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March 28, 2019

Hon. Edward R. Korman
United States District Judge
United States District Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: In re Holocaust Victim Assets Litigation (Swiss Banks Settlement)

Dear Judge Korman:

We enclose for filing our Final Report on the Swiss Banks Settlement Fund distribution process. The Final Report also will be posted on the website for this matter, www.swissbankclaims.com.

It has been our great honor to have assisted the Court in formulating, establishing and overseeing the claims process in this matter, which has resulted in the worldwide distribution of nearly $1.285 billion to more than 458,000 Holocaust victims and certain of their heirs.

Respectfully submitted,

Judah Gribetz

Shari C. Reig

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: HOLOCAUST VICTIM ASSETS LITIGATION	:	Case No. CV 96-4849 (ERK)(MDG) (Consolidated with CV 96-5161 and CV 97-461)
This Document Relates to: All Cases	:	

SPECIAL MASTERS' FINAL REPORT ON THE SWISS BANKS HOLOCAUST SETTLEMENT DISTRIBUTION PROCESS

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March 28, 2019

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Judah Gribetz
Shari C. Reig

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I. ORIGINS OF THE SWISS BANKS SETTLEMENT AND DISTRIBUTION PROCESS

Switzerland was a neutral nation during the Second World War. Both before and after Hitler's accession to power in Germany in 1933, Swiss banks appeared to provide a financial haven where foreigners at risk could safely deposit their funds. For decades after the war, however, Nazi victims and their families were told that if they were seeking to recover their property, Switzerland was not the place to look. They were told that there were no records of their assets or that they did not have proof that the assets belonged to them. They were turned away time and time again, but they did not forget and they did not give up.

In 1996 and 1997, a series of class action lawsuits were filed in several United States federal courts against Swiss banks and other Swiss entities. These lawsuits alleged that financial institutions in Switzerland collaborated with and aided the Nazi Regime by knowingly retaining and concealing assets of Holocaust victims, and by accepting and laundering illegally obtained Nazi loot and profits of slave labor. All of the cases were consolidated in the United States District Court for the Eastern District of New York ("the Court"). The lawsuits were litigated by Professor Burt Neuborne and a team of leading U.S. class action attorneys.

Judge Edward R. Korman, before whom the litigation was pending, actively encouraged the parties to settle. With his assistance, the parties reached a settlement in principle for $1.25 billion in August 1998, to be paid jointly by two large Swiss banks, Credit Suisse and Union Bank of Switzerland ("UBS"), creating a class action fund to be administered by the Court.[1] The Settlement had the support of the United States government, which had first become involved with the matter in 1994, when Stuart E. Eizenstat, then serving as U.S. Ambassador to the European Union, had initiated an inquiry into the Holocaust-era activities of Swiss banks. Ambassador Eizenstat continued to oversee the U.S. government's role in matters of Holocaust compensation and played an important part in bringing about the Swiss Banks Settlement.[2] It

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[1] The Swiss government did not participate in the settlement and paid no part of the Settlement Fund of $1.25 billion.

[2] Ambassador Eizenstat has served in many governmental roles, including Deputy Secretary of the Treasury, Under Secretary of State for Economic, Business & Agricultural Affairs, Under Secretary of Commerce, and Special Representative of the President and Secretary of State for Holocaust-Era Issues under President Clinton. He remains actively involved with Holocaust compensation issues. He described his experiences with the

(*continued on next page*)

was envisioned that the Settlement Fund would be distributed among five different victim groups (ultimately designated under the Settlement Agreement as those who were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual or disabled), and among five different settlement classes (the Deposited Assets Class, Slave Labor Class I, Slave Labor Class II, the Looted Assets Class, and the Refugee Class).

The Settlement Agreement did not, however, set forth a specific method of allocating the Settlement Fund among these diverse classes and victim groups. Rather, the agreement provided for the Court to appoint a Special Master to employ "open and equitable procedures to ensure fair consideration of all proposals for allocation and distribution."[3] The Plaintiffs' Executive Committee on December 15, 1998 unanimously endorsed Judge Korman's proposal to appoint Judah Gribetz as Special Master. Shortly thereafter, on January 26, 1999, the parties signed the Settlement Agreement. On March 31, 1999, the Court issued an order formalizing Mr. Gribetz's appointment (and by order dated October 3, 2002, Special Master Gribetz's colleague, Shari C. Reig, was appointed as Deputy Special Master). Judge Korman approved the Settlement

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negotiation of claims arising from accounts held in Swiss bank accounts, slave labor on behalf of German and Austrian corporate and governmental entities, and other Holocaust-era injuries, in his book IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II (PublicAffairs 2003).

In addition to Ambassador Eizenstat's account, analyses of the Swiss Banks case and other Holocaust litigation include, among others, Professor Michael Bazyler's chapter, *Achieving A Measure of Justice and Writing Holocaust History Through U.S. Restitution Litigation, in* RETHINKING HOLOCAUST JUSTICE: ESSAYS ACROSS DISCIPLINES 235 (Norman J.W. Goda ed., Berghahn Books 2017); Michael J. Bazyler, *www.swissbankclaims.com: The Legality and Morality of the Holocaust-Era Restitution Settlement with the Swiss Banks*, 25 FORDHAM J. INT'L. L. S-64 (2001); MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS (N. Y. Univ. Press 2003); HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006); LEORA BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW (Univ. of Mich. Press 2017) ("BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW"), MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990's (Univ. of Wis. Press 2009) ("MARRUS"); JOHN AUTHERS & RICHARD WOLFFE, THE VICTIM'S FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST (Harper Collins Publishers 2002); John Authers, *The Road to Restitution*, FIN. TIMES WEEKEND, Aug. 16/17, 2008; and GREGG J. RICKMAN, SWISS BANKS AND JEWISH SOULS 40-41 (Transaction Publishers 1999).

[3] Settlement Agreement, Section 7.1. The Settlement Agreement is included as part of the exhibit to the Final Report entitled "Claimant Application Materials," and is also available on the website for these proceedings, http://www.swissbankclaims.com/Documents/Doc_9_Settlement.pdf. The website contains information about the litigation and settlement, the various claims processes for each of the settlement classes, statistics on distribution, and a "Chronology" highlighting some of the most significant events in the case and containing hyperlinks to thousands of documents, including individual decisions on Refugee, Slave Labor and Deposited Assets Classes claims.

Agreement — while imposing important conditions intended to facilitate the review of claims, particularly those relating to Holocaust-era Swiss bank accounts — by order of July 26, 2000.[4] On September 11, 2000, the Special Masters filed the Proposed Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"), which the Court approved in its entirety on November 22, 2000, a decision the United States Court of Appeals for the Second Circuit affirmed on July 26, 2001.[5]

What has the claims process established under the Distribution Plan accomplished? It has resulted in the payment of more than the $1.25 billion settlement amount — nearly $1.285 billion — to over 458,400 Holocaust victims and their heirs. It has repaid nearly $720 million to owners or heirs of Swiss bank accounts, enabling 4,716 documented accounts, each with an average value of almost $116,000, to be returned to those families from whom the assets were wrongfully taken. The $720 million also includes payments to another 12,301 Holocaust victims and heirs, who were compensated for bank account claims that were credible but could not be documented because of the banks' massive destruction of Holocaust-era records.[6]

One of these bank account payments — for nearly $22 million, the largest single award issued by the Court — was made to members of a family that included Maria Altmann, whose relatives' art was looted by the Nazis, and who filed suit in federal court in Los Angeles against the Austrian government seeking return of that art.[7] Following several years of litigation, including proceedings before the U.S. Supreme Court as well as in Austrian courts, Ms. Altmann

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4 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139 (E.D.N.Y. 2001).

5 *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at *4 (E.D.N.Y. Nov. 22, 2000), *aff'd.*, Nos. 00-9595, 00-9597, 2001 WL 868507 (2d Cir. July 26, 2001), reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005).

The accompanying Executive Summary of the Final Report is intended to provide an overview of the processes that are described in detail in the complete Final Report. Since it is anticipated that not all readers will have the time or opportunity to read the full Final Report (approximately 2,000 pages including exhibits and bibliography), some excerpts from this Final Report are repeated in their entirety in the Executive Summary.

6 These were called "Plausible Undocumented Awards," or "PUAs," and each recipient of a PUA was awarded $7,250.

7 *In re Account of Österreichische Zuckerindustrie AG Syndicate, available at* http://www.crt-ii.org/_awards/_apdfs/Osterreichische_Zuckerindustrie.pdf. For ease of reference, all further citations to Deposited Assets Class awards will include only the name of the decision. All decisions may be found via a surname search at www.crt-ii.org/awards, as well as at the website for this Settlement, www.swissbankclaims.com, through a link on the "Deposited Assets Class" page.

in 2006 finally was able to reclaim her family's paintings, including the celebrated "Portrait of Adele Bloch-Bauer" by Gustav Klimt. Her struggle for restitution was highlighted in the film "*Woman in Gold*." Less well known is that in addition to losing its art, the family also lost its business, one of Austria's largest sugar refineries (known as ÖZAG), because of maneuverings among the Nazis and Swiss bankers. Despite the family's extensive efforts to protect its assets, the Swiss bank "actively cooperated with the forced sale" of the ÖZAG shares, transferring the bank-held shares to a "designated Nazi 'purchaser' at a small fraction of the shares' value."[8] This was in violation of its contractual agreement with, and fiduciary duty to, the family. The value of these Swiss assets was returned to the family through the Deposited Assets Class claims process.

The Swiss Banks Settlement distribution program has enabled almost 198,000 people, the vast majority of whom were Holocaust survivors (and the remainder, heirs of survivors who passed away after the settlement), to receive a total of over $280 million. This sum was some measure of financial recognition of the slave labor they were forced to perform at the hands of the Nazis, the proceeds of which ended up in Switzerland.[9] The claims process has paid another 570 individuals nearly $700,000 for the slave labor they performed for Swiss-owned companies. It has recognized and paid over $11 million to 4,158 persons who sought refuge in Switzerland but were turned away or expelled, or who managed to gain admission into Switzerland but suffered mistreatment as refugees.

Although nothing in the settlement negotiated by the parties was directed specifically towards the plight of needy survivors, the Distribution Plan nevertheless made it possible for the Court to provide almost $256 million in food, medicine, medical devices, home health care, heating supplies, and other basic needs for more than 237,400 Holocaust survivors around the world, living at the edge of subsistence. Some of these victims settled, after the Holocaust, just a few blocks from the courthouse in Brooklyn, while others were many thousands of miles away. Wherever they lived, these survivors all shared an important common bond. All were looted

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8 William Glaberson, *For Betrayal by Swiss Banks and Nazis, $21 Million*, N.Y. TIMES, Apr. 14, 2005.

9 The Court approved the claims of 173,914 Jewish former slave laborers, and another 24,109 claims for Roma, Jehovah's Witness, homosexual and disabled former slave laborers.

during the Nazi era; some portion of their property or its proceeds might have been transacted through Switzerland; and all were needy when the lawsuits settled.

The distribution process was designed to take into consideration each and every Nazi victim on whose behalf the claims were brought. Otherwise, the compensation program would have run the risk of "anonymizing the victims," one of the many effects of the Holocaust itself. As historian Gerhard L. Weinberg has observed, grouping victims together can make one "lose sight of the fact that each Jew who was murdered was an individual with hopes and talents, family and feelings…. These persons were not just numbers, either as physically marked on their bodies or as analyzed in statistics…. It was always specific human beings who were killed. Whatever his or her age or gender, geographical location, or social status, each had a life to lead, a life that was cut short by the deliberate actions of others. And how much could these men, women, and children have contributed to the wider world?"[10] Holocaust historian Peter Hayes likewise has stressed the importance of emphasizing the impact upon individuals, noting that there is "an important educational and moral reason always to put human faces on the behaviors we chronicle."[11]

Each man, woman and child, whether he or she perished or managed to survive, had a story to tell. Those narratives were heard by the U.S. judicial system, under the supervision of a

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[10] Gerhard L. Weinberg, *A Commentary on "Gray Zones" in Raul Hilberg's Work*, *in* GRAY ZONES: AMBIGUITY AND COMPROMISE IN THE HOLOCAUST AND ITS AFTERMATH 70, 79 (Jonathan Petropoulos & John K. Roth eds., Berghahn Books 2005). Holocaust scholar Raul Hilberg often emphasized the activities of the perpetrators. Another approach, however, more closely examines the victims. For example, Omer Bartov has praised Tim Cole's 2016 work, HOLOCAUST LANDSCAPES, because the author placed Holocaust victims at the center of the narrative. "Cole thereby breaks down the homogeneous picture of the Holocaust in the popular imagination, alternating as it does between fascination with the perpetrators, a singular focus on Auschwitz, or an obsession with the clash of titans in the 'bloodlands' of the East; he also rescues the victims from the silent columns heading into the crematoria, the sealed trains with their muffled cries, and the faceless multitudes shot at the edge of pre-dug mass graves. Here the individual takes centre stage, incarcerated in a ghetto or hiding in a forest, struggling to survive in a camp or gasping for air in a deportation train, cramped for months in an attic, marching endlessly across the continent, rotting among piles of corpses in the last, chaotic camps of the disintegrating Reich, and finally searching for loved ones in a ruined, resentful, homicidal continent, often only to find that she has remained alone in the world." Omer Bartov, *Murder in the first person*, TIMES LITERARY SUPPLEMENT, Aug. 10, 2016, *available at* http://www.the-tls.co.uk/articles/public/murder-in-the-first-person/ (reviewing TIM COLE, HOLOCAUST LANDSCAPES (2016)) (last accessed Aug. 18, 2016). The Swiss Banks Settlement distribution likewise sought to put the individual at "center stage."

[11] Peter Hayes, *Summary and Conclusion*, *in* CONFISCATION OF JEWISH PROPERTY IN EUROPE, 1933-1945 - NEW SOURCES AND PERSPECTIVES-SYMPOSIUM PROCEEDINGS 143, 148 (U. S. Holocaust Memorial Museum 2003).

federal judge who favored "an individualized settlement distribution mechanism in order to contribute to the 'historical record.'"[12] Some of these narratives were recounted in person at public hearings. Hundreds of thousands more were described over the years as claims administrators working on the Court's behalf read and carefully summarized victims' personal histories: of great wealth, including Swiss accounts, meticulously stripped piece by piece; of back-breaking labor in the concentration camps and ghettos that then sent the profits of this free labor into Switzerland; of Swiss border guards handing families over to the Gestapo. As one scholar observed of the program relating to Swiss bank accounts, the claims process "memorializ[ed] every award in a written opinion, now publicly available on [the] website. Each award contains information provided by the claimant, including the name of the account owners, a personal story consisting of information regarding the owners followed by a brief explanation of family ties, and in some cases a description of the family's whereabouts during the war."[13]

As a result of the $1.25 billion settlement, some of these losses were compensated (and in the case of those whose bank accounts were taken, repaid as nearly as possible in full). Perhaps of equal importance, their stories were preserved. They are available on the internet, where they will remain part of the historical record of the Holocaust. In addition, whether they perished or survived, whether they filed claims or not, whether they were or were not eligible for financial compensation, victims have been remembered in another way. Their names have been recorded, many for the first time, in a permanent database initiated and funded by the Settlement under the Victim List Project of the Swiss Banks Holocaust Settlement. With the Court's support of programs at Yad Vashem and the United States Holocaust Memorial Museum ("USHMM"), this database has compiled and made accessible worldwide millions of names of individuals whom

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[12] BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW, at 69 (citing an Aug. 14, 2014 interview with Judge Korman).

[13] Leora Bilsky, *The Judge and the Historian: Transnational Holocaust Litigation as a New Model*, 24 HIST. & MEMORY 117, 130 (2012).

These summaries can be located as follows. For Deposited Assets Class decisions, *see* http://www.swissbankclaims.com/DepositedAssets.aspx. For summaries of Slave Labor Class I awards, *see* http://www.swissbankclaims.com/SlaveLaborI.aspx. For summaries of Slave Labor Class II awards, *see* http://www.swissbankclaims.com/SlaveLaborII.aspx. For summaries of Refugee Class awards, *see* http://www.swissbankclaims.com/RefugeeClass.aspx. In addition, detailed summaries of selected Deposited Assets Class decisions are included with this Final Report on the Swiss Banks Holocaust Settlement Distribution Process.

the Settlement Agreement was intended to benefit — Jewish, Romani, Jehovah's Witness, homosexual and disabled victims or targets of Nazi persecution, those who perished and those who survived.[14]

By seeking to compensate, at least in some part, individual material losses, the Swiss Banks Settlement claims programs have helped to illuminate one of the lesser-known aspects of the Holocaust era: the role played by Swiss entities. Historian Simon Dubnow, as he was being taken away by the Nazis to be killed in December 1941, is said to have called out to the Jews of Riga: "write it down!"[15] The Court has overseen a process that emphasized the importance of "writing it down." The information that was gathered from a multitude of sources — among them banks, companies, archives and claimants — has been analyzed and presented in an effort to avert what Dubnow feared: "that the evidence would die with the victims; that if records were not kept then no one would know of the crime that was being perpetrated."[16]

These efforts helped to further the achievements of decades of prior restitution efforts that had resulted in billions of dollars in payments to Holocaust victims. As historian Michael Marrus has observed:

> Analysts differ on the specific nature and significance of the accomplishment…. Virtually everyone recognizes that, for some survivors living in difficult material circumstances — in Eastern Europe and the former Soviet Union, but also

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[14] These individualized programs are the opposite of what was feared by some scholars, who believed that the class action mechanism of the Swiss Banks settlement necessarily meant that individual histories would be subsumed by the group claim. For example, one historian noted that "[i]f there is a point of extreme sensitivity to [H]olocaust survivors, it lies in their individuality; and if there is a duty [H]olocaust survivors consider sacred, it is to the memory of the dead. Class action suits by their nature challenge both of those sentiments, each for different reasons. The class action suit is that legal proceeding in which all plaintiffs are lumped together based on the allegedly identical and undifferentiated nature of their claims and situations. The voices of many are channeled into a univocal articulation." Vivian Grosswald Curran, *Competing Frameworks for Assessing Contemporary Holocaust-Era Claims, Symposium - Holocaust Restitution: Reconciling Moral Imperatives with Legal Initiatives and Diplomacy*, 25 FORDHAM INT'L L.J. S-107, S-119 (2001) ("2001 Fordham Symposium").

While the class action mechanism did run the risk that that survivors would be "lumped together," *id.,* the highly individualized claims processes adopted by the Court were designed to avoid that result. Each claimant's "univocal articulation," *id.*, was reviewed carefully so that every individual survivor could be heard.

[15] *See, e.g.*, David Silberklang (Editor-in-Chief of Yad Vashem Studies), *March of the Living: Jews, Write it Down*, HOLOCAUST SURVIVORS AND REMEMBRANCE PROJECT, http://www.isurvived.org/2Postings/HolocaustRemembrance.html (last visited June 1, 2016); Ronald W. Zweig, *Politics of Commemoration*, 49 JEWISH SOC. STUD. 155, 155 (1987).

[16] Zweig, *Politics of Commemoration*, at 155.

> elsewhere, including the United States and Israel — settlements have provided badly needed financial assistance, however inadequate, to sometimes indigent pensioners. But one must always keep in mind the limited impact historically. Historian Ronald Zweig makes the valuable point that this achievement needs to be seen in the context of more than five decades of German and other restitution, and that however significant what has been accomplished recently, this involves no more than about 5 percent of what had been dispensed in the preceding period.[17]

Even if amounting to less than "5 percent of what had been dispensed in the preceding period," however, the Swiss Banks Settlement and distribution process were of historic importance.[18] Professor Michael Bazyler, one of the first scholars to delve into the Holocaust compensation lawsuits of the 1990s and beyond, has observed that the Swiss banks case was "the mother of all Holocaust restitution settlements." He has described as "startling" the "ability of the Swiss campaign to set the stage for the settlements achieved with Germany and its industries, Austria and its industries, French banks, European insurance companies, and also American corporations for their reprehensible wartime activities."[19] With the Holocaust-related litigation

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[17] MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990's 117 (Univ. of Wis. Press 2009) (MARRUS, SOME MEASURE OF JUSTICE) (citation omitted). For many decades, survivor advocates had worked tirelessly and often nearly anonymously to secure "[s]ome measure of justice" for victims of the Nazis. One of the pivotal figures of the movement was Saul Kagan, a founder of the leading Holocaust compensation organization, the Conference on Jewish Material Claims Against Germany (Claims Conference). *See* Judah Gribetz & Shari C. Reig, *Saul Kagan, Claims Conference Founder, Was Too Humble to Speak of Achievement - An Appreciation*, FORWARD, Nov. 13, 2013, http://forward.com/articles/187608/saul-kagan-claims-conference-founder-was-too-humbl/ ("When Judge Edward R. Korman asked us to assist him, as special master and deputy special master, with the allocation and oversight of the $1.25 billion Swiss Banks Settlement, we knew that there were lessons we needed to learn from those who had devised and administered earlier Holocaust compensation programs…. [Saul] Kagan had too much humility to offer his advice, but he gave it generously when asked, and we learned to ask often").

[18] Marrus at 117; *see also* Curran at S-119 ("being legal proceedings, class action suits like all other suits, lead to a court record that cannot hope to be historically complete in reconstructing the past").

[19] MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS 51-52 (N. Y. Univ. Press 2003). *See also* Michael J. Bazyler, *The Gray Zones of Holocaust Restitution: American Justice and Holocaust Morality*, *in* GRAY ZONES: AMBIGUITY AND COMPROMISE IN THE HOLOCAUST AND ITS AFTERMATH 339, 340 (Jonathan Petropoulos & John K. Roth eds., Berghahn Books 2005) ("While these settlements [with Swiss Banks, German entities which used slave labor, insurance companies and others] came nowhere close to fully compensating still-living Holocaust victims or heirs for their, or their families', wartime material losses, the sheer size of the settlements and their unexpected occurrence so long after the end of the war qualifies them as a major victory for surviving victims and others seeking to right as best as possible the horrible financial wrongs committed during the war."); Editorial, *The Deceptions of Swiss Banks*, N.Y. TIMES, Dec. 7, 1999, http://www.nytimes.com/1999/12/07/opinion/the-deceptions-of-swiss-banks.html ("The Swiss bank settlement, the first in which a major European industry agreed to repay victims of Hitler-era economic crimes, set an important precedent that surviving Nazi victims are now rightly trying to follow up in other areas, most notably in talks with German industry about compensation for their use of slave and forced labor").

and settlements that arose in the 1990s, beginning with the Swiss Banks Settlement, "European nations that had previously denied they had played any role in or profited from the Holocaust now addressed their national myths and agreed it was time to face their actual history. In all these matters, acknowledgment of past wrongs would not have happened without pressure from the highest reaches of the American government, which would not have come without pressure from the leaders of the American Jewish community and, before that, pressure from survivors and their children."[20]

Financial journalist John Authers, a senior editor at Bloomberg, and formerly at the *Financial Times*, covered the case and co-authored a book on the 1990s Holocaust restitution process.[21] He noted in a review of Professor Bazyler's work that "[i]t was not until 1996, a half century after Nuremburg, that the movement to exact financial restitution from the companies that benefited from the destruction of European Jewry began, with the launch in Brooklyn of a lawsuit calling for Swiss banks to disgorge the contents of victims' accounts, which had been allowed to remain dormant."[22]

> What followed was an epic series of legal and political negotiations. It culminated in settlements with the Swiss banks, German industrial companies that had used slave labor, European insurers that had failed to pay out on life policies written on the lives of victims, French banks that had collaborated with the Vichy regime, and Austrian banks that had collaborated with German occupiers, along with a raft of new historical truth commissions that reassessed the wartime role of governments across Europe. It also triggered a series of lawsuits by individuals over the possession of artworks that had been looted from Jewish families by the Nazis.[23]

Professor Neuborne, who served as Lead Settlement Counsel in the Swiss Banks case, noted that the "litigation deliver[ed] an additional benefit" that he had "not anticipated." In a purely "diplomatic setting" divorced from the courtroom, "victims speak in the voice of charity, imploring governments and powerful private entities to recognize a non-binding moral

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[20] DEBORAH E. LIPSTADT, HOLOCAUST: AN AMERICAN UNDERSTANDING 128 (Rutgers Univ. Press 2016).

[21] JOHN AUTHERS & RICHARD WOLFFE, THE VICTIM'S FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST (Harper Collins 2002).

[22] John Authers, Book Review, 48 AM. J. LEGAL HIST. 330, 330 (2006) (reviewing MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS (2003)).

[23] *Id.*

imperative to redress a past wrong." By contrast, in a "legal setting, victims speak in the voice of obligation, demanding that defendants comply with a legal mandate compelling the righting of a past wrong. Not only is rights talk more powerful rhetoric than charity talk, it restores a sense of dignity to the victims by forcing powerful defendants to confront them as equals…. The victims view the payments, not as charity that reinforces their sense of victimhood and oppression, but as vindication, acknowledging their entitlement to compensation, and their status as equals."[24]

Likewise, the International Organization for Migration (IOM), which administered on the Court's behalf the various claims processes for Roma, Jehovah's Witness, homosexual and disabled class members, highlighted the emphasis upon individuals:

> Real people were not ignored here…. stories were told by real individuals about an era when they were simply trying to stay alive in unprecedented circumstances, all the while vicious geopolitical, economic and personal agendas and vendettas swirled around them…. For so many of these individuals, acknowledgment and recognition were what they had sought for so long for lives that literally had been stolen from them. Those lives can never be reclaimed nor can the sufferings the victims endured be transformed into anything other than horror. But their testimonies can be meaningful for all as a lesson and reminder that all are touched by the plight of individuals, whether they acknowledge that connection or not.[25]

The ability of these survivors to receive compensation was due in large part to the fact that the judicial power of the United States was "harnessed in the cause of Holocaust justice and

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[24] Burt Neuborne, *Toward Common Procedures in Seeking Compensatory Relief for the Violation of Core Aspects of Customary International Law: The Experience of the Holocaust Cases* 23 (June 3-5, 2009) (unpublished paper presented at the Conference of International Association of Procedural Law, Toronto) ("Neuborne, *Toward Common Procedures*"). *See also* Burt Neuborne, *The Experience of the Holocaust Cases, in* COMMON LAW, CIVIL LAW AND THE FUTURE OF CATEGORIES 507, 518 (Janet Walker & Oscar G. Chase eds., LexisNexis 2010) (Neuborne 2010) ("In a diplomatic setting, victims beg governments and powerful private entities to redress a past wrong. They speak in the voice of supplication and charity. In a legal setting, victims speak in the voice of rights and obligation, demanding that defendants comply with a legal mandate. Rights-talk restores dignity to the victims by forcing powerful defendants to confront them as equals"); Paul R. Dubinsky, *Justice for the Collective: The Limits of the Human Rights Class Action*, 102 MICH. L. REV. 1152, 1154 (2004) (the "Holocaust restitution cases" were "more about individual justice than collective justice. Little was awarded in the way of remedies to address injuries suffered by the collective. Nearly all the money generated by the settlements was paid out in the form of individual cash awards. Proposals for group-oriented remedies were rejected").

[25] History, Responsibility, Acknowledgement: The Holocaust Victim Assets Programme - Swiss Banks, Final Report, International Organization for Migration, submitted to the Court on May 31, 2013, at 196-97 ("IOM Final Report").

in the cause of informing the world that, on occasion, historical wrongs can be laid bare and victims receive some small measure of recognition and justice."[26]

This approach has been characterized as "managerial judging."[27] In such circumstances, the judge "actively manages the case from its inception through its implementation, encouraging the parties to reduce the area of dispute by agreeing on points of fact and law, and ideally, by settling. American judicial managerialism was of particular importance in the case against the Swiss banks, in light of their long-standing refusal to publish lists of dormant accounts…. Judge Korman actively encouraged the parties to settle, used his control over the settlement process to pressure the Swiss banks to cooperate in disclosing additional account information, and supervised the distribution of the settlement."[28] As noted by two attorneys who participated in the litigation, "the lesson from [the Swiss banks case] is that U.S. courts *can* effectively provide a forum for resolving these kinds of extraordinary historical wrongs."[29]

Other courts have been less ambitious. For example, slave laborers tried to sue German companies in the 1960s. One such claim was pursued against IG Farben, the notorious German conglomerate that requisitioned thousands of slave laborers from the SS, and had built a factory near Auschwitz to take advantage of its proximity to such a large slave labor pool. Farben was also the company that manufactured the Zyklon B poison used in the gas chambers. A case against Farben was rejected by the courts in 1966.

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[26] LEONARD ORLAND, A FINAL ACCOUNTING: HOLOCAUST SURVIVORS AND SWISS BANKS xvii, 133 (Carolina Academic Press 2010) ("ORLAND, A FINAL ACCOUNTING").

[27] Leora Bilsky, *The Judge and the Historian: Transnational Holocaust Litigation as a New Model*, 24 HIST. & MEMORY 117, 127 (2012) (citing Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 387-91 (1982)).

[28] Bilsky, *The Judge and the Historian*, at 127 (citation omitted). *See also* Leora Bilsky & Talia Fisher, *Rethinking Settlement*, 15 THEORETICAL INQUIRIES IN LAW 77, 101 n.113 (2014) ("The court's managerial activism is exemplified in particular by Judge Korman of the Brooklyn Federal Court in the Swiss banks litigation, who, among other things, initiated the consolidation of the three initial claims, urged the plaintiffs to appoint Burt Neuborne as special counsel to the plaintiffs, and is credited with being the architect of the settlement and with overseeing the process of distribution").

[29] Morris Ratner & Caryn Becker, *The Legacy of Holocaust Class Action Suits: Have They Broken Ground for Other Cases of Historical Wrongs?, in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 345, 347 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006).

Himmler visiting the site of I.G. Farben. Auschwitz, Poland.
Photo courtesy of Yad Vashem and Wilhelm Brasse.

The United States Court of Appeals in that case held that the "span between the doing of the damage and the application of the claimed assuagement is too vague. The time is too long. The identity of the alleged tort feasors is too indefinite. The procedure sought – adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in a European area by a government then in power – is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed."[30]

As the Special Masters noted of the 1966 IG Farben case in their chapter included in the treatise, *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity*: "We have had the great privilege over these years to have learned something of the personal histories of thousands of individual survivors of the Holocaust. We became acquainted with one of the more poignant and ironic of these stories while reviewing proposed awards for claimants with plausible undocumented bank account claims. In the fall of 2006, the Court authorised an award of $5,000 [subsequently increased to $7,250] to a Holocaust survivor who plausibly had

[30] *Kelberine v. Societe Internationale*, 363 F.2d 989, 995 (D.C. Cir. 1966). *See also* Michael Thad Allen, *The Limits of Lex Americana: The Holocaust Restitution Litigation as a Cul-de-Sac of International Human-Rights Law*, 17 WIDENER L. REV. 1, 16, 18 (2011) (citing *Kelberine* as an example of "[d]efendant MNCs [multinational corporations] easily stifl[ing] private litigation that lacked political support;" the court "never reached the merits and instead found the whole issue of Holocaust-era restitution non-justiciable").

demonstrated that her family had had a Swiss bank account that was never returned. Because she also had been a former slave laborer, she had received a separate payment under Slave Labor Class I. Her daughter is [an English] professor and she sent us her research concerning resistance efforts in the concentration camps. Her mother (the claimant) and aunt had been saved by this 'resistance' – by the concentration camp inmates who, at great personal risk, had warned them to lie about their ages, and about whether they were twins, [and other basic facts,] to avoid 'selection' for immediate death in the gas chambers."[31]

This former slave laborer – who was compensated under the Swiss Banks settlement because of the complex claims processes the Court was willing to undertake – happens to have

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[31] Judah Gribetz & Shari C. Reig, *The Swiss Banks Holocaust Settlement*, *in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 115, 141-42 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Koninklijke Brill NV 2009) ("Gribetz & Reig"). This chapter derives from a paper delivered by Shari Reig at a conference on reparations held at The Hague, The Netherlands, March 1-2, 2007. *See also* Judah Gribetz and Shari C. Reig, *Epilogue*, in ORLAND, A FINAL ACCOUNTING, at 135-151.

The heroic resistance efforts of concentration camp inmates at Auschwitz was described by the daughter and niece of the claimants, Professor Gail Ivy Berlin, in her paper entitled: "The 'Canada' Commando as a Force for Resistance in Auschwitz: Redefining Heroism," Proteus: A Journal of Ideas, Vol. 30: Deviance in Culture and Society, at 32 (Fall 1995). Professor Berlin explained how Lenka, Olga and Esther Berkovic — her mother, aunt and grandmother, respectively — were enslaved at Auschwitz and then later at one of its many sub-camps, part of the vast European system of sub-camps and ghettos. *See, e.g.*, Erich Lichtblau, *The Holocaust Just Got More Shocking*, N.Y. TIMES, Mar. 3, 2013, http://www.nytimes.com/2013/03/03/sunday-review/the-holocaust-just-got-more-shocking (discussing the research and cataloguing, as of that date, by the United States Holocaust Memorial Museum of more than 42,000 Nazi camps and ghettos, many of which had not been previously known). That number has since increased to over 44,000. *See* https://www.ushmm.org/information/press/press-releases/museums-encyclopedia-of-camps-and-ghettos-available-online (June 2, 2017) (last accessed June 5, 2017)

Upon stepping off the train at Auschwitz, the Berkovic family was met by a "man in striped pajamas [who] was a Jewish prisoner, a member of the 'Canada' commando, assigned to empty out the cattle cars and gather the baggage." Berlin at 32. His seemingly "bizarre instructions and scraps of information" saved their lives, for he "knew what he could not tell them directly: anyone younger than sixteen was killed," and so the 15-and-16-year-old Lenka and Olga followed his whispered command and lied to Josef Mengele that they were 16 and 17. "[A]nyone older than forty was killed," and so Esther Berkovic dropped her age from 44 to 40. "[A]nyone accompanying a child was killed," and so the girls' older cousin, with her five children, was warned not to let her teenage cousins help her with her children on the selection ramp. "[T]wins were the object of vicious medical experiments," and so the sisters, who looked alike, made sure Mengele knew that they were not twins. "[I]nnocent-looking trucks marked with a red cross went directly to the gas chamber," and so the family was directed to walk rather than ride. "To the best of his ability, the man in striped pajamas, a Jewish inmate of Auschwitz, tried to offer life-saving information to three absolute strangers, all a little too young or a little too old to make it through the first selection safely without his help. His efforts resulted in three lives saved." Berlin at 32. Professor Berlin's review of other survivor statements indicated that although "the acts of these men" in the Canada commando, who risked their lives to warn new arrivals how they might stay alive, "are absent from the treatments of Jewish resistance or defiance in even the best Holocaust histories, they are found in the testimonies of survivors." Berlin at 33.

been one of the plaintiffs in the IG Farben case: the very lawsuit that was dismissed decades ago, in 1966, because the claims seemingly presented so many obstacles. Many years later, that Holocaust survivor finally received some measure of compensation for what happened to her in Europe in the 1940s, because the American judicial system concluded in the 1990s that justice was long overdue.[32]

Nearly $1.285 billion (more than the $1.25 billion Settlement Fund) has been paid to hundreds of thousands of victims, like the survivor described above, and some additional portion of the history of the Holocaust has been preserved. To take just a few additional examples:

Deposited Assets Class

- Julian Schachian was born in 1880 in Berlin, Germany. He was an attorney with the title of Doctor of Law. He perished in the Holocaust in 1942. His brother, Siegfried Schachian, was born in 1876 in Berlin, Germany. Siegfried Schachian was deported to Theresienstadt in 1942. Subsequently, he was sent further east, where he perished in 1944. Their niece, who at the time of the award was 91 years ago, claimed their accounts.

  This elderly claimant apparently did not remember (because she did not mention in her claim form) that in 1933, at the age of 26, she personally had visited the bank on behalf of her uncles. The bank records reflected this visit, for the bank had kept the claimant's calling card. Other bank records showed that on July 4, 1933, the claimant met with a bank representative and instructed the bank to no longer send account statements and correspondence to her uncle, Julian Schachian. She told the bank that her uncle also would destroy any account information that he held at his home.

  The bank records showed that Dr. Julian Schachian had held two accounts: a custody account opened on January 19, 1930, as well as a demand deposit account. Despite the entreaties of Dr. Schachian's niece — the claimant — the assets in Dr. Julian Schachian's custody account (worth SF 41,900) were transferred on December 22, 1936 to an account belonging to the *Deutsche Bank und Disconto-Gesellschaft* in Berlin. That transfer was made following the Reich's November 1936 order forcing German owners of foreign securities that were held abroad to deposit those securities in a custody account belonging to a German bank. The Swiss bank thus transferred Julian Schachian's assets out of Switzerland to Nazi Germany, and closed his account on December 19, 1938. With respect to Siegfried Schachian, the bank records showed that the securities in his custody account (with a December 22, 1936 market value of SF 6,300.00), were transferred to an account belonging to the *Deutsche Bank*

[32] Gribetz & Reig, at 142.

und Disconto-Gesellschaft in Berlin. The account was closed on September 30, 1938. Decades after the Swiss bank closed these accounts and delivered them to the Third Reich, the 91-year-old claimant received an award from the Settlement Fund in the amount of SF 841,550 (approximately $762,802).

- Elisabeth Denes-Deutsch and Adolf Denes, born respectively in 1896 and 1893, were married and lived with their teenaged daughter Eva (born in 1926) in Oradea, Romania. Adolf Denes was a banker and manager of the English-Hungarian Bank in Oradea. The entire family was killed in Auschwitz. The bank records demonstrated that Adolf and Elisabeth Denes held a demand deposit account, and that they had used the fictive name "W. Aden" and the password "Silos." The Swiss bank transferred the account to a suspense account in September 1965 and closed it to fees in 1966. The bank records also showed that the last contact with the account owners was before the end of World War II. The account was reported in a survey conducted by Swiss banks in 1962 (which found only a few hundred possible Holocaust victim accounts). The account later was reported in November 1965 to the Cantonal Guardianship Authority of Zurich.

  According to the records provided by the banks in the course of the Court-supervised claims process, long before the CRT [Claims Resolution Tribunal, the administrative body charged with analyzing bank account claims on the Court's behalf] process began, two claims had been submitted to the Swiss Justice Department, seeking return of this account. One of these claims had been filed in August 1965 by a Denes relative who lived in Tel Aviv, Mr. Josef Deutsch, Elisabeth Denes' brother. Swiss authorities directed Mr. Deutsch to withhold evidence and documentation relating to his claim until he was expressly requested to hand it in. But Mr. Deutsch never was requested to present his evidence. Instead, in 1966, the bank closed the account to fees, notwithstanding Mr. Deutsch's communication only one year earlier seeking information about his sister's account. Mr. Deutsch was advised of the account's closure in 1968. It took another three decades, but when the CRT took over the claim, it was able to recommend and the Court was able to authorize an award to Mr. Deutsch's widow in the amount of SF 27,642.50 ($19,211).[33]

Slave Labor Class I

- The claimant, who was Jewish, was born in Hungary on May 2, 1915. Because the Notice of Pendency of Class Action, claim forms, and related materials all promised claimants confidentiality, particularly in recognition of the sensitivity of the information provided in support of their claims, the survivor's name is not disclosed here, but her name, and all other relevant identifying information, are known to and

[33] These three cases are described in more detail in the accompanying chapter of this Final Report on the Swiss Banks Holocaust Settlement Distribution Process, "Summaries of Selected Deposited Assets Class Decisions," which summarizes over 200 of the several thousand decisions issued in the Deposited Assets Class claims process. Deposited Assets Class decisions may be found on the internet at http://www.swissbankclaims.com/DepositedAssets.aspx.

were filed with the Court under seal.[34] On December 23, 1944, the claimant was deported to Ravensbruck KZ. One month later, on January 25, 1945, she was sent to Mauselwitz work camp, a sub-camp of Buchenwald, where she worked all night from 6:00 p.m. to 6:00 a.m. in an ammunition factory. Allowed only a half-hour rest, the claimant was beaten by an SS guard for putting her head down on a workbench in exhaustion. On April 18, 1945, as the American Army approached, the Germans evacuated the camp. The claimant was able to escape and hid in a nearby forest. She was found by a farmer and his family, and driven by cart to Graslitz, already liberated. She was compensated through the Court's claims process.

- The claimant was a Romani who was born on June 16, 1923. At the time of her claim, she lived in the Czech Republic. She performed slave labor at various camps: Lety u Pisku, Auschwitz, Ravensbruck and Flossenburg. On August 12, 1942, she was captured and taken, pregnant, to Lety. She escaped from Lety in December 1942 and gave birth to a daughter in Prostejov. In March of 1943, the Nazis recaptured her and sent her to Auschwitz. There, her baby was killed. She received typhus and other injections from Dr. Mengele. In addition, she worked at a Munich factory while at Flossenberg. The claimant was forced on a Death March, but escaped. After the War, she gave birth to a mentally handicapped child as a result of the experiments she was forced to endure during the Holocaust. She was compensated through the Court's claims process.

Slave Labor Class II

- The claimant, who lived in Poland, performed slave labor at Sarotti AG in Berlin-Tempelhof, Germany. Because of his religious convictions as a Jehovah's Witness, he did not want to participate in the defense of the factory during the air raids, in collecting corpses or digging trenches. For this he suffered greatly, including beatings by the Gestapo. Because he performed slave labor for a Swiss-owned entity, he received compensation under Slave Labor Class II.

Refugee Class

- The claimant, born on November 14, 1929 in Belgium, was expelled from Switzerland in 1942. In the summer of 1942, the claimant, her parents and another couple traveled with a Belgian smuggler to Besançon, under false identity. The

[34] By contrast, the names of the owners of Swiss bank accounts (most of whom had perished in the Holocaust, or had passed away subsequently), were publicly disclosed in order to permit heirs to locate and file claims to the accounts. Most of the heirs who received awards from the Settlement Fund chose to preserve their privacy, and their names were redacted from the publicly available decisions about their accounts, but as with other claimants, their names and other identifying information were docketed under seal. Certain claimants, such as Mrs. Altmann, chose to disclose their names and in some instances to discuss their personal circumstances, whether in the press or elsewhere.

smuggler took them to a farm, and then they crossed the border into Switzerland. They arrived at Neuchâtel and went to Basel, where they were advised to register at the police station. They were arrested at the Basel police station, jailed and questioned for a week. Upon their release they were told they would be taken to Bern, but instead were escorted to the border. They pleaded to stay in Switzerland. However, Swiss police threatened to hand them over to German patrols if they did not cooperate. They went back to Besançon, and then to Brussels. The claimant's mother was caught in Brussels and died in Auschwitz. The claimant remained in hiding throughout the war. She was compensated as a member of the Refugee Class.

- The claimant, born on July 11, 1919 in Poland, was denied permission to enter Switzerland by Swiss authorities in Berne, Switzerland in late 1938. The claimant had been studying medicine at the University of Bologna in Italy and was expelled from the university because he was Jewish. The claimant was accepted to the University of Geneva. He applied for a visa to Switzerland through the police department in Berne. The police denied his application, despite the fact that a dean from the University of Geneva had sent a recommendation to the police department. The claimant left Italy and went to Poland in January 1939. In June 1940, he was sent to a labor camp in Siberia, where he remained throughout the rest of the war. He received compensation based upon his denial of entry into Switzerland.

Looted Assets Class

- Ludmila M. was born in Minsk in 1940. Her parents worked at a local bank. The family tried to leave Minsk on foot after their home was destroyed, but they were seized and sent to the ghetto. Ludmila's mother, who was Belarusian, was able to leave the ghetto. She brought her typhoid-infected baby to her grandmother's house in the Peski village. It was Ludmila's illness that might have saved her from the Nazis, as the soldiers learned of the girl's typhoid and were afraid to enter the village. Ludmila's father and uncle escaped from the Minsk ghetto in 1942 and joined the partisans; her grandparents, however, perished. After the war, Ludmila taught Russian language and literature. Living on a monthly pension of $260, Ludmila was eligible for services, including food and medication subsidies, through humanitarian programs partly funded by the Court.

- Vasily L. lived near the Polish border. When the German army approached the village in 1941, 11-year-old Vasily and his family left and walked east to escape the heavy bombardment. They eventually reached the Mogilev region, where a non-Jewish family sheltered Vasily at great personal risk. After the war, Vasily worked at a brick-making factory. With serious health problems and a monthly pension of $287, Vasily and his wife were eligible for assistance partly funded under the Looted Assets Class programs, including medical aid, home care, personal hygiene items and rehabilitation equipment.

* * *

The starting point of the claims process that led to the compensation of these and over 458,400 other Nazi victims was the Settlement Agreement, signed on January 26, 1999.[35] The Settlement Agreement became operative as of March 30, 1999 following execution of written "Organizational Endorsements" of the agreement by 17 major worldwide Jewish organizations.[36]

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[35] Much has been written about the litigation and negotiations leading up to the Settlement Agreement. For a more detailed discussion of these events, which took place before the appointment of the Special Masters, *see, e.g.*, Burt Neuborne, *Litigating the Holocaust: The Swiss Bank and German Slave Labor Cases* 30 (2013) (unpublished manuscript) ("Neuborne, *Litigating the Holocaust"*) ("Reaching the $1.25 billion figure was pure Korman. Like my mother, Korman understood the importance of a good hot meal in making peace in the family. He scheduled a dinner at Gage & Tollner's, a famous Brooklyn restaurant … and asked each side to make a final informal presentation to him. After 12 days of often bitter bargaining in his chambers, Korman was sure that both sides wanted to settle and needed a final boost"). *See also* Francine Parnes, *Fighting On: Legal Actions by Nazi Victims Seeking Compensation Meet with Mixed Results*, A.B.A. J., Mar. 2002, at 20-22 (discussing the success of the settlement); Allen Pusey, *Precedents*: *August 12, 1998: Swiss Banks Settle Holocaust Claims*, A.B.A. J., Aug. 2014, at 72 (noting anniversary of settlement).

Professor Neuborne has observed (in "*Litigating the Holocaust*," at 92):

> "The Holocaust-era litigation has generated a substantial literature. Books include, MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE (2009) (a judicious critique of the wisdom and efficacy of the Holocaust litigation); J. AUTHERS & R. WOLFFE, THE VICTIMS' FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST (2002) (a useful narrative of the Swiss bank litigation); M. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS (2003) (the best single account of the litigation); S. EIZENSTAT, IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR AND THE UNFINISHED BUSINESS OF WORLD WAR II (2003) (an indispensable account of the diplomatic background to the Berlin Agreements terminating the German slave labor cases); M. BAZYLER & R. P. ALFORD, EDS., HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY (2006) (reflective essays by many of the key participants). Articles include, John Authers, *Satisfaction Not Guaranteed*, FIN. TIMES MAG. BOOK REV., Aug. 23, 2003, at 30; Michael Bazyler, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1 (2000); Burt Neuborne, *Preliminary Reflections on Aspects of the Holocaust Era Litigation*, 80 WASH.U.L.Q. 795 (2002); Anne-Marie Slaughter & David Bosco, *Plaintiff's Diplomacy*, FOREIGN AFFAIRS, Sept./Oct. 2000, at 102. *See also* Burt Neuborne, *The Experience of the Holocaust Cases, in* COMMON LAW, CIVIL LAW AND THE FUTURE OF CATEGORIES 507 (Janet Walker & Oscar Chase eds., 2010) (urging the adoption of transnational procedures in international human rights cases)… For academic criticism of the litigation from the perspective of the German defendants, *see* Detlev Vagts & Peter Murray, *Litigating the Nazi Labor Claims: The Path Not Taken*, 43 HARV. INT'L L.J. 503 (2002). For criticism that the slave labor settlement did not go far enough, *see* Libby Adler & Peer Zumbansen, *The Forgetfulness of Noblesse Oblige: A Critique of the German Foundation Law Compensating Slave and Forced Laborers of the Third Reich*, 39 HARV. J. LEGIS. 1 (2002). For an article questioning my legal theories in the Swiss bank and German slave labor cases, *see* Michael Thad Allen, *The Limits of Lex Americana: The Holocaust Restitution Litigation as a Cul-De-Sac of International Human Rights Law*, 17 WIDENER L. REV. 1 (2011). For a bitterly hostile commentary on the Holocaust-related litigation, and on me personally, *see* N.G. Finkelstein, THE HOLOCAUST INDUSTRY: REFLECTIONS ON THE EXPLOITATION OF JEWISH SUFFERING (2000)…."

[36] In what was called a "Related Agreement" executed in connection with the Settlement Agreement, the "Settling Plaintiffs" agreed that they would "use their best efforts to obtain the written endorsements of the Agudath Israel World Organization, Alliance Israelite Universelle, the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, the American Jewish Joint Distribution Committee, the Anti-Defamation League, B'nai B'rith International, the Centre of Organizations of Holocaust Survivors in Israel, the Conference [on] Jewish Material Claims Against Germany, the Council of Jews from Germany, the European Council of Jewish Communities, the Holocaust Educational

(*continued on next page*)

The Settlement Agreement created five specific classes of claimants: the "Deposited Assets Class," the "Looted Assets Class," "Slave Labor Class I," "Slave Labor Class II" and the "Refugee Class." With the exception of "Slave Labor Class II," a class member was required to be a "Victim or Target of Nazi Persecution," defined as "any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped."[37]

The five classes were defined in the Settlement Agreement (at Section 8.2) as follows:

- "The **Deposited Assets Class** consists of Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Deposited Assets or any effort to recover Deposited Assets."
- "The **Looted Assets Class** consists of Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Looted Assets or Cloaked Assets or any effort to recover Looted Assets or Cloaked Assets."[38]

Trust, the Jewish Agency for Israel, the Simon W[ie]senthal Center, the World Jewish Congress, and the World Zionist Organization in the form of Exhibit 1 hereto within twenty (20) days after the parties execute the Settlement Agreement." If any of the listed organizations failed to execute the endorsement, "Settling Defendants at their sole discretion" were entitled to "declare that the Settlement Agreement shall not become effective," and the parties were to resume negotiations "in a good-faith effort to resolve the issue."

The "Exhibit" referenced in the Related Agreement, entitled "Endorsement," provided that each entity "endorse[d] the Settlement Agreement …. as a fair, adequate and reasonable settlement," "affirm[ed] that the Settlement Agreement [brought] about complete closure and an end to confrontation with respect to the issues dealt with in the settlement," "agree[d] not to make any public statement or take any action that would violate or be inconsistent with this endorsement, including requesting or approving sanctions or opposing business transactions involving Swiss entities released by the Settlement Agreement based on conduct covered by the settlement," "covenant[ed] not to sue, call for suits against, or support suits against any Swiss entity released by the Settlement Agreement based on conduct covered by the settlement," and "waive[d] any and all claims it may have against the Swiss entities released by the Settlement Agreement based on conduct covered by the settlement."

The list of Organizational Endorsers is annexed as an Exhibit to this Final Report.

[37] Settlement Agreement, Section 1.

[38] The term "Assets" was defined as "any and all objects of value including but not limited to personal, commercial, real, tangible, and intangible property, including, without limitation, cash, securities, gems, gold

(*continued on next page*)

- "The **Slave Labor Class I** consists of Victims or Targets of Nazi Persecution who actually or allegedly performed Slave Labor for companies or entities that actually or allegedly deposited the revenues or proceeds of that labor with, or transacted such revenues or proceeds through, Releasees, and their heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from the deposit of such revenues or proceeds or Cloaked Assets or any effort to obtain redress in connection with the revenues or proceeds of Slave Labor or Cloaked Assets."[39]

- "**Slave Labor Class II** consists of individuals who actually or allegedly performed Slave Labor at any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or other business concern headquartered, organized, or based in Switzerland or any affiliate thereof, and the individuals' heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee other than Settling Defendants, the Swiss National Bank, and Other Swiss banks for relief of any kind whatsoever relating to or arising in any way from such Slave Labor or Cloaked Assets or any effort to obtain redress in connection with Slave Labor or Cloaked Assets."

- "The **Refugee Class** consists of Victims or Targets of Nazi Persecution who sought entry into Switzerland in whole or in part to avoid Nazi persecution and who actually or allegedly either were denied entry into Switzerland or, after gaining entry, were deported, detained, abused, or otherwise mistreated, and the individuals' heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of

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and other precious metals, jewelry, documents, artworks, equipment, and intellectual property." (Settlement Agreement, Section 1). "Looted Assets" were defined as "Assets actually or allegedly belonging in whole or in part to Victims or Targets of Nazi Persecution that were actually or allegedly stolen, expropriated, Aryanized, confiscated, or that were otherwise wrongfully taken by, at the request of, or under the auspices of, the Nazi Regime." *Id.*

"Cloaked Assets" were defined as "Assets wholly or partly owned, controlled by, obtained from, or held for the benefit of, any company incorporated, headquartered, or based in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946 or any other entity or individual associated with the Nazi Regime (regardless of where such entity or individual was or is located, incorporated, headquartered, or conducting business), the identity, value, or ownership of which was in fact or allegedly disguised by, through, or as the result of any intentional or unintentional act or omission of or otherwise involving any Releasee, including, without limitation, Internationale Industrie und Handelsbeteiligungen A.G. (a.k.a. 'Interhandel'), and its predecessors, successors, or affiliates." Settlement Agreement, Section 1.

[39] "Slave Labor" was defined in Section 1 of the Settlement Agreement as "work for little or no remuneration actually or allegedly performed by individuals involuntarily at the insistence, direction, or under the auspices of the Nazi Regime." The term "Nazi Regime" included not only the Nazi government of Germany, but all "its instrumentalities, agents, and allies (including, without limitation, all other Axis countries), all occupied countries, and all other individuals or entities in any way affiliated or associated with, or acting for or on behalf or under the control or influence of, the Nazi Regime..." *Id.*

> any kind whatsoever relating to or arising in any way from such actual or alleged denial of entry, deportation, detention, abuse, or other mistreatment."

Lead Settlement Counsel Professor Neuborne, who was not involved in drafting this complex document, has described his reaction to reviewing the Settlement Agreement for the first time:

> I remember thinking that the first half of the written settlement agreement in the Swiss case was a pretty good job. It set up five settlement classes that tracked our legal theories and defined the five victim groups whose members were eligible to receive payment from one or more of the settlement classes. Then, I looked for the rest of the settlement agreement — you know, the part that explained how much of the $1.25 billion each settlement class would receive, and how to go about processing the class members' claims for payment. Guess what. There was no rest of the settlement. The experienced class action lawyers had drafted one-half of an excellent agreement that guaranteed the entire Swiss nation complete relief from future Holocaust-related litigation, in return for payment of $1.25 billion to the five plaintiff classes. But the plaintiffs' lawyers had punted on how the $1.25 billion was to be allocated among the five settlement classes, and how individual class members were going to receive any funds…. The gritty work of allocating the settlement funds, and distributing the prize money to the victims, was someone else's problem.[40]

What was "someone else's problem" became the Court's, and the Special Masters.' This Final Report on the Swiss Banks Holocaust Settlement Distribution Process explains how that problem was resolved. It describes how a judicial process that began in a courthouse in Brooklyn was able to reach out to hundreds of thousands of Nazi victims and heirs around the world; to hear and record their experiences; and to offer some material assistance to more than 458,400 people, mostly Holocaust survivors, for losses beyond comprehension.

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[40] Neuborne, *Litigating the Holocaust*, at 37-38.

A. The Consolidated Class Action Lawsuit and its Historical Context[41]

The lawsuits were filed because in the decades after the Holocaust, Swiss financial institutions had failed to return deposits to the Nazi victims (or their relatives) who had entrusted their assets to the banks. When inquiries were made, the banks "denied the existence of a substantial number of unpaid accounts, or claimed that the accounts had already been paid." They demanded "proof that could only be supplied by access to the banks' records."[42]

The problem was that the Swiss banking system was not designed to encourage the return of property. To the contrary, during and after the Holocaust, as Professor Neuborne described it, Switzerland was "the only developed country without an escheat law."[43] In Switzerland, "long-dormant accounts do not escheat to the state, but continue to be held on the banks' books under the fiction that the true owner may turn up some day. In the meantime, the banks get to use the money. At the same time, Swiss law authorizes the destruction of bank records when an account has been dormant for 10 years. So much for worrying about owners of abandoned accounts. The reality is that Swiss banks treat abandoned accounts as found money, subject only to a fictive reserve against future claimants. Thus, not only was there no list of abandoned property to check, the banks had a huge economic incentive to deny the existence of the Holocaust-era

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[41] The following discussion draws extensively from many of the Special Masters' prior submissions to the Court, including the September 11, 2000 "Proposed Plan of Allocation and Distribution of Settlement Proceeds,'" the October 2, 2003 "Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds," the April 16, 2004 "Special Masters' Recommendations for Allocation of Possible Unclaimed Residual Funds" ("Special Masters' April 16, 2004 Recommendations"), the December 19, 2008 report entitled "CRT Special Master Junz' Proposal for Adjustment of Deposited Assets Class Presumptive Values in the Context of the Settlement Agreement and the Distribution Plan," and the April 9, 2009 report entitled "CRT Special Master Junz' Proposal for Adjustment of Deposited Assets Class Presumptive Values: Supplemental Contextual Analysis." These and numerous other documents are available at the internet site for this settlement, http://www.swissbankclaims.com/Chronology.aspx. Further, filings with the Court are publicly available on the docket for the Eastern District of New York.

[42] Neuborne, *Toward Common Procedures*, at 7.

[43] *Id.* "Escheat" refers to the "power of a state to acquire property for which there is no owner," most commonly where a property owner dies without heirs or a will (intestate). *See* http://legal-dictionary.thefreedictionary.com/escheat.

accounts, since they got to keep the money, and had a made-to-order authorization to destroy records of any account that was dormant for 10 years."[44]

The banks also were "unwilling to acknowledge" that they had transferred "Jewish-owned Swiss bank deposits to the Reichsbank on the basis of coerced authorizations," since that practice "called their loyalty to depositors in question, and because they feared being asked to pay again since carrying out coerced payments to third-persons violated Swiss law."[45] Judge Korman observed in a 2004 opinion that it "is possible to imagine situations where a bank's decision to order a forced transfer would have been morally justified as a way to protect a client's life, but that was clearly not the case for these banks. These banks did not decide to order forced transfers because they thought it would serve their clients well — they did so to 'avoid friction and unpleasantness' with their business interests in Germany. Unpleasantness for their clients was not even a consideration."[46] The question was "'not whether [the Swiss banking industry] should or could have maintained its [business contacts with Nazi powers], but rather how far these activities went: in other words, where the line should have been drawn between unavoidable concessions and intentional collaboration.'"[47] The banks "drew a line quite near intentional collaboration."[48]

The Court, drawing upon the conclusions of experts who had studied the Swiss banking system, noted that the banks "stonewalled" in the face of post-War questions, which "was generally an effective way for the Swiss banks to insulate themselves from liability and benefit economically."[49] The banks' destruction of records facilitated their goal. While the "Swiss

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44 Neuborne, *Toward Common Procedures*, at 7. *See also* PAUL VOLCKER, INDEP. COMM. OF EMINENT PERSONS, REPORT ON DORMANT ACCOUNTS OF VICTIMS OF NAZI PERSECUTION IN SWISS BANKS 123, 133-35 (1999) ("VOLCKER REPORT") (Annex 9, "Swiss Law on the Treatment of Dormant Accounts: A Comparison to European and U.S. Law").

45 Neuborne, *Toward Common Procedures*, at 7.

46 *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 306 (E.D.N.Y. 2004). Professor Neuborne observed that "[i]f only the Swiss had been candid after the war, the moral complexity of the coerced transfers could have been acknowledged, and the ultimate cost shifted to German entities. But the Swiss response was to bury the past in secrecy." Neuborne, *Toward Common Procedures*, at 7.

47 *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 306.

48 *Id.*

49 *Id.* at 314.

banks generally complied with Swiss law on record keeping," this was "precisely the ruse. The Swiss Code of Obligations requires only that banks keep correspondence and accounting records for a period of ten years, regardless of whether an account is open or closed. If the banks could stonewall for ten years, then they could 'legally' destroy the very documents which might answer claimants' questions. This is exactly what they did. Banks 'regularly and systematically' destroyed material that was ten years old…. And thus the banks destroyed countless records that might have been critical in explaining their Nazi era actions with respect to accounts once held by Nazi victims. The destruction was part of the banks' ordinary course of business, and it was massive…. [T]he banks made no effort to save relevant documents, despite the fact that they knew Nazi victims and their representatives were clamoring for them."[50]

Frustrated with the banks' continuing efforts to downplay their misconduct, even after the 1999 settlement, the Court in 2004 was "compel[led] to "write," because "over the past year-and-a-half, the bank defendants have filed a series of frivolous and offensive objections to the distribution process…. These objections bring to mind the theory that, 'if you tell a lie big enough and keep repeating it, people will eventually come to believe it.' The 'Big Lie' for the Swiss banks is that during the Nazi era and in its wake, the banks never engaged in substantial wrongdoing."[51]

Michael Bradfield, who served as legal counsel to the committee that investigated Holocaust-era Swiss bank accounts (the "Volcker Committee," headed by former U.S. Federal Reserve Board Chairman Paul Volcker), and with Volcker subsequently was appointed one of the Court's Special Masters, had a similar view. He noted: "[T]here [was] really a historical failure here. There [was] a historical failure. The Swiss had many opportunities from the

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50 *Id.* at 314-315 (citations omitted).

51 *Id*. at 303. Judge Korman expanded further upon these themes in a later essay. *See* Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 115 (Michael J. Bazyler & Roger P. Alford eds., New York University Press 2006). The Court's 2004 opinion is discussed in greater detail elsewhere in this Final Report (*see* "The Deposited Assets Class Claims Process").

closing of the war in 1945 until now to come clean on this issue, and they failed the test every time."[52]

With no apparent remedy under the Swiss banking system, Holocaust victims and their heirs turned to the United States courts.

B. Early Efforts to Recover Assets

The first of the class action lawsuits relating to claims against Swiss banks and other entities was filed in October 1996.[53] But the events outlined in the lawsuits had occurred decades earlier. As framed by Ambassador Stuart E. Eizenstat, who played an important role in the Holocaust compensation movement beginning in the 1990s and who remains actively involved with Holocaust compensation issues:

> Why the sudden surge of interest in these tragic events of five decades ago? There are a variety of explanations. The end of the Cold War gave us the chance to examine issues long pushed to the background. Some previously unavailable documents have been declassified, and made publicly available. As Holocaust survivors come to the end of their lives, they have an urgent desire to ensure that long-suppressed facts come to light and to see a greater degree of justice to assuage, however slightly, their sufferings. And a younger generation seeks a deeper understanding of one of the most profound events of the twentieth century as we enter the twenty-first.[54]

The lawsuits resulting in the Settlement Agreement, while the most well-known, were not the first attempt to recover assets deposited in Switzerland that belonged to victims of Nazi

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52 Michael Bradfield, Comment, *Allocating the Proceeds of Settlements: Looted Assets, Successor Interests, Recovered Properties, and Settlement Funds*, 25 FORDHAM INT'L L.J. S-257, S-265 (2001). Mr. Bradfield previously had served as General Counsel of the Federal Reserve Board.

53 *Weisshaus v. Union Bank of Switzerland*, No. 96-4849 (E.D.N.Y., filed Oct. 3, 1996).

54 U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II - Preliminary Study (May 1997), coordinated by then-Under Secretary of Commerce for International Trade Stuart E. Eizenstat and prepared by William Z. Slany, Department of State Historian, Foreword by Stuart E. Eizenstat (EIZENSTAT REPORT), at iv.

persecution or their heirs. Rather, the litigation was part of a continuing series of efforts that began immediately after World War II.

Following the War, the Allies — the United States, Great Britain and France — sought the return of monetary gold and other assets that the Nazis had looted and deposited in neutral countries, including Switzerland.[55] On January 14, 1946, as a result of the Paris Reparations Conference, 18 countries entered into the Agreement on Reparation from Germany, Establishment of Inter-Allied Reparation Agency, and Restitution of Monetary Gold (the "Paris Reparations Agreement").[56] The Paris Reparations Agreement provided for: (i) restitution on a sharing basis of monetary gold looted by Nazi Germany; (ii) allocation of all nonmonetary gold[57] found in Germany to the relief and resettlement of surviving Nazi persecutees; (iii) establishment of a $25 million fund (out of German external assets located in neutral countries) for the rehabilitation and resettlement of Nazi persecutees; and (iv) the establishment of organizational structures, including the Inter-Allied Reparations Agency, to effectuate the Agreement.[58] Allied representatives "were instructed to take possession of German external assets in neutral countries (such assets in Allied nations were to be taken by the Allied nations themselves)" and to "'request' that neutrals turn over 'heirless assets' or their proceeds to the persecutees, for relief and resettlement."[59]

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[55] *See* EIZENSTAT REPORT at 62-118; *see also* Seymour J. Rubin, *The Washington Accord Fifty Years Later: Neutrality, Morality, and International Law*, 14 AM. U. INT'L L. REV. 61 (1998) ("Rubin"); Seymour J. Rubin & Abba P. Schwartz, *Refugees and Reparations*, 16 L. & CONTEMP. PROBS. 377 (1951) (Rubin & Schwartz), *reprinted in The Eizenstat Report and Related Issues Concerning United States and Allied Efforts to Restore Gold and Other Assets Looted by Nazis During World War II: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 105th Cong. 1st Sess., 271 (June 25, 1997) (the "June 1997 House Hearing"). Rubin was deputy negotiator for the United States delegation that negotiated the Washington Accord (discussed below).

[56] The 18 nations that entered into the Paris Reparations Agreement on January 14, 1946 were: Albania, Austria, Belgium, Canada, Czechoslovakia, Denmark, Egypt, France, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, South Africa, Great Britain, the United States and Yugoslavia. *See* Paris Reparations Agreement, Jan. 14, 1946, 61 Stat. 3157, 555 U.N.T.S. 69. *See also* Rubin at 64-65 and n.2.

[57] "Nonmonetary gold included not only rings, bracelets, and dental inlays, but other essentially unidentifiable objects of value such as gold coins without numismatic value, silver plate, *objets d'art* and the like." Rubin at 65 n.3.

[58] *Id*. at 64-66; *see also* EIZENSTAT REPORT at xxxvi.

[59] Rubin at 66; *see also* EIZENSTAT REPORT at xxv.

After the Paris Reparations Agreement was entered into force, the Allies negotiated with other countries, including Switzerland, in an effort to implement the Agreement. As a result of these negotiations, on May 25, 1946, Switzerland and the Allies entered into the Accord on the Multilateral Liquidation of German Property in Switzerland (the "Washington Accord").[60] Pursuant to the Washington Accord, Switzerland agreed to transfer approximately $58 million in gold and 50% of liquidated German assets located in the country to the Allies, who would then use such funds to reconstruct devastated areas of Europe and to assist stateless Nazi victims.[61] Switzerland also agreed, via a side letter, to "examine sympathetically" the means by which to place the assets of heirless Nazi victims found in Switzerland at the disposal of the Allies for purposes of refugee relief and rehabilitation.[62]

Under the terms of the Washington Accord, Switzerland paid approximately $58 million in monetary gold[63] to the Tripartite Gold Commission (the "TGC").[64] According to the Eizenstat Report, however, Switzerland did not comply fully with its obligation under the Washington Accord to liquidate and pay 50% of German assets to the Allies. The Swiss raised numerous objections, argued over exchange rates, and refused to recognize an exemption for assets of

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60 The Washington Accord was entered into force on June 27, 1946. 13 U.S.T. 1118. *See* Rubin at 69 n.7; EIZENSTAT REPORT at xxvii, 62-83.

61 *See* EIZENSTAT REPORT at xxvi-xxvii, 82-83.

62 *See* Letter from Walter Stucki, head of the Swiss delegation, to the Chiefs of the Allied Delegations, May 25, 1946, RG 59 (on file with Records of the Department of State, NARA); *see also* EIZENSTAT REPORT at xxvii, 82-83, 193; Rubin at 68-69; Rubin & Schwartz at 387.

63 The United States Treasury and State Departments at the time estimated that the Swiss National Bank held $185 million to $289 million in gold that had been looted by the Nazis. *See* EIZENSTAT REPORT at vii, 70.

64 The TGC was created by the Allies on September 27, 1946 and was responsible for distributing to countries with claims against Germany a "gold pool" comprised of monetary gold found in Germany and other countries to which Germany might have transferred monetary gold obtained through looting. *See* EIZENSTAT REPORT at 57, 181-85. Between 1958 and 1996, the TGC distributed to 10 European nations a total of 329 metric tons of gold with a value of $379,161,426. *Id*. at 183. On February 3, 1997, the Allies agreed to freeze distribution of the final $68 million amidst allegations that monetary gold looted from central banks was intermingled with gold belonging to Nazi victims (including gold taken from victims' teeth). *See, e.g.*, Foreign & Commonwealth Office, General Services Command, History Notes, *Nazi Gold: Information from the British Archives: II*, (Historians, LRD No. 12) (May 1997) (British Archives Report II); David E. Sanger, *3 Nations Agree on Freezing Gold Looted by Nazis*, N.Y. TIMES, Feb. 4, 1997, at A1, A11. Subsequently, several nations decided to allocate their respective portions of the gold pool to charitable causes intended to help surviving Nazi victims. *See* Distribution Plan at 42-43, n. 89.

surviving or heirless German Jews, maintaining that such assets were subject to liquidation.[65] A compromise was reached in 1952 whereby Switzerland paid $28 million in German assets.[66]

To comply with the side letter concerning dormant, unclaimed assets referenced in the 1946 Washington Accord, the Swiss Bankers Association ("SBA") in 1947 requested that each of its member banks report the unclaimed ("heirless") assets of Nazi persecutees in its possession.[67] Very little information, however, was revealed.

> The 1947 Survey did not produce a great deal of information. It was a relatively informal survey ignored by some banks and not taken seriously enough by others. The survey reported assets with a total of only SFr. 482,000.[68]

Meanwhile, Swiss banking secrecy laws, enacted in 1934, made it extremely difficult for heirs of Nazi victims to obtain access to essential bank records and files, often blocking them from tracing the accounts of their deceased relatives. Other obstacles were raised, such as rules requiring official documentary evidence of the victims' death, or proof of the right of inheritance.[69] Not surprisingly, with the massive destruction and upheaval of the Holocaust, formal documentation usually was unavailable.

Jewish humanitarian organizations pressed for special legislation, particularly compulsory registration laws, to remedy the problem of dormant accounts and heirless assets.[70]

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65 *See* EIZENSTAT REPORT at vii, 95-99, 102-03; *see also* Rubin at 72-73.

66 Agreement Concerning German Property in Switzerland, Aug. 28, 1952, 13 U.S.T. 1131 (entered into force on Mar. 19, 1953); *see* EIZENSTAT REPORT at vii. According to the Eizenstat Report, estimates of German assets in Switzerland at the time ranged from $250 million to $750 million. *See id.* at vii.

67 *See* VOLCKER REPORT, Annex 5 ("Treatment of Dormant Accounts of Victims of Nazi Persecution"), ¶¶ 26-28.

68 *Id.* at ¶ 30. This was approximately $500,000 in 2018, and considerably less in 1947.

69 *See* Distribution Plan, Vol. I., at 44-45 (citing, *e.g*, Rubin & Schwartz, reprinted in June 1997 House Hearing, at 284 n.47 (quoting a June 7, 1950 letter from the SBA, responding to requests to help claimants locate bank accounts of deceased Nazi victims, in which the SBA "stated that it would be glad to help 'within the limits of possibility,' but that first the claimant would have to: 1. prove 'on the basis of official and authenticated documents' the death of the original owner; 2. establish, on the same basis, claimant's right of succession; and 3. give exact details about the banks in which the accounts exist")).

70 *See* JACQUES PICARD, SWITZERLAND AND THE ASSETS OF THE MISSING VICTIMS OF THE NAZIS § 4.4 (1993) (PICARD REPORT), *reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims Hearing Before the H. Comm. on Banking & Fin. Servs.*, 104th Cong. 2d Sess. 236, 247-49 (Dec. 11, 1996) (December 1996 House Hearing); *see also* Anita Ramasastry, *Secrets and Lies? Swiss Banks and International Human Rights*, 31 VAND. J. TRANSNAT'L L. 325, 358-59 (1998).

The SBA objected to such laws[71] and initiated another survey in 1956.[72] This survey requested banks to report those assets belonging to known or suspected Nazi persecutees who had no known heirs.[73] The scope of the survey, however, was "quite narrow," with ill-defined reporting categories.[74] The restrictive survey methods all but dictated the outcome:

> A most interesting aspect of the 1956 Survey is the manner in which it was initiated; the SBA apparently understood that the threatened legislation would not be enacted if the survey showed that the value of accounts was below SFr. 4 million. Thus, the SBA seemed to have a motivation to keep the numbers as low as possible. In fact, a letter from the SBA to its board members dated June 7, 1956, which included a discussion of the survey, stated "[a] meager result from the survey will doubtless contribute to the resolution of this matter in our favor."
>
> Not surprisingly, the results of this survey were quite modest. Only four accounts were reported as being dormant accounts pertaining to known victims of Nazi persecution, while 82 dormant accounts pertain to assumed victims of Nazi violence. Only six cantonal banks participated in the survey; they reported a total of 14 accounts. Only one private bank reported accounts, and it reported only two accounts. The total value for the 86 accounts was SFr. 862,410. These results led the SBA to state in a letter to the Swiss President that the problem "by no means [had] the significance which the other side is constantly attempting to ascribe to it."[75]

In its 2004 opinion addressing the activities of the Swiss banks during and after the Holocaust, the Court observed of the ineffective 1956 survey:

> "[T]he banks and their Association lobbied against legislation that would have required publication of the names of … so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the … controversy of the last 30 years."[76] Indeed, in order to thwart such legislation, the SBA encouraged Swiss banks to underreport the number of such accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our

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71 PICARD REPORT § 4.4, reprinted in December 1996 House Hearing at 247; VOLCKER REPORT ¶ 48.

72 VOLCKER REPORT, Annex 5, ¶¶ 35-38.

73 *Id.* ¶ 35.

74 *Id.* ¶ 36.

75 *Id.* ¶¶ 37-38.

76 *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 312 (citing VOLCKER REPORT ¶ 48).

> favor."[77] …. The banks adhered to the SBA's recommendation: "For instance, Swiss Bank Corporation (*Schweizerischer Bankverein, SBV*) indicated in 1956 that it could not state 'with certainty' that it had such accounts but there were 13 cases (with a total value of 82,000 francs) where this was probable."[78] Given what the Volcker Committee was able to find 40 years later [over 36,000 victim accounts], these estimates were clearly nothing more than a lie.[79]

Historian David M. Crowe has posed the question: "Why did Switzerland get off so easily?" The answer was related to Cold War politics. "In addition to worrying about the use of Swiss funds to revive a Nazi movement in Europe, the Western powers were concerned about keeping Switzerland in the Allied camp during the early stages of the cold war. Switzerland was viewed as a key player in rebuilding Europe, and the Allies did not want Switzerland, which was already doing a lot of business with the Soviet Union, to strengthen its economic ties with the Kremlin."[80]

A few years later, in 1962, the Swiss government again faced questions over the still-open issue of unclaimed assets deposited in Swiss banks by Nazi victims. In response, the Swiss Parliament passed the Federal Resolution of December 20, 1962 (the "1962 Resolution").[81] This statute preempted bank secrecy laws. It required individuals and institutions "administering, possessing, holding in safekeeping or overseeing" the assets in Switzerland of "foreign nationals or stateless persons about whom no reliable information has been received since [] May 9, 1945 and who are known or presumed to have fallen victim to racial, religious or political persecution," to register any such unclaimed assets with a central registration office at the Federal Justice

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77 *Id.* (citing VOLCKER REPORT, Annex 5, ¶ 37 (quoting a letter from the SBA to its board members, dated June 7, 1956)).

78 *Id.* (citing FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR 451 (Pendo Verlag GmbH 2002) (*available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf) (Bergier Commission or BERGIER FINAL REPORT)). The Bergier Report is discussed in detail *infra.*

79 *Id.*

80 DAVID M. CROWE, THE HOLOCAUST: ROOTS, HISTORY AND AFTERMATH 357 (Westview Press 2008). *See also* Eizenstat Report at iv; Neuborne, *Toward Common Procedures*, at 21 ("When the interests of victims were balanced against the geopolitical imperative of fighting communism, rebuilding Europe, and reunifying Germany, the victims didn't stand a diplomatic chance").

81 FEDERAL ASSEMBLY OF THE SWISS CONFEDERATION [CONSTITUTION] Dec. 20, 1962, Federal Resolution on the Assets in Switzerland of Foreigners or Stateless Persons who have been Victims of Racial, Religious and Political Persecution (reprinted in December 1996 House Hearing at 264) (1962 Resolution); *see also* VOLCKER REPORT, Annex 5, ¶ 39; PICARD REPORT §4.6 (reprinted in December 1996 House Hearing at 251).

Ministry.[82] The law provided for a five year period to make claims for such funds and the entire process was to last ten years.[83]

The 1962 Resolution met with considerable resistance. The commission of historians appointed by Switzerland to investigate that nation's Holocaust-era activities, the "Bergier Commission"[84] (after its chair, Jean-Françoise Bergier) pointed out that in Switzerland, "there were strong objections to the use of the term '*Wiedergutmachung*'[85] [restitution] after 1945. This became apparent during the discussions of 1962 …. Addressing a National Council committee meeting, Federal Councillor Ludwig von Moos (Catholic Conservative People's Party) denied that there was any moral obligation on Switzerland in the sense of '*Wiedergutmachung.*'"[86] Federal Councillor von Moos stated that "'Switzerland has nothing to make amends for … either to the victims of Nazi persecution or to Jewish or other organizations

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[82] 1962 Resolution, arts. 1(1), 3, and 7 (reprinted in December 1996 House Hearing at 264-65); *see also* VOLCKER REPORT, Annex 5, ¶¶ 39-43; PICARD REPORT §4.6.

[83] 1962 Resolution, arts. 12 and 16(3) (reprinted in December 1996 House Hearing at 266-67); PICARD REPORT §4.6 at 251-52. The 1962 Resolution was officially enacted on September 1, 1963 and was to remain in force until August 31, 1974. *See* PICARD REPORT § 6 (reprinted in December 1996 House Hearing at 253-57).

[84] The Bergier Commission was established by the Swiss Parliament on December 13, 1996 to examine the period prior to, during and immediately after the Second World War. One of its members was the economic historian Dr. Helen B. Junz. In 2004 the Court appointed Helen Junz as CRT Special Master.

On March 22, 2002, the Bergier Commission issued its final report, as well as a number of detailed studies, concerning the activities of the Swiss banks and other institutions during the Holocaust period. *See* BERGIER FINAL REPORT at 5.

[85] "*Wiedergutmachung"* is a German phrase used in the Holocaust compensation context, literally meaning "making good again." However, as observed by the late Saul Kagan, a founder of the Claims Conference and a father of the Holocaust compensation movement, *Wiedergutmachung* implies making whole. That is "a term with which I [Mr. Kagan] have great difficulty and therefore do not use." Saul Kagan, *Comment: A Participant's Response*, *in* HOLOCAUST AND SHILUMIM: THE POLICY OF WIEDERGUTMACHUNG IN THE EARLY 1950S 53, 54 (Axel Frohn & Dr. Hartmut Lehmann eds., German Historical Institute 1991). *See also id.*, Axel Frohn, *Introduction: The Origins of* Shilumim, at 1-2 (Israelis refer to compensation payments "with the Hebrew word *Shilumim* (recompense)," a term which indicates "that these payments did not imply an expiration of guilt, nor did their acceptance connote a sign of forgiveness…. *Shilumim* is fundamentally different from the German word *Wiedergutmachung*, which etymologically means returning to former conditions and, in a broader sense, to a former state of co-existence. In connection with the Holocaust, *Wiedergutmachung* — though the most suitable word in German — sounds helplessly naïve and out of place"); Gideon Taylor, Greg Schneider & Saul Kagan, *The Claims Conference and the Historic Jewish Efforts for Holocaust-Related Compensation and Restitution*, *in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 103, 104 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Koninklijke Brill NV 2009) ("The Claims Conference has never used this term, as it has always maintained that the payments, no matter the amount, can never be more than symbolic in their attempt to compensate victims").

[86] BERGIER FINAL REPORT at 428-429.

and certainly not to the State of Israel,'" while "Social Democrat National Councillor Harald Huber, who had proposed the Registration Decree in 1957, took a quite similar tone: 'Actually, Switzerland has nothing to make amends for and countries are not entitled to make any claims.'"[87] In Switzerland, "the rejection of a claim for '*Wiedergutmachung*' enjoyed a broad consensus."[88]

Fewer than one-third of the accounts initially considered in the 1962 Survey actually were reported. Only 1,374 accounts were registered with the central office (worth SFr 11.2 million after interest).[89] Of these assets, SFr. 3.5 million were determined to be outside the scope of the decree, thereby remaining with the asset managers or banks. Identifiable heirs received only SFr. 3.7 million.[90] SFr. 2.1 million and SFr. 1.1 million were distributed to the Swiss Federation of Jewish Communities and the Swiss Central Office for Refugee Aid, respectively, and SFr. 464,000 and SFr. 325,000 were distributed to the Polish and the Hungarian Unclaimed Asset Funds, respectively.[91]

Critics have pointed out the shortcomings of the 1962 Resolution, including the absence of any meaningful enforcement mechanism to compel the banks' compliance, the exclusion of many potential claimants residing in Eastern Europe,[92] and loose rules, some of which exempted company accounts and deposits of those who died after World War II.[93] The Swiss adopted

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87 *Id.*

88 BERGIER FINAL REPORT at 428-429. The Bergier Commission noted that "[c]riticism of compensation and restitution payments all too readily gave way to anti-Semitic stereotypes: 'Jews are only interested in money' is a frequently heard cliché which anew inflicts injury upon the victims and their descendants who are seeking justice." *Id.* at 429.

89 VOLCKER REPORT, Annex 5, ¶¶ 44-45.

90 *Id.* ¶ 45.

91 *Id.*

92 Article 8 of the 1962 Resolution provided that the process of declaring an account owner missing or presumed dead "shall not be set in motion if their [sic] are grounds for believing that such a process would cause unpleasantness or difficulties for the persons sought." 1962 Resolution, art. 8, reprinted at December 1996 House Hearing at 266. Accordingly, the declaration process was not implemented with respect to many claimants behind the Iron Curtain who might have been exposed to "unpleasantness" on account of their assets located in Switzerland. *See* PICARD REPORT §4.5, reprinted in December 1996 House Hearing at 249.

93 *See, e.g.*, December 1996 House Hearing at 96 (opening statement of Rep. James A. Leach, Chairman, House Committee on Banking and Financial Services); PICARD REPORT §6.1 (reprinted in December 1996 House Hearing at 253-54); Ramasastry at 360-62; Jodi Berlin Ganz, *Heirs Without Assets and Assets Without Heirs: Recovering and Reclaiming Dormant Swiss Bank Accounts*, 20 FORDHAM INT'L L. J. 1306, 1331 (1997); Peter

(*continued on next page*)

restrictive interpretations of the law, particularly with respect to the definition of "'victim of racial, religious, or political persecution,'" including only those persons who "'died a violent death or were missing because of the reasons for persecution as specified in the law.'"[94]

In the years that followed, the "powerful and secretive Swiss Bankers Association (SBA) used delusion and questions about adequate documentation to reject Holocaust-era claims. In the end, the Swiss banks paid few of the thousands of claims filed by Holocaust victims and their families. Until the mid-1990s, the banks claimed they were able to locate only about $2.5 million in stolen assets."[95]

C. 1990s - Continuing Efforts to Recover Assets

The atmosphere was different by the 1990s. This time, the issue did not go away. "[I]n contrast to previous decades, most of [the] stories concerned the bystanders rather than the perpetrators or victims. Swiss banks, international corporations, insurance companies, leading museums, the Red Cross, and the Vatican all found themselves under unprecedented pressure to account for their record during the Holocaust. Some opened up their archives in response. Most 'discovered' that they had terrible skeletons in their closet, though they may have knowingly kept those skeletons there. Now, however, they could not so easily deny their wartime wrongs and their postwar failings. They had held on to financial assets that rightfully belonged to survivors. These funds sat in their coffers while survivors were rebuffed, often in the most glib and callous fashion."[96]

By the 1990s, "the rules have changed. Bank secrecy laws are out. Transparency is in. Moral standards are increasingly global. World public opinion matters. Institutions of all kinds

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Gumbel, *Heirs of Nazis' Victims Challenge Swiss Banks on Wartime Deposits*, WALL ST. J., June 21, 1995, at A1.

94 VOLCKER REPORT, Annex 5, ¶ 41.

95 CROWE at 357.

96 LIPSTADT, HOLOCAUST: AN AMERICAN UNDERSTANDING 126.

have taken big steps in confronting their past. After decades of appearing at the branches of Credit Suisse one at a time, now victims are taking action en masse. They are pooling their resources. They are receiving support from the wider Jewish community, the human rights community, and people of all persuasions who see the dispute in terms of equity."[97] An unsuccessful 1995 meeting between representatives of Swiss banks and the World Jewish Congress "foreclose[d] any chance of resolving the bank account claims without the public relations equivalent of hand-to-hand combat." [98] And so:

> A gale becomes a category-4 hurricane, with specific events feeding the storm: UBS is caught red-handed destroying World War II-era bank records. The Senate Banking Committee holds public hearings on the Swiss banking industry. The proposed merger of SBC and UBS is held up by the New York State Banking Department. Eizenstat's office at the State Department releases an inter-agency report highly critical of wartime gold laundering by the Swiss National Bank. The report suggests that actions by the Swiss may even have prolonged World War II. The plaintiffs' bar joins the fray and enlists Holocaust survivors in public relations efforts. European business executives, displaying a certain moral obtuseness, feed the fire. The WJC [World Jewish Congress] launches attack ads. The Swiss public, initially critical of the banks, does an about-face when scrutiny moves from the post-War behavior of the banks to the wartime actions of the Swiss government. Two blue-ribbon commissions [Volcker and Bergier] conclude that complicity was rife in Switzerland during the War and afterwards. Small but vocal minorities call for economic boycotts.[99]

Whereas historically, "[d]ebate was polarised between those who argued that rescue was possible, who accordingly held governments and leaders responsible for sins of omission, and those who did not," this time, the "eruption of the 'Nazi gold' issue from 1995 to 1999 suddenly and dramatically altered the basis of this compartmentalisation. The transformation began with the hearings of the US Senate Banking Committee, presided over by Senator Alfonse D'Amato in 1996-97, which publicised the accusations made against Swiss banks by Holocaust survivors. D'Amato provided an unprecedented platform for frail and elderly Jews whose murdered relatives had made deposits in these institutions prior to the war but whose heirs were prevented from retrieving the assets due to the duplicity or insensitivity of the banks when adjudicating

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97 Dubinsky, *Justice for the Collective*, at 1161.

98 *Id*. at 1162.

99 *Id*. at 1162-64.

claims. In 1997, investigators pursuing the Swiss hit upon a new line of attack when they realised that the Third Reich had sold to the Swiss national bank and commercial banks gold looted from the treasuries of conquered states and from the Jews. This was not news to historians, but there was global indignation that Switzerland had profited from the Nazi trade in plundered gold and astonishment when it was learned that international efforts to restitute the gold that had begun in 1945 were still continuing. Thanks to the inherent nature of the issue and the effect of media globalisation, the revelations about Swiss banks and the Nazi gold trade became the subject of worldwide comment. The current stance of Swiss bankers on the subject of 'dormant accounts' as well as the fate of the surviving 'Nazi gold' was the focus of intense international lobbying and rapidly climbed the political agenda in dozens of countries."[100]

It was this unique confluence of history and politics that led to further academic investigation in Switzerland, global media attention, and, eventually, class action lawsuits in the United States.

1. A Reexamination of Assets in Switzerland

In late 1992, Jacques Picard, a Swiss historian, published a report entitled "Switzerland and the Assets of the Missing Victims of the Nazis."[101] The Picard Report raised numerous questions about Switzerland's treatment of assets in the country belonging to victims of racial, religious and political persecution following World War II.[102]

Thereafter, the media began to recount cases of Swiss banks dismissing seemingly legitimate claims of elderly, impoverished Holocaust survivors. Journalist Peter Gumbel wrote an article that appeared on the front page of *The Wall Street Journal* on June 21, 1995.[103] Gumbel stated that "[f]or 50 years, since the end of the war, [Swiss] banks … have cast a

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[100] David Cesarani & Paul A. Levine, *Introduction* to DAVID CESARANI & PAUL A. LEVINE, 'BYSTANDERS' TO THE HOLOCAUST: A RE-EVALUATION 1, 9-10 (David Cesarani & Paul A. Levine eds., Frank Cass Publishers 2002).

[101] *See* PICARD REPORT (reprinted in December 1996 House Hearing at 236-269).

[102] *See id*. Picard later published a book entitled *Die Schweiz und die Juden 1933-1945 [The Swiss and the Jews 1933-1945*] (Zurich 1993).

[103] Peter Gumbel, *Heirs of Nazis' Victims Challenge Swiss Banks on Wartime Deposits*, Wall St. J., June 21, 1995, at A1.

dismissive blanket of silence over the question of what they did with accounts opened by Jews and others who were then persecuted, and often murdered, by the Nazis."[104] At approximately the same time, on the occasion of the 50th anniversary of the end of the war, May 7, 1995, Swiss President Kaspar Villiger brought to light an additional concern: he publicly stated that Switzerland needed to apologize for refusing entry into the country to thousands of Jewish refugees from Nazi Germany both before and during World War II. This statement garnered additional international media attention.[105]

The Union Bank of Switzerland (UBS) and the Swiss Bank Corporation (SBC) in 1995 acknowledged the possibility that they still retained unclaimed assets of Nazi victims.[106] The SBA agreed to establish a working group to conduct another survey[107] and issued guidelines that relaxed certain documentary requirements relating to bank account claims.[108]

The 1995 survey consisted of two parts: a preliminary survey and a main survey. The SBA reported the results of the preliminary survey in September 1995 and revealed a total of 893 dormant accounts, with a value of SFr. 40.9 million. The results of the main survey were reported in February 1996 and revealed an even lower amount: 775 accounts, with a value of SFr. 38.7 million (approximately $32 million).[109]

The SBA board minutes pertaining to the 1995 review suggest that there may have been an inherent bias in the survey, contributing to the lower-than-expected results.[110] The purpose of the 1995 survey, as set forth in the SBA board minutes, was to support the prior investigation and deflect the media. Thus, it was intended to show

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104 *Id.* at A10.

105 *See, e.g.*, Alfred Defago, *Swiss are Coming to Terms with a Mixed Past*, INT'L HERALD TRIB., Aug. 25, 1997, at 8; John Parry & Nicholas Moss, *Gold Loses Its Luster*, EUROPEAN, Oct. 30, 1997, at 32.

106 EIZENSTAT REPORT at iv.

107 VOLCKER REPORT, Annex 5, ¶ 46.

108 Distribution Plan, Vol. I, at 49 (citing Ramasastry at 362-63; Ganz at 1350).

109 VOLCKER REPORT, Annex 5, ¶¶ 46, 49.

110 *Id*. ¶ 47.

> that the [1962] Survey…was done in a thorough fashion and to show that speculations which say that huge amounts were held back is at most a rumor…so that these partly unfounded press speculations can be refuted through a coordinated public affairs campaign.[111]

In the meantime, members of the World Jewish Restitution Organization ("WJRO") and the World Jewish Congress ("WJC") continued to negotiate with the SBA regarding the restitution of Jewish assets and property.[112] In December 1995, dissatisfied with the progress of the negotiations, WJRO/WJC President Edgar M. Bronfman[113] and WJC Executive Secretary Dr. Israel Singer enlisted the support of Senator Alfonse D'Amato of New York, Chairman of the United States Senate Banking, Housing, and Urban Affairs Committee.[114] Senator D'Amato held a hearing on April 23, 1996 to inquire about dormant Swiss bank accounts possibly belonging to Nazi victims.[115]

At the same time, a study led by Ambassador Eizenstat about the Swiss role during World War II, and particularly its gold transactions, was under way in the United States. Meanwhile, in Switzerland, two expert commissions — one headed by former Chairman of the United States Federal Reserve Board Paul A. Volcker, and one led by Swiss historian Jean-François Bergier — were gearing up for their own investigations.

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111 *Id*.

112 The WJC is an international federation of Jewish communities and organizations whose membership includes more than 100 communities organized by the regions of North America, Latin America, Europe, Euro-Asia, Israel and the Asia-Pacific.

113 By letter to Bronfman dated September 10, 1995 (attached to the VOLCKER REPORT as Appendix B, at A-3), Israeli Prime Minister Yitzhak Rabin stated that as President of the WJRO, Bronfman "represent[ed] the Jewish people and the State of Israel" with respect to issues "of restitution of Jewish assets deposited in Switzerland, along with the issues of restitution of Jewish property…in countries of Central and Eastern Europe." By letter to Bronfman dated September 8, 1995, President Clinton similarly expressed his "support [of] the efforts of the World Jewish Restitution Organization and the World Jewish Congress to help resolve the question of Jewish properties confiscated during and after the Second World War." Thereafter, by letter dated May 2, 1996, President Clinton reiterated his "continuing support in the area of restitution of Jewish property…. [including] the return of Jewish assets in Swiss banks." *See* Letters from William J. Clinton, President of the United States, to Edgar Bronfman, President of the WJRO/WJC (Sept. 8, 1995 & May 2, 1996).

114 *See* GREGG J. RICKMAN, SWISS BANKS AND JEWISH SOULS 40-41 (Transaction Publishers 1999) (RICKMAN).

115 *See Swiss Banks and the Status of Assets of Holocaust Survivors or Heirs: Hearings Before the S. Comm. on Banking, Hous. & Urban Affairs*, 104th Cong. 2d. Sess. (Apr. 23, 1996) ("April 1996 Senate Hearing"). The witnesses testifying before the Senate Committee included Eizenstat, Bronfman, Hans J. Baer (Chairman of Baer Holding Ltd. and Bank Julius Baer) on behalf of the SBA, and Greta Beer, a Holocaust survivor. S*ee also* RICKMAN at 51-53.

2. The Volcker Committee

In a Memorandum of Understanding dated May 2, 1996, the SBA, the WJRO and the WJC agreed to establish the ICEP (also known as the Volcker Committee), chaired by Paul A. Volcker.[116] In addition to Volcker, ICEP consisted of three members and two alternates appointed by the WJRO and three members and two alternates appointed by the SBA, as well as a special consultant. The Committee also was led by legal counsel, Michael Bradfield, whom Judge Korman later appointed CRT Special Master along with Paul Volcker, and who remained actively involved with the Holocaust-era bank accounts issue throughout the settlement and distribution process.[117]

ICEP's main objectives, as described in the report produced at the end of the audit (known as the "Volcker Report"), were:

> (a) to identify accounts in Swiss banks of victims of Nazi persecution that have lain dormant since World War II or have otherwise not been made available to those victims or their heirs; and (b) to assess the treatment of the accounts of victims of Nazi persecution by Swiss banks.[118]

Dormant accounts were "broadly" defined "to mean those accounts with respect to which there have been no withdrawals or additions by, and no correspondence or other contacts with the accounts holders or their representatives or with the beneficiaries since at least the end of 1945 as well as accounts that should have been dormant as described above but for the fact that the funds in the account are unavailable for reasons other than their return to the original

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[116] *See* VOLCKER REPORT, Appendix A.

[117] ICEP members Ruben Beraja (former President of Banco Mayo Coop. Ltdo.), Avraham Burg (Knesset Chair and former Chairman of the Jewish Agency for Israel) and Ronald S. Lauder (Chairman of RSL Communications, Ltd.), and alternates Zvi Barak (Chairman of the Board of Trustees, ICC Jerusalem International Convention Center) and Israel Singer (WJC Secretary General) were appointed by the WJRO. ICEP members Curt Gasteyger (Professor at the Graduate Institute of International Studies in Geneva, Switzerland), Klaus Jacobi (former State Secretary for Foreign Affairs of Switzerland and Swiss Ambassador to the United States) and Peider Mengiardi (former Chairman of the Board of Directors and Chief Executive Officer of ATAG Ernst & Young), and alternates Hans J. Baer (former Chairman of the Board of Directors of Bank Julius Baer) and René Rhinow (Professor of Law at the University of Basel and Senator in the Swiss Parliament) were appointed by the SBA. Michael Bradfield (then of the law firm Jones, Day, Reavis & Pogue) was appointed as legal counsel to ICEP. Mr. Bradfield, with Paul Volcker, subsequently was appointed by Judge Korman as CRT Special Master. Ian Watt (former Head of the Special Investigations Unit of the Bank of England) was appointed as Special Consultant to ICEP. VOLCKER REPORT Annex 1, at 25.

[118] VOLCKER REPORT ¶ 3.

depositors or their legal representatives."[119] The latter statement referred to closed accounts — which proved to be a crucial component of the banks' inventory, and a central component of the eventual claims process.

ICEP employed five major auditing firms. "ICEP's investigation covered a period of more than 60 years" and included a review of "[a]ll available records" relating to the 1933-1945 time period from "some 254 Swiss banks existing in 1945."[120] The banks examined "represent[ed] 82 percent of the Swiss banking system in 1945 and nearly all deposits of foreign account holders, and include[d] all banks most likely to have attracted significant deposits from Holocaust victims."[121]

At the outset of the ICEP investigation, the Swiss banks pledged their "support and cooperation." At hearings held before the House Committee on Banking and Financial Services on December 11, 1996, for example, Dr. Georg Krayer, Chairman of the SBA, stated that:

> First, the SBA, its members and the Swiss bank supervisors are committed to providing their full support and cooperation to the [ICEP] audit and abiding by its results…. Second, the auditors will have full access to all relevant information. Third, because of this access, the audit findings will represent the best attainable results and therefore must be accepted as conclusive by all responsible parties.[122]

Consistent with Dr. Krayer's statement, on January 22, 1997, the Swiss Federal Banking Commission (the "SFBC") declared the ICEP audits as "official special audits" under the Swiss Banking Act of 1934 and the Swiss Banking Ordinance of 1972.[123] This declaration empowered the SFBC to compel the banks' cooperation with the ICEP investigation, and ensured that the

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[119] VOLCKER REPORT at 1 n.1. *See also* December 1996 House Hearing at 56 (testimony of Paul A. Volcker, Chairman, ICEP) (stating that ICEP's goal was to identify "not only all the accounts now dormant…, but…[also] accounts, in effect, that should be there and should be dormant, …if they themselves had not been illicitly invaded….").

[120] VOLCKER REPORT ¶ 16.

[121] *Id.*

[122] December 1996 House Hearing at 69.

[123] *See* Letter of Support from Dr. Kurt Hauri, Chairman, and Daniel Zuberbühler, Director, of the SFBC to Paul Volcker, Chairman of ICEP (Jan. 29, 1997) (attached to the VOLCKER REPORT as Appendix G, at A-29 to -30); *see also* VOLCKER REPORT ¶¶ 61-62.

ICEP auditors would have "full and unfettered access" to relevant bank files, including customer files protected by bank secrecy legislation.[124]

In a further effort to support the ICEP process, the SFBC and the SBA agreed with ICEP in June 1997 to establish the Claims Resolution Tribunal (a process known as "CRT-I," as distinguished from the later "CRT-II" process that operated under the Court's authority). CRT-I had the mandate of analyzing claims to certain dormant accounts in Swiss banks dating from the pre-War era. According to a Joint Press Release issued by the SFBC and ICEP on June 27, 1997, this claims resolution process was to include the following elements:

- "An SFBC circular letter to Swiss banks requiring them to report the accounts of residents and non-residents of Switzerland that have been dormant since 1945,"
- "Publication of the names and other information on these accounts, with additional names publications [sic] to follow when other dormant accounts are identified by the Swiss banks or the ICEP process," and
- "An independent and objective international claims resolution panel to definitively and equitably decide claims, operating under liberal rules of evidence, with its decisions, in the form of written opinions, taken after due consideration of the representations of the claimants."[125]

Tight deadlines were set for implementation of the claims resolution process, including a deadline of July 23, 1997 for worldwide publication of the first list of dormant accounts belonging to foreign residents or nationals, and a deadline of October 20, 1997 for publication of a second list of domestic dormant accounts.[126] Consistent with these public statements, and with the encouragement of ICEP, the SFBC conducted yet another survey, instructing all Swiss banks to report to ATAG Ernst & Young all accounts opened before May 9, 1945 that remained dormant since that time.[127] At the conclusion of the 1997 survey, 5,570 foreign accounts with an

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[124] VOLCKER REPORT, Appendix G, at A-30.

[125] Distribution Plan, Vol. I, at 54 (citing Joint Press Release of Kurt Hauri, Chairman of the SFBC, and Paul Volcker, Chairman of ICEP (June 25, 1997)).

ICEP also announced the establishment of a Panel of Experts on Interest Fees and Other Charges (the "Kaufman Panel," after its Chair, Henry Kaufman), and the approval of the Charter, By-laws and Rules of Procedure for the Claims Resolution Process. *Id.* at 54-55 n.138.

[126] Joint Press Release of Kurt Hauri, Chairman of the SFBC, and Paul Volcker, Chairman of ICEP (June 25, 1997) (attached to VOLCKER REPORT, Appendix D, at A-9).

[127] VOLCKER REPORT, Annex 5, ¶ 50.

aggregate value of approximately SFr. 72.3 million were reported and published in newspapers internationally and on the internet.

It is important to note that the "CRT-I" claims process that followed the publication of these 5,570 accounts was distinct from the program later operated under the Court's authority. CRT-I resulted in payment of some $10 million, mostly for accounts of non-Holocaust victims. By contrast, the claims review process established after the Volcker Committee's audit ("Volcker audit" or "ICEP audit") was completed and the Settlement Agreement was approved, was operated under the supervision of the Court. This later process — "CRT-II" — returned *almost $720 million* to Holocaust victims and heirs.

ICEP's comprehensive investigation continued for three years. The direct costs of the investigation, borne by the Swiss banks, were in the range of SFr. 300 million.[128] The Swiss banks also incurred substantial internal expenses, including for staffing and for collecting, processing and analyzing documents.[129] According to ICEP, this costly investigation could have been wholly avoided had the SBA and its member banks agreed to publish the names of dormant account holders in the immediate aftermath of World War II. As stated in the Volcker Report:

> The Swiss commitment to bank secrecy and a concern about maintaining the integrity of that secrecy — ironically in part a response to foreign exchange controls in Germany and their use to persecute Jews there — were undoubtedly factors in the decision not to publish the names of the dormant account holders after World War II. Switzerland had an informed and vigorous debate extending over a number of years on this subject. Banks were also concerned that too liberal a regime for processing claims to dormant accounts would result in payments to the wrong parties and double liability for the banks. Unfortunately, the banks and their Association lobbied against legislation that would have required publication of the names of such so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years. An historic opportunity was missed.[130]

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[128] *Id.* ¶¶ 17, 55-59, Table 1.

[129] *Id.* ¶ 17.

[130] *Id.* ¶ 48. *See also In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 157-58 (E.D.N.Y. 2000); 319 F. Supp. 2d 301, 312 (E.D.N.Y. 2004).

On December 6, 1999, the Volcker Committee released its final report containing the results of its three-year investigation. The "Volcker Report"

- determined that 6,858,116 accounts existed in Swiss banks between 1933 and 1945, either opened prior to or during that period, and remaining open throughout those years; however, no bank records remained for 2,757,950 (approximately one-third) of these accounts;
- described the auditors' review of records for the approximately 4.1 million Swiss Holocaust-era accounts for which documentation did still exist;[131]
- matched the names of account holders against the names of victims of Nazi persecution with respect to approximately 2.25 million accounts, approximately one-third of the total. The matching process was not undertaken regarding 1,065,630 domestic Swiss accounts and 784,791 small savings accounts in the interests of speed and manageability of the audit process, and thus, as stated by the Volcker Committee, "the total of the number and value of accounts with some presumption of involvement with victims of Nazi persecution identified by the [ICEP] investigation is clearly conservative;"[132]
- concluded that 53,886 accounts [subsequently reduced to approximately 36,000] had a "probable or possible relationship to victims of Nazi persecution;"[133]
- noted that the auditors had "reported no evidence of systematic destruction of records of victim accounts, organized discrimination against the accounts of victims of Nazi persecution, or concerted efforts to divert the funds of victims of Nazi persecution to improper purposes;"[134] and
- determined that there was "confirmed evidence of questionable and deceitful actions by some individual banks in the handling of accounts of victims, including withholding of information from Holocaust victims or their heirs about their accounts, inappropriate closing of accounts, failure to keep adequate records, many cases of insensitivity to the efforts of victims or heirs of victims to claim dormant or closed accounts, and a general lack of diligence — even active resistance — in response to earlier private and official inquiries about dormant accounts."[135]

These findings — that tens of thousands of accounts belonged to Holocaust victims (a number far greater than the few "hundreds" of accounts previously reported in earlier surveys) — very likely were unexpected by Swiss financial and banking authorities.

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131 *See* VOLCKER REPORT ¶ 20.

132 *Id.* ¶ 58.

133 *Id.* ¶ 30.

134 *Id.* ¶ 41(a).

135 *Id.* ¶ 41(b).

