

248-273

ORIGINAL DOCUMENTS IN SAFE

Case No. 248

Date of filing: 20 May '91

\*\* AWARD - Type of Award \_\_\_\_\_  
 - Date of Award \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

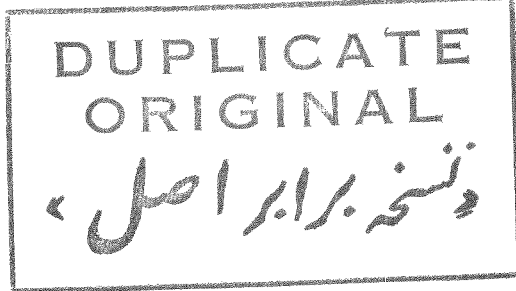
\*\* SEPARATE OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DISSENTING OPINION of Holtzman (concurring)  
 - Date 20 May  
2 pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: \_\_\_\_\_  
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 - Date \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

## IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده



CASE NO. 248

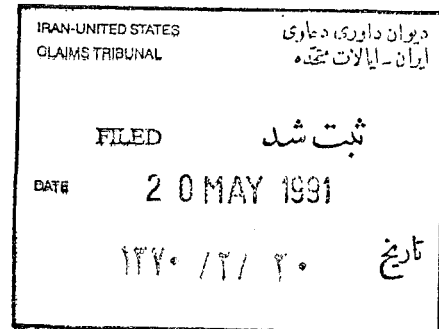
CHAMBER ONE

AWARD NO. 509-248-1

ROY P.M. CARLSON  
Claimant,

and

THE GOVERNMENT OF THE  
ISLAMIC REPUBLIC OF IRAN,  
MELLI INDUSTRIAL GROUP,  
Respondents.



CORRECTION TO THE ENGLISH VERSION OF THE  
DISSENTING OPINION OF HOWARD M. HOLTZMANN

The following correction is hereby made to the English version of my Dissenting Opinion, in this Case filed on 1 May 1991.

1. Page 8, footnote 2 should read:

<sup>2</sup>Minutes of MIG, as submitted by the Claimant, refer to a guarantee given by MIG to the "Financial Organization of Expansion of Industrial Units" in Iran. It stipulates that if certain shares of MIG that were transferred to the Organization "turned out to be beneficially owned by others it [MIG] would indemnify all the Organization's costs and damages."

2. A copy of the corrected page is attached.

Dated, The Hague

20 May 1991

Howard M. Holtzmann

of the independent accounting firm, Peat Marwick, attesting to the authenticity of documents that reflect payments made to Irvani for the account of Carlson. Also in evidence are receipts by Irvani for payments totalling the price for which he had agreed to sell the MIG shares to Carlson. Moreover, there is contemporaneous correspondence between Carlson and Erdtmann that recapitulates the payments made to purchase the shares, as well as a confirmation to Erdtmann by a Swiss bank of payments made for the account of Carlson. All of these documents are entirely consistent with Carlson's compensation arrangements, and, taken together, strongly support the conclusion that the arrangements were carried out as planned.

12. In considering this Case, it is important to recognize that Carlson's decision to hold his shares in the names of the nominee corporations was not unusual. It is quite common for shares to be held by nominees whose names appear on the corporation's records, but who hold the shares for the benefit of the real owner. There are many business reasons for this widespread practice, and the terms "record owner" and "beneficial owner" customarily are used to describe such situations. As shown by the statements of the two independent public accounting firms, Confido Treuhand A.G. and Peat Marwick, generally-accepted accounting procedures exist to reflect the true financial circumstances when the economic owner is the beneficial owner rather than the nominee.<sup>2</sup> Similarly, this Tribunal has repeatedly recognized the existence of shares that are held in the names of nominees for their beneficial owners. See, e.g., Order of 15 December 1982 in Flexi-Van Leasing, Inc. and The Islamic Republic of Iran, Case No. 36, Chamber

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<sup>2</sup>Minutes of MIG, as submitted by the Claimant, refer to a guarantee given by MIG to the "Financial Organization of Expansion of Industrial Units" in Iran. It stipulates that if certain shares of MIG that were transferred to the Organization "turned out to be beneficially owned by others it [MIG] would indemnify all the Organization's costs and damages."

IRAN-UNITED STATES CLAIMS TRIBUNAL	دوران داری دعاوی ایران - ایالات متحده
رسیده در تاریخ ۱۶ / ۲ / ۹۱	
RECEIVED 6 MAY 1991	

248-272

Aan Iran-United States Claims  
Tribunal  
Parkweg 13  
2585 JH 's-Gravenhage

AJ/MvK/ATL

3 mei 1991.

