

For Six Month Period Ending 6/30/94
(Insert date)

Name of Registrant

Registration No.

Donald L. Wallace, Jr.

4813

Business Address of Registrant

1150 Conn. Ave., NW, Suite 507, Washington, D.C. 20036

I-REGISTRANT

1. Has there been a change in the information previously furnished in connection with the following:

(a) If an individual:

- (1) Residence address Yes No
- (2) Citizenship Yes No
- (3) Occupation Yes No

(b) If an organization:

- (1) Name Yes No
- (2) Ownership or control Yes No
- (3) Branch offices Yes No

2. Explain fully all changes, if any, indicated in item 1.

IF THE REGISTRANT IS AN INDIVIDUAL, OMIT RESPONSE TO ITEMS 3, 4, and 5.

3. Have any persons ceased acting as partners, officers, directors or similar officials of the registrant during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name

Position

Date Connection Ended

FEDERAL BUREAU OF INVESTIGATION
 DEPARTMENT OF JUSTICE
 JUL 27 AM 11:30
 RECEIVED

4. Have any persons become partners, officers, directors or similar officials during this 6 month reporting period?
 Yes No

If yes, furnish the following information:

<i>Name</i>	<i>Residence Address</i>	<i>Citizenship</i>	<i>Position</i>	<i>Date Assumed</i>
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5. Has any person named in Item 4 rendered services directly in furtherance of the interests of any foreign principal?
 Yes No

If yes, identify each such person and describe his services.

6. Have any employees or individuals other than officials, who have filed a short form registration statement, terminated their employment or connection with the registrant during this 6 month reporting period? Yes No

If yes, furnish the following information:

<i>Name</i>	<i>Position or connection</i>	<i>Date terminated</i>
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7. During this 6 month reporting period, have any persons been hired as employees or in any other capacity by the registrant who rendered services to the registrant directly in furtherance of the interests of any foreign principal in other than a clerical or secretarial, or in a related or similar capacity? Yes No

If yes, furnish the following information:

<i>Name</i>	<i>Residence Address</i>	<i>Position or connection</i>	<i>Date connection began</i>
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II—FOREIGN PRINCIPAL

(PAGE 3)

8. Has your connection with any foreign principal ended during this 6 month reporting period? Yes No

If yes, furnish the following information:

Name of foreign principal

Date of Termination

-
9. Have you acquired any new foreign principal¹ during this 6 month reporting period? Yes No

If yes, furnish following information:

Name and address of foreign principal

Date acquired

-
10. In addition to those named in Items 8 and 9, if any, list the foreign principals¹ whom you continued to represent during the 6 month reporting period.

H.R.H. Prince Bandar Bin Sultan
601 New Hampshire Ave., NW
Washington, D.C. 20037

III—ACTIVITIES

11. During this 6 month reporting period, have you engaged in any activities for or rendered any services to any foreign principal named in Items 8, 9, and 10 of this statement? Yes No

If yes, identify each such foreign principal and describe in full detail your activities and services:

- 1/14/94 Facilitated a meeting with Adel Al Jubeir and Steve Raby of Senator Howell Heflin's office regarding the Harbert Howard Companies dispute
2/28/94 Facilitated a meeting with Adel Al Jubeir and Haley Fisackerly and Robert McArthur of Senator Thad Cochran's office regarding the Harbert Howard Companies dispute.
3/8/94 On behalf of Adel Al Jubeir the registrant met with David Rudd and James Assey of Senator Ernest Hollings' office to discuss the Harbert Howard Companies dispute.
4/14/94 Facilitated a meeting with Adel Al Jubeir and Congressman Earl Hilliard regarding the Harbert Howard Companies dispute.
4/19/94 Facilitated a meeting with Adel Al Jubeir and Congressman Bud Kramer regarding the Harbert Howard Companies dispute.
4/21/94 Met with Congressman Earl Hilliard regarding H.R. 4096 a bill to ensure that certain unresolved commercial disputes between American firms and Saudi Arabia are resolved satisfactorily
4/26/94 Dinner with Congressman Earl Hilliard to discuss H.R. 4096
5/4/94 Met with Congressman Earl Hilliard to discuss H.R. 4096
5/24/94 Lunched with Stephan Bell of Congressman Earl Hilliard's office and Adel Al Jubeir to discuss H.R. 4096
6/7/94 Facilitated a meeting with Adel Al Jubeir regarding the Harbert Howard Companies dispute and H.R. 4096 with Bob McNeil of Congressman Browder's office.
5/23/94 Spoke with Congressman Browder regarding the Harbert Howard Companies dispute and a meeting

¹The term "foreign principal" includes, in addition to those defined in section 1(b) of the Act, an individual or organization any of whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual. (See Rule 100(a)(9)).

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under Section 3 of the Act. (See Rule 208.)

12. During this 6 month reporting period, have you on behalf of any foreign principal engaged in political activity² as defined below?
 Yes No

If yes, identify each such foreign principal and describe in full detail all such political activity, indicating, among other things, the relations, interests and policies sought to be influenced and the means employed to achieve this purpose. If the registrant arranged, sponsored or delivered speeches, lectures or radio and TV broadcasts, give details as to dates, places of delivery, names of speakers and subject matter.

All meetings stated below were held to discuss the current dispute between Harbert Howard Companies and Saudi Arabia and any pending or possible legislation which would try to resolve this dispute.

- 1/14/94 Facilitated a meeting with Adel Al Jubeir and Steve Raby of Senator Howell Heflin's office regarding the Harbert Howard Companies dispute.
 2/28/94 Facilitate a meeting with Adel Al Jubeir and Haley Fisackerly and Robert McArthur of Senator Gochran's office regarding the Harbert Howard Companies dispute.
 3/8/94 On behalf of Adel Al Jubeir met with David Rudd and James Assey of Senator Holling's office to discuss Harbert Howard Companies dispute
 4/14/94 Facilitated a meeting with Adel Al Jubeir and Congressman Hilliard regarding the Harbert Howard Companies dispute.
 4/19/94 Facilitated a meeting with Adel Al Jubeir and Congressman Bud Kramer regarding the Harbert Howard Companies dispute.
 4/21/94 Met with Congressman Hilliard regarding H.R. 4096 a bill to ensure that certain unresolved commercial disputes between American firms and Saudi Arabia are resolved satisfactorily.

~~See Attached sheet for continuation.~~

13. In addition to the above described activities, if any, have you engaged in activity on your own behalf which benefits any or all of your foreign principals? Yes No

If yes, describe fully.

