

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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| BASSAM Y. ALGHANIM, | : | |
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| Plaintiff, | : | Case No. 09-CIV-8098 (NRB) |
| v. | : | |
| | : | |
| | : | |
| KUTAYBA Y.ALGHANIM et al., | : | |
| | : | |
| | : | |
| Defendants. | : | |

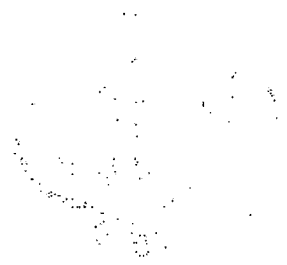
**DECLARATION OF DR. NASSER GHUNAIM AL ZAID IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE COMPLAINT**

I, Dr. Nasser Ghunaim Al Zaid, do hereby affirm and declare under the penalty of perjury as follows:

I. INTRODUCTION

1. I have been asked by Shearman and Sterling LLP, the legal representative acting on behalf of both Kutayba Y. Alghanim ("KYA") and Omar K. Alghanim ("OKA"), to provide an expert opinion regarding certain matters related to Kuwaiti Arbitration Law.

2. Specifically, I have been asked to provide my expert opinion on (1) whether the application of Kuwaiti choice of law rules would lead to the conclusion that Kuwaiti law should govern the Memorandum of Understanding (MOU) dated March 27, 2008 and the agreement dated March 12, 2008 (collectively, the "Agreements") entered into by Plaintiff and defendant KYA (together, the "Brothers"); (2) whether the arbitration clauses contained in the Agreements signed by the Brothers constitute valid and enforceable agreements to arbitrate; and (3) whether the Kuwaiti courts would consider that the dispute submitted before the US courts should be heard by way of arbitration before the arbitrator selected by the Brothers in the Agreements and would refer it to arbitration for resolution.



My Qualifications

3. I graduated from the University of Kuwait Law School in 1990. After graduation, I was able to pursue my graduate studies and I obtained the Masters Degree, followed by the Ph.D. Degree in Law from Cairo University in Egypt in 2004. I am a lawyer before the Court of Cassation and the Constitutional Supreme Court in the State of Kuwait.

4. I am presently the Secretary General of the Gulf Cooperation Council Commercial Arbitration Centre ("GCC Centre"), a position I have held since 2004. The GCC Centre was jointly established by the chambers of commerce of each of the Gulf States, including Kuwait, in 1993 and became fully operational in 1995. The GCC Centre is a diplomatic organization, whose arbitration jurisdiction covers all the GCC countries. As Secretary General, I am in charge of supervising arbitration applications referred to the Center, the appointment of arbitrators and panel umpires in the event parties to arbitration failed to agree on such appointment, the settlement of disputes related to the validity of appointing a certain arbitrator and challenge of an arbitrator, the requests for extensions of time, and, the recording and the filing of the issued awards.

5. Prior to my position as Secretary General of the GCC Centre, I worked for 14 years for the legal department, Contracts and Tenders Division, in a petro-chemical company in Kuwait, during which time I represented the company in various legal issues and participated in the preparation and wording of several contracts together with the relevant legal consultations and submissions. Throughout my career, I have participated in several cases as an arbitrator and rendered several arbitration awards.

6. Furthermore, I have submitted several and various work papers in scientific conferences on arbitration, and participated in the discussions of the United Nations Commission on International Trade Law (UNCITRAL) on the Model Law under the auspices of the United Nations and rendered advice and evaluation to several laws related to arbitration in some countries, and to the arbitration proceedings of certain arbitration centers.

7. I am an active member of the arbitration community in the region. In 2006, I assumed the position of the Secretary General of the Arab Board for International Arbitration (Paris). In 2006, I was appointed Vice President of the Arab European Board (Paris). Since 2004, I have been the Chief Auditor of GCC Law and Arbitration magazines. A copy of my CV is enclosed.

Statement of Independence

8. I affirm that this report contains my independent opinions of the issues under discussion at present, in my capacity as an expert in Kuwaiti Law. My compensation is not dependent on the opinions expressed or the outcome of the motion.

