IRAN-UNITED STATES CLAIMS TRIBUNAL

ایالات متحده - 335 - 167
۳۳۵ - ۱۶۷

ORIGINAL DOCUMENTS IN SAFE

Case No. 335 Date of filing: 8 Aug 06

** AWARD - Type of Award Final.
- Date of Award 8 Aug 1906.
20. pages in English 21 pages in Farsi

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

** CONCURRING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

_____

- Date _____
_____ pages in English _____ pages in Farsi

R/12

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 335
CHAMBER TWO
AWARD NO. 245-335-2

335-167
۳۳۵-۱۶۷

THOMAS EARL PAYNE
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,

Respondent.

AWARD

Appearances:

For the Claimant:
Mr. Thomas Earl Payne, Claimant
Mr. Hamid Sabi,
Mr. George Henderson, Attorneys
Mr. K. Banayan,
Mr. B. Martin
Mrs. S. Payne,
Mr. M. Dooman, Assistants
Mr. G. Briggs,
Mr. J. Rypstre, Witnesses

For the Respondent:
Mr. Mohammad K. Eshragh, Agent of the Government of the Islamic Republic of Iran
Mr. Seyed-Mostafa Dorchezadeh,
Mr. Seyfollah Mohammadi,

Legal Advisers to the Agent
Mr. Abolfazi Kousheshi, Assistant to the Agent
Mrs. Navabbeh Espahbodi,
Mr. Abdolhamid Soltani,
Mr. Syed-Asdollah Danesh-Hossein, Representatives of the Ministry of Commerce

Also Present:

Mr. Daniel M. Price, Deputy Agent of the United States of America

I. THE CLAIM

1. The Claimant, THOMAS EARL PAYNE, filed a Statement of Claim on 18 January 1982 for U.S.$2,889,101, representing the value of his ownership interests in Irantronics Ltd. ("Irantronics") and Berkeh Company Ltd. ("Berkeh") which he maintains were expropriated by the GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent"). A Statement of Defence was filed by the Respondent. A Statement of Defence and a Statement of Counterclaim were also filed by Irantronics and Berkeh seeking 25,279,743 Rials for taxes and social insurance premiums allegedly owed by the companies.

2. The Claimant filed an Amendment to the Statement of Claim on 5 May 1983, which sought to increase the amount of the Claim to U.S.$7,261,640, plus interest and costs. The Tribunal, in its Order of 10 May 1983, decided to join the admissibility of the Amendment to consideration of the merits of the Case.

3. A Hearing in this Case was held on 2 May 1986.

4. Berkeh was incorporated in Iran on 25 April 1967 as a film distribution company. It grew to include a small high-technology business whose principal business was as exclusive representative of the Tektronix Corporation in Iran. The Claimant was employed by Berkeh in 1970 and later purchased a 30 percent share in the company. He then developed for the company an electronics service center, including a metrology laboratory.[1] On 2 October 1976, the

---

[1] A metrology laboratory is a place for the "calibration" of measuring equipment in reference to established "standards". Standard weights and measures, such as the kilo, liter, and meter, are internationally defined. The calibration of instruments is the analysis of the performance parameters of an instrument to ensure performance in accordance with the manufacturer's specifications.

Claimant, together with Michael Dooman, one of the other partners, put Berkeh into liquidation. On 18 October 1976, Irantronics was established to take over the metrology and sales representation business of Berkeh. The Claimant's initial share in Irantronics was 25 percent, which was later increased to 35 percent. On 16 June 1977, the Claimant, Mr. Dooman, and a third partner, Saeed Yafeh, set up a new company under the same name of Berkeh. Each shareholder held one-third of the share capital. The new Berkeh continued the electronic spare parts sales business and the film distribution business of its predecessor and shared office space with Irantronics. The Claimant was the Technical Director and a member of the Board of Directors of both Berkeh and Irantronics.

