

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

**Injury to property in the State of Washington by reason of the drifting of fumes from the
smelter of the Consolidated Mining and Smelting Company of Canada, in
Trail, British Columbia**

Report and recommendations of the International Joint Commission established by the Treaty concluded
between the United States of America and Canada on 11 January 1909, signed at Toronto on 28 February
1931

**Domages causés aux biens dans l'État de Washington par les émanations de la fonderie de la
compagnie Consolidated Mining and Smelting Company of Canada,
à Trail, Colombie Britannique**

Rapport et recommandations de la Commission mixte internationale établie par le Traité conclu entre les
États-Unis d'Amérique et le Canada le 11 janvier 1909, signé à Toronto le 28 février 1931

28 February 1931

VOLUME XXIX, pp.365-371



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2012

PART XIX

**Injury to property in the State of Washington by reason of
the drifting of fumes from the smelter of the Consolidated
Mining and Smelting Company of Canada, in Trail,
British Columbia**

**Report and recommendations of the International Joint
Commission established by the Treaty concluded between the
United States of America and Canada on 11 January 1909,
signed at Toronto on 28 February 1931**

**Dommmages causés aux biens dans l'État de Washington
par les émanations de la fonderie de la compagnie
Consolidated Mining and Smelting Company of Canada,
à Trail, Colombie Britannique**

**Rapport et recommandations de la Commission mixte
internationale établie par le Traité conclu entre les États-Unis
d'Amérique et le Canada le 11 janvier 1909, signé à Toronto
le 28 février 1931**

INJURY TO PROPERTY IN THE STATE OF WASHINGTON BY
REASON OF THE DRIFTING OF FUMES FROM THE SMELTER OF THE
CONSOLIDATED MINING AND SMELTING COMPANY OF CANADA,
IN TRAIL, BRITISH COLUMBIA

DOMMAGES CAUSÉS AUX BIENS DANS L'ÉTAT DE WASHINGTON
PAR LES ÉMANATIONS DE LA FONDERIE DE LA COMPAGNIE
CONSOLIDATED MINING AND SMELTING COMPANY OF CANADA,
À TRAIL, COLOMBIE BRITANNIQUE

**Report and recommendations of the International Joint
Commission established by the Treaty concluded between the
United States of America and Canada on 11 January 1909, signed at
Toronto on 28 February 1931* ****

**Rapport et recommandations de la Commission mixte
internationale établie par le Traité conclu entre les États-Unis
d'Amérique et le Canada le 11 janvier 1909, signé à Toronto
le 28 février 1931*** ******

Competence of the Joint Commission—determination of the territory affected by the fumes—determination of the amount of indemnity for past damages—assessment of probable future damages—method of providing adequate indemnity—recommendations for the reduction of fumes drifting into the United States.

Concept of damage—compensation for damage to property owned by the county, but no indemnity for alleged loss of taxes—no indemnity for alleged loss of trade by business men, loss of clientele or income by professional men—indemnity to be deposited in a trust fund established for persons having suffered damages.

* Reproduced from *American Journal of International Law*, 25 (1931), p. 540.

** Subsequent proceedings between the Parties were held under special agreement resulting in awards issued in 1938 and 1941. *Trail smelter case (United States, Canada)*, Awards of 16 April 1938 and 11 March 1941, United Nations, *Reports of International Arbitral Awards*, vol. III, pp. 1905-1982.

*** Reproduit de *American Journal of International Law*, 25 (1931), p. 540.

**** Des procédures ultérieures eurent lieu entre les Parties en vertu d'un accord spécial et résultèrent dans l'émission de sentences en 1938 et 1941. *Trail smelter case (United States, Canada)*, sentences des 16 avril 1938 et 11 mars 1941, Nations Unies, *Recueil des sentences arbitrales*, vol. III, pp. 1905-1982.

Compétence de la Commission mixte—détermination du territoire affecté par les émanations—détermination du montant des indemnités pour les dommages antérieurs—estimation des dommages futurs probables—méthode pour allouer une indemnisation adéquate—recommandations pour réduire les émanations pénétrant aux États-Unis.

