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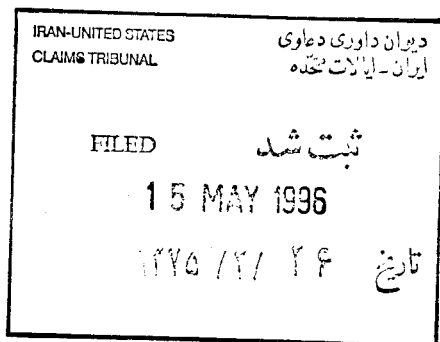
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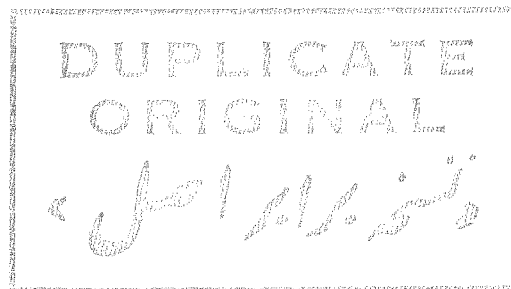


CASE NO. 164

CHAMBER THREE

AWARD NO. 570-164-3

JACQUELINE M. KIAIE,  
JULIA S. KIAIE,  
Claimants,



and

THE GOVERNMENT OF THE  
ISLAMIC REPUBLIC OF IRAN,  
Respondent.

AWARD

Appearances

For the Claimants:      Mr. John L. Boos,  
                                 Attorney for the Claimants;  
                                 Mrs. Julia S. Kiaie,  
                                 Mrs. Jacqueline M. Kiaie,  
                                 Claimants;  
                                 Dr. Ala T. Kiaie,  
                                 Witness;  
                                 Mr. Paul Regan,  
                                 Expert Witness;

For the Respondent:      Mr. Ali H. Nobari  
                                 Agent of the Islamic Republic of  
                                 Iran;  
                                 Mr. Nozar Dabiran,  
                                 Professor Brigitte Stern,  
                                 Legal Advisers to the Agent;  
                                 Mr. Behrouz Salehpour,  
                                 Legal Assistant to the Agent;  
                                 Mr. Mohammad Rangchian,  
                                 Attorney for Western Industrial  
                                 Group;  
                                 Mr. Ali Reza Arbabi,  
                                 Representative      of      Western  
                                 Industrial Group;  
                                 Mr. Seyed Ghansoor Mousavi,  
                                 Financial      Representative      of  
                                 Western Industrial Group;  
                                 Mr. Majid Fatehi,  
                                 Expert Witness;

Also Present:              Mr. D. Stephen Mathias,  
                                 Agent of the United States of  
                                 America;  
                                 Ms. Mary Catherine Malin,  
                                 Deputy Agent of the United  
                                 States of America;  
                                 Mr. Jubin Kiaie.

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I.        INTRODUCTION

1.        The Claimants in this Case are JULIA S. KIAIE ("Julia Kiaie") and her daughter, JACQUELINE MOHANNA KIAIE ("Jacqueline Kiaie"; collectively, the "Claimants"), who allegedly are both of dual Iranian-United States nationality.<sup>1</sup> The Respondent in this Case is THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Respondent"). The Claimants contend that the Respondent expropriated their interests in Western Industrial Group ("WIG"), a company incorporated in Iran for the purpose of developing an industrial city.<sup>2</sup> According to the Claimants, the Respondent appointed successive managers and directors to govern WIG, thereby depriving the Claimants of their rights as shareholders. Julia Kiaie also claims that the Respondent deprived her of her rights as a shareholder in Western Publishing and Printing Company, a company incorporated in Iran for the purpose of printing and publishing books. The Claimants seek compensation for the alleged expropriation of their shares in WIG and Western Publishing and Printing Company in the amount of U.S.\$8,278,140.00,<sup>3</sup> together with interest of "at least" 8% from the date of the alleged expropriation.

2.        The Respondent denies that the Claimants were dominant and effective United States nationals at the time the shares were allegedly expropriated; that the Claimants owned the shares in question; that the shares were expropriated; and that the shares had any positive value.

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<sup>1</sup> The Claimants originally also included Jubin T. Kiaie, son of Julia Kiaie. However, he was subsequently withdrawn as a Claimant, as described in more detail in Part II, infra.

<sup>2</sup> WIG was registered in the Corporate Registration Bureau on 17 June 1974 under Register No. 19205.

<sup>3</sup> This amount is based on the expert valuation report submitted by the Claimant, as adjusted at the Hearing.

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## II. PROCEDURAL HISTORY

3. The Statement of Claim was filed on 18 December 1981. The named Claimants were "Kiaie, Jacqueline Mohanna" and "Kiaie, Jubin T. (jointly with Kiaie, Julia S.)." The Respondent's Statement of Defence was filed on 30 April 1982, and a separate Statement of Defence was filed on behalf of WIG on the same date.

4. On 11 June 1982, the Tribunal ordered the Parties to submit their memorials on jurisdictional issues by 14 July 1982. On 13 July 1982, the Claimants submitted a Memorial in which they requested that the Tribunal treat this Case together with Case No. 832 (Vivian M. Tavakoli, et al. and The Government of the Islamic Republic of Iran). By Memorandum of 2 August 1982, the President of the Tribunal reassigned Case No. 832 (Tavakoli) to Chamber Three, which already had been assigned the present Case. On 25 April 1983, the Tribunal delayed further proceedings pending the decision of the Full Tribunal in Case No. A18.

5. The Full Tribunal issued its decision in Case No. A18 on 6 April 1984. Islamic Republic of Iran and United States of America, Decision No. DEC 32-A18-FT (6 Apr. 1984), reprinted in 5 Iran-U.S. C.T.R. 251 (hereinafter "Case No. A18"). On 28 June 1985, the Tribunal ordered the Claimants to file by 2 September 1985 all written evidence they wished the Tribunal to consider concerning their nationality. The Claimants submitted a Memorial on their dominant and effective nationality on 26 August 1985. In the same Memorial, the Claimants requested that Julia Kiaie be registered as the Claimant, and that Jacqueline Kiaie and Jubin Kiaie be registered as "Beneficiaries" of Julia Kiaie.

6. On 28 August 1985, the Tribunal asked the Respondent to comment on the Claimants' request for correction of their Claim. The Respondent submitted its comments on 2 January 1986, objecting to the requested correction. On 28 January 1986, the Tribunal informed the Parties that a decision on the Claimants' request would "be taken at the appropriate time." By Order of

9 April 1986, the Tribunal ordered the Respondent to submit by 17 June 1986 its evidence on the nationality of the Claimants. By letters submitted on 15 January 1987 and 17 March 1987, the Respondent requested the Tribunal to postpone the deadline for filing this evidence until after the Tribunal had reached a decision on the Claimants' request for correction of the Claim.

7. In an Order dated 30 April 1987, the Tribunal noted that Julia Kiaie's name had been included in the list of the Claimants on the original Statement of Claim, that the Power of Attorney attached to the Statement of Claim referred to Jacqueline, Jubin and Julia Kiaie, and that the Claimants' subsequent Memorial referred explicitly to Julia Kiaie. Consequently, the Tribunal deemed "the Request to be a request for clarification of the identities of the Claimants listed in the Statement of Claim rather than amendment of the Statement of Claim, pursuant to Article 20 of the Tribunal Rules," and determined that it would consider Julia Kiaie as a Claimant together with Jacqueline Kiaie and Jubin Kiaie.

8. In the same Order, the Tribunal noted that the Claimants had provided evidence on the nationality of only Julia Kiaie and ordered the Claimants to submit evidence and memorials on the nationality of the two other Claimants by 1 July 1987. The Tribunal ordered the Respondent to submit its evidence on the nationality of the Claimants by 1 September 1987.

9. By Memorial filed on 2 July 1987, the Claimants notified the Tribunal that Jubin Kiaie was withdrawn as a Claimant. In the same Memorial, the Claimants submitted their evidence on the nationality of Julia Kiaie and Jacqueline Kiaie. After obtaining a number of extensions of time, the Respondent submitted its evidence on nationality on 12 June 1990. On 23 August 1990, the Claimants submitted a "Rebuttal to Respondent's Statement of Defence dated 12 June 1990." By letter submitted on 5 October 1990, the Respondent objected to this submission by the Claimants, on the ground that it was not filed pursuant to any

Tribunal Order, and requested that the Tribunal strike it from the record.

10. On 3 December 1990, the Tribunal issued an Order joining the issue of nationality to its consideration of further jurisdictional issues and the merits. Pursuant to the Tribunal's Order, the Claimants submitted their Memorial on all jurisdictional issues and the merits on 28 February 1991. On 5 September 1991, the Tribunal accepted into the record the earlier submission that the Claimants had filed on 23 August 1990. The Respondent submitted its Memorial addressing jurisdiction and the merits on 12 May 1992.