Lead Settlement Counsel Neuborne has written of his initial reluctance to accept the Volcker audit in place of traditional discovery through the litigation process. His reservations largely dissipated when the Volcker Committee released its conclusions:

> I initially called the whole thing a huge whitewash, but I was wrong. The Volcker audit wasn't as reliable as letting independent accountants hired by the lawyers look hard at the banks' records, and it came much too late because the banks had destroyed so much data, but it wasn't a whitewash. Many of the folks who carried out the audits, especially Michael Bradfield, Volcker's right-hand man, were deeply committed and very conscientious. In the end, though, they saw only what had survived destruction, and only what the banks allowed them to see. Despite the massive destruction of the historical record, the Volcker auditors eventually discovered traces of 36,000 Swiss bank accounts that were "probable or possible" unpaid Holocaust-era accounts. Who knows how many they missed because of the total record destruction of 2.8 million accounts and the banks' intransigence about opening their books?[136]

The Volcker Committee made several key recommendations.[137] These recommendations were described by Chairman Paul Volcker in his February 9, 2000 statement before the House Committee on Banking and Financial Services:[138]

- "The SFBC should promptly authorize consolidation of the existing but scattered auditor workpapers and databases (established during the ICEP investigation) relating to 4.1 million accounts open in the 1933-1945 period, and assembly of them into a central archive that can be used in a claims resolution process."
- "The SFBC should authorize publication of the names of holders of approximately 25,000 accounts having the highest probability of a relationship to victims of Nazi persecution."[139]
- "Any person with a claim to a dormant account of a victim, whether or not the name is published, should be provided facilities for resolving such claims through the CRT. Existing claims compiled by the New York State Holocaust Claims Processing

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136 Neuborne, *Litigating the Holocaust*, at 20. Hans Baer, former head of the family bank Julius Baer, observed of Michael Bradfield that he "dug more deeply into the dossiers, constantly increased the search criteria for the auditors, and expanded the framework of the investigation." HANS J. BAER, IT'S NOT ALL ABOUT MONEY: MEMOIRS OF A PRIVATE BANKER 447 (Beaufort Books 2008).

137 *See* VOLCKER REPORT ¶¶ 65-80.

138 *Restitution on Holocaust Assets: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 106th Cong. 2d Sess. (Feb. 9, 2000) (statement of Paul A. Volcker, Chairman, ICEP) (Volcker Prepared Statement).

139 The number of accounts published was adjusted to approximately 21,000 (later supplemented by another 3,000 accounts following post-settlement litigation). The reasons for this adjustment are described in more detail elsewhere in this Final Report.

Office[140] and others should be matched against the centralized database of accounts, and resolved by the CRT."

- "To provide a fair return to victims (and their heirs), whose accounts became *de facto* illiquid, individual account values should be adjusted on the basis of long-term Swiss rates of interest, involving multiplying 1945 account values by 10 times."[141]

The head of the Swiss banking system had committed to the audit process in testimony before the United States Congress, stating during a 1996 hearing that the "the audit findings will represent the best attainable results and therefore must be accepted as conclusive by all responsible parties."[142] Once the Volcker audit was completed, however, Swiss banking authorities seemed somewhat less inclined to adopt the results. Thus, on the same day that the Volcker Report was released, December 6, 1999, the SFBC issued its own press release stating that it was "solely responsible for decisions on publishing further lists of accounts;" that it would "analyze individual ICEP recommendations on archiving data, further publication of unclaimed assets, and handling of claims;" and that it would "decide on the ICEP recommendations in the first quarter of 2000 after consulting other parties concerned."[143]

Nearly four months later, on March 30, 2000, the SFBC announced that it had "authorized" the Swiss banks to: (i) "publish 26,000 [later reduced to 21,000] accounts … deemed by the Volcker Committee to have a probability of being related to victims of the Holocaust;" and (ii) "create a central data base containing 46,000 [later reduced to 36,000] accounts that the Volcker Committee consider[ed] to be probably or possibly related to Holocaust victims."[144] The SFBC declined to adopt the Volcker Committee's recommendation

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140 *See* Distribution Plan, Vol. I, at 58-59 n. 154. *See also* http://www.dfs.ny.gov/consumer/holocaust/hcpoindex.htm ("Since 1997 the Holocaust Claims Processing Office (HCPO) has advocated on behalf of Holocaust victims and their heirs, seeking the just and orderly return of assets to their original owners. In fulfilling this mission, as of December 31, 2015, the HCPO has facilitated the restitution of over $173 million in bank accounts, insurance policies, and other material losses and the resolution of cases involving more than 114 works of art"). At the time of the HCPO's creation, Neil Levin was the New York State Superintendent of Banks and was also Chairman of the New York State Commission on the Recovery of Holocaust Victims' Assets. Levin later served as Executive Director of the Port Authority of New York and New Jersey. He perished in the terrorist attacks on the World Trade Center on September 11, 2001.

141 Distribution Plan, Vol. I, at 58-59.

142 December 1996 House Hearing at 69.

143 SFBC Press Release (Dec. 6, 1999).

144 SFBC Press Release (Mar. 30, 2000).

to create a central database for all 4.1 million accounts that existed in Swiss banks in the 1933-1945 period, stating that such a large central database was "neither necessary nor meaningful" because "ICEP itself had, after a very thorough investigation, no reason to believe that these accounts were in any way related to victims of [the] Holocaust."[145]

As the Court observed in its Final Approval Order, ICEP Chairman Paul Volcker later clarified in a letter to SFBC Chairman Kurt Hauri that the "exclusion of millions of small savings accounts and Swiss address accounts from the ICEP analysis in the interest of speedy and manageable results does not, and cannot, mean that none of those accounts were Holocaust related."[146] Volcker concluded that "'there will be some limited but significant number of Holocaust related accounts to be found among the millions of savings and Swiss address accounts that [were] arbitrarily excluded from [ICEP's] research…. [and that,] [t]o the extent that such accounts can be practically and expeditiously identified, which is what the test experiment suggests is entirely feasible, the effort should be done to put this matter to rest.'"[147]

Following the SFBC's March 30 Press Release, the parties continued to negotiate the Swiss banks' implementation of the Volcker Committee's recommendations. The two defendant banks, UBS and Credit Suisse, ultimately agreed to:

- "cooperate in assembling information concerning their portion of the [21,000] 'probable' accounts referred to in the SFBC's March 30 order … to permit expeditious publication of names and other identifying information associated with those accounts after approval of a final plan of allocation and distribution;"
- "cooperate in achieving an earlier publication date if approval of the allocation and distribution plan encounters substantial delays, if it is possible to assemble the information needed for publication prior to such approval and if an adequate court-approved claims process is in place to assist claimants;"
- "create a centralized electronic database relating to their share of the [approximately 36,000] accounts referred to in the Volcker Report" as "probably" or "possibly" related to Holocaust victims;

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145 *Id.*

146 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 155 (E.D.N.Y. 2000) (quoting Letter from Paul A. Volcker, ICEP Chairman, to Dr. Kurt Hauri, SFBC Chairman 3 (Apr. 12, 2000) ("Volcker Letter")).

147 *Id.* (quoting Volcker Letter at 2, 3).

- "permit the personnel of the Claims Resolution Tribunal established under the Settlement Agreement to have convenient access to the centralized database of the [approximately 36,000] accounts and to the Volcker Committee's auditors' paper files in connection with such accounts;"
- "assist[ ] in the matching of claims to accounts that claims personnel have a reasoned and satisfactory basis for concluding may be listed under a Swiss address (including accounts opened in the names of intermediaries) against existing bank databases containing 2.1 million accounts opened during the relevant period;" and
- "'consider in a spirit of cooperation requests for further assistance in any particular cases where there is a reasonably strong likelihood that further assistance would provide probative information and where the costs of such further assistance do not outweigh the potential benefits.'"[148]

The significant impact of the Volcker Committee's findings, the Swiss banks' reaction to them, and the Court's decisions incorporating these findings into the claims process, is the subject of the chapter in this Final Report entitled "The Deposited Assets Class Claims Process."

Further historical context for the settlement and all of the claims processes that followed is provided below.

3. The Eizenstat Report

In late 1996, President Clinton commissioned a special inter-agency task force under the supervision of Ambassador Stuart E. Eizenstat to investigate and prepare a report describing the Allied efforts to recover and restore Nazi looted gold and other assets after World War II.[149] The Eizenstat Report, released in May 1997, detailed Switzerland's relationship with Nazi Germany and highlighted Switzerland's handling of looted gold and other assets.[150]

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[148] *Id.* at 156 (quotations and citations omitted); *see also* Amendment No. 2 to Settlement Agreement, Aug. 9, 2000, at 3-4, included as an exhibit to this Final Report and also *available at* http://swissbankclaims.com/Documents/DOC_20_Amendment2.pdf (Amendment No. 2 to Settlement Agreement); Memorandum to File, ¶¶ A - C.

[149] *See* EIZENSTAT REPORT *supra*.

[150] *See id*. The task force led by Stuart E. Eizenstat released a second report in June 1998, entitled "U.S. and Allied Wartime and Postwar Relations and Negotiations With Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury" (Supplement to Preliminary Study on U.S. and Allied Efforts to Restore Gold and Other Assets Stolen or Hidden by Germany During World War II).

> Switzerland was Nazi Germany's banker and financial facilitator, taking and transferring German gold — most of it looted — and providing Germany with Swiss francs to purchase needed products. Switzerland also supplied Germany with key war materials such as arms, ammunition, aluminum, machinery and locomotives.[151]

The Eizenstat Report concluded that the "acceptance of the stolen gold in exchange for critically important goods and raw materials helped sustain the Nazi regime and prolong its war effort."[152]

The Swiss Federal Council criticized the Eizenstat Report as being "one-sided" and containing "unsupported" conclusions and "political and moral judgments that go beyond the historical report."[153] Some years later, the historians whom Switzerland had commissioned to examine the nation's wartime past — the Bergier Commission — while not considering Switzerland to have prolonged the war,[154] agreed that Swiss institutions had played an important role in assisting Nazi Germany.

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[151] EIZENSTAT REPORT at xxi.

[152] *Id*. at iii; *see also id.* at v (concluding that the assistance to Nazi Germany provided by Switzerland and other neutral countries "had the clear effect of supporting and prolonging Nazi Germany's capacity to wage war"). Historian David M. Crowe has noted that "Swiss banks acted as an important conduit for gold reserves stolen from the various countries occupied by the Germans, and, presumably, gold stolen from Holocaust victims. In fact, almost four-fifths of Germany's shipments of gold went through Swiss banks…. According to a U.S. Army intelligence report, 'Switzerland constituted the principal foreign market for the large quantities of gold which Germany spent in financing her war effort.'" Crowe, *The Holocaust: Roots, History, and Aftermath*, at 353. Crowe drew his findings from the BERGIER FINAL REPORT, which noted (at 238) that during World War II, "Switzerland was the most important market for gold from the territories controlled by the Third Reich. Almost four-fifths of the Reichsbank's gold shipments abroad were arranged via Switzerland." The Bergier Commission observed that it was "hardly surprising that the SNB's [Swiss National Bank's] decisions have — quite legitimately — been the subject of historical and moral assessment on frequent occasions, and that its decisions are judged as having been reprehensible." BERGIER FINAL REPORT at 253.

[153] Alan Cowell, *Swiss Assert Study by U.S. Of Nazi Ties Is 'One-Sided'*, N.Y. TIMES, May 23, 1997, at A1; William Drozdiak, *Swiss Defend Wartime Policy, Reject Criticism; Bern Calls U.S. Report 'One-Sided' Judgment*, WASH. POST, May 23, 1997, at A31; Marilyn Henry, *Swiss Slam Eizenstat Report*, JERUSALEM POST, May 25, 1997, at 12; *see also* June 1997 House Hearing at 45-48 (testimony of Swiss Ambassador Thomas G. Borer regarding Eizenstat Report).

[154] BERGIER FINAL REPORT at 518.

4. The Bergier Commission

On December 13, 1996, the Swiss Parliament passed a decree establishing the Bergier Commission,[155] which on December 19, 1996 received a mandate from the Swiss Federal Council to "examine the period prior to, during, and immediately after the Second World War."[156] The Bergier Commission consisted of ten members, including distinguished scholars from Switzerland, the United States, Israel and Poland.[157]

The Bergier Commission released two preliminary reports followed by a comprehensive final report. In July 1998, the Bergier Commission offered its initial assessment of wartime gold transactions between Switzerland and Germany, reaching many conclusions similar to Eizenstat.[158] Thus, the Bergier Gold Report concluded that the Swiss National Bank (the "SNB"), an institution "supervised by the Swiss government," played an important role in handling Reichsbank gold, and that the commercial banks played a less significant but still noteworthy role.[159]

> During World War II, Switzerland was the most important conduit for gold originating from countries occupied or controlled by the Third Reich. Roughly 79 percent of all gold shipments from the Reichsbank to other countries were routed through Switzerland. In terms of volume, the SNB accounted for 87 percent of this bar, with Swiss commercial banks handling the remaining 13 percent ….

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[155] *See* Federal Decree Concerning the Historical and Legal Investigation of the Fate of Assets Which Reached Switzerland as a Result of National Socialist Rule, Dec. 13, 1996 (the "1996 Federal Decree") (VOLCKER REPORT Appendix F, at A-21).

[156] JEAN FRANÇOIS BERGIER, INDEP. COMM'N OF EXPERTS, SWITZERLAND AND REFUGEES IN THE NAZI ERA 9 (1999) (BERGIER REFUGEE REPORT).

[157] Jean-François Bergier (a Swiss historian) was appointed Chairman of the Bergier Commission. The other nine members of the Bergier Commission were: Wladyslaw Bartoszewski (Poland), Linus von Castelmur (Switzerland), Saul Friedländer (Israel), Harold James (United States), Georg Kreis (Switzerland), Sybil Milton (United States), Jacques Picard (Switzerland), Jakob Tanner (Switzerland) and Joseph Voyame (Switzerland). Sybil Milton passed away during her tenure, as did Joseph Voyame. Voyame was replaced by Daniel Thürer, and Milton was replaced by Dr. Helen Junz. The Court subsequently appointed Helen Junz to serve as a CRT Special Master.

[158] *See* JEAN FRANÇOIS BERGIER, INDEP. COMM'N OF EXPERTS, SWITZERLAND AND GOLD TRANSACTIONS IN THE SECOND WORLD WAR INTERIM REPORT (1998) (BERGIER GOLD REPORT).

[159] *Id.* at 191-93.

> [T]he value of the gold delivered by the Reichsbank to the SNB was between SFr. 1.6 and SFr. 1.7 billion.[160]

The SNB was engaged in significant gold transactions with Nazi Germany. However, the Bergier Commission found no evidence that the SNB was aware that some of the gold it received from Germany was looted from individual victims of the Nazis.

> The total value of the gold shipped by the Reichsbank to Switzerland which is known to have been stolen from the victims of Nazi oppression is SFr. 581,899. Although the subject of gold confiscated from Jewish deportees was discussed by the SNB management in late 1943, there is no indication that those responsible for deciding SNB policy were aware of the origin of such gold shipped by the Reichsbank to Switzerland.[161]

The Bergier Commission did conclude, however, that if the SNB did not know that the gold came from Nazi victims, the SNB nevertheless was aware that much of the gold it received from Germany had been taken from occupied countries. To that extent, the Bergier Commission found that the SNB's gold transactions during the Holocaust era were not in good faith.

> From today's perspective, the SNB's claims that it acted in good faith and that Switzerland's neutrality obliged it to accept the gold offered by Nazi Germany are clearly not justified …. SNB officials became aware while the war was still in progress that the precious metal being shipped by the Reichsbank to Switzerland included gold that had been looted. Swiss neutrality in no way obliged the country to accept stolen gold…. [E]conomic deterrence [of an alleged possible German invasion] was an argument cobbled together *a posteriori* to justify the previous gold policy.[162]

The Bergier Commission released its second preliminary report, the Bergier Refugee Report, on December 10, 1999. The Report condemned the Swiss decisions to (1) demand that Germany mark the passports of Jewish persons with a "J" stamp in 1938; and (2) seal its borders to "racially" persecuted refugees in 1942.[163] Although the Bergier Commission noted that many

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[160] *Id.* at 191.

[161] *Id.*

[162] *Id.* at 193. With respect to commercial banks, although the Bergier Commission noted that "no reliable statement can be made about the banks' profits from gold commerce," *id.* at 164, it also observed that "[i]n the first two years of the war, the Reichsbank carried out its gold transactions in Switzerland primarily through commercial banks." *Id.* at 191.

[163] BERGIER REFUGEE REPORT at 270-71.

refugees were granted asylum by Switzerland during the War,[164] it also found that "Switzerland declined to help people in mortal danger," and that "[a] more humane policy might have saved thousands of refugees from being killed by the Nazis and their accomplices."[165] The Bergier Commission concluded that the exact number of refugees refused entry into or expelled from Switzerland could not be determined, but there was verifiable proof that approximately 24,500 refugees were turned away at the border or expelled between January 1940 and May 1945, and approximately 14,500 entry applications were rejected.[166]

On March 22, 2002, the Bergier Commission released its Final Report.[167] At the same time, the Swiss Federal Council issued a "declaration" that acknowledged that "together with other studies, those of the ICE [another name for the Bergier Commission] establish clear cases of negligence after the war with regard to the restitution of property. The Federal Council expresses its sincere regrets to all those people who suffered the consequences of this. It hopes the measures which have been taken in the last few years will contribute to rectify these errors and cases of negligence."[168]

The Bergier Commission sharply criticized Swiss banking practices and refugee policies. As to the banks, some of the more significant findings were that:

- Swiss banks cooperated with Nazi authorities in forcing account owners to transfer assets under duress. The "banks complied with the instructions of their German customers signed at times under duress, and transferred securities to the German banks indicated."[169]
- After the war, the "banks were able to use the amounts remaining in the [dormant] accounts and to earn income from them. They showed little interest in actively

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[164] *See, e.g., id.* at 24, 146 n.273, 263.

[165] *Id.* at 271.

[166] *Id.* at 20, 129, 263.

[167] *See* BERGIER FINAL REPORT.

[168] Declaration of the Federal Council on the Occasion of the Publication of the Final Report of the Independent Commission of Experts: 'Switzerland – Second World War', Mar. 22, 2002, *available at* http://www.admin.ch/cp/d/3c9b033b_1@fwsrvg.bfi.admin.ch.html.

[169] BERGIER FINAL REPORT at 275.

seeking accounts of Nazi victims, justifying their inaction with the confidentiality desired by their customers."[170]

- Although account holders or their heirs attempted to contact the banks after the war, they were provided incomplete or "misleading" answers. "Some banks gave a factually correct but misleading answer, namely that there was no longer any contact between the bank and the person in question. Others in addition referred to the statutory duty to keep files for ten years and stated that they were unable to provide information on the assets being sought – although relevant documents are still available in the archives today."[171]
- The banks' reluctance to locate heirless assets was clear during the 1950s, when the "big banks co-ordinated their response to heirs,"[172] and continued beyond the 1950s as well.
- The banks relied upon search fees and the reduction of account balances to deflect claimant inquiries.[173]

The Final Bergier Report was released in March 2002, well after many significant events had taken place in the lawsuit: the parties by then had agreed to settle the class action claims (1998) and had signed the Settlement Agreement (1999); the Court had issued its final approval of the settlement (2000); the Court of Appeals had upheld the settlement's approval (2001); and the claims processes were substantially under way. The Bergier Commission's findings were significant, and the Court took them into account in a 2004 opinion, emphasizing that "the Swiss banks' devotion to secrecy and their repeated acts of stonewalling were not based on principles — they were profit-driven…. As the Bergier Commission found, 'it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of banking secrecy and a clear preference for continuity in private law. Over the many years of such rejections, a large number of accounts were reduced to zero or almost.' …. Where economics counseled against upholding secrecy, private law and property rights, however, the banks were quick to abandon their supposedly entrenched values."[174]

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[170] *Id.* at 277.

[171] *Id.* at 443.

[172] *Id.* at 446.

[173] *Id.* at 446-47.

[174] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 313 (E.D.N.Y. 2004) (citing BERGIER FINAL REPORT at 455). *See also* Roger P. Alford, *The Claims Resolution Tribunal*, *in* THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS 575, 584-85 (Chiara Giorgetti ed., Martinus (*continued on next page*)

Of the Final Bergier Report, Ambassador Stuart Eizenstat observed:

> Perhaps even more historic were the shocking discoveries in Switzerland's own Bergier Commission report, which came out in March 2002 — revelations that went well beyond the findings in our 1997 Nazi gold report. No country before or since has commissioned such a critical examination of an important part of its own history as the Swiss did here.... Certainly the Swiss public has been bombarded with a whole new set of facts about the conduct of their government and their banks during and after World War II. The Bergier report went far beyond ours. It found multiple violations of Swiss neutrality by the acceptance of looted gold; the unregulated railway traffic, including Nazi war criminals in flight; the camouflaging of German business interests; and the use of some 11,000 forced laborers in Swiss-owned factories located in Nazi Germany. The Swiss Bank Corporation, whose merger with Union Bank of Switzerland was so controversial during our negotiations, was found to have violated its own country's laws by helping German firms trade in stolen securities…. Millions were returned to their German owners, the Bergier report confirmed, rather than to the Allies, as promised in its 1946 agreement with the United States, and the banks "obstructed the return of securities from Jews and inhabitants of occupied countries."[175]

The claims process arising from the settlement took into consideration the important findings of the Volcker Committee and the Bergier Commission. This resulted in the adoption of a number of inferences favorable to the Deposited Assets Class claimants. Presumptions were used to fill in the evidentiary gaps in the records. The court's administrative agent for the bank account claims — the Claims Resolution Tribunal in Zurich (CRT) — was authorized to presume that if evidence was missing, it was not the claimant, but the bank, that was at fault. Judge Korman instructed the CRT that it could apply the "adverse inference" principle to substitute for records that the banks had destroyed, a traditional remedy under U.S. law that presumes the destroyed evidence was unfavorable to the party responsible for its destruction.[176] The Settlement Fund in effect was now standing in the shoes of the bank defendants, which over

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Nijhoff 2012): "When the Swiss banks refused to cooperate with the Claims Resolution Tribunal, Judge Korman issued a scathing order explaining the application of adverse inferences against the Swiss banks. [He] did so based on 'decades of improper behavior by the Swiss banks.' The Swiss banks improperly authorized the forced transfer of money to the Nazis, had a policy of stonewalling when account holders or their heirs approached them for information, and systematically destroyed bank documents."

[175] STUART E. EIZENSTAT, IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II (PublicAffairs 2003) 180, 184 (EIZENSTAT, IMPERFECT JUSTICE).

[176] *See* 319 F. Supp. 2d at 316-18.

a period of several decades had destroyed the evidence. The application of the adverse inference meant that as long as some record existed to show that a Holocaust victim had owned a Swiss bank account, the Settlement Fund would compensate a plausible claim even in the absence of data conclusively demonstrating the fate of the account.

Thus, if the bank records did not show who closed an account, the CRT was permitted to presume that it was wrongfully closed. If the bank records did not show the amount in the account, the CRT was able to presume that the account had a designated average (presumptive) value. If the bank records did not show what type of account it was, or whether it was linked to other accounts, or whether it held securities, or whether it had been reported in a Nazi census, the Court directed the CRT to conduct its own research to make sure that nothing was missed and no legitimate claim remained unpaid. And where no documentary evidence could be found, if the claimant plausibly had indicated that a close relative had owned a Holocaust-era Swiss account, the claimant received a payment of $7,250 for this claim — a "plausible but undocumented award" ("PUA").

Beyond the Bergier Commission's findings about bank misconduct toward the Holocaust victims who had entrusted their assets to Swiss financial institutions, the Bergier Commission also had a harsh view of Swiss refugee policy. The Declaration accompanying the Final Bergier Report observed: "The Commission reminds us that Switzerland, in particular its political leaders, did not always respond to the humanitarian needs of the time. This is principally true of Swiss policy with regard to refugees. The fact that Switzerland offered shelter to more persecuted people than it turned away does not mitigate its responsibility towards those who were discriminated against as a result of the 'J' stamp, nor towards those whom it turned away and abandoned to unspeakable suffering, deportation and death."[177]

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[177] Declaration of the Federal Council on the Occasion of the Publication of the Final Report of the Independent Commission of Experts: 'Switzerland – Second World War', Mar. 22, 2002, *available at* http://www.admin.ch/cp/d/3c9b033b_1@fwsrvg.bfi.admin.ch.html. *See also* Elizabeth Olson, *Commission Concludes that Swiss Policies Aided the Nazis*, N.Y. TIMES, Mar. 23, 2002, at A4 ("An independent historians' commission, wrapping up five years of research into Switzerland's wartime past, concluded today that the country's neutrality was twisted to justify policies that helped the Nazis, including turning away Jews fleeing the Holocaust"); *Nostra culpa: Switzerland in the second world war*, ECONOMIST, Mar. 28, 2002, at 37-38 ("after more than five years and 25 volumes of research, a massive final report by an independent commission of experts has restored truer shades of grey, and even some of black, to the tale of Switzerland's relations with

(*continued on next page*)

The Final Bergier Report noted that refugee policies were influenced by the anti-Semitism that had existed in Switzerland for many years before World War II:

> The aim to protect the country from "over-Jewification" ("*Verjudung*") had been growing in Switzerland since the First World War. This stance influenced naturalisation, which became increasingly restrictive. From 1916 onwards, files of candidates for naturalisation bore handwritten comments attesting the intention of making it difficult for Jews to gain Swiss citizenship. In 1919, the Federal Administration used a stamp in the form of the Star of David. Swiss civil servants used this system of stamping documents from 1936 onwards, and thus well before the introduction of the notorious stigmatisation [the "J"-stamp on German passports] in 1938.[178]

The Final Bergier Report also reaffirmed the earlier conclusions of the Bergier Interim Report on Refugees concerning restrictive Swiss policies toward Roma refugees:

> In practice, it was not only the various schemata that decided whether or not a particular refugee received asylum, but also social perceptions that overlaid the explicit regulations and were taken for granted to such an extent that they did not need to be expressed and are therefore rarely found in source materials. Nevertheless, they determined the practice of asylum policy as well as the fate of refugees. One such category was "Gypsies." A high-ranking customs official who remarked in 1936 that "beggars, vagabonds, Gypsies, etc." are "to be expelled immediately at the border", only confirmed routine police practice. A year earlier, the Police for Foreigners had complained to consulates that provided Roma and Sinti with transit visas for Switzerland that "the sight of the dirty passports and the photos of Gypsies pasted inside should" have been sufficient reason to deny permission to enter the country. One can conclude on the basis of such comments that "Gypsies" were considered a category of refugees to be rejected, although no directive explicitly named them as such.[179]

Victims of Hitler's regime were left with few options, in stark contrast to the more generous treatment Switzerland accorded even to actual Nazis:

> German claims pertaining to property law resulting from wartime camouflaging were … processed efficiently by the Swiss courts in the early 1950s. Even former Nazi perpetrators, who had argued over the division of the spoils, were able to air

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Nazi Germany," noting that "some of Switzerland's politicians and businessmen failed their own country on three counts": by turning back refugees; "manipulat[ing] neutrality and help[ing] Hitler's war machine;" and failing to restore property after the War).

178 BERGIER FINAL REPORT at 71-72.

179 BERGIER REFUGEE REPORT at 132-133.

> their differences before Swiss courts. By contrast, the victims were consigned to the end of the queue for decades, so that numerous claims can now no longer be settled definitively.[180]

In summing up the impact of Switzerland's refugee policies, the Bergier Commission concluded that "the Swiss authorities were instrumental in helping the Nazi regime to attain its goals."[181]

The result of all of this scrutiny was that Switzerland "found itself battered by a few storms. A fair amount of damage was caused by the revelation that neutral Switzerland had behaved rather less well in the second world war than everybody had wanted to believe. It turned away too many Jewish would-be refugees at its borders; indeed [as of 2004], it ha[d] only just got around to pardoning those Swiss citizens who illegally helped Jews to enter the country during the Nazi period. Switzerland also bought great quantities of gold that Nazi Germany had looted from the occupied countries. And, after the war, anxious to preserve its banking secrecy in the face of money laundering charges, it did not look hard enough for money deposited in Swiss banks by Jews who died during the Holocaust. In defence of their wartime behaviour the Swiss pointed out, not unreasonably, that if they had antagonised the Nazis too much they might have been invaded too, which would have been worse for everyone. But their squeaky-clean image suffered, particularly in America."[182]

5. The Swiss Humanitarian Fund

Early on, when these "storms" that "battered" Switzerland[183] first began to brew, the SBA took some steps to address the claim that it had not responded adequately to the needs of Nazi victims. Thus, on February 26, 1997, the SBA announced the formation of the Swiss Fund for Needy Victims of the Holocaust/Shoa (the "Swiss Humanitarian Fund").[184] The Swiss

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180 BERGIER FINAL REPORT at 486.

181 *Id*. at 168.

182 Barbara Beck, *A Special Case*, ECONOMIST, Feb. 12, 2004, at 3-4.

183 *Id*. at 3.

184 *See* Distribution Plan at 66 (citing Alan Cowell, *3 Swiss Banks Plan to Establish Fund for Nazis' Victims*, N.Y. TIMES, Feb. 6, 1997, at A1).

Humanitarian Fund was established "to support persons in need who were persecuted for reasons of their race, religion or political views or for other reasons, or otherwise were victims of the Holocaust/Shoa, as well as to support their descendants in need."[185]

The Swiss Humanitarian Fund originally was endowed with SFr. 100 million by the defendant Swiss banks — UBS, Credit Suisse and the Swiss Bank Corporation [186] — supplemented by SFr. 100 million contributed by the Swiss National Bank, SFr. 65 million contributed by other Swiss businesses, and an additional SFr. 8 million raised by appeals to the Swiss public. With interest, the Swiss Humanitarian Fund ultimately raised SFr. 294,892,293 (approximately $172,954,329 at the exchange rate in 2000).[187]

The Swiss Humanitarian Fund allocated 88% of its assets to benefit needy Jewish Holocaust victims, and the remaining 12% to benefit other Nazi victims, among them, Roma, Jehovah's Witnesses, homosexuals, persons with disabilities, political prisoners, and others.[188] Of the 88% allocated to Jewish victims, 35% was apportioned on a priority basis to the "double victims" of Central and Eastern Europe and the nations of the former Soviet Union, all of whom were presumed to be needy.[189] The Swiss Humanitarian Fund distributed SF 295 million to 312,000 Nazi victims worldwide.[190]

However, other Swiss efforts to assist Nazi victims were less successful. At approximately the same time that the Swiss Humanitarian Fund was established, in 1997, "the Swiss government announced that it would set up a $4.7 billion Swiss Foundation for Solidarity to aid victims of the Holocaust and other genocides. Yet the fund, which would come from a

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185 Although the Executive Ordinance establishing the Swiss Humanitarian Fund authorized payments to needy descendants of Nazi victims, it was decided not to make payments to descendants. *See* Distribution Plan at 66 (citing THE SWISS FEDERAL COUNCIL, TASK FORCE OF SWITZERLAND, Feb. 26, 1997, Executive Ordinance Concerning the Special Fund for Needy Victims of the Holocaust/Shoah); *id.*, Annex K ("Swiss Humanitarian Fund").

186 UBS and SBC merged while the class action litigation was pending.

187 *See* Distribution Plan, Vol. I., Annex C, Exhibit 2.

188 *See* Swiss Fund for Needy Victims of the Holocaust/Shoa, Fund Auditors Report for the Period Ending Dec. 31, 1999, Mar. 10, 2000, at 1, 7.

189 *Id.* at 6. *See also* Distribution Plan, Vol. II, Annex K ("Swiss Fund for Needy Victims of the Holocaust/Shoa").

190 FINAL REPORT: SWISS FUND FOR NEEDY VICTIMS OF THE HOLOCAUST/SHOA 12 (2002).

reevaluation and sale of Swiss gold reserves, had to be approved by the Swiss parliament and put to a vote in a public referendum. Though approved by parliament, the referendum was narrowly defeated at the polls on September 22, 2002."[191]

6. The German and Austrian Slave Labor Lawsuits

While the litigation was pending against Swiss banks and other Swiss institutions, numerous additional lawsuits were filed in several United States courts against an array of German and Austrian companies, as well as an American company, arising out of the companies' use of and profit from slave labor during the World War II era (the "Slave Labor Lawsuits").[192] The first of the Slave Labor Lawsuits was a class action brought on March 8, 1998 in the United States District Court for the District of New Jersey by plaintiff Elsa Iwanowa against Ford Motor Company, the American automobile manufacturer, and its German subsidiary, Ford Werke A.G. (the "Ford" suits).[193] Shortly thereafter, four more class action lawsuits were filed in the same federal court. These included two suits each against Degussa AG and Siemens AG, German manufacturing companies that were alleged to have used and profited from slave labor.[194]

The defendants moved to dismiss on a variety of grounds. They argued that (1) the court lacked jurisdiction to hear the cases; (2) there were alternative resolution mechanisms better

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[191] CROWE at 358. Ambassador Eizenstat observed that Swiss right-wing politician Christoph Blocher "could not stomach this latest generosity. He accused the banks of admitting guilt when 'Switzerland had no reason to apologize for doing business with Nazi Germany in order to survive as a neutral country.' Blocher threatened to force a referendum on the Solidarity Fund and suggested using the revalued gold to increase Swiss old-age pensions. That brought the Solidarity Fund to an immediate halt. To this day, it has not been set up by the Swiss government." EIZENSTAT, IMPERFECT JUSTICE, at 99.

[192] *See generally* Michael J. Bazyler, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1, 191-236 (2000) (discussing Slave Labor Lawsuits). Several years earlier, a Jewish World War II serviceman, Hugo Princz, who had been captured during the war and imprisoned in a concentration camp, had unsuccessfully sought a pension from West Germany under its restitution statutes. He also litigated his claims in the U.S. court system. On September 19, 1995, the United States and Germany entered into a settlement agreement providing payment both to Mr. Princz, for his incarceration in the concentration camp, and to ten other servicemen similarly situated who were to share a total of $2.1 million to be distributed at the discretion of the U.S. government. The agreement also established a fund for other American survivors of concentration camps. Ultimately 235 individuals received lump sum payments, estimated at $10,000 per month of incarceration. *See* Distribution Plan, Vol. II, E-56-58; *see also, e.g.*, Kimberly J. McLarin, *Holocaust Survivors Will Share $2.1 Million in Reparations*, N.Y. TIMES, Sept. 20, 1995, at B5.

[193] *See Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424 (D.N.J. 1999).

[194] *See Burger-Fischer v. Degussa AG*, 65 F. Supp. 2d 248 (D.N.J. 1999).

suited to resolve the disputes; (3) the United States court was an inconvenient forum; (4) plaintiffs' claims were barred by applicable statutes of limitations; (5) the complaints failed to state a claim upon which relief could be granted; and (6) the claims were not justiciable because they raised political issues that could not properly be addressed by a court.[195]

In contrast to Judge Korman, who refrained from deciding the defendants' motions to dismiss in view of (and in encouragement of) the parties' settlement negotiations,[196] the courts in the Slave Labor Lawsuits did rule. On September 13, 1999, the respective courts granted the defendants' motions to dismiss.[197] In the *Ford* case, while rejecting defendants' jurisdictional arguments,[198] the court nevertheless found that most of plaintiffs' claims had been brought too late and were barred by statutes of limitations.[199] The court determined that plaintiffs' slave labor claims raised political issues beyond the court's purview, which instead should have been

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[195] *See Iwanowa*, 67 F. Supp. 2d at 434; *Burger-Fischer*, 65 F. Supp. 2d at 250. The defendant Swiss banks case made the same arguments. *See infra*.

[196] Judge Korman's handling of the litigation has been widely praised. *See, e.g.*, Neuborne, *Litigating the Holocaust*, at 19 (Judge "Korman worried that if he issued a discovery order, the case would get bogged down in a legal quagmire that would take years to resolve, and that we might well lose in the Supreme Court. So he refused to rule one way or another, leaving the plaintiffs' lawyers to stew about how we could possibly win the case without facts, and the Swiss to worry that Judge Korman might be on the verge of throwing a rock through their [banking] secrecy window. Neither side understood that Korman was playing a very sophisticated game of keeping both sides guessing in order to force a settlement"), *id.* at 27 ("Instead of ruling on the various motions by both sides, Korman treated the lawyers like scorpions in a bottle and just stood pat while they stung each other and worked themselves into a frame of mind to settle the case. Actually, Korman did a little more than stand pat. As the months went on and Stuart Eizenstat's tireless efforts at mediation slowly moved the banks' settlement offer up, Korman dropped orchestrated hints about his thinking on the legal issues designed to raise the anxiety level on both sides."); EIZENSTAT, IMPERFECT JUSTICE, at 122 ("Judge Korman later explained the reasoning behind his deliberate inaction. He wanted to give Volcker time to finish his audit. He also had his eye on the settlement negotiations that were just getting started under my auspices, about which he read in the *New York Times* and the Jewish press, and he wanted to let my efforts ripen. By cannily keeping both sides in suspense, Korman showed wisdom and sophistication. In this way he maintained leverage over a dispute that could easily have spun out of control"); *id*. at 165 ("Judge Edward Korman played the Swiss bank cases like Jascha Heifetz played the violin").

[197] *See Iwanowa*, 67 F. Supp. 2d at 491; *Burger-Fischer*, 65 F. Supp. 2d at 285. *See also* Leora Bilsky, Rodger D. Citron, & Natalie R. Davidson, *From Kiobel Back to Structural Reform: The Hidden Legacy of Holocaust Restitution Litigation*, 2 STAN. J. COMPLEX LITIG. 138, 153 (2014) (noting that in *Burger-Fischer*, "the court emphasized justiciability, essentially concluding that plaintiffs' war-related claims could be asserted only by their government and that all war-related claims were extinguished by postwar peace treaties;" the court also "concluded that the questions presented by the lawsuit were to be resolved directly (and politically) by the nations involved and not by the judiciary;" in *Iwanowa*, "the court also noted that the statute of limitations barred the plaintiffs' claims").

[198] *See Iwanowa*, 67 F. Supp. 2d at 440, 446.

[199] Distribution Plan, Vol. I, at 69.

addressed by the political divisions of government, the Executive Branch and Congress. The court also concluded that abstention was appropriate because "principles of international comity dictate that a court not interfere with a foreign sovereign's pronouncement of its law," noting that "[t]he German Federal Government has taken the position that foreign citizens [such as Iwanowa] may not assert direct claims for war-time forced labor against private companies."[200]

As to the *Degussa* and *Siemens* cases, the New Jersey District Court dismissed those claims on the ground of nonjusticiability.[201]

> The critical issue, the resolution of which is dispositive of these cases, is whether in light of post World War II diplomatic history the plaintiff victims, and representatives of victims of the Nazi regime[,] can bring an action in this Court against private German corporations which participated in and profited from the atrocities committed against plaintiffs and those they seek to represent.[202]

The court ruled that the Degussa and Siemens class actions raised political and policy issues outside the judicial mandate. After analyzing the various reparations treaties negotiated between Germany and the Allied powers in the years following World War II,[203] the court observed that "[i]n effect, plaintiffs are inviting this court to try its hand at refashioning the reparations agreements [entered into by] the United States and other World War II combatants . . . ."[204] Concluding that "this is a task which the court does not have the judicial power to perform,"[205] the court dismissed the complaints.[206]

In upholding the Swiss Banks Settlement Agreement as fair, Judge Korman observed of the German slave labor lawsuits that some of their findings might have been applicable to certain claims asserted in the Swiss Banks cases. "I take no position regarding whether these [lawsuits] were correctly decided, or whether they would even apply here. Instead, I cite them as a reality

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200 *Iwanowa*, 67 F. Supp. 2d at 490.

201 *See Burger-Fischer*, 65 F. Supp. 2d at 283-85. The court did not address the other issues raised in defendants' motions to dismiss.

202 *Id.* at 254-55.

203 *Id.* at 265-72.

204 *Id.* at 282.

205 *Id.*

206 *Id.* at 285.

check for those objectors who believe that strong moral claims are easily converted into successful legal causes of action."[207]

Following the dismissal of the German slave labor cases, the Federal Republic of Germany enacted legislation creating a Foundation entitled "Remembrance, Responsibility and Future" ("German Foundation"). The legislation established a fund of approximately $5.2 billion to compensate those persons who performed slave or forced labor under the Nazi Regime, or who had claims to property looted by the Nazis. The legislation provided for the dismissal with prejudice of all Slave Labor Lawsuits (some of which had not been dismissed and some of which were pending on appeal at the time the legislation was enacted).[208]

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[207] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 148-49 (E.D.N.Y. 2000). Professor Neuborne, who represented the plaintiffs in both the Swiss Banks and German slave labor cases, observed of the rulings in the German cases:

> While I believe that both decisions would almost certainly have been reversed — they were opposed by lawyers in both the State and Justice Departments — *Iwanowa* and *Burger-Fischer* complicated the ongoing settlement negotiations…. Unlike Judge Korman, who sat on the legal issues in the Swiss case for a year and then fostered an excellent settlement, the two New Jersey federal judges insisted on dismissing the plaintiffs' complaints in the midst of the intensive settlement discussions that had been fostered by Secretary Eizenstat. If the judges had remained silent, the German slave labor settlement would have been much higher. I estimate that the two [rulings] cost the victims DM 5 billion. . . .
>
> Since the German corporate defendants adamantly rejected a Rule 23 settlement similar to the Swiss case (even though it would have provided them with an iron-clad preclusion defense) [*i.e.* further litigation would be barred by a settlement], the parties were forced to build a *de facto* class action without using an American court.

Neuborne, *Toward Common Procedures*, at 17.

Ambassador Stuart E. Eizenstat noted that in the German slave labor cases, the defendants' "own lawyer … told our team that it was 'striking not just to Stu but to me that the German companies refused the surest route to legal peace, from class-action releases.' But the Germans feared that a traditional class-action settlement would be an admission of guilt that would only create a precedent for even more lawsuits. No amount of argument could convince them otherwise. We needed a hybrid solution." IMPERFECT JUSTICE at 257.

[208] *See Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft"* [Law on the Creation of a Foundation "Remembrance, Responsibility and Future"], Aug. 12, 2000, BGBl. I at 1263, last amended by Gesetz, Sept. 9, 2008, BGBl. I at 1797. As has been described by the former United States Special Envoy for Holocaust Issues, Ambassador Douglas Davidson: "The foundation [was] the product of an executive agreement concluded in the summer of 2000 [July 17, 2000] between the United States and Germany. Following the signing of this agreement, the German Bundestag enacted [the law establishing] the foundation as the vehicle to make humanitarian payments to former slave and forced laborers and other victims of National Socialism. It was jointly funded by the German government and German industry. Between 2001 and 2007, the Foundation paid roughly 4.5 billion euros to nearly two million forced and slave laborers in almost one hundred countries. Once these payments were completed, the foundation became a grant-making institution through the establishment of a 'Remembrance and Future' fund. This fund, as the law puts it,… 'foster[s] projects that serve the purposes of better understanding among peoples, the interests of survivors of the National

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There was considerable overlap between Slave Labor Class I under the Swiss Banks Settlement, and the German Foundation. In the interest of administrative efficiency and to minimize confusion among survivors, the Distribution Plan utilized many of the same agencies and administrative procedures adopted by the Foundation.

II. THE CLASS ACTION COMPLAINTS AGAINST SWISS BANKS AND THEIR RESOLUTION

A. The Litigation

On October 3, 1996, in the midst of the public scrutiny over Switzerland's role during and after the Holocaust, the first of several complaints was filed against Swiss banks. Lead Settlement Counsel Neuborne has described the "procedural nightmare" that arose from "four overlapping complaints with multiple named-plaintiffs, each purporting to represent the same class. Several plaintiffs were American citizens. Several were citizens of various foreign countries. Each claimed ownership of a Swiss bank account. Each claimed to be a knight-errant suing on behalf of all owners of Holocaust-era Swiss bank accounts. Each sued the three largest Swiss banks, Union Bank of Switzerland [UBS], Swiss Bank Corporation [SBC] and Credit Suisse. (Union Bank of Switzerland and Swiss Bank Corporation merged during the litigation to create UBS, narrowing the defendants to two). No problem, so far, except that nobody had any idea which Swiss banks the claimed accounts were in."[209]

Socialist régime, youth exchange, social justice, remembrance of the threat posed by totalitarian systems and despotism, and international cooperation in humanitarian endeavors.'" Letter from Ambassador Douglas Davidson, Special Envoy for Holocaust Issues, to Shari C. Reig, December 24, 2013. The Foundation law provides that the United States government is to name two members to the Board of Trustees. One is a representative of the United States government. The other is a lawyer to be named by the Government of the United States of America. In 2013, the United States Department of State appointed Deputy Special Master Shari C. Reig to serve as the lawyer named to the Board by the United States, and in 2016 reappointed her to a four-year term.

[209] Neuborne, *Litigating the Holocaust*, at 20.

Holocaust survivor Gisella Weisshaus filed the first class action lawsuit against UBS and SBC in the United States District Court for the Eastern District of New York.[210] Mrs. Weisshaus filed an amended complaint on January 24, 1997, adding three new representative plaintiffs and Credit Suisse, the SBA, and the Bank of International Settlements ("BIS") as joint defendants. The Weisshaus Amended Complaint alleged that defendants conspired in failing to identify and return assets deposited in the banks by plaintiffs or their ancestors from 1933 to 1945 as a safeguard from the Nazis, and that defendants converted these assets for their own use.[211] The Weisshaus Amended Complaint also alleged that the banks profited by knowingly serving as a depository for property looted by the Nazis.[212] The plaintiffs asserted six causes of action: breach of contract, accounting, breach of fiduciary duty, conversion, conspiracy, and unjust enrichment.[213]

On October 21, 1996, Holocaust survivor Jacob Friedman and four other named plaintiffs filed another class action lawsuit in the United States District Court for the Eastern District of New York against the same three Swiss banks — UBS, SBC, and Credit Suisse — as joint defendants, and named the SBA as a non-defendant co-conspirator.[214] The *Friedman* Complaint alleged that the defendant banks conspired and profited from laundering Nazi assets, from knowingly and/or recklessly accepting Nazi looted assets, from knowingly and/or recklessly accepting profits generated by the Nazi use of slave labor, and from intentionally concealing and preventing the recovery of assets deposited in the banks by Nazi victims.[215] The *Friedman* Complaint specified three separate classes of plaintiffs: "Rightful Owners of Nazi Regime Looted Assets and/or Their Heirs," "Slave Laborers and/or Their Heirs," and "Certain Swiss Bank Depositors and/or Their Heirs."[216] The stated causes of action were Conspiracy to Violate and/or Complicity in Violations of International Law, Breach of Fiduciary Duty, Breach of

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210 *Weisshaus v. Union Bank of Switzerland*, No. 96 CV 4849 (E.D.N.Y., filed Oct. 3, 1996) (Weisshaus Am. Compl.).

211 *See* Weisshaus Am. Compl. ¶¶ 1, 19-23, 36, 38, 40.

212 *Id*. ¶ 42.

213 *Id*. ¶¶ 29-43.

214 *Friedman v. Union Bank of Switzerland*, No. 96-5161 (E.D.N.Y., filed Oct. 21, 1996) (*Friedman* Compl.).

215 *Friedman* Compl. ¶ 1.

216 *Id*. ¶ 2.

Special Duty, Breach of Contract, Conversion, Unjust Enrichment, Negligence, Violations of Swiss Federal Banking Law, Violations of Swiss Commercial Code of Obligations, Conspiracy, Fraud, and Fraudulent Concealment.[217]

On January 29, 1997, the World Council of Orthodox Jewish Communities ("World Council") filed a third class action lawsuit in the federal district court for the Eastern District of New York, also naming UBS, SBC, and Credit Suisse as joint defendants and the SBA as a non-defendant co-conspirator.[218] The World Council's allegations concerning deposited assets, looted assets and slave labor mirrored those of the *Friedman* Complaint.[219] The plaintiff subclasses and the causes of action asserted in the *World Council* action were similar to those of the *Friedman* action. However, the *World Council* action contained an additional subclass, "Rightful Owners of Nazi Regime Communal Assets and/or Their Heirs,"[220] and did not allege violations of Swiss banking laws or codes of obligation.[221]

On March 7, 1997, the *Weisshaus, Friedman and World Council* lawsuits were consolidated for pretrial purposes under the caption *In re Holocaust Victim Assets Litigation.* On July 30, 1997, in the midst of extensive motion practice, the plaintiffs amended their complaints, primarily to consolidate the plaintiff subclasses and to cure certain jurisdictional defects. On June 29, 1998, plaintiffs' counsel filed another class action lawsuit on behalf of Nazi victims against the Swiss National Bank in federal district court in Washington, D.C.[222] This lawsuit alleged that the bank knowingly had accepted looted assets, primarily stolen gold, from Nazi Germany.[223]

One day later, on June 30, 1998, the same plaintiffs' counsel filed another class action lawsuit on behalf of different plaintiffs against the same defendant banks — SBC, Credit Suisse,

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217 *Id.* ¶¶ 207-94.

218 *World Council of Orthodox Jewish Communities, Inc. v. Union Bank of Switzerland*, No. 97-0461 (E.D.N.Y., filed Jan. 29, 1997) (World Council Am. Compl.).

219 World Council Am. Compl. ¶ 2.

220 *Id.* ¶ 96.

221 *Id.* ¶¶ 102-48.

222 *Rosenberg v. Swiss National Bank*, No. 98-01647 (U.S.D.C., filed June 29, 1998) (Rosenberg Compl.).

223 Rosenberg Compl. ¶¶ 1, 49-71.

and UBS — in state court in San Francisco, California.[224] The California plaintiffs did not assert any allegations regarding deposited assets or dormant accounts, but alleged that the banks profited from "knowingly accepting for deposit and concealing the existence of slave labor profits and assets looted by the Nazis."[225] Plaintiffs stated only one cause of action: violation of the California Unfair Competition Act.[226] They alleged that the banks' trafficking and/or concealment of the looted and slave labor assets constituted "unlawful, unfair and/or fraudulent business and/or practices" prohibited by the Act.[227]

B. The Motions to Dismiss or Stay Proceedings

On May 15, 1997, the defendant banks responded to plaintiffs' complaints by filing several motions to dismiss or, in the alternative, to stay (*i.e.*, postpone) the proceedings. Plaintiffs filed papers in opposition to defendants' motions on June 16, 1997, and defendants countered with reply papers on July 9, 1997. The motions raised many procedural and substantive legal issues (a number of which subsequently were cited in the German Slave Labor Lawsuits). The Swiss defendants' procedural arguments included the following:

Abstention: Defendants asserted that plaintiffs' claims could be resolved without resort to litigation, through superior, cooperative alternative mechanisms, such as the claims process being conducted by ICEP.[228] Defendants urged the Court to abstain from deciding the merits of plaintiffs' claims or, alternatively, to stay the proceedings until ICEP's work was completed to avoid "[1] interfering with Swiss sovereign interests, [2] encroaching on the conduct of U.S.

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224 *Markovicova v. Swiss Bank Corp.*, No. 99-6160 (Cal. Sup. Ct., filed June 30, 1998) (Markovicova Compl.).

225 Markovicova Compl. ¶ 1.

226 *Id.* ¶ ¶ 43-46.

227 *Id.* ¶ 44.

228 Reply Mem. of Law in Support of Defendants' Motions to Dismiss on Abstention Grounds and in the Alternative to Stay these Proceedings at 1-7 (July 9, 1997). *See also id.* at 5 (asserting that "an independent claims resolution body will be established to make claims determinations and to resolve any disputes that may arise during the claims process, such as those between competing claimants").

foreign policy, and [3] impeding superior alternative processes for resolving Holocaust-related claims."[229]

In response, plaintiffs characterized defendants' abstention argument as an improper attempt to control the process by which Holocaust-related claims would be compensated. Plaintiffs emphasized the futility of the efforts already made, for more than 50 years, to obtain redress outside of the courts.[230]

Standing: Defendants argued that plaintiffs lacked standing to sue because they could not link or trace any profits or revenue from the looted assets or slave labor of an individual plaintiff to any individual defendant Swiss bank.[231] Defendants similarly asserted that plaintiffs could not tie the damages they sought on the looted assets and slave labor claims to any specific plaintiff's injury.[232]

Plaintiffs responded that defendants' standing argument was premature and that discovery might enable them to prove individual links.[233] Additionally, plaintiffs argued, equity would permit theories of group entitlement and collective liability to prevent the banks' unjust enrichment.[234]

Diversity Jurisdiction: Defendants argued that the complaints should be dismissed for lack of diversity jurisdiction due to the absence of complete diversity (difference) of citizenship between the parties. Defendants pointed out that the various complaints included both alien or foreign plaintiffs and alien defendants as parties.[235]

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229 Defendants' Overview Reply Mem. at 22-24 (July 9, 1997); *see also* Defendants' Post-Hearing Reply Mem. of Law at 6 (Sept. 12, 1997).

230 Mem. of Law Submitted by Professor Neuborne (June 16, 1997) (Neuborne 1997 Mem.) at 61-63; 71-72.

231 Defendants' Overview Reply Mem. at 18 (July 9, 1997); Mem. of Law in Support of Defendant's Partial Motion to Dismiss for Lack of Standing to Sue at 6-15 (May 15, 1997).

232 Defendants' Overview Reply Mem. at 18-19 (July 9, 1997); Mem of Law in Support of Defendants' Partial Motion to Dismiss for Lack of Standing to Sue at 16-18 (May 15, 1997).

233 Neuborne 1997 Mem. at 76.

234 *Id*. at 76-77.

235 *See* Distribution Plan, Vol. I, at 77.

Plaintiffs cured this jurisdictional defect by filing amended complaints, one with all named plaintiffs as United States citizens,[236] and one with all named plaintiffs as aliens, with federal jurisdiction claimed under the Alien Tort Claims Act.[237]

Federal Question Jurisdiction: The parties disputed whether claims sounding in customary international law arose under federal common law and thus conferred federal question jurisdiction.[238]

Jurisdiction under the Alien Tort Claims Act (ATCA): The parties disputed whether the ATCA could confer federal jurisdiction. The ATCA grants original jurisdiction to federal courts over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."[239] While defendants maintained that plaintiffs were not all aliens and that the claims were not purely tort-based, they principally argued that allegations of the banks' commercial activities, even if accepted as true, did not rise to the level of a violation of the law of nations.[240]

Plaintiffs responded by claiming that the Swiss banks knowingly financed the Nazi war effort, knowingly engaged in transactions with the Nazis that furthered their criminal activities, and knowingly accepted assets that were looted and that resulted from slave labor — all of which constituted violations of recognized international law principles.[241]

Forum Non Conveniens: Defendants argued that the complaints should be dismissed on grounds of *forum non conveniens* (inconvenient court). They claimed that Switzerland was a more convenient and appropriate forum to adjudicate plaintiffs' claims, arguing that, among

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236 *See Weisshaus* (filed July 30, 1997).

237 *See Sonabend* (filed July 29, 1997).

238 Mem. of Law in Support of Defendants' Motion to Dismiss the Complaints for Lack of Subject Matter Jurisdiction, at 35-41 (May 15, 1997); Defendants' Overview Reply Mem., at 19 (July 9, 1997); Neuborne 1997 Mem. at 56.

239 28 U.S.C. § 1350 (1994).

240 Mem. of Law in Support of Defendants' Motion to Dismiss the Complaints for Lack of Subject Matter Jurisdiction, at 42-62 (May 15, 1997); Defendants' Overview Reply Mem., at 16-17 (July 9, 1997).

241 Plaintiffs' Mem. of Law in Opposition to Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction and for Failure to State a Claim Under International Law, at 16-45 (June 16, 1997).

other things, the conduct at issue occurred in Switzerland, most of the evidence remained there, and Swiss law applied to the majority of the claims asserted.[242] Defendants further claimed that Switzerland retained a strong national interest in the dispute, while litigation in the United States would create enormous and unnecessary administrative burdens.[243]

In response, plaintiffs contended that much of the relevant evidence was not located in Switzerland, but could be found in the USHMM and throughout Europe.[244] Moreover, plaintiffs argued that litigating the claims in Switzerland would be a practical impossibility due to Switzerland's refusal to recognize class action lawsuits.[245]

In addition to procedural arguments, defendants also raised numerous substantive grounds for dismissal, including plaintiffs' purported failure to state causes of action for the three basic claims asserted — those relating to dormant accounts, looted assets and slave labor.

With respect to the dormant account claims, defendants argued that those claims failed because most plaintiffs were unable to allege or prove that a specific account belonging to them was held by a specific defendant bank. Many decades had passed since the deposits were made and most of the relevant records had been lost or destroyed, or the original depositor no longer was alive to testify.[246] Defendants contended that the plaintiffs' dormant accounts claims therefore had to be dismissed due to a lack of evidence.[247]

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[242] Mem. of Law in Support of Defendants' Motion to Dismiss on Forum Non Conveniens Grounds, at 10-39 (May 15, 1997); Reply Mem. of Law in Support of Defendants' Motion to Dismiss on Forum Non Conveniens Grounds, at 7-29 (July 9, 1997).

[243] Reply Mem. of Law in Support of Defendants' Motion to Dismiss on Forum Non Conveniens Grounds, at 28-29 (July 9, 1997).

[244] Neuborne 1997 Mem. at 72-75.

[245] *Id.* at 73. Professor Neuborne, in his 2013 manuscript, *Litigating the Holocaust* (at 22), reflected on what he described as the weakness of the defendants' *forum non conveniens* argument: "By telling Judge Korman that the case would almost certainly be dismissed in a Swiss court, the banks shot their *forum non conveniens* defense in the foot. In order to invoke *forum non conveniens*, there must be a fair chance that the case can go forward in the foreign court. Once the banks told Judge Korman that the Swiss courts would dismiss any transferred case, I jumped on the mistake, and we never heard much any more about *forum non conveniens*."

[246] *See* Neuborne 1997 Mem. at 15-16. The defendants did not explain, however, that the documents were missing because the banks had destroyed so many of them.

[247] Reply Mem. of Law in Support of Defendants' Partial Motion to Dismiss Common-Law Claims for Failure to State a Claim, at 11-12 (July 9, 1997).

Plaintiffs responded that discovery might cure any such defects,[248] and that even if they could not link specific accounts to specific banks, defendants still could be held liable collectively under theories of joint and several liability.[249] Plaintiffs argued that evidence of the banks' concerted actions to obstruct plaintiffs' tracing of their accounts would provide a sound and compelling equitable basis from which to find the banks collectively liable.[250]

Plaintiffs alternatively asserted a claim for several liability under the "market share" doctrine, contending that each defendant bank could be held liable in proportion to the share of deposits it held.[251] Plaintiffs acknowledged that use of the market share doctrine in this case would be novel, but alleged that any decision resulting in the banks' retention of these deposits would further perpetuate the unjust enrichment of the banks at the expense of the Nazi victims who were the rightful owners of the funds.[252]

With respect to looted assets and slave labor claims, defendants argued that plaintiffs' inability to link or trace any profits generated from the assets or labor of a particular plaintiff to a particular defendant was a fatal defect.[253] Once again, plaintiffs argued that discovery might reveal such links and that, alternatively, group entitlement and collective liability theories were proper to prevent the banks' unjust enrichment.[254]

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248 Neuborne 1997 Mem. at 21.

249 Distribution Plan, Vol. I, at 79-80 n. 248 ("Joint and several liability refers to liability that is shared among co-promisors or joint tortfeasors. Liability is said to be joint and several when a plaintiff may demand payment from or sue the liable parties separately or together at the plaintiff's option. *See* W. Page Keeton, *et al.*, *Prosser and Keeton on the Law of Torts*, at 327-28 (5th ed. 1984)").

250 Neuborne 1997 Mem. at 20-21.

251 *Id*. The Distribution Plan noted (at 80 n. 250) that the "market share doctrine has been used in products liability actions in which the courts do not require a precise link between the harm caused by a defendant and that suffered by a plaintiff. Rather, each defendant may be held liable in proportion to the market share it retains of whatever dangerous product has caused the plaintiff's injury. *See Sindell v. Abbott Laboratories*, 607 P.2d 924, 938 (Cal. 1980); *Hymowitz v. Eli Lilly & Co.*, 539 N.E.2d 1069, 1078 (N.Y. 1989); *Prosser and Keaton*, §103, at 714."

252 Neuborne 1997 Mem. at 20-21.

253 Defendants' Overview Reply Mem. at 18-19 (July 9, 1997); Defendants' Mem. in Support of Motion to Dismiss for Failure to State a Cause of Action, at 3-4, 19-51 (May 15, 1997).

254 Neuborne 1997 Mem. at 20-21.

Defendants' final substantive argument was that plaintiffs' reliance on international customary law to support their looted assets and slave labor claims was inappropriate.[255] The banks asserted that their conduct did not violate international human rights norms.[256] They further stated that private corporations generally are not subject to liability under customary international law and that, in any event, private commercial transactions with Nazis by banks in neutral countries such as Switzerland did not violate customary international law.[257]

The parties sharply contested this issue. Defendants cited the Nuremberg trial of Karl Rasche, chairman of the Dresdner Bank, and his acquittal for all wrongdoing for his actions as a banker.[258] Defendants contended that under the *Rasche* decision, the act of providing basic commercial banking services (such as the exchange of cash or credit) did not violate customary international law even where the bank was fully aware that its customer was committing war crimes.[259] Plaintiffs asserted that although Rasche was acquitted for ordinary commercial banking transactions, he was convicted in the Nuremberg trial for knowingly trafficking in looted assets and assisting Nazi war crimes.[260]

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[255] Plaintiffs abandoned their initial position that their looted assets and slave labor claims could be pursued under specific international treaties, and instead based these claims entirely on customary international law. Neuborne 1997 Mem. at 28-35; 39-46.

[256] Reply Mem. of Law in Support of Defendants' Motion to Dismiss the International Law Claims in Friedman and World Council for Failure to State a Claim, at 8-17 (July 9, 1997).

[257] *Id*. at 36-42.

[258] *Id*. at 22.

[259] *Id*. at 26-27.

[260] Neuborne 1997 Mem. at 32-33. Professor Neuborne acknowledged in his 2013 reflections on the lawsuit that although "the customary international law claims were serious,… they were far from sure things. The Circuits had split on the Alien Tort Statute. Some courts were refusing to enforce customary international law claims in the absence of unambiguous Congressional authorization. No one had yet imposed customary international law on a corporation. And, apart from the equivocal [*Dresdner*] bank case, I couldn't find a case where a bank's provision of financial services was deemed aiding and abetting the Nazis." Neuborne, *Litigating the Holocaust,* at 25.

Professor Neuborne noted that during one hearing of almost ten hours, conducted "more like a law school seminar than a structured oral argument," Judge Korman appeared to recognize the legal merits of many of the claims (at least with respect to the bank accounts) but "appeared dead set against the customary international law arguments because he didn't think he had power to enforce what he scathingly called 'a kind of world common law' without explicit authorization from Congress. Try as I might, I couldn't get Korman to view the 1789 Alien Tort statute as such an authorization." *Id.* at 26.

(*continued on next page*)

C. The Settlement Agreement

On August 1, 1997, the District Court heard oral arguments on the motions to dismiss. As reported in *The New York Times*: "Batteries of lawyers representing Swiss Banks and Jewish groups faced off … over whether a class-action lawsuit accusing the banks of retaining the assets of Holocaust victims should proceed. Judge Edward R. Korman made no ruling, but his questions and comments led lawyers representing more than 18,000 Jews taking part in the suit to predict the judge would allow crucial portions of it to proceed."[261]

Judge Korman reserved decision on the motions for over one year, while settlement negotiations intensified. Then-Assistant Secretary of State Eizenstat was called upon to serve as a mediator and other public officials also offered to assist in the settlement process.[262]

In May 1998, Credit Suisse agreed to settle separately with Estelle Sapir, a dormant account plaintiff whose claims had been highly publicized.[263] Classwide negotiations, however,

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Professor Neuborne further observed: It turns out that we were both wrong about the Alien Tort Statute. Five years after the Swiss case settled, the Supreme Court finally held in *Sosa v. Alvarez-Machain* that the 1789 statute was a Congressional authorization to enforce a small slice of customary international law [CIL] against behavior so universally reviled by the international community that it is analogous to piracy. I don't think that I could have shoehorned the Swiss banks' immoral financial assistance to the Nazis into the narrow vision of CIL recognized in *Sosa*, even under an aiding and abetting theory. Indeed, the Second Circuit has even refused, erroneously I believe, to impose CIL damage on a corporation." *Id.* at 26 (citing *Kiobel v. Royal Dutch Petroleum*, 621 F.3d 111 (2d Cir. 2010)).

In April 2013, in *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659 (2013), the United States Supreme Court "further limited plaintiffs' ability to bring claims against companies for actions that occur on foreign soil, upholding the dismissal of a suit that accused Royal Dutch Shell PLC of aiding in human rights abuses." Greg Ryan, *Supreme Court Curbs Reach of Alien Tort Law*, LAW 360 (Apr. 17, 2013, 1:41 PM), http://www.law360.com/articles/433511.

261 David Rohde, *Judge Weighs Fate of Suit Filed by Jews Against Swiss*, N.Y. TIMES, Aug. 1, 1997, at A5.

262 *See* Declaration of Professor Neuborne in Support of Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement, Nov. 5, 1999, at 13 (Neuborne 1999 Declaration). Ambassador Eizenstat subsequently observed that his "bitter experience with the Swiss negotiations, in which the Swiss government refused to be a negotiating partner, taught me a lesson that I never forgot in joining the German, Austrian and French talks. I would never again risk the prestige of the U.S. government in trying to settle class-action lawsuits against foreign companies, unless their governments were willing to become directly engaged. Otherwise, I would be left once more to the caprice of unruly private interests, without the broad view that governments bring to the table…. Fortunately, the governments of Germany, Austria, and France, in contrast to that of Switzerland, recognized that the reputation of their private companies reflected on their nations' reputations." EIZENSTAT, IMPERFECT JUSTICE, at 341.

263 *See* David E. Sanger, *Under Pressure, Big Swiss Bank Yields to Daughter of Nazi Victim*, N.Y. TIMES, May 5, 1998, at B1.

once again stalled. At this point, various state and local officials threatened a series of sanctions against the Swiss banks in the event that an agreement could not be reached.[264]

By then, Judge Korman had taken an active role in facilitating a settlement, convening long, intensive negotiating sessions in chambers.[265] On August 12, 1998, the parties reached an agreement in principle to settle the lawsuits. In exchange for a payment of $1.25 billion originally to be paid in four equal installments,[266] the agreement required a broad release of virtually all Holocaust-related claims against virtually all Swiss business and governmental entities, starting with Switzerland itself.[267]

The parties did not formally execute the Settlement Agreement, however, until January 26, 1999. This delay was due in large part to disagreements among counsel in defining who should be eligible for compensation.[268] While it was generally agreed that targets of systematic Nazi oppression on grounds of race, religion, and politics should benefit from the settlement,[269]

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[264] On July 3, 1998, New York State Comptroller H. Carl McCall and New York City Comptroller Alan Hevesi announced that if a settlement was not reached by September 1, 1998, they would prohibit Swiss banks and investment firms from selling state and city debt and would stop any future short-term investment deposits with the Swiss banks. If a settlement was not reached by November 1, 1998, the comptrollers would instruct private investment managers for the state and city to stop trading through Swiss firms. It appeared that other states, including California, were likely to impose similar sanctions. *See* John J. Goldman, *Pressure Rises for Holocaust Fund Pact*, L.A. TIMES, July 3, 1998, at A31.

[265] Neuborne 1999 Declaration at 13.

[266] The first two installments of $250 million and $333 million were paid into an escrow account by the defendant banks on November 23, 1998 and November 23, 1999, respectively. The remaining installments of $333 million and $334 million each were to be paid on November 23, 2000 and November 23, 2001, respectively. Settlement Agreement, Section 5.1. Pursuant to Amendment No. 2 (discussed below), the parties agreed to accelerate the fourth installment payment by one year. As true for many other elements of the case, even after settlement, the escrow fund became the subject of a dispute and was resolved only after further litigation.

[267] Settlement Agreement, Sections 1 (Definition of "Releasees" and "Other Swiss Banks"), 12, Ex. B. Claims against certain Swiss insurance companies explicitly were exempted from the agreement. Critics have noted that "the Swiss government and its central bank" were "not willing to be part of this compromise, but they were willing to reap its benefits. To this very day, neither the Swiss government nor its central bank is willing to take any moral or legal responsibility for the fact that during the Second World War, they traded in looted gold with Nazi Germany. In distancing themselves from the settlement with the Swiss commercial banks, the Swiss government and the SNB [Swiss National Bank] cited the provision in the [1946] Washington Accord where the Allies stated they would make no further demands on Switzerland and its central bank regarding gold acquisitions during the war." RAUL TEITELBAUM & MOSHE SANBAR, HOLOCAUST GOLD - FROM THE VICTIMS TO SWITZERLAND: TRAILS OF THE NAZI PLUNDER 14 (Amy Teibel trans., Moreshet 2001).

[268] Henry Weinstein, *Holocaust Survivors, Swiss Banks OK Settlement*, L.A. TIMES, Jan. 23, 1999, at A13.

[269] Neuborne 1999 Declaration at 13. The settlement of $1.25 billion was deemed insufficient to compensate all possible victims of the Nazis; for example, non-Jews from Central and Eastern Europe who were forced to work.
(*continued on next page*)

the specification of such groups required further negotiation. The Settlement Agreement ultimately designated as beneficiaries "Victim[s] or Target[s] of Nazi Persecution," defined as any persons or entities "persecuted or targeted for persecution by the Nazi regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped."[270] To be eligible for compensation under the Settlement Agreement, a party would have to fall within one of five Settlement Classes: the Deposited Assets Class, the Looted Assets Class, Slave Labor Class I, Slave Labor Class II, or the Refugee Class.[271]

When the class action litigation against Swiss entities first began, the fact that Swiss industry used slave labor during World War II was not widely known and was not the basis of the original claims. It was the companies themselves that expressed concern about their possible liability for Holocaust-era use of slave labor. Therefore, "Slave Labor Class II" was added to the Settlement Agreement at the behest of the defendants, not the claimants. The class was devised because of the defendants' insistence upon an "all-Switzerland" release as a condition to the settlement. Similarly, the refugee claims were included only at the end of the process, in the Settlement Agreement, largely at the instance of the Settling Defendants who were aware that several former refugees had brought lawsuits in Switzerland. While those proceedings did not yield favorable decisions from Swiss courts, they did result in payments recognizing the "moral" bases of the claims.[272]

Except for Slave Labor Class II, every claimant had to have been a "Victim or Target of Nazi Persecution," or an heir — a broad opening that threatened to render any payments virtually

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An organization representing Polish Nazi victims contested that group's exclusion from the Settlement Agreement, an argument that both the District Court as well as the United States Court of Appeals for the Second Circuit rejected. *In re Holocaust Victim Assets Litig.*, 225 F.3d 191 (2d Cir. 2000) (upholding definition of the plaintiff-class in the Settlement Agreement to exclude Polish and other non-Jewish forced laborers).

270 Settlement Agreement, Section 1.

271 *Id.* Section 8.2.

272 *See, e.g.*, Distribution Plan, Vol. II, Annex J, at J-26-29, discussing the lawsuit brought against Switzerland by Charles and Sabine Sonabend. In May 2000, they reached a settlement with the Swiss government, receiving $118,000 to cover "costs incurred during their legal battle." Alexander G. Higgins, *Swiss Make Holocaust Apology*, ASSOCIATED PRESS, May 23, 2000; *see* Barth Healey, *Switzerland: An Auschwitz Settlement*, N.Y. TIMES, May 20, 2000, at 4.

insignificant, given that there were millions of potential class members who could be categorized as "heirs."[273]

The agreement did not specify precisely how the $1.25 billion would be allocated and distributed among the Settlement Classes. Rather, in accordance with the recommendations of the plaintiffs' Executive Committee, the parties (in Section 7.1 of the Settlement Agreement) deferred to the Court to appoint a Special Master to formulate a plan of allocation and distribution.

By Order dated March 30, 1999, the Court preliminarily approved the Settlement Agreement and provisionally certified the five Settlement Classes. Following the Plaintiffs' Executive Committee's unanimous endorsement,[274] Judge Korman appointed Judah Gribetz as Special Master by Order dated March 31, 1999,[275] thus designating Mr. Gribetz "to oversee the drafting of a plan for the distribution of the Swiss settlement, the largest single pool of funds for Holocaust victims since Germany agreed to reparations nearly 50 years ago." [276] The appointment was "deemed made as of December 15, 1998, the date the parties agreed to his appointment and the date he began to perform informally the duties of Special Master."[277] The March 31, 1999 Order directed Special Master Gribetz to develop a proposed Plan of Allocation and Distribution of the settlement fund, subject to Court approval. The proposal was to provide for the fair and equitable distribution of the settlement fund and would include a recommendation for "where residual funds, if any, remaining after distribution to eligible

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[273] *Id*. Slave Labor Class II applied generally to "individuals" (*i.e*. all Nazi victims), and was not limited to the five designated categories of "Victims or Targets of Nazi Persecution" applicable to the other four classes. *Id*.

[274] *See* Letter from Professor Neuborne to Hon. Edward R. Korman (Dec. 15, 1998).

[275] *See* Referral to Special Master for Development of Plan to Allocate and Distribute Settlement Proceeds, dated March 31, 1999 (March 31, 1999 Order). *See also* Henry Weinstein, *Holocaust Survivors, Swiss Banks OK Settlement*, L.A. TIMES, Jan. 23, 1999, at A13 ("The thorny questions over how to fairly disburse the funds are about to be thrown into the lap of veteran New York lawyer Judah Gribetz…. Gribetz has a long record of public service, including serving as counsel to former New York Gov. Hugh Carey and more recently advising Sen. Daniel Patrick Moynihan (D-N.Y.) on federal judicial appointments. Gribetz also has done considerable work in the Jewish community, but is considered not to be aligned with any Jewish organization that might be a candidate to receive some of the funds").

[276] *Unsettling: Banks and the Holocaust*, ECONOMIST, Aug. 19, 2000, at 77.

[277] March 31, 1999 Order ¶ 1.

members of the Settlement Classes (as defined in the Settlement Agreement) shall be distributed."[278]

D. The Notice Plan

Plaintiffs' class counsel devised a Notice Plan to provide members of the Settlement Classes with notice of the certification of the Settlement Classes, the terms of the Settlement Agreement, their rights with respect to the proposed settlement, and the deadline for submitting exclusion requests and objections.[279] The Court adopted the Notice Plan on May 10, 1999, finding it "the best notice practicable under the unique circumstances of this case, taking into account the geographic dispersion of the class, the size of the Settlement Fund, and other relevant factors."[280]

No lists of class members were available for a simple direct mail notice program. Instead, the Notice Plan involved the coordination of several different components, including direct mail, worldwide publication, public relations ("earned media"), the internet, and grass roots community outreach.[281] The Notice Plan provided for:

- placement of the Court-approved Notice in paid publications, including 371 appearances in mainstream newspapers and 622 appearances in Jewish publications, placed in 40 countries;
- press efforts that resulted in additional coverage in at least 552 news articles, and 34 countries;

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[278] *Id.* ¶ 3. To accomplish this task, the March 31, 1999 Order, paralleling Rule 53 of the Federal Rules of Civil Procedure, expressly authorized the Special Master to "conduct hearings and to interview or otherwise communicate with members of the Settlement Classes," to "travel domestically or abroad to conduct such hearings or interviews" and to "discuss any aspect of the allocation and distribution issues." *Id.* ¶ 4.

[279] *See* Notice Plan at 3. The Notice Plan was designed to reach more than 1 million Holocaust survivors, and millions of their heirs, throughout the world. *See id.*

[280] Order Appointing Notice Administrators, Approving Forms of Notice and Notice Plan, Scheduling Exclusion Requests and Objection Deadlines, and Scheduling Final Fairness Hearing, dated May 10, 1999 (Notice Order") at 3, ¶ 8; 4, ¶ 3.

[281] *See* Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement (Plaintiffs' Mem. in Support of Final Approval), at 13.

- an extensive community outreach program;
- a direct mail program, including more than 1.7 million Notice packages sent to potential Class members in 137 countries;
- a voice response system that fielded almost 500,000 calls; and
- an internet notice effort which resulted (at the time) in over 316,000 "hits" on the Court-ordered website.[282]

This massive notice program resulted in the return of almost 600,000 surveys — "Initial Questionnaires" ("IQs") — to the Notice Plan administrators, from potential class members throughout the world.[283] As Lead Settlement Counsel Professor Neuborne has described it, this response was "astounding," given that in the typical class action litigation, a "response rate of 3% is deemed high." Further, there were "fewer than 300 opt-outs [*i.e.* requests for exclusion from the settlement], many of which were subsequently rescinded."[284]

Assessing the notice program, the Court found that it had been "the most comprehensive, effective and successful in the history of class action litigation."[285] The "net effect of the notice activities was that extraordinarily large numbers of all potential Class member groups were notified, based on a scientific examination."[286] The Court later observed that "even one of the unsuccessful objectors [to certain aspects of the Court's programs] acknowledged that the 'notification process in this case was hailed as the most ambitious effort ever to notify beneficiaries of a legal settlement.'"[287]

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[282] *See* Plaintiffs' Mem. in Support of Final Approval, at 12-13 (citing reports by Notice Plan administrators); September 7, 2000 Notice Administration Letter.

[283] *See* Initial Questionnaire Data.

[284] Neuborne, *Litigating the Holocaust* at 4.

[285] *In re Holocaust Victim Assets Litig.*, 2014 WL 2440612, at *4 (E.D.N.Y. 2014), citing Report of Notice Administrator Todd B. Hilsee ¶ 3, 96-cv-4849, EDF No. 355.

[286] *Id.*

[287] *In re Holocaust Victim Assets Litig.*, 314 F.Supp. 2d 155, 158 (E.D.N.Y. 2004) (quotation marks omitted).

E. Amendment No 2 to the Settlement Agreement

Following implementation of the Notice Plan, the Court held a Fairness Hearing on November 29, 1999 in New York. The Court conducted a supplemental fairness hearing in Israel on December 14, 1999. The parties agreed to modifications to the Settlement Agreement in response to certain objections and comments made at the Fairness Hearings. Specifically, some objected that the broad scope of the releases might pose an obstacle to the recovery of artworks and other identifiable items of property looted by the Nazis and in the possession of a Swiss releasee.[288] The defendant banks agreed to modify the original agreement to assure that persons would be able to seek assistance in recovering looted artwork from releasees without any serious impediment created by the Settlement Agreement.[289]

Others objected to the inclusion of certain insurers as "Releasees."[290] The objections related to the effectiveness of notice as to claims against released Swiss insurers, and the appropriateness of releasing the insurers, in the absence of a mechanism to pay valid Holocaust-related insurance claims as part of the distribution of the Settlement Fund.[291] The modifications in response to these objections involved the "*de facto* creation of a sixth class of beneficiaries who would be entitled to file claims against the participating insurance carriers by virtue of (i) those carriers' infusion of an additional $50 million in cash to the settlement fund and (ii) the agreed upon allocation of $50 million of the existing settlement fund to pay such insurance claims."[292]

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288 *See In re Holocaust Victim Assets Litig.*, 2014 WL 2440612, at *5, citing *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 158.

289 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 159.

290 The original Settlement Agreement provided for releases to a number of unidentified non-party Swiss insurance companies, defined broadly to include any insurance company where at least 25 percent of the outstanding stock was owned by a Swiss company. *Id.* at 160.

291 *Id.*

292 *Id.* at 164-65. The $100 million originally earmarked for insurance claims subsequently was reduced to $50 million, with $25 million each to be provided by, respectively, the Settlement Fund and the defendants. The modifications also created a mechanism, set forth in Article 4 of Amendment No. 2 to the Settlement Agreement, to evaluate and pay Holocaust-related insurance claims.

Most significantly, in response to concerns about the ability to administer the Deposited Assets Class distribution process — including questions about whether the process could be fair if the defendant banks (which controlled much of the information) did not cooperate — the Court imposed a number of further requirements in addition to those enumerated in the Settlement Agreement. These included the requirement of publication of account owner names, consolidation of databases, and cooperation with the administrative process. In short, "[f]rom the beginning, … Judge Korman was quite explicit about his intentions to carefully supervise the process."[293] As Judge Korman observed in considering whether the settlement was fair:

> On March 30, 2000, after an inordinately long and unexplained delay of four months following the publication of the Volcker Report, the Swiss Federal Banking Commission ("SFBC") authorized publication of relevant information relating to approximately 26,000 [subsequently reduced to 21,000] of the accounts referred to in the Volcker Report that were identified as having a "probable" link to Holocaust victims . . . . No authorization was given by the SFBC for the publication of information relating to the approximately 28,000 [reduced to 15,000] remaining accounts identified in the Volcker Report as "possibly" related to Holocaust victims. Moreover, unlike earlier SFBC rulings concerning publication of information relevant to Holocaust-related accounts, the SFBC merely "authorized" publication of much of the relevant information, but did not mandate complete publication. Perhaps even more disturbing was the failure of the SFBC to mandate the creation of a central database of 4.1 million accounts that were opened in Switzerland between 1933-45. In sum, the SFBC, by its actions, has made it much more difficult to carry out the mandate of the Volcker Committee that "victims who have been long denied justice by circumstances beyond their control — often poor and now aged — deserve every reasonable assistance in establishing a claim." . . . .
>
> [I have been advised] that the defendant banks, acting pursuant to the SFBC's authorization, have agreed to cooperate in assembling information concerning their portion of the 26,000 [later reduced to 21,000] "probable" accounts referred to in the SFBC's March 30 order in order to permit expeditious publication of names and other identifying information associated with those accounts . . . . [The defendant banks also] have agreed to create a centralized electronic database relating to their share of the 54,000 [later reduced to 36,000] accounts referred to in the Volcker Report [and have agreed to certain other access provisions]. . . .
>
> Nevertheless, the failure of the SFBC to mandate compliance with the recommendations of the Volcker Committee, coupled with the unwillingness of

[293] Alford, *The Claims Resolution Tribunal* at 584.

> the private or cantonal banks that are non-party releasees to voluntarily cooperate in permitting publication of information relating to some or all of their accounts that may be included within the 54,000 [later 36,000] accounts referred to in the Volcker Report, have created substantial impediments to administration ….
>
> [M]y hope is that the Swiss Confederation, if not the SFBC, will take the steps necessary to compel the cantonal and private banks to comply with the Volcker Committee's recommendations to the same extent as the defendant banks have agreed to comply. Nevertheless, their failure to do so does not justify disapproving the settlement with the defendant banks. They have pledged "their good faith cooperation with the implementation of the settlement." Memorandum to File of Burt Neuborne, Esq. and Roger Witten, Esq. ... This is a pledge that reflects their legal obligation. It is one to which I intend to hold them.[294]

These important obligations impacted the timing and complexity of the settlement's administration, but also ensured that the greatest number of potential claimants would be reached and their claims fairly resolved.

F. The Final Approval Order

Judge Korman granted final approval to the Settlement Agreement on July 26, 2000, observing that the agreement was reached after "lengthy, well-informed and arm's length negotiations by competent and dedicated counsel who provided loyal and effective legal representation to all parties."[295] The adequacy and reasonableness of the settlement were weighed against the "practical alternative to the settlement in the real world … prolonged, complex and difficult litigation, in which plaintiffs' chance of success as a class was uncertain."[296] Although "in a perfectly just world, plaintiffs should have received a far greater sum, in the real world, a recovery of $1.25 billion in return for broad releases was the best that dedicated and competent counsel could achieve under the circumstances of this case."[297]

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294 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 155-158 (E.D.N.Y. 2000).

295 *Id.* at 146.

296 *Id.* at 148.

297 *Id.* at 149.

The defendant banks were directed to advise the Court within seven business days whether they intended to adhere to the as-yet unexecuted Amendment No. 2 to the Settlement Agreement. If the banks did not do so, the Court would enter a final judgment approving the original Settlement Agreement.[298] On August 4, 2000, defendants advised that they intended to execute Amendment No. 2[299] and, thereafter, the Court entered final judgment granting approval of the amended Settlement Agreement.

III. POST SETTLEMENT PROCEEDINGS

The Settlement was only the first step in moving forward on the distribution of the $1.25 billion fund. Various judicial proceedings, including litigation of a number of important issues, continued for years.

A. Appeals of the Court's Order Approving the Settlement as Fair

On September 7, 2000, a Notice of Appeal was filed from the August 9, 2000 Final Order and Judgment. Under the terms of the Settlement Agreement, no distributions from the Settlement Fund could be made until the "Settlement Date" had been reached; *i.e.*, the date upon which all appeals from the Final Order and Judgment had been resolved. The pendency of the appeal needed to be taken into consideration in connection with establishing filing deadlines and claims processing protocols. The appeal subsequently was withdrawn, and on May 30, 2001, the Settlement Agreement became final and distributions could proceed.

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298 *Id.* at 167.

299 *See* Defendants' Submission Regarding Amendment No. 2 to the Settlement Agreement and the July 20, 2000 Memorandum to the File, Aug. 4, 2000 (Defendants' August 4, 2000 Submission).

B. Submission and Approval of the Proposed Distribution Plan

Special Master Gribetz filed the Proposed Plan of Allocation and Distribution of Settlement Proceeds on September 11, 2000. The proposal (the Distribution Plan) was adopted in its entirety on November 22, 2000.[300] The approximately 900-page Distribution Plan set forth the recommendations, and respective rationales, for allocation of the Settlement Fund among the five classes and five "Victim or Target" groups designated in the Settlement Agreement.[301]

For the **Deposited Assets Class**, the Distribution Plan allocated up to $800 million to repay the claims of those who owned bank accounts and other assets deposited in Swiss financial institutions. The allocation of two-thirds of the Settlement Fund to these claims was based upon the priority accorded to the bank accounts under the Settlement Agreement and basic principles of U.S. law, as well as the results of the Volcker Committee's three-year investigation of Holocaust-era Swiss accounts. The Volcker Committee identified at least 54,000 accounts, subsequently reduced to 36,000, "probably" or "possibly" belonging to Nazi victims or their heirs. Calculating known and estimated account values of these 36,000 accounts — compiled in an "Accounts History Database" ("AHD") — the auditors determined the value of these accounts to be between $642 million and $1.36 billion. Although the midpoint of that range was approximately $1 billion, the Distribution Plan conservatively recommended setting aside a lower amount of up to $800 million for the Deposited Assets Class, given the passage of so many decades since the Holocaust, and the likelihood that many account owners and heirs would not or could not file claims.

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300 *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at *4 (E.D.N.Y. Nov. 22, 2000), *aff'd.*, Nos. 00-9595, 00-9597, 2001 WL 868507 (2d Cir. July 26, 2001), reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005).

301 All work was to be performed by organizations, more fully described below, which were to operate under the "direct supervision of the U.S. District Court, assisted by the Special Master[s]. This mean[t] in practice that all procedures and guidelines concerning claims processing [were] subject to the prior approval of the Court. It also mean[t] that all claims decisions taken by the organizations [were] mere 'recommendations' which only bec[a]me 'decisions' once they ha[d] received the blessing of the Court. The latter thus ha[d] the power to reject or change the individual determinations made by the organizations." Peter Van der Auweraert, *Holocaust Reparation Claims Fifty Years After: The Swiss Banks Litigation*, 71 NORDIC J. INT'L L. 557, 581 (2002). At the time of his writing in 2002, Mr. Van Der Auweraert was serving as IOM's Legal Officer for its Swiss Banks claims processing programs, known by IOM as "HVAP," or the Holocaust Victim Assets Programme. He also was a visiting professor of law at the University of Turku in Finland.

The Distribution Plan provided for Deposited Assets claims to be administered on the Court's behalf by the CRT in Zurich ("CRT-II"), which already had been processing claims against Swiss bank accounts prior to the finalization of the settlement ("CRT-I"). The CRT later was assisted by the New York-based Swiss Deposited Assets Program ("SDAP"). Under the Distribution Plan and the subsequently-adopted Rules of the Claims Resolution Process ("CRT Rules"), bank accounts were to be adjusted for interest and fees and repaid in full using the known value of the account. If the actual value was unavailable, the accounts were to be paid using the estimated "average" ("presumptive") value based upon the type of account, such as savings account, demand deposit, custody account (holding securities), and so forth. Most of the presumptive values subsequently were increased, reflecting new valuation data that became available as a result of the Court's ongoing insistence upon the banks' cooperation with the claims process. The Court also adopted the Special Masters' suggestion to award payments of $5,000 (later increased to $7,250) for claimants who plausibly owned, or were heirs to, Swiss bank accounts for which documentation did not exist because of the banks' destruction of account records.

For **Slave Labor Class I**, applicable to those who performed slave labor for German and other companies that transacted their profits through Swiss entities, the Distribution Plan provided for payments of $1,000 each (later increased to $1,450) to surviving slave laborers, or to their heirs if the former slave laborer died on or after February 16, 1999. The Plan determined that such payments to all surviving slave laborers were warranted because historical research demonstrated that virtually all major slave labor-using entities had banking and other financial relationships with Switzerland. Thus, all proceeds of slave labor could be presumed to have been transacted through Switzerland.

In the interest of efficiency and to minimize survivor confusion, the Plan provided for the same administrative agencies and processing mechanisms as utilized by the German Foundation. This was the $5.2 billion foundation created on July 17, 2000, partly in response to class action litigation in the United States arising from the claims of uncompensated Jewish and non-Jewish victims who performed slave labor for German industrial and governmental enterprises during the Nazi era. Following the lead of the German Foundation, which had designated the Claims Conference and the IOM to process the claims of, respectively, Jewish and non-Jewish former

slave laborers, the Court adopted the Special Masters' recommendation and appointed the Claims Conference and IOM to perform the same functions on behalf of Slave Labor Class I.

The **Refugee Class**, applicable to those denied entry into or expelled from Switzerland, or admitted into Switzerland but abused or mistreated, followed a similar distribution mechanism. The Claims Conference was to process the claims of Jewish claimants and the IOM was to process the claims of Roma, Jehovah's Witness, homosexual and disabled claimants. Surviving refugees (or the heirs of refugees who died on or after February 16, 1999) originally were to receive $2,500 if they were denied entry into or expelled from Switzerland, while those admitted but mistreated were to receive $500. Those payments later were increased, respectively, to $3,625 and $725.

Under the Settlement Agreement, **Slave Labor Class II**, applicable to those who performed slave labor for Swiss entities, was the one class that was not limited to the five "Victim or Target" groups but, rather, was open to all Nazi victims. The Distribution Plan provided for payments of $1,000 (subsequently increased to $1,450) to former slave laborers or the heirs of those who died on or after February 16, 1999. All Slave Labor Class II claims were processed by the IOM.

For the **Looted Assets Class**, applicable to those whose assets were looted by the Nazis and disposed of or transacted through Switzerland or Swiss entities, the Court agreed with the Special Masters' observation that the size of the Looted Assets Class, coupled with the impossibility of determining whether specific property was transacted through a Swiss entity, rendered individualized administration of the class impracticable. The looting was simply too massive. Indeed, in a separate proceeding arising from "implementation of a [2001] fund to compensate Austrian Jewish victims of the Nazi regime for Holocaust-related property deprivations," the United States Court of Appeals for the Second Circuit observed: "The severity of property expropriations by the Nazi regime cannot be overstated. We are reminded of the words of Judah Gribetz, the court-appointed Special Master in a separate Holocaust reparations

case: '[T]here is scarcely a victim of the Nazis who was not looted, and on nearly an incomprehensible scale.'"[302]

All Nazi victims could be presumed to have been victims of Nazi looting, the proceeds of which may have been — but could not be proven to have been — transacted through Switzerland.[303] Accordingly, it was appropriate to adopt a "*cy pres*" remedy[304] to assist those who had been looted by the Nazis and who continued to suffer the most severe economic loss. The Special Masters recommended that rather than distributing individual, but probably negligible, payments to every single "victim or target," the neediest class members should benefit from humanitarian aid programs providing food, medicine, shelter and similar assistance. The Distribution Plan initially allocated $100 million — and, ultimately, a total of approximately $256 million — over a ten-year period, later increased to 15 years. The payments were distributed with the understanding that this humanitarian aid would augment, but not replace, existing assistance programs on behalf of needy Jewish survivors that already were being funded by communal sources, as well as through certain governmental programs. These programs were to be implemented, managed and/or monitored by the American Jewish Joint Distribution Committee ("JDC") and the Claims Conference. The Court also would fund similar programs for needy Roma, Jehovah's Witness, homosexual and disabled survivors, to be implemented and monitored by the IOM.[305]

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302 *Whiteman v. Dorotheum GmbH & Co KG*, 431 F. 3d 57, 59 (2d Cir. 2005), citing *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 95 (E.D.N.Y. 2004).

303 *See* Distribution Plan, Vol. I, at 21-27, 110-117.

304 *See Glossary: In re Holocaust Victim Assets Litig.*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 6, http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("Cy Pres") (describing "*cy pres*" as a "remedy for relief through a class-wide benefit program where it is difficult or impractical to provide direct monetary compensation to individual class members; also referred to as the 'next best thing'").

305 *See* Distribution Plan, Vol. I, at 136-37 (in connection with each program funding proposal to be submitted by the JDC and/or the Claims Conference, "[t]he Court will consider whether the proposed funding is intended to augment the program by expanding the services provided or by lengthening the period for which services are provided, rather than substituting for existing program funding"). *See also id.* at 26 (under the Distribution Plan, the funds allocated for needy Jewish Nazi victims "should be designated for the augmentation" of JDC and Claims Conference humanitarian assistance programs); *id.* at 141 ("In particular, the Court should consider whether the programs recommended for funding by the IOM … are to be augmented by expansion of services, or by lengthening the period for which services are provided, rather than substituting for existing funding").

In a separate negotiation, and distinct from the Distribution Plan, plaintiffs and defendants established a claims resolution process for certain Holocaust-era **Insurance Claims** involving two named Swiss insurers, to be administered by CRT-II but directed in considerable measure by the insurers. The payment of the insurance claims process was partially funded from the Settlement Fund and partially funded by the participating insurance companies.

Finally, on behalf of all class members, the Distribution Plan provided for the creation of a $10 million **Victim List Project** (originally described as the "Victim List Foundation"), ultimately increased to $14.5 million, to memorialize all Victims or Targets of Nazi Persecution, those who survived and those who perished.

As this distribution process drew to its conclusion, Lead Settlement Counsel Professor Neuborne reflected on the efforts of the Special Masters, who at the time of Neuborne's writing had "devoted [many] years of [their professional] li[ves] to constructing a parallel legal universe . . ."[306]

In this "parallel" legal world:

> Holocaust-era bank account claims could be justly resolved despite the passage of a half-century, and the Swiss banks' destruction of the historical record…. [A]n institution in Zurich, the Claims Resolution Tribunal (the "CRT II"), [was designated] to adjudicate bank account claims as an arm of the Brooklyn federal court, replete with an Israeli-designed computer program that read 100,000 bank account claims in multiple languages [relating to over 415,000 possible account owners], including Hebrew and Cyrillic, and matched the claims against the surviving records of 36,000 Swiss bank records from the 1930's and 40's identified by the Volcker audit as probable or possible Holocaust-era accounts, which were written in an archaic dialect of banking German. When a claim matched with an account, CRT officials investigated the match to assure that the true owner had been identified. [The process incorporated] elaborate Evidence rules and rebuttable presumptions designed to govern disputes over the ownership, payment, and size of a given account, and … sophisticated burden of proof rules [were] calculated to recognize the passage of time and to take account of the destruction of the original records. [The Court incorporated] [r]ebuttable presumptions made necessary by Switzerland's reprehensible behavior in having destroyed the historical record…. [For example] if a Swiss bank account was closed during the Nazi era without a record of who actually had received the

[306] Neuborne, *Litigating the Holocaust*, at 41.

> proceeds, it was fair to presume that the account had not been paid to its true owner. [A] process [was created] enabling payments to 12,500 persons with "plausible but undocumented claims" to reflect the fact that Swiss destruction of all traces of 2.8 million accounts made it impossible to verify their plausible claims. With the help of dozens of dedicated CRT staffers [some 280 in total over the years] working out of a Zurich office building led by Mary Carter, a fiercely dedicated American lawyer, and Dov Rubenstein, a Cambridge-trained Israeli lawyer and ex-fighter pilot, the CRT presided over the resolution of more than 100,000 bank account claims, resulting in payments of [almost $720] million to thousands of bank account class members throughout the world. The CRT memorialized every award in a written opinion that is publicly available on a web site maintained by the settlement. The thousands of CRT opinions chronicling the claims, with the claimants' names redacted to respect their privacy, constitute a priceless addition to the historical record.
>
> In addition, relying on non-governmental organizations like the International Organization [for] Migration (IOM), headquartered in Geneva [and the] Claims Conference, headquartered in New York, [the process established] investigative mechanisms to identify approximately two hundred thousand former slave laborers and refugees, and to pay them a total of $300 million.
>
> Finally, [the Distribution Plan] organized a consortium of aid organizations, charitable institutions and social workers and distributed [almost $256] million for the care of hundreds of thousands of the poorest survivors throughout the world, including thousands of Sinti-Roma. Over the past decade, [the Court and its agents], and the virtual legal world they built, distributed 100% of the $1.25 billion settlement fund [ultimately almost $1.285 billion] to 452,000 [ultimately over 458,400] Holocaust victims or their heirs throughout the world - a remarkable achievement.[307]

The United States Court of Appeals for the Second Circuit described these efforts, undertaken in careful coordination by the Court, Lead Settlement Counsel and the Special Master, as "exemplary."[308]

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[307] Neuborne, *Litigating the Holocaust*, at 41-42. More than the $1.25 billion settlement — a total of almost $1.285 billion — was distributed to over 458,400 Holocaust victims and certain heirs.

[308] *In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 149 n.15 (2d Cir. 2005) ("the careful consideration that the District Court, the Special Master, and the Lead Settlement Counsel have accorded to every step in the allocation and distribution of this historic settlement has been exemplary").

C. Appeals of the Court's Order Adopting the Distribution Plan

After the Court adopted the Special Masters' recommendations, six appeals were filed from the Court's order approving the Distribution Plan. Four of the six appeals shortly were withdrawn. Of the two remaining appellants, one filed a brief on the merits and, on July 19, 2001, argued his case before the Court of Appeals for the Second Circuit. That appeal challenged the Court's appointment of the Claims Conference to assist with administration of the distribution process; questioned the allocation of approximately two-thirds of the settlement fund to the Deposited Assets Class; and contested the decision to utilize *cy pres* principles to administer the Looted Assets Class.

As to the second appeal, challenging the Claims Conference as an administrative agent, the Court of Appeals, in an opinion issued one week after oral argument on July 26, 2001, noted that the "Claims Conference was chosen because of its lengthy experience with similar programs and because it had already been chosen to process" German Foundation claims. The "efficacy of having one organization process the claims of individuals entitled to recover from both programs cannot be gainsaid."[309]

As to the allocation of up to $800 million to the Deposited Assets Class, the Distribution Plan, like the Settlement Agreement itself, had placed "priority upon returning to their rightful owners 'the sums that Swiss banks have been holding for them for more than half a century.'" Judge Korman had deemed that priority to be "appropriate" in his November 22, 2000 decision adopting the Distribution Plan in its entirety.[310] The Court of Appeals likewise recognized the

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309 *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001).

310 *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at *3 (E.D.N.Y. Nov. 22, 2000) (citation omitted). *See also* Distribution Plan, Vol. I, at 10-12 ("The allocation and distribution of the Settlement Fund must reflect the unique historical background against which this lawsuit arose and upon which it was settled: the allegation that Swiss banks failed to return thousands of bank accounts that had been opened primarily by Jewish victims of the Nazis who attempted to shield some of their financial assets from the Third Reich…. The parties to the Settlement Agreement … accord[ed] the 'Deposited Assets Class' priority among the five settlement classes. Under the terms of the Settlement Agreement, repayments to bank depositors are to be deducted first from the Settlement Fund. The remainder of the Settlement Fund is to be distributed among the other four settlement classes") (citing, *e.g.*, Settlement Agreement, Sections 5.2, 5.3; Amendment No. 2 to Settlement Agreement, at 3-7; Memorandum to the File, Aug. 9, 2000, ¶ D).

preeminence of the Deposited Assets claims, confirming that the allocation was proper because the

> existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting …. [T]hese claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation. By contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate. Any allocation of a settlement of this magnitude and comprising such different types of claims must be based, at least in part, on the comparative strengths and weaknesses of the asserted legal claims.[311]

The strength of the Deposited Assets Class claims was reaffirmed on numerous occasions over the duration of the claims process. In a November 4, 2002 decision addressing certain plaintiffs' attorneys' fees, Judge Korman pointed out that the Deposited Assets Class claims were and remained the core of the lawsuit:

> The heart of this case and the only cause of action capable of surviving a motion to dismiss turned on the failure of Swiss banks to honor their contractual and fiduciary duties to their depositors. *In re Holocaust Victim Assets Litigation*, 14 Fed. Appx. 132, 135 (2d Cir. 2001). The other claims against the Swiss banks, while not without a moral basis, were not sustainable, *id.* ….[312]

In 2004, in response to certain objections regarding aspects of the Looted Assets Class allocation, Judge Korman reiterated that "of all the claims asserted against the Swiss Banks, only the claims of the Deposited Assets Class have any legal merit. The other claims could not have withstood a motion to dismiss."[313] The issue was not whether the other claims (for injuries relating to slave labor, looting and refugee attempts) had moral validity, but, rather, that the deficiencies of those claims under United States law were "a reality check for those … who believe that strong moral claims are easily converted into successful legal causes of action."[314]

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311 *In re Holocaust Victim Assets Litig.*, 413 F.3d at 186.

312 *In re Holocaust Victim Assets Litig.*, 270 F. Supp. 2d 313, 321 (E.D.N.Y. 2002).

313 *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 93 (E.D.N.Y. 2004).

314 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 148-49 (E.D.N.Y. 2000). *See also* Allen, *The Limits of Lex Americana*, at 42. The author observed that "Judge Korman made clear to the plaintiffs … that despite his approval of the $1.25 billion settlement, he found serious weaknesses in the plaintiffs' cases. 'Deposited

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D. Implementation of the Distribution Plan - Establishing the Claims Processes

As discussed in detail in the chapters that follow, nearly 1,113,000 claims were received, and over 458,000 awards were approved. To that end, a wide variety of administrative and policy issues had to be considered. To oversee this process, the Court, Special Masters and claims administrators variously:

- approved claim forms, claims procedures, and appellate processes for the Deposited Assets, Slave Labor, and Refugee Classes;
- appointed Special Masters Volcker and Bradfield to supervise the Deposited Assets Class distribution process and the CRT, and subsequently appointed Dr. Helen B. Junz to serve as an additional CRT Special Master;[315]

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assets claims rested on a solid legal claim beyond unjust enrichment. No one ever doubted that they [claimants] had a right to be repaid,' he later remarked, but '[t]he plaintiffs threw everything but the kitchen sink into [the category of restitution]. They often never stated a cause of action at all'." *Id.* at 42 n.291 (citing "[t]elephone interview with Judge Edward Korman (Apr. 23, 2009)"). According to the author, "Judge Korman said he 'always though that these [deposited assets claims] were the most meritorious.'" *Id.* at 42 n.292.

315 The Claims Resolution Tribunal (CRT) was based in Zurich because of the need for access to bank documents that under Swiss law had to remain in Switzerland. It served essentially as an arm of the Court, led by its Special Masters, including Helen Junz, who also had been a member of the Bergier Commission. As Judge Korman said of Dr. Junz in a Memorandum & Order of November 29, 2006 relating to amendment of one of the rules for processing Deposited Assets Class claims: "Prior to her [April 13, 2004] appointment [by the Court] Dr. Junz, who is an economist, had a distinguished career as a national and international public servant. She served in senior positions at the Board of Governors of the Federal Reserve System of the United States, at the Economic Council of the President in the White House; as Deputy Assistant Secretary at the Department of the Treasury and subsequently at the International Monetary Fund. Her involvement with the analysis of Holocaust era asset questions came in 1997 when Paul Volcker asked her to produce a study of the wealth of the Jewish population in Europe at the eve of the Nazi era to provide a touchstone against which he and the Independent Committee of Eminent Persons ('ICEP'), which he chaired, could assess the results of their audit of Swiss banks. The study was published as a book entitled, WHERE DID ALL THE MONEY GO? THE PRE-NAZI ERA WEALTH OF EUROPEAN JEWRY (Staempfli Publishers Ltd. 2002). Subsequently she guided the economic and financial research for the U.S. Presidential Advisory Commission on Holocaust Era Assets, served as a member of the Independent Commission of Experts Switzerland - Second World War (the Bergier Commission); advised the van Kemenade Commission (Dutch commission) on aspects of Jewish-owned wealth in the Netherlands; produced, in collaboration with her co-authors, a study for the Austrian Historical Commission and was a fellow at the Center for Advanced Holocaust Studies at the U.S. Holocaust Memorial Museum." Memorandum & Order at 1-2, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 29, 2006).

Dr. Junz replaced CRT Special Master Paul Volcker when he was asked to lead an unrelated United Nations investigation. In addition, throughout the process, Michael Bradfield (with important assistance from attorney Jaimie Taff, who previously had worked at the CRT) also served on the Court's behalf as CRT Special Master. Mr. Bradfield had been counsel to the Volcker Committee and supervised the audit firms in their investigation of Swiss accounts. The CRT staff was led throughout the claims process by the organization's Secretaries

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- extended the appointment of Special Master Gribetz, and also appointed Shari C. Reig as Deputy Special Master, to assist with the Deposited Assets Class process and oversee distributions to the two Slave Labor, Refugee and Looted Assets Classes, as well as under the Insurance program and the Victim List Project, and;
- authorized hearings on and approved the proposed CRT rules, and supervised the February 5, 2001 publication of a list of 21,000 Swiss bank accounts determined by the Volcker Committee "probably" to belong to Holocaust victims;
- adjusted the payment mechanisms following assessment of preliminary claims data to provide for one-time payments in full to Deposited Assets recipients as well as to former slave laborers and refugees, rather than the originally anticipated two installment payments;
- authorized payments to class members on a "rolling" basis in a series of implementation orders beginning in July, 2001;
- authorized distributions from the Settlement Fund to certain of the class representatives "whose efforts materially aided the plaintiff class;"[316]
- reiterated the necessity for Swiss entities seeking releases under "Slave Labor Class II" (arising from slave labor for a Swiss entity performed by any Nazi victim, not just those within the five specified "victim or target groups") to identify themselves to the Court. It was only the companies, not the former slave laborers, who were in possession of such information. The "self-identification" requirement was challenged by the defendants and ultimately litigated before the Court of Appeals, which upheld the District Court's determination;
- extended filing deadlines for all classes in recognition that often elderly claimants might have been confused by the variety of parallel Holocaust compensation programs and initially were unaware of the need to file claims;
- authorized the expansion of the claims process to incorporate materials other than formal claim forms, such as Initial Questionnaires and claim forms filed with other entities or programs, recognizing that many future claims relating to Switzerland's Holocaust-era activities would be barred if not included within this process;
- adopted several adjustments in the method for calculating Deposited Assets Class awards to incorporate new data revealed during the claims process, including information relating to accounts that victims were forced to report to the Nazis; the deduction of fees from account balances; and the average values for accounts for which no valuation data was available in the bank records;

General, Mary Carter and Dov Rubinstein. The CRT also received crucial assistance from the New-York based Swiss Deposited Assets Program (SDAP), led by Elena Vournas and Valerie Fischer. The analysis and resolution of so many bank account claims and the repayment of nearly $720 million to Holocaust victims and heirs would have been impossible without this extraordinarily dedicated group of people, and so many others involved with the CRT and SDAP programs.