Concept de dommage—compensation pour les dommages occasionnés à la propriété du comté, mais aucune indemnisation pour les pertes de taxes invoquées—aucune indemnisation pour les présumées pertes commerciales subies par les hommes d'affaires ou les pertes de clientèle ou de revenus subies par les professionnels—l'indemnisation doit être déposée dans un fonds d'affectation établi pour les personnes ayant subi des dommages.

In the matter of the reference relating to damage in the State of Washington caused by fumes from the smelter at Trail, British Columbia, operated by the Consolidated Mining and Smelting Company of Canada, Limited, hereinafter called the company, the Commission begs to report that the following are respectively the questions submitted to it by the Governments of the United States and the Dominion of Canada, and its findings thereon.

1. (1) *Extent to which property in the State of Washington has been damaged by fumes from smelter at Trail, British Columbia*

The territory affected is to be found within the three zones shown on the map accompanying this report and for the purpose of identification marked with the letter A.

(2) *The amount of indemnity which would compensate United States interests in the State of Washington for past damages*

In view of the anticipated reduction in sulphur fumes discharged from the smelter at Trail during the present year, as hereinafter referred to, the Commission therefore has deemed it advisable to determine the amount of indemnity that will compensate United States interests in respect of such fumes, up to and including the first day of January, 1932. The Commission finds and determines that all past damages and all damages up to and including the first day of January next, is the sum of \$350,000. Said sum, however, shall not include any damage occurring after January 1, 1932.

(3) *Probable effect in Washington of future operations of smelter*

Provided that the company having commenced the installation and operation of works for the reduction of such fumes, proceeds with such works and carries out the recommendation of the Commission set forth in answer to Question (5), the damage from such fumes should be greatly reduced, if not entirely eliminated, by the end of the present year.

(4) *Method of providing adequate indemnity for damages caused by future operations*

Upon complaint of any person claiming to have suffered damage by the operations of the company after the first day of January, 1932, it is recom-

mended by the Commission that in the event of any such claim not being adjusted by the company within a reasonable time, the Governments of the United States and Canada shall determine the amount of such damage, if any, and the amount so fixed shall be paid by the company forthwith.

(5) *Any other phase of problem arising from drifting of fumes on which Commission deems it proper or necessary to report and make recommendations in fairness to all parties concerned*

(a) The Commission deems it proper and necessary in fairness to all parties concerned to report and make recommendations with reference to the reduction of the amount and the concentration of SO₂ fumes drifting from the smelter of the company into the United States.

The company has erected and put in operation the first of three sulphuric acid units, each with a capacity of 112 tons per day, which it proposes to erect for the purpose of reducing such fumes.

The company has represented to the Commission that said units, together with a pilot plant with a capacity of 35 tons per day, which has been in operation for some time, will produce 147 tons of acid per day thereby reducing the amount of sulphur discharged from the stacks of said smelter by 49 tons per day.

The company has further represented to the Commission that it will have a second 112-ton sulphuric acid plant in operation in or about the month of May, 1931, and a third unit of like capacity in or about the month of August, 1931, and that when said units are completed as aforesaid, they, together with said pilot plant, will be using 123.6 tons of sulphur extracted from said fumes, thereby extracting approximately 35 per cent of the total sulphur content of the fumes discharged from said stacks.

The company has further represented that the plants and works constructed and contemplated by it as aforesaid will necessitate the expenditure of a sum in excess of \$10,000,000, the greater part of which has already been expended.

The Commission therefore reports and recommends that, subject to the provisions hereinafter contained, the company be required to proceed as expeditiously as may be reasonably possible with the works above referred to, and also to erect with due despatch such further sulphuric acid units and take such further or other action as may be necessary, if any, to reduce the amount and concentration of SO₂ fumes drifting from its said plant into the United States until it has reduced the amount by some means to a point where it will do no damage in the United States.

