

180-258
18-288
یوان داوری

ORIGINAL DOCUMENTS

Case No. 180

Date of filing: 6 MAY 85

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

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

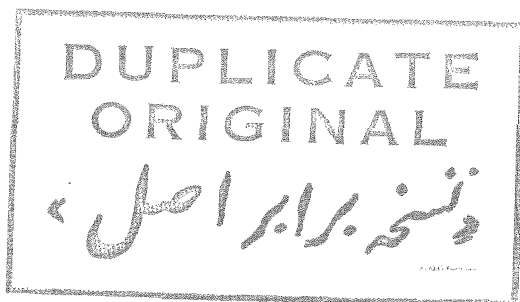
** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: Correction to dissenting
opinion of Richard Mosk
- Date 3 MAY 85
2 pages in English _____ pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL



HARNISCHFEGER CORPORATION,

Claimant,

and

MINISTRY OF ROADS AND TRANSPORTATION,
INDUSTRIAL DEVELOPMENT AND RENOVATION
ORGANIZATION OF IRAN, MACHINE SAZI
ARAK AND MACHINE SAZI PARS,

Respondents.

دیوان داری دعاوی ایران - ایالات متحدہ

CASE NO. 180

CHAMBER THREE

AWARD NO. 175-180-3

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	6 MAY 1985 تاریخ
No.	۱۲۶۴ / ۲۱ / ۱۶ شماره 180

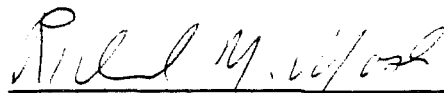
CORRECTION TO DISSENTING OPINION OF
RICHARD M. MOSK FROM FINAL AWARD

As reflected in the attached corrected page, there shall be added to the Dissenting Opinion of Richard M. Mosk From Final Award at page 9, the following:

Line 12, after "outset" add "and if the amendment arises out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original claim."

Line 17, add , which is adaptable to Tribunal procedures,

Dated, 3 May, 1985


Richard M. Mosk

Apparently, had the Claimant listed Iran in the caption or specified with greater particularity each Respondent in each Claim, there would have been no question as to the propriety of the amendment. But it must be recalled that when the Claim was filed, there were few Tribunal guidelines on pleadings and no Tribunal jurisprudence.

A workable rule is the modern rule in the United States which permits an amended pleading adding a party or changing the capacity of a party after the limitations period has expired if that party had adequate notice of the action and of the plaintiff's mistake in failing to name it at the outset and if the amendment arises out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original claim. See 6 Wright and Miller, Federal Practice and Procedure: Civil § 1497 at 499 (1971); 3 Moore's Federal Practice, supra at § 15.15[4] at 15-211-12; Annot, 8 ALR 2d 6 (1949). This "modern rule," which is adaptable to Tribunal procedures, is "the result of a development which, in furtherance of the policy that cases should be decided on their merits, gradually broadened the right of a party to amend a pleading without incurring the bar of the statute of limitations." Austin v. Massachusetts Bonding & Insurance Co., 56 Cal. 2d 596, 600, 364 P.2d 681, 683 (1961). In the instant case, MSA knew of the action and, as is clear from its defenses, knew that it was the proper party to the dispute.