 1977, Allan applied to the Iranian Consulate General's Office in New York for a reversion to Iranian nationality. That application was granted and an Iranian identity card was given to him apparently some time in the Summer of 1977. See Interlocutory Award No. ITL 66-298-2, supra, at para. 6, 14 Iran-U.S. C.T.R. at 5. The picture emerging from these facts is that Allan Saghi voluntarily applied to revert to Iranian nationality in 1977, a few months before the Claimants executed several share transfers in preparation for implementation of the Law for Expansion. In August 1977, two shareholders lists were submitted to the Iranian authorities. Allan Saghi appeared on the list providing "Status of Company's shareholders, excluding shares of foreign shareholders", thereby presenting himself as an Iranian national. See supra, para. 7. In the same month the Claimants transferred the nominal ownership of certain shares to nineteen N.P.I. employees. In the context of the present Case, it thus seems clear that Allan consciously sought and obtained Iranian nationality solely for the purpose of having certain shares in N.P.I. placed in his name in order to minimize the adverse effects of the Law for Expansion. The Tribunal holds that in these exceptional circumstances, fundamental considerations of equity require that Allan Saghi -- a dual national with dominant and effective U.S. nationality -- should not be permitted to recover against Iran, even if the related benefits, i.e., the shares in N.P.I. he acquired with the use of his Iranian nationality, were not limited to Iranians by Iranian law. To rule otherwise would be to permit an abuse of right. Consequently, the Tribunal need not decide whether some or all of the shares he owned beneficially were, by Iranian law, not lawfully so owned by a non-Iranian.

60. In determining the consequences of applying the caveat to Allan Saghi's claim, it should first be noted that the caveat does not exclude Allan Saghi as a claimant; it merely applies to those parts of his claim where the equitable considerations giving rise to the application of the caveat are present. Where these elements are absent, his claim should not be affected. Thus, the caveat does not affect Allan Saghi's ownership interests in Novin because the Law for Expansion had no relevance to that type of company.

61. Allan Saghi's claim with respect to his ownership interests in N.P.I. may be divided into three parts, corresponding to three categories of shares:

(1) shares registered in Allan Saghi's name that he himself beneficially owned (251);

(2) shares registered in Allan Saghi's name that were beneficially owned by James Saghi (1818) or Michael Saghi (343);

(3) shares that were beneficially owned by Allan Saghi but registered in the names of seven Iranian employees (355).

62. In view of the findings in para. 59, supra, the caveat clearly applies to both the first and third category of shares: Allan Saghi beneficially owned those shares as an Iranian national. Accordingly, the Tribunal dismisses his claim for 606 N.P.I. shares, pursuant to the caveat.

63. The caveat cannot apply to the second category of shares. These were registered in Allan Saghi's name, but the beneficial rights of ownership belonged to James and Michael Saghi. In reality, James and Michael Saghi are the claimants for these shares; they are the beneficial owners of shares nominally owned by Allan Saghi. The caveat does not apply to them because they are not dual nationals. The fact that Allan Saghi can be considered an Iranian national for the purposes of these shares does not affect them as claimants. The Tribunal has recognized their rights, as

beneficial owners, to claim compensation for measures affecting their property rights. See supra, para. 26.

64. The Tribunal thus reaches the following conclusions concerning the Claimants' property interests in N.P.I., as modified by the application of the A18 caveat to Allan Saghi's claim:

- James Saghi may claim for 3176 shares (consisting of 900 shares registered in his own name, plus 1818 registered in Allan Saghi's name, and 458 registered in the names of nine Iranian employees -- all of which he beneficially owned);

- Michael Saghi may claim for 555 shares (consisting of 62 shares registered in his own name, plus 343 registered in Allan Saghi's name, and 150 registered in the names of three Iranian employees -- all of which he beneficially owned);

James and Michael Saghi thus owned 3731 shares, or 74.62% of N.P.I. As noted in paras. 43 and 60, supra, James, Michael and Allan Saghi may claim collectively for 93.5% of Novin.

C. The Expropriation Claim

65. The Tribunal turns next to the alleged taking of the Claimants' property. There has been no formal expropriation of N.P.I. or Novin. The issue here is whether the Respondent's actions deprived the Claimants of their ownership rights in those companies and thus constituted "expropriation or other measures affecting property rights" for which the Respondent is responsible. See Article II, paragraph 1 of the CSD.

66. In Kimberly-Clark Corp. and Bank Markazi, et al., Award No. 46-57-2, at 9 (25 May 1983), reprinted in 2 Iran-U.S. C.T.R. 334, 338, the Tribunal decided that N.P.I. was

controlled by the Government of Iran on 19 January 1981 and that a claim against N.P.I. was therefore a claim against "Iran" within the meaning of Article VII, paragraph 3 of the CSD. The Claimants argue that the expropriation of N.P.I. and Novin is now res judicata as a result of that decision. This argument misconstrues the decision in Kimberly-Clark. The jurisdictional question whether a company was controlled by the Government of Iran is distinct from the question whether the company has been expropriated. The fact that a company was a controlled entity is relevant evidence but not conclusive proof that it was expropriated. See Foremost Tehran, Inc., et al., supra, at 19, 10 Iran-U.S. C.T.R. at 241; SEDCO, Inc. and National Iranian Oil Co., et al., Interlocutory Award No. ITL 55-129-3, supra, at 40, 9 Iran-U.S. CT.R. at 277. It is necessary, therefore, to address the merits of this issue and to weigh the evidence.

