

WILLIAM J. QUILLIN *ET AL.* (UNITED STATES)*v.* GERMANY*(April 21, 1926, pp. 654-657.)*

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of the National Commissioners certifying their disagreement.

On August 29, 1917, the Schooner *Laura C. Anderson*, licensed under the laws of the United States and registered at the port of Philadelphia, Pennsylvania, while engaged in private commerce was captured by a German submarine and sunk about 30 miles from the port of Le Havre, France.

The claimants herein, William J. Quillin and 27 others, who were at the time of the loss and have since remained American nationals, were in the aggregate the owners of the legal title of a 52/64 interest in the vessel and have since been and now are the owners of this claim for a like interest in the value of the vessel and stores lost. The owners of the legal title of the remaining 12/64 interest have not established their American nationality.

The American and German Agents agree—confirmed by the National Commissioners—that at the time of her loss the fair market value of the *Laura C. Anderson* was \$120,000 and that there were also lost with her stores of the value of \$1,805.23.

The American and German Agents further agree—confirmed by the National Commissioners—that at the time of the loss of the schooner the owners of her legal title carried French Government insurance indemnifying them against the risks of war to the amount of 348,000 French francs, which converted into dollars at the rate of exchange prevailing at the date of the loss, namely, 17.359 francs to the dollar, equaled \$60,409.32; that although promptly notified of her loss the French Government did not make payment under this policy of insurance until February, 1921, at which time the amount paid, converted into dollars at the rate of exchange then prevailing, namely, 7.17¢ to the franc, equaled \$24,951.60.

The sole question certified to the Umpire for decision is, Which rate of exchange, that prevailing at the date of the loss or that prevailing at the date of payment, shall be applied in converting into dollars the French francs actually received by the owners of the vessel? The German Agent contends for the former basis and the American Agent for the latter.

When the schooner was sunk her fair market value, fixed at \$120,000, was lost. Under the Treaty of Berlin it becomes material to determine who suffered that loss and the extent to which it was impressed with American nationality.

The tangible thing destroyed was the schooner. The owners of the legal title to that schooner suffered no loss to the extent of the payments made to them by the insurer, who was the real loser to the extent of such payments. At the time of the loss the insurer had a contingent or conditional property interest in the tangible thing destroyed—the schooner—which interest became absolute and fixed upon payment by the insurer. The extent of the insurer's interest was measured, not by the amount of the maximum indemnity stipulated for in the policy, but by the amount actually paid by the insurer and received by the insured. The aggregate loss sustained, measured in terms of American dollars, is fixed at \$120,000. This loss Germany is obligated to pay under the Treaty of Berlin to the extent—but only to the extent—that it was impressed with American nationality. Germany's interest in allocating this loss as between the owners of the legal title of the schooner and the insurer thereof is due to their diverse nationalities. To the extent of the damage sustained by the insurer—the French Government—resulting from the loss of the schooner, Germany is not liable under the Treaty of Berlin. What, then, was that damage measured in terms of American dollars? Manifestly it was the 348,000 francs which were paid to the owners of the legal title by the insurer converted into dollars at the rate of exchange prevailing at the date of payment, namely, \$24,951.60. The sum remaining after deducting this payment, so converted, from the \$120,000, the fair market value of the schooner at the time of her loss, represents the net loss to the claimants and their associates from the loss of the hull, namely, \$95,048.40. The stores lost were not insured. Their agreed value was \$1,805.23, which added to the net loss on the hull makes a total loss to the *owners* of the vessel of \$96,853.63, of which these *claimants* own a 52/64 interest. It follows that the net loss suffered by these claimants was \$78,693.58.

The rule here announced is in entire harmony with the decisions heretofore rendered by this Commission and with the awards made in the American underwriters' claims. The basis of such awards was "the actual net out of pocket payments of the American underwriters \* \* \* after deducting all sums, if any, received by such underwriters under policies of reinsurance". It will be noted that those awards were based, not on the amount of maximum indemnity stipulated to be paid in the policies of insurance, but rather on the amount actually *paid* by the American underwriters measured in terms of American dollars at the time of payment.

Applying the principles above announced and the rules and principles announced in other decisions of this Commission to the facts in this case, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of the claimants herein the sum of seventy-eight thousand six hundred ninety-three dollars fifty-eight cents (\$78,693.58) with interest thereon at the rate of five per cent per annum from November 11, 1918, distributed as follows:

<i>Claimant</i>	<i>Proportional share</i>	<i>Net hull loss</i>	<i>Storrs, etc.</i>	<i>Total award</i>
William J. Quillin.....	11/128	\$8,168.26	\$155.17	\$8,323.43
Oscar Bell.....	1/128	742.56	14.11	756.67
John W. Callaway.....	1/64	1,485.13	28.20	1,513.33
Annie S. Carey.....	1/64	1,485.13	28.20	1,513.33
James G. Conwell.....	1/64	1,485.13	28.20	1,513.33
Mary S. Coulbourn, Trustee of Joseph N. Coulbourn.....	1/64	1,485.13	28.20	1,513.33
A. D. Cummins.....	8/64	11,881.06	225.67	12,106.73
Alverda Eley.....	1/64	1,485.13	28.20	1,513.33
S. J. Furniss.....	1/64	1,485.13	28.20	1,513.33
Harlan E. Goodell.....	1/64	1,485.13	28.20	1,513.33
Ethel Hastings.....	2/64	2,970.26	56.42	3,026.68
C. L. Horsey.....	1/128	742.56	14.11	756.67
Charles M. Kelley.....	1/64	1,485.13	28.20	1,513.33
S. Crowley Loveland.....	1/64	1,485.13	28.20	1,513.33
Francis J. McDonald.....	4/64	5,940.52	112.83	6,053.35
William Martino.....	1/64	1,485.13	28.20	1,513.33
Jonathan May & Sons.....	8/64	11,881.06	225.67	12,106.73
C. W. Riggin.....	1/64	1,485.13	28.20	1,513.33
F. H. Small.....	1/128	742.56	14.11	756.67
John Sullivan.....	1/64	1,485.13	28.20	1,513.33
Edward G. Taulane.....	2/64	2,970.26	56.42	3,026.68
George Taulane.....	2/64	2,970.26	56.42	3,026.68
Lewis B. Taulane.....	2/64	2,970.26	56.42	3,026.68
Herbert L. Black.....	1/64	1,485.13	28.20	1,513.33
Harold G. Foss.....	1/64	1,485.13	28.20	1,513.33
Arthur D. Foster.....	1/64	1,485.13	28.20	1,513.33
Joseph O'Brien.....	1/64	1,485.13	28.20	1,513.33
David Baird Company.....	1/64	1,485.13	28.20	1,513.33
<b>TOTAL</b>	<b>52/64</b>	<b>77,226.83</b>	<b>1,466.75</b>	<b>78,693.58</b>

Done at Washington April 21, 1926.

Edwin B. PARKER  
*Umpire*