



30 January 2004
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Honorable Edward R. Korman
Special Master Judah Gribetz
Holocaust Victim Assets Litigation
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San Francisco
California, CA 94128-8300

LEGAL SERVICES

Dear Sirs

Comments on the Interim Report

There are four aspects of the Interim Report which, when taken together, provide a very clear roadmap as to what should be done with the unclaimed amounts.

The *first* aspect is the emphasis in the Interim Report on the central importance of the Deposited Assets Claims (e.g. pages 9 and 24 of the Interim Report).

The *second* aspect is the focus in the Interim Report on the very significant obstacles that have been placed in the way of Holocaust survivors and their heirs with potential claims to Swiss bank accounts, for example:

- (i) the destruction by the Swiss banks of all records relating to 2.8 million of the approximately 6.9 million accounts opened between 1933 and 1945 (footnote 7, page 6);
- (ii) the refusal of the Swiss banking authorities, contrary to the recommendations of the Volcker Report, to create a central archive for the Total Accounts Database which contains information on the 4.1 million accounts for which records still exist (footnote 8, page 6); and
- (iii) the refusal by Swiss banking officials to permit publication of more than 21,000 of the 36,000 accounts in the Accounts History Database ("the AHD is believed to contain only a portion of the Holocaust victim accounts for which Swiss bank records still exist") (footnote 8, page 6).

These constraints are, of course, over and above the enormous constraints created by the failure of the Swiss banks to take steps to compensate their Jewish clients for over 60 years. Further, all of these constraints could relatively easily have been overcome through reasonable cooperation from the Swiss banks and Swiss banking authorities as had been promised (e.g. footnote 44, page 30).

In light of these constraints, it is quite clear from the Interim Report that the names published on the internet are a mere fraction of those bank accounts in respect of which claims could even now be made, and this is no doubt reflected in the relatively paltry amount of money that has been paid out.

My family's situation is a case in point - one of probably tens or hundreds of thousands of similar cases. Because of the inadequate document disclosure on which the claims process is based, my family had to go to the considerable effort and expense of examining the public archives in Brno in the Czech Republic in order to discover that our family business - Weiss & Hanak - had accounts with Swiss banks. No reference is made to these Weiss & Hanak accounts in the lists published on the CRT web site. In particular, no mention of the Weiss & Hanak accounts is made in the "Section 2 - Institutions" list. Attached to this letter are copies of documents from the Czechoslovak Central Bank and from one of the Swiss banks in question that we discovered in the Brno public archives evidencing the Weiss & Hanak bank accounts that were not disclosed by the Swiss banks or banking authorities. Lori Katz of the CRT is currently investigating our claims in respect of these accounts.

It is clear that the "Section 2 - Institutions" list (which is where the Weiss & Hanak accounts should have shown up) represents a tiny fraction of Jewish-owned businesses throughout Western, Central and Eastern Europe, Russia and elsewhere that would have had Swiss bank accounts prior to the War. No doubt a much larger list could be compiled if proper access were granted by the Swiss banks and banking authorities to relevant documentation. It is imperative that action be taken now, using unclaimed funds if necessary, to amplify this list by searching public archives and other alternative sources.

The *third* aspect is the stress the Interim Report lays on the vast amount of money that claimants would have been entitled to had they received a modicum of cooperation and good faith over the post-War years, and as part of the class action settlement process, from the Swiss banks and banking authorities. As noted in the Interim Report, the value of all "probable" and "possible" claims among the 36,000 accounts amounts to approximately \$1.634 billion (page 34), leaving aside the several million other accounts to which proper access is currently being denied.

The *fourth* aspect is the attempts that the CRT is trying to make to overcome some of the constraints referred to above, including:

- (i) the experimental programme to match bank accounts against the Total Accounts Database that includes all 4.1 million accounts for which records survive, not just the 36,000 accounts noted on the database made available to the CRT (page 6);
- (ii) the attempt to find information on Swiss bank accounts from certain archives including, in particular, the Austrian State Archives (page 59); and
- (iii) the action that Masters Volcker and Bradfield and Lead Settlement Attorney Neuborne are taking to obtain proper access to the Total Accounts Database (page 59).