316 *See* Order dated December 4, 2002; *see also* n.32 *infra*.

- formulated and instructed the CRT to incorporate a number of evidentiary presumptions in reviewing claims based upon the banks' destruction of records and the lack of information concerning the fate of many claimed accounts;
- approved a negotiated settlement with Swiss banks and banking authorities enabling administrative functions and certain other claims processing activities of the CRT in Zurich to be performed in New York by the "Swiss Deposited Assets Program;"
- authorized "Plausible Undocumented Awards" (PUAs) in the amount of $7,500 to be issued to Deposited Assets Class claimants who had plausibly demonstrated that one or more of their relatives had owned a Holocaust-era Swiss account, in recognition that the lack of documentation was due to the banks' destruction of data;
- authorized 45% increases in awards for members of all classes; and
- considered and ruled upon a variety of challenges to different elements of the claims process, particularly relating to the allocation and administration of the Looted Assets Class *cy pres* programs assisting the neediest Nazi victims.

E. Challenges to the Distribution Process

Although the case had settled and the claims processes theoretically should have proceeded without further litigation, various parties nevertheless continued to file legal challenges. As Lead Settlement Counsel Professor Neuborne has described it, there is a "vast swamp of reported cases involving the Swiss bank litigation."[317] All of these disputes (and others not reflected in reported decisions) arose after the lawsuits had settled:

1. *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000) (the District Court issued a comprehensive opinion describing the Swiss banks litigation and upholding the fairness of the $1.25 billion settlement);

2. *In re Holocaust Victim Assets Litig.*, 2000 U.S. Dist. LEXIS 15644 (E.D.N.Y. Aug. 9, 2000) (the District Court approved amendments to the Settlement Agreement involving access to claims data and establishment of insurance claims program);

[317] Neuborne, *Litigating the Holocaust*, at 90; Neuborne, *Toward Common Procedures*, at 11-12 n.15. There also were appeals from some of the most complex CRT decisions, a number of which were resolved only after extensive briefing and review by the Court. For further information, *see* chapter of this Final Report entitled, "The Deposited Assets Class Claims Process," and the related chapter, "Summaries of Selected Deposited Assets Class Decisions."

3. *In re Holocaust Victim Assets Litig.*, 225 F.3d 191 (2d Cir. 2000) (the United States Court of Appeals for the Second Circuit upheld the definition of the plaintiff-class in the Settlement Agreement to exclude Polish and other non-Jewish forced laborers);

4. *In re Holocaust Victim Assets Litig.*, 2000 U.S.App.LEXIS 29529 (2d Cir. Nov. 20, 2000) (the Court of Appeals dismissed an appeal challenging the validity of class certification; the appeal was reinstated and eventually withdrawn with prejudice on June 15, 2001);

5. *In re Holocaust Victim Assets Litig.*, 2000 WL 33241660 (E.D.N.Y. Nov. 22, 2000) (the District Court approved the Special Masters' Proposed Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"));

6. *In re Holocaust Victim Assets Litig.*, 14 F. App'x. 132 (2d Cir. 2001), *redesignated as an opinion*, 413 F.3d 183 (2d Cir. 2005) (the Court of Appeals upheld the District Court's approval of the Distribution Plan);

7. *In re Holocaust Victim Assets Litig.*, 2001 WL 419967 (E.D.N.Y. Apr. 4, 2001), vacated in part by 282 F.3d 103 (2d Cir. 2002) (the Court of Appeals upheld the District Court's "self-identification" requirement directed at Swiss companies that used Holocaust-era slave labor, while vacating aspects of the definition of the Slave Labor II class, and remanding for determination of the parties' intentions; the proceeding was resolved after extensive negotiation by stipulation);

8. *In re Holocaust Victim Assets Litig.*, 256 F. Supp. 2d 150 (E.D.N.Y. 2003) (the District Court required the Swiss banks to pay $5 million in compound interest on escrow funds);

9. *In re Holocaust Victim Assets Litig.*, 2003 U.S. Dist. LEXIS 20686 (E.D.N.Y. Nov. 17, 2003) (the District Court adopted the Special Masters' Interim Report on Allocation and Distribution);

10. *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, *amended and superseded by* 319 F. Supp. 2d 301 (E.D.N.Y. 2004) (the District Court rejected the banks' opposition to the Special Masters' Interim Report and analyzed the banks' misconduct during and after the Holocaust);

11. *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89 (E.D.N.Y. 2004) (the District Court rejected objections to the Special Masters' Interim Report challenging the *cy pres* allocation formula and reiterated that distributions to the Looted Assets Class were to be based on survivors' needs, not their geography);

12. *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407 (E.D.N.Y. 2004) (the District Court did not adopt proposals from certain organizations seeking the allocation of funds for projects of remembrance and education regarding, respectively, homosexual and disabled Nazi victims);

13. *In re Holocaust Victim Assets Litig.*, 314 F. Supp. 2d 155 (E.D.N.Y. 2004) (the District Court denied a motion for reconsideration);

14. *In re Holocaust Victim Assets Litig.*, 314 F. Supp. 2d 169 (E.D.N.Y. 2004) (the District Court responded to an expert's report on survivor demographics filed on behalf of certain survivors);

15. *In re Holocaust Victim Assets Litig.*, 424 F.3d 132 (2d Cir. 2005), *cert. denied*, 547 U.S. 1206 (2006) (the Court of Appeals rejected challenges to the structure of the settlement, and to the *cy pres* allocation and distribution plan; later, the United States Supreme Court denied *certiorari* and did not hear further appeals);

16. *In re Holocaust Victim Assets Litig.*, 424 F.3d 158 (2d Cir. 2005) (the Court of Appeals rejected the challenge to the *cy pres* allocation and distribution plan brought by an organization seeking funding of programs of remembrance and education on behalf of disabled Nazi victims);

17. *In re Holocaust Victim Assets Litig.*, 424 F.3d 169 (2d Cir. 2005) (the Court of Appeals rejected the challenge to the *cy pres* allocation and distribution plan brought by an organization seeking funding of programs of remembrance and education on behalf of homosexual Nazi victims).[318]

18. *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010) (the District Court adopted Special Master Junz's recommendation to increase presumptive values for certain types of accounts and also increased payments for Plausible Undocumented Awards);

19. *In re Holocaust Victim Assets Litig.*, 2013 WL 2152667 (E.D.N.Y. May 13, 2013) (the District Court allocated $50 million in residual funds to needy victims using the same *cy pres* mechanisms set forth under the Distribution Plan);

20. *In re Holocaust Victim Assets Litig.*, 2013 WL 2153101 (E.D.N.Y. May 13, 2013) (the District Court allocated $4.5 million in remaining residual funds to the Victim List Project, paralleling prior 45% increases to other class members);

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[318] In addition, there was post-settlement litigation concerning the legal fees sought by plaintiffs' counsel, as well as by an attorney representing a group of U.S. survivors, including: *In re Holocaust Victim Assets Litig.*, 270 F. Supp. 2d 313 (E.D.N.Y. 2002) (denying risk multiplier for plaintiffs' attorneys' fees); *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 363 (2004) (denying fee request); *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407, reconsideration denied, 314 F. Supp. 2d 155 (E.D.N.Y. 2004) (same); *In re Holocaust Victim Assets Litig.*, 314 F. Supp. 2d 169 (E.D.N.Y. 2004)(same); *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 332 (E.D.N.Y. 2004) (same); *In re Holocaust Victim Assets Litig.*, 2004 U.S. Dist. LEXIS 6197 (E.D.N.Y. Mar. 31, 2004) (same); *In re Holocaust Victim Assets Litig.*, 415 F. Sup. 2d 130 (E.D.N.Y. 2004) (rejecting attorneys' fee application; also rejecting challenge to *cy pres* allocation); *In re Holocaust Victim Assets Litig.*, 424 F.3d 150 (2d Cir. 2005) (affirming denial of fees for attorney for HSF); *In re Holocaust Victim Assets Litig. (Professor Neuborne)*, 2007 WL 805768 (E.D.N.Y. Mar. 15, 2007) (magistrate fee recommendation of $3.1 million); and *In re Holocaust Victim Assets Litig. (Professor Neuborne)*, 528 F. Supp. 2d 109 (E.D.N.Y. 2007) (confirmation of magistrate's fee recommendation).

21. *In re Holocaust Victim Assets Litig.*, 2014 WL 2171144 (E.D.N.Y. May 23, 2014) (the District Court rejected certain objections to the JDC as the administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in the Former Soviet Union);

22. *In re Holocaust Victim Assets Litig.*, 2014 WL 2547582 (E.D.N.Y. May 30, 2014) (the District Court rejected certain objections to the Claims Conference as the administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in Israel, the United States and other parts of the world); and

23. *In re Holocaust Victim Assets Litig.*, 2014 WL 2440612 (E.D.N.Y. May 30, 2014) (the District Court rejected a motion by a California resident seeking to intervene).

Many of the post-settlement disputes were related to the Court's consideration of proposals to increase the amounts allocated to various class members. The Court's initial decision in 2002 to increase awards to various classes by 45% did not meet with resistance. That decision did, however, lay the groundwork for future supplements to class members, and these later allocation decisions were sometimes challenged.

Thus, in 2002, taking advantage of unexpected additional income generated by a tax exemption on the Settlement Fund as well as interest income,[319] the Court increased by 45% the payments under Slave Labor Class I, the Refugee Class and the Looted Assets Class. Following

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[319] The tax refund was the result of discussions among the Court, Special Masters, Settlement Fund accountant and plaintiffs' class counsel, who observed that interest on the $1.25 billion Settlement Fund was subject to taxation, and perhaps so too might be distributions to claimants. The matter was brought to the attention of members of the United States Congress, resulting in a provision of the 2001 Economic Growth and Tax Relief Reconciliation Act, Section 803, entitled: "No Federal Income Tax on Restitution Received by Victims of the Nazi Regime or their Heirs or Estates." The law exempted from taxation the interest earned on the Swiss Banks Settlement Fund, the fund established under ICHEIC, and similar Holocaust compensation funds *See, e.g., In re Holocaust Victim Assets Litig.*, 270 F. Supp. 2d 313, 325 (E.D.N.Y. 2002) ("After Special Master Judah Gribetz called attention to the diminution of the Settlement Fund by taxes on earned interest as well as the taxation of benefits awarded to the members of the classes," a successful effort was made "to persuade Congress to adopt legislation exempting from taxation interest earned by the Settlement Fund and payments to its beneficiaries").

In addition to refunding to the Settlement Fund the taxes that already had been paid on interest earned, Section 803 — initiated largely by those involved with creating and overseeing the Swiss Banks Settlement Fund — resulted in overall savings to the Settlement Fund of approximately $25 million in taxes, the sum that would have been due had the exemption not been enacted. These savings were passed along to class members as distributions from the Settlement Fund. The tax law also exempted from taxation the individual payments that were made from the Swiss Banks Settlement and other Holocaust compensation funds, benefiting many thousands of U.S. citizens by ensuring that such payments were not to be reported as taxable income. *See, e.g., In re Holocaust Victim Assets Litig.*, 528 F. Supp. 2d 109, 112 (E.D.N.Y. 2007) (Block, J.) (noting that the "Congressional legislation making the settlement fund tax exempt" resulted in a "potential savings of 25 million dollars").

resolution of post-settlement litigation relating to Slave Labor Class II, the Court on June 22, 2004 authorized a 45% increase to members of that class as well.[320] The Court further determined that the excess funds allocated to members of the Looted Assets Class ($45 million at that time) were to be distributed in accordance with the same criteria and mechanisms that had governed the initial $100 million allocation; *i.e.*, through humanitarian assistance programs administered by the JDC, Claims Conference and the IOM.

In August, 2003, the Court requested the Special Masters to consider whether additional excess funds existed to permit a second supplemental distribution to class members, without jeopardizing the rights of any person under the Distribution Plan. Based upon examination of the then-most recent distribution statistics and projections, as well as investment data concerning the Settlement Fund, it appeared that $60 million in additional excess funds was available.[321] Unlike the first distribution of excess funds in 2002 (which allocated the additional funds among several classes), the Special Masters, upon consultation with the Court, recommended allocating the additional $60 million wholly to the Looted Assets Class, for the benefit of needy survivors. As with the prior allocations, the Special Masters recommended that such funds should be used only to augment, and not replace, existing funds the organizations already received from other sources. The Court adopted this recommendation by order dated November 17, 2003, thus more than doubling the Looted Assets Class allocation from $100 million to $205 million as of 2004.

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[320] These increases were available for distribution to class members even though, as Judge Korman pointed out in his 2010 decision adjusting presumptive values and PUA amounts, the "economic recession with which this century began, the economic crisis which ensued from the 9/11 terrorist attack in 2001, and the global economic crisis, which began in 2007, have resulted in interest rates that are at historic lows." *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279, 291 (E.D.N.Y. 2010).

[321] The excess funds were attributable to interest income accruing on the Settlement Fund "as well as the defendant banks' transfer to the fund of approximately $5.2 million, pursuant to Judge Block's determination on April 11, 2003 that the banks owed compound interest on the original Escrow Fund." *See* Letter from Judah Gribetz to Hon. Edward R. Korman (Sept. 11, 2003). The issue was called to the Special Masters' attention by the Settlement Fund accountants, Eisner LLP (now Eisner Amper) ("Eisner"). Eisner pointed out in December 2001 that under Section 2.2 of the Escrow Agreement, the determination of compound interest at LIBOR appeared to be required. The timing of compounding was not specified but if LIBOR was compounded on a daily, weekly or monthly basis, the Defendant Banks would be required to make additional payments of over $4 million (as of that date). The dispute was litigated and, as a result, the banks were required to pay additional interest of $5.2 million. *See In re Holocaust Victim Assets Litig.*, 256 F. Supp. 2d 150, 155 (E.D.N.Y. 2003) (although the Escrow Agreement contained certain ambiguous language, "extrinsic evidence" including the "acts and conduct of the banks decisively inform the Court that the parties intended that the Escrow Fund was to earn compound interest" and not simple interest).

In addition to seeking the Special Masters' views on allocation of excess funds, in August, 2003, the Court also requested the Special Masters to consider whether residual funds — from those amounts initially allocated to members of the five plaintiff classes — might remain unclaimed at the close of the administration period. If so, the Court asked for recommendations concerning the ultimate distribution of such residual funds.

In April 2004, the Court accepted for consideration the Special Masters' proposal to allocate all further residual funds to the neediest survivors, in accordance with three main priorities: first, food and winter relief to those most in need of such assistance (mostly in the former Soviet Union); second, home health care, medicines and medical equipment for those whose needs for such services were unmet by governmental or other assistance programs; and third, case management, mental health care and assistance for support groups.

However, the preliminary assessment that approximately $200 million in residual funds remained proved to be premature.[322] CRT Special Master Helen Junz in the meantime had completed a reanalysis of the amounts to which owners (or heirs) of Holocaust-era Swiss bank accounts might be entitled. She came to the conclusion that there might be little in residual funds after appropriate payments were made to the Deposited Assets Class.

Many of the Deposited Assets Class awards had been based on the ICEP auditors' assessment of "presumptive" or "average" values for a particular type of account (*e.g.*, safe deposit, demand deposit, custody account and so forth). Presumptive values were used in substitution for actual account values, as in many cases the records reflecting actual values had been destroyed by the banks. After studying the available data, including information provided to the CRT by the banks only after the initial presumptive values had been adopted and the claims process was well under way, Special Master Junz concluded that the presumptive values for the most part had been significantly underestimated. She notified Judge Korman that based upon her study of actual values for accounts that had been awarded, as well as for other accounts to which the CRT had access, it was evident that most of the bank account awards needed to be increased. Given the availability of new and more accurate information, and in light of the

[322] *See* Special Masters' April 16, 2004 Recommendations, at 20.

priority of the Deposited Assets claims, the appropriate course was to correct the account values, in most cases upward. The auditor who oversaw the Volcker Committee investigation advised the Court that he, too, would have made use of this additional information had it been available at the time of the original review. That upward adjustment meant that the Court needed to authorize retroactive increases to claimants who had already been paid, while increasing payments on forthcoming CRT awards.

Special Master Junz filed her recommendation on March 21, 2006 and filed supplemental reports thereafter. However, because the amount of funds available for a residual allocation to the Looted Assets Class would decrease substantially by adopting Special Master Junz' proposal, certain objectors questioned the proposed adjustment in payments for the bank accounts. After considerable litigation, the Court adopted Special Master Junz' recommendations on June 16, 2010,[323] thus paving the way for substantial additional payments to be issued to members of the Deposited Assets Class. In total, the Court processes repaid nearly $720 million to Holocaust victims and heirs whose accounts had not been returned by Swiss banks.

As the claims program for bank accounts drew to a close in late 2012, and it was clear that some amount of residual funds would remain from the up to $800 million allocated to the Deposited Assets Class, the Court requested a final recommendation as to the use of those funds. On March 22, 2013, Special Master Gribetz and Deputy Special Master Reig advised that approximately $54.5 million in residual funds remained. They proposed that $4.5 million of this amount should be allocated to research and archiving programs operated by Yad Vashem and the USHMM, as part of what had proven to be the successful Victim List Project, thus ensuring that all Court-funded programs would benefit from the same 45% increase that had been authorized for the other classes. The remaining $50 million, it was suggested, should be allocated to programs serving the needy, thus bringing the Looted Assets Class allocation to approximately $256 million, from the original $100 million. The Court adopted these recommendations on May 13, 2013.[324] Objections similar to those previously raised in connection with the Looted

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[323] *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010).

[324] *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2013 WL 2152667 (E.D.N.Y. May 13, 2013) (discussing allocation of $50 million, nearly all of the remaining residual funds, to the needy); *In re Holocaust Victim* (*continued on next page*)

Assets Class programs were filed in connection with the allocation of residual funds. The Court found these objections to be without merit.[325]

IV. THE IMPACT OF THE SWISS BANKS SETTLEMENT

A decade after the Settlement, some were expressing reservations that had been voiced as early as the 1950s during the discussions of the first Holocaust compensation agreement, the Luxembourg Agreements negotiated by the Claims Conference and other members of the organized Jewish community. The concern was that "endless talk of restitution payments 'cheapened the memory of the Holocaust,' and turned the 'biggest mass murder in history into an economic issue.'"[326]

What sometimes was overlooked was that the Holocaust litigation instituted in the 1990s, beginning with the Swiss Banks Settlement, was responding to the financial needs of many survivors, as well as to a distinct aspect of the Holocaust: the rampant and uncompensated looting of Nazi victims. The Swiss Banks Settlement and subsequent proceedings resulted in payments to hundreds of thousands of non-Jewish Nazi victims, many of whom never had previously received payments of any kind for their stolen property and their unpaid labor.[327] In

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Assets Litig., No. 96-4849, 2013 WL 2153101 (E.D.N.Y. May 13, 2013) (discussing allocation of $4.5 million in residual funds to the Victim List Project).

325 *See In re Holocaust Victim Assets Litig.*, 2014 WL 2171144 (E.D.N.Y. May 23, 2014) (rejecting objections by certain survivors to the JDC as administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in the Former Soviet Union); *In re Holocaust Victim Assets Litig.*, 2014 WL 2547582 (E.D.N.Y. May 30, 2014) (rejecting certain objections to the Claims Conference as administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in Israel, the United States and other parts of the world); and *In re Holocaust Victim Assets Litig.*, 2014 WL 2440612 (E.D.N.Y. May 30, 2014) (rejecting motion by a California resident seeking to intervene).

326 As the Distribution Plan noted (*see* Vol. II, Annex E - "Holocaust Compensation," at E-10), such concerns had been raised decades previously, when the first Holocaust compensation agreements were negotiated in the early 1950s. *See, e.g.*, Andrei S. Markovits & Beth Simone Noveck, *West Germany*, *in* THE WORLD REACTS TO THE HOLOCAUST 391, 406 (David S. Wyman ed., Johns Hopkins Univ. Press 1996) ("[M]ost Israelis, who saw no difference between the Third Reich and the Federal Republic, were repelled by the idea of negotiating directly with their former torturers"). For a discussion of some of the more recent arguments, *see* Netty C. Gross, *Looking Back in Pride and Anger: Ten years after the landmark Swiss banks settlement, experts are divided about the moral impact of the restitution agreement*, JERUSALEM REP., Nov. 24, 2008, at 61 ("Gross, *Looking Back in Pride and Anger*") (quoting a representative of the Simon Wiesenthal Center).

327 *See, e.g.*, BAZYLER, HOLOCAUST JUSTICE 296-97.

addition, as noted previously, scholars such as Professor Michael Bazyler have observed that the Swiss Banks settlement paved the way for several new Holocaust compensation programs, including the considerably larger German slave and forced labor program. The "Swiss banks settlement was … 'the mother of all Holocaust restitution settlements. If the litigation had failed, there would have been no momentum to proceed further with the other claims,' for insurance, art and slave labor compensation."[328] Lead Settlement Counsel Neuborne noted that "[f]rankly, no one expected the Swiss bank case to settle for $1.25 billion. The success of the litigation … [led to new cases] ... filed against European insurance companies, Austrian banks, German banks, the French National Railway system, and even the United States government for failing to safeguard a so-called 'Hungarian Gold Train' bearing Nazi loot. But the bulk of the new Holocaust-era litigation centered on the massive use of slave and forced labor by German companies during WW II."[329]

The German Foundation acknowledged as much, observing in its 2017 publication reflecting on the slave and forced labor program that the main impetus for that compensation process was the litigation in the United States. These lawsuits had begun in 1998 with "a wave of so-called class action lawsuits against those German companies operative in the US" — cases which were filed in the aftermath of the Swiss Banks litigation — "that had been involved in one way or another in abuses and exploitation of forced laborers during the Nazi period... For German companies, these lawsuits not only meant that they could eventually lose the cases and face very large financial obligations, they also had to spend significant sums on legal fees and, probably even more importantly, they got negative publicity in the media... Therefore, these

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328 Gross at 61.

329 Neuborne, *Toward Common Procedures*, at 15. On the other hand, as noted by Ambassador Eizenstat, although lawsuits were filed against a variety of European entities including Swiss banks, German manufacturers, and Austrian insurers, only the litigation against French banks yielded a clear victory for plaintiffs on the legal merits. Judge Sterling Johnson of the Eastern District of New York "shocked the French banking community by refusing to dismiss the American lawsuits …. [It was] the first time in all the Holocaust litigations that a U.S. judge had permitted a case to go forward to trial by denying a motion to dismiss." EIZENSTAT, IMPERFECT JUSTICE, at 320-321. The French banks settled shortly thereafter.

court proceedings had an important impact on the economic performance of the involved German companies in the US."[330]

It is also noteworthy that, taking all of the recent settlements into consideration, "[m]ost of the beneficiaries of the restitution money are non-Jewish wartime survivors or their heirs. For example, 80 percent of the recipients of the DM 10 billion German slave labor settlement money are elderly Slavs from eastern Europe forced to work for Nazi Germany."[331]

In addition, the settlements were negotiated on behalf of survivors around the world, not only for those in the United States, and the payments often made a significant difference to those living in other countries. Dr. Otto Graf Lambsdorff, who as a representative of the German government was extensively involved with the negotiation and creation of the German Foundation, observed: "... [A] price? We knew how difficult that was. The other side and I were absolutely relieved and delighted that all the people around the table came to a result. Whether this is a just result or an unjust result, nobody can say that. I do not know it. But to say that money is not so important, do not take it too lightly here in New York, in the United States. To a survivor who is living here in, hopefully, well-to-do or reasonably satisfactory conditions, DM 15,000 [the amount designated for slave laborers under the German Foundation] is not too much. For a survivor in the Ukraine or Belarus, it is a fortune."[332]

Some commentators, such as Holocaust scholar Michael Marrus, have been supportive of compensation efforts generally, but have expressed concern in this particular case that the behavior of the Swiss banks "reflects a universal 'banking culture,'" as evidenced by the apparent failure of "Israeli banks" to "behave[] any better with their own Holocaust victims[']

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330 Roland Bank, *Establishing the Program*, *in* THE GERMAN COMPENSATION PROGRAM FOR FORCED LABOR: PRACTICE AND EXPERIENCES 12, 15 (Günter Saathoff, Uta Gerlant, Friederike Mieth & Norbert Wühler eds., Found. Remembrance, Responsibility and Future 2017).

331 EIZENSTAT, IMPERFECT JUSTICE, at 320-321.

332 Otto Graf Lambsdorff, Comment, *The Evolution and Objectives of the Holocaust Restitution Initiatives*, 25 FORDHAM INT'L L.J. S-145, S-169 (2001). *See also* Michael J. Bazyler, Comment, *The Strategies Used to Achieve Non-Monetary Goals*, 25 FORDHAM INT'L L.J. S-177, S-189 (2001) ("…. I was born in the Soviet Union, I lived in Poland, and I have relatives in both countries, and I still send funds to an aunt in Odessa. That U.S. $7,500 [the approximate amount of the payment for slave labor under the German Foundation program] will make an incredible difference to that woman. And as Count Lambsdorff did say, it's a fortune for her. That can make a difference").

assets than the Swiss did." Professor Marrus feared that "'[h]istorical claims … generally cannot be based upon the remedial paradigm of individual perpetrator, individual victim, and proven quantifiable losses….'"[333] Even with its supposed limitations, though, Marrus, like many other observers, also considered the Swiss Banks Settlement a "major achievement" and the largest "on a human rights issue ever to be heard in a civil court," with "[h]istoric wrongs … acknowledged."[334] The compensation movement of the late 1990s "gave voice to a fundamental human need. 'If a person has suffered tremendously, he wants it acknowledged by a government, court, tribunal or other institution. Victims around the world are no longer happy with diplomatic apologies between nations only, as was the case after World War I,'" and thus the Swiss Banks Settlement and others "gave Holocaust survivors 'a measure of justice.'"[335]

Similarly, many critics of the general concept of Holocaust compensation nevertheless agreed that the property claims that were at the heart of the Swiss Banks lawsuit did demand redress, no matter how many decades had passed. Thus, columnist Charles Krauthammer, who was concerned about the impact of restitution "on the memory of victims," also believed that "[i]ndividual victims who had their savings or property or art stolen should be allowed to seek restitution even at this late date."[336] The *Economist* opined that "since it is hard to decouple claims for monetary and for moral compensation, it is hard to shrug off the faintly shabby air that hangs over the Holocaust claims," but nevertheless acknowledged that if not for the "persistent efforts in the first place to seek financial reparation, to bang time and again on the doors of Swiss banks, demanding access to secret archives, it is unlikely that the dormant accounts would ever have been discovered. It is also unlikely that the renewed efforts to delve more broadly into a painful history would have taken place."[337] Dr. Yael Danieli, a clinical psychologist specializing in treatment of Holocaust victims, has observed as to the financial aspects of compensation: "The money *concretises* for the victim the confirmation of responsibility, wrongfulness, he is not

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[333] MARRUS, SOME MEASURE OF JUSTICE, at 135 (quoting Dinah Shelton, *The World of Atonement: Reparations for Historical Injustice*, 50 NETHERLANDS INT'L L. REV. 289, 291 (2003)).

[334] Gross at 61 (quoting Marrus).

[335] *Id.* at 64 (quoting Marrus).

[336] Charles Krauthammer, *The Holocaust Scandal*, WASHINGTON POST, Dec. 4, 1998.

[337] *Putting a Price on the Holocaust*, ECONOMIST, Nov. 25, 1999, *available at* http://www.economist.com/node/326811.

guilty, and somebody cares about it. It is at least a token. It does have a meaning. Just a letter of apology doesn't have the same meaning and even if it is a token it adds. In our system of justice, of government, when damage occurred, money is paid."[338]

Apologies — and restitution — have not been limited to the European nations where the Holocaust happened. Professor Bazyler has noted that Israel has not been immune from the impact of the Holocaust litigation. The "initial accusations that the Swiss banks failed to return monies … led to inquiries about whether banks in other countries might also be holding such pre-war and wartime dormant accounts. One surprising answer: Israel…. In January 2000, Bank Leumi, Israel's largest bank … admitted to holding approximately 13,000 dormant accounts, many of which are believed to have belonged to victims of Nazi persecution."[339] Following initial resistance, Bank Leumi (successor to the Holocaust-era Anglo-Palestine Bank) was "[e]mbarrassed into following the model adopted by the Swiss banks and other European corporations" and "created a claims settlement process by which survivors and heirs entitled to these funds would be eligible to receive them." Significantly, the "Bank Leumi episode illustrates an important legacy of the Swiss campaign. Restitution claims made by Holocaust survivors — or for that matter any other historical claims for financial wrongs — can no longer be ignored by those accused of benefitting from those wrongs. Such accusations are now taken seriously."[340]

Nor has the restitution movement been limited to the Holocaust. The Swiss Banks case and those that followed to some extent "opened the door to lawsuits" concerning other human

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338 Yael Danieli, *Massive Trauma and the Healing Role of Reparative Justice*, *in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 41, 60 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Koninklijke Brill NV 2009). Dr. Danieli is the co-founder and director of the Group Project for Holocaust Survivors and their Children, as well as the founding director of the International Society for Traumatic Stress Studies. She has served as Advisor on Victims of Terrorism for the office of the Secretary-General of the United Nations and has provided consultation on victim issues to many organizations, including the International Criminal Court; the South African Truth and Reconciliation Commission; and the Rwandan government. *Yael Danieli*, THE ALLIANCE OF NGOS ON CRIME PREVENTION & CRIMINAL JUSTICE, http://cpcjalliance.org/yael-danieli/ (last visited Apr. 7, 2016).

339 Michael J. Bazyler, *www.swissbankclaims.com: The Legality and Morality of the Holocaust-Era Settlement with the Swiss Banks, Symposium - Holocaust Restitution: Reconciling Moral Imperatives with Legal Initiatives and Diplomacy*, 25 FORDHAM INT'L L.J. S-64, S-87 to -88 (2001) (Bazyler, *Legality and Morality*).

340 *Id.* at S-88 to -89.

rights abuses, "jump-start[ing] a wave of litigation by American POWs and civilians with claims against Japanese firms that used slave labor during the Second World War; heirs of victims of the Armenian genocide; and the fight for restitution by the descendants of African-American slaves."[341] The human rights litigation that followed the Swiss Banks Settlement, however, did not generally produce the same successful results.[342]

Beyond their impact upon individual victims, the Holocaust lawsuits in general, and the Swiss Banks Settlement in particular, helped to expand the historical record. Thus, in one week in December of 1999, Switzerland received not one but two major reports concerning its wartime behavior, the Volcker Report and the Bergier Refugee Report (eventually followed in 2002 by the Final Bergier Report). The *Economist* noted: "The Swiss did not embark on this self-examination entirely voluntarily. Much of the impetus came from the unyielding pressure of Jewish groups which, over the years, refused to take No for an answer from the Swiss banks. The banks, in turn, hid behind secrecy laws. It is also true that until quite recently the Swiss government itself handled the clamour to investigate the various charges clumsily and

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341 Gross at 64 (quoting Prof. Bazyler).

342 The plaintiffs in the German slave labor cases did not prevail in the U.S. courts, but their lawsuits contributed to a political climate resulting in the establishment of the German Foundation. Similarly, claims arising from the Armenian genocide went forward as a result of a California statute specifically enacted to permit California courts "to hear cases based on Armenian genocide life insurance policies," resulting in a "$20 million dollar settlement." BETH STEPHENS ET AL., INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS 548-49 (2d ed. 2008).

On the other hand, the Holocaust litigation "has not produced a flood of decisions favoring victims of historical wrongs, and the litigation effort is best made as part of a larger social movement for justice, to enhance the prospects of a favorable outcome." Ratner & Becker, *The Legacy of Holocaust Class Action Suits*, at 353. For example, "victims of Japanese industry's slave labor" during World War II, including former U.S. POWs, "filed over two dozen" ultimately unsuccessful "lawsuits against the corporations that had exploited them during the war." United States District Judge Vaughn Walker dismissed the claims based on the 1951 Treaty of Peace between Japan and the U.S. and its allies. Michael J. Bazyler, *The Post-Holocaust Restitution Era: Holocaust Restitution as a Model for Addressing Other Historical Injustices* 6-7 (Bar-Ilan Univ. Faculty of Law, Working Paper No. 2-03, March 2003) (*available at* http://www.biu.ac.il/law/unger/working_papers/2-03.pdf). As to *In re African American Slave Descendants Litig.*, 304 F. Supp. 2d 1027 (N.D. Ill. 2004), in which "descendants of slaves sought reparations from banks, insurance companies, and other corporations that profited from the institution of slavery," STEPHENS ET AL., INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS, at 544, the district court dismissed the claims for lack of standing (carving out a narrow exception for individuals suing in a representative capacity for their ancestors' estates), statute of limitations, political question, and failure to state a claim.

Moreover, the United States Supreme Court has cast doubt upon the viability of claims by foreign nationals for human rights abuses committed outside the U.S. by corporate entities. *See Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659 (2013).

insensitively. Nonetheless, that this exercise has taken place at all is ground for some Swiss credit. Many other countries have passed through inglorious episodes this century and, even after prodding, have chosen not to look back with such thoroughness…. With mixed motives, no doubt, Switzerland is now confronting its past. To do so is far from easy."[343]

Professor Leora Bilsky has observed that "[o]nly by turning to the American class action did jurists find a way to hold corporations accountable for their involvement in the Nazi crimes, due to such factors as the group structure of the claim and the change in the role of the judge."[344] She viewed the Swiss Banks Settlement and its implementation as a means of collecting "new and important information," and praised the emphasis the distribution process placed not just upon payments, but upon history. "[I]n order to distribute the global settlement amount, the court in the Swiss case relied on historical research but also encouraged the production of data, through victim questionnaires, the distribution plan and the award process. Questionnaires were sent to approximately one million survivors and their families, seeking to allow potential class members to express support or opposition to the settlement, as well as to gather information to assist the court in designing a fair scheme of allocation of the settlement funds. In the view of Professor Neuborne, one of the counsels for the plaintiffs, a central reason for bringing the cases was 'to speak to history - to build a historical record that could never be denied.'"[345]

As Professor Bilsky pointed out, the settlement process enabled the Court to prod the banks to release information that otherwise would not have been made public due to Swiss banking secrecy rules.

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[343] *Swiss shame, and solace*, ECONOMIST, Dec. 18, 1999, at 15.

[344] Bilsky, *The Judge and the Historian*, at 119.

[345] *Id.* at 128-29 (citing Burt Neuborne, *Preliminary Reflections on Aspects of Holocaust-Era Litigation in American Courts*, 80 WASH. U. L.Q. 795, 830 (2002)). Steven Less, *International Administration of Holocaust Compensation: The International Commission on Holocaust Era Insurance Claims (ICHEIC)*, 9 GERMAN L. J. 1651, 1685 (2008) ("the [Swiss Banks] litigation approach offered a model of transparency. Summaries of the proposed plan for allocation and distribution of settlement funds were mailed [and] almost 600,000 persons who returned 'Initial Questionnaires' concerning a draft settlement. Moreover, copies of the two-volume, 900-page report were available cost-free upon request as well as posted [on] the Internet prior to the public hearing held by the District Court in November 2000").

These views differ from those of Professor Marrus, who considered the Holocaust litigation to be of "limited impact historically." MARRUS, SOME MEASURE OF JUSTICE, at 117.

> Judge Edward R. Korman, who was in charge of the Swiss banks case, refused to formally order discovery to allow the plaintiffs' accounting experts to inspect the banks' records, fearing that such an order would have forced Swiss banks to commit a criminal act in their country. Instead, he pressured the defendants to reveal some information, by chastising the banks for failing to publish their lists of dormant accounts, and by refusing to validate the settlement as fair according to the law until access to information required for a fair claims procedure was secured. In other words, since the transnational aspects of the case obstructed the reliance on formal rules of discovery, settlement allowed the parties to reach a type of discovery that was much broader than the one entailed by Swiss law, but restricted in American terms…. [T]he judge's far-reaching procedural powers to supervise settlement negotiations and condition the approval of the settlement agreement enabled him to pressure the banks into overriding their secrecy policy and revealing at least some valuable information.[346]

The distribution plan likewise yielded extensive historical data.

> ….[T]he Special Master[s] appointed by the court in the Swiss banks litigation prepared a distribution plan which relied on, and in turn contributed to, the historical archive. While the plan provides an extensive review of historical research, relying on numerous sources, including primary sources, in order to determine the feasibility of holding an individualized claims process, it also reveals previously unpublished data. For example, in order to administer the distribution to the class of victims of slave labor who had worked for German entities owning assets in Swiss entities, the Special Master[s] established a list of German entities owning assets held in a Swiss company.
>
> In addition, the settlement, and in particular the possibility of obtaining a legal release from future claims, provided incentives for Swiss corporations to self-identify as having used slave labor during World War II and contribute historical information in a manner reminiscent of the South African Truth and Reconciliation Commission (TRC). . . . Because of a lack of information, the court asked that companies seeking release from claims identify themselves and provide information, such as the names of slave laborers used by them. Several companies, including Nestlé, provided lists of thousands of individuals who had worked for them during the war and may have performed slave labor. These examples show how the legal process, while heavily reliant on existing historical research, can also contribute to historical research.[347]

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[346] Bilsky & Fisher, *Rethinking Settlement*, at 105. *See also* BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW, at 68 (the "settlement gave the courts tools to incentivize the defendants to reveal information notwithstanding legal limitations on discovery in a transnational setting").

[347] Bilsky, *The Judge and the Historian*, at 129. *See also* BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW, at 68 (noting that the Distribution Plan "provides an extensive review of existing historical research to determine the feasibility of holding an individualized claims process" while "also reveal[ing] previously unpublished data"); ORLAND, A FINAL ACCOUNTING, at xvi ("A particularly noteworthy aspect of this case is

(*continued on next page*)

Further, the litigation prodded reluctant governments, initially Switzerland but ultimately others, to explore their own Holocaust-era histories. For the Swiss, the self-examination was particularly difficult, so many decades after the Holocaust, because this kind of review had not been undertaken before. As the Chairman of the Bergier Commission, Jean-François Bergier, observed:

> Any effective reworking of the history of Switzerland's part in the Second World War must be based on two mutually complementary and interactive approaches. One is analytical: a highly detailed critical summarising of the facts and circumstances revealed by source material…. The other is the synthesis approach, identifying the most significant facts and placing them in their chronological and thematic context. It is this aspect that has been insufficiently addressed in Switzerland in the past, and that, no doubt, is what has made us so vulnerable…. From September 1939 to May 1945 was only five-and-a-half years, but the explanation for those years is to be found by placing them in the context of a longer period, extending both backwards and forwards in time. The tribulations we are now experiencing, whose knock-on effect is spreading from one country after another, clearly show that the chapter is far from closed. In a way, viewed from a very long distance, the Second World War was only one critical moment in a story that began before 1914 and seems not to have finished yet.[348]

Historian David Cesarani has analyzed the "unfinished business" of the Holocaust, noting that "Swiss banks and German corporations, insurance firms, the art market and even railways were soon the subject of industrial-scale historical research by specially commissioned teams under the leadership of established scholars. The resulting studies transformed the historical landscape. As Götz Aly concluded in *Hitler's Beneficiaries* (2005), the transfer of wealth from

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the detailed, scholarly, and humane documentation of the experiences of Holocaust victims under the Nazi regime, as well as the current needs of the Holocaust survivors in the twenty-first century").

For further discussion of the impact of the Holocaust litigation, *see* Dr. Otto Graf Lambsdorff's comments as part of the panel, *The Evolution and Objectives of the Holocaust Restitution Initiatives*, 25 FORDHAM INT'L L.J. S-145, at S-167 ("I find it difficult to understand why the class action lawsuits lead to depersonalization. Looking to the German Foundation, the result is that we do pay money to individuals, to persons. Of course, it starts with a number of plaintiffs, a class, but at the very end the result of these class action lawsuits, or negotiations … is giving money to individualized people…. Second, … restitution enhances the memory…. [T]he debate, the memory, the dealing with Holocaust affairs in Germany became more and more lively. Companies are looking into their archives. Companies have asked academics, professors, to write reports, to find out what has happened within the companies").

348 Jean-François Bergier, *On the Role of the 'Swiss Independent Expert Commission on the Second World War,' in* SWITZERLAND AND THE SECOND WORLD WAR 353, 358-59 (Georg Kreis ed., Frank Cass Publishers 2000).

Jews to Germans widened the circle of complicity to almost every German citizen," and a "similar dynamic extended across Europe."[349]

This self-examination and resulting expansion of knowledge was prompted to a considerable extent by the "Swiss model," which is "now the prototype used by both other European governments and private corporations when confronted with accusations about their wartime role. After a half-century of silence, the full historical record is only now coming out about how German, Austrian, French, British and even American companies profited from the Holocaust. The historical black hole of how commerce was conducted in Europe between 1933-45 is finally being filled in by Holocaust historians who … are now much in demand to staff the historical commissions being created by governments and private companies to research and issue reports about their financial dealings with the Nazis."[350] The companies have sought the input of Holocaust historians. For example, Deutsche Bank asked Harold James to examine the bank's role during the Nazi era; Allianz turned to Gerald Feldman; Degussa commissioned Peter Hayes; Bertelsmann engaged Saul Friedlander; and General Motors (for its German subsidiary Opel) sought out Henry Ashby Turner.[351]

The distribution mechanism for the core claims — the Deposited Assets Class — have left a unique legacy.[352] Professor Bilsky has concluded that the CRT process has expanded historical knowledge both by providing "sufficient incentives for the banks and the Swiss government to begin a serious audit and release some information," even if incomplete, and by

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[349] David Cesarani, *The Road to Ruin: The ever-changing face of Holocaust studies*, NEW STATESMAN, Feb. 11, 2013, at 8.

[350] Bazyler, *Legality and Morality*, at S-89.

[351] *See, e.g.*, HAROLD JAMES, THE DEUTSCHE BANK AND THE NAZI ECONOMIC WAR AGAINST THE JEWS: THE EXPROPRIATION OF JEWISH-OWNED PROPERTY (Cambridge Univ. Press 2001); WAR CRIMES OF THE DEUTSCHE BANK AND THE DRESDNER BANK: OFFICE OF MILITARY GOVERNMENT (U.S.) REPORTS (Christopher Simpson ed., Holmes & Meier 2002); PETER HAYES, FROM COOPERATION TO COMPLICITY: DEGUSSA IN THE THIRD REICH (Cambridge Univ. Press 2004); GERALD FELDMAN, ALLIANZ AND THE GERMAN INSURANCE BUSINESS, 1933-1945 (Cambridge Univ. Press 2006); HENRY ASHBY TURNER, JR., GENERAL MOTORS AND THE NAZIS: THE STRUGGLE FOR CONTROL OF OPEL, EUROPE'S BIGGEST CARMAKER (Yale Univ. Press 2005).

In addition, as the *Economist* has pointed out, "[o]f the 16,000 books on the Holocaust listed in America's Library of Congress, more than two-thirds were published in the past two decades." *Remembering the Holocaust - Bearing Witness ever more*, ECONOMIST, Aug. 24, 2013, *available at* http://www.economist.com/node/21584008.

[352] *See* Alford, *The Claims Resolution Tribunal*, at 590.

"contribut[ing] short personal histories to the historical 'archive' through the elaborate individualized claims programs established for the claims related to bank accounts."[353]

As Professor Alford, who participated in the CRT-I process, has observed, the CRT "is among the most unusual international tribunals in history…. The establishment of a hybrid process that is both international and domestic is a testament to the creativity of all involved — the governments, the private litigants, and the adjudicators. All of those involved in the [CRT] helped write one of the final chapters of the Holocaust."[354]

Thousands of individual decisions issued under the Court's authority are published on the internet (at www.swissbankclaims.com), and approximately 200 of these cases are described in the chapter included as part of this Final Report: "Summaries of Selected Deposited Assets Class Decisions." These decisions describe in detail who the victims were, what happened to them during the Holocaust, the post-war efforts to reclaim their assets, and what became of those assets. As counsel to the Volcker Committee and CRT Special Master Michael Bradfield has noted, "the [CRT] cases make you realize that these are not statistics or just pieces of paper, but real people are involved. Reading the decisions in these cases is for me like standing in the Holocaust Museum in Washington or in Yad Vashem in Jerusalem."[355] It is difficult to imagine a process more oriented toward preserving individualized histories than the CRT's.

As to more general knowledge of the Holocaust, Professor Bilsky took particular note of the Court's 2004 decision on the banks' behavior, describing it as an "exceptional instance of historical determination by the judge in the THL [transnational Holocaust restitution lawsuits]":

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353 Bilsky, *The Judge and the Historian*, at 130.

354 Alford, *The Claims Resolution Tribunal*, at 590.

355 Michael Bradfield, Comment, *Allocating the Proceeds of Settlements: Looted Assets, Successor Interests, Recovered Properties, and Settlement Funds*, 25 FORDHAM INT'L L.J. S-257, S-267 to -268 (2001). The CRT decisions, as well as summaries of the experiences of slave laborers and refugees, are all intended to individualize victims and to research and then preserve their unique histories. Thus, while one observer has stated that the "problem with the Holocaust restitution initiatives was that there were inadequate provisions for historical or moral justice," nor was "priority placed on establishing historical truth," THANE ROSENBAUM, THE MYTH OF MORAL JUSTICE: WHY OUR LEGAL SYSTEM FAILS TO DO WHAT'S RIGHT 75-76 (HarperCollins Publishers 2004), the Swiss Banks Settlement claims process did seek to emphasize "historical truth" at every turn.

> Visibly exasperated by what he deemed "a series of frivolous and offensive objections to the distribution process," Judge Korman upheld the [CRT] rules, after an extensive discussion and analysis of the Bergier Report's findings. In doing so, the judge expressly sought to set the historical record straight, and in addition assigned moral responsibility to the defendants for historic wrongdoing during the Nazi era and after the war, as well as for the present-day denial of responsibility . . .[356]

However, as Professor Bilsky has noted, it may be that "only legal experts can find this decision hidden among a long list of legal documents, even though it is published on a public website."[357]

It is not only the Court's opinions that are not widely known. Switzerland's own committee of experts — its Bergier Commission — revealed new information and expressed critical views about many aspects of Swiss wartime behavior, but the Commission's 2002 final report and its numerous related studies went largely unnoticed in Switzerland and elsewhere. As the Swiss historian, Prof. Dr. Regula Ludi, observed in 2004:

> The public response to the outcome of Switzerland's most ambitious historical investigation has been disappointing. The media barely took notice of the ICE's [Bergier Commission's] final results. Compared to the late 1990s — when Nazi era- related issues made the headlines over months, newspapers were inundated by letters to the editor, and no week passed without talk shows or documentaries on television — the subject does not attract public attention anymore. Obviously the general interest in the wartime history has waned. So, in the end, the question remains: how has the memory crisis affected Swiss society and the political meaning of historical representations in the longer run?[358]

Professor Ludi likewise noted in 2005 that the "final output of five years of intensive historical research in early 2002 has barely attracted any attention, let alone any more substantial reactions. This is perhaps surprising considering the nervous responses both media and public

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356 Bilsky, *The Judge and the Historian*, at 138-39; *see also* Bilsky & Fisher, *Rethinking Settlement*, at 120.

357 Bilsky, *The Judge and the Historian*, at 139.

358 Regula Ludi, *Waging War on Wartime Memory: Recent Swiss Debates on the Legacies of the Holocaust and the Nazi Era*, 10 JEWISH SOC. STUD. 116, 141 (2004).

had shown to every single disclosure just a few years earlier. Obviously, the Swiss public is tired of reckoning with the past and considers the Nazi era a closed chapter."[359]

The Bergier Report also attracted some negative comment in Switzerland. As noted by Swiss historian Dr. François Wisard, Head of History Unit, Federal Department of Foreign Affairs of the Swiss Confederation, there were members of the Swiss public who immediately sought to repudiate the Report. A "group of citizens" asked the Swiss government to "comment thoroughly" and "adopt a critical view" of the Bergier Report. "The government refused to draft such a comment about the report. It might have been surprising should the government have tasked the Commission with examining a long list of topics and then to have eventually questioned its findings once the report was published."[360]

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[359] Regula Ludi, *Demystification or Restoration of Neutrality? Confronting the History of the Nazi Era in Switzerland*, 11 HOLOCAUST STUD. 24, 45 (2005). Simon Erlanger, *The Controversy on the Lost Jewish Accounts in Swiss Banks and Its Aftermath*, JERUSALEM CTR. FOR PUB. AFFAIRS, No. 103 (Oct. 1, 2010), http://jcpa.org/article/the-controversy-on-the-lost-jewish-accounts-in-swiss-banks-and-its-aftermath/at 6, similarly has observed that "the size and the nature of the writing [the Bergier Commission] produced are exactly where the problem lies. Even for experts and professional historians the massive output is difficult to read, and for the average citizen it is a closed book. While an effort was made to summarize the most important results in the final report, it still makes difficult reading for the interested layman. So far, efforts to popularize the Bergier Commission's reassessment of history and publish it in a more readable form have not come to fruition. Apart from some new history textbooks based on the commission's findings, its insights have not been widely disseminated and so have failed to make an impact on society." In addition, "by 2001, when [the Bergier Commission] started to publish its results, the U.S. and Jewish pressure on Switzerland was already a thing of the past. Business as usual prevailed, and almost nobody in the political parties, parliament, or the public wanted to rock the boat or even hear about replacing the old narrative with a new one. After all, the whole exercise was merely about fending off outside pressure …. Being viewed, then, as imposed by external elements, the reassessment of the past has barely left traces. While the new and revised narrative established by the Bergier Commission has become the official history of Switzerland during World War II, it has had little impact outside of academia. With the settlement between the major Swiss banks and Jewish claimants, most of the Swiss considered the matter resolved and moved on. Switzerland's wartime record has ceased to be a matter of public debate and interest." *See also* Bernhard C. Schär and Vera Sperisen, *Switzerland and the Holocaust: teaching contested history*, 42 J. CURRICULUM STUD. 649, 657 (2010) (reviewing a Swiss textbook on the Bergier Commission and the Swiss role during the Nazi era, the authors noted that the textbook "presents itself as an instrument that lives up to the task of joining the group of other democratic, civilized, European nations that have (supposedly) already gone through [the] painful process" of "catharsis with regard to the nation's share of responsibility for the Holocaust." However, the "need for national catharsis is, of course, contested in Switzerland. In the national conservative view of the nation's war history, Switzerland's degree of responsibility for the Holocaust is insignificant, and therefore there is no need for catharsis").

[360] François Wisard, *The Swiss Experience with State-Commissioned Historical Investigations: A Short Overview with a Focus on the Bergier-Commission (1996-2002), in* BYSTANDERS, RESCUERS OR PERPETRATORS? THE NEUTRAL COUNTRIES AND THE SHOAH 243, 251-252 (Int'l Holocaust Remembrance Alliance ed., Metropol Verlag 2016). *See also* BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW, at 90 ("Because it failed to produce a legal judgment, [the Holocaust litigation] has been largely ignored by legal scholars, even though it is precisely the settlement of these lawsuits that allowed lawyers, politicians, giant corporations, civil society

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Although there is not necessarily widespread knowledge of the trove of historically significant information that has been unearthed as a result of the Swiss Banks litigation and other Holocaust-related claims, the findings still remain. They are there for any interested party, historian or otherwise, to examine.

* * *

Professor Neuborne, who served as Lead Settlement Counsel to the plaintiff class in the Swiss Banks case and was one of the chief litigators in the German slave labor cases, offered his own reflections as an active participant in the two proceedings. As the Swiss Banks settlement distribution process was winding down, he took stock of what the Swiss and German lawsuits had accomplished and concluded that each had been a success:

> The very fact that institutions of great power were forced to negotiate with the victims on terms of formal equality and to publically pay huge sums to them in settlement of the victims' claims reinforced a sense of individual dignity that is not enhanced by tutelary actions by governments on behalf of victims. Based on my conversations, many victims welcomed the opportunity to seek redress in their own names, as opposed to being treated as wards of the state. It is the difference between demanding justice, and asking for charity. It is, moreover, inaccurate to claim that the Holocaust litigation may have muddied the moral record by allowing the defendants to exit without a formal finding of guilt, or an apology. In the first place, the German settlement included a moving apology by President Rau to hundreds of survivors. The Swiss settlement did not include a formal apology, but publicity about the litigation forced the Swiss government to appoint the Bergier Commission, which finally chronicled Switzerland's WW II mistreatment of refugees and the banking industry's post-war failure to deal fairly with Holocaust-related accounts. The Volcker audit provided incontrovertible evidence of large numbers of unpaid Holocaust-era accounts and disclosed the extent of Swiss destruction of the historical record. The litigation resulted in the opening of numerous corporate archives to historians, dramatically expanding the available historical record. The Swiss settlement funded the Victim[] List Project, the effort to remember each victim by name. The painstaking claims processes in both the Swiss and German settlements generated vast amounts of information about the lives and losses of individual victims. And, the very existence of the litigation stimulated a new wave of research and writing about the Holocaust. Finally, the basic purpose of the litigation was not to stimulate moral consideration of the Holocaust, or to supplement the historical record. It was an

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organizations, and individual victims to come together to design deliberative forums and establish innovative mechanisms to resolve decades-old disputes, all the while enhancing historical knowledge.").

> effort to provide a modicum of compensation to as many individual victims as possible, while stripping aiders and abettors of as much of their ill gotten gains as possible. That project would, of course, have been enhanced by legal victories that clarified the law and called the defendants names. But, in the end, the success of the project should be measured, in my view, by the delivery of substantial compensation to victims and the disgorgement of significant sums by wrongdoers – on that level, it was a remarkable success. I call it some measure of compensation, but no attempt at justice.[361]

Professor Neuborne's thoughtful reflection might be disputed in only one respect: the claims processes, particularly those established for owners of Swiss bank accounts, made every attempt to deliver justice, with significant results. If justice — at least on a material level, if certainly not on a moral level — could not be fully meted out, that was because so many decades had passed and so many documents had been destroyed. But it was not for lack of trying.

The chapters that follow describe the effort to deliver some degree of material justice to each of the five settlement classes and each of the five victim groups under the Swiss Banks Holocaust Settlement.

[361] Neuborne, *Litigating the Holocaust*, at 90.

THE DEPOSITED ASSETS CLASS CLAIMS PROCESS

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I. INTRODUCTION: THE FATE OF HOLOCAUST VICTIMS AND THEIR SWISS ACCOUNTS

For decades, Nazi victims and their families were told that if they were seeking property taken from them during the Holocaust, Swiss banks were not the place to look. The banks said that they had never held these accounts; or had there ever been such accounts, they were no longer in existence; or if any accounts still remained, there were only a small number, of minimal value; or whatever records might once have existed no longer were kept; or the person asking could receive no further information without documents proving who the account owner was, how that person was related, and how that person died (even if at the hands of the Nazis). And so account owners and their heirs were turned away time and time again. But they did not forget and they did not give up, and finally, in the late 1990s, they found a forum to pursue their lost bank assets: the United States judicial system.

In 1996 and 1997, class action lawsuits were filed in several United States federal courts against Swiss banks and other Swiss entities, alleging that financial institutions in Switzerland collaborated with and aided the Nazi regime, by knowingly retaining and concealing assets of Holocaust victims, and by accepting and laundering illegally obtained Nazi loot and profits of slave labor. All of the cases were consolidated in the United States District Court for the Eastern District of New York ("the Court"). The lawsuits were litigated by a team of leading U.S. class action attorneys. Judge Edward R. Korman, before whom the litigation was pending, actively encouraged the parties to settle the lawsuits, and with his assistance, the parties reached a settlement in principle for $1.25 billion in August 1998, which they finalized in January 1999. The Court-appointed Special Masters proposed and the Court adopted a Distribution Plan, which ultimately resulted in the payment of nearly $1.285 billion — more than the $1.25 billion settlement amount — to over 458,400 Holocaust victims and their heirs, including nearly $720 million to owners of Swiss bank accounts.[1] The chapter that follows describes the process by

[1] The Distribution Plan was adopted by the Court in its entirety on November 22, 2000, a decision upheld by the United States Court of Appeals for the Second Circuit on July 26, 2001. *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at *4 (E.D.N.Y. Nov. 22, 2000), *aff'd*, 14 Fed. App'x 132, 136 (2d Cir. 2001) (reissued as published opinion, 413 F.3d 183 (2d Cir. 2005)). In addition to being publicly available on the Court's docket, the Distribution Plan was published in its entirety in *Symposium - Holocaust Restitution: Reconciling Moral Imperatives with Legal Initiatives and Diplomacy*, 25 FORDHAM INT'L L.J. S-107, S-307 to

which Holocaust victims and their heirs were able, after decades, to obtain some measure of restitution of their property.

The following three examples (and dozens of other summaries below, as well as the accompanying chapter of this Final Report, "Summaries of Selected Deposited Assets Class Decisions") stand for the thousands of cases in which Holocaust survivors or their heirs sought to recover their Swiss-held assets, and for the countless other cases in which no one remained to ask.

Hedwig Bendix was born in 1895 in Berlin. She later moved to Czechoslovakia, where she lived with her daughter and her husband, who owned a business (*Julius Bendix & Söhne)*. The three family members were deported to the Lodz Ghetto. They perished either in Lodz or in Theresienstadt.

On November 23, 1945, Hedwig Bendix' son wrote to his parents' Swiss bank to inquire about their assets, emphasizing that his mother and father had been killed in a concentration camp during World War II. The bank replied on December 4, 1945, stating that the Bendixes "have no relations with the Bank." After a Zurich attorney followed up, the bank on December 7, 1945 clarified its earlier statement, this time admitting that the Bendixes had been bank customers, but stating that they "no longer had any business relations with the Bank." Two years later, responding to a third letter seeking information about Mr. and Mrs. Bendix, the bank replied on November 5, 1947 that "'no assets are deposited with our head-office.'"

These statements by the bank were incomplete. Bank documents made available to the Court decades later, in connection with the Deposited Assets Class claims process under the Swiss Banks Settlement, showed that Hedwig Bendix indeed had owned accounts at the bank. On February 20, 1939, the bank had received a letter via Berlin, with instructions about one of these accounts. The bank closed that account one week later, on February 28, 1939, and transferred it to Nazi Germany's Central Bank, the Reichsbank. Hedwig Bendix also owned two additional accounts at the same bank, one of which was closed on July 29, 1939, and the other in 1945. No other records remained in the bank files concerning these accounts. These records

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S-494 (2001). Substantial excerpts from the Distribution Plan also were published in ORLAND, A FINAL ACCOUNTING, Appendix B, 229-250, 293-364.

undoubtedly were among the millions destroyed by the Swiss banks in the decades following the Holocaust.

In light of the bank's disingenuous response to repeated inquiries on behalf of the Bendix family — denying a customer relationship, even while the bank continued to hold documents showing not only that the Bendixes had owned accounts, but that the bank had transferred at least one of these accounts to the Nazis — the Court authorized the value of all of the Bendix accounts (worth SF 183,780 or approximately $132,215.83) to be awarded to the claimant, Hedwig Bendix's niece.[2]

Grete Koretz-Lang was born in 1899. She was married to an attorney, Dr. Ernest Koretz. They had a daughter, Susan Koretz, who was born in 1933. Grete Koretz-Lang's father was Angelus Simon, and her mother was Rosa Simon-Lang. The family lived in Karlsbad, Czechoslovakia. Angelus Simon died before the Second World War. The rest of the family perished in the Holocaust.

After the war, family representatives repeatedly inquired with the Swiss bank believed to have held assets owned by one or more of the five family members who had died. On June 14, 1946, a bank employee made a handwritten note indicating that at least one member of the family had, indeed, held an account at that bank. It was of unknown type and it was held in U.S. dollars ("$147.--"). However, half a year later, on December 30, 1946, the bank wrote that "as far as our investigations show, no assets are deposited with the Zurich Office of our bank." The family's representative followed up with several more inquiries, including one written on

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[2] *In re Accounts of Hedwig Bendix, available at* http://www.crt-ii.org/_awards/_apdfs/Bendix_Hedwig.pdf. For ease of reference, all further citations to awards recommended by the CRT (all reviewed by the Special Masters and approved by the Court), will include only the name of the decision. All decisions may be found via a surname search at www.crt-ii.org/awards, as well as at the website for this Settlement, www.swissbankclaims.com, through a link on the "Deposited Assets Class" page.

For any given award based upon a documented Swiss bank account, the recipient(s) could have received a number of different types of awards (discussed in greater detail *infra*): initial award, award amendment, presumptive value adjustment award, and appeal award. While only the initial awards and, where applicable, award amendments, are available on the CRT website, every award was approved by and docketed with the Court. Award amounts referenced in this Final Report reflect the total award amounts, taking into consideration all payments made in connection with a particular award. In most instances, the total award amount is actually greater than the amounts shown on the individual awards published on the CRT website, primarily due to "presumptive value increases" (discussed below) that were authorized by the Court after the initial awards (and in some instances, amendments) were issued.

November 22, 1949, during that representative's visit to Zurich. A bank employee wrote at the bottom of this letter: "'the matter has already been investigated, and [the representative] has been informed both verbally and in writing that no assets [currently] exist with us.'"

On August 4, 1950, the bank noted in an internal memorandum that Angelus Simon of Prague had died, and that if he held any assets, they should be blocked (*i.e.* made inaccessible to the account owner).[3] The following week, on August 10, 1950, the bank's legal department wrote an internal memorandum. It stated: "'[o]n the occasion of any further visit from [the family's representative] of New York in relation to the assets of Angelus Simon, Rosa Simon, Grete Simon, or Ernst Koretz, please simply tell him verbally the following (do not confirm in writing): 'There are no assets in the names of the four mentioned individuals in our branch [of the Bank], as far as our investigations can tell.' [He] will not likely request further investigations regarding assets that may have existed earlier. If that does happen, we will have to deny his request on the basis of basic considerations.'" (Emphasis in original.) Thus, by this memorandum, the bank's legal department was explicitly advising bank employees to deny the existence of *current* assets that one or more of these Holocaust victims might have owned. In the unlikely event that an inquiry was made about assets the family might have owned in the *past*, that request, too, should be deflected.

The next month, by letter dated September 14, 1950, a relative of the account owners again reached out to the bank. The relative, who lived in New York, explained that the account owners had lived in Karlsbad, but had later moved to Prague. They all died "'as a result of the war.'" The relative stated that he had documents indicating that the individuals had died, and that he was their legal heir. The bank carefully followed the August 10, 1950 advice of its legal department. In a September 19, 1950 letter, the bank advised that that according to its investigations, there were "'currently no assets in the names of the referenced individuals in our branch of the Bank.'"

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[3] CRT decisions generally capitalized the word "Bank" to refer to the particular Swiss bank at which the account at issue was held. That format is adopted here for direct quotations from the CRT decisions, but other references to "bank" or "banks" are not capitalized herein unless otherwise specifically noted. Similarly, although CRT decisions generally capitalized the terms "Claimant" and "Account Owner," that format is adopted here only for direct quotations from CRT decisions; otherwise, lower-case format is used.

However, this statement was incomplete and misleading. The documentation made available through the Deposited Assets Class claims process demonstrated that at least one member of the family had owned at least one account at the bank, a fact that the bank repeatedly failed to disclose. The Court thus awarded this account (SF 49,375, or approximately $42,935) to the family's remaining heir.[4]

Bertha Siegal was born in 1906 in Volochisk, Ukraine. She lived in Ukraine, where she was an educator until 1941. She had briefly lived in Switzerland in the 1920s. When the Nazis invaded Ukraine in the summer of 1941, Bertha Siegal and her two children (one of whom was the claimant) tried to escape. They were seized and detained in the Stanislavchik Ghetto. Bertha Siegal died in Vinitsa, Ukraine in 1957.

The bank records made available through the claims process showed that Bertha Siegal, who resided in Acquarossa Terme, Switzerland, held an account of unknown type. The account had been transferred to a suspense account on or before December 20, 1948. The bank records included a February 19, 1964 memorandum addressed to the bank's Legal Department, referring to a 1962 survey. The survey represented an early, but incomplete, effort by Swiss banking authorities to address the inquiries they were receiving from Holocaust victims and heirs who were trying to locate their deposits in Swiss banks.[5] The memorandum referenced a telephone conversation held earlier that day. It "enclose[d] a list of accounts held at the Bank which had balances under 100.00 Swiss Francs. The memorandum 'request[ed] [the Legal Department] to inform them which of the persons listed could be considered to be a Jew, so that we, in such cases, can close those accounts off the books.'" The account therefore was not returned to its owner or her heirs. Rather, the bank closed the account to fees and charges on the day it wrote the memo to its attorneys, February 19, 1964. Decades later, the Court authorized an award to Bertha Siegal's son.[6]

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4 *In re Account of Angelus Simon, Rosa Simon-Lang, Grete Koretz-Lang, Ernst Koretz, and Susan Koretz.*

5 By Federal Decree of December 20, 1962, the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss-based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since May 9, 1945 and who were known or presumed to have been victims of racial, religious, or political persecution. *See* www.swissbankclaims.com (Glossary) ("1962 Survey").

6 *In re Account of Bertha Siegal.*

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The process by which these, and thousands of other, Holocaust-era Swiss bank accounts finally were returned to their rightful heirs, after being wrongfully withheld for decades, is described in this chapter.

The Deposited Assets Class claims program undertook the painstaking task of analyzing claims to hundreds of thousands of accounts believed to have been owned by victims of Nazi persecution. The claims process succeeded in returning nearly $720 million to many thousands of heirs. The task was enormous, unprecedented and difficult. Worldwide in scope, the program was the first opportunity for Nazi victims and their heirs to have their claims to Holocaust-era Swiss accounts resolved by an independent body. More than 104,000 claims, relating to over 415,000 possible account owners, were submitted to the Court for consideration.

Previously, efforts to access accounts and account records had been made directly through the Swiss banks and related Swiss institutions, with limited success and frequent obstruction by the banks. The written decisions issued by the Zurich-based Claims Resolution Tribunal (the "CRT"), the Court-supervised administrative body that oversaw the claims process, illustrate the lengths to which the Nazis went to strip their victims of all they had. These decisions also reveal that Swiss banks played a role in that effort. The cases demonstrate that Swiss banks failed to protect depositors from Nazi efforts to confiscate assets. The banks, in many instances, were directly involved in transferring to the Nazis assets that had been confiscated from persecutees under duress. There was also an intentional - and at times coordinated - effort by the Swiss banks to prevent access to accounts by their owners or rightful heirs of the owners in the post-War period.

From "the most famous account holder on the [CRT's] docket"[7] — Sigmund Freud — to more typical families trying to shield what they could, victims and targets of Nazi persecution

[7] Roger P. Alford, *The Claims Resolution Tribunal*, *in* THE RULES, PRACTICE, AND JURISPRUDENCE OF INTERNATIONAL COURTS AND TRIBUNALS 575, 588 (Chiara Giorgetti ed., Martinus Nijhoff 2012). Alford observed (at 588) that setting aside the fame of the account owner, the Freud claim was quite "typical" of the claims considered and resolved by the CRT. "[M]any of the issues arising in the case [were] identical to hundreds of other claims: the sparse information in the bank's records, the absence of evidence regarding the value of the accounts, the circumstances surrounding its closure, the presumptions the [CRT] applied as to the appropriate division of the award among heirs, and the [CRT's] efforts to undertake independent research to resolve the claim." *Id.*

turned to Swiss banks before the war, believing them to be safe havens for their vulnerable assets. That trust often was misplaced. The claims and supporting documentation submitted by Holocaust victims or their heirs allowed Claimed Account Owners ("CAO") to be matched to Swiss bank accounts and their account owners ("AO"); to learn the fate of these account owners; and to reach a reasonable conclusion about what happened to their assets.

* * *

When the litigation process began, and even after the case settled, some doubted that these assets could be restored. The Court, and the agencies and individuals who assisted the Court, were confronted with many obstacles. The investigation of the banks, led by former United States Federal Reserve Chairman Paul Volcker (the "Volcker Committee" or "ICEP" - Independent Committee of Eminent Persons), was one of the largest, most complex, most extensive, and most historically significant forensic accounting audits ever conducted. The Volcker Committee's work revealed that 6.8 million Holocaust-era Swiss bank accounts had existed in the 1933-1945 period (the "Relevant Period").[8] Records for 2.7 million of those accounts had been totally destroyed. There was incomplete data for many of the remaining 4.1 million accounts.[9] Of these 4.1 million accounts, the Volcker Committee auditors excluded what were characterized as "domestic" (Swiss address) accounts as well as savings accounts, leaving approximately 2.25 million accounts, of which approximately 353,000 were reviewed through audit procedures. The vast majority of accounts thus were excluded from the audit.[10]

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[8] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 151 (E.D.N.Y. 2000). Because the Volcker Committee's work is widely known as the "Volcker audit," that term is generally used here, although from a technical point of view, the auditors conducted an "investigation" as opposed to an "audit."

[9] Such destruction continued even after a Swiss Federal Decree issued in 1996, which directed that all documents from the Holocaust era be maintained. In a well-known example from 1997, a security guard at the Union Bank of Switzerland ("UBS") rescued documents awaiting destruction in the bank's shredder room. The information to be destroyed included minutes of the Federal Bank (*Eidgenössische Bank*), which went bankrupt in 1945 when its German business collapsed, and whose important records had been taken into possession by UBS. The bank took action against the security guard for breach of bank security. *See In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 316 (E.D.N.Y. 2004).

[10] *See* PAUL VOLCKER, INDEP. COMM. OF EMINENT PERSONS, REPORT ON DORMANT ACCOUNTS OF VICTIMS OF NAZI PERSECUTION IN SWISS BANKS (1999) ("VOLCKER REPORT"), Annex 4, Table 4. *See also* VOLCKER REPORT, Annex 4, ¶ 12 ("By comparing databases containing approximately 5.5 million names of victims and claimants to the 2.25 million accounts in the accounts databases subject to matching, the auditors identified 280,157 matched accounts"); the auditors also analyzed another 76,491 unmatched accounts (for a total of 353,396), because "the circumstances of their opening and of their subsequent disposition indicated a probable or possible relationship to victims of Nazi persecution," such as bank records showing a "concentration camp

Of the accounts audited, approximately 54,000 — later reduced to 36,138 — were deemed "probably" or "possibly" belonging to Holocaust victims. Under the claims process, Swiss banking authorities generally limited access only to these 36,138 accounts (the "Accounts History Database" or "AHD"). Through the research of the CRT into archives and other sources, the AHD was expanded, so that eventually it consisted of 37,954 accounts.

Because of the equitable concerns presented by the fact that heirs had been deprived of access to bank information for more than sixty years; the notice requirements of American class action law; and the finality of the class action settlement, access to and publication of account owner names was paramount. The claims administrators and the Court, however, were hindered by restrictions imposed by Swiss banks and banking authorities:

- The Swiss banking authorities failed to authorize compliance with the Volcker Committee's December 6, 1999 recommendation to create a centralized database ("Total Accounts Database") of all 4.1 million Holocaust-era accounts for which records still exist, of the approximately 6.8 million for which records had once existed, but had since been destroyed.
- Only 21,000 account owner names were published (in February 2001), augmented only after post-settlement litigation by the publication of an additional approximately 3,000 names (in January 2005). The total number of names published was therefore only approximately two-thirds of the 36,000-account original AHD, and only a very small fraction of the 4.1 million Holocaust-era accounts for which Swiss bank records still existed.[11]
- The CRT was restricted in its ability to examine auditor and banking records, even for the 36,000 accounts in the original AHD. Swiss banking authorities required the Court to employ a "Data Librarian" who reviewed and often redacted information from each bank record (for example, where the record indicated names of other individuals not specifically known to have been related to the account owner), before it was provided to the CRT for analysis.

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address or a notation that the account owner had died in a concentration camp." VOLCKER REPORT, Annex 4, ¶ 15.

[11] In a June 11, 1997 letter to the editor of the *New York Times*, Volcker wrote: "The aim of the audit is to insure that all dormant accounts of persecuted persons from that period be identified. Because those accounts may have been opened in Swiss names, it seems appropriate to go beyond publication of accounts that are thought to be related to Holocaust victims to publication of all dormant accounts." Paul A. Volcker, Letter to the Editor, *Swiss Haven't Found New Holocaust Funds*, N.Y. TIMES, June 15, 1997, http://www.nytimes.com/1997/06/15/opinion/l-swiss-haven-t-found-new-holocaust-funds-638048.html.

- The defendant banks initially were reluctant to cooperate with the CRT's requests for "voluntary assistance" to help supplement the record, so as to enable the CRT to assess all available facts before reviewing each claim.

Despite these obstacles, the CRT examined every one of the 104,000 claims — filed by 119,526 individual claimants — to over 415,000 possible accounts, and by its efforts helped to return almost $720 million to bank account owners and their heirs.

Following the Court's directives, the CRT's approach favored the claimants. If evidence was missing, it was not the claimant, but the Swiss bank, that was presumed to have been the party at fault. If the bank records did not show who closed an account, the Court presumed it was wrongfully closed, and the claimant was paid. If the bank records did not show the amount of the account, the Court did not presume the balance was "zero" — for what depositor would have kept a "zero-balance" account when fees were charged for holding the account? Rather, it was assumed that the account had held assets that could be determined, at least at a pre-designated average (presumptive) value, and so the claimant was paid. If the bank records did not show what type of account it was, or whether it was linked to other accounts, or whether it held securities, or whether it had been reported in a Nazi census,[12] the Court directed the CRT to conduct its own research to make sure that no evidence was missed. And in the worst case situation, where no documentation could be found, despite the CRT's best efforts to locate records either from the ICEP audit, or after pressing the banks to provide "voluntary assistance" on a case-by-case basis, or from archives or other non-bank sources, the Court still made sure the claimant was not penalized by the lack of records. If the claimant plausibly indicated that a close relative had owned a Holocaust-era Swiss account, the Court authorized that person to receive $7,250 for a "plausible but undocumented award" ("PUA").

[12] For example, by decree on April 26, 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. The records of the Austrian State Archives (Archive of the Republic, Finance) contain the individual asset registration files, which, where available, were used by the CRT as a tool, both to enhance matching efforts, and to provide additional information about any assets identified by the asset holder that were held in a Swiss bank.

A. The Scope of the Claims Process

Of the 119,526 individuals who submitted claims, 104,140 filed their own claims with the CRT, and the other 15,386 were co-claimants expressly included on a claim form filed by a family member.

The 104,140 claims were comprised of several categories:

- 32,925 were designated formally as Deposited Assets "claim forms" in connection with the initial publication of names in 2001;
- 2,003 were designated formally as Deposited Assets "claim forms" in connection with the publication of additional names in 2005 following post-settlement litigation with the banks;
- 62,766 of the approximately 600,000 Initial Questionnaires ("IQs") filed in 1999 and 2000 (and some thereafter), in connection with the original outreach and notification of settlement undertaken by plaintiffs' counsel, were authorized by the Court to serve as CRT claim forms;[13]
- 4,609 claims were accepted that had been filed, but not compensated, in connection with the Swiss banks' 1997 publication of account owner names (a process separate from that under the Settlement Fund);
- 1,769 claim forms had been filed over the years with the New York State Holocaust Claims Processing Office (HCPO),[14] and subsequently were accepted into the CRT process; and

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[13] In connection with the notice program, a six-page document seeking background information, an "Initial Questionnaire," was circulated to class members. More than 600,000 individuals returned their completed Initial Questionnaires. Analysis of these 600,000 IQs revealed that 62,766 contained information sufficient to identify the potential claimant and the potential account owner, and therefore could serve as claim forms with respect to Deposited Assets. The remainder of the IQs (some 538,000) did not indicate the existence of Swiss bank accounts, but were focused upon other Holocaust-era losses covered by the settlement, such as slave labor, looted assets and refugee claims.

[14] The New York State Holocaust Claims Processing Office (HCPO) was created in 1997, in response to the difficulties that had been faced, and were being raised anew, by Holocaust victims and heirs who sought to recover bank accounts and other assets. "Since 1997 the Holocaust Claims Processing Office (HCPO) has advocated on behalf of Holocaust victims and their heirs, seeking the just and orderly return of assets to their original owners. In fulfilling this mission, the HCPO has facilitated the restitution of over $157 million in bank accounts, insurance policies, and other material losses and the resolution of cases involving more than 56 works of art. The HCPO works as a bridge between claimants and the various international compensation organizations and/or the current holder(s) of the asset be it a bank account, insurance policy or artwork. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered." *See* N. Y. State Dep't of Fin. Servs., HOLOCAUST CLAIMS PROCESSING OFFICE, http://www.dfs.ny.gov/consumer/holocaust/hcpoindex.htm (accessed Jan. 16, 2014). *See also* Proposed Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"), *In re Holocaust Victims Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 11, 2000), Vol. I, at 58-59 n.154, *available at* www.swissbankclaims.com (Chronology) (describing HCPO).

- 68 claim forms were generated during the claims process that began in 2000, as a result of appeals by individuals challenging awards that had been issued to family members or others.

Thus, there were approximately 41,000 claim forms, and 63,000 Initial Questionnaires, considered in the claims process.

In many instances, the claimants would list one, two, three or more family members believed to have owned an account. But at the same time, the claimant also would provide information about other relatives — aunts, uncles, grandparents, cousins — while not specifically claiming the accounts that these other individuals might have owned. However, the CRT understood that the passage of time, the loss of records, and the disruption in family relationships wrought by the Holocaust might have rendered a claimant unable to pinpoint who in his or her family had held a Swiss bank account. Accordingly, it was the CRT's policy to analyze *each and every name mentioned in a claim form*, whether a claimant formally had named that person as a potential account owner or not.

The true magnitude of the program overseen by the Court can be understood only by considering the total number of potential account owners for whom the CRT searched. While the number of claimants and represented parties (119,526) is a very substantial figure in itself, the number of Holocaust victims for whom the CRT tried to locate accounts was nearly three times higher: **415,453**. In other words, the CRT analyzed claims on a case-by-case basis for 415,453 separate individuals who *explicitly* or *implicitly* were believed to have deposited assets with Swiss banks during the Holocaust era.

The New York State Holocaust Claims Processing Office (HCPO), in assisting claimants seeking restitution of insurance policies (among many other responsibilities), encountered a similar situation. While substantially fewer insurance claimants were involved as compared with the CRT process, the HCPO observed that the program had expanded considerably from the original number of submissions, due to the complexities of processing property claims:

The vast majority of claimants who received CRT awards represented themselves in the process, as the Court had intended. The claim form and all other aspects of the claims program made it clear that it was not necessary for a claimant to obtain legal or other representation in order for his or her claim to be carefully analyzed. A total of 15% of the awarded claimants had some kind of representation, whereas 85% did not.

> Overall, the HCPO has handled in excess of 13,000 inquiries [concerning Holocaust-era assets]. Of these, nearly half have been insurance related inquiries from 35 countries and 48 states and the District of Columbia. These inquiries have generated over 2,300 claims from 24 countries and 43 states and the District of Columbia…. While there are over 2,300 claimants, this actually means that we have claims naming more than 3,400 potential insurance policyholders and an excess of 5,300 policies. This is because in many instances, the claimant could be the sole survivor of a sizable family and therefore submitted applications naming several relatives as the insured individual, including their parents, grandparents, aunt, uncles, siblings, and cousins. In addition, individuals may have had multiple policies. Many of the HCPO's cases refer to more than one policy.[15]

In the CRT's case, every effort was made to err on the side of over-inclusiveness by incorporating tens of thousands of informal claims, and by examining hundreds of thousands of potential account owners. This slowed and complicated the claims process. Every one of the 415,453 potential account owner names provided by claimants had to be entered for "matching" against the 37,954 accounts contained in the AHD. When the pool of potential account owners (415,453) was "matched" against the pool of known accounts (37,954), over 1.5 million matches were generated. Every match — 1.5 million — needed to be examined by a member of the CRT staff. Although some portion of the matches could be discarded as merely "technical" (*i.e.*, matches that arose only because the matching program was designed to be especially broad, but which on their face were invalid; for example, the first and middle names were the same but the last name was entirely different), most of the matches required detailed and individualized analysis. In many instances, the bank records were sparse, containing little more than an owner's name and perhaps city or only country of residence. Because many names were common, numerous (sometimes dozens or more) matches often were generated to the same account. Each match had to be analyzed to determine which claimant, if any, was the proper heir to the account.

B. A Summary of the Awards

A total of more than $726.2 million in awards were authorized for Deposited Assets Class members, of which nearly $720 million was paid out, of the up to $800 million

[15] Holocaust Claims Processing Office, N.Y. State Dep't of Fin. Serv., *The Insurance Industry and the Economies of Central and Eastern Europe, 1918-1945* 107 (Oct. 2011), *originally available at* http://www.dfs.ny.gov/consumer/holocaust/hcpor111031.pdf.

allocated for Deposited Assets Class claims from the $1.25 billion Settlement Fund.[16] These funds were repaid through three mechanisms (1) $615.5 million was repaid for accounts for which documentation had been located, either from bank records, archives or other sources provided by the claimants, or by the CRT through supplemental research;[17] (2) the Settlement Agreement provided that the Settlement Fund would cover the payments made under the CRT-I process (pre-dating the Settlement), for accounts that had been owned by Holocaust victims, which totaled approximately $18.2 million;[18] and (3) $86.1 million was paid for "Plausible Document Awards" ("PUAs") based upon plausible claims for which no documentation could be located as a result of the banks' decades of destruction of records.

Of the Deposited Assets awards, 46% were issued to individuals who resided in the United States at the time they were paid. These U.S. residents, who lived in all 50 states, received a total of $327,369,822. Most lived in the following 11 states (using rounded figures): New York (32%); California (15%); Florida (9%); New Jersey (7%); Massachusetts (5%); Pennsylvania (5%); Maryland (4%); Michigan (3%); Texas (3%); Connecticut (2%); and Illinois (2%).

Approximately 11% of the awarded claimants lived in Israel, and they received $80,247,838. After the United States and Israel, the countries in which the largest number of claimants lived (using rounded figures) were Canada (7%); Great Britain (7%); France (5%); Australia (3%); Austria (3%); Germany (3%); the Czech Republic (2%); Switzerland (2%);

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[16] The amount authorized, $726,272,177, exceeded the amount actually paid to claimants ($719,745,337). *See* Distribution Statistics, *available at* http://www.swissbankclaims.com/New%20Docs/Distribution%20Stats.pdf. This was due to the following: (1) some approved claimants could not be located despite extensive efforts to obtain their contact information; (2) some approved claimants passed away and no eligible heirs could be located; (3) in a few instances, approved claimants refused to accept payment and/or refused to complete documentation required before funds could be transferred; and/or (4) in a limited number of cases, as more fully discussed *infra*, certain approved Deposited Assets Class awards were withdrawn by Court order as a result of information that came to the attention of the CRT after the awards had been approved. In all instances, any funds authorized but unpaid were either applied to authorized but unfunded awards of the same class, or returned to the Settlement Fund for reauthorization and distribution to other class members.

[17] A total of $615.5 million ultimately was paid, for the reasons cited above.

[18] As more fully discussed below, the "CRT-I" process was initiated while the litigation was still pending, but before the case had settled, and thus was distinct from the later claims process that operated under the authority of the Court, "CRT-II." The CRT-I process involved adversarial proceedings adjudicated by one or more international arbitrators.

Hungary (1%); Argentina (1%) and Italy (1%). Approximately 0.1% lived in the former Soviet Union (FSU). In total, they lived in 70 different countries.

The tables that follow provide further information about the geographic dispersal of Deposited Assets award recipients.

IN RE: HOLOCAUST VICTIM ASSETS LITIGATION (Edward R. Korman, US District Judge)
Award Demographics of CRT II Awards by Recipients' Countries of Residence

COUNTRY	TOTAL CRT II AWARDS IN DOLLARS	PERCENTAGE OF TOTAL	REGION
UNITED STATES	$ 327,369,822.19	46.2329%	
ISRAEL	$ 80,247,838.11	11.3330%	
CANADA	$ 48,614,001.55	6.8655%	
GREAT BRITAIN	$ 48,146,330.78	6.7995%	
FRANCE	$ 33,688,529.94	4.7577%	
AUSTRALIA	$ 23,234,375.97	3.2813%	
AUSTRIA	$ 23,042,985.64	3.2543%	
GERMANY	$ 20,905,020.59	2.9523%	
CZECH REPUBLIC	$ 12,755,413.37	1.8014%	
SWITZERLAND	$ 12,429,697.74	1.7554%	
HUNGARY	$ 11,056,626.50	1.5615%	
ARGENTINA	$ 9,374,421.32	1.3239%	
ITALY	$ 7,460,329.30	1.0536%	
SUBTOTAL	**$ 658,325,393.00**	**92.9723%**	
ROMANIA	$ 4,804,305.00	0.6785%	EUROPE
BELGIUM	$ 4,661,559.81	0.6583%	EUROPE
NETHERLANDS	$ 4,127,886.85	0.5830%	EUROPE
SWEDEN	$ 2,232,718.94	0.3153%	EUROPE
SLOVAKIA	$ 2,213,266.45	0.3126%	EUROPE
CROATIA	$ 2,200,708.33	0.3108%	EUROPE
POLAND	$ 1,429,930.20	0.2019%	EUROPE
SLOVENIA	$ 1,169,755.01	0.1652%	EUROPE
GREECE	$ 928,979.75	0.1312%	EUROPE
SPAIN	$ 822,464.33	0.1162%	EUROPE
NORWAY	$ 740,006.34	0.1045%	EUROPE
LUXEMBOURG	$ 589,925.22	0.0833%	EUROPE
ANDORRA	$ 457,504.97	0.0646%	EUROPE
SERBIA	$ 423,342.05	0.0598%	EUROPE
DENMARK	$ 408,471.52	0.0577%	EUROPE
BULGARIA	$ 268,174.63	0.0379%	EUROPE
BOSNIA	$ 243,472.40	0.0344%	EUROPE
PORTUGAL	$ 175,761.42	0.0248%	EUROPE
IRELAND	$ 75,198.08	0.0106%	EUROPE
MONACO	$ 54,861.11	0.0077%	EUROPE
YUGOSLAVIA	$ 50,750.00	0.0072%	EUROPE
MALTA	$ 39,492.97	0.0056%	EUROPE
CYPRUS	$ 31,010.40	0.0044%	EUROPE
ALBANIA	$ 7,250.00	0.0010%	EUROPE
REST OF EUROPE	**$ 28,156,795.78**	**3.9765%**	
BRAZIL	$ 6,282,499.90	0.8872%	WESTERN HEMISPHERE
CHILE	$ 2,035,075.75	0.2874%	WESTERN HEMISPHERE
URUGUAY	$ 1,742,890.01	0.2461%	WESTERN HEMISPHERE
MEXICO	$ 1,369,848.09	0.1935%	WESTERN HEMISPHERE
COLUMBIA	$ 821,500.72	0.1160%	WESTERN HEMISPHERE
PERU	$ 801,786.50	0.1132%	WESTERN HEMISPHERE
BOLIVIA	$ 625,605.51	0.0884%	WESTERN HEMISPHERE
VENEZUELA	$ 431,594.05	0.0610%	WESTERN HEMISPHERE
JAMAICA	$ 402,552.36	0.0569%	WESTERN HEMISPHERE
EL SALVADOR	$ 249,915.29	0.0353%	WESTERN HEMISPHERE
ECUADOR	$ 45,983.22	0.0065%	WESTERN HEMISPHERE
GUATEMALA	$ 43,500.00	0.0061%	WESTERN HEMISPHERE
COSTA RICA	$ 7,250.00	0.0010%	WESTERN HEMISPHERE

COUNTRY	TOTAL CRT II AWARDS IN DOLLARS	PERCENTAGE OF TOTAL	REGION
REST OF WESTERN HEMISPHERE	**$ 14,860,001.40**	**2.0986%**	
RUSSIA	$ 368,822.48	0.0521%	FORMER SOVIET UNION
UKRAINE	$ 301,675.39	0.0426%	FORMER SOVIET UNION
ESTONIA	$ 59,987.98	0.0085%	FORMER SOVIET UNION
LATVIA	$ 29,000.00	0.0041%	FORMER SOVIET UNION
MOLDOVA	$ 23,369.87	0.0033%	FORMER SOVIET UNION
LITHUANIA	$ 21,750.00	0.0031%	FORMER SOVIET UNION
UZBEKISTAN	$ 14,500.00	0.0020%	FORMER SOVIET UNION
BELARUS	$ 7,250.00	0.0010%	FORMER SOVIET UNION
SUBTOTAL FORMER SOVIET UNION	**$ 826,355.72**	**0.1167%**	
SOUTH AFRICA	$ 3,909,236.58	0.5521%	OTHER
NEW ZEALAND	$ 1,144,656.84	0.1617%	OTHER
ZIMBABWE	$ 469,560.66	0.0663%	OTHER
CHINA	$ 272,153.82	0.0384%	OTHER
NIGERIA	$ 26,621.90	0.0038%	OTHER
BANGLADESH	$ 25,315.97	0.0036%	OTHER
KENYA	$ 21,750.00	0.0031%	OTHER
THAILAND	$ 21,138.89	0.0030%	OTHER
JAPAN	$ 7,705.81	0.0011%	OTHER
ALGERIA	$ 7,250.00	0.0010%	OTHER
SENEGAL	$ 7,250.00	0.0010%	OTHER
INDIA	$ 6,499.10	0.0009%	OTHER
REST OF OTHER	**$ 5,919,139.57**	**0.8359%**	
	$ 708,087,685.47	**100.000%**	

(a)

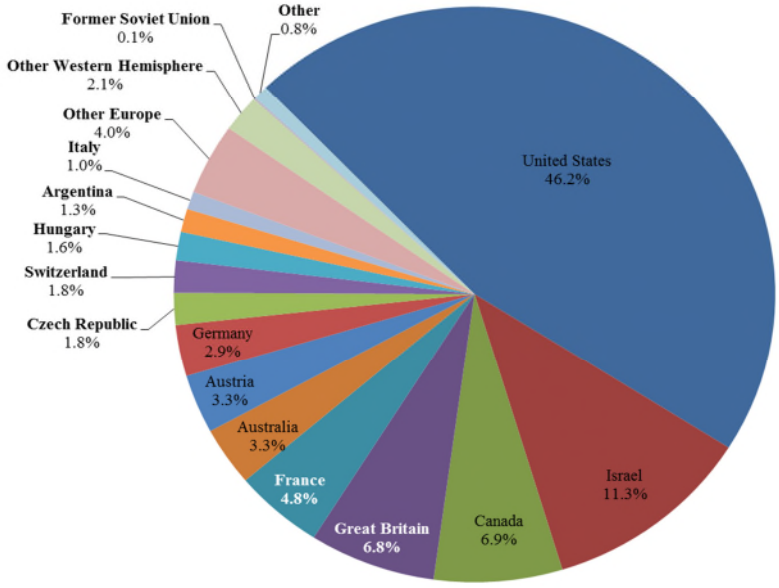
Footnotes:

(a) This chart does not reflect CRT-I awards of $18,184,493. Total authorized CRT-II and CRT-I awards were $726 million.

IN RE: HOLOCAUST VICTIM ASSETS LITIGATION (Edward R. Korman, US District Judge)
CRT II Award Demographics by US Recipients' States of Residence

U.S. STATE	TOTAL	PERCENTAGES PER STATE
New York	103,948,298.51	31.75%
California	48,228,771.41	14.73%
Florida	28,940,337.94	8.84%
New Jersey	23,240,855.10	7.10%
Massachusetts	17,361,729.38	5.30%
Pennsylvania	14,568,817.14	4.45%
Maryland	11,434,325.10	3.49%
Michigan	9,120,553.71	2.79%
Texas	8,336,286.47	2.55%
Illinois	7,342,588.19	2.24%
Connecticut	6,861,929.36	2.10%
North Carolina	5,983,249.38	1.83%
Arizona	5,267,231.82	1.61%
Virginia	4,900,143.25	1.50%
South Dakota	4,675,019.09	1.43%
Colorado	3,423,480.69	1.05%
SUBTOTALS	**303,633,616.54**	**92.75%**
Washington	2,594,326.06	0.79%
Ohio	2,519,200.07	0.77%
Hawaii	2,420,297.50	0.74%
Georgia	2,238,142.46	0.68%
Oregon	1,673,335.75	0.51%
Missouri	1,630,056.23	0.50%
Wisconsin	1,081,969.33	0.33%
Dist. Of Columbia	997,976.43	0.30%
Indiana	825,737.45	0.25%
Rhode Island	771,036.75	0.24%
Minnesota	767,260.46	0.23%
Alabama	698,961.39	0.21%
Idaho	680,605.02	0.21%
South Carolina	624,409.11	0.19%
New Hampshire	559,692.93	0.17%
Louisiana	556,727.63	0.17%
West Virginia	523,762.92	0.16%
Tennessee	464,325.11	0.14%
Vermont	458,894.66	0.14%
New Mexico	369,400.47	0.11%
Maine	345,407.12	0.11%
Nevada	219,324.88	0.07%
Iowa	182,817.84	0.06%
Kentucky	149,244.34	0.05%
Utah	137,865.79	0.04%
Mississippi	75,548.86	0.02%
Kansas	51,093.20	0.02%
Nebraska	43,794.17	0.01%
Oklahoma	31,197.54	0.01%
Arkansas	14,598.06	0.00%
Montana	14,598.06	0.00%
Virgin Islands	7,299.03	0.00%
Wyoming	7,299.03	0.00%
Alaska	-	0.00%
Delaware	-	0.00%
North Dakota	-	0.00%
SUBTOTALS	**23,736,205.65**	**7.25%**
TOTAL	**327,369,822.19**	**100.00%**

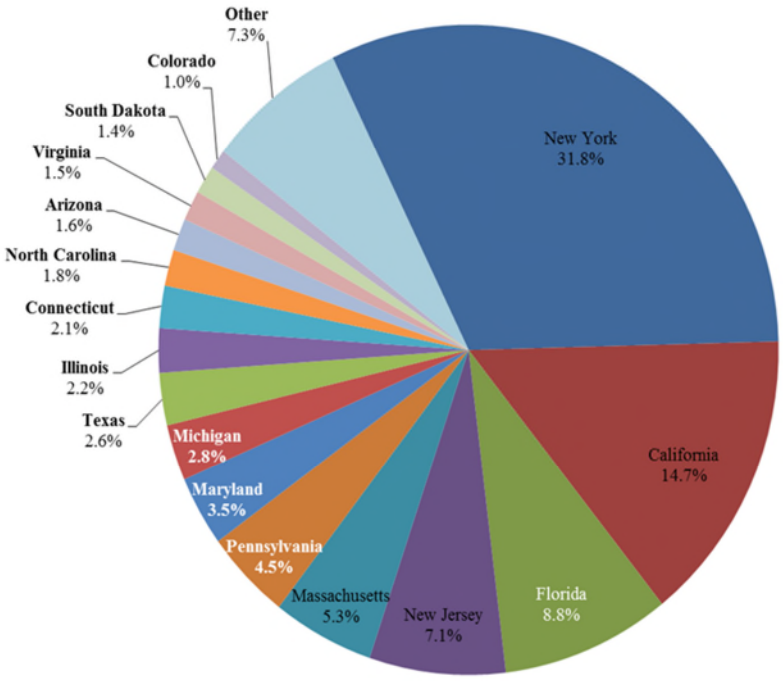
IN RE: HOLOCAUST VICTIM ASSETS LITIGATION
(Edward R. Korman, US District Judge)
Award Demographics of CRT II Awards by Recipients' Countries of Residence



UNITED STATES	$327,369,822.19	46.2%
ISRAEL	$80,247,838.11	11.3%
CANADA	$48,614,001.55	6.9%
GREAT BRITAIN	$48,146,330.78	6.8%
FRANCE	$33,688,529.94	4.8%
AUSTRALIA	$23,234,375.97	3.3%
AUSTRIA	$23,042,985.64	3.3%
GERMANY	$20,905,020.59	3.0%
CZECH REPUBLIC	$12,755,413.37	1.8%
SWITZERLAND	$12,429,697.74	1.8%
HUNGARY	$11,056,626.50	1.6%
ARGENTINA	$9,374,421.32	1.3%
ITALY	$7,460,329.30	1.1%
TOTAL	**$658,325,393.00**	**93.0%**
REST OF EUROPE	$28,156,795.78	4.0%
REST OF W. HEMISPHERE	$14,860,001.40	2.1%
SUBTOTAL FSU	$826,355.72	0.1%
REST OF OTHER	$5,919,139.57	0.8%
TOTAL	**$49,762,292.47**	**7.0%**
GRAND TOTAL	**$708,087,685.47 (a)**	**100.0%**

(a) This chart does not reflect CRT-I awards of $18,184,493. Total authorized CRT-II and CRT-I awards were $726 million.

IN RE: HOLOCAUST VICTIM ASSETS LITIGATION
(Edward R. Korman, US District Judge)
CRT II Award Demographics by US Recipients' States of Residence



New York	$103,948,298.51	31.8%
California	$48,228,771.41	14.7%
Florida	$28,940,337.94	8.8%
New Jersey	$23,240,855.10	7.1%
Massachusetts	$17,361,729.38	5.3%
Pennsylvania	$14,568,817.14	4.5%
Maryland	$11,434,325.10	3.5%
Michigan	$9,120,553.71	2.8%
Texas	$8,336,286.47	2.5%
Illinois	$7,342,588.19	2.2%
Connecticut	$6,861,929.36	2.1%
North Carolina	$5,983,249.38	1.8%
Arizona	$5,267,231.82	1.6%
Virginia	$4,900,143.25	1.5%
South Dakota	$4,675,019.09	1.4%
Colorado	$3,423,480.69	1.0%
TOTAL	**$303,633,616.54**	**92.7%**
Other States	$23,736,205.65	7.3%
GRAND TOTAL	**$327,369,822.19**	**100.0%**

With respect to the documented awards issued under the CRT-II process, 5,248 claimants received 2,950 awards, which addressed 4,716 Holocaust-era Swiss accounts. Many of the awards returned more than one account to a claimant, and many of the awards resolved multiple claims in a single decision (*i.e.*, a single award was issued to more than one claimant). The average value of each *account* authorized for payment was $116,602.[19] Because awards typically contained more than one account (on average, 1.6), the average value of each CRT *award* authorized was higher: $185,263.[20]

The average **age** of the claimants at the time their awards were issued was 72, providing stark evidence of just how long family members had to wait for their assets to be returned, and further indicating that the recipients were, by and large, closely related to the Holocaust victims who had owned the accounts.

With respect to the awarded accounts, the CRT categorized accounts as "outliers" and "non-outliers." Outliers represented a relatively small number of accounts (40) and were characterized as such, primarily because of their extremely high values, well above the averages for most other awarded accounts. The non-outlier accounts consisted of the remaining 4,676 accounts awarded for which documentation had been identified.

Of the awarded non-outlier accounts, the bank records and other documentation demonstrated that:

- 195 of these accounts had been transferred outright to Nazi authorities;
- 312 were transferred to a suspense account, a grouping of open and dormant accounts, and another 29 were transferred to a suspense account and subsequently closed;
- 137 were transferred to a fund or so-called special account designated by the bank in question;
- 62 were closed to bank fees;
- 116 were closed to the banks' profit and loss statements; and
- 251 remained open and dormant.

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[19] The average value of accounts *paid* was $115,889.

[20] The average value of awards *paid* was $184,130.

For the remaining 3,603 non-outlier accounts awarded, most had been closed, although the circumstances under which the closures occurred were not clear from the documentation. It was the actions of the banks, not the claimants (and certainly not the account owners), that caused the records of the banks to have been destroyed. Given the historical circumstances indicating that Holocaust victims were meticulously stripped of their assets, absent evidence to the contrary, it was presumed that accounts closed under unknown circumstances had not been returned to their rightful owners, and therefore should be awarded to the claimants. The Court authorized the application of a standard presumption under U.S. law, the adverse inference. The burden of proof essentially would be shifted away from the claimant, to compensate for the banks' massive destruction of records that otherwise might have proven the fate of the account and/or its value. The Settlement Fund in effect was now standing in the shoes of the bank defendants. The application of the adverse inference meant that as long there was documentary evidence that a claimant or relative had owned a Swiss bank account, the Settlement Fund would compensate a plausible claim, even where the records conclusively demonstrating what had happened to the account had been destroyed. There was enough known about what often happened to these bank accounts to warrant the presumption that the particular account owner — like so many Nazi victims — had not been able to retrieve her assets.

The total number of individual Holocaust victims for whom the CRT was able to locate account documentation and award their Swiss accounts (sometimes referred to as "Account Owners" or "AOs") was 3,696.[21] The majority of these 3,696 account owners — some 79% — suffered directly at the hands of the Nazis.

Over 23% (856) died in a concentration or slave labor camp, or a ghetto. Of those victims, the majority were killed in one of the following locations: Auschwitz (286); Thereisenstadt (131); Lodz (25); Dachau (22); Riga (16); Gurs (14); Mauthausen (14); Bergen Belsen (13); Buchenwald (13); or Treblinka (10). Another 3.5% survived slave labor or other incarceration in a camp or ghetto, and an additional 1.5% were imprisoned in a camp or ghetto and thereafter fled or went into hiding. Approximately 3.5% survived by hiding. Approximately

[21] The "3,696" number refers to the number of people who owned accounts that were awarded; this is in contrast to the "4,716" figure noted earlier, which refers to the number of accounts awarded. The latter number is higher, because one account owner could have held several accounts.

6% were otherwise killed by the Nazis. Approximately 1.4% committed suicide in a desperate effort to avoid being caught by the Nazis. About 5.4% died of natural causes during the War, and 1.2% died before the War (in which case their immediate heirs, who normally would have inherited the account, were themselves Nazi victims if living under control of the Third Reich, and so they too could not have accessed the accounts). Over 33% (1,206) were forced to flee. Of these individuals, approximately 32.5% fled to the United States; 13% to the United Kingdom; 11.1% to Palestine (Israel); and 10.4% initially to Switzerland, and generally thereafter to another nation. Nine percent (9%) of the account owners survived the Nazis in some other manner. The fate of approximately 7% is unknown.

With the exception of Slave Labor Class II, awards under the Settlement Agreement could be issued only on behalf of "Victims or Targets of Nazi Persecution;" *i.e.*, those who were or were believed to be Jewish, Roma, Jehovah's Witness, homosexual or disabled. Of the 3,696 account owners (or their heirs) who received awards, the vast majority — over 96% — were Jewish. Of the remainder, 1% were not Jewish, but had a Jewish spouse; an additional 1.4% held a joint account with a Jewish account owner; and 0.3% were believed to be Jewish. Thus, 3,662 of the 3,696 account owners (99%) were or were believed to be Jewish, or targeted for being Jewish. There were 13 account owners who were known or believed to be homosexual (4 of whom were also Jewish). Seven (7) account owners were Romani. Five (5) account owners were disabled (one of whom was also Jewish). Five (5) account owners were Jehovah's Witnesses. Four (4) account owners were presumed to fall within one of the five victim or target groups based upon information provided by claimants and other available documentation.

Of the 3,696 owners of accounts for whom the CRT located documentation, more than one-half (51%) had originally resided in Germany (29.4%) or Austria (21.6%) during 1933 to 1945 (defined as the "Relevant Period" under the Settlement Agreement). Another 6.5% lived in Romania; 6.2% in Czechoslovakia; 5.4% in Hungary; and 4.6% in Poland.

For the 3,696 account owners, the CRT was able to locate and recommend awards to 4,243 heirs. Over 30% of these awards were made to the children of the account owners, and another 2.4% to the child's surviving spouse. Approximately 20.5% of the awards were issued to the grandchildren of the account owners (and .5% to the grandchild's surviving spouse); and

approximately 2.4% to the account owner's great-grandchild. Approximately 16% of the awards were made to the niece or nephew of the account owner, and approximately 10% to the account owner's great-niece or great-nephew. Nearly 3.6% of the awards were made to the actual surviving account owner. Approximately 1.6% of the awards were issued to the account owner's spouse. Approximately 2.3% of the awards were made to the account owner's sibling(s).

II. THE BASIS FOR THE AWARDS: A UNITED STATES COURT ADDRESSES DECADES OF BANK MISCONDUCT IN EUROPE

Many decades after and thousands of miles away from the continent where the Holocaust took place, the United States judicial system determined that it was appropriate to hold business entities operating in the U.S. accountable for violating their duties to those whom had entrusted their assets for safekeeping. As Professor Michael Bazyler, who has written extensively on the "Holocaust restitution movement" of the late 1990s, has observed: "The Holocaust did not occur in the United States, but in Europe. Most Holocaust survivors reside outside of the United States. It is the United States legal system, however, that has taken the lead in delivering some measure of long-overdue justice to aging Holocaust survivors."[22]

A. The Behavior of the Swiss Banks Analyzed by the American Judicial System

Judge Korman, who oversaw these proceedings, reflected on the role of the American legal system in a 2006 "Law Day" speech before the New York Federal Bar Council.[23]

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[22] Michael J. Bazyler, *The Holocaust Restitution Movement in Comparative Perspective*, 20 BERKELEY J. INT'L L. 11, 12 (2002).

