395-311

CLAIMS TRIBUNAL

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دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN SAFE

Case No. 395 Date of filing: 10 Aug 89

** AWARD - Type of Award _____
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____

- Date _____
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** SEPARATE OPINION of _____

- Date _____
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** DISSENTING OPINION of _____

- Date _____
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** OTHER; Nature of document: Concurring & Dissenting Opinion of Judge Brower

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. 395
CHAMBER THREE
AWARD NO. 431-395-3

COMPONENT BUILDERS, INC.,
WOOD COMPONENTS CO. and
MOSHOFSKY ENTERPRISES, INC.,

Claimants,

and

THE ISLAMIC REPUBLIC OF IRAN,
BANK MASKAN IRAN [SUCCESSOR TO
BANK RAHNI IRAN] and
INSURANCE COMPANY OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحده
FILED - ثبت شد
Date 10 AUG 1989
۱۳۶۸ /۵/ ۱۹

CONCURRING AND DISSENTING OPINION OF JUDGE BROWER

1. I concur generally in most of the Award's findings in this Case and thus join in it to form the necessary majority. I write separately nonetheless because I believe that in three instances the Award has misapplied provisions of the Building Supply and Erection Agreement in determining the rights of the Parties as of the Fall of 1978 and thereafter, resulting in a monetary award to the Claimants of less than that to which they are entitled and to Bank Maskan of more than that to which it is entitled.[1]

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[1] For reasons previously set forth in my Concurring and Dissenting Opinion in McCollough & Company and Ministry of Post, Telegraph & Telephone, et al., Award No. 225-89-3, paras. 15-21 (22 Apr. 1986), reprinted in 11 Iran-U.S. C.T.R. 35, I disagree with the manner in which the Award calculates the conversion rates to be applied to the (Footnote Continued)

I.

2. The Award finds that the Respondents' termination of the Building Supply and Erection Agreement should be considered a termination for convenience under Article 13.3 (Award, para. 59) and that Bank Rahni appropriated the materials and equipment of the Claimants at Shahin Shahr. It thus awards the Claimants U.S.$518,977 and U.S.$254,005.11 as the respective values of the equipment and materials taken.

3. In calculating the value of the equipment the Award relies upon Article 5.3.1 of the contract, which provided that upon completion of the contract the owner had the option to purchase any remaining equipment from the Claimants at "the depreciated value thereof (determined on a straight line basis over the useful life of the Construction Equipment as set forth in Annex F) assuming normal wear and tear, plus any Iranian taxes and customs fees for which Contractor is liable." While this article is not expressly applicable to the facts here, the Award finds "no reason why this contractually agreed upon method of valuation on completion of the project should not be used in the case of a termination for convenience." The Award then rejects the Katirai Report, alleged to have been prepared pursuant to Article 5.3.1, as factually inadequate and accepts the residual value of the equipment as shown in the Mobley valuation, finding it to be generally consistent with Article 5.3.1.[2] As for the valuation of the materials, the

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(Footnote Continued)
monetary amounts recovered against Bimeh Iran.

I also believe that, given the substantial success of the Claimants' case, an award of costs to the Claimants is appropriate.

[2]This is the value of the equipment as set forth in the
(Footnote Continued)

Award finds the valuation submitted by Bank Maskan, which exceeds other unit price valuations introduced, to be inadequate since it encompasses items required for completion in addition to any excess items. The Award instead relies again upon the Mobley valuation.

4. While I agree that Bank Rahni appropriated the materials and equipment and that the termination of the Building Supply and Erection Agreement should be considered a termination for convenience, I believe that the Award's application of Article 5.3.1 in valuing the property is inappropriate. Such application, in my view, misapplies the Building Supply and Erection Agreement and grants the Claimants less than that to which they are entitled.

5. As the Award points out, the Parties have submitted four alternative valuations of the equipment left in Iran. Three of these valuations, i.e., the Claimants' initial valuation, the Katirai Report and the Mobley valuation, are in broad concurrence as to the contractual value of the equipment under Article 5.3.1.[3] Once finding an appropriation to have occurred, therefore, the issue becomes whether the contractual value of the equipment, as calculated under Article 5.3.1, should be applied or whether a higher value, i.e., the fair market value of the property at the time of the appropriation, should be awarded.

(Footnote Continued)
Mobley Report prior to the application of a multiplier to determine the fair market value.