These four aspects of the Interim Report argue inexorably in favour of the following approach to the use of unclaimed funds:

1. Much greater effort should be made to gain access to the documents to which proper access is currently being denied by the Swiss banks and banking authorities.

The Interim Report states that: "it is both legally and morally appropriate that *every effort* be made to return these bank accounts to those who entrusted their property to Swiss financial institutions for safekeeping, or to their heirs" (page 112). It is crystal clear from the Interim Report that much more could be done to live up to this fine commitment.

2. To the extent that the Swiss banks continue to refuse proper access to the majority of relevant documentation, significant investment should be made (using unclaimed funds if necessary) to locate information on missing accounts using alternative means. My family's experience has shown how necessary it is investigate public archives and other alternative sources in order to find evidence of Swiss bank accounts where such accounts have not been disclosed by the Swiss banks and banking authorities. The Interim Report refers to the CRT's resort to the Austrian State Archives but this is just one of thousands of useful archives and the CRT should hire researchers to search many other archives throughout Europe in order to unearth the information about Swiss bank accounts to which access is currently denied. A particular focus should be on Jewish-owned businesses. It beggars belief to imagine that the "Section 2 - Institutions" list represents any more than a tiny fraction of Jewish-owned businesses that had Swiss bank accounts. As my family's experience shows, information on such Swiss bank accounts can, in the absence of cooperation from the Swiss banks and banking authorities, be found comparatively easily (although at the cost of significant effort and expense) in public archives. Given the export-driven focus of many pre-War Jewish-owned businesses, and the extensive exchange control restrictions in place pre-War, many of these businesses will, like my family's, have required exchange control permissions from relevant Central Banks throughout Europe and beyond in order to transfer money to and from their Swiss bank accounts. Has any attempt been made to obtain information and documentation from Central Banks in Western, Central and Eastern Europe (including Switzerland itself)? Has any attempt been made to search public archives in major cities (apart from in Austria), particularly those with large pre-War Jewish communities? In the face of continued lack of cooperation from the Swiss banks and banking authorities, significant urgent investment should now be made in pursuing such alternative information sources, using unclaimed funds, in order to honour the solemn commitment made in the Interim Report to make "every effort" to identify such accounts.

3. The individual adjudications published on the CRT web site indicate that, in respect of most accounts, the Swiss banks have destroyed all documentation relating to the value of the accounts. Accordingly, assumptions as to the value of these accounts have had to be applied. However, a careful analysis of the individual adjudications shows that the average value of all the accounts where the documentation relating to value has not been destroyed is much higher than the average value of all the accounts where the documentation has been destroyed. This empirical conclusion, which arises from the adjudication process, and could not have been known at the time the assumptions were established, argues strongly in favour of increasing the amounts that have been paid out in respect of accounts where the documentation had been destroyed so as to reflect the more realistic averages that have been established empirically from the adjudication process. Other asset classes have been awarded increased allocations and the compensation provided in relation to

the Deposited Asset Claims class should be augmented to reflect new and realistic assumptions derived empirically from the adjudication process.

