REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Standard Oil Company of New York (United States) v. Germany, Sun Oil Company (United States) v. Germany, and Pierce Oil Company (United States) v. Germany

21 April 1926

VOLUME VII pp. 301-308

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Claimant	Proportionate share	Net hull loss	Stores, etc.	Total award
William J. Quillin	11/128	$8,168.26	$155.17	$8,323.43
Oscar Bell	1/128	742.56	14.11	756.67
John W. Callaway	1/64	1,485.13	28.20	1,513.33
Annie S. Carey	1/64	1,485.13	28.20	1,513.33
James G. Conwell	1/64	1,485.13	28.20	1,513.33
Mary S. Coulbourn, Trustee of Joseph N. Coulbourn	1/64	1,485.13	28.20	1,513.33
A. D. Cummins	8/64	11,881.06	225.67	12,106.73
Alverda Elsey	1/64	1,485.13	28.20	1,513.33
S. J. Furniss	1/64	1,485.13	28.20	1,513.33
Harlan E. Goodell	1/64	1,485.13	28.20	1,513.33
Ethel Hastings	2/64	2,970.26	56.42	3,026.68
C. L. Horsey	1/128	742.56	14.11	756.67
Charles M. Kelley	1/64	1,485.13	28.20	1,513.33
S. Crowley Loveland	1/64	1,485.13	28.20	1,513.33
Francis J. McDonald	4/64	5,940.52	112.83	6,053.35
William Martino	1/64	1,485.13	28.20	1,513.33
Jonathan May & Sons	8/64	11,881.06	225.67	12,106.73
C. W. Riggin	1/64	1,485.13	28.20	1,513.33
F. H. Small	1/128	742.56	14.11	756.67
John Sullivan	1/64	1,485.13	28.20	1,513.33
Edward G. Taulane	2/64	2,970.26	56.42	3,026.68
George Taulane	2/64	2,970.26	56.42	3,026.68
Lewis B. Taulane	2/64	2,970.26	56.42	3,026.68
Herbert L. Black	1/64	1,485.13	28.20	1,513.33
Harold G. Foss	1/64	1,485.13	28.20	1,513.33
Arthur D. Foster	1/64	1,485.13	28.20	1,513.33
Joseph O'Brien	1/64	1,485.13	28.20	1,513.33
David Baird Company	1/64	1,485.13	28.20	1,513.33
TOTAL	52/64	77,226.83	1,466.75	78,693.58

Done at Washington April 21, 1926.

Edwin B. PARKER
Umpire

STANDARD OIL COMPANY OF NEW YORK (UNITED STATES) *v.* GERMANY

SUN OIL COMPANY (UNITED STATES) *v.* GERMANY

PIERCE OIL COMPANY (UNITED STATES) *v.* GERMANY

(April 21, 1926, pp. 660-669.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—ESPOUSAL OF CLAIMS.—DAMAGE: (1) EXCEPTIONAL WAR MEASURES APPLIED TO PROPERTY OF AMERICAN-OWNED ALLIED CORPORATION IN ALLIED COUNTRY, (2) DETERMINATION OF DAMAGE BY MUNICIPAL LAW, (3) DEPRECIATION BY REQUISITION, (4) RULE

OF PROXIMATE CAUSE. Destruction by Germany, during period of belligerency, of seven vessels owned by British subsidiaries of claimants and requisitioned by Great Britain. Payment by Great Britain to subsidiaries of value of vessels as *requisitioned* vessels at time of loss. Claims brought for value of *free* vessels less amount paid by Great Britain. *Held* that, under Treaty of Berlin, Germany obligated to compensate for damage resulting from her acts indirectly suffered by American shareholders in British corporations, and that claims are, therefore, properly espoused and properly presented by United States; but that subsidiaries recovered all damages actually suffered by them through *destruction* of vessels: under British law, they lost requisitioned vessels, and under Treaty of Berlin Germany not obligated to compensate for damage (depreciation) through *requisition*, which was Great Britain's act, not attributable to destruction as proximate cause.

