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Excerpt

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GENERAL MOTORS CORP. *v.* IRAN

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GENERAL MOTORS CORPORATION,
GENERAL MOTORS OVERSEAS CORPORATION,
GENERAL MOTORS OVERSEAS DISTRIBUTION CORPORATION, *Claimants*
v.

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
GENERAL MOTORS IRAN LIMITED
(now known as PARS KHODRO, CO.), *Respondents*

(Case No. 94)

Chamber One: Lagergren, Chairman

Signed 18 January 1983^[1]

ORDER

The following is the text as issued by the Tribunal:

ORDER

Claimants are hereby ordered to submit by 17 March 1983 the following evidence with respect to their nationality:

1. Certificates by a government official of the State of Delaware, issued after 19 January 1981, showing the dates when General Motors Corporation, General Motors Overseas Corporation (“GMOC”) and General Motors Overseas Distribution Corporation (“GMODC”) were incorporated and whether they were in existence on the dates of the respective certificates.

2. A signed copy of an officer of General Motors Corporation, sworn to before a notary public, stating the percentage of voting stock which is held by stockholders of record with addresses in the United States as shown on the stockholders list used in connection with the corporation’s Annual Meeting closest to 19 January 1981.

3. A copy of the page, or pages, of the proxy statement previously issued by General Motors Corporation in connection with its Annual Meeting closest to the earliest date on which a claim in this case arose, which shows (i) the date of the Annual Meeting, (ii) the number of shares of each class of capital stock entitled to vote at the meeting, and (iii) information with respect to any beneficial owners of 5% or more of the corporation’s voting stock. These pages should be attached to a

[1] Filed 21 January 1983.]

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certificate by an officer of General Motors Corporation, sworn to before a notary public, that they are true and complete copies of pages included in the proxy statement in the form filed with the Securities and Exchange Commission and mailed to stockholders. In the event the proxy statement contains no reference to any beneficial owners of 5% or more of the corporation's voting stock, such certificate shall include a statement as to whether that is because there are no such owners.

4. The same material as described in paragraph 3, but related to the proxy statement in connection with the Annual Meeting of General Motors Corporation closest to 19 January 1981.

5. A certificate by the firm of certified public accountants which audited and gave its opinion concerning the financial statements of General Motors Corporation for the fiscal year ended immediately prior to its Annual Meeting closest to the earliest date on which a claim in this case arose, stating: (i) the number of voting shares of the stock of GMOC, GMODC, General Motors of Canada, Ltd. ("GM Canada"), and General Motors Continental, N.V. ("GM Continental") which were issued and outstanding at the end of such fiscal year and (ii) the number of and percentage of such shares owned by General Motors Corporation on that date.

6. The same material as described in paragraph 5, but related to the fiscal year immediately prior to the Annual Meeting of General Motors Corporation closest to 19 January 1981.

Respondent may on or before 18 April 1983 submit any evidence in rebuttal thereof. Thereafter, the Chamber intends to decide whether the claim is a claim by a national of the United States as defined in Article VII of the Claims Settlement Declaration, on the basis of the written statements submitted by the parties.

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Re DETROIT BANK AND TRUST CO.

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IN RE REFUSAL TO FILE CLAIM OF
DETROIT BANK AND TRUST COMPANY^[1]

(Refusal Case No. 3)

Full Tribunal: Lagergren, *President*

Signed 7 February 1983^[2]

The following is the text as issued by the Tribunal:

DECISION

On 20 January 1982 the Registrar of the Tribunal received a claim by Detroit Bank and Trust Company (“Detroit Bank”) against Industrial Mining Development Bank of Iran in the sum of \$2 million plus interest. In this claim Detroit Bank asserted that it is the owner and holder of 2,000 promissory notes, each dated 14 April 1977 and each in the principal amount of \$1,000 plus interest made by the Industrial and Mining Development Bank of Iran and payable to the order of bearer on 14 April 1984. Furthermore, Detroit Bank contended in the claim that the Tribunal has jurisdiction over the claim pursuant to Article II, paragraph 1, of the Claims Settlement Declaration and paragraph 2(B) of the Undertakings. Detroit Bank, which is said to be an American banking institution, asserted that it had been unable after diligent efforts to otherwise resolve its claim with the Government of the Islamic Republic of Iran and that it had been unable to reach agreement with Iran with respect to the establishment of an international arbitration panel to hear and determine its claim against Iran pursuant to paragraph 2(B) of the Undertakings.

The Registrar refused to file the claim by Detroit Bank. The reason for this refusal was explained by the Registrar in a letter to Detroit Bank, dated 1 February 1982. The Registrar stated in this letter that the claim was refused since

pursuant to Article III, paragraph 4, of the Claims Settlement Declaration, 19 January 1982 was the last date for filing claims by nationals of the United States and of Iran pursuant to Article II, paragraph 1, of the Claims Settlement Declaration.

Detroit Bank appealed against this decision by a letter which was

[1] *See also* Refusal Case No. 3, Decision signed 5 May 1983, 2 IRAN-U.S. C.T.R. 312.]

[2] Filed 14 February 1983.]

