

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**The Eagle Star and British Dominions Insurance Company (Ltd.) and Excess  
Insurance Company (Ltd.) (Great Britain) v. United Mexican States**

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WEBSTER WELBANKS (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 29, April 10, 1931, majority decision, not concurred in by Mexican Commissioner. Pages 28-29.*)

CONSULAR CERTIFICATE AS PROOF OF NATIONALITY. Consular certificate and declaration of claimant's sister as to British nationality *held* sufficient evidence of nationality.

(*Text of decision omitted.*)

J. H. HENDERSON (GREAT BRITAIN)  
*v.* UNITED MEXICAN STATES

(*Decision No. 30, April 23, 1931. Pages 30-31.*)

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—CLAIM IN REPRESENTATIVE CAPACITY. Certified copy of will *held* sufficient evidence of capacity as heir and executrix.

PROCEDURE, DEMURRER. Demurrer *overruled* when grounds asserted therefor did not affect entire claim.

(*Text of decision omitted.*)

THE EAGLE STAR AND BRITISH DOMINIONS INSURANCE COMPANY (LIMITED) AND EXCESS INSURANCE COMPANY (LIMITED)  
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 31, April 23, 1931. Pages 32-36.*)

NATIONAL CHARACTER OF CLAIM.—INSURERS AS CLAIMANTS. British insurers of a Mexican firm *held* not entitled to claim for losses sustained by insured and paid by insurers. Insurers, by virtue of their professional character, are not to be viewed as other claimants.

*Cross-reference:* Annual Digest, 1931-1932, p. 216.

*Comments:* G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission", Law Q. Rev., Vol. 49, 1933, p. 226 at 233.

1. The Memorial sets out that on the 21st April, 1920, the Excess Insurance Company (Ltd.) insured in favour of Messrs. Fernando Dosal y Compañía 1,000 bags of granulated sugar at 35,000 pesos Mexican gold. The bags of sugar were located on cars N.T. 3033 and 3240 of the National Railways for the journey from Union Hidalgo to Mexico City.

On the 26th April, 1920, the Eagle Star and British Dominions Insurance Company (Ltd.) and the Excess Insurance Company (Ltd.), each Company taking half of the risk, insured in favour of Messrs. Fernando Dosal y Compañía 1,300 cases of cube sugar valued at 51,000 pesos Mexican gold, for the journey from San Jerónimo to Mexico City. The cases were loaded into cars N.T. 3311 and 3312 of the National Railways.

On the 26th April, 1920, the Eagle Star and British Dominions Insurance Company (Ltd.) insured in favour of Messrs. Fernando Dosal y Compañía 500 bags of granulated sugar valued at 21,250 pesos Mexican gold, for the journey from Union Hidalgo to Mexico City. The bags were loaded on car N.T. 3450.

On the 4th May, 1920, cars Nos. 3240, 3300, 3312 (or 3112) were left at the Railway Station at Tierra Blanca in the State of Veracruz. The garrison of the town had been withdrawn. Taking advantage of this fact, a body of unknown armed men entered the station and, assisted by several local inhabitants, looted the contents of the cars.

On the 3rd May, 1920, car No. 3540 was completely looted in the Railway Station at Tres Valles in the State of Veracruz.

The Agents of the claimants, after making the necessary investigation, were satisfied that the loss of the sugar had been sustained, and paid to Messrs. Fernando Dosal y Compañía on the 15th June, 1920, the sum of 89,510 pesos Mexican gold. Of this sum 42,880 pesos Mexican gold were for the account of the Excess Insurance Company (Ltd.), and 46,630 pesos Mexican gold were for the account of the Eagle Star and British Dominions Insurance Company (Ltd.).

The former amount is claimed on behalf of the Excess Insurance Company (Ltd.), and the latter on behalf of the Eagle Star and British Dominions Insurance Company (Ltd.), being a total of 89,510 pesos Mexican gold.

2. The Mexican Agent has lodged a motion to dismiss on the following grounds:

(a) The Memorial contains two different claims, and each one of the claims of the two Insurance Companies is made under several different heads. As article 3 of the Rules of Procedure provides that each claim shall constitute a separate case before the Commission and shall be registered as such, this provision has been infringed.

(b) As the British Agent has only sent a list of the documents in his possession and neither the originals nor copies, he has infringed article 6 of the Rules of Procedure, which provides that the Memorial shall be accompanied by all documents in support of the claim that may be in the possession of the British Agent, and also article 49 of the same Rules, which provides that five copies of each one of the said documents shall be filed.

(c) The right to file the claim belonged originally to the owners of the goods, Messrs. Fernando Dosal y Compañía, and said right was as a result of the payment of the insurance, and according to the Mexican law, transferred to the Insurance Companies. The right of the Insurer is not an original, but a derived right; he is subrogated to the right of the Insured, and his loss is not direct but indirect. Moreover, he has received a premium for the risk he undertook, and he certainly did not suffer the entire loss. As the party originally entitled to file the claim was a Mexican company, the claim did not arise as a British claim, and the Commission was for that reason not competent to take cognizance of it.

3. The British Agent replied as regards (a), that it was true that the Rules of Procedure provided that each claim should constitute a separate case, but

not that each claim should be dealt with in a separate Memorial. Article 3 had been complied with as the claims had been registered separately. The two claims which arose out of the same subject matter were included in one Memorial solely for the convenience of the Commission.