- 3/8/94 On behalf of Adel Al Jubeir the registrant met with David Rudd and James Assey of Senator Hollings' staff to discuss Harbert Howard Companies dispute.
 4/21/94 The registrant met with Congressman Hilliard on behalf of Adel Al Jubeir to discuss the introduction of H.R. 4096, a bill to ensure that certain unresolved commercial disputes between American firms and Saudi Arabia are resolved satisfactorily.
 4/26/94 The registrant had dinner with Congressman Hilliard to discuss H.R. 4096.
 5/4/94 The registrant met with Congressman Hilliard to discuss H.R. 4096.
 5/23/94 The registrant spoke with Congressman Browder regarding H.R. 4096 and to set up a meeting to discuss the Harbert Howard Companies dispute.

²The term "political activities" means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.

IV—FINANCIAL INFORMATION

14. (a) RECEIPTS—MONIES

During this 6 month reporting period, have you received from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal, any contributions, income or money either as compensation or otherwise? Yes No

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies.³

<i>Date</i>	<i>From Whom</i>	<i>Purpose</i>	<i>Amount</i>
5/5/94	H.R.H. Prince Bandar Bin Sultan	Retainer fee	\$30,000.00
5/17/94	H.R.H. Prince Bandar Bin Sultan	Retainer fee	\$30,000.00
*5/25/94	H.R. H. Prince Bandar Bin Sultan	Expense Reimbursement	\$698.94

* Expenses include but are not limited to travel, transportation, taxis, parking, messenger services, subscriptions, meals, long distance phone calls, etc.

\$60,698.94
Total

(b) RECEIPTS—THINGS OF VALUE

During this 6 month reporting period, have you received any thing of value⁴ other than money from any foreign principal named in Items 8, 9 and 10 of this statement, or from any other source, for or in the interests of any such foreign principal? Yes No

If yes, furnish the following information:

<i>Name of foreign principal</i>	<i>Date received</i>	<i>Description of thing of value</i>	<i>Purpose</i>
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³A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. See Rule 201(e).

⁴Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

15. (a) DISBURSEMENTS—MONIES

During this 6 month reporting period, have you

(1) disbursed or expended monies in connection with activity on behalf of any foreign principal named in Items 8, 9 and 10 of this statement? Yes No

(2) transmitted monies to any such foreign principal? Yes No

If yes, set forth below in the required detail and separately for each foreign principal an account of such monies, including monies transmitted, if any, to each foreign principal.

<i>Date</i>	<i>To Whom</i>	<i>Purpose</i>	<i>Amount</i>
* 1/5/94 - 6/17/94	On behalf of H.R.H. Bandar Bin Sultan	Expenses	\$1,258.97

* Expenses include but are not limited to travel, transportation, taxis, parking, messenger services, subscriptions, meals, long-distance phone calls, xerox, etc.

\$1,258.97

Total

15. (b) DISBURSEMENTS—THINGS OF VALUE

During this 6 month reporting period, have you disposed of anything of value⁵ other than money in furtherance of or in connection with activities on behalf of any foreign principal named in items 8, 9 and 10 of this statement?

Yes No

If yes, furnish the following information:

<i>Date disposed</i>	<i>Name of person to whom given</i>	<i>On behalf of what foreign principal</i>	<i>Description of thing of value</i>	<i>Purpose</i>
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(c) DISBURSEMENTS—POLITICAL CONTRIBUTIONS

During this 6 month reporting period, have you from your own funds and on your own behalf either directly or through any other person, made any contributions of money or other things of value⁵ in connection with an election to any political office, or in connection with any primary election, convention, or caucus held to select candidates for political office?

Yes No

If yes, furnish the following information:

<i>Date</i>	<i>Amount or thing of value</i>	<i>Name of political organization</i>	<i>Name of candidate</i>
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V—POLITICAL PROPAGANDA

(Section 1(j) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

16. During this 6 month reporting period, did you prepare, disseminate or cause to be disseminated any political propaganda as defined above? Yes No

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

17. Identify each such foreign principal.

⁵Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment over competitors, "kickbacks," and the like.

18. During this 6 month reporting period, has any foreign principal established a budget or allocated a specified sum of money to finance your activities in preparing or disseminating political propaganda? Yes No

If yes, identify each such foreign principal, specify amount, and indicate for what period of time.

19. During this 6 month reporting period, did your activities in preparing, disseminating or causing the dissemination of political propoganda include the use of any of the following:

- Radio or TV broadcasts Magazine or newspaper articles Motion picture films Letters or telegrams
 Advertising campaigns Press releases Pamphlets or other publications Lectures or speeches
 Other (specify)

20. During this 6 month reporting period, did you disseminate or cause to be disseminated political propoganda among any of the following groups:

- Public Officials Newspapers Libraries
 Legislators Editors Educational institutions
 Government agencies Civic groups or associations Nationality groups
 Other (specify)

21. What language was used in this political propoganda:

- English Other (specify)

22. Did you file with the Registration Section, U.S. Department of Justice, two copies of each item of political propoganda material disseminated or caused to be disseminated during this 6 month reporting period? Yes No

23. Did you label each item of such political propoganda material with the statement required by Section 4(b) of the Act? Yes No

24. Did you file with the Registration Section, U.S. Department of Justice, a Dissemination Report for each item of such political propoganda material as required by Rule 401 under the Act? Yes No

VI-EXHIBITS AND ATTACHMENTS

25. EXHIBITS A AND B

(a) Have you filed for each of the newly acquired foreign principals in Item 9 the following:

- Exhibit A° Yes No
Exhibit B7 Yes No NOT APPLICABLE

If no, please attach the required exhibit.

(b) Have there been any changes in the Exhibits A and B previously filed for any foreign principal whom you represented during this six month period? Yes No

If yes, have you filed an amendment to these exhibits? Yes No

If no, please attach the required amendment.

6The Exhibit A, which is filed on Form CRM-157 (Formerly OBD-67) sets forth the information required to be disclosed concerning each foreign principal.
7The Exhibit B, which is filed on Form CRM-155 (Formerly OBD-65) sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

26. EXHIBIT C

If you have previously filed an Exhibit C⁸, state whether any changes therein have occurred during this 6 month reporting period. Yes No

If yes, have you filed an amendment to the Exhibit C? Yes No

If no, please attach the required amendment.

27. SHORT FORM REGISTRATION STATEMENT

Have short form registration statements been filed by all of the persons named in Items 5 and / of the supplemental statement? Yes No

If no, list names of persons who have not filed the required statement.