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received by the Registrar on 22 February 1982. In this letter Detroit Bank argued that the late filing was caused by a carrier which delivered the claim in The Hague later than expected due to bad weather conditions in London.

On 22 March 1982 Chamber Three decided to relinquish jurisdiction to the Full Tribunal as regards the review of the Registrar's refusal.

Following orders by the Tribunal Detroit Bank and the Agent of the Islamic Republic of Iran have submitted the attached arguments on the question of refusal (see Annexes 1 and 2).

The relevant portions of paragraph 2 of the Undertakings read:

Iran having affirmed its intention to pay all its debts and those of its controlled institutions, the Algerian Central Bank acting pursuant to Paragraph 1 above will issue the following instructions to the Central Bank:

.....

(B) To retain \$1.418 billion in the escrow account for the purpose of paying the unpaid principal of and interest owing, if any, on the loans and credits referred to in Paragraph (A) after application of the \$3.667 billion and on all other indebtedness held by United States banking institutions of, or guaranteed by, the Government of Iran, its agencies, instrumentalities or controlled entities not previously paid and for the purpose of paying disputed amounts of deposits, assets, and interest, if any, owing on Iranian deposits in U.S. banking institutions. *Bank Markazi and the appropriate United States banking institutions shall promptly meet in an effort to agree upon the amounts owing.*

In the event of such agreement, the Bank Markazi and the appropriate banking institutions shall certify the amount owing to the Central Bank of Algeria which shall instruct the Bank of England to credit such amount to the account, as appropriate, of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. *In the event that within 30 days any U.S. banking institution and the Bank Markazi are unable to agree upon the amounts owed, either party may refer such dispute to binding arbitration by such international arbitration panel as the parties may agree, or failing such agreement within 30 additional days after such reference, by the Iran-United States Claims Tribunal.* The presiding officer of such panel or tribunal shall certify to the Central Bank of Algeria the amount, if any, determined by it to be owed, whereupon the Central Bank of Algeria shall instruct the Bank of England to credit such amount to the account of the Bank Markazi or of the Federal Reserve Bank of New York in order to permit payment to the appropriate banking institution. *After all disputes are resolved either by agreement or by arbitration award and appropriate payment has been made, the balance of the funds referred to in this Paragraph (B) shall be paid to Bank Markazi.* (emphasis added).

.....

Detroit Bank asserts that the Industrial and Mining Development Bank of Iran is an agency, instrumentality and controlled entity of the

Islamic Republic of Iran.

The Algiers Agreements provide two possibilities for U.S. claimants to obtain payment for claims from monies reserved for that purpose.

One is to file a claim in accordance with Article II of the Claims Settlement Declaration and to obtain payment from the \$1 billion Security Account provided for in paragraph 7 of the General Declaration; the other, which is open only for banking institutions, is to institute the procedure laid down in paragraph 2(B) of the Undertakings and to obtain payment from the \$1.418 billion escrow account provided for in that paragraph.

This latter procedure is totally different from that of the Claims Settlement Declaration. The procedure in paragraph 2(B) of the Undertakings consists of three steps, of which only the last one refers to the Tribunal:

- (i) The U.S. banking institutions and Bank Markazi shall promptly meet in an effort to agree upon the amounts owing;
- (ii) in the event that within 30 days any U.S. banking institution and Bank Markazi are unable to agree on the amounts owed, either party may refer such dispute to binding arbitration by such international arbitration panel as the parties may agree; and
- (iii) failing such agreement within 30 additional days after such reference, either party may refer the matter to the Tribunal.

A careful reading of paragraph 2(B) shows that it does not contain any limit within which the appropriate banking institution or Bank Markazi has to refer the dispute to an international arbitration panel. This rule provides furthermore that neither of the parties can refer the matter to this Tribunal before the second 30 days period has elapsed. The claim of Detroit Bank was filed after the 19 January 1982 deadline established by the Claims Settlement Declaration. The Tribunal holds that the claim was properly refused insofar as it was based upon Article II of that Declaration because, whatever hardship to a claimant, the mere failure of a courier service to deliver a claim to the Registrar before the deadline does not entitle the Tribunal to make an exception to the time limit established by the Declaration.

Insofar as the claim is based on paragraph 2(B) of the Undertakings, the Bank has not alleged with sufficient specificity, either in the statement of claim or in its subsequent explanations, the dates and circumstances of the negotiations and the failure to agree upon an arbitral panel which are prerequisites to the jurisdiction of this Tribunal under that paragraph.

In order to satisfy itself that these requirements have been met the Tribunal orders Detroit Bank to submit by 7 March 1983 complete information and evidence regarding the following questions:

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Re DETROIT BANK AND TRUST CO.

(i) Have Detroit Bank and Bank Markazi met in an effort to agree upon the amounts owing and, if so, during which days did the banks meet?

(ii) Were the banks unable to agree on the amounts?

(iii) Has either of the two banks referred the dispute to binding arbitration by such international arbitration panel as the parties may agree, and, if so, when?

(iv) Have the two banks failed to agree on any such international arbitration panel?