(b) The Commission further recommends that the Governments of the United States and Canada appoint scientists from the two countries to study and report upon the effect of the works erected and contemplated by the company as aforesaid, on the fumes drifting from said smelter into the United States, and also to report from time to time to their respective governments in regard to such further or other works or actions, if any, as such scientists may

deem necessary on the part of the company to reduce the amount and concentration of such fumes to the extent hereinbefore provided for.

(c) When the company has reduced the amount and concentration of SO₂ fumes emitted from its plant at Trail, British Columbia, and drifting into the territory of the United States, to a point where it claims it will do no damage in the United States, then it shall so notify the Government of Canada, which shall thereupon forthwith notify the Government of the United States, which may then take up the matter with the Government of the Dominion of Canada for investigation and consideration to determine whether or not it has so reduced the amount and the concentration of SO₂.

(d) The question of whether or not the company is proceeding with expedition as aforesaid may be taken up at any time by the Government of the United States with the Government of Canada for further consideration.

(e) This finding and recommendation under Question (5) must be read in connection with Questions (1), (2), (3) and (4); that is to say, if these conditions as above stated, under Question (5) are fully met, there will be no future indemnity to pay, that being included in the amount of damages embraced under Question (2), except as hereinafter provided.

(f) Any future indemnity will arise only if and when these conditions and recommendations stated under Question (5) are not complied with and fully met, and then only in respect of any damage done after the first day of January, 1932, as hereinafter provided.

(g) The word "damage" as used in this document shall mean and include such damage as the Governments of the United States and Canada may deem appreciable, and for the purposes of paragraphs (a) and (c) hereof, shall not include occasional damage that may be caused by SO₂ fumes being carried across the international boundary in air pockets or by reason of unusual atmospheric conditions. Provided, however, that any damage in the State of Washington howsoever caused by said fumes on and after January 1, 1932, shall be the subject of indemnity by the company to any interests so damaged, and shall not be considered as included in the answer to Question (2) of the reference, which answer is intended to include all damage of every kind up to January 1, 1932.

2. It is further recommended that the amount of the indemnity specified in Question (2) shall be paid into the Treasury of the United States and shall be held as a trust fund for the use and benefit of persons having suffered damage as hereinbefore mentioned; and upon the appointment by the Governor of the State of Washington of a responsible and bonded administrator, or such other person as may be appointed, he shall confer and advise with the members of the United States Section of this Commission, and shall have access to all claims and other information in the custody of said section, and such administrator or other person shall make a detailed list of awards to the various persons damaged by said fumes, and he shall allot to each individual

claimant that part of the total sum of \$350,000 to which such individual is entitled. Said administrator or other person shall be the sole and final judge of all questions referred to him, and no appeal shall lie from his decisions; and having perfected his list of awards as aforesaid, he shall distribute the fund by cheque drawn against said trust fund, and take and accept proper receipts therefor, which said receipts shall be a full and complete release of the parties signing the same to all claim upon said fund.

The said sum of \$350,000 does not include any allowance for indemnity for damage to the lands of the Government of the United States. No claim was presented to the Commission in respect thereof, and counsel for the Government of the United States at the last public hearing announced that any claim in connection with such lands was withdrawn. The Commission, therefore, finds that any claim of the Government of the United States for past damages in respect of said lands has been waived.

The Commission further finds and recommends that Stevens County is entitled to compensation for damage to property owned by it within said zones, but that said county is not entitled to indemnity for alleged loss of taxes by reason of such fumes, such claim being regarded by the Commission as too remote and indefinite to permit of adjudication herein.

The Commission does not recommend any indemnity for alleged loss of trade by business men or loss of clientele or income by professional men resident in the City of Northport, within the said zones, such claims being regarded by the Commission as too remote and indefinite to permit of adjudication herein.

Signed in the City of Toronto, on Saturday, February 28, 1931.

C. A. MAGRATH
JOHN H. BARTLETT
W. H. HEARST

P. J. McCUMBER
GEORGE W. KYTE
A. O. STANLEY