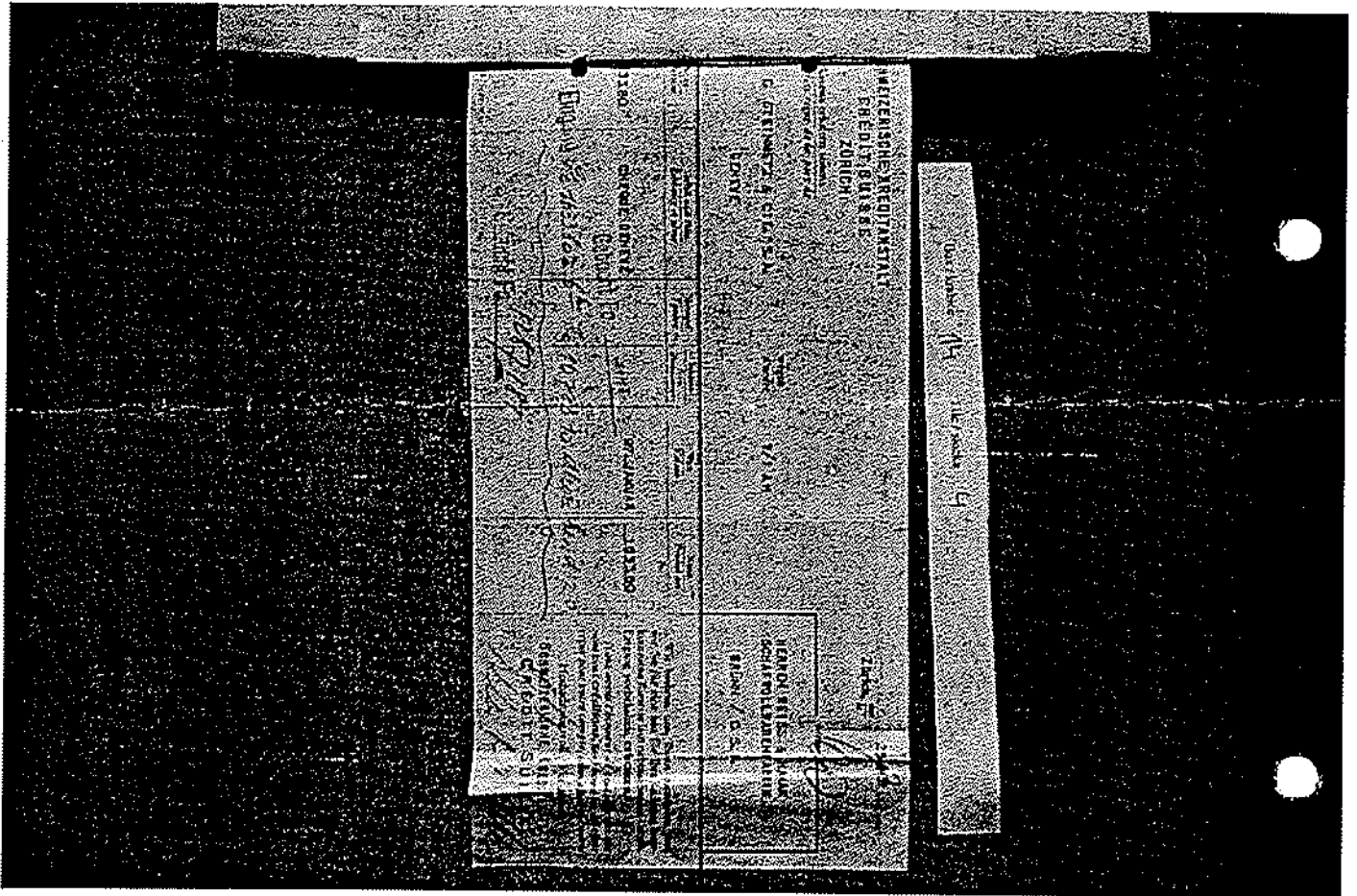
4. Claimants have waited many decades to receive compensation in respect of their families' bank accounts. Most would not have kept the money in a Swiss bank as an investment strategy after the War if they had had the choice. Many placed their money in Swiss banks on a temporary basis to protect themselves against the Nazi threat. They have therefore lost the opportunity to invest their money as they would have preferred, for example, building up a business taken from them or destroyed by the Nazis, or putting it into high interest accounts. This argues in favour of a further significant uplift on the amounts paid out on claimed accounts.