[23] *See* Edward R. Korman, Chief Judge, U.S. Dist. Ct., E.D.N.Y., Address Delivered on the Occasion of the Award of the Federal Bar Council's Learned Hand Medal for Excellence in Federal Jurisprudence (May 2, 2006), *in* SECOND CIR. REDBOOK 2006-2007, at 315 ("Korman, 2006 Federal Bar Council Address"). Judge Korman, who received the Learned Hand Medal at that ceremony, subsequently adapted this speech as the introduction to a book by Professor Leonard Orland analyzing in detail the Swiss Banks Settlement and distribution process. *See* Hon. Edward R. Korman, *Introduction* to LEONARD ORLAND, A FINAL ACCOUNTING: HOLOCAUST SURVIVORS AND SWISS BANKS xix (Carolina Academic Press 2010) (ORLAND, A FINAL ACCOUNTING). Judge Korman noted in this book that his "introduction derives from my remarks delivered on the occasion of the award of the Federal Bar Council's Learned Hand Medal for Excellence in Federal Jurisprudence, May 1, 2006." *Id.* at xix n.1.

> My involvement in [the Swiss Banks Holocaust] case has revealed to me sad truths about the discordance between law and morality, between law and justice, between law and liberty…. My experience with [that] case forced me to confront the use by the Nazis of the law and the courts to deprive Holocaust victims of their dignity, their property and indeed, their very lives. It also enlightened me about the role of the Swiss banks, sometimes acting pursuant to Swiss law and sometimes in violation of it, as their willing accomplices.[24]

Judge Korman noted that it became apparent, only after the case had settled, that the Swiss banking industry had engaged in two types of misconduct. The first type of misconduct was what drove the lawsuits and led to the settlement, and it related to accounts that had remained open, and had not been returned to their rightful owners. The second type of misconduct involved something else. It related to closed accounts, many of which had been closed out by Swiss banks in cooperation with Nazi authorities who had placed the account owners under duress. The victims were forced to turn over their Swiss bank accounts and other assets to the *Reich.*

> My initial understanding of the case was that the dispute centered on accounts that were opened in Swiss Banks before World War II and which became dormant during the war mainly because the owners of the assets of the accounts were murdered by the Nazis.
>
> After the war, Holocaust survivors and their heirs sought to claim the funds deposited in Switzerland. The Swiss banks imposed insurmountable barriers. They destroyed documents and stonewalled heirs of account holders. Swiss law provided both the incentive and the mechanism for this misconduct. Swiss law had no requirement for escheat which would have required banks to turn unclaimed accounts to the state. Without an escheat law, Swiss banks were permitted to keep any assets as long as the money remained in the dormant bank accounts. Swiss law required banks to maintain records for only ten years. Even though the banks knew the importance of maintaining those documents to assist in the processing of Holocaust-related claims, they relied on Swiss law to justify their wholesale document destruction policy. Using Swiss law, the banks also applied charges to these accounts, frequently depleting them to zero.
>
> So much we knew when the case settled. The case appeared to involve misconduct by Swiss Banks *after* World War II. What we did not have was a clear understanding of the misconduct of the Swiss Banks *prior to and during the War*.

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[24] Korman, 2006 Federal Bar Council Address, at 316-17.

> [O]ne Holocaust victim's case … highlights that behavior as it does the misuse of law by the Nazis and the Swiss to justify their illegal and immoral behavior… Some brief background is necessary.
>
> Of the $1.25 billion settlement of the case against the Swiss banks, $800 million was set aside to pay claims for deposited assets. To avoid a distribution process in which the amount set aside was simply divided among every person who filed a claim, we established a Claims Resolution Tribunal [CRT] which operate[d] out of Zurich, Switzerland. This Tribunal receive[d], researche[d] and meticulously processe[d] claims in a way that result[ed] in awards that bear some relationship to the amounts deposited.[25]

Judge Korman went on to discuss one example of the Swiss banks' wrongful behavior:

> [During the course of the claims process,] I approved a $22 million award that had been recommended by the [CRT]. The award went to the survivors of an Austrian Jewish family, who, along with others, owned most of the outstanding shares of the largest sugar refining company in Austria. I refer to it here as ÖZAG, the acronym of its Austrian name.[26]

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[25] *Id.* at 317 (emphasis in original).

[26] *Id.* at 317-18 (citing *In re Account of Österreichische Zuckerindustrie AG Syndicate)*. The same family later prevailed in its claim against the Austrian government seeking return of the celebrated painting, "Portrait of Adele Bloch-Bauer" by Gustav Klimt, a struggle highlighted in the 2015 film "*Woman in Gold.*" The movie tells the "incredible story of Maria Altmann, a Jewish refugee who is forced to flee Vienna during World War II. Decades later, determined to salvage some dignity from her past, Maria has taken on a mission to reclaim a painting the Nazis stole from her family: the famous [Woman] in Gold, a portrait of her beloved Aunt Adele. Partnering with an inexperienced but determined young lawyer [the attorney E. Randol Schoenberg, who also assisted Ms. Altmann and family members with their claims to Swiss bank accounts], Maria embarks on an epic journey for justice 60 years in the making." *See* http://trailers.apple.com/trailers/weinstein/womaningold/. *See also* Patricia Cohen, *The Story Behind 'Woman in Gold': Nazi Art Thieves and One Painting's Return*, N.Y. TIMES, Mar. 30, 2015. The portrait "is a dazzling, shimmering, gold-flecked masterpiece — 'the ideal emblem of opulence,' as one observer put it — eventually purchased in 2006 by Ronald Lauder for the Neue Galerie in New York for $135 million, said at the time to be the highest price ever paid for a work of art." MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990's 51 (Univ. of Wis. Press 2009).

As described in the CRT award [*In re Account of Österreichische Zuckerindustrie AG Syndicate*, or ÖZAG], shortly before Nazi Germany sent its troops into Austria and incorporated it as part of the German Reich, the members of the families that owned most of the shares of ÖZAG, which were publicly traded, entered into a Syndicate Agreement with a Swiss Bank. This agreement was designed to protect the family interest from forced transfer to a designee of the Nazis, a practice known as "Aryanization" that was already taking place in Germany.[27]

Under this Syndicate Agreement, the Jewish owners of more than 50 percent of ÖZAG's shares transferred them to the bank's name. They instructed the bank

Maria Altmann with Gustav Klimt's *Portrait of Adele Bloch-Bauer I.*
Photo courtesy of E. Randol Schoenberg.

[27] *Aryanization* has been described as follows: "As early as 1933, Jewish businessmen were being made to sell their companies. During the first few years, however, the firms were mostly left in peace by the authorities. The owners were free to decide to whom they would sell and the selling price was agreed between the two parties. Even if they were based at the time on the agreement of both parties, such take-overs cannot be termed 'fair deals' without closer investigation. The contracts were not drawn up on a legal basis and under free-market conditions. Instead, the situation was one in which the Jewish businessmen were under great pressure to sell. Furthermore, in view of the currency and tax restrictions it was difficult to use the income from the sale... From the middle of 1936 on, sales contracts had to be submitted to … regional economic advisors ... Towards the end of 1937, pressure on large firms in particular increased, and from 1938 on take-overs had to be approved by the authorities. At this stage it was possible to sell a firm only at a price well below its real value. Economic persecution turned a new corner after the annexation of Austria … in March 1938, when within a few weeks thousands of Austrian companies were 'Aryanised' or liquidated. This 'uncontrolled Aryanisation' was followed by state regulation and an organized 'Aryanisation' which manifested the state's economic interest. The authorities imposed an 'Aryanisation tax' … and tried to ensure as great a margin as possible between the amount paid to the vendor and the actual sale price, the difference being paid into the state coffers." FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR 322-23 (Pendo Verlag GmbH 2002) (*available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf) (also known as the Bergier Commission after its chair, and hereinafter cited as "BERGIER FINAL REPORT"). As more fully described below, the Bergier Commission was established by the Swiss Parliament on December 13, 1996 to examine the period prior to, during and immediately after the Second World War. One of its members, who was subsequently appointed as a CRT Special Master, was Dr. Helen B. Junz. The reference to "Final" Report is intended to distinguish the 2002 report from earlier interim studies that the Bergier Commission had released relating to refugees and gold transactions.

that the shares subject to the Syndicate Agreement could not be sold or transferred without the consent of the bank. Moreover, the Syndicate Agreement explicitly provided that the bank could not give its consent to such sales or transfers without the unanimous agreement of the beneficial owners. The clear objective was to set up a barrier to enforced sale or confiscation that depended almost entirely on the mutual expectation, embodied in their Syndicate Agreement with the bank, that the bank would not cooperate with, or give in to, the Nazis.

Within days of the *Anschluss*,[28] the worst fears of the Jewish ÖZAG shareholders were realized. Criminal tax proceedings against the company, supported by an audit report drafted by a self-proclaimed anti-Semite and Nazi party member, were commenced … by Nazi functionaries. The objective was to drive down the price of ÖZAG shares in order to enable a distress sale at a fraction of true value to a hand-picked Nazi "purchaser" with close ties to the Nazi party.

Sadly, the Bank did not live up to the expectations of the ÖZAG shareholders or to its fiduciary commitments. Instead, the Bank actively cooperated with the forced sale of their ÖZAG shares by transferring those shares held by the bank to the designated Nazi "purchaser" at a small fraction of their value. This was done without obtaining the unanimous consent of the Syndicate Agreement participants. By transferring a controlling interest in ÖZAG through this sale, the bank enabled the Nazis to acquire the remaining shares at a fraction of their true value.

While the $22 million award in the ÖZAG case was unique in its size, it is merely a striking example of the widespread betrayal of Jewish clients by Swiss banks. Having marketed themselves to the Jews of Europe as a safe haven for their property, Swiss banks repeatedly turned Jewish-owned property over to Nazis in order to curry favor with them. They did this either in violation of their contractual obligations or by honoring requests to transfer to the Nazis money and property entrusted to them with full knowledge that the written requests were coerced–both of which violated Swiss law.[29]

The explanation for their conduct was provided by Paul Rossy, the chief executive officer of the Swiss National Bank. Rossy told a forum of economic leaders in July, 1940 that

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[28] "*Anschluss*" is a "German word meaning connection or annexation that is used to refer to the takeover of Austria by Germany in March 1938…. On March 13, 1938 German troops marched into Austria, and declared the country a part of the German Reich. The *Anschluss* was supported by many Austrians, among them Austrian Nazis, who saw it as a political, social, and cultural reunification with their brother country, Germany. Thousands turned out to greet Adolf Hitler, the native son who was returning to his homeland." *ANSCHLUSS*, http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%205740.pdf (last visited Jan. 22, 2018)

[29] Korman, 2006 Federal Bar Council Address, at 317-18 (citing BERGIER FINAL REPORT at 276; Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 115, 119-20 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006) (citation in original)). The Nazis, who already had the factory itself, wanted to ensure that the forced transfer had the veneer of "legality" by ensuring that the company's shares were also transferred in accordance with "law."

> [t]he world, and naturally our country as well, is confronted with totally new conditions to which it must become accustomed… [O]ur country will have to consciously seek its place in this new world and endeavor to play an active role in it. In no case should we limit ourselves to passive adaptation alone.

> The ÖZAG award is also striking in that no record of the rise and fall of the ÖZAG Syndicate was found in the bank's records. Rather, the documents upon which this award and others are based were submitted by the claimant and/or obtained as a result of research by the staff of the [CRT] from archival sources. We will never know how many other examples of betrayal were buried in the records of the 2.7 million accounts the banks concede they have destroyed completely or how many would have been found in the remaining accounts for which only fragmentary records survive.

> The ÖZAG case is also significant, because it reflects the strategies used by Nazis to seize control of Jewish property, ranging from outright theft to sophisticated distress sales orchestrated by compliant tax officials and faithless banks, all disguised by the veneer of "law."[30]

Judge Korman suggested in his speech to members of the federal bar that he was highlighting the Nazi-era misuse of law, because of its stark contrast to the American legal system celebrated on "Law Day":

> Sadly, law, but not the spirit of liberty, was the hallmark of both the Swiss and the Nazis during the Holocaust Era. Fortunately, we live in a nation that sees law as the foundation of liberty, and liberty as the foundation of law. This is what sets us apart from the culture that gave birth to Nazi Germany and other tyrannies.[31]

It is this unique American system — law, liberty and morality — that enabled these claims, after so many decades, finally to be heard and to be compensated.

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[30] *Id.* at x318-19. *See also* William Glaberson, *For Betrayal by Swiss Banks and Nazis, $21 Million*, N.Y. TIMES, Apr. 14, 2005 ("In a way, to the living descendants of those two families and to a world where the number of surviving victims of the Nazis and their collaborators is dwindling, the huge award [in ÖZAG] is more than that. It provides a detailed trip back to a dark time, showing exactly how the banks' actions helped the Nazis, how lifetimes' achievements were lost in days, and how the process was masked in the language of ledgers, legalisms and banking"). The author of the article interviewed one of the claimants, Maria V. Altmann, who at the time was 89 and was still waiting for the resolution of her ultimately successful claims against Austria seeking return of the Klimt paintings. Mrs. Altmann "said in a telephone interview that [the Court's] decision [in the Swiss Banks case] sounded like a crime novel in its narrative of how the sugar company slipped from the family's control. 'I am shuddering,' she said. 'It is unbelievable for me to grasp that there were people doing such things, and especially a bank.'" *Id.* *See also* Alford, *The Claims Resolution Tribunal* at 585-587 (discussing ÖZAG award).

[31] Korman, 2006 Federal Bar Council Address, at 322.

B. Historical and Legal Bases of the Deposited Assets Class Claims

The Settlement Agreement created five classes of compensable claims: Deposited Assets, Slave Labor Class I, Slave Labor Class II, the Refugee Class, and the Looted Assets Class.

Under United States law, not all class action claims are to be treated equally. The United States Court of Appeals for the Second Circuit confirmed in this very case that "[a]ny allocation of a settlement of this magnitude and comprising such different types of claims must be based, at least in part, on the comparative strengths and weaknesses of the asserted legal claims."[32]

Judge Korman reaffirmed the strength of the Deposited Assets Class claims on numerous occasions over the duration of the claims process. He noted that the "heart of this case" and indeed "the only cause of action capable of surviving a motion to dismiss turned on the failure of Swiss banks to honor their contractual and fiduciary duties to their depositors."[33] In a later decision, he reiterated that "of all the claims asserted against the Swiss Banks, only the claims of the Deposited Assets Class have any legal merit. The other claims could not have withstood a motion to dismiss."[34] The issue was not whether the other claims (for injuries relating to slave labor, looting and refugee status) had moral validity, but rather that the deficiencies of those claims under United States law were a "reality check for those … who believe that strong moral claims are easily converted into successful legal causes of action."[35]

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[32] *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001) (citing *In re "Agent Orange" Prod. Litig.*, 818 F.2d 179, 183-84 (2d Cir. 1987) ("approving equitable distribution of settlement funds based on 'weigh[ing of] the relative deservedness' of the claims") and *Curtiss-Wright Corp. v. Helfand*, 687 F.2d 171, 174 (7th Cir. 1982) (holding that limited settlement fund requires allocation based on equitable principles such as the strength of competing claims)).

[33] *In re Holocaust Victim Assets Litig.*, 270 F. Supp. 2d 313, 321 (E.D.N.Y. 2002).

[34] *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 93 (E.D.N.Y. 2004).

[35] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 148-49. *See also* Michael Thad Allen, *The Limits of Lex Americana: The Holocaust Restitution Litigation as a Cul-de-Sac of International Human-Rights Law*, 17 WIDENER L. REV. 1, 42 (2011). The author observed that "Judge Korman made clear to the plaintiffs … that despite his approval of the $1.25 billion settlement, he found serious weaknesses in the plaintiffs' cases. 'Deposited assets claims rested on a solid legal claim beyond unjust enrichment. No one ever doubted that they [claimants] had a right to be repaid,' he later remarked, but '[t]he plaintiffs threw everything but the kitchen sink into [the category of restitution]. They often never stated a cause of action at all." *Id.* at 42 n.291 (citing "[t]elephone [i]nterview with Judge Edward Korman (Apr. 23, 2009)."). According to the author, "Judge Korman said he 'always thought that these [deposited assets claims] were the most meritorious.'" *Id.* at 42 n.292.

THE DEPOSITED ASSETS CLASS CLAIMS PROCESS

In devising the allocation and distribution recommendations, it was crucial to recognize that of all of the several categories of classes and claims, including for slave labor and refugee status, the Deposited Assets Class claims were unique. They were the claims with the greatest substantive merit under United States law; the focus of public pressure; and the very foundation of the lawsuits that had followed decades of unsuccessful efforts by Holocaust victims to recover their assets from Swiss banks.

The first attempts to retrieve bank accounts deposited in Switzerland by victims of the Holocaust began just after the War, and continued unsuccessfully over the years. Periodically, the Swiss banks would conduct internal "surveys" to find "dormant" Holocaust victim accounts. These surveys produced just a few hundred accounts.

As summarized by the Court in a decision detailing the many "[d]ecades of improper behavior by the Swiss banks," the banks' strategy of deflection began immediately after the War in response to queries by claimants. The banks "also employed this strategy in the face of broad-based efforts to uncover assets of Nazi victims,"[36] such as in the 1950s. Thus:

> "[T]he banks and their Association lobbied against legislation that would have required publication of the names of … so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the … controversy of the last 30 years."[37] Indeed, in order to thwart such legislation, the SBA [Swiss Bankers Association] encouraged Swiss banks to underreport the number of such accounts in a 1956 survey. "'A meager result from the survey,' "it said, "'will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor.'"[38] The banks adhered to the SBA's recommendation: "For instance, Swiss Bank Corporation (*Schweizerischer Bankverein, SBV*) indicated in 1956 that it could not state 'with certainty' that it had such accounts but there were 13 cases (with a total value of 82,000 francs) where this was probable."[39] Given what the Volcker Committee was able to find 40 years later, these estimates were clearly nothing more than a lie.[40]

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[36] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 303, 312 (E.D.N.Y. 2004). The decision is discussed in detail *infra*.

[37] *Id.* at 312 (quoting VOLCKER REPORT, ¶ 48).

[38] *Id.* (quoting VOLCKER REPORT, Annex 5, ¶ 37 (citing a letter from the SBA to its board members, dated June 7, 1956)).

[39] *Id.* (quoting BERGIER FINAL REPORT 451).

[40] *Id.*

Although there was renewed interest in the Holocaust accounts issue in the early 1960s, the results were similarly fruitless.

> When external pressure forced Switzerland in 1962 to adopt the Registration Decree, which was "meant to provide a genuine solution [to] the problem that had remained unresolved throughout the 1950s," the banks again put forth "concerted resistance." [BERGIER FINAL REPORT] at 451. This time the banks did not vigorously resist the law's passage; rather, they completely frustrated its implementation. Pursuant to the Registration Decree, banks were obliged to "report any assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since 9 May 1945 and who were known or presumed to have been victims of racial, religious or political persecution." *Id.* at 452. "A total of 46 banks reported 739 accounts containing a sum total of 6,194,000 francs." *Id.* at 453. They declined to report accounts of people who died after May 9, 1945 (even where one customer had died in the Dachau concentration camp on May 13, 1945), accounts held in the name of a trustee, and accounts where the account holder's name was arguably not Jewish. *Id.* at 454. "In short, a whole raft of measures was adopted with the aim of deliberately minimising the results of the investigation." *Id.* And again, this raft of measures was not adopted by isolated banks in isolated situations — it was a collective decision to deceive by the Swiss Banking Association that delayed justice in some cases for several decades, but in most cases indefinitely.[41]

Dr. Helen B. Junz is an economist who served as an expert for the Volcker Committee and the Bergier Commission, both of which investigated Holocaust-era assets in Switzerland (as discussed below). Judge Korman later appointed her as one of the Court's CRT Special Masters.[42] Dr. Junz has summarized the failed attempts to recover these accounts as follows:

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[41] *Id.* (quoting BERGIER FINAL REPORT).

[42] As Judge Korman said of Dr. Junz: "Prior to her [April 13, 2004] appointment [by the Court] Dr. Junz, who is an economist, had a distinguished career as a national and international public servant. She served in senior positions at the Board of Governors of the Federal Reserve System of the United States, at the Economic Council of the President in the White House; as Deputy Assistant Secretary at the Department of the Treasury and subsequently at the International Monetary Fund. Her involvement with the analysis of Holocaust era asset questions came in 1997 when Paul Volcker asked her to produce a study of the wealth of the Jewish population in Europe at the eve of the Nazi era to provide a touchstone against which he and the Independent Committee of Eminent Persons ('ICEP'), which he chaired, could assess the results of their audit of Swiss banks. The study was published as a book entitled, WHERE DID ALL THE MONEY GO? THE PRE-NAZI ERA WEALTH OF EUROPEAN JEWRY (Staempfli Publishers Ltd. 2002). Subsequently she guided the economic and financial research for the U.S. Presidential Advisory Commission on Holocaust Era Assets, served as a member of the Independent Commission of Experts Switzerland - Second World War (the Bergier Commission); advised the van Kemenade Commission (Dutch commission) on aspects of Jewish-owned wealth in the Netherlands; produced, in collaboration with her co-authors, a study for the Austrian Historical Commission and was a fellow at the Center for Advanced Holocaust Studies at the U.S. Holocaust Memorial Museum." *See* Memorandum & Order at 1-2, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 29, 2006).

> From 1945 through 1962, the Swiss banking community, mainly responding to outside pressure, made a number of efforts to identify what assets that had belonged to victims of Nazi persecution still remained on their books. In every case they came up with insignificant results, but each time they reported higher numbers than before. The most serious of these attempts, the 1962 survey, though yielding seven times the amount the banks had reported six years earlier, still came up with only a paltry SF 6.2 million. This survey, for the first time, also covered non-bank asset managers. They reported unclaimed assets of a further SF 3.6 million, *i.e.* more than half the banks' purported holdings. A partial return of these funds to heirs and other designated purposes appeared to end the matter, at least as far as the banks were concerned.
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> It was, therefore, not surprising that the Swiss banking community in 1995, when persistent publicity regarding the amounts of victims' assets in their possession forced a response, once again fell back on a self-assessment survey. This time they identified SF 37.8 million worth of assets belonging to foreign depositors who had not been heard from since May 9, 1945, and assumed this would put the matter to rest as the earlier surveys had done. But 1995 proved not to be business as usual.[43]

The year 1995 "proved not to be business as usual," because the inquiries from Holocaust victims and heirs did not go away. This time, they were receiving considerable media attention, resulting in mounting pressure on the banks. Journalist Peter Gumbel's analysis appeared on the front page of *The Wall Street Journal* on June 21, 1995.[44] Gumbel stated that "[f]or 50 years, since the end of the war, [Swiss] banks … have cast a dismissive blanket of silence over the question of what they did with accounts opened by Jews and others who were then persecuted, and often murdered, by the Nazis."[45]

Beginning in 1996, "Jewish organizations, led by the World Jewish Congress, succeeded in pressing Swiss banks and financial institutions to uncover dormant accounts and heirless assets of Holocaust victims."[46] Thus, a new investigation of Swiss accounts was undertaken

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[43] Helen B. Junz, *Confronting Holocaust History: The Bergier Commission's Research on Switzerland's Past*, 8 JERUSALEM CTR. FOR PUB. AFFAIRS 1 (2003), *available at* http://jcpa.org/article/confronting-holocaust-history-the-bergier-commissions-research-on-switzerlands-past.

[44] Peter Gumbel, *Heirs of Nazis' Victims Challenge Swiss Banks on Wartime Deposits*, WALL ST. J., June 21, 1995, at A1.

[45] *Id.* at A10.

[46] Regula Ludi, *Waging War on Wartime Memory: Recent Swiss Debates on the Legacies of the Holocaust and the Nazi Era*, 10 JEWISH SOC. STUD. 116, 120-21 (2004) ("Since the end of World War II, Jewish organizations and the State of Israel had tried several times to come to an agreement with the Swiss banks. All of their efforts, however, had been rebuffed by the Swiss Bankers Association, which fiercely defended the banking secrecy

following Switzerland's agreement to relax its bank secrecy rules, led by Paul Volcker, former Chairman of the United States Federal Reserve Board.

The commission was known as the Independent Committee of Eminent Persons ("ICEP") or the Volcker Committee.[47] It had two main objectives: to "identify accounts in Swiss banks of victims of Nazi persecution that have lain dormant since World War II or have otherwise not been made available to those victims or their heirs" and "to assess the treatment of the accounts of victims of Nazi persecution by Swiss banks."[48]

At the outset of the Volcker investigation, the Swiss banks pledged their cooperation and support. At a December 1996 hearing before the Committee on Banking and Financial Services of the United States House of Representatives, for example, Dr. Georg Krayer, Chairman of the SBA, stated that:

> First, the SBA, its members and the Swiss bank supervisors are committed to providing their full support and cooperation to the [ICEP] audit and abiding by its results…. Second, the auditors will have full access to all relevant information. Third, because of this access, the audit findings will represent the best attainable results and therefore must be accepted as conclusive by all responsible parties.[49]

Consistent with Dr. Krayer's statement, on January 22, 1997, the Swiss Federal Banking Commission (the "SFBC") declared the Volcker audits as "official special audits" under the Swiss Banking Act of 1934 and the Swiss Banking Ordinance of 1972.[50] This declaration empowered the SFBC to compel the banks' cooperation with the Volcker investigation, and

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that would have been put at risk in the event of a diligent investigation. At the same time, surviving relatives of Holocaust victims searched the banks for their properties. They often failed because of the requirements financial institutions imposed on them to prove their claims to the inheritance. More than once it happened that Jewish claimants were asked for death certificates of relatives murdered at Auschwitz. Moreover, for many years neither Jewish organizations nor individual claimants received any support from the Swiss government").

47 The SBA, World Jewish Restitution Organization, and World Jewish Congress entered into a Memorandum of Understanding on May 2, 1996 establishing ICEP.

48 *See* Distribution Plan, Vol. I, at 52-53 (citing VOLCKER REPORT ¶ 3).

49 December 1996 House Hearing at 69.

50 *See* Letter of Support from Dr. Kurt Hauri, Chairman, and Daniel Zuberbühler, Director, of the SFBC to Paul Volcker, Chairman of ICEP (Jan. 29, 1997) (attached to the VOLCKER REPORT as Appendix G, at A-29 to -30); *see also* VOLCKER REPORT ¶¶ 61-62.

ensured that the auditors would have "full and unfettered access" to relevant bank files, including customer files protected by bank secrecy legislation.[51]

On December 6, 1999, the Volcker Committee released its final report. Its research showed that some 6.8 million Swiss bank accounts were open or opened during the relevant period of 1933-1945. Of these, the banks had destroyed documents relating to approximately 2.7 million accounts. Despite this massive document destruction, records still remained for approximately 4.1 million Holocaust-era Swiss accounts. The auditors conducted research on approximately 353,000 of these 4.1 million accounts.[52] The Volcker Committee determined that of the 300,000 accounts investigated, a total of 53,886 had a "probable" or "possible" relationship to victims of Nazi persecution.[53] These 53,886 accounts were to constitute the Accounts History Database, or "AHD." The Volcker Committee further recommended that approximately 25,000 of these AHD accounts should be published. The Volcker Committee concluded that the value of the accounts in the AHD was approximately $643 million to $1.36 billion, including interest. The Volcker Committee recommended that all of the 4.1 million Holocaust-era accounts for which records continued to exist should be consolidated into a "Total Accounts Database" (TAD) for use in a claims process.[54]

Although the Swiss Bankers Association (SBA) had advised the United States Congress at a December 11, 1996 hearing that "the SBA, its members and the Swiss bank supervisors" were "committed to providing their full support and cooperation to the [Volcker] audit and

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[51] VOLCKER REPORT, Appendix G, at A-30.

[52] These accounts were selected for research because the names of the account owners matched to various victim databases, or because the circumstances of the accounts' opening and closing otherwise indicated that they might have been owned by Nazi victims. VOLCKER REPORT, at 7.

[53] Distribution Plan, at 57 (citing VOLCKER REPORT ¶ 30).

[54] Distribution Plan, at 58-59, 98-99 (citing VOLCKER REPORT ¶ 65-67). In February, 2000, Paul Volcker had testified before the House of Representatives concerning the importance of access to the TAD — the Total Accounts Database:

"It is important ... that the Swiss Federal Banking Commission, ... should promptly authorize consolidation of the existing, but scattered, audited work papers and databases relating to all of the 4.1 million accounts opened from the 1933 to [1945] period in Swiss banks, and to arrange to put all of those databases in a central archive so that they can be used conveniently in a claims resolution process." *Restitution on Holocaust Assets: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 106th Cong. 2d Sess. (Feb. 9, 2000) (statement of Paul A. Volcker, Chairman, ICEP).

abiding by its results,"[55] representatives of the Swiss banking system appeared to back away from that earlier statement once the Volcker Committee issued its findings. On the same date of the Volcker Report, December 6, 1999, the Swiss Federal Banking Commission ("SFBC") announced that it, alone, was solely responsible for decisions on publishing further lists of accounts. The SFBC added that it would conduct additional analysis before reaching a decision on the Volcker recommendations.[56]

Several months later, in March 2000, the SFBC announced that it had authorized the Swiss banks to "publish [26,000] accounts that are deemed by the Volcker Committee to have a probability of being related to victims of the Holocaust" and to create a central database containing 54,000 accounts which "the Volcker Committee considers to be probably or possibly related to Holocaust victims."

The SFBC's decision to authorize only approximately 26,000 accounts for publication was based upon the Volcker Committee's assessment that those were the accounts that "probably" related to Holocaust victims, while the remaining accounts not authorized for publication were "possibly" related to victims.[57] The number of accounts recommended for publication subsequently was reduced to 21,000, while the number of accounts recommended for inclusion in the "central database" (the AHD) was reduced from 54,000 to 36,000 accounts, a reduction later challenged on the basis of information disclosed during the claims process.[58]

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55 *The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 104th Cong. (Dec. 11, 1996) (statement of Dr. Georg Krayer, Chairman, Swiss Bankers Association).

56 Statement of the Swiss Federal Banking Commission, 6 December 1999 ("The ICEP recommendations in this final report are mainly directed to the SFBC, which is solely responsible for decisions on publishing further lists of accounts. The SFBC will analyze individual ICEP recommendations on archiving data, further publication of unclaimed assets, and handling of claims. It will decide on the ICEP recommendations in the first quarter of 2000 after consulting other parties concerned").

57 SFBC Press Release, 30 March 2000, 16.30.

58 The Court explained the reduction from 54,000 to 26,000 as follows: "…[T]he conservative estimate [of the Volcker auditors] was met with surprise and disfavor by the SBA [Swiss Bankers Association] and the Swiss Federal Banking Commission ('SFBC'). The SBA and SFBC thus turned to the same auditors the Volcker Committee had employed and asked them to further 'scrub' the accounts the auditors had identified. The banks came forward with additional information from bank records and asked the auditors to once again eliminate from the list accounts that were opened after 1945, accounts that had closing dates before the dates of occupation, accounts with any activity after 1945, and duplicate accounts from the list of probable and possible accounts." *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, 80 (E.D.N.Y. 2004). However, this

The SFBC declined to adopt the Volcker Committee's recommendation to create a Total Accounts Database ("TAD") for all of the 4.1 million accounts that existed in Swiss banks in the relevant 1933-1945 period.[59]

It was against this backdrop that the U.S. class action lawsuits were litigated.[60] When Judge Korman approved the Settlement Agreement on July 26, 2000, finding that it was the better alternative to litigation, he made it clear that his approval was not without reservation, given the relatively limited number of bank accounts that would be made available to the claims process and the access restrictions that had been placed upon them. Therefore, the Court intended to closely monitor the banks' compliance with their good faith duty to cooperate with the claims process:

> On March 30, 2000, after an inordinately long and unexplained delay of four months following the publication of the Volcker Report, the Swiss Federal Banking Commission ("SFBC") authorized publication of relevant information relating to approximately 26,000 [subsequently reduced to 21,000] of the accounts referred to in the Volcker Report that were identified as having a "probable" link to Holocaust victims. No authorization was given by the SFBC for the publication of information relating to the approximately 28,000 [reduced to 15,000] remaining accounts identified in the Volcker Report as 'possibly' related to Holocaust victims. Moreover, unlike earlier SFBC rulings concerning publication of information relevant to Holocaust-related accounts, the SFBC merely "authorized" publication of much of the relevant information, but did not mandate complete publication. Perhaps even more disturbing was the failure of the SFBC to mandate the creation of a central database of 4.1 million accounts that were opened in Switzerland between 1933-45. In sum, the SFBC, by its actions, has made it much more difficult to carry out the mandate of the Volcker Committee that "victims who have been long denied justice by circumstances beyond their control — often poor and now aged — deserve every reasonable assistance in establishing a claim."
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> [I have been advised] that the defendant banks, acting pursuant to the SFBC's authorization, have agreed to cooperate in assembling information concerning

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reduction was challenged in post-settlement litigation, after the CRT made it clear that the evidence it was reviewing during the claims process refuted many of the bases for eliminating accounts during scrubbing. For example, Holocaust victims made use of addresses in Switzerland and in other non-Axis countries to avoid Nazi scrutiny. Additionally, post-1945 activity could have been the result of inquiries by family members of victims, and thus it was appropriate to give the CRT access to such accounts.

[59] Distribution Plan, Vol. I, at 59.

[60] For a more detailed overview of the lawsuits and settlement negotiations, and the terms of the Settlement, s*ee* chapter entitled "Origins and History of the Settlement."

> their portion of the 26,000 [later 21,000] "probable" accounts referred to in the SFBC's March 30 order in order to permit expeditious publication of names and other identifying information associated with those accounts...
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> [The defendant banks also] have agreed to create a centralized electronic database relating to their share of the 54,000 [later reduced to 36,000] accounts referred to in the Volcker Report [and have agreed to certain other access provisions]...
>
> Nevertheless, the failure of the SFBC to mandate compliance with the recommendations of the Volcker Committee, coupled with the unwillingness of the private or cantonal banks that are non-party releasees to voluntarily cooperate in permitting publication of information relating to some or all of their accounts that may be included within the 54,000 [later 36,000] accounts referred to in the Volcker Report, have created substantial impediments to administration...
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> . . . .
>
> [M]y hope is that the Swiss Confederation, if not the SFBC, will take the steps necessary to compel the cantonal and private banks to comply with the Volcker Committee's recommendations to the same extent as the defendant banks have agreed to comply. Nevertheless, their failure to do so does not justify disapproving the settlement with the defendant banks. They have pledged "their good faith cooperation with the implementation of the settlement." This is a pledge that reflects their legal obligation. It is one to which I intend to hold them.[61]

In addition to the Volcker investigation that provided much of the backdrop to the Settlement Agreement (and the conditions the Court attached to its approval), a second major inquiry was under way at approximately the same time as the Volcker audit: that of the Bergier Commission.

The Bergier Commission was established by the Swiss Parliament on December 13, 1996 to "'examine the period prior to, during, and immediately after the Second World War.'"[62] On March 22, 2002, the Bergier Commission issued its final report as well as a number of detailed studies. The Bergier Commission concluded that Swiss banks had permitted account owners to transfer their accounts to Nazi entities, although the banks should have suspected that the owners were acting under duress. These were considered "forced transfers."

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[61] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 155-158 (citations omitted). The banks' good faith duty to cooperate with the claims process was the subject of subsequent litigation.

[62] Distribution Plan, Vol. I, at 64 (citation omitted).

In the words of Switzerland's historical experts:

> Although assets transferred to the Third Reich were left out of the inventory of unclaimed assets of Nazi victims in Swiss banks, they were nevertheless part of the restitution claims. Investigators filed some of these claims against Swiss banks while others were supposed to be filed in Germany under reparations legislation (*Wiedergutmachungsgesetzgebung).* However, they were always dependent on receiving information from the banks about the way accounts were surrendered. Some banks gave a factually correct but misleading answer, namely that there was no longer any contact between the bank and the person in question. Others in addition referred to the statutory duty to keep files for ten years and stated that they were unable to provide information on the assets being sought — although relevant documents are still available in the archives today. Although in some cases the banks did inform claimants that the assets had been paid out, they neglected to provide key details, *i.e.*, who gave the instruction and who received the payment. At the end of the 1960s, the Zurich head Office of Swiss Bank Corporation portrayed the attitude that prevailed among Swiss banks in a "highly confidential" letter, as follows:
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> > "In our experience, there was a very great risk that the requests for information at that time only seemed to be made in connection with German reparations procedures, but were actually to be used to hold us liable for any transfer performed back then. It was asserted time and again that transfer instructions received from Jewish customers at that time had been issued under duress and were therefore noncommittal for the customers or their legal successors."[63]

The Bergier Commission also condemned the banks' post-War failure to adequately survey dormant accounts or to make a serious attempt to locate heirs of unclaimed accounts.

Despite the Bergier Commission's criticism of the Swiss banks' treatment of Holocaust-era accounts, the defendant banks continued to object to elements of the distribution process, although under the terms of the Settlement Agreement they had no standing to do so. In response, the Court issued a forceful opinion summarizing the entire history of the Swiss banks'

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[63] BERGIER FINAL REPORT at 443-444. This banker thus was describing the concerns about "double liability" — that not only would Germany be liable for forced transfers, but so too would be the Swiss banks — that permeated much of the banks' communications with Holocaust victims and their heirs.

treatment of Holocaust-era accounts, and the obstacles that, for decades, had prevented the victims and heirs from finding and retrieving their accounts.[64] Thus, the Court explained:

> What compels me to write is that over the past year-and-a-half, the bank defendants have filed a series of frivolous and offensive objections to the distribution process .... These objections bring to mind the theory that, "if you tell a lie big enough and keep repeating it, people will eventually come to believe it." The "Big Lie" for the Swiss banks is that during the Nazi era and in its wake, the banks never engaged in substantial wrongdoing.[65]

Drawing upon the Bergier Commission's findings, Judge Korman described how the banks had cooperated with one another to avoid customer inquiries after the War. He summarized the banks' history of document destruction and their determination to advise customers that Swiss banks were not obligated to maintain documents for more than ten years, even when the documents at issue still existed, and even when the banks knew that Holocaust victims were asking for them.

> After the war, many surviving account holders or their heirs approached the banks seeking information about accounts, often with valid legal claims. The banks, which had improperly transferred the funds in the accounts to the Nazis, were afraid that they would be called to account for the breach of their fiduciary duties. *See, e.g., Albers v. Credit Suisse*, 188 Misc. 229, 234, 67 N.Y.S.2d 239, 244 (N.Y. City Ct. 1946) (holding Credit Suisse liable for transferring a client's assets to a German bank pursuant to the client's orders because "above all it knew that the plaintiff was not likely of his free will to transfer property of his located in Switzerland to a bank in German territory controlled by the German government"). Equally important, the problem was not disappearing. "Although assets transferred to the Third Reich were left out of the inventory of unclaimed assets of Nazi victims in Swiss banks, they were nevertheless part of the restitution claims" that had been filed against the banks. In sum, former account holders and their heirs were complaining, and access to records could have shown their claims to be legitimate.[66]

The banks "received a direct economic benefit from their silence," because in contrast to the law of the United States and other nations, during and after the Holocaust, dormant assets in

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[64] Judge Korman expanded further upon these themes in a later essay. *See* Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 115 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006).

[65] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 303.

[66] *Id*. at 308 (quoting BERGIER FINAL REPORT at 443).

Switzerland remained with the banks.[67] In response to questions from account owners or their heirs, the "Swiss banks stonewalled as a matter of course. Because claimants typically lacked information as to the exact location or nature of the items deposited, the banks could routinely 'entrench themselves behind banking secrecy' and cite the claimant's inability to sufficiently document a legal entitlement as a reason to deny payment."[68] If "claimants had precise information, the banks turned to still more deceitful tactics. 'A situation was reached where even death certificates were being demanded for people who had been killed in the [concentration] camps,'" when of course "no such documents were issued."[69]

The banks' "devotion to secrecy and their repeated acts of stonewalling were not based on principles — they were profit-driven…. As the Bergier Commission found, 'it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of banking secrecy and a clear preference for continuity in private law. Over the many years of such rejections, a large number of accounts were reduced to zero or almost.' Where economics counseled against upholding secrecy, private law and property rights, however, the banks were quick to abandon their supposedly entrenched values."[70]

There was a "particularly telling example of profits being placed over 'banking secrecy'" — the "secret post-war deals reached by the Swiss with Poland and Hungary to loot unclaimed accounts belonging to Holocaust Victims."[71]

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67 *Id.* (citing VOLCKER REPORT ¶ 45).

68 *Id.* at 309 (citing BERGIER FINAL REPORT at 449).

69 *Id.*

70 *Id.* at 313 (quoting BERGIER FINAL REPORT at 455). *See also* Thomas L. Friedman, *Cynical, Immoral, Neutral*, N.Y. TIMES, May 22, 1997, http://www.nytimes.com/1997/05/22/opinion/cynical-immoral-neutral.html ("There are three types of neutrality. One is principled neutrality - choosing not to help any side in any war anywhere. This was not the Swiss in World War II. Another is pragmatic neutrality. That is choosing to stay out of a war out of weakness (because getting involved would mean getting steamrolled) but also refusing to help any side. That was also not the Swiss in World War II. A third form is cynical neutrality. That is using neutrality to stay out of a war, but then covertly doing business with all sides, no matter how evil, to enrich yourself. That was the Swiss in World War II."); DAVID M. CROWE, THE HOLOCAUST: ROOTS, HISTORY AND AFTERMATH 355 (Westview Press 2008) ("An American intelligence report [prepared in 1944] concluded that Swiss 'aid to the enemy in the banking field was clearly beyond the obligations under which a neutral must continue to trade with a belligerent, aid solely dictated by the profit motive of the Swiss banks'").

71 319 F. Supp. 2d at 313. According to Swiss historians Peter Hug and Marc Perrenoud, Switzerland entered into compensation arrangements of a similar nature with several Central and Eastern European nations: Bulgaria (November 26, 1954); Yugoslavia (September 27, 1948, revised June 3, 1959); Poland (June 25, 1949, revised

"[T]he primary aim of [these deals] was to favour Swiss interests in the wake of nationalisation of assets in Poland and Hungary." Bergier [Final] Report, at 450. The Bergier Commission was conservative when it wrote that this was "the primary aim" of the deals. What actually happened was that money was taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized. And yet, "[t]he agreement[s] got no or very little publicity. It was therefore virtually impossible even for heirs living abroad to assert their claims." *Id.* at 451. Gerhard Weinberg, an eminent historian of the Nazi era, explained the deal with Poland as follows:

> [I]n 1949 the Swiss government signed a secret agreement with the Communist government of Poland under which the Swiss government with the agreement of the regime in Warsaw located the accounts in Swiss financial institutions of those Polish citizens who had been murdered and who either had no heirs or whose heirs had been stonewalled. The proceeds of this looting operation were then paid over to Swiss citizens who had claims on Poland arising out of the nationalization and/or confiscation of their property in Communist Poland.

Swiss Banks and Nazi Gold: Hearing before the House Comm. on Banking and Financial Servs., 105th Cong. (June 25, 1997) (statement of Gerhard L. Weinberg). The deal with Hungary was similar in operation. *See* Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, G-32 n. 94 … (citing Gerhard L. Weinberg, "German Wartime Plans and Policies Regarding Neutral Nations," statement before American Historical Association, January 10, 1998) …. While the "primary aim" of "favour[ing] Swiss interests" through these deals is clear, it is hard to imagine what secondary aim there could have been.

What is most striking about these secret agreements is that, as the Bergier Commission pointed out, "[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up." Bergier [Final] Report, at 450. Indeed, "[n]either private property rights nor banking secrecy had been a barrier to the release of these assets." *Id.* at 451. Dr. Weinberg explained:

June 26, 1964); Romania (August 3, 1951); Czechoslovakia (December 22, 1949, revised June 17, 1967); and Hungary (July 19, 1950, revised March 26, 1973). Peter Hug & Marc Perrenoud, *Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries* 34 (Oct. 1996), *reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 104th Cong. 2d Sess., 322, 353 (Dec. 11, 1996). *See also id.* at 410-14 (describing 1949 agreement between Switzerland and Poland whereby the assets of Polish citizens who had died supposedly without heirs were transferred to Poland. The proceeds were then used to compensate Swiss citizens who had claims against Poland for communist-initiated expropriations of Swiss assets) (cited in Distribution Plan, Vol. I, at 44 n.94).

> [A]ccounts which previously have been announced in diplomatic negotiations as either not existing or incapable of being located, and which have been withheld from the heirs either for those reasons or because the heirs cannot produce documents acceptable to the financial institutions, can suddenly be identified, their contents removed, and legal title to the assets transferred to Swiss citizens whose claims against Poland or Hungary might hinder future profitable Swiss trade with those countries.[72]

The banks refused to provide information to these customers or their heirs, while the same banks during the Holocaust era had cooperated with the Nazi regime, and later reached deals with Communist nations. Columnist and author Thomas Friedman of the *New York Times* observed of this arrangement: "In 1949, when the Swiss were still stiffing the Allies, they did allow the Polish Government to recover assets in Swiss banks of heirless Poles murdered by the Nazis. Why? So the Poles could use the cash to pay back the Swiss for money they lost when Poland nationalized a few Swiss companies during the war. Can you believe that?"[73]

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[72] 319 F. Supp. 2d at 313-314.

Several years after his 1997 testimony before Congress, Professor Weinberg reflected on the Bergier Commission's 2002 Final Report, including its findings concerning the Swiss deals with Poland and Hungary:

"Certainly those Germans fleeing to Switzerland at the end of the war to escape possible trial for war crimes found a far more friendly reception than any prior group of refugees. There is here an extraordinary similarity to the treatment of the accounts of Holocaust victims as described in the chapter on property rights in the postwar world. The same banks that pretended that the accounts could not be found, did not exist, or had nothing in them any more could easily find accounts when they wished to, so that the contents could be stolen and transferred to special accounts to pay Swiss citizens with claims against the postwar Communist governments of Poland and Hungary. The silly assertion that this operation was no big deal for the banks ignores the reality that it was indeed a big deal for the Holocaust survivors whose accounts had been stolen. The diligent researchers of the [Bergier C]ommission evidently did not find a single banker who refused to steal from his bank's clients." Gerhard L. Weinberg, Book Review, 38 CENT. EUR. HIST. 325, 326 (2005) (reviewing FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR (2002)). *See also* Gerhard L. Weinberg, *German Plans and Policies Regarding Neutral Nations in World War II with Special Reference to Switzerland*, 22 GER. STUD. REV. 99, 101-02 (1999) ("The official position of Switzerland [during] as well as in the negotiations after the war always was that looting is legal," and Switzerland applied that policy not only with respect to Nazi Germany, but "in their dealings with Communist governments as well." The secret post-War deals with Poland and Hungary "were motivated primarily by unadulterated greed unaffected by legal, moral, or any other considerations"); David Cesarani, *Jewish Victims of the Holocaust and Swiss Banks*, 11 DIMENSIONS 3, 6 (1997) (the Swiss agreements with Poland and Hungary "were shameless acts of despoliation: Assets which Swiss bankers claimed could not be detected for the benefit of Holocaust survivors were nevertheless located to satisfy the demands of communist countries, and to compensate Swiss citizens whose losses were minuscule compared to the scale of Jewish suffering"). The Court authorized a number of awards to heirs of accounts that had been turned over to Poland, Hungary and Romania.

[73] Thomas Friedman, *Cynical, Immoral, Neutral*, N.Y. TIMES, May 22, 1997, http://www.nytimes.com/1997/05/22/opinion/cynical-immoral-neutral.html.

This pattern of avoiding customer inquiries (at least when raised by Holocaust victims or heirs) continued for many years. At some point, the banks decided to act together to divert questions by Nazi victims:

> "In May 1954, the legal representatives of the big banks co-ordinated their response to heirs so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry. They agreed not to provide further information on transactions dating back more than ten years under any circumstances, and to refer to the statutory obligation to keep files for only ten years, even if their records would have allowed them to provide the information."[74]

Nor did the Swiss banks stonewall "only in response to individual claimants." Rather, they "also employed this strategy in the face of broad-based efforts to uncover assets of Nazi victims. [As the Volcker Committee concluded, the] 'banks and their Association lobbied against legislation that would have required publication of the names of such so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated … the controversy of the last 30 years.'"[75]

The refusal to provide information by stonewalling "was generally an effective way for the Swiss banks to insulate themselves from liability and benefit economically," as Judge Korman pointed out. "[S]till more successful" was the banks' "wholesale destruction of records."[76] While the "Swiss banks generally complied with Swiss law on record keeping," this was "precisely the ruse. The Swiss Code of Obligations requires only that banks keep correspondence and accounting records for a period of ten years, regardless of whether an account is open or closed. Volcker Report, Annex 7, ¶ 3. If the banks could stonewall for ten years, then they could 'legally' destroy the very documents which might answer claimants' questions. This is exactly what they did. Banks 'regularly and systematically' destroyed material that was ten years old. *See* Volcker Report, Annex 7, ¶ 11. In some banks, the document destruction was annual, in some it was semi-annual, and in some it was simply intermittent. But it happened across the board. And thus the banks destroyed countless records

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74 319 F. Supp. 2d at 311 (quoting BERGIER FINAL REPORT at 446).

75 *Id.* (quoting VOLCKER REPORT ¶ 48).

76 *Id.* at 314.

that might have been critical in explaining their Nazi era actions with respect to accounts once held by Nazi victims. The destruction was part of the banks' ordinary course of business, and it was massive…. [T]he banks made no effort to save relevant documents, despite the fact that they knew Nazi victims and their representatives were clamoring for them."[77]

Where account records did survive, if the accounts were large enough, the banks "would often 'manage the assets in the interest of customers about whom no further information was available.'"[78] The banks "use[d] these accounts to generate substantial commissions and fees, and records would persist. In the case of small dormant accounts, however, the banks devised ways to eliminate the accounts altogether, and then eliminate all record of them. For instance, the banks would continue to charge activity fees on dormant, non-interest bearing accounts, and when claimants would request that the bank perform a search for their account, the bank would charge high search fees." The banks also would "open[] safes and sell[] assets to pay for the cost of hiring the safe."[79] According to the Bergier Commission, as a result of the "'deduction of such fees, unclaimed accounts, deposits and safe-deposit boxes could also disappear in the space of a few decades'" and "the 'dormant account' itself became 'dormant.' In other words, not only did the banks not have any information on the customers concerned, but researchers were also no longer able to obtain documents on these accounts at the bank during the period in question."[80]

Judge Korman stressed that the failure of the Swiss banking system to assist Holocaust victims and heirs still continued to be a concern. He described the restrictions that had been imposed by Swiss banks and banking authorities upon the claims process, and explained that it had only been with reluctance that he had approved the settlement under these conditions, as limited access to records was better than no access at all:

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[77] *Id.* at 314-15. The Swiss Code of Obligations required only that banks keep correspondence and accounting records for a period of ten years, regardless of whether an account was open or closed. *See* VOLCKER REPORT, Annex 7, ¶ 3. It is important to note in this context that the banks were not *required* to destroy records after ten years, but were permitted to do so.

[78] 319 F. Supp. 2d at 315 (quoting BERGIER FINAL REPORT at 455, and citing an April 6, 2002 "monograph prepared for Special Master Bradfield" by Dr. Helen B. Junz ("Junz") at 5).

[79] *Id.* (citing Junz at 3).

[80] *Id.* (citing BERGIER FINAL REPORT at 447-448).

The 21,000 accounts identified as probably belonging to Nazi victims were published on the Internet on February 5, 2001 with the endorsement of the SFBC [Swiss Federal Banking Commission]. The rest were not. Instead, a single Accounts History Database ("AHD") was created containing all the information related to the 36,000 accounts deemed probably or possibly belonging to Nazi victims after the scrubbing process [a process resulting in fewer AHD accounts than had been described by the Volcker Committee in its December 1999 report]. For the remaining 4.1 million accounts, we have not one database, but many. The Volcker Committee's audit "by its nature" resulted in the creation of databases of the 4.1 million accounts found at various banks. These databases were never compiled into a single database — at present, there are over 50 databases containing the accounts. As the Volcker Committee recognized in its report, "these databases are scattered among individual Swiss banks and are not now freely available for examination…

The AHD and the TAD are administered through what has been termed the Data Librarian. The role of the Data Librarian (an accountant who is appointed by and reports to [the CRT Special Masters] and the SFBC) was created in an effort to make the information available to the CRT while "assuring compliance with Swiss laws on data privacy and confidentiality, and the rules on data confidentiality established by the SFBC in its decisions of March 30, 2000." CRT-II Rules, Appendix A. Essentially, if the CRT is able to match the name of a claimant to a name on an account in the AHD though computer searches, the Data Librarian will provide the CRT with whatever relevant information exists for the account. For accounts in the TAD, the CRT has more limited access. For example, with respect to accounts that bear a Swiss address and for small savings accounts (accounts excluded from name-matching by the Volcker Committee), the Data Librarian will only perform a name-matching analysis of accounts in the TAD after being provided with "credible evidence" that the specific account sought is likely to have belonged to a Nazi victim who used a Swiss address.

Before turning to the specifics of the current debate over the level of access, I address a particularly frivolous argument for the status quo that the banks have repeatedly put forth. The banks argue that the decision to provide the current level of access to the account records was not made by the banks or even by the Swiss government, but by the Volcker Committee...

I was personally apprised by the Volcker Committee of the negotiation process that led to its recommendations. The Volcker Committee, while independent, was constrained by the fact that it was seeking to make recommendations that would be followed. At the outset of its discussions with the Volcker Committee, the [SFBC] was only willing to agree to permit the publication of fewer than 5,000 accounts. The banks themselves also sought limited disclosure .... Had the banks and the SFBC remained in steadfast opposition, the successes of the Volcker Committee would have become meaningless; without access to accounts, justice could not be rendered. Thus, a compromise was brokered.... The fact that the Volcker Committee made this measured recommendation in the face of such

> pressure in order to get the banks and the SFBC to go along does not eliminate the banks' active role in limiting the CRT's subsequent access to accounts. Nor does the fact that, for pragmatic reasons, I approved the settlement even though it involved less than full publication.[81]

In a later writing, Judge Korman corrected a misimpression that had been expressed in some quarters: that the Swiss banks' behavior in connection with their Holocaust-era accounts was supposedly appropriate, and the $1.25 billion settlement was not justified. [82]

For example, an article in *Commentary* had contended that "'the offending behavior [by Swiss banks] was evidently limited to a relatively small number of banks and is not of recent vintage.'" The article further stated that the "Volcker Committee has revealed 'the suspect nature of a good number of the claims for compensation that have been streaming in ever since this issue was highlighted in the 1990's."[83] Judge Korman pointed out that "[e]ach of these statements is the result of a misreading of historical accounts or of a premature rush to judgment, and each serves to whitewash decades of improper behavior by Swiss banks." The Volcker Committee findings could not be read in the abstract, but needed to be viewed in connection with the later "final report of the Bergier Commission, which employed historians, researchers and economists to examine the role of Switzerland and its financial center during the Nazi era." The "Volcker Committee's findings should not be ignored — indeed, when read in context actually

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81 *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, 80-82 (E.D.N.Y. 2004).

82 Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 115, 127-29 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006) ("Korman, Rewriting the Holocaust History of the Swiss Banks"). Judge Korman was addressing the position taken in, *e.g.*, Gabriel Schoenfeld, *Holocaust Reparations-A Growing Scandal*, COMMENT., Sept. 2000, at 25.

Holocaust historian Raul Hilberg also questioned the $1.25 billion settlement. Professor Hilberg noted in an interview that he had been requested early in the process to offer his recommendations about allocation and distribution of the Settlement Fund. He did not do so. He explained his reasons as follows: "My objection to the whole idea of testifying to the court, was that the total sum, in my opinion, already at that point was too great. And the conditions under which that sum was achieved, was the sort of pressure, the sort of threat, that I cannot approve of. It was not a freely negotiated agreement, it was not an agreement about facts, it was a kind of surrender by the Swiss banks who faced boycott and all sorts of sanctions were they not to agree, therefore I declined to testify." "Professor Raul Hilberg on Slave Laborers and Swiss Banks": Interview by David Ridgen, Canadian Broadcasting Corporation, with Professor Raul Hilberg, in Burlington, Vt. (Apr. 22, 2002). However, the Volcker and Bergier investigations made clear that the Swiss banks had failed in their handling of accounts owned by Holocaust victims and heirs.

83 Korman, Rewriting the Holocaust History of the Swiss Banks, at 116 (quoting *Commentary* at 32, 33).

reveal a great deal more than [the *Commentary* piece] suggest[ed] — but more reliance should be placed on the historical conclusions of the Bergier Commission."[84]

The Bergier Report made clear that Swiss banking secrecy laws were central to the banks' misconduct. These laws were not enacted to protect Jewish assets, "as acknowledged by a member of the Swiss Federal Banking Commission." The banking secrecy laws were inextricably tied to Switzerland's lack of an escheat provision, which allowed the banks to "profit from their greed. Indeed, if the Swiss secrecy laws and the lack of an escheat provision opened the door to fiduciary violations, it was the greed of Swiss banks that drove them through."[85]

This "'Swiss banking secrecy' is not some holy grail that stands apart from financial motives." Rather, it "was a concerted policy decision to which the Swiss banks referred when it

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[84] Korman, Rewriting the Holocaust History of the Swiss Banks, at 116-17. That the Volcker Committee had itself made the case that the banks had acted inappropriately is evident from Professor Roger Alford's description of the "dozens of … questionable activities" highlighted in the Volcker Committee's (ICEP) Report. Roger P. Alford, *The Claims Resolution Tribunal and Holocaust Claims Against Swiss Banks*, 20 BERKELEY J. INT'L L. 250, 258 (2002). Professor Alford, who is also Associate Dean of Notre Dame Law School as well as a Deputy Assistant Attorney General in the U.S. Department of Justice, served as the Senior Legal Advisor for CRT-I (a bank-controlled claims process that operated prior to the Settlement Agreement). Professor Alford, who has written and taught extensively about the Holocaust restitution process, described some examples, drawn from the ICEP Report and from his own experiences at CRT-I, of the banks' "questionable activities":

"In some cases, bank documents establish that significant fees were charged for maintaining or closing accounts. While the Volcker [Committee] has estimated that normal bank fees for fifty years should total approximately 665 Swiss Francs, in *Case 2012* [under CRT-I], a bank charged 6,212 Swiss Francs in fees, leaving only 9.60 Swiss Francs in the account. In other cases, if the account was previously closed because of excessive bank fees, the banks informed inquiring claimants that there was no such open account at the time the claim was made, without revealing that an account had existed and was now closed because of bank fees." Alford at 258.

Further, Alford observed, "Swiss banks engaged in dozens of other questionable activities. Such activities included collecting fees and charges owed for the use of safe deposit boxes by opening the boxes and selling the jewelry and other valuables to cover prior unpaid and future rental charges. In some cases jewelry was sold to pay for 'unpaid' rental costs for a number of years into the future. In other instances, Swiss banks deliberately narrowed their scope of inquiry to protect the assets in an account. For example, if a victim's account was held in Basel and years later an heir sought information at the Zurich branch about the existence of the account, the bank would review the records, discover that the account was held in the Basel branch, and inform the heir that there was no account at this branch held by a person with that name. Occasionally, an account holder held two or more accounts with a bank, a current account and a securities account. The bank would reveal the existence of one of the accounts and pay this out to the account holder's heirs, but not reveal the existence of the other account. Dormant accounts were also often ripe for embezzlement because no account holder would notice erratic behavior in an account. In 1990, one account at large private bank contained a value of 65,850 Swiss Francs, but by the end of 1994 it held only 557 Swiss Francs. The account was reported in 1997 as still having a balance of only 557 Swiss Francs." *Id.* at 258-59.

[85] Korman, Rewriting the Holocaust History of the Swiss Banks, at 130-131.

benefitted them (attracting depositors in the 1930's and turning away claimants in the postwar period) and which the Swiss banks abandoned when it harmed them (in their deals with Poland and Hungary)."[86] Further, the problem not only was that the banks had made "'no systematic effort … to resolve a glaring scandal,'" but that they had "actively covered it up." The banks "time and time again violated their fiduciary duty to account holders and destroyed documentation to cover up their tracks. Whatever their motives and whatever their moral culpability, their actions gave rise to legal liability. This is the central premise of the class action litigation against the Swiss banks and it rests on a strong foundation." The claims had "nothing to do with the morality of Swiss behavior during the war." The claims were based squarely on solid legal footing: the banks' flagrant violation of their fiduciary and contractual duties to their account holders.[87]

* * *

This, then, was the background to the Deposited Assets Class, some of which was known at the outset of the distribution process, but much of which was not revealed until after the claims process began, when the Bergier Commission issued its findings. Still other aspects of the banks' treatment of its depositors did not become known until well into the analytical process of examining the more than 104,000 individual claims for over 415,000 possible account owners.

Even with the massive document destruction outlined by the Court, millions of Holocaust-era records did continue to exist. It was still possible to locate and return accounts to specific Holocaust victims and heirs. Further, the underlying causes of action were quite straightforward and did not require application of novel or untested legal theories. Plaintiffs merely were asserting claims for simple breach of contract and unjust enrichment.

The Special Masters' distribution recommendations in 2000 therefore placed greatest emphasis upon establishing an individualized review process for Deposited Assets Class claims, a recommendation that Judge Korman adopted and the Court of Appeals upheld in 2001, when it confirmed that it was appropriate to prioritize the Deposited Assets claims:

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86 *Id*., at 131.

87 *Id*., at 131-132.

> The existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting…. [T]hese claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation. By contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate.[88]

A number of scholars and other observers who have reflected upon the distribution process have concluded that an individualized program for bank account claims was the proper approach, even with the benefit of hindsight revealing that the process was long and complex.

For example, writing several years after the claims process had begun, Professor Katrina Wyman explored the settlement and distribution programs in depth from the perspectives of various philosophical theories of justice. With respect to the claims for four of the five classes, she indicated – as had the Court in numerous published decisions – that whatever their moral legitimacy, many of the claims (*e.g.*, for slave labor, looting and refugee status) were legally questionable.[89] The deposited assets claims, however, had strong factual and legal underpinnings, and the individualized claims process was intended to restore as nearly as possible what had been taken. Thus, as Professor Wyman observed:

> The payments come as close as is possible more than sixty years after World War II to remedying the wrongful withholding of the accounts, whether redress is understood as the restoration of equality or the repair of wrongful losses. The Swiss banks program has devoted considerable time and resources to calculating payments individually in respect of bank account claims. The program's objective has been to pay successful claimants the value of their – or their forebears' – accounts, adjusted for inflation. This objective has been met only imperfectly, due to the banks' destruction of records in the decades after the war and uneven cooperation from the banks in administering the claims process. But even the presumptions that have been employed to compensate for the disappearance of documentary evidence have been calculated, and are being scrutinized, with care. Overall, then, there is a strong basis for justifying as

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88 *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001) (reissued as published opinion July 1, 2005).

89 Katrina M. Wyman, *Is There A Moral Justification For Redressing Historical Injustices*, 61 VAND. L. REV. 127 (2008). Katrina Wyman is the Sarah Herring Sorin Professor of Law at New York University Law School.

> Aristotelian corrective justice at least the bank account payments to the heirs of individuals murdered in the Holocaust.[90]
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> * * *
>
> The banks' withholding of bank accounts after the war clearly constitutes a violation of a protected interest for which rectification is due. By withholding the accounts, the banks improperly converted the funds for the banks' own use….
>
> The payments for the bank account claims also come very close to Nozick's first-best conception of rectification. Under that conception, rectification involves transferring holdings to the persons who would have held them had there been no violation of the principles of justice in acquisition and/or transfer…. [T]he payment of bank accounts follows a highly individualized process in which claimants are matched to bank accounts. In turn, successful claimants receive payments based on estimates of the value of the accounts they are claiming, adjusted for inflation. In other words, the claims resolution process strives to the greatest extent possible to pay out what the banks withheld.[91]

Professor Leora Bilsky of Tel-Aviv University has observed that the individualized claims process for the Deposited Assets Class expanded the historical record:

> [T]he distribution stage contributed short personal histories to the historical "archive" through the elaborate individualized claims programs established for the claims related to bank accounts. The Special Master appointed by the court to oversee the distribution directed that a Claims Resolution Tribunal be set up in Zurich, under the direct supervision of the Brooklyn court, to adjudicate the more than 100,000 claims for bank accounts that followed the posting of 35,000 names on the internet.[92] The tribunal resolved more than 100,000 claims, memorializing every award in a written opinion, now publicly available on a website. Each award contains information provided by the claimant, including the name of the account owners, a personal story consisting of information regarding the owners followed by a brief explanation of family ties, and in some cases a description of the family's whereabouts during the war.[93]

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90 *Id.* at 187.

91 *Id.* at 191.

92 The number of names authorized for publication by Swiss banking authorities was somewhat lower than the number cited by Bilsky. Approximately 24,000 accounts in total were authorized for publication (in 2001 and then in 2005), of the 36,000 accounts made available to the claims process through the AHD as supplemented by additional accounts located by the CRT through independent research.

93 Leora Bilsky, *The Judge and the Historian: Transnational Holocaust Litigation as a New Model*, 24 HIST. & MEMORY 117, 130 (2012). Bilsky quoted Lead Settlement Counsel Professor Neuborne as remarking that the "'thousands of CRT opinions … constitute a priceless addition to the historical record.'" *Id.* (citing Burt Neuborne, A View from the United States — Potentials and Pitfalls of Aggregate Litigation: The Experience of the Holocaust Litigation 47 (unpublished manuscript)).

In a review of the lawsuit and settlement, financial journalist John Authers, who covered the case and co-authored a book on the 1990s Holocaust restitution process,[94] recapped the principles underlying the Deposited Assets Class claims process. Authers suggested that the decision to treat each such claim on its individual merits was the proper one:

> [W]hat exactly would "justice" for the Holocaust survivors mean? The WJC's [World Jewish Congress's] "moral and material restitution" formula seemed to suggest that "moral" and "material" were separate things. The banks were supposed to make a moral gesture, and then show they meant it by backing it up with cash. But many claimants took deep offence at this. They bridled at any notion of charity or moral gestures: this money was theirs, and had been for half a century. "This is not charity from the Swiss," protested an ag[]ing Estelle Sapir, who had months earlier been paid money by Credit Suisse. "My father deposited money there. It's my money."
>
> For them, the moral victory that many perceived was not at all clear-cut. And over the following decade, the "material" portion of the equation – getting the Swiss banks' money to its rightful owners – would also prove much easier said than done.[95]
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> . . . .
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> [H]ad the lawsuit ever come to court, the people with the strongest legal cases for recompense were those with claims on accounts…. [I]n 2000, Korman decided they should be allocated $800m[illion] of the settlement. Almost nobody who had been involved in the investigations, on either the Swiss or the Jewish sides, thought it would be possible to find claimants for anything like this amount of money. That aroused resentment among other claimants.

Professor Paul Dubinsky has pointed out that "[n]othwithstanding [the] communal aspects of the cases, at the remedy stage the balance tipped in favor of the individual rather than the group. The many thousands of individual claims that had been zipped up into a class action complaint were, at the remedy stage, unzipped into many thousands of individual claims again. There were no legal claims advanced on behalf of the large collective. The complaints did not seek damages on behalf of the 'Jewish People' or the 'Jewish community of Romania.' They could not. No credible legal theory could be mustered for why such a collective entity is a proper plaintiff in a U.S. court." Paul R. Dubinsky, *Justice for the Collective: The Limits of the Human Rights Class Action*, 102 MICH. L. REV. 1152, 1176 (2004). Other "restitution movements," such as that on behalf of descendants of African-American slaves or victims of South African apartheid, "sometimes seem to misunderstand or ignore this aspect of the Holocaust cases when they view them as precedent for group-oriented remedies. They are not. Relief for individuals is what triumphed. The losses suffered by the whole were not recognized." *Id.* at 1179-80.

94 JOHN AUTHERS & RICHARD WOLFFE, THE VICTIM'S FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST (Harper Collins Publishers 2002).

95 John Authers, *The Road to Restitution*, FIN. TIMES WEEKEND, Aug. 16/17, 2008, at 23, 24 ("*2008 Financial Times article*").

> And there was a further problem. For these people, "rough justice" was not an option. If it was possible to establish with some precision exactly what a bank owed to an individual, then the US legal appeals process would surely find that this should be done. That in turn meant that this money could not be paid out easily to charity cases, for fear that it would run out while people with strong legal claims against the banks still remained unpaid.[96]

The Deposited Assets Class distribution process, which as Authers noted rested upon the effort "to establish with some precision exactly what a bank owed to an individual,"[97] is described in the pages that follow.

III. ESTABLISHING THE PARAMETERS OF THE CLAIMS PROCESS

A. Determining the Amount to Allocate to the Deposited Assets Class

The Distribution Plan adopted by the Court allocated up to $800 million of the $1.25 billion settlement for the Deposited Assets Class. That amount was based largely upon the Volcker (ICEP) audit. As the Court has observed, the "Volcker Committee conducted what is likely the most extensive audit in history, employing five of the largest accounting firms in the world at a cost of hundreds of millions of dollars to defendants [*i.e.* Swiss banks]."[98]

To understand the distribution recommendation, some further background on the ICEP audit is needed.

1. The ICEP Audit and Report

The ICEP audit involved more than 250 Swiss banks and 4.1 million accounts audited by five audit firms employed by the Volcker Committee (the "ICEP Auditors"): Price Waterhouse, which became Price Waterhouse Coopers after merging with Coopers & Lybrand in 1998

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96 *Id.* at 26.

97 *Id.*

98 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 151.

("PWC"), Coopers & Lybrand, KPMG, Deloitte and Touche and Arthur Andersen ("AA").[99] These 4.1 million accounts formed the TAD, to which, unlike the AHD, the CRT did not generally have access. PWC and Arthur Andersen together reviewed accounts contained in more than 140 Swiss banks, including the former *Schweizerischer Bankverein*, also known as the Swiss Banking Corporation ("SBC"), and Credit Suisse Group ("CSG").[100] KPMG reviewed accounts contained in the *Schweizerische Bankgesellschaft*, also known as the Union Bank of Switzerland ("UBS").[101]

The ICEP audit focused on 1) whether an account was open in the period 1933-1945; 2) whether it "probably" or "possibly" belonged to a Victim or Target of Nazi Persecution; and 3) the account's disposition and, to a lesser account, its value. The ICEP auditors categorized these accounts, excluding from review those indicating permanent residence of an account owner in Switzerland, low-value savings accounts, properly closed accounts, and foreign accounts previously published by the Swiss in 1997.

ICEP ultimately identified an initial group of approximately 54,000 "probable" or "possible" Holocaust victim accounts, which the auditors categorized as follows:

Category 1: Matched to a name on a victim list;[102] account holder did not reside in Switzerland; evidence of persecution or account inactivity; and account was open, dormant, suspended, closed to profit, closed by fees, paid to the Nazis or closed unknown to whom.

Category 2: Did not match to a name on a victim list; account holder resided in the Axis or an Axis-occupied country; evidence of persecution or account inactivity; account was open, dormant, suspended, closed to profit, closed for fees or paid to Nazis.

Category 3: Matched to a name on a victim list; account holder resided in the Axis or an Axis-Occupied country; no evidence of persecution or account inactivity; account closed unknown to whom.

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99 ICEP Auditors investigated 254 Swiss banks that existed in 1945, which, at the time of the ICEP audit, had been incorporated into 59 banks.

100 PWC reviewed SBC records and AA reviewed UBS records.

101 *Schweizerische Bankgesellschaft* was renamed "UBS" in 1997 and in 1998 merged with the SBC to form the "new" UBS.

102 This referred to the matching of account owner names to names appearing on victims' lists, including then-available lists from Yad Vashem and other sources. VOLCKER REPORT, Annex 4, ¶¶ 7-12.

Category 4: Did not match to a name on a victim list; account holder was of unknown country of residence; evidence of persecution or account inactivity; the account was open, dormant, suspended, closed to profit, closed to fees, paid to Nazis or closed unknown by whom.[103]

All accounts contained in Categories 1-4 shared common characteristics, including that all accounts were open or opened during the Relevant Period 1933-1945; there was no evidence of post-War activity; and there was no evidence that the account was paid to the account owner or his or her heirs.

After categorization, the group of approximately 54,000 accounts was "scrubbed" to remove duplicate accounts, accounts opened after 1945 (although initially believed to have been opened during 1933-1945), accounts indicating activity after 1945, and accounts closed before the date of occupation of the account owner's country of residence. As a result, the pool of accounts decreased to just over 36,000, which were included in the AHD.[104] The 21,000 "probable" Holocaust victim accounts published in February 2001 included all Category 1 and Category 2 accounts, and certain accounts in Category 3 that were more likely to have belonged to Holocaust victims (so-called "Category 3A" accounts, which had "unique or almost unique matches indicat[ing] a significantly higher probability that the relationship of these accounts to victims [was] not simply a coincidence of common names but [were] genuine matches between account holders and victims of Nazi persecution").[105]

a. Review of Accounts by the Audit Firms

The audit firms were not presented with a complete account file for each account they identified during the ICEP audit. Rather, the various pieces of information and documentation needed to establish the history of a given account were contained in different archives, which required assembly by the audit firms into one single file based on financial statements. The audit firms used various sources of information to achieve this goal. Internal sources were found in

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[103] VOLCKER REPORT ¶¶ 32-34; Annex 4, ¶¶ 27-35.

[104] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 324.

[105] Distribution Plan, Vol. I at 95, citing VOLCKER REPORT ¶ 33.

the relevant Swiss bank's archives, and external sources were obtained from publicly available information, such as documents relating to various asset freezes during the Relevant Period.[106]

The audit firms initially were directed by the Volcker Committee to focus on general identification of account owners from Axis-controlled countries, to isolate the pool of accounts held by probable or possible Holocaust victims. The audit firms placed less focus on the specific details of those accounts. Accordingly, reports prepared by the audit firms pertaining to specific accounts (the "Audit Report") contained general account and account owner information, but often lacked specific information such as exact addresses, other names associated with the account, transaction dates and account values.

ICEP auditors and CRT lawyers reviewed data pertaining to six different types of accounts:

- *Custody Account*: Also known as a "depot" or securities account. The bank held the account owner's property, usually consisting of securities (*i.e.*, stocks or bonds). Custody accounts bore interest.
- *Demand Deposit Account*: Also known as a "current account." A cash account providing instant access to funds (similar to a checking account in the present day). Demand deposit accounts were held for liquidity, rather than for investment. These accounts collected minimal or no interest.
- *Passbook/Savings Account*: A savings account in which a passbook had to be presented upon withdrawal of assets. Savings accounts with values under 250 Swiss Francs or unknown values were excluded by ICEP. The terms "passbook account" and "savings account" were used interchangeably.
- *Safe Deposit Box Account*: Customers rented boxes for a fee, with two keys associated with the box, one for the customer and one for the bank. The bank could force the account open to obtain the fees.

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[106] Banks prepared documents as a result of various asset freezes, including the 1941 freeze of foreign assets held in the United States, in accordance with the Trading With the Enemy Act; the freeze of German assets in 1945; and the freeze of Romanian assets in 1948. Swiss banks also prepared reports pursuant to a Federal Decree of 1962, in which banks were directed to provide information about assets belonging to foreigners or stateless persons persecuted because of race, religion or political opinion. Evidence of Swiss accounts that were frozen in accordance with such "freezes" were considered by the ICEP auditors pursuant to the ICEP audit. However, in many cases, these accounts were not included among the approximately 36,000 accounts that were identified as probably or possibly belonging to Victims of Nazi Persecution, either because there was no evidence that these account owners were Victims of Nazi Persecution, or because the account owners were able to access the accounts and receive the proceeds. However, in other instances, the CRT determined as a result of the claims review process that some of the "frozen" accounts should have been published. Post-Settlement litigation focused on the need to include such accounts as part of a subsequent publication (*see infra*).

- *"Other" Account*: These were known as *Bürge*, *Festgeldkonto*, *Pfandbestellung* or *Depositenkonto* accounts.
- *Unknown Type of Account*: This category was used by the ICEP auditors if they were unable to definitively determine the type of account at issue. However, through the "voluntary assistance" process, the CRT often was able to discern the account type upon thorough analysis of the account records.[107]

b. Categories Established by the Individual Audit Firms

With respect to Price Waterhouse Coopers ("PWC"), that firm used various sources of information in the course of its investigation of the SBC. These sources included printouts of records available from the electronic databases prepared by SBC, the most common of which were:

- ELA: The result of a search previously undertaken by the bank in its archives in 1997, outside the scope of the ICEP audit. This database consisted of scanned images of bank documents.
- CLOSED 1 and CLOSED 2: Electronic files prepared by the bank that included foreign or domestic accounts closed during the Relevant Period and accounts where the account owner was presumed to have been Jewish. This database did not contain scanned bank documents.
- SUSPLIST: List of suspended or collective accounts identified by the bank.

PWC could not always verify the information contained in the electronic printouts by comparing that data with the documents used to establish the report itself. In such cases, PWC included a memorandum in the account file, which was later presented to the CRT for analysis in the claims review process. PWC indicated in those memos that the bank had not provided PWC with the relevant account records upon which the database report was based, and that the CRT should request those files from the bank.

The PWC Account Reports contained various information including the ICEP category to which the account at issue had been classified, as well as customer account information. Such customer information included:

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[107] "Voluntary assistance" provided by the banks resulted not only in reclassification of individual account types, but reconsideration of many individual account balances. This ultimately led to a reassessment of many of the overall presumptive values that had been assigned by the auditors.

- *Account Identification Number*: Each account received its own number, even if the same account owner held multiple accounts. This was not the same number as an account number assigned by the bank itself during the Relevant Period, but an internal "tracking" number for purposes of the claims process. Where PWC or the CRT determined that two different account IDs were the same account, the two account IDs were consolidated into a single account.
- *Account Type*: Accounts were classified either as a Custody Account, Demand Deposit Account, Savings/Passbook Account, Safe Deposit Box Account or Unknown Account Type.
- *Balance on Account* (in Swiss Francs): Although PWC reviewed account records for indication of value, CRT staff carefully reviewed the underlying bank documents to provide confirmation – or revision – of the value information indicated by the audit firms.
- *Account Status*: Accounts were open, suspended or closed. If there was no evidence that the account was still open or had been transferred to a suspense account due to inactivity, the account was presumed closed.

Arthur Andersen ("AA") performed the audit of the Credit Suisse Group ("CSG"), which was formed as a result of the *Schweizerische Kreditanstalt* ("SKA") acquiring 22 banks and a trust company. The major banks acquired by CSG were Bank Leu and the *Schweizerische Volksbank*. The majority of the accounts audited by AA that were published in February 2001 were held at the SKA.

Account reports prepared by AA generally contained the name of the account owner and his or her domicile, the ICEP category to which the account had been assigned, and a disposition report summarizing the audit findings regarding the account owner and account. The information reflected in the disposition report was taken from several sources, including internal CSG archives; external sources; and sources prepared by AA. Some disposition reports contained the image of a "bomb," indicating that an image of either a document or electronic information should have been displayed, but the underlying data file containing the image was corrupt. AA indicated that the file could be made available by CSG upon request, and the CRT did request the underlying bank documents in many instances. The basic bank record included in the majority of files prepared by AA was a customer account card from the SKA. The front of the card contained information about the account owner; the type of account or accounts held at the bank by the account owner; and whether the accounts had been closed. The back of the card contained additional information about the accounts, including closure dates.

2. Valuing the Deposited Assets Claims in Light of the Volcker Audit

In assessing the potential value of the Deposited Assets Class claims in the context of the $1.25 billion settlement, the Special Masters took into consideration the four different account categories that the Volcker Report had referenced. "Category 1" was comprised of 3,191 accounts. These were accounts "that remain open and dormant, were placed in suspense accounts, or closed after some period of dormancy, and matched exactly or almost exactly with names of known Holocaust victims or claimants."[108] Of the Category 1 accounts, 70% had known values.[109]

"Category 2" consisted of "7,280 accounts that do not meet the exact or near-exact name matching test, but nonetheless have other characteristics that suggest that there may be a probable or possible relationship between the account holders and victims of Nazi persecution — Relevant Period accounts of people who were resident in an Axis or Axis-occupied country during that Period, that were either inactive for at least 10 years after 1945 or, in some cases, identified by the bank as the account of a victim, or otherwise met certain criteria."[110] Of the Category 2 accounts, 80% had known values.[111]

After establishing 1945 values by "adding back bank fees and subtracting interest payments before the known valuation date," and adding the compound interest earnings to determine current values , *i.e.* multiplying 1945 values by 10, "corresponding to long-term Swiss interest rates over that period," the "total fair current value of Category 1 and 2 accounts so calculated would be SF 411 million using the mean value of known accounts values, or less if the median value (SF 271 million) is used."[112] As calculated in the Distribution Plan (September 11, 2000) at the then-prevailing exchange rate (U.S. $1.00 = SF 1.7754), the value of the Category 1

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[108] VOLCKER REPORT ¶ 32; *see also id.*, Annex 4 ("Identification of Accounts Probably or Possibly Related to Victims of Nazi Persecution").

[109] *Id.*, Annex 4, ¶ 38.

[110] *Id.* ¶ 38. (footnotes omitted).

[111] *Id.*, Annex 4, ¶ 38.

[112] *Id.*, Annex 4, ¶ 41.

and 2 accounts would have been approximately $231.5 million using the mean, and $152.6 million using the median.[113]

Significantly, however, the bulk of the AHD was concentrated not in "Categories 1 and 2," but in "Category 3." Category 3 consisted of "a much larger number of closed accounts — 30,692 — open in the Relevant Period by residents of Axis or Axis-occupied countries, matched exactly or almost exactly to names of victims," which "were closed (except for Germany) during or subsequent to the year of Axis occupation of the country of residence of the account holder or after the war. These characteristics are indicators of a probable or possible relationship of these accounts to victims." The Volcker Report noted that "these accounts have no direct evidence of an extended period of dormancy, or of unauthorized closure, important elements of the presumption that there was a relationship to a victim." However, the Volcker Report also pointed out that "14,716 of these accounts have unique name matches or have confirming factors," and a total of "15,980" had "unique or almost unique matches." These name matches therefore indicated "a significantly higher probability that the relationship of these accounts to victims is not simply a coincidence of common names but are genuine matches between account holders and victims of Nazi persecution."[114]

Weighing against these indications that the Category 3 accounts belonged to Nazi victims, however, was the relative lack of other data about these accounts, including their values. Thus, when the audit was conducted, it appeared that only 11 percent of the Category 3 accounts had known values. A "large portion of the funds" seemed to be "clustered in relatively few custody accounts." For these reasons, the Volcker Committee auditors concluded that "no reliable projection of current values properly due victims for Category 3 was feasible."[115] Nevertheless, some members of the Volcker Committee "point[ed] out that by a mechanical projection of the average values for Categories 1 and 2 over the larger number of Category 3 accounts, a present value ranging between SF 827 million and SF 1.9 billion could be calculated depending upon use of median or mean values. Given the significantly greater uncertainty attached to Category 3 accounts in light of their closed account character, that range of values for this Category would

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[113] Distribution Plan, Vol. I., at 96.

[114] VOLCKER REPORT ¶ 33 (footnote omitted).

[115] *Id.*, Annex 4, ¶ 42.

in all likelihood very substantially exceed awards to victims ultimately determined in a claims resolution process."[116] Based on the exchange rates prevailing as of the date the proposed Distribution Plan was filed, September 11, 2000, these Category 3 accounts were valued at between approximately $465.8 million and $1.07 billion.[117]

"Category 4," according to the Volcker Report, consisted of "12,723 nominally foreign accounts opened in the Relevant Period that could not be matched to victim names and lacked evidence of a residence by an account holder in an Axis or Axis-occupied country during the Relevant Period. Some 8,400 suspended, unknown and savings type accounts in this Category come from Swiss Volksbank (now a part of Credit Suisse Group) and Banque Cantonale Neuchâteloise. Although these banks had a predominantly domestic retail business during the Relevant Period, they also had many contacts with foreigners. All of the accounts in this Category were considered as having a sufficiently possible relationship to Holocaust victims to warrant their inclusion in Category 4."[118] In Category 4, 98% of the accounts had known values. The estimated value of all Category 4 accounts was SF 4.2 million,[119] or approximately $23.7 million as of the date of the Distribution Plan.[120]

Thus, including the estimate of the Category 3 account values proposed by some members of the Volcker Committee, and based on the exchange rates in effect in September 2000, the total value of all four categories of AHD accounts was between $642 million and $1.36 billion. Although the midpoint of that range was approximately $1 billion, the Distribution Plan conservatively recommended that a lower amount, up to $800 million, should be set aside for the Deposited Assets Class.

As the Court has observed, "[t]he significance of the report of the Volcker Committee, which included three members appointed by the Swiss Bankers Association, is that it provided legal and moral legitimacy to the claims asserted here on behalf of the members of the Deposited

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116 *Id.* ¶ 42 n.23.

117 Distribution Plan, Vol. I, at 97 n.309.

118 VOLCKER REPORT ¶ 34 (footnote omitted).

119 *Id.*, Annex 4, ¶ 38.

120 Distribution Plan, Vol. I, at 97.

Assets Class. The findings suggest that the value of deposited assets held by the Swiss banks could exceed the $1.25 billion settlement amount."[121] The Court further noted that "it is only the successful campaign that the Swiss banks waged to prevent disclosure before records were destroyed, Volcker Report ¶¶ 41(b), 48, that gave rise to the legal and practical impediments to the successful litigation of this case by the vast majority of individuals to whom money is justly due."[122]

In 2003, the CRT reexamined the AHD valuation data. Although the AHD by then had been reduced from 54,000 to 36,000 accounts, at the multiplier of 12 then used to bring the accounts up to present-day values,[123] and at the then-prevailing exchange rate of US $1 = SF 1.35, the CRT estimated the value of these 36,000 accounts to be approximately $1.63 billion. This amount was considerably higher than the $1.36 billion "high-end" estimate of the ICEP auditors, even though it was based upon an Account History Database that had been reduced after the audit by the "scrubbing" of some 18,000 accounts. The CRT's 2003 inquiry confirmed what the Volcker Committee and the Court had said: the value of the accounts in the AHD, alone, could be significantly higher than the Settlement Fund amount of $1.25 billion.[124]

Yet it was unlikely that all of the victims or heirs would be located, or that sufficient records existed to ensure that all victim accounts would be successfully claimed. Therefore, the Distribution Plan recommended capping the amount available to the Deposited Assets Class at

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[121] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 153 (citing VOLCKER REPORT, Annex 4, ¶¶ 41-42 and n.23). *See also id.* at 163 ("[A]s I have already noted, the Volcker Committee's estimates indicate that the total value of these accounts could exceed $1.25 billion. The only reason for settling the case for less was the practical problem created by the wholesale destruction of records and, to a degree, the passage of time") (citation omitted).

[122] *Id*. at 153-54.

[123] The economist Henry Kaufman chaired a "Panel on Interest, Fees and Other Charges" for the Volcker Committee. The panel prepared a report in 1998 that adopted a "multiplier" — a current value adjustment factor of ten — to be applied to any awards to be issued by the CRT (at that time, CRT-I), to bring 1945 values to current values. This factor was calculated by determining the compounded nominal value of a long term Swiss Federal Government bond ("CNV") over the period from 1939 to 1998. The precise value in 1998 was 10.18, which was rounded to ten. Under the oversight of Paul Volcker and ICEP's attorney Michael Bradfield, both of whom subsequently were appointed as CRT Special Masters, the "Kaufman Factor" multiplier was increased several times during the claims process to ensure an appropriate current value of the account.

[124] *See* Judah Gribetz & Shari C. Reig, Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds at 16 n.17, 34-35 (Oct. 2, 2003) ("Special Masters' Interim Report") (discussing CRT's 2003 analysis of AHD values). This estimate did not include the value of accounts that might have been contained in the 4.1 million account TAD.

$800 million. The remaining $425 million would be available for distribution to surviving members of the other classes: Slave Labor Class I, Slave Labor Class II, the Refugee Class and the Looted Assets Class, as well as for insurance claims and the Victim List Project.

Based upon the strength of the claims, and the fact that, despite the banks' massive document destruction, records did still exist for many accounts, the Distribution Plan recommended that the Deposited Assets Class claims should be assessed individually, by reviewing the existing bank records as well as claim forms, archival records, and a wide variety of other sources. Every effort would be made to determine and return to claimants the actual value of their deposits (multiplied by interest).

If the actual account value was unavailable, then the auditors' estimates of average account values for similar types of accounts would be used. To fill the gap posed by incomplete bank records — which may have documented the existence of an account, but in many instances contained no information about the account's value — the Court authorized awards to be made at designated "average" amounts based on the type of account. These average amounts ("presumptive values") were assigned by the Volcker Committee auditors after the Distribution Plan had been approved on November 22, 2000 and the claims process was under way. The presumptive values were included in the proposed CRT Rules recommended to the Court on February 1, 2001 by CRT Special Masters Paul Volcker and Michael Bradfield,[125] and adopted by the Court on February 5, 2001.[126]

The presumptive values were based on the best data available as of early 2001, and they varied depending on the type of the account: savings; demand deposit; custody; safe deposit box; account of unknown type; and "other" account type (*i.e.*, an account not falling into the above categories). The presumptive value for a savings account was calculated at a 1945 value of SF

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[125] By Order of December 8, 2000, Judge Korman appointed Paul Volcker and Michael Bradfield, former Chairman and Counsel, respectively, of ICEP, as CRT Special Masters. In April 2004, upon notification by CRT Special Master Paul Volcker of his commitment to lead the investigation of the United Nations' oil-for-food program, Special Master Bradfield assumed responsibility for the CRT appeals process, while Dr. Helen Junz was appointed to serve as CRT Special Master.

[126] The CRT Rules were divided into three separate sections concerning the procedures for the publication of accounts; the manner in which the information sources available for the analysis of a claim would be used; and the rules of procedure to be applied by the CRT. *See* CRT, *Rules Governing the Claims Resolution Process (As Amended)* ("CRT Rules"), *available at* http://www.crt-ii.org/_pdf/governing_rules_en.pdf.

830; for a demand deposit account, SF 2,140; for a custody account, SF 13,000; for a safe deposit box, SF 1,240; for an account of unknown type, SF 3,950; and for other accounts, SF 2,200. A multiplier was utilized to bring these amounts to current values.[127]

The question that remained, however, was how to minimize the administrative burdens and compensate for the lack of records, while still ensuring that only plausible bank account claims were paid. The resolution of that issue is addressed below.

IV. ESTABLISHING A CLAIMS ADMINISTRATION PROCESS

A. CRT-I versus CRT-II

With the amount available for distribution established (up to $800 million of the $1.25 billion settlement), the next objective was to arrange a claims process. The obvious agency was the CRT, which already was operating in Zurich. The CRT initially was established in 1997 to arbitrate claims to 5,570 dormant accounts in Swiss banks that were published by the SFBC in June 1997 and October 1997, prior to the completion of the ICEP audit.[128] That process was known as "CRT-I."[129] The adjudication of those pre-settlement claims took the form of arbitral proceedings. The claimants and the individual banks where the dormant accounts were located were the parties to the proceeding, and awards issued by CRT-I were mainly paid by the banks. Many of the 5,570 published accounts turned out to have been owned by individuals who were not victims of the Holocaust. These payments were the banks' responsibility alone. By agreement of the parties, payments made under this process for accounts owned by victims ($18 million) were deducted from the $1.25 billion settlement.

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[127] *See* CRT Rules, Article 31 and *infra*.

[128] On June 25, 1997, Kurt Hauri, Chairman of the SBA, and Paul Volcker, Chairman of ICEP, announced an agreement among the Swiss Bankers Association, Swiss Federal Banking Commission and ICEP to establish a Claims Resolution Process for dormant accounts in Swiss banks dating from prior to the end of the Second World War. A circular letter issued by the Swiss Federal Banking Commission to Swiss banks required the banks to report the accounts of residents and non-residents of Switzerland that had been dormant since 1945, with publication of the names and other information on the accounts set for July 23, 1997 and October 20, 1997.

[129] Going forward, all references to the "CRT" in this report, unless otherwise noted, refer to the CRT-II (Court-supervised) process.

CRT-I proceedings were conducted by an international staff, including a panel of arbitrators from Switzerland, the U.S., Israel and elsewhere. Because of CRT-I's expertise in evaluating Holocaust-era deposited assets claims, the Court requested that it continue its work on behalf of the Settlement Fund. That process — "CRT-II" — is the subject of the remainder of this report. The CRT-II process diverged significantly from that under CRT-I, primarily because the CRT now would become an administrative body. Operating under the authority of a U.S. court, CRT-II was intended to review claims and assist claimants to the greatest extent possible, rather than to serve as an adjudicative body deciding between essentially adverse parties (the banks and Holocaust victims and their heirs).

Ultimately, CRT-I adjudicated over 9,000 claims to the accounts published in 1997. The work of CRT-I involving these accounts was completed in the spring of 2001. Because the CRT-I process was essentially winding down at the same time that CRT-II's work was beginning, there was some confusion about the differences between the two programs. Thus, when CRT-I reported its results — that approximately $10 million had been distributed up to that point, mostly for accounts that had not belonged to victims of the Holocaust — some seized on this amount to contend that the issue of Holocaust accounts was a "myth."[130]

This claim evidenced a misunderstanding of the CRT's work. The two processes (CRT-I and CRT-II) were distinct. The CRT-II process involved different claimants (more than 104,000 as opposed to 10,000); more accounts (36,138 in the original post-scrubbing AHD, supplemented by additional accounts located by CRT-II, plus the theoretical (if in reality essentially inaccessible) availability of the 4.1 million TAD accounts — versus 5,570 accounts in CRT-I); and different administrative and substantive rules.[131]

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[130] Adam Sage & Roger Boyes, *Swiss Holocaust cash revealed to be myth*, TIMES OF LONDON, Oct. 13, 2001. *See also* Elizabeth Olson, *Swiss Banks Find $10 Million From Holocaust*, N.Y. TIMES, Oct. 12, 2001 ("A search of Swiss bank accounts dormant since World War II recovered $10 million that has been awarded to families of Holocaust victims, an international tribunal announced today"); Hanspeter Born, *Letter from Zurich: Awarding the millions, eyes closed*, WELTWOCHE, May 23, 2002 (referring to the "Myth of the Swiss Holocaust funds" and stating that "[f]rom the 65 million Swiss Francs awarded 16 million concerned accounts of victims. In view of the huge amount of money, which, according to press reports, were said to be hidden in dormant accounts, and in view of the approximately one billion Swiss Francs, which were swallowed by the Volcker [Committee] and its auditors, the 16 million awarded to the victims looked quite modest").

[131] For CRT-II, the Court eliminated the various distinctions between types of judges and, ultimately, eliminated the role of "CRT judge" in its entirety. CRT staff attorneys (rather than Senior Claims Judges and Resident

THE DEPOSITED ASSETS CLASS CLAIMS PROCESS

As described by Professor Roger Alford, who served as Senior Legal Adviser for CRT-I, the "procedure established for resolution of claims to accounts published in 1997" was an "exceptional, even unique procedure in international arbitration."[132] CRT-I was a "mass arbitration tribunal" that resolved claims in "'a judicial case-by-case manner rather than through an administrative procedure using predetermined criteria,'" and "[a]s originally established, its jurisdiction was over accounts opened by non-Swiss nationals or residents that had been dormant since May 9, 1945, which were subsequently made public by the Swiss Bankers Association in 1997."[133] Professor Alford observed:

> The Tribunal [CRT-I] received almost 10,000 claims to the 5,570 accounts published in 1997. The Tribunal had three distinct procedures for resolving these original claims. The "initial screening" procedure was a process designed to protect the banks' obligation of confidentiality to account holders. This process established whether a claimant had submitted any information on his or her entitlement to the assets in the dormant account or whether it was otherwise apparent that he or she was not entitled to the account...
>
> If the bank or the Tribunal determined that the claimant should receive the information contained in the bank documents, the claims were subsequently submitted for consideration under either a "fast track procedure" or an "ordinary procedure." The "fast track" procedure was applied when a bank believed that the claimants were entitled to the assets in the account and requested the Tribunal to render an award or confirm a settlement agreement reached between the banks and the claimants. Subject to confirmation that the request conformed with the claims resolution process, the Tribunal generally granted such requests. Of particular concern to the Tribunal was a finding that there were no other possible heirs that could be adversely affected by an award to a claimant and that there was no information before the Tribunal that might render its plausibility suspect.
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> . . . .

Claims Judges) were given responsibility for drafting decisions, which were reviewed by the Court-appointed Special Masters and then submitted to the Court for approval. CRT staff attorneys were hired based upon academic and personal credentials, as well as on their commitment to the objectives of the claims process. CRT staff attorneys represented the front line of claim and bank analysis and review. Accordingly, it was appropriate to delegate the decision-drafting process to CRT staff attorneys in the interests of efficiency. *See, e.g.*, Letter from Special Master Bradfield to Judge Korman concerning changes in staffing and amendment of CRT rules to permit "Staff Attorneys" to "certify draft claims decisions" for "approval by the Court" (June 11, 2002).

[132] Roger P. Alford, *The Claims Resolution Tribunal and Holocaust Claims Against Swiss Banks*, 20 BERKELEY J. INT'L L. 251, 260 (2002) (citation omitted).

[133] Alford at 260. *See also* Alford, *The Claims Resolution Tribunal* (2012), at 576-577 ("under the CRT I procedures, the tribunal acted independently of the federal court, resolving claims to accounts published by the Swiss Bankers Association in 1997 under the originally established procedure").

> All claims not resolved by the fast track procedure were resolved by the ordinary procedure. This process involved a full review of the claims and all available evidence in an expedited procedure. Recognizing the difficulty of establishing a claim given the destruction of documents and the passage of time, the burden of proof required [was] that it [was] "plausible in light of all the circumstances" that the claimant [was] entitled [to] the claimed account. Because these claims presented the most difficult and interesting legal issues, they were resolved by a panel of three arbitrators under procedures not unlike traditional international arbitration.
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> *Most awards [were] rendered for claims to accounts held by persons who were not identified as victims or targets of Nazi persecution.* According to a Final Report of the Claims Resolution Tribunal published on September 30, 2001, the Tribunal had rendered 49 million Swiss Francs in awards to claimants to "non-Victim" accounts, while only 16 million Swiss Francs had been awarded to claimants of Victim accounts.[134]

Reports discussing the results of the CRT's work failed to note the difference between CRT-I, which was ending, and CRT-II, which had just begun. This narrative thus missed the basic fact that CRT-I was created to analyze entirely different accounts, was open to different claimants, had different operating procedures, was managed largely by different staff, and was an arbitral process. Thus, inaccurate headlines appeared, such as one that stated, "Swiss Holocaust cash revealed to be a myth," and claiming that "[m]ost dormant Swiss bank accounts thought to have belonged to Holocaust survivors were opened by wealthy, non-Jewish people who then forgot about their money... A 17-member tribunal based in Zurich was set up in 1997 to investigate the identities of 5,500 foreign accounts and 10,000 Swiss accounts that have lain dormant since the end of the Second World War." Of approximately "10,000 claims... [o]nly 200 accounts — containing £6.9 million - could be traced to Holocaust victims."[135] This

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134 Alford at 261-264 (emphasis added).

135 Adam Sage & Roger Boyes, *Swiss Holocaust cash revealed to be myth*, TIMES OF LONDON, Oct. 13, 2001. These accounts, apparently relying in part upon a press release signed by Prof. Dr. Hans Michael Riemer, a Swiss professor and legal expert who consulted on CRT-I, did not reference that portion of the press release referring to the CRT's "new task" of "assisting U.S. Judge Korman and his Special Masters…in distributing a portion of the Global Settlement Fund established as a result of the class action litigation between the class action Plaintiffs and the major Swiss banks." Dr. Riemer's reference to the new list of "approximately 21,000 dormant and closed accounts of account owners," published on February 5, 2001, also was overlooked. The press release itself failed to mention the additional 15,000 accounts that were also part of the original 36,000-account AHD, but which Swiss banking authorities did not authorize for publication.

assertion was inaccurate in light of the over 104,000 claims for more than 415,000 possible account owners that the Court received, and the nearly $720 million returned to over 5,248 individuals for 4,716 accounts.

Notwithstanding the misunderstanding about the nature of CRT-I, the organization was the obvious choice for assisting the Court in the next phase of claims review. The Zurich-based staff that comprised CRT-I already had experience in reviewing Swiss bank account records, and many staff members had worked with Holocaust survivors. However, Swiss law generally prohibited entities on Swiss territory from acting on behalf of a foreign state, and therefore special permission was needed before CRT-II could assume claims processing duties on the Court's behalf. The CRT had to make this request, since that was the only way to obtain access to bank files on behalf of the Court. If CRT-II simply began to process claims on behalf of the United States District Court, that act would be considered a criminal offence under Swiss law.

On January 19, 2001, the Swiss Federal Department of Justice and Police (SFDJP) granted the requested permission, taking pains to make clear that the lack of authorization would have violated Swiss law.

> According to Art. 271, section 1 of the Swiss Penal Code of 21 December 1937, anyone who, without authorization, undertakes the actions that fall within the competence of a Swiss authority or official on Swiss territory on behalf of a foreign state is committing a criminal offence...[136]

The SFDJP determined that "[u]pholding Swiss interests and maintaining banking secrecy would be easier if all the activities concerned were carried out by an institution domiciled in Switzerland. The fact that judicial assistance negotiations are being conducted by

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However, the same inaccurate description was repeated in 2008, long after the CRT-II process was under way. By that point, over $469 million (of eventually nearly $720 million) had been repaid to bank account owners, as publicly reported at www.swissbankclaims.com ("Swiss Banks Settlement Fund Distribution Statistics as of December 31, 2007"). However, in *Cuckoo for Switzerland*, AEI confused CRT-I with CRT-II: "There was a scandal over the application of the country's bank-secrecy laws in the 1990s…The issue was a public relations fiasco for the country, and resulted in a settlement of nearly $1.3 billion in 1998. But in 2001, after an exhaustive four-year investigation, the Claims Resolution Tribunal…released its findings on a list of 5,570 foreign accounts…Only about 200 accounts could be traced to Holocaust victims; claimants were awarded $11 million." John Fund, *Cuckoo for Switzerland*, AM. ENTER. INST., Mar. 28, 2008, https://www.aei.org/publication/cuckoo-for-switzerland/ (last visited Mar. 22, 2016).

[136] 3003 Bern, 19 January 2001, Federal Department of Justice and Police, Authorization Pursuant to Art. 271 of the Swiss Penal Code ("SFDJP Authorization").

the commissioners of a US trial court in another country accords with the US conception of legal proceedings and is permissible in Switzerland in accordance with international agreements (citation omitted)."[137] The SFDJP further noted that:

> ...The [CRT] will not be carrying out a task that would otherwise be handled by a Swiss court or other Swiss authority by way of providing judicial assistance. However, Swiss interests, and especially the protection of banking secrecy, are served if an institution domiciled in Switzerland carries out the activities described above. This access to confidential customer data at the banks was made possible by the Federal Banking Commission [in connection with the ICEP Audit of the Volcker Committee]. In order to ensure that banking secrecy was respected, the *ICEP* auditors were, however, forbidden from forwarding confidential information to the *ICEP*. Confidential documents and information were not allowed to leave Switzerland...

The SFDJP reiterated that only limited rights were being granted:

> It should be noted that the authorization to be issued is not a blank check, but is limited to the clearly defined and limited briefs, as they are known today, of the [CRT], the *Special Masters*, and their assistants...Apart from decisions about the claims that are to be satisfied from the Settlement money, neither the [CRT] nor its supervisory bodies will have any authority to encroach on the rights and interests of persons living in Switzerland. The cooperation of the banks, which will consist of providing the [CRT] with information, is voluntary and subject to Swiss law.
>
> [Based on the foregoing, the CRT] is being issued with the authorization to carry out its brief independently, without coercion of persons in Switzerland and in accordance with the distribution plan of 11 September 2000 and with the Rules of Procedure that are based on this plan.[138]

Once the decision was made to establish an individualized claims process using the CRT, and upon securing Swiss permission (albeit restricted by banking secrecy provisions), the next step was to create the claims process. It needed to be transparent; encourage participation by all possible claimants; and ease the way toward reclaiming accounts that had been held for decades by Swiss banks. It also needed to ensure that only the most qualified and committed lawyers and other personnel were entrusted with the important task of examining bank accounts and returning them to Holocaust victims and their heirs — a process that was guided by two dedicated

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137 SFDJP Authorization.

138 *Id*.

individuals who led the organization throughout its tenure: its Secretaries General, Mary Carter and Dov Rubinstein.[139]

For any of that to take place, however, the CRT could not operate with one hand tied behind its back.[140] The CRT needed access to all of the information that existed about Holocaust-era Swiss bank accounts, whether the banks provided it willingly, or needed to be prodded by the Court. This proved to be a controversial process that continued long after the settlement was signed and the claims process was under way.

B. Preparing for the Review of Claims: Ensuring Access to Information

To compensate for the many restrictions upon the Swiss bank data to be made available to the claims process, the parties negotiated and the Court approved certain agreements to help define the "good faith cooperation" required of the banks under the Settlement Agreement. Thus, in a "Memorandum to the File" executed in connection with the Court's approval of the Settlement Agreement, the parties specified that:

- "The defendant banks will continue to cooperate with respect to establishment of a consolidated electronic database concerning the approximately 46,000 accounts referred to in the ICEP report [originally 54,000, and subsequently reduced to 46,000 and then 36,000]...The defendant banks will provide reasonable access by claims personnel to the consolidated database and to ICEP audit files prepared in connection with such accounts."[141]
- "If a Class Member who does not appear on the list of approximately [36,000] or on other previously published lists makes a deposited asset claim, and if claims personnel find that the Class Member has provided a reasoned and satisfactory basis for a conclusion that his or her account may be under the name of a person with a Swiss address, then the ICEP auditors' database for the relevant bank will be searched (beyond the bank's share of the approximately [36,000]) for potential matches for these persons. The bank may opt to conduct the database search itself under the

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[139] Ms. Carter, a U.S. attorney who worked with the Special Masters in New York and later moved to Switzerland to oversee the CRT, passed away in Zurich after spending more than a decade analyzing claims and helping to oversee this process. Like Mr. Rubinstein and the rest of the CRT staff – numbering some 280 individuals over the years — Ms. Carter's fierce commitment never wavered, and she dedicated herself to the mission of bringing justice to Holocaust victims and their families.