[3]The Claimants' initial valuation of the property apparently was performed pursuant to Article 5.3.1 and Annex F. The Mobley Report, prior to applying a multiplier to reach the fair market value of the property, arrives at a similar figure for the materials and a slightly higher figure for the equipment. The Katirai Report, although incomplete, is accepted by the Parties as consistent with these contractual valuations.

6. To answer this question best one needs to examine the provisions of the Building Supply and Erection Agreement. Article 5.3.1 of the contract provides that the owner may purchase any equipment "suitable for continued use after Final Acceptance" for the depreciated value of that equipment, determined "on a straight line basis over the useful life of the Construction Equipment as set forth in Annex F," plus any taxes and customs fees. In other words, assuming completion of the project, the Building Supply and Erection Agreement gives the Respondents the right to purchase the equipment for roughly its book value. Such a right also expressly existed when and if the contract was terminated for cause. Article 13.7.1, the provision governing a termination for cause, provided that upon such a termination the owner had the right to take possession of the materials and equipment at the site and to retain whatever was necessary to complete the job, to have an inventory of the remaining materials and equipment performed (which "shall be indisputable for both contracting parties"), and to pay the contractor the value of the property retained as measured by the price breakdown for materials in Annex F to the Building Supply and Erection Agreement and Article 5.3 for equipment.

7. In contrast to these provisions Article 13.7.2 expressly applies when the contract is terminated "for nonpayment as set forth in Paragraph 13.2.2 and/or convenience as set forth in Paragraph 13.3." In such a situation the owner is to establish a fund to cover the contractor's costs. The contractor, inter alia, may draw upon the fund for "[t]he cost of disposing of Contractor's materials and Construction Equipment (less salvage or resale value)." Accordingly, under a termination for convenience Article 13.7.2 implicitly gives the contractor the right to resell the materials and equipment remaining and to obtain the actual resale value of the property. Unlike the situation obtaining when there is a termination for cause or the contract is completed in the normal course, the contract

gives the owner no right to take possession of the materials and equipment, mandates no specific procedure for the inventory of the property, does not make such inventory "indisputable" between the Parties and does not direct that the property be valued at minimum contractual levels as set forth in Annex F and Article 5.3.

8. The Claimants' initial submission of a valuation allegedly based upon the contractual methods set forth in Article 5.3 potentially could be dispositive of the issue as to which of these two provisions to apply and how to value the equipment. Such submission would suggest that the Claimants believed under the facts of this Case that the Building Supply and Erection Agreement required application of this provision. It should be remembered, however, that the Claimants later amended their claims to assert a right to the fair market value of the property at the time of the taking. More important, the Award itself, by its express finding that the termination was for convenience under Article 13.3, forecloses this alternative. Article 13.7.2 expressly governs the rights of the Parties under a termination for convenience. It thus is simply wrong to apply Article 5.3.1 to a termination for convenience when that provision applies by the terms of the contract solely to a termination for cause or assumes normal completion of the contract. The separate provision of the contract expressly governing the rights of the Parties and the procedures to be followed for the disposal of property under a termination for convenience must be followed. To do otherwise is to treat the Claimants as breaching parties, which the Award expressly finds they were not.

9. Furthermore, contrary to the assertion in the Award, every reason exists for not applying Article 5.3.1 to the facts here by analogy. Initially, when a separate provision of the contract (Article 13.7.2) sets forth the procedures to be followed and the rights of the Parties upon

termination for convenience, and the provision at issue (Article 5.3.1) is stated to apply to other forms of termination or resolutions of the contract, a presumption obviously exists that the latter should not be applied. Indeed, no reason then exists to analogize at all. Second, and equally as important, a strong policy reason exists for treating a termination for cause and a termination for convenience differently. In the case of a termination for cause the contractor has breached the agreement and thus it makes sense to limit it contractually as to the amount it is to receive upon termination. Obviously, any resolution should give the non-breaching party in such a case the opportunity to retain materials and property necessary to complete the job and to compensate the contractor for such property at no more than the contractual minimum. This is simply because a breaching party should not benefit from its own breach. In the case of a termination for convenience, however, the owner is simply deciding that it no longer wishes to continue the contract and no fault or breach on the part of the contractor is implied. Under such circumstances it makes sense to permit the contractor to obtain the most it can for the materials and equipment it had acquired to perform the job but now cannot use. In such circumstances it is entirely inappropriate to require the contractor to sell such property to the owner at book value; rather the contractor should be given the opportunity to obtain the true market value of the property either by resale or salvage. Clearly, this is the reason the Building Supply and Erection Agreement contains separate provisions for such terminations.[4]