As regards (*b*), that it was incorrect to state that he had filed only a list of documents, because the annexes to the Memorial had been filed with the Joint Secretaries in July 1929.

As regards (*c*), that, although the insured cargoes belonged to a Mexican firm, the losses fell entirely upon the insurers. The Agent's view was that, according to the terms of the Convention, the claimants were fully entitled to compensation, as they were British Companies having suffered losses in consequence of revolutionary events.

4. The Commission, as regards (*a*) and (*b*), concurs in the view that the Rules of Procedure have not been infringed, because (*a*) the claims have been filed and registered separately, and (*b*) the annexes to the Memorial have been filed in due form and in due time.

5. The principal question dividing the two Agents is as to whether the insurers are entitled to claim before the Commission for insurance money paid by them to insured parties, even if those parties, i.e., the original sufferers, did not possess British nationality.

The Commission sees a great difference between the position of Insurers and that of other claimants, although they are in a similar position in so far as the losses suffered by both of them can be traced to certain events. But that is where the similarity ends.

Other claimants—assuming that the facts are proved—have suffered losses directly, unexpectedly and unwillingly. Insurers suffer losses indirectly as a consequence of a contract, into which they have entered voluntarily, professionally, in the normal and ordinary course of their business and in consideration of certain payments. They suffer losses not in the first place and just because certain events have occurred, but because, in their legitimate desire to subserve their own financial interests, they have undertaken to run the risk of those events.

It seems difficult to look at Insurers in the same light as at other claimants. They who, as a professional act and with a view to make profit, undertake risks, to which other persons are exposed, who in order to cover those risks, stipulate for the payment of certain sums of money, balanced in the course of a long experience in proportion to the extent of the danger incurred, who direct an entire organization based on the existence of risks, which would be useless in the case of their absence, and who are finally able to assume such chances and to calculate such premiums as will ultimately result in a profit on the whole volume of their transactions, cannot be regarded as entitled to compensation on the same footing as persons to whom the occurrences which gave rise to the claim were an unforeseen calamity.

6. The professional character, in which Insurers apply for compensation, makes it more difficult to determine the amount of the loss than in the case of other claimants. Very often this amount will not be equal to the amount paid by them to the insured party, because it will be dependent upon the premiums received. It will also be dependent upon another circumstance. It is universally known that Insurers are working on a vast system of reinsurance, by which they, on the one hand, take over part of the risks insured by other Companies, while, on the other hand, they cede part of their own contracts to those other Companies. As a consequence of this system the surface over which the risks are really spread is often very extensive. It may not be confined to the Com-

panies of one country, but may be international. For this reason it is quite possible that, although the insurance contract was signed and the amount paid by a British Company, the ultimate loss was divided over many corporations, of which one or more may have another nationality. Consequently the decision on the nationality of the claim from its inception until now does not depend solely upon the nationality of the Insurer claiming, but would also require an investigation of the reinsurance contracts, subdividing the profits and losses from the original insurance.

7. The view may be taken—as is laid down in several codes—that the Insurer is, by the payment of the insurance money, subrogated to the right of the Insured, and that he is entitled to such compensation as was due to the latter, but at the same time it is evident that he can never exert any rights that did not belong to the Insured.

In the case now under consideration, the Insured party was a Mexican firm not entitled to claim compensation from their Government under the terms of the Claims Convention. By declaring themselves competent to adjudicate upon this claim, the Commission would grant to the Insurance Companies a right which the firm that suffered the loss did not have. There would be laid upon the Mexican Government a liability towards another Government, which would not have arisen out of the events had not the said firm entered into a contract to which the Mexican Government were not a party.

The Commission cannot believe that this would be a just or even a reasonable application of the Convention.

8. The motion to dismiss is allowed.

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#### ANNIE BELLA GRAHAM KIDD (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 32, April 23, 1931. Pages 36-39. See also decision No. 3.*)

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RESPONSIBILITY FOR ACTS OF BANDITS.—FAILURE TO SUPPRESS OR PUNISH. When Mexican authorities, upon being informed of killing of claimant's husband by bandits, took prompt and energetic action resulting in arrest and execution of six or eight men, claim *disallowed*.

1. This is a claim for compensation for the murder of William Alfred Kidd at El Carrizal, near Zitácuaro.

The Memorial sets out that on the 8th October, 1916, between 10 and 11 in the morning, Mrs. Kidd was in her house at El Carrizal Camp. Eight or ten men, who appeared to be of the Mexican Army, but might have been revolutionaries, arrived and started shooting. Mrs. Kidd went out to see what was happening, and these men demanded that they be given arms and horses. Mrs. Kidd replied that there were two horses, but no arms. The men then asked for Mr. Kidd, and on learning that she did not know where he was they took her into the house and commenced to search for arms. About this time Mr. Kidd arrived, and with his wife gave these men some food. After this certain members of the band began to disperse, while a few remained in the room. One of the band ordered Mr. and Mrs. Kidd and David Kidd, Mr. W. A. Kidd's brother, to stand up for execution. On being asked why they insisted on killing them, the leader replied that he was anxious that nothing should happen,