Sources referred to in drafting the opinion

9. In preparing this opinion, I have reviewed and referred to the (1) Agreements; (2) non-certified translations into Arabic of the complaint submitted by Plaintiff on 22 September 2009 to the United States District Court for the Southern District of New York (the "US Courts") and the amended complaint dated 23 October 2009 (the "Amended Complaint"); (3) Law No. 38 of the year 1980 on Civil and Commercial Procedure Code, as amended, together with the explanatory note of the law (a commentary on the law) (attached hereto as Exhibit 1); (4) Law No. 67 of the year 1980 regarding the Civil Law (attached hereto as Exhibit 2); (5) the Law No. 5 of the year 1961 on Legal Relations Containing A Foreign Element (attached hereto as Exhibit 3); (6) various rulings of the Kuwaiti Court of Cassation; and (7) jurisprudence and legal references, which are specialized in arbitration doctrine in general and in the State of Kuwait in particular.

In addition, I have reviewed the following actions brought by Plaintiff in Kuwaiti courts:

(a) six separate cases brought against Yusuf Ahmed Alghanim and Sons W.L.L. ("YAAS"), Alghanim Industries Company W.L.L. ("Alghanim Industries"), Kirby Building Systems, Gulf Trading & Refrigerating Co, Gulf Bank and Alamana Industries whereby BYA requested the court of urgent matters to appoint a custodian and to remove KYA from the management of the companies and the judgments rendered in connection therewith;

(b) two separate cases brought against KYA and, as the case may be, YAAS and Alghanim Industries, seeking the appointment of an expert to calculate BYA's shares in each company's 2007 and 2008 profits and to order KYA and each of the respective corporate defendants to jointly pay him such profits, and the judgment issued on November 2, 2009 dismissing the first case and referring Plaintiff to arbitration. Plaintiff has withdrawn the second case on November 2, 2009; and

(c) pleading filed by Plaintiff through his attorney Mishari Al Usaimi on October 13, 2009 before the Kuwaiti court, to establish Plaintiff's ownership of 50% of YAAS.

Arbitration in Kuwait

10. Kuwaiti law is construed on the basis of Shari'a law and Kuwaiti Civil Code. The Kuwaiti Civil Code mainly derives from the Egyptian Civil Code and from the French Civil Code which both remain, in particular the former, of great influence on the implementation of Kuwaiti law.

11. Arbitration in Kuwait is regulated by Chapter 12 of the Kuwaiti Code of Civil and Commercial Procedures (Procedural Code) enacted by Law No. 38 of the year 1980. Domestic commercial arbitration is regulated by Articles 173 to 188 of Chapter 12 whereas Articles 182 to 188 govern international commercial arbitration.

12. Arbitration is commonly used by Kuwaiti businesses as well as by foreign parties doing business in Kuwait to settle their disputes. Recourse to arbitration with a Kuwaiti party and/or in Kuwait is notably reinforced by the fact that the State of Kuwait is one of the signatory countries to the 1958 New York Convention regarding the Recognition and Enforcement of Foreign Arbitration Awards, and it adopted the necessary laws to implement the foreign arbitration awards in Kuwait. In addition, Kuwait ratified the 1956 Washington Convention regarding the settlement of investment disputes between countries and foreign countries citizens therein.

Statement of Facts

13. I have assumed the accuracy of the facts that are submitted in the Agreements and the Amended Complaint. After reviewing these documents, I note that the following facts are of interest for the preparation of this opinion. BYA and KYA are both Kuwaiti citizens. (Am. Compl. ¶¶ 22-23). BYA and KYA are embroiled in an ongoing family dispute in Kuwait over the division of their jointly-held businesses and assets. (Am. Compl. ¶ 42). According to the Amended Complaint, the family business is comprised of several leading Kuwaiti companies, including, for example, Alghanim Industries and YAAS, both of which were recently added as defendants in the action before the US Courts. (Am. Compl. ¶¶ 26-27; 33-34). In or around 2008, the Brothers decided to divide the family businesses and assets. (Am. Compl. ¶ 36). BYA and KYA first entered into the March 12 Agreement that provided for the division of their assets. (Am. Compl. ¶ 38). Shortly thereafter, the parties agreed to the MOU. (Am. Compl. ¶ 38). The MOU states that "[t]his agreement integrates, explains and provides further detail to the two agreements we signed on March 12, 2008." (MOU, first paragraph of the Preamble). The subject matter of the Agreements concerned the general rights and obligations of the Brothers vis-à-vis all of their jointly-owned business interests and personal assets. Under the terms of the Agreements, the parties agreed to the dissolution of partnership and division of assets between both of them at agreed rates. (See MOU, Preamble ("Further to our discussions, we, Kutayba Y. Alghanim ('KYA') and Bassam Y. Alghanim ('BYA') set forth below our agreement

with respect to the termination of our partnership and separation of our shared and respective assets.”)). Both Agreements were signed before His Highness Sheikh Nasser Mohammed al Ahmed al Jaber Al Sabah, the Prime Minister of Kuwait, who served as witness.