Cross-references: A.J.I.L., Vol. 20 (1926), pp. 782-789; Witenberg, Vol. II, pp. 165-173 (French text).

Bibliography: Kiesselbach, *Probleme*, pp. 119-120, 153.

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

These three cases, which have been submitted, argued, and considered together, are before the Umpire for decision on a certificate of the National Commissioners certifying their disagreement. They are put forward by the United States on behalf of the Standard Oil Company of New York, the Sun Oil Company, and the Pierce Oil Corporation, all American nationals, for losses alleged to have been suffered by them through the sinking by German submarines of seven steamships (tankers) owned by British subsidiaries of the claimants. All of these tankers were sunk during the period of America's belligerency, the first on April 6, 1917, and the last on October 3, 1918. At the time of their destruction they were all under requisition by Great Britain and operated for her by the owners for hire fixed by her. They were all laden with cargoes of oils which were being transported under the directions of the British Government. Under the requisitions Great Britain assumed the risks of war to each vessel and in the event of its total loss from such a risk undertook to pay the owner therefor the ascertained value of the vessel at the time of such loss. It was provided that any dispute arising between the British Government and the owner in the ascertainment of such value should be settled by arbitrators selected by a prescribed method under the provisions of the British Arbitration Act.

By agreements reached between the British Government and the British corporations owning these seven tankers the value of each as a requisitioned vessel as of the time of its loss was arrived at [1] and the amounts so ascertained paid by Great Britain to the owners. [2] The amounts so paid aggregated $6,030,668.00. The claimants allege that as free ships in a free market at the time of the loss of each their aggregate value was $10,607,500.00. Subtracting from this value of free ships the value of requisitioned ships which the owners

[1] In Docket No. 5323 see Exhibit II, "Proof of Claim" and affidavit of George D. Ali; affidavits of Montagu Piesse, Exhibits J, H-1, and H-2; Director of Ship Purchases, Exhibit J.

In Docket No. 5434 see affidavit of J. Howard Pew, Exhibit I.

In Docket No. 5469 see affidavit of Clay Arthur Pierce, Exhibit III, page 3. See original Consolidated Brief in support of claims, pages 17, 30, and 73.

[2] The British Reparation Claim against Germany included the value of these tankers with the exception of the *Tatarrax*, which should have been included but was omitted for the reasons explained in the record (Exhibit J in Docket No. 5323 and Claimants' Consolidated Brief, pages 104 and 105).

have received from the British Government leaves a balance of $4,576,832.00, which is the total of the claims here put forward against Germany. A detailed tabulation of these claims is in the margin. [3]

In the last analysis, the basis of the claims here put forward is that as the American shareholders of their British subsidiaries the claimants were damaged through the sinking of these seven vessels by Germany to the extent of $10,607,500.00, being the money equivalent of these ships as free ships at the time of their loss; that the British subsidiaries of claimants have been paid by Great Britain the sum of $6,030,668.00, being the money equivalent of these ships as requisitioned ships; and that the balance of $4,576,832.00 represents the uncompensated damage suffered by claimants, American nationals, resulting from Germany's act, and for which it is claimed that Germany is obligated to make compensation under the terms of the Treaty of Berlin.

Under the terms of that Treaty Germany is obligated to compensate for damages resulting from her acts indirectly suffered by an American national through the ownership of shares of stock in a British corporation. In other words, if through Germany's act the property of a British corporation has been damaged or destroyed resulting in an American national suffering damage through his ownership of shares therein, then under the Treaty of Berlin Germany is obligated to make compensation to the extent of the damage so suffered by him. No claim for such damage can be espoused by the United States on behalf of the British corporation as such, because (leaving out of consideration Government-owned claims) only claims for damages suffered by American nationals fall within the Treaty. But, in order to fully protect American nationals who had an interest in the property destroyed and who

[3] Note:

