

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Elizabeth A. Achelis, Margaret Achelis Sansome, and Frederic G. Achelis (United  
States) v. Germany**

1 May 1929

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be entered into in pursuance of the above-quoted request embodied in the Act, they were required to file notice of their claims with the Department of State prior to July 1, 1928, unless such notice had already been so filed.

The request of the Congress to the President was complied with and the two Governments entered into the Supplementary Agreement of December 31, 1928, above mentioned, which in effect extended the jurisdiction of the Commission to include claims of the same character as those of which the Commission has jurisdiction under the original Agreement, provided notice thereof was filed with the Department of State prior to July 1, 1928.

It follows from the foregoing statement that this Commission is without jurisdiction to consider any claim put forward on behalf of an American national if notice in writing of the claim was not filed with the Department of State prior to July 1, 1928.

This decision, in so far as applicable, will control the disposition of all claims presented to the American Agent for submission to the Commission.

Applying it to the claims dealt with in the motion of the American Agent, notice of which in writing was not filed with the Department of State prior to July 1, 1928, it follows that the Commission is without jurisdiction to consider them.

Done at Washington May 1, 1929.

Edwin B. PARKER  
*Umpire*

Chandler P. ANDERSON  
*American Commissioner*

W. KIESSELBACH  
*German Commissioner*

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ELIZABETH A. ACHELIS, MARGARET ACHELIS SANSOME, AND  
FREDERIC G. ACHELIS (UNITED STATES) *v.* GERMANY

(May 1, 1929, pp. 953-957.)

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PROCEDURE: REHEARING AFTER FINAL JUDGMENT. — ESTATE CLAIMS: EXCEPTIONAL WAR MEASURES, DEPRECIATION OF SECURITIES. Death in October, 1916, of claimants' grandmother, whose will provided for postponement of distribution of estate "until peace with England is concluded". Liquidation, nevertheless, under German exceptional war measure, after United States entered war, including payment in April, 1918, and May, 1919, to *Treuhaender* of securities, inherited by claimants' mother, an American national. Final judgment by Commission refusing compensation for alleged losses through depreciation of securities. Petition for rehearing on ground, that decision contrary to Administrative Decision No. IV (see Vol. VII, p. 117). *Held* that claim did not come under Administrative Decision No. IV, applicable only when obligation arose to transmit money or securities to American nationals: neither under will nor war measure, an obligation to transmit securities to claimants' mother could arise for executor and liquidator, respectively.

DAMAGE: RULE OF PROXIMATE CAUSE. — EVIDENCE: BURDEN OF PROOF, PRESUMPTIONS. *Held* that Administrative Decision No. IV established presumption, that administrators of estates are ordinarily under duty to transmit shares to beneficiaries as soon as estate ready for distribution, and that they

will ordinarily fulfill their duty; and, accordingly, relieved American beneficiaries from burden of proving, that nonfulfillment of duty and loss resulting from depreciation of estate are proximate results of application of German exceptional war measure. *Held* also that, since in present case *no* duty to transmit share existed, claimants had to prove causal connexion between depreciation and war measure, but failed to succeed; had estate not been liquidated, abovementioned provision of will would have prevented distribution.

BY THE COMMISSION: —

A petition has been presented in this case on behalf of the claimants by the Agent of the United States, asking for a reconsideration of their claim and an additional award therein, on the ground that in its decision of February 6, 1929,<sup>1</sup> the Commission failed to render full and complete justice to the claimants because that decision "is not only not in accordance with the Commission's Administrative Decision No. IV, dealing with estate claims (Consolidated Edition of Decisions, p. 141),<sup>a</sup> but is contrary thereto so that the claimants have not been afforded the relief accorded to the claimants in a like position in applying the very same provisions of the Treaty of Berlin".

The rules of this Commission make no provision for a rehearing of any case in which a final decree has been entered. Nevertheless, this petition and the arguments submitted in support thereof have been carefully examined. No new evidence is submitted in support of this petition, which rests wholly upon arguments questioning the legal effect of the facts previously presented and already considered by this Commission in rendering its decision of February 6, 1929.

The contention of the claimants concerns specifically the refusal of the Commission to award compensation on their behalf for losses resulting from the depreciation in value of certain securities inherited by them from their mother, which losses, they allege, were caused by the application to these securities of exceptional war measures in Germany.

The facts are briefly as follows:

In October, 1916, the claimants' grandmother, Alette Koenig, a German national, died in Germany, leaving her surviving several children and grandchildren, some of whom were of German nationality, others of British, and the remainder, being the claimants herein, of American nationality. The interest of these claimants in Mrs. Koenig's estate is derived through their mother, Bertha Achelis, now deceased, also an American national and the daughter of Mrs. Koenig, whom she survived.