5. As of 1977, therefore, the business of the two companies consisted of importation and sales of general electronic spare parts and distribution of cinematographic products (Berkeh), and sales representation for high-technology electronic equipment, warranty service, repair, and calibration of that electronic equipment, and sales of special components and electronic spare parts (Irantronics).

6. The central feature of the two companies was Irantronics' Standards and Metrology Laboratory ("the Laboratory"). The Laboratory not only generated income but also attracted clients to the product lines for which Irantronics was the exclusive representative in Iran. This sales representation business, for which Irantronics received a commission on all sales in Iran, was the principal income source between the two companies. However, without the Laboratory to attract and maintain clients, the sales representation business would not have been as successful as it was. The principal feature of the Laboratory was the set

of "primary standards" traceable to "international standards."[2]

7. The Claimant left Iran in December 1978. Mr. Dooman left Iran in January 1979. Mr. Yafeh remained in Iran to manage Berkeh. The two other shareholders of Irantronics, Mrs. Fahimi and Mr. Afshar, remained in Iran to manage Irantronics.

8. During his absence from Iran, the Claimant was in frequent contact with the other owners and managers in Iran and the business of the companies ran relatively smoothly, although at a much reduced pace, throughout the Revolution and afterwards until the summer of 1980. On 5 July 1980, a "temporary" manager for Irantronics was appointed by the Minister of Commerce. This government-appointed manager assumed his position on or about 7 August 1980.

II. REASONS FOR THE AWARD

A. Preliminary Issue

9. As already noted, the Claimant amended his Statement of Claim to increase the amount of compensation sought. The Respondent objected to the amendment on the ground that an increase in the amount claimed is not a proper amendment. The Tribunal decides that no prejudice could be considered

---

[2] As referred to in footnote 1, supra, "international standards" are internationally defined. National bureaus of standards maintain "primary standards" in relation to the international standards. Such primary standards are used to calibrate "secondary standards" in metrology laboratories. These secondary standards are then used to calibrate equipment. Irantronics maintained its own set of primary standards, periodically calibrated against official national primary standards in the United States, the United Kingdom, and Australia. With these primary standards, Irantronics could efficiently maintain the secondary standards used in the Laboratory.

to have been caused to the Respondent by a change in the Claimant's valuation of the property at issue even if this change is caused by using a different method of valuation. The Respondent had ample opportunity to respond, and did respond, to the revised valuation made by the Claimant. Accordingly, the Tribunal decides that the Amendment is admissable in accordance with Article 20 of the Tribunal Rules.

B. Jurisdiction

1. The Claim

10. The Claimant submitted as evidence of his United States nationality a copy of his birth certificate from the State of California. There is no evidence that the Claimant ever lost his U.S. nationality or acquired another. It was not disputed that the Claimant owned the Claim from the date the Claim arose, 5 July 1980, to the date the Claims Settlement Declaration entered into force, 19 January 1981, and that the Respondent falls within the definition of Iran under Article VII, paragraph 3, of the Claims Settlement Declaration. Accordingly, the Tribunal is satisfied it has jurisdiction over the Claim.

2. The Counterclaim

11. Irantronics and Berkeh filed a Statement of Counterclaim for taxes and social insurance premiums owed by themselves to the Respondent in the total amount of 25,279,743 Rials for the period 1972-1981. The Claimant contended that the Tribunal lacks jurisdiction over the Counterclaim since: neither Berkeh nor Irantronics are parties to the proceedings; the Counterclaim does not arise out of the same contract, transaction, or occurrence as the Claim; and, the Tribunal may not enforce the revenue laws of any country.

12. Since neither Irantronics nor Berkeh are parties to this action, since the Counterclaim for taxes and social security premiums cannot be said to arise out of the Claim which is for the taking of property without compensation, and since the Claimant is not personally liable as a shareholder for the tax debts of these Iranian limited liability companies, the Counterclaim is dismissed for lack of jurisdiction. The Tribunal notes, however, that the alleged tax debts were properly invoked in connection with the Respondent's valuation of the two companies, discussed below.