Claimant	*Date of sinking and name of tanker* [a]	*Owner of vessel British*	*Alleged value of vessel* $	*Amount paid to owner by Great Britain* $	*Balance claimed here by claimant against Germany* $
Standard Oil Co. of New York	1917 Apr. 6 *Powhatan*	Tank Storage & Carriage Co., Limited	1,275,000 00	751,685.00	523,315.00
	1917 June 15 *Wapello*	Standard Transportation Co., Ltd., of Hong Kong	1,518,000 00	1,039,513.00	478,487.00
	1918 Mar. 20 *Samoset*	Ditto	1,398,400.00	884,895.00	513,505.00
	1918 May 30 *Waneta*	Ditto	442,000.00	440,068.00	1,932 00
	1918 Aug. 10 *Tatarrax*	Ditto	1,800,000.00	1,336,917 00	463,083 00
			6,433,400.00	4,453,078 00	1,980,322.00
Sun Oil Co.	1917 May 1 *British Sun*	British Sun Co., Limited	2,674,100.00	892,080.00	b 1,782,020 00
Pierce Oil Corp.	1918 Oct. 3 *Eupion*	Eupion Steamship Co., Ltd., of London	1,500,000.00	685,520.00	814,480.00
Total: 3 claimants	7 tankers	4 owners	10,607,500 00	6,030,668.00	4,576,832.00

a Each of the 7 vessels was a British registered steamship, was sunk during America's belligerency, and when sunk was in pay of the British Government and had a cargo of fuel oil, spirits, or kerosene.

b After deducting expense of 2,356 pounds sterling.

suffered from its destruction, no matter in what capacity they suffered, whether directly or indirectly through the ownership of shares of stock in foreign corporations or otherwise, they are, under the Treaty, protected to the extent of their interest. It follows that these claims are properly espoused and properly presented here by the United States on behalf of these claimants for damages, if any, which they have sustained as shareholders in their British subsidiaries.

The question then arises, What, if any, damage has been sustained by these British subsidiaries through which as shareholders claimants are alleged to have suffered? There is no pretense that these claimants have been directly damaged by Germany's act in sinking the seven ships in question, all of which were owned by British corporations. But the claim is that as shareholders in such British corporations these claimants have been indirectly damaged. The burden, therefore, rests on the claimants to prove that the British corporations suffered damages through the act of Germany and the amount thereof and the extent to which such damages have fallen on the claimants as stockholders of such corporations, and that as such stockholders they have not already been indirectly compensated therefor through payment to the corporations. While one of the results of the provision obligating Germany to make compensation for indirect damages suffered by American nationals as owners of shares of stock in foreign corporations was to give such American nationals the right, through espousal by their Government, to assert their claims against Germany before this Commission, notwithstanding claims of the foreign corporations as such could not be presented here, nevertheless there was no purpose to confer upon American shareholders any right to recover damages in excess of those actually suffered by the foreign corporations themselves.

In determining the damage, if any, suffered by the British corporations who owned the seven ships which were sunk by Germany, the status of these ships must be examined and the facts as they existed at the time of their destruction, entering as factors into the determination of their value, ascertained. Without undertaking to enumerate all of those factors, it will suffice to note the following: (1) The ships were tankers in great demand by Great Britain and her allies. (2) They were of British ownership and registry and therefore subject to being and had in fact been requisitioned by Great Britain under her exceptional war powers. (3) The authority for such requisitioning was the Royal Proclamation of August 3, 1914, one of the conditions of which was "that the owners of all ships and vessels so requisitioned shall receive payment for their use, and for services rendered during their employment in the Government service, and compensation for loss or damage thereby occasioned". (4) The British Government at the time of requisitioning these ships submitted to their owners a form of charterparty known as "T-99" which the owners refused to sign. Nevertheless Great Britain took the ships from their owners and the owners operated, managed, and navigated the ships for her account at the rates of hire fixed by her under this form of charter.[4] (5) Clause 19 of this charter provided that the British Government should take the risks of war incident to the operation of each ship and in the event of its total loss from such a risk should pay to the owner its ascertained value at the time of such loss and that should a dispute arise as to such value the same should be settled by arbitration under the provisions of the British Arbitration Act. (6) The owners and the ships, the persons and the subject matter, were under the jurisdiction of Great Britain and subject to her laws. Under these laws Great Britain could and did, as an exceptional war measure, requisition the ships for her use and fix a compensation in the nature of hire and an undertaking to

[4] See original Consolidated Brief in support of claims, pages 8 and 9.

compensate in the event of loss on a basis which operated as an onerous burden or encumbrance on the ships, substantially reducing their value, without any legal obligation or undertaking on her part to compensate the owners for such depreciation in value. (7) At the time of the loss the British owners of these ships did not own free ships but encumbered ships, burdened with the onerous terms of the British requisitions, which encumbered ships were being operated by them for the British Government. The British owners were not free to offer them for sale as free ships but only as encumbered ships.

