JAMES A. BEHA, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AS LIQUIDATOR OF NORSKE LLOYD INSURANCE COMPANY, LIMITED, FOR AMERICAN POLICYHOLDERS (UNITED STATES) *v.* GERMANY

(April 12, 1928, pp. 901-903.)

This claim is put forward by the United States on behalf of the Superintendent of Insurance of the State of New York as statutory liquidator for American policyholders of the Norske Lloyd Insurance Company, Limited, a Norwegian corporation, which, in January, 1916, pursuant to the laws of the State of New York, was admitted to transact and thereafter transacted business in that State. The corporation was adjudged insolvent in 1921. The claimant as liquidator of its assets in the United States found them sufficient for the payment of all claims of all American policyholders. But the Court of Appeals of the State of New York held that only those American nationals (designated class 1 policyholders) whose policies were issued through the United States branch of the Norske Lloyd were entitled to preferential payment from the assets in the United States, and that the American nationals (designated class 2 policy-holders) holding policies issued to them by the corporation but not through the United States branch thereof were not entitled to such preferential payment but as common creditors must share pro rata with all policyholders. It is alleged that while class 1 policyholders will be paid in full class 2 policyholders, whose claims are estimated at $432,000, will recover from the Norwegian corporation as general creditors only 23 per cent of their claims.

The argument put forward in support of this claim may be briefly stated thus: It is claimed that the Norske Lloyd, a Norwegian national, was rendered insolvent through the destruction by Germany of property insured by it belonging to other than American nationals, which insurance, in the light of Germany's effective war activities, proved to have been unprofitable and therefore improvidently written. American nationals holding policies written by this neutral insurer, but not through its American branch, whose property was destroyed, but not by Germany, will, because of the insolvency of this neutral insurer, be unable to collect from it 77 per cent of the amount of the indemnity for which they contracted. While Germany is not obligated under the Treaty of Berlin to reimburse the neutral insurer for the losses paid by it, nevertheless demand is now made that Germany reimburse insured American nationals to the extent of their losses which the neutral insurer cannot pay in full because of its insolvency.

The claimant's counsel frankly state that this claim is asserted not to collect insurance under policies written by the Norwegian insurer but rather to collect damages resulting from the insurer's inability to pay because of its insolvency caused by Germany's acts.

Assuming the truth of the facts upon which this argument rests, the vice in it is that the inability of these American policyholders to collect from the Norwegian insurer indemnity in full was not the natural and normal consequence of the acts of Germany in destroying property not American-owned which happened to be insured by the same Norwegian insurer.

The property of the American class 2 policyholders, for whom the claimant herein is acting, has been destroyed to their damage. It is not contended that the destruction resulted from any act of Germany. They have sought indemnity from the neutral insurer under policies written by it, but because of its insolvency it cannot discharge its contractual obligations. To these contracts Germany was not a party, of them she had no notice, and with them she was in no way connected. In destroying non-American-owned property insured by this neutral insurer Germany inflicted damage on such insurer. But Germany did not directly or indirectly touch any property owned by these American policyholders or in which they held a property interest. The destruction by Germany of non-American-owned property insured by this Norwegian insurer which resulted in its insolvency cannot, in legal contemplation, be attributed as the proximate cause of damages sustained by American nationals resulting from their inability, because of the insurer's insolvency, to collect full indemnity for the loss of their property not touched by Germany.

But for the existence of a state of war this neutral insurer would have written no war-risk insurance. The heavy premiums charged were intended to be commensurate with the risks assumed. The insurer doubtless thought it was being adequately compensated for such risks. It knew, and all of its policyholders must be presumed to have known, that, speaking generally, it at the time had no recourse against Germany or any other belligerent for losses which it might sustain under its contracts of indemnity. The fact that subsequent events proved that the premiums collected were not sufficient in amount to justify the risks assumed and hence that its contracts of indemnity were improvidently entered into by it, resulting in its insolvency and its inability to pay in full American policyholders whose property was not damaged or destroyed by any act of Germany, cannot be attributed to Germany's acts as a proximate cause.

Applying the principles announced in numerous cases heretofore decided by this Commission, it is decreed that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

Done at Washington April 12, 1928.

Edwin B. PARKER
Umpire

Chandler P. ANDERSON
American Commissioner

W. KIESSELBACH
German Commissioner