14. Article 7 of the March 12 Agreement stipulates as follows:

“Should any dispute arise in the future between the two Parties, the final advice, opinion and decision relating thereto will be issued by his highness Sheikh Nasser Al Mohamed Al Ahmed Al Jaber Al Sabah.”

15. The MOU was made in 15 articles, and Article (15) of which reads as follows:

“Any dispute arising in the future between us related to the subject matter of this agreement shall be finally determined by H. H. Sheikh Nasser Al Mohammad al-Ahmad al-Jaber Al-Sabah.”

16. The substance of the present dispute before the United States District Court for the Southern District of New York concerns an alleged conspiracy involving KYA, OKA and others to gain an unfair advantage in negotiations and legal proceedings brought by BYA regarding the division of the businesses and assets. (Am. Compl. ¶ 1).

17. Also, I have been told by Shearman & Sterling that I could assume that the following facts were accurate and should be taken into account in the preparation of this opinion:

- BYA was the chairman and managing director of Gulf Bank when the Agreements were signed;
- KYA was the chairman and OKA the chief executive officer of Alghanim Industries when the Agreements were signed; and
- The Agreements were negotiated and signed in Kuwait.

II. LEGAL ISSUES

First Question: Would the application of Kuwaiti choice of law rules lead to the conclusion that Kuwaiti law should govern the Agreements?

18. The general principle under Article 23 of the Civil and Commercial Procedure Code is that Kuwaiti courts have jurisdiction with respect to lawsuits filed against Kuwaiti citizens, even if their domiciles were outside of the State of Kuwait. The aforementioned article provides that “Kuwait courts shall have jurisdiction over the lawsuits that are filed against the Kuwaiti citizen, as well as over lawsuits filed against foreigners whose domicile or place of residence is within the State of Kuwait, except for real estate lawsuits that are related to a real property situated outside of Kuwait”. (Ex. 1, Art. 23 of the Civil and Commercial Procedure Code).

19. The explanatory note to the above mentioned Article 23 states that the Kuwaiti courts have jurisdiction with respect to lawsuits filed against Kuwaiti citizens that relate to personal status or real estate (whether civil or commercial lawsuits) irrespective of whether their domicile or places of residence were usually in the State of Kuwait, or of whether they had neither domicile nor place of residence therein, or irrespective of whether the plaintiff is a Kuwaiti citizen or a foreigner, residing or living in the State of Kuwait or overseas. (Ex. 4, explanatory note to Art. 23).

20. Furthermore, the Kuwaiti Court of Cassation states that: “According to Article 23 of the Civil and Commercial Procedure Code, the Kuwaiti courts shall have jurisdiction over the lawsuits that are filed against Kuwaiti nationals, whether of personal status, pecuniary, civil or commercial nature, except the real estate lawsuits that are related to a real property outside the State of Kuwait, where Kuwait’s courts of law shall have no jurisdiction. Therefore the defendant can be a Kuwaiti citizen or

a foreigner in Kuwait who maintains a principal or chosen domicile or a temporary residence....” (See Ex. 5, Court of Cassation Decision No. 384/1997, June 28, 1998 and Ex. 6, Court of Cassation Decision No. 244 & 248/2004, December 5, 2005).

21. Articles 59 to 65 of Law No. 5 of the year 1961 on Legal Relations Containing A Foreign Element apply to contracts in general. Article 59 sets forth an analysis for the determination of the applicable law. In this respect, it is provided that in case the parties have not chosen a governing law to the Agreements or no circumstances point to a specific law, the law of the state of common domicile of the parties shall apply or absent such common domicile, the law of the place where the agreement was concluded.¹ (See Ex. 3, Art. 59 of Law No. 5/1961).