The British courts have found as a fact that the value of a British ship during the war period varied according as it was or was not under requisition or subject to requisition; that if not under requisition, but with a possible chance of being requisitioned, it would not command as large a price as it would if free from requisition under a guarantee from the Government not to requisition it; and if actually under requisition but with a possible chance of being released therefrom it would not command as large a price as it would if free from requisition but with a possible chance of being requisitioned. [5] In the *Longbenton* case a British vessel was requisitioned by the British Government and operated by the owners under the terms of the official charterparty known as "T-99", under which the ships with which we are here concerned were being operated. The *Longbenton* was lost by enemy action on June 27, 1917. Its owners contended that clause 19 of this charterparty, which provided that in the event of its total loss from risks of war the British Government should pay the owners "the ascertained value of the steamer * * * at the time of such loss", was in effect a contract of indemnity against any requisition, and that they were entitled to recover on the basis of its value had it been free from requisition, and that the Government in assessing its value was not entitled to take into account the fact that it was under requisition at the time of its loss. The British High Court of Justice rejected this contention and held that for the purpose of assessing the value of the vessel at the time of its loss all of the facts must be taken into consideration, and one of the most material facts was that the vessel was at the time of its loss under requisition. In other words, at the time of its loss the vessel was a requisitioned vessel, not a free vessel, and its value must be ascertained accordingly. In that case the umpire in the arbitration found as facts that the *Longbenton*, which was under requisition at the time of its loss, had a value of £28,500; that had it not been under requisition but subject to requisition it would have had a value of £44,500; and that had it not been under or subject to requisition it would have commanded a still higher price. The court held that the fact of its being under requisition was one of the most important facts to consider in determining its value at the time of its loss, and that the Government was only obligated to pay the owners the sum of £28,500, its value as a requisitioned ship at the time of its loss. The owners of the seven tankers here under consideration dealt and settled with the British Government on the basis of the rule laid down in this *Longbenton* case. [6]

The British law, and its application to the owners of these vessels and to the vessels themselves, are facts to be taken into account in determining what it was that the owners lost. It is the subject matter of their losses which is here dealt with. The value of that subject matter will be considered later. For some time prior to and at the time the ships were sunk by Germany the British

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[5] See award of umpire in the arbitration of the *Longbenton* case in Harries *v.* Shipping Controller (1918), 34 The Times Law Reports 446, 118 Law Times Reports 603, and 88 Law Journal Reports 1919 (N. S. 88, K. B.) 576.

[6] See affidavit of Montagu Piesse, page 3, Exhibit H-1 in Docket No. 5323.

subsidiaries of the claimants were not the owners of free ships. Hence they could not have lost free ships through Germany's act in destroying them. What they did in fact lose were ships encumbered with British requisitions. Such requisitions imposed burdens on the ships, which under the British law were lawfully imposed. It is undisputed that these ships, burdened with requisitions, had a value very substantially less than they would have had if they had been free ships in a free market. But they were not free ships, and the fact that they were not results from the claimants herein having voluntarily placed the title to them in British corporations, registering them as British ships, and subjecting them to British requisitions. As such they were treated by Great Britain as all other British-owned ships were treated. Presumedly the claimants derived, or expected to derive, advantage through the British ownership and the British registry of these ships. But they cannot here complain of the disadvantages resulting therefrom.