C. THE MERITS

1. The Expropriation Claim

a) Liability

13. On 5 July 1980, a letter from the Minister of Commerce appointed Mr. Seyed Mohammad Zarghami as supervisor of Irantronics in accordance with Legal Act No. 6738 of 16 June 1979 ("Law of 16 June 1979").[3] The relevant part of the letter stated:

> You are supposed to control [Irantronics] on behalf of the Islamic Republic of Iran Government in compliance with the rights derived from the above mentioned Legal Act and the company's Article by taking proper steps immediately in order to solve the problems and submitting monthly reports to the Council of Companies Management.

---

[3] Legal Act Regarding - Provisional Appointment of Manager or Managers to Head Manufacturing, Industrial, Commercial, Agricultural and Service Units belonging to either the Public or Private Sector, issued on 16 June 1979 as Decree No. 6738 by the Prime Minister of the Provisional Government of the Islamic Republic of Iran. The Decree was published in the Official Gazette on 8 July 1979 as Law No. 7/2571 of 19 June 1979. Since the letters of appointment

(Footnote Continued)

14. Mr. Zarghami also took over control of Berkeh in August 1980, pursuant to an order of the Minister of Commerce of 18 August 1980, a reference to which was published in the Official Gazette on 25 February 1981.

15. As a result of the assumption of management of Irantronics and Berkeh by Mr. Zarghami, the Claimant asserted that he and his partners lost control of their interests in both companies. The Claimant maintained that since July 1980, no accounting was given to him or to any of the other shareholders by the government-appointed directors, no dividends were paid, and no amounts due to shareholders were repaid. Further, no opportunity was given to the shareholders to attend general meetings and no annual reports were sent. The Claimant also asserted that the previous managers, appointed by the directors, were divested of all authority and later dismissed. The Claimant alleged that the circumstances which would have entitled the Government of Iran to invoke the provisions of the Law of 16 June 1979 to safeguard the continuation of the businesses did not exist, since at the time of the taking both companies were properly financed, salaries and bonuses of the employees were regularly paid, and several of the owners and a sufficient number of managers were present in Iran to run the businesses effectively. The Claimant also alleged that the taking of the companies was made for reasons of national interest in view of the importance which the Laboratory and the electronic spare parts inventories had for the Government of Iran.

16. In its defence the Respondent alleged that the appointment of provisional managers effected no change in the legal status of the companies or in the ownership interests of the stockholders and that the provisional managers were

---

(Footnote Continued)
used the reference to Legal Act No. 6738, the date of 16 June 1979 is followed herein.

appointed to safeguard the interests of stockholders and to maintain economic activity in the country during a time when the two companies were left without supervision. The Respondent alleged that the Claimant abandoned the companies when they were in very weak economic condition due to the U.S. embargo on exports to Iran, the economic recession, Iranian concern at the time not to purchase American goods, the growth of production of identical items in Iran or procurement from non-U.S. sources, and the exercise of control by the Ministry of Islamic Guidance on the importation of cinema films.

17. The Respondent argued that the companies continued to exist as independent legal entities managed in accordance with the commercial laws of Iran and the companies' respective Articles of Association. The Respondent states that the Law of 16 June 1979 lays down the limits of government interference, on an objective and non-discriminatory basis. It further argued that under the provisions of that Law it assumed no obligation for the indebtedness of the companies and therefore the appointment of temporary managers meant neither financial nor administrative control. The action was thus considered neither to amount to expropriation nor to an assumption of control over Irantronics or Berkeh.