[140] For ease of reference, CRT-II will be referenced as "the CRT" throughout this discussion, and unless otherwise noted the remainder of this Chapter discusses only the work of CRT-II and not CRT-I.

[141] Memorandum to the File ¶ B(2), *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Aug. 9, 2000).

> supervision of the ICEP auditors or to have the ICEP auditors conduct the search; under either option, the Settlement Fund shall pay for the auditors' activities.... If there are name matches, then the existing ICEP electronic and hard-copy files will be searched for further information, *e.g.*, to confirm the match, to ascertain the amount that may have been in the account, etc. The bank may opt to conduct the search itself under the supervision of the ICEP auditors or to have the ICEP auditors conduct the search; under either option, the Settlement Fund shall pay for the auditors' activities. The defendant banks will not be obligated to search beyond these existing ICEP files, but they will consider in a spirit of cooperation requests for further assistance in any particular cases where there is a reasonably strong likelihood that further assistance would provide probative information and where the costs of such further assistance do not outweigh the potential benefits."[142]

In addition, Article 6 of the CRT Rules provided that "[w]hen necessary to obtain information to resolve claims to Accounts that is unavailable to the CRT under Articles 1-5, the CRT may seek the voluntary assistance of banks that may have information in their files on such an Account."

However, the claims process revealed that reliance upon the "voluntary assistance" procedures alone was not sufficient to ensure access to bank records. During the course of their work, CRT staff members learned that the banks had more data than had been made available to the CRT at the outset of the process. The CRT notified the Court that this information was crucial to a fair process. The Special Masters also advised the Court that "'[l]ack of full access to existing documentation and the unavailability of other data has interfered with the claims process'" and, as a result, payments had "'moved more slowly than any of the parties concerned' would have preferred."[143] Shortly thereafter, the banks agreed to a process to review certain specific claims against the Total Accounts Database, but many concerns remained unresolved.[144] Thus, in 2004, Lead Settlement Counsel Professor Burt Neuborne filed a motion seeking further cooperation from the banks. Specifically, Professor Neuborne advised that CRT officials had informed him "that increased access to six sources of information currently in the possession of

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[142] *Id.* at ¶ B(3). This so-called "Swiss address" provision subsequently was expanded, after further litigation, in a settlement known as the "Second Memorandum to the File." *See infra*.

[143] William Glaberson, *Holocaust Fund Official Says Many People May Not Be Paid*, N.Y. TIMES, Oct. 8, 2003, http://www.nytimes.com/2003/10/08/nyregion/holocaust-fund-official-says-many-people-may-not-be-paid.html (quoting Special Masters' Interim Report).

[144] William Glaberson, *Access Won to Accounts of Nazi Era*, N.Y. TIMES, Oct. 14, 2003, http://www.nytimes.com/2003/10/14/nyregion/access-won-to-accounts-of-nazi-era.html.

the defendant banks is necessary for the fair and just administration of the deposited assets claims program."[145]

First, the CRT strongly recommended that a fair claims process required "publication of information concerning approximately 15,000 Swiss bank accounts that were found by [the ICEP auditors] to be 'possibly' owned by Holocaust victims, but that have not yet been publicly identified," in contrast to the 21,000 accounts that Swiss banking authorities had authorized for publication in 2001. While these 15,000 accounts had been placed into a so-called "black box," so that a claimant who happened to name one of those accounts was entitled to have the account matched to his/her family members, the CRT had found that "a statistically significant difference" had "arisen between the 'match rate' of claims for accounts that have been publicly identified, and accounts…that have not been publicly identified...Not surprisingly, in the absence of targeted public notification of an account's existence, it is now apparent that members of the deposited assets class will not file claims to the account's ownership."[146]

Second, the CRT urged publication or republication of information concerning several thousand unclaimed Swiss bank accounts that had been "previously identified in earlier audits and investigations as potentially owned by Holocaust victims" including in "1945, 1952, 1959, 1962, and 1997."[147]

Third, the CRT sought publication of "information concerning Swiss bank accounts owned by Holocaust victims residing in Poland and Hungary that were seized subsequent to WWII by the communist governments of Poland and Hungary." These were the accounts that

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[145] Declaration of Lead Settlement Counsel Professor Neuborne ¶ 6, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 27, 2004) ("April 27, 2004 Neuborne Declaration"). Professor Neuborne pointed out that although some of the data sought by the CRT had been excluded from the claims process because of decisions made by the ICEP auditors, "no criticism of the ICEP audit is intended. Its function was to determine whether a significant number of unredeemed Holocaust-era accounts remained in Swiss banks. It performed that function brilliantly. Given the limitations of time and resources, the auditors could not have been expected to produce a definitive list of Holocaust-era accounts. Choosing to apply categorical disqualifications in settings where a relatively small proportion of the disqualified accounts might be owned by Holocaust victims may well have made good sense. It almost certainly resulted, however, in the unwitting exclusion of many Holocaust victim-owned accounts from the audit's final list of 'probable' and 'possible' accounts ultimately listed on the AHD." *See* Memorandum of Law in Support of Motion Seeking Additional Information 14, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 27, 2004) ("April 27, 2004 Memorandum of Law").

[146] April 27, 2004 Neuborne Declaration at ¶¶ 7-13.

[147] *Id.* at ¶¶ 14-18.

were the subject of "international agreements between Switzerland, Poland and Hungary," which were "used to satisfy claims by Swiss nationals against the governments of Poland and Hungary" or were retained by those governments.[148] While some lists of those accounts had been published in Poland and Hungary, the publications were not connected with the Court-authorized settlement, and notice had been neither widespread nor effective.[149]

Fourth, the CRT recommended restoration of accounts that had been "scrubbed" from the original 54,000-account AHD, reducing it to 36,000 accounts. When the AHD was established, "ICEP auditors, in an understandable effort to save money and time, categorically disqualified from significant aspects of the auditing process" a number of types of accounts: those with Swiss addresses or with addresses in areas outside Axis control; accounts closed prior to Axis invasion or occupation; and accounts indicating post-1945 activity. However, in the CRT's experience, "many Holocaust victim-owned accounts utilized" addresses in Switzerland and in other non-Axis countries "to avoid Nazi scrutiny. Similarly, experience has taught that many Holocaust victim-owned accounts were involuntarily transferred to Nazi banks prior to actual Axis-control of an area," in a variety of instances including where the account owner was "forced to transfer assets to ransom family members residing in Nazi-controlled areas." Additionally, "post-1945 activity does not negate Holocaust victim-ownership," based on information the CRT had seen as a result of its claims processing activities.[150] To the contrary, "much post-1945 activity reflected efforts by family members to recover a Holocaust-era account, or consisted of efforts to plunder the accounts by faithless persons…While the banks assert that mere post-1945 requests for information did not disqualify an account, an ongoing [CRT] investigation … indicates that accounts categorically excluded because of post-1945 activity were, in fact, owned by victims of the Holocaust who died in a Nazi concentration camp, rendering it impossible for the true owner to have engaged in the post-1945 activity."[151]

Fifth, the CRT reiterated its request for unrestricted access to the approximately 4.1 million accounts in the Total Accounts Database (TAD).

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148 *Id.* at ¶¶ 19-21; *see In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59 (E.D.N.Y. 2004).

149 April 27, 2004 Neuborne Declaration at ¶ 21.

150 *Id.* at ¶¶ 22-26.

151 *Id.* at ¶¶ 64-65.

Sixth, the CRT sought access to all bank documentation relating to a matched account. After the CRT "determine[d] that a name match exist[ed] between a claimant and a Holocaust-era account listed on the AHD," it was sometimes "impossible to determine the validity of the claim without inspecting surviving bank records relating to the matched account that fall outside the period from 1933-45." Therefore, the CRT requested the ability to review all bank records relating to a matched account, "regardless of the date of the document."[152]

In addition to seeking access to a wider category of bank records, the CRT also had determined that many aspects of the claims process would operate more efficiently "in New York, rather than in Zurich, in order to permit substantial savings in cost and personnel efficiency." Professor Neuborne advised that the CRT would continue to "assure respect for Swiss law" wherever located.[153]

Professor Neuborne explained that these requests were not unexpected, and were within the spirit of the original agreement as amended. He noted that it was anticipated even when the parties agreed to the Settlement, and the Court approved the agreement, that there might be a need to revisit the restrictions placed upon the CRT claims process.[154]

In the interest of avoiding protracted litigation and enabling the claims process to move forward, the dispute over access to documents was resolved by agreement, the "Second Memorandum to File," dated June 10, 2004 and approved by the Court on June 15, 2004.[155] Under the terms of the Second Memorandum to File:

- The banks agreed to "support the establishment of [a] New York City facility" to perform certain designated tasks — the matching and review of claims, using the ICEP audit file prepared in connection with the account in question — "on the condition that the Court and the CRT [] adopt confidentiality measures satisfactory to the competent Swiss authorities." This provision was subject to "explicit prior approval from the Swiss Federal Banking Commission" (SFBC), a request that the

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[152] *Id.* at ¶ 32.

[153] *Id.* at ¶ 33.

[154] *Id.* at ¶¶ 96-97, 99, 101.

[155] *See* Second Memorandum to the File, June 10, 2004; Confidentiality Order, June 15, 2004.

banks agreed to support in good faith. The SFBC ultimately did grant approval on July 26, 2004.[156]

- The banks agreed to support publication, on the internet only, of the approximately 3,000 account names (of the 15,000 AHD names not previously published) that had matched exactly or nearly exactly to victims' lists, but had been excluded from the 2001 publication.
- The banks also agreed to "support the republication," on the internet only, of specific accounts "that were the subject of previous efforts by the Swiss government to identify potentially relevant Swiss bank accounts from the World War II era": accounts that had been identified under the 1962 survey and that Switzerland had published on the internet in 1998, and "Polish and Hungarian accounts from the World War II era (as published by the Polish and Hungarian Governments), which were the subject of international agreements," if the accounts were not already included in the AHD.
- The banks agreed to modify the restrictions concerning the search of the TADs using a "reasonable matching protocol" and a sampling procedure. "[E]xisting voluntary cooperation in resolving particular claims in accordance with Section B.3 of the August 9, 2000 Memorandum to File is not precluded, however," *i.e.*, the CRT could continue to request that the banks provide the underlying bank records in connection with particular accounts, as opposed to the ICEP audit records, and the banks would take these requests under advisement.[157]

The banks stressed the importance of "finality, and, accordingly, Settling Plaintiffs and the [CRT represented that they would] not seek or support further requests to Settling Defendants for any actions in connection with the Settlement of distribution of settlement funds," nor would they "seek or support any requests to Other Swiss Banks or the Swiss Bankers Association for any actions in connection with the Settlement or distribution of settlement funds, save for requests for voluntary cooperation in resolving particular claims."[158]

The renewed dispute about access to bank records in 2003-2004 attracted a certain amount of press coverage, which had diminished once the Distribution Plan had been approved in 2000. As the Special Masters noted:

> Largely impelled by Judge Korman's intense scrutiny of the banks' behavior during and after the Holocaust era, and in some instances continuing to date,

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156 Second Memorandum to the File ¶ 1(b)-(c). The facility was in fact established, the "Swiss Deposited Assets Program" or "SDAP." It operated in New York within the offices of the Conference on Jewish Material Claims Against Germany ("Claims Conference").

157 Second Memorandum to the File ¶¶ 2(a)-(b), 3(b), (e).

158 Second Memorandum to the File ¶ 4.

> many of the issues which first brought about this lawsuit are back on the table. They certainly are back in the public eye.[159]

The dispute's resolution likewise was reported in the press:

> After years of acrimony, Swiss banks have agreed to release records of thousands of World War II-era accounts that may belong to victims of the Nazis.
>
> A lawyer for Nazi victims who sued the banks said the agreement could allow the victims or their descendants to obtain hundreds of millions of dollars in unclaimed funds. The banks' refusal to release the records had angered Holocaust survivors and infuriated a federal judge overseeing the case.
>
> If Swiss banking authorities approve the agreement, Credit Suisse and UBS AG will publish the names of 3,000 accounts opened during the Nazi era. They will open databases of Nazi-era accounts for comparison with a list of thousands hoping to recover family assets from Swiss banks.[160]

The New York-based *Jewish Week* took note of the agreement, as well as the new adaptations to the CRT's claims-matching program, and observed that these revisions could result in distribution of much of the up to $800 million that had been allocated to the Deposited Assets Class:

> A new computer program to improve the chances of matching Swiss bank claims against dormant Holocaust-era accounts, plus a tentative agreement by Swiss banks to release the names of 5,000 more dormant bank account holders, may result in the return of up to $800 million to their rightful owners.
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[159] *See* William Glaberson, *Holocaust Fund Official Says Many People May Not Be Paid*, N.Y. TIMES, Oct. 8, 2003, http://www.nytimes.com/2003/10/08/nyregion/holocaust-fund-official-says-many-people-may-not-be-paid.html (quoting Special Masters' Interim Report); William Glaberson, *Access Won to Accounts of Nazi Era*, N.Y. TIMES, Oct. 14, 2003, http://www.nytimes.com/2003/10/14/nyregion/access-won-to-accounts-of-nazi-era.html. *See also* Judah Gribetz & Shari C. Reig, Special Masters' Recommendations for Allocation of Possible Unclaimed Residual Funds, Apr. 16, 2004 ("Special Masters' April 2004 Recommendations"), at 18-19 n.38, citing, *e.g.*, Jacob Gershman, *A Blistering Attack On Swiss Banks Issued by Judge*, N.Y. SUN, Feb. 20, 2004, at 1; William Glaberson, *Judge Accuses Swiss Banks of Stonewalling*, N.Y. TIMES, Feb. 21, 2004, at B2; *Judge rejects Swiss banks' arguments about accounts of Holocaust victims*, N. Y. NEWSDAY, Feb. 21, 2004; Randi F. Marshall, *Judge: Holocaust Payments Delayed*, N.Y. NEWSDAY, Feb. 21, 2004; Randi F. Marshall, *Brooklyn, N.Y. Judge Accuses Swiss Bank of Denying Misconduct during Nazi Era*, MIAMI HERALD, Feb. 21, 2004; William Glaberson, *Judge says Swiss banks still lie over Holocaust*, INT'L HERALD TRIB., Feb. 23, 2004; *Swiss banks are evading Jewish repayments*, SUNDAY TIMES (S. AFR.), Feb. 23, 2004; Editorial, *Swiss banks must come clean*, N.Y. DAILY NEWS, Feb. 25, 2004, at 30; *Banks seek to avoid fresh row over Holocaust funds*, SWISSINFO.CH, Feb. 29, 2004.

[160] Michael Weissenstein, *Swiss banks, Holocaust survivors reach accord on Nazi-era accounts*, ASSOCIATED PRESS, June 17, 2004.

> [T]he new software [CPS] … considers [different name spellings], nicknames, maiden names, former names and similar-sounding names...
>
> [The agreement also resulted in] the release of the names of another 5,000 Swiss bank depositors whose accounts have been dormant since the war and who are believed to have been Nazi victims.
>
> The Swiss Federal Banking Corp. must give approval before the names can be published on the Internet... [O]nce they are published, relatives of those account holders will have a chance to file claims for the money in those accounts.[161]

In addition to the post-settlement litigation that resulted in publication of additional names, creation of a New York office to assist the CRT, and the possibility of access to certain accounts in the TAD, the CRT also continued to press for the right to examine not only the ICEP audit files created for the "AHD" accounts, but the underlying bank records themselves.

Article 6 of the CRT Rules provided for "Voluntary Assistance From Banks": "When necessary to obtain information to resolve claims to Accounts that is unavailable to the CRT under Articles 1-5, the CRT may seek the voluntary assistance of banks that may have information in their files on such an Account." Taking its lead from the Court's ruling that approval of the Settlement Agreement was conditioned upon the banks' cooperation with the claims process, the CRT sought the banks' aid in connection with hundreds of claims and thousands of accounts. The documents requested from the banks often contained information useful to the claims process, such as data that would help to determine the identity of the account owner (for example, through a street address not specified in the AHD file); the existence of other unreported accounts in addition to those reported by the auditors; and the value of the account (for example, through a listing of the securities held in a custody account).

Early in the process, one of the two defendant banks, UBS, began to discuss with the CRT the procedures that would be followed by the CRT, UBS, and its ICEP auditor (Price Waterhouse Coopers) for requesting and obtaining "voluntary assistance." The CRT began regularly forwarding to UBS lists of accounts for which additional information was requested. Typically, UBS representatives would review the list, gather any available information, and then meet with CRT staff to discuss the results. Additional relevant documents were delivered to the

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[161] Stewart Ain, *Software Finding More Swiss Money*, JEWISH WEEK, July 30, 2004.

CRT through the Data Librarian. CRT and UBS representatives continued to meet to discuss various accounts for which the CRT sought additional background information, yielding additional information for nearly 2,000 accounts. During this period, UBS, and in particular its counsel Britta Delmas, provided the CRT with considerable assistance. The claims process as well as the claimants benefitted greatly from Ms. Delmas' diligence and dedication.

In addition to helping the CRT assess whether a claimant was entitled to a particular account, the amount of the account, and whether other accounts existed that had not been reported, the "voluntary assistance" procedure also was intended by the CRT for another purpose. It was a means to ensure that there would not be questions raised after the fact about awards that had been authorized and paid based upon information that was solely within the banks' files (and which had not been provided to the CRT either as part of the ICEP audit or thereafter).

The records provided by the bank were added to the respective CRT account dossiers and were utilized to draft decisions. Under the terms of the "Data Librarian Rules" governing the CRT's ability to operate in Switzerland, the Data Librarian was responsible for removing any account owner information from documents transmitted to the CRT not directly concerned with the account owner or account at issue. In many cases, the documents provided to the CRT regarding a particular account owner consisted of lists — *e.g.* a list of accounts/account owners that had been transferred to a collective suspense account. Although the information in these lists likely would have been informative and useful to the claims process, the other account owner names were required to be redacted by the Data Librarian because of Swiss banking secrecy laws, which prevented the transmission of account owner information deemed by banking authorities as not germane to the claims process. Once the Data Librarian had reviewed and redacted the so-called "extraneous" account information, he transmitted the physical files to the CRT.[162]

Upon review of the new documentation, or upon the declaration from UBS that no additional documentation was available, the CRT would finalize its review and issue a recommendation to the Court.

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[162] Additional information about the responsibilities of the Data Librarian is contained in Appendix A to the CRT Rules ("Data Librarian Rules").

As to defendant bank Credit Suisse, the CRT became aware that little additional information was available for accounts held in that bank, other than custody accounts. The CRT thus focused its efforts on receiving as much data as possible about these accounts. Overall, the CRT conveyed to Credit Suisse 15 "request lists" encompassing approximately 504 accounts. As with UBS, the documents submitted to the CRT from Credit Suisse archives were first submitted to the Data Librarian for redaction of account owner information that the banking authorities considered not germane to the individual claim. These redacted files subsequently were added to the physical claim files and the electronic claim processing system of the CRT ("CPS").

This "voluntary assistance" process proved crucial to the claims program. It resulted in the discovery of additional accounts that could be awarded, as well as increases in payments to a number of claimants. The Court described the process in a Memorandum & Order addressing the CRT's first successful effort to obtain supplemental information from Credit Suisse:

> Late last year it became apparent that one of the two Settl[ing] Defendants, *Credit Suisse*, would provide a significant amount of specific additional account information that had neither been recorded by the ICEP auditors nor had been previously disclosed in the course of so-called "voluntary assistance." Such voluntary assistance is an integral part of the banks' pledge to cooperate with the implementation of the Settlement Agreement...
>
> The CRT accordingly has sought voluntary assistance relating to hundreds of claimed accounts and has received regular input from one of the defendant banks [UBS] for several years. But until 2007 little had been achieved in several years of ongoing discussion between the CRT and *Credit Suisse* about the need for voluntary assistance for a large and growing number of cases. In 2007, however, after the CRT had submitted an updated list of accounts for which it had requested additional information, the tenor of the discussions became more promising. Finally, in November 2007, the CRT received additional documentation for a priority list of 29 yet to be awarded Custody accounts. This additional information proved to contain not only information about the identity of the account owner, but also detailed documentation on the portfolios held in these 29 accounts as well as their disposition history. The significance of this documentation for the account award process is self-evident. In view of the importance of the additional information found in this sample, and the emphasis this Court has placed on restoring to account owners or their heirs the proper value of the assets they had been deprived of, it was deemed only appropriate that the CRT would, even at this late stage in the process, revisit claims that had been considered closed following the award of the accounts in question.

> The CRT thus pressed for the delivery of additional information for a list of 322 Custody accounts…, which consisted largely of already awarded accounts, most of which, in the absence of any information on their content, had been awarded at presumptive value. *Credit Suisse* eventually provided documentation containing new information for 257 of the requested 322 Custody accounts, part of which was received in February 2008, while the bulk of it came in April.
>
> The CRT has since begun revisiting the previously awarded custody accounts for which new information is available. The CRT now recommends the adjustment of 10 awards previously approved by the Court prior to the receipt of this additional information [for a total of approximately $18 million]. Additional amendments will be forthcoming as the CRT's analysis of the records proceeds.[163]

As CRT Special Master Junz explained, the Credit Suisse materials were extremely useful to the CRT, but this diligence in tracking down all available documentation did not come without a cost. The new materials imposed a considerable burden upon the CRT's staff as they endeavored to analyze the more than 104,000 claims:

> To put the significance of the receipt of the new information in better context, it should be considered that it was delivered in the form of over 2,000 copies of individual deposit documents, which had to be organized and transcribed to make them usable. These documents in turn were found to contain over [1,609] entries for individual securities, coins and precious metals... To ascertain the amendment and award values of these accounts and to estimate potential total payments from the Settlement Fund associated with this new portfolio and asset disposition information, these 1,609 … assets had to be valued. This means that market values had to be found for these assets and the quality of the securities among them determined (whether they were in default or not) as of the disposition date of the asset, if known; then these valuations as well as the disposition information had to be analyzed and merged into the award process databases. A truly daunting endeavour, especially as it had to be accomplished within a short time without loss of accuracy.[164]

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[163] Memorandum & Order Approving Set 168: 10 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund 1-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 30, 2008) (footnote omitted).

[164] Report of Special Master Junz to Judge Edward R. Korman, October 10, 2008, at 4 ("Junz October 10, 2008 Report"). SDAP, too, was required to devote staff and other resources to assist in investigating the data from Credit Suisse and its impact upon the Deposited Assets Class payments. The new information from Credit Suisse related to 1,438 securities, and the security issuers were domiciled in 26 different countries. The CRT and the Special Masters requested SDAP's assistance in obtaining prices for these securities, as close as possible to the date upon which the account owner lost control over the account. SDAP gathered this information from a wide variety of public and private institutions in New York City over the course of several months.

* * *

The new information enabled the CRT to identify account owners more accurately, leading either to a conclusive positive identification resulting in an award, or a "match disconfirmation" resulting in a claim denial. The examination of these additional records further led to the discovery of more accounts that could be awarded, and improved the assessment of the value of securities held in custody accounts.

Most significantly, the "voluntary assistance" process originally envisioned by the Court in approving the Settlement Agreement contributed materially to the reconsideration and the resulting upward adjustment of many of the awards. These awards had been issued using the "presumptive values" that had been established by the ICEP auditors before the claims process was under way, so that accounts for which valuation information had been destroyed were assessed not at "zero," but rather at the average values of the accounts for which information still existed (depending upon the type of account it was, *e.g.*, safe deposit, custody account, demand deposit and so forth). It became clear, as the claims process progressed, that the original presumptive values were too low.[165] As a result, the Court was able to authorize additional awards and improve the valuation base beyond what would have been the case if the CRT had relied solely upon the audit files presented to it at the outset of the claims process. These improvements are discussed in greater detail below.

C. The CRT-II Claims Process - Principles

1. Transparency

Extensive information about the claims process was available from at least three separate venues. First, two websites containing information concerning the CRT (as well as the overall settlement process) were maintained and updated regularly: www.crt-ii.org, and www.swissbankclaims.com.[166] Each site could be accessed through the other. Statistics on the

[165] *See In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010), discussed more fully *infra*.

[166] The www.swissbankclaims.com site was established at the outset of the Settlement under the supervision of plaintiffs' counsel, who had employed an outside vendor, Poorman-Douglas (subsequently, Epiq Systems), to

number of claims received and paid were available on each website. The awards, and many of the substantive denial decisions (as opposed to technical denials; see below), were published on the internet. Thus, interested persons could review these decisions and become familiar with the presumptions, rules, guidelines and other practices governing the CRT process. Holocaust historian Michael R. Marrus noted: "Particularly useful on the subject of the Swiss banks is the official Web site of the Swiss Banks Settlement: *In re Holocaust Victim Assets Litigation*, …. available at http://www.swissbankclaims.com/..."[167]

Second, many documents, decisions, and other materials produced or received by the CRT or the Special Masters were docketed with the Court, and therefore made available for public scrutiny.

Third, extensive information about the CRT process, including statistics on claims processing, obstacles presented and overcome, and much other information was presented in several major filings which received considerable public attention. These included the Special Masters' Interim Report;[168] the Special Masters' April 2004 Recommendations; numerous court filings by Lead Settlement Counsel Professor Neuborne concerning the lack of access to certain information as a result of actions by the defendant banks and Swiss banking authorities; the Court's opinion discussing the banks' behavior during and after the Holocaust era; and the various filings of the Special Masters related to, and the Court's decision adopting, a proposal to increase presumptive values for many accounts for which no valuation information as a result of new information gleaned from the CRT's scrutiny of bank records in connection with the claims process.

Morris Ratner was one of the lead plaintiffs' attorneys during the litigation and served as a court-appointed Settlement Counsel. He was also involved extensively with the German slave

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serve as one of the Notice Administrators for the Settlement. The vendor maintained the www.swissbankclaims.com website throughout the program. Because the Notice of Pendency of Class Action, claim forms, and related materials promised claimants confidentiality, claimants' names were redacted from the decisions unless they waived confidentiality. Their names, addresses, and other relevant identifying information are known to and were filed with the Court under seal.

[167] MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990's 141 n.1 (Univ. of Wis. Press 2009).

[168] In addition to being publicly available on the Court's docket, the Special Masters' Interim Report was published in its entirety in Orland, *A Final Accounting*, at Appendix B, 421 - 467.

labor lawsuits and subsequent negotiations. He subsequently became a professor of law at the University of California's Hastings Law School. In comparing the Swiss Banks settlement to "Executive Branch" Holocaust-related settlements (such as the agreement resulting in the German Foundation, the International Commission on Holocaust-Era Insurance Claims ("ICHEIC"), and other programs[169]), he observed that the transparency of the Swiss Banks Settlement was a unique advantage of a Court-supervised process:

> [B]ecause of reporting requirements, settlements effected through the Judicial Branch are more likely to be the subject of continuing scrutiny by class members and the public. For example, in the *Swiss Banks* case, we have continuously updated the court with reports that are filed and a matter of public record regarding the provision of different phases of notice. Similarly, the special masters have filed reports with the court regarding the status of their efforts during the implementation phase. While the Executive Branch settlements have certain reporting requirements built into them, the reporting has generally been less detailed, and the reports are not as easily accessed by members of the general public or victim classes.[170]

2. Preparation

A "transparent" process could not take place without the widespread publication of account owner names. Although Swiss banking authorities restricted publication to only 24,000 of the 36,000 accounts in the AHD, it was imperative to publicize these names — and the fact

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169 *See* chapter entitled "Origins and History of the Settlement."

170 Morris A. Ratner, *The Settlement of Nazi-Era Litigation through the Executive and Judicial Branches*, 20 BERKELEY J. INT'L L. 212, 232 (2002).

At the same time, the transparency of the legal process has not been without its drawbacks, mainly relating to the time-consuming requirements imposed by a court-sanctioned process. As Holocaust compensation expert Marilyn Henry observed:

> The processes themselves have different virtues and drawbacks. The Swiss settlement was subject to formal procedural rules governing all class-action lawsuits filed in American federal courts. Those rules guarantee a substantial amount of transparency in the process, provide opportunities for the potential beneficiaries to comment on the settlement terms, and appear to be a bulwark against political pressure. However, these rules also significantly lengthen the amount of time between a settlement and the actual distribution of the funds. The demographics of the claimants also extended the time involved in the Swiss case: legal materials had to be translated into dozens of languages and sent to potential claimants who lived in dozens of countries. The German foundation could distribute funds at an accelerated pace, but it is not governed by established rules. Instead, it is run by a board representing victims, nine governments, and German industry, and they must thrash out competing interests.
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> Marilyn Henry, *Fifty Years of Holocaust Compensation*, *in* 102 AM. JEWISH Y.B. 3, 80 n.179 (David Singer & Lawrence Grossman eds., Am. Jewish Comm. 2002).

that claims also could be filed for other accounts (including those not authorized for publication) — as widely as possible. Thus, the accounts of "probable" victims (*i.e.* the 21,000 names) were published on the internet on February 5, 2001, as directed by the Court's Order of December 8, 2000, as amended (the "2001 List"). The 2001 List could be easily searched and downloaded by potential claimants and service organizations by name, city and country.[171] After the Second Memorandum to the File was signed, approximately 3,000 additional names were published on January 13, 2005 (the "2005 List").

In preparing for this publication, the Court, Special Masters and CRT arranged for the following steps to be undertaken:

- Compiling account lists from each of the Swiss banks by the ICEP audit firms and aggregating those data into a single database that had been reviewed to eliminate errors in name spellings and the like;
- Loading those data onto websites where the accounts lists were to be published and testing that the data could be readily searched and downloaded;
- Preparing, translating and formatting claim forms and instructions and a considerable number of related explanatory documents into the five official CRT languages (English, Hebrew, French, German and Spanish).[172] The Deposited Assets claim form, often the first communication between the claimant and the CRT, was created in consultation with the Court and with the input of survivor assistance organizations, with the goal of eliciting the maximum amount of information by asking straightforward questions of the claimant;
- Preparing "Frequently Asked Questions" to be posted on the CRT website and on the settlement's general website. Claimants were provided with contact information not only for the CRT, but for survivor assistance programs around the world. CRT attorneys proactively contacted claimants if additional information was needed to fully treat their claims;
- Coordinating a worldwide network of voluntary agencies to assist claimants in the submission of their claims;
- Drafting and obtaining comments on the CRT Rules; and

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171 The official list of names of the account owners of the 21,000 "probable or possible" accounts could be found on the internet on the official website of the SBA at www.dormantaccounts.ch. In addition, the list also was published on the website of the CRT at www.crt-ii.org, as well as the website for the Holocaust Victim Assets Litigation, www.swissbankclaims.com.

172 The Deposited Assets Class claims forms and information sheets for both the 2001 and 2005 Lists, as well as the Initial Questionnaire, other claim forms, and similar documents are included together as an Exhibit to this Final Report.

- Assembling a package of documents in five languages to send to approximately 82,000 members of the Holocaust Victim Assets class who had indicated in Initial Questionnaires that they intended to assert a Deposited Assets claim.

3. Assisting Claimants

The CRT-II process was global, but the largest percentage of claims originated in the United States (35.5%), with claimants from Israel and Hungary making up the second and third largest groups (at 27.32% and 7.28%, respectively). The CRT had five official working languages: English, Hebrew, French, German and Spanish. All Swiss Deposited Assets claim forms were required to be submitted in one of these languages. CRT staff members were fluent in a number of languages, including Russian, Czechoslovakian, Polish and Hungarian, which enabled translation of supporting documentation where necessary. The CRT, which had the status of an association under Swiss law (the "Independent Claims Resolution Foundation"), employed approximately 70 staff members at the height of its operations, and approximately 280 staff in total over the years.

The CRT established a Call Center prior to publication of the 2001 List.[173] The Call Center, staffed with individuals who spoke the five official CRT languages as well as others, was dedicated solely to the task of responding on a daily basis to thousands of inquiries. At its peak, the Call Center employed approximately 20 individuals. CRT staff made every effort to reply to messages within 24 hours. After publication of the 2005 List, an additional call center was established in New York to help claimants file and submit claims resulting from the new list. By the end of September 2005, the New York call center had received more than 3,500 related phone calls and over 1,500 emails.

Examples of the concerns to which the Call Center responded in writing and telephone are as follows:

- Confirming receipt of a claim: Under the Court's directives, the CRT accepted a variety of claim documents, including formal CRT claim forms submitted in response

[173] The CRT-II Call Center was a continuation of the CRT-I Call Center, which was previously established with the same toll-free, country-specific numbers later used by CRT-II.

to the 2001 and 2005 Lists; Initial Questionnaires; claim forms submitted to the New York State Holocaust Claims Processing Office ("HCPO"); and claim forms submitted prior to the Swiss Banks Settlement as part of the CRT-I, ICEP and ATAG Ernst & Young claims process;[174]

- Updating the claimant on the status of his/her claim upon thorough review of the history of the claim, including analysis of drafted decisions, related claims, past correspondence, and other background matters. Call Center staff also explained the significance of certain decisions and, where necessary, arranged for their translation;
- Responding to inquiries concerning claims to Holocaust-era Swiss insurance policies, a program that the CRT administered along with the Deposited Assets Class program;[175]
- Determining whether a claimant sought to supplement the record, or, rather, to provide new information, concerning a particular account owner (the CRT's advice varied depending upon that assessment); and
- Responding to inquiries about Holocaust restitution programs other than the CRT's, including the programs established by the Court with respect to claims under Slave Labor Class I, Slave Labor Class II, the Refugee Class and the Looted Assets Class of the Settlement Agreement. CRT staff also responded to questions about other programs not administered by the Court, including those for non-Swiss insurance, looted art, German slave labor, and other restitution programs.

Call Center staff members were trained to be especially mindful of the sensitive nature of the CRT's work and the experiences of the claimants (both survivors of the Holocaust and their relatives). In cases of elderly or ill claimants, the Call Center prioritized those requests whenever possible.

The CRT also received tens of thousands of written inquiries. Nearly 24,000 inquiries sought a status update on a claim or an appeal; nearly 11,000 sought to supplement their files with additional documents; over 5,000 claimants provided the CRT with a death notification and 2,600 submitted testamentary materials; over 3,500 sought to file a new claim; over 3,000 posed a question after receiving a decision; over 3,000 filed paperwork on power of attorney matters; and another 36,000 inquiries were related to other matters.

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[174] The broadening of the types of documents that could be considered as formal "claims" substantially increased the scope of the CRT's work but was deemed necessary to ensure that Holocaust victims and their heirs could participate fully in the Settlement Fund distribution process. For further discussion, *see infra*.

[175] *See* chapter entitled "The Insurance Claims Process."

CRT staff extensively communicated with claimants by postal and electronic mail; conducted more than 13,000 telephone conversations with claimants or their representatives; and in some 27 cases, at the request of the claimants, met with them personally at the CRT offices in Zurich. These meetings, as stressed in the claims materials, were not required and generally were discouraged to spare claimants the time and expense of travel.

4. Analyzing the Claims

All Deposited Assets claims were reviewed by a large team working at the offices of the CRT in Zurich, and at SDAP in New York. At the inception of the program, the Zurich office was wholly responsible for all claims processing activities, mirroring its role under CRT-I. With over 104,000 claims, it became clear that the scope of the work would challenge the capacity of the Zurich office, and there were considerable expenses associated with the Swiss requirement that the CRT operate in Switzerland. In consultation with the Court and the Special Masters, Lead Settlement Counsel successfully pressed for Swiss authorities to permit some operations to occur outside the country. The obvious location was New York, where the Court and many of its administrative agents were located.

Rather than creating a new, free-standing entity, Special Master Bradfield entered into a "services agreement" with the Claims Conference, which had decades of experience in processing Holocaust-related claims, and which was already serving as one of the Court's administrative agents for three other settlement classes (Looted Assets; Slave Labor I and Refugees). The Claims Conference established a Swiss Deposited Assets Program (SDAP), expertly led by attorney Elena Vournas, Chen Yurista, Valerie Fischer, and many other dedicated staff members. SDAP was to provide offices and administrative assistance to the Court and the CRT in connection with claims processing activities for the Deposited Assets Class.

The CRT and SDAP employed a multinational staff with wide-ranging language capabilities. The staff consisted of attorneys, paralegals, researchers and administrative assistants. During the initial phase of the program, while negotiations continued with Swiss banking authorities concerning SDAP's ability to access bank records and other materials, SDAP assisted the CRT with reviewing, translating and entering data into the then-existing claims

processing system ("CAS", or the "Claims Adjudication System"). In addition, SDAP also began the initial phase of the program that became the "Plausible Undocumented Award" (PUA) process — the issuance of awards for claims that were plausible, but for which documentary evidence did not exist, largely due to the banks' destruction of millions of account records. In anticipation of this program, SDAP assisted the Court and Special Masters in analyzing and formulating the criteria for evaluating claims under the PUA process, worked with IT developers to create a database, and began to analyze claims. SDAP later was tasked with processing awards, and issuing thousands of payments to claimants around the world.

Following the resolution of ongoing litigation with Swiss banks, the New York facility was established and maintained in a secure, closed working environment. In August 2004, upon completion of the secure connection between the New York (SDAP) and Zurich offices, safeguards were set in place to ensure that the information transmitted from the Zurich facility could not be transmitted elsewhere, downloaded, stored or printed at the New York facility, with the exception of allowing the printing of awards and correspondence, as long as no confidential information from the Zurich office could be printed.

SDAP instituted procedures and computer protocols to ensure protection of data confidentiality. All SDAP staff members, and all staff members of the Claims Conference who had potential access to SDAP facilities, signed two confidentiality agreements in which they agreed to comply with all relevant provisions, including Swiss law governing confidentiality and privacy. Representatives of the Swiss banks regularly inspected the SDAP facility to confirm that proper security measures were in place.

5. Processing the Claim Forms

Claimants were directed to send their completed claim forms to the Claims Registration Office in New York, where the claims were assigned an individual number and were entered into a database.

As an initial matter, the CRT sought to determine some basic information about the claimant: where he or she lived, and the relative or other individual for whom he or she was claiming. Of the 119,526 claimants and represented parties, the vast majority lived in one of five

countries at the time they filed their claim forms: the United States (almost 36%); Israel (over 27%); Hungary (over 7%); Canada (almost 6%); and Germany (4%). Together, these individuals constituted nearly 80% of the claimants. Those from the United States, Canada and Israel alone comprised over 68% of all claimants.

Of the 104,140 claimants, over one-quarter (28%) sought return of their parents' accounts.[176] An additional 9% sought return of accounts belonging to their grandparents. Approximately 8% were nieces, nephews and/or cousins of persons were believed to have owned Swiss bank accounts. Over 7% sought return of their own accounts. Another 1% sought return of accounts belonging to a spouse.

However, a very large group of claimants — over 46% (48,147 individuals) — fell into a category that substantially complicated the CRT's ability to analyze their claims. These claimants either did not specify their relationship with the individual believed to own an account (the "Claimed Account Owner" or "CAO"); did not have a family connection to the Claimed Account Owner; or were only very distantly related to the Claimed Account Owner. Thus, of the 104,140 claimants, nearly half of their claims were particularly difficult to analyze even from the very outset. Because the claimant's relationship to the account owner was unclear, the claimant's entitlement to the account likewise was unclear, complicating the CRT's ability to interpret the often only minimally informative records made available by the Swiss banks.

Many of these 48,147 claimants were brought into the claims process because of the Court's determination to take a generous approach by authorizing the review of sometimes sparsely-worded Initial Questionnaires ("IQs") — informational surveys that were solicited and returned before the Settlement Agreement was approved or the claims process had been established — that appeared to reference Swiss bank accounts. While some individuals within this group may have believed that their IQs served as claims (despite warnings to the contrary on the IQs themselves), others had never intended to file a Deposited Assets claim.[177]

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[176] Another 15,386 individuals were recorded as "represented parties," bringing the total number of claimants to 119,526.

[177] The decision to analyze the IQs is discussed more fully below.

If the 48,147 claimants who did not clearly specify the relationship to a potential account owner are excluded from 104,140 claimants, then a total of 55,993 individuals filed claims in which the CRT was able to determine the relationship to the Claimed Account Owner (generally the depositors themselves, their spouses, children, grandchildren, nieces, nephews or cousins). Of those 55,993 claimants, approximately one-third (18,096) were approved by the Court for payment.

The process by which these determinations were reached is described below.

6. The Matching Process

The first step in reviewing the 415,453 possible account owner names provided by the over 119,000 claimants and represented parties was to "match" these names to the database available to the CRT, the "AHD." The AHD ultimately consisted of 37,954 names (after supplementation of the original 36,000 through additional accounts the CRT was able to locate in archives and from other sources). This resulted in 1,523,153 matches.

The CRT employed the so-called "Daitch-Mokotow" and "Soundex" matching protocols. These systems were intended to be over-inclusive, but also resulted in a large number of "technical" matches, *i.e.*, matches that the computer program deemed valid at a very basic level but which clearly were not proper. To correct this "overmatching" tendency, SDAP engaged in a process known as "cluster busting," reviewing all matches before the claim progressed to further review by the CRT staff in Zurich.[178] Depending upon the frequency with which the claimed name appeared in the AHD (*i.e.*, how many account owners had the same name), the extent to which the claimed name may have been relatively common (*i.e.*, the equivalent of "John Smith"), and the similarity of spellings and phonetics contained in the relevant names, there were sometimes hundreds of "matches" to a single account. Accordingly, the computer-generated matches were first subjected to a preliminary review to remove any pairings generated on a

[178] Although the match review process took place throughout the claims process, the bulk of the work of analyzing the over 1.5 million matches was completed between 2004 and 2006, during which time 1,250,147 or 82% of all matches were reviewed.

purely technical basis.[179] Following that initial review, files for substantive evaluation were prepared for CRT attorneys by support staff. These files included the relevant bank account record(s), along with all viable claims potentially matching to that account.

As a general rule, CRT staff identified both "confirming" and "disconfirming" factors supporting or disproving a match. Strong reasons for confirming a match included identification of unpublished information, such as addresses, names of other persons associated with the account at issue, or matching signatures. Examples of strong disconfirming factors included different maiden names, or the fact that the account was opened before the birth or after the death of the Claimed Account Owner. Many cases required further analysis and, in the absence of evidence to the contrary, application of certain presumptions approved by the Court (and sometimes codified in the CRT Rules) to aid in reaching determinations. These presumptions, discussed below, were crucial in compensating at least in part for the unfairness presented by a documentary record that had been partly or nearly entirely destroyed.

To further assist in the matching effort, the published 2001 and 2005 Lists generally contained only a portion of the account owner information available in the bank records. In many cases, the Lists published only the account owner's name, and in some cases the country or city of residence of the account owner. To the extent that there was other information available in the bank files, the CRT was able to compare unpublished data in the bank records with statements in the claim forms to assess whether a claimant had identified unpublished information, an important factor in assessing the validity of the claim.

The CRT also confirmed whether the claimed account was within the CRT's jurisdiction. Specifically, accounts closed prior to the Nazi era (defined in the Settlement Agreement as the "Relevant Period," 1933-1945), were not within the CRT's purview.

Once the CRT determined that an award was proper, the amount of the award needed to be calculated. Where the account's value was available from the bank's records, the award was based upon that sum, adjusted for fees and interest. If the value of an account was unknown, the CRT relied on the results of the ICEP audit as to the average value of the same or similar type of

[179] For example, the claimed names "Johanna Smith" or "John Smithson" might have matched to the name "John Smith."

account during the time period from 1933 to 1945.[180] As more fully discussed below, the method of valuing accounts of unknown value was revisited as a result of information revealed during the claims process.

In addition to calculating the amount of an award, the CRT determined how the account proceeds were to be divided among the claimants, if there was more than one, including any party the claimant(s) may have represented. Many cases involved complex distributions, in accordance either with the distribution method outlined in Article 23 of the CRT Rules or, where inheritance documentation was available, in accordance with a chain of wills.[181]

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[180] Article 29 of the Rules provided: "For an Account for which an Award is made under Article 22, but the amount in the Account is unavailable from bank records or the amount in the Account (1945 value) is less than the amount set forth below, the amount in the Account (1945 value) is to be determined from the following schedule, in absence of plausible evidence to the contrary." CRT Rules, Article 29. The account values according to Article 29 were as follows: Custody Account: SF 13,000; Demand Deposit Account: SF 2,140; Savings/Passbook Account: SF 830; Safe Deposit Box Account: SF 1,240; Other Type of Account: SF 2,200; and Unknown Account Type: SF 3,950. These amounts, but one, subsequently were increased in June 2010.

[181] Article 23(1) of the Rules guided allocation of funds in the absence of a will or other relevant inheritance documents pertaining to the account owner: a) if the account owner's spouse, but no descendants of the account owner, had submitted a claim, the account owner's spouse was entitled to the full award amount; b) if the account owner's spouse and descendants submitted a claim, the spouse was to receive one-half of the account and any descendants who had submitted a claim were to receive the other half in equal shares by representation; c) if the account owner's spouse had not submitted a claim, the award was to be made in favor of any descendants of the account owner who submitted a claim, in equal shares by representation; d) if neither the account owner's spouse nor any descendants of the account owner had submitted a claim, the award was to be in favor of any descendants of the account owner's parents who had submitted a claim, in equal shares by representation; e) if neither the account owner's spouse nor any descendants of the account owner's parents had submitted a claim, the award was to be in favor of any descendants of the account owner's grandparents who had submitted a claim, in equal shares by representation; f) if a child of the account owner was deceased, that child's spouse but none of that child's descendants had submitted a claim, that child's spouse was considered a child of the account owner; g) if none of the persons entitled to an award pursuant to Article 23(1)(a-f) had submitted a claim, the CRT was authorized to make an award to any relative of the account owner, whether by blood or by marriage, who had submitted a claim, consistent with principles of fairness and equity.

In cases involving a will or other inheritance documents, the CRT Rules provided as follows: a) if a claimant submitted the account owner's will or other inheritance documents pertaining to the account owner, the award was to provide for distribution among any beneficiaries named in the will or other inheritance documents who had submitted a claim; b) if none of the named beneficiaries had filed a claim, the CRT was authorized to make an award to any claimant who had submitted an unbroken chain of wills or other inheritance documents, starting with the will of, or other inheritance documents pertaining to, the account owner; c) if a claimant based a claim of entitlement on a chain of inheritance but had not submitted an unbroken chain of wills or other inheritance documents, the CRT was to use the general principles of distribution established in Article 23(1) to make allowance for any missing links in the chain, consistent with principles of fairness and equity. *See* CRT Rules, Article 23.

As has been observed in a work prepared under the auspices of the Permanent Court of Arbitration Steering Committee on International Mass Claims, INTERNATIONAL MASS CLAIMS PROCESSES: LEGAL AND PRACTICAL PERSPECTIVES (Howard M. Holtzmann & Edda Kristjánsdóttir eds., Oxford Univ. Press 2007)

Once the CRT drafted an award for submission to the Special Masters, the Special Masters reviewed the award, in some instances requesting additional information or determining that a different outcome was warranted than that proposed by the CRT. "This review, in addition to detailed provisions on claims admissibility criteria, matching of claims and accounts, criteria for making awards, and presumption to be applied to certain classes of claims, assist[ed] in maintaining consistency among different claims reviewers."[182]

Once an award was finally recommended to the Court, and the Court reviewed and if applicable approved the award, SDAP was authorized to pay the award proceeds out of the Settlement Fund. The payment process itself was complicated, involving communication with claimants and relatives around the world to ensure that the appropriate documents were submitted and the appropriate wire transfer information provided.[183]

Claimants were required to sign an acknowledgement form (the "Acknowledgement Form") prior to receiving payment of an award, which released any further claim to the awarded accounts. The Acknowledgement Form also obligated payees to share the award amount received with any other heirs of the account owner who came forward after the award was issued,

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("INTERNATIONAL MASS CLAIMS PROCESSES"): "The inheritance regime set forth in the [CRT's] Governing Rules, approved by the United States federal district court overseeing the class action … is generally recognized as fair, and establishing such a regime was designed to expedite the decision of some claims by eliminating the need for ascertaining and applying the particular national laws applicable to the claimants." *Id.* at 113. The authors noted that broader "questions may arise as to whether it is appropriate for a court in the United States to adopt rules that supersede national laws that would otherwise govern inheritance of individuals, particularly where the claimants have not lived in the United States and the distribution of their estates would be governed by national laws having different provisions." *Id.* That question, however, would be appear to be addressed at least in this case by the claimant's agreement to participate in (rather than opting out of) the U.S.-based class action settlement.

The German Foundation "Remembrance, Responsibility and Future," which separately reviewed slave labor and other claims, reached the same result as the CRT, imposing a self-contained set of inheritance rules. "This system was not uncontested since it meant disappointing persons who were heirs according to their respective national inheritance law including those who were designated as a beneficiary in the will of the deceased person. However, given the large number of beneficiaries, the system avoided the challenge of having to establish first, which national inheritance law applied, and then who was an heir under such national inheritance law. It would have been very difficult, time consuming, and costly … to identify and then apply different national inheritance laws..." Roland Bank, *Eligibility, in* THE GERMAN COMPENSATION PROGRAM FOR FORCED LABOR: PRACTICE AND EXPERIENCES 26, 36-37 (Günter Saathoff, Uta Gerlant, Friederike Mieth & Norbert Wühler eds., Found. Remembrance, Responsibility & Future 2017).

182 International Mass Claims Processes at 259.

183 The payment process, which was handled largely by SDAP in New York, is more fully discussed below.

and who would have been entitled to participate in the award in accordance with the entitlement provisions set forth in Article 23 of the Rules.[184]

7. The Claim Form

The name of the claimant's relative, his or her biographical data, and any other relatives identified by the claimant were entered into the CRT's database by CRT support staff. To further ensure accuracy and thoroughness with regard to the information entered, CRT attorneys conducted "Data Integrity" ("DI"), which sought to correct any previous data entry errors in the Zurich database, the "Claims Processing System" or "CPS." The DI process also was intended to add any missing information to the database, most importantly names of relatives that had not been previously entered into the system. The purpose was to gather correctly spelled names to match against the 36,000 account owner names that the Volcker Committee had identified as probably or possibly belonging to Victims or Targets of Nazi persecution (as augmented by additional accounts located by the CRT from archival and other sources).[185]

At the Data Integrity stage, claim information was compared with the entries in the database to ensure accuracy of names, including all name spellings, nicknames and/or name variations; inclusion of the names and name variations of any relatives identified in the claim; and any biographical data associated with a Claimed Account Owner and their relatives. In addition, SDAP staff transliterated thousands of names from Hebrew to Latin fonts.

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184 The Acknowledgment Forms were especially important in responding to untimely claims; *see infra*.

185 The SDAP staff assigned to this project consisted of 7 Supervisors and 20 claims analysts, working in day and evening shifts in order to complete the project in a timely manner. SDAP staff performed Data Integrity (and with respect to all of the IQs and ICEP claim forms, original data entry) on a total of 48,867 forms, which included more than 35,000 IQs, 2,300 ICEP forms, 9,625 claim forms from the 2001 List and an additional 1,942 claim forms from the 2005 List. In addition, SDAP also scanned and organized 7,600 ICEP files for upload into the CRT-Zurich database.

a. Information Elicited by the Claim Form

The claim form sought the following data:

i. Information about the Claimant

- Claimant's personal information such as date and place of birth, parents' names and contact information.
- Alternate contact information, in the event the claims process was unable to contact the claimant. In the absence of a separate power of attorney form granting authority of the person identified as the alternate contact to represent the claimant in the claims process, the alternate contact did not have any right to receive information about the claimant's claim, but was simply a conduit for facilitating communication with the claimant. An alternate contact could also act with power of attorney for the claimant upon submission of the requisite form.
- Names of any family members represented by the claimant, along with submission of a completed and signed power of attorney from each of the named parties.
- Names of any other family members submitting separate claims. This provided an opportunity for the CRT to "link" related claims for purposes of including all entitled parties in a decision. The CRT encouraged inclusion of all entitled family members to a particular account, whether by representation of one family member on behalf of themselves and others, or submission by each family member of a separate claim form. Exclusion of known family members from an award was often the subject of late claims to awarded accounts and was addressed in the appeals process.

ii. Information about the Claimant's Relative

- Name of the account claimed, with a requirement that separate claims be submitted for each account owner. Claimants were prompted to indicate whether the owner of the claimed account: 1) held an account published on the 2001 [and later the 2005] List; 2) was identified as a power of attorney holder for an account, but believed by the claimant to have been the account owner; or 3) held an account that was not published on the 2001 or 2005 List.
- Name of a company that held an account, if the account was in the name of such company. Claims to company-held accounts were required to establish ownership rights of the claimant's relative ("Claimed Account Owner" or "CAO") to the company at issue.
- Name of the beneficial owner of an account, for cases involving claims that an account was opened in the name of one person, who held the account on behalf of another.

- General information on the CAO, such as dates of birth and death; any addresses associated with the CAO; whether the CAO ever resided in Switzerland (temporarily or permanently); and the extent to which the CAO maintained any personal or professional connections to Switzerland.
- Whether the CAO was a Holocaust victim. A claim involving a CAO who was not a "Victim or Target of Nazi Persecution" — Jewish, Roma, Jehovah's Witness, homosexual, or disabled — was inadmissible under the Settlement Agreement.
- The CAO's circumstances during the Second World War. Details regarding the experience of the CAO during the Relevant Period provided key information to assist in match review (such as dates during which the CAO was present in a particular country). This information also enabled the CRT to chronicle the fate of CAOs, as well as that of their assets, in published decisions.
- The claimant's relationship to the CAO, with supporting documentation (if available, in light of the facts and circumstances of each particular case).
- Names of the CAO's spouse, children and parents, as well as a family tree containing information about other branches of the CAO's family.
- In cases involving a claim of beneficial ownership, or a claim not based on a relationship (such as a company account owner), information establishing the beneficial ownership or entitlement to funds owned by a company account owner.

8. Account Review in Practice

The first files CRT attorneys reviewed generally contained an Audit Report summarizing the findings of the ICEP auditor with regard to the account at issue; bank documents related to a particular account or set of accounts belonging to the same account owner or account owners (often obtained through "voluntary assistance" initiated at the behest of the CRT); and the claim forms for "matches" generated by the CRT's database. The Audit Report reflected certain key information noted by the ICEP auditors, including whether the account at issue was captured in audit Categories 1-4 and if so, which category; whether the account had been published; the number of accounts associated with the account owner; and the type of additional information, if any, that had been published along with the account owner's name.

CRT attorneys examined the bank records to determine the accuracy of the information identified by the ICEP auditors. In some cases, the audit firm may have omitted certain information in its report, such as the name of an additional account holder or power of attorney

holder (who may or may not have been related to the account owner). In cases where a joint account owner or power of attorney holder was identified, that name was added to the AHD for matching purposes in the claims process.[186] In this manner, other matching claims were linked with the original matched claim in an attempt to capture all claims from the same family.[187]

a. Match Confirmation

Key information considered by the CRT in an effort to confirm or disconfirm claim "matches" included:

- Gender: The CRT evaluated whether the account owner and the claimant's relative were the same gender, based upon information in the bank records and claim form, and based also upon gender concepts generally in effect at the time the bank and other records would have been created, as well as the gender expressed by the claimants. Although the names of the two persons may have been identical or substantially similar, certain names may have been gender neutral or masculine or feminine in one language and the opposite in another. Alternatively, some accounts contained only the first name initial of the account owner, which preliminarily matched to the same first name initial of the claimant's relative, even though, upon further evaluation, it was clear that these were two people of different genders.[188] For example, the bank records may have identified gender as follows: "*Herr*," "*Frau*," "*Fräulein*," "*Monsieur*," "*Madame*," "*Mademoiselle*", etc. Where the bank records did not specify the gender of the account owner, but the name itself appeared to be a possible basis for a conclusion as to gender, the CRT took into consideration the fact that many names were not gender-specific and evaluated the claim accordingly.[189]

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[186] Under Swiss law, a power of attorney holder did not hold ownership rights to an account. Accordingly, a claimant with a confirmed match to a power of attorney holder, but not the account owner, would not have been entitled to the proceeds of the account at issue.

[187] Claims may have been submitted to the same or related accounts by various branches of a family tree. By adding information about additional account owners, and conducting thorough Data Integrity, the CRT was able to match these claims to each other, and through those matches include other entitled heirs in an award distribution.

[188] *See In re Account of J. Wagner*, involving a claim to an account held by a man named Jechiel Wagner, whereas the bank records indicated that the account owner was a woman and included information regarding the account owner's maiden name.

[189] For example, the name "Andrea" is typically recognized in English as a female name, but it is a male name in Italian. Similarly, "Laurence" is usually considered in English to be a male name, but is a female name in French.

- Technical name match: The names involved were so different that, considering the names alone, it was clear that the account owner and the claimant's relative were not the same person.[190]

- Alternate name: Derivative names were considered "alternate names" and not considered a technical match. For example, the names Miriam, Miri, Mary and Maria may have referred to the same person. In such cases, the CRT evaluated several factors including the countries of origin of the account owner and the claimant's relative; the part of Switzerland where the account was opened (*i.e.*, French, German or Italian speaking); and information provided by the claimant regarding any alternate names of the claimant's relative, to determine whether an alternate name might have been used in the bank records.

- Maiden and married names: There could be clear evidence of the account owner's maiden name in the bank records, which contrasted with the maiden name of the Claimed Account Owner. The CRT evaluated preliminary conclusions reached with regard to maiden versus married names, as in some cases, the maiden and married names of Claimed Account Owners remained the same (perhaps due to marriages within the family).

- Marital status: The account owner's title may have provided information regarding marital status. For example, an account owner identified in the bank records as *Frau* or *Madame* or *Mme* indicated, in accordance with custom during the Relevant Period, that that person's last name was her married name, or that she was an older, unmarried woman. Similarly, the title *Fräulein*, *Mademoiselle*, or *Mlle* indicated that the account owner was unmarried and, most likely, in her early twenties or younger. Such information was a useful tool to aid in disconfirming matches. In the foregoing example, a young, unmarried woman would not have been ascribed a title reserved for a married or mature woman. Similarly, the CRT considered whether the claimant's relative's maiden name, rather than her married name, matched to an account owner's married name.

- Age: The CRT evaluated information in the bank records regarding the account owner's age (where available), as compared with the age of the claimant's relative. Examples of such cases included information leading to a conclusion that: 1) the relative had not been born at the time the account was opened; 2) the relative had passed away by the time the account at issue was opened; or 3) the relative was a young child when the account was opened, and there was no indication in the bank records that the account was opened by an adult on behalf of the child. In some cases, a discrepancy in age could be deduced from information in the bank records about the account owner's profession or title (*e.g.*, "Dr." and "Prof").[191] In other cases, the account owner's birth date appeared in the bank records, which could be compared

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[190] For example, the last names "Smith" and "Smithson" are not the same, but the computer matching system may have generated a match based upon the root name "Smith."

[191] For example: the bank records may have indicated that the account owner used a "Prof." title, but the Claimed Account Owner was only eight years old at the time the account was opened, and so obviously could not have been a professor.

with the date of birth of the claimant's relative as provided by the claimant or other sources.[192]

- Profession: In certain cases, the bank records revealed information about the account owner's profession, either via a professional title or notation in the record. The CRT considered such information in an effort to confirm or disconfirm a match. For example, the bank records may have indicated that the account owner used a "Dr." title, whereas the Claimed Account Owner did not have an educational background providing for use of a "Dr." title.[193]

- Country of residence: The bank records indicated that the account owner resided in a country to which the claimant's relative did not have a plausible connection. CRT attorneys were aware that certain regions in Europe had a history of border changes during the Relevant Period, and kept this in mind when evaluating the match. Identification by a claimant of an unpublished country of residence listed in the bank records provided support for a match to the account, along with other factors.

- City of residence: The CRT evaluated matches of account owners and claimant relatives who had identical or similar names, but resided in different cities of residence within the same country. In evaluating such matches, the CRT considered several factors, including the distance between the two cities of residence; whether the claimant's relative resided in a small city or town; whether the account owner's city of residence was the closest large city to the relative's smaller town of residence; and whether the relative maintained any significant connection to the account owner's city of residence that would provide for a plausible conclusion that the relative would have used that city of residence, rather than his or her own, when opening a bank account. Such reasons may have included close family members or business in a particular city.

- Nationality: An account owner's nationality was not often listed, although nationality could be deduced to a certain extent from an indication of an account owner's city or

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[192] Claimants did not always have information regarding their relatives' dates of birth, particularly for more distant relatives such as great-grandparents and cousins. In certain cases, the CRT often could corroborate information provided by the claimant against data contained in external sources, including the then-available information in the Yad Vashem Database of Holocaust Victims, to identify the relative and identify a birth date and perhaps other biographical information. Yad Vashem has since considerably expanded its victims' database, with the assistance of funds provided under the Victim List Project created as part of the Distribution Plan under the Settlement Agreement, so that there are now over 4.5 million names in the database. For more information, *see* chapter entitled, "The Victim List Project."

[193] *See In re Account of M. Natheim*, in which the CRT concluded that the claimant had plausibly identified the account owner. The CRT noted that the claimant's relative's first name initial and last name matched the published first name initial and last name of the account owner. The CRT also noted that the relative's city and country of residence matched the published city and country of residence of the account owner, and that the claimant had identified the account owner's doctor title and city of residence in the United States, both of which were unpublished. The CRT also noted that the claimant had indicated that his relative had provided a street address only two kilometers from the address indicated in the bank records, and that it was plausible to conclude that the address not identified by the claimant was his relative's work address. The claimant submitted copies of his relative's letterhead, which indicated that *Dr. jur.* Netheim was an attorney, and that his office was located in the city of residence of the account owner.

country of residence. CRT attorneys were aware that a target of Nazi persecution could have recorded a country of residence different from his or her actual domicile for purposes of concealing a connection with an account. The CRT also was aware that the Nazi regime dispossessed Jews of German citizenship as part of the Nuremburg Laws. Accordingly, the CRT considered whether a claimant's relative who resided in a country other than the country or city identified in the bank records could have had a plausible reason for identifying the account owner's city or country of residence. Such reasons may have included close family or business connections to the country of residence identified in the bank records.

- Address: The CRT considered whether the bank records contained any unpublished information regarding an address of an account owner, and whether a claimant had identified such unpublished information. In general, identification by a claimant of an unpublished address provided support for a definite match to the account.

- Other names: The CRT evaluated whether the claimant identified any other names associated with the account, whether those names had been published, identification by the claimant of the relationship between the account owner and any other persons associated with the account, and any other unpublished information regarding other names on the account identified by the claimant.

- Beneficiary: In cases involving a claim that a relative was the beneficiary of an account held in the name of a published account owner, the CRT considered whether the bank records contained any information establishing that the account was held on behalf of the claimant's relative.

- Opening Date: All accounts identified by the ICEP auditors and captured in the TAD, as well as the AHD, were open or opened at some point during the Relevant Period 1933-1945. While not every account included specific information regarding the date on which an account was opened (or closed), all relevant accounts had some indication of existence during that time period, including the appearance of the account in a particular bank database or identification of the account on a suspended accounts list. Many accounts did include information with regard to dates of opening and/or closing, upon which the CRT relied in drawing several conclusions.

  An account opening date, where available, was compared with biographical information about a claimant's relative. If an opening date occurred after the death of the relative, or at a time when that person would have been a child (without evidence of an account opened on behalf of a child), such information indicated that the claimant's relative was not the same person identified in the bank files. Similarly, an opening date associated with a particular country to which the claimant's relative did not have any connection at the time of opening also indicated that the "match" was not valid. Alternatively, an opening date at a time when the relative was clearly resident in the country or city at issue in the bank records, while perhaps not on its own sufficient to confirm a match, nevertheless provided a basis for further investigation of the match.

There were 1,504,392 "negative" matches, of which approximately 44% (664,669) were "technical" matches; *i.e.*, matches that arose only because the matching program was designed to be especially broad, but which on their face were invalid (for example, the first and middle names were the same, but the last name was entirely different). For the remaining 839,723 of these "negative matches," the matches ultimately were "disconfirmed;" *i.e.*, it was determined that the account could not be awarded to the claimant.

Not all of the accounts in the AHD generated matches, despite the fact that the CRT located and ran over 415,000 names against the AHD. The AHD consisted of 37,954 accounts, 36,138 of which were made available as a result of the ICEP audit and the remaining 1,816 due to the CRT's continuing research and its insistence upon further disclosure of accounts by the banks. Of these 37,954 accounts, 30,420 matched to one or more of the 415,453 names of potential accounts owners, but 7,534 did not match to any names at all. Therefore, these 7,534 accounts — nearly one-fifth of the entire account database available to the CRT — had no possibility of ever being awarded. No one had claimed them; no one had named these account owners as relatives; there was not even a "technical" match to be analyzed. In most cases, these accounts went unclaimed because entire families had been destroyed by the Nazi regime and there were no heirs left at all.[194] In a few other instances, the heirs were aware that the account owner already had received the proceeds of the account(s) at issue; they knew that they were not entitled to payment, and did not file a claim.

b. Efforts to Expand Scope of Matching to TAD

The AHD represented just a fraction of the TAD. Accounts were excluded from the TAD for a variety of reasons, including that they appeared to be domestic (Swiss) accounts or were small savings accounts. ICEP Chairman Paul Volcker had observed that the decision to exclude accounts from the AHD were based upon "'convenient shorthand descriptions [(*i.e.*, "relevant" or "irrelevant" accounts and "probable" or "possible" relationships to Holocaust victims)], perhaps too cryptic in light of lawyers determination to split hairs, [which] cannot contradict the

[194] The number of accounts awarded (4,716) was approximately 16% of the number of accounts that were claimed (30,420). This was the inevitable result of the passage of decades and the destruction of so many bank documents, even with the CRT's application of legal and evidentiary presumptions intended to benefit the claimants (see below).

uncontestable fact that the exclusion of millions of small savings accounts and Swiss address accounts from the ICEP analysis in the interest of speedy and manageable results does not, and cannot, mean that none of those accounts were Holocaust related. To the extent that such accounts can be practically and expeditiously identified, which is what the test experiment suggests is entirely feasible, the effort should be done to put this matter to rest.'"[195]

The Settlement Agreement and the CRT Rules provided for matching to the TAD under certain designated circumstances, largely controlled by the banks. After extensive negotiation, the parties agreed to a test program to determine the usefulness of additional matching to the TAD at certain Swiss banks. The preliminary test of the TAD (the "TAD Test") was carried out in 2004, with the cooperation of UBS, which made available the data in the archive for the Swiss Banking Corporation (SBC), which had merged into UBS. In addition, UBS authorized CRT staff members to conduct and analyze the TAD review, as opposed to insisting upon the more complex mechanism set forth in the Second Memorandum to File which would have required former ICEP auditors to return to Zurich for this exercise. As true for its participation in the "voluntary assistance" process, UBS's assistance under the guidance of attorney Britta Delmas enabled the TAD review and the claims process to progress more efficiently.

The TAD review involved two aspects: the test matching and research of 483 claimed account owner names to the TAD, and the researching of 1,905 accounts matching HCPO claims that had been matched to the TAD in 2000 to determine whether these matched accounts were likely to result in an award. A total of 2,052 matched accounts were reviewed as part of the test at UBS. All of these accounts had a match to either one of the 483 selected names or to a name in a HCPO claim. Those matches were analyzed, resulting in the conclusion that only 3% were likely awards, 14% were possible awards, and 83% were unlikely to be awarded.

However, the CRT was unable to gain a definitive estimate of the awardable accounts that might be available from the TAD, because the procedure became more complicated with the effort to match accounts held by Credit Suisse. Although the CRT engaged in extensive discussions with Credit Suisse, a significant obstacle was presented by that bank's insistence

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[195] *In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d at 155 (quoting Letter of Chairman Volcker to Swiss Federal Banking Commission Chairman K. Hauri (Apr. 12, 2000) at p. 3).

upon engaging an independent audit firm to conduct match review and testing (as opposed to allowing CRT staff to conduct this work, as had UBS). In addition, an agreement could not be reached concerning whether a claimant needed to match a name exactly or whether spelling variations would be considered; the relevant period of the accounts at issue; or the ultimate arbiter of a plausible match. As to the latter, Credit Suisse indicated that the outside auditor, rather than the CRT, would make such a determination, using different standards than those applied by the CRT in the general review process. The CRT therefore was unable to assess the overall likelihood of locating awardable accounts in the TAD, as many TAD accounts were held by Credit Suisse and adequate testing could not be undertaken.

V. THE APPLICATION OF PRESUMPTIONS TO FILL IN THE EVIDENTIARY GAPS

The CRT sought to analyze whatever data was available in the claim forms, the audit files and the bank records, erring in favor of the claimant wherever possible. Nevertheless, many gaps in the evidentiary record still remained, most commonly when the CRT was called upon to determine who (if anyone) had received the proceeds of an account, particularly where it was closed.[196] However, millions of account records had been destroyed, including, in many cases, documents that would have contained crucial pieces of information: the date and circumstances of the account's closure. U.S. law helped to fill this gap.

A. United States Law

The Court did not allow the destruction of account records to impede the claims process. The CRT was authorized to incorporate legal and evidentiary presumptions, just as in any litigation marred by the lack of documents.

[196] These are the "Category 3 accounts" noted in the ICEP audit.

In the treatise *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity*,[197] Special Master Judah Gribetz and Deputy Special Master Shari C. Reig described the complexity of administering the claims process, and the significance of the Court's decision to treat the bank account claims as typical of other claims under American law involving destruction of evidence:

> Given the passage of more than sixty years since the Holocaust, the fading of memories, and the destruction of documents, it was imperative to find a way to simplify the claims processes while still establishing limits so that only those with plausible claims would be compensated. In the absence of that element of plausibility, the Settlement Fund would be depleted and those whose property was taken as a result of the Holocaust would have lost whatever small satisfaction they might have obtained from finally seeing their specific injuries recognised in some tangible form. Yet if the evidentiary bar was raised too high, virtually no one could prove a claim. Thus, it was important to strike a balance by favouring the claimant while requiring that certain minimum levels of proof be met, depending upon the class and the nature of the claim….
>
> [T]here had been massive and often deliberate destruction of bank records relating to Holocaust-era accounts. There are no records for 2.7 million accounts — over one-third of the deposits — and the account records that do remain sometimes are sparse. Nevertheless, millions of records continue to exist. In many cases, these records are sufficient to show that an account had been open or opened during the Holocaust era; who owned the account; and how much it had been worth. What often [was] missing [was] the record that would show whether the account had been closed, and if so, by whom. As the Volcker Committee and the Bergier Commission had indicated, it was not surprising that this kind of information often was unavailable, since presumably it would have confirmed in many instances that the banks had permitted Holocaust victims to turn over their accounts to Nazi Germany under duress, or that the banks had taken the accounts into their own profits after the War.[198]

Despite these obstacles, "[t]he solution to this dilemma actually was quite straightforward. It required only that the Court apply a fundamental evidentiary principle under United States law, … that of 'spoliation.' The theory of spoliation posits that a party who has caused the destruction of documents, and who knew or should have known that the documents would be

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[197] *See* Judah Gribetz & Shari C. Reig, *The Swiss Banks Holocaust Settlement*, *in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY 115 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Koninklijke Brill NV 2009) ("Gribetz & Reig"). This chapter derives from a paper delivered by Shari Reig at a conference on reparations held at The Hague, The Netherlands, March 1-2, 2007. *See also* Judah Gribetz & Shari C. Reig, *Epilogue* to ORLAND, A FINAL ACCOUNTING 135, 135-151.

[198] Gribetz & Reig at 132.

relevant to litigation, should be held responsible for this destruction. An 'adverse inference' may be taken against that party. It may be presumed that the evidence destroyed would have been unfavourable to the person causing its destruction."[199]

In accordance with spoliation principles, the CRT was authorized to incorporate within the claims processing rules certain "Presumptions Relating to Claims to Certain Closed Accounts."[200] Unless there was "evidence to the contrary," where data was missing, the CRT would presume that neither the account owners nor their heirs had received the proceeds of an account. The burden of proof essentially would be shifted away from the claimant, to compensate for the banks' massive destruction of records that otherwise might have proven the fate of the account.

> "It is a well-established and long-standing principle of law that a party's intentional destruction of evidence relevant to proof of an issue at trial can support an inference that the evidence would have been unfavorable to the party responsible for its destruction." *Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir. 1998). "[A]n adverse inference should serve the function, insofar as possible, of restoring the prejudiced party to the same position he would have been in absent the wrongful destruction of evidence by the opposing party." *Id.* While these presumptions can of course never return account holders to the position they would have been in were it not for decades of bank stonewalling and document destruction, they can help to balance the equities."[201]

The American legal treatise, *Handbook of Federal Civil Discovery and Disclosure*, subsequently incorporated this description of the adverse inference into its discussion of "spoliation," relying in its 2010 edition upon the above language from *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301 (E.D.N.Y. 2004). Judge Korman's analysis of the impact of intentional document destruction thus was incorporated in support of the principle that negligent document destruction might have the same ramifications: the "preferred sanction in the event of negligent destruction of evidence is the 'spoliation inference' — the drawing of an adverse

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[199] *Id.* at 132-33. *See also* Michael Thad Allen, *The Limits of Lex Americana*, at 43 ("Independent audits yielded hard documentary evidence that backed up thousands of claims for dormant accounts. Moreover, the Swiss banks' egregious behavior in destroying records only created a further legal presumption of truth to the plaintiffs' allegations") (citing Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 115, 128-29 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006)).

[200] *See* CRT Rules, Article 28.

[201] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 317.

inference based on matters probably contained within the destroyed evidence. In its strictest form, the 'spoliation inference' establishes prima facie the elements of the injured party's claim that cannot be proven without the missing evidence."[202]

The Court authorized the CRT to employ basic U.S. legal principles allowing presumptions to take the place of documentary evidence that had been destroyed. Thus, based on the adverse inference, the CRT was instructed to assume, in the absence of documentary evidence from the bank files or other sources, that "the account owner did not receive the proceeds, but, rather, that the bank took the account into its own profits, permitted the account owner to withdraw the funds and turn them over to the Nazis under duress, or that the bank otherwise closed the account improperly."[203]

This approach was in contrast to other restitution programs, which often failed to consider the difficulties confronting claimants who did not have documentary proof due to the destruction and chaos of the Holocaust. For example, as recounted in one CRT award, *In re Accounts of Franziska Rosenstern*, the German restitution courts (which had heard cases closer in time and place to the Holocaust) found the lack of documents dispositive, and ruled against the Holocaust victim claimant and heirs. In the *Franziska Rosenstern* case, the account owner's daughter, the mother of the eventual claimant before the CRT, had sought recompense in 1964 for her own mother's securities. She had filed an application with the Restitution Tribunal of the Regional Court of Berlin. The Berlin tribunal rejected the claim, finding that Franziska Rosenstern did not prove that she had been under duress, and did not show that she had lost control of her assets. As described by the CRT, the Berlin tribunal stated in 1964 that "the person seeking restitution must prove that the assets were confiscated by the Reich." It concluded that although "'the claimant maintains that the securities made their way to Berlin, this is obviously only an assumption. But assumptions do not suffice to meet the burden of proof required according to § 5 of the Federal Law of Restitution.'"

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[202] Jay E. Grenig & Jeffrey Kinsler, Handbook of Federal Civil Discovery and Disclosure § 16:8 ("The 'spoliation inference'") at 879-880 (3d ed. 2010).

[203] Gribetz & Reig, at 134.

The CRT, applying the Court's rules, reached a different conclusion. Notably, in contrast to the Berlin tribunal, under U.S. law the CRT could rely upon "assumptions" to "meet the burden of proof" where the documents had been destroyed by the party obligated to maintain them. The CRT noted that "the Berlin Restitution Tribunal ignored not only the historical reality of the systematic expropriation of Jewish-owned assets at the hands of the Nazi authorities, but also the concrete evidence in the form of [a] note [from authorities], … which confirmed that the Account Owner's assets were confiscated by Gestapo order dated 1 May 1942 and that the Account Owner was deported shortly thereafter. In denying her restitution claim because no records existed to support the assets' confiscation by Nazi authorities, the [Berlin] Tribunal punished the Account Owner's daughter for the Reich's – and by extension, the Bank's – spoliation of evidence." The account owner had perished in Theresienstadt, and so she could not have reclaimed her Swiss accounts. The Court thus approved an award of $1,279,523.15. This was the value of the securities owned by Franziska Rosenstern. The Swiss bank to which these assets had been entrusted evidently instead had turned over this account and its holdings to the Nazis.

In an opinion piece in the newspaper, the *Forward*, Judge Korman elaborated upon the need to fill in the gaps in the evidentiary record. The principles governing the CRT's approach to every claim "appropriately established a very relaxed standard of proof. These rules are intended to compensate for the Swiss banks' systematic destruction of Holocaust-era account records. They reflect information gained from the CRT's examination of the remaining bank files, European archives and claimant information. We have left no stone unturned in our effort to return Swiss bank accounts to their rightful owners."[204] Thus:

> To compensate for the destruction of bank files, I authorized the CRT to apply an "adverse inference." If bank records show that an account existed but do not show what happened to it — such as who closed it and received the proceeds — the CRT presumes the account was closed improperly and pays the claim. (Sometimes there is evidence to the contrary, as where the account is closed before Nazi occupation...) We have studied many other Holocaust compensation programs, from the 1950s to the present. We are unaware of another program that applies such a generous presumption to make up for the lack of documentation.

[204] Edward R. Korman, *The Swiss Bank Claims Process is Both Just and Thorough*, FORWARD, Aug. 29, 2007, *available at* https://forward.com/opinion/11503/the-swiss-bank-claims-process-is-both-just-and-tho-00397/ (internal quotation marks omitted).

This was not the only way that the Court used traditional American legal principles to assist victims' families in their otherwise uphill battle to prove a claim where records might have been destroyed. As described by Judge Korman in the *Forward*, there were many other such examples (each of which is discussed in greater detail in the pages that follow):

> We use the earliest historically accurate date when determining when the Nazis began seizing Jewish property. This is an important date, because it permits the application of the adverse inference. For example, in Germany, we presume confiscations began when Hitler acceded to power on January 30, 1933. To our knowledge, most claims processes use a later date of 1936 or 1937. For Hungary, we use the earlier alliance date of November 1940, rather than the occupation date of March 1944…
>
> For the many accounts for which account owner information is limited because so many records have been destroyed, there are often several plausible claimants: sometimes two, sometimes five or more. They all show a plausible connection to the account owner because all that is known from the bank records is the owner's name, and perhaps country. There are many claims processes that likely would reject all of the claims because there is no way to determine which claimant was related to the account owner. (For example, the account owner could be listed in the bank files as "Isaac Meyer" from "Austria," and five unrelated claimants may show that they had a relative named Isaac Meyer from Austria.) We have chosen the opposite tack. Rather than denying all of the competing claims, we award all of them, dividing the account among the claimants pro rata.
>
> Where there are no bank records documenting the existence of an account, the CRT tries to locate evidence from some other source, such as Austrian and German census archives. For example, after Nazi occupation in 1938, the Austrians required Jews to complete a detailed census form listing their assets. Some 60,000 were filed. The CRT has made numerous awards to claimants who listed Swiss accounts on the census forms, although the bank records themselves may have been destroyed or are otherwise unavailable to the claims process. Whether based on the bank files, archives or other documentation, these awards are not inconsequential — they average $135,000.[205]
>
> Many claimants plausibly have shown that a family member owned a Swiss account, but the bank records have not been located. Once again, in an effort to ensure that claimants do not bear the burden of the banks' destruction of documents, I have authorized the CRT to make payments to those with "plausible undocumented claims" in the amount of $5,000 each [subsequently increased to $7,250]. These are not "humanitarian" payments … but awards based on the CRT's assessment of specific criteria, including the nature of the account owner's

[205] The $135,000 sum was as of the 2006 date of Judge Korman's article. At the close of the claims process in 2014, the average value of authorized awards was $185,263, and $184,130 for paid awards.

> relationship to Switzerland, the family's postwar attempts to access the funds, and other factors that I described in a February 17, 2006 decision.
>
> The CRT applies average, or presumptive, values calculated by the auditors who acted on behalf of former Federal Reserve Board Chairman Paul Volcker, who led the investigation of Swiss banks in the late 1990s. CRT Special Master Helen Junz, an economist who in connection with the Volcker investigation studied and reported on the wealth of the Jewish population in Europe on the eve of the Holocaust, has since reexamined these account values in light of information learned from the claims process. She has recommended a considerable increase in the presumptive values, which … would result in millions of dollars in additional payments to those who already have received awards as well as to those whose claims remain to be paid.
>
> Many CRT accounts do contain value information. However, when the actual value is lower than the average [presumptive] value, the claimant receives the higher amount; we assume that the account may have been eroded below presumptive value by fees and other charges. Since unlike in most countries, unclaimed accounts in Switzerland escheat to the banks and not the state, the banks had an interest in continuing to charge fees against these assets.
>
> Many Holocaust victims owned custody accounts containing bonds. In almost all cases, we pay the higher of market or nominal value as of the date the account was closed. This reflects our assumption that the account owner was forced to turn over the account to the Nazis and could not control her investment decisions.
>
> We have opened the process to as many claimants as possible, even though every new claim must be matched against all other claims and bank accounts to ensure that the proper owner is paid. To that end, I permitted the CRT to analyze some [63,000] — of more than 600,000 — [Initial Q]uestionnaires, in addition to the approximately 35,000 [ultimately 41,000] claim forms sent to the CRT. The questionnaires were submitted early in this case, even before I approved the settlement, as part of a broad informational survey of Nazi victims and heirs. However sparse many of the questionnaires may be, we have made every effort to match them to Swiss accounts as well as to analyze them as "plausible undocumented claims," and we have made many payments as a result. Similarly, although late claims slow the review process for those who submitted timely applications, I have authorized several extensions of the filing deadline to ensure that claimants have been given every opportunity to participate in this settlement.

The incorporation of so many rules favorable to claimants prolonged the claims process. The alternative, however, would have been worse:

> We are well aware that this process has not been "expeditious," ... This effort to fill in the glaring gaps in the Swiss bank records is unfortunately difficult, and it takes time.

It would have been more expeditious to deny many claims, given the paucity of the bank documentation. But to assist those whose claims against Swiss banks have been ignored for too long, we chose another approach: conducting extensive research, and sorting through sometimes dozens of competing claims and complicated family relationships. The process has been — and will continue to be — thorough and just.[206]

B. The Historical Basis for the Application of American Legal Presumptions to the Claims Process

The Court's decision to permit the CRT to "fill in the blanks" in the documentary record by employing presumptions did not arise in a vacuum. The presumptions were based upon historical realities, some of which were known at the outset of the claims process, and some of which became evident as the Court, the Special Masters and the CRT studied the documents that were still available despite the massive destruction of bank files.

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[206] Edward Korman, *The Swiss Bank Claims Process is Both Just and Thorough*, FORWARD, Aug. 29, 2007, *available at* https://forward.com/opinion/11503/the-swiss-bank-claims-process-is-both-just-and-tho-00397/. *See also* Letter from Hon. Edward R. Korman to New York State Banking Superintendent 5 (Feb. 1, 2006) (citing *In re Accounts of Otto and Maria Fuchs*) ("The CRT's work could certainly be completed more quickly if it were to limit its search to the person identified by the claimant as the account owner. However, we have concluded that, after a 60 year hiatus and a determined effort on the part of Swiss banking authorities to limit access to accounts, claimants are best served only after painstaking analysis not only of the specific account that the individual may have claimed, but of even accounts potentially owned. Experience has shown us that this additional research is of significant benefit to the claimants… To take but one example, in late 2002, the CRT recommended and I approved an award of nearly $5 million, in which the claimant had sought only her father's account. The CRT did locate one account that had been owned by the claimant's father. Of far more significance, however, the CRT also discovered several additional accounts holding substantial assets belonging to the claimant's aunt, who had been killed in a concentration camp and who had no heirs other than the claimant and the relative she represented. The claimant had not claimed the aunt's accounts. Were it not for the CRT's protocols, which require that staff members review all potentially related account owners for whom information is available in the [AHD], the claimant would have never known about, much less received, her aunt's substantial assets — some of which clearly belonged to the claimant's father, based upon information in the bank files").

Professor Michael Bazyler has observed that the distribution of Deposited Assets Class funds "proved to be an extremely difficult task... [T]he Swiss banks destroyed millions of records relating to these Holocaust-era accounts ... To make the process fair to the claimants, given the lack of documentation, Judge Korman provided for lenient standards of proof. For example, if an account record showed it was closed after the owner's country came under Nazi occupation or became an ally of Nazi Germany, the claims examiners in Zurich presumed that the account was closed improperly by the Swiss banks — either it was turned over to the Nazis or the banks took over the funds. The claimant would then be awarded the present value of the recorded amount with interest." Michael J. Bazyler, *Unfinished Justice: A Conversation with Michael Bazyler*, REFORM JUDAISM MAG., Spring 2008, at 79, 80.

The Court's decision to utilize presumptions to assist Holocaust victims also was not without precedent. During the same time period in which the Court, Special Masters and CRT were analyzing over 104,000 claims to Swiss assets, the German Foundation "Remembrance, Responsibility and the Future" was assessing an enormous number of applications from around the world for different Holocaust compensation programs the Foundation had established in 2000, including for slave labor, medical experimentation, property losses and other injuries. The principal legal adviser to the Foundation explained that the German Foundation had incorporated presumptions, so that claimants could receive individual attention while not being penalized for a lack of information decades after the Holocaust:

> On a broader scale, the standard of credibility permits broad presumptions based on historical experience that apply to a larger number of applications. Ample use has been made of such presumptions under the German law. For instance, it is presumed that all persons who were detained in a concentration camp or a ghetto were forced to work. Therefore, every applicant who can show that he or she was detained in one of these places does not need to provide any independent proof with regard to forced labor. Similarly, with persons who could establish that they were deported from their home state in Eastern Europe to the German Reich or occupied territory, it is presumed that they were forced to work. This presumption is based on the historical knowledge that this was the typical fate suffered by deportees from Eastern Europe. Moreover, the credibility approach permits schematic acceptance of certain documents as sufficient proof of a certain element and thereby guarantees a high output of decisions.
>
> Moreover, it may even be doubted that relaxed standards of proof decrease accuracy. Given the time that has elapsed since the events, it may be regarded as a rule rather than the exception that applicants do not have any documentation about their fate at the time in question…. To insist on documentation as the standard of proof required for eligibility, therefore, would mean that an important number of actual victims would not qualify for a positive decision. Therefore, even if the likelihood of historically accurate positive decisions may be better if documents are required, the probability of historically false rejections would be higher. In the particular context of the Foundation, which addresses situations of more than five decades ago, the percentage of decisions that do not coincide with the historical truth is therefore probably lower with the use of a relaxed standard of proof.[207]

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[207] Roland Bank, *Processing of Claims for Slave and Forced Labor: Expediency versus Accuracy*? *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 190, 193-94 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006).

In the German Foundation's 2017 publication reviewing the forced labor program, the Foundation again stressed the importance of implementing evidentiary rules that were not overly burdensome, under the circumstances of the Holocaust. "It would be meaningless to establish elaborate eligibility criteria when they are difficult to prove or at least to be made credible... Generally, the German forced labor compensation program provided for a *relaxed standard of proof* because it was conscious of the fact that much time had elapsed since the historical events and that the type of injustices which the program addressed were difficult to prove. Moreover, the long time since the events also implied that the survivors had a very advanced age. Against this background, it was a matter of fairness not to rely on documentary evidence or public records only and that applicants were allowed to support eligibility with a variety of evidentiary means, including credible statements."[208]

This rationale was equally if not more applicable in the Swiss Banks case, where documents had not been simply misplaced with the passage of time, but destroyed by those responsible for preserving them. To penalize claimants for the lack of documents "would mean that an important number of actual victims [or heirs] would not qualify for a positive decision."[209]

Where documents did still exist, they revealed much about the reasons so many accounts had been recorded as "closed," and the looting that had impacted the value of the accounts that remained open. This historical evidence warranted the presumption that the banks destroyed documents because of some uncomfortable facts: the banks had enabled the Nazis to force their victims to turn over their Swiss accounts (and in some instances, the banks themselves had reported the accounts to Nazi authorities); confiscations had begun at the earliest possible date, upon the occupation by or alliance of a nation with the Third Reich; the banks had failed to return accounts entrusted to them by refugees forced to deposit their assets if they were fortunate enough to be granted asylum in Switzerland; the banks complied with the Swiss government's agreements to turn over Holocaust victim accounts to Communist governments as part of post-

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[208] Roland Bank, *Eligibility, in* THE GERMAN COMPENSATION PROGRAM FOR FORCED LABOR: PRACTICE AND EXPERIENCES 26, 35 (Günter Saathoff, Uta Gerlant, Friederike Mieth & Norbert Wühler eds., Found. Remembrance, Responsibility & Future 2017).

[209] *Id*. at 194.

War deals favoring Swiss nationals; the banks did not adequately respond to account owners and heirs after the War; and the banks charged fees against accounts, and in some instances took the accounts into their own profits.

Presumptions based upon these historical facts also enabled the CRT to determine account values where the bank records did not show them. Absent documentation to the contrary, the CRT generally presumed that account values had been underreported by account owners in an often fruitless effort to shield at least some of their assets from the Nazis; that the banks had not added interest to victims' accounts, although the banks did subtract fees; and, ultimately, that the account values originally assigned at the outset of the claims process had significantly underestimated the true worth of the accounts, resulting in substantial additional payments to many claimants.

Examples of the types of cases analyzed by the CRT, and the historical evidence that these cases yielded — warranting application of broader presumptions concerning the fate and value of the accounts where complete documentation of the accounts did not exist — are discussed below.

C. The Presumption That the Account Owner Did Not Receive the Proceeds of His or Her Swiss Assets

1. Forced Transfers

One of the defining elements of the Swiss banks' behavior during the Holocaust era, as described by Judge Korman (relying heavily upon the findings of Switzerland's own Bergier Commission), was the banks' willingness to routinely facilitate transfers by Holocaust victims that were made under duress. These were known as "forced transfers." The Court directed the CRT to assume that where bank records were lacking (mainly because the banks had destroyed them), it was plausible that the records would have shown that the bank in question had cooperated with Nazi authorities in transferring the victims' funds out of a supposedly secure Swiss bank account.

The banks destroyed these documents because among other things, they were concerned after the War that they might be held accountable for activities that even the banks' own legal experts had counseled against.

> Swiss banks proved less of a safe haven than many of their customers had hoped. While not every Swiss bank acted in the same way on every occasion, the Bergier Commission's findings reveal that *in general* the banks placed their own perceived economic self-interest ahead of their customers as *a matter of policy*. The most glaring example of this was the practice of engaging in questionable account transfers during the Nazi era. Time and time again, banks completed transfer orders which they knew were requested only because of Nazi persecution, and which they suspected were not in their customers' best interest. An example that reflects the concerted policy of the Swiss banks is described by the Bergier Commission as follows:
>
> > After overrunning Poland in September 1939, the new ruling [Nazi] power endeavoured to acquire Polish assets deposited in Switzerland. As early as 20 November 1939, the Polish bank Lodzer Industrieller GmbH asked Credit Suisse to transfer assets deposited with it to an account at the German Reichsbank in Berlin. The bank saw a fundamental problem in this procedure and asked its legal affairs department to examine the matter. The latter recommended not complying with the request since the customer's signature had most likely been obtained under duress by the occupying authorities. A further reason for refusing the request was that it had come from Berlin and contained incorrect information about the amount deposited with Credit Suisse. The legal affairs department also pointed out that for Poland, German foreign exchange regulations represented a war measure taken by an occupying force and that Switzerland had not yet recognized the new political situation. **Managing Director Peter Vieli subsequently discussed the issue with Rudolf Speich, his counterpart at the Swiss Bank Corporation**. The latter contacted the Reichsbank, which agreed that in view of the unclear constitutional situation in Poland, Swiss banks were not obliged to comply with requests from German administrators…. Nevertheless, according to a file note 'the directors of the Reichsbank and Dr. Speich were of the opinion that duly signed requests from customers for their assets held in Switzerland to be transferred to an account with the Reichsbank must be executed since absolutely no justification could be found for not doing so.' **Although there were legal and moral objections to transferring the funds, the consideration that they 'still had important interests in Germany, and should avoid friction and unpleasantness whenever possible' prevailed at CS [Credit Suisse].** They complied with the request and opted for the principle of carrying out legally signed orders even when they were not received directly from customers, but via the Reichsbank in Berlin. Their comportment in Poland was in this respect

> typical of how the banks dealt with the assets of Nazi victims: **as a rule, they complied with transfer orders from foreign customers without properly checking whether the signatures they bore had been obtained under duress by the Nazi authorities and whether the orders were in fact in the customer's interest.**[210]

Significantly, the "two major banks in this example (Credit Suisse and Swiss Banking Corporation) consulted with one another and *together* decided to disregard the legal advice of Credit Suisse's legal department. It is possible to imagine situations where a bank's decision to order a forced transfer would have been morally justified as a way to protect a client's life, but that was clearly not the case for these banks. These banks did not decide to order forced transfers because they thought it would serve their clients well — they did so to 'avoid friction and unpleasantness' with their business interests in Germany. Unpleasantness for their clients was not even a consideration."[211]

The question was "'not whether [the Swiss banking industry] should or could have maintained its [business contacts with Nazi powers], but rather how far these activities went: in other words, where the line should have been drawn between unavoidable concessions and intentional collaboration.' Bergier [Final] Report, at 497. The banks drew a line quite near intentional collaboration. They made a collective decision that long-term economics counseled in favor of authorizing transfers to Germany, and, as [Bergier Commission member and, later, CRT Special Master] Helen Junz explains, '[t]he focus on Germany as a desirable business partner persisted beyond the period when Swiss business believed in a Nazi victory as there was a widespread conviction that the German economy would either survive or quickly regenerate after the war.' Junz, at 3. This policy constituted a clear violation of the banks' fiduciary duty to their account holders — individuals who were being persecuted daily."[212]

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[210] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 305-06 (emphasis in original) (citing BERGIER FINAL REPORT at 276-77).

[211] *Id*. at 306.

[212] *Id*. In a different paper, Dr. Junz observed that the banks' cooperation with Nazi authorities took on additional significance in light of the banks' post-War behavior. She noted that there is "ample evidence showing that clients' accounts were also released to the Nazi authorities — either directly to the Reichsbank, or indirectly into frozen accounts at financial institutions designated by the Nazi regime. To what extent does the release of such accounts to Berlin — directly or indirectly — indicate the sacrifice of the interests of one set of clients, to more 'interesting' ones who were more powerful or offered better business prospects, or both? Should one consider such actions based on 'business logic' as enrichment? The answer is not clear, as many circumstances

Although the "dearth of records makes it difficult to determine the overall impact of improper transfers by the Swiss banks during the Nazi era," as the Court noted, the Bergier Final Report provided some estimates:

> The Bergier Commission cited as an "example" that, between 1933 and 1939, Credit Suisse transferred about 8 million francs worth of securities to the Deutsche Bank; the Zurich office of the Swiss Banking Corporation transferred over 6 million francs worth of securities in accordance with the 1936 German Law on Compulsory Deposits; and the Swiss Banking Corporation sold 8 million francs worth of securities on behalf of German customers who were likely forced to transfer the proceeds to German banks. Bergier [Final] Report, at 275. These transfers alone total 22 million francs. Assuming conservatively that these francs were measured in 1945 and using the CRT's 2003 multiplier of 12 and an exchange rate of 1.35 Swiss francs to the dollar, this sum, undoubtedly a small fraction of the total forced transfers by Swiss banks during the war, would correspond to over $195 million today.[213]

The Court further observed:

> Perhaps more significantly, forced transfers continued throughout the duration of the war even though the Swiss courts recognized that they were illegal under Swiss law. [Bergier Final Report] at 276 (finding that when opponents of forced transfers had been "able to take legal action in Switzerland, the requests made by the [Nazi authorities] were rejected by the judges and the blocked assets were deposited with the court."). The Bergier Commission member Helen Junz explained that, "[a]lthough there are documented cases where banks acted to safeguard clients' assets — by moving them to numbered accounts or into other-named accounts — current evidence shows that *the cases in which accounts were released predominated.*" Junz, at 2 (emphasis added). She also notes that independent researchers Barbara Bonhage, Hanspeter Lussy, and Marc Perrenoud "estimate that in this way the major banks released some SF 200 million worth of

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surrounding the closing of victims' accounts by Swiss banks remain ambiguous. But the question of the balance between cooperation with the Nazi authorities and action in the genuine interest of the client loses some of the benefit of the doubt when seen in relation to the post-war treatment of victims and their assets. The recurrent theme that runs like a red thread through thousands of pages of analysis is, indeed, that of a 'business logic first' attitude. The consequence was at best myopia, and more often than not blindness, with respect to the property rights of persecutees of the Nazi regime…. The Swiss authorities explained this behavior, in part, by the perceived threat to the continued independence of a 'small, neutral country encircled by the Axis powers.' But there was no change in attitude after the end of the war, especially not once Allied pressure diminished with the advent of the Cold War. Restitution did not fit in with new business strategies, particularly in the financial sector. The much vaunted Bank Secrecy Act of 1934, which in many instances had not been able to protect victims' assets, was cited to bar access to information on those accounts that had remained in Switzerland." Helen B. Junz, *Confronting Holocaust History: The Bergier Commission's Research on Switzerland's Past*, 8 JERUSALEM CTR. FOR PUB. AFF. 1 (2003), *available at* http://jcpa.org/article/confronting-holocaust-history-the-bergier-commissions-research-on-switzerlands-past.

[213] 319 F. Supp. 2d at 307.

> deposits and securities to the German banks and/or the Reichsbank." *Id.* (citing UEK [Bergier Commission] study, no. 15, *Nachrichtenlose Vermögen bei Schweizer Banken*). Again using the CRT's conservative conversion rate, this sum would equal **over $1.7 billion today**.[214]

In other words, the value of the forced transfers alone ($1.7 billion) exceeded the $1.25 billion Settlement Amount.

Forced transfers were not inevitable. Rather, "the banks had a choice. They could have chosen to adhere to their fiduciary obligation and refused to honor transfers requested under duress. They could have frozen customer assets or otherwise blocked transfers as a matter of policy. Their failure to do so is revealing."[215]

As described in a study prepared for the Bergier Commission:

> "An effective protection of customers' assets might have only been possible through a general blockage/freeze. Because public opinion would have likely welcomed a freeze of German and Austrian assets in 1933 and 1938, respectively, and because [Swiss] courts hindered the forced transfers when they were called in to decide such cases, it is very hard to understand today why Swiss politicians and banks did not vehemently take steps against the implementation of the German laws forcing the repatriation of foreign-held assets — either through a freeze or through some other effective intervention."[216]

Bergier Commission historians Peter Hug and Marc Perrenoud observed that, by contrast, Switzerland did freeze assets of other European nations as early as 1940 (the occupied nations of France, Denmark, Norway, Belgium, Luxembourg and the Netherlands). Other freezes were

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[214] *Id.* (emphasis added). On the subject of Swiss judicial responses to forced transfers, *see also* Jacques Picard, *Switzerland, National Socialist Policy, and the Legacy of History*, *in* 'BYSTANDERS' TO THE HOLOCAUST: A RE-EVALUATION 103, 130 (David Cesarani & Paul A. Levine eds., Frank Cass Publishers 2002) ("Swiss courts resisted National Socialist authorities by denying them access to assets which had been 'Aryanised' in Germany in 'legal' terms, but which in reality had been deposited by their Jewish owners in Switzerland"); BERGIER FINAL REPORT at 339 ("Swiss courts were normally in sympathy with the original owners and referred to the *ordre public* reservation [refusing to enforce foreign law contrary to the nation's policy]…. At the end of February 1939, the [German] Ministry of Economic Affairs realized that a provisional administrator would invariably lose any case that went to a Swiss court. For this reason it was thought better to avoid further court cases for the time being in order to prevent a negative impression…. In October 1942 the issue was discussed once again. The judiciary in the neutral countries, namely Switzerland and Sweden, reacted more unfavourably towards the provisional administrators than ever. At the same time this strengthened the position of the rightful owners provided they had access to a Swiss court of law and their persecutors did not resort to other types of pressure — for example by imprisoning relatives — in order to force a settlement out of court").

[215] 319 F. Supp. 2d at 307.

[216] *Id.* (citing UEK study, no. 15, Nachrichtenlose Vermögen bei Schweizer Banken, at 166).

effectuated in 1941 (Yugoslavia, Greece and the USSR), 1943 (Italy), and 1944 (Croatia, Slovakia and Hungary). One of the purposes of a freeze, as the Swiss historians noted, was "to prevent transfers of funds or property from taking place which could be the subject of dispute later."[217] Nevertheless, when it came to Germany, an asset freeze "was fiercely resisted," and "although certain people had been advocating this move since the 1930s," no decision was taken until the war was nearly over, in February 1945, and even then only "implemented later."[218]

Switzerland's decision not to freeze German assets but to instead permit "repatriation" of accounts and other assets to Germany can be understood "when one considers the premium banks placed on 'avoid[ing] friction and unpleasantness' with their interests in Nazi Germany. This also explains their willingness to accede to forced transfers even though 'the banks during the Nazi period had considerable leeway in determining their response to the Nazi authorities' demand that they cooperate in making their foreign clients comply with Nazi laws and regulations.'"[219]

With this extensive historical background (as explored by the Bergier Commission and reexamined by the Court), it was appropriate for the CRT to incorporate the presumption that where account records had been destroyed, the bank was presumed to have effectuated a forced transfer. In many instances, there was enough evidence to demonstrate that it was not just plausible, but likely, that the banks had been complicit in enabling transfers to be made to the Nazis by customers who were acting under duress.

a. Transfers by owners under personal duress

Two relatively recent examples involving restitution efforts by the heirs of renowned art collectors demonstrate this point. The bank records likely would have revealed that the banks cooperated with the Nazis' demand that the owners turn over their accounts. Since these

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[217] Peter Hug & Marc Perrenoud, *Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries* 34 (Oct. 1996), *reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 104th Cong. 2d Sess., 339 (Dec. 11, 1996).

[218] *Id.*

[219] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 307-308 (citing Junz at 2 and UEK study, no. 15, Nachrichtenlose Vermögen bei Schweizer Banken).

individuals were meticulously stripped of everything else that they owned, it is highly doubtful that the Nazis would have missed the victims' Swiss bank accounts. The logical inference is that the bank records, had they not been destroyed, would have revealed that the accounts were closed under duress, and transferred to the Nazis. In applying the adverse inference to fill in the gaps in the banks' evidentiary record, the CRT was able to level the playing field for the victims' heirs.

A *Wall Street Journal* article, "What the Nazis Stole,"[220] recounted the background to the 2015 memoir, "The Orpheus Clock," by Simon Goodman. Goodman learned that his father's parents, who he had been told "died in the war," had been Jewish. They had "'once been enormously wealthy.'" Simon Goodman's grandfather, Fritz Gutmann, "had founded and long been [one of] the leading lights of one of Germany's major financial institutions, the Dresdner Bank. Generation after generation of Gutmanns had flourished in imperial and Weimar Germany, very much a part of the nation's establishment. They not only amassed great wealth and magnificent artwork and objets d'art but rubbed shoulders with the top echelon of society. All that changed after 1933, when the Nazis seized the bank and the assets of the family members in Berlin."[221]

Fritz Gutmann resided in Amsterdam, where he was a "pillar of Dutch commerce and society," heading up the Dresdner Bank in the Netherlands, "with a townhouse in Amsterdam and a country estate."[222] With the onset of Nazism, the Dutch affiliate of the bank was aryanized and it "cut its ties with Fritz Gutmann, who went on to form his own company." By May 1943, despite assurances of protection by "no less a Nazi official than Heinrich Himmler," Fritz Gutmann and his wife Louise "felt threatened enough to buy tickets on a train that they thought would be taking them to safety in Italy…. The train turned out to be destined for the Theresienstadt concentration camp." Fritz Gutmann was "beaten to death with clubs or garroted

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220 Martin Rubin, *What the Nazis Stole*, WALL STREET J., Aug. 21, 2015, http://www.wsj.com/articles/what-the-nazis-stole-1440191187 (reviewing SIMON GOODMAN, THE ORPHEUS CLOCK (2015)).

221 *Id.*

222 *Id.*

with wire," while Louise Gutmann was killed in Auschwitz. "Meanwhile, the Gutmanns' property and possessions in the Netherlands were confiscated by the Third Reich."[223]

Simon Goodman learned that his father, Bernard, had "embarked on an effort to reclaim the family's birthright" after the war, but "his endeavors met with rebuffs and dead ends…. His effort to get back the family's Dutch estate was met with stonewalling from bureaucrats in liberated Holland." He unsuccessfully sought to "reclaim the Gutmann clan's artworks, running from Old Masters by Frans Hals and Botticelli to Impressionist masterpieces by Degas and Renoir. The family's peerless silver collection – including an ornate 16th-century clock with depictions from the underworld of classical myth – had also gone missing."[224]

As the *Wall Street Journal* observed, while the "root of such dispersal and loss was of course the original Nazi looting," it was followed by "all manner of opportunistic theft," including "unscrupulous collectors, the heads of willfully blind institutions and Allied officials who, though responsible for returning stolen property to its rightful owners after the war, directed it elsewhere."[225]

The Swiss bank to which Fritz Gutmann entrusted his accounts must be added to that list of opportunists. In *In re Accounts of Fritz Gutmann*, in which the Court approved an award of $233,910.34, the claimant advised the CRT that his grandfather, Fritz Gutmann had been a banker for Dresdner Bank in Amsterdam, and that he later had founded his own company, *Firma F. B. Gutmann*, running it from 1933 until 1942. As later described in Simon Goodman's book and by the *Wall Street Journal*, the CRT noted that the claimant had "stated that in 1943, his grandparents received permission to emigrate to Italy via Berlin, but when they arrived in Berlin, they were detained and deported to Theresienstadt," where Fritz Gutmann perished.[226] The claimant also provided the CRT with "documents relating to his grandfather's art collection," building a collection" that had "not escaped" notice by Hermann Göring." Shortly after the Nazi occupation of the Netherlands, the CRT was told, "important parts of the collection, which had

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223 *Id*.