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[4]The fact that the owner also has the contractual right to purchase the equipment at minimum levels upon normal completion of the contract does not subvert this policy consideration. That right is expressly spelled out in the contract and assumes that the contractor has received all of his rights and privileges under the contract as well. This
(Footnote Continued)

10. Once reaching this point and determining that the Claimants have the right to obtain the fair market value of their property at the time of the appropriation under Article 13.7.2, the issue becomes one of arriving at that value. Both Parties have submitted estimates of the fair market value of the property. The Claimants have submitted a valuation of a Mr. Edward L. Mobley, purportedly an experienced equipment and materials procurer and estimator. According to Mr. Mobley's report, he worked extensively in Iran from 1975 through 1978 and was thoroughly familiar with the market for the kinds of properties involved. He also testified that he visited the project being constructed by the Claimants several times during the Summer and Fall of 1978 in connection with an assignment from his then employer, Ismad Company, to locate a building component supplier for a future project. He states that in his investigations he inspected the housing units and specifically evaluated the excess material and equipment that would remain after completion of the project, with a view to possibly using them in his future project.

11. In determining the existence of the quantity and description of the items to be valued, he states that he examined the Claimants' "correspondence files, original purchase orders, invoices, vouchers, shipping documents, bills of lading, master equipment and material lists, receiving documents and site inventory records" as well as making personal observations on site. He also consulted an inventory of remaining equipment made at the time of the Claimants' departure from Iran by Mr. Krueger, who was one

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(Footnote Continued)
right of the owner is part of its negotiated benefits under the contract. Such benefits should not be expanded to include a situation where the contract is terminated early through no fault of the contractor and thus the contractor clearly has not yet received all of its negotiated rights and benefits.

of the last four of the Claimants' employees to leave Iran, on 3 February 1979.

12. For the U.S.-purchased equipment Mr. Mobley stated that by reference to the above-mentioned sources he was able to determine the original U.S. ex-yard or warehouse price. He then increased the U.S. cost by a factor of 1.64 to account for procurement costs, packing and crating, freight and insurance, port charges, loading and shipment to site, as described in his affidavit. To that amount, which he considered "on-site delivered cost," he applied two years straight-line depreciation to arrive at a "residual value." He then applied an "inflation/appreciation multiplier" of 1.48 to arrive at the fair market value of the equipment.[5] Based on his calculations he came to the conclusion that the fair market value of the U.S.-purchased equipment remaining on site or in customs at the end of the project was, as of 1 August 1979, U.S.$593,240.

13. For the Iran-purchased equipment Mr. Mobley established the ex-yard or warehouse price in Iran by examination of check and payment vouchers and site inventory records, and multiplied that by a factor of 1.11, reflecting procurement, documentation and shipping costs, to arrive at the "on-site delivered costs." This amount he similarly decreased by two years straight-line depreciation and then multiplied that residual value by the 1.48 inflation/appreciation multiplier. On the basis of his calculations he determined that the fair market value of equipment purchased in Iran, as of 1 August 1979, was U.S.$174,841.

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[5] He stated that he normally would apply a multiplier of 1.60 for inflation/appreciation but that he reduced that factor by 0.12 to allow for the cost of repairs and replacement of certain items.

14. For the building materials, which were all purchased in the United States, he first established the existence of the items by examining the Claimants' master material lists for the various types of houses, shipping manifests, inventory lists at the site, site photographs, and statements of the Claimants' and TCSB's site staff. The on-site cost for those materials was derived from price lists previously furnished to Bank Maskan and checked by TCSB. He states that lost, missing or damaged materials (those subject to insurance claims) were not included in the valuation. To the on-site cost of the materials he applied a multiplier of 1.60 to account for inflation and cost appreciation from the time of purchase to 1 August 1979. His resulting estimate gives the value of the materials as U.S.$406,412.[6]

15. Bank Maskan rejects the Claimants' proposed valuation of the goods as incompetent and biased and has offered its own expert valuation. The alternative valuation was made by unidentified "experienced and noted experts of the engineering department of Bank Maskan, with each one of these experts possessing experience of over 15 years in construction affairs." The experts state in their report that they obtained the assistance of four additional experts of the Justice Administration in the fields of construction, electricity and related equipment, motorized transport vehicles and property. In deriving a value for the property these experts employed certain price lists of the Ministry of Plan and Budget for such construction materials. These price lists are not submitted by the Respondents. The total amount of the equipment and materials as evaluated by the Bank's engineers is Rials 48,583,460.