18. The Tribunal notes that the Law of 16 June 1979 provides, inter alia, for the appointment of persons as managers, members of the board of directors, or observers in order to prevent the closure of certain types of companies "whose managers or owners have left the said units or worksites, stopped work or cannot be reached for any reason". In addition, the "Legal Bill for the Determination of the Limits of the Duties and Authority of Temporary Director or Directors for the Supervision of Manufacturing, Industrial, Commercial, Agricultural and Service Units Whether in the Public or the Private Sectors" of 14 July 1980 gave to the managers appointed under the Law of 16 June

1979 "all functions assigned to the directors, the managing director, the general meeting and the inspectors".

19. While the Respondent argued that the Claimant's shares were not expropriated and that he could return at any time to assert his rights of participation in the companies, the Tribunal notes that the Respondent did not dispute that since July 1980 the shareholders of the companies have not received any communication from the new managers with respect to dividend notices, annual reports, requests for proxies, or notices of annual shareholders meetings. Nor have the existing Directors, including the Claimant, been invited to any Board meetings.

20. It is well settled in this Tribunal's practice, as elsewhere, that property may be taken under international law through interference by a State in the use of that property or with the enjoyment of its benefits. Foremost Tehran, Inc. et al. and The Government of the Islamic Republic of Iran, Award No. 220-37/231-1 (11 April 1986) p. 22. See also Starrett Housing Corporation et al. and The Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 32-24-1 (19 Dec. 1983) p. 51; Tippetts, Abbett, McCarty, Stratton and TAMS-AFFA Consulting Engineers of Iran, Award No. 141-7-2 (29 June 1984) pp. 10-11; SEDCO, Inc. et al. and National Iranian Oil Company, Interlocutory Award No. ITL 55-129-3 (28 Oct. 1985) pp. 39-43; Phelps Dodge Corp. et al. and The Islamic Republic of Iran, Award No. 217-99-2 (19 Mar. 1986) pp. 12-14. The evidence indicates that the Respondent, acting through its Minister of Commerce and under the Law of 16 June 1979, transferred the management of the two companies to Mr. Zarghami with specific instructions to control Irantronics "on behalf of the Islamic Republic of Iran Government". Similar action in respect of Berkeh was published in February 1981, making the authority retroactive to August 1980. The Law of 16 June 1979 provides that upon issuance of the directive appointing a manager "previous directors and managers will be stripped of their competence in managing" the affairs of the company

and that "[t]he directive appointing a manager or board of directors, until cancellation thereof by the relevant ministry, ..., will remain in force; the manager ... so appointed will remain in [his] position[s]; and the shareholders have no right whatsoever to choose managers in their place." The effect is to strip the original managers of effected companies of all authority and to deny shareholders significant rights attached to their ownership interest. While one of the purposes of the Law of 16 June 1979 is the appointment of managers on a "provisional" basis, the sum effect in this case was the deprivation of any interest of the original owners in the companies once they were made subject to provisional management by the Government.

21. The evidence indicates that neither Irantronics nor Berkeh were abandoned or had ceased activity, which could have justified the assumption of control by the Government under the Law of 16 June 1979. While the Claimant left Iran in December 1978, the evidence indicates that he did not in fact abandon his business activities in Iran. Irantronics was effectively managed by one of the other minority shareholders, Mrs. Fahimi, with whom the Claimant kept in frequent and regular contract. Letters of reassurance were sent by the Claimant in the summer of 1979 to various manufacturers represented by Irantronics, also indicating the Claimant's continued interest in maintaining the business in Iran. While there was clearly a reduction in staff during the Revolution, the companies' business continued. In particular, the servicing of equipment seems to have continued as before, following a lull during the period of revolutionary events in 1979.

22. In its Award in Tippetts, Abbott, McCarthy, Stratton, supra, the Tribunal observed that:

> While assumption of control over property by a government does not automatically and immediately justify a conclusion that the property has been taken by the government, thus requiring compensation under international law, such a

> conclusion is warranted whenever events demonstrate that the owner was deprived of fundamental rights of ownership and it appears that this deprivation is not merely ephemeral. The intent of the government is less important than the effects of the measures on the owner, and the form of the measures of control or interference is less important than the reality of their impact.