224 *Id*.

225 *Id*.

226 Louise Gutmann was sent on from Theresienstadt to Auschwitz.

been stored with an art dealer in Amsterdam, were sold directly to Göring's agents, other works found their way to Germany via a German art dealer; and some pieces, which had been sent to 'safety' in France were found and looted there after the German invasion. Much of the collection was recovered by the Dutch authorities after the War and, after lengthy proceedings, finally was restituted to the Gutmann heirs in 2002."[227]

As to Fritz Gutmann's Swiss accounts, the bank records that remained revealed that he had held a demand deposit account and a custody account, both opened on May 11, 1922. These records did not show the accounts' value, nor their date(s) of closure. But Fritz Gutmann's art collection had been looted or transferred to Nazi agents under duress, and the Gutmanns were killed in concentration camps. Despite the missing information in the bank files, the logical conclusion was that like his art collection, Fritz Gutmann's Swiss accounts, too, were turned over to the Nazis.

The same can be said for the Cassirer family, whose heirs have been mired in a dispute seeking return of the famous Pissarro painting, "Rue Saint-Honoré, Après-midi, Effet de Pluie," held by the Thyssen-Bornemisza Museum in Madrid. [228]

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[227] *In re Accounts of Fritz Gutmann*. The CRT files contain a partial copy of the recommendation of the Dutch Advisory Committee on Assessment of Restitution Applications. The recommendation, issued on March 25, 2002, noted that the committee had "asked itself the question how one should deal with the fact that certain facts can no longer be traced, that certain data have been lost or have not been retrieved, or that for other reasons it is impossible to prove certain facts. With respect to this question the committee holds the opinion that where the difficulties that have arisen are due or partly due to the passing of time, the risk therefor must lie with the government, except for special circumstances." Further, the Committee noted that there were "sufficient indications to warrant the presumption" that many of the Gutmanns' works of art "were sold involuntarily." Interestingly, this 2002 characterization bears a striking similarity to the adverse inference presumption that guided CRT-II since its 2000 inception.

[228] *See, e.g.*, Kat Greene, *9th Circ. Again Revives Suit Over Nazi-Plundered Art*, LAW 360 (July 10, 2017, 8:53 PM), https://www.law360.com/articles/942888/9th-circ-again-revives-suit-over-nazi-plundered-art; Daniel Siegal, *Quest for Nazi-Plundered Art Returns to 9th Circ.*, LAW 360 (Dec. 5, 2016, 7:00 PM), https://www.law360.com/articles/869185**.** *See also* Carol J. Williams, *Pissarro masterpiece travels a twisted history*, L.A. TIMES, Apr. 7, 2010, http://articles.latimes.com/2010/apr/07/local/la-me-pissarro7-2010apr07; Jim Falk, *Cassirer and Cohen - draft family genealogy – Person Sheet*, METASTUDIES.NET, http://metastudies.net/genealogy/PS04/PS04_174.HTM (last visited Mar. 24, 2016) ("*Cassirer and Cohen*").

Camille Pissarro, *Rue Saint-Honoré, dans l'après-midi. Effet de pluie*, 1897. https://www.museothyssen.org/en/collection/artists/ pissarro-camille/rue-saint-honore-afternoon-effect-rain. Photo courtesy of the Museo Nacional Thyssen-Bornemisza, Madrid.

Julius Cassirer, a member of a wealthy and prominent German family[229], and the father of three children – Friedrich (Fritz), Bruno and Elise (Liesel) — purchased the painting in 1900 directly from Pissarro. He left the painting to his son Fritz, a musician and conductor, who was married to Lilly. "Pictures from the 1930s show the beautiful Pissarro painting in the living room of the Cassirers' residence in Munich."[230]

When the Nazis rose to power, Lilly Cassirer, by then a widow remarried to the physician and professor Otto Neubauer, fled Germany by making a "simple swap."[231] She traded the Pissarro for her freedom, and her husband's.[232] "A Nazi-appointed appraiser forced her to sell 'Rue Saint-Honoré, Après-Midi, Effet de Pluie' for 900 Reichsmark — about $360 at the time and much less than its worth. But when the couple fled Munich in 1939, they could not take the funds, which had been paid into a blocked bank account."[233] While the "postwar German government voided the sale, [Lilly Cassirer] Neubauer, a member of the prominent German

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229 "With their pioneering spirit, philosophical leanings, and fine taste in art, the members of the close-knit Cassirer clan set standards and were successful in a wide variety of businesses and cultural endeavors: in banking, in the paper and cable industry, as art dealers, one as a publisher, another as a professor of philosophy, and yet another as a music theorist." MELISSA MÜLLER & MONIKA TATZKOW, LOST LIVES, LOST ART: JEWISH COLLECTORS, NAZI ART THEFT, AND THE QUEST FOR JUSTICE 12 (Vendome 2010) ("Müller & Tatzkow").

230 Cassirer and Cohen.

231 Marilyn Henry, *Stolen Images*, HADASSAH MAG., May 2006, at 30, *available at* http://www.hadassahmagazine.org/2006/05/11/arts-stolen-images/.

232 Her sister Hannchen was unable to escape, perishing in Theresienstadt. Müller and Tatzkow at 16.

233 Stolen Images at 30.

Jewish Cassirer family of intellectuals, publishers and businessmen, never recovered the Pissarro. It was sold multiple times. In 1993, the Spanish government paid $350 million for the collection of Swiss industrialist and Nazi supporter Baron Hans Heinrich Thyssen-Bornemisza; today, the collection is in the renovated Villahermosa Palace in Madrid, now called the Thyssen-Bornemisza Museum. Among the works in the baron's possession — the second-largest private collection in the world — was the Pissarro."[234]

After several years of unsuccessful negotiations, in 2005, the heirs of Lilly Cassirer sued the Madrid museum, as well as Spain. In 2015, the District Court for the Central District of California ruled in favor of the museum, finding that Spanish law governed the dispute. The law of Spain did not require the museum to turn the painting over to Lilly Cassirer's heirs. The court in that case observed that "[a]though the Foundation [Museum] has now prevailed in this prolonged and bitterly contested litigation, the Court recommends that, before the next phase of litigation commences in the Ninth Circuit, the Foundation pause, reflect, and consider whether it would be appropriate to work towards a mutually-agreeable resolution of this action, in light of Spain's acceptance of the Washington Conference Principles and the Terezin Declaration, and, specifically, its commitment to achieve 'just and fair solutions' for victims of Nazi persecution."[235] As of the date of this Final Report on the Swiss Banks Settlement distribution process, the litigation continues.

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[234] *Id.*; *see also* Williams, *Pissarro masterpiece travels a twisted history*, L.A. TIMES, Apr. 7, 2010, http://articles.latimes.com/2010/apr/07/local/la-me-pissarro7-2010apr07.

[235] *Cassirer v. Thyssen-Bornemisza Collection Found.*, No. 05-3459-JFW, 2015 WL 9464458, at *20 (C.D. Cal. June 4, 2015). The "Washington Conference Principles" referenced by the Court are the December 3, 1998 "Washington Conference Principles on Nazi-Confiscated Art," a declaration endorsed by 44 nations after an international conference in Washington, D.C. The participating nations recognized that if "the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair resolution, recognizing that this may vary according to the facts and circumstances surrounding a specific case." *Washington Conference Principles on Nazi-Confiscated Art* ¶ 8, U.S. DEPT. OF STATE, http://www.state.gov/p/eur/rt/hlcst/122038.htm. As to the Terezin Declaration: "On June 30, 2009, the 47 states attending the Prague Conference on Holocaust Era Assets, signed the Terezin Declaration. The Declaration calls, among other things, to strengthen and sustain previous efforts, notably those by the Washington Conference to ensure just and fair solutions regarding cultural property, including Judaica which was looted or displaced during or as a result of the Holocaust (Shoah). In regard to Looted Art, the Declaration calls for the recognition that restitution cannot be accomplished without the knowledge of potentially looted art and cultural property. It therefore calls for continuous provenance research, in addition to an ongoing effort to make available results on the internet, with due regard to privacy rules and regulations." *Conferences, Declarations & Resolutions - Terezin Declaration*, CLAIMS CONFERENCE/WJRO, http://art.claimscon.org/resources/additional-resources-2/.

With the Cassirer family in their sights, the Nazis also targeted Lilly's brother-in-law, Bruno – and his Swiss bank account. Bruno Cassirer, who like his brother Fritz and sister Elise, was born in Breslau, was an art dealer and publisher. As described by the CRT in *In re Account of Bruno Cassirer*, he founded the publishing company *Bruno Cassirer Verlag* in Berlin. With his wife Else and his children, Bruno Cassirer fled Germany to England in 1938, where he lived until his death in 1941.

The few Swiss bank records that remained and that were made available to the CRT were sparse. These documents showed only that Bruno Cassirer was the account owner, and that his wife Else was the power of attorney holder, of a numbered custody account. The bank records further showed that the Cassirers lived in Berlin. The Volcker Committee auditors were able to determine their street address as Granitzerplatz 1. The account was closed on September 10, 1936. The records did not show who closed the account, or its value. The CRT awarded the account to the claimants, the grandchildren and other heirs of Bruno and Else Cassirer (in the amount of $215,185.95). The CRT explained that Bruno Cassirer had fled Germany in 1938. When the account was closed in 1936, he was still living in Germany and would not have been able to retain ownership of the proceeds, given the Nazis' "campaign to seize the domestic and foreign assets of the Jewish population." Although the Swiss banks had destroyed the records that would have demonstrated precisely what happened to the account, Bruno Cassirer – like his sister-in-law Lilly,[236] and like so many other victims – were targeted by the Nazis, and their assets were ransacked. It was not likely that the Nazis had missed these victims' Swiss accounts.

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[236] Another Cassirer family member, Ernst, a cousin of Julius Cassirer, likewise lost his Swiss bank account. In *In re Accounts of Ernst Cassirer*, the CRT recounted how the prominent German philosopher Ernst Cassirer was forced to flee Germany in 1933. Ernst Cassirer, who had lectured at the university in Hamburg until 1933, taught first at Oxford in the United Kingdom (1933 to 1935), and then at Göteborg University in Sweden, becoming a Swedish citizen in 1936. He left Europe for the United States in 1941, holding positions at Columbia, and then at Yale, until his death in 1945. The bank records available to the CRT showed that the account owner was Prof. Ernst Cassirer, who resided in Hamburg, Germany, and in Zurich, Switzerland. He held a numbered custody account that was opened on July 31, 1930 and closed on March 18, 1933, as well as a numbered safe deposit box that was opened on March 18, 1933 and closed on August 19, 1936. Because the custody account was closed on the same date that the safe deposit box was opened, the CRT presumed that Ernst Cassirer was able to retrieve the contents of the custody account. However, as to the safe deposit box, although Ernst Cassirer was living in England in 1936 when the account was closed, the CRT presumed that the account owner, like many others, "may have had relatives remaining in his country of origin" – as indeed he did. He "may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety." The CRT thus awarded Ernst Cassirer's grandchildren the presumptive value of the safe deposit box ($31,379.39).

Similarly, in another case involving a forced transfer, *In re Accounts of Arthur Albers*, the CRT had an opportunity to revisit the claims of a Nazi victim who had been held in a concentration camp at the time his account was transferred out of the Swiss bank. The account owner had first sought redress in a New York court (the City Court) in 1946, just after the Holocaust, and several decades before the 2000 Settlement Agreement. The lawsuit, *Albers v. Credit Suisse*, which the Court cited in its 2004 opinion on the banks' behavior, and which was also noted in the CRT Rules,[237] explicitly recognized that Swiss banks should not have complied with Holocaust-era transfer orders that they knew or should have known were made under duress.

According to the City Court decision, in June 1938, one of the Swiss banks in question ("Bank I," as characterized in the CRT's decision) was contacted by a Dr. Fleischmann, a Zurich resident, concerning Mr. Albers' custody account, which held bonds. Dr. Fleischmann advised the bank that the bonds should be delivered only to Mr. Albers in person, since he was imprisoned by the Nazis, his business had been confiscated, and he had been forced to forfeit the remainder of his property to secure his release. The City Court observed that Bank I had made a notation in its records that the account should be blocked, and that any attempt to close the account should be submitted first to Dr. Koellreuter, a bank employee who was in communication with Dr. Fleischmann.

Mr. Albers was imprisoned in Buchenwald from September 1938 until April 1939. While there, he was forced to sign various papers, including a letter in which he directed Bank I to transfer bonds from his account to the account of the Nazi-controlled *Österreichische Creditanstalt*. The New York City Court decision explained that Mr. Albers signed the letter without knowing its contents, and without being permitted to read it. This letter was then sent on to the Swiss bank (Bank I). After the transfer, Bank I purported to write a letter to Mr. Albers confirming that it had executed his transfer order. The bank, however, did not send this letter to Mr. Albers (whom the bank knew was not likely to receive the letter, given that he was then in Nazi custody). The bank instead kept the letter in its own files.

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[237] *Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946), *cited in* 319 F. Supp. 2d at 308 *and in* CRT Rules, Article 28(j) n.5.

Bank I's legal department prepared a memorandum, which stated that Mr. Albers' bonds were transferred before Dr. Koellreuter or Dr. Fleischmann had been consulted, and that the proceeds of the sale of the bonds were credited to the *Österreichische Creditanstalt*'s account at *Chase City Bank* in New York. The memoranda, while noting that Dr. Fleischmann did not hold power of attorney over the account, asserted that Dr. Fleischmann approved the transfer after the fact, but that Dr. Fleischmann subsequently denied having given his approval.

The City Court concluded that Bank I had acted in disregard of its obligations to its customer, Arthur Albers. The letter that Arthur Albers had signed purporting to authorize the transfer was of no validity, considering that Mr. Albers was being held in Buchenwald when he signed it.

> The plaintiff's letter authorizing the transfer was, of course, void considering the circumstances in which it was signed. But if that were all before the defendant [Credit Suisse] it could act upon the letter with impunity; it would be putting too strict an obligation upon it, too onerous a burden, to ask it to go behind every letter of authorization that it received. But if it knew the circumstances in which the letter was written it could not rely upon it without being remiss in the duty it owed the plaintiff; and it did know those circumstances. It knew the general state of affairs in Germany and in the adjacent countries that had been forcibly seized by the German Government. It knew of the destruction of life, of the torture and the confiscation of property visited upon numberless people for no reason other than their religion. It knew that the plaintiff was one of those persons. The letter which it had received in June of 1938 through an intermediary of the plaintiff informed it precisely of the plaintiff's status. It had no communication from the plaintiff, or from anyone acting in his behalf, from June, 1938 until it received the letter of January, 1939.... The fact that it [the bank] made no inquiry concerning his whereabouts or his existence is an indication of its intention to rely only upon the formalism of the letter and to ignore all other circumstances.[238]

When the CRT process commenced, Mr. Albers' grandchildren and great-grandchildren filed claims seeking full restitution of the accounts.

The CRT decision explored some of the same facts that had been cited in the 1946 New York City Court decision, and expanded the analysis with data derived from Swiss bank files that had not been available to the City Court. These bank files indicated that Mr. Albers held a custody account and a demand deposit account at Bank I, as well as two custody accounts and

[238] 188 Misc. at 233; 67 N.Y.S.2d at 243.

one demand deposit account at a second Swiss bank ("Bank II"). The records from Bank I, including memoranda from Bank I's legal department (from 1942 and 1944), indicated that Mr. Albers opened the custody account on December 29, 1937, into which he deposited 7% Yugoslavian Government 1962 bonds with a nominal value of $5,000.00. The custody account held at Bank I was closed sometime between January 20 and 29, 1939, and the demand deposit account held at Bank I was closed on January 31, 1940.

Bank II's records included documents relating to three surveys of assets the Swiss banks had conducted after the War: (1) the 1945 freeze of assets held in Switzerland by nationals of Germany and the territories incorporated into the Third Reich; (2) the 1959 internal survey of accounts whose owners had had no contact with the respective banks since the 1930s; and (3) the survey of dormant accounts ordered by a Swiss Federal Decree of December 20, 1962 (the "1962 Survey"), which required the registration of assets belonging to foreigners or stateless persons who were victims of racial, religious, or political persecution.[239] Under Article 6 of the CRT Rules, the CRT requested the "voluntary assistance" of Bank II to obtain additional information about the account owner's assets. Bank II subsequently provided the CRT with more documents, including customer cards and a list of accounts dated September 29, 1980.

The additional records provided by Bank II indicated that the bank's last contact with Mr. Albers was sometime before August 31, 1939. These records also showed that more than one bank was involved — not just the first bank discussed in the City Court decision, but the second bank, which held two custody accounts and one demand deposit account owned by Mr. Albers. These records indicated that the custody accounts were closed on May 7, 1938 and February 16, 1939, respectively. The value of the custody accounts on the dates of their respective closures

[239] *See Glossary: In re Holocaust Victim Assets Litigation*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 1, http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("1945 Freeze"): "In accordance with a "decree of the Swiss Federal Council, all assets in Switzerland belonging to citizens of Germany and the territories incorporated into the Third Reich were frozen on February 16, 1945. A Swiss government ruling of May 29, 1945 required that all German assets in Switzerland had to be reported to the Swiss Compensation Office. The freeze was lifted pursuant to the agreements concluded between Switzerland and Western Germany and between Switzerland, USA, France and the United Kingdom in August 1952. These agreements entered into forced on 19 March 1953." *See also id.* ("1962 Survey"): "By Federal Decree of December 20, 1962, the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss-based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since May 9, 1945 and who were known or presumed to have been victims of racial, religious, or political persecution."

was unknown. The demand deposit account, which was opened on August 8, 1938, was frozen in the 1945 Freeze, at which time it had a balance of 987.50 Swiss Francs ("SF"). The records indicated that the account was unfrozen in June 1955, with a balance of SF 954.50, and that on September 7, 1959 its balance was SF 911.00.

According to Bank II's records, the demand deposit account was considered for the 1962 Survey but was never registered. The records did not indicate why the account was excluded. The most recent balance for the demand deposit account in Bank II's records was SF 801.00 as of December 12, 1963. Bank II's records indicated that the account was closed in 1982, at which time the amount in the account was unknown.

The CRT, through its own research, located a file in the Austrian State Archive pertaining to Mr. Albers, pursuant to a Nazi decree issued in April 1938 requiring all Jews to register their assets (the "1938 Census").[240] The records indicated that Mr. Albers was arrested by the Gestapo on April 21, 1938 and imprisoned in a concentration camp on April 29, 1938. Mr. Albers' Census form was dated August 8, 1938, and signed by Felix Kozar, a Nazi-appointed *kommissarischer Verwalter* (administrator). These records showed that the Gestapo seized Mr. Albers' assets and liquidated his business. According to Kozar, prior to his imprisonment, Mr. Albers owned real estate worth 228,670.00 Reichsmark ("RM"), business interests worth RM 522,566.39, and miscellaneous assets, including accounts and securities at banks in Vienna, Paris, and Zurich, worth RM 82,503.90.

The 1938 Census records established that Mr. Albers held two custody accounts, one each at Bank I and Bank II. The records indicated that each custody account contained 7% Yugoslavian Government bonds with a nominal value of US $5,000.00. The bonds at each bank carried a market value of RM 5,779.00 as of April 27, 1938 and RM 5,833.00 as of December 31, 1938. These records also indicated that on November 21, 1938, a flight tax (*Reichsfluchtsteuer*)

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[240] By decree of April 26, 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria (as well as Germany), and who held assets above a specified level, to register all assets as of 27 April 1938. The records for the 1938 Census for Austria are currently housed in the Austrian State Archive (Archive of the Republic, Finance). *See* http://www.swissbankclaims.com/Glossary.aspx ("Austrian Census").

of RM 218,464.00 was assessed against Mr. Albers.[241] According to a notation in the 1938 Census records, by December 31, 1938, all of Mr. Albers' known foreign securities, except for the Yugoslavian bonds at Bank I and Bank II, had been transferred to the Nazi-controlled *Österreichische Creditanstalt* in Austria. Finally, the 1938 Census records contained a letter from the Vienna Finance Ministry to another Nazi official, dated May 4, 1939, stating that the Finance Ministry did not object to the emigration of the account owner, his wife, and grandchildren, since the account owner's entire fortune had been confiscated as of October 25, 1938.

In October 1939, after Arthur Albers had fled Nazi occupation, he informed the bank of his new London address and instructed the bank to sell his bonds. The bank responded that the bonds already had been sold for the benefit of the *Creditanstalt*. The CRT noted that on "16 December 1939, the account owner, who was reportedly [according to the bank records] astonished to learn that his account had been closed, demanded compensation from [the bank], and ordered his remaining account there, a demand deposit account, to be closed immediately" and the SF 1,000 proceeds to be transferred to Arthur Albers' representative in Zurich. The bank complied with this order.

With respect to Bank I (which had been the subject of the 1946 City Court proceeding), the CRT award recognized that Mr. Albers himself had closed one of his accounts from London, after learning that the bank had transferred a different account to the *Creditanstalt*. The CRT therefore did not award that account. However, the other account had been turned over to the Nazis, and the CRT award compensated the Albers family for the difference between the amount received as a result of the 1946 City Court lawsuit, and the market value of the bonds actually held at the bank. The three other accounts (located at Bank II), newly revealed through the CRT process (including the "voluntary assistance" mechanism), were awarded as well. Two of those accounts were closed while Arthur Albers had been imprisoned, and so while he was under Nazi

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[241] The Nazis levied a substantial tax, the so-called "flight tax," upon those able to flee or who were believed to be intending to flee. As described in the BERGIER FINAL REPORT, beginning in 1938, "many special taxes and levies were introduced such as the so-called '*Sühneleistung*' (atonement fine) instituted after the pogrom in November 1938 [*Kristallnacht*] and the *Reichsfluchtsteuer* (emigration tax), which [was] extended [to be] levied on people who were likely to emigrate. To avoid the high penalties and meet the financial burden, many Jews and others who were persecuted had to withdraw their assets and securities from Switzerland." BERGIER FINAL REPORT at 274.

duress. The third account at Bank II had been closed in 1982, long after Mr. Albers had died, with no record indicating that the accounts had been paid to Mr. Albers' heirs. The CRT awarded this account as well. The total amount awarded was SF 615,884.38 ($500,634.16).[242]

In another example of accounts transferred by Swiss banks to Nazi authorities while the owners clearly were under Nazi duress, the Court approved an award in *In re Account of Österreichische Zuckerindustrie AG Syndicate ("ÖZAG").*[243] The ÖZAG award, totaling approximately $22 million (SF 26,450,993.36) based on the exchange rate prevailing at the time the decision was issued, was the largest award authorized by the Court. In addition to its size and its unique facts (as described by Judge Korman in his 2006 Law Day speech, *supra*), the award also was noteworthy in that the claimant was Maria Altmann, who went on to prevail against the Austrian government based on a claim for looted art. Following several years of litigation, including proceedings before the United States Supreme Court, Ms. Altmann in 2006 finally was able to reclaim her family's paintings, including the celebrated "Portrait of Adele Bloch-Bauer" by Gustav Klimt. Her story was recounted in the 2015 film, "Woman in Gold."

The CRT observed that despite the family's extensive efforts to protect its assets, the Swiss bank had ignored its legal and fiduciary commitments. Rather than following its customers' directives, the bank "actively cooperated with the forced sale" of the ÖZAG shares, transferring the bank-held shares to a "designated Nazi 'purchaser' at a small fraction of the shares' value, without obtaining the unanimous consent" of the Altmann family and other shareholders as required under the complex agreement the family had put in place.

Transfers under duress were not limited to the most prominent families with the largest Swiss bank accounts. Rather, the CRT's research demonstrated that victims across a variety of social and geographic spectrums were forced to turn over their assets to the Nazis, with the cooperation of Swiss banks.

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[242] Because records concerning the actual account values had been destroyed, the accounts were awarded at their respective presumptive values. For more information concerning the calculation and readjustment of presumptive values, *see infra*.

[243] The award subsequently was published in a law journal, International Legal Materials. *See* Claims Resolution Tribunal (CRT) for Swiss Bank Account cases: *In re Holocaust Assets Litigation*, Case No. CV96-4849, 44 INT'L LEGAL MATERIALS 1307 (2005).

For example, in *In re Accounts of Paul Kolisch, Estella Kolisch, and Gertrude Eveline Shapiro*, the claimant was the husband of account owner Gertrude Eveline Shapiro and the son-in-law of account owners Paul and Estella Kolisch. Paul Kolisch, who was Jewish, lived in Vienna, where he published several newspapers. After his newspaper publishing business was aryanized and his home was confiscated, Paul Kolisch was imprisoned in the Dachau concentration camp, where he was tortured. He was then sent to Buchenwald, where he was killed in December 1939.

The claimant submitted correspondence between account owner Estella Kolisch (Paul's wife) and the bank. Mrs. Kolisch authorized the bank to transfer her accounts to the Nazis to obtain her husband's release. The bank complied with this request, which was made under duress. A custody account and a demand deposit account were transferred to a Nazi-controlled bank on June 16, 1938. The CRT also found that a second bank had held other Kolisch accounts (a demand deposit account and a safe deposit box), and awarded these accounts as well, presuming that these too had been transferred under duress. The total amount awarded to the claimant for all four accounts (including subsequent adjustments, *see infra*) was SF 766,811 ($523,297.55).

In *In re Accounts of Dr. Robert Blum*, the claimant was the grandchild of the account owner. Dr. Blum, who was a Jewish attorney in Germany, was imprisoned several times in the Dachau concentration camp, the last time for three weeks in November 1938. In 1939, Dr. Blum fled from Germany to São Paolo, where he died in September 1941. The bank records included a power of attorney form, signed while Dr. Blum was in Dachau, which gave Dr. Blum's wife the ability to make bank declarations and dispose of the couples' assets. The Volcker Committee auditors themselves concluded when they reviewed this account, well before the CRT process started, that the two accounts held by Dr. Blum were paid to the Nazis. The CRT agreed with this conclusion. Because the bank records did not indicate the amounts transferred, the award was calculated using presumptive values (*i.e.*, average values, based upon data obtained from those accounts that did still have records indicating the amount of assets they had held). The total amount awarded for the two accounts was SF 281,517.50 ($209,755.96).

In *In re Account of Leo Fürst*, the claimant was the account owner's nephew. The account owner lived in Austria and was the director of a petrol company. He was arrested by the *Gestapo* several days after the Nazis invaded Austria, and was subsequently imprisoned from March 19, 1938 to May 1938 in the Rossauerlände jail in Vienna. In June 1938, Mr. Fürst fled Austria to Nice, France, where he died on January 20, 1941.

The claimant provided his uncle's death certificate, a 1938 report by the Gestapo on his uncle, and correspondence with the Nazi authorities concerning his uncle's assets and "flight tax." The bank records indicated that Mr. Fürst held a custody account that was closed on March 30, 1939, and a demand deposit account that was closed one day later, on March 31, 1939. The correspondence with Nazi authorities identified an account of unknown type with a May 30, 1938 value of SF 1,318.00. As Mr. Fürst had reported his account of unknown type to the Nazi authorities, the CRT presumed that the Nazis had contacted the bank, which then turned the account over. In addition, since the bank records did not show that the custody and demand deposit accounts were paid to their owner, the owner fled Austria in 1938, and the Nazi authorities were informed that the account owner held at least one Swiss bank account, the CRT concluded that it was plausible that the Nazis had learned about, and the banks had turned over, *all* of Mr. Fürst's Swiss accounts. The CRT awarded the three accounts at their presumptive values, and the claimant received SF 338,462.50 ($281,633.23).

In *In re Accounts of Alfred Wolff*, the account owner was the claimant's father. He was a medical doctor in Berlin. He was arrested by the Nazis in 1934, and died on December 13, 1935. The bank records indicated that he had owned a safe deposit box that was closed on May 26, 1934, as well as a demand deposit account closed a few days later on May 31, 1934. The CRT noted that Mr. Wolff had been arrested in 1934, "the same year in which his Swiss account[s] [were] closed, exposing him to the coerced disclosure and confiscation of his assets including those located abroad."[244] The account owner's son was awarded SF 64,597.50 ($49,471.54).

[244] These cases and hundreds of others are summarized in the chapter of this Final Report entitled "Summaries of Selected Deposited Assets Class Decisions." Since the inception of the distribution process, the CRT decisions have been and will remain available on the internet (*see* http://www.swissbankclaims.com/DepositedAssets.aspx; http://www.crt-ii.org/_awards/index.phtm).

b. Transfers of accounts reported by the banks to the Nazis

i. Bank Lists

In some cases, the CRT had evidence showing that the account had been part of a list that the bank had compiled, in preparation for transferring its customers' assets to Nazi authorities.

Thus, in *In re Accounts of Albert Gerngross, Paul Gerngross, Martha Gerngross, and A. Gerngross A.G.*, the claimant was the estate of the niece of account owner Albert Gerngross. The bank records demonstrated that the depositor's accounts had been reviewed by the bank as early as March 17, 1938, just four days after the *Anschluss*. The bank stated in an internal notice that it "would soon complete a list of over 1,000 custody accounts belonging to Austrian citizens." The bank records for these accounts also included "a list of custody accounts belonging to customers residing in Austria which were transferred to Austrian or German banks in 1938."

Account Owners Albert and Paul Gerngross were brothers, and account owner Martha Gerngross was married to Paul Gerngross. All of the account owners resided in Vienna. They were shareholders in their business, A. Gerngross A.G., one of the largest department stores in Vienna then, and now.

The Gerngross shopping centre, which was founded by Viennese Jews. Vienna, Austria, circa 1904. https://en.wikipedia.org/wiki/History_of_the_Jews_in_Vienna#/media/File:Gerngross_Wien_1904.jpg. Photo courtesy of Wikimedia.

Gerngross, Mariahilfer Straße, Wien. Vienna, Austria, Aug. 22, 2015. https://commons.wikimedia.org/wiki/File: 20150822 Gerngross 2881.jpg. Photo courtesy of Wikimedia and Ailura. Creative Commons Attribution-Share Alike 3.0 Austria.

In 1939, after the *Anschluss*, Albert Gerngross fled to Switzerland. Martha and Paul Gerngross fled first to England and then to Uruguay, where they remained until returning to Austria after the end of the Second World War. Before fleeing Austria, the account owners were forced to submit census forms registering their assets in accordance with the Nazi Regime's decree of April 26, 1938. These records indicated that Paul and Martha Gerngross had savings and bank assets worth approximately 270,000.00 Reichsmark, including SF 84.61 held in a demand deposit account by Paul Gerngross at the Swiss bank.

The bank's records indicated that the account owners held five accounts. Albert Gerngross held a custody account and a demand deposit account; Paul and Martha Gerngross held one custody account each; and A. Gerngross A.G. held an account of unknown type. Albert Gerngross's custody account was transferred on April 14, 1938 to the Nazi-controlled *Öesterreichische Creditanstalt-Wiener Bankverein* in Vienna, with a balance of SF 47,000.00. Paul and Martha Gerngross's custody accounts were transferred to the *Länderbank Wien A.G.* in Vienna on August 16, 1938, with respective balances of SF 16,500.00 and SF 1,900.00. The Volcker Committee auditors determined that the three custody accounts had been paid to the Nazi authorities. The CRT agreed with the auditors' conclusion, and recommended that the accounts be awarded to the claimant.

In addition, the CRT considered Albert Gerngross's demand deposit account and A. Gerngross A.G.'s account of unknown type, which were presumed to have been closed on an unknown date. Given that the account owners had other accounts that were paid to the Nazi authorities, and there was no evidence in the bank's records that the account owners or their heirs had closed these two accounts and received the proceeds themselves, the CRT concluded that it was plausible that the proceeds of these two accounts likewise were not paid to the account owners or their heirs. The 1938 Census records also showed that account owner Paul Gerngross held a demand deposit account not mentioned in the bank's records, and the CRT concluded that this account, too, had been paid to the Nazi authorities. The total amount awarded, after adjustment for present-day values, was SF 1,179,262.70 ($896,775.78).

Similarly, in *In re Accounts of Walter Herzog*, the bank records included correspondence between its main branch and its Zurich branch, describing preparation of lists of account owners pursuant to the Foreign Assets Law of Austria. The bank decided not only to turn over the account to the Nazis, but to charge the owner for the transfer. As the CRT observed, a bank letter reflected that "the Bank's General Director agree[d] to the Zurich branch's suggestion to charge their clients a transfer fee, in addition to the usual securities charge, of ½% - 1% of the total value of the securities transferred to a German *Devisenbank*."[245] The claimant was awarded SF 250,375.00 ($170,736.54).

In *In re Account of Annemarie Gallia-Boschan*, the account owner owned a cognac and beer factory in Vienna, "R. Marty Comp." The family was wealthy, owning a house in Vienna and a summer house on the River Danube.

The bank's records indicated that Annemarie Gallia-Boschan held a custody account in an unknown amount, closed on an unknown date. She also owned two demand deposit accounts, one in the amount of SF 627 as of December 31, 1937, which was closed on October 22, 1938;

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[245] *See also, e.g.*, *In re Accounts of Georg Müller and Ernst Müller* (the bank records consisted of various documents including "a letter from the Bank dated 17 March 1938, describing how it would soon complete a list of over 1,000 custody accounts belonging to Austrian citizens, pursuant to the Foreign Assets Law of Austria;" the Court authorized an award of SF 922,884 ($663,945.32)); *In re Account of Robert and Marie Blumka* (the bank records consisted of, among other documents, "an excerpt from a list of accounts that were transferred to German or Austrian banks;" the Court authorized an award of SF 281,517.50 ($205,267.10)); and *In re Account of Nelly Steiner* (referring to the same list; the Court authorized an award of SF 242,375.00 ($152,449.83)).

the other of unknown amount, which was closed on December 14, 1938. The claimants (who were grand-nieces from different branches of the family) provided the CRT with the 1938 Census form Mrs. Gallia-Boschan had been forced to submit, in which she declared that she owned securities at the Swiss bank valued at RM 193,826. Later, Mrs. Gallia-Boschan updated her Census submission with an August 15, 1939 letter to the Vienna Asset office. In that letter, she advised that with some exceptions as listed, she had sold all of the foreign securities at the bank, "'in part voluntarily in the 'Special Securities Sale,' and in part under the orders of the Asset Office in Vienna.'" She stated that as to the securities list of "exceptions," their value as "'per the orders of the Foreign Currency Office (*Devisenstelle*) in Vienna, [had] been transferred to the account of the *Länderbank* Wien" held at the Swiss bank. She stated that she held other assets at the bank, the value of which was SF 1,467.50. She also noted that she and her husband had a total wealth of RM 1,321,374.80, and that they had been obliged to pay a "flight tax" of RM 393,911 RM.

The 1938 Census records showed that Mrs. Gallia-Boschan had liquidated her custody account and sold some securities. The proceeds had been transferred to the Nazi-controlled *Länderbank* Wien in Vienna. Her remaining securities were transferred to the account of the *Länderbank* Wien at the bank in Switzerland. The CRT noted that the facts of this case were "similar to other cases before the CRT, in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets to the 1938 Census, and subsequently, their accounts were closed unknown to whom or were transferred to Nazi-controlled banks."[246] The claimant was awarded SF 4,099,120.32 ($3,129,099.48), representing the present value of the accounts as declared on the 1938 Census form (SF 341,593.36).

[246] *See also, e.g., In re Account of Gerson Ginsberg; In re Account of Robert Schwarzkopf;* and *In re Accounts of Salomon Meisels and Albert Meisels* (awarding accounts reported in the 1938 Census, where there was no evidence rebutting the presumption that such accounts had been turned over by the Swiss banks to Nazi authorities).

ii. August Dörflinger

Although examples abound of accounts reported to the Nazi authorities by Swiss banks, among the more egregious transfers were those that were assisted by a Swiss bank employee, August Dörflinger.

August Dörflinger was suspected of having betrayed 85 account relationships to Nazi authorities, as set forth in a December 2, 1942 protocol contained in the bank files, entitled "Existing Accounts and Depots" (*Bestehende Konti & Depots)*. The protocol, which was created during a meeting among a prosecutor, a bank representative, policemen, and Dörflinger, indicated that Dörflinger was accused of acting as a spy for the Nazis and violating bank secrecy laws. Swiss authorities charged Dörflinger with reporting 74 account holders to the authorities in Nazi Germany, a charge to which he admitted. Nine additional relationships were suspected of having been betrayed, and an additional two also were suspected of being associated with Dörflinger. The total 1942 value of these 85 accounts was nearly SF 1.6 million, or nearly SF 20 million when adjusted to present-day values (at the multiplier of 12.5).

Thus, for example, in *In re Accounts of Samuel Stiebel*, the account owner was a Jewish physician living in Germany. He was informed by Nazi authorities in 1933 that he would be arrested if he continued to treat Communists and Jews. With his family, he managed to flee first to Switzerland and then to Palestine. The CRT explained:

> [The bank records contain] excerpts from the transcript of the interrogation of a Bank employee, August Dörflinger, conducted by the State Prosecutor of Basel on 2 December 1942, and a letter dated 15 February 1950 to the Bank written by August Dörflinger while he was in prison.
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> August Dörflinger, a convicted German spy, reported two of the Account Owner's accounts to the Nazi authorities. This document shows that as of 2 December 1942, the Account Owner held a demand deposit account with a balance of 1,240.00 Swiss Francs, and a savings account, numbered 50352, with a balance of 734.00 Swiss Francs, and that the Account Owner's accounts were … closed after having been reported to the Nazis. The [ICEP auditors] determined that these accounts had been paid to the Nazi authorities as they had been reported to the Nazis by an employee of the Bank.

As the CRT explained in the *Stiebel* decision, it was "noted in a Department of State Report [the May 1997 Eizenstat Report][247] … [that] 'as U.S. officials received reports that in the early 1930s the Germans had placed French-speaking Nazis in leading Swiss banks, they grew increasingly concerned that Nazi elements may have infiltrated the Swiss banking system.' The Nazi Germans were even so brazen as to take out newspaper ads offering rewards to those who came forward with information on Jewish depositors." The claimant in this case received an award of SF 96,887.50 ($79,125.89).

Similarly, in *In re Accounts of Felix David*, the account owner owned a hardware store in Breslau, Germany (now Wrocław, Poland), and later moved to Berlin. He and other family members were forced to perform slave labor in Berlin. They later were transported to Theresienstadt, where they perished. The bank records indicated that August Dörflinger reported Mr. David's three accounts (two demand deposit accounts and one custody account) to Nazi authorities prior to December 1942. The bank records indicated that the custody account had a value of SF 48,000 as of December 1942, and the two demand accounts had a combined value of SF 660.05 as of that same date. The accounts were blocked in the 1945 freeze. The custody account was closed on October 15, 1959, one demand deposit account was closed on January 31, 1960, and the other demand deposit account was closed on an unknown date. The claimant, the wife of Mr. David's nephew, received SF 657,425.00 ($509,832.95).[248]

In 1942, the State Prosecutor of Basel investigated and prosecuted Dörflinger for his crimes, as his breach of banking secrecy was flagrant, and his arrest was made possible partly

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[247] U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II - Preliminary Study (May 1997), coordinated by the then-Under Secretary of Commerce, Ambassadord Stuart E. Eizenstat, and prepared by William Z. Slany, Department of State Historian ("EIZENSTAT REPORT").

[248] Other examples of awards of accounts that had been reported by the spy Dörflinger include *In re Accounts of Marcus Manasse* (account owner was a physician from Berlin who held a demand deposit account transferred in 1974 to a suspense account, and an account of unknown type included on the list of 85 accounts reported by Dörflinger; Court authorized an award of SF 81,270.00 ($54,912.16)*; In re Account of Alfred M. Schwarzschild* (Alfred Schwarzschild, an artist born in Frankfurt who later lived in Munich, had difficulty selling his art beginning in 1933 and fled to England in 1936, his wife and children following him in 1938. His account appeared on the Dörflinger list, which indicated that as of December 2, 1942, the account held a balance of SF 2,943.50; Court authorized an award of SF 49,375.00 ($40,568.85)); and *In re Account of Charlotte Amsterdam* (Mrs. Amsterdam's husband had been a high-ranking bank executive and the Amsterdams were believed by the claimant, their nephew, to have perished in the Warsaw Ghetto; Charlotte Amsterdam's account of unknown type was reported by Dörflinger to Nazi authorities; claimants received an award of SF 49,375.00 ($41,843.22)).

with the help of other Swiss bank personnel. In September 1943, a Swiss military court sentenced Dörflinger to life imprisonment for economic and military espionage, including for disclosing details of 74 Swiss accounts, and for passing on military secrets.[249]

Although the Swiss banks cooperated with Dörflinger's prosecution in the 1940s, they were less forthcoming several decades later, when the CRT sought a more complete record of the spy's activities. As described by the CRT, although asked to do so, the banks did not provide the CRT with "the full text of the Dörflinger interrogation or the list of the other 82 Account Owners who apparently incurred the same deposit confiscations as suffered by the Account Owner in this case as a result of the information provided to Nazi authorities by Dörflinger." A "full accounting by the banks of the role played by spies, the names of the persons who they identified, and their impact on the accounts of Nazi victims, would [have been] of very substantial value to the CRT in fulfilling its mandate to return the deposits in Swiss banks to these victims or their heirs."[250] Nevertheless, "Swiss banking authorities [did] not provide[] the CRT with the full 'Dörflinger list'" but instead provided information only in response to particular claims. "Of course, without publication of [the unclaimed] account names and full access to bank records, it [was] difficult for a victim or heir to file a claim, and it [was] difficult for the CRT to pay it."[251]

c. Transfers presumed to have been made under duress

Because of the patterns revealed by the Volcker and Bergier Reports, as well as in many of the account files made available to the CRT, the CRT concluded that it was appropriate to presume that an account owner was acting under duress even if, at the time of the transfer, he or she appeared to have been living "in safety" outside the territory controlled by Nazi authorities. The CRT reasoned and the Court concurred that because looting was so rampant and took so many forms, the account owner may have been responding to Nazi threats made against other family members (or assets) still under Nazi control.

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[249] BERGIER FINAL REPORT at 261 ("The employee in question was sentenced to life imprisonment by a military court in September 1943"); VOLCKER REPORT, Annex 5, ¶ 23 (*cited in* Special Masters' Interim Report at 56 n. 87).

[250] *In re Accounts of Samuel Stiebel*.

[251] Special Masters' April 2004 Recommendations at 32.

Thus, in *In re Accounts of Emil Taub*, the CRT observed that although the accounts were closed when Emil Taub was outside Nazi territory, there was no indication in the bank records as to whom the accounts were closed. The CRT noted that the account owner may have yielded to Nazi pressure to turn over accounts to ensure the safety of relatives who remained behind. Further, the 1938 Census records "indicate[d] that the Nazi authorities blocked the proceeds of the sale of the Account Owner's house" and "inquired regarding any remaining assets that he held following his flight to Palestine." Swiss bank accounts owned by Mr. Taub may have been among these assets. The claimant received an award of SF 271,125.00 ($230,228.52).

Similarly, in *In re Accounts of Otto Simon and Josef Simon*, the claimant sought the accounts of her father (Dr. Josef Simon), an attorney and director of the *Anker Versicherung* insurance company in Vienna, and her grandfather (Otto Simon), a professor of mathematics. The claimant's father was arrested and imprisoned for "allegedly conducting activities for the then illegal Social Democratic Party" in 1937, and he fled from Austria to Denmark that same year. Her father acquired Danish visas for his parents and other relatives, and they fled Austria in the autumn of 1938.

The bank records showed that Professor Otto Simon held one custody account and one demand deposit account, which were closed on March 31, 1938. The CRT also located 1938 Census records filed by Professor Simon. Dr. Josef Simon held a custody account which was opened on April 2, 1938 (at an address "care of Pastor Th. Povlsen, in Holte," Denmark). The account was closed on May 9, 1938. The CRT awarded all of the accounts to the claimant. As to her grandfather's accounts, these were closed after the *Anschluss*, while Professor Simon was still living in Vienna, at a time when the Nazis had "begun a major effort to confiscate the assets of the Jewish population of Austria." As to her father's account, it was closed when the owner was "outside Nazi-dominated territory," but "given that the Bank's records do not indicate to whom the account was closed, that Account Owner Josef Simon fled his country of origin due to Nazi persecution, that [he] may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety, that [he] and his heirs would not have been able to obtain information about his account after the Second World War from the Bank, even for the stated purpose of obtaining indemnification from the German authorities, due to the Swiss banks' practice of withholding or misstating account

information in their responses to inquiries by account owners because of the banks' concern regarding double liability, … the CRT conclude[d] that it is plausible that the account proceeds were not paid to Account Owner Josef Simon." The claimant, with other family members, was awarded SF 549,462.50 ($438,203.45).[252]

In cases where there was no direct evidence that the account owner was under duress, but the circumstances indicated that the owner had never received his or her accounts — for example, because he or she had perished in the Holocaust — the adverse inference similarly applied, and the CRT recommended an award.

Thus, in *In re Accounts of Rose Herz, Margarethe Cohen and Max Seeler-Herrmann*, the claimant was the daughter of account owner Rose Herz, who was the sister of account owner Max Seeler-Herrmann. Account owner Margarethe Cohen was the niece of Rose Herz and Max Seeler-Herrmann. In 1938, Rose Herz fled Germany for Palestine, where she died on September 22, 1970 (in Haifa, Israel). Account owner Max Seeler-Herrmann resided in Berlin, where he owned a company named *Seeler & Cohn*. In 1938, Max Seeler-Herrmann and his wife were deported. They perished in the Holocaust. Margarethe Cohen resided in Germany, but managed to survive the Holocaust and died in the 1980s.

The bank's records indicated that the account owners held four accounts. Each owner held a custody account, and Rose Herz also owned an account of unknown type. Rose Herz's custody account was opened in 1931 and closed on September 16, 1937, and her account of unknown type was closed on an unknown date. Max Seeler-Herrmann's custody account was closed on September 16, 1937. Margarethe Cohen's custody account was opened in 1931 and closed on June 26, 1936.

With respect to the three custody accounts, the CRT noted that in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of its Jewish nationals through

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252 *See also In re Accounts of Lore Metzger* (awarding SF 289,087.50/$236,372.12 to the claimant, who herself was the account owner, who had fled as a child with her family in 1933 from Germany to Grenoble, France, and then in 1941 to Casablanca, ending up in the United States. The CRT awarded a demand deposit account (closed on April 20, 1934) and a custody account (closed on December 21, 1936), finding that although both accounts were closed when the claimant was outside Nazi-occupied territory, the claimant's family nevertheless had fled from Germany and may have had relatives who remained behind. "[H]er parents may therefore have yielded to Nazi pressure to turn over [her] accounts to ensure their safety").

the enforcement of flight tax and other confiscatory measures, including confiscation of assets held in Swiss banks. Rose Herz had remained in Germany until 1938, while her custody account was closed in 1937. There was no evidence that she or an authorized party received the proceeds of either her custody account or her account of unknown type. Account owner Max Seeler-Herrmann remained in Germany until being deported. He subsequently was murdered. Margarethe Cohen remained in Germany throughout the War. The CRT concluded that the account owners would not have been able to repatriate their accounts to Germany during this time without confiscation of the account proceeds by the Nazis. The claimant was awarded SF 809,025.00 ($636,100.40) for the four accounts.

Similarly, in *In re Account of Kurt Alexander*, the claimant identified the account owner as his brother, who had lived in Berlin and had been killed in Auschwitz with most members of the family. The bank records indicated that Kurt Alexander of Berlin had owned a demand deposit account opened on June 30, 1933 and closed on June 20, 1936. The CRT awarded the presumptive (average) value of a demand deposit account (SF 28,712.50 ($25,505.83)), observing that "after coming to power in 1933, the Nazi regime" had "embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax — and other confiscatory measures, including confiscation of assets held in Swiss banks; … there is no evidence that the Account Owner fled Germany prior to his death in a concentration camp." He "would not have been able to repatriate his account to Germany without losing ultimate control over its proceeds."[253]

d. Refugee Accounts

Forced transfers took a unique form in the case of refugees. As the Swiss historian Jacques Picard has noted, those who were accepted into Switzerland as refugees often were asked to turn over assets to pay for their upkeep. "Since refugees in Switzerland were subject to a general employment prohibition and the transfer of funds from abroad was extremely difficult, they could support themselves only if they had assets in Switzerland. The short-term residence

[253] *See also, e.g., In re Account of Otto Rothschild* (account was closed in 1933; account owner, a German cattle dealer, perished in Auschwitz; award of SF 75,150.00 ($63,444.12)); *In re Account of David Geschmay* (account was closed in 1934; account owner, a Czech manufacturer who also held German citizenship, perished in Theresienstadt; award of SF 37,575.00 ($30,545.38)).

permits for refugees entering Switzerland during the 1930s which were issued by cantonal authorities often demanded collateral and pledges of payment."[254]

Confiscations by Swiss authorities continued pursuant to a March 12, 1943 decree of the Swiss Federal Council providing that assets of refugees who entered the country after August 1, 1942 were to be placed in a Swiss bank and managed by Swiss police authorities. These funds were not always returned. As the Bergier Final Report observed:

> Even before this date, however, asylum seekers had been forced to hand over their assets, with dubious legal justification; in this sense, the Decree of March 1943 provided a legal basis for a procedure which was already being carried out in practice, but at the same time had proved to be problematic. On the one hand, confiscated assets disappeared, and on the other it can be shown from a list drawn up by the territorial command in Geneva, that in at least ten cases refugees whose modest assets had been confiscated in the reception camp were subsequently deported without their money having been handed back to them.
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> The official management scheme involved cash, which was deposited on current accounts, as well as valuables, for which deposit facilities were created. At the end of September 1943, the SVB [Swiss Volksbank] was already managing as many as 2,500 accounts containing an estimated total amount of 800,000 francs, as well as 800 deposit facilities. By December 1944, the number of accounts had increased considerably: there were "around 7,300 accounts [and] approximately 2,100 deposit facilities" as well as 250 accounts in frozen dollars...
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> As a rule refugees were handed back their assets upon leaving Switzerland. It must be said, however, that in the meantime most of the balances had decreased considerably. Apart from the repayment for their keep, this can also be explained by the high administrative fees levied by the bank. In addition, the authorities had exonerated the bank from paying the refugees interest on their current accounts. A particularly severe measure from the refugees' point of view was that the Police

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[254] Picard, *Switzerland, National Socialist Policy, and the Legacy of History*, at 131. *See also* the chapter in this Final Report entitled "The Refugee Class Claims Process." For further information, *see* Distribution Plan, Vol. II, Annex J ("Refugees"), at J-24-25 (refugees' assets were placed "'under the control of the Confederation'" with "'[c]urrency and valuables … to be taken from refugees and placed under trusteeship administration;'" while the balances were to be returned, "'[t]owards the end of the war, many refugees left Switzerland without demanding the return of their assets from the EJPD [Federal Department of Justice and Police]. In each instance, the EJPD instructed the Volksbank [the trustee] to close the accounts and to transfer the amounts to the Federal Treasury and Accounting Office") (quoting JEAN FRANÇOIS BERGIER, INDEP. COMM'N OF EXPERTS, SWITZERLAND AND REFUGEES IN THE NAZI ERA 214, 222 (1999) ("BERGIER REFUGEE REPORT")).

> Division was authorised to sell pieces of confiscated jewellery [sic] if necessary (including even family heirlooms) without obtaining the owner's permission.[255]

The CRT case of *In re Accounts of Mario Calfon* exemplifies the findings of the Bergier Commission. In *Calfon*, the claimant's father, the account owner, was in the jewelry and weaving industries in Milan. Mario Calfon and his wife and one daughter escaped to Switzerland in 1943, while two other daughters went into hiding in Italy. While in Switzerland, Mario Calfon's jewelry was confiscated by Swiss authorities pursuant to the March 12, 1943 decree of the Swiss Federal Council providing that assets of refugees who entered the country after August 1, 1942 were to be placed in a Swiss bank and managed by Swiss police authorities. Mario Calfon was forced to work in refugee camps near Lugano, and he and his wife were hospitalized while in Switzerland.

The bank records, which were not reported by the ICEP auditors but were provided to the CRT by the claimant, included a letter from the chief of the Police Division to the management of the refugee camp "Majestic," with a copy to the bank. The letter instructed the camp's managers to order Mario Calfon to sell assets in his custody account to cover the sum of SF 539.17, which Mrs. Calfon had incurred because of her hospitalization in early 1944. Mario Calfon wrote to the bank requesting that the gold jewelry in his account not be sold. Although the bank initially granted that request, it later demanded that Mr. Calfon sell his jewelry to pay off his debt. Instead, Mr. Calfon was able to reach an agreement on October 3, 1944 whereby another individual acted as his guarantor in the event that the debt was not repaid within one year. On October 4, 1944, the Police Division sent an invoice to Mario Calfon debiting his demand deposit account for his cost of living at the refugee camps (SF 1,289.50) as well as his wife's hospitalization costs (SF 202.20). On October 13, 1944, the Police Division informed Mario Calfon that another SF 50 was debited as a fee for searching for his children, while SF 100 was blocked to cover additional costs that might arise.

Mario Calfon wrote several additional letters between 1945 and 1957, after he had returned to Florence. He repeatedly raised the matter of his deposited jewelry, and objected to the fact that he had been charged for his cost of living at the refugee camps, while not being

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[255] BERGIER FINAL REPORT at 158-159 (citation omitted).

reimbursed for the work he had performed there. He also noted that the medical expenses incurred in Switzerland were caused by forced labor in the refugee camps.

Although the bank informed the Police Division by letter of March 11, 1947 that it had returned Mario Calfon's assets to him and had closed his custody account, the bank records indicated that these assets were not, in fact, returned. Rather, they were used to cover the debt allegedly owed by Mario Calfon, despite his express instructions to the bank not to dispose of the gold jewelry. The records show that the custody account was closed sometime before March 11, 1947 and do not show the fate of the jewelry deposited in this account, but the jewelry was not in the account, nor had it been returned. As to the demand deposit account, the bank records do not indicate when the account was closed.

The CRT awarded Mario Calfon's daughter the presumptive value of the custody and demand deposit accounts (SF 289,087.50 ($238,915.29)), observing that the bank's assessment of the value of the jewelry in the custody account was not reliable. The CRT noted that Mario Calfon, as true for other refugees in Switzerland "whose assets were placed in accounts at the bank by the Swiss authorities generally could not freely dispose over their accounts." A "number of refugee accounts could not be retrieved by account owners" and "complaints of refugees mostly concerned the fact that their deposit assets were not returned."

Similarly, in *In re Account of Minia Nussenbaum*, the claimant, who was herself the account owner, was interned in slave labor camps in France and, subsequently, in a refugee camp in Charmilles, Switzerland. Upon her arrival at the camp, her money (2,650 French Francs) was confiscated and deposited by Swiss authorities at the bank. Records from 1998 indicate that the bank responded to Minia Nussenbaum's request to search for her accounts by explaining that her French Francs had been converted to SF 41.05, from which SF 15.20 was deducted for "pocket money," SF 3.45 was deducted for bank fees, and the remaining SF 22.50 was transferred to the refugee camp. The bank stated that it had no further obligations to the owner as of 1944. The CRT decision noted that her "transfer certificate from the refugee camp … does not show any payments to [her] and was not countersigned by the Bank," and "owners of refugee accounts generally could not freely dispose over their accounts." Nor was there evidence that the owner

had been able to retrieve the accounts after the war. Minia Nussenbaum thus received a CRT award of SF 49,375.00 ($45,717.59).

2. Use of Early Occupation and Alliance Dates

In addition to authorizing the CRT to presume that records were destroyed to conceal the banks' participation in forced transfers, the Court also permitted the CRT to presume that such transfers commenced at the earliest historically appropriate date, whether the date of Hitler's accession on January 30, 1933 (in the case of Germany); Italy's 1936 alliance with Germany; Austria's 1938 incorporation into the Third Reich (the *Anschluss)*; or various other dates applicable to the particular countries.

Thus, with respect to Germany, by Order of April 25, 2003, the Court adopted "Appendix C" to the CRT Rules, which incorporated the presumption that "in the absence of evidence to the contrary, it shall be presumed by CRT-II that German account owners and their heirs did not receive the benefit of any of their Swiss accounts closed on or after January 30, 1933."

> This decision at the outset of the claims process in 2003, recognizing that in Germany, the Holocaust began as soon as Hitler took power in January 1933, essentially anticipated two 2016 federal statutes concerning the date upon which Holocaust confiscations in Germany began. As the U.S. Court of Appeals for the District of Columbia pointed out in a July 10, 2018 decision, *Philipp v. Federal Republic of Germany and Stiftung Preussischer Kulturbesitz*: "[I]n two statutes dealing with Nazi-era art-looting claims, Congress has expressly found that the Holocaust began in 1933. In the first statute – the very section of the FSIA [Foreign Sovereign Immunities Act] at issue here – Congress provided jurisdictional immunity for certain art exhibition activities, 28 U.S.C. § 1605(h), but created an exception for art taken during the 'Nazi[] era,' defined as beginning in January 1933, *id*. § 1605(h)(2)(A)."[256] The Court of Appeals for the District of Columbia was here referring to the Foreign Cultural Exchange Jurisdictional Immunity Clarification Act of December 16, 2016. The Court of Appeals for the District of Columbia noted that in the second statute, the HEAR Act (the Holocaust Expropriated Art Recovery Act of 2016), "Congress again defined January 1933 as the beginning of the Nazi era [citation omitted]."[257]

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256 *Philipp v. Fed. Republic of Germany & Stiftung Preussischer Kulturbesitz*, 894 F.3d 406, 413 (D.C. Cir. 2018).

257 *Id*. *See also* Stewart Ain, *Victory for heirs of German Jewish Art Dealers Allegedly Fleeced by Nazis*, JEWISH WEEK, July 18, 2018.

Appendix C was based upon the CRT's study of the Bergier Final Report and its companion study on dormant accounts,[258] which "clarified that Nazi expropriation of the Swiss bank accounts of Jewish and other targets of Nazi persecution commenced as early as 1933, shortly after Hitler's rise to power. The Bergier Commission further reported that Swiss banking practices enabled these expropriations to occur."

Appendix C also noted that the CRT's observations from its own analysis of bank records and claims had indicated a "dramatic increase in [account] closure[s] following the enactment of the Law on Treason against the German Economy on 12 June 1933." The Bergier Commission pointed out that the Law on Treason had forced "'very many German customers [to give] Swiss banks instructions to turn over their accounts and securities to the *Reichsbank*.'"[259] As of April 2003, when the Court adopted Appendix C, the CRT had "identified 1,583 accounts of German account owners closed between 1933 and 1936 that may match to the names of account owners set forth on claim forms. Of these, some 830, or 52.4%, were closed in 1933." There was a "dramatic increase in closure following the enactment of the Law on Treason against the German Economy on 12 June 1933."[260] In February 1933, 37 accounts were closed; 43 were closed in March; 38 in April; 61 in May; 32 from June 1-11 (*i.e.* just before the Law on Treason was enacted); and 82 from June 12-30. However, in the weeks after the June 12, 1933 law was enacted, closures increased, with 117 in July and 162 in August. The closures then dropped down again, to 70 in September; 58 in October; 68 in November; and 62 in December.[261]

The CRT also examined all 1,243 accounts in the AHD closed in 1933 (whether those accounts matched to claims or not). The same pattern appeared. In the first few months of 1933, account closures ranged from 48 (February) through 83 (May). In July, however, 182 accounts were closed; 252 in August; and 111 in September. In other words, as noted in Appendix C, the

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258 *See generally* BERGIER FINAL REPORT; *see also* Barbara Bonhage, Hanspeter Lussy & Marc Perrenoud, Nachrichtenlose Vermögen bei Schweizer Banken: Depots, Konten und Safes von Opfern des nationalsozialistischen Regimes und Restitutionsprobleme in der Nachkriegszeit — Zweiter Weltkrieg, (Chronos Verlag, Vol. 15, 2001) ("Bergier Dormant Accounts Study").

259 CRT Rules Appendix C at 4 (quoting Bergier Dormant Accounts Study at 66-67, and citing as one example the "*Schweizerische Kreditanstalt*, next to the main branch, [where] business in the Basel branch was particularly affected, so that in August 1933 'daily dozens of passbook/savings books from Germany [were] cashed in.'").

260 *Id.*

261 *Id.* at 5.

number of accounts closed in the "four and one-half months after June 12" increased by 257.2 percent over account closures in 1933 up to that date.

In sum, "[o]f the 1,243 total German-domiciled accounts identified in the AHD as having been closed in 1933, 946, or 76.1 percent, were closed after June 12, 1933," while for the "830 matched accounts closed in 1933, 619, or 74.6 percent, were closed after June 12," evidencing that the closures were related to the Nazi regime's enactment of its harsh expropriation law.

In addition, as noted by the Bergier Commission and discussed in Appendix C, German-instigated spying in Swiss banks had begun as early as 1931, "[i]mmediately after the introduction of foreign exchange controls," with German "financial and customs authorities" attempting "through bank espionage in Switzerland" to "obtain information about German clients."[262]

There are a number of examples of the forced transfer of Swiss accounts as early as 1933, some cited in Appendix C, and others discovered later during the claims process. These include the cases of *In re Account of Auguste and Aaron Levis* (the bank records contained a July 28, 1933 letter from one of the account owners asking for her safe deposit box to be closed because she was being forced to transfer the contents to the Reichsbank; an award was made in the amount of SF 290,830.00($216,980.51)); *In re Account of Hedwig Bendix* (the owner held four accounts, one of which was closed on September 20, 1934; the bank records revealed that some of the owner's assets had been transferred to the Reichsbank, and the owner was killed in Lodz; an award was made of SF 183,780.00 ($132,215.83)); and *In re Account of Karl Stein* (the bank records showed that the account owner's savings/passbook account was on a list of Swiss bank accounts transferred to the German Government's account at the Reichsbank; the list was "three pages long" and indicated that as of December 8, 1933, assets totaling SF 195,900.75 had been

[262] *Id.* at 6 (quoting Bergier Dormant Accounts Study at 105-126). The Volcker Committee had noted the same phenomenon. "In 1932, advertisements appeared in a Swiss newspaper offering loans to Swiss bank employees; they were part of a scheme to purchase information from the employees regarding the names of Germans who held accounts in Swiss banks in exchange for a commission based on the total account value. One employee of a large commercial bank, who was arrested with the bank's assistance, was convicted by Swiss authorities for espionage activities, in part, for providing account details of Germans owning Swiss bank accounts to the Nazis. At the time of his arrest, funds from 10 of the 74 accounts that he had disclosed to the Nazis had already been transferred to Germany." VOLCKER REPORT, Annex 5, ¶ 23. The CRT awarded several accounts that had been reported by this bank spy, August Dörflinger.

transferred to the Reichsbank, including Mr. Stein's account; an award was made of SF 27,855.00 ($20,039.57)).

Appendix C noted that expropriations continued throughout the 1930s, prior to the *Anschluss* and the September 1, 1939 start of World War II. One notable example of how expropriation became institutionalized was the Seventh Implementation Order to the Law of Foreign Exchange Control of November 19, 1936. The law required German owners of foreign securities to deposit their securities with a German bank. The original deadline for such transfers was December 4, 1936. Swiss bank correspondence dated February 16, 1937 indicated that in the period between the effective date (November 19, 1936) through January 31, 1937, securities from 291 customer custody accounts in the amount of SF 6,266,7609 were transferred to various banks in Germany.[263]

The determination not to penalize claimants for the banks' document destruction was not, however, intended to ignore historical realities. When it became clear that in some instances, the CRT had been applying too early an "occupation," or "relevant date," the CRT recommended and the Court approved an adjustment of the claims processing rules — an example of the application of liberal but historically valid presumptions.

Thus, Article 28 of the CRT Rules originally had provided that an account would be presumed to have been closed inappropriately, absent evidence to the contrary, if the date of closure was after "'the imposition of Swiss visa requirements on January 20, 1939.'"[264] It was understood at the inception of the claims process that Switzerland's tightening of its entry laws — which had a significant impact upon those seeking refugee status (as discussed in the chapter of this Final Report regarding the Refugee Class) — also had restricted the ability of depositors to access their accounts. However, after her appointment as CRT Special Master, Dr. Helen Junz pointed out that "the imposition of additional Swiss visa requirements on 'emigrants' on January 20, 1939 [was] not relevant to whether it may be presumed that an owner did, or did not, receive the proceeds of his or her account…. '[T]hough in certain circumstances entry even for short-

263 *See* Appendix C at 9-10.

264 Memorandum & Order at 4, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 29, 2006) (quoting Letter from CRT Special Master Helen B. Junz to the Court, Oct. 19, 2006).

term stays may have been impeded at times, this does not mean that thereby access to, and full management of, assets held in Swiss banks by account owners who were Nazi persecutees was circumscribed. This was so because such management did not require the physical presence of the account owner in Switzerland.'"[265]

Instead, there were "various means by which, prior to the date upon which the account owner's country was occupied by or allied with Nazi Germany, the owner could have accessed his or her account." If he or she was not a resident of the Reich, he or she "could have traveled to Switzerland under restrictions that were not notably different from those already in effect prior to the imposition of additional visa requirements on January 20, 1939." If unwilling or unable to enter Switzerland, the account owner could have used a courier, mail, telephone, wire or a third person. There also were other "'more sophisticated means to furnish and then manage their accounts from a distance, so that physical presence was not necessary and difficulty of entry does not come into play;'" for example, "'over/under invoicing.'" While in many instances, the account owner may have perished in the Holocaust, his or her "ultimately tragic fate once his/her country fell under the sway of the Reich does not mean that he or she could not have accessed the account before that time."[266]

Based upon Dr. Junz's analysis, the Court reconsidered the Swiss visa issue. Summarizing the rationale underlying the various claims processing rules, the Court observed that the "purpose of Article 28 [of the CRT Rules] is to provide the CRT with general guidelines to help streamline the processing of claims, particularly where crucial documentation has been destroyed. Specifically, Article 28 is intended to offer guidance to the CRT in analyzing claims to accounts for which enough documentation remains to show that the account existed during the Holocaust era, but the documents that would demonstrate whether the owner received the proceeds have been destroyed. I already have explained that under these circumstances, and *absent other evidence to the contrary* — a proviso also included in Article 28 — it is appropriate to draw an adverse inference in favor of the claimant, who should not be held responsible for the banks' destruction of documentation. *In re Holocaust Victim Assets Lit[ig].*, 319 F. Supp. 2d

[265] *Id*. at 5 (quoting Special Master Junz's letter).

[266] *Id*. at 5-8 (quoting Special Master Junz's letter).

301 (E.D.N.Y. 2004). As Article 28 makes clear, one important element in determining whether the adverse inference applies or, instead, whether there is evidence to the contrary, is the date upon which the account was closed."[267]

As factually supported by information analyzed during the claims process, it was clear that Swiss visa requirements did not interfere with an account owner's ability to access his or her property from outside that country. This constituted "evidence to the contrary," such that the adverse inference presumption should not normally apply in such cases. Article 28 of the CRT Rules thus was amended. The account would be presumed to have been closed improperly, where, among other factors:

> the account was closed and the Account records show evidence of persecution, or the Account was closed after the date of occupation by or incorporation into the Reich or the date of alliance with the Reich of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the Swiss authorities' freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later)."[268]

The Court authorized the CRT to adopt the following dates of occupation, incorporation or alliance "to establish deemed dates of loss of control over financial assets":

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[267] *Id.* at 8.

[268] *Id.*at 9 (citing and amending CRT Rules, Article 28(a), and noting that the remainder of Article 28 was unchanged). Judge Korman referred to Special Master Junz's observation that the amendment "formalize[d] the policy that ha[d] been in place for several years," and while it was "an unfortunate oversight that Article 28 was not previously amended to eliminate the reference to Swiss visa requirements," there had been no "practical impact upon the claims process." It was "extremely unlikely that any claimant has modified or limited the information he or she provided to the CRT… because of Article 28's inclusion of a reference to Swiss visa requirements. It is also extremely unlikely that the CRT did not seek to amplify such information if it appeared to be incomplete and/or insufficient to perform the exhaustive analysis underlying any decision regarding proper closure of an account by the account owner, and thus whether or not the account is awardable under the Settlement Agreement." In an abundance of caution, however, Judge Korman "instructed the CRT to re-examine the 33 or so decisions that I have been made aware as having been issued to date in which accounts were denied because they were closed prior to the date upon which the owner's country of residence was occupied by or entered into an alliance with Nazi Germany, but on or after the imposition of additional Swiss visa requirements on 'emigrants' on January 20, 1939." *Id.* at 9-11.

Germany:	January 30, 1933[269]
Italy:	October 25, 1936[270]
Austria:	March 12, 1938[271]
Czechoslovakia/Sudetenland:	September 30, 1938[272]
Czechoslovakia/Remainder:	March 15, 1939[273]
Poland:	September 1, 1939[274]
Denmark:	April 9, 1940[275]

[269] *See* CRT Rules, Appendix C, and *supra*. *See also* MARILYN HENRY, CONFRONTING THE PERPETRATORS: A HISTORY OF THE CLAIMS CONFERENCE 111 (Vallentine Mitchell 2007) (with respect to post-reunification property claims relating to assets in the former East Germany, "[t]here were presumptions in the German property law that worked in favour of Jewish claims. Chief among them was that transactions after 1933 were presumed to have been involuntary. This is the concept of *Entziehungsvermutung*, or the presumption of confiscation, which meant that any sale between 1933 and 1945 was considered to be of dubious validity").

A different Holocaust compensation program, the ICHEIC process for insurance claims, utilized somewhat later dates than did the CRT. According to Schedule 1 of ICHEIC's "Holocaust Era Insurance Claims Processing Guide, First Edition - June 22, 2003," in Germany, payments to blocked accounts were presumed to have taken place during the period 1933-1939, but the date upon which ICHEIC presumed that insurance proceeds were confiscated was not until 1940. This was seven years after the CRT's presumed confiscation date of 1933.

[270] For Italy: *See, e.g.*, *In re Account of Natan Fraenkel* ("The CRT notes that Italy formed an alliance with Germany on 25 October 1936, and therefore it is considered that from this date there existed the possibility of oppression. Accordingly, an asset closed after 25 October 1936 will only be considered closed properly if there is evidence that the asset was paid to the account owner or an authorized party") (awarding SF 260,375.00 ($213,002.25) for a custody account closed between April 7, 1936 and December 31, 1937; the account owner had resided in Milan until she went into hiding in 1942 or 1943 after being warned by the Italian resistance that she had been targeted by the Nazis). By contrast, ICHEIC presumed that confiscations in Italy began in 1943.

[271] For Austria: This is the date of the *Anschluss*, when Austria was incorporated into the German Reich *(see supra).*

[272] For Sudetenland (Czechoslovakia): *See, e.g.*, *In re Accounts of Ida Pollak* (awarding one account, a custody account closed on October 15, 1939 (SF 260,375.00 ($218,600.29)), but denying the other account, a demand deposit account closed on October 10, 1934. The latter date was "before the annexation of the Sudetenland region of Czechoslovakia by Nazi Germany in September 1938," and therefore the CRT presumed that the account owner "had access to the account until the date of its closure and received the proceeds of this account herself").

[273] For Czechoslovakia (Bohemia and Moravia): *See, e.g.*, *In re Account of Gallus & Wolf* (the account owner was a Prague company aryanized in February 1941 and whose owner was deported to Theresienstadt and later perished in Majdanek. The company's Swiss account, of unknown type, had existed as of at least March 25, 1939, "which is ten days after the 15 March 1939 Nazi invasion of Czechoslovakia," and the "Decree of 21 June 1939 on Jewish Assets issued by the German Reich's Protectorate of Bohemia and Moravia would have obliged the owner of the Account Owner to register all foreign assets, including the account at issue here").

[274] For Poland: This is the date upon which World War II is considered to have begun, with the Nazi invasion. *See, e.g.*, *In re Account of Anna Szpilfogel and Izraël Szpilfogel* (the demand deposit account was opened on May 21, 1937 and closed on June 23, 1939, "more than two months before the German invasion of Poland;" thus, the CRT presumed that the account owners "received the proceeds of the claimed account").

[275] For Denmark and Norway: *See, e.g.*, *In re Accounts of Eva Kauffmann* (the account owner had fled from Poland to Denmark and then to Sweden; all three of the accounts were awarded, including a custody account "which was closed on 23 April 1940," after "the Nazis invaded Denmark on 9 April 1940, after which the Account Owner is not deemed to have been able to access her account" (award of SF 809,837.50 ($652,422.11)); U.S. Holocaust Memorial Museum, *Norway*, HOLOCAUST ENCYCLOPEDIA

Norway:	April 9, 1940
Belgium:	May 10, 1940[276]
France:	May 10, 1940
Luxembourg:	May 10, 1940
Netherlands:	May 10, 1940
Greece:	October 28, 1940[277]
Hungary:	November 20, 1940[278]
Romania:	November 20, 1940

http://www.ushmm.org/wlc/en/article.php?ModuleId=10005460 (last visited Oct. 15, 2014) ("On April 8-9, 1940, Germany invaded Norway").

[276] For France, Belgium, Luxembourg and The Netherlands: *See, e.g.*, U.S. Holocaust Memorial Museum, *German Invasion of Western Europe, May 1940*, HOLOCAUST ENCYCLOPEDIA, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005181 (last visited Oct. 15, 2014) ("Germany attacked in the west on May 10, 1940…. The main German attack … went through the Ardennes Forest in southeastern Belgium and northern Luxembourg. German tanks and infantry quickly broke through the French defensive lines and advanced to the coast"). *See also, e.g.*, *In re Accounts of Ernst Feldheim, Lea Feldheim and Fritz Feldheim* (noting that "Germany invaded Belgium in May 1940" and that "after the German invasion of Belgium, Switzerland froze all accounts belonging to Belgian residents in July 1940." Since the account owner was deported and was presumed to have perished in the Holocaust, and his account was open as of December 27, 1939 and could not have been accessed by him after the German invasion, the CRT presumed that neither he nor his heirs had received the account proceeds; award of SF 544,705.00 ($418,257.32)); *In re Accounts of Erwin Rubin and Marcel Rubin* (accounts were not awarded where the bank records showed that the account owner, who resided in France as of May 1937, had closed her safe deposit box on April 21, 1938, whereas "France was not occupied by Nazi forces until May 1940"); *In re Accounts of Max Lichtenstein* (awarding certain accounts (SF 28,712.50 ($23,729.33)) and further concluding that one account "closed on 19 April 1939 [was] prior to the Nazi occupation of Luxemburg on 10 May 1940"); *In re Accounts of Hermann May* (awarding accounts owned by Nazi victim who had fled from Germany to Amsterdam "approximately five years before the May 1940 Nazi occupation of the Netherlands;" although the accounts were closed in 1933, prior to the occupation, the owner had been a German national and "may … have yielded to Nazi pressure to turn over his accounts" to ensure the safety of relatives who remained behind in Germany; award of SF 587,037.50 ($480,219.80)).

[277] For Greece: *See, e.g.*, U.S. Holocaust Memorial Museum, *Greece*, HOLOCAUST ENCYCLOPEDIA, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005778 (last visited Oct. 15, 2014) ("On October 28, 1940, Fascist Italy invaded Greece from bases in Albania, which Italy had occupied and annexed in April 1939").

[278] For Hungary and Romania: *See, e.g.*, U.S. Holocaust Memorial Museum, *Axis Alliance in World War II*, HOLOCAUST ENCYCLOPEDIA, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005177 (last visited Oct. 15, 2014) (USHMM, "*Axis Alliance*") ("Hoping for preferential economic treatment, mindful of recent German support for annexation of northern Transylvania, and eager for future Axis support for acquiring the remainder of Transylvania, Hungary joined the Axis on November 20, 1940"); U.S. Holocaust Memorial Museum, *Romania*, HOLOCAUST ENCYCLOPEDIA, http://www.ushmm.org/wlc/en/article.php?ModuleId=10005472 (last visited Oct. 15, 2014) ("On November 20, 1940, Romania formally joined the Axis alliance"). *See also, e.g.*, *In re Accounts of Helene Grosz* (the claimant plausibly had identified the account owner as her great-aunt, who resided in Hungary at the time the accounts were closed in 1938 and 1939; however, the accounts all were closed before Hungary's formal alliance with Nazi Germany on November 20, 1940, thus indicating that Helene Grosz was able to access these accounts and obtain the proceeds); *In re Account of Moise Landau* (although the claimant plausibly had identified the account owner as her brother, who resided in Romania at the time of the account closure on December 24, 1938, the account was closed prior to the Tripartite Pact on November 20, 1940; therefore, it was presumed that Moise Landau was able to access the account and receive the proceeds of the claimed account).

Bulgaria:	March 1, 1941[279]
Yugoslavia:	March 25, 1941[280]

3. Post-War Agreements Between Switzerland and Communist Countries

Although Nazi Germany ceased to exist after the War, the defeat of the Third Reich did not mean that depositors' accounts held in Swiss banks were returned to them. There was a particularly telling example of the ease with which "banking secrecy" could be breached when convenient: the post-war deals negotiated between the Swiss and Polish governments, and later with Hungary, in which dormant accounts belonging to Holocaust victims were turned over to the Communist governments. The historian Gerhard Weinberg in his congressional testimony noted how these arrangements had attracted little, if any, attention. Thus, for example, the *New York Times* did report on one of the deals, but only on page 26 of the newspaper. Although Jewish groups protested the arrangement, their objections failed to derail the plan.[281]

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279 For Bulgaria: *See, e.g.*, USHMM, *Axis Alliance* (Bulgaria initially "resist[ed] German pressure," but after Germany "offered Greek territory in Thrace and exempted it from participation in the invasion of the Soviet Union, Bulgaria joined the Axis on March 1, 1941").

280 For Yugoslavia: *See, e.g.*, USHMM, *Axis Alliance* ("When the Germans agreed to settle for Yugoslav neutrality in the war against Greece, without demanding transit rights for Axis troops, Yugoslavia reluctantly joined the Axis on March 25, 1941").

281 As described in the December 7, 1949 edition of the *New York Times*: "The Swiss Government has agreed to turn over to the Polish Government funds placed in Swiss banks and other institutions by Polish Jews who died heirless during World War II. The agreement, the implementation of which is being strongly objected to by international Jewish organizations and the Swiss Jewish community, is contained in letters exchanged June 25, 1949, when the Polish-Swiss trade agreement was signed…. In objecting to the Swiss decision, to give the heirless property of Polish victims of Nazi concentration camps to the Polish Government, Jewish organizations cite the Allied declaration of June, 1946, that such property should go to an international body (the International Refugee Organization, which was then in the planning stage) for use in resettling refugees belonging to groups to which dead owners had belonged…. The Jewish groups fear that a precedent will be set by the Polish agreement that will apply to all heirless property in Switzerland. They also have told Swiss authorities that turning over heirless property to a Communist Government does nothing to enhance the country's carefully nurtured reputation as a safe haven for capital of all kinds. The Swiss say the only precedent involved is that under the Polish agreement instead of the automatic application of the law of 1891. The Swiss will permit claims to be filed up to five years from ratification of the agreement by persons claiming to be heirs. This, the Swiss maintain, gives Jewish organizations more than they would normally get under Swiss law. The upshot is that if the Swiss Parliament ratifies the accord [which it did], the funds, whatever their size, will be used to settle claims of Swiss owners of property nationalized in Poland instead of for the benefit of refugees under care of the International Refugee Organization." Michael L. Hoffman, *Swiss Will Turn Over to Warsaw Property of Heirless Polish Jews*, N.Y. TIMES, Dec. 7, 1949, at 26.

In the view of the Bergier Commission, the "'primary aim of [these deals] was to favour Swiss interests in the wake of nationalisation of assets in Poland and Hungary.'" However, as the Court noted in its opinion on the banks' behavior, the "Bergier Commission was conservative when it wrote that this was 'the primary aim' of the deals. What actually happened was that money was taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized…. What is most striking about these secret agreements is that, as the Bergier Commission pointed out, '[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up.' Indeed, '[n]either private property rights nor banking secrecy had been a barrier to the release of these assets.'"[282]

These accounts were the subject of post-settlement litigation. As a result of this litigation, the banks agreed to permit the CRT in 2005 to publish certain Polish and Hungarian accounts that, decades earlier, had been published but not widely disseminated by the then-Communist governments of Poland and Hungary. The CRT was able to recommend a number of awards in connection with these accounts, as well as for accounts that had been turned over to Romania under similar arrangements.

a. Poland

One example of the Swiss-Polish agreement is the case of *In re Account of Oswei Epstein.* Records of the account were not available in the Swiss bank files provided to the CRT, but later were located in files maintained by the Swiss Federal Archives (SFA), as well as those held by the Polish Ministry of Finance.

The account owner, Oswei Epstein, was a wood exporter who died in 1937 in Danzig. His wife, who would have been the heir to the account, died in the Pinsk ghetto.

In connection with the 1962 Survey, records held by the SFA indicated that Oswei Epstein owned a demand deposit account valued at SF 794 as of February 3, 1964. On

[282] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 313 (citations omitted).

December 27, 1965, a custodian was appointed to the account, and on May 1, 1970, the proceeds were transferred to the Heirless Assets Fund in Bern (at which time the account balance was SF 660). On August 15, 1975, this sum was transferred to the Polish National Bank. Similarly, in "the publication entitled *Nasze finanse*, published by the Press Office of the Polish Ministry of Finance, number 25, dated February 1998, there [was] information concerning the assets of Oswei Epstein…. These records indicate that the Account Owner held an account with a balance of SF 794.00, of which SF 134.00 was taken as bank fees." The records showed that the balance of SF 660 was transferred to the Polish National Bank on August 15, 1975.[283] Since the account was not returned to the owner, the Court authorized an award to the heirs in the amount of SF 26,750.00 ($21,747.97).

In another case, *In re Accounts of Erna Zimet-Achselrad*, the claimant received an award of SF 289,087.50 ($235,131.30), representing the presumptive value of the two accounts her great-aunt had owned. Both accounts had been transferred first, to the Swiss Heirless Assets Fund, and later, on August 15, 1975, to the Polish National Bank. As early as 1964, the claimant's mother had sought to locate her aunt's accounts. The CRT pointed out the difficulties that the claimant's mother had "encountered in establishing her rights to her aunt's account," which "seem to have been in line with the general circumstances referred to in Peter Hug and Marc Perrenoud, *In der Schweiz liegende Vermögenswerte von Nazi-Opfern und Entschädigungsabkommen mit Oststaaten*, Bundesarchiv Dossier 4, Bern, 13 December 1996/January 1997":

> The conditions laid down by the Swiss authorities represented a veritable Catch-22: with regard to account owners from behind the Iron Curtain, no search was undertaken, nor were account owner names publicized, in order to protect these persons from their own governments' pressure to then transfer these funds; for heirs of account owners, who in the meantime had moved to the West, the general procedure of first proving that the disappearance of the account owners was such that death could legally be assumed (*Verschollenheitsverfahren)* and then providing the necessary inheritance documentation was virtually impossible. All this helps to explain why the ultimate amount transferred to Poland by Swiss authorities, SF 463,954.55, was about equal to the approximately SF 500,000.00

[283] The claimants, the grandchildren of Oswei Epstein, were awarded SF 26,750, representing the presumptive value of a demand deposit account (since the recorded balance was lower than average [presumptive] value). Following the Court's adjustment of presumptive values upon the recommendation of Special Master Junz, the claimants received an additional SF 1,962.50 ($1,621.90).

that had been registered in 1962 as dormant accounts belonging to Polish account owners considered victims of Nazi persecution.[284]

This transfer took place even though Swiss authorities were aware that Erna Zimet-Achselrad's niece had been trying to recover her aunt's accounts since 1964. More than ten years later, though, the bank, at the direction of the Swiss government, turned over those assets to Poland in 1975 as part of the deal to compensate Swiss citizens for confiscations under communism.

b. Hungary

Under the Swiss-Hungarian Compensation Agreement of March 26, 1973, Switzerland gave assurances in a confidential side protocol that it would compensate Hungary with SF 325,000 for the transfer to the Unclaimed Assets Fund of unclaimed assets belonging to Hungarian nationals presumed to be deceased. Hungarian counterclaims amounting to SF 400,000 were offset directly against the sum compensating dispossessed Swiss property owners, which amounted to SF 1.8 million. The two governments made public only the net compensation of SF 1.4 million. On February 19, 1975, on instructions from the Federal Justice Department, the Federal Financial Administration transferred SF 325,000.00 from the Unclaimed Assets Fund to the account kept by the Political Department to the Hungarian government.[285]

An example of this arrangement is the case of *In re Account of Eugen Halasz.* The account owner lived in Budapest with his family, where he was forced to hide from the Nazis. He died in Budapest in June 1949. In 1997, Eugen Halasz's grandson (the claimant) discovered the name "Eugen Halasz" on a published list of "heirless" Hungarian accounts that had been held in Swiss banks and transferred to the Hungarian government. Eugen Halasz's name also was included in a report created by the Swiss Task Force for the Assets of Nazi Victims.

The bank records made available to the CRT showed that Eugen Halasz's name had been included on a January 27, 1997 list of 33 unclaimed accounts of Hungarian nationals who had vanished. He had owned an account of unknown type with a balance of SF 842.30 in September

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[284] *In re Accounts of Erna Zimet-Achselrad* at 4 n.7.

[285] *See In re Account of Eugen Halasz.*

1963, when it was reported as part of the 1962 Survey. The bank transferred the assets to the Swiss government, which then transferred the money to the Hungarian government on February 19, 1975 as part of the general settlement of claims with Hungary. Since the account had been turned over to the Hungarian government rather than repaid to its owner, the CRT awarded the account (of unknown type) at its presumptive value (SF 47,400.00 ($34,852.94)).

Likewise, in *In re Account of Sigmund Fichmann*, the account owner had worked as a sales representative for a Swiss textile wholesaler. He died in Budapest in 1951. His account was reported in the 1962 Survey. Following prolonged litigation based on the efforts of the CRT to obtain access to additional bank records and accounts, the account was published as part of the 2005 List. It was then claimed by Sigmund Fischmann's niece and great-nephew.

The bank records indicated that Mr. Fichmann, a Hungarian national and textiles salesman, had not been heard from since the 1944 occupation of Budapest. In January 1964, a businessman in Zurich, Gottfried Schaerer, registered assets totaling SF 1,992.65 with the Swiss Federal Department of Justice. According to Mr. Schaerer, this represented a balance that he owed to Mr. Fichmann. In response to Mr. Schaerer's query as to where he could deposit the assets, the Swiss Federal Department of Justice advised in February 1964 that the assets should be transferred to an account administered by Swiss authorities, and Mr. Schaerer did so. In December 1966, the city of Zurich's custodial authorities named a custodian for the assets. The bank records do not indicate the ultimate disposition of the assets.

Documents provided by the claimants indicated that the account had been published at least once prior to the 2005 List; it was originally published in connection with the 1997 "list that was given to the Hungarian Ministry of Foreign Affairs." At that time, Sigmund Fichmann's niece had "disput[ed] the validity of the inter-state agreement of 1972 on both the Hungarian and Swiss sides, and requested details about the account and payment of the assets to the Hungarian state."

Several years later, in October 2004 (three years after the CRT claims process had been under way), Sigmund Fichmann's great-nephew inquired after this account with the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks. The Contact Office responded: "'Unfortunately we are not in possession of the information concerning the account

of Mr. Fichmann. As far as the possibility of a claim for compensation is concerned, you should consult with a lawyer specializing in international law.'" Assessing this 2004 response, the CRT observed: "It is not clear why the Contact Office did not have access to the files of the assets registered pursuant to the 1962 Survey …, why it was not aware of (or did not draw attention to) the account's apparent inclusion in the 1972 transfer of assets from Switzerland to Hungary, or why it simply did not refer [the claimant] to the CRT." In light of the bank's failure to provide information, and given that Mr. Fichmann had died in Budapest in 1951, and so was behind the Iron Curtain and could not have had his funds repatriated to him, Mr. Fichmann's heirs received an award of SF 49,375.00 ($40,805.79).

c. Romania

Switzerland entered into a similar arrangement with Romania:

> [A]s in the case of expropriated property compensation agreements with Poland and Hungary, the Swiss Government, which is a Release[e] under the Settlement, may have used [Swiss accounts] as leverage to obtain compensation for the property of Swiss citizens expropriated by the Romanian Government by agreeing to assist that Government in locating the dormant account of the deceased Account Owner. A direct agreement to transfer unclaimed assets was apparently not part of the Romanian agreement due to an international outcry against the Swiss Government agreements with Poland and Hungary in 1950, which did provide for such transfers.[286]

In *In re Accounts of Ionica Weiss,* the CRT explained that Mrs. Weiss had lived with her husband Geza, an optician, and their children, in Oradea and later in Nagyvarad. On June 3, 1944, Ionica and Geza Weiss were deported to Auschwitz. They were gassed upon arrival. One of their children moved to France after the War; the other (the claimant) lived in Romania until 1960, when she emigrated to Israel.

The bank records indicated that Ionica Weiss of Romania held an account of unknown type, valued at SF 62,000 on August 20, 1948. The account was included on a list of Swiss bank accounts "that were registered by Romanian citizens who were compelled by the Romanian Communist Regime to report their foreign assets, or by the Regime itself when it determined that

[286] *In re Accounts of Ionica Weiss* at 3.

its citizens owned assets held in Swiss banks." The August 20, 1948 date upon which the account was valued, as set forth in the CRT decision, was "recognized by the CRT as that of the Swiss Government's Freeze of Romanian Assets."

The CRT awarded the account (SF 744,720.00 ($496,480.00)) to account owner Ionica Weiss's daughter, who had filed an Initial Questionnaire, but not a claim form. The CRT observed that "the account belonged to a Romanian citizen and was still open as of 1948, which was four years after the Account Owner died in Auschwitz, and therefore may have been subject to the Freeze of Romanian Assets in August 1948." The CRT noted that the Freeze was lifted in 1950. Approximately "one year later, in August 1951, Switzerland and Romania entered into an agreement on compensation for Swiss property that had been nationalized by Romania's communist regime. As part of that arrangement, the Swiss Government agreed to assist the Romanian Government in finding the dormant account assets of deceased Romanian nationals and residents in Swiss banks."

Similarly, in *In re Account of Avram Weinbaum*, the account owner, a businessman, fled from Romania to Palestine in 1941, where he died in 1943. Mr. Weinbaum owned a numbered account. The bank records did not indicate the type, the date it was closed, or to whom it was paid. The CRT observed that while it could not "determine with certainty who received the proceeds of the account," it was "plausible that neither the Account Owner nor his heirs received the proceeds. The account belonged to a Romanian citizen, was still open as of 1945, which was two years after the Account Owner died, and therefore may have been subject to the Freeze of Romanian Assets in August 1948 …." Once the freeze was lifted in 1950, and Switzerland and Romania entered into their 1951 agreement, Mr. Weinbaum's account then "would have been subject to transfer to the Romanian Government under this arrangement. As the Account Owner died in 1943, he could not have closed the account and received the proceeds after the Freeze was lifted in 1950." In addition, it "would have been extremely difficult and dangerous for [Mr. Weinbaum's heirs] to access the account after the Second World War because they lived in Communist Eastern Europe." In any event, there was "no evidence in the bank records of any such access." Accordingly, Mr. Weinbaum's nephew, the claimant, received SF 45,425.00 ($29,620.89).

4. Post-War Stonewalling

After the War, the banks not only continued to participate in the Swiss government's decision to transfer accounts away from their rightful owners (in the case of the deals with Communist nations), but also sought to obscure the record of their wartime cooperation with forced transfers initiated by, and made to, Nazi authorities. The Court took note of this "stonewalling,"[287] and instructed the CRT that this was another basis for applying the adverse inference.[288]

Thus, in the case of *In re Accounts of Angelus Simon, Rosa Simon-Lang, Grete Koretz-Lang, Ernst Koretz, and Susan Koretz*, the ICEP auditors reported the existence of an account "based upon repeated inquiries to the Bank from a Mr. Frank Lang and his legal representative [Paul Weiden, a New York attorney] regarding assets that had potentially been held at the Bank by his relatives," the five account owners listed in the title of the award. In their report, the auditors referenced a handwritten note apparently made by a bank employee on June 14, 1946, which appeared to indicate that at least one owner held an account of unknown type in U.S. dollars ("$147.--").

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[287] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 308-12.

[288] Some observers in Switzerland have taken issue with the adverse inference evidentiary principle. Swiss historian Prof. Dr. Thomas Maissen has written: "Document destruction, even though legal after ten years according to Swiss law, became for [Judge Korman] the 'most contentious subject': if a party destroyed relevant evidence, the law assumed that this would have been harmful to the destroyer. Thus the onus of proof was reversed so that a former account in a Swiss bank became a possible victim's account if the contrary was not positively evident. Therefore, the Swiss banking system of the Nazi era (and thereafter) had to be criminalized as a whole and transformed into a conspiracy built up to rob European Jews and then to cover the tracks. Such a plot cannot be excluded, but it is quite improbable and not supported by existing documentation and the research of the Bergier and the Volcker Commissions although they did not spare the banks from criticism for misbehavior, criminal acts and stonewalling against clients…. There are good reasons to distinguish between the historian's and the judge's task and why the latter should not be held responsible for establishing historical truth in order to adjudicate individual cases." Thomas Maissen, *Republican and Liberal Values in Coping with the Memory of World War II: The Swiss Holocaust Assets in a Transnational Perspective*, *in* THE LIBERAL-REPUBLICAN QUANDARY IN ISRAEL, EUROPE, AND THE UNITED STATES: EARLY MODERN THOUGHT MEETS CURRENT AFFAIRS 231, 243-244 (Thomas Maissen & Fania Oz-Salzberger eds., Academic Studies Press 2012) (citing Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 115, 127-29 (Michael J. Bazyler & Roger P. Alford eds., N.Y. Univ. Press 2006)).

Whatever the perception in Switzerland, however, as Judge Korman has observed, if the case ever had gone to trial in the U.S., the Swiss bank defendants would have been confronted with these basic American rules relating to spoliation of evidence. At trial, they likely would have faced the same adverse inference that the CRT applied.

Six months later, in a letter dated December 30, 1946, the bank wrote to Mr. Weiden, then in Zurich. The bank advised that in connection with Mr. Weiden's recent visit to the bank, "'we would inform you that, as far as our investigations show, no assets are deposited with the Zurich Office of our bank" in the names of the five account owners. Mr. Weiden responded a month later on January 28, 1947, noting that at the time of his visit, "[y]ou [the bank] told me that a thorough investigation in the matter had resulted in only very little money being found. However, you were to confirm this in writing. May be that your letter was misplaced by the hotel, or by the post." In response, on February 5, 1947, the bank forwarded Mr. Weiden another copy of its December 30, 1946 letter.

Mr. Weiden wrote to the bank again on November 22, 1949. He stated that he was again in Zurich, and that he believed that "'a not-insubstantial account existed at your Bank [in the account owners'] names.'" A handwritten note at the bottom of Mr. Weiden's letter, apparently written by a bank employee, stated: "'the matter has already been investigated, and Mr. Weiden has been informed both verbally and in writing that no assets [currently] exist with us.'" [Brackets in original bank note.]

Subsequently, in an internal memorandum dated August 4, 1950, the bank stated that Angelus Simon of Prague had died, and if he held any assets, they should be blocked. No assets were reported. The following week, on August 10, 1950, the bank's legal department wrote in an internal memorandum: "'[o]n the occasion of any further visit … in relation to the assets of Angelus Simon, Rosa Simon, or Grete Simon, Ernst Koretz, please simply tell him verbally the following (do <u>not</u> confirm in writing): 'There are no assets in the names of the four mentioned individuals in our branch [of the Bank], as far as our investigations can tell.' Mr. Lang will not likely request further investigations regarding assets that may have existed <u>earlier</u>. If that does happen, we will have to deny his request on the basis of basic considerations.'"[289]

Thus, by this memorandum, the bank's legal department explicitly advised bank employees that if they were asked about the account owners' assets, they should deny that any existed, as no such assets were *currently* held at the bank. In the unlikely event that an inquiry

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[289] *In re Accounts of Angelus Simon, Rosa Simon-Lang, Grete Koretz-Lang, Ernst Koretz, and Susan Koretz* at 4 (emphasis in original).

was made about *past* assets, that request, too, should be deflected, by relying upon "basic considerations," *i.e*. the rule requiring documents to be held only for ten years.

The next month, by letter dated September 14, 1950, the bank was contacted by a relative of the account owners. The relative (who lived in New York) explained that the account owners had lived in Karlsbad but had later moved to Prague, and that they all died "'as a result of the war.'" The relative advised that he had legal documents indicating that the individuals had died, and that he was their legal heir. The bank responded a few days later, on September 19, 1950, using the terminology that had been provided by the legal department. The bank stated that according to its investigations following the heir's last visit, there were "'*currently* no assets in the names of the referenced individuals in our branch of the Bank.'"[290]

Notwithstanding the bank's repeated denials of the existence of any accounts (or at least, "currently existing" accounts), the Volcker Committee auditors concluded otherwise. As described by the CRT, "based upon the handwritten note made by a Bank employee on the letter from Mr. Weiden dated 14 June 1946, the auditors reported the existence of an account of unknown type, denominated in United States Dollars … held by at least one of the individuals about whom information had been sought in the repeated inquiries to the Bank."

Given the evidence in the bank documents, and the fact that the account owners all had died in the Holocaust, the CRT awarded an account of unknown type at presumptive value (SF 49,375.00 ($42,934.78)). As the CRT observed:

> The Bank's records indicate that a Bank employee made a handwritten notation on the 14 June 1946 letter received from the representative of one of the Account Owners' heirs that indicates that assets totaling US $147.00 were held or had been held at the Bank under at least one of the Account Owners' names. According to the letter from Mr. Weiden dated 28 January 1947 contained in the Bank's records, this information was confirmed verbally by the Bank to Mr. Weiden during his visit to the Bank in Zurich in approximately December 1946. The records further indicate, however, that by 1950, the Bank refused to provide any further information to the heirs regarding these assets; that the Legal Department recommended that no information regarding this account be given in writing; that the Bank specify in all future correspondence with the heirs that there were no assets existing at the present time only and only at the main branch of the Bank;

[290] *Id.* at 4-5 (emphasis added).

> that the bank surmised that the heirs were unlikely to inquire about whether assets belonging to the Account Owners had previously existed at the Bank; and that if they did so inquire, such inquiries should be declined.[291]

The case of *In re Accounts of Rudolf Goldmann and Hedy Hock* is similar. Rudolf Goldmann was an engineer in Vienna, and the deputy minister in the Finance Ministry. Hedy Hock was the sister of Dr. Goldmann's first wife. After his retirement from the Finance Ministry in 1936, Dr. Goldmann began to work for the Vienna Jewish Community. Dr. Goldmann and his second wife fled to Belgium in 1941. They were captured in July 1943 and deported to Auschwitz, where they perished.

In 1946, Dr. Goldmann's son, who provided proof that he was his father's heir, wrote to the bank requesting information about his father as well as other relatives, including Hedy Hock. The bank replied in a December 1946 letter that "due to Swiss legal requirements, it would only be able to respond to his request after he presented documents authenticated by the relevant Swiss consulate," since the son at that time resided in Haifa. The bank also demanded advance payment of a search fee of at least SF 40.00. In 1948, the London office of the bank, on behalf of Dr. Goldmann's cousin, requested information about any accounts owned by Rudolf Goldmann or Hedy Hock. The Zurich branch of the bank advised the London office that it was not holding any assets belonging to either individual.

Notwithstanding the bank's denials, the bank records made available to the CRT showed that Hedy Hock of Vienna indeed had held several accounts: a custody account, a demand deposit account, and a time deposit account. The custody account was closed on August 16, 1938, and the other two accounts were closed no later than that date. The records further showed that Dr. Rudolf Goldmann was given full power of attorney for Hedy Hock on November 29, 1934. In addition, the 1938 Census records for Hedy Hock showed that she owned an account at the bank's Zurich branch with a balance of SF 11,205. Dr. Goldmann perished in Auschwitz, while Hedy Hock had died in Austria in 1941. Thus, they "could not have repatriated the assets in her custody account, which was closed on 16 August 1938, without losing ultimate control over their proceeds."

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[291] *Id.* at 7.

In light of these facts, the CRT awarded the claimant — the grandson of Dr. Goldmann and the great-nephew of Hedy Hock — the demand deposit account owned by Dr. Goldmann, and the custody and time accounts owned by Hedy Hock, for a total of SF 478,525.00 ($416,741.63). The CRT observed that the account owners' heirs previously had "attempted to obtain information about the accounts, but were turned away by the Bank, even though the records clearly still existed and were ultimately identified during the ICEP investigation." The CRT referred to the Court's opinion describing the banks' stonewalling of Holocaust owners and heirs, "particularly those that were the subject of forced transfers or transfers ordered under duress." The CRT observed that this case "provides yet another example of the typical method Swiss banks used to deflect inquiries made by heirs of Jewish victims whose assets had been transferred, under duress, into the Reich."

In *In re Accounts of Adolf Denes and Elisabeth Denes-Deutsch*, the account owners were married and lived with their daughter in Oradea, Romania. Adolf Denes was a banker, and manager of the English-Hungarian Bank in Oradea. The entire family was killed in Auschwitz. The bank records showed that Adolf and Elisabeth Denes held a demand deposit account, and that they had used the fictive name "W. Aden" and the password "Silos." The account was transferred to a suspense account in September 1965. It was closed to fees in 1966. The last contact the bank had with the account owners was before the end of World War II. The account was reported in the 1962 Survey, and subsequently was reported in November 1965 to the Cantonal Guardianship Authority of Zurich.

In awarding the *Denes* accounts (at a total of SF 27,642.50 ($19,210.94)), the CRT noted that the account owners' heirs had been pursuing these assets for decades. Two claims to the account had been submitted to the Swiss Justice Department, including one in August 1965 by a relative who lived in Tel Aviv, Josef Deutsch, who was the claimant's husband, and the brother of Elisabeth Denes-Deutsch. The Swiss Justice Department had instructed Josef Deutsch to withhold any evidence and documentation relating to his claim until he was expressly requested to hand it in. In 1966, the bank closed the account to fees, notwithstanding Mr. Deutch's inquiry, only one year earlier, about his sister's account. Correspondence from 1968 indicates that Mr. Deutsch never was requested to present evidence relating to his claim, but he was advised of the

account closure. Given the bank's behavior, the CRT recommended that Mr. Deutsch's widow receive compensation.

In *In re Account of Dr. Julius Homburger*, the claimant, who originally filed her claim with the New York State Holocaust Claims Processing Office (HCPO), was the daughter of the account owner. Account owner Dr. Julius Homburger resided in Frankfurt, where he was a physician. Dr. Homburger and his family escaped Nazi Germany via Switzerland in 1935, from where they fled to Palestine. Dr. Homburger died in Haifa, Israel in 1950. After the Second World War, the claimant unsuccessfully attempted to locate accounts belonging to her parents, and later contacted the Swiss Bankers Association in 1989 and 1996. The claimant also made an inquiry in 1989 with the Swiss Consulate in Montreal.

The account owner's wife (the claimant's mother) also contacted the Bank in 1987 inquiring about any accounts belonging to her husband or herself, but was unsuccessful. In responding to the claimant's inquiries, the bank stated that because records were kept only for ten years and subsequently shredded, an investigation would be fruitless. The bank further explained that in order to search all its branches, it required death certificates, letters testamentary or letters of administration, and a check for SF 2,000.00. The claimant advised the CRT that she had provided the bank with a notarized power of attorney from her mother, and had given evidence that her father had died some 40 years previously. The bank then restated its ten-year document retention policy, and emphasized that the claimant had not proved her right to inquire about possible accounts of her parents.

The CRT examination revealed, however, that the bank records did contain information about these account owners, notwithstanding the ten-year document retention rule cited by the bank. In fact, Julius Homburger held an account of unknown type, which was opened on September 19, 1935 and closed on March 19, 1936. Given that the bank had withheld information about the account in response to inquiries made by Mr. Homburger's family, and given that there was no evidence in the bank's records that Mr. Homburger or his heirs closed the account and received the proceeds, the CRT concluded that it was plausible that the account proceeds were not paid to the rightful owners. The claimant was awarded SF 47,400.00 ($34,347.83).

Heirs seeking information from Swiss banks about the Levi family had no better success. In two decisions, *In re Accounts of Sara (Särle) Levi, Martha Baldauf and Ilse Lebrecht* and *In re Accounts of Sara (Särle) Levi, Martha Baldauf and Ilse Lebrecht*, the CRT described the years of stonewalling the family had encountered.[292] Berthold Wolf, a German attorney representing the heirs of Martha Baldauf (who had been killed in the Holocaust in 1940) first contacted the Swiss bank by letter of October 28, 1958. He asked about accounts owned by Ilse Lebrecht and Martha Baldauf, and he stated that these probably had been forcibly repatriated to the Reich. Among the handwritten notations a bank employee wrote on this October 28, 1958 letter was the question: "'Can information be given?'" On November 10, 1958, the bank responded that "as a general principle, the Bank could not provide any information about account activities that took place over ten years ago, because its files are destroyed after this period of time."

On December 22, 1958, Berthold Wolf replied, stating that the bank previously had provided information helpful to a different branch of the family. He suggested that "the Bank's research might also be made easier if he [Wolf] assured them that no claims against the Bank could be brought on the basis of its information." A handwritten note, evidently by a bank employee, refers to the existence of a custody account numbered 52260. A different notation on the bank records again asked, "'Can we tell how the custody account was closed?'" On December 31, 1958, the bank told Berthold Wolf that based on renewed research, it had no documents that would allow it to determine whether assets belonging to Martha Baldauf had been handed over to Nazi authorities.