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[6] For Iran-purchased equipment Mr. Mobley apparently applied a conversion ratio of 70 rials per dollar.

16. Faced with these conflicting estimates, the issue for the Tribunal comes down to one of credibility and weighing the evidence presented to it. The Tribunal already has accepted the Mobley valuation as the most credible, absent its imposition of multipliers to reach a fair market value, in determining the contractual value of the equipment under Article 5.3.1. In my view the Mobley Report equally is the most credible in examining the fair market value of the property. The Claimants' estimate of the fair market value of the goods was made by an identified expert who submitted his report to the Tribunal over his signature, stated that he based his valuation on inventory lists prepared by the Claimants' employees upon their departure from Iran in early 1979, and fully described his methodology. The Bank's proposed valuation, however, is presented merely as the conclusion of unidentified "experienced experts" based on unsubmitted and unexplained Ministry of Plan and Budget price lists. There is no indication as to the source of the inventory upon which the valuation was based. In view of all the evidence I would have determined that the valuation supplied by Claimants is the more credible and reasonable and awarded the Claimants the amounts requested accordingly.

II.

17. The Award grants Bank Maskan Rials 11,232,900 in liquidated damages under Article 10.4 of the contract for the Claimants' delay in submitting certain of the housing units for provisional acceptance. Award, para. 149. In dealing with the sixty housing units at Shahin Shahr that were never completed to ninety-seven percent and thus did not qualify for provisional acceptance, the Award calculates liquidated damages from 5 November 1978 (ten working days after the scheduled completion date) to 28 August 1979 (the date of formal termination of the Building Supply and Erection Agreement), a total of 192 days after subtracting the period during which the Award finds the contract to have

been suspended for force majeure (24 January 1979 to 8 May 1979). In my view such calculations totally distort the damages incurred by the Respondents under the contract and, more importantly, are inconsistent with the express findings of the Award.

18. The Award expressly finds that the Building Supply and Erection Agreement was terminated for convenience under Article 13.3 rather than for cause. In so holding, the Award states that the Claimants were justified in refusing to return to Iran to complete the work due to the Respondents' failure to make certain payments to them and other contractual disputes. In sum, the Award concludes that these difficulties made the continuation of the contract "de facto impossible." Award, para. 59.

19. The difficulties to which the Award refers, however, did not arise miraculously on 28 August 1979, the date of formal termination. Rather, as the Award itself points out, they were first communicated to the Respondents in a telex from the Claimants, dated 4 May 1979, in which the Claimants responded to the Respondents' demand for them to return to Iran. This response is prior to the date on which the Award concludes the force majeure suspension to have been lifted and is only the first of many letters prior to formal termination in which the Claimants notified the Respondents of the existence of such difficulties and of their refusal to return to Iran prior to them being resolved. Indeed, the Award expressly finds that at the time the Claimants' informed the Respondents of their difficulty continuation of the contract was impossible. Accordingly, while formal termination did not take place until 28 August 1979, the Award in effect finds that the Claimants, upon their departure, were justified in not returning to Iran. In such circumstances, it is extremely inequitable at the same time to award the Respondents liquidated damages for "delay" for

a period of time in which the Claimants were justified in not performing.

20. In my view, such a finding requires liquidated damages to cease as of 24 January 1979, the date that force majeure suspension commenced and the Claimants' performance was excused. It then became irrelevant whether such conditions continued to the date of formal termination or terminated in May of 1979 -- the fact is that the Award has determined that the Claimants were justified in not resuming their performance.

III.

21. The Award grants, incorrectly in my view, interest to Bank Rahni on the sum of U.S.$558,744[7] from 23 February 1979 to the date of termination of the Building Supply and Erection Agreement on 28 August 1979. Award, para. 134. No legal basis exists for such an award.

22. According to general principles of law, an award of interest is only appropriate from the date on which a party's obligation of payment can be said to have been breached. Such a breach would arise in the present instance only if Wood Components failed to make payment when it became due. The terms of the contract must therefore be analyzed to identify when payment of the adjustment became due.