23. In its Interlocutory Award in SEDCO, supra, the Tribunal considered the effect of the appointment of temporary managers under the Law of 16 June 1979. The Tribunal endorsed the view that the appointment of government managers was an important factor in finding a taking had occurred, since such an appointment denied the owner of any right to manage the enterprise. Id. at 40-41. The Tribunal decided that if at "the date of the government appointment of "temporary" managers there is no reasonable prospect of return of control, a taking should conclusively be found to have occurred as of that date." Id. at 42. In arriving at that determination, the Tribunal noted that the Law of 16 June 1979 did not prescribe the length of government control and did not provide for judicial or administrative determination of whether the property should be returned to its original owners. Id.

24. The Tribunal finds the circumstances of this Case similar to those in SEDCO, supra, in particular with respect to the applicability of the Law of 16 June 1979. In the present Case, the Tribunal finds that the Respondent effectively took control of both Irantronics and Berkeh in July/August 1980 by the appointment of the temporary manager pursuant to the Law of 16 June 1979. No evidence was offered regarding a revocation of the Ministerial Directive of 5 July 1980. No dividends were paid nor was any form of communication in respect of those companies sent to the original owners. It is difficult to maintain that after a lapse of six years, the taking could still be considered to have been "temporary".

25. As to the date of the taking, Mr. Zarghami was officially appointed to manage Irantronics on 5 July 1980 and to manage Berkeh on 18 August 1980. In view of the close interrelationship of management and control between the companies, the taking is deemed to have had effect with respect to both companies as of 5 July 1980. The Respondent is therefore liable to the Claimant for the value of the property so taken.

b) Valuation

26. The Parties disagreed on the appropriate standard of compensation and the method of valuation of the property taken. The Claimant contended that the appropriate standard is that laid down in Article IV of the Treaty of Amity between the United States and Iran[4] and in the recognized principles of international law, which would entitle him to the payment of adequate compensation representing the fair value of the property taken. According to the Respondent, present-day international law lays down a standard of partial compensation, the amount determined "with a view to the laws and regulations of the states concerned".

27. The taking in this Case occurred on 5 July 1980. The Tribunal, in Phelps Dodge, supra at para. 27, concluded that Article IV, paragraph 2, of the Treaty of Amity was "clearly applicable to the investment at issue . . . at the time the claim arose." The claim in Phelps Dodge arose as of 15 November 1980. The Tribunal held that the Treaty was still in force in November 1980, and therefore was applicable to the taking. This conclusion also makes Article IV, paragraph 2, the relevant source of law in this Case since the taking here occurred prior to November 1980.

---

[4]Treaty of Amity, Economic Relations, and Consular Rights Between the United States of America and Iran, signed
(Footnote Continued)

28. Article IV, paragraph 2, of the Treaty of Amity provides that:

> Property of nationals and companies of either High Contracting Party, including interests in property, shall receive the most constant protection and security within the territories of the other High Contracting Party, in no case less than that required by international law. Such property shall not be taken except for a public purpose, nor shall it be taken without the prompt payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the full equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and payment thereof.

29. Applying the standard set forth above, the Claimant is entitled to the payment of "just compensation", which must represent the "full equivalent" of the property taken.

30. Under this standard, the Tribunal must determine what is the "full equivalent" of the Claimant's interests in Berkeh and Irantronics. Berkeh and Irantronics are both service companies as opposed to manufacturing companies or holders of concessions for the exploitation of natural resources. The Tribunal has previously decided two cases involving expropriation of service-sector companies. In American International Group, Inc. et al. and The Islamic Republic of Iran et al., Award No. 93-2-3 (19 Dec. 1983) at p. 21, the Claimant was an insurance company and the Tribunal held that:

> the appropriate method is to value the company as a going concern, taking into account not only the net book value of its assets but also such elements as good will and likely future profitability, had the company been allowed to continue its business under its former management.

