

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Gladys Bilicke (United States) v. Germany, and Gladys Bilicke, Individually and
as Guardian of the Estate of Carl Archibald Bilicke, and Others (United States)
v. Germany**

24 September 1924

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Survey receiving a salary of \$2,000 per annum plus an allowance of \$2.50 per day in lieu of subsistence while on active field duty. He had a most enviable record, had been especially commended by the Secretary of Commerce for distinguished services, was strong, active, and ambitious, and his prospects for advancement were bright. At the time of his death he was en route to Glasgow, Scotland, to take up advanced study in the University of Glasgow in furtherance of his life's work.

While at the time of his death the deceased was not contributing to the support of his parents, the record affirmatively indicates that he was definitely planning to care for them in their old age and equipping himself to that end. His brother and sister, both married, with others dependent on them, were not and are not in a position to care for their parents, now advanced in years. That a great loss was sustained in the death of James B. Miller there can be no doubt. While the evidence of pecuniary loss cognizable under the law is somewhat meager, the facts stated and the justifiable inferences therefrom support a substantial award.

The deceased had with him personal property of the value of \$3,650 which was lost.

Applying the principles and rules heretofore announced in the decisions of this Commission to the facts as disclosed by the record, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of (1) Thomas C. Miller and Emma J. Miller, his wife, jointly, the sum of fifteen thousand dollars (\$15,000.00) with interest thereon at the rate of five per cent per annum from November 1, 1923, and (2) Thomas C. Miller as Administrator of the Estate of James B. Miller, deceased, the sum of three thousand six hundred fifty dollars (\$3,650.00) with interest thereon at the rate of five per cent per annum from May 7, 1915.

Done at Washington September 19, 1924.

Edwin B. PARKER
Umpire

GLADYS BILICKE (UNITED STATES)
v. GERMANY

GLADYS BILICKE, INDIVIDUALLY AND AS GUARDIAN OF THE
ESTATE OF CARL ARCHIBALD BILICKE, AND OTHERS (UNITED
STATES) *v.* GERMANY

(September 24, 1924, pp. 435-438.)

DAMAGES: PERSONAL INJURIES; IN DEATH CASES: ACTUAL, ANTICIPATED FINANCIAL CONTRIBUTIONS, PERSONAL SERVICES.—EVIDENCE: CERTIFICATE. Claims for losses suffered by wife and children of *Lusitania* victim. Application of rules announced in *Lusitania* Opinion, see p. 32 *supra*, and in other decisions. Evidence: physicians certificate. *Held* that in death cases Commission empowered to make awards for loss of actual or probable contributions, which were fruits of personal efforts of decedent, not for loss of such contributions derived as income from decedent's estate, which on his death vested in claimants and yields to them same income as it yielded to decedent during life. Damages allowed on behalf of (1) claimant

in first case for personal injuries, (2) claimants in second case, a.o. for loss by children of care and supervision of father.

PARKER, *Umpire*, rendered the decision of the Commission.

The two cases numbered and styled as above¹ have been considered and will be disposed of together. They are before the Umpire for decision on a certificate of the two National Commissioners^a certifying their disagreement.

It appears from the records that Albert Clay Bilicke, then nearly 54 years of age, with his wife, Gladys Bilicke (a claimant herein), then 49 years of age, were passengers on the *Lusitania*. The former was lost. The latter was rescued, suffering from shock and exposure. They had been married about fifteen years. The deceased left surviving him, besides his widow, two sons and one daughter, Albert Constant, then 13 years of age, Nancy Caroline, then 11½ years of age, and Carl Archibald, then 8 years of age. The deceased and all of the claimants were born and have ever remained American nationals. The daughter married Henry de Roulet, also an American national, on July 17, 1923.

When the *Lusitania* went down Mrs. Bilicke was thrown into the water, where she remained for some time, but was finally rescued. Her experiences at and immediately following the wreck and for several days thereafter were most distressing. While she sustained several abrasions on her head and contusions on her body, these were of comparatively small moment. The testimony in the record is practically conclusive that she suffered almost complete nervous prostration as a direct result of the shock and exposure. This neurasthenic condition, which is real, persists, notwithstanding years of careful nursing and the best scientific advice. Several physicians of high standing who have treated her certify in the strongest terms that her injuries are permanent and in all probability she will never recover her former mental and nervous poise.