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct executed on:

(Type or print name under each signature)

(Both copies of this statement shall be signed and sworn to before a notary public or other person authorized to administer oaths by the agent, if the registrant is an individual, or by a majority of those partners, officers, directors or persons performing similar functions who are in the United States, if the registrant is an organization.)


Donald L. Wallace, Jr.

July 26, 1994

Subscribed and sworn to before me at _____

this _____ day of _____, 19 _____

(Signature of notary or other officer)

⁸The Exhibit C, for which no printed form is provided, consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. (A waiver of the requirement to file an Exhibit C may be obtained for good cause upon written application to the Assistant Attorney General, Criminal Division, Internal Security Section, U.S. Department of Justice, Washington, D.C. 20530.)

UNITED STATES DEPARTMENT OF JUSTICE
REGISTRATION UNIT
CRIMINAL DIVISION
WASHINGTON, D.C. 20530

NOTICE

Please answer the following questions and return this sheet in triplicate with your supplemental statement:

1. Is your answer to Item 16 of Section V (Political Propaganda - page 7 of Form OBD-64 - Supplemental Statement):

Yes _____ or No XXX

(If your answer to question 1 is "yes" do not answer question 2 of this form.)

2. Do you disseminate any material in connection with your registration:

Yes XXX or No _____

(If your answer to question 2 is "yes" please forward for our review copies of all such material including: films, film catalogs, posters, brochures, press releases, etc. which you have disseminated during the past six months.)

Donald L. Wallace, Jr.
Signature

July 26, 1994

Date

Donald L. Wallace, Jr.
Please type or print name of signatory on the line above

Chairman of the Board

Title

INTERNAL SECURITY
SECTION
REGISTRATION UNIT

'94 JUL 27 AM 11:30

DEPT OF JUSTICE

WALLACE & EDWARDS
A GOVERNMENT RELATIONS CORPORATION
1150 CONNECTICUT AVENUE, N.W.
SUITE 507
WASHINGTON, D.C. 20036

TELEPHONE: (202) 331-4331
FACSIMILE: (202) 331-4330

Supplemental Statement, Donald L. Wallace

This is a continuation of the answer to question 12, Section III Activities, on page 4.

4/26/94 Dinner with Congressman Hilliard to discuss H.R. 4096.

5/4/94 Met with Congressman Hilliard to discuss H.R. 4096.

5/23/94 Spoke with Congressman Glen Browder to set up a meeting with him to discuss the Harbert Howard Companies dispute and H.R. 4096.

5/24/94 Lunched with Stephan Bell of Congressman Hilliard's office with Adel Al Jubeir to discuss H.R. 4096.

6/7/94 Facilitated meeting with Adel Al Jubeir and Bob McNeil from Congressman Browder's office to discuss Harbert Howard Companies dispute and H.R. 4096.



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

OCT 14 1993

Mr. Bill L. Harbert
Bill Harbert International
Construction Inc.
820 Shades Creek Parkway
Birmingham, AL 35209

RECEIVED
OFFICE OF ASSISTANT
SECRETARY FOR
INTERNATIONAL
TRADE
JUL 27 AM 11:51 '94

Dear Mr. Harbert:

Secretary Brown, who has recused himself from involvement in all matters relating to the dispute between Bill Harbert International Construction Inc. ("Harbert") and the Government of Saudi Arabia ("SAG"), has asked that I review Ambassador Bandar's September 15 letter and your submission dated September 22, and provide you with the Department's views with respect to its future participation in this matter.

As you know, the Department's efforts to assist U.S. companies resolve their outstanding commercial disputes with the SAG pre-date the adoption of Section 9140(b) of the Defense Appropriations Act of 1993. In coordination with U.S. Embassy personnel in Saudi Arabia, the Department's Office of the Near East ("ONE") has long sought to promote negotiated settlement of commercial disputes and to ensure that U.S. firms have access to the Saudi judicial system.

In this case, ONE has supported Harbert's attempts to obtain relief from the SAG by, *inter alia*, persuading Ambassador Bandar to review the Saudi court judgments; putting Harbert representatives in contact with Saudi Embassy personnel and offering to set up meetings between them; examining Harbert's claim documentation and assisting the company in developing a file supporting its petition for relief; and transmitting the claim documentation (together with comments which, in ONE's view, highlighted the most pertinent elements of the claim) to the Saudi Embassy for the Ambassador's consideration. In sum, the Department has invested considerable time, effort, and resources in assisting Harbert attempt to reach a negotiated settlement of its claim.

The Department had been prepared to request that the SAG consider submitting this dispute to binding arbitration. Ambassador Bandar anticipated this request on pages 18-19 of his letter, in which he stated categorically that "the Kingdom of Saudi Arabia...does not submit itself to any form of arbitration in commercial disputes." As a sovereign state, Saudi Arabia cannot be compelled to reopen a final and binding judgment rendered in a court of competent jurisdiction and issued in accordance with Saudi law and the provisions of the underlying contract at issue. Therefore, we have concluded that requesting the SAG to re-consider its decision not to submit this dispute to arbitration would not be productive.



We are sensitive to the difficulties that U.S. firms may confront in resolving disputes arising out of commercial relationships with foreign parties or related to contract performance abroad. However, the Department lacks the legal authority and competence to intervene as a finder of fact in private commercial disputes. As Secretary of Defense Aspin noted in his June 3, 1993 letter to Vice-President Gore in which he provided the Congress a follow-up report on the status of the remaining commercial disputes between U.S. firms and the SAG, "it is not [the] position [of] the [United States Government] to sort out the competing claims of the disputants in...any of the...cases at hand. We have neither the legal authority nor the expertise necessary to adjudicate such claims." Aside from providing the kind of process-related support described above and from which Harbert has already benefitted, the Department cannot participate as a party-in-interest in the Harbert-SAG dispute.

Because Ambassador Bandar has determined, in the exercise of his sovereign authority, that the Saudi court judgments are final and binding, we regret that we see no further role for the Department in this matter.

Sincerely,



Karl S. Reiner
Acting Deputy Assistant Secretary
Africa, the Near East, and South Asia

سفارة المملكة العربية السعودية
في واشنطن

OFFICE OF
THE AMBASSADOR

ROYAL EMBASSY OF SAUDI ARABIA
601 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20037

September 15, 1993

The Honorable Howell Heflin
United States Senator
728 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Heflin:

I am writing as a follow up to my letter to you of June 30, 1993 on the Harbert matter. I have completed an exhaustive review of the case and would like to share my findings and conclusions with you.

I have examined all the relevant court judgments which we have obtained directly. I have also examined the voluminous documents provided to my office by Harbert International, Inc. through the Department of Commerce, and the office of Congressman Beville, as well as by Mr. Harbert directly, including the two reports purported to have been prepared by the Saudi House for Consulting Services ("SCH").