67. It is undisputed that the Organization for National Industries appointed a "Supervisor" for N.P.I. on 13 May 1980. The legal basis for this appointment was apparently the Protection and Development of Iranian Industries Act. According to the Respondent, Clause C of that Law authorized temporary state management of corporations whose assets were less than their liabilities. The Claimants have submitted evidence which indicates that the Supervisor's role was ostensibly to manage the company in cooperation with its directors while an audit was carried out to determine whether Clause C applied to N.P.I. In the months following the appointment of the Supervisor, N.P.I.'s managers attempted to repay the company's debts in order to avoid coming within the scope of Clause C but were prevented from doing so by the Supervisor. The Respondent has not rebutted this evidence.

68. On 2 September 1980, Hassan Sadr, the Deputy Minister of Industries and Mines and Managing Director of the National Industries Organization, appointed Nariman Rezai Mehr as temporary member of the Board of Directors and Managing

Director of N.P.I. Two other men were appointed at the same time as temporary members of the Board of Directors. These appointments were made pursuant to the Protection and Development of Iranian Industries Act. Letters submitted in evidence by the Claimants show that Iraj Sepehran and Aris Shahoumian, managers of N.P.I. who had been appointed by the company's shareholders, continued their efforts to repay N.P.I.'s debts. Mr. Mehr apparently blocked these efforts; for example, in a letter dated 23 October 1980, he informed Messrs. Sepehran and Shahoumian:

> 1. Pursuant to explicit orders of the Revolutionary Council of the Islamic Republic of Iran, the financial liabilities of nationalized companies are not payable until all auditing is performed and their assets are evaluated by the Organization for the National Industries of Iran.
>
> . . . .
>
> 4. Considering the above, the order by the former "shareholders" of this company concerning transfers of funds for repayment of debts cannot be carried out and is rejected by the Board of Directors, unless a court or other qualified authority issues an order concerning your request.

69. The managers and shareholders of N.P.I. protested against the actions of the Supervisor and the Government-appointed Board of Directors in a letter, dated 27 November 1980, to the Islamic Parliament's Commission for the Ministry of Industries and Mines. The letter described in detail how N.P.I. had been prevented from repaying its debts and commented: "It is very strange to see that a debtor is insisting on repaying debts to the government, but the authorities are creating problems to delay it and even avoid collecting the company's taxes."

70. The Respondent acknowledges that N.P.I. was brought under temporary state management but claims that this was justified because N.P.I.'s owners and managers had abandoned

the company and the company's liabilities exceeded its assets. The Respondent also contends that James Saghi admitted in a letter to KCC, dated 19 January 1981, that N.P.I. had not yet been expropriated.

71. The Tribunal cannot agree that the Respondent can avoid liability for compensation by showing that its actions were taken legitimately pursuant to its own laws. See American International Group, Inc. supra, at 14-15, 4 Iran-U.S. C.T.R. at 105 ("[I]t is a general principle of public international law that even in a case of lawful nationalization the former owner of the nationalized property is normally entitled to compensation for the value of the property taken."); INA Corp. and The Islamic Republic of Iran, Award No. 184-161-1, at 7-8 (13 Aug. 1985), reprinted in 8 Iran-U.S. C.T.R. 373, 378; Phelps Dodge Corp., et al. and The Islamic Republic of Iran, Award No. 217-99-2, para. 22 (19 Mar. 1986), reprinted in 10 Iran-U.S. C.T.R. 121, 130.

72. Moreover, it is clear that the owners and managers of N.P.I. did not abandon the company. Evidence in the record shows that James Saghi settled in the United States in 1977 but remained in contact with N.P.I.'s managers and continued to supervise its affairs. The controversy over repayment of debts shows that those managers were active in 1980 and resisted what they saw as efforts by the Government of Iran to take control of N.P.I. They remained in place until forced out by the Government: On 19 October 1980, Mr. Mehr was instructed by the Government to cut off Mr. Sepehran's salary and benefits because Mr. Sepehran was suspected of "financial wrongdoings." Around the same time, Mr. Mehr sent a letter to Mr. Sepehran which stated the following:

> In spite of letter No. 605/M of 17 September 1980 and our conversations in order to persuade you to cooperate with us, you are still continuing your irresponsible behavior. As an officer of the corporation and Director of Executive Affairs, you are not participating in any of the meetings and you are also absent on successive days. This is

> completely against administrative regulations and against the revolutionary movement in our society. Therefore, until further notice, all your responsibilities are terminated and your department shall perform its duties directly under the Managing Director. [Emphasis added.]

On 1 February 1981, an Assistant Revolutionary District Attorney affiliated with the Organization for Nationalized Industries ordered that twelve individuals, including Mr. Shahoumian, be excluded from the premises of N.P.I. and Novin, which were described in the order as "this nationalized unit."