DEPOT ARBITRAALVONNIS NR. 56/1991

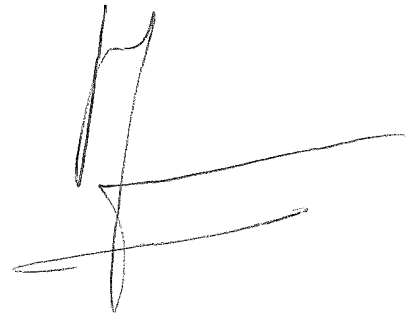
Hiermede bericht ik u, dat het op 1 mei 1991 door uw Tribunal  
gewezen vonnis inzake:

AWARD NUMMER: 509-248-1,

op 3 mei 1991, onder nummer 56/1991  
te mijner griffie is nedergelegd.

Het verschuldigde griffierecht ad f.100,-- wordt van uw rekening-  
courant afgeschreven.

De griffier,




Agent Receipt

NO. \_\_\_\_\_

## IRAN-UNITED STATES CLAIMS TRIBUNAL

74633

The following documents are being served by the Registrar of the Iran-United States Claims Tribunal in accordance with Tribunal Rules to filling Claims with the Government of the Islamic Republic of Iran, the Declaration of the Government of the Islamic Republic of Algeria concerning the Claims by the Government of United States of America and the Government of Islamic Republic of Iran, 1981

248-271 I

برگ رسیه نماینده رابط  
دیوان داری دعاوی ایران - ایالات متحد

مدارک زیر بواسطه مدیر دفتر دادگاه داری دعاوی ایران - ایالات متحده بر طبق قواعد دادگاه راجع به ثبت دعاوی در دادگاه و پیرو بیانیه دولت دیگران هیچ جمهوری مردم الجزایر در ارتباط با حل و فصل دعاوی دولت ایالات متحده آمریکا و دولت جمهوری اسلامی ایران مورد رجوع ۱۴ ژانویه ۱۹۸۱ ابلاغ میشود.

Claim No. شماره پرونده	Chamber شماره شعبه	Parties طرفین	Documents مدری	Docket No. شماره سند
248	1	Roy P.M. Carlson,  VR: The Government of the Islamic Republic of Iran,  روی پ. ام. کارلسون ، طیقه: دولت جمهوری اسلامی ایران ،	Dissenting Opinion of Howard M. Holtzmann, Filed on May, 1, 91  (5 Copies in English only)  نظر مخالف هاوارد ام. هولتزمن ثبت شده به تاریخ ۱۳۷۰/۲/۱۱  (۵ نسخه فقط به انگلیسی)	271    ۲۷۱

Received by:

(name and signature)

☐

Agent/Deputy agent of the Islamic Republic of Iran  
Agent of United States of America

☐

Authorized person acting on behalf of the Agent.

Date:

Certificate

I certify that, acting for and behalf of the Registrar of the Iran-United States Claims Tribunal, I have served the documents listed above on the aboved mentioned person.

Name and Signature

Date:

R2:rev:2

2 MAY 1991

دریافت شد:  
(نام و امضاء)  
نماینده رابط / قائم مقام نماینده رابط جمهوری اسلامی ایران  
ایالات متحده آمریکا  
تحریر معار از طرف نماینده رابط.  
تاریخ:  
گواهی  
استاندارد گواهی می کنم که با داشتن اختیار نمایندگی از طرف مدیر دفتر دادگاه دعاوی ایران ایالات متحده مدارک مرسور در این برگ را به شخصی مذکور در بالا تحویل دادم.  
نام و امضاء  
تاریخ:

۲:

Agent Receipt

NO. \_\_\_\_\_

IRAN-UNITED STATES CLAIMS TRIBUNAL

74632

The following documents are being served by the Registrar of the Iran-United States Claims Tribunal in accordance with Tribunal Rules to filling Claims with the Tribunal pursuant to the Declaration of the Government of the Islamic Republic of Algeria concerning the claims by the Government of United States against the Government of Islamic Republic of Iran, 19,1981

248-2717

برگرفته نماینده رابط

دیوان داری دعاری ایران - ایالات متحد

مدارک زیر بر وسیله مدیر دفتر دادگاه داری دعاری ایران - ایالات متحده به طرف دولت دادگاه رجوع به ثبت دعاری در دادگاه و بهر دو بهانه دولت متکراته یک جمهوری مردم الجزایر در ارتباط با حل و فصل دعاری دولت ایالات متحده آمریکا و دولت جمهوری اسلامی ایران مورخ ۱۴ ژانویه ۱۹۸۱ ابلاغ میشود.