I assembled a team of experts including lawyers who are licensed to practice law in the Kingdom, Sharia scholars, experts on commercial disputes and government officials to examine the documents. Their mandate was to respond to the issues raised in the Department of Commerce letter to my office dated August 13, 1993 (copy enclosed), as well as to analyze the decision of the Saudi courts to determine the basis for its reasoning, and to compare it to other court decisions in similar cases and whether Harbert was denied due process. What follows is the result of this extensive review, throughout which I have been personally involved.

The Honorable Howell Heflin
September 15, 1993
Page 2

Unfortunately, it is clear from the content of the letters by Harbert, and by Members of Congress, that there exists a misunderstanding of the Saudi legal system, the Sharia, the legal issues involved in the Harbert dispute, the role of SCH, and the legal reasoning of the Saudi courts in this case. In this letter, I will explain the Saudi court system and the role of outside consultants. I will also highlight the reasoning behind the court's decision in this case, and the position taken at the appeals level.

I. The Saudi Court System: An Overview

Broadly speaking, the judiciary in Saudi Arabia is organized into several independent systems. The largest court system is that which is administered by the Ministry of Justice, the Sharia courts. This court is the court of general jurisdiction in Saudi Arabia. All categories of disputes of whatever type are within its jurisdiction unless explicitly removed from it and vested in a different court. The Board of Grievances (the "Board") is the second most important court in the country with more restricted jurisdiction. In addition, there are several judicial committees and commissions vested with much narrower jurisdiction over certain types of cases.

All Saudi courts apply Islamic law, the Sharia, mostly as interpreted by the Hanbali school of Islamic jurisprudence. The traditional corpus of the Sharia is occasionally supplemented by modern regulations which must be not inconsistent with the Sharia.

1. The Sharia Court

At the lower level, the Sharia court is organized into three courts. A Summary Court is vested with jurisdiction over small civil claims and certain categories of felonies and other criminal cases. The Marital Court is granted jurisdiction over certain aspects of domestic relations. All other matters falling within the Sharia court jurisdiction are handled by the General Sharia Court. The latter court is the most prevalent in the cities and towns of Saudi Arabia.

Judges are recruited from among the graduates of the various Sharia colleges in Saudi Arabia. Typically, a number of professors are entrusted with making recommendations regarding potential judges. The potential candidates' names are forwarded to the Ministry of Justice annually and each

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September 15, 1993
Page 3

year new graduates are selected for judgeships. The new judge spends a number of years clerking for a senior judge until he is deemed to have acquired the necessary skills, at which point he is formally appointed. Judges are given tenure until the retirement age of 70 and may only be removed by the Higher Judicial Council, the highest court in the Sharia system.

In this court, hearings are only weeks apart and judgments are rendered fairly quickly. Except for capital cases, which are heard by a panel of three judges, all disputes are handled by single judges. Judgments rendered by the lower Sharia courts must be appealed within 15 days from the date the would-be appellant receives the judgment. The appeal is lodged with the judge (or panel of judges) who rendered the judgment to give the judge(s) the opportunity to modify or reverse his/their judgment should the appeal persuade him/them to do so. If the judge declines to change his decision, he forwards the judgment along with the appeal and the relevant documents and minutes to the court of appeals, of which there are two, each vested with jurisdiction over approximately one-half of the country. The court of appeals is organized in panels each of which is composed of a number of senior judges, typically with more than 20 years of experience in the lower courts. The panel with the relevant jurisdiction would review the judgment and would render its decision by majority vote. The panel may affirm the lower court judgment; it may give "comments" to the lower court judge and request his response; or it may reverse the judgment.

In most cases, the court of appeals is the final stage of litigation. In all capital cases, however, there is automatic appeal from the court of appeals to the Supreme Judicial Council, the highest court in the Sharia system.

2. The Board of Grievances

The Board of Grievances, which is headed by a jurist with the rank of a Minister, comes directly under the King and was originally organized to adjudicate claims against the government, *i.e.*, administrative disputes. Like the Sharia system, the Board's judges are chosen in a similar fashion and accorded the same privileges and immunities. The Board's jurisdiction was slowly expanded to include other matters, such as forgery and embezzlement. But the largest expansion took place in 1988 when jurisdiction over "commercial" disputes was transferred to it from the now-defunct Committee for the Settlement of Commercial Disputes. As the case under

The Honorable Howell Heflin
September 15, 1993
Page 4

review is an "administrative" dispute, only this Division will be discussed below.

Article 8(1)(d) of the Board's Regulations (promulgated by Royal Decree number M/51 dated 17/71 1402H [1982]) vests the Administrative Division of the Board with jurisdiction over all disputes between any agency of the Saudi government and a private contractor stemming from a breach of contract on the part of the governmental agency or the private contractor. This excludes other disputes whose cause is rooted in other than contractual faults.

The Administrative Division is divided into lower and appellate panels. Both the lower and appellate panels are composed of three judges with decisions made by majority vote. There are several lower panels (each technically called the "First [or Second...etc.] Administrative Panel") distributed throughout the Board's system and one appellate panel (technically called the "Administrative Audit Commission, First Panel") located in Riyadh (the "Appellate Court"). The appeal procedure is similar to that of the Sharia system with the exception that the would-be appellant is granted 30 days to lodge his appeal.

The Board's headquarters are located in Riyadh with branches in the other major cities.

3. Other Courts

In addition to the two main courts, the Sharia and the Board, there are a number of judicial committees and commissions. These include labor, customs, negotiable instruments, banking and other committees vested with jurisdiction to settle narrowly defined disputes. Some of these committees have their own appellate divisions, such as the labor committee. For those without an appellate division, the Board's Appellate Court serves that function.

II. The Harbert Case

1. History

From the documents under review, it appears that on 14/6/1398H [12-5-1978] the Ministry of Agriculture and Water (the "Ministry") awarded Harbert Howard (the "Company") a contract to supply and install pipes for the fourth phase in the construction of the water distribution network in Jidda (the "Contract"). The supply portion of the Contract was

The Honorable Howell Heflin
September 15, 1993
Page 5

priced at approximately SR 38 million and the installation works at SR 153.5 million. The completion dates varied for different parts of the Contract, with the last part to be completed by 13-2-1400H [31-1-1980]. Because of delays of various origins, the period of execution lasted much longer. The Ministry granted the Company a major extension of time to complete the works (232 days) and applied delay penalties for certain parts of the Contract. The actual preliminary handover of the Contract took place on 19-9-1980.