The Tribunal does not need to decide now whether the 19 January 1982 deadline for filing claims applies also to the filing of disputes under paragraph 2(B) of the Undertakings. If the answers of the Detroit Bank show that it has met the prerequisites to invoking our jurisdiction under that paragraph, the Tribunal will in that event be prepared to decide that question.

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MORGAN EQUIPMENT CO. *v.* IRAN

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MORGAN EQUIPMENT COMPANY, *Claimant*

v.

THE ISLAMIC REPUBLIC OF IRAN,
THE MINISTRY OF ROADS AND TRANSPORTATION,
THE IRANIAN NAVY, *Respondents*

(Case No. 280)

Signed 31 May 1983^[1]

LETTER FROM MR. P. BELLET TO MR. K. P. ROGERS^[2]

The following is the text as issued by the Tribunal:

Due to the existence of the Claim of Morgan in this Tribunal and the sufficient security which results from the Escrow Account, the Tribunal would appreciate you withdraw your attachment so that the already deposited settlement between Port of Vancouver and MRTR be filed and implemented.

In that case the Tribunal is prepared to accelerate the proceedings, to render an award during the fall at the latest or at an earlier date.

[1] Filed 31 May 1983.]

[2] Mr. K.P. Rogers, Morgan Equipment Co.]

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8 RCA GLOBAL COMMUNICATIONS, INC. *v.* IRAN

RCA GLOBAL COMMUNICATIONS, INC.,
RCA GLOBAL COMMUNICATIONS DISC, INC.,
RCA GLOBCOM SYSTEMS, INC., *Claimants*

v.

THE ISLAMIC REPUBLIC OF IRAN,
TELECOMMUNICATION COMPANY OF IRAN,
IMPERIAL IRANIAN SUPREME COMMANDER'S STAFF,
MILITARY'S SWITCHING PROJECT OFFICE,
BANK MELLI IRAN,
BANK MARKAZI,
FOREIGN TRADE BANK OF IRAN, *Respondents*

(Case No. 160)

Chamber One: Lagergren, Chairman

Signed 2 June 1983^[1]

ORDER

The following is the text as issued by the Tribunal:

ORDER

In a Motion filed with the Tribunal on 6 May 1983 the Claimants have requested the Tribunal to direct the Government of Iran to stay further proceedings regarding a claim filed with the Public Court of Tehran by Iran Insurance Company against RCA Global Communications, Inc. and RCA Global Communications Disc, Inc.

RCA Global Communications, Inc. has been requested to appear before the Public Court of Tehran on 8 June 1983.

In its Order of 12 May 1983 the Tribunal has requested the Respondents to file a Reply to the Claimant's Motion by 23 May 1983, addressing in particular the question as to whether the litigation before the Public Court of Tehran involves any issue that can lead to decisions by the Tribunal inconsistent with decisions by the Public Court of Tehran.

Following a request for an extension submitted by the Deputy Agent of the Islamic Republic of Iran on 23 May 1983, the Tribunal has granted an extension to file said Reply by 1 August 1983.

However, in view of the Claimants' statement that RCA Global

[1] Filed 2 June 1983.]

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Communications, Inc. has been ordered to appear before the Public Court of Tehran on 8 June 1983 and the Tribunal's inherent power to issue orders to conserve the respective rights of the Parties and to ensure that its jurisdiction and authority are made fully effective, the Tribunal finds it appropriate immediately to request the Government of Iran to move for a stay of the proceedings before the Public Court of Tehran until such time that the Tribunal can make a decision on the Claimants' request based on the views of both Parties.

For these reasons, the Tribunal requests the Government of the Islamic Republic of Iran to take all appropriate measures to ensure that the proceedings before the Public Court of Tehran be stayed until 15 August 1983.

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DALLAL *v.* IRANDALLAL, *Claimant**v.*

THE ISLAMIC REPUBLIC OF IRAN,

BANK MELLAT (formerly INTERNATIONAL BANK OF IRAN), *Respondents*

(Case No. 149)

Chamber One: Lagergren, Chairman; Kashani, Holtzmann^[1], *Members*Signed 10 June 1983^[2]

AWARD NO. 53-149-1

The following is the text as issued by the Tribunal:

APPEARANCES:

For the Claimant: Mr. Richard D. Coopersmith
Coopersmith & Coopersmith, New York

For the Respondents: Mr. Mohammad K. Eshragh
Agent of the Islamic Republic of Iran
Mr. Hossein Safai
Legal Adviser to the Agent of the Islamic
Republic of Iran
Mr. M. H. Maadi
Representative of Bank Mellat
Mr. Rackvel
Assistant to the Representative of Bank Mellat

Also present: Mr. Arthur W. Rovine
Agent of the United States of America

AWARD

I. FACTS AND CONTENTIONS

The Claimant in this case, Mr. Dallal, contends that he in January 1979 received and is the lawful holder of two cheques drawn by International Bank of Iran on Chase Manhattan Bank N.A., New York, payable to his account at Chemical Bank New York, each cheque in the amount of \$200,000. He further contends that both of these cheques were dishonoured. He therefore seeks the face amount of the two

[1] Dissenting Opinion, see p. 17 below.]

[2] Filed 10 June 1983.]