73. Similarly, the evidence does not support the contention that N.P.I. was insolvent in 1980. There is no direct evidence in the record concerning the balance of N.P.I.'s assets and liabilities in mid-1980. The Claimants' evidence shows that N.P.I.'s managers attempted repeatedly to repay the company's debts; one may infer from those efforts that N.P.I. did possess sufficient assets to make the repayments. Indeed, the 27 November 1980 letter to the Parliamentary Commission stated that N.P.I. had a cash balance of 155,191,741 rials in an account at Bank Melli Iran. On 15 June 1988, in response to a request from the Claimants, the Tribunal ordered the Respondent to submit all documents relating to the bank accounts of N.P.I. and Novin for the period 1979-81. The Respondent did not submit documents relating to N.P.I.'s bank accounts. Accordingly, the Tribunal will assume that N.P.I. possessed sufficient liquid assets in 1980 to repay its debts and thus remain outside the reach of Clause C of the Protection and Development of Iranian Industries Act. This assumption is furthermore supported by NPI's Balance Sheet for the year ending 20 March 1981, which has been submitted by the Claimants.

74. James Saghi's 19 January 1981 letter to KCC concerned KCC's failure to receive royalty reports from N.P.I. Mr. Saghi wrote:

> I do not truly know the reason why the dispatch of the reports to you was suddenly stopped after March 1980. However, I guess the reason could be that from March or April of last year the government has created problems for us, is interfering in our affairs and is trying to find an excuse for nationalizing our company as it has done to a number of other industrial concerns. Up to the date of writing of this letter the government officials have not been successful. We shall continue to fight and I hope that they are not successful and the present administration comes to sense and reason and the conditions become rather normal.

In light of other evidence in the Case, the Tribunal does not regard this letter as having probative value concerning whether the Respondent had by that date taken control of N.P.I. and deprived the Claimants of their ownership rights. Mr. Saghi asserts that he was reluctant to admit to his licensor that he had lost control of his company. The evidence before the Tribunal has shown that agents of the Iranian Government gradually extended their control over N.P.I. after May 1980. Mr. Saghi referred to that interference but chose to strike a note of optimism in his letter. His expression of hope does not outweigh other evidence in the record proving that the Respondent took control of N.P.I. Indeed, it should be recalled that the Respondent itself has acknowledged that N.P.I. was brought under "temporary state management" in 1980.

75. The assumption of control over property by a government -- for example, through the appointment of "temporary managers" -- does not, ipso facto, mean that the property has been taken by the government, thus requiring compensation under international law. The appointment of such managers is, however, an important factor in finding a taking. If the appointments were part of a process by which the owner of the property was deprived of fundamental rights of ownership and if the deprivation was not ephemeral, then one must conclude that compensation is required. See, e.g., Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA

Consulting Engineers of Iran, et al., Award No. 141-7-2, at 11 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225; SEDCO, Inc. and National Iranian Oil Company, et al., Interlocutory Award No. ITL 55-129-3, supra at 40-41, 9 Iran-U.S. C.T.R. at 277-78.

76. Judging from the evidence in the record of this Case, the first interference with the Claimants' ownership rights resulted from the appointment of the Supervisor for N.P.I. on 13 May 1980. Considered in isolation, the Supervisor's prevention of the repayment of debts might not rise to the level of a deprivation of property. However, the Protection and Development of Iranian Industries Act made the Supervisor's actions much more dangerous. Actions by agents of the Government of Iran that gave that Government the grounds under that law for appointing a new Board of Directors and a Managing Director effectively deprived the owners of N.P.I. of their right to manage the company. Interference with the Claimants' ownership rights continued and, indeed, intensified after the appointments of 2 September 1980: The managers chosen by N.P.I.'s owners attempted again in October 1980 to repay N.P.I.'s debts but were stopped from doing so by Mr. Mehr, the Government-appointed Managing Director. The managers themselves were then excluded from the company. The Respondent has maintained its control over N.P.I. ever since then.

77. The Tribunal concludes from this evidence that the Government of Iran did deprive the Claimants of their ownership rights in N.P.I. Where the appointment of "temporary" managers ripens into permanent control of a company and a deprivation of property, the date of the appointment is the date of the deprivation. See SEDCO Inc. and National Iranian Oil Company, et al., Award No. ITL 55-129-3 supra, at 41; 9 Iran-U.S. C.T.R. at 278. The actions of the Supervisor would justify selecting the date of his appointment, 13 May 1980, as the date of the deprivation. However, the Claimants have argued that the subsequent appointments, on 2

September 1980, of Mr. Mehr and the two other Board members marked the imposition of Government control. The Tribunal accepts this argument and accordingly finds that the Respondent deprived the Claimants of their ownership rights in N.P.I. on 2 September 1980.

78. There remains the question whether the Respondent also deprived the Claimants of their ownership rights in Novin. The Respondent contends that Novin is a separate entity and that the Claimants' evidence concerning the taking of N.P.I. proves nothing about the status of Novin. The Tribunal notes that there is no dispute between the Parties over Novin's separate juridical identity. However, the evidence relating to the creation of Novin and the operation of the two companies shows that, in practice, N.P.I. and Novin comprised two parts -- for manufacturing and distribution, respectively -- of a unitary enterprise. The actions taken against the existing management confirm this: The letter of 19 October 1980 directing Mr. Mehr to temporaily cut Mr. Sepehran's salary and benefits identified him as "shareholder and member of Board of Directors and the former Manager of Executive Affairs of Novzohour and shareholder and member of Board of Directors of Novin." Similarly, in his letter of 1 February 1981, the Assistant Revolutionary District Attorney ordered the exclusion of twelve individuals, including Mr. Shahoumian, from N.P.I. and Novin; those two entities, along with Novzohour Sport Company, were described as "this nationalized unit." The Tribunal therefore concludes that the actions that deprived the Claimants of their ownership rights in N.P.I. had the same effect with respect to Novin.