3

Claim No. شماره پرونده	Ch شماره شعبه	طرفین	Documents مدارک	Docket No. شماره سند
248	1	Roy P.M. Carlson,  vs: The Government of the Islamic Republic of Iran,  روی پ. ام. کارلسون ، علیه دولت جمهوری اسلامی ایران ،	Dissenting Opinion of Howard M. Holtzmann, Filed on May, 1, 91  (3 Copies in English only)  نظر مخالف هاوارد ام. هولتزمن ثبت شده به تاریخ ۱۳۷۰/۲/۱۱  (۳ نسخه فقط به انگلیسی)	271   ۲۷۱

Received by:

(name and signature)

- ☐ Agent/Deputy agent of the Islamic Republic of Iran  
☐ Agent of United States of America  
☒ Authorized person acting on behalf of the Agent.

Date: 2 MAY 1991

Certificate

I certify that, acting for and behalf of the Registrar of the Iran-United States Claims Tribunal, I have served the documents listed above on the aboved mentioned person.

Name and Signature  
Date:

R2:rev:2

دریافت شد:

(نام و امضاء)

نماینده رابط / قائم مقام نماینده رابط جمهوری اسلامی ایران

ایالات متحده آمریکا

شماره کار از طرف نماینده رابط.

تاریخ: ۱۳۷۰/۲/۱۲

کواهی

استاندارد کواهی می کنم که با دانشستن احتیاج نمایندگی از طرف مدیر دفتر دادگاه دعاری ایران ایالات متحده مدارک مرسور در این برگ را به شخصی مذکور در بالا تحویل دادم.  
 نام و امضاء  
 تاریخ:

۲:

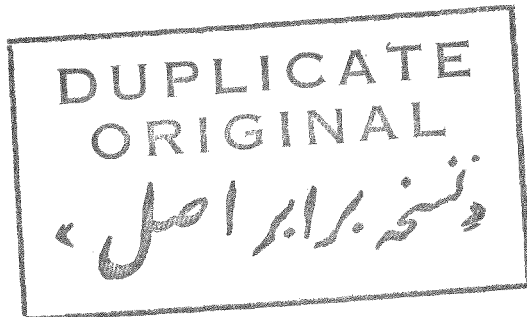
ORIGINAL DOCUMENTS IN SAFECase No. 248Date of filing: 12 May '91

248-271

- \*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi
- \*\* DECISION - Date of Decision \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi
- \*\* CONCURRING OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi
- \*\* SEPARATE OPINION of \_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi
- \*\* DISSENTING OPINION of Hallmann  
- Date 12 May '91  
17 pages in English \_\_\_\_\_ pages in Farsi
- \*\* OTHER; Nature of document: \_\_\_\_\_  
\_\_\_\_\_  
- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



CASE NO. 248

CHAMBER ONE

AWARD NO. 509 -248 -1

ROY P.M. CARLSON  
Claimant,

and

THE GOVERNMENT OF THE  
ISLAMIC REPUBLIC OF IRAN,  
MELLI INDUSTRIAL GROUP,  
Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	1 MAY 1991
	تاریخ ۱۳۷۰ / ۲ / ۱۱

DISSENTING OPINION OF HOWARD M. HOLTZMANN

1. My disagreement with the majority in this Case is basic. While my colleagues find insufficient proof of the transactions that are at the root of the claim of Mr. Roy P.M. Carlson, I believe that the circumstances described by Mr. Carlson are plausible, that his statements are credible, and that the supporting evidence is persuasive. Moreover, as discussed below, I consider that the majority predicates its views on inferences that are largely unwarranted. I therefore respectfully dissent from the dismissal of Mr. Carlson's claim for the expropriation of shares of Melli Industrial Group ("MIG") and several associated companies, that he had acquired as part of his employment as general



manager of that enterprise.<sup>1</sup> In this connection, it is necessary to review in some detail the circumstances in which Mr. Carlson obtained and held his ownership interest in the expropriated shares.

2. Roy Carlson is an experienced and respected financial executive. Before the events from which this claim arises, he spent twenty years as an employee of the Bank of America, rising to the position of vice-president in charge of its regional office in Beirut. It is undisputed that he was then recruited to go to Teheran as general manager of MIG, the largest manufacturer and retailer of shoes in Iran, and that he served in that capacity for about five years. When he left Iran in the wake of the Islamic Revolution, his qualifications were quickly recognized, and he was chosen to be the chief executive officer of the National Bank of Georgia, a major banking institution based in Atlanta, Georgia, a city that is the financial center of the southeastern United States. In connection with his work in Atlanta, two Governors of the State of Georgia, the Mayor of Atlanta (who is also a former United States Permanent Representative to the United Nations), and several others have submitted sworn statements attesting both to Carlson's "impeccable reputation ... as a person of excellent character" and to his outstanding leadership of the National Bank of Georgia. It is in the light of this career that Carlson's actions should be viewed and his credibility weighed.