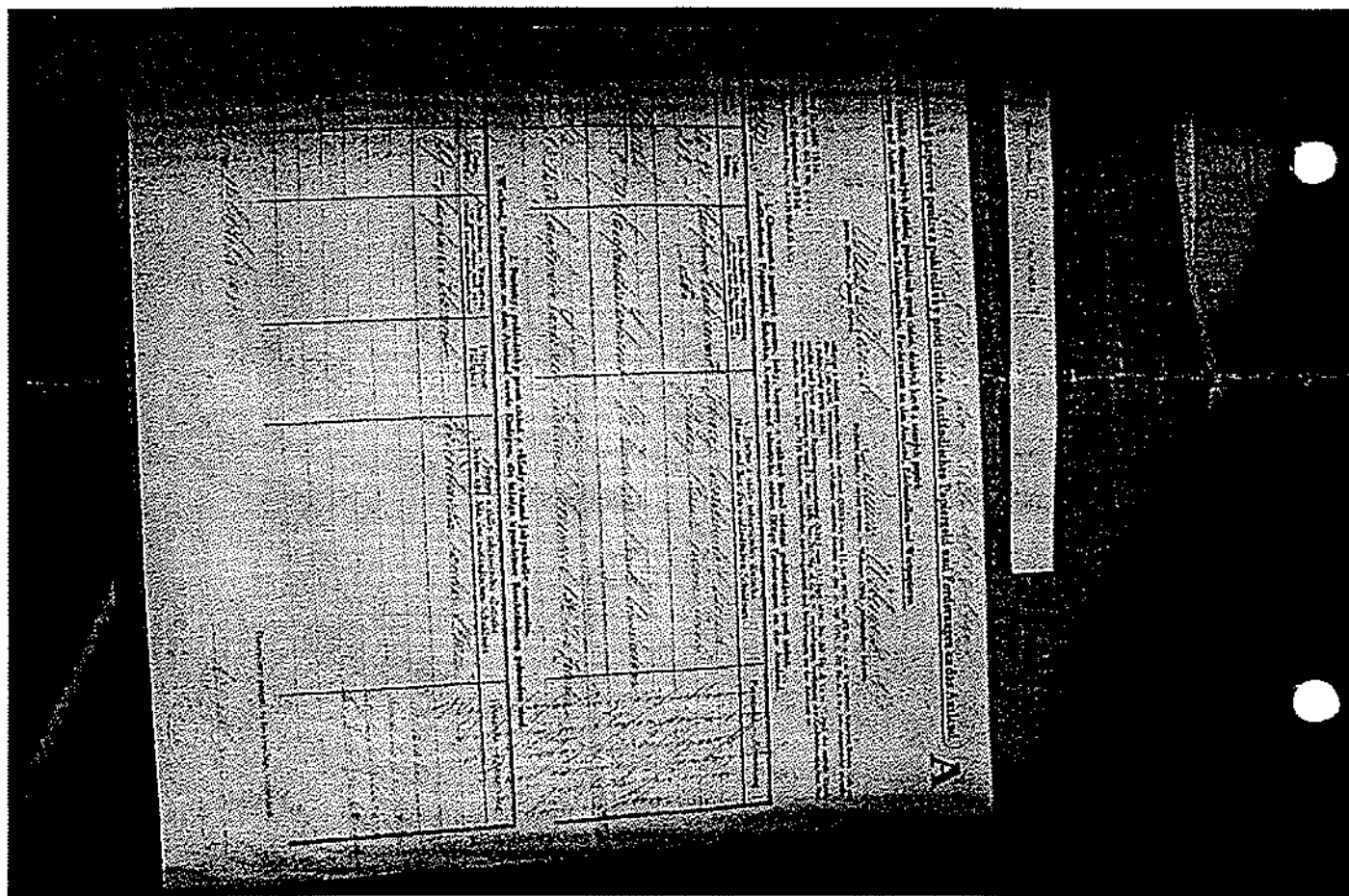
5. Similarly, the amounts on claimed accounts should be further increased to reflect the punitive damages element of the class actions.

Yours sincerely

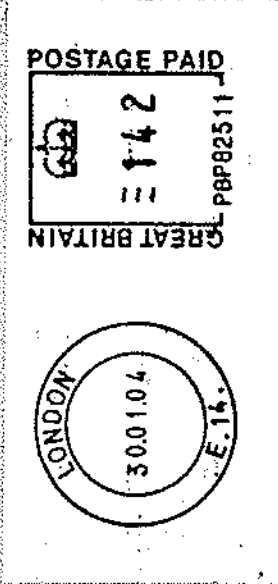
A handwritten signature in black ink, appearing to read 'Tim Schwarz', written in a cursive style.

Tim Schwarz





AIR MAIL



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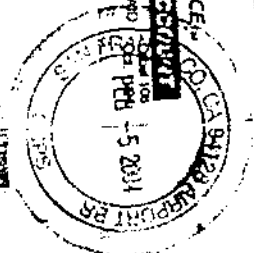
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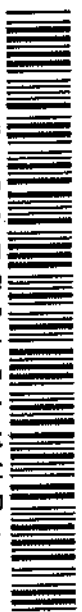
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