D. Valuation and Compensation

1. The Standard of Compensation

79. The Tribunal has previously held that under the Treaty of Amity[10] a deprivation requires compensation equal to the full equivalent of the value of the interests in the property taken.[11] The Tribunal has found that the Respondent deprived the Claimants of their ownership interests in N.P.I. and Novin, and consequently they are entitled to full compensation. For going concerns, like N.P.I. and Novin, the full equivalent of their value equals their fair market value.[12] Fair market value may be defined as "the amount which a willing buyer would have paid a willing seller for the shares of a going concern, disregarding any diminution of value due to the nationalization itself or the anticipation thereof, and excluding consideration of events thereafter that might have increased or decreased the value of the shares."[13] On the other hand, while any diminution of value caused by the deprivation of property itself should be disregarded, "prior changes in the general political, social and economic

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[10] Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed 15 August 1955, entered into force 16 June 1957, 284 U.N.T.S. 93, T.I.A.S. No. 3853, 8 U.S.T. 900. The Tribunal has previously found that the Treaty was in force at the time the claim in this Case arose. See, e.g., Phelps Dodge Corp., et al. supra, para. 27, 10 Iran-U.S. C.T.R. at 131-32.

[11] Id., para. 28, 10 Iran-U.S. C.T.R. at 132.

[12] See American Int'l Group, supra, at 21-22, 4 Iran-U.S. C.T.R. at 109; INA, supra, at 10, 8 Iran-U.S. C.T.R. at 379; Starrett Housing Corp., et al. and The Islamic Republic of Iran, et al., Award No. 314-24-1, paras. 261, 277 (14 Aug. 1987), reprinted in 16 Iran-U.S. C.T.R. 112, 195, 201.

[13] INA, supra, at 10, 8 Iran-U.S. C.T.R. at 380.

conditions which might have affected the enterprise's business prospects as of the date the enterprise was taken should be considered."[14]

2. The Contentions of the Parties

80. Both Parties have submitted evidence relating to the value of these two companies. Some of the submissions treat the companies separately; others treat them as a single unit. In view of the Tribunal's findings, supra, para. 78, that N.P.I. and Novin functioned as a unitary entity and that the Respondent took over both companies, the Tribunal will treat N.P.I. and Novin together except as otherwise required by the caveat.

81. The principal evidence relied upon by the Claimants is KCC's offer in 1975 to purchase a 45% equity stake in N.P.I. See supra, para. 5. The Claimants have submitted a copy of a telex, dated 9 June 1975, in which KCC offered to pay U.S.$2.75 million plus 45% of N.P.I.'s audited net worth for that interest. According to the Claimants, N.P.I.'s audited net worth at that time was U.S.$3.9 million, making the offer worth U.S.$4.5 million. The Claimants further allege that, as a result of a U.S.$500,000 increase in N.P.I.'s net book value between March and August 1975, KCC increased its offer to U.S.$4.75 million in August 1975. James Saghi did not accept this offer, and the negotiations ended. Two of the KCC executives who participated in these negotiations, Robert C. Ernest and Thomas M. Stanton, have corroborated these allegations in affidavits executed in 1987.

82. The Claimants contend that a "minority discount" should be applied to KCC's offer in order to derive from it a value for N.P.I. as a whole. Using a discount of 20%, the

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[14] American Int'l Group, supra, at 18, 4 Iran-U.S. C.T.R. at 107.

Claimants conclude that the value of N.P.I. in August 1975 was U.S.$12 million. They note, too, that in August 1975, N.P.I. included the future Novin. Finally, the Claimants assert that the value of N.P.I. in 1975 provides evidence of its value, along with that of Novin, five years later when the Respondent took the companies. James Saghi asserts that increasing the 1975 value by the United States Consumer Price Index yields a "conservative" estimate for the value of the companies in 1980 of U.S.$18.6 million.

83. The Claimants further submitted two valuations based upon estimates of the value of the companies' assets. In his own affidavit, James Saghi listed all of the companies' tangible and intangible assets and stated the value of each. The total value was U.S.$18,103,300. Although he submitted copies of some invoices and other documents, the principal basis for his valuation was his own acquaintance with N.P.I. and the paper business. The Claimants commissioned a valuation of the assets listed in Mr. Saghi's affidavit by two independent experts who work in the paper business in the United States, David G. Lapre and John F. Lundgren. For equipment with which they were familiar, they calculated the average cost in 1987 of new and used equipment. They provided no documentary evidence in support of their findings. Using American inflation data, they adjusted the figures to yield average values for 1980. For assets that they lacked the knowledge or expertise to assess (e.g., N.P.I.'s land), they accepted Mr. Saghi's valuation. They concluded that N.P.I.'s assets (which included Novin's assets) were worth U.S.$18,630,330 in August 1980. Neither Mr. Saghi's valuation nor the Lapre & Lundgren valuation included any consideration of the companies' liabilities.

84. The Claimants further submitted a valuation of the assets and liabilities of N.P.I. (including Novin) by Coopers & Lybrand (C&L), an international accounting firm. For its valuation, C&L used data from the Saghi and Lapre & Lundgren valuations and from N.P.I.'s balance sheets. C&L concluded

that N.P.I.'s value in August 1980 was U.S.$20,612,436. It was on the basis of this valuation that the Claimants increased their claim to U.S.$19,272,627, which is 93.5% of N.P.I.'s value, as found by C&L. See supra, para. 1.