Throughout the period of execution the Company maintained that it would seek damages for the extra costs it had incurred because of the delays in the works as the Company held the view that all the delays were the fault of the Ministry. While the Ministry accepted to extend the Contract without penalty as indicated above, it rejected the Company's position and instead blamed the Company itself for the delay.

On 5-12-1402H, more than two years after the completion of the Contract, the Company formally submitted its claims to the Ministry. The Company also sought the diplomatic intervention of the U.S. government. Indeed, the U.S. ambassador in Saudi Arabia wrote to the Saudi government on 19-7-1983 raising the question of compensation for the Company. The Ministry answered with its own letter rejecting the claims. On 16-3-1407H [1987], after about four more years, the Company filed a law suit against the Ministry for damages. The case was assigned to the Board's Ninth Administrative Panel in Jidda (the "lower Court" or simply the "Court") which held many hearings over the next few years culminating in a decision rejecting the jurisdictional challenges mounted by the Ministry. As the case was recognized to involve technical expertise, the lower Court decided to refer the file to SCH requesting its views with regard to the evaluation of the claimed damages. This was made by the Court's Preliminary Judgment No. 4/D/A/9 for the year 1412H. As indicated by the specific holding of the Court of Appeal, the mandate of SCH went only to the monetary evaluation of claimed damages and not to a determination of breach or entitlement to damages.

As the file of the case indicates, on 24-6-1412H SCH sent its report to the lower Court containing its technical assessment of the damages (the "Report"). The Company initially chose to challenge the Report and actually accused the Ministry of tampering with it. In its challenge, the Company submitted a memorandum expounding its views of what a fair settlement would be. As part of what it considered

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"decisive evidence" of the validity of its claims, the Company enclosed a letter signed by 25 U.S. members of Congress sent to the King of Saudi Arabia and referred to the existence of two reports made by SCH. It also included detailed objections to the Report. In the next hearing, however, the Company without explanation dropped its objections and urged the lower Court to adopt the Report and order payment of damages accordingly. Three weeks later, on 29-8-1412H, the Court rendered its judgment ordering the Ministry to pay damages in the amount of approximately SR 25.5 million (the First Judgment). The Company appealed and within weeks the Appellate Court and remanded the case to the lower Court. The lower Court then issued its Second Judgment on 27-12-1412H essentially awarding the same damages and expanding its reasoning. The Second Judgment was appealed again. The amount of damages was affirmed by the Appellate Court and the reasoning of the judgment was expanded. [Copies of certified translations of both the Second and Appellate Judgments are enclosed.]

The Company executed the Second Judgment and collected the damages in full.

As far as Saudi law is concerned, the matter is closed.

2. Analysis of the Case

a. Procedural Analysis

In many respects, this case is a typical contractual dispute between a Saudi governmental agency and a private contractor. It relates to the execution of a contract for the benefit of a government agency which by law had to be governed by Saudi law, including government procurement regulations. All these contracts specify the Board as the forum vested with jurisdiction to settle any dispute relating thereto. No Saudi government agency is permitted to enter into any contract without so specifying.

In another, narrower respect, this is also a typical case. It was filed in 1407H, just a short time before major revisions of the jurisdiction of the Board and its by-laws were promulgated. This caused some disruption to the process of adjudication and partially accounts for the longer than average time it took for the court to settle the case. Although there are no statistics available, experience would indicate that the average time it takes to litigate a complex

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construction dispute like this case is around three years, whereas this particular matter took about five years before a final judgment was rendered. This compares favorably with other courts in other countries. Indeed we are aware of cases that have taken close to 20 years to adjudicate in the U.S.

While the overhauling of the Board that took place in 1408-1409H [i.e., 1988] may have prolonged the time needed to reach a final judgment, it was those changes that saved the case from being time-barred. Up until the promulgation of the new Procedural Regulations of the Board on 16-11-1409H, the statute of limitations for this type of administrative case was three years. In light of the facts of the case, it is almost certain that the Court would have had to decline hearing the case had it not been for these changes.

After holding numerous hearings on the claims of the Company and the various defenses offered by the Ministry and other agencies entrusted with defending the government against contractual claims (the Ministry of Finance and the Audit Board), the lower Court closed the case and decided that some of the claims were technical in nature. As the Saudi courts are empowered to decide on the need for outside technical assistance and request the same, the lower Court rendered its Preliminary Judgment to refer the case to an outside expert, namely SCH. The SCH is an autonomous government agency dedicated to offering technical consulting services both to the various government departments and to the private sector in return for a fee commensurate with the work provided. In most cases, whether with the Board or Sharia court, whenever a court determines that outside expertise is needed, SCH is invited to give it, which is what the Court did in this case.

In analyzing the value and relevance of outside expertise, a few facts have to be borne in mind. The role of outside experts in the Saudi judicial system is no more than the engagement of a person or agency for the purpose of providing technical skills for the determination of the value of certain claims that would require specialized expertise. The experts are not regarded as outside judges nor as arbitrators. Whatever opinion they provide is more in the nature of an "advice" that the court is free to accept or reject as the administration of justice may dictate. In addition, the Saudi courts, like in other countries, would never sanction the recommendations of an expert (or even the award of an arbitrator) that are inconsistent with the law or with public policy. Any portion of the recommendations (or

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the award) would be struck if it violates the law or is found to be against public policy.

b. The SCH Reports

From reading the judgments, one is left with the impression that once the Company overcame its initial confusion and hostility to the expert opinion offered by SCH, the Report was transformed into the foundation on which the validity of the Company's claims rested. Initially, the Company claimed there was an "original" report, presumably more favorable to the Company ("Report One") and accused the Ministry of tampering with it, resulting in the report that was actually submitted to the Court ("Report Two"). The Company appears to believe such a report was less sympathetic to its claims. Report Two's final summation of the damages is identical to the Report discussed by the Court.

We have reviewed both Report One and Report Two as provided to us by the Company through the Department of Commerce and we are puzzled by the Company's position as both Reports are in essence the same. Furthermore, once they are analyzed in accordance with the requirements of Saudi law, they virtually yield the same results. We are unable to discern any real advantage given to the Company by Report One over Report Two.

As summarized in both Report One and Report Two, the Court asked SCH to review the documents offered by the parties to the dispute as well as the report of the Contract Consultant, BBV, to advise as to the causes for the suspension of work over all relevant periods and whether they are attributable to the Company or the Ministry. In addition, the Court requested SCH to offer its opinion as to whether the floods that occurred could have been expected by a contractor with the relevant experience. For its report, the Court authorized SCH to contact other official agencies such as the meteorological authority. It further requested SCH to submit its estimate of the actual cost incurred by the Company during the Contract's extension periods, and all direct damages resulting therefrom. SCH was required to submit its findings in a report to the Court. The Report was submitted and its findings were mostly rejected by the Court on ground explained elsewhere in this letter.

