

NOTICE OF ARBITRATION UNDER THE ARBITRATION RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW

BETWEEN:

DR. AHMED DIAA ELDIN ALI MOHAMED HUSSEIN

(CLAIMANT)

-AND-

THE ARAB REPUBLIC OF EGYPT

(RESPONDENT)

NOTICE OF ARBITRATION

NIXON PEABODY LLP

Nixon Peabody LLP
Tower 46, 55 West 46th Street
New York, New York 10036-4120
212-940-3000
833-343-1753
Legal representative for Claimant

February 3, 2021

I. INTRODUCTION

1. This Notice of Arbitration, together with its Exhibits numbered C-1 to C-2, is submitted on behalf of Dr. Ahmed Diaa Eldin Ali Mohamed Hussein (hereinafter “**Claimant**”) pursuant to Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law in force as from 15 August 2010 (the “**UNCITRAL Arbitration Rules**”) against the Arab Republic of Egypt (hereinafter “**Respondent**”), (hereinafter collectively referred to as the “**Parties**”).
2. This Notice of Arbitration contains information concerning the following:
 - i. The name, description and address of each of the Parties (**II**);
 - ii. The Parties’ contractual relationship and the nature and circumstances of the Parties’ dispute giving rise to Claimant’s claims (**III**);
 - iii. The dispute resolution clause, the proposed governing law, the seat and language of the arbitration (**IV**);
 - iv. Claimant’s position as regards the composition of the arbitral tribunal (**V**);
 - v. Claimant’s damages (**V**);
 - vi. A statement of the relief sought (**VI**);
3. This dispute principally concerns Respondent’s violation of Article III, 1 of the Bilateral Treaty between the United States and Egypt (the “U.S.-Egypt BIT”) (Exhibit C-1) which guarantees that nationals of either country must be appropriately compensated in the event that the government expropriate their investment. Specifically, starting in 1997 Claimant, on behalf of himself and his family, purchased what became in excess of 70% of the shares of SIMO, a large manufacturing company with two locations in Egypt, from the Egyptian Stock Exchange—an investment worth approximately \$20,000,000.00, at that time. Following Claimant’s investment, SIMO was expropriated by Egypt. By letter dated September 8, 2020 (Exhibit C-2), the Egyptian Government informed Claimant that it would not be providing Claimant with adequate compensation for the investment that it expropriated. The Egyptian Government’s refusal to provide compensation to Claimant qualifies the action as an improper expropriation, a direct violation of the U.S.-Egypt BIT.

II. THE PARTIES

A. Claimant

4. Claimant is Dr. Ahmed Diaa Eldin Ali Mohamed Hussein, a dual citizen of the United States of America and the Arab Republic of Egypt.

5. Claimant's address is:

Dr. Ahmed Hussein
45 Rockefeller Center, Suite 2256
New York, New York 10111
212-332-1700
ahmednic@aol.com

6. Claimant's representative, to whom all correspondence should be sent in this arbitration, are:

Nixon Peabody LLP
Daniel A. Schnapp, Esq.
Catherine A. Savio, Esq.
Tower 46, 55 West 46th Street
New York, New York 10036-4120
212-940-3000
833-343-1753
dschnapp@nixonpeabody.com

B. Respondent

7. Respondent is the Arab Republic of Egypt.

8. Respondent's contact information is:

The Arab Republic of Egypt
Egyptian State Lawsuits Authority
42 Gameat El Dowal El Arabiya St.
Mohandeseen, Cairo, Egypt
Tel: +20 2 37617046
Fax: +20 2 37621417

III. THE PARTIES' CONTRACT AND THE NATURE AND CIRCUMSTANCES OF THE PARTIES' DISPUTE GIVING RISE TO THE CLAIMS

(a) Factual Background

9. SIMO was a large company with locations in the Bahteem District and Mostorod, Egypt, that engaged in the manufacture and distribution of paper and cardboard

products. Starting in 1997, Claimant, on behalf of himself and his family, purchased what became in excess of 70% of the shares of SIMO from the Egyptian Stock Exchange—an investment worth approximately \$20,000,000.00, at that time. Claimant purchased the shares with funds that originated with his investments in the United States.