11. The Claimants submitted their Reply Brief on 11 October 1993. On the same date, the Claimants submitted the "Memorial of the United States on the Issue of the Caveat in Case A/18." By letter of 18 October 1993, the Respondent objected to the filing of the latter document. On 12 January 1994, the Tribunal accepted the "Memorial of the United States on the Issue of the Caveat in Case A/18" into the record and invited the Respondent to respond to it by 1 April 1994. The Respondent submitted its Memorial and Evidence in Rebuttal on 15 July 1994 and the "Brief of the Islamic Republic of Iran on the Issue of the Caveat in Case A/18" on 16 September 1994. Corrections to the latter document were submitted by the Respondent on 17 October 1994.

12. By facsimile transmission received by the Tribunal on 23 November 1994, the Claimants submitted a copy of a document that they wished to present as evidence at the Hearing. This was allegedly an advertisement in the Tehran newspaper Hamshahri.

13. A Hearing in this Case was held, concurrently with a Hearing in Case No. 832 (Tavakoli), on 8 and 9 December 1994.

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### III. JURISDICTION

#### A. The Date the Claim Arose

14. Under Article II, paragraph 1 of the Claims Settlement Declaration, the Tribunal has jurisdiction over claims that were "outstanding on the date of this Agreement [19 January 1981], whether or not filed with any court . . . ." Thus, for the Tribunal to have jurisdiction in the present Case, it must be established that the Claim had arisen by 19 January 1981. The Tribunal, therefore, turns to this issue.

##### 1. The Claimants' Contentions

15. The Claimants have alleged that their property was expropriated on various dates. In their initial pleadings, the Claimants allege that WIG was expropriated in or about October 1978 through the appointment of managers by the Respondent. In their Memorandum of 13 July 1982, the Claimants suggest that WIG was expropriated on 26 November 1979, when a supervisor for WIG, Mr. Fariborz Heidari Bigvand, was designated by the Respondent. In their Memorial submitted on 25 February 1986, the Claimants allege that expropriation occurred "through the use of armed revolutionary guards of the Islamic Republic," although they do not provide a date for this alleged event.

16. In subsequent pleadings, the Claimants altered their position by advancing significantly later dates for the alleged expropriation.<sup>4</sup> They assert that "revolutionary chaos and vigilante activity prior to March 1980" did not constitute a taking, and they describe the appointment of managers or inspectors as in fact merely representing a temporary stewardship. The Claimants contend that the mandate of the

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<sup>4</sup> This change may have resulted from concerns regarding the jurisdictional requirement that a claim be owned continuously by, in this Case, a United States national. See paras. 52-53, infra.

supervisor, Mr. Bigvand, appointed on 26 November 1979, was very limited. They allege that he was appointed simply to investigate and assess the financial situation and the conditions of production of WIG, and to prepare a report on those matters. Although he was empowered to sign official documents, including checks, the Claimants contend that he could only do so with the existing Board, not alone. In contrast, the Board allegedly retained the power to sign on its own. The Claimants allege that Mr. Bigvand was appointed neither to take over WIG nor to replace the existing Board, but to "cooperate" with, or "assist" the Board. The Claimants further contend that during this period, the new Islamic government respected the existing commercial laws and operated in a spirit of cooperation. The Claimants finally allege that Mr. Bigvand did not actually do anything at WIG, primarily because WIG itself was not involved in production. Allegedly, Mr. Bigvand was told by WIG officers that there was no production at WIG, found that there was nothing for him to do, and so "said goodbye and left and [we] never saw him again."

17. Ala Kiaie, husband of Julia Kiaie, father of Jacqueline Kiaie and an officer of WIG, stated that the purpose of Mr. Bigvand's report was to enable the Government to "develop the policy for the future management," and that Mr. Bigvand was to ensure that the Board did not enter into any commitment without Mr. Bigvand's knowledge.

18. In their later pleadings, the Claimants contend that expropriation only occurred on 27 October 1980, once a full Board of Directors of WIG had been appointed by the Respondent and permanent control asserted in accordance with the commercial laws of Iran and the articles of association of the company. The Claimants assert that

[b]y late 1979, the business and social climate deteriorated . . . . In an atmosphere of violence and recrimination there followed a period of several months in which all large-scale commerce was almost in a state of suspended animation . . . . Professionals in many areas, including W.I.G. management, were

hounded and forced to take refuge . . . .  
Despite being out of Iran, board members such as  
Ala Kiaie were in contact with employees back in  
Iran; . . .

It is important to note that even during this  
period of about a year of interrupted life  
respondent scrupulously adhered to the  
legislation enacted by the prior regime, and for  
many months refrained from taking the step of  
expropriation. Gradually, respondent added its  
nominees to the board, while legitimate board  
members served from abroad.

The Claimants cite James M. Saghi, et al. and The Islamic Republic of Iran, Award No. 544-298-2, para. 77 (22 Jan. 1993), reprinted in \_\_ Iran-U.S. C.T.R. \_\_ (hereinafter "Saghi"), where the Tribunal held that expropriation occurred on a date when the Respondent appointed three directors to the company in question.

19. Ultimately, the Claimants relied upon the argument that WIG could not have been expropriated until the Respondent appointed three directors -- the minimum number for the Board of Directors to take action under WIG's articles of association. The Claimants allege that a third director was not appointed until 13 April 1980. In determining this date, the Claimants rely on the 31 December 1981 Report of the Auditorial Institution, an official agency of the Government of the Islamic Republic of Iran. In that Report, Mr. Yaghoob Shirsavar is said to have been appointed on 26 February 1980 and Messrs. Nasrollah Gharabaghi and Karim Shirazian Khosrawi on 13 April 1980. Fourth and fifth Directors were appointed on 6 September and 27 October 1980, respectively.

## 2. The Respondent's Contentions

20. The Respondent denies that WIG has been expropriated, and contends that it only exercised temporary management over the abandoned company after the flight of its management in order to ensure that its assets were not misappropriated.

21. In the alternative, the Respondent alleges that, if the shares were indeed expropriated, this occurred on 26 November 1979, when Mr. Bigvand was appointed. In support of this contention, the Respondent submitted a translation of the Legal Bill Concerning the Appointment of Provisional Director or Directors for Supervising Production, Industrial, Commercial, Agricultural and Services Units Whether in Public or Private Sector (hereinafter the "Legal Bill of 14 June 1979").<sup>5</sup> That Bill concerns the appointment of "directors," on the one hand, and "supervising members," on the other. The Respondent contends that Mr. Bigvand was appointed as a "supervising member" and that the terms "manager" and "supervisor" are "in all senses . . . equivalent to directors."

22. The Legal Bill of 14 June 1979 reads in relevant part:

Article 2 - Appointment of the director or the board of directors and supervising members shall be made by an administrative order . . . .  
With issuance of the said order [of appointment] concerning the director or the board of directors and its service on the relevant unit, the earlier directors and persons in charge will be stripped of their competence. . . .  
Shareholders are not allowed in any way to appoint directors in their stead.

Article 3 - The director or the board of directors . . . shall in every respect be the legal representatives of the original directors of the units . . . and they shall have all the authorities necessary for managing the current and routine affairs [of the unit]. . . .

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<sup>5</sup> In Shahin Shaine Ebrahimi, et al. and The Government of the Islamic Republic of Iran, Award No. 560-44/46/47-3, para. 62 (12 Oct. 1994), reprinted in Iran-U.S. C.T.R. \_\_\_, \_\_\_, (hereinafter "Ebrahimi"), the same legislation is referred to as the "'Law Concerning the Appointment of Provisional Managers(s) to Supervise Productive, Industrial, Commercial, Agricultural and Services Units in the Private and Public Sectors,'" approved by the Islamic Revolutionary Council under No. 6738 on 16 June 1979 (26 Khordad 1358)."

The pleadings also indicate that Mr. Bigvand was appointed pursuant to a Bill of 7 July 1979 (The Protection and Development of Iranian Industries Act). The text of this law is not in the record.

Obligations and signatures of the director or board of directors shall amount to the obligations and signature of the relevant unit.  
. . .

The supervising members . . . shall have the right to exercise full supervision over all the affairs of the relevant unit particularly over the actions and activities of the directors. . . [The Government] may . . . stipulate in the order of appointment of the supervising members that the financial and binding documents of the unit covered by this law must bear the signature of one or more of the supervising members in addition to the authorized signatories of the said unit.

23. The Respondent alleges that the Legal Bill of 14 June 1979 gave powers exercisable by even just one supervisor or director. The Respondent contends that

the enforcement of the supervision and superintendence in question was realized by the appointment of a manager or supervisor and the exercise of the provisions of the Bills was not necessarily bound by the number of the managers or observance of the provisions of the Statutes.

24. The Respondent also submitted the letter of appointment of Mr. Bigvand, which instructed Mr. Bigvand to

make best efforts in properly performing the tasks and advancing the objectives of that unit [WIG and Western Publishing and Printing Company], speedily prepare a report on financial and production situation as well as the problems and resources of the Company in order to determine its subsequent strategy, and submit same to [the Government].

Furthermore, as of the date of this letter of appointment, the right to sign all financially binding instruments and documents is vested jointly in you and the company managers.

The Respondent alleged that, once Mr. Bigvand was appointed, the Board of WIG no longer had the power to sign official documents without him.