Report One and Report Two are practically identical. But as we have been provided with the two versions with each in a different language, thorough comparison is difficult to

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make. Nonetheless, in their methodology both Reports are similar, with Report Two containing what appears to be more detailed and rigorous discussions of some of the claims, leading to revisions, both upward and downward, of some of the amounts recommended.

Both Reports recommend compensation for the suspension periods, repairs of flood damages, additional insurance cost, delay penalty, delay in payments, and the additional cost of the performance bond. However, for the other categories (lost profit, foreign exchange losses, and legal costs), in both Reports SCH left to the Court the determination whether or not the Company is entitled in principle to the damages.

As far as we can determine, there is only one category discussed in Report One that is not covered in Report Two, namely, income tax liability. But as discussed in Report One, SCH did not reach a determination on its own but left it to the Court to determine the Company's eligibility for such damages in principle. It also shows that in accordance with the financial statements submitted by the Company, it was not liable for tax. Since the Company would not have been liable to taxation anyway, and as the Company did not include that item in its claims as discussed in the Court's judgments, this was not an issue of great concern for the Company.

While there were practically no differences in the general discussion of the claims in both Reports, the final amounts recommended by Report Two are somewhat different from those in Report One. The total of all damages are about SR 51.8 million in Report One and SR 46.6 in Report Two, a difference amounting to one million U.S. dollars or a variation of 10%. Although it is very difficult to understand the emotional outbursts surrounding these relatively insignificant differences, the difficulty is further compounded once it is recognized that the differences are even less pronounced if the comparison is made only with respect to claims that are not rejected in principle by Saudi law. These differences (elements of category A of Report Two and their equivalents in Report One) total SR 1.54 million, or US \$400,000.

Although we have accepted to review the Reports as submitted to us by the Company through the Department of Commerce, this should not be interpreted that we accept the various allegations made by the Company that two reports exist.

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c. Substantive Analysis

The jurisprudence of administrative law in Saudi Arabia is settled. The Board is vested with the power to award compensation for damages resulting from contractual defaults. This jurisdiction is fairly strict as it excludes claims based on other theories such as damages caused by unforeseeable circumstances. Once the court is satisfied that the basis of the claim is contractual, then it proceeds to analyze the three elements of contractual liability, namely breach, damages and the existence of a causal link between the breach and damages.

The lower Court divided the Company's claims into two broad categories a) compensation for the delay in the work and b) refund of the delay penalty imposed by the Ministry. For purposes of determining liability for the delays, the lower Court went through a lengthy discussion of the progress of the works to determine the cause of the delay. The lower Court held that the evidence showed that the Ministry was obligated to deliver the site and to supply the pipes and their accessories by certain dates which the Ministry had failed to meet. The Ministry's defense that the delay was caused by other suppliers and contractors was rejected by the lower Court. As the cause of the delay was neither unpredictable nor impossible to prevent, the Ministry was held responsible for the delay. Hence the element of breach was established.

The lower Court then turned to the determination of damages. The claims of the Company were submitted in several variants the highest of which was \$18.5 million. The final claims were somewhat less and consisted of the following elements:

	SR
i) damages for work suspension for 309 days [hereinafter referred to as Claim One]	25,787,690
ii) damages for flood repairs [hereinafter referred to as Claim Two]	2,132,412
iii) cost of additional insurance [hereinafter referred to as Claim Three]	888,648

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iv) cost of extension of the bond [hereinafter referred to as Claim Four]	57,629
v) refund of wrongful calculation of the delay penalty [hereinafter referred to as Claim Five]	1,957,339
vi) damages for delay in the payment of the monthly disbursements [hereinafter referred to as Claim Six]	11,939,261
vii) lost profits [hereinafter referred to as Claim Seven]	5,703,456
viii) exchange rate losses [hereinafter referred to as Claim Eight]	6,155,335
ix) legal cost [hereinafter referred to as Claim Nine]	5,625,000

which total SR 60,237,770.00 or approximately \$16.1 million.

The court then reviewed these claims systematically. First, the court summarized the recommendations of the Report submitted by SCH, which the Company, after initially challenging its validity, later endorsed. The Report divides the damages claimed into three categories. As described in the Second Judgment (which is identical to the description in Report Two), these are as follows:

A. Damages for periods during which work was suspended:

i) cost for 309 days	SR 25,238,189.08
minus value of the warehouse	SR 549,501.00
ii) cost of floods	SR 996,177.50
iii) additional bond cost	SR 57,628.64

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iv) mistake in the calculation of the delay penalty SR 1,975,339.23

B. Direct damages caused by the extension of the Contract:

i) cost of the delay in payment of monthly disbursements SR 7,822,215.00

C. Other damages claimed whose award is left to the Board:

i) lost profits SR 4,461,609.87

ii) foreign exchange losses SR 4,480,340.63

Although the Report classified damages in three categories, for purposes of analyzing their validity under Sharia law, these are in essence of two types, direct and consequential damages. With the exception of lost profit which is in the nature of consequential damages, all elements of the claim are theoretically direct damages. In following the analysis below, it should be kept in mind that Saudi laws flatly deny the award of consequential damages to any party, whether in administrative or other civil disputes. It is a deeply embedded principle in Islamic jurisprudence and it has not been subject to any serious challenge.

The lower Court, after reviewing the Report, declined to endorse it in full. Instead, the Court offered a detailed critique of its shortcomings. Specifically, the Court criticized the Report as going beyond direct damages, which would include only the additional cost incurred by the Company, such as salaries and wages, depreciation, maintenance and overhead. These would be calculated by evaluating the cost resulting from those parts of the labor force and equipment which actually remained idle as a direct result of the Ministry's failure to fulfill its commitments under the Contract (e.g., provision of the pipes) plus overhead. Instead the Report calculated the damages on the basis of the difference between the excess in actual costs over actual revenue for the relevant periods. This methodology is deeply flawed in the lower Court's opinion. The lower Court position is to take the whole Contract as an integral unit where profits and losses are arrived at only after its full completion. Once the Contract is treated as a unit, all revenue and expenditure could be analyzed to determine the

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profit and loss attributable to a given period during the Contract's execution. The variation in the progress of work and revenue for any given period is not necessarily a correct reflection of the damages suffered during that period. In this respect the lower Court noted that because of its methodological flaws, the Report did not evaluate damages incurred by the Company due to suspension of work because of stoppage during Ramadan and for lack of permits. This failure occurred because during the relevant periods revenue exceeded cost.