23. Article 8.3 of the Building Supply and Erection Agreement, the provision pursuant to which Bank Rahni reduced the scope of the project, provides in such an event only that

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[7]The U.S.$558,744 represents the offset acknowledged by the Claimants as the adjustment to the contract price resulting from Bank Rahni's reduction in the scope of the work by 22 units.

"the Contract Price . . . shall be adjusted accordingly." Nothing in that provision speaks to the manner and timing of payment of any adjustment. Similarly, nothing in Article 8.4[8] speaks to the manner and timing of payment of any adjustment. Rather, that provision only addresses the method for its calculation. It is undisputed that Wood Components was to refund an adjustment to the contract price to Bank Rahni. The issue here is not how much of an adjustment was required or whether one was required at all but rather when payment was due. The Award's conclusion that Article 8.4 obliges the Contractors to calculate the reduction in the contract price is therefore irrelevant.

24. The only provision that speaks to the timing of payment of any adjustment to the contract price is Article 9.4.1, which provides in pertinent part, as amended:

> Upon completion of Wood Component Co.'s performance hereunder or upon termination of this Contract, whichever occurs first, Owner may demand the immediate repayment of any outstanding amounts

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[8]Article 8.4 of the Building Supply and Erection Agreement provides:

> 8.4. Method of Establishing Prices for Modification
>
> In determining the amounts by which the Contract Price shall be revised as a result of modifications agreed upon or required by this Article, including any increases in the scope of Work as provided in Paragraph 8.3., the prices and unit prices set forth in the Price Breakdown, attached hereto as Annex F, shall be utilized wherever they are applicable. Should such modifications require services and/or Materials and Supplies for which prices and unit prices are not set forth in the Price Breakdown, then Contractor shall submit to Owner proposed prices, which prices shall be no greater than the lowest prices currently charged by the Contractor to any of its other customers for the same or substantially similar services or Materials and Supplies in similarly quantities. Within thirty (30) days after receipt of the proposed prices, Owner shall either approve or reject the prices in whole or in part and in case of approval, the letter of credit shall be adjusted accordingly.

> of the Supply Advance Payment against Owner's release of the said Advance Payment Guarantee. If Wood Components Co. fails to repay such outstanding amount within thirty (30) days after such demand, Owner may collect the outstanding amounts from the Advance Payment Guarantee and shall release any remainder of such Advance Payment Guarantee to Wood Components Co.

Indeed, the Parties themselves, contemplating that the adjustment to the contract price would be offset against amounts owed Wood Components by Bank Rahni, appear to have intended a similar mechanism to be applied in the present instance.[9] Under such circumstances Wood Components would never have become obligated to effect payment since the Bank was already in possession of the funds from which satisfaction of the adjustment would be made. Consequently, Wood Components would not be liable for any interest on the amount of the adjustment.

25. Even if the mechanism set out in Article 9.4.1 were to be applied by analogy, Bank Rahni would accrue only the right to demand immediate repayment of outstanding amounts upon either performance of the contract or termination, whichever first occurs. Upon receiving such a demand, Wood

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[9] Bank Rahni in its telex of 2 June 1979 to the Contractors indicated:

> [C]onsidering that due to elimination of the 22 housing units from the scope of your work under the agreement, the total price of the agreement will have, as agreed, to be adjusted. The amount of the foregoing statements will be taken into account in determining the financial picture of the project . . . and should, after taking into account the above referenced adjustment, ther[e] still be any amounts payable to you, such amounts will be paid upon resumption of works.

The Contractors, responding on 14 June 1979, stated: "The deduction of 22 units, when the amount is agreed upon, would have to be from the last of the provisional payments due [the Contractors]." Thus, although the Parties did not agree precisely as to when the adjustment should be taken into account, they fully agreed that the adjustment should be set off against funds already in Bank Rahni's possession.