In awarding Sara Levi's custody account to her daughter-in-law, the CRT observed that "in the course of its correspondence with Mr. Wolf, the Bank repeatedly asserted that it could provide no information about any activities that occurred more than ten years ago, in spite of the fact that the various notations on the letters clearly indicate that the bank did indeed have information about the accounts in question and in spite of the fact that the actual records still exist (and were forwarded to the HCPO and CRT [by the bank]). The presumption that the Bank was withholding or misstating account information in response to Mr. Wolf's inquiries because of its concerns regarding double liability was implicitly addressed in Mr. Wolf's letter of 22

[292] *In re Accounts of Sara Levi, Martha Baldauf and Ilse Lebrecht.*

December 1958, when he assured the Bank that no action against it could be brought on the basis of any information it might provide."[293]

After deducting restitution that Sara Levi's son (the claimant's husband) had received from the German government for the securities in 1961 — an amount equivalent to SF 29,047.42 — the CRT awarded the balance of the custody account, SF 206,108.57 (multiplied by 12.5, for a total of SF 2,939,449.88 ($2,389,796)).[294]

In *In re Account of Lina Froehlich*, the bank records included a May 14, 1948 letter to the bank from the account owner's son, Hermann Froehlich, requesting information about accounts in the names of his mother, father, and sister. In his letter, the account owner's son explained that his mother, Lina Froehlich, had been deported to the Piasky concentration camp. She was presumed to have died there. The account owner's son included a copy of his father's death certificate. He noted that his mother's death certificate would be officially issued the following day, as would his parents' will. The bank responded that it only provided information to heirs after they had officially proven themselves to be the legitimate heirs of the account owners. The bank also advised the son that the persons he had named had no connection to the bank, and possessed no assets at the bank. However, the bank records reviewed by the CRT indicated that Lina Froehlich had, indeed, held an account of unknown type at the bank, which had been closed on December 31, 1933. The ICEP auditors presumed that the account had been paid to the Nazi authorities. The total amount awarded for this account was SF 47,400.00 ($33,058.45).

The banks' deflection of customer inquiries is perhaps most evident in the decision to demand death certificates, often from the heirs of account owners who had perished in the Holocaust.[295] This request was made (and complied with) in the case described above, *In re Account of Lina Froehlich.* Similarly, in *In re Accounts of Acatiu Nemeth,* in February 1974, a

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[293] *In re Accounts of Sara (Särle) Levi, Martha Baldauf and Ilse Lebrecht* at 14.

[294] The CRT subsequently recommended and the Court authorized another award as well as an award amendment for the account owner, for a total of SF 4,621,869.51/$3,880,321.78.

[295] Although this assertion — that the banks demanded death certificates for those killed by the Nazis — was cited in many publications released during the height of the public scrutiny of the banks' activities in the late 1990s, the Distribution Plan of September 11, 2000 did not refer to the death certificate issue because direct evidentiary support for this contention was not then available. However, in the course of analyzing bank files and other documentation, there was clear evidence showing that the banks had required relatives to produce proof of the death of depositors who had perished in the Holocaust.

cousin of the eventual CRT claimant contacted the bank. This individual advised that his cousin (the account owner's son) was unable to contact the bank directly because he lived in Romania, behind the Iron Curtain. The cousin asked what documents were necessary to claim the account. The bank replied by demanding various types of evidence, including records proving that Acatiu Nemeth was deceased. However, as the CRT decision explains, by March 1941 the bank already knew that its client was deceased, since its files as of that date reflected that the account was held by the *"Estate"* of Acatiu Nemeth. The account owner's son received SF 99,259.50/$80,047.98.

In *In re Account of Ascher Bank*, the account owners, Ascher Bank and his wife, both presumably died in the Holocaust, as Mrs. Bank's sister, the claimant, did not hear from them again after 1940. The files made available to the CRT showed that after the Holocaust, the claimant wrote to the Cantonal Guardianship several times. Correspondence dated January 12, 1966, August 30, 1966 and October 24, 1967 indicates that the Cantonal Guardianship asked for additional documentation, including a death certificate for Mr. Bank, and a last will and testament. As the CRT observed, despite the fact that "the Account Owner's heir contacted the Registration Office and claimed the account" as early as 1966, the Swiss authorities nevertheless paid the supposedly "unclaimed" account to the Polish National Bank ten years later, on August 15, 1975.

In *In re Account of Otto Strakosch*, in 1950, according to "Bank I's" records, an American lawyer representing the administrator of Mr. Strakosch's estate (who had been appointed by the New York Surrogate's Court) contacted Bank I. As described by the CRT, the bank responded by stating "that it did not recognize the rights of an appointed administrator to a customer's account as being legally valid, because the Account Owner was not an American resident." That same year, the administrator "replied to Bank I in a letter in which he claimed that he and his sister were the legal heirs of the Account Owner, according to the Account Owner's will. In response, Bank I stated that it could provide no information because it had no proof that they were the legal heirs, and it did not keep customer records for more than ten years. In addition, Bank I would require a death certificate of the Account Owner." Based on the records that actually did still exist, notwithstanding the bank's effort to deflect the earlier inquiry by citing the ten-year document retention rule, the claimant received SF 1,020,995.46 ($712,226.10) through the Court's claims process.

5. Accounts Closed by Post-War Assessment of Fees and Other Charges

The banks generally did not provide information to their clients or the heirs about accounts transferred to the Nazis under duress. The banks also tended to avoid responding to inquiries about other accounts, including those still open after the Holocaust (whether closed at some point after 1946, or remaining open as of the date of the CRT analysis). This was particularly so, where it was profitable for the banks to continue to hold these assets. Swiss banks gained financially simply by the fact that Switzerland had no escheat law.[296]

> After the war, Holocaust survivors and their heirs sought to claim the funds deposited in Switzerland. The Swiss banks imposed insurmountable barriers. They destroyed documents and stonewalled heirs of account holders. Swiss law provided both the incentive and the mechanism for this misconduct. Swiss law had no requirement for escheat which would have required banks to turn unclaimed accounts to the state. Without an escheat law, Swiss banks were permitted to keep any assets as long as the money remained in the dormant bank accounts. Swiss law required banks to maintain records for only ten years. Even though the banks knew the importance of maintaining those documents to assist in the processing of Holocaust-related claims, they relied on Swiss law to justify their wholesale document destruction policy. Using Swiss law, the banks also applied charges to these accounts, frequently depleting them to zero.[297]

The CRT recommended, and the Court authorized, many awards evidencing this type of behavior.

Thus, in *In re Account of Erwin and Babette Koblitz*, the account owners lived in Bielsko, Poland, with their daughter, the claimant. Erwin Koblitz was the *Prokurist* (authorized representative) of a company, and Babette Koblitz was a housewife. They both perished in 1942. The Koblitz' daughter had made a claim to her parents' accounts after World War II and had received a quantity of British gold coins during the late 1990s.

The bank records showed that Erwin and Babette Koblitz held at least one account, opened in May 1934. Documents received following the CRT's request for "voluntary

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296 "Escheat" refers to the provision by which unclaimed property held in banks eventually reverts to the state, rather than remaining with the bank in question. *See* BLACK'S LAW DICTIONARY XXXX (10th ed., Thomson Reuters 2014).

297 Hon. Edward R. Korman, 2006 Federal Bar Council Address, at 317; *see also In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 308-09.

assistance" demonstrated that the Koblitzes owned more than one account at the bank, and that these were registered in May 1940 under the British Trading with the Enemy Act of 1939. Specifically, the Koblitzes owned one custody account containing 150 British gold sovereigns, and one demand deposit account. The latter account held a negative balance of 8.15.5 Pound Sterling ("£") as of May 1942, which over the decades was further reduced by fees and charges, including maintenance fees for the separate custody account. As of April 1977, the account had reached a negative balance of £ 230.40. Both accounts (the demand deposit and custody accounts) were closed in March 1980 and transferred to a suspense account at the bank for dormant assets.

In determining that the account owners' daughter was entitled to an award, the CRT observed that although she had received from the bank British gold sovereigns during the 1990s, there were no records indicating whether the account had held any other assets. It was "plausible that the full proceeds of the custody account were not paid to the Account Owners or their heirs." The claimant was awarded the presumptive value of the custody account, minus the value of the gold coins previously returned (*i.e.* SF 5,767.50), resulting in an award of SF 7,232.50 (thereafter multiplied by 12.5, for a total of SF 90,406.25 ($73,501.02)). As to the demand deposit account, it had been suspended, at which time it had held a negative balance. This was due partly to the fact that the bank had continued to charge fees against the account, including fees for the separate custody account.[298] That account was awarded at its presumptive value (SF 216,993.75 ($177,759.31).

In *In re Account of Bedrich Spielmann*, the account owner, the claimants' great-uncle, was an attorney or businessman who lived in Germany and Austro-Hungary. He perished in a concentration camp. He owned a safe deposit box that was "considered for registration in the 1962 survey of assets held in Switzerland by foreigners or stateless persons who were or who were believed to have been victims of racial, religious or political persecution, conducted by Swiss banks pursuant to a Federal decree in 1962." However, the account was never reported in the 1962 Survey because the bank had determined that Mr. Spielmann — who died in a

[298] *See In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 315-16 (describing one bank's decision to charge fees against an account, leading to a negative balance, as "seemingly inexplicable." However, this was "easily understood once one recognizes that the client also had a safe at the bank." The safe contained gold, which was used to offset the fees on the other account).

concentration camp — had not been persecuted by the Nazis. The safe deposit box was emptied on May 19, 1964. The bank deemed its contents to be valueless. The CRT disagreed. It was "implausible that an account owner would hold a safe deposit box for the purpose of depositing valueless objects. In this regard, the CRT notes that an account owner would have been charged SF 500.00 in fees from 1 January 1945 to 19 May 1964." The claimant was awarded SF 37,575.00 ($31,840.29).

In re Accounts of August (Auguste) Hirsch is similar. The decision followed ongoing litigation with the banks stemming from the CRT's effort to obtain access to additional Holocaust-era documents and accounts. The CRT determined from files in the Swiss Federal Archives (SFA) that account owner August Hirsch owned at least one other account, in addition to the one that had been reported at the inception of the claims process. In connection with the 1962 Survey, the bank reported that it had not had contact with the account owner since before 1945. On January 21, 1946, the bank had sent a letter to August Hirsch's last known address, which "was returned to the bank with a note marked 'deported and missing' (*deportiert & verschollen*)." The records indicated that August Hirsch held an account numbered V 13080, which had a balance of SF 52 as of September 1, 1963.

The CRT awarded this newly-disclosed account to the niece of August Hirsch (SF 10,750.00/$8,415.39). The CRT observed that August Hirsch had died in a concentration camp, and that the account subsequently had been registered in the 1962 Survey. In addition, the bank evidently was aware, as of 1946, that its customer had been deported and was missing, but there is no indication that it took any steps to locate its customer's heirs.

In the case of *In re Account of Nelly Fleischmann*, the bank in 1956 had asserted to Ludwig Fleischmann, the claimant's father (and husband of Nelly Fleischmann), that "it no longer possessed files from 1938." But the CRT claims process demonstrated that bank records did exist. These records showed that Nelly Fleischmann of Bayreuth held a custody account numbered 43500, which had been opened on May 31, 1931 and closed on January 10, 1939. Although the bank files contained evidence of an account held in Nelly Fleischmann's name, there was "no indication that the bank informed the Claimant's father that this account" existed,

which the CRT noted was misleading.[299] The claimant was awarded SF 316,512.50 ($205,461.19).

In *In re Account of Abraham Schlagmann*, the claimant was the great-nephew of the account owner, who owned a factory that manufactured women's undergarments. The account owner was never heard from again after the Second World War. Abraham Schlagmann had held a demand deposit account that was last accessed on August 11, 1939. The account held a balance of SF 2,439.50 when it was transferred to a collective account on or before October 23, 1962. The records indicate that the bank closed the account on or before August 11, 1988. After adjusting the balance to reflect standardized bank fees taken against the account, the CRT awarded the claimant SF 30,090.00 ($20,194.63).

In *In re Account of Pierre Seligmann and Adèle Seligmann*, the claimant was the niece of the account owners, who hid in southwestern France during the German occupation. Pierre Seligmann died in 1970 and Adèle Seligmann died in 1963, both in Paris. The bank records indicated that the Seligmanns had held three accounts: two demand deposit accounts and a custody account. One of the demand deposit accounts and the custody account were closed on January 1, 1949, which would have been a bank holiday. The remaining demand deposit account was closed to profit and loss on March 1, 1953, with a remaining balance of SF 6.70. The claimant was awarded SF 309,160.00 ($226,159.62), based upon the presumptive values for each of the three respective accounts.

In *In re Account of Ernst Handel*, the claimant was the nephew of the account owner, who was married and resided in Vienna, Austria. Ernst Handel's brother-in-law, the claimant's father, managed a factory called *Kawe Prima Fabrica Romana*, for which he traveled to Switzerland for business. Around 1939, the claimant's father sent his two sisters, one of whom was the account owner's wife, to Shanghai, China, to save them from Nazi persecution. Ernst Handel and his wife, who never had any children, eventually fled to the United States, while Ernst Handel's brother-in-law went to Palestine in 1940.

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[299] Denying the existence of such documents was part of the banks' strategy in "stonewalling" Holocaust victims and their heirs in an attempt to avoid double liability for the banks' role in facilitating forced transfers. *See In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 308.

The bank records indicated that Ernst Handel of Vienna, Austria, held a custody account numbered 22488 that was opened on May 26, 1939, into which SF 3,000.00 was transferred from the Zurich branch to the Geneva branch on May 20, 1939. Ernst Handel also held a demand deposit account that was opened on May 26, 1939. The bank's records indicated that the bank closed both accounts to fees on December 1, 1949, on which date the demand deposit account had a negative balance of SF 141.90. Accordingly, the CRT concluded that the account owner did not receive the proceeds of the accounts. The claimant was awarded SF 286,538.33 ($238,247.64).

In many instances, the CRT did not have to apply an adverse inference presumption to determine what had become of the account. The account remained open, and so clearly it had not been returned to the Holocaust victim or her heirs.

In the case of *In re Account of John Simon*, for example, the claimant was the account owner. Mr. Simon explained that he had been a travel agent in Bucharest. He was conscripted into a forced labor battalion in Hungary and Ukraine. After Mr. Simon was released from the forced labor battalion, he returned home to find that all of his possessions had been stolen. The bank records indicated that Mr. Simon had held a savings/passbook account that remained open and dormant. It held a balance of SF 0.68 as of September 26, 2001. After increasing the account balance to reflect standardized bank fees, Holocaust survivor John Simon was awarded SF 12,726.24 ($8,598.81).

In *In re Accounts of André Isaac Meyer and Marcelle Meyer*, the claimant was the daughter of the account owners. In 1940, the Nazis forced André Meyer out of his company. In 1942, they confiscated his home. After the Meyers and their children fled to unoccupied France, their son, the claimant's brother, fought with the Resistance forces. He was killed in combat in January 1945. André Meyer died in 1986 and Marcelle Meyer died in 1964, both in Paris. The bank records indicated that the account owners held three accounts: a demand deposit account and a custody account that were closed on unknown dates, and a demand deposit account that remained open and dormant. On April 21, 1975, the open and dormant demand deposit account had a balance of SF 1,046.00. The claimant received an award of SF 990,006.74 ($712,445.09).

In *In re Account of Hedwig Hauser*, the claimant claimed her own account. Hedwig Hauser was born in 1915 near Znaim, Czechoslovakia. In the 1930s, Hedwig Hauser's mother told her that she had opened an account, into which she deposited 30,000.00 Czech Crowns for her daughter's benefit. The claimant fled Czechoslovakia immediately after the Nazi occupation in 1939. She tried to flee on a refugee ship bound for Palestine, but it was intercepted by British forces and redirected to Mauritius, where she was detained until 1945. Both of her parents perished in Treblinka. The bank records indicated that Hedwig Hauser held a savings account, numbered 2153. The account was transferred to a collective account for dormant assets on September 4, 1985 and therefore had not been returned to the account owner. She received a CRT award of SF 10,335.00 ($8,030.85).

6. Accounts Located by the CRT

The adverse inference presumption was applicable not only to fill in evidentiary gaps caused by the banks' destruction of records, but also in those cases where records evidencing the account had been found by the claimant or by the CRT through its own research. These records from non-bank sources often revealed bank misconduct of the very sort that might have contributed to the banks' destruction of the records in the first place.

The case of *In re Account of Wilhelmine Schoenholz* is instructive. Wilhelmine Schoenholz lived in Germany for 35 years. She owned a corset and lingerie shop. She had been a purveyor to the court of the Queen of Wurttemberg, the Grand Duchess of Hesse, and the last Russian Tsarina. She was wealthy and independent, and until 1932, traveled regularly to Switzerland. After the Nazis' rise to power, she was forced out of her home and ordered to move into her shop. She was relocated several times, as was her shop. In 1942, she was deported to Theresienstadt and presumably died there, as she was never heard from again after World War II.

Archival documents provided to the CRT by the claimants indicated that Wilhelmine Schoenholz owned a Swiss bank account valued at SF 165,000. In the "Jewish file" (*Judenkarte*) created by Nazi authorities, numbered 9722, the cover page included the notation "*über 165,000 Schweizerfranken*" ("over 165,000 Swiss Francs"). The file also included an undated document wherein Wilhelmine Schoenholz applied for a "*Sicherungskonto*" (security account) and stated

that she was 77 years of age, very poor, and living on social welfare. The file indicated that this application was denied on the basis of her Swiss bank account. The file also contained a notation that "measures" were being taken regarding the matter. The "measures" presumably involved the confiscation of Mrs. Schoenholz' Swiss account. A document dated October 2, 1942 indicated that Wilhelmine Schoenholz had been "evacuated," and that the security order was completed and would be noted on her "*Judenkarte*." Given that she was targeted so completely by the Nazis, Ms. Schoenholz was not in a position to retrieve her Swiss account before she perished in the Holocaust. Ms. Schoenholz's heir, her grandson's wife, received an award of SF 1,980,000.00 ($1,488,721.80).

Similarly, in *In re Account of Kleiderfabrik Josef Schneider*, the CRT recommended and the Court authorized an award, despite the absence of any bank records demonstrating the existence of the account. The banks appeared to have destroyed the relevant files, but the claimant was able to provide documentary evidence of a different sort. Holocaust-era letterhead from the company, *Kleiderfabrik Josef Schneider*, showed that it was a business located at Aberlestrasse 1 in Munich, which had an account of unknown type at a named Swiss bank. The CRT noted that it had "previously awarded accounts to Claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database). The evidence submitted by these Claimants falls into very limited categories. Article 17 of the [CRT] Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by Claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank." The claimant was awarded SF 49,375.00 ($40,471.31).[300]

[300] *See also, e.g.*, *In re Account of Gallus & Wolf* (company letterhead demonstrated ownership of a Swiss account); *In re Account of Adolf Groszmann Generalvertretung-Ausländischer Fabriken* (same).

D. Presumptions Relating to the Value of an Account

The Court permitted the CRT to use presumptions to fill in the gaps in the evidentiary record not only to determine what happened to the account, but also to assess its value. These presumptions included the following: accounts recorded as below average (presumptive) value may have been looted and therefore should be awarded at average value; Holocaust victims who were forced to report their assets in Nazi census forms may have underreported the value of these assets; and banks did not award interest, but did deduct fees for carrying accounts. The CRT took all of these presumptions into consideration in assessing the amount of an award.

At the same time, the CRT also conducted detailed research to find actual account values, including by engaging in ongoing efforts to obtain additional information from the banks well after the class action litigation had settled and the claims process was under way. This process had a significant impact upon individual claimants, and also upon the entire class as a whole. The new account valuation data revealed that the presumptive values that had been originally assigned by the ICEP auditors, which were drawn from then-available information about accounts that did still have valuation data in the files, were too low. The evidence was reevaluated and the Court authorized an upward adjustment of presumptive values, resulting in additional payments of almost $100 million to thousands of Holocaust victims and heirs.

The following principles were incorporated into the claims process, enabling the CRT to more accurately assess values for Holocaust victim bank accounts.

1. Application of A Multiplier to Approximate the Account's Current Value

Claimants benefited from the application of a multiplier designed to take into consideration the interest income that would have normally accrued on their accounts. The Court determined that interest should be credited from 1939 through the date of the award.

In connection with the work of the Volcker Committee, the economist Henry Kaufman chaired a "Panel on Interest, Fees and Other Charges." The panel prepared a report in 1998 which adopted a current value adjustment factor of ten to be applied to any awards to be issued by the CRT (at that time, CRT-I), to bring 1945 values to current values. This factor was

calculated by determining the compounded nominal value of a long term Swiss Federal Government bond ("CNV") over the period from 1939 to 1998. The precise value in 1998 was 10.18, which was rounded to ten.

When CRT-II began, the Kaufman Panel was able to calculate the CNV to the year 2000, but was not able to make this calculation for subsequent years because the Swiss National Bank discontinued the data series on which the calculation was based.[301] However, under the oversight of then-CRT Special Master Paul Volcker, former Chairman of the United States Federal Reserve Board and head of ICEP, the "Kaufman Factor" multiplier was increased several times during the claims process to ensure an appropriate current value of the accounts. Thus, in 2000, the CNV was 10.89. Beginning in November 2001, when CRT-II began issuing Awards, the multiplier was established at 11.5 by rounding the 2000 CNV up to the nearest whole number, and by adding a growth element of 0.50 based on additional interest income in that year.

CRT Special Master Michael Bradfield later recommended that, "[u]sing the same methodology based on the growth of the CNV in past years, it is proposed to increase the [multiplier] to 12.5 times from its present level of 12 times…. [which takes] into account the passage of time [and] fairly increases the amount of the payments to Awardees to provide a level of earnings that would have been available to prudent investors if they had had dominion over their funds."[302] The proposal to increase the multiplier to 12.5 was adopted by Order dated August 25, 2003. The multiplier remained at that amount thereafter.[303]

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301 *See* Letter from Special Master Bradfield to Judge Korman (July 11, 2003).

302 *Id.*

303 The Court also monitored the exchange rates over the course of the claims process, and authorized a change in policy to ensure that claimants, and the Settlement Fund as a whole, were treated equitably regardless of the date upon which an award was authorized. Payments from the Settlement Fund to Deposited Assets Class awardees had to be made in U.S. Dollars, which required a conversion of Swiss Francs, the currency in which the Swiss banks reported the value of accounts of Holocaust victims, into U.S. Dollars. The 1945 Swiss Franc value, brought to current values by the multiplier, thus was converted into U.S. Dollars at the market exchange rate prevailing at the time the Court approved the relevant award.

This method was chosen for its simplicity and operational feasibility. However, over the course of the claims process and as global economic conditions changed, the appreciation of the Swiss Franc-U.S. Dollar market rate rendered this methodology unsuitable, as it was resulting in smaller benefits to those claimants receiving awards at the beginning of the claims process and greater benefits to those who received later awards. In response, the Court requested CRT Special Masters Bradfield and Junz to review the exchange rate methodology and to make recommendations. The Special Masters analyzed the data and observed that by August 2007 the US dollar

2. Adjustment of Low Value Accounts to Presumptive Value

"Presumptive values" were assigned to accounts for which valuation data had been destroyed and values were unknown. The "presumptive values" were determined by the ICEP auditors after assessing the valuation information that still remained for many accounts, and assigning averages based upon the category of account (*e.g.*, safe deposit, custody account, demand deposit, and so forth).

The Court authorized the CRT to apply these presumptive values to accounts whose 1945 values were known, but were still less than the average 1945 value of an account of similar type. The higher "presumptive" value was to be used in place of the lower recorded account value, in the absence of plausible evidence to the contrary.[304]

The Court's order followed the recommendation of CRT Special Masters Volcker and Bradfield, who noted that the "ICEP and Bergier Reports reveal that the Swiss banks and their employees took advantage of the accounts of victims of Nazi persecution — including by charging excessive fees to the accounts and by taking account balances for their own use. Both Reports state that the banks levied fees, special charges, and commissions against such accounts, invested them in the bank's own notes, and suspended interest payments on accounts. The Bergier Report adds that banks wanted the dormant accounts to disappear and that they made decisions to manage them in the best interest of the bank. Staff Study No. 15 of the Bergier

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exchange rate had declined to Fr.1.20 to the US dollar, a fall of 29% in 80 months. The decline continued from August 2007 to August 2011, over which period the value of the dollar declined another 26% to Swiss Francs 0.78 to 1.00 US Dollar. In the entire period of 128 months reviewed by the CRT Special Masters, the value of the US dollar in terms of Swiss Francs declined by 54%. The Special Masters thus recommended that a fixed rate of US$ 1 = SF. 1.21 be applied to further Swiss Franc-based payments, which reflected the average daily exchange rate for the whole period of the claims process. The Court adopted this recommendation by order dated September 28, 2011.

304 *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. May 28, 2002). The May 28, 2002 Order also authorized the CRT to (1) issue awards to sons-in-law and daughters-in-law of account owners, as well as other relatives not part of the account owner's immediate family; and (2) issue payments in full to claimants to accounts of known value. The latter amendment was approved at a time when the CRT was required to issue only partial payments of awards, with the expectation that supplemental payments would be authorized when all claims had been filed, and the full scope of potential awards assessed. Subsequently, the Court adopted Special Master Bradfield's recommendation of February 25, 2003 that all "Certified Awards shall be paid in full" (*see* CRT Rules, Article 31(3)). By Order of March 18, 2003, the Court provided for payment in full to all claimants who previously had received only partial payment under earlier versions of the CRT Rules.

Commission indicates that it was the intent of the banks to rid themselves of the nuisance of dormant accounts."[305]

As the claims process progressed, CRT Special Masters Volcker and Bradfield observed that "many awards [were] drafted involving low value accounts." They noted that "it seemed illogical that the account owner would have bothered to deposit such a paltry sum into a Swiss bank account." The ICEP and Bergier Reports both "support[ed] the conclusion that many of the accounts of victims of Nazi persecution were depleted by the banks and their employees through fees and otherwise." The CRT Special Masters "recommended that the current Article 35 account values be extended to certain accounts with low values." However, if there was "other plausible information concerning the value of the account," the CRT would have the discretion to "award an amount higher or lower than the average value."[306]

Of the 4,090 presumptive value accounts awarded, 1,168 were low-value accounts which were increased (or "bumped up," in the vernacular of the CRT) to presumptive value.[307]

3. Presumption of Underreporting in the 1938 Census

The CRT was authorized to presume that Holocaust victims who reported their Swiss accounts in the 1938 Census had reason to try to hide their assets, by underreporting the values of their accounts.[308]

At the inception of the claims process, where specific information on the value of assets held in Swiss banks was available from the 1938 Census returns, the CRT had taken this census

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[305] Letter from Special Master Michael Bradfield to Judge Korman 1 (May 23, 2002) (citing Bergier Dormant Accounts Study at 400-401).

[306] *Id.* at 1-2.

[307] Of the 4,675 awarded accounts (excluding outliers), 4,090 were awarded at presumptive value (87.5%) and 585 at known value (12.5%). Many of these presumptive value accounts later were adjusted upward, as discussed *infra*.

[308] *See* Memorandum & Order Approving 15 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Oct. 21, 2004) ("Order of October 21, 2004"). The fact that the account had been reported to the Nazis also almost always led the CRT to conclude, absent evidence to the contrary, that the Nazis had forced the account owner to turn over his Swiss assets — or that the Nazis had bypassed the account owner and gone straight to the bank, which transferred the accounts as requested by the Nazi authorities.

information as the proper basis for determining award amounts in cases where bank records contained no information on account values, or where the bank information cited lower values than those the account owners had declared to the Nazi authorities. Thus, where the account owner had declared a value lower than the presumptive values under the CRT Rules, this lower value was awarded. However, in 2004, CRT Special Master Junz recommended that the Court amend that practice. She found that there was evidence that Holocaust victims tended not to declare all the assets in the 1938 Census, or had undervalued them, to try to safeguard some of their wealth. The Court approved Special Master Junz's proposal that account valuations, in the absence of evidence to the contrary, were to be at least equal to presumptive values (or higher if the census declaration reflected a higher amount). This new rule generally resulted in higher payments to claimants. As to earlier decisions, the CRT recommended and the Court approved retroactive adjustments where warranted, both in the 2004 Order itself and subsequently.[309]

Thus, in *In re Account of Hedwig Ullmann*, the ICEP auditors did not report an account belonging to Hedwig Ullmann during the Holocaust era, and so there was no record of the account in the "Accounts History Database" (AHD) made available to the CRT at the outset of the claims process. However, the CRT located the account owner's 1938 Census form. This document indicated that Hedwig Ullmann owned an account at the Basel branch of a Swiss bank. The CRT awarded Hedwig Ullmann's account to her children and grandchildren at presumptive value (SF 260,375.00 ($245,029.85)), because the value of the securities recorded in the 1938 Census form was lower than presumptive value. The CRT observed that this case was "similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich."

In *In re Account of Robert Schwarzkopf*, records from the 1938 Census included a report filed by the Vienna police regarding a search of the office and apartment of Robert and Selma Schwarzkopf. As described by the CRT, the search "was carried out by the police on 12 March

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309 *See, e.g.*, Memorandum & Order Approving Set 193: 52 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Jan. 19, 2010) (adopting award amendments increasing the amounts of earlier decisions which had not incorporated the principle set forth in the October 21, 2004 Order) ("Order of January 19, 2010").

1938, for assets to be reported. Among the items discovered in the search were … Swiss Franc-denominated City of Vienna bonds with a par value of 18,000.00 Swiss Francs, which were confiscated by the police." The CRT awarded Robert Schwarzkopf's son an account of unknown type at presumptive value (SF 47,400.00 ($32,465.75)). The CRT observed that "coincident with the *Anschluss* on March 12, 1938, the Nazis initiated a concerted plan to seize and confiscate the wealth of Austrian Jews. In pursuance of this plan, the search of the Account Owner's office and apartment took place on 12 March 1938, together with the seizure of his financial assets. His Swiss account was closed 18 days later on 30 March 1938."

In a number of cases, the presumption of underreporting was applied where the victim had filed a 1938 Census form, but had not listed his or her Swiss accounts in that document. However, bank records revealed during the claims process indicated that an account had existed. For example, in *In re Account of Hanna Hartmann*, the CRT awarded Hanna Hartmann's niece three Swiss accounts at their respective presumptive values. Although Hanna Hartmann had not specifically disclosed her Swiss accounts in the 1938 Census, the bank records demonstrated that she had, in fact, owned such accounts. The "facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Jewish Austrian citizens are arrested, searched, or report their assets in the 1938 Census, and, beginning immediately thereafter, and in many cases within the same year, their accounts are transferred to Nazi-controlled banks or closed unknown to whom. In the present case, the Account Owner was deported from Vienna and killed, and the existence of any account in her name was denied by Swiss authorities in 1967 and as late as 1997."

Significantly, several years after Hanna Hartmann's accounts were awarded to her heirs, using the presumptive values the ICEP auditors had assessed at the inception of the claims process (resulting in an award of SF 474,949.38 ($414,184.37)), the "voluntary assistance" process yielded new information. The bank "made available to the CRT additional information" about the securities held in a custody account owned by Hanna Hartmann. She had not listed these assets in her 1938 Census, nor had they been disclosed in the first set of bank records provided to the CRT. The new information included detailed documentation on the portfolios held in the account, and confirmed that the values applied for the original award were similar to the actual values of the securities contained in the account.

Similarly, in *In re Account of Beger & Röckel*, the account owner was a printing factory in Munich owned by Wilhelm Marx. He was born in 1875 in Nördlingen, Germany. In addition to *Beger & Röckel*, Wilhelm Marx also owned another printing factory, *Graphia - Kunstanstalt und Drukerei.* With other members of his family, including his son-in-law, Hans Archenhold, Wilhelm Marx was arrested and imprisoned in Dachau in November 1938. His businesses were confiscated by the Nazis. The *Beger & Röckel* printing plant was converted to build Messerschmitt fighter planes.[310]

After his release from Dachau, Wilhelm Marx and other members of his family fled from Germany to England in March 1939, and then to the United States in early 1940. Hans Archenhold, who had been a "creative force" at his father-in-law's company, *Beger & Röckel*, "walked into [the Hallmark greeting card offices in Kansas City] without an appointment and asked for a job." He was hired, and he instituted new practices at the factory enabling Hallmark to "shift to a more efficient, mechanized system to meet the growing demand for greeting cards." He "kept Hallmark on the leading edge as American printing technology began to outpace Europe's."[311]

In connection with their audit of Holocaust-era Swiss bank accounts, the ICEP auditors did not report an account belonging to *Beger & Röckel*. The account presumably was among the millions for which records were destroyed by the banks in the post-Holocaust era. Nevertheless, the CRT located evidence of the account by examining the 1938 Census records. These documents indicated that Wilhelm Marx owned *Beger & Röckel* as well as *Graphia*, and that aryanization proceedings against the companies began before November 12, 1938, and concluded on February 15, 1939. Two days later, on February 17, 1939, the companies were sold for RM 243,024.07. Wilhelm Marx was credited with RM 146,640.07 (as compared to the RM 339,827 value of the companies that he had reported in his 1938 Census declaration). Although the aryanization price was much lower than the amount that Wilhelm Marx had estimated the companies were worth, and he was credited (on paper) with an amount still lower, none of these estimates mattered, because he was allowed to receive virtually nothing at all from

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310 *See* PATRICK REGAN, HALLMARK: A CENTURY OF CARING 71 (Hallmark 2009) ("Hans Archenhold: New Life in the New World").

311 *Id*.

the forced sale. Rather, on March 21, 1939, tax authorities blocked his assets. They allowed him to withdraw only up to RM 1,500 monthly, to pay for his living expenses and official charges. The blocking order stated that the subjects were "non-Aryan," and that "recent experience" had shown that "non-Aryans, after the sale of their businesses, would attempt to evade the foreign exchange regulations and move the liquid assets they had received abroad."

The 1938 Census records also contained evidence of his Swiss account. Specifically, a December 10, 193[8] letter was "written on the company's letterhead" to the Munich Tax Office. The letter stated that Wilhelm Marx's partners guaranteed payment of any flight tax that would be due if Mr. Marx were to leave the country. The letterhead indicated that the company owned business accounts in Munich, Vienna, and St. Gallen, Switzerland.

The CRT awarded the claimants, the great-grandson and grand-children of Wilhelm Marx (one of whom was also the daughter of Hans Archenhold), the presumptive value of an account of unknown type (SF 49,375.00 ($39,500.00)). The CRT observed that Wilhelm Marx had been imprisoned in Dachau and his assets had been aryanized. It was not likely that he had received his Swiss bank accounts, given that his other assets were seized.[312]

4. Adjustment of Account Values for Interest and Fees

At the beginning of the claims process, the CRT had "routinely ma[de] adjustments to add back fees charged to the account and to deduct interest accruals" back to 1945. That practice was intended to "protect the Settlement Fund from making awards that would have resulted in

[312] The same individuals also received an additional award of SF 289,087.50 ($242,891.70) for the published accounts of Wilhelm Marx. The CRT noted that the bank records indicated that Wilhelm Marx of Munich owned a demand deposit account as well as a custody account, both of which had been opened on October 12, 1930 and closed on July 14, 1933. The decision stated: "Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1940, and would not have been able to repatriate his accounts to Germany without losing ultimate control over its proceeds; that the Account Owner's assets were confiscated by the Nazi regime; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended … the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner …."

double counting of interest in the post-1945 period: once by the bank crediting an account with interest and then again through the CRT's application of the compound interest factor," *i.e.*, the multiplier, which increased by increments from 10 to 12.5 during the claims process.[313]

Special Master Junz proposed that the Court "amend this practice because, while there is ample evidence in the bank records that fees continued to be charged over the life of an account — even to a point where the asset value of the account turned negative and the bank started charging interest on the balance due — there is virtually no evidence in the bank records of accounts actually being credited with accrued interest." In other words, the banks charged fees, but did not pay interest. The Court thus authorized the CRT "to suspend deduction of interest accruals when determining account valuation absent bank documentation showing interest actually having been credited to the account over the period in question."[314]

5. Reclassification of "*Depositenkonten*" (Time Deposit Accounts)

At the outset of the claims process, accounts designated in the bank records as "time deposits" ("*Depositenkonten*") were treated by the CRT as accounts of "other" type. In accordance with Article 29 of the Rules, such accounts were assigned a presumptive value of SF 2,200.00 (later increased to SF 3,900). During the course of the claims process, Special Master Junz advised the CRT that the more appropriate classification for this type of account was as an account of "unknown" type, which had a higher presumptive value of SF 3,950.00.[315] The Court approved several amendments to reclassify time deposit accounts previously awarded as accounts of "other" type as accounts of unknown type, and to make the appropriate adjustments in the presumptive values, resulting in additional awards of SF 153,125.

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313 *See* Order of October 21, 2004 at 2-3.

314 *Id*. at 3.

315 *See, e.g., In re Accounts of Ella Frank and Ella Zoltan* (CRT Batch 142, approved by Court order dated Aug. 31, 2007; award of SF 49,375.00 ($41,145.83)); *In re Account of Sigmund Rosenthal* (CRT Batch 152, approved by Court order dated Dec. 18, 2007; award of SF 49,375.00 ($42,934.78)).

6. Amendment of Awards

The valuation presumptions, which were adopted at various points as the claims process progressed and as new information became available, had to be applied equitably to all claimants, not just to those whose claims were reviewed after the rules were changed.

Thus, the CRT periodically submitted requests to the Court seeking authorization of amendments to awards previously issued, such as where new accounts were discovered belonging to the claimant, or new data about the account's value had been revealed.[316] As the claims process drew to a close, the CRT reexamined many of the awards previously issued and filed with the Court a so-called "mega-amendment" request, seeking the Court's approval of some 52 amendments of previously issued awards. This ensured that payments to those claimants reflected presumptions adopted after their awards were issued, including rules relating to underreporting of accounts reported in the 1938 Census; equalization of known "low-value" accounts to presumptive values; and the like. By order dated January 19, 2010, the Court approved this request, authorizing additional payments in the amount of SF 431,386.

E. Reassessment of Presumptions Based Upon New Evidence Located by the CRT During the Claims Process

The use of presumptions allowed the CRT to fill in evidentiary gaps and to recommend awards to the Court. The claims process also was improved by the Court's insistence that the banks cooperate — pursuant to the "good faith duty" the Court had spelled out in approving the Settlement in July 2000 — and the CRT's continuing demand for greater access to records that had not been made available at the outset of the claims process. Thus, the CRT continually sought as much information as the banks were willing to provide. The result was that the CRT often received new data that revealed that there were more accounts, and that many accounts had

316 *See, e.g.*, Order of October 21, 2004; Memorandum & Order Approving Set 168: 10 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 30, 2008); Memorandum & Order Approving Set 170: 35 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Aug. 11, 2008); Order of January 19, 2010.

higher values, than had been understood at the outset of the claims process. This new data enabled the CRT to recommend and the Court to issue additional awards, and at greater amounts.

On the other hand, on occasion, the new data sometimes revealed that accounts already awarded should not have been paid, or should have been paid at lower amounts. Adjustments were made in those cases as well.

The discussion that follows sets forth two such examples of how new data enabled the CRT to recalculate many awards and to issue additional payments: (1) by revaluing many bonds and securities; and (2) by reassessing the presumptive values the auditors had assigned at the beginning of the claims process. Further, the following discussion also demonstrates that (3) where newly produced data revealed that certain payments had been made in error, the CRT attempted to recoup any such overpayments.

1. Adjustment of Bond Values

As the CRT insisted upon, and obtained, more and more information about the accounts from the banks and other sources, it became clear that there was a wealth of previously undisclosed data about many of the accounts, particularly custody accounts. Due to this new data, the CRT often was able to determine precisely which equities and bonds Holocaust victims had held in their accounts.

Following consultations among the Court, the Special Masters and the CRT Secretaries General, guidelines were promulgated to be applied to future awards, as well as to awards previously issued to determine which, if any, awarded accounts should receive additional payments. Similarly, the review considered whether any awarded accounts had been overpaid.[317]

These guidelines noted as the "basic premise" that the "basis for valuation of securities, *i.e.* equities and bonds, is their market value as of the date that the Account Owner can be deemed to have lost control of his/her portfolio." The "relevant dates for market quotations" were either "the date of closure of the account, if that date falls within the relevant period [1933-

317 *See* Guidelines for the Valuation of Securities, *i.e.* Equities and Bonds, circulated to the CRT by Special Master Helen B. Junz ("Guidelines for the Valuation of Securities").

1945]," or "where no closure date is available, or where the date of closure falls outside the relevant period, the date utilized by the CRT in determining when the account owner's country of residence or citizenship came under Nazi occupation or control in other ways (*e.g.*, date of formal alliance with the Axis)."

The guidelines referred to various "sources registering market values during the relevant period," beginning with the "CRT's existing database of market quotations, *i.e.*, market values that already have been awarded based upon certified quotes from the 1938 Census, bank documentation, claimant documentation, or previous CRT research;" Swiss exchanges such as the "Zurich Kursblatt, the Bourse de Genève or the Bourse de Bâle (the Geneva and Basel exchanges), or other Swiss exchanges;" the financial press including the *New York Times*, the *Wall Street Journal*, the *Financial Times*, the *London Times*, and the *Frankfurter Allgemeine*; and stock exchange handbooks and annual yearbooks such as the Compass Series (for Central and Eastern European countries) and Moody's Manuals.

The Guidelines for the Valuation of Securities established that for equities, awards should be issued based upon their "market value, as equities are traded either without a face value, or with a notional face value that bears no relationship to the value of the security."

As to bonds, the Guidelines provided that

> [A]s a general rule, the nominal value of bonds not in default shall be awarded if the market value was below the nominal value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond[s] to maturity to avoid a capital loss. The market value of the bonds shall be awarded if that value was above the nominal value on the date the account owner is deemed to have lost control over the account. Short-term paper, a type of security, is valued at its nominal value. Stocks are valued at market value.[318]

[318] *See, e.g., In re Account of Mendelssohn & Co. i. L.* (award of SF 260,375.00/$232,757.59); *In re Accounts of Suzanna Ehrlich* (award of SF 271,125.00 ($224,070.25)); *In re Accounts of Fritz Wolff* (award of SF 257,968.75 ($213,499.48)); and *In re Accounts of Emmerich Kalman* (award of SF 1,852,193.75 ($1,730,809.98)). For a more detailed exposition of the methodology employed by the CRT for purposes of calculating the value of bonds and securities, *see In re Account of Else Israel* (award of SF 342,764.75 ($262,009.10)) and *In re Accounts of Elisabeth Magnus* (award of SF 488,828.63 ($441,757.61)), discussed below.

For bonds in default at the time that the account owner was deemed to have lost control over the account:

> "[T]he award valuation should be the market value on or as close as possible to the relevant date," as it would be "presumed that the Account Owner chose to purchase and/or hold a high-risk security in his/her portfolio." Therefore, the "Account Owner's ability to manage the portfolio would not have enhanced his/her capability to obtain nominal value during or immediately after the relevant period.[319]

2. Adjustment of Presumptive Values

"Presumptive values," or average values, were utilized by the CRT to determine the amount of an award for a particular Holocaust-era Swiss bank account, where bank records containing the actual valuation data no longer existed.

To fill the gap posed by incomplete bank records, which may have documented the existence of an account but contained no information about the account's value, the Court authorized awards to be made at designated "average" amounts based on the type of account. These average amounts — or "presumptive values" — were assigned by the Volcker Committee auditors after the Distribution Plan had been approved on November 22, 2000 but quite early in the claims process. The presumptive values were included in the proposed CRT Rules recommended to the Court on February 1, 2001 by CRT Special Masters Paul Volcker and Michael Bradfield, and adopted by the Court on February 5, 2001. The presumptive values were thus based on the best data available as of early 2001. The amounts varied depending on the type of the account: savings; demand deposit; custody; safe deposit box; account of unknown type; and other (accounts not falling into the above categories). The presumptive value for a savings account was calculated at a 1945 value of SF 830; for a demand deposit account, SF 2,140; for a custody account, SF 13,000; for a safe deposit box, SF 1,240; for an account of unknown type, SF 3,950; and for other accounts, SF 2,200. A multiplier ranging from 10 at the outset to 12.5 by the end of the claims process was applied to bring these amounts to current values.

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[319] *See* Guidelines for the Valuation of Securities.

After her appointment, CRT Special Master Helen Junz began to monitor the validity of the original presumptive values against the actual values revealed in the claims process experience. She determined that there was a disparity between these amounts. She then worked with the CRT to conduct an extensive study, which revealed that the average value of a Swiss bank account owned by a Holocaust victim was significantly higher than the amounts that were estimated at the inception of the claims program. Based on her analysis, she recommended that the Court adjust the presumptive values.[320] Special Master Junz's projections indicated that the total amount payable to the Deposited Assets Class could be $812.7 million, which would exceed the up to $800 million allocated to that class by over $12 million.[321]

Special Master Junz explained that the presumptive values recommended by the ICEP auditors did not reflect several important facts revealed only later, as a result of years of analysis of data revealed during the claims process.

One important factor was that the ICEP auditors, who were under time constraints and were focusing upon victim status rather than account amounts, sometimes reported that the accounts they reviewed were of unknown value. The CRT, however, was reviewing the bank records for different purposes, on a more individualized basis in response to particular claims. With this scrutiny, the CRT in many instances was able to determine the account's value. This was generally due to the insistence that the CRT be given access to the bank records underlying the auditors' report of the account. In fact, "more than one half of the accounts awarded under

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320 CRT Special Master Junz filed several reports underlying her eventual presumptive value recommendations. *See* Special Master Junz's initial report of March 21, 2006 ("Junz Presumptive Value Memorandum of March 21, 2006"), updated at the request of the Court on May 14, 2007 ("Junz Updated Memorandum of May 14, 2007"), supplemented on July 15, 2007 ("Junz Supplemental Memorandum of July 15, 2007") and updated again on October 10, 2008 ("Junz October 10, 2008 Report"). The Court asked the Special Masters to place Special Master Junz's recommendation in the context of the Settlement Agreement and the Distribution Plan. *See* Judah Gribetz & Shari C. Reig, CRT Special Master Junz's Proposal for Adjustment of Deposited Assets Class Presumptive Values in the Context of the Settlement Agreement and the Distribution Plan, Dec. 19, 2008 ("December 19, 2008 Presumptive Values Contextual Analysis"); Judah Gribetz & Shari C. Reig, CRT Special Master Junz's Proposal for Adjustment of Deposited Assets Class Presumptive Values: Additional Contextual Analysis of her Supplemental Report, Apr. 9, 2009 ("April 9, 2009 Supplemental Contextual Analysis").

321 *See* Junz October 10, 2008 Report at 15-16. Special Master Junz's calculation was based on the then-prevailing exchange rate of US$ 1 = SF 1.10. However, she explained that "given the large swings in the exchange rate of the US dollar vis-à-vis the Swiss franc over the past year, and the important effect of a change of even a few basis points on the total amounts," she also had calculated the "overall total at exchange rates of US$ 1 = SF 1.05 and US$ 1 = SF 1.15 as well." As of December 17, 2008, the exchange rate was US$ 1 = SF 1.10, which was the central rate used in Special Master Junz's calculations.

CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all."[322] Special Master Junz's recommendations took this information into consideration.

Further, the CRT also located additional accounts that were not reported at the outset of the claims process. Their values impacted the averages. Thus, of the 4,676 accounts awarded (excluding the 40 "outliers"), 3,603 accounts, or 77% of the total, were contained in the original AHD provided by the ICEP auditors to the CRT at the outset of the claims process. However, an additional 1,071 accounts, in two different categories, had not been included in the ICEP database, and neither the accounts nor their values had been considered by the ICEP auditors.

One category of such accounts was considered to consist of "sub-accounts." These were 498 additional accounts that were located by CRT staff members in the course of examining the bank records underlying the accounts reported by the ICEP auditors. A sub-account was linked to the "main" account — the account that the ICEP auditors had reported — but the sub-account nevertheless was distinct, with its own value, and separately awardable.[323]

In addition to these sub-accounts, the CRT also located another 573 accounts in a second category. These accounts were derived from three types of sources: the CRT's extensive surveys of European archives; its continuing request for access to Swiss bank accounts that were not in the AHD (which led to post-settlement litigation and the publication of additional account owner names); and its ongoing review of other potential sources of account documentation, such as claimant records.[324]

Therefore, the CRT was able to locate and award a total of 1,071 accounts beyond the 3,604 accounts contained within the AHD originally reported by the ICEP auditors at the outset of the claims process. Of the 4,676 non-outlier accounts awarded, the CRT located nearly one-fourth — 23%.[325] These accounts, however, had not been taken into consideration when the

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322 *See* Junz October 10, 2008 Report at 7.

323 The 498 sub-accounts that the CRT located produced another SF 51,676,705.90 in awards.

324 Some of these accounts ultimately were published in 2005 following ongoing litigation with the banks. The value of the awards paid to claimants for these 573 other accounts totaled SF 104,358,825.33.

325 That translated into an additional SF 156,035,531 in awards to heirs of Holocaust victims.

ICEP auditors analyzed account information, and the assessment of presumptive values was incomplete without including this large pool of data.

The CRT's insistence upon examining not only the ICEP materials but also the underlying bank records also enabled the CRT to reassess or in some cases determine the type of account that was at issue: custody, savings, demand deposit, safe deposit, other, or unknown. By discovering the true nature of the account, the CRT often was able to increase the amounts that could be awarded to claimants, particularly where the CRT learned that an account characterized by the auditors as of "unknown" type actually was a custody account, since custody accounts were of especially high average value.

All of this new information was taken into consideration by Special Master Junz and by the CRT in reassessing and recommending an adjustment of presumptive values. Thus, Special Master Junz advised the Court that shortly after her appointment as CRT Special Master on April 14, 2004,[326] she had "started monitoring th[e] relationship" between "the award amounts that the Court has approved under CRT-II on accounts for which the value of the account balance was known ('known value accounts') and those awarded at presumptive value in the light of the experience gained thus far."[327] Special Master Junz noted a disparity in these values and cited several reasons for this variance.[328]

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[326] Michael Bradfield acted as CRT Special Master from the inception of the CRT until April 2004, at which time Mr. Bradfield assumed responsibility for the CRT appeals process.

[327] *See* Junz Presumptive Value Memorandum of March 21, 2006 at 1.

[328] Her observations amplified an issue earlier called to the attention of the Court and Special Master Gribetz. At least two class members had responded to the Court's request for proposals for the use of residual funds, if any, remaining from the $800 million allocated to bank accounts, by contending that it was premature to focus upon "residual funds," when it was clear that many accounts were being undervalued. These class members observed that awards paid for accounts with valuation documentation (known value accounts) were significantly higher than awards for accounts for which valuation documentation had been destroyed (unknown value accounts), thus calling into question the presumptive values then in use. As noted by one of the individuals who brought the valuation issue to the Court's attention: "'[T]he 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." Junz Presumptive Value Memorandum of March 21, 2006, at 1 n.2 (citing Letter from Tim Schwarz to the Court and to Special Master Gribetz (Jan. 30, 2004)); *see also* Letter from E. Randol Schoenberg to the Court and to Special Master Gribetz (Jan. 15, 2004). Mr. Schoenberg assisted Mrs. Altmann in presenting her claims to the CRT, resulting in the nearly $22 million ÖZAG award, and also represented her in her ultimately successful claims against Austria seeking restitution of her family's looted art, including paintings by Gustav Klimt.

The most significant factor impacting the valuation of accounts of unknown value, according to Special Master Junz, was that the ICEP auditors had excluded "Category 3" accounts from their determination of presumptive values.[329]

In their investigation of Holocaust-era Swiss accounts, the ICEP auditors had divided into four categories the accounts deemed "probably" or "possibly" to have been owned by Holocaust victims. According to the Volcker Report, these categories were "ranked on the basis of various characteristics by degree of probability of their owners having been victims of Nazi persecution."[330] The auditors then studied the accounts for which valuation data still existed. Because such a high percentage of accounts in Categories 1 and 2 had known values (70% of "Category 1" accounts and 80% of "Category 2" accounts), the auditors considered these data sufficiently reliable for determining the average value by account type. These average values, by account type, then were used as "proxy" or presumptive values for accounts of unknown value.

The auditors did not use the value information for known value Category 3 accounts because at the time of the audit, the data were "deemed to be statistically unreliable."[331] Category 3 accounts were determined by the auditors to have been closed. However, due to the destruction of bank records, it was unknown who closed the accounts, or whether they were closed properly. Only 11% of these accounts had known values, and these known values were deemed to be "clustered" in a relatively small number of custody accounts.[332] Nevertheless, Category 3 accounts constituted a very high percentage of all accounts in the AHD. Of the original approximately 54,000 AHD accounts (*i.e.* pre-"scrubbing"), more than half (57%) — 30,792 — were "Category 3" accounts. The auditors' exclusion of "Category 3" data became even more questionable when the CRT received extensive information from one of the two defendant banks, Credit Suisse. The new data was provided to the CRT quite late in the claims process, and only after earlier unsuccessful efforts to obtain such information from the bank. The Credit Suisse materials revealed actual account values for 239 custody accounts, virtually all of which were "Category 3" accounts previously considered to be of unknown value. The

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329 Junz Presumptive Value Memorandum of March 21, 2006 at 11.

330 *Id.* at 3.

331 *Id.*

332 VOLCKER REPORT, Annex 4, ¶ 42.

majority of these accounts had been awarded, and at their presumptive values. However, after review of the bank records, nearly all of those awards were able to be adjusted — mostly upward — to their actual (known) values, through amendments approved by the Court.

This new data impacted the presumptive value estimates across all of the auditing categories.[333] Significantly, custody accounts constituted approximately 30% of the accounts awarded in the claims process. Further, custody accounts also constituted approximately 70% of the value of all CRT awards. The ICEP auditors issued their presumptive value recommendations for custody accounts based upon their assessment of the average value of the 397 known-value custody accounts that were available at the time of the audit. The Credit Suisse information more than doubled that number, bringing the number of known-value custody accounts in the CRT database up to 892. CRT Special Master Junz pointed out that the addition of so much new and relevant valuation data warranted recalculation of custody account values, as well as values for other types of accounts.

Special Master Junz additionally observed that the auditors had a "difference[] in focus"[334] as compared with the CRT. Specifically, Special Master Junz stated that "the focus of the audit was on the discovery of the relevant accounts, and the recording of balance values and type of account information, though important, was not the primary objective, especially given the prevailing time and expenditure constraints."[335] Thus, whereas the auditors were concentrating upon whether an account probably or possibly had belonged to a Nazi victim, the CRT scrutinized the bank files to resolve a variety of other questions, including the type of the account, and its value. However, "more than one half of the accounts awarded under CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all."[336]

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333 *See* Junz October 10, 2008 Report, at 2 *et seq.*

334 Junz Presumptive Value Memorandum of March 21, 2006 at 2; *see also* Junz Updated Memorandum of May 14, 2007, Appendix I, at 1.

335 Junz Presumptive Value Memorandum of March 21, 2006 at 15; *see also* Junz Updated Memorandum of May 14, 2007, Appendix I, at 3.

336 Junz October 10, 2008 Report at 7 (emphasis added).

In "many cases this value information was actually available in the bank files, in others it involved obtaining price quotations for listed assets and in yet others value information came from outside sources. The values thus obtained notably tended to average above the corresponding ICEP proxy values by significant margins. This was especially so for accounts in Category 2 and for custody accounts across the board, including those in Categories 1 and 2. These differences point to the auditors having missed a considerable number of relatively high balance values in the two Categories on which they based their determination of proxy values. This, in turn also did much to moot the auditors' objection to the inclusion of Category 3 in the proxy value determination, which rested on their opinion that high value custody accounts were clustered in that Category."[337]

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[337] Junz October 10, 2008 Report at 7. The claims process, which revealed how significant the Category 3 (closed) accounts really were, also demonstrated that certain observers who questioned the settlement may not have been in the best position to assess the facts. They had reached premature conclusions, and were not keeping track of the detailed data that were being revealed over the years as a result of the CRT's ongoing research.

For example, Holocaust historian Raul Hilberg stated that "the Swiss banks did not owe the money, that even though survivors were beneficiaries of the funds that were distributed, they came, when all is said and done, from places that were not obligated to pay that money." *See Raul Hilberg and Avi Shlaim: Speak out in defense of the Holocaust scholarship of Norman Finkelstein*, DEMOCRACY NOW, May 9, 2007, http://hnn.us/roundup/entries/38707.html. This critique rested upon what Hilberg termed his "surmise" about what had happened to the closed accounts, which were a significant part of the claims process and represented a considerable portion of the awarded accounts. In Hilberg's view, these closed accounts "had existed, but they were no more. The simplest surmise was that a large portion of them must have been emptied out by their owners after the war. The people who could do just that were prewar refugees from the Reich-Protektorat area, as well as wartime residents of France, Hungary, or Romania who had never been deported — two groups whose numbers in this context must have been significant."). RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWS 1281 (Yale Univ. Press 3d ed. 2003). Professor Hilberg's view was not borne out by the facts revealed during the claims process. Many of the closed accounts had not been "emptied out by their owners after the war," *id.*; many of their owners had not survived the Holocaust at all. Rather, the accounts were closed under duress and paid to the Nazis, or, after the Holocaust, the banks took these accounts into their own profits and closed them out. The accounts were not returned to the account owners or their heirs.

Similarly, Professor Hilberg described what he considered to be "justified claims," but this did not take into consideration the high value accounts that were looted down to a balance of zero. Hilberg stated that as to the "unclaimed accounts that were still open the count was really very low, some tens of millions of Swiss francs which translates into $20-25 million U.S., depending upon which exchange rate is chosen, multiplied by 10 to account for interest due, and that would be about $250 million or so, in that vicinity, current dollars U.S., not 1 billion, 250 million. And I would suggest and predict that one day, when they will look back and somebody will [write] his doctoral dissertation or her doctoral dissertation about that subject, the conclusion will be that the actual number of justified claims is much smaller than had been presupposed." "Professor Raul Hilberg on Slave Laborers and Swiss Banks": Interview by David Ridgen, Canadian Broadcasting Corporation, with Professor Raul Hilberg, in Burlington, Vt. (Apr. 22, 2002). However, this assessment was not accurate. The data revealed through the claims process showed just the opposite: the number and value of "justified claims" was considerably higher "than had been presupposed." *Id.* Professor Hilberg, whose groundbreaking research and writings on the Holocaust have been an indispensable source of information to the Special Masters, passed

Special Master Junz advised the Court that the claims process demonstrated that the original decision to exclude the known Category 3 account values from the presumptive value calculations was flawed for two reasons. First, many of the "Category 3" accounts were indeed owned by victims of the Holocaust, as the claims process revealed, contrary to what had been surmised by the ICEP auditors. Second, rather than the known value accounts in Category 3 missing a large number of low-value accounts, and thus being improperly skewed toward high-values, the opposite appeared to have been true. Average known values of accounts of Category 1 and 2 turned out not to be too different from average known values for Category 3 accounts. Thus, the auditors appeared to have not considered a large number of high-value accounts, and so the estimates may have been improperly skewed toward accounts with low values.

Based upon her research, CRT Special Master Junz recommended that the Court adjust the presumptive values to reflect the new data. If the Court adopted the proposed adjustment at 100% of the recommended amounts, this would entail the following changes:

- For savings accounts, for which the original presumptive value for accounts of unknown value was SF 830 (using 1945 values, and prior to application of the multiplier), the presumptive value would have increased to SF 900. Applying the multiplier of 12.5, and at the then-prevailing exchange rate of US $1 = SF 1.10, the value of an awarded account would have increased from $9,432 to $10,227.[338]
- For demand deposits, for which the original presumptive value for accounts of unknown value was SF 2,140, the presumptive value would have increased to SF 2,500 (*i.e.*, from $24,318 to $28,409).
- For custody accounts, for which the original presumptive value for accounts of unknown value was SF 13,000, the presumptive value would have increased to SF 31,000 (*i.e.*, from $147,727 to $352,273).
- For safe deposit boxes, for which the original presumptive value for accounts of unknown value was SF 1,240, the presumptive value would have increased to SF 5,300 (*i.e.*, from $14,091 to $60,227).
- For accounts of unknown type, for which the original 1945 presumptive value was SF 3,950, Special Master Junz proposed no adjustment (thus, the dollar amount would remain at $44,886).

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away in 2007, and unfortunately he did not have the opportunity to study the CRT claims process in detail or upon its completion.

[338] *See* Junz October 10, 2008 Report at 13 (Tables 4a and 4b).

- For "other" accounts (*i.e.*, those which did not fall within one of the above categories), for which the 1945 presumptive value for accounts of unknown value was SF 2,200, the presumptive value would increase to SF 3,900 (*i.e.*, from $25,000 to $44,318).

In total, an additional $264.5 million in award amendments would have been required to adjust presumptive values at 100% of the proposed amount. At that rate, Special Master Junz estimated that "the grand total of past and future payments [would equal] US$ 812.7 million,"[339] an amount that was higher than the up to $800 million allocated to the Deposited Assets Class under the Distribution Plan.

The auditor who led the original ICEP work that established the original presumptive values, Frank Hydoski, considered Special Master Junz's analysis to be appropriate. He advised the Court that a reanalysis of the presumptive values in light of the new information disclosed during the claims process was advisable.

> In short, it seems to me that it would be a sound undertaking to: (1) add new information to the data used originally to calculate the average balances; (2) recalculate the average balance amounts; and (3) adjust presumptive values, if there are material changes.
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> . . . .
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> It is clear from the data provided in Dr. Junz's original letter and the two updates that the CRT has in fact gathered considerable additional information of a kind and quality that should be taken into account in these statistical calculations. I would add that such data would have been used in the 1999 calculations [leading to the current presumptive values] had it been available.[340]

CRT Special Master Michael Bradfield held a similar view. He not only had assisted the Court since the inception of the claims process, "working initially to develop the rules and procedures" of the CRT claims process, but he also had been counsel to and "de facto staff director" of the Volcker Committee. "Among other areas of responsibility, [he] supervised the work of the audit firms in connection with their investigation of Swiss bank accounts. Based on this experience, [he was] fully familiar with the work of the five major audit firms retained by ICEP to carry out its investigation, and with the purposes and results of the ICEP

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339 *Id.* at 15.

340 Letter from Frank Hydoski to Hon. Edward R. Korman 1-2 (Dec. 1, 2008); *see also In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279, 282 (E.D.N.Y. 2010).

investigation."[341] Given the new data located by the CRT as a result of its analysis of claims and accounts, Special Master Bradfield advised that:

> It would be clearly inconsistent with the Settlement Agreement not to utilize the important information that has been revealed as a result of the CRP [Claims Resolution Process], especially information about account values. As Mr. Hydoski, who led the original effort to estimate account values, stated "such data would have been used in the 1999 calculations had it been available." Accordingly, I support Dr. Junz's recommendation on the use of the additional information available from the CRP to establish the Article 29 presumptive values to be used for the determination of awards where account valuation information is missing from Swiss bank records.[342]

As Special Master Bradfield suggested, integrating valuation information obtained in the course of claims processing did not impinge upon the findings of the Volcker Committee. Rather, the opposite was true: the Volcker Report had explicitly anticipated that as a result of the claims process, meaningful data about account values would be revealed after the audit had been completed.

> [T]he [Volcker] Committee has developed approaches toward approximating fair current values for individual accounts in situations where the book values are known. The Committee, with the support of the banks, believes that these approaches provide a reasonable and fair basis for making awards to identified Holocaust victims in a manner that takes account of the fact that these funds were unavailable to victims or their heirs for decades. But this approach cannot reasonably be aggregated over accounts where neither the book value nor a legitimate claimant, or both, can now be identified. Such a determination of the overall total must await the outcome of the claims resolution process.[343]

Thus, the updated values reflected the auditors' original intention to incorporate data revealed during the claims process; took into account the impact of "scrubbing" the database from approximately 54,000 accounts (a database upon which the auditors based their presumptive value recommendations) down to 36,000 accounts (a database which contained 18,000 fewer accounts, whose average values differed from the original 54,000); and gave

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341 Letter from Michael Bradfield, CRT Special Master, to Hon. Edward R. Korman 1 (Apr. 3, 2009).

342 *Id.* at 4 (quoting Letter from Frank Hydoski to Hon. Edward R. Korman at 2).

343 VOLCKER REPORT ¶ 36.

appropriate weight to data concerning accounts closed "unknown to whom" ("Category 3 accounts"), which the claims process revealed did belong to Holocaust victims.[344]

Some obervers questioned these presumptive value adjustment recommendations. They believed that CRT Special Master Junz had not accurately analyzed the data, and they considered that it was more appropriate to allocate all remaining funds to needy survivors through the Looted Assets Class, rather than adjusting presumptive values for the Deposited Assets Class.

While offering ample opportunity for these concerns to be heard, the Court "emphasize[d] one point to those parties. Special Master Junz's recommendation, if adopted, would not alter the plan of allocation which has been adopted. The proposal simply involves a change in calculating the value of certain accounts to more accurately reflect their true value. The amount available for distribution to the Deposited [Assets] Class will not exceed the eight hundred million dollars … originally allocated to the class."[345]

The issues concerning the presumptive value recommendations are discussed in greater detail below. They illuminate some of the unanticipated developments in the case that resulted in delays, and for some survivors, perhaps additional distress.

By order dated June 16, 2010, the Court adopted Special Master Junz's recommendations. As an initial matter, the "Volcker Committee specifically had anticipated that the processing of individual claims and the study of the related bank records would yield data that would be incorporated into the claims process, including data concerning account values."[346] Special Master Bradfield, "who supervised the audit and, with Mr. Volcker, also developed the initial CRT Rules and procedures," shared that view. "Dr. Junz's conclusions — and her methodology as well — are far more accurate than the original presumptive values calculated by the ICEP auditors because she has taken into consideration several fundamental circumstances affecting the database from which presumptive values have been calculated. These factors have been

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344 *Id.* at 282-85.

345 Order, *In re Holocaust Victim Assets Litig.*, Nos. 09-160 & 96-4849 (E.D.N.Y. Jan. 14, 2009).

346 *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d at 282.

described at great length both by Dr. Junz and in the related reports submitted by Special Master Gribetz and Deputy Special Master Reig."

Anticipating that the presumptive values would be adjusted, the CRT's Zurich and New York offices had been directed in advance "to begin preparing the calculations, claimant notification materials, and other documentation necessary to issue a presumptive value increase to the several thousand individuals eligible to receive such adjustments." While necessary and appropriate to ensure that Nazi victims and heirs received as near as possible the value of their stolen assets, the adjustment process also would be complex. It would require "detailed, case-by-case analysis of each award — often including several different account types divided among several different claimants and/or groups of claimants (not all of whom are related)." Thus, it was "imperative that this work commence well in advance of a formal decision on the presumptive value recommendations so as not to prolong the anticipated wind-down of the Deposited Assets Class claims process."[347]

The presumptive value increase, if adopted at "100% of the recommended amount," would have "required approximately $230 million, a sum that was not available under the Distribution Plan since it would have exceeded [by more than $12 million] the up to $800 million allocated to the Deposited Assets Class."

Based upon the "projected costs, and the fact that Dr. Junz'[s] data are reliable and certainly far more accurate than the information provided at the outset of the claims process, but because of the destruction of millions of bank records, the precise averages for accounts with unknown balances never can be determined with exactitude," the Court authorized the CRT to calculate the anticipated increases based upon a $100 million adjustment. "This represented 43.5% of the $230 million needed to pay the recommended adjustment at the full amount, a sum comparable to the 45% increases authorized several years ago for the other four classes."[348]

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[347] *Id.* at 285. The Court authorized 1,860 presumptive value adjustment awards, a process that was conducted through the submission of adjustment recommendations in 27 "batches," which were issued beginning with the first of several orders issued on June 30, 2010 and completed by order dated April 26, 2012.

[348] *Id.* at 286. By the end of the claims process, virtually all allocations (and thus all payments) had been increased by 45%, a process first initiated in 2002 when it became clear that the Settlement Fund had benefitted from the accrual of unanticipated interest, as well as the enactment of a U.S. law in 2001 which expressly exempted taxes

This adjustment also enabled the Court to "authorize a similar 45% increase in payments to those members of the Deposited Assets Class who have received awards of $5,000 each for plausible but undocumented claims [PUAs]. As is true for those with documented claims, these Holocaust victims and heirs have been adversely affected by the destruction of millions of bank records. There is a significant disparity between the PUA amount of $5,000, versus the current average value of an award based upon bank records and other documentation, approximately $149,000," an amount which would "increase once the presumptive values are adjusted upward."[349] Thus, each PUA recipient ultimately received a total payment of $7,250.

* * *

The Court's observation that the presumptive value adjustment process would be complicated, but would also confer significant benefits upon owners of many Holocaust-era Swiss bank accounts, was borne out. From a practical standpoint, the authorization of "bump-up" presumptive value payments to many of the same individuals who already had received an award posed significant administrative challenges. CRT staff members in Zurich were required to review each and every award previously issued, as well as those pending, to determine which recipients were entitled to which additional amounts. Because the amounts awarded varied depending on the type of account; the claimant's relation to the account owner; the number of recipients; the existence of prior payments possibly needing adjustment; and myriad other factors, the analysis was not "mechanical." It was not possible for the CRT simply to program a computer and run the numbers. Rather, each case required individualized review, and it was for that reason that the CRT was directed to begin this examination even while issues relating to Special Master Junz's proposal were still under review.

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on the fund as well as payments made therefrom. *See, e.g.*, Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002); *see also In re Holocaust Victim Assets Litig.*, 270 F. Supp. 2d 313, 325 (E.D.N.Y. 2002) ("After Special Master Judah Gribetz called attention to the diminution of the Settlement Fund by taxes on earned interest as well as the taxation of benefits awarded to the members of the classes," a successful effort was made "to persuade Congress to adopt legislation exempting from taxation interest earned by the Settlement Fund and payments to its beneficiaries").

349 *Id.* The average value of authorized awards at the close of the claims process was $185,263. The average value of awards paid was $184,130, reflecting that some awarded claimants or heirs could not be physically located after their awards were approved.

The case of *Paul Friedmann and Elsa Friedmann* provides an example of the complex process undertaken to ensure that account owners would receive individualized attention and proper compensation for their stolen property.[350] In a communication with a representative of the Holocaust Claims Processing Office, CRT Secretary General Mary Carter expressed her appreciation to the HCPO for calling to the CRT's attention a presumptive value adjustment in the *Friedmann* case that the CRT had not initially recommended. Ms. Carter explained how the case had worked its way through the CRT system, through several rounds of amendments, adjustments, and additional awards. The purpose of this complex process was to ensure that the *Friedmanns'* son (the claimant) received the benefit of all of the presumptions that had been adopted in favor of CRT claimants. Thus, as Ms. Carter explained:

> In the original award, which was approved in Batch 42 on 20 May 2004, we awarded one of Elsa's custody accounts at known value based upon value information contained in the bank records and in her 1938 Census declaration. Her other two custody accounts were awarded at presumptive value. Paul's two accounts (one custody, one demand deposit) were awarded at known value based upon the values he declared in his Census declaration (there was no corroborating value information in a bank record though).
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> In the October 2004 amendment, Paul's two accounts were bumped up to presumptive value, based upon an Order of the Court that noted that account owners often underreported values in their Census declarations, and that, absent corroborating evidence regarding the account value, for example, value information contained in records from the bank, such accounts would be awarded at presumptive value. Elsa's known value custody account was not bumped up, because there was corroborating value evidence in the bank records.
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> In the December 2004 amendment, we corrected a minor error in the October 2004 amendment amount that affected the calculation of the October 2004 amendment amount.
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> In Batch 193, which was approved on 19 January 2010, we amended the known value of Elsa's custody account, because the previous known value was based upon the market values of three bonds in her account that were of good quality. For such bonds, we award the nominal value if the market value is below nominal value. The amendment thus increased the known value of this custody account, but it was still awarded at known value, because the bank record with the value information substantially corroborated the known value amount.

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[350] *In re Accounts of Paul Friedmann and Elsa Friedmann*.

> In summary, after the original award and three amendments, we awarded four custody accounts and one demand deposit account. All but one of Elsa's custody accounts were awarded at presumptive value.
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> The [presumptive value] adjustment decision, however, addresses only four accounts (three custody and one demand deposit). One of the custody accounts included in the bump up was properly not bumped up because it was awarded at known value. However, the adjustment decision failed to include one of Elsa's custody accounts that was awarded at presumptive value.
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> We are drafting an amendment to the adjustment to correct this issue ….[351]

As a result of the Court's decision that it was proper to reassess whether Holocaust victims and heirs had received adequate compensation for their Swiss bank accounts, an additional $97 million was awarded for presumptive value adjustments, and another $28 million for increases to Plausible Undocumented Awards.

3. Recoupment of Overpayments

The effort to obtain "voluntary assistance" from the banks to develop the clearest possible picture for each claimed account sometimes resulted in information that was not favorable to the claim. In some cases, often years after the original award had been issued based upon the documentation then available to the CRT, the defendant bank subsequently provided the CRT with additional records indicating that the account had been overpaid, or should not have been paid at all, because the owner or an heir had received the proceeds. In such cases, if the account turned out to be eligible for an upward adjustment due to an amendment or supplemental payment, the CRT would deduct the overpayment.[352] Where that was not possible, the Court did not require the CRT to seek an actual repayment from the claimant, because the claimant was not at fault. He or she did not know of the overpayment, and likely had already spent it or otherwise earmarked it. Rather, it was the lack of a complete record at the outset of the claims process that caused the miscalculation.

For example, in *In re Account of Oskar Kraus*, the account was a custody account for which no valuation information was available at the time the award was made, and so the

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[351] Communication from Mary Carter, CRT Secretary General, to HCPO.

[352] The issue also occasionally arose on appeal; *see infra.*

custody account was awarded at the then-prevailing presumptive value. The bank later provided the CRT with information showing that Mr. Kraus had held ten different securities in his custody account. The actual value of these securities was somewhat lower than the amount that had been awarded (*i.e.* lower than presumptive value). On the other hand, Mr. Kraus also had owned a demand deposit account, which the CRT had awarded based upon the actual amount in the account. Subsequently, the Court authorized the CRT to presume that, absent evidence to the contrary, accounts with known values that were lower than presumptive value might have been looted or reduced by fees. These accounts were to be awarded at the higher presumptive value. Oskar Kraus's demand deposit account was slated for an upward adjustment. Therefore, the CRT made two calculations: the amount due for the increase in the demand deposit account, and the amount overpaid for the custody account. After these two adjustments, the CRT determined that the original award (SF 716,197.20 ($555,191.63)) had been overpaid by SF 1,757.68 (using 1945 values). The CRT observed that the award had been "based upon information available to the CRT at the time. Accordingly, the CRT does not seek outright repayment of the overpayment from the Claimant. However, because the original … Award was overpaid, no further amount is awarded in this Award Amendment. Moreover, the overpayment amount shall be deducted from any award amendment that may be forthcoming."[353]

The Court's June 16, 2010 order authorizing upward adjustment of presumptive values also permitted the CRT to recoup any overpayments that might have been made, by offsetting that amount from any presumptive value adjustment due to a claimant, whether in the same award or in a different award for another account or account owner.[354]

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353 *In re Account of Oskar Kraus*.

354 *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d at 291. Subsequently, the Court approved certain "recoupments" in connection with the presumptive value adjustments. *See, e.g.*, Memorandum & Order Approving Set 16: 27 Adjustments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process, *In re Holocaust Victim Assets Litig.*, No. 09-160 (E.D.N.Y. Dec. 23, 2010) ("In virtually all of these 27 decisions, the post-award information provided by the Banks to the CRT demonstrates that the original award was inappropriate because (1) the account owner identified in the bank records was not the same individual as the claimant's relative; (2) the account was closed prior to 1933 (in the case of Germany) or, in the case of other nations, prior to the date that the account owner's country of residence was occupied by or entered into an alliance with Nazi Germany; or (3) the account owner clearly received the proceeds of the account. In all 27 Certified Adjustments…, the CRT does not seek outright repayment of funds that were awarded based on the incomplete information available to the CRT at the time the original award was made. However, in these cases, given that the additional information has shown that all or a

VI. OTHER POLICIES AND PROCEDURES FAVORING CLAIMANTS

In addition to adopting an array of substantive rules intended to compensate for the banks' destruction of records by substituting historically appropriate presumptions where documentary evidence no longer existed, the Court also instructed the CRT to incorporate a variety of procedural mechanisms to assist class members. Among these were the Court's decision to authorize payment of "Plausible Undocumented Awards;" to permit multiple plausible but unrelated claimants to share an award on a *pro rata* basis; to allow informal "Initial Questionnaires" to substitute for claim forms; and to authorize several extensions of the filing deadlines to ensure that no claimant was excluded from the process for technical reasons.

A. Payment of "Plausible Undocumented Awards ('PUAs')"

1. Rationale

Under Article 22(3) of the CRT Rules approved by the Court, the CRT had authority to recommend an award "in a case in which the Claimant plausibly establishes a right to an Account that falls within the CRT's jurisdiction but which, for whatever reasons, was not identified during the ICEP Investigation and therefore cannot be subject to Matching and/or Research."[355]

From the outset of the claims process, there was always an emphasis upon obtaining unfettered access to as much of the documentary evidence as possible. Accordingly, the Court, Special Masters and CRT pressed Swiss banking authorities for additional publication of account owner names and additional production of bank records.

Nevertheless, despite these efforts, the banks' destruction of records for nearly 2.8 million Holocaust-era accounts had left an "'unfillable gap' that [could] never be known or

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portion of the original award was inappropriate, the CRT is unable to recommend an additional adjustment payment regarding the accounts so affected").

[355] CRT Rules, Article 22(3).

analyzed for their relationship to victims of Nazi Persecution."[356] Furthermore, "of the remaining 4 million Holocaust-era Swiss accounts for which records still exist, Swiss banking authorities generally have limited the CRT's access only to those in the 'Account History Database' ('AHD'), consisting of approximately 36,000 accounts. Of these 36,000 accounts, Swiss authorities have permitted publication of only approximately 24,000 (21,000 in 2001, and 3,000 in 2005)."[357]

Thus, "for many thousands of claimants, there [were] no existing documents that would prove that they or their family members owned Holocaust-era Swiss bank accounts." To assist these individuals, the Court "directed the CRT to commence an analysis of all of the Deposited Assets claims to determine whether an award should be recommended even in the absence of bank records or other documentation proving the existence of an account."[358]

There was precedent for awards based upon testimonial but not documentary evidence, both under the Court's distribution process relating to other classes, and in other areas of Holocaust restitution.

> As pointed out by the Special Master[s], in similar circumstances, the Court has recognized the propriety of approving awards to claimants who have provided plausible but undocumented evidence that they performed slave labor for a German entity that transacted its profits through Switzerland (Slave Labor Class I) or for a Swiss company (Slave Labor Class II), or were refugees who were expelled from or mistreated in Switzerland (Refugee Class). While the claims of the overwhelming majority of former slave laborers and many of the refugees have been demonstrated through documentary evidence, including archival records obtained from German and Swiss governmental and private entities, it is clear that the claimants' testimonial evidence also must be taken into consideration because the underlying documentation has been destroyed.
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> [Further, a] similar program was under way in connection with the International Commission on Holocaust Era Insurance Claims ('ICHEIC'), which under its

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356 Memorandum & Order Approving 105 Plausible Undocumented Awards [PUAs] Certified by the Claims resolution Tribunal (Swiss Deposited Assets Program) Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund 3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Feb. 17, 2006) ("February 17, 2006 PUA Order") (citing Letter of February 15, 2006 from Special Master Judah Gribetz and Deputy Special Master Shari C. Reig, and quoting Volcker Report of December 6, 1999.

357 February 17, 2006 PUA Order at 2.

358 *Id.* at 3-4.

"8A2" program has made payments of $1,000.00 to claimants for whom insurance policies could not be located.[359]

Thus, while the "effort to obtain access to additional bank records and to permit publication of additional Holocaust-era account owner names" continued, a "parallel effort[]" was taking place during which "protocols were developed for reviewing the plausibility of undocumented Deposited Assets claims."[360] Because it was anticipated that there would be a new claims filing period following publication of additional names (*i.e.* the 2005 List), the plan to issue awards for claims without documentary evidence was not publicly announced for some time. Specifically, "the decision was made to permit the new claims period to run [in connection with the 2005 List] to ensure that certain unscrupulous individuals did not take advantage of the new filing period to submit spurious claims [for Plausible Undocumented Awards] that could have relied heavily upon information set forth in claim forms filed in connection with the 2001 publication."[361] Once the claims filing deadline for the 2005 List expired, the PUA process could be publicly announced — as it was, with the Court's Order of February 17, 2006 — and awards could be made. Each PUA was to be in the amount of $5,000 per recipient, an amount subsequently increased to $7,250 by Order of June 16, 2010.

2. The PUA Review Process

The New York-based Swiss Deposited Assets Program (SDAP) was tasked with responsibility for reviewing all of the more than 104,000 claims to determine those which were plausible, based upon testimonial and other circumstantial evidence of an account. To that end, SDAP developed an analytical framework to ensure that seemingly subjective information would be assessed critically, and in accordance with a set of objective criteria.

First, SDAP determined whether the claims met the admissibility criteria as described in Article 18 of the CRT Rules. Thus, each claimant was required to plausibly demonstrate that his or her relative (the Claimed Account Owner or "CAO") was a "victim or target of Nazi persecution," as defined under the Settlement Agreement.

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359 *Id.* at 4.

360 *Id.*

361 *Id.* at 5.

Second, eligibility for awards was limited to those family members most likely to have personal knowledge of the existence of a Swiss bank account, as well as to those likely to be the most direct heirs to the account. Awards were recommended only for those persons in the "circle of heirs": the children, spouse, parents, siblings or grandchildren of the Claimed Account Owner.

Third, each claimant was eligible for one PUA and one payment only, regardless of the number of relatives he or she believed had owned Swiss bank accounts (the Claimed Account Owners).

Fourth, claims were assessed according to the amount and detail of biographical information that the claimant had supplied in connection with the Claimed Account Owner. The greatest weight was given to claims in which the claimant indicated that the CAO had a specific connection to Switzerland, showing the opportunity to open and maintain a bank account and increasing the likelihood that the account existed. Considerable weight also was given to claims in which the claimant indicated that the search for the family's Holocaust-era Swiss accounts had been undertaken prior to 1997, when the Swiss bank account issue and the resulting litigation became highly publicized.[362]

Finally, SDAP prioritized claims based upon the age of the claimants, awarding the eldest first.

A "scoring system" was presented to and approved by the Special Masters and the Court, and technology teams thereafter created and tested the database. The teams consisted of SDAP attorneys as well as computer technicians employed by the Claims Conference (for the SDAP side of the project), the CRT, and outside advisers engaged by SDAP on behalf of the Court (Forensic Risk Alliance or "FRA"). SDAP staff navigated through a controlled scoring system by answering questions with a Yes/No answer, which would result in "scoring" of the claims with a particular number. Claims given a "passing" score contained enough information to plausibly demonstrate that there had been a Swiss Holocaust account; that the claimant had given adequate biographical information about the Claimed Account Owner; and that the claimant

[362] *See also id.* at 5-6.

indicated that the Claimed Account Owner had a specific connection to Switzerland during the Relevant Period.[363]

Once the database was created, tested and approved, the claims review process began in earnest. SDAP employed five staff attorneys, five supervisors, approximately 25-30 claims analysts during a day shift, and approximately 25 claims analysts during an evening shift. As with other facets of the program, the language capabilities of the staff were diverse, since the claim forms were originally distributed in English, Hebrew, German, French and Russian, and the Initial Questionnaires (IQs) were in multiple languages (including English, Hebrew, German, Hungarian, Russian, French, Spanish, Polish, Portuguese, Czech, Romanian, Dutch, Slovakian, Serbo-Croatian, Italian, Latvian, Greek, Bulgarian, Danish, Yiddish and Ukrainian).

There were several levels of review of all claims (including IQs). The claim initially was reviewed by a claims analyst, based on his/her language capabilities, then by a supervisor, and then by a staff attorney. All passing claims were re-evaluated by a staff attorney to ensure that the claim was indeed eligible for an award. Similarly, many claims that did not "pass" initial review were re-evaluated to ensure that all relevant information had been taken into account. As true for CRT staff, SDAP staff members were advised to adhere to three principal precepts: (1) "If in doubt, make all decisions in favor of the claimant;" (2) "Make sure to read *every word on every page* of the Claim Form, IQ, and attachments. It has happened that a key phrase was found on page 17 of the attachments, changing the claim from one that is denied to one that receives an

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[363] A similar process was utilized in reviewing so-called "humanitarian" claims in the ICHEIC process (which, like SDAP, also operated at the offices of the Claims Conference). *See* INTERNATIONAL MASS CLAIMS PROCESSES at 35 ("The term 'humanitarian' is used in this context to describe claims that insurance companies had no *legal* obligation to pay because of absence of evidence sufficient to prove that the policy ever existed. Thus, in recognition of the widespread destruction of documents during and after World War II, a special 'Point Scoring System' was developed to award 'points' to the unnamed and unmatched claims based on anecdotal information on the claim form about the alleged existence of a Holocaust era insurance policy"). ICHEIC "humanitarian" payments were issued in the amount of $1,000 (as compared with the $7,250 awarded for Swiss Banks Settlement PUAs). As true for PUAs, "[o]nly one award was granted per successful *claimant* …, regardless of the number of claims submitted or the number of policies alleged to have existed." *Id.* at 72. In both processes, further, the scoring system, review process and assessment of claims were subject to outside supervision. In the case of PUAs, there was ongoing management and direct review by the Special Masters acting on behalf of the Court. For ICHEIC payments, a "delegate from the Senior Counselor's office [of ICHEIC] came to the … processing facility in New York to observe claims review procedures and conduct sample reviews of scored claims." *Id.* at 198.

award….;" and (3) "Review each claim as if it was your first one today, as if it was your grandmother's….."[364]

In analyzing the claims, SDAP staff members drew upon their historical knowledge and archival research, and also adhered to a variety of guidelines to ensure that all claims were evaluated consistently and were based upon equitable and objective criteria. As a preliminary matter, each claim first was assessed to ensure that the Claimed Account Owner was a class member: someone targeted for persecution because he or she was believed to be Jewish, Roma, Jehovah's Witness, homosexual or disabled. SDAP staff also considered the nature of the information the claimant had provided about the Claimed Account Owner: his or her full name; business or occupation (including type, size, and location); professional title if any; community position if relevant (such as "head of the local merchant association"); pre-War address (including street address if available); post-War residence; place of birth; date of birth; date of death; nationality; and experiences during the Holocaust era.

The depositor's contacts with Switzerland also were considered, such as whether the claimant's relative owned assets belonging to a Swiss entity (such as stocks or bonds); had business dealings with a Swiss entity, or had international dealings, in which case a business relationship with a Swiss entity would be presumed; had a secondary residence in Switzerland or used a Swiss address whether in actuality or as a pretext; had a child enrolled in a Swiss school; had a relative living in Switzerland; and/or traveled to Switzerland.

SDAP staff also reviewed the claimant materials to determine whether the claimant had been able to provide information about the bank account, such as the name of the Swiss bank in which the account owner was believed to have deposited his or her assets; the bank's location; the type of account; whether it was numbered (*i.e.* under password); the name of the account officer; the use of an intermediary in opening the account, whether in Switzerland or through a local branch or post office; the amount of the deposit; and/or whether the claimant had witnessed the opening of the account, the making of deposits or the review of bank documents.

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364 *See* SDAP Plausible Undocumented Awards Claim Evaluation Guidelines at 2 (emphasis in original).

In total, by the end of 2005 — after the filing period for the 2005 List had expired but prior to the Court's February 17, 2006 announcement of the new PUA process — SDAP had evaluated virtually all of the approximately 104,000 claims in the database.

3. Secondary Review: Ensuring That All Plausible Claims Were Compensated

In 2007, SDAP conducted a strategic re-review of particular failing claims: those with newly-added claimant correspondence, those whose score was on the borderline, and a review of the relationship component of all borderline claims falling outside the "circle of heirs." In addition, the Special Masters and the Court recommended reanalysis of claims filed by individuals who, themselves, were Nazi victims. Often such claimants, who typically were elderly, had not understood that in addition to describing their own experiences during the Holocaust, the claim forms had sought to elicit the biographical details of relatives believed to have owned the account. SDAP staff also reexamined IQs with strong "connections" to Switzerland, but that were missing adequate biographical information (as was typical of IQs). In total, in the 2007 project, SDAP re-reviewed approximately 30,000 individual failing claims.

Additionally, SDAP re-reviewed every claim in which the primary claimant also represented family members (co-claimants), to identify and award all claimant family members who would be eligible for a PUA. If a power of attorney form was found in the claimant's file, indicating that the claimant was representing a family member, that family member would then be considered a co-claimant. If the co-claimant met all other PUA eligibility criteria, an award recommendation was submitted to the Court. If there was no power of attorney form attached to the claim form, but there was a clear intention by the claimant to represent an eligible family member, an SDAP staff member would then contact the claimant and solicit a power of attorney form so that the eligible family member also would receive a PUA.

In many instances, SDAP was contacted by claimants who did not receive a PUA but whose relative — who had filed a claim form or IQ — had received a PUA, based upon information provided for the same claimed relative's account. For example, several cousins might have submitted separate claims for the account of their grandfather, but only one of the cousins may have "passed" under the scoring system, and received an award. In these cases,

SDAP joined the "failing" claims to the "passing" claims, and recommended an award for the "failing" claimant(s) based upon the information provided by the relative whose claim had "passed" PUA review.

There were multiple levels of review of each batch to ensure uniformity of the submissions, from supervisors to staff attorneys. Furthermore, each submission was reviewed and approved by the Special Masters, who would receive a scoring sheet and all claim forms, IQs and a summary of relevant claimant correspondence. As extra layer of consistency, the Special Masters also reviewed a portion of the underlying claims and documentation for every PUA batch submitted to the Court.

4. Increase in PUA Payments

In the same 2010 order in which it authorized an increase in presumptive values for documented accounts, the Court also authorized an increase of $2,250 for awards based upon testimonial and other documents (PUAs). This amount represented a 45% increase in the PUA amount, and thus maintained symmetry between the Deposited Assets Class and the other four classes, all of which had already received 45% increases. As true for those with documented claims, PUA recipients had been adversely affected by the destruction of millions of bank records. The Court found that while it was impossible to determine with certainty the true value of an award premised upon an account for which all records had been obliterated, there was no doubt that many PUA recipients had received far less than the payments that would have been made, had their account documents not been destroyed by the Swiss banks. Those with plausible but undocumented Deposited Assets claims thus were entitled to receive the same 45% increase accorded to members of the other four classes, whose legal claims were weaker.

B. Awarding Documented Accounts on a *Pro Rata* Basis to Unrelated but Equally Plausible Claimants ("Multiple Plausible Matches" or "MPMs")

There were many accounts for which account owner information was limited because so many records were destroyed. As a result, there often were several plausible claimants to the same account: sometimes two, sometimes five or more. All showed "a plausible connection to the account owner because all that [was] known from the bank records [was] the owner's name,

and perhaps country."[365] As an example, the account owner could have been listed in the bank files as "Isaac Meyer" from "Austria," and five unrelated claimants might have shown that they had a relative named Isaac Meyer who had a connection to Austria at some point during the period 1933-1945.

The Court considered various approaches to this issue, including denying all of the competing claims because there was no way to determine which claimant actually (as opposed to plausibly) was related to the account owner. The Court rejected that approach as one that would penalize claimants for the banks' destruction of account records. Rather than turning away all of the competing plausible claims, the Court concluded that it was appropriate to award all of them, dividing the proceeds of the account on a *pro rata* basis.

Thus, for example, in *In re Account of Emil Kaufmann*, the bank records consisted of "an excerpt from a collective account ledger and printouts from the Bank's database." The records indicated that Emil Kaufmann owned a savings/passbook account numbered 4523, which was transferred on April 6, 1970 to a collective account, at which date it reportedly held SF 0.20. The CRT located 1938 Census records concerning an individual named Emil Kaufmann, which indicated that he was a bank official and a childless widower. However, the bank records did not contain any identifying information about Emil Kaufmann other than his name, and so it was not possible for the CRT to determine whether the person identified in the 1938 Census records was the same person named in the bank records.

Four different and unrelated individuals claimed the account. The first claimant stated that Emil Kaufmann was her great-uncle, who had been a lawyer in Germany. He perished in Auschwitz. The second claimant stated that Emil Kaufmann was his father, who lived in what is now Slovakia and who managed a granary. He fled to the mountains and joined the partisans after the Nazis murdered his first wife and daughter. He remarried after the Holocaust. The third claimant, named Emil Kaufmann, stated that he himself was the account owner. He was born in Romania and his father owned a jewelry store. He was deported to Birkenau, and immigrated to Palestine after the war. The fourth claimant stated that Emil Kaufmann was his

[365] Edward R. Korman, *The Swiss Bank Claims Process is Both Just and Thorough*, FORWARD, Aug. 29, 2007, *available at* https://forward.com/opinion/11503/the-swiss-bank-claims-process-is-both-just-and-tho-00397/.

cousin, a director of the *Wiener Bankverein*. He fled to the United States in 1939 or 1940 after the Nazis had confiscated his assets. As the bank records contained only the account owner's name, and the date on which the account was transferred to a collective account, the CRT determined that all four claims were plausible. Accordingly, each claimant received one-quarter of the total award.

Of the 2,950 awards, 236 (8%) were MPMs, and these were awarded to a total of 867 claimants. Of these MPM awards, 131 involved two competing claimants or sets of claimants; 62 involved three competing claimants or sets of claimants; 29 involved four competing claimants or sets of claimants; 13 involved five competing claimants or sets of claimants, and 1 involved six competing claimants or sets of claimants.

In general, where more than five claimants or groups of claimants plausibly asserted claims to the same account, the Court adopted the CRT's recommendation to treat these cases in a different manner. They were not to be divided up as "MPMs," but rather were referred to the alternative "Plausible Undocumented Award" process. If the appropriate criteria were satisfied, each claimant was eligible for an award of $7,250. The Court explained the rationale as follows:

> As the number of unrelated claimants or groups of claimants increases …, the probability that any one of those claimants' relatives is the actual account owner, as well as the amount of the award, is reduced.
>
> One option to treat such accounts would be to deny all claimants whose relatives' names matched to the names of the account owners and recommend no payment on the basis of these accounts. However, as the CRT has observed, this option would be unfair, as the impossibility of making an identity determination is due entirely to the destruction of account owner information in the bank records. The CRT therefore recommends that in … cases in which six or more claimants or groups of claimants plausibly have identified the account owner, rather than dividing the account on a *pro rata* basis, the claims instead be considered for Plausible Undocumented Awards ("PUAs"). In my February 17, 2006 Memorandum and Order approving the first set of PUAs, I explained that such awards attempted to compensate for the burdens imposed upon claimants due to the massive destruction of Swiss bank records relating to Holocaust-era accounts. Here too, the inability to definitively identify the account owner is due to the destruction of records by the Swiss banks. At the same time, it would be inappropriate to award the account on a *pro rata* basis among so many competing claimants, when the likelihood of the account belonging to any one of the claimants' relatives is no more than 17% for six or more competing claims.

> Obviously as the number of such claims increases, the likelihood of ownership — and the share of the award — is even further diminished.[366]

Utilizing this procedure, the Court approved the CRT's recommendation to deny 362 claims because in each case, six or more claimants or groups of claimants plausibly had identified the account owner as a relative. All 362 claims were referred to the PUA process "in accordance with the criteria established for the issuance of a PUA (including requirements concerning the degree of relationship between the claimant and the claimed account owner; the ineligibility for a claimant to receive more than one PUA; and other criteria)."[367] Upon review, a total of 134 of these claims subsequently were approved for PUAs.[368]

In some instances where the Court authorized multiple unrelated claimants to share an award on a *pro rata* basis, other less plausible claims also had been filed to the same accounts. In such cases, the CRT observed that there was "very little information" about the account owner, and recommended that such claims be denied. As the CRT explained: "[T]he CRT considers such factors as an account owner's city or country of residence, profession, nationality, and/or names of family members. Since such information about the account owner is not available in this case, the CRT considers other, more detailed and nuanced factors. Such factors include, but are not limited to, whether a claimant identified an exact spelling of the account owner's name; whether the claimant was able to provide documentation linking his or her surname to that of the account owner, thereby demonstrating a familial relationship to a person with the same name as the account owner; whether a claimant identified the account owner's name prior to its publication, or despite the fact that the name was never published; and/or whether the fate of the claimant's relative is consistent with the disposition of the claimed account. Based upon these

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366 Memorandum & Order Approving Set 190: One Certified Denial Upon Remand Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Assessment of Certain 'Matched' Claims in Accordance With the Criteria Applicable to Plausible Undocumented Awards at 2-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 17, 2009).

367 Memorandum & Order Approving Set 191: 361 Certified Denials Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Referring the Denials to the Plausible Undocumented Award ("PUA") Review Process at 2, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 18, 2009).

368 *See* Memorandum & Order Approving Seventeenth Set of Plausible Undocumented Awards Certified by the Claims Resolution Tribunal (Swiss Deposited Assets Program) Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 2, 2009).

considerations, matches between this account and less plausible claims were disconfirmed, and those claims were excluded from this decision."[369]

C. Prioritizing Certain Claims

At the inception of the process, when the CRT had only preliminary estimates of the number of claims that would be filed and the total amount that would be paid, awards issued to claimants under the age of 75 were paid in three installments of 30%, 35% and 35%. This was intended to ensure that sufficient funds would be available from the up to $800 million allocated to the Deposited Assets Class to pay all claims at least on a *pro rata* basis, until it could be determined whether the awards all could be paid in full.

Even so, priority was given to the review of claims submitted by elderly claimants. Further, claimants who were aged 75 or older always received the full amount of their award in one payment. That payment method was later amended to provide for payment in full of all awards, regardless of age. Payment of accounts for which the CRT determined the actual value always were issued in full.

D. Incorporation of Initial Questionnaires and CRT-I Claim Forms into the Claims Process

1. Rationale

Shortly after the Settlement Agreement was executed, and during the period in which the Court was analyzing the agreement to ensure that it was fair and warranted approval, plaintiffs' class counsel established a "notice" program to inform Holocaust victims and heirs of the proposed settlement. As part of the notice program, interested persons were asked to submit "Initial Questionnaires" ("IQs"). These documents were designed to provide background information about the scope of the class, but were not intended to serve as actual claim forms.

> However, it became clear as the claims process moved forward that at least with respect to claims for Holocaust-era Swiss bank accounts, many individuals believed they had already "applied" to the CRT program by submitting an IQ. Therefore, they never filed CRT claim forms. After surveying the data that had

[369] *See, e.g., In re Account of E. Geiger*; *In re Account of Helene Kaufmann*; *In re Account of J. Meyer*.

> been provided in the IQs, the Court by order of July 30, 2001 directed that those IQs with sufficient information should be treated as claim forms: Prior to my approval of the Settlement Agreement and before the inception of the claims process, class members were invited to submit IQs [Initial Questionnaires] which were "for information purposes only, to let us know the address at which we can mail you future notices regarding any claims process, and to give us information about your particular circumstances." Class members were advised that "completion of this questionnaire does not entitle you to any Settlement funds." *See* Initial Questionnaire. Nevertheless, in recognition that "many Respondents erroneously understood that the IQ is a claim form and that no other claim form had to be submitted to qualify for a Deposited Assets award … to assure that Class Members with Deposited Assets claims are not precluded by technical procedural requirements from having fairly and timely presented claims fairly adjudicated," I ordered those IQs which can be processed as claim forms to be treated as timely claims. *See* Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). Thus, although the IQs generally contained less information than the Deposited Assets Class claim forms, approximately 70,000 other class members…have been deemed to have filed a timely claim and have been given the opportunity to supplement their IQs with additional documentation.[370]

In a later decision, the scope of the documentation that would be permitted to serve as Deposited Assets Class claim forms was again expanded: specifically, "those claims filed subsequent to the publication of account owner names in July and October, 1997, prior to the completion of the [ICEP audit]."[371]

Before the CRT process that operated under the Court's authority — CRT-II — there had been a previous process, CRT-I. That program had adjudicated approximately 9,000 claims to 5,570 mostly non-Holocaust victim accounts published in 1997. "Although many claimants who filed claims to unpublished accounts subsequently filed claims with the CRT II in connection with the publication of an additional list of account owner names on February 1, 2001, the CRT

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[370] Order at 1-2, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Oct. 10, 2008). Of approximately 600,000 Initial Questionnaires, a review process led by the HCPO, with the help of volunteer law students and others acting under the Court's supervision, indicated that approximately 70,000 of these IQs contained information relating to a possible Deposited Assets Class claim. These 70,000 IQs were deemed "claim forms" for CRT review. Subsequently, to make certain that the correct IQs had been characterized as Deposited Assets Claims, SDAP reviewed a random sample of some 51,000 forms that were flagged as "Non Deposited-Assets Claims." SDAP's review confirmed that the original review had been appropriate. There was only a small margin of error, 1.2% of all IQs reviewed, found to include some information relating to a possible Deposited Assets Class claim.

[371] Order Concerning Use of ICEP Claims as Claim Forms in the Claims Resolution Process for Deposited Assets at 1, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 30, 2004).

II has identified approximately 4,610 claims for which no corresponding CRT II claim form was filed pursuant to the February 1, 2001 publication. These 4,610 claims were submitted to CRT I, ATAG Ernst & Young [one of the ICEP auditors], and ICEP."[372]

Many of these claims contained "sufficient detail to constitute a claim for Deposited Assets," and "many claimants believed erroneously that the previous claim was sufficient for claiming under the Settlement Agreement and that no other claim form needed to be submitted" under the Court's process. Thus, "to assure that no Class Member with Deposited Assets claims is precluded by technical procedural requirements from having fairly and timely presented claims fairly adjudicated," the Court approved Special Master Junz's proposal that the 4,610 "CRT I" claims be treated as timely CRT II claim forms.[373]

2. The Impact of the IQs Upon the Claims Process: Over 1.5 Million Matches Analyzed by the CRT; Acceptance of Additional Competing Claims

The inclusion of IQs and CRT-I claim forms had an immediate impact upon claims processing activities. With the expansion of the pool of claims from approximately 32,000 (the number of formal claim forms filed with the CRT), to over 104,000 (due to the acceptance of IQs and CRT-I claims), the scope of the CRT's task took on a new dimension. The CRT now was charged with comparing over 104,000 claims, and more than 415,000 account owner names provided in these 104,000 claims, against 37,954 names in the AHD. The result was that approximately 1.5 million matches were generated that needed to be individually reviewed.

The first issue was a practical one. The CRT had been using a program known as the "Claims Adjudication System," or "CAS." This system worked well for the approximately 32,000 formal CRT-II claim forms, but was not equipped to handle an infusion of another 70,000 claims when IQs and CRT-I forms were accepted into the process. Accordingly, the CRT was required to transition to a new program, the "Claims Processing System" ("CPS"). This required the CRT to halt some of its claims processing activities while the new system was installed.

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372 *Id.* at 2.

373 *Id.* at 2-3.

Once CPS was operative, the 1.5 million matches needed to be analyzed. The matching process was time-consuming. Some of the matches could be eliminated fairly quickly by comparing only the matched names (and determining, for example, that the individuals were of different genders). The remaining matches, however, were manually reviewed to determine if the person in the bank records was the same person as the claimant's relative. Confirmed matches led to additional analysis by the CRT to determine who closed the account; when it was closed; and its value at the time of closure.

The decision to include IQs had another significant impact upon the claims process. It was only after the claims process was under way that it became clear that many individuals, including elderly survivors, had assumed that their IQs constituted formal claims, the impetus for including the 70,000 IQs with Deposited Assets information. However, by this point, matching already had taken place, and awards already were being issued. When entered into the CPS system, IQs (as well as claim forms) that had not been previously available sometimes matched to accounts that already had been awarded. In most instances, the Court authorized the CRT to award the newly-matched claimant the amount to which he or she was entitled, regardless of the fact that the account already had been awarded to one or more different claimants.

In *In re Account of Ernst Moser*, for example, the CPS program enabled the CRT to locate another potentially matching claim, which had been submitted as an IQ only. The "new" claimant was not related to the brother and sister who had received the original awards. Those awardees had identified the account owner as their father, an attorney who was forced to flee from Austria after the *Anschluss*. They had received an award of SF 125,500.00 ($100,400.00) for three accounts held at two Swiss banks. The "new" claimant identified the account owner as his father, a Berlin dentist who repeatedly had been turned away from the Swiss border. While this "new" claimant was not related to the two original recipients, his claim was equally plausible in light of the sparse data about the account owner that remained in the bank files. Had both claims been known to the CRT at the outset (*i.e.*, the claim from the siblings whose father was an Austrian attorney, and the claim from the individual whose father was a Berlin dentist), the claims would have been treated as equally plausible ("MPMs"), and each would have received one-half of the value of the accounts. However, the CRT "[r]ecogniz[ed] that over two years [had] passed since [the original award] and that there is no indication that [the original recipients]

were aware that another equally entitled person had filed a claim." Thus, the original claimants were not asked to return their payments. At the same time, the "new" claimant was awarded what would have been his share of the original award had his IQ been processed at the outset (SF 62,750 ($51,016.26)).

Likewise, in *In re Account of Elsa Steiner*, the CRT originally had awarded the account (of unknown type) to two unrelated claimants. Each received one-half the total award of SF 49,375.00 ($39,500.00). The first claimant identified Elsa Steiner as her sister, who had lived in Hungary with her children and husband, a furrier, and who had been killed in Auschwitz with her children. The second claimant identified herself as Elsa Steiner, one of three children of a hardware store owner in Horažďovice, Czechoslovakia. She stated that her father was killed in Auschwitz. Subsequently, the CPS system located a third plausible claimant, who indicated in her IQ that Elsa Steiner was her aunt, from Prague, who had perished in a concentration camp. Since the bank records showed only that the account was owned by someone named Elsa Steiner (without reference to her country of residence) and that it had been transferred to the bank's suspense account on December 14, 1987, all three claimants would have been deemed equally entitled to the account, had all of their claims been available at the outset of the match review analysis. Accordingly, the CRT recommended that the third claimant receive the share to which she would have been entitled, SF 16,458.33, had her claim been processed initially. As to the payments made to the two original awardees, the CRT observed that "more than three years have passed since the [original] award" and there was "no indication that" either claimant was aware that "another equally entitled person had filed a claim." Thus, the CRT did not seek "outright repayment of the overpayment" under the original award. However, anticipating the possible upward adjustment of presumptive values (as indeed occurred with the Court's order of June 16, 2010), the CRT noted that "the amount of overpayment shall be deducted from any award adjustment that may be forthcoming..."

