

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**Knickerbocker Insurance Company of New York, Successor to Equi-table
Underwriters of New York (United States) v. Germany**

18 April 1928

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KNICKERBOCKER INSURANCE COMPANY OF NEW YORK,
SUCCESSOR TO EQUITABLE UNDERWRITERS OF NEW YORK
(UNITED STATES) *v.* GERMANY

(April 18, 1928, pp. 912-914.)

PROCEDURE: REHEARING AFTER FINAL JUDGMENT. — DISTRIBUTION OF AMOUNTS PAID. Contestation of transfer to claimant of claims forming basis of final judgment. Request for rehearing. *Held* that question must be decided by municipal tribunal according to local jurisprudence (reference made to Administrative Decision No. II, Vol. VII, p. 23).

BY THE COMMISSION: —

In the case numbered and styled as above ^a a final judgment was entered by this Commission on September 18, 1924, decreeing that

“ the Government of Germany is obligated to pay to the Government of the United States on behalf of Knickerbocker Insurance Company of New York, Successor to Equitable Underwriters of New York, the sum of Two Hundred Twelve Thousand, Eight Hundred Eleven and 71/100 Dollars (\$212,811.71), with interest thereon at the rate of 5 per cent. per annum from November 11, 1918, to the date of payment.”

The American Agent now presents and brings to the attention of the Commission a “ Petition in the nature of a petition for rehearing and protesting against the certification of any award on the claim of the Equitable Underwriters of New York to the Knickerbocker Insurance Company ” dated March 20, 1928, filed by Thomas A. Duffey for himself and as attorney-in-fact for Estate of W. Eitingon, Herman Basch, James Stuart Lowry, Herbert Buxton, Simon J. Steiner, E. H. Fischer, Philip B. Fouke, F. Jarrigeon, Henry J. Fuller, Alfred deJonge, I. Galland, Charles I. McLaughlin, S. Schild, A. V. Berner, R. S. Charlton, and B. M. Crosthwaite, for themselves and on behalf of all other individual members of the Equitable Underwriters of New York.

The Equitable Underwriters of New York was a Lloyds unincorporated association which, during the years 1917 and 1918, underwrote war risks, the payment of which forms the basis of the award in this case.

On December 31, 1919, the Equitable Underwriters of New York was converted under the laws of the State of New York into a stock insurance corporation under the name of New York Equitable Assurance Company, which was on March 11, 1920, consolidated or merged with the Knickerbocker Insurance Company of New York, a corporation created under the laws of that State.

The petitioners, Duffey and others, now assert that the claims against Germany which formed the basis of the award herein were never transferred to or vested in the New York Equitable Assurance Company and through it to the Knickerbocker Insurance Company of New York but remained and still remain the property of the *individual members* of the Equitable Underwriters of New York.

It is apparent that both the petitioners and the Knickerbocker Insurance Company of New York claim through and under the Equitable Underwriters of New York, a juridical entity. Neither challenge the correctness of the award with respect to the obligation of Germany to pay the Equitable Underwriters of New York, their successor or successors.

^a Note by the Secretariat, Original report: Docket No. 3172.

This Commission in its Administrative Decision No. II (Decisions and Opinions, page 10) ^a held in effect that while this Commission, as an international tribunal applying the terms of the Treaty of Berlin in the light of established rules of international law and such rules of municipal law as may be applicable, has the exclusive and final power to determine the existence or non-existence of the original obligations, if any, of Germany, all questions involving conflicts in interests between American nationals or the transfer of interests in or to such original obligation must be decided by municipal tribunals according to local jurisprudence. ¹

So far as concerns the *original* claimant's primary *right to recover* this Commission's jurisdiction is exclusive and final, but all controversies over asserted rights to *receive payment* arising (1) between the original claimants and those claiming under them or (2) between two or more whose rights are derivative, not original, claiming through assignments or otherwise, voluntary or involuntary, from the original claimants, must be decided by municipal tribunals.

It follows that this is not the forum in which the petitioners should seek relief.

Although the rules of this Commission make no provision for a rehearing of any case in which a final decree has been entered, this petition has been carefully considered. It is hereby dismissed.

Done at Washington April 18, 1928.

Edwin B. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

GEORGE ACHELIS, JULIE ACHELIS SPIES, JOHN ACHELIS,
ESTATE OF ANNIE ACHELIS VIETOR, DECEASED, AND ESTATE
OF FRITZ ACHELIS, DECEASED, HEIRS AND LEGATEES OF THE
ESTATE OF THOMAS ACHELIS, DECEASED (UNITED STATES)
v. GERMANY

(*April 25, 1928, pp. 914-920.*)

ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES. — DAMAGE: RULE OF PROXIMATE CAUSE. Claim for loss resulting from prevention by German exceptional war measures of distribution of estate prior to August, 1921. Appli-

^a *Note by the Secretariat*, Vol. VII, p. 28.

¹ See *Comegys and Pettit v. Vasse*, 1828, 1 Peters (26 U.S.) 193, 212; *Frevall v. Bache*, 1840, 14 Peters (39 U.S.) 95, 97; *Judson v. Corcoran*, 1855, 17 Howard (58 U.S.) 612, 614; *Phelps v. McDonald*, 1879, 99 U.S. (9 Otto) 298, 307; *Frelinghuysen v. Key*, 1884, 110 U.S. 63, 71; *Leonard v. Nyc*, 1878, 125 Massachusetts 455, 466; *Brooks v. Ahrens*, 1888, 68 Maryland 212, 221; *Heard v. Sturgis*, 1888, 146 Massachusetts 545, 547, and *Williams v. Heard*, 1891, 140 U.S. 529, 539-540; *Kingsbury v. Mattocks*, 1889, 81 Maine 310, 315; *Taft v. Marsily*, 1890, 120 New York 474, 477.