3. The circumstances that led to Carlson's recruitment by MIG are clear and uncontested. MIG was run by Mr. Rahmin Irvani, an Iranian businessman who had formed, built and

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<sup>1</sup>I concur, however, in paragraph 28 of the Award which clarifies the important procedural point that a Claimant has the right to assert a claim on alternative grounds.

dominated the enterprise, and who, along with his family, was the principal shareholder. As the business grew in the early 1970's, Irvani wished to expand internationally, and to modernize MIG's organization so that its shares could qualify for trading on the Teheran Stock Exchange. He realized that achieving his goals would require employing an internationally experienced financial executive and businessman. The search for a suitable person, particularly one with a background of operating in the Middle East, took several years. Mr. Irvani turned for advice to a trusted advisor, Dr. Lothar Erdtmann, a German business consultant and investor with whom MIG had done business for a number of years. Irvani suggested that Carlson might be attracted to come to Teheran. Irvani already knew Carlson as a result of Carlson's visits to Teheran seeking and servicing customers for Bank of America. Indeed, Irvani had approached Carlson unsuccessfully several times with offers of employment. By 1974, however, growing political instability in Beirut made it more likely that Carlson would move if an attractive offer were made to him. Irvani sought the aid of Erdtmann in designing a compensation package that would motivate Carlson to come to Teheran rather than seeking employment elsewhere.

4. After discussions with Carlson, MIG offered him, as the main element of his compensation, the opportunity to purchase 20% of MIG's stock at a price equal to the par value. His salary would be low; the documentary evidence shows quite clearly that Carlson's salary from MIG for the years 1976, 1977, and 1978 amounted to roughly \$29,000 per annum. Yet Carlson had been earning over three times this amount per year as a Bank of America executive. It would have been very strange for Carlson to have taken a job which paid so little, relative to his previous earnings, unless some other type of compensation was offered. Clearly, the most important element of his compensation was the opportunity to purchase MIG shares. Such arrangements are

not unusual in modern business. For example, a column in the "International Herald Tribune" on 15 March of this year describes the common situation of executives "who often work back-breaking hours and accept a low salary in exchange for stock that could make them rich". Both Carlson and MIG were in a position to benefit from the compensation package. For Carlson, the advantage was the opportunity to profit from the growth that he expected to help MIG achieve; for Irvani and his company, the advantage was that Carlson's proprietary interest as a shareholder would inspire him to render top performance and to remain with the company.

5. It was agreed that Carlson would have the opportunity to purchase up to \$10 million worth of MIG shares at par value, which was lower than market value. The shares would be purchased directly from Irvani, rather than being issued by MIG. Carlson, however, did not have \$10 million to spend for MIG shares. To solve this problem, Erdtmann agreed to form a syndicate of lenders who would make a personal loan of up to \$10 million to Carlson. To enable Carlson to carry the loan, the Erdtmann syndicate agreed that the loan would be interest-free, and that instead of interest the Erdtmann group would receive 45% of Carlson's profit when he sold the stock. To secure Carlson and the Erdtmann syndicate against the risk that the MIG stock might decline in value, MIG agreed to buy back the stock for the amount paid. Again, the arrangement provided mutual benefits for all of the participants. The advantage for Carlson was that he was provided with interest-free funds to purchase the stock; the advantage for the Erdtmann syndicate was that it was in a position to receive 45% of Carlson's profit from the expected growth of MIG under his leadership; the advantage for both Carlson and the Erdtmann group was that they were fully protected against loss by the buy-back agreement; the advantage to MIG and Irvani was that it was a means to attract Carlson without paying the large salary he otherwise

would have required. It was obviously a sound, mutually-beneficial business arrangement.

6. It was planned that Carlson would make the purchases in the names of two corporations that he would own, rather than in his own name. This was done because Iranian law denied certain advantages to companies in which a single foreign shareholder held more than 10% of the shares, and because other management personnel at MIG might resent Carlson's ownership. As noted, MIG's objective was to attract Carlson to accept employment and consequently Irvani sought to minimize Carlson's costs in connection with forming the two companies through which he would hold the MIG shares. Accordingly, Irvani transferred to Carlson for a nominal sum the shell of an English corporation, Grafton Ltd, that Irvani controlled, but that was no longer active. A second company, to be called North West, would be formed by Carlson in Switzerland. So that Carlson would not have to put up cash for the expenses of forming and operating that company, Irvani agreed that MIG and its associated companies would use the Swiss company as a vehicle for occasional minor international transactions, in order to provide a source of income needed to meet corporate expenses.