25. In response to the Claimants' contention that WIG could only have been expropriated once the Respondent had appointed three directors, the Respondent alleged that it had appointed three directors to WIG by 18 March 1980. Specifically, the Respondent alleged that Mr. Bigvand was equivalent to a director, that Mr. Sirous Moshar was appointed as a director of WIG in November 1979 and that Mr. Shirsavar was appointed as a director of WIG in February 1980. Elsewhere, the Respondent also contended that the first three directors appointed were in fact Mr. Shirsavar, Mr. Moshar and Mr. Gharabaghi.

26. In support of these allegations, the Respondent submitted copies of three official letters. Two letters of appointment indicate that Mr. Yaghoob Shirsavar was appointed as director to WIG on 21 February 1980 and Mr. Nasrollah Gharabaghi on 26 February 1980. The Respondent alleges that the third letter shows that Mr. Sirous Moshar was appointed as director of WIG on 26 November 1979. In that letter, which bears the date 27 October 1980, the Iranian National Industry Organization canceled letters of appointment Nos. 211938 of 26 November 1979 and 21661 of 26 February 1980 of Western Textile Company and Western Wool Processing Company "belonging to the Western Industrial Group."

### 3. The Tribunal's Findings

27. As an initial matter, the Tribunal rejects the Respondent's contention that by leaving Iran in 1979, the former managers of WIG abandoned the Company. It is well-established that force majeure conditions in Iran beginning in December 1978 led to a departure by United States nationals. See Harold Birnbaum and The Islamic Republic of Iran, Award No. 549-967-2, para. 26 (6 July 1993), reprinted in \_\_ Iran-U.S. C.T.R. \_\_, \_\_ (hereinafter "Birnbaum"); Motorola Inc. and Iran National Airlines Corporation, et al., Award No. 373-481-3 (28 June 1988), reprinted in 19 Iran-U.S. C.T.R. 73, 85 (hereinafter "Motorola"); Eastman Kodak Company, et al. and The Government of Iran, et al., Partial Award No. 329-227/12384-3 (11 Nov. 1987), reprinted in

17 Iran-U.S. C.T.R. 153, 163-64. It is also possible that similar difficulties existed in relation to, and explained the departures of, some Iranian nationals; indeed, Ala Kiaie has testified that this was his experience. In any event, evidence in the record shows that, before leaving, Ala Kiaie appointed a Mr. Akbar Rafii Tehrani to be responsible for the company in his absence; and that, after leaving Iran, he remained in contact with that person and continued to supervise the affairs of WIG.

28. The Tribunal also rejects the Respondent's submission that it cannot be held liable for expropriation because it was assuming management of the Company in order to preserve it and prevent its dispersal. The Respondent's asserted reasons and concerns for taking control of WIG, if it did, "cannot relieve it from responsibility to compensate the Claimant for the taking." Birnbaum at para. 35. The Tribunal also has held that "[t]he intent of the government is less important than the effects of the measures on the owner . . . ." Tippetts, Abbott, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225-26 (hereinafter "Tippetts").

29. The Tribunal next turns to the question whether WIG was in fact expropriated by the Respondent. The Tribunal first notes that, in its practice, it is well-settled that expropriation may be found to have occurred "if a government has interfered unreasonably with the use of property." Harza Engineering Co. and The Islamic Republic of Iran, Award No. 19-98-2 (30 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 499, 504. The Tribunal has held that a finding of expropriation "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." Tippetts, 6 Iran-U.S. C.T.R. at 225.

30. The central issue, therefore, in determining whether a company has been expropriated is not whether control has been exercised in accordance with the pre-existing legislation and

articles of association, but whether a sufficient degree of interference with property rights has in fact occurred, by whatever means. The Tribunal thus rejects the Claimants' contention that WIG can only have been expropriated once the Respondent exercised control over WIG in accordance with pre-existing legislation. It is instead necessary to examine if and when a sufficient degree of interference with fundamental property rights in WIG occurred.

31. By order of 26 November 1979, the Iranian National Industries Organization appointed Mr. Bigvand as supervisor of WIG and Western Publishing and Printing Company. In the pleadings, the words "supervising member," "supervisor" and "inspector" were all used in relation to Mr. Bigvand.<sup>6</sup> After determining the correct translation with the help of its Language Services Division, and after considering the facts of this Case, the Tribunal finds that Mr. Bigvand was appointed as a "supervisor," not an "inspector." The Tribunal also finds that the term "supervisor" is functionally equivalent to the term "supervising member" and accepts that Mr. Bigvand was appointed to WIG under the relevant provisions of the Legal Bill of 14 June 1979.

32. The Tribunal notes that, under article 3, paragraph 2, of the Legal Bill of 14 June 1979, supervising members have "the right to exercise full supervision over all the affairs of the relevant unit particularly over the actions and activities of the directors."

33. The Tribunal further notes that, in his letter of appointment, Mr. Bigvand was expressly directed to ensure that WIG was run so as to meet the requirements of the new Government, and to prepare a report to the Government on WIG's financial and

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<sup>6</sup> See, for example, the first translation of the letter of appointment, where the position is translated as "supervisor." In the Claimants' Reply Brief the same position is translated as "inspector." The Legal Bill of 14 June 1979 under which Mr. Bigvand was appointed refers to "supervising members."

production situation in order to enable the Government to determine its subsequent strategy. In the same letter, Mr. Bigvand was also given authority to sign all financially binding instruments and documents jointly with the members of the Board of Directors. The Respondent argued that this meant that the Board no longer had power to sign financially binding instruments and documents without Mr. Bigvand, while the Claimant argued that the Board retained authority to sign on its own. Although the language of the relevant part of the letter of appointment is not a model of clarity, the Tribunal finds that, in light of the wording of the Legal Bill of 14 June 1979, the effect of the letter was that all financially binding instruments and documents had to be signed by both the supervisor, Mr. Bigvand, and the authorized representative of the Board of Directors. This effectively prevented the Board of Directors from taking any significant action, including the payment of money, without the agreement of Mr. Bigvand.

34. Mr. Bigvand's appointment thus represents a significant intrusion into the rights of the owners of WIG to manage the company. The Tribunal has stated in relation to the Legal Bill of 14 June 1979 that: "[t]he appointment of conservators, managers or inspectors, often has been regarded as a highly significant indication of expropriation because of the attendant denial of the owner's right to manage the enterprise." Sedco, Inc., et al. and National Iranian Oil Co., et al., Interlocutory Award No. ITL 55-129-3 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 277-78 (hereinafter "Sedco"). See also Ebrahimi at paras. 76-77; Faith Lita Khosrowshahi, et al. and The Government of the Islamic Republic of Iran, et al., Award No. 558-178-2, paras. 23-28 (30 June 1994), reprinted in \_\_ Iran-U.S. C.T.R. \_\_, \_\_; Motorola, 19 Iran-U.S. C.T.R. at 85; Thomas Earl Payne and The Islamic Republic of Iran, Award No. 245-335-2 (8 Aug. 1986), reprinted in 12 Iran-U.S. C.T.R. 3, 10; Starrett Housing Corp., et al. and The Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 32-24-1 (19 Dec. 1983), reprinted in 4 Iran-U.S. C.T.R. 122, 154-56.

35. However, in Tippetts, the Tribunal observed that "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." The Tribunal went on in that case to state that

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.

Tippetts, 6 Iran-U.S. C.T.R. at 225-26. See also Birnbaum at para. 28; Eastman Kodak Company, et al. and The Government of Iran, et al., Partial Award No. 329-227/12384-3 (11 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 153, 163-165.

36. In this connection, the Tribunal notes that Mr. Bigvand's role principally was to study the company and prepare a report on its status in order to assist in the development of future policy. After such a study had been completed, it is not clear what the Respondent's course of action with respect to WIG was to be, nor whether Mr. Bigvand was to continue in his position. The Tribunal further notes that there is no indication in the record that Mr. Bigvand in fact took any action at WIG or contacted WIG officials after his initial visit. Whether or not this was because of the inactive state of WIG, it appears that his appointment of itself had relatively little impact on the actual exercise of the fundamental rights of the owners of WIG and, under the circumstances, did not represent a conclusive interference.

37. In light of these considerations, the Tribunal concludes that there is insufficient evidence to show that Mr. Bigvand's appointment of itself amounted to a permanent deprivation of ownership rights in WIG.

38. It is not in dispute that the Respondent also appointed directors to WIG. There is, however, a dispute as to who was appointed and when they were appointed. The Respondent contends that Mr. Sirous Moshar was appointed as a director of WIG in November 1979. The Tribunal notes that Mr. Moshar is not mentioned as a director of WIG in the Report of the Auditorial Institution dated 31 December 1981. The only evidence submitted by the Respondent in support of its allegation is a letter canceling certain letters of appointment. The letters of appointment that were canceled are not in the record, but they are described in the letter of cancellation as appointing Mr. Moshar as director and as relating to Western Textile Company and Western Weaving and Processing Company, rather than to WIG itself. This indicates that Mr. Moshar was appointed as a director of the Western Textile and Western Weaving and Processing Companies, and not of WIG. In light of these considerations, the Tribunal finds that there is no evidence in the record that Mr. Moshar was appointed a director of WIG.