The claimants earnestly contend that they are entitled to recover the value of free ships as of the time of the loss, and rely on numerous decisions of American courts. [7] These cases hold in effect that under the Constitution of the United States the Government of the United States is obligated to make compensation for property taken by it, and the measure of such compensation is the value of the property taken at the time of the taking, which must be ascertained by the exercise of "a reasonable judgment having its basis in a proper consideration of all relevant facts". [8] In ascertaining such value, the United States in taking property for public use can not confine the compensation to a market restricted or controlled by the Government itself; but the test is, what is the value in a free market, one which would result from "fair negotiations between an owner willing to sell and a purchaser desiring to buy". [9] In all of these American cases relied on by the claimants' counsel it will be noted that the question presented was the amount of compensation which the Government of the United States under the Constitution of the United States was required to pay to the owner of property taken for public use, and that the property taken through requisition was free property at the time of taking. The owners lost free, not encumbered, property. If these arguments, supported by the sound principles announced by the American courts, had been addressed by the British subsidiaries of claimants to the competent authorities of Great Britain, whose duty it was to fix a basis for compensating the owners for the use of requisitioned ships, they would have been pertinent. But obviously they can have no application here nor prove helpful in determining the nature of the subject matter which the British subsidiaries of claimants lost when their ships were destroyed, which must be determined by the laws of Great Britain lawfully exercising jurisdiction over both the person of the owners and the subject matter lost. The controlling fact is that the rules announced in these American decisions did not obtain in Great Britain prior to and at the time the ships were destroyed, and therefore can have no application in determining the status or the value of the ships which were actually destroyed by Germany, namely, requisitioned ships.

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[7] Hudson Navigation Co. *v.* United States (1922), 57 Court of Claims 411; United States *v.* New River Collieries Co. (1923), 262 U. S. 341; National City Bank *v.* United States (1921), 275 Federal Reporter 855; Standard Oil Company of New Jersey *v.* Southern Pacific Company (1925), 268 U. S. 146; Brooks-Scanlon Corporation *v.* United States (1924), 265 U. S. 106.

[8] Standard Oil Company of New Jersey *v.* Southern Pacific Company (1925), 268 U. S. 146.

[9] Brooks-Scanlon Corporation *v.* United States (1924), 265 U. S. 106.

The claimants confuse two distinct losses suffered by their British subsidiaries, namely: (1) the damages which such subsidiaries sustained as a result of Great Britain's act in requisitioning their ships and (2) the damages which such subsidiaries sustained by Germany's act in destroying their ships.

The act of Great Britain in requisitioning the ships unquestionably resulted in very materially depreciating their value, to the damage of claimants' British subsidiaries. In the last analysis it is the amount of this damage for which claimants are seeking an award against Germany; that is, the difference between the value these ships would have had if at the time of their destruction they had been free ships and their actual value at the time of their destruction as requisitioned ships. The real question, therefore, presented to this Commission for decision is, Under the Treaty of Berlin is Germany obligated to compensate for damages resulting from the act of Great Britain in exercising her exceptional war powers and requisitioning these ships—British property—for war purposes? From expressions in their briefs it would seem that the claimants would answer this question in the affirmative. [10] For the reasons heretofore announced in the decisions of this Commission the Umpire has no hesitation in answering it in the negative. [11] The act of Great Britain in requisitioning these British ships, and in fixing the hire thereof at substantially less than the current market hire, resulted in damages to the British owners, but such damages belong to that large class suffered by thousands of British nationals as a consequence of the war for which no redress has been provided. This act of Great Britain and the damages flowing therefrom are not attributable to Germany's act as a proximate cause.

Under the Treaty of Berlin Germany's liability, if any, for damages suffered by American nationals resulting from exceptional war measures is limited territorially to such measures as were applied "in German territory as it existed on August 1, 1914". [12] For all damages sustained by American nationals during America's belligerency outside of German territory as thus defined Germany's obligation to make compensation is limited to "physical or material damage to tangible things" resulting from "acts of Germany or her allies" or "directly in consequence of hostilities or of any operations of war". [13]

Under the Treaty of Berlin Germany is obligated to compensate the claimants as American shareholders in British corporations to the extent of the losses if any they have suffered as such shareholders due to the act of Germany in destroying the seven ships owned by such corporations. But what did Germany destroy? She destroyed seven ships encumbered with British requisitions. Her liability therefor under the Treaty if limited to the value at the time of the loss of the ships so encumbered, less the amount which the owners of the ships have already received as indemnity for such loss. But the claimants admit [14] that, following the *Longbenton* case, Great Britain has paid to their British subsidiaries the money equivalent of the value of these vessels as requisitioned vessels, so that it follows that these British subsidiaries have

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[10] See original Consolidated Brief in support of claims, pages 31, 35, and 36.