(Footnote Continued)
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. 899.

Likewise, in INA Corporation and The Government of the Islamic Republic of Iran, Award No. 184-161-1 (13 Aug. 1985) at p. 10, the Tribunal held that the Claimant, also an insurance company, was entitled to "compensation equal to the fair market value of its shares", under the standard established in Article IV, paragraph 2, of the Treaty of Amity. The Tribunal defined "fair market value" as:

> the amount which a willing buyer would have paid a willing seller for the shares of a going concern, disregarding any dimunition 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.

31. In the present Case, the Claimant asserted that the two companies should be valued as "going concerns" at the time of the taking. The Claimant proposed that the going concern value of the two companies be calculated on the basis of a multiple of 10 times net average earnings for the three years preceding the taking. The Claimant argued that a factor of 10 is conservative and appropriate considering the rather stable business of the two companies, the "captive market" which would have relied on their unique services, and their relative imperviousness to market or political changes. The Claimant thus calculated the going concern value of the two companies to be U.S.$8,827,000. The Claimant's interest, based on an average 34 percent shareholding in the two companies, would amount to U.S.$3,001,180 under this method. While this amount differs from the U.S.$2,889,101 requested in the Statement of Claim and the U.S.$7,261,640 advanced in the Amendment, this amount was confirmed by the Claimant at the Hearing to represent his preferred valuation of the Claim.

32. The Claimant also provided evidence regarding the value of the principal assets of each of the two companies. In respect of Berkeh, the Claimant stated that the book value of the spare parts inventory of the company was about

U.S.$250,000. The claimed book value of the spare parts inventory of Irantronics was likewise approximately U.S.$250,000. In support of the valuation of the Laboratory, the Claimant submitted a number of affidavits of persons familiar with the equipment, who estimated the value at between U.S.$725,000 and U.S.$6,000,000. At the Hearing, the Claimant's witness, Mr. Rypstre, testified on the basis of personal experience with the type of equipment and, in particular, with the Irantronics Laboratory, that the replacement value of the Laboratory in July 1980 exceeded U.S.$2,000,000. In addition, the Claimant contended that the Laboratory's primary standards appreciated in value, as their performance history was recorded over time, so that mere replacement value did not represent the full equivalent of the value of the Laboratory.

33. The Respondent, on the other hand, argued that the Tribunal should consider only the net book value of the two companies. The Respondent denied that Berkeh and Irantronics were going concerns at the date of the taking. In support, the Respondent pointed to the effects of the Revolution, including the change in the economic system, the depression in the activities of productive and service concerns, and the application of new regulations in respect of foreign transactions by government agencies. As evidence of the net book value of the two companies, the Respondent submitted an audit report of Amir and Partners, a registered Iranian accounting firm, which indicates that as of 5 August 1980 the two companies were commercially inactive and had negative net book values of 27,023 Rials for Berkeh and 8,591,835 Rials for Irantronics. The Respondent contended that this negative value is greater when account is taken of taxes owed the Respondent by the two companies. On the basis of the alleged negative net book value of each company, the Respondent argued that the Claimant is not entitled to any compensation whatsoever.

34. The Tribunal is thus confronted with widely conflicting assessments of the value of the two companies. The Claimant

alleged a going concern value for the two companies of nearly U.S.$9,000,000, while the Respondent alleged a negative net book value for both companies. Based on the evidence before it, the Tribunal considers that the companies were both going concerns at the time of the taking and decides that it must value the Claimant's interests on the basis of the fair market value of his shares taking into account the debts of the companies including tax liabilities.