7. Carlson took up his duties at MIG in August 1975. He, Irvani and Erdtmann proceeded on a basis of mutual trust, reinforced by mutual self-interest in carrying out their arrangements. Accordingly, they operated on a handshake, often with only minimal formal written documents -- a circumstance that has led to many of Carlson's difficulties in persuading the Tribunal in this Case. Notwithstanding the limited formal documentation, there is ample surrounding evidence that Carlson, Irvani and Erdtmann each performed his obligations. Carlson went to work at MIG and purchased the MIG shares through North West and Grafton. Irvani transferred the MIG shares to Grafton and North West. Erdtmann's syndicate advanced the funds to pay Irvani for

the MIG shares. The only obligation that was not fulfilled was MIG's agreement to buy back the shares acquired by Carlson. However, this failure was not caused by Carlson, Erdtmann, or Irvani; rather, the repurchase was prevented when the Iranian Government assumed control of MIG in July 1979 after the Iranian Revolution -- a circumstance that Carlson can not be expected to have foreseen when he entered into his employment arrangements in the stable days of 1975.

8. There is overwhelming evidence that North West and Grafton carried out the acquisition of the 600,000 shares of MIG whose value Carlson claims in this Case. The documentary proof of these purchases consists of papers whose authenticity is not questioned, including: (i) a stock certificate for 300,000 MIG shares in the name of North West, and another for 300,000 shares in the name of Grafton; (ii) copies of share registers of MIG, dated 6 March 1978; (iii) an audit report by MIG's Iranian auditors; and (iv) an MIG tax return filed with the Iranian Government that contains a list of stockholders including the shares owned by North West and Grafton. Also in evidence are share certificates issued to North West and Grafton, by various MIG subsidiaries, as well as minutes of meetings of those companies listing North West and Grafton as shareholders.

9. In addition to affidavits executed by Carlson, there is also substantial documentary evidence that the shares of MIG and its subsidiaries registered in the names of North West and Grafton were held by them as nominees for the benefit of Carlson. The basic instrument is a Fiduciary Agreement in which North West acknowledges that it received 600,000 shares of MIG (including 300,000 received by it as an nominee of Grafton), as well as shares of various MIG subsidiaries, and that it held these shares for the benefit of Carlson. In the Fiduciary Agreement North West agreed, inter alia, to follow Carlson's instructions concerning the shares, to hold all dividends and distributions subject to

Carlson's instructions, to transfer the shares only as Carlson might direct, and to comply with any other instructions concerning the shares that Carlson might give. The terms of the Fiduciary Agreement thus establish that Carlson had full beneficial interest in the shares.

10. The existence and validity of the Fiduciary Agreement is confirmed in writing by two independent firms of certified public accountants, Confido Treuhand A.G. of Switzerland and Peat Marwick Maine & Co. ("Peat Marwick") of the United States. Peat Marwick, for example, states that Carlson reported in U.S. tax returns filed long before the expropriation and the filing of this claim that he was the owner of the MIG shares. Further confirmation of Carlson's ownership is found in affidavits of three professionals who were involved in carrying out the transactions and who have no interest in the outcome of this case. Both the firm of accountants and the law firm that represented Grafton have submitted affidavits prepared by partners that attest to the existence and validity of the nominee agreement between North West and Grafton. In addition, the accountants state that 9 of Grafton's 10 shares have been owned by North West since November 1977. This also is confirmed by an affidavit executed by one of Grafton's directors.

11. The evidence described in paragraph 10 above, which alone is sufficient to establish Carlson as the beneficial owner of the shares at issue, is further supported by proof that Carlson, as contemplated by the compensation arrangements, paid Irvani for the shares with funds borrowed from the Erdtmann syndicate. First and foremost, there is a copy of a Wechsel (hereinafter referred to as "the draft"), signed by Carlson, dated 11 May 1977, by which he promised to pay Erdtmann \$10 million, which, it will be recalled, was the agreed price of the MIG shares. Surely Carlson would not have undertaken such a heavy personal obligation if he was not the owner of the shares. Second, there is a report

of the independent accounting firm, Peat Marwick, attesting to the authenticity of documents that reflect payments made to Irvani for the account of Carlson. Also in evidence are receipts by Irvani for payments totalling the price for which he had agreed to sell the MIG shares to Carlson. Moreover, there is contemporaneous correspondence between Carlson and Erdtmann that recapitulates the payments made to purchase the shares, as well as a confirmation to Erdtmann by a Swiss bank of payments made for the account of Carlson. All of these documents are entirely consistent with Carlson's compensation arrangements, and, taken together, strongly support the conclusion that the arrangements were carried out as planned.