22. The explanatory note to Article 59 explains that among the circumstances that should be looked at to determine if they point to a specific law are (i) the choice by the parties of the state courts to settle their disputes (ii) the reference by the parties to practices that are specific to a certain law or (iii) the reference of the parties to examples or form that obviously relate to a specific law. In addition, such note indicates that it is for the judge to interpret the will of the parties out of all circumstances. The explanatory note continues to state that absent such circumstances, the law provides that the law of common domicile of the parties would apply failing which the law where the agreement was concluded would apply. (Ex. 7, explanatory note to Art. 59 of Law No. 5/1961).

23. The Agreements are silent as to the governing law. With respect to the existence of circumstances that point to a specific law, I note that the parties have expressly granted jurisdiction in the March 12 Agreement in case of “any dispute aris[ing] in the future between the two Parties” and, in the MOU, in case of “any dispute arising in the future between [the Brothers] related to the subject matter of the agreement”, to His Highness Sheikh Nasser Mohammed al Ahmed al Jaber Al Sabah, the Prime Minister of the State of Kuwait.

24. In my opinion, the above mentioned provisions constitute, under Article 59, a circumstance that clearly points to the application of Kuwaiti law. The choice of the Prime Minister of Kuwait to settle the parties’ dispute can with no doubt be interpreted as an implied intention of the parties to choose Kuwaiti law to govern their disputes under the Agreement.

25. In addition, the judge could also consider as circumstances pointing to Kuwaiti law the facts that the Brothers are (i) Kuwaiti citizens (see Ex. 8, Court of Cassation Decision No. 130/1998 & No. 297/1999, February 19, 2001); and (ii) both prominent businessmen in Kuwait managing two of the leading companies in Kuwait (Gulf Bank and Alghanim Industries).

26. In any event, should the judge find that the above mentioned circumstances do not suffice to decide that Kuwaiti law governs the Agreements (which I doubt he would), the following point to look at, pursuant to Article 59, is the common domicile of the parties. Domicile, in accordance with the provision of Article 13 of the Civil and Commercial Procedure Code, is the place where the person usually lives. A person may maintain simultaneously more than one domicile. (Ex. 9, Court of Cassation Decision No. 114/2000, April 7, 2001). In this respect, as both the Brothers are prominent Kuwaiti businessmen managing some of the largest companies in Kuwait, I would assume that the Brothers’ domicile is in Kuwait. In any event, I know of no facts that would show that the Brothers do not have a domicile in Kuwait.

¹ Article 59 of Law No. 5 of the year 1961 provides that “[a] contract, in terms of the substantive conditions required for it to be valid and the effects resulting therefrom, shall be governed by the laws of the country in which the common domicile of the contracting parties exists if they have the same domicile, unless the contracting parties agree or unless it is established from the circumstances that another law is intended to be applied. If the contracting parties had different domiciles, then the contract shall be governed by the laws of the country in which the contract is entered into.”

27. Finally, as the Agreements were signed in the office of, and were printed on the letterheads of, His Highness Sheikh Nasser Mohammed al Ahmed al Jaber Al Sabah, the Prime Minister of the State of Kuwait, the final element of Article 59 is satisfied and determines that Kuwaiti law applies to the Agreements. (See Ex. 10, Court of Cassation Decision No. 10/2002, October 19, 2003 and Ex. 8, Court of Cassation Decision No. 130/1998 & No. 297/1999, February 19, 2001).

28. Therefore, in view of the above, Kuwaiti law is, with no doubt, the law governing the Agreements.

Second Question: Do the arbitration agreements contained in the Agreements signed by the Brothers constitute valid and enforceable agreements to arbitrate?

29. It is acknowledged that party-autonomy is the basis of arbitration, as it empowers an arbitrator or panel of arbitrators (who, unlike a court, would not ordinarily have jurisdiction over disputes) to settle disputes that arise between parties to an arbitration agreement. (See Ex. 11, Court of Cassation Decision No. 419/1996, June 23, 1997).

30- In this regard, the Kuwaiti Cassation Court (in Decision No. 328/1997 (Commercial Division) dated February 15, 1998, Ex.12) laid down two important principles:

Firstly, courts shall have no jurisdiction over hearing the disputes agreed to be arbitrated.

Secondly, the parties may agree to litigate rather than arbitrate after they concluded the arbitration agreement.