Similarly, the Court rejected the recommendations made by the Consultant, BBV, as also flawed (which is incidentally the same position taken by SCH in its evaluation of BBV recommendations). After carefully scrutinizing BBV's report, the Court found that the Consultant's methodology resulted in compensating for the same claim more than once. Hence the Court declined to accept BBV recommendations.

Because of these flaws, the lower Court declined to accept the Report's evaluation of damages in respect of Claims One, Two, Three and Four. The Court then went on to hold that it was persuaded that the Company did suffer damages during the suspension of work periods because of the Ministry's failure to deliver the pipes. It also held that the Company suffered damages due to suspension of work during Ramadan and other periods. Of the 309 days claimed by the Company, the Court excluded only 14 days, the period of the floods in Jidda, on contractual grounds. In addition, the lower Court held that the repair of damages to the works caused by "Excepted Risks," i.e., floods, is contractually the responsibility of the Ministry.

The Court, however, declined to accept the Report's calculations in full as the Court was persuaded that during the relevant period not all the Company's work force and equipment were idle. Thus, after this analysis, the Court decided that for the first four claims, the Company was entitled to 15% of the value of the installation part of the Contract in damages (SR 23,043,327.50).

As a rule, Saudi courts are reluctant to grant "lump-sum" damages. The courts are careful lest they award any amounts that may smack of consequential, indirect, or speculative damages. Thus the courts normally insist on the submission of dispositive evidence for every amount claimed in direct damages. In many disputes, this is well-nigh impossible. The Saudi courts would not accept internal

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documents nor the testimony of the litigant's employees to substantiate claims. Because of these and other rigorous standards for the admission of evidence, many plaintiffs simply fail to recover any damages even though the courts hold that they have been wronged. For many years the Board maintained this standard which effectively denied many private plaintiffs most if not all of the damages to which they were entitled.

Largely in response to that difficulty, the Board began to accept the notion of awarding damages in lump-sum aggregates that the judges conclude are the fairest amounts taking into account all circumstances surrounding the case. Thus after the lower Court concluded that the calculations of the Report were too flawed to be accepted, and recognizing the difficulty, if not outright impossibility, of the Company's ability to submit evidence that would measure to the Sharia exacting standards, the Court estimated fair compensation at 15% of the value of the relevant part of the Contract. While this estimate may strike the uninitiated as arbitrary, it actually is not. The extension of the time it took to complete the Contract is essentially stipulated at 309 days (the Company conceded this as indicated in Report Two and as gleaned from the judgments). The 295 days granted by the Court come close to an extension of time of around one-third the original period specified in the Contract. However, it is almost never the case that an extension in the time for the execution of any works increases the cost by an equal percentage. Furthermore, the Court was satisfied that not all the Company's work force and equipment were idle during the period of the Contract. In addition, the Court found contributory breach on the part of the Company. Those three factors account for the limitation of the damages paid for the periods of suspension from a theoretical 33% to 15% of the price of the Contract.

As to Claim Five, the Court held that the calculation of the delay penalty was wrong. It again requested the assistance of SCH, which sent the Court revised calculations of the amount to be refunded. The Court endorsed the new valuation and ordered the Ministry to refund SR1,761,995.20 to the Company.

Claim Six, which concerns cost of money, is inherently problematic for the Saudi courts. So long as the only proven loss is payment of interest on funds or its equivalent, the Saudi courts in accordance with Sharia principles would categorically decline to award damages.

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Although it found the Ministry at fault for failing to disburse payments to the Company on time, the lower Court indicated that the Company proof of damages for this claim as calculated by SCH were nothing but payment of interest or its equivalent. No Saudi court would ever award such damages.

Claim Seven is the typical consequential damages no Saudi court would award. The notion of "lost profit" is rejected in principle in the Sharia. The reasoning is complex but it is akin to the principles that bar the award of interest. As the lower Court indicated, "profit" is not inherent in capital; it could just as well lose money when invested. In addition, this claim is in the nature of a demand for compensation because of delay in payment, *i.e.*, interest, which is prohibited by law. Finally, the Court noted that the damages awarded were in dispute until settled as the Ministry did not acknowledge them and then simply refused to pay them.

The lower Court quickly disposed of Claim Eight concerning foreign exchange losses. As the Contract was specified in Saudi Riyals, the Court held that payment of obligations were to be made by the currency specified, not its value in another currency.

Finally, the lower Court addressed Claim Nine for legal cost. It should be noted at the outset that the Saudi courts rarely accept to award legal cost. In rare instances, when the defendant is held to have known that his conduct is wrongful and persisted in it, the courts may award legal cost which tend to be considerably less than what plaintiffs usually claim they paid. It is therefore not surprising that the lower Court rejected the Company's claim for legal cost.

The lower Court concluded by ordering the Ministry to reimburse the Company for the fees paid by SCH for its preparation of the Report in accordance with the Court's ruling in its Preliminary Judgment to hold the losing party liable for the cost of the Report.

In total, the Company was awarded SR 25.5 million.

d. The Appellate Judgment

As indicated above, the lower Court issued its First Judgment which was remanded by the Appellate Court. The lower Court issued the Second Judgment basically reaffirming its earlier ruling on the amount awarded for damages and expanding

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its holding. This Second Judgment was appealed again but the Appellate Court upheld the Judgment and further expanded its holding.

The Appellate Judgment basically reiterates the reasoning contained in the Second Judgment and expands it. The Appellate Court reasoned that the Ministry was at fault for causing the delays. Then the Appellate Court went on to endorse the lower Court's rejection of the Report as being flawed and the 15% award as well as the other damages were upheld.

The Appellate Court enunciated the relevant principles which govern payment of damages in administrative disputes. The Appellate Court asserted that only actual, certain damages directly caused by the administrative agency may be compensated for. It further held that a claimant is not entitled to full compensation even if the damages are actual and ascertainable if caused by the mutual fault of both parties, in which case each party would bear its respective percentage of the damages. Finally, the Appellate Court confirmed that only actual, direct damages are compensated for but not speculative or prospective ones.

Accordingly, the Appellate Court held that the Company is not entitled to some of its claims. This includes compensation for work stoppage due to floods, which is not the fault of the Ministry; lost profit which is illegitimate; foreign exchange currency and legal cost on similar ground to those advanced by the lower Court. In addition, the Appellate Court rejected the claim of the Company for compensation for the additional insurance cost (covering the period of suspension) on the ground that the Contract did not require the Company to do so.