12. In considering this Case, it is important to recognize that Carlson's decision to hold his shares in the names of the nominee corporations was not unusual. It is quite common for shares to be held by nominees whose names appear on the corporation's records, but who hold the shares for the benefit of the real owner. There are many business reasons for this widespread practice, and the terms "record owner" and "beneficial owner" customarily are used to describe such situations. As shown by the statements of the two independent public accounting firms, Confido Treuhand A.G. and Peat Marwick, generally-accepted accounting procedures exist to reflect the true financial circumstances when the economic owner is the beneficial owner rather than the nominee.<sup>2</sup> Similarly, this Tribunal has repeatedly recognized the existence of shares that are held in the names of nominees for their beneficial owners. See, e.g., Order of 15 December 1982 in Flexi-Van Leasing, Inc. and The Islamic Republic of Iran, Case No. 36, Chamber

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<sup>2</sup>A document introduced by the Government of Iran in this Case refers to shares registered on the corporate books of an Iranian company in the name of one shareholder that "turned out to be beneficially owned by others".

One, reprinted in 1 Iran-U.S. C.T.R. 455; Howard Needles Tammen & Bergendoff and The Government of the Islamic Republic of Iran, et al, Award No. 244-68-2, paras. 39-41 (8 Aug. 1986), reprinted in 11 Iran-U.S. C.T.R. 302, 312-313; International Technical Products Corp., et al, Award No. 196-302-3 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 230-233; International Schools Services, Inc. and National Iranian Copper Industries Company, Award No. ITL37-111-FT (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 338.

13. The arrangements concerning Carlson's employment and ownership of shares in MIG and its subsidiaries continued undisturbed until the Islamic Revolution in Iran. Then, on 31 July 1979, the new Government enacted the Law on the Protection and Development of Industries in Iran. That Law contains in its sub-section B a list of 52 persons whose properties were expropriated because of their "illegal relationship with the past regime, illegitimate use of facilities, and violation of public rights". Irvani and members of his family were listed in sub-section B. There is uncontested evidence that MIG's new managers eventually came to the conclusion that the shares in the names of North West and Grafton had been expropriated along with the shares of the Irvani family. Conclusive proof of this is found in a tax return that MIG filed with the Iranian Ministry of Finance for the period ending 19 March 1980, which specifically lists the 600,000 shares in the names of North West and Grafton as being owned by "shareholders subject to sub-section B", i.e. those whose shares were expropriated pursuant to the law on the Protection and Expansion of Industry.<sup>3</sup> MIG continued thereafter to treat the shares in

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<sup>3</sup>It appears from three pieces of miscellaneous correspondence offered in evidence by Iran (see Award, para. 26) that there may have been some initial uncertainty  
(Footnote Continued)



the names of North West and Grafton as having been expropriated. Thus, when Carlson sought to invoke the buy-back agreement with MIG and thereby to receive the \$10 million he needed to pay the debt he had incurred to buy the shares, the new management of MIG refused to honor the buy-back obligation -- an action entirely consistent with its view that the shares had been expropriated and no longer belonged to their former owners.

14. The expropriation of the shares of MIG and its subsidiaries held in the names of North West and Grafton adversely affected Carlson's property rights as the beneficial owner of those shares. Consequently, he has standing, pursuant to Article II, paragraph 1 and Article VII, paragraph 2 of the Claims Settlement Declaration,<sup>4</sup> to make a direct claim for the loss he suffered. Earlier Tribunal Awards firmly establish this right. Thus, "[t]he Tribunal has recognized the standing of beneficial owners ... when the legal owners are mere nominees." Howard Needles Tammen and Bergendoff, supra, 11 Iran-U.S. C.T.R. at 313, citing International Technical Products, supra, 9 Iran-U.S. C.T.R. at 230-33.

15. The majority, however, denies Carlson's standing to make a claim because "it finds insufficient proof of Carlson's employment arrangements" (Award, para. 31). In support of this conclusion, the majority relies on several

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(Footnote Continued)

as to whether the shares in the names of North West and Grafton had been expropriated. In any event, that correspondence is superseded and clarified by the tax return, which is unequivocal and dated later than all of the relevant correspondence.