31. It should be considered that an agreement to arbitrate is a contract like any other contract and therefore should fulfill the conditions in relation to the form and substance of a contract (See Ex. 13, Art. 32 of the Civil Code), with additional requirements as set forth in Article 173 of the Civil and Commercial Procedure Code. An arbitration agreement to be valid must be in writing; should be based on mutual consent; the parties must have the capacity to enter into the agreement; the subject matter of the contract should be lawful; and the arbitration may not cover matters not amenable to settlement between the parties.²

32. The arbitration agreements do fulfill the above mentioned requirements. They are in writing, and they express a consent of the parties, which was witnessed by His Highness Sheikh Nasser Mohammed al Ahmed al Jaber Al Sabah. In addition, I assume that the Brothers had full capacity to conclude an arbitration agreement, as I know of no facts that would show that the Brothers (each of whom managed large companies) lacked the capacity to enter into the arbitration agreements. The subject matter of the arbitration agreements is any dispute arising between the Brothers that relates to the subject matter of the Agreements, an ordinary and lawful purpose. Finally, the subject matter of the Agreements themselves (that is, the division of assets between the Brothers and the implementation of such division) is a commercial matter that may be settled directly between the Brothers.

33. In addition, Article 173 paragraph 4 also provides that "The subject matter of the dispute shall be specified in the agreement on arbitration or during the pleading." (See Ex. 1, Art. 173 of the Civil and Commercial Procedure Code). In this regard, the subject matter of the dispute is defined in the arbitration agreement contained in the MOU (which "integrates, explains and provides further detail" to the March 12 Agreement) as being any dispute that arises in the future between the parties that relates to the subject matter of the Agreements and would satisfy this requirement. In addition, the subject matter of a specific dispute that would actually arise under the Agreements could, pursuant to Article 173, be specified during the pleadings.

² For example, a criminal case brought against someone may not be reached by a compromising conciliation.

34. Based on the foregoing, it is evident that both agreements (article 7 of the March 12 Agreement and article 15 of the MOU) contain an agreement to submit to the binding and final decision of His Highness Sheikh Nasser Mohammed al Ahmed al Jaber Al Sabah, Prime Minister of the State of Kuwait, any dispute that might arise between them in the future. Articles 7 and 15 are worded in a way that does not give rise to any doubt with respect to both parties' intent to refer any dispute that might arise between them to arbitration.

35. Should a dispute arise between both parties to both agreements, and such dispute was referred to the state courts, and one of the parties raised the existence of the arbitration clause, the courts would consider that they have no jurisdiction to hear the case, in accordance with the provisions of the law and the principle of party autonomy and parties' will to settle their dispute through arbitration.³

36. Consequently, the arbitration clauses contained in both agreements are valid and enforceable. Therefore, the courts would deny jurisdiction and refer a dispute between the parties to the agreed arbitration entity.

Third Question: Would the Kuwaiti courts consider that the dispute submitted before the US courts be submitted to arbitration before the arbitrator selected by the Brothers in the Agreements and refer it to arbitration for resolution?

37. It is acknowledged, as per Article 173 of the Civil and Commercial Procedure Code, that agreement on arbitration may be made in all disputes arising out of implementation of a contract and that courts shall have no jurisdiction over hearing the disputes agreed to be arbitrated. This implies that arbitration is a method of dispute resolution based on party autonomy. (See Ex. 1, Art 173 of the Civil and Commercial Procedure Code).

39. The above mentioned article was upheld by the Court of Cassation when it held that "agreements to arbitrate may be made regarding any disputes which arise out of the implementation of a contract in which case state courts cannot hear such disputes." (Ex. 14, Court of Cassation, Decision No. 132/1996, November 4, 1996).

40. In this respect, it is worth noting that the Agreements contain arbitration agreements that provide for very broad terms. This, in my opinion, implies the parties' intent not to limit the arbitration agreements to very narrow and specific disputes so long as they relate to the subject matter of the Agreements. Indeed, the arbitration agreements provide "Should **any dispute** arise in the future between the two Parties, the final advice, opinion and decision relating thereto will be issued by his highness Sheikh Nasser Al Mohamed Al Ahmed Al Jaber Al Sabah" (Article 7 of the March 12 Agreement) (emphasis added) and "**any dispute** arising in the future between [the parties] **related to the subject matter of this agreement**, shall be finally determined by H.H. Sheikh Nasser Al Mohammad Al Ahmad Al Jaber Al Sabah." (Article 15 of the MOU) (emphasis added).