In conclusion, the Appellate Court affirmed that the Company was entitled to damages for the other claims. The Appellate Court, however, insisted that the contributory fault of the Company must be factored into the determination of damages. It held that the Company was late in the start of the main pipe and failed to provide the work force and equipment on time. The Company was also late in supplying its portion of the pipes and their accessories as well as in the construction of the warehouse. The Appellate Court also noted that the work stoppage was never total at any given period allowing the Company to utilize its workers and equipment in the other parts of the project, all of which was located in one city.

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Taking all these factors into account, the Appellate Court ruled that the claims of the Company were greatly exaggerated and affirmed the amount of the damages awarded. In doing so, the Appellate Court extended the award to cover the Ministry delay in payment to the Company as well as the additional cost of the performance bond.

III. Conclusions

As mentioned above, the Harbert case is a typical administrative dispute and it raises no new or unusual jurisprudential issues. In fact, this case is not much different procedurally and substantively from the hundreds of cases handled and published by the Administrative Division. The lower Court handled the matter in the usual way of adjudicating administrative disputes. Apparently because of the changes in the by-laws of the Board in 1988, the case took longer than the period usual for the conclusion of this class of lawsuits. The Appellate Court took only a few weeks to render its opinion, both with respect to the First and Second Judgments.

There are, nonetheless, some unusual aspects to this particular piece of litigation. The case was finally ended in the Summer of 1992, roughly twelve years after the claim had arisen. Of those years, about seven years elapsed before the Company decided to pursue its claims before the Saudi courts. This is unusual as claimants are able to assess the necessity of resort to the courts within a much shorter period.

Another unusual feature in this case is the Company's palatable disrespect and contempt for the Saudi courts. All litigants at one time or another feel frustrated; but claimants normally stay away from actions or statements that a court of law may hold to be offensive. Specifically, as one can discern from the judgments, the Company advised the Saudi court that unless it ruled in accordance with the wishes of U.S. Congressmen, its ruling would be contrary to justice. It is actually surprising that the lower Court did not cite the Company and its lawyers for contempt of court; most other courts would have certainly done so.

Relatedly, the Company appeared both confused in handling its claims and rather oblivious to the danger of committing criminal offenses by the manner it dealt with the Report. Initially, the Company went on record of accusing a government agency of tampering with the Report, a libelous statement. Unless the Company was able to prove such

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tampering, its officers (and may be lawyers) could have been convicted and jailed.

In any event, the Company changed its position and requested the lower Court to endorse the Report. Yet, throughout, one discerns that the Company misunderstood the probative value of the Report and the role of SCH. Had the Company recognized that the mandate of SCH, as clearly reiterated in the Appellate Judgment and in the correspondence between the lower Court and SCH as provided to us by the Company through the Department of Commerce, was a technical one and did not go to the determination of fault nor to the question of whether it was entitled to damages in the first place, the Company may have been less enthusiastic about its endorsement of the Report. In addition, the Company, through its own lawyers, should have known that no lost profit is ever awardable under Saudi law (this is not much different from a U.S. court awarding the proceeds of a hit contract). Indeed, many Saudi lawyers would never consent to the inclusion of such a claim in their submissions to the local courts.

In the final analysis, however, it should be noted that while the Court rejected the Report on methodological grounds, the Court's ultimate award did not substantially differ from the recommendations of SCH. If the fairly obviously unwinnable claims are excluded (categories B and C of the Report) the amount awarded, which is SR 25.5 million, is not much less than those recommended by the Report, namely SR 27.7 million. Indeed, when it was strictly a question of technical expertise as in the case of mathematical calculations of the delay penalty, the Court had no hesitation about adopting the recommendation of SCH.

All in all, in our opinion, this is a reasonable Judgment and conforms to the standards of Saudi law and jurisprudence. The case was handled by three Islamic jurists in the lower Court and the judgment was reviewed by another three such jurists on appeal. The fact that a court does not accept the total claims of a plaintiff or automatically adopt the recommendations of outside experts is neither a surprise to those with the relevant experience nor is it a derogation of the court's fairness.

Finally, the issue of arbitration has been suggested in a number of letters I have received from Members of Congress, as well as by the Department of Commerce. I wish to emphasize that the Kingdom of Saudi Arabia, as a matter of principle and as required by law, does not submit itself to

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any form of arbitration in commercial disputes. All contracts by government agencies clearly specify jurisdiction of the Board. Disputes are resolved in the Kingdom's courts, according to Saudi laws. This matter is non-negotiable, and contractors are free to choose not to enter into contracts with Saudi government entities if they do not accept this.

Furthermore, arbitration, as a concept, is an option parties enter into to avoid bringing their dispute before a court. Arbitration is certainly not entered into to settle displeasure over the final decision of a court vested with jurisdiction. This view is universal, and not unique to the Kingdom. To agree to arbitrate a matter already adjudicated by courts vested with jurisdiction makes a mockery of the legal process. It also undermines the credibility of any legal system.

It is not unusual for disagreements to develop in contractual situations. This is certainly true in complicated construction jobs. It is also not unusual for one or both parties to a dispute not to be satisfied with the decisions rendered by courts. This is certainly the case in the Harbert matter, where Harbert feels that the Court's verdict falls short of its demands, and the Ministry of Agriculture and Water feels the final verdict was too generous to Harbert. This is the nature of commercial disputes, and that is why countries have laws and courts to uphold those laws.

Harbert signed a contract in the Kingdom which clearly establishes the venue and jurisdiction. A dispute arose, and Harbert filed suit in Saudi courts per the terms of its contract. The Court rendered its verdict and issued a judgment in favor of Harbert, which Harbert appealed. The decision was upheld, and the judgment subsequently paid in full. This matter is now closed.

On a personal note, I have had the privilege of living in Alabama for a number of years, during which time I met with and befriended a cross-section of Alabamians in business as well as social settings. I have found them to be very honorable, forthright people who conducted their business and personal relations in the highest manner of integrity. Mr. Harbert has leveled accusations not only against myself, but also against my staff, two distinguished members of my government's cabinet, and against the fairness and integrity

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of my nation's judges and legal system in a manner unbecoming of a gentleman from a distinguished Alabama family.

The Company entered into a contract governed by Saudi laws and was accorded due process according to these laws. A judgment was awarded and paid in full. The Government of the Kingdom of Saudi Arabia considers this matter closed and wishes Mr. Harbert and the Company success in future endeavors.

Sincerely,

Bandar bin Sultan bin Abdulaziz
Ambassador

BbSbA/aj

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