<sup>4</sup>Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, dated 19 January 1981, reprinted in 1 Iran-U.S. C.T.R. 9.

factors from which it draws inferences that the compensation arrangements were a fabrication. In my view, the Award's analysis is flawed and its inferences are unwarranted. In an effort to support its conclusion, the majority begins by emphasizing that "[f]irst of all, there was no written contract of employment" between Carlson and MIG. In my view, there is no basis for drawing an adverse inference from the absence of a formal employment agreement between Carlson and MIG. While some executives and employers do enter into employment contracts, many prefer the flexibility that comes with having no written agreement. Moreover, these executives consider that it is more important to build lasting relationships on a foundation of mutual trust than on a written contract. Business experience teaches that employment contracts were hardly a norm, and certainly not sine qua non, as the majority implies. The evidence supports a finding that Carlson and Irvani chose, at a time of stability in Iran, to act in an informal manner; it is not for the Tribunal, in hindsight, to penalize Carlson for that decision.

16. Moreover, the lack of a written contract is more than outweighed by the actions of Carlson and Irvani. Even absent a formal agreement, the fact of Carlson's employment and the elements of his compensation are well-supported and largely undisputed. Thus, it is uncontested that he became General Manager of MIG as he said, that he was provided with a house and other prerequisites, and that North West and Grafton became shareholders of MIG and its subsidiaries.

17. The majority also considers that there is insufficient proof of "the arrangements by which Carlson was to receive an interest free loan of up to \$10 million to purchase shares of MIG and related companies" (Award, para. 31). In this connection, the majority notes, but refuses to credit, "an unsigned handwritten memo by Dr. Erdtmann" that Carlson presented in evidence as a contemporaneous business record

made in 1975 to outline the terms of the \$10 million line of credit. In my view, Dr. Erdtmann's handwritten memo is entirely in character with the informal manner in which the parties chose to act. Its authenticity is supported by the fact that the transactions it described all eventually took place. The majority seeks to cast doubt on the memo by noting that although it was purported to have been written in 1975, it referred to North West (Zurich), a Swiss corporation that was not formed until December, 1976. There is, however, a simple explanation for this apparent discrepancy. When Erdtmann initially outlined the transaction in his memo, he expected that a Swiss corporation would be formed in Zurich to hold one-half of the MIG shares for Carlson. However, when Carlson initiated the formation of a corporation to hold his MIG shares, his English lawyer advised that it would be fiscally advantageous to establish the company in Luxembourg, rather than Switzerland. Accordingly, North West (Luxembourg) was formed. Thereafter, Carlson's lawyers found that the expected Luxembourg tax benefits were not available. Accordingly, he reverted to the original plan and organized North West (Zurich) which became the party in the transaction. The majority's concerns in this respect are thus unwarranted.

18. The majority seeks to question the existence of the \$10 million line of credit to Carlson from Erdtmann's syndicate by noting Erdtmann's reticence to disclose the details of the arrangements among the syndicate's members. (Award, para. 32). Carlson bears no burden of proof as to how the Erdtmann syndicate operated, nor is Carlson's claim diminished by Erdtmann's statement that it was his practice to deal on a basis of mutual trust with his mother, who was a major lender, and with other close associates. The overwhelming fact is that Carlson signed the draft committing himself to repay the \$10 million loan --

something he would not have done if he had not personally received the benefit of the loan.<sup>5</sup>

19. In addition, the majority finds it "hard to reconcile that the arrangements concerning the \$10 million line of credit were not formalized until May, 1977", although very substantial amounts had been advanced by Erdtmann before that time. (Award, para. 36). This circumstance merely evidences the informal atmosphere in which the parties acted on the basis of the 1975 memo and the mutual trust among the individuals concerned. This mutual trust was not misplaced, because, as noted, Carlson, before any problems arose, completed the paper work by signing the draft, thereby formally obligating himself to pay the funds that had been advanced to him without the need for documentation beyond the 1975 memo that had outlined the arrangement. Carlson's willingness to accept personal liability by signing the draft powerfully demonstrates that the transaction was not a sham. Significantly, the arrangements were formalized in 1977, long before there was any need to fabricate such an arrangement; at that time no one foresaw either the Islamic Revolution or the present claim.

20. The majority dwells at length on the fact that Erdtmann was an active participant in various MIG transactions, including Carlson's compensation arrangements (Award, para. 37), and that those arrangements were mutually beneficial to Carlson, Irvani and Erdtmann (Award, para. 38). As discussed in paras. 4 and 5 above, each of the three participants was motivated by his own valid commercial purposes. The existence of reciprocal benefits

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<sup>5</sup>As the Award notes, this draft was the basis of a 1987 lawsuit brought by Erdtmann to recover the amounts due under the draft. See Award, para. 39.

is the hallmark of a sound business transaction, not a ground for suspicion or a basis for adverse inferences.