In Mrs. Koenig's Last Will and Testament she provided that:

"In case I die before peace with England is concluded and intercourse with my sons in London is free from all restrictions",

the ultimate disposition of her property should

"be deferred until peace with England is concluded and intercourse with my sons in England is free from all restrictions" (Exhibit 5 A-2, p. 30).

<sup>1</sup> Award entered by National Commissioners on behalf of claimants jointly in amount of \$30,698.86 (with interest at 5% per annum to date of payment of award on \$6,987.96 thereof from January 1, 1919, and on remaining \$23,710.90 thereof from December 11, 1921).

<sup>a</sup> *Note by the Secretariat*, Vol. VII, p. 117.

Her Will also provided that a "special capital", as designated "in my books", but "not less than the sum of 1,000,000 marks out of my entire estate", shall be constituted "of which other disposition is hereinafter made".

Under date of March 27, 1917, one George Mosler, a banker, was appointed in accordance with the provisions of the Federal Decree of July 31, 1916, and of an "Instruction regarding the liquidation of British and French enterprises" issued by the Prussian Royal Minister of Commerce, and Trade, compulsory liquidator of the estate of Alette Koenig. The Instruction in so far as the duties of the liquidator are concerned, reads:

"Proceeds of liquidation remaining for the persons interested in the enterprise shall be distributed among them; in so far as they fall to enemy nationals they shall be deposited for the account of the persons interested with the Koenigl. Preussische Seehandlung", subsequently changed to the Treuhänder. (Petition for Rehearing, p. 4).

The Liquidator proceeded promptly with the liquidation of the estate with the result that on or about August 28, 1917, he was able to submit to the Minister of Commerce a proposal for the distribution of certain of the assets of the estate (Exhibit 5 G-2, p. 5). This proposal being approved by the Minister of Commerce on September 29, 1917, the Liquidator, on or about October 30, 1917, distributed to the German heirs the major portion of their share in the estate, but he did not turn over to Bertha Achelis her share, she being then an enemy national residing in the United States. The Liquidator held this share until April 18, 1918, when "he paid to the Treuhaender, for account of the said Bertha Achelis, the bulk of her share in the estate of her mother, Alette Koenig, and in May, 1919, he reported the remainder thereof to the Treuhaender through Mendelssohn and Co.", with whom the securities were deposited. (American Brief, p. 14.)

In these circumstances the claimants contend that their claim comes within the ruling of this Commission in the Estate Claims Decision above mentioned.

This contention was fully discussed in the briefs of both Agents when the claim was submitted, and was carefully considered by the Commission before rendering its decision, and the Commission did not then, and does not now, concur in this contention.

In the Estate Claims Decision the Commission held that "when an *obligation arose* from an heir, administrator, or executor to transmit money or securities to an American national and he was prevented from so doing by an exceptional war measure, liability on the part of Germany for the resulting damages would seem to be established".

The German Agent correctly stated the position of the Commission in rendering this Decision in his brief (p. 9) in this case, from which the following extract is quoted for convenience of reference:

"The Estate Decision is an interpretation of Art. 297 (e) of the Treaty of Versailles with special reference to such enemy property, rights, and interests as constitute an estate or a share in an estate. The significance of the Estate Decision within the frame of Art. 297 (e) of the Treaty of Versailles consists in the fact that certain presumptions are established which operate to relieve the claimant to a certain extent of the burden of proof ordinarily resting upon him. These presumptions are based on the legal fact that persons in charge of the administration of an estate, such as co-heirs, executors and administrators of an estate, are ordinarily under a duty to transmit to the beneficiaries their respective shares therein as soon as the estate is ready for distribution and that, as a matter of common experience, such persons will ordinarily fulfill their duty. In case this duty arose during the time when the German war legislation concerning the American property was in force and remained unfulfilled at that time, the Estate Decision relieves the American

beneficiary from the burden of proving that the nonfulfillment of the said duty and the loss resulting from the depreciation of the estate were the proximate result of the application of German exceptional war measures. It results that under the Estate Decision Germany's liability to compensate the claimants for the depreciation of Bertha Achelis' share in the estate of Alette Koenig depends on the condition that the liquidator was under a duty to transmit this share to the United States during the time when the German war legislation concerning American property was in force."