39. Evidence relied on by the Claimants indicates that Mr. Yaghoob Shirsavar was appointed by the Respondent as a director of WIG on 26 February 1980 and that Messrs. Nasrollah Gharabaghi and Karim Shirazian Khosrawi were appointed on 13 April 1980 (see para. 19, supra). Other evidence, relied on by the Respondent, indicates that the Respondent appointed Mr. Shirsavar as a director of WIG on 21 February 1980, and Mr. Gharabaghi on 26 February 1980 (see para. 26, supra). While the exact dates are thus the subject of conflicting evidence, it is clear from the record that the Respondent did appoint Messrs. Shirsavar and Gharabaghi as directors of WIG in early 1980; the record also establishes that a number of other directors were appointed soon thereafter. The Tribunal notes that Article 2, paragraph 2 of the Legal Bill of 14 June 1979 provides that, with the appointment of even one director under this legislation, the original directors lose their powers. Moreover, Article 3, paragraph 1 of the same legislation provides that the government-appointed directors "shall in every respect be the legal

representatives of the original directors of the units . . . and they shall have all the authorities necessary for managing the current and routine affairs."

40. In light of this, the Tribunal finds that, with the appointment of one director to WIG, the Respondent deprived the owners of their ability to manage the company and consolidated and rendered permanent its control over the company. The fact that the Respondent subsequently and within a short period of time appointed a full Board simply reinforces this conclusion. The Tribunal therefore finds that WIG was expropriated by the Respondent.

41. In determining the exact date on which expropriation occurred, the Tribunal has held that "[w]here the appointment of 'temporary' managers ripens into permanent control of a company and a deprivation of property, the date of appointment is the date of the deprivation." Saghi at para. 77. See also Ebrahimi at para. 79; Sedco Inc. and National Iranian Oil Company, et al., Award No. ITL 55-129-3 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 248, 278; Tippetts, Abbett, McCarthy, Stratton and TAMS-AFFA Consulting Engineers of Iran, et al., Award No. 141-7-2 (29 June 1984), reprinted in 6 Iran-U.S. C.T.R. 219, 225. While in Saghi the Tribunal found that the company in question was only expropriated on the date of the appointment of directors, this conclusion only seems to have been reached because neither Party to the case had contended that the appointment of the Supervisor constituted a taking. See Saghi at para. 77.

42. In light of the clarity and significance of the intrusion represented by Mr. Bigvand's appointment on 26 November 1979, and given that this appointment represents the beginning of a series of events whereby the Respondent proceeded to assert permanent control over WIG, the Tribunal determines that WIG was expropriated by the Respondent on 26 November 1979. The requirement of Article II, paragraph 1 of the Claims Settlement

Declaration that the Claim be outstanding on 19 January 1981 is therefore satisfied.

B. The Nationality of the Claimants

43. Under Article II, paragraph 1 and Article VII, paragraph 2 of the Claims Settlement Declaration, the Tribunal has jurisdiction over "claims of nationals of the United States against Iran," provided that the claim was "owned continuously" by a United States national from the date the claim arose until 19 January 1981. In Case No. A18, the Full Tribunal held that the Tribunal "has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States." Case No. A18, 5 Iran-U.S. C.T.R. at 265.

44. Thus, in accordance with its holding in Case No. A18, the Tribunal first must determine whether, between 26 November 1979 and 19 January 1981, all or any of the Claimants were nationals of the United States, Iran, or both countries. If the Tribunal concludes that the Claimants were nationals of both the United States and Iran, it then must determine, in respect of any Claimant having dual nationality, which nationality was dominant and effective during the relevant period.

1. Dual Nationality

45. The Tribunal notes that there is no dispute that the Claimants were Iranian nationals at birth by virtue of being born of Iranian fathers.

46. The Tribunal is satisfied that Julia Kiaie was also a United States national at birth by virtue of her birth to a father who was also a national of the United States. Her United States nationality is evidenced by United States passports, one issued to her in Tehran on 9 July 1966 (Passport Number Z562378)

and another on 22 September 1975 (Passport Number F1813421); by United States Certificate of Citizenship No. AA-212773, issued on 25 November 1980; and by a letter from the Immigration and Naturalization Service dated 26 June 1992. The latter two documents both indicate that Julia Kiaie became a citizen of the United States on 5 March 1929 (her date of birth); the Certificate of Citizenship also states that, as of 25 November 1980 -- the date of issuance of the Certificate -- Julia Kiaie was a United States national.

47. There is no evidence in the record that Julia Kiaie has relinquished or otherwise lost either her United States nationality in accordance with United States law or her Iranian nationality in accordance with Iranian law. Consequently, the Tribunal finds that during the relevant period, Julia Kiaie was a national of both Iran and the United States.

48. The Tribunal is satisfied that Jacqueline Kiaie was naturalized as a United States national on 18 March 1980. This is evidenced by Certificate of Naturalization Number 11196937.

49. The Claimants allege that Jacqueline Kiaie was in fact born a United States national by virtue of being a child of Julia Kiaie, who was herself a United States national. They argue that she only obtained a naturalization certificate because in 1980 she was not aware that she was entitled to United States nationality through her mother, and was poorly advised by her legal counsel. They contend that Jacqueline Kiaie should therefore be regarded by the Tribunal as having been a United States national from birth.

50. The Tribunal notes that Jacqueline Kiaie's Certificate of Naturalization indicates that she obtained United States nationality by grant, commencing from the date of the Certificate. The Tribunal notes further that at the Hearing, counsel for the Claimants admitted that, despite considerable research, he had in fact been unable to determine whether

Jacqueline was entitled to United States nationality from her birth by virtue of her mother's United States nationality. The Tribunal concludes that the Claimants have not satisfied their burden of proving that Jacqueline Kiaie was a United States national from birth.

51. The Claimants assert that Jacqueline Kiaie first applied for naturalization in San Francisco in late 1977, and that her naturalization was delayed because the United States Immigration and Naturalization Service lost her files in the course of transferring them from Chicago, where she had been living, to San Francisco. The Tribunal understands the Claimants to suggest that, because the Immigration and Naturalization Service allegedly delayed her naturalization through its error, the Tribunal should backdate the effective date of her naturalization to some period in 1977 or 1978.

52. The Tribunal notes that the Claimants have put forward no evidence to support their allegation, raised for the first time at the Hearing, that Jacqueline Kiaie applied to be naturalized in 1977 or 1978. Jacqueline Kiaie stated that she no longer had in her possession any documents relating to this application. The Tribunal concludes that the Claimants have not demonstrated that Jacqueline Kiaie applied for naturalization in late 1977. In any event, the Tribunal notes that the power to confer nationality on an individual rests exclusively with the Government of the country, nationality of which is claimed. The Tribunal is unable to find a person to be a national of the United States as of a date when the United States had not yet conferred United States nationality on that person. See Zaman Azar Nourafchan, et al. and The Islamic of Iran, Award No. 550-412/415-3, paras. 23, 39 (19 Oct. 1993), reprinted in \_\_ Iran-U.S. C.T.R. \_\_, \_\_, \_\_.

53. In light of the above considerations, the Tribunal concludes that Jacqueline Kiaie became a national of the United States on 18 March 1980. Jacqueline Kiaie was therefore not a

United States national on 26 November 1979, the date her Claim arose. Her Claim, consequently, was not "owned continuously" from the date on which it arose to 19 January 1981 by a national of the United States, and for that reason it falls outside the jurisdiction of the Tribunal.

## 2. Dominant and Effective Nationality

54. Having found that during the relevant period Julia Kiaie was a national of both Iran and the United States, the Tribunal proceeds to determine her dominant and effective nationality during that period. In Case No. A18, the Full Tribunal held that in determining the dominant and effective nationality of a claimant, the Tribunal is to "consider all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment." Case No. A18, 5 Iran-U.S. C.T.R. at 265. All pertinent factors which cast light on the genuineness and extent of a claimant's connections to the States in question at the time the claim arose, and throughout the relevant period, are to be considered. See Reza Said Malek and Islamic Republic of Iran, Interlocutory Award No. ITL 68-193-3 (23 June 1988), reprinted in 19 Iran-U.S. C.T.R. 48, 51.

### a. The Claimants' Contentions

55. The Claimants allege that Julia Kiaie was a dominant and effective United States national during the relevant period. Julia Kiaie was born Julia Sargis Massihi on 5 March 1929 in Kermanshah, Iran to Abraham and Kate Sargis. Both of her parents were Iranian nationals. Julia Kiaie asserts that her father had been naturalized as a United States national in 1909 and that her mother also obtained United States nationality on some unspecified date, but prior to 1959.

56. At birth, as noted above (see para. 45, supra), Julia Kiaie was a national of both Iran and the United States. She

alleges that her father raised Julia and her siblings in an American spirit. Julia Kiaie alleges that her parents were Christian, and she has provided a copy of the funeral service of her mother in support of this allegation. She alleges that she too is Christian and in support provides a letter from the Pastor of the Tehran Evangelical Church stating that she was baptized in that church on 15 July 1930.

57. Julia Kiaie married an Iranian, Ala Kiaie, on 13 October 1953, when she was twenty-four years old. In 1959, after her father died, her mother and three brothers, who allegedly either possessed or thereafter obtained United States citizenship, moved to Chicago, United States. Her sister joined them there several years later. Julia Kiaie remained in Iran. She and her husband had two children, Jacqueline and Jubin Kiaie.