[11] See Opinion in War-Risk Insurance Premium Claims, Decisions and Opinions, pages 33 *et seq.*, and in United States of America on behalf of the Eastern Steamship Lines, Inc., Claimant, *v.* Germany, *ibid.*, pages 71 *et seq. (Note by the Secretariat,* this volume, pp. 44 and 71 *supra,* respectively.)

[12] Article 297 *(e)* of the Treaty of Versailles carried into the Treaty of Berlin.

[13] Paragraph 9 of Annex I to Section I of Part VIII of the Treaty of Versailles carried into the Treaty of Berlin and also Administrative Decision No. VII, Decisions and Opinions, at pages 319 and 320. *(Note by the Secretariat,* this volume, pp. 234 and 235 *supra.)*

[14] See footnote 1, page 302.

already received the money equivalent of all that they had to lose, and all that they in fact did lose, namely, requisitioned ships.

It follows that the claimants herein, the American shareholders of the British corporations owning these ships, have failed to establish any loss or damage suffered by them as such shareholders and resulting from Germany's acts in destroying these vessels.

Wherefore the Commission decrees that the Government of Germany is not, under the Treaty of Berlin of August 25, 1921, obligated to pay to the Government of the United States any amount on behalf of the claimants herein or any of them on account of the claims asserted in these three cases.

Done at Washington April 21, 1926.

Edwin B. PARKER
Umpire

WINTHROP C. NEILSON (UNITED STATES) *v.* GERMANY

(April 21, 1926, pp. 670-674.)

DAMAGE: RULE OF PROXIMATE CAUSE.—EVIDENCE: REPORT OF SURVEY, AFFIDAVIT, EVIDENCE TAKEN IN MUNICIPAL COURT, MARINE PROTEST BEFORE CONSULAR AGENT. Alleged damage to American vessel through strain while escaping from German submarine on August 6, 1918. *Held* that damage, if any, was direct result of German attack (proximate cause); but that no evidence brought of actual damage to vessel. Evidence: see *supra*.

Cross-references: A.J.I.L., Vol. 20 (1926), pp. 790-791; Annual Digest, 1925-26, pp. 254-255.

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

This case is before the Umpire for decision on a certificate of the National Commissioners certifying their disagreement.

The claim is put forward on behalf of Winthrop C. Neilson, an American national, who is alleged to have been the owner of the American Steamship *Mohegan*, which he claims was damaged while escaping from a German submarine off the coast of Virginia on August 6, 1918. From the record it appears, however, that only the naked legal title to this ship was in Neilson, who held it for and in the interest of the Republic Mining & Manufacturing Company, an American corporation, of which Neilson is president, the entire capital stock of which is, and in 1918 was, owned by the Aluminum Company of America. In view of the disposition which will be made of this case, this variance between the allegations and the proof as to the true ownership of the vessel is not material.

From the record as now presented, including the evidence filed on April 15, 1926, it appears that the *Mohegan* was a wooden vessel originally built in Michigan in 1894, rebuilt in 1917, and brought down from the Great Lakes and placed in the South American trade. On August 6, 1918, the *Mohegan*, while on her fifth voyage for claimant, bound from New York for Paramaribo, Dutch Guiana, heard firing not far from Diamond Shoals Lightship at 2.25 o'clock p. m. At 2.30 p. m. the *Mohegan* saw a steamer in ballast running toward the light vessel, which was about eight miles distant. The officers of the *Mohegan* then saw flashes from the submarine's guns but the outline of the submarine was very indistinct. The master of the *Mohegan* turned the ship instantly and increased her speed to the limit, starting for Cape Hatteras