85. In response to the Ernst & Whinney valuation submitted by the Respondent, infra, para. 88, C&L also carried out a valuation based on N.P.I.'s earnings. Using N.P.I.'s balance sheet for the year ending 20 March 1981, but disregarding certain extraordinary charges, and applying a price/earnings ratio of 7.0, C&L found that N.P.I. alone was worth about U.S.$15.5 million. C&L estimated that Novin was worth about U.S.$1.2 million, based on evidence in the request for a ruling from the IRS, supra, para. 41, and in the Khodaie & Moghaddas valuation, infra, para. 89.

86. The Respondent has also submitted several other valuations. Most present N.P.I.'s value alone; one relates to Novin alone. Mohammed Ashrafi, an expert working for the Iranian Ministry of Justice, appraised N.P.I.'s physical assets in July 1977. Mr. Ashrafi adjusted the historic cost of the assets for depreciation, inflation and currency exchange rates, and concluded that N.P.I.'s physical assets were then worth 244,270,000 rials (equivalent to approximately U.S.$3.5 million). This valuation took no account of N.P.I.'s intangible assets or its liabilities. The Respondent has also submitted a valuation of N.P.I.'s machinery and equipment carried out by Jaakko Pöyry, a Finnish engineering firm. Jaakko Pöyry visited N.P.I. in 1987. With adjustments for depreciation and inflation, it calculated that the replacement value of certain machinery and equipment in 1980 was U.S.$1,961,000.

87. A.M. Mahallati & Co., an Iranian accounting firm, carried out an asset/liability valuation of N.P.I. for the Respondent in 1988. Referring to N.P.I.'s balance sheet for the year ending 20 March 1979, it found that N.P.I.'s net worth was 5.8 million rials. Mahallati then reduced the net

asset value by over 58.9 million rials, explaining that the adjustment had been required by N.P.I.'s auditors in 1980. The 1980 audit itself was not submitted in evidence. Adding the market value of N.P.I.'s fixed assets (derived from the Jaakko Pöyry valuation) and subtracting a capital gains tax that Mahallati stated was applicable, Mahallati arrived at a net deficit of 11.3 million rials; it therefore concluded that the value of N.P.I.'s share capital in June 1979 was nil.

88. The Respondent also submitted a valuation of N.P.I. by Ernst & Whinney (E&W), an international accounting firm which later became Ernst & Young. E&W calculated the value of N.P.I. in June 1979, based on the company's earnings. Included in evidence with E&W's valuation were N.P.I.'s balance sheets for 1975-79 and portions of the company's audit reports for 1977-79. N.P.I.'s net profit for the year ending 20 March 1979 was 13,883,000 rials. Stating that "[w]e are informed" that N.P.I.'s tax provision for that year was understated by approximately 7.9 million rials, E&W subtracted that amount from N.P.I.'s earnings when calculating the company's value. E&W multiplied those adjusted earnings by a price/earnings ratio derived from KCC, 7.0, and discounted by 30-50% to reflect N.P.I.'s allegedly weaker condition and the greater commercial risks in post-Revolutionary Iran. E&W concluded that N.P.I. was worth a maximum of 25 million rials (equivalent to approximately U.S.$350,000) in June 1979.

89. Finally, the Respondent has submitted a valuation of Novin, carried out in 1989 by Hassan Khodaie and Hossein Moghaddas, two "Official Experts to Justice Administration" in Iran. Their asset/liability assessment concluded that Novin's net value as of 20 March 1980 was 18,634,572 rials (equivalent to approximately U.S.$250,000).

3. The Tribunal's Findings

90. The Tribunal's task is to determine N.P.I.'s value on the date of expropriation, i.e., September 1980. In this regard the Tribunal first notes that most of the valuations placed in evidence by both Parties do not relate to the period in question and thus may not be an accurate measure of a going concern's fair market value in 1980. Furthermore, only a few of the valuations submitted contain data that will be helpful in determining the value of the company. Valuations that merely calculate the net value of assets and liabilities may be appropriate for determining the dissolution or liquidation value of a company,[15] but are an inadequate method of valuing a going concern such as N.P.I. and Novin. Such valuations ignore the future prospects of a going concern and therefore fail to indicate the price that a potential buyer would pay for the company. In addition, asset/liability valuations that ignore certain assets or liabilities do not provide a complete picture of a company's value.

91. KCC's offer in 1975 to purchase a 45% equity stake in N.P.I. (which included the future Novin) is potentially important evidence despite the fact that it was made 5 years before the date of taking. As stated above, the fair market value of a company can best be defined as "the amount which a willing buyer would have paid a willing seller ...". KCC clearly was such a willing buyer and must have been reasonably well informed about N.P.I. as a result of the relationship between the companies extending over many years. KCC made its telexed offer after the Government proposed the Law for Expansion and before the Majlis enacted it; the terms of the offer show that KCC was aware of the Government's proposals and tailored its offer to protect its interests in case the new Law was applied to N.P.I. Although KCC's offer

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[15] See TAMS, supra, at 12, 6 Iran-U.S. C.T.R. at 226; SEDCO, Inc. and National Iranian Oil Company, Award No. 309-129-3, supra, para. 267, 15 Iran-U.S. C.T.R at 101-2.

was rejected and the deal was not consummated, James Saghi at that time certainly was a willing seller, be it not for the amount offered by KCC. In short, the purchase would have been an arms-length transaction between a willing buyer and a willing seller. The Tribunal accordingly finds that extrapolating from the KCC 1975 figure to arrive at a figure for September 1980, is an appropriate way of calculating a value of N.P.I. at the date of expropriation. When applying this method the Tribunal will take into account all relevant data available from the other valuations submitted. Before extrapolating from the KCC 1975 figure, two preliminary questions have to be answered.