58. In early 1967, when she was thirty-eight years old, Julia Kiaie moved to Chicago with Jacqueline, aged 12 at that time, and Jubin, aged 8. She purchased a house in Chicago in the same year, and in 1968 she obtained a job with an American corporation. She still held this job as of 6 July 1990. She alleges that she did not return to Iran after leaving in 1967.

59. On 10 January 1974, Julia Kiaie's marriage with Ala Kiaie was dissolved by the Circuit Court of Cook County. Under the Settlement Agreement, Julia Kiaie was given custody of Jacqueline and became the sole owner of the house in Chicago and an investment property in Palm Beach, Florida, while Ala Kiaie received custody of Jubin and was to pay U.S.\$250 per month for the support of Jacqueline, as well as paying the expenses of her education. Although the divorce settlement states that Ala Kiaie was to have custody of Jubin, it appears that Jubin in fact stayed with Julia Kiaie.

60. In the United States, Julia Kiaie is alleged to have participated in civic duties such as voting and jury service. A copy of a letter from the Office of the Comptroller of the

County of Cook indicates that she did perform jury service, although this letter is not dated. The Claimants also allege that she performed voluntary work for her "church, other denominational institutions and various charity organizations," and that she works with the Assyrian Club of Chicago.

b. The Respondent's Contentions

61. The Respondent asserts that Julia Kiaie was a dominant and effective Iranian national during the relevant period and contends that the affidavits prepared by Julia Kiaie in her own favor have no probative value. The Respondent points to the fact that Julia Kiaie was born in Iran, spent the greater part of her life in Iran as an Iranian with Iranian identification, married an Iranian and chose to invest a large amount of money in Iran even after she had left the country. It contends that Julia Kiaie must have been educated and have held a job in Iran before her departure in 1967. It alleges that she continued to perform her civil and political duties as an Iranian national at least up to 1976. Further, it alleges that as Ala Kiaie, the "head of the family," lived in Iran and had his business interests in Iran, the center of her interests was also in Iran.

62. The Respondent asserts that Julia Kiaie converted to Islam prior to marrying Ala Kiaie, and that she was divorced under Iranian law in 1977. A copy of the Iranian deed of divorce was submitted in support. The Respondent alleges that the fact that Julia Kiaie was divorced in Iran in 1977 evidences her ties to Iran and also proves that she returned to Iran in 1977, contrary to her allegation that she never returned to Iran after leaving in 1967. Further, in the divorce decree, she is stated to be an "Iranian national" and a "Moslem," which the Respondent alleges also indicates that even in 1977 she still identified herself with Iran and Iranian culture rather than with the United States. The Respondent, however, argues that the religious affiliation of a person is not relevant in ascertaining that person's dominant nationality.

63. The Claimants deny that Julia Kiaie returned to Iran for the Iranian divorce. They contend that she agreed that the Iranian divorce procedure could take place, in her absence, so that Ala Kiaie could remarry in Iran, and that she allowed him to take whatever steps were necessary to carry out the divorce. In support of this allegation they quote the Iranian divorce record, which states: "The wife's attorney stated he would notify his client of her divorce." They claim that she was described as Moslem by Ala Kiaie's lawyer without her knowledge, for the purpose of administrative simplicity, and that she never converted to Islam. These allegations are supported by Ala Kiaie.

c. The Tribunal's Findings

64. Julia Kiaie spent the first thirty-eight years of her life in Iran, and for the last fourteen of those years she was married to an Iranian man. Following that, and up to the date of the expropriation on 26 November 1979, she spent almost thirteen years in the United States. Soon after her arrival in the United States she took measures to settle on a long-term basis there, purchasing a house and obtaining a job with an American company. As far as the record indicates, she still has both of those. Her mother, brothers and sister all lived in the Chicago area when she moved there, and her children moved with her. She severed most of her ties with Iran. She obtained a divorce from her Iranian husband in the United States in 1974.

65. The record indicates that she participated in American cultural and social activities, working at an American company and participating in church and other community activities. Her main source of income after 1967 was her employment in the United States.

66. Julia Kiaie alleged that she never returned to Iran after her departure in 1967, while the Respondent alleged that she attended divorce proceedings in Iran in 1977. The Tribunal notes

that the Iranian divorce record indicates that Julia Kiaie was not present at those proceedings. The Tribunal thus finds that there is no evidence that Julia Kiaie returned to Iran for her divorce in 1977.

67. Although Julia Kiaie allegedly made a significant investment in Iran in 1973 or 1974 (purchasing shares in WIG and Western Publishing and Printing Company), the record indicates that this decision was mainly governed by considerations of likely profitability and the availability of a trusted advisor running the company, rather than resulting from any significant attachment to Iran on her part. Furthermore, she also possessed a house and possibly some investment property in the United States. There is no evidence in the record that would suggest that she had any intention of moving back to Iran.

68. In light of the above, the Tribunal finds that Julia Kiaie's attachment to the United States outweighed her attachment to Iran during the relevant period from the time her Claims arose until 19 January 1981. Consequently, the Tribunal determines that during the relevant period, Julia Kiaie's dominant and effective nationality was that of the United States.

#### IV. OWNERSHIP

69. Having determined that the jurisdictional requirements set out in Article II, paragraph 1 and Article VII, paragraph 2 of the Claims Settlement Declaration are met in respect of the Claims of Julia Kiaie, the Tribunal turns to consider whether Julia Kiaie held an ownership interest in WIG and/or Western Publishing and Printing Company that would give rise to a right of compensation.

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A. Western Industrial Group

1. The Claimants' Contentions

70. The Tribunal notes that, due to the paucity of documentary evidence regarding ownership in this Case, the sufficiency and consistency of the Parties' allegations on this matter is of particular significance. It is therefore necessary to examine the contentions of the Parties, particularly those of the Claimants, in detail.

71. In the Statement of Claim, the Claimants allege that Jacqueline and Jubin Kiaie each purchased 540 shares in WIG in 1973. Jubin allegedly purchased his shares "for his mother . . . , under his name, as joint tenants."

72. In their Memorial filed on 13 July 1982, the Claimants submit and rely on a statement by Mahmood Miraftab, an officer of WIG. In that statement, Mr. Miraftab indicated that he sold 2080 of his shares in WIG to Julia Kiaie in 1974 and 1978, being paid in full when the transfers were completed. Mr. Miraftab went on to allege that Julia Kiaie had wanted

to have her children, Jacqueline and Jubin, be recorded in the Company as shareholders in order to safeguard their interests in case of unforeseeable circumstances. She required further that she should be considered as the sole shareholder but upon death or unpredictable events her shares be transfer[r]ed to her children without any problem.

73. In the Claimants' Memorial filed on 26 August 1985, Julia Kiaie alleges that in 1973 she appointed Mr. Miraftab to be the trustee of her investments in WIG. The purchase money allegedly came from the sale of assets owned by Ala and Julia Kiaie, these assets having been sold as part of the divorce arrangements. These investments were intended by Julia Kiaie to be "the backbone of [her] financial security and a protection for [her]

children's future." Ala Kiaie allegedly also agreed to invest whatever he had into WIG for the benefit of the children.

74. In their Memorial filed on 25 February 1986, the Claimants allege that Julia Kiaie purchased 2080 shares from Mr. Miraftab in 1974 and 1978. They go on to allege that the shares were originally registered under the names of Jacqueline and Jubin, but that later they were transferred to Julia Kiaie's name. They also allege that, in 1966 or 1967, Julia Kiaie appointed Mr. Miraftab and his wife Pari Miraftab to be trustees with respect to Julia Kiaie's interests in Iran. When Ala and Julia Kiaie divorced, they allegedly agreed that all funds obtained from the sale of their joint properties should be invested by the Miraftabs for the education and future security of their children. With this money, the Miraftabs purchased 1080 shares in WIG in 1974 "in the names of Jacqueline and Jubin, jointly with their mother." Mr. Miraftab allegedly transferred these shares to Julia Kiaie's name at a later date in order to facilitate his dealings as trustee. In 1978, "as additional funds became available," he "transferred" a further one thousand shares to Julia Kiaie "with the provision that in the event of some unexpected incidents or death of Julia Kiaie all the shares become the properties of Jacqueline and Jubin without any legal complication."

75. In their Memorial filed on 10 March 1987, the Claimants allege that the shares were registered in the names of the children and "included [Julia Kiaie] as a joint owner who was to share in the profitability of the venture." It is alleged that Jubin Kiaie purchased his shares with the intention of joint ownership.

76. In their Memorial filed on 2 July 1987, the Claimants allege that Julia Kiaie purchased shares in WIG and gave a portion of them to Jacqueline Kiaie. She allegedly held the rest jointly with Jubin Kiaie.

77. In their Memorial filed on 23 August 1990, the Claimants allege that Mr. Miraftab purchased 2080 shares on behalf of Julia Kiaie, using money that she "left with [him]." The shares allegedly were initially put in Mr. Miraftab's name. Mr. Miraftab allegedly was unable to invest his own resources in WIG because at the time his finances were tied up in other ventures. In 1978 he allegedly transferred 1000 shares to Julia Kiaie's name, and the suggestion appears to be that he had already transferred 1080 shares to her or her children. The Claimants also refer again to Mr. Miraftab's statement of 1982, in which he says that he sold his shares to Julia Kiaie in 1974 and 1978, receiving payment upon transfer.