10. In March 1999, SIMO was expropriated by Egypt via a decision issued by the Chairman of the Companies Regulatory Authority, who appointed a Trustee for management of the Company and dissolved the Board of Directors.
11. In 2006, following years of litigation surrounding the propriety of the March 1999 expropriation of SIMO, Egyptian courts effectively canceled the decision issued by the Chairman of the Companies Regulatory Authority, and all consequences therefrom, effectively ordering that the Company be returned to the shareholders, including Claimant, and awarding any damages that occurred since 1999. This was a final and binding decision upon the Egyptian Government. In 2007, the Chairman of the General Authority for Investment & Free Zones issued a decision confirming the Court's 2006 judgment.
12. In 2014, the Administrative Court in Egypt ordered the return of SIMO to the State due to alleged deficiencies in connection with the sale of the Company to Claimant that caused, among other things, the shares of the Company to be sold at a price that was lower than actual value. That same year, in response to this Court Order, the Prime Minister issued a final decree implementing the Administrative Court's 2014 Order and directing the Minister of Finance to provide all necessary financial credits related to the shareholders' rights. The Egyptian Government did not, however, comply with the Prime Minister's decree.
13. Claimant was never provided with any form of compensation for the expropriation of SIMO. Claimant communicated with the Minister of Treasury, the Minister of Public Sector, the Chairman of the Investment Authority, the Head of the Holding Company for Chemical Industries, and other government representatives, who advised Claimant to bring the matter before the Egyptian General Authority for Investment & Free Zones Technical Secretariat Ministerial Committee for Investment Disputes Settlement.

14. Following an almost two-year delay by Egypt, and by letter dated September 8, 2020, and in response to Claimant's complaint that SIMO remained expropriated by Egypt and he not been provided with adequate compensation for the expropriation of SIMO, the Egyptian Government informed Claimant that it was not competent to render a decision on the matter and as a result, refused to provide Claimant with adequate compensation for the value of his investment. Such a refusal constitutes an improper expropriation, a direct violation of the U.S.-Egypt BIT.

(b) Legal Basis of Claim/Respondent's Violations of Its Legal Obligations

15. The United States and Egypt entered into the U.S.-Egypt BIT in an effort to foster reciprocal encouragement and protection of investments made by nationals of either party. To that end, the U.S.-Egypt BIT requires, among other things, that Egypt provide Claimant, a national of the United States, with appropriate compensation in the event that Claimant's investment in SIMO, or any portion thereof, be expropriated by Egypt.

16. Article III of the U.S.-Egypt BIT, entitled "Compensation for Expropriation," states in relevant part:

1. No investment or any part of an investment of a national or company of either Party shall be expropriated or nationalized by the other Party or by a subdivision thereof-or subjected to any other measure, direct or indirect, if the effect of such other measure, or a series of such other measures, would be tantamount to expropriation or nationalization (all expropriations, all nationalizations and all such other measures hereinafter referred to as "expropriation")-unless the expropriation

- (a) is done for a public purpose;
- (b) is accomplished under due process of law;
- (c) is not discriminatory;
- (d) is accompanied by prompt and adequate compensation, freely realizable; and
- (e) does not violate any specific contractual engagement.

Compensation shall be equivalent to the fair market value of the expropriated investment on the date of expropriation. The calculation of such compensation shall not reflect any reduction in such fair market value due to either prior public notice or announcement of the expropriatory action, or the occurrence of the events that constituted or resulted in the expropriatory action. Such compensation shall include payments for delay as may be considered appropriate under international law, and shall be freely transferable at the prevailing rate of exchange for current transactions on the date of the expropriatory action.