21. The Award also emphasizes that Erdtmann and his syndicate would benefit from an award of damages in this Case, because Carlson would use the proceeds to repay the \$10 million loan (Award, para. 39). As a result of MIG's failure to honor the buy-back agreement, the present claim is a major contingent asset of Carlson, and it is entirely appropriate that his creditors should look to it as a source of repayment. The significance of this normal business circumstance is that the Tribunal when weighing Erdtmann's credibility must keep in mind his interest in the outcome of this litigation. Even taking that interest into account, I consider that, for the reasons described above, the circumstances of Carlson's employment are sufficiently proven.

22. The majority goes on to set up a straw-man when it observes that Carlson was never the registered owner of the shares of MIG and related companies (Award, para. 40). Carlson has never claimed to be the registered owner, nor has he ever asserted anything but that North West and Grafton were the registered owners. Carlson's direct claim is based on his beneficial ownership interest in the shares, as demonstrated by the nominee agreements between Carlson and North West and North West and Grafton. While it may be true that Article 40 of the Iranian commercial code, quoted in the Award, is controlling as to the legal requirements necessary to effect a transfer of record ownership of shares for purposes of the relationship between a corporation and its shareholders, it is not the source by which the Tribunal should determine whether Carlson had a property interest sufficient to support its jurisdiction. This issue must be determined by reference to the Claims Settlement Declaration, and to international law.

23. The majority makes two additional points that, for the sake of completeness, require brief comment (Award, para. 41). The Award notes that the Fiduciary Agreement was dated only in 1978, whereas shares were purchased by North West and Grafton somewhat earlier. The simple answer is that Carlson, or his lawyer, considered it prudent to consolidate in a single document the already existing beneficial ownership arrangements. The fact that Carlson's beneficial ownership existed before the date of his Fiduciary Agreement is amply demonstrated by the Peat Marwick report that Carlson filed U.S. tax returns acknowledging such ownership in 1977 and 1978. Finally, the majority seeks to draw the inference that the buy-back agreement never existed (or was invalid) because there appears to be no mention of it in the corporate minutes of MIG. Again, the answer is simple; Carlson explained that Irvani preferred to keep confidential the details of Carlson's compensation arrangement to avoid jealousy among other executives that would have disrupted the harmony of working relationships within MIG staff. I find this to be an entirely plausible explanation. In any event, Carlson does not base his pending claim on the buy-back agreement -- but rather on expropriation. As a result, no technical issue arises as to whether the validity of the buy-back agreement is affected by the state of the corporate minutes.

24. In sum, none of the points raised by the majority justify dismissal of this Case. In contrast, as explained above, Carlson's position is strongly supported by undeniable facts and disinterested witnesses. These include:

- \* The fact that North West and Grafton were the record owners of 600,000 MIG shares -- a fact proven by MIG's corporate records both under its original management and under the management of the new Government.

- \* The fact that Carlson was the beneficial owner of the MIG shares held in the names of North West and Grafton -- a conclusion supported by evidence submitted by firms of independent certified public accountants in Switzerland and the United States, as well as by banks and law firms that were professionally engaged in the transactions long before the claims arose.
- \* The fact that Carlson signed a draft personally obligating himself to pay \$10 million -- something that he would not have done if he was not the owner of the MIG shares.
- \* The fact that the 600,000 MIG shares held in the names of North West and Grafton were expropriated -- a fact acknowledged by a tax return filed with the Iranian authorities after the Revolution by the new MIG management.

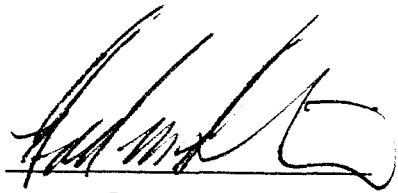
Surely this is persuasive evidence.

25. Because I would have found Carlson's direct claim to be within the Tribunal's jurisdiction, there is no need to discuss his indirect claim, as owner of a majority of the shares of North West and Grafton. Fairness, however, requires me to add a word concerning the majority's treatment of Dr. Reinhard, a respected Swiss attorney (Award, paras. 44-45). In my view the "inconsistencies" which the majority finds between his two certificates can be explained by the distinction between record and beneficial ownership of shares. Given the purpose of his 1981 affidavit, and the structure of Carlson's ownership of North West, I find Dr. Reinhard's explanation to be convincing.

26. For the reasons set forth above, I would hold that Roy Carlson has standing to bring a claim for expropriation. Accordingly, the Tribunal should determine the value of the

shares of MIG and its associated companies that were taken from Carlson without payment of compensation as required by the Treaty of Amity between the United States and Iran<sup>6</sup> and by international law.

Dated, The Hague  
1 May 1991



Howard M. Holtzmann

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<sup>6</sup>Treaty of Amity, Economic Relations and Consular Rights of 1955 between Iran and the United States, which entered into force on 16 June 1957.