78. In the same Memorial the Claimants submitted three letters, two from Mr. Miraftab to Julia Kiaie and one from Julia Kiaie to Mr. Miraftab. In his first letter, dated 24 June 1974, Mr. Miraftab writes that he is negotiating for the purchase of land for WIG, and that he has obtained 2080 shares for Julia Kiaie, Jacqueline and Jubin Kiaie with the money Julia Kiaie "left with [him]." He states that the shares would be in his name, as agreed, and would be transferred to Julia Kiaie "in proper time." In his second letter, dated 10 December 1977, he writes that he is moving to London and thinks it would be wise to transfer "to your name the remainder of one thousand shares." In her letter, dated 8 January 1978, Julia Kiaie agrees to the suggested transfer.

79. In the same Memorial, the Claimants submitted the Report of the Auditorial Institution dated 31 December 1981. Purportedly relying on the Minutes of the annual general meeting of WIG held on 16 May 1976, the Report indicates that Mr. Ala Kiaie held 1080 shares in respect of his "own rights and as proxy for Miss Jacqueline Kiaie," and that Mr. Miraftab held 1020 shares in respect of his "own rights and as guardian of Messrs. Siamak and Babak Miraftab." The Tribunal notes that the Minutes of the annual general meeting of WIG of 16 May 1976, submitted by the Respondent, in fact show Ala Kiaie as signing "on his own

behalf and as attorney of Miss Jacqueline Kiai[e], and as guardian of Mr. Jubin Kiai, 1080 shares" (emphasis added). The Tribunal also notes that the Minutes of the annual general meeting of WIG of 20 July 1975, submitted by the Respondent, show Ala Kiaie as owning 80 shares, and Jacqueline and Jubin Kiaie as each owning 500 shares. The Minutes also indicate that Mr. Miraftab owned 220 shares, and that his two children, Siamak and Babak, each owned 400 shares.

80. In the same Memorial the Claimants submitted a document, allegedly a Will of Julia Kiaie signed on 27 December 1977, in which she bequeaths to Jacqueline and Jubin Kiaie, inter alia,

2080 Shares of Western Industrial Group, Iran,  
purchased through Dr. Mahmoud Miraftab, who was  
given full authority to act as he deemed fit.  
Note: Said shares have been purchased in such  
manner that I shall retain all rights and  
privileges of ownership, and to be transferred  
to my children upon my death.

The Will appears to have been notarized on the same date that it was signed.

81. In their Memorial of 28 February 1991, the Claimants allege that Julia Kiaie purchased the shares that were listed in Jubin Kiaie's name, and that Jubin in fact only had a survivorship interest in those shares. They also allege that the Report of the Auditorial Institution dated 31 December 1981 shows that Julia Kiaie and Jacqueline Kiaie together owned 2080 shares in WIG. They allege that the 1080 shares indicated as being held by Ala Kiaie on his own account and for Jacqueline Kiaie were all in fact owned by Jacqueline Kiaie; and that the 1020 shares indicated in the Report as being held by Mr. Miraftab were the shares that Mr. Miraftab subsequently sold to Julia Kiaie. The Claimants allege that Julia Kiaie purchased 2080 shares in total from Mr. Miraftab, transferring 1080 to Jacqueline and retaining the other 1000, with Jubin Kiaie listed as survivor.

82. In their Memorial of 11 October 1993, the Claimants allege that "the Kiaie interest in the subject Western Industrial Group was held by Julia Kiaie jointly with her children Jacqueline and Jubin." Julia Kiaie allegedly "owned and held all of the 2080 shares in joint tenancy with her minor children." The Claimants allege that Mr. Miraftab "transferred 2080 W.I.G. shares to her [Julia Kiaie] and her children." They also allege that in April 1974, Julia Kiaie arranged for the transfer of 22 million rials (the equivalent of U.S.\$300,000) to Mr. Miraftab by check drawn on the Pahlavi Square branch of the Bank of Tehran. The money was used to purchase land for WIG, and 2080 shares were issued to Mr. Miraftab in respect of it. Mr. Miraftab transferred 1080 of these shares to the "Claimants" in 1974, but he had to retain some 1000 in his name until 1978 in order to satisfy the requirements to be a director. He left the company in 1978 and transferred the 1000 shares to Julia Kiaie at that time. Ala Kiaie held 1080 shares, purchased by Julia Kiaie, for Jacqueline. Julia Kiaie was co-owner with Jacqueline. The first 1080 shares were registered in the names of Jacqueline and Jubin, each holding 540 shares.

83. In an affidavit annexed to the same Memorial, Julia Kiaie alleges that in 1974, after she and Ala Kiaie had separated, she accepted advice from Mr. Miraftab to invest in WIG. She allegedly had some money in the United States and raised more through the sale of carpets and jewelry. She asked Ala Kiaie to withdraw this money from her account in Iran and to give it to Mr. Miraftab. Mr. Miraftab told her that he had received the money and that "he had been paid in full for the shares." Mr. Miraftab was to transfer the shares to Julia Kiaie "as soon as possible." He transferred 1080 shares in 1974 to Julia Kiaie, allegedly in her name "jointly with [her] child," and a further 1000 shares in 1978 to her "also held jointly with [her] child".

84. In the same Memorial, the Claimants allege that, even if Julia Kiaie was not a record owner, her Will and Mr. Miraftab's affidavit prove that she was the beneficial owner of the shares.

As such, the Claimants allege that she is entitled to compensation.

85. At the Hearing, the Claimants alleged that the shares were purchased with money left to Julia Kiaie under the divorce agreement. It was alleged that Julia Kiaie and Ala Kiaie agreed that all of that money should be for the benefit of the children, but under Julia Kiaie's control, and that Julia Kiaie was the owner. It was alleged that Julia Kiaie was the owner of 1080 shares registered in the name of Jacqueline Kiaie, and of 1000 shares registered in the name of Jubin Kiaie, with Jacqueline and Jubin having a right of "survivorship" over the shares registered in their respective names. When asked to explain her ownership interest, Jacqueline Kiaie said: "All I knew is that we were all involved in it and so the word involved in one capacity or another is all I can say. But try to distinguish it, I cannot, I am sorry."

86. The Claimants also indicated at the Hearing that the shares were purchased from Mr. Miraftab in 1974 and in 1978, payment being made in full when the transfer of the shares was completed. The Claimants stated that Mr. Miraftab did not act as trustee, and that their earlier references to trusteeship were simply an expression of the closeness of the relationship between the family and him. However, Ala Kiaie also said that Mr. Miraftab "was handling" the investment in WIG of the money controlled by Julia Kiaie.

87. Also at the Hearing, Julia Kiaie was asked why Mr. Miraftab had retained 1000 shares in his name. She said that Mr. Miraftab had told her he needed to keep some shares, and that she had surmised that this was perhaps necessary in order for him to remain in his position as director. She did not explain why the shares were registered in the names of Mr. Miraftab's wife and children. She was also unclear in her explanation of how the shares came to be in the names of her children rather than in her own name.

88. Julia Kiaie and Ala Kiaie gave further explanations at the Hearing regarding how the money for the shares was transferred from the United States to Iran. Julia Kiaie said she had sold all her property, jewelry and carpets when she left Iran and had obtained some more money from the divorce settlement. The proceeds of the sales and the divorce settlement were deposited in the Mercantile National Bank in Chicago. Mr. Miraftab then introduced her to someone involved in the transfer of funds and she gave him a check for U.S.\$300,000. She stated that she has no record of this check.

89. Ala Kiaie said at the Hearing that all the money Julia Kiaie had was obtained from him as part of the divorce settlement. He said that he acted merely as the conduit, arranging for the money to be transferred from Chicago to Kermanshah through a broker who was the director of a bank in Tehran. The broker introduced him to someone who had an account in the United States. The money was taken from the Mercantile National Bank and put into an account held by that person in the United States. That person also had an account with the Pahlavi branch of the Bank of Tehran and withdrew the equivalent in rials, which he transferred to Ala Kiaie.

## 2. The Respondent's Contentions

90. The Respondent alleges that, under Iranian law, and particularly Article 40 of the Commercial Code of Iran, the person properly registered as the owner of property is the only person recognized as being the owner as against the company or third parties. The Respondent asserts that there is no objective evidence that Julia Kiaie was registered as a shareholder in WIG, and it has submitted affidavits indicating the contrary. The Respondent asserts that, because of this, Julia Kiaie does not hold an interest in WIG capable of enforcement against the Respondent. The Respondent further argues that the Tribunal should not recognize Julia as being a beneficial owner of WIG shares in the present Case. It argues that the Tribunal's

decision in Saghi concerning beneficial ownership should be distinguished.

