

- ①
1. Since reading the file and seeing <sup>Mr</sup> Malcolm's draft I met the partner in Grayth who has had the conduct of the Black To an litigation on behalf of the American insurance companies.
2. This lawyer told me that the ~~the~~ Insce. Coys claim if successful will be paid <sup>in</sup> priority to the other claimants on the fund, by virtue of the provisions of the legislation dealing with war claims. \* He also said that the American companies were going to pay back to the English companies the costs of the investigation to which he attributed the success of the American coys. He said that there was no conflict of interest between the American Coys and the English coys; that he thought the English coys had had a serious injustice done to them and that Stalross the head of the American group was very sympathetic.
3. He added however that he had given an opinion that the English coys had no earthly chance of ever getting anything because of the State Dept's decision in 1907 that the American Agent should not espouse non American claims.

Joyce  
Feb 27/10  
Mr Malcolm  
F.A.  
Mr Hayes Millar  
Jr

Joyce  
Mar 7/10

\* As the claims are insurance claims they are split up among underwriters and are all less than \$100,000 and therefore paid in full and not pro rata

~~He~~ When asked if he would have given the same advice if there had been a chance of the S.D. reconsidering the claims he said that in such circumstances it would be worth trying again and added that he could probably get authority to support the English coys. He claimed to have helped Mr Arnold to prepare the memorandum of Feb 15th 1929. He said that if any thing was to be done it should be done now.

4. I would suggest therefore that the note to the S.D. should be slightly modified and the following action taken

A] The note to the S.D. should remind them of their promise and point out that in the absence of the German agent the final decision would be a formal matter in favour of the American coys

(see suggested alterations) and suggesting a very early meeting.

B] The lawyers of the English coys should be asked to come here as soon as possible in order to provide the legal arguments if the S. Dept are willing to ~~take~~ ~~our~~ legal justification of ~~or~~ consider ~~the~~ ~~matter~~ the legality or



(2)

otherwise of their previous decision.

The way the English says ~~claim~~ contention should be put is firstly that, quite apart from any rule of law, equity and justice would be in favour of the operation of the doctrine of subrogation and therefore of the American Agent espousing these non American claims. The next point would be that if a rule is to be invoked forbidding subrogation such rule must be certain and well established to justify the hardship it will cause.

It can then be demonstrated that this rule ~~is~~ is not absolute; that it has been frequently disregarded where justice demanded it. For instance in the Alabama claims and in the Venezuelan claims the U.S. itself espoused non national claims.

I believe that in the Black Tom case itself the American Agent espoused the claim of Canadian Car & Foundry which is not American cog ~~because~~ on the ground that it was American owned, this if correct, is the responsibility of a non national claim.

[3c] If the English says approve, the partner

in law should be called in.

The recommendation  
6. ~~recommending~~ That the lawyers  
of the English coys should be approached  
~~that~~ is contrary to Stirling's observation  
in his semi official letter of Aug 21<sup>st</sup> 1939  
who says it would be raising false  
hopes.

I do not think that matters, as  
the English coys know they have very  
little chance. Apparently both  
Judge Moore and Hackworth are strongly  
opposed to allowing the American  
Agent to espouse the English claims  
but as it is the last chance it seems  
worth trying.

J.F. 6.10.39