The deceased, Albert Clay Bilicke, had long been actively engaged in building, real estate, and hotel ventures in Los Angeles, California. The record discloses that on July 1, 1891, his net worth was only slightly in excess of \$16,000. His books disclose that his accumulations grew steadily until on his death his estate was conservatively valued at \$2,706,864. It consisted principally of California properties and securities and substantial real-estate holdings in Kansas City, Missouri. This estate was created through the exercise of the industry and sound business judgment of the deceased. For years prior to his death the personal expenditures of the deceased and the members of his family and the cost of maintaining their domestic establishments ranged from approximately \$35,000 to \$68,000 per annum.

There can be no doubt but that at the time of his death the deceased was active in the management of his properties and through his personal efforts was constantly contributing to the support and maintenance of his family and increasing the estate which they should ultimately inherit. It may be fairly inferred, however, from the record that for several years prior to his death the deceased had devoted himself less intensively to his business affairs and more to travel and other recreational pastimes, being to a greater extent than formerly content with the income from his already large properties. His books

¹ Original report: United States of America on behalf of Gladys Bilicke, Claimant, *v.* Germany, Docket No. 226; United States of America on behalf of Gladys Bilicke, individually and as Guardian of the Estate of Carl Archibald Bilicke, and Albert Constant Bilicke and Nancy Bilicke de Roulet, Claimants, *v.* Germany, Docket No. 272.

^a Dated September 23, 1924.

show a decrease in his net worth on December 31, 1913, from the same date of 1912 and a still further decrease on December 31, 1914, while his estate as of May 7, 1915, the date of his death, was valued at \$2,706,000 as against \$2,316,000 on December 31, 1912.

Under the terms of the will of the deceased the widow received a cash legacy of \$50,000 for distribution to friends and charities and the deceased's sister (not a claimant herein) a cash legacy of \$10,000, and the remainder he bequeathed one-third to the widow and two-ninths to each of his three children. These legacies of California properties are held by a family holding corporation, the gross annual income of which, generally speaking, has steadily increased since the death of the deceased, and the net annual income from it, with three exceptions, has been in excess of the deceased's net income for several years prior to his death. After paying the California State inheritance taxes and all other expenses, the net worth of the properties bequeathed by the deceased to the claimants and now held by them is somewhat in excess of their value at the time of his death.

The measure of the awards which this Commission is empowered to make in death cases is, not the value of a life, but the loss to claimants resulting from a death so far only as such losses are susceptible of being measured by pecuniary standards. To the extent that contributions by deceased to claimants (1) made during his life, and (2) those which would probably have been made but for Germany's act causing his death, were the fruits of the personal efforts of the deceased whose producing power was destroyed by death, the claimants have suffered pecuniary damages, which Germany is obligated to pay. But to the extent that such actual or probable contributions were derived as income from the estate of deceased which vested in the claimants on his death and yielded to them the same income as it yielded to him during his life, the claimants have suffered no pecuniary damages (*Pym v. G. N. Ry. Co.*, 4 Best & Smith's Reports, 396; *S. A. & A. P. Ry. Co. v. Long*, 87 Tex. Sup. Ct. Repts.).

The children of deceased, of tender years at the time of his death, have sustained pecuniary loss in being deprived of the care and supervision of a father of unusually strong character and sound judgment.

In neither case is any claim made for the value of personal property lost at sea.

Consolidating these two cases, the one for personal injuries suffered by Mrs. Bilicke, the other for pecuniary damages sustained by the claimants in the death of Mr. Bilicke, and applying the rules announced in the *Lusitania* Opinion and in the other decisions of this Commission to the facts as disclosed by the records, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of (1) Gladys Bilicke individually the sum of fifty thousand dollars (\$50,000.00), (2) Albert Constant Bilicke the sum of thirty thousand dollars (\$30,000.00), (3) Nancy Bilicke de Roulet the sum of thirty thousand dollars (\$30,000.00), and (4) Gladys Bilicke as Guardian of the Estate of Carl Archibald Bilicke the sum of thirty thousand dollars (\$30,000.00), with interest on each of said sums at the rate of five per cent per annum from November 1, 1923.

Done at Washington September 24, 1924.

Edwin B. PARKER
Umpire