91. The Respondent contends that the Claimants' assertions as to who owns shares, how many are owned, and how they were obtained are contradictory. The Respondent points out that in the Statement of Claim the Claimants assert that Jacqueline and Jubin Kiaie each purchased 540 shares in 1973, whereas in Mr. Miraftab's 1982 affidavit, Mr. Miraftab states that he sold 2080 shares to Julia Kiaie in 1974 and 1978. Further, in Mr. Miraftab's letter of 24 June 1974, Mr. Miraftab states that he purchased 2080 shares in WIG on behalf of Julia, Jacqueline and Jubin Kiaie but was retaining them in his own name for the time being. The Respondent also points out that Mr. Miraftab stated in his 1982 affidavit that he sold the shares to Julia Kiaie, receiving the purchase price in cash, whereas in his letter of 24 June 1974, he writes that he purchased the shares with the money Julia Kiaie had left him. The Respondent contends that such contradictions show that the Claimants' allegations are untrue.

92. The Respondent alleges that the letters between Mr. Miraftab and Julia Kiaie were in fact drafted after the dates those letters bear. The Respondent relies on Mr. Miraftab's 1992 affidavit in support. The Respondent argues that Julia Kiaie's Will is not authentic either. The Respondent points out that the Will contradicts Mr. Miraftab's 1982 affidavit. In that affidavit, Mr. Miraftab states that he sold shares to Julia Kiaie in 1974 and later in 1978, amounting to a total of 2080 shares. Yet the Will purports to bequeath all 2080 shares, even though it was drawn up in 1977, prior to the transfer of part of the shares. The Respondent also questions what need there was to include the shares in the Will, given that the shares were allegedly purchased in such a manner that they would automatically pass to Julia Kiaie's children on her death.

93. The Respondent alleges that the Claimants' contentions concerning the collection and transfer of U.S.\$300,000 to Iran for the purchase of shares in WIG are false, and it points out that no evidence of the transfer has been submitted.

94. The Respondent further contends that Mr. Miraftab's 1982 affidavit is false, and in support of this assertion it has submitted an affidavit from Mr. Miraftab dated 30 September 1992. In the 1992 affidavit, Mr. Miraftab states that 1080 shares in WIG were owned by Ala Kiaie but were at first registered in the name of Mr. Miraftab. Ala Kiaie allegedly purchased 1000 more shares from Mr. Miraftab in 1978, intending to register them in the names of his children. Mr. Miraftab believed that the latter transfer had been completed, but in 1983, Ala Kiaie told Mr. Miraftab that it had not. Mr. Miraftab claims that he therefore refunded the purchase price to Ala Kiaie. The Respondent alleges that this establishes that Julia Kiaie does not have a beneficial interest in WIG, and that the alleged second transfer to the Kiaies, consisting of 1000 shares, never took place.

95. The Claimants allege that the 1992 affidavit was prepared under duress and contend that Mr. Miraftab's 1982 affidavit reflects the truth. The Respondent denies this. It relies upon a second affidavit of Mr. Miraftab, dated 4 February 1994, in which Mr. Miraftab states that his 1992 affidavit was not prepared under duress.

96. The Respondent also has submitted a document signed on 9 July 1975, in which Jacqueline Kiaie gives her father, Ala Kiaie, full power of attorney over "the shares purchased in my name from Western Industrial Group." The document enabled Ala Kiaie to "acquire shares on my behalf or sell them," and it states that "[i]n general I have transferred all rights pertaining to shares that have been purchased on [sic] my name to the attorney [Ala Kiaie] and I will have no rights for myself during attorney's life time." Ala Kiaie is "vested with the right to take any step respecting sale, purchase, exchange, and

conversion of my shares; any action he would take on my behalf will be lawful." The Respondent argues that this supports its contention that the true beneficial owner of the shares was Ala Kiaie, not Julia Kiaie.

97. The Claimants allege that the power of attorney document proves that Jacqueline Kiaie had an ownership interest in WIG, but deny that it indicates that Ala Kiaie held a beneficial interest in those shares. The Claimants allege that Jacqueline Kiaie simply wanted her father to act as her proxy to protect her interests, and that she turned to him rather than relying on Mr. Miraftab as her mother did "[b]ecause of her emotional attachment to her father." In their respective 1993 Affidavits, Julia and Jacqueline Kiaie provide similar explanations. In his 1993 Affidavit, however, Ala Kiaie says that the power of attorney was drawn up because of Julia Kiaie's concerns. According to Ala Kiaie, Julia Kiaie was apparently

worried that an attractive young woman like Jacqueline might have married any person of her choosing and she was afraid that in a rare probability Jacqueline might get into a marital situation which could effect [sic] the shares in WIG which Julia and her children own. Julia asked me how, if Jacqueline married, Julia's ownership could be protected.

Ala Kiaie allegedly proposed the power of attorney as a solution.

98. At the Hearing, Jacqueline said that she received the form from her father and did not understand it but followed her father's instructions and returned it to him. She subsequently said that she understood that her father would be acting in her interests but that her mother would have to agree to any sale of the shares.

### 3. The Tribunal's Findings

99. The Tribunal notes that by the date of the Hearing, both Parties were in agreement that Jacqueline and Jubin Kiaie were

each the record owners of some five hundred shares in WIG as of 20 July 1975. However, the Tribunal notes that the official records relating to WIG -- consisting of the Minutes of the annual general meeting held on 20 July 1975, the Minutes of the annual general meeting held on 16 May 1976 and the Auditorial Institution report of 31 December 1981 for the year ended 19 March 1981 -- do not refer to Julia Kiaie in any capacity. The Tribunal further notes that at the Hearing, despite earlier pleadings otherwise, the Claimants contended that Jacqueline and Jubin Kiaie were the sole registered owners of all 2080 shares claimed, and that Julia Kiaie, although not a registered owner, nevertheless held an interest in those shares.

100. In light of the evidence before the Tribunal and Claimants' own contentions at the Hearing, the Tribunal concludes that Julia Kiaie was not a record owner of any WIG shares. However, the Tribunal has in the past, in certain circumstances, recognized and compensated persons who are not registered owners of shares in an Iranian company on the ground that they are beneficial owners of such shares. See Saghi at paras. 18-26. The Tribunal turns first to the question of exactly what the allegations of the Claimants are in respect of Julia Kiaie's involvement in the purchase and ownership of the shares.

101. Regarding the source of the funds for the purchase of the shares, the Tribunal notes that the Claimants have alleged that the money came entirely from the sale of the assets of Julia and Ala Kiaie upon their divorce, but also that it was raised solely through the sale of carpets, jewelry and properties owned by Julia Kiaie, together with a bank account held by her, and that Ala Kiaie made a separate contribution.

102. In respect of the way in which funds were transferred by the Claimants to pay for their shares in WIG, the Tribunal notes that the Claimants have alleged that the money was "left with" Mr. Miraftab in 1973 or 1974, but also that it was transferred to him from the United States. The Claimants have alleged that,

at the time the Statement of Claim was filed, Ala Kiaie was "neither aware of the extent of Julia's stock ownership in WIG nor the circumstances under which the transfer of shares had taken place on her behalf," but also that he acted as a "conduit" in transferring the money from her to Mr. Miraftab. The Tribunal notes that the Claimants do not have any documentary evidence of the alleged transfer of funds.

103. Apart from the Statement of Claim, where it is alleged that the Claimants held 1080 shares between them, it is uniformly alleged that the Claimants purchased 2080 shares in WIG. However, with respect to the way in which those shares were acquired, the Claimants have alleged that Mr. Miraftab acted as trustee, investing the Kiaies' money on their behalf, but also that the Kiaies purchased the shares from Mr. Miraftab, with Mr. Miraftab acting simply as a seller, albeit a trusted one. With respect to the date on which the shares were acquired, the Claimants have alleged that they were acquired in 1974 and 1978, but also that they were acquired in 1973, in 1974 only, and prior to December 1977.

104. With respect to the way in which the shares were registered, the Claimants have alleged that they were registered in the names of Jacqueline and Jubin, but also that they were at first registered in the names of Jacqueline and Jubin but then transferred to Julia Kiaie; that they were registered in the names of Jacqueline and Jubin, the latter jointly with Julia Kiaie; and that they were registered in the names of Jacqueline and Jubin, both jointly with their mother. It is also alleged that the shares were registered first in the name of Mr. Miraftab and then, in 1974, 1080 shares were transferred to Jacqueline and, in 1978, 1000 shares were transferred to Julia Kiaie. Finally, it is alleged that at first the shares were registered in the name of Mr. Miraftab and then in 1974, 1080 shares were transferred to Julia Kiaie and Jacqueline jointly, or to Jacqueline and Jubin, or to Julia Kiaie and a "child," the

remaining 1000 being transferred to Julia Kiaie and a "child" in 1978.

105. As indicated above, throughout the course of their pleadings, and up to the date of the Hearing, the Claimants have presented varied and fundamentally inconsistent allegations as to the source of the funds used to pay for the shares, the manner in which those funds were transferred to Iran, the role of Mr. Miraftab in the acquisition of shares by the Kiaies, the date of that acquisition, the number of shares purchased and the names in which those shares were held.

106. The Tribunal notes that, even were it to be established that Julia Kiaie had given funds to her children to enable them to invest in WIG, this would not of itself be sufficient to establish that she had an interest in shares registered in her children's names.