17. Claimant's investment in SIMO qualifies as an "investment of a national" of the United States pursuant to Article I, (c) of the U.S.-Egypt BIT. The U.S.-Egypt BIT requires that the nationalization of Claimant's investment be "accompanied by prompt and adequate compensation, freely realizable ... equivalent to the fair market value of the

expropriated investment on the date of expropriated ... [and] payments for delay.” U.S.-Egypt BIT Article III, I. By refusing, in the September 8, 2020 letter, to provide prompt and adequate compensation to Claimant for its expropriation of SIMO, Egypt has violated Article III of the U.S.-Egypt BIT.

IV. DISPUTE RESOLUTION CLAUSE, GOVERNING LAW, SEAT AND LANGUAGE OF THE ARBITRATION

(a) The Arbitration Clause

18. Claimant hereby requests arbitration of the dispute set forth herein pursuant to the investor-state dispute settlement provision in Article VII, Sections 1-3 of the U.S.-Egypt BIT and in accordance with Articles 3(3)(a) and (3)(c) of the UNCITRAL Arbitration Rules.

(b) The Place of Arbitration

19. Claimant proposes that the arbitration be conducted at the International Centre for Settlement of Investment Disputes (“ICSID”) in Washington, D.C. Claimant requests that Respondent consent to ICSID administration of the arbitration. If Respondent does not object in its response to this Notice of Arbitration, then Respondent will be deemed to have consented to ICSID administration of the arbitration.

(c) Governing Law

20. The instant dispute shall be resolved in accordance with Article VII, 3, (c) of the U.S.-Egypt BIT and the UNCITRAL Arbitration Rules.

(d) The Language of Arbitration

21. The parties have not previously agreed upon the language of the arbitration. Claimant proposes that the language of the arbitration shall be English.

V. THE ARBITRAL TRIBUNAL

22. The Parties have not previously agreed on the constitution of the tribunal, including the number of arbitrators or procedure of appointment. Claimant proposes that the tribunal be composed of one arbitrator and invites Respondent’s comments. Claimant reserves the right to nominate a Co-Arbitrator in accordance with Article 9 of the UNCITRAL Rules.

VI. CLAIMANT'S DAMAGES

23. Claimant has been damaged in the amount of the lost value of his investment of SIMO, an amount of no less than approximately \$20,000,000.00 in 1997, payments for delay, and the attorney's fees and costs associated with Claimant's recovery of compensation for Egypt's improper expropriation.
24. Claimant is also entitled to prejudgment and post judgment interest, as appropriate on the amounts owed, in accordance with international law and Article 3, 1 of the U.S.-Egypt BIT on these amounts.

VII. RELIEF SOUGHT

25. As a result, Claimant respectfully requests the arbitral tribunal to issue an award:
- i. declaring that the arbitral tribunal has jurisdiction to consider the dispute described herein between the Parties;
 - ii. declaring that Respondent violated its obligations by refusing to provide Claimant with adequate compensation for the lost value of his investment in SIMO is a violation of the unambiguous terms of Article III, 1 of the U.S.-Egypt BIT as described above;
 - iii. ordering Respondent to compensate Claimant for the damages and losses suffered as a result of Respondent's breaches of the U.S.-Egypt BIT;
 - iv. awarding Claimant pre-judgment and post-judgment interest, as appropriate, on the amounts owed by Egypt to Claimant;
 - v. ordering Respondent to pay all arbitration costs, including Claimant's representative's costs and expenses;
 - vi. ordering any further or other relief the Tribunal may consider appropriate; and
26. For the avoidance of doubt, Claimant reserves its right to:
- i. raise any and all further claims arising out of or in connection with the disputed matters described in this Notice of Arbitration or otherwise arising between the Parties; and

- ii. amend and/or supplement the relief sought herein;
- iii. produce such factual or legal arguments or evidence (including witness testimony, expert testimony and documents) as may be necessary to present its case or rebut any case which may be put forward by Respondent; and
- iv. seek interim and provisional measures before this arbitral tribunal or any competent national court.

Respectfully submitted,

s/Daniel Schnapp

Daniel A. Schnapp, Esq.
Catherine Savio, Esq.
Nixon Peabody LLP
Legal representative for Claimant
Tower 46, 55 West 46th Street
New York, New York 10036-4120
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dschanpp@nixonpeabody.com
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