(1) What was KCC's offer actually worth?

(2) What did KCC's offer indicate with respect to the value of N.P.I. as a whole in 1975?

92. The actual value of KCC's offer is uncertain because one component of it was stated as 45% of N.P.I.'s audited net worth. Mr. Ernest, the KCC executive who made the offer, states in his 1987 affidavit that KCC's June 1975 offer was worth U.S.$4.5 million, based on N.P.I.'s net worth of U.S.$3.9 million, and that the offer was increased to U.S.$4.75 million two months later, based on a U.S.$500,000 increase in N.P.I.'s net worth. The Claimants have submitted no contemporaneous documentary evidence to support these claims with respect to N.P.I.'s net worth. On the other hand, the Respondent has submitted N.P.I.'s audit report for the year ending 20 March 1976. The balance sheet included in the report shows that N.P.I.'s net worth on 20 March 1975 was 43,096,157 rials (equivalent to approximately U.S.$616,000), and that its net worth on 20 March 1976 was 28,294,392 rials (equivalent to approximately U.S.$404,000). The Claimants have not rebutted this evidence or explained the reasons for the discrepancy between their allegations and the evidence of the audit report. The Tribunal finds

that the Respondent's evidence is more persuasive on this point and, accordingly, that N.P.I.'s net worth in August 1975 lay between U.S.$404,000 and U.S.$616,000. This leads to the conclusion that KCC's offer was worth approximately U.S.$3 million.

93. The Claimants assert that the amount offered to purchase 45% of N.P.I. actually represented less than 45% of N.P.I.'s value. This is because a minority interest with "no control over corporate policy" normally sells at a discount. The Claimants allege that the "minority discount" in this case should be 20%. Applying this discount to U.S.$4.75 million, the alleged value of the KCC offer, they argue that N.P.I. was worth a "minimum" of U.S.$12 million in 1975. Applying the 20% discount to U.S.$3 million, the amount found by the Tribunal to be the value of the KCC offer, supra, para. 92, yields U.S.$8 million as the value of N.P.I.

94. The Respondent argues that there should be no minority discount when extrapolating the value of N.P.I. from the value of a 45% share in the company because KCC "expected to acquire control over the company." In support of this argument, the Respondent points to certain conditions attached to KCC's offer, as reflected in its 9 June 1975 telex:

> 2. SAGHI TO STAY ON AS ACTIVE MANAGER ONE YEAR AFTER STARTUP BUT WITH NO OBLIGATION BEYOND THREE YEARS FROM DATE OF CLOSING. TO BE SUCCEEDED BY A GENERAL MANAGER ACCEPTABLE TO KCC AND SAGHI.
>
> 3. WHEN SAGHI LEAVES, GENERAL MANAGER TO TAKE DIRECTION FROM KCC AS DEFINED BY A MANAGING CONTRACT WITH KCC. SAGHI TO CONTINUE AS CONSULTANT TO KCC IN MATTERS COVERED BY THE MANAGING CONTRACT AND TO BE PAID A CONSULTING FEE WHICH SHALL BE A PERCENTAGE OF ROYALTY PAYMENTS MADE TO KCC.
>
> IT IS UNDERSTOOD THAT KCC MANAGEMENT OF NPI IS SUBJECT TO OVERSIGHT OF JOINT ADVISORY COUNCIL OF TWO MEMBERS: ONE TO BE SAGHI AND THE OTHER TO BE AN OFFICER OF KCC. MANAGING

CONTRACT TO CONTAIN CLAUSE FOR RESOLVING ANY CONFLICT.

. . . .

6. BOARD TO BE 50-50, WITH UNRESOLVED ISSUES DECIDED BY SHAREHOLDER VOTE.

. . . .

8. KCC TO HAVE OPTION TO PURCHASE CONTROL OF NPI (51 PERCENT) FROM SAGHI AND ASSOCIATES AT SAGHI'S DEATH. PRICE TO BE BOOK VALUE OF SHARES AT THAT TIME.

The Respondent concludes that "even though Kimberly Clark was the buyer of a minority of shares, no steps or measures could be taken without its approval and consent."

95. In the Tribunal's view, the terms of KCC's offer would have given KCC a significant role in the management of N.P.I.; KCC would not be a passive minority shareholder. It would appear to go too far to say that nothing could be done without KCC's approval. On the other hand, it also appears inaccurate to assert that KCC would have gained "no control over corporate policy." KCC's 50% representation on N.P.I.'s Board of Directors could be expected to give it considerable influence over corporate policy. The option to increase its stake to 51% upon Mr. Saghi's death by purchasing shares at book value was also valuable to KCC. Mr. Stanton, KCC's General Counsel at the time, confirms in an affidavit submitted by the Claimants that the "ability to obtain a controlling interest in Novzohour was a condition of KCC's purchase." He also notes that "the proposed operation was to be joint between James Saghi and KCC." While it may be true as a general rule that minority shares sell at a discount, the evidence here does not sustain the Claimants' contention that this minority share of 45% was to be sold at a 20% discount. The Tribunal therefore decides that no "minority discount" should be used in deriving a value for N.P.I. as a whole from KCC's offer. Hence, KCC's offer of approximately U.S.$3 million for a 45% stake in N.P.I.

indicates that N.P.I. was worth approximately U.S.$6.7 million in August 1975.