107. The Tribunal recognizes that Julia Kiaie's 1977 Will indicates that she believed she owned 2080 shares in WIG at that time. However, a belief by a person as to her property rights, no matter how sincere, is not sufficient in itself to create those rights but can only serve as supporting evidence. Furthermore, the terms of the proxy granted by Jacqueline Kiaie to her father, Ala Kiaie, giving him power to sell her shares in WIG, appear to be inconsistent with the alleged beneficial interest of Julia Kiaie. The Claimants have not presented a consistent alternative explanation as to why Jacqueline Kiaie gave her father the power of attorney, and in particular why she gave him the power to sell the shares registered in her name. Whereas at the Hearing Jacqueline Kiaie contended that she simply received the document from her father and signed it in obedience to him without fully understanding it, in their written pleadings Jacqueline and Julia Kiaie had alleged that Jacqueline wanted her father to act on her behalf rather than Mr. Miraftab, who was allegedly acting for her mother, because of Jacqueline Kiaie's emotional attachment to her father. Moreover, Ala Kiaie had

asserted that in fact it was Julia Kiaie who had initiated the arrangement because she was concerned that Jacqueline might marry a person who would take advantage of her shareholding.

108. In light of the inconsistencies in the allegations presented by the Claimants concerning Julia Kiaie's alleged ownership of shares, and given the absence of other documentary evidence, the Tribunal finds that the Claimants have not established that Julia Kiaie was the beneficial owner of any shares in WIG.

109. The Tribunal notes that the Respondent has not submitted the share register of WIG. The Auditorial Institution Report indicates that the share register was available to it. Further, in his 1992 affidavit, Mr. Khosravi Pour, who provided an affidavit for the Respondent, states that he consulted the share register. The Tribunal notes that, in appropriate circumstances, the failure of the Respondent to produce evidence available to it may justify the Tribunal in drawing adverse inferences from that failure. See Edgar Protiva, et al. and The Government of the Islamic Republic of Iran, Award No. 566-316-2, para. 68 (14 July 1995), reprinted in \_\_ Iran-U.S. C.T.R. \_\_, \_\_; Birnbaum at paras. 80, 106, 115, 124, 139; Benjamin R. Isaiah and Bank Mellat, Award No. 35-219-2 (30 Mar. 1983), reprinted in 2 Iran-U.S. C.T.R. 232, 238; Raygo Wagner Equipment Co. and Star Line Iran Co., Award No. 20-17-3 (15 Dec. 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 413.<sup>7</sup> However, in the particular circumstances of this Case, given the inconsistencies in the Claimants' own versions of events regarding Julia Kiaie's alleged ownership of shares and the absence of any other documentary evidence, it would not be appropriate to do so.

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<sup>7</sup> See also Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals 232-25 (1987); Durward V. Sandifer, Evidence Before International Tribunals 108, 115-18, 149-54, 172-74 (1975).

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B. Western Publishing and Printing Company

110. The Tribunal next turns to examine whether Julia Kiaie held an interest in the Western Publishing and Printing Company ("WPPC").

1. The Claimants' Contentions

111. In the Statement of Claim, it is alleged that "the claimants" had purchased 35% of the shares in WPPC directly. These shares are not mentioned again in the pleadings until 1991, when, in the Memorial filed on 28 February 1991, the Claimants assert that the "claimants" held 25% of WPPC. In his 1991 affidavit, Ala Kiaie states that Mr. Miraftab, "as trustee of Julia Kiaie, . . . purchased for her and her children a twenty percent (20%) interest in WPPC. She has retained this ownership interest to the present."

112. In their Reply Brief filed on 11 October 1993, the Claimants allege that Julia Kiaie purchased 700 shares, or 20% of the share capital of WPPC, directly, and that she lent a Mr. Rafii Tehrani money for him to purchase another 20%. The loan allegedly was made on the understanding that if it were not repaid, the shares would revert to Julia Kiaie. When Mr. Rafii Tehrani left his position at WPPC, he allegedly had not repaid the loan and the shares reverted to Julia Kiaie. This transfer was, however, not registered due to "the revolutionary chaos."

113. In her 1993 affidavit, Julia Kiaie stated that in early 1977, Mr. Miraftab encouraged her to invest in WPPC. She allegedly purchased 20% of the shares in the company for about U.S.\$96,000, and purchased another 20% -- for the same sum -- for Mr. Rafii Tehrani, who was to be the managing director of the company. The money was allegedly transferred to WPPC's formation account at the Bank of Tehran, and her 20% of the shares were registered "in my ownership with my children Jacqueline and Jubin."

114. In support of their allegations, the Claimants put forward three documents. The first is a copy of a letter dated 3 March 1979 from Mr. Rafii Tehrani to the Board of Directors of WPPC in which Mr. Rafii Tehrani tenders his resignation from the post of Managing Director of the company. The second is also a letter from Mr. Rafii Tehrani to the Board of WPPC dated 3 March 1979. In it, Mr. Rafii Tehrani states that, under an agreement of 23 September 1976, Ala Kiaie had paid for the shares of WPPC that were registered in the names of Mr. Rafii Tehrani's wife and children, and that the shares were mortgaged to Ala Kiaie as security for Mr. Rafii Tehrani's promise to repay the money within one and a half years. As the money had not been paid and the one and a half year period had elapsed, Mr. Rafii Tehrani requests the Board to transfer 650 shares to Ala Kiaie. The third document is the minutes of a meeting of the Board of Directors of WPPC held on 5 March 1979. These minutes note that Mr. Rafii Tehrani had resigned from the Board and had requested the Board to transfer 700 shares to Ala Kiaie. The minutes note that the price of the shares "had been paid by Dr. Kiaie," and that the Board then agreed to make the transfer.

## 2. The Respondent's Contentions

115. The Respondent denies that the Claimants held any interest in WPPC, and it has submitted affidavits to the effect that there is no trace of Julia Kiaie's alleged interest in the company. The first affidavit is by a person who is an officer of the Western Textile Company, the Western Wool Processing Company and WIG, but not of WPPC, while the second affiant is an officer only of WIG. The Respondent further points out that the letters and minutes submitted by the Claimants in support of their allegations in fact indicate that it was Ala Kiaie who paid for the shares in Mr. Rafii Tehrani's name, and that, on Mr. Rafii Tehrani's failure to repay the loan, the shares were to be transferred to Ala, not Julia Kiaie.

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### 3. The Tribunal's Findings

116. The Tribunal first turns to the Claimants' allegation that Julia Kiaie lent money to Mr. Rafii Tehrani for him to purchase 20% of the shares in WPPC, and that he subsequently directed that those shares be transferred to her due to his inability to repay the loan on time. The Tribunal notes that the documentary evidence submitted by the Claimants in support of this allegation in fact directly contradicts it. The documentary evidence indicates instead that money was lent to Mr. Rafii Tehrani by Ala Kiaie, not Julia Kiaie, and that the shares owned by Mr. Rafii Tehrani and his family were to be transferred to Ala Kiaie, not to Julia Kiaie.

117. The Tribunal thus concludes that Julia Kiaie did not hold an interest in the shares in WPPC registered in the names of Mr. Rafii Tehrani and/or his family.

118. The Tribunal next examines the Claimants' allegation that Julia Kiaie held 20% of the shares in WPPC in her own name, together with her children. The Tribunal first notes that there is no documentary evidence in support of this allegation. The Tribunal further notes that the Claimants' allegations concerning the size of their shareholding display troubling inconsistencies. The Claimants initially alleged that they held 35% of the shares in WPPC directly, then 25%, and then 20%. The Tribunal finally notes that in her alleged Will of 27 December 1977, although Julia Kiaie mentions shares in WIG, she does not refer to the shares in WPPC that allegedly were purchased at the beginning of 1977. While this is not a conclusive consideration, the omission of all reference to the WPPC shares is disturbing in light of the size of the alleged investment.

119. In light of the above, the Tribunal concludes that the Claimants have not established that Julia Kiaie held any ownership interest in WPPC.

V. AWARD


120. In view of the foregoing,

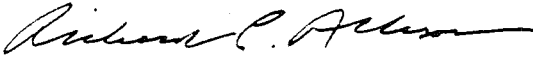
THE TRIBUNAL AWARDS AS FOLLOWS:

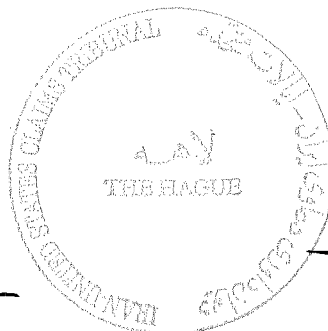
- a) The Claim of the Claimant JACQUELINE KIAIE against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction under Article II, paragraph 1 of the Claims Settlement Declaration.
- b) The Claims of the Claimant JULIA KIAIE against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN are dismissed for lack of proof that the Claimant held ownership interests in the relevant properties.
- c) Each Party shall bear its own costs of arbitration.

Dated, The Hague


15 May 1996

  
Gaetano Arangio-Ruiz  
Chairman  
Chamber Three

  
Richard C. Allison



In the Name of God

  
Mohsen Aghahosseini  
Concurring