EASTERN STEAMSHIP LINES, INC. (UNITED STATES) *v.* GERMANY

(War-Risk Insurance Premium Claim, March 11, 1924, pp. 71-74.)

PARKER, *Umpire*, delivered the opinion of the Commission, the American and German Commissioners concurring in the conclusions:

The United States asserts this claim on behalf of the Eastern Steamship Lines, Inc., a Maine corporation, operating in 1918 a fleet of eight steamships in the freight and passenger service between points along the New England coast and as far south as New York, reaching the latter port through Long Island Sound and the Cape Cod Canal when open. On the morning of July 21, 1918, during the period of belligerency between the United States and Ger-many, the American tug *Perth Amboy*, owned by the Lehigh Valley Railroad, in which the claimant had no interest, with four light barges in tow, when about two miles off shore on the Massachusetts coast was attacked by a German submarine. The barges were sunk by her gunfire and the *Perth Amboy* was set on fire by explosive shells and burned but not sunk. Following this attack and because of it, the claimant at once covered its vessels operating in these and near-by waters with war-risk insurance, which it renewed, and most of which it continued to carry until after the Armistice of November 11, 1918,

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at a cost to it in premiums of $17,351.19. This claim is asserted to recover the amount of these premiums with interest.

The American counsel contends that the facts in this case take it out of the principles and rules announced by this Commission November 1, 1923, in its Opinion in War-Risk Insurance Premium Claims (pages 33-59 of Decisions and Opinions), and that the aggregate amount of the premiums paid by this claimant for insurance against war perils is a loss to it proximately resulting from Germany's act, to pay which Germany is obligated under the Treaty of Berlin.

The basis of the demand, as stated in the claimant's brief, is that the submarine attack on the *Perth Amboy* was "the direct and proximate cause of this claimant's taking out insurance against war perils" and therefore "the legal connection between the threatened destruction and the insurance is completely established". The argument rests on a false premise. The losses proximately resulting from the submarine attack within the meaning of the Treaty of Berlin were the damage to the tug *Perth Amboy* and the destruction of the barges which it had in tow. These offensive operations of Germany off the coast of her then enemy doubtless did create a fear in the mind of the president of the claimant corporation for the safety of claimant's property and that fear may have influenced the claimant in doing a number of different things to protect its physical properties, the lives of its employees, and to preserve its established business. But the expenses incurred by it in taking such measures, on its own volition and in the exercise of its own discretion, were simply incident to the existence of a state of war in which the United States was then a participant and in no sense losses, damages, or injuries caused by Germany or her allies within the meaning of the Treaty of Berlin.

The claimant's ships were never attacked by or in any way injured or damaged by Germany or her allies. It may be that business prudence required that claimant protect its property as far as practicable, through war-risk insurance against *threatened loss*. However, as pointed out in its brief, such insurance did not give it full protection against the losses which resulted from the warlike activities of a German submarine off the New England Coast during the period when Germany was at war with the United States.

The claimant suffered losses in revenues from the falling-off of the passenger business because of this threatened danger from submarines. Suppose the claimant had, in the exercise of its discretion, in order to protect its established business, diverted it by rail and handled it during the period of belligerency through trackage arrangements with rail lines; could it recover now from Germany the additional cost to it of such an operation?

And if the claimant had arranged to handle its business by rail instead of by water, and as a result its masters and crews had been thrown out of employment, would the losses resulting to them have been attributable to Germany's act as a proximate cause?

Or suppose the claimant had continued the operation of its water lines but concluded that, in order to maintain its organization and as far as possible protect its passenger business, it would, in addition to protecting its property, insure the lives of its masters, its crews, and its passengers, and also insure against injury to their persons; would the cost of such insurance have been a loss suffered by claimant as the proximate result of Germany's act?

Or suppose the summer residents on this coast, moved through fear of attack by hostile submarines, had not only covered their properties with war-risk insurance but temporarily leased and moved into other residences further inland out of reach of enemy guns; can expenses incurred in making such changes and in procuring such insurance be seriously treated as losses for which Germany is obligated to pay under the Treaty of Berlin?

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These questions are put simply to illustrate the far-reaching application of the contention earnestly pressed by American counsel.

The proximate result of Germany's act complained of by claimant was the damaging of the tug *Perth Amboy* belonging to the Lehigh Valley Railroad and the destruction of the barges which it had in tow. One of the incidental results of Germany's offensive operations off the coast of her then enemy was to create in the mind of the president of the claimant corporation a fear of danger to its property, to partially protect against which the claimant incurred the expenses here sought to be recovered in procuring insurance against losses which were threatened but which in fact never occurred. Because of this fear, claimant's president, acting on his own volition and in the exercise of what, it is assumed, was business prudence, bought and paid for insurance against these threatened losses. The procuring of this insurance was not Germany's act but that of the claimant. The resulting expense was incurred not to repair a loss caused by Germany's act but to provide against what claimant's president feared Germany might do resulting in loss to it, although these fears were never realized. Such expenses are losses to claimant incident to the existence of a state of war, but they are not losses for which Germany is obligated to pay under the terms of the Treaty of Berlin, as construed by Administrative Decisions Nos. I and II and the Opinion in War-Risk Insurance Premium Claims, all handed down by this Commission on November 1, 1923.

It results from the foregoing that this claim must be dismissed and it is hereby so ordered.

Done at Washington March 11, 1924.

Edwin B. PARKER
Umpire

Concurring in the conclusions:

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner

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