In the present case there was no obligation on the part of the Executor of the Will at any time to transmit to the claimants their share of the estate, because the Will in terms postponed the distribution of the estate "until peace with England is concluded". This provision of the Will was superseded by the Liquidation Decree pursuant to which the Liquidator took possession of the estate and partially distributed it. If the Liquidator had been able and ready to distribute the American owned share of the estate before the United States became a belligerent, the Estate Claims Decision would have been applied, and the claimants would have been entitled to an award under it. The fact was, however, that, as above set forth, the Liquidator was not in a position to distribute any part of this estate, even to the German heirs, until October 30, 1917, and meanwhile the United States had entered the War on April 6, 1917. On that date the American heirs became enemy nationals, and under the terms of the Liquidation Decree the Liquidator was obliged in distributing the estate to deposit the share of the "enemy nationals" for their account with the *Treuhaender*, which was done in so far as the estate was ready for distribution.

It is evident from this sequence of events that the Liquidator was not ready to distribute the American share of the estate before he was prevented from transmitting it to the American heirs by the other provisions of the same Decree which authorized liquidation. He, therefore, never was under an obligation to transmit their share to the American heirs, and it is for that reason that this claim must be distinguished from the ordinary estate claims, and excluded from the application of the Estate Claims Decision, which is based both in principle and in terms on the existence of such obligation.

The Liquidation Decree when originally adopted was not an exceptional war measure within the meaning of the Treaty of Berlin so far as American owned property rights and interests in Germany were concerned, but it did become such an exceptional war measure immediately upon the entry of the United States into the War on April 6, 1917. Accordingly, under Article 297 (e) of the Treaty of Versailles, the claimants would be entitled to an award upon proper proof of damage or injury inflicted upon their property rights or interests in Germany by the application of this exceptional war measure as provided for in that Article.

Inasmuch, however, as the claimants are not entitled to the benefit of the presumption recognized in the Estate Claims Decision, for the reasons above set forth, they are required under the Treaty of Berlin, as interpreted by this Commission, to establish Germany's liability for such damages in accordance with Rule 15 of the Commission's Order of May 7, 1925, before they are entitled to an award, but the evidence submitted by them is not sufficient in the opinion of the Commission to sustain this burden of proof. The record fails to show that the claimants sustained a loss due to the application of the aforesaid Liquidation Decree as an exceptional war measure, and the Commission is of the opinion that such a loss cannot be established within the meaning of the Treaty of Berlin because, had the estate not been liquidated, the provisions of the Will would have prevented its distribution until the end of the War.

The Commission finds nothing either in the petition or in the record of this case which would justify an additional award on behalf of the claimants.

Accordingly, the petition for a rehearing and an additional award is found to be without merit and is hereby dismissed.

Done at Washington May 1, 1929.

Chandler P. ANDERSON  
*American Commissioner*

W. KIESSELBACH  
*German Commissioner*

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ELECTRIC BOAT COMPANY (UNITED STATES)  
*v. GERMANY*

(April 21, 1930, pp. 960-965.)

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USE UNDER GERMAN LICENCE OF INVENTION COVERED BY GERMAN PATENT. —  
PROCEDURE: AGREEMENT BETWEEN AGENTS. — INTEREST: SPECIAL  
CIRCUMSTANCES, SPECIAL BASIS. *Held* that building in of appliances or  
arrangements in submarines under construction constitutes use for which,  
under licence, licence fee must be paid. Agreement between Agents on  
number of devices for which licence fee due. Special basis adopted for  
allowance of interest in view of special circumstances.

*Bibliography*: Woolsey, A.J.I.L., Vol. 35 (1941), p. 283, footnote 4.

BY THE COMMISSION:

The Commission, having carefully considered the issues presented in this claim by the pleadings and the questions of fact and law raised in the briefs on both sides, and having examined the evidence submitted, and after hearing oral argument by counsel on both sides and after due deliberation thereon, finds and decides as follows:

I. The Commission finds, on the evidence submitted, that the claimant's contention that its German patents, No. 147,345 and No. 255,966, have been infringed by the use of certain devices and appliances on German submarine boats, has not been sustained, and decides that the German Government is not liable, under the Treaty of Berlin, for damages for any alleged infringements of these patents.

II. The Commission finds that the rights granted under the compulsory license issued pursuant to German law by the Reichsgericht, by virtue of its Decree of March 13, 1913, to the German Navy and to the Germania Wharf, to use the invention protected by the claimants' German patent No. 133,607, have been exercised by the licensees —

(a) In so far as the licensees have used in the construction of submarine boats an arrangement for simultaneously moving a torpedo forward to the expulsion tube, while compensating or balancing water is being moved in the opposite direction to a containing tank or tanks, or for simultaneously moving a mine in one direction and the water in the opposite direction, so as to maintain the trim and equilibrium of the boat during the process, and

(b) In so far as the licensees have used in the construction of submarine boats a "zwischen" water tank containing the exact volume of water required