35. In arriving at a figure representing what the Tribunal considers to be the fair market value of the Claimant's interest in both companies at the time of the taking, the Tribunal considers it necessary to consider the effects of the Revolution prior to the taking, which certainly caused a significant decrease in the volume of sales, and thus the income from commissions. The Claimant stated that 60 percent of Irantronics' income was derived from direct sales and sales commissions. Account has also to be taken of the United States embargo on export licences to Iran, which reduced the supply of spare parts, components, and electronic equipment sold by the two companies. The Claimant may have recognized these factors when he began to make arrangements during 1979 to transfer some of the activities of Irantronics out of Iran. During 1979, the Claimant explored possibilities in the United States and in the Middle East outside of Iran. He established a wholly-owned subsidiary of Irantronics in California and developed a plan to transfer the primary standards there when it proved impossible to have them periodically taken out of Iran for calibration. He incorporated another new company in California with the idea of conducting business with other countries in the Middle East. The Tribunal also notes that although Irantronic's main competitor left Iran following the Revolution, leaving the entire market to Irantronics, the company's main clientèle consisted of government agencies. Much of this government-related business was threatened by the change in government policies following the Revolution. While there remained an existing

pool of equipment which required servicing, the conditions prevailing during the summer of 1980 do not indicate that this market would have expanded very much, if at all. Also, it must be observed that Berkeh was clearly seriously affected by the new restrictions on the importation of films imposed by the Iranian Government.

36. The Tribunal considers that if the taking had occurred earlier, when the effects of the Revolution were not yet manifest, it might have been justified in applying a method of valuation similar to that proposed by the Claimant. However, the Tribunal considers that the effects of the Revolution seriously discounted the reliability of past performance as an indicator of likely future profitability for the two companies and the value of their goodwill, particularly since they are service companies.

37. The Tribunal therefore finds that it must make an approximation of the value of the Claimant's interest in the two companies, taking into account all the circumstances of the Case. Accordingly, the Tribunal determines that the sum of U.S.$900,000 represents the fair value of the Claimant's interests in the two companies at the time of the taking.

2. Other Claims

38. The Claimant also claimed amounts totalling in excess of U.S.$94,000 for loss of salary, exchange control loss, expropriation loss, out of pocket loss, and loss of personal property. The Tribunal considers that the Claimant failed to adequately substantiate these Claims or to articulate the legal basis for alleging liability on the part of the Respondent. Accordingly, they are dismissed for lack of proof.

39. Finally, in his last filing of 2 April 1986, the Claimant requested that the Tribunal also award an amount of 5,093,958 Rials on the basis of a statement in the audit

report on Irantronics, submitted by the Respondent, which identified the Claimant as one of the creditors of the company. No other evidence was submitted in support of this request. The Tribunal notes that if any such amount is owed to the Claimant, it is a separate debt owed by Irantronics, who is not a party to this action. The Tribunal therefore lacks jurisdiction over this part of the Claim and it is dismissed accordingly.

III. INTEREST

40. The Tribunal finds the Claimant is entitled to interest on the amount of compensation awarded at an annual rate of 11.25 percent from the date of the taking, 5 July 1980, up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

IV. COSTS

41. Each of the Parties shall bear its own costs of arbitrating this Claim.

V. AWARD

42. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is obligated to pay to the Claimant, THOMAS EARL PAYNE, the sum of Nine Hundred Thousand United States Dollars (U.S.$900,000), plus simple interest at the rate of 11.25 percent per annum (365-day basis) calculated from 5 July 1980 to and including the date on which the Escrow Agent

instructs the Depositary Bank to effect payment out of the Security Account.

(b) This obligation shall be satisfied by payment out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Government of Algeria of 19 January 1981.

(c) The tax and social security counterclaim and the claim for debt are dismissed for lack of jurisdiction.

(d) All other claims are dismissed for lack of proof.

(e) Each of the Parties shall bear its own costs of arbitration.

(f) This Award is hereby submitted to the President of the Tribunal for the purpose of notification to the Escrow Agent.

Dated, The Hague
8 August 1986

Robert Briner
Chairman

In the name of God,

Hamid Bahrami-Ahmadi
Concurring in part
Dissenting in part

George H. Aldrich