41. In order for the courts to stay proceedings and refer the dispute to arbitration as provided by the parties, they have to establish that such dispute falls within the scope of the arbitration agreements that are agreed upon by the parties.

42. In this regard, as mentioned above in (paragraph 13), the subject matter of the Agreements is the division of the family businesses and assets between the Brothers and the implementation of such division.

³ It is interesting to note that, under Kuwaiti law, the courts would not raise the issue of existence and validity of an arbitration agreement *ex officio*. It is for the interested party to raise its existence and to raise the issue of lack of jurisdiction by the courts, in which case the court shall have no alternative but to respond to such argument. (Ex. 12, Court of Cassation No. 328/1997, February 15, 1998).

43. The connection between the present dispute and the subject matter of the arbitration agreements is highlighted by Plaintiff's repetitive statements throughout the Amended Complaint that the violations committed by the defendants were aimed at undermining his position in relation to the division of the Bothers' assets, which is the subject matter of the Agreements. (See Am. Compl. ¶¶ 1; 13-14; 113).

44. In addition, the Agreements are referred to in several paragraphs of the Amended Complaint (see Am. Compl. ¶¶ 38; 40; 42) and the violations that are claimed by the Plaintiff are closely linked to the performance of the obligations that are contained in the Agreements and are within the subject matter thereof. Therefore, it is not conceivable to decide on the dispute raised by the Amended Complaint without referring to the Agreements.

45. Furthermore, Plaintiff claims for damages that he evaluates at "many hundreds of millions of dollars". (Am. Compl. ¶ 113). Such claim is the subject matter of the dispute that is submitted before your courts by Plaintiff. It is founded on the main argument that the defendant's alleged violations have enabled KYA to "illegally maintain control over the brothers' joint assets, parry all of his efforts to obtain his assets and income [...], wrongfully barring Plaintiff from the use and enjoyment of his assets [...]" (Am. Compl. ¶ 113).

46. A claim based on the allegation that due to the defendants' wrongdoing, he was not in a position to implement the division of assets would fall within the arbitration agreements and is to be heard by arbitration in accordance with the parties' agreement. This statement has been made by the Court of Cassation which held that the claim on the merit is the one that implies the findings of the reasons of the dispute and obligations of the parties towards each other and that it shall not fall under the jurisdiction of state courts where an arbitration agreement exists. (Ex. 15, Court of Cassation Decision No. 690/2004, March 19, 2005).

47. Therefore, Plaintiff, by claiming such damages before state courts has not chosen the right forum since the claim for damages is connected to the rights and obligations that arise under the Agreements, and its settlement of Plaintiff's claims would imply the review of a larger but related dispute that was agreed by the parties to be resolved by arbitration. In view of this, state courts could not hear the dispute that is submitted by Plaintiff before your courts.

48. Finally, I note that a judge deciding whether or not damages should be granted must look into the fault alleged and the damages claimed and determine whether there is a justifiable relationship between the fault and the damages. Therefore, any assessment of the damages demanded by Plaintiff in the Amended Complaint would require review of the Brothers' underlying dispute relating to the division and ownership of assets, which in turn is equivalent to looking into the subject matter of the Agreements.

49. In view of the above, whereas the Amended Complaint relates to a commercial dispute which both parties had agreed to settle, as per Articles 7 of the March 12 Agreement and article 15 of the MOU, and whereas it is stipulated that the settlement of any future disputes between the parties related to the subject matter of the Agreements shall be finally decided by arbitration by His Highness Sheikh Nasser Mohammad al Ahmad al Jaber Al Sabah, Prime Minister of the State of Kuwait and whereas the subject matter of the Amended Complaint is directly related to the subject matter of the Agreements, a Kuwaiti court should decide that it does not have jurisdiction over the dispute that is submitted before your Court by Plaintiff since it should be settled through arbitration.

50. I note that in addition to KYA, Plaintiff filed the Amended Complaint against OKA, Alghanim Industries, YAAS and Waleed Moubarak (collectively, the "Additional Defendants"). The presence of the Additional Defendants that are not party to the Agreements raises the question as to whether claims brought against them could also be settled through arbitration.