Components then would be provided with thirty days within which to make payment, upon failure of which Bank Rahni would become entitled to collect outstanding amounts against guarantees provided by Wood Components. In the present case, however, Bank Rahni has made no demand for immediate payment.[10] Consequently, until receiving such a demand, Wood Components never became obligated to effect payment. Since such an obligation never arose, no interest should be awarded on the offset.[11]

26. Putting aside for the moment the agreed mechanism set out in Article 9.4.1, it is illogical to suggest that Wood Components was contractually obligated to refund amounts in overpayment pursuant to the owner's reduction immediately or even proximately close to the date of reduction. Wood Components had already shipped to the site the materials for the units subsequently deleted from the scope of the contract. Certainly the money it had received upon delivery of

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[10]The letter pursuant to which Bank Rahni reduced the scope of the project, while referring to the adjustment to the contract price, contains no demand or request for payment, immediate or otherwise. Similarly, no other correspondence from Bank Rahni contains a demand or a request for payment of the adjustment.

[11]The Award's reference to Article 9.5.1.2 of the Building Supply and Erection Agreement, as amended, is misplaced. That provision clearly speaks to any amounts "incorrectly calculated or incorrectly claimed" by Wood Components. As the Award expressly states, all amounts drawn by Wood Components on the letter of credit "were properly claimed and calculated . . . at the time of payment." Award, para. 134. Consequently, Article 9.5.1.2 does not apply to payment of an adjustment to the contract price resulting from the Bank's reduction in the scope of work. Even if this provision could somehow be construed to apply to the present situation, the provision states that "Wood Component Co. shall, immediately upon the Owner's request, reimburse the Owner the amount(s) so withdrawn or credited." (Emphasis added.) In the present case, Bank Rahni has made no request for payment. Consequently, Wood Component never became obligated to effect payment.

the materials had been utilized to offset its supply costs. The value of such materials subject of the adjustment therefore would not have been readily accessible to Wood Components but rather would have been realized only after it had a reasonable opportunity to liquidate them. This consideration is all the more dramtic when one considers that, while Bank Rahni reduced the scope of the work by twenty-two units, it was contractually permitted pursuant to Article 8.3 to reduce the scope of the work by up to 25 percent of the total 500 units. If such a reduction of 125 units occurred after the materials for such had been delivered and payment received by Wood Components, the adjustment to the contract price would be some U.S.$3,187,000. To suggest that Wood Components should be obligated to refund that amount upon notice of the reduction (or even thirty days thereafter) when Wood Component's financial investment with respect to those 125 units lay unliquidated in the materials for the unassembled units in Iran is inconceivable.

27. In light of the above, I disagree with the award of interest on the U.S.$558,744 offset.

28. The Tribunal compounds its error of awarding interest on the offset by failing to consider the effect of the force majeure period on any obligation to effect payment. On the same day that Bank Rahni reduced the scope of the agreement, it also suspended performance of the contract for force majeure. Since, as demonstrated above, payment of the resulting adjustment is necessarily linked to recouping the value of any materials delivered for units that were subsequently deleted from the scope of the project, any obligation to refund the adjustment would have been

suspended during the entire force majeure period and payment therefore would not have become due until thirty days after its expiration.[12]

Dated, The Hague
10 August 1989

Charles N. Brower

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[12]The Award also rejects the claim for increased social insurance premia for lack of proof. While I concur in this finding as regards a portion of the claim, I believe that ample evidence exists to support an award of Rials 1,242,000 for additional premia incurred after 30 August 1978 and an award of Rials 1,821,785 for increases as a result of ceiling changes in March 1978.

As for the claim for additional premia incurred after 30 August 1978, the Award finds that a liability for such expenses, if properly calculated, exists. The Claimants evidenced the amount of their claim by submitting calculations in chart form, listing the names of the individual employees, dates of employment, monthly salary and terms of reimbursement. The accuracy of these calculations is attested to by the Affidavit of Erna Hansen, the Assistant Secretary to the Claimants, who states that it is based "on actual and detailed data transmitted from Iran up to July 1978 . . . [and] on a reconstruction from monthly summaries thereafter." The Award finds this chart and affidavit to be insufficient evidence of the proper adjustment to be made to the contract price. Given that the Award finds an adjustment in fact to be due and that the Respondents have raised no specific objections to the calculations, I see little reason to question them.

As for the claim for increases as a result of ceiling changes, the Claimants, for the period 21 March 1978 to 30 August 1978, have submitted a document, dated 12 February 1978, from the Iranian Social Security Fund stating that such an increase would occur on 21 March and further have submitted a chart listing their employees and calculating the additional charges for which they were liable. Given the lack of any specific challenges to these calculations, I again see no reason to question them. I therefore would have awarded these sums on the claims.