

BRITISH EMBASSY,
WASHINGTON, D. C.

November 7th, 1939.

No. 1236

My Lord,

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With reference to correspondence ending with my despatch No. 732 of the 3rd July 1939 regarding the "Black Tom" sabotage case, I have the honour to report that on October 30th 1939 Associate Supreme Court Justice Owen J. Roberts, the Umpire of the German-American Mixed Claims Commission, gave a decision awarding some 49 million dollars to the American claimants.

2. As mentioned in my despatch under reference the German Commissioner had withdrawn from the Commission in March last. Consequently the present decision was given in his absence.

3. On October 3rd Herr Thomsen, the German Chargé d'Affaires, sent a protest 34 pages in length to the Secretary of State repeating the charges of bias on the part of the Umpire which had been made by the German Commissioner and contending that the decision was illegal on the ground that a truncated Commission was not competent to make an award.

4. Mr. Secretary Hull answered this protest in a letter of October 18th in which he declined to interfere with the conduct of the Commission over which the State Department had no control and in which he commented on the action of the German

Commissioner/

The Right Honourable

The Viscount Halifax, K. G.,

etc., etc., etc.

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Commissioner which was, he declared, deliberately designed to frustrate the work of the Commission.

5. As the awards given on October 30th far exceed the available fund of about 26 million dollars other successful claimants who have obtained awards with regard to matters not connected with the sabotage cases, will, I understand, seek to attack the legality of the present awards and restrain payment by the Treasury under the Settlement of War Claims Act of 1928. Already one suit has been filed to restrain the payment of the present awards on the grounds that the Commission could not in the absence of the German Commissioner make a valid award. The awards which have just been given will, I understand, mostly rank in priority to the awards made earlier in cases not connected with the Black Tom explosions. The reason is that the Black Tom claims are mostly by underwriters whose individual claims are below \$100,000 and which therefore benefit under S.4 (3) of the above mentioned Act.

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6. Arising out of the suggestions contained in the American Department's letter A 5701/4786/45 of September 9th I arranged for some members of my staff to have a meeting with the Honourable R. Walton Moore, the Counselor of the State Department, to see if anything could be done with regard to the claims of the British underwriters which had never been formulated to the Commission because the State

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Department in 1927 decided that the American Agent should not espouse non-national claims. My request for the meeting was based on the promise of the Secretary of State in 1929 that the decision of 1927 referred to above should be reconsidered. I enclose herein a copy of my letter asking for such meeting. The meeting which took place on October 20th lasted a considerable time and the representatives of His Majesty's Embassy made a point of stressing the injustice which had resulted to the British insurance companies by the refusal of the State Department to accept the argument that the doctrine of subrogation should be applied and of urging that the American Agent should espouse these claims. In particular attention was called to the cynical passage in the Department of State's letter of June 8th, 1927 in which the Department admitted it invoked the doctrine of subrogation "in international arbitrations where the result is to benefit American nationals", but "a different situation is presented" where such a benefit "does not inure to the benefit of American nationals, and the Department consistently refuses in such cases to recognize the applicability of the doctrine".

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7. The representatives of the State Department seemed to be sympathetic to the English companies and expressly stated there could be no question as to the merits of the claims. They pointed out however that the withdrawal of the German Commissioner had

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made it impossible to present any more claims even if the Department reversed its decision not to allow the American Agent to adopt these claims. The procedural difficulties would be insuperable; for instance there would be no possibility of disagreement between the German and the American Commissioners and without such a disagreement the Umpire could not be called in.

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8. The entirely negative attitude of the State Department's representatives at that meeting was officially confirmed in a letter of October 26th 1939 from Judge Moore, a copy of which I enclose herein. In this letter the absence of the German Commission is relied on for the assertion that no re-examination would be of any use. I may say that the statement is true that the Department of State have consistently indicated that they adhere to their previous decision.

9. In the circumstances I do not see that any further steps can be taken by me to press the claims of the British companies and in fact the long quiescence of their lawyers shows I think that they must have given up hope of getting their claims presented before the Commission which would seem now to have concluded its labours.

10. I understand informally that the American companies intend partly to reimburse the English companies for the expenses incurred by them in establishing the guilt of the agents of Germany in the Black Tom explosions.

11. If it is thought that I could usefully take any further steps I would be grateful for the necessary instructions as to the line which I should adopt.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

(SGD) LOTHIAN