51. Each of the defendants is closely connected to KYA. OKA is the eldest son of KYA and the chief executive officer of Alghanim Industries and YAAS, (Am. Compl. ¶¶ 24; 36), Alghanim Industries is a company whose chairman is KYA, (Am. Compl. ¶ 26), and YAAS is another company whose chairman is KYA. (Am. Compl. ¶ 27). Waleed Moubarak is legal counsel to KYA and OKA, Alghanim Industries and YAAS. (Am. Compl. ¶ 28).

52. Such individual and entities have clearly been affected by the implementation of the Agreements whether because they were subject to the division (Alghanim Industries and YAAS) or because they are involved in the management of such entities (OKA and Waleed Moubarak).

53. In addition, the Amended Complaint alleges that they all acted together for the common purpose of thwarting the implementation of the Agreements. (Am. Compl. ¶ 83). According to Plaintiff, the fact that the defendants "acted in concert" means that "each was the agent of the other and each is responsible for all actions of the others in furtherance of their conspiracy." (Am. Compl. ¶ 29).

54. Whereas the "Additional Defendants" are either companies that are the subject matter of the Agreements or individuals who are alleged to have assisted KYA in a purported conspiracy to deprive Plaintiff of his rights under the Agreements, and the claims against the Additional Defendants are directly related to and dependent on the claims asserted against KYA, a Kuwaiti court should decide that it does not have jurisdiction over the claims against the Additional Defendants and that they too should be settled through arbitration.

III. SUMMARY OF CONCLUSIONS

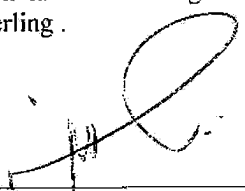
- 1- Kuwaiti law shall be the prevailing law to be applied to the Agreements.
- 2- The arbitration agreements are valid and enforceable.
- 3- If the dispute submitted before the US Courts was submitted before Kuwaiti courts, the latter should refer it to arbitration for resolution.

I conclude this opinion by hoping that a conciliatory arrangement is reached between the Brothers and that this opinion shall lead to the truth and shall be impartial and shall serve justice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Note: the documents relating to the articles and precedent of Kuwaiti law mentioning in the declaration were delivered in Arabic and translated by Shearman and Sterling.

Executed on 21 November 2009 in Kuwait City, Kuwait.


Dr. Nasser Ghunaim Al-Zaid

21/11/2009

Curriculum Vitae

Personal Information:

Name: Dr. Nasser Ghunaim Edham Ghunaim Al Zaid

Nationality: Kuwaiti

Marital Status: Married

DOB: 08/05/1968

Mobile: +973 39339668

Mobile: +965 66910900

Fax: +965 25646146

Education

B.A. from University of Kuwait Law School – Kuwait, 1990

M.A. in Public and Criminal Law from Tanta University – Egypt, 1998

Ph.D. in Law from Cairo University – Egypt, 2004

Current Position:

Secretary General of the Gulf Cooperation Council (GCC) Commercial Arbitration Centre – Kingdom of Bahrain, since 2004.

Practical Experience:

- 1. Admitted to practice before the Court of Cassation and the Constitutional Supreme Court of Kuwait.**
- 2. 14 years of work experience at the legal department, Contracts and Tenders Division, in a petro-chemical company (PIC) – Kuwait.**
- 3. Teaching of Law (Commercial) at Public Authority for Applied Education – Kuwait.**
- 4. Legal consult office of Mayor - municipality Kuwait.**
- 5. Legal consult office of the Minister of Oil - Kuwait.**
- 6. Supervision of the arbitration cases for the Center for Commercial Arbitration of the Gulf Cooperation Council (Bahrain).**
- 7. Participation in the discussions of the UNCITRAL model law.**
- 8. Discussion of two master researches in 2009 on the topics of (1) the state responsibility on administrative acts and (2) the parliament supervision methods for the protection of public property.**

Memberships in Professional Commissions

- 1- Chief Auditor of the GCC Law and Arbitration Magazines, since 2004**
- 2- Vice President of the Arab Association for International Arbitration – Paris, since 2006**
- 3- Vice President of the Arab European Board – Paris, since 2006**
- 4- Secret Secretary for Association Euro-Arabia DE L' Arbitrage International – Paris, since 2006**
- 5- Member of the World Council of Arbitration – Qatar, since 2008**