96. This leads to the remaining, and most difficult, issue with respect to the KCC offer: If N.P.I. was worth U.S.$6.7 million in August 1975, what was it (along with Novin) worth five years later, on 2 September 1980? The Parties have offered many arguments but little factual data to assist the Tribunal in answering this question.

97. The Claimants argue that the value of N.P.I. should be increased to account for the effects of inflation. Because KCC's offer was expressed in U.S. dollars, they argue, inflation data from the United States should be used. Thus, U.S.$12 million in August 1975 was worth approximately U.S.$18.6 million five years later, an increase of 55%.[16] To support his claim that N.P.I.'s real value increased during those years, James Saghi points to the expansion of the company's capacity that was carried out then and to its enjoyment of a near-monopoly position in a market where consumer demand, both in Iran and in neighboring countries, was increasing. There is evidence that the managers of N.P.I. installed by the Respondent investigated the possibilities of further expanding N.P.I.'s capacity after 1980; according to the Claimants, this proves that the company emerged from the Revolution with its good prospects intact.

98. The Respondent has not rebutted the Claimants' evidence concerning the expansion of N.P.I.'s capacity. However, it has argued that the Islamic Revolution greatly weakened the company and thereby reduced its value. The E&W report submitted by the Respondent enumerates the political and economic risks that a potential investor in June 1979 would

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[16] Put another way, the change in value over the years was attributable to a decrease in the value of the dollar caused by inflation.

have taken into consideration. These included unsettled labor relations which increased the costs of employment, possible changes in the taxation system, greater Government regulation and control of the economy, inflationary expectations, devaluation of the rial, difficulties in obtaining raw materials, and reduced foreign investment in Iran. E&W does not explain how the situation might have evolved between June 1979, the date chosen for its valuation, and September 1980, the date of the taking in this Case.

99. The Claimants acknowledge that the Revolution interrupted N.P.I.'s expansion but seek to rebut the Respondent's arguments by referring to the rule that an expropriating state cannot use its own acts to decrease the value of a business and, hence, the compensation that it owes for the expropriation. That rule remains valid and important; however, the Tribunal remains obliged to consider changes in political, economic and social conditions prior to September 1980 that would have affected N.P.I.'s business prospects and thus its value. See American Int'l Group, supra, at 16-18, 4 Iran-U.S. C.T.R. at 106-7.

100. The Tribunal is convinced that the Islamic Revolution cannot be ignored when seeking to relate N.P.I.'s value in 1975 to that of 1980. It is well known that Iran's economy was disrupted and, in many ways, transformed by the Revolution. A potential investor in Iran in 1980 would indeed have weighed the political and economic risks enumerated in the E&W report. However, the impact of the Revolution should not be exaggerated or reduced to broad generalizations. It cannot be assumed that the potential buyer would fail to distinguish between investments and projects that were frustrated or undermined by the Revolution and those which might reasonably be expected to recover once the turmoil of the Revolution itself had subsided. For example, in CBS Inc. and The Islamic Republic of Iran, et al., Award No. 486-197-2 (28 June 1990), reprinted in 25 Iran-U.S. C.T.R. 131, the claimant had participated in a joint venture aimed,

in part, at marketing popular Western music in Iran. The attitude towards that sort of music in post-Revolutionary Iran was found to have reduced the value of the joint venture. Id. para. 52, 25 Iran-U.S. C.T.R. at 148-49. In contrast, N.P.I. manufactured paper products for which a market remained after the Revolution. Indeed, as the Claimants have pointed out, this Tribunal received evidence in Case No. 57 of N.P.I.'s continued sales of tissue paper after the Revolution. See Kimberly-Clark, supra, at 5, 2 Iran-U.S. C.T.R. at 336. On the other hand, it is also well-known that due to the Revolution Iran's relations with its neighbours and foreign trading partners changed considerably. James Saghi testified at the Hearing that in 1975 KCC intended to use the NPI factory as a center to cover the whole Middle East market for raw material manufactured at N.P.I. The Tribunal finds it doubtful that a potential investor in 1980 would consider such a regional function for N.P.I. to be a realistic prospect. Before making conclusory statements regarding the impact of inflation and the Revolution on the value of N.P.I, the Tribunal will consider the evidence in the record that is more directly related to the company and its business.

101. A picture of N.P.I.'s trading results can be pieced together from balance sheets submitted by the Parties. These data show a generally favorable trend, with some setbacks around the time of the Revolution:

N.P.I. Trading Results
(millions of rials)

	Year Ending 20 March						
	1975	1976	1977	1978	1979	1980	1981
Sales	239	301	353	533	520	717	722
Gross Profit	47	50	46	94	138	254	286
Net Profit (Loss)	(2)	(8)	(29)	1	14	115	112

The Parties do not dispute the authenticity of the balance sheets from which these figures were drawn. They do disagree, however, over whether adjustments should be made on the balance sheets. The Claimants would delete certain extraordinary charges. See supra, para. 85. The Respondent would increase provisions for taxes. See supra, para. 87. The data necessary to resolve these disputes are not in evidence; accordingly, the Tribunal cannot decide how much weight should be given to those balance sheets.

102. The Tribunal notes, however, that both Parties have used the balance sheet results as a basis for valuations based upon price-earnings ratios, although each Party differs as to the appropriate ratio and each selects the year and the adjustments most favorable to its side. If, rather than selecting a single year, one looked at the average earnings over the three years ending 20 March 1981, that would give an average net profit of 80.1 million Rials. In the absence of probative evidence, the Tribunal has no basis for making adjustments in either direction to that average earning amount. With respect to the appropriate ratio, the views of the experts presented by the Parties range from 3.5% to 4.9%, the range proposed by Ernst & Whinney, the Respondent's expert, to 7.0% proposed by Coopers & Lybrand, the Claimants' expert. When applied to the three year average earnings, those ratios suggest approximate values between U.S.$4 million and U.S.$8 million.

103. In conclusion, while evidence in this Case is not such as to enable the Tribunal to quantify with precision a valuation of N.P.I., the Tribunal is able to make a reasonable approximation. The Tribunal considers it reasonable to assume that inflation would have increased the dollar value of N.P.I. in 1980 compared to 1975. However, it is also reasonable to assume that the negative effects of the Revolution, particularly the isolated position Iran found itself in, would have had a negative impact upon N.P.I.'s future business prospects. As a result, the Tribunal concludes

that N.P.I.'s value would have decreased more than the increase in value attributable to inflation. Consequently, the Tribunal holds that compared to N.P.I.'s value in 1975 dollars, its value in current 1980 dollars had decreased. Thus, on the basis of the evidence and taking into account all relevant circumstances, this leads the Tribunal to conclude that N.P.I. and Novin, together, were worth approximately U.S.$5.5 million in September 1980. This amount is less than N.P.I.'s value in 1975 and falls near the middle of the range suggested supra by the price earnings analysis.

104. The Tribunal has found that the Claimants' ownership interests in N.P.I. differed from their interests in Novin. See supra, para. 44. Therefore, the amount found to represent the value of the two companies, U.S.$5.5 million, needs to be apportioned between them on the basis of the evidence before the Tribunal. Although there is very little evidence regarding Novin's value as a separate company, the Tribunal will take into consideration the two valuations of Novin introduced by the Parties. C&L in its valuation referred to supra, para. 85, estimated that Novin was worth about U.S.$1.2 million. The valuation carried out by Messrs. Khodaie and Moghaddas supra, para. 89 gives a net value of approximately U.S.$250,000. The Tribunal notes that each Party's proposed valuation of Novin represents roughly 10 percent of their respective proposed valuations for the two companies combined. Without any further evidence the Tribunal sees no basis to assume that Novin was worth more or less than approximately 10 percent of the value of the total business. Accordingly, the Tribunal values Novin at 10 percent of the amount found to represent the two companies together, i.e., U.S.$550,000. This amount falls between the two values for Novin suggested by the Parties.

105. The Tribunal has found that the Claimants owned collectively 86.74% of N.P.I. but that only James and Michael Saghi can claim for their combined share, which collectively is 74.62%. See supra, para. 64. The Tribunal therefore

awards the Claimants James and Michael Saghi 74.62% of U.S.$4,950,000, i.e., U.S.$3,693,690 in compensation for the deprivation by the Respondent of their ownership interests in N.P.I. The Tribunal also awards the Claimants James, Michael and Allan Saghi 93.5% of U.S.$550,000, i.e., U.S.$514,250 in compensation for the deprivation by the Respondent of their ownership interests in Novin.

E. Interest

106. To compensate the Claimants for the damages they suffered as a result of the Respondent's failure to compensate them when their property was taken, the Tribunal considers it fair to award the Claimants simple interest at the rate of 9.5%, to run from 2 September 1980, the date of the deprivation.

F. Costs

107. Each Party shall bear its own costs of arbitration.

V. AWARD

108. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

A. The Respondent, the ISLAMIC REPUBLIC OF IRAN, is obligated to pay

- the Claimants JAMES M. SAGHI and MICHAEL R. SAGHI, the amount of Three Million Six Hundred Ninety Three Thousand Six Hundred Ninety United States Dollars and No Cents (U.S.$3,693,690), plus simple interest at the rate of 9.5% per annum (365-day basis) from 2 September 1980 up to and including the date on which the Escrow

Agent instructs the Depositary Bank to effect payment to the Claimants out of the Security Account;

- the Claimants JAMES M. SAGHI, MICHAEL R. SAGHI and ALLAN J. SAGHI the amount of Five Hundred Fourteen Thousand Two Hundred Fifty United States Dollars and No Cents (U.S.$514,250) plus simple interest at the rate of 9.5% per annum (365-day basis) from 2 September 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment to the Claimants out of the Security Account.

B. Each Party shall bear its own costs of arbitration.

C. This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague
22 January 1993

José María Ruda
Chairman
Chamber Two

In The Name of God

George H. Aldrich
Concurring Opinion

Koorosh H. Ameli
Dissenting Opnion