The majority of the over 104,000 claim forms (62,766, or 60%) were IQs. The claims administrators did not originally expect the IQs to serve as claim forms, and perhaps neither did many of the claimants. Unlike Deposited Assets claim forms, the questions presented in the IQs did not focus solely on Swiss deposited assets, but also requested information related to other issues addressed by the settlement process as a whole, such as slave labor, refugee status and

looted assets. Accordingly, many IQ claimants provided detailed information about one category of claim, with less information about others. Many of those who had completed IQs may never have intended to claim a Swiss bank account. However, those IQs with information about bank accounts subsequently were deemed to be claim forms, in the interests of equity, because the person filling out the IQ had given some type of indication that a relative might have owned a Swiss bank account.

Of the claims receiving awards, nearly 75% resulted from a formal CRT claim filed in connection with the 2001 publication. Another 4% of the awards arose from CRT claim forms filed in connection with the 2005 publication. Therefore, a total of 79% of the awards were generated by formal claim forms filed in response to the 2001 and 2005 Lists. Another 5% of awards were associated with claim forms filed with the HCPO, and 2% were associated with claim forms filed in connection with the 1997 pre-Settlement publication. Thus, 86% of the awards were the result of formal claim forms, whether filed specifically via the CRT process, or through the HCPO or ICEP programs. Far fewer awards — under 14% — were generated by Initial Questionnaires. This disparity is not surprising, given that the Initial Questionnaires had not been designed or designated as claim forms; had not been intended to capture the same type of detailed information; and had not been expected to be treated as claim forms.

Another way to consider this data is that the inclusion of approximately 63,000 IQs as claims, along with the 41,000 formal claim forms (for a total of 104,000 claims) lowered the award ratio for the Deposited Assets Class. If the 41,000 claim forms alone are considered, then more than one-third of these claims received awards.[374]

3. The Outcome: the IQs and CRT-I Claim Forms Yield Additional Awards

The IQs ultimately did not result in a very large number of additional awards. The desire to leave no stone unturned, by including the IQs as claim forms, required considerable resources

[374] A total of 15,251 awards were made: 2,950 awards for documented accounts, and 12,301 for PUAs (http://www.swissbankclaims.com/Documents/Distribution%20Stats.pdf). Because awards generally were paid to more than one claimant, the number of *recipients* of these 2,950 awards was considerably higher (5,248). *Id.*

and prolonged the CRT process. Nevertheless, many of these awards were substantial, and all of them certainly were significant to their recipients.

One such example is the case of *In re Account of Jules Roos N.V.* The claimants (the daughter of Jules Roos, and her nephew, Jules Roos' grandson), had filed an Initial Questionnaire but not a claim form. *Jules Roos N.V.* was an Amsterdam bank wholly owned by Jules Roos of Amsterdam. In August 1939, anticipating Nazi persecution, Jules Roos abandoned his business and home and fled to Montreal. He died in 1968 in Lima, Peru. The Swiss bank records showed that the Amsterdam bank *Jules Roos N.V.* held a custody account that was closed on April 30, 1940, as well as a second account of unknown type, which was closed as of July 28, 1942. *Jules Roos N.V.* was aryanized, after which its accounts became a subject of some discussion within the Swiss bank. As described by the CRT, "[a]ccording to a letter from the Account Owner to the Bank, dated 4 May 1942, *Jules Roos N.V.* was placed under a Nazi administrator, *Herr* (Mr.) Heinrich G. Fousek, by order of the *Reichskommissar* … for the occupied Dutch territories."

In recommending that the account of unknown type be awarded to the claimants,[375] the CRT observed that "the account remained open after the closure of the custody account and was still open as of 3 June 1942. The CRT notes that at this time, *Jules Roos N.V.* was under the authority of a Nazi-appointed administrator and that, although the Bank did not fully recognize the right of this administrator to dispose over the account, it had agreed internally to honor the requests of the administrator to dispose of the account since the account had a low balance of SF 15.00." Since the administrator, not the account owner, received the proceeds of the account, the bank owner's daughter was awarded SF 49,375.00 ($40,805.79).

Similarly, in *In re Account of Monika Hofmann*, the claimant (who was also the account owner, and who had filed only an IQ) was born in Germany. Her father was Romani, and he had opened a Swiss bank account in his daughter's name. He owned a five-stage puppet theater until 1934, when Nazis looted the theater. He was a forced laborer for the German military between 1944 and 1945. The bank records showed that the account owner, Monika Hofmann, held an

[375] The custody account was not awarded because it was closed prior to the Nazi invasion of the Netherlands and the account owner was presumed to have received the proceeds.

account of unknown type. On November 10, 1976, it held SF 65.05, and it was transferred to a suspense account. The account remained in the bank's suspense account. Because the reported value of the account was lower than presumptive value, the CRT applied the presumption that the reported value likely reflected looting of the account or imposition of fees, and the claimant received the presumptive value of the account.[376]

E. Multiple Extensions of Filing Deadlines and Review of Late Claims

At the outset of the claims process, CRT Special Masters Volcker and Bradfield recommended, and the Court adopted, a filing deadline of August 5, 2001. That deadline was extended to August 31, 2001.[377] Thereafter, the filing deadline was extended for all claims "filed before January 1, 2003, that include a reason for their tardiness … provided that there is no prejudice to a timely claimant (unless the late claimant is the Account Owner)."[378]

Subsequently, the deadline was extended again. The Court noted that "for the period January 1, 2003 through December 31, 2004, the CRT has identified and received to date an additional 645 late claims to deposited assets and 18 late claims to insurance policies…." The Court found that "it would be inequitable to exclude late claims filed by persons who are more entitled to the proceeds of the claimed account than timely claimants," but also "recognizes the need for expeditious review of accounts, the necessity for an equitable balance in the treatment of timely and late claims, and the urgency for finality of decisions." The Court thus "distinguishe[d] between late claims to accounts not yet awarded, and those to awarded accounts." Whereas late claims to unawarded accounts "would not adversely impact the claims resolution process, the acceptance of late claims to awarded accounts would hinder this review and could

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376 *See also, e.g., In re Account of Julius Rosenthal* (award of SF 260,375.00 ($204,934.23)); *In re Accounts of Aleksandar Weiss and Emanuel Weiss* (award of SF 75,150.00 ($61,287.60)); and *In re Account of Rene Weil* (award of SF 47,919.13 ($38,335.30)).

377 *See* Order Postponing the Time for Filing Claim Forms in the Claims Resolution Process for Deposited Assets to August 31, 2001, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Aug. 15, 2001).

378 Memorandum & Order at 3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 8, 2003) (noting that "the determination that excusable neglect exists in this case for claims filed by December 31, 2002, takes into account that most of the claimants to accounts created more than 60 years ago are necessarily elderly, with many having suffered the trauma of the Holocaust, giving credibility to claims of misunderstood deadlines, failure to obtain claim forms, lack of knowledge of the claims process, and serious illness or death of family members").

lead to an endless revisiting of decisions that would unnecessarily extend" the process. Further, "where an award has been made, payment of the late claim operates to the prejudice of the Settlement Fund, because it means double payment of the same account which the CRT may not be able to recoup from the timely filed claimant. Indeed, if such recoupment was possible it would involve needless expense and effort."[379]

Thus, the Court ordered that the deadline be extended to December 31, 2004 for claims to unawarded accounts. As to late claims to accounts that already had been awarded, those were to be "treated in the appeals process, which is to enforce stringent requirements for the consideration of such claims on a case by case basis." Such appeals were to take into consideration whether the late claimant was the account owner, or his/her spouse, or child; provided an "unusually compelling reason for failing to comply with the filing deadlines;" and demonstrated "by clear and convincing evidence that the claimed account was awarded erroneously."[380]

Even claims filed well past all deadlines often were still reviewed by the CRT. Thus, as Judge Korman wrote to one claimant who sought to file claims in 2009:

> [Y]our claim was submitted even after all of the extended deadlines had expired. The rationale for a claims deadline is "the need for expeditious review of accounts, the necessity for an equitable balance in the treatment of timely and late claims, and the urgency for finality of decisions and of the claims resolution process itself." *See* CRT letter of February 23, 2009, at page 2. Nevertheless, "to ensure that no Class Member with a Deposited Assets claim is precluded by technical procedural requirements from having his or her claim fairly adjudicated, [I] asked the CRT to examine late claims upon receipt to determine whether the claimant has definitely identified an account belonging to his or her relative." While this examination does not include the advanced computerized name matching protocols adopted for timely claims, even for late claims such as yours, "a manual search [was] conducted to determine whether the names of the person identified in the late claim are included in the" bank account data made available to the CRT. "If so, the information about the person/s identified in the claim form is compared to the information about the account owner/s contained in the bank records to

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379 *See* Memorandum & Order at 1-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 30, 2004).

380 *Id.* at 3.

> determine whether the claimant has definitely identified the account owner/s as his/her relative/s."[381]

Therefore, "as the CRT explained in its February 23, 2009 letter, although your claim was not 'formally admitted into the claims resolution process,' your claim nevertheless 'was carefully reviewed so that procedural requirements do not prevent the return of Holocaust-era assets to their rightful heirs.' However, an award was not warranted because 'either the information in your late claim did not demonstrate that your relative was the owner of the account you claimed, or the [records available to the CRT do] not contain any accounts belonging to persons with the names of your relatives.'"[382]

In the case of claims to accounts that had been awarded to timely claimants, the late claimant often was referred to the original award recipient, so that the parties could determine amongst themselves whether the late claimant was entitled to any share of the award. A pre-condition to receiving an award, as required under the terms of the Settlement Agreement, was the recipient's obligation to sign an Acknowledgment Form. An early version of the Acknowledgment Form did not include explicit confirmation that the recipient would share the award amount with other entitled heirs. When the claims process gained more experience, it became clear that despite the massive worldwide publication of the Settlement and claims process, and the incorporation of tens of thousands of "informal" claims by utilizing the Initial Questionnaires, not all family members were aware of the fact that other relatives had claimed an account. Further, sometimes family members attempted to intentionally exclude other heirs from sharing award payments. [383]

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[381] *See* Letter from Hon. Edward R. Korman to Mr. K (Nov. 17, 2009).

[382] *Id*. Judge Korman noted that the claimant had been successful in his attempt to recover other Holocaust-era Swiss accounts: "[I]n connection with your timely-filed CRT claim to the account of … your cousin's mother, you received an award in February 2005 in the amount of SF 26,750."

[383] This was addressed in some detail in the Decision on Appeal in *In re Account of Alexander Conitzer*, which Judge Korman approved on April 6, 2007 (*see also* Memorandum & Order Authorizing Approval of 9 Decisions on Appeal, April 5, 2007). The *Conitzer* Decision on Appeal noted:

> "It has been asserted that a claimant is not obliged to inform the CRT of the existence of other known equally or better entitled related heirs of the account owner, and that, therefore, the absence of such notification should have no impact on the decision as to the validity of the appeal in this case. Article 24 of the CRT Rules has been cited as the basis for this assertion. This Article provides that 'The rights of individuals to an Account who have not submitted claims to the CRT will, as a general rule, not be considered under the Claims Resolution Process authorized by these rules.'

The CRT therefore made explicit the implicit obligation that family members were required to share their awards with relatives of equal entitlement, and to transfer the entire award to relatives better entitled to the account. Prior to receiving payment, each award recipient was required to sign an Acknowledgment Form stating in part that:

> In consideration of the payment, I undertake and agree that in the event that one or more other heirs of the account owner, known or unknown, entitled under Article 23 of the Rules Governing the Claims Resolution Process, as amended, (the "Rules") make(s) a claim to this account or accounts, or otherwise seek(s) payment or compensation therewith, I shall share the payment with, or in the event that pursuant to the principles of distribution in Article 23 I am so required, I shall transfer the payment to, such other entitled heir(s), in the absence of another mutually agreed basis, irrespective as to whether the heir(s) was/were identified in the information provided to the CRT.

For example, in *In re Account of Beger* & *Röckel*, over five years after the award was approved, additional claimants seeking a share of the award, distant cousins of the original

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However, in considering this matter, it is important to bear in mind that the basic objective of the Claims Resolution Process, initiated by the Settlement Agreement, is to restore to Holocaust victim account owners or their heirs, the funds and/or property that were improperly withheld from them if the account owners had accounts in Swiss banks during the 1933-1945 period. It was never the intention that the Claims Resolution Process should become the vehicle for intra-family discord, greed and avarice, or to authorize a first come first served winner take all lottery in which known heirs could be deliberately excluded from sharing in awards simply because another family member filed first or because known heirs were deliberately excluded from claim forms filed by their relatives. Article 24 was thus not intended to facilitate these objectives in the rare cases in which they occur.

Instead, Article 24 was included in the Rules because it was recognized that there could be some cases in which the devastation, loss, and dispersion of families resulting from the Holocaust might make the Claims Resolution Process difficult to operate effectively if the burden of finding all entitled family members should be placed on claimants or the CRT before awards could be disbursed to claimants once the deadline for filing claims had passed. When it became clear from operating experience that the provisions of Article 24 could be abused to provide a basis for excluding known heirs from participating in the division of family assets, the Court moved promptly to make an already implicit obligation explicit by requiring all claimants receiving awards to agree to share their award with all eligible heirs recognized as such by the CRT Rules at the time the award was made or subsequently. Similarly, the principle of assuring the ability of all known heirs to share in awards was the basic rationale in the Friedl case [citing Decision on Appeal: *In re Account of Rudolf Friedl*, approved by the Court on April 11, 2005] where all known heirs as specified in the will of the account owner were authorized to participate in an award that was mistakenly awarded to lesser entitled claimants even though these heirs had not filed claim forms.

In the case before the Court, there was "clear and persuasive evidence that the Claimants knew of the existence of the Appellant and deliberately withheld this information from the Court …. [I]t is unfair and unjust to exclude the Appellant from sharing the award in this case. Similarly, awarded claimants who deliberately did not provide the Court with the information that it needed to properly decide the distribution of an award to the known heirs of the account owner are required to return to the Settlement Fund the amounts that they received in excess of the amounts to which they are properly entitled." *See also* Decision on Appeal, *In re Accounts of Dr. Simon Gutmann*; Decision on Appeal, *In re Account of Helene Rudnicki* (both approved by Memorandum & Order Authorizing Approval of 9 Decisions on Appeal, April 5, 2007).

recipients, contacted the CRT. They stated that their grandfather was co-owner of the firm *Beger & Röckel*. The CRT advised the claimants that they had not filed a timely claim, nor did their late claim qualify for consideration under the terms of the Court's December 30, 2004 order. The claimants were not the account owners, spouse or children of the account owners; they did not provide an "unusually compelling reason for failing to comply with the filing deadlines;" and they did not demonstrate "by clear and convincing evidence that the claimed account was awarded erroneously." However, the CRT advised the claimants that if they had filed timely claims — and if they had shown that their grandfather had owned one-half of the firm — they would have been entitled to one-half of the award. Accordingly, the late claimants were provided with copies of the Acknowledgment Forms that their cousins had signed, in which (as true for all awardees) the recipients had agreed to share or transfer the payment to relatives equally or better entitled to the award. They were advised to attempt to "reach an agreement [outside the CRT process] about the distribution of the award amount and any potential award amount adjustment in the future."[384]

In some cases, claims arrived far too late to be considered at all. Beginning in 2009, claimants were advised that no additional claims could be filed.[385] The CRT received a number of inquiries from late claimants after January 1, 2009, all of whom were notified that the deadline had expired. The CRT also was aware of other individuals who did not attempt to file claims after that date, because they understood that the claims would be untimely. It would have been inequitable for later claimants to receive special consideration. In light of the massive worldwide notice of the settlement in 1999, and after many years of activity during which every

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384 *See also, e.g.*, Memorandum & Order Approving Set 192: 11 Awards, 4 Award Amendments, and 1 Corrected Award Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund at 3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 21, 2009) ("This set also includes three Award Amendments, *In re Kaufmann…, In re Meyer, Hans…, and In re Mueller*…, in which the CRT adopts and amends its finding to address the entitlement of related claimants who were not included in the original Awards...The Award Amendments…stipulate that, in accordance with the acknowledgment form, the claimants are directed to share payment received in the original awards with their relatives, as described in the Award Amendments").

385 *Id.* at 3-4 (describing one award in Set 192 "based on a claim that was received past the claim filing deadline," and noting that the "Court in its discretion has decided to accept certain claims received past the claim filing deadline but prior to 1 January 2009, namely those where a set of exceptional circumstances is demonstrated" such as where "(1) the claimant has proven with certainty that the account owner is his/her relative or that he/she is otherwise entitled to the account; (2) the account has not previously been awarded to another claimant; (3) the claimant is disabled or of advanced age; and (4) there are no other timely claims to the account filed by those with an equal or closer degree of relationship to the account owner").

effort was made to accommodate and assist claimants from around the world, the complex and costly match review and claims analysis processes needed to be concluded. Claims filed after 2008, more than four years after the extended filing deadline and more than seven years after the original deadline, were untimely.

* * *

The utilization of presumptions and the effort to move the process along in a few instances resulted in the realization that the CRT had issued an award to the wrong claimant, as in the case of the account owner Hans Leipziger.

The case was publicized by the *Forward* — "Fund Pays Heirs of Wrong 'Hans Leipziger'" — which noted that "as in any large financial distribution, there also have been many difficult and messy decisions in the attempt to enact justice 70 years after the fact."[386] The newspaper quoted CRT Special Master Bradfield's observation that "'[w]e were under great pressure to make decisions before survivors died.'" Tens of thousands of claims had been filed (ultimately reaching over 104,000, for more than 119,000 claimants and more than 415,000 possible account owners) and a number of families "could not tell whether a name on the list of account holders was their relative" and therefore "decided to take a shot at putting in for some of the Swiss payout."[387] It was not surprising that some mistakes were made in determining who owned which account, particularly given the banks' destruction of records crucial to recreating the account's history.

In the case of the Hans Leipziger account, the originally awarded claimant "had inadvertently and innocently identified the wrong Hans Leipziger." He had identified and presented documentation demonstrating that his relative had the same name as the account owner, Hans Leipziger, and that Mr. Leipziger had died in the Gross-Rosen concentration camp. However, after the award was made, and after the filing deadline had expired, another claimant came forward with information about a different Hans Leipziger, which better matched the information in the bank files. As to the original claimant, Special Master Bradfield pointed out that that individual "'may have had the wrong person, but he wasn't trying to cheat anybody… I

386 Nathaniel Popper, *Fund Pays Heirs of Wrong 'Hans Leipziger,'* FORWARD, June 1, 2007.

387 *Id.*

think it's a tough judgment to make — to say, "We're not going to let you keep the money".'" The decision "was made easier because [the second claimant] had not submitted the application for the other Hans Leipziger on time."[388]

F. The Process of Claims Review as Shown by Two CRT Awards: the Accounts of Else Israel and Elisabeth Magnus

The level of detail in which the CRT analyzed every claim, and considered every possible avenue of compensation — a process that required considerable time and expense — is exemplified by two CRT awards authorized by the Court: *In re Account of Else Israel* and *In re Accounts of Elisabeth Magnus.*

In the case of *In re Account of Else Israel*, the German account owner, Else Israel, and her husband adopted their daughter (the claimant's mother) at the age of five. In 1934, Else Israel's daughter fled to Palestine. The account owner, Else Israel, perished in Theresienstadt on August 17, 1942.

On October 8, 1949, the claimant's father, who had survived the Holocaust and was living in Riverdale, New York, wrote to the bank. The claimant provided the CRT with a copy of this letter. The claimant's father informed the bank that he had been recognized in a Berlin inheritance certificate as the legal representative for the claimant, who was Else Israel's granddaughter and sole heir. As the CRT explained, "[i]n his letter, [claimant's father] referred to a bank statement, which appears to be copied onto the bottom of his letter, that references a custody account, numbered 45914, which [claimant's father] identified as belonging to Else Israel." The letter listed five different types of bonds and specified their nominal values.

The bank replied on October 14, 1949. "In its reply, the Bank wrote that it usually did not respond to inquiries about accounts of clients who were deceased until the inquirer had demonstrated that he/she was the legitimate heir of the account owner;" however, the bank said that it would make an exception to spare the claimant's father unnecessary expense. The bank advised that Else Israel had not had a relationship with the bank since 1936. Since "Swiss law

388 *Id.*

required the retention of correspondence with account owners for only ten years, it had already destroyed all its files that were dated prior to 1939."

The CRT pointed out that the bank files that it received in its analysis of this claim contained a copy of the claimant's father's letter. It differed from the claimant's version in one important respect, however. The bank's copy of this letter had "handwritten notations, mostly illegible, that appear to have been made by Bank employees and that appear to address the various securities listed in the statement. One of the notations appears to refer to a demand deposit account belonging to Else Israel that was closed ('*saldiert*') on 16 December 1936."

Thus, as the CRT noted, the bank's letter of October 14, 1949 — in which it had stated that no longer had files relating to the account — was "disingenuous at best." The internal notations on the bank's copy of the letter "clearly indicate, despite their illegibility, that the Bank had information pertaining to the disposition of these securities, and chose not to reveal it…." The year "cited by the Bank as the year during which its customer relationship with the Account Owner ended (1936) is the same year during which more stringent Nazi legislation requiring the repatriation of foreign-held securities became effective." The CRT observed that the bank's 1949 response to the claimant's father was "readily explained by [the banks'] concern for double liability."

In determining the amount of the award, there were several options. The easiest option would have been to assign the claimant a *pro rata* share of the amount allocated to the Deposited Assets Class, without regard to the number or nature of the accounts, or the facts surrounding the unreturned accounts. Another option would have been to determine the type of account, and award it at its presumptive value, without looking into what the account actually held. In the case of the demand deposit account, there was no remaining evidence indicating the account's actual value, and so the CRT awarded the presumptive value.

As to the custody account, however, the Court, the Special Masters and the CRT concluded that the more equitable process was to analyze precisely what securities were held in the account, and to then determine their value on a case-by-case basis. That was what the depositor would have expected when she entrusted those assets to the care of the Swiss bank.

Although the depositor perished in Theresienstadt, she (or her heirs) deserved no less from the claims process.

Thus, the CRT observed that the bank itself had considered the claimant's father's 1949 letter "sufficiently reliable to allow it to respond to [the] inquiry without requiring him to prove himself to be the rightful heir of the Account Owner." That list also was a "sufficiently reliable basis for the determination of the value of the custody account." The CRT traced each security back to its value on the date that the bank indicated the account had been closed, December 16, 1936. At that time, the account held:

- "4.5% Brazilian Loan 1888 bonds with a nominal value of £ 1,000.00, which was equivalent to 15,300.00 Swiss Francs … which were in default and which on 16 December 1936 were trading at 24 percent, putting their market value at SF 3,672.00." The CRT noted that the "default status of the bond" was "shown in *Moody's Manual of Investments, American and Foreign Government Securities,* Moody's Investor's Service, New York, 1940 ["*Moody's*"], p. 1715. The market value was obtained from the *London Times*, 17 December 1936."
- "5% United States of Brazil funding Bonds 1931, 40 years, English tranche, with a nominal value of £ 120.00, which was equivalent to SF 1,836.00, which were not in default at end December 1936." The "non-default status of the bond" was "shown in *Moody's.*"
- "4% City of Kopenhagen of 1910 bonds with a nominal value of £ 300.00, which was equivalent to SF 4,590.00, and which were trading at 109.00 percent on 15 December 1936, putting their market value at SF 5,003.10." The "market value was obtained from the *London Times*, 16 December 1936." The CRT "used the quotation for the 1910 City of Copenhagen loan for the 1911 issue as well, as the two loans traded on the Geneva Stock Exchange under the same quotation since 2 January 1928. *See Manuel des Valeurs Cotées à la Bourse de Genève, Édition 1937,* note (a), *Geneva: Societé de Banque Suisse, 1937,* p. 46." The CRT "further note[d] that although the range of quotations for the two issues on the other Swiss exchanges was not identical, an average of the high and the low for the year results in the same price for both issues. *See Schweizer Börsenhandbuch … für Banken und Kapitalisten,* Zurich: Albert Mueller, 1937, 6th ed. (Ed. C. Kling), p. 84."
- "4% City of Kopenhagen of 1911 bonds with a nominal value of £ 700.00, which was equivalent to SF 10,710.00, and which were trading at 109 percent on 15 December 1936, putting their market value at SF 11,673.90." The "market value was obtained from the *London Times* 16 December 1936."
- "4% Chicago, Rock Island and Pacific Railway Comp. first & ref. mortgage gold bonds p. 1934 with a nominal value of US $5,000.00, which was equivalent to SF 15,300.00. The company had filed for reorganization under the Bankruptcy Act of

> 1933 and the bonds, which were in default, were trading at 18.375 percent on 16 December 1936, putting their market value at SF 2,811.38." The status of the bond was "shown in *Moody's Manual of Investments, American and Foreign: Railroad Securities,* Moody's Investor Service, New York, 1940, p. 634. The market value was obtained from the *New York Times,* 17 December 1936, which also shows the company being in reorganization."

Under Special Master Junz's Guidelines for the Valuation of Securities, "as a general rule, securities [were] awarded at market value, except that bonds not in default [were] awarded at their nominal value if their market value was below their nominal value on the date the account owner [was] deemed to have lost control over the account. In these cases the CRT presume[d] that the account owner, if able to decide freely, could have opted to hold the respective bond to maturity to avoid a capital loss." In the case of Else Israel's custody account, "the 4.5% Brazilian Loan 1888 bonds were in default, and the Chicago, Rock Island and Pacific Railway Comp. was in reorganization, which is similar in status to default." Pursuant to these Guidelines, "the CRT use[d] the market value of the two series of City of Copenhagen bonds, the 4.5% Brazilian Loan 1888 bonds, the 4% Chicago, Rock Island and Pacific Railway Comp. bonds, and the nominal value of the 5% United States of Brazil funding bonds 1931 to determine the award amount. The total 1945 value [was] therefore SF 24,996.38. The current value of this amount is determined by multiplying the historic value by a factor of 12.5" so that the "award amount for the custody account [was] SF 312,454.75."

The CRT sought and in 2008 received "voluntary assistance" from the bank, which produced additional documents relating to Else Israel's custody account. As a result of this new information, the CRT determined that it was necessary to revisit the 2006 decision. As typically the case when "voluntary assistance" was received, an adjustment was required in favor of the claimant.

The bank records produced in 2008 showed that every one of the five bonds that the claimant's father had listed in his 1949 letter to the bank had, in fact, been in Else Israel's custody account. One of the bonds had been sold in 1935, while four of the five were transferred on December 14, 1936 to another account at the bank, numbered 20184. The CRT observed that the bank's records "do not indicate who owned the account numbered 20184, into which some of these securities were transferred. Even if this account were owned by the Account Owner, the

records do not indicate when the account was closed, or the disposition of the securities contained within." It was clear that "the Account Owner did not receive these securities or their proceeds."

The bank records further showed that in addition to the five bonds listed in the claimant's father's letter, Else Israel's custody account also had held one additional bond — *4.5% Brasilianische Anleihe von 1888* — which, like most of the other bonds in the account, had been transferred on December 14, 1936 to the numbered account, 20184. The total value of the securities held in the custody account was SF 25,124.18, rather than the SF 24,996.38 calculated in the previous decision based upon the five bonds listed in the claimant's father's letter. After applying the 12.5 multiplier, the CRT awarded an additional SF 1,597.50 to the account owner's grandchild, the claimant.

The total payment was significantly higher than the amount that would have been awarded had the process been more "streamlined" in an effort to avoid the difficulties presented by seeking to obtain actual values, which required decades-old bonds and securities to be priced. Instead of receiving SF 342,764.75 ($262,009.10), the claimant would have received the presumptive value of SF 162,500 (SF 13,000 for a custody account, multiplied by 12.5).

In the interest of speed, the Court also could have simply divided up the $800 million allocated to the Deposited Assets Class on a *pro rata* basis among the approximately 119,000 claimants. This would have resulted in payments of about $6,723 each, and would have moved the process along, but also would have had no relation to any given claimant's assets or to the behavior of the Swiss banks in that case. The Court also could have divided up the $1.25 billion settlement among the approximately 600,000 individuals who filed Initial Questionnaires. This would have resulted in payments of $1,333 each, but would have been disconnected from the historical facts. Since the Court chose to emphasize equity and historical accuracy (with the resulting additional administrative costs), not speed, however, Else Israel's heir was able to receive the present-day value of the assets that were actually deposited with the bank: $262,009.10.

The case of *In re Accounts of Elisabeth Magnus* was similarly complex, but also enabled one more Holocaust victim's story to be told, and her assets restored to her family. Account

owner Elisabeth Magnus lived in Berlin. Her daughter (the claimant's mother) attended a Swiss boarding school. Elisabeth Magnus performed military service in Germany until Nazi authorities learned that she was Jewish. She was killed in Lodz in 1941. The claimant, Elisabeth Magnus's grandson, did not file a formal claim form with the CRT, but the Court authorized the CRT to deem his Initial Questionnaire as a claim form, and thus his claim was included in the process.

The bank records showed that Elisabeth Magnus owned a demand deposit account closed on April 30, 1934, and a custody account closed on December 28, 1936. There was no information about the value of the accounts, or who had closed them. The CRT took note of the presumptions of Appendix C of the CRT Rules, recognizing that Nazi confiscations in Germany began in 1933. Elisabeth Magnus had remained in Germany until her 1941 deportation to Lodz. Prior to her deportation, she "would not have been able to repatriate her accounts to Germany without losing ultimate control over their proceeds." After her deportation, she perished, and so would not have retrieved her accounts. Accordingly, in 2005, the CRT awarded the two accounts at their respective presumptive values (SF 2,140 and SF 13,000) as increased by the 12.5 multiplier, for a total of SF 189,250 ($164,565.22).

After the award was issued and the claimant was paid, the bank eventually located and made available to the CRT additional records. These related to the contents of the custody account owned by Elisabeth Magnus.

These new records demonstrated that Elisabeth Magnus had owned nine different types of securities. The CRT analyzed the data, and determined that the claimant was owed nearly SF 300,000 more than he had originally received, because the actual value of the assets in the custody account was considerably higher than the presumptive value.[389] Thus, applying Special Master Junz's Guidelines, the CRT concluded that Mrs. Magnus had owned the following securities at the time she lost control over the account, December 28, 1936, the date of the account's closure:

[389] This was not an unusual discovery. When Special Master Junz and the CRT examined account records that had not been available, or were not thoroughly analyzed at the time of the ICEP audit, the actual values typically were higher than the "presumptive" values. This is what led Special Master Junz to recommend and the Court to adopt an upward adjustment of most presumptive values.

- "*4% Schweizerische Bundesbahnen von 1912/14* bonds with a face value of SF 5,000.00, which were transferred on 18 December 1936 to an account within the Bank, numbered 15200," likely an account of a German bank. At the time of the transfer, the bonds "were of good quality and were trading at 101.00%." Utilizing the *Zürcher Kursblatt* of December 31, 1936, the CRT determined that the bonds' market value was SF 5,050.00.
- "*5% Argentine Government Port of the Capital (Buenos Aires) per 1. July 1949* bonds with a face value of £400.00. Since these bonds were cashed in on 9 July 1935, they will be valued at their face value of £ 400.00, which was equivalent to SF 6,032.00."
- "*5% Schweizerische Bundesbahnen 4. Elektr. Anl. von 1924* bonds with a face value of SF 3,000.00. Since these bonds were cashed in on 15 April 1935, they will be valued at their face value of SF 3,000.00."
- "*5% Schweizerische Bundesbahnen 5. Elektr. Anl. von 1925* bonds with a face value of SF 6,000.00. Since these bonds were cashed in on 24 July 1936, they will be valued at their face value of SF 6,000.00."
- "*5.5% Internationale Anleihe des Deutschen Reiches von 1930, Schweizerische Tranche* bonds with a face value of SF 3,000.00. These bonds were in default and were trading at 28.50% when they were transferred on 19 December 1937" to numbered account 15200 at the bank, and so were valued at their market value of SF 855.00. The CRT obtained the market value from the *Zürcher Kursblatt* of December 31, 1937.
- "*6% Japanische Anleihe von 1924 per 10. Juli 1959* bonds with a face value of £ 400.00. These bonds were of good quality and were trading at 86.00% when they were transferred on 18 December 1936" to numbered account 15200 at the bank. The CRT obtained the market value from the *Financial Times* of December 19, 1936. Because the bonds were of good quality and their market values were below face value, the CRT used face value to determine that the bonds were worth SF 6,120 on the date of their transfer.
- "*6% Rentenbons Compania Hispano-Americana de Electricidad. Madrid von 1920* bonds with a face value of $ MN 5,175.00. These bonds were of good quality and were trading at 64.50% when they were transferred on 19 December 1936" to numbered account 15200 at the bank. The CRT obtained the market value from the *Zürcher Kursblatt* of December 31, 1936. Because the bonds were of good quality and their market values were below face value, the CRT used face value to determine that the bonds were worth SF 4,370.29 on the date of their transfer.
- "6 *Compania Hispano-Americana de Electricidad Madrid Aktien Serie D à Ptas. 100.* - shares, which were trading at SF 300.00 each when transferred in 1936" to numbered account 1211 at the bank, "for a total market value of SF 1,800.00."
- "12 *Compania Hispano-Americana de Electricidad Madrid Aktien Serie E à Ptas. 100.* - shares, which were trading at SF 298.50 each when transferred in 1936" to numbered account 1211 at the bank, "for a total market value of SF 3,582.00."

Certain of these securities had been transferred into accounts respectively numbered 15200 and 1211, which "appear as the transfer destination for other, unrelated accounts held by apparently unrelated account owners." Two of the securities were held in London, and it was "common practice for most British-issued securities to remain physically in England, deposited in an English bank." However, the "the Bank in Switzerland was ultimately in control of the disposition of these assets." The records did not indicate when the accounts were closed, or the disposition of the securities. The account owner had perished in Lodz. Thus, the CRT concluded that the account owner did not receive her assets. The CRT's determination to obtain the complete record of the account, even after the claim had been paid, resulted in a significant additional award to a claimant who had not filed a formal claim form (and who might have been excluded from any recovery at all under other restitution programs). The claimant later benefited from the presumptive value recalculations, resulting a total award of SF 488,828.63 ($441,757.61).

Both the *Else Israel* and *Elisabeth Magnus* awards thus demonstrate the importance of the Court's decision to broaden the claims process to include as many participants as possible. These decisions also demonstrate the diligence with which the CRT tracked down as many facts as available about the accounts, including their value, often resulting in substantial benefit to the claimants. These efforts may have prolonged the claims process and made it more complex, but surely also made it more equitable — particularly so where, as in the *Else Israel* case and in so many others, the bank records demonstrate how unfairly the claimants and their relatives had been treated decades earlier, when their inquiries had been turned away.

VII. DENIALS OF CLAIMS

The determination to apply liberal rules favoring often elderly claimants for whom, through no fault of their own, a full documentary record often did not exist, was balanced by the equally important consideration of ensuring that erroneous claims were not paid. Issuing unfounded awards would diminish the historical record; cast doubt upon the merits of the claims that were awarded; and dilute the Settlement Fund, which had to be distributed among five classes of claimants who were also Holocaust victims.

Thus, although the CRT's objective was to identify claims for which awards could be issued, that process also meant that claims had to be denied when they did not match to the claimed accounts. The CRT researched 415,453 possible account owners who had been named during the claims process. A claimant could have received a number of different decisions, depending upon how many relatives he or she indicated might have owned a Swiss bank account. Each claimant may have "identif[ied] more than one family member who may have held an account. The CRT matche[d] all relevant names in claim forms against [the accounts in the AHD] and analyze[d] every match. As a result, one claim[ant] may receive an award to an account belonging to one family member, an identity denial to another account owned by a person with the same name as a different family member, and a rejection letter for yet another name in the claim form, informing the claimant that no accounts were found in the AHD belonging to that person. Therefore, each claim[ant] may have [had] more than one decision."[390] In addition, "one decision may encompass more than one claim, from the same or multiple claimants. For example, an award may join three claims filed by [a] … claimant with a claim filed by another … claimant. That award, then, would analyze four claims. Not all four claims, however, may be fully resolved by that single award, as other account owner names claimed by those claimants may receive denials or rejection letters." As a last complicating factor, "many claimants file more than one claim. Sometimes the claims identify different family members who may have owned an account; other times the claims identify the same family members."[391]

On a number of occasions, account denials were addressed in the context of an award. This usually occurred when the CRT determined that the account owner in question held several accounts. In such instances, the CRT might have concluded that one or more of the victim's accounts had not been returned to the rightful owner and thus should be awarded. However, one or more of the other accounts owned by the same person did not support an award, and the

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390 For example, a claimant seeking accounts owned by his mother, father, and grandfather, respectively, could have received an award for his mother's account; an identity denial for his father's account, because his father shared the same name as the published account owner, but was not the same person (given that many names were common); and finally, a letter notifying him that his grandfather's name did not match to any account owners in the CRT's database, and the CRT could not find evidence in the available bank records that the grandfather had owned a Swiss account.

391 *See* Letter from Hon. Edward R. Korman to N. Y. State Banking Superintendent 3 (Feb. 1, 2006).

rationale for denying such accounts was discussed in the same decision recommending payment for a different account.[392]

For example, the CRT had the opportunity to review claims involving relatives of the legendary psychoanalyst Sigmund Freud, *In re Accounts of Alexander Freud and Harry Freud*.[393] The account owners, Sigmund Freud's brother and nephew, had owned an account of unknown type that was listed on a closing register for numbered accounts, and was transferred to London on September 10, 1938. The CRT concluded that the account was accessed by the account owners, who had fled to London by the time of the transfer, and so the claim to that account was denied. Alexander and Harry Freud, however, had held another account, a demand deposit account, which remained suspended — thus, they had not received it. That account was awarded at presumptive value (SF 28,712.50/$22,041.75).

Another example of a case involving multiple decisions, including both awards and denials, is that of *In re Account of Robert Heller*. The claimant in that case received an award of SF 10,750.00 ($9,828.27) for the account of her uncle, a Viennese doctor who had fled Austria after the Nazis confiscated his assets after the *Anschluss*. The bank records showed that Robert Heller of Vienna had held a custody account that was closed on February 18, 1925. He also owned a passbook/savings account that had not been reported during the ICEP audit, because of an audit policy that excluded savings accounts with a recorded value under SF 250. The CRT awarded the passbook/savings account, based upon the fact that the bank had failed to maintain the documentation for the account, and it was plausible that the account had been closed after the owner had fled Austria. However, the CRT did not award the custody account, since it had been closed in 1925, prior to the Nazis' ascension to power.

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392 In total, 321 accounts were denied in the context of award decisions. Of these, the CRT determined that 251 of the accounts had been properly returned to the account owner(s); another 36 had been closed before the period in which the account owner's country of residence was occupied by or allied with Nazi Germany (and therefore was presumed to have been closed properly); and 27 were not "relevant period" accounts (*i.e.*, they were accounts not opened or open during the period 1933-1945).

393 The CRT also awarded accounts that had belonged to Sigmund Freud himself; *see infra*.

A. "No Match Decisions"

The vast majority of names provided by claimants did not match to any of the 37,954 names in the AHD. In these cases, no other documents established the existence of a Holocaust-era Swiss bank account owned by the claimant's relative. For each of the more than 415,000 CAOs researched, the claimants needed to be notified when these names did not "match" to the AHD. The CRT thus provided such claimants with "No Match Findings" (also known as "No Match Letters"), which were decisions advising the claimant of family member names that had been researched but not found in the AHD.[394]

The CRT issued a total of 89,858 of these "No Match Letters." Because the CRT's first priority was to research and issue awards, the "No Match Letter" ("NML") process did not begin until several years after the review process began. The first batches of NMLs, approximately 21,600, were issued in 2006. In 2007, the CRT issued approximately 53,000 NMLs; approximately 14,000 in 2008; another 1,170 in 2009; and the last 22 in 2010.

As with other decisions, the "No Match Letter" denials were drafted and certified by the CRT, and then sent to SDAP for post-decision processing. This included submitting the batches to the Court for approval and mailing the decisions to the claimants. SDAP worked closely with the Zurich office to conduct a two-step initial testing of the NML module in the Zurich database to determine whether the initial query in the system was accurate, and whether the Data Integrity error rate (for example, the accuracy of the recorded claimant street address) was acceptable for purposes of mailing. SDAP also tested the bulk mailing system component of the module.

The decision to incorporate tens of thousands of relatively informal Initial Questionnaires into the claims process resulted in a substantial number of awards that otherwise would not have been made, but it also resulted in tens of thousands of claim denials and NMLs for claims that perhaps never were intended to have been filed with the CRT in the first place.

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394 In some instances, a claimant was surprised to see that the CRT had investigated a relative's name that he or she had not formally claimed. Some claimants filed appeals on the ground that they had not claimed the accounts of the relatives listed in the "No Match Letters." These claimants appeared to be concerned that their claims to other relatives would not be investigated. In response to their appeals, they were assured that receiving an "NML" did not mean that their other claims to other accounts were closed.

Of the 89,681 claim forms that resulted in an NML, two-thirds (59,619) were based upon names included in the approximately 70,000 Initial Questionnaires brought into the process by the Court. The substantial percentage of "No Match Letters" arising from the Initial Questionnaires indicates that the determination to be over-inclusive did not come without a cost. The task increased exponentially with the decision to analyze tens of thousands of additional claims (and all of the possible account owner names mentioned in those IQs). Although not everyone who filed an IQ had intended to claim a bank account, the Court did not want to risk excluding anyone who mistakenly believed that he or she had filed a claim to a Swiss bank account by submitting an Initial Questionnaire.

B. Inadmissibility Decisions

The Settlement Agreement required that the person believed to have owned an account needed to be a member of one of the five "Victim or Target" groups: someone who was, or was believed to be, Jewish, Roma, Jehovah's Witness, homosexual or physically or mentally disabled. Failure to identify the account owner as a member of one or more of these five groups rendered a claim inadmissible for consideration. The CRT issued 2,288 "inadmissibility" decisions, which, as with awards and denials, were eligible for appeal. In certain cases, claimants filed multiple requests for review. Some of these went through repeated submissions and appeals.

In the case of *Mr. M* of Germany, for example, Mr. M. had filed three different claims with the CRT, including at least one that exceeded 100 pages. He received numerous responses from the CRT and the CRT Special Masters, which did not satisfy him. He continued to press his claims, including by directly contacting the Court.

The essential problem with Mr. M's claims was that they undermined the entire premise of the Settlement Agreement. Mr. M was seeking compensation on behalf of his parents, but his father had served Hitler. Thus, after rejecting these claims several times, both initially and on appeal, the CRT eventually succeeded in convincing Mr. M that a settlement on behalf of *victims* of the Nazis was not the proper place to seek recompense for someone who had *aided* the Nazis. In a letter of April 7, 2008, the CRT wrote:

> In your letter [of March 24, 2008], you inquire about the status of your claims to Swiss bank accounts belonging to your parents. As you are aware, your [three] claims … have been deemed inadmissible by the CRT. The CRT inadmissibility decisions approved by the Court … are final.
>
> The Court … has jurisdiction only over claims of Victims or Targets of Nazi Persecution under the terms of the Settlement Agreement in the Holocaust Victim[] Assets class action litigation….
>
> In contrast, you indicate in your claims that your father, whose assets you are claiming, served as first lieutenant in a German flight squadron during World War II and received a medal of honor (*Ritterkreuz zum Eiseren Kreuz mit Eichenlaub*) from Hitler in 1944. You further indicate that your father worked with an SS agent from the German foreign ministry. The documents you submitted with your claims include a certificate for your father of "aryan" descent dated 2 January 1943. As a result, your father does not fall under the definition of a Victim or Target of Nazi Persecution during the relevant period between 1933 and 1945.
>
> . . . .
>
> We again ask you to refrain from further submissions to the CRT or the Court or individuals thereof...[395]

Other inadmissibility decisions were based upon a claimant's assertion that he or she was entitled to the account, solely because the account owner on one of the publication lists had the same name as the claimant's relative. Such "same name" claims originally were intended under the CRT Rules to be deemed "inadmissible," and were not to be considered for further review. For reasons of equity, the CRT subsequently recommended that those claims be analyzed on substantive grounds:

> [A]ccording to Article 18 of the [CRT Rules], a claim is inadmissible if, among other reasons, the claim is based essentially on a statement that the claimant or his or her relative and the account owner have the same or similar last name, or the claimant has provided no relevant information and/or documentation regarding his or her relationship to the account owner. In each of these 45 cases, the claimant either has based his/her claim to the account essentially on the fact that his/her relative and the account owner have the same or similar last name, or has not provided sufficient information or documentation regarding his/her

[395] Letter from Claims Resolution Tribunal to Mr. M. (Apr. 7, 2008). Similarly, the CRT spent some time on the claim and letters of *Mr. J*, who asked for an investigation of the Swiss accounts of his father, "killed in the chaos of war." Mr. J's father, however, was not a "Victim or Target of Nazi Persecution." Rather, according to his son, he "was killed as a [G]erman soldier and translator ([I]talian) to the staff by soldiers of the US Fifth Army … at the very end of the war." Letter from Claims Resolution Tribunal to Mr. J. (Apr. 8, 2008).

> relationship to the account owner, including documentation linking the claimant's name to that of the account owner. The CRT has deemed these claims admissible to ensure that no Class Member with a Deposited Assets claim is precluded by technical procedural requirements from having his or her claim fairly adjudicated. However, based upon the information provided in these [45] cases [at issue in Set 194], the CRT was unable to conclude that the claimants identified the account owner as their relatives.[396]

SDAP in New York worked closely with the Zurich office to prepare and finalize inadmissibility decisions. SDAP performed all post-decision processing, including submitting 2,288 Inadmissibility decisions to the Court in nine "Inadmissibility Batches." Once approved by the Court, SDAP then mailed the claimant packets and processed all returned mail.

C. Entitlement Denials

The CRT issued 60 "entitlement" denials to 158 accounts. An "entitlement" denial meant that the CRT had determined that the claimant was not "entitled" to the account(s), usually due to the lack of a family relationship between the claimant and the account owner.

Some specific examples of "entitlement denials" included those where the claimant was not related to the account owner and not otherwise eligible as an heir (such as under a will); was not as closely related as another claimant who had previously received an award for the same account (*e.g.* the account owner's niece would not be entitled to an award, if the owner's child previously had received an award for that account); the claimant had established a relationship only to the power of attorney holder, but not to the actual account owner[397]; and/or the claimant sought a corporate account, but did not show a family relationship with the owner of the corporation (*e.g.*, the claimant's relative was employed by, but did not own, the company that owned the account).

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396 *See* Memorandum & Order Approving Set 194: 216 Award Denials Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process at 1, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Feb. 12, 2010).

397 As explained in a number of CRT decisions, "under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a Power of Attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs." *See, e.g.*, *In re Account of Gertrud Deutsch*; *In re Account of Paul Prager (Power of Attorney Holder)*; *In re Accounts of Margarethe Schaller (Power of Attorney Holder Margarita Burg-Guenther)*; and *In re Accounts of Michael Flörsheim, Irene Elisabeth Stern, and Martha Recha Flörsheim.*

For example, in *In re Accounts of Iwan Iwanow*, the account owner was a chief engineer for Vlaikov & Co, in Sofia, Bulgaria. The claimant stated that his grandfather owned the company Vlaikov & Co., and that he had entrusted his employee, Iwan Iwanow, with SFr 96,000 to deposit in the company's account in Zurich. The claimant advised that his grandfather and other family members were persecuted during the Holocaust, and were unable to travel from Eastern Europe during the Communist era.

The CRT recommended that the claim be denied, and the Court adopted this recommendation. Although the bank records indicated that Iwan Iwanow did hold Swiss accounts closed after the War, there was no documentation indicating that the account was owned by a company or other legal entity; that it was opened on behalf of the claimant's grandfather or another individual other than Iwan Iwanow; or that Iwan Iwanow was related to the claimant's grandfather. In the absence of a family relationship between the claimant and the account owner, or a will or other testamentary document showing that the claimant's relative was a beneficiary of the account owner, the claimant was not entitled to the accounts.

In the case of *In re Accounts of Martin Sachs and Hildegard Sachs*, the bank records showed that the account owners lived in Hirschberg, Germany with their daughter. Martin Sachs and his brother co-owned a weaving mill. They were forced by the Nazis to sell their business in 1937. Hildegard Sachs passed away in 1931. Martin Sachs was arrested by the Gestapo several times, and committed suicide in prison in 1943. The CRT awarded the accounts to the daughter of the account owners, who provided documentation (including a birth certificate) demonstrating that her parents were Martin Sachs and Hildegard Sachs. She also provided evidence of her mother's maiden name, which had not been published, but which was recorded in the bank records. A different claimant submitted a claim form identifying Martin Sachs as her great-uncle. Since the CRT had received and awarded a claim from the account owners' daughter, the claim filed by the great-niece was denied. She was a more distant relative, and thus not entitled to any portion of the accounts.

D. Disposition Denials

A total of 167 denials were issued to 512 accounts on disposition grounds. In such cases, the CRT determined that the account owner or other authorized person acting on behalf of the account owner had received the proceeds. In the face of massive document destruction, the CRT generally presumed (absent evidence to the contrary) that a Holocaust-era account was closed improperly. Therefore, disposition denials were issued mainly for one of only two reasons: (1) there was documentation specifically demonstrating that the account owner(s) had received the account; or (2) the account was closed prior to the date that the account owner's country of residence was occupied by or had entered into an alliance with Nazi Germany.[398]

In many instances, "disposition denials" were issued where the documentary evidence left no doubt that the account owner had been actively involved in managing his/her Swiss assets during and/or after the War, thus rendering it highly unlikely that he/she had not received the proceeds of her account.

One such example was that of *In re Account of Fanny Hatvany*. Baroness Fanny Hatvany was born in 1868 in Budapest, Hungary and was married to Baron Hatvany, a leading industrialist. The Hatvanys had four children, although the claimant, the Hatvanys' great-grandson, advised the CRT in his claim form of only two of these children. Baron Hatvany died in 1913, leaving a large estate. Fanny Hatvany continued to live in Budapest until the Nazi occupation, at which time she went into hiding.

The claimant initially received a "No Match Decision" from the CRT because none of the claimed Swiss accounts had been included in the AHD. The claimant requested reconsideration, explaining that he was seeking restitution of assets which, as described by the CRT, allegedly were "held in an account numbered C.637 or 637 for Fanny Hatvany in the name of the [Geneva branch of a] French Bank in secondary depository institutions, including the Swiss Depository, in London, England." According to the claimant, who submitted a December 31, 1947 statement of assets, the account held 13 gold bars as well as various securities.

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[398] As discussed elsewhere herein, the CRT used the earliest historically accurate dates of occupation or alliance.

After the War, the family and many of its individual members initiated an exhaustive effort to recover these assets. Only assets held in the U.K. (account 637) remained in issue as of 1947. The family sought to recover those assets in at least three different venues: (1) the CRT; (2) the Enemy Property Claims Assessment Panel (EPCAP), a program intended to "provide compensation to victims of Nazi persecution who had property in the United Kingdom which was confiscated by the British Government during the Second World War under UK legislation on trading with the enemy, and who have not had their property returned;" and (3) in litigation before Judge I. Leo Glasser in the Eastern District of New York, a proceeding wholly separate from the Swiss Banks Holocaust Settlement and the CRT process supervised by Judge Korman.

In the case before Judge Glasser, the claimants sought recovery of the gold bars that allegedly had not been returned, or in the alternative, the value of the bars. In response, the defendant banks produced evidence demonstrating conclusively that the four gold bars had been released to the family not long after the War. Specifically, the defendants produced a June 7, 1948 letter from the French bank holding the assets to the Swiss Depository, which as described by the CRT "informed the Swiss Depository, at the formal request of the French Bank's client, that the 4 bars of gold … were the property of [Ms. Hatvany], an American national who resided in New York." The French bank "requested that this gold be put at her disposition."

As a result of these documents produced during discovery, the claimants voluntarily dismissed with prejudice their lawsuit before Judge Glasser. The claimants then returned to EPCAP, and withdrew their claim for four of the thirteen gold bars. They acknowledged that the documentary evidence disproved their claim that the 13 gold bars still remained with the Swiss Depository. However, the claimants continued to prosecute the remainder of their claim before EPCAP (*i.e.* focusing on the 9 gold bars allegedly remaining with the British authorities). EPCAP rejected the claim in a June 2009 decision, and again on appeal in June 2010.

At some point during these extensive EPCAP proceedings, the claimant supplemented his CRT claim with hundreds of pages of new documents, contending that in addition to the gold, there also were securities in Fanny Hatvany's account that had not been returned.

The CRT recommended that the Court deny the claim in its entirety. With respect to the thirteen gold bars, the CRT noted that "neither the claimant nor his attorney had ever informed

the CRT that they had received, in June 2007, the documents from the Swiss Depository that led them to withdraw their EPCAP claim for the four gold bars held on deposit in the French bank's name, nor did they provide these documents to the CRT, despite their repeated statements that they had" done so. As to the remaining 9 gold bars, the CRT rejected the claim for the same reasons cited by EPCAP, among them: Fanny Hatvany's American daughter had signed a May 5, 1948 declaration in the British Consulate in New York affirming that she had power of attorney for her mother and that she was free to dispose of the gold, and listing all 13 gold bars (not just 4) as her "actual property;" the family presumably had pursued and succeeded in obtaining the 9 gold bars, just as with the 4 for which the return was documented; and family correspondence about *all* of the gold bars had ceased at the time that the 4 bars were returned.

With respect to the securities in the account, the CRT explained that although the claimants had not mentioned all of them in their claim form, the Hatvanys had other children (four, and not two, as the claimants had implied). The Hatvanys' son, who had not been mentioned in the claim, had heirs, and these heirs had retained an interest in the account at the same time as the claimant. The account was actively managed all throughout the post-War period, as demonstrated by voluminous portfolio statements showing payments made from the account to the Hatvany son whom the claimants had failed to disclose to the CRT. The account's closure in 1980 coincided approximately with the death of this Hatvany son. Citing extensive precedent, the CRT noted that no awards had been issued in the face of such obvious post-War management of the account by an owner or heir.

The claimant appealed the CRT's denial of the claim. The appeal was rejected by order dated September 2, 2011, in which the CRT's decision was found "clearly correct and in accord with … CRT precedent." The claimants had advanced a "frivolous and disingenuous" procedural argument relating to subsequent proceedings in the EPCAP case.[399]

Other denials were issued on similar grounds; namely, that the documentation demonstrated that the account owner had actively managed his or her account after the Holocaust. For example, in *In re Account of Alexander Politzer*, the CRT noted that the bank had sent

[399] *See In re Account of Fanny Hatvany* (Certified Denial Upon Request for Reconsideration); Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 2, 2011).

account statements to the account owner in Argentina in 1947; the account owner had confirmed the accuracy of the statements and had visited the bank in Zurich on November 21, 1949; and he had informed the bank of the death of the power of attorney holder and designated a new power of attorney holder on the same date. Therefore, the CRT determined that the account owner had maintained contact with the bank after the War and had received the proceeds of the claimed account.[400]

E. Identity Denials

Because the banks had destroyed so many relevant records, the CRT sought to recommend plausible awards even where the identification was not strong, as the claimants could not be faulted for the lack documents. For example, in *In re Account of H. Schlegel*, the match between the Claimed Account Owner and the actual account owner was indefinite, particularly since the bank records did not contain the account owner's first name, only the letter "H." However, the CRT determined that the match was plausible. The account had not been published; the claimant had filed a claim for an account owned by his father, "whose surname is the same as the Account Owner's unpublished surname" (taking into account that the name "Schlagel" was spelled in a variety of ways in various documents available to the CRT, including "Schlegel"); and the "Claimant was only five years old when his father perished, and therefore the Claimant would not necessarily have known of an account in his own name." In addition, there were no other claims to the account. Since the account was not returned to the owner — because it remained in the bank's suspense account — the CRT determined that the account plausibly belonged to the claimant, and awarded the account (SF 49,375 ($39,186.51)).

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[400] *See also, e.g.*, *In re Accounts of Walter C. Wolff and Ellen Ruth Wolff* (with regard to a demand deposit account, the customer card showed the account owner's residence in New York, where he moved in 1941; the account owner was in contact with the bank after his move; and the account was closed on December 31, 1945, months after the War had ended; thus, the CRT concluded that Mr. Wolff had closed the account himself); *In re Accounts of Emil Weil* (with regard to one account, the account owner was actively using it in April 1945, when he paid an invoice regarding the storage of his furniture in Switzerland; further, the claimant submitted a statement dated January 14, 1948, in which the bank informed the account owner of the securities in the account on that date, a time when the account owner already was residing in New York; since Mr. Weil was in contact with the bank after the war and again in 1948, the CRT determined that he had received the proceeds of this account); *In re Accounts of Löw-Beer* (the accounts at issue were actively managed after the War by the account owners and/or their heirs) .

However, in many instances, the CRT determined that the claimant's relative and the account owner named in the bank file were two different people. Many victims shared the same name, but that did not mean that they were the same person. For example, the claimant's relative was a woman, but the account owner reflected in the bank records was a man.

Where the CRT detected a discrepancy, it attempted to conduct additional research to determine if the discrepancy was sufficient to disqualify the match. Where the CRT was unable to confirm that the claimant's relative was the same person named in the bank files (the account owner), the CRT issued an "Identity Denial" decision. In total, 6,046 identity denials were issued. The most common bases for identity denials were as follows:

- **Different Countries**: The account owner resided in a country different from that named by the claimant as the Claimed Account Owner's country of residence.
  - For example, the claimant specified "Germany" whereas the bank records showed that the account owner resided in "France," and the Claimed Account Owner did not have a demonstrated connection to Germany for purposes of opening a Swiss bank account using an address in Germany.
  - The claimant identified one of the account owner's countries of residence, but failed to identify the account owner's other countries of residence.
- **Different Cities**: The account owner resided in a city different from the Claimed Account Owner's city of residence, as identified by the claimant, and the Claimed Account Owner did not have a plausible connection to the account owner's city of residence for purposed of opening a Swiss bank account:
  - The claimant specified (*e.g.*) "Berlin" whereas the bank records showed that the account owner resided in (*e.g.*) "Hamburg."
  - The claimant specified (*e.g.*) "Berlin" whereas the bank records showed that the account owner resided in a different city:

  ...and these cities were distant from one another (over 500 km apart)

  ...and these cities were not distant from one another (*e.g.*, 150 km apart), however:

    - the city named by the claimant and the city appearing in the bank records both were small; thus, it was unlikely that the account owner would have named one such small city in the bank records although he lived in a different but similarly small city.
    - the city named by the claimant and the city appearing in the bank records both were large urban centers; thus, it was unlikely that the account owner would have named one such large city in the bank records although he lived in a different but similarly large city.

  - the city named by the claimant was large whereas the city appearing in the bank records was small; thus, it was unlikely that the account owner would have provided the name of the small city, and not the big city, for the bank records, given the desire to disguise identities.

- **Marital Status**: The claimant's relative had a different marital status than that identified in the bank records, based upon dates identified by the claimant and/or appearing in the bank file.
  - *e.g.*, the claimant stated that his mother (the account owner) was married in 1930, but the account owner was only a child at that time and could not have been married.
  - *e.g.*, the claimant stated that his mother was born in 1925, but the account owner is identified as "Frau [Mrs.] _____" and the account was opened in 1930 (*i.e.*, at a time when the Claimed Account Owner, who would have been age 5, could not have been married nor addressed with a title of respect).
  - The claimant's relative was married to someone other than the person shown in the bank records as the owner's spouse.
  - The bank records showed that the account owner had a maiden name different from that provided by the claimant.
- **Inconsistent Name**: The first name provided by the claimant was different from the first name stated in the bank files. (Thus, for example, the name published in 2001 or 2005 may have been only the middle name, or only the first initial, but not the same name or initial as that provided by the claimant).
- **Inconsistent Dates**: The claimant stated that his relative was born, died, or was married in a year logically inconsistent with the facts shown in the bank files concerning the account owner.
  - *e.g.*, the claimant's relative died prior to the date the account was opened.
  - *e.g.*, the claimant's relative was born after the date the account was opened or closed.
- **Inconsistent Professions**: The claimant failed to identify the account owner's profession. This rationale was rarely if ever the sole basis for denial but rather often provided further evidence that the account owner and the claimant's relative were not the same person, in light of other inconsistencies.
  - The claimant stated that the relative's profession was one that was inconsistent with the title that appeared in the bank records.
    - For example, the bank files showed that the owner was a medical doctor, whereas the claimant stated that his relative owned a factory, without any indication that his relative may have had an entirely different occupation or different training.
- **Failure to identify other persons named in the bank files**: The claimant failed to identify the power of attorney holder (POA) although the POA appeared to be a close

relative of the account owner. This rationale was rarely if ever the sole basis for a denial, but rather was cited as another example of inconsistencies between the person identified by the claimant and the actual account owner.

- The claimant failed to identify the Joint Account Owner, although the joint owner appeared to be a close relative of the account owner.
- The claimant identified only the POA and not the actual account owner (*e.g.*, the claimant showed no relation to the account owner, either originally or on follow-up by the CRT). Under Swiss law, a power of attorney holder is not considered to be the owner of the account and the claimant has no legal rights to the account.

- **Other Plausible Claimant**: The CRT had awarded the account to a claimant who plausibly identified the account owner as his relative. This rationale was never the sole basis for a denial but was used to further support the conclusion that there were significant inconsistencies between the person identified by the claimant, and the person identified in the bank records.

Some claimants questioned identity denials, particularly those denials resting upon geographic disparities between the bank records and the information provided by the claimants. Those individuals stated that the Holocaust was a chaotic era; desperate victims of the Nazis moved around often and did not necessarily keep or want records from that time period, including of their residence; and the banks may not have recorded the residence accurately.

One such claimant wrote to the Court in 2010. In response, Judge Korman laid out the principles underlying the identity denials. The CRT applied generous presumptions favoring claimants to compensate for the destruction of records:

> [Y]ou expressed concern that the CRT issues non-identity denial decisions based solely on a "non-match of residence or town of birth" between the [C]laimed [A]ccount [O]wner and the account owner. Unfortunately, due to the massive destruction of bank documentation as described above, the account owner's residence often is the only identifying factor available in the bank records, aside from his or her name. Because it would be inappropriate to penalize a claimant who lacks documentation to definitively prove that his or her relative is the same person indicated in the bank files, the CRT considers a "match" to be plausible and an award to be appropriate where the claimant has identified that his/her relative has the same (or similar) name, and same (or similar) residence — even broadly, such as the same country — as the person described in the bank files, in the absence of other information disconfirming the match or other more plausible claims to the same account. You will find examples of such plausible matches in

> many of the award decisions (published on the internet at www.swissbankclaims.com and www.crt-ii.org).[401]

The CRT was familiar with the chaotic circumstances of the Holocaust, in which Nazi victims may well have attempted to hide their true identities:

> Your statement that "account owners had an excellent reason to alter at least some of the identifying information on their accounts and to use an alternate address, and in particular a Swiss address, if they could" is well taken. In fact, I have made the same point:
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> > Chairman Volcker has stated that "there will be some limited but significant number of Holocaust related accounts to be found among the millions of savings and Swiss address accounts that we arbitrarily excluded from our research." Letter of Chairman Volcker to Swiss Federal Banking Commission Chairman K. Hauri (Apr. 12, 2000), at 2. This is in part because many victims of Nazi terror may have opened Swiss bank accounts using a secondary residence address in Switzerland, or a false Swiss address designed to confuse the Nazis, or the Swiss address of a friend, business associate or lawyer…. This, [Chairman Volcker] explained, was the reason for the need [for Swiss banking authorities] to create a central database of 4.1 million accounts, including the Swiss address and small bank accounts.
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> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 155 (E.D.N.Y. 2000); *see also In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 321-322 (E.D.N.Y. 2004). I approved the Settlement Agreement as fair despite our concerns about the limited access to be accorded to Swiss bank records, determining that the $1.25 billion paid by the banks was preferable to protracted litigation in view of the uncertain legal basis for some of the claims, the lack of documentation, and the age of the survivors and other claimants.[402]

However, "even taking into consideration the banks' destruction of Holocaust-era documents and the incomplete information available to the claims process, not all claims can be compensated. There is a limited Settlement Fund; not one but five settlement classes; and hundreds of thousands of claimants." If an award based on a Deposited Assets Class claim was issued despite significant inconsistencies between the data in the bank records and the data provided by the claimant, the "cost of an erroneous CRT bank account award would be borne not

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[401] *See* Letter from Hon. Edward R. Korman to [REDACTED TO PRESERVE CLAIMANT CONFIDENTIALITY] 4 (Mar. 5, 2010).

[402] *Id.* at 4-5.

by the Swiss banks, but by other Holocaust victims and their families with legitimate claims which require compensation."[403] Accordingly:

> The CRT thus has been obliged to reject many claims as inadequately proven, even under a generous definition of plausibility. Where a claimant has provided information that clearly contradicts the data in the Swiss bank files — such as specifying a different country or city than that shown in the bank records — and the claimant is unable to explain the discrepancy either through communications with CRT staff or on appeal, the claim must be denied so that other class members with more plausible claims can be compensated. This is especially so in the case of "identity denials," because many Holocaust victims had the same or similar name. Thus, for example, without more information, there is simply no plausible basis to conclude that the "Isaac Cohen" from Austria identified as a relative by a claimant is the same person as the "Isaac Cohen" from Hungary shown in the bank files.[404]

The decision to err on the side of over-inclusiveness, by including Initial Questionnaires as claim forms, had an impact upon denials. Although the IQs comprised nearly three-fourths of the claim forms, they constituted only a relatively small percentage of the "substantive" denials described above. Specifically, Initial Questionnaires comprised approximately 11% of disposition denials; 17% of entitlement denials; and 18% of identity denials. When the CRT recommended a denial of a claim set forth on an IQ, in most instances it was not because the account owner had received the proceeds, or because the claimant was not the proper heir. Rather, typically, IQs never matched to the AHD at all, and so there was nothing "substantive" to analyze or deny. Nevertheless, in an abundance of caution to avoid precluding possibly valid claims, the CRT analyzed the hundreds of thousands of matches the IQs generated, and issued tens of thousands of "No Match Letters," a process that added to the complexity of the program.

VIII. APPEALS

From the CRT's inception through April 2004, Special Master Bradfield (with Special Master Paul Volcker) oversaw the CRT. Special Master Bradfield subsequently became head of the CRT appeals process, working closely with former CRT staff attorney Jaimie Taff, who

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403 *Id*. at 5.

404 *Id*.

returned to the United States from Zurich after Special Master Bradfield engaged her to work with him on CRT appeals and other matters.[405] Commensurate with that transition, Dr. Helen Junz was appointed Special Master of the CRT.[406]

Claimants were provided 90 days to submit an appeal. All appeals were treated by Special Master Bradfield's office. As of 2006, "requests for reconsideration" based on the submission of relevant new evidence (as compared to a "plausible suggestion of error" as required for appeals) were addressed by Special Master Junz or, at the Court's direction in some instances, by the CRT.[407] All appeals were to be filed with the CRT, which in turn forwarded the "appeal" or the "request for reconsideration" to CRT Special Masters Bradfield or Junz, respectively, for processing and evaluation.[408]

A total of 3,558 appeals and requests for reconsideration were resolved. The CRT resolved 1,399 appeals. Special Master Junz resolved 253 appeals, and Judge Korman directly determined at least 5 appeals. A total of 31 decisions were reversed on appeal, resulting in authorization of $19,992,845.78 in additional awards.

As to Special Master Bradfield, between April 2004 and July 2012, the Office of Special Master Bradfield ("Special Master Bradfield's office" or the "SMO") resolved more than 1,850 appeals. Of these, 1,767 were denied (96%), 33 resulted in an award on appeal, 32 were remanded to the CRT and 14 were settled with the assistance of the SMO. In four cases, the appellants withdrew their appeal. In total, the SMO recommended awards on appeal totaling more than SF 10,000,000. In addition, the SMO facilitated settlements resulting in the recoupment of more than $3,500,000, which was either redistributed among claimants or returned to the Settlement Fund.

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405 In addition to providing crucial support to Special Master Bradfield, Ms. Taff also greatly assisted in the preparation of this chapter by providing extensive information about the appeals process, as well as the mechanisms used by the CRT to assess claims.

406 At the Court's request, Special Master Judah Gribetz and Deputy Special Master Shari C. Reig also closely monitored the CRT claims process and participated in the analysis of all substantive CRT decisions prior to their submission to the Court.

407 *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 14, 2006).

408 Special Master Bradfield also received important assistance from staff member Kristina Emminger.

A considerable number of claims involved complex and arcane issues, requiring analysis of many thousands of pages of materials. Some of this information was obtained from the bank files, but most was supplied by the claimants and/or located by the CRT through independent investigation. Many of the claimants whose claims were denied filed appeals. In some instances, it became clear in the course of analyzing the relevant materials that claimants occasionally had submitted only partial records, sometimes inadvertently, but other times, intentionally. The Court in several instances issued discovery orders requiring the claimants to provide all of the relevant documentation in their possession, and to make representations to the Court when documents could not be located. Some of these cases resulted in hearings, with involvement not only by the CRT and the Special Masters, but also by Lead Settlement Counsel Professor Neuborne.

In some instances, it became clear that although the claims raised on appeal were not compelling, they also were not frivolous, given the banks' destruction of records and the lack of a complete evidentiary record. In these few cases, the Court authorized the Lead Settlement Counsel to negotiate a settlement, with the settlement amount representing a fraction of the amount claimed. These appeals settlements enabled the CRT and the Court to turn to other claims, so as not to delay distribution of the remainder of the fund and the completion of the process.[409]

* * *

The work of Special Master Bradfield's office ("SMO") is representative of the manner in which CRT appeals were reviewed. That process is discussed in some detail below.

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[409] *See, e.g., In re Accounts of Bankhaus M. Thorsch & Söhne, Alfons and Marie Thorsch, and Alfons Thorsch* (settlement of SF 4,032,790.00 ($3,757,657.19)); *In re Accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, Wistag AG and Wistag Partnership Wittgenstein* (settlement of SF 7,337,341.84 ($6,063,918.88)); and *In re the Assets of Siegfried Budge* (settlement of SF 5,566,000.00 ($4,600,000.00)). These decisions and hundreds more are described in detail in the accompanying chapter, "Summaries of Selected Deposited Assets Class Decisions." The Budge settlement also is available at *In re Holocaust Victim Assets Litig.*, Nos. 12-5798, 96-4849, 96-5161, 97-461, 2013 WL 638613 (E.D.N.Y. Feb. 14, 2013).

A. Types of Appeals

Upon receipt of an appeal, Special Master Bradfield's office assigned the case to one of six specific categories: 1) Award Amount; 2) Identification and Disposition Denials; 3) Division of Award Proceeds; 4) Inadmissibility; 5) "No Match" Decisions; and 6) Third Party Challenges.

1. Award Amount

The SMO resolved 60 appeals categorized as "Amount Appeals." This type of appeal generally involved a challenge to the application of "presumptive values;" an assertion of error with regard to the analysis of the relevant bank records and/or presumptions applied in the award; or the submission of relevant new information establishing that the value of the account was greater than the amount awarded.

With respect to appeals based upon presumptive values, appellants sometimes asserted that, despite the lack of bank records showing the actual value of the account, it was inappropriate to apply presumptive values. They claimed that their relative had been extremely wealthy, and that such wealth must have translated to a Swiss bank account greater in value than the amount awarded. In some cases, the appellant provided documentation establishing that the account owner was indeed wealthy. In other cases, the Appellant relied upon affidavits or other descriptions relating to the account owner's wealth, which — given the vast confiscation and/or total destruction by the Nazis of their victims' assets and personal belongings — may have been all that remained as evidence in support of the appeal. However, in the absence of documentation establishing the actual value of the Swiss bank account at issue, the SMO upheld the CRT's determination.

Thus, for example, in *In re Accounts of Weiss & Hanak*, the appellant had received an award (SF 53,500.00 ($42,460)) representing the average value of two demand deposit accounts.[410] On appeal, the appellant asserted that the presumptive values may have been appropriate for accounts held by individuals, but did not accurately reflect the average values of accounts held by businesses. The appellant also contended that the ICEP audit (which by its

[410] The award subsequently was increased to SF 57,425.00 ($45,704.12) following the Court's June 2010 presumptive value order.

mandate was limited to Swiss accounts) should have extended its reach to other nations. The SMO concluded that Appellant had not provided any relevant new information demonstrating that the actual value of the accounts at issue was greater than the amount awarded, and denied the appeal.

In other cases, appellants had concerns about the number of accounts awarded, as compared with the number of accounts associated with a particular owner on the 2001 List. The CRT's effort to review the bank records underlying the accounts reported by the ICEP auditors in some instances revealed that the auditors had not considered all of the information that later became available to the CRT to review in more depth. The CRT's review of the underlying bank files usually resulted in outcomes favorable to the claimants. For example, the CRT often located information about new accounts, or about additional assets, other than those the auditors had reported, resulting in additional awards. However, in other instances, an auditor may have inadvertently characterized a power of attorney holder as an actual account owner, or had recorded (and caused the publication of) a higher number of accounts supposedly held by the account owner than were actually indicated in the Swiss bank records. In such cases, the CRT would make adjustments. Some claimants appealed these decisions, asserting that the CRT was bound to follow the 2001 or 2005 published lists. In the absence of new information on appeal establishing that the CRT's analysis was erroneous, the SMO upheld the CRT's conclusions, which were based upon all of the documentary data available at the time the claim was analyzed, rather than when the account was published.

For example, in *In re Accounts of Margarete Golz-Spitzer*, the appellant appealed the CRT's conclusion that her relative held two, rather than four, accounts at the bank, because four accounts had been published. Of the two accounts that existed, one was awarded to the appellant (SF 10,375.00 ($8,366.94)). The other had been closed in 1927, prior to the Holocaust era and thus outside the scope of the CRT's review.[411] The appellant asserted that the CRT had paid too few accounts, and that it also had not adequately analyzed the bank records pertaining to the account closed in 1927. The SMO concluded on appeal that although the 2001 List identified four accounts held by the account owner, the relevant bank records contained information

[411] The award subsequently was increased to SF 10,750.00 ($8,676.86).

regarding only two accounts, which were addressed in the award. The SMO also confirmed that the unawarded account had been closed prior to the relevant period, in 1927, and upheld the CRT's decision.

In some instances, the new information came from the claimants themselves. In rare cases, Nazi victims were able to retain documentation establishing the existence of their accounts, as well as the value of their holdings. These documents generally were provided to the CRT as part of the claim. However, in a few cases, the information was provided only on appeal, because the appellant mistakenly believed that the ICEP audit already had identified such information, precluding the need to submit it. In other cases, the appellant conducted additional research and was able to locate new information after his or her claim form had been submitted. In either instance, the SMO considered any new data.

For example, in *In re Accounts of Fanny Margulies and Serafine Margulies*, the appellant and her sister received an award representing the average value of one account of unknown type, and one custody account (SF 211,875.00 ($165,527.34)).[412] The appellant's mother had held an account of unknown type at the bank, whereas the appellant's maternal aunt had held a custody account. The appellant asserted on appeal that the account owners would have held the same type of account. The SMO agreed, noting that the account owners' father had opened both accounts on behalf of his daughters; the accounts were opened on the same day; and the account owners' father had acted as power of attorney over both accounts. Thus, the bank records pertaining to the account of unknown type must have been incomplete, for it was more likely that the father would have treated his daughters similarly. The SMO recommended and the Court authorized an additional award of SF 113,125.00 on appeal, representing the difference between a custody account and an account of unknown type.

2. Identity Denials

An identity denial was based upon the CRT's conclusion, following comprehensive review of the bank records and other data, that an account owner was not the claimant's relative,

[412] The award subsequently was increased to SF 520,750.00 ($420,795.92) following the Court's June 2010 presumptive values order, which authorized upward adjustments for many previously-issued awards.

but a different person with the same or similar name as the claimant's relative. Such conclusions rested on several factors, such as that the account owner and the claimant's relative lived in different cities or countries of residence; that one was married while the other was not; or that the account had been opened after the claimant's relative had passed away.

If claimants believed there to be a plausible suggestion of error with regard to the CRT's conclusion, they were invited to produce that information on appeal. Thus, in the case of *In re Account of Moritz Mayer*, the CRT concluded that the claimant had failed to show a connection between his father and the city of residence recorded for the account owner, which was unpublished. On appeal, however, the appellant provided documentation demonstrating that his paternal uncle had resided in the account owner's city of residence. The appellant established that his uncle was a prominent businessman in that city. He would have had an opportunity to open a Swiss bank account on behalf of his brother, who, at the time, lived under Nazi occupation. The appellant received an award on appeal in the amount of SFr 204,750.00 ($191,355.14).[413]

Other appellants appealed disposition denials, seeking review of the CRT's conclusion that the account owner, or an authorized party acting on behalf of the account owner, had received the proceeds of the account. In some instances, this determination was based on the fact that the account had been closed prior to the date of Nazi occupation of, or alliance with, the account owner's country of residence.[414]

Thus, for example, in *In re Accounts of Flore Heymann, Alexandre Heymann, Jeanne Weiler, Leon Weiler, Paul Metzger, and Lucy Metzger*, the appellant appealed the conclusion that the owners had received the proceeds of their account prior to the Nazi occupation of France in May 1940. The appellant contended that although the Nazis did not occupy France until 1940, the population of Strasbourg, the account owners' city of residence, was evacuated in September 1939. Because the account owners would have been evacuated from Strasbourg, they would have been prevented from accessing their Swiss bank account. The SMO concluded that while

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413 The award subsequently was increased to SF 326,662.50 ($292,109.28).

414 *See supra*, discussing Court's Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 29, 2006).

Strasbourg was evacuated in September 1939, this was still prior to the Nazi occupation of France, and was not carried out at the direction of the Nazi regime. There was no evidence that the account owners had not been able to retrieve their Swiss account. Accordingly, the SMO denied the appeal.

In certain cases, neither the ICEP audit nor the CRT had identified an account, but the claimant had provided information that he or she believed supported the existence of a Swiss bank account. Although the CRT did award accounts based upon evidence provided by the claimant, the evidence considered to be plausible in such instances fell into very limited categories. These categories included Austrian and German State Archives records; bank documents; documents submitted to an official governmental agency; and official letterhead indicating a connection to a Swiss bank.

Certain appeals were based upon the CRT's conclusion that the claimant's evidence did not plausibly show that his or relative owned a Swiss bank account. For example, in *In re Accounts of Mozes Fleischmann, Mirjam Fleischmann, Olga Fleischmann and Juliska Veber*, the appellant claimed account proceeds totaling US $2,840,000 based on accounts that he said were held by his parents and his paternal and maternal aunts, Olga Fleischmann and Juliska Veber, respectively. The CRT had deemed the evidence insufficient to support this assertion.

The appellant state that his parents, Mozes and Mirjam Fleischmann, resided in Budapest, Hungary from 1934 to 1944, where his father was one of the most important businessmen in the Hungarian wine industry. The appellant stated that his father owned several vineyards, wine cellars, and a distribution company. The appellant explained that in 1944, his family was moved into the International Ghetto, a group of 30 buildings rented in Budapest by the Swedish diplomat Raoul Wallenberg to protect Hungarian Jews from being persecuted by the Nazis. According to the appellant, the entire family obtained special passes, known as *Schutzpasses*, which were to have afforded them protection.[415] However, his parents were captured by a Hungarian fascist squad and murdered in Budapest in November 1944. The appellant stated that both of his aunts also perished in the Holocaust.

[415] For more information about the *Schutzpass*, *see* chapter of this Final Report entitled "The Refugee Class Claims Process." Several Refugee Class awards, described in that chapter, relate to the *Schutzpass*.

In support of his original claim, the appellant submitted a photocopy of a small, folded handwritten note (the "Note") that he stated his father gave him in 1944. The Note indicated the name of a Swiss bank, as well as information pertaining to three accounts of unknown type held in Zurich: one opened in 1938 by Mozes and Mirjam Fleischmann containing US $965,000.00; one opened in 1940 by Mozes Fleischmann and his sister, Olga Fleischmann, which contained US $985,000.00; and one opened in 1940 by Mirjam Fleischmann and her sister, Juliska Veber, which contained US $890,000.00. The final line of the Note stated: "One day all this will be yours! Daddy." According to the appellant, the dates on the note referred to the years the accounts were opened. The appellant stated that he attempted, but failed, to retrieve the proceeds of the accounts in Switzerland in 1955 and 1977. He stated that the bank refused to give him any information regarding the accounts because he did not have the account numbers.

The CRT denied the claim, explaining that neither the ICEP auditors nor the CRT — despite an extensive search, and after "voluntary assistance" provided by the bank named in the Note — had been able to identify any of the accounts listed in the Note.

On appeal, the appellant asserted that records pertaining to the accounts could not be found because the Swiss bank at issue had destroyed millions of bank records after the War. The appellant submitted several documents, including results of testing by persons hired to authenticate the Note; statements by the appellant's representative chronicling the involvement of the appellant's father in the Hungarian wine industry and his father's connection to the Hungarian Royal Court; information pertaining to the *Schutzpass* issued to Mozes, Miriam and Mihaly (Michael) Fleischmann; and affidavits executed between 2003 and 2008 from persons claiming to be familiar with Mozes Fleischmann's involvement in the Hungarian wine industry in the 1940s.

Special Master Bradfield engaged several leading experts to date-test the original Note. None of the experts could pinpoint a year of manufacture for the paper. All of the experts acknowledged that it was possible, and even likely, that the paper was manufactured after the Second World War. One expert concluded that it was "very likely" that the Note dated from the post-1950s period. The SMO was unable to test the media used to write the Note, pencil, which the experts advised could not be date-tested. Because the text of the Note was printed in block

letters, and the only handwriting sample attributed to the appellant's father was a signature contained in business records, it was not possible to accurately compare the handwriting on the Note with the signature attributed to the appellant's father.

Further, the appellant did not present any evidence demonstrating that his family had any involvement in the Hungarian wine industry. Such information could have included Hungarian property records, information from wine-related trade journals or business media, or excerpts from newspapers identifying the appellant's father (or any member of his family) as engaged in the Hungarian wine business.

The SMO's own efforts to identify the appellant's father's connection to the Hungarian wine industry included a request to the chief Hungarian archivist at the United States Holocaust Memorial Museum ("USHMM"). The archivist did not identify any information demonstrating that the appellant's father was involved in the Hungarian wine industry. He did identify another Fleischmann family that figured prominently in the Hungarian wine industry. The appellant, however, was not related to that family. Rather, the research undertaken by the USHMM indicated that the appellant's father was a certified mechanical engineer, a "dealer of technical gadgets," and a manufacturer of passementerie, an ornament worn with traditional Hungarian clothing.

The SMO explained that statements without supporting documentation pertaining to a Claimed Account Owner's profession and wealth, as well as unsupported claims related to efforts to retrieve funds from Swiss banks, asserted only after the claims process had commenced (and only upon appeal) did not carry sufficient evidentiary weight. Accordingly, Special Master Bradfield denied the appeal.

The appellant then sought review by the Court, which confirmed that the appeal had been appropriately denied. The Court found that Special Master Bradfield had undertaken "extensive and comprehensive efforts … to authenticate the note" the appellant had provided, but the results were inconclusive.[416] However, even if the Special Master had determined the note to be authentic, and the claimant's father to have been involved with the Hungarian wine industry,

[416] *In re Holocaust Victim Assets Litig.*, 2011 WL 1104093 (E.D.N.Y. Mar. 23, 2011), at *1.

"this note in itself is insufficient to justify an award." The note, "even if authentic, remains an assertion by the [a]ppellant's father regarding the existence of Swiss bank accounts, for which no collaborating evidence has been found."[417] However, because the claim was "determined to contain sufficient information to warrant a Plausible Undocumented Award," the appellant was "entitled to receive a total payment of U.S. $7,250 for this PUA."[418]

3. Division

The SMO resolved 36 appeals involving a challenge to division of an award. Division appeals largely consisted of objections to the share of an award amount, as well as challenges to the determination that unrelated claimants plausibly had identified the account owner and thus were equally entitled to a *pro rata* share of the award through an "MPM" award.

As to division appeals, awards were distributed among various branches of an account owner's family tree, or among relatives within the same branch (*i.e.*, siblings). Where the division was appealed, the SMO reviewed all relevant documentation establishing the relationships of the various awardees to the relevant account owner. The SMO also reviewed documentation related to a chain of wills, where relevant, to ensure that the award distribution was consistent with that information.

Thus, in *In re Accounts of Stefan and Irene Adler*, the award totaled SF 181,680.00 ($123,066.22) and represented one custody account and one demand deposit account, both of which were jointly held by the account owners.[419] The claimant was the second wife and widow of Stefan Adler. Irene Adler was his first wife. The CRT determined that the claimant was entitled to one-half of the total award. The remaining half was awarded to the niece and nephew of the other account owner, Irene Adler.

On appeal, the appellant asserted that she was entitled to three-quarters of the award rather than one-half. She claimed that the award erroneously had concluded that the accounts were jointly held, as she believed that her husband had used the accounts for his business. She

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417 *Id.*, at *2.

418 *Id.*

419 The award subsequently was increased to SF 281,517.50 ($205,576.57).

also asserted that her husband's first wife, Irene Adler, had pre-deceased him, and "Roman Law" provided that the first wife's share should have been divided in equal shares between her husband (who later married the appellant), and Irene Adler's other heirs.

Following a review of the bank records, the SMO agreed with the CRT that the accounts were jointly held by the two spouses, rather than held as business accounts by Stefan Adler. The SMO also observed that the CRT Rules, not Roman Law, governed the proceedings. The CRT Rules provided that two joint account owners were to be treated as if they each owned one-half of the account, even if one pre-deceased the other. Accordingly, the fact that Stefan Adler had survived Irene Adler did not affect the joint ownership of the accounts. In addition, the descendants of Irene Adler's parents — the niece and nephew — were entitled to her share of the accounts.

There were also appeals based upon "Multiple Plausible Match" awards. The appellants generally contended that they had established a superior claim of relationship to an account owner than had other awardees. Thus, in *In re Account of David Grünberg*, the CRT awarded an account as an "MPM" to the appellant's brother, "Claimant G.," and to another unrelated claimant, "Claimant T." (the total award was for SF 49,375.00 ($40,471.31)). The CRT concluded that Claimant G. plausibly had identified himself as the account owner, while Claimant T. also had plausibly identified the account owner as her grandfather. The appellant, however, was not entitled to share in the award, because his brother, Claimant G., had a superior claim — he, himself, had owned the account. On appeal, the appellant asserted that as both he and his brother had identified the account owner, both should receive a share of the account. He also contended that despite the fact that only Claimant G.'s name appeared on the account, their father likely opened it on behalf of both sons.

The SMO concluded that there was no evidence that the account had been opened for both sons. There was no indication in the bank records that the appellant held any ownership interest or was affiliated in any way with the account at issue. Since the appellant failed to establish that the CRT had erred, his appeal was denied.

4. Inadmissibility

The SMO resolved 52 appeals involving an initial decision that a claim was not admissible. If an appellant successfully demonstrated that his or her relative was targeted as a member of one of the five victim classes, the SMO remanded the claim to the CRT for further analysis.

Thus, for example, in the case of *Claimed Account Owner Jean-Marie Gattelet*, the appellant contended that the Claimed Account Owner was Jewish, although the CRT had found no evidence to support such claim. However, on appeal, the appellant provided new documentation: a page from an undated personal military ID booklet, which indicated that the Claimed Account Owner was classified by French military doctors as Jewish. Accordingly, the SMO reversed the inadmissibility decision and remanded Appellant's claim to the CRT for review.

On the other hand, in the case of *Claimed Account Owner Wilhelm Krüger*, the appellant contended on appeal that she had been a victim of Nazi persecution because her parents conceived her to make a "superior German race." She stated that her victim status derived from her having been conceived in a "breeding program" in Nazi Germany. Because she was not a member of one of the five designated "victim or target" groups, her appeal was denied.

5. No Match Findings

The SMO resolved 1,342 appeals based upon the CRT's finding that no account could be located for any of the claimant's relatives. In the absence of bank records such as a bank statement, a deposit slip, or letter to the appellant from a relative mentioning the account, or some similar document that would provide a basis for further investigation, the appeal was denied.

In the case of *Claimed Account Owners Otto Ignac Eisner & Eisner Tuchgrosshandel*, the appellant claimed that her father, Otto Ignac Eisner, had a Swiss bank account that was closed in 1947 by another man named Otto Eisner. The appellant stated that since her father had died in 1942, he could not have closed his account in 1947. The appellant enclosed a letter from

a Swiss bank dated January 9, 2001, which she believed established that her father had owned a Swiss bank account that was closed improperly in 1947.

The SMO informed the appellant that the 2001 letter indicated that an account held by a person named Otto Eisner was *opened* rather than *closed* in 1947. The Swiss bank had provided the appellant with a signature sample for Otto Eisner, and indicated that Otto Eisner had submitted a passport issued in Prague in 1947. The Swiss bank had informed the appellant that it had concluded that the account owner named Otto Eisner was not the same person as appellant's father, who was also named Otto Eisner and died in 1943.

The SMO did not comment on the bank's conclusion that the appellant's father and the account owner were not the same person, since the account opened in 1947 was outside the scope of the Relevant Period (which covered accounts opened or open during 1933-1945). However, as neither the ICEP auditors nor the CRT had located an account held by any of the appellant's relatives, the appeal was denied.[420]

6. Third Party Challenges (Late Claims)

The SMO resolved 109 late claims to accounts that had been previously awarded. The Court extended the CRT claims filing deadline several times, including by order of December 30, 2004, which provided that late claims to awarded accounts were eligible for consideration in the appeals process only if the late claim complied with three conditions: (1) the late claimant had to be either the account owner, the account owner's spouse or the account owner's child; (2) the late claimant must have provided an unusually compelling reason for failing to comply with the

[420] Similarly, in the case of *Claimed Account Owner Alice Homburger*, the appellant contended that her mother, Alice Homburger, had owned a Swiss account. She submitted as proof a September 16, 1987 letter from her mother to Credit Suisse. In that letter, Alice Homburger stated that a sum of money had been deposited in her account in September 1935, that she could not remember the account number, and that she had been unable to access the account due to various foreign exchange restrictions in the former Palestine and Israel during and after the Second World War. The SMO informed the appellant that records identified by Credit Suisse indicated that Alice Homburger had opened an account on February 16, 1960 that was later closed on June 2, 1966. Those records also showed that the appellant's father had opened an account on September 19, 1935 that was subsequently closed on March 19, 1936, and the CRT had awarded that account. However, the bank records showed that the appellant's mother had opened and closed her account after the War, and therefore the CRT had no jurisdiction over the account.

filing deadlines; and (3) the late claimant must have demonstrated by clear and convincing evidence that the claimed account had been awarded erroneously.

For those cases that were appealed, the SMO evaluated the relationship between the late claimant and account owner. A late claimant asserting a particular relationship to an account owner was required to document that he or she was the account owner, or that person's spouse or child. The SMO also considered whether the late claimant had provided an "unusually compelling reason" for failing to file a timely claim. Appellants offered various reasons for failing to file, ranging from a lack of knowledge of the claims process (rejected by the SMO, given the massive worldwide notification of the Settlement) to illness (generally accepted, with supporting medical records and correspondence from a physician). Finally, the SMO considered whether the late claimant had established with clear and convincing evidence that the account had been awarded erroneously.

The SMO sometimes directly contacted those who had received the original award and sought to reach a settlement among the parties, often members of the same family. Such efforts resulted in the redistribution and/or recoupment of several million dollars. In some cases, awardees readily returned overpaid funds for redistribution among other heirs of the account owner. In other cases, however, the original recipient objected to the inclusion of another claimant for various reasons including that the late claimant had not met the filing deadline; that the funds already had been spent; and/or that there was no obligation to include other family members in the claim.

Where the SMO was unable to reach a settlement, and the late claimant had fulfilled the criteria of the December 30, 2004 order, the SMO recommended an award. Where the late claimant did not fulfill the criteria of the order, the SMO in limited cases determined that a narrow exception could be made if the original awardee(s) had provided false or misleading information. Where the late claimant did not fulfill the criteria of the order, and also was not eligible for an exception to the order, the late claim was denied.

Later in the claims process, the SMO took into consideration the fact that many individuals would be receiving additional payments based upon presumptive value adjustments. The SMO determined that in such cases, the presumptive value increase could be paid in whole

or in part to late claimants knowingly excluded from the process by the original recipients, even if the late claimants had not met the criteria of the Court's December 30, 2004 order.

Thus, for example, in the case of *In re Accounts of Arthur Pollak*, the original award had been paid in full to a grandchild of the account owner, for a total of SF 26,750.00 ($21,400.00). After the original award was issued, the claimant's siblings came forward as third parties, arguing that they were entitled to a share of the payment. Since the late claimants did not satisfy the terms of the December 30, 2004 order, the SMO determined that it was not appropriate to burden the Settlement Fund with a "double payment" by issuing an award to these individuals. However, the SMO also determined that the original recipient knowingly had excluded his siblings from his CRT claim. Had they been included (or had they submitted their own timely claims), the award would have been divided among the siblings. Each would have received $5,755.47.

Subsequently, the original claimant received a presumptive value adjustment of $1,621.90, so that his total award was $23,021.90. When the presumptive value award was issued, the SMO noted that the original recipient had been overpaid by $15,644.53. Therefore, the entire adjustment amount of $1,621.90 was to be distributed to the appellant and his other siblings. The SMO noted that these late claimants also were not precluded from initiating independent efforts, outside the CRT process, to obtain the full share of the award to which they were entitled.

B. Payment Issues on Appeal

Upon approving an award on appeal, the SMO initiated the payment process. While the majority of payments were made without issue, appellants in a few cases raised certain objections that prevented prompt payment. Some appellants requested a delay of payment until the resolution of their appeal, which was not a prerequisite for treatment of an appeal. Others objected to the submission of documentation required by the claims process prior to payment.

In one particularly complex case, the executors of two estates, E1 and E2, which were two of many payees of an award, expressed concerns that they were to be made responsible for any transfer of funds should other entitled heirs come forward. The executors of E1 and E2

indicated that the ultimate beneficiary of the estates was an Israeli children's hospital. Thus, in accordance with the relevant chain of wills, the executors of E1 and E2 would not be in a position to assume responsibility for the funds. The SMO worked extensively with representatives of the estates, the hospital, and the parent company of the hospital, which were located in several countries and whose interests were not always aligned, to resolve the matter.

IX. CHALLENGES TO THE DEPOSITED ASSETS CLASS PROCESS

The Deposited Assets Class claims process was complex for many reasons, including the Swiss banks' destruction of millions of bank records and the banking authorities' restriction of access to the files that did remain; the decision to err on the side of over-inclusiveness by incorporating tens of thousands of informal documents into the process as Deposited Assets claim forms (particularly the Initial Questionnaires), the majority of which did not support an award; the decision to investigate each and every relative named by a claimant to determine if that person owned a Swiss bank account, requiring the CRT to research more than 415,000 potential account owners and more than 1.5 million matches; the extension of filing deadlines and acceptance of late claims; the individualized treatment of particularly complex cases, including on appeal; and the conclusion that it was appropriate to review and update policies and guidelines in light of new facts that emerged from the claims process, often resulting in the upward adjustment and issuance of many additional payments (for example, by incorporating new presumptions concerning balances of accounts reported in the 1938 Census; accounts reported in the bank files as "low value;" and reconsidering and recalculating awards based upon presumptive values).

Despite efforts to continually reevaluate the claims process to ensure that participants were treated fairly, and adoption of presumptions generally favoring the claimants, there were some observers who thought the program could have been more generous. This concern was not surprising, given the many decades during which Holocaust victims and their heirs were turned away by Swiss banks. Their frustration, and their belief that even more could have been done for bank account owners, was understandable. Others implied the opposite: that the bank account

process should not have been stressed as central to the settlement. Both viewpoints are discussed below.

A. Concerns About Timing and Amounts Awarded

Some felt that the distribution process did not award enough payments to enough claimants. Others believed that the process could have been speeded up significantly. These claims were reasonable but also might not have taken into account the lengthy history leading up to the claims process, and the extensive measures that were adopted to mitigate the effects of the banks' destruction of millions of records.

As the Court has pointed out, the "CRT's rules 'appropriately established a very relaxed standard of proof.' These rules are intended to compensate for the Swiss banks' systematic destruction of Holocaust-era account records. They reflect information gained from the CRT's examination of the remaining bank files, European archives and claimant information. We have left no stone unturned in our effort to return Swiss bank accounts to their rightful owners."

For example, the decision was made to search for accounts owned not only by relatives the claimants specifically named as possible account owners, but for *all* relatives mentioned by claimants, on the chance that one of these individuals also might have owned a Swiss bank account. That decision meant that the claims process was longer and more complex, but it also helped to broaden the search for account owners and heirs.

> The CRT's work could certainly be completed more quickly if it were to limit its search to the person identified by the claimant as the account owner. However, we have concluded that, after a 60 year hiatus and a determined effort on the part of Swiss banking authorities to limit access to accounts, claimants are best served only after painstaking analysis not only of the specific account that the individual may have claimed, but of even accounts potentially owned. Experience has shown us that this additional research is of significant benefit to the claimants…. To take but one example, in late 2002, the CRT recommended and I approved an award of nearly $5 million, in which the claimant had sought only her father's account. The CRT did locate one account that had been owned by the claimant's father. Of far more significance, however, the CRT also discovered several additional accounts holding substantial assets belonging to the claimant's aunt, who had been killed in a concentration camp and who had no heirs other than the claimant and the relative she represented. The claimant had not claimed the

> aunt's accounts. Were it not for the CRT's protocols, which require that staff members review all potentially related account owners for whom information is available in the [AHD], the claimant would have never known about, much less received, her aunt's substantial assets — some of which clearly belonged to the claimant's father, based upon information in the bank files.[421]

The limitations imposed by the lack of a complete documentary record, and the restrictions the banks imposed on those records that did exist, are exemplified by the concerns raised by one claimant who was a vocal advocate in favor of Holocaust restitution in the media and before Congress. He expressed dissatisfaction with various Holocaust compensation programs, including that established for the Deposited Assets Class. He had never filed a formal claim form with the CRT, but he had filed an Initial Questionnaire (IQ). Since he was quite knowledgeable about Holocaust compensation programs, his failure to file a CRT claim form perhaps was intentional. Nevertheless, as true for thousands of others, the CRT erred on the side of caution by treating his IQ as a bank account claim.

Once his IQ had been thoroughly reviewed, he received a "No Match Letter." He was advised that despite an exhaustive search, including the matching of the names of 21 different family members against the 37,954 names in the AHD, the CRT was unable to locate documentation evidencing that any of his relatives had owned a Swiss bank account. After receiving this decision, he appealed, and supplemented the original record after communicating with archives in Europe. However, he was unable to provide any evidence of a Swiss account, and CRT Special Master Bradfield therefore upheld the CRT's decision on appeal.

The claimant then sought and received a ruling from the Court. He was again offered the opportunity to supplement the record. When he was unable to provide further documentation in support of his claim, the Court upheld Special Master Bradfield's denial of the appeal, pointing out that the materials that had been provided on appeal — "a document indicating that the Nazis apprehended [his] relatives while on route to Switzerland; photographs and letters demonstrating that [his] relatives traveled to Switzerland; … post-War estate tax records regarding [his] relatives' assets and pre-War wealth, … [and affidavits signed by] a sister of a housekeeper employed by [his] relatives during the Holocaust era" describing the family's wealth — "'do not

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[421] Letter from Hon. Edward R. Korman to N. Y. State Banking Superintendent 5 (Feb. 1, 2006) (citing *In re Accounts of Otto and Maria Fuchs*).

have the same plausibility value of statements that are more or less contemporaneous with the 1933-1945 period, or made before the commencement of the Claims Resolution Process.'"[422]

While the claim did not satisfy these standards, the Court made clear that that claimant, and others like him, did have a remedy:

> I understand the position advanced by [the claimant] and thousands of other Holocaust victims and their heirs, that it would be inappropriate to penalize claimants for the lack of bank records or other documentary evidence….
>
> In recognition of the obstacles confronting many claimants due to the destruction of bank files, the inability to locate other credible documentation (such as archival records), and the passage of time, I authorized the payment of "Plausible Undocumented Awards." Deposited Assets Class claims that have been assessed in accordance with designated criteria and determined to be plausible receive payments of $5,000 each [increased by $2,250 by order of June 16, 2010]. In fact, in 2007 [he] received just such an award …. [His] case in fact is prototypical of many of the Plausible Undocumented Awards for which I have authorized compensation: the claims often discuss great family wealth; describe increasing persecution by the Nazis; recollect, sometimes (as here) through an affidavit of a family member or acquaintance funds that were deposited into a Swiss bank account; and explain the heirs' inability to access those assets from the banks after the War. While descriptive evidence of this nature does not substitute for bank records or archival documentation, it does warrant the recognition that the claimant may have been prohibited from locating such documentation of an account due to circumstances well beyond his or her control.[423]

In the meantime, the claimant had submitted a statement to the U.S. Congress.[424] This was at a time when his appeal of the CRT decision was pending, and while he had been given the opportunity to supplement his original submission, which consisted at that point only of his Initial Questionnaire. He sent a copy of his congressional statement to the Court. In this statement, he contended that "distribution bodies" — presumably including the CRT — applied "rules blatantly unfair to legitimate claimants." He stated that the Swiss Banks Settlement claims process would be improved by adhering to certain "standards."

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422 *See* Order at 4-5, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Oct. 10, 2008).

423 *Id.* at 7.

424 *See* America's Role in Addressing Outstanding Holocaust Issues: Hearing Before the S. Comm. on Europe of the H. Comm. on Foreign Affairs, 110th Cong. (Oct. 3, 2007) (Statement of Holocaust Survivors, Descendants and Restitution Claimants).

In response, the Court observed that some of these recommended "'standards' simply paraphrase principles that I already have enunciated and adopted in overseeing the review of bank account claims," while others "are well-taken, but nevertheless untimely criticisms of decisions that class members and their representatives properly determined were necessary compromises to ensure that elderly Holocaust survivors and heirs would see some recompense in their lifetimes."[425]

> ... [A]s I noted in my [2000 and 2004] opinions, Paul Volcker, the former head of the Federal Reserve Board, who also led the investigation into the Swiss banks' treatment of Holocaust-era accounts, testified before Congress in 2000 to urge the Swiss banks to provide greater access to their accounts. In his statement to the Committee on Banking and Financial Services chaired by Congressman Leach, Mr. Volcker made it clear that the "SFBC [Swiss Federal Banking Commission] should promptly authorize consolidation of the existing but scattered auditor workpapers and databases (established during the [Volcker] investigation) relating to 4.1 million accounts open in the 1933-1945 period, and assembly … of them into a central archive that can be used in a claims resolution process." Although Mr. Volcker testified in February 2000, while the class action settlement still was under consideration and when interested parties still had the opportunity to influence the outcome, neither Congress, the media, nor potential class members joined Mr. Volcker's effort to improve access to bank documentation, and the Swiss banking authorities did not accede to Mr. Volcker's requests.
>
> Against this backdrop, we have made a strenuous effort throughout the claims process to ensure that claimants are not prejudiced by this lack of bank documentation. Thus, your first "standard" — that it is "disingenuous and unjust to subject Holocaust victims and their heirs to ordinary standards of proof, when Swiss banks failed to provide the rightful account owners with documentation in such a vast number of cases" — is a recitation of the adverse inference principle that I long ago adopted in favor of claimants confronted with minimal bank records.[426]

In addition, the adverse inference principle permitted the Court to authorize awards for plausible but undocumented claims (PUAs).

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[425] Letter from Hon. Edward R. Korman to Claimant [REDACTED] 4-5 (Apr. 7, 2008).

[426] *Id.* at 3 (quoting *Restitution of Holocaust Assets: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 106th Cong. 2d Sess. (Feb. 9, 2000) (statement of Paul A. Volcker, Chairman, Indep. Comm. of Eminent Persons)).

However, the claimant seemed to be suggesting that *each* of the more than 104,000 claims should have been "paid, and at some amount exceeding $5,000"[427] — for example, each of the more than 104,000 claims should have received $10,000. These payments alone "would total $1.05 billion of the $1.25 billion settlement." The claimant also had referred to "a variety of amounts seemingly available for compensation from the Swiss banks, ranging from '$25 billion' to '$114 billion' to '$4.5 trillion.'" These proposals, however, "do not exist in a vacuum;" "[w]e do not have $25 billion or more to repay bank depositors" since the case was settled for $1.25 billion, a settlement upheld on appeal, and intended to repay not only bank accounts but also claims based on looting, slave labor and refugee status. While the Court "share[d] [the claimant's] frustration with the amount of funds available for distribution," the "amount of the settlement reflected the judgment of some of the ablest class action lawyers in the United States, with which I agreed, that while, 'in a perfectly just world, plaintiffs should have received a far greater sum, in the real world, a recovery of $1.25 billion in return for broad releases was the best that dedicated and competent counsel could achieve under the circumstances of this case.'"[428]

In a retrospective, the financial journalist who had reported on the case for years, John Authers, noted that the claims process was slow, but that it produced important results. He used one of the CRT's more famous awards — to the heirs of Sigmund Freud — to illustrate his point.

> The business of matching each dormant account, opened more than 60 years earlier, would be an administrative nightmare. It would have to reach standards that would survive legal scrutiny in the US...
>
> The lawyers [at the CRT] were told by Korman to give the claimants the benefit of every possible doubt. The problem had been caused in part by the banks' destruction of documents, reasoned the judge, and that destruction must not get in the way of justice.
>
> Each [claimant] received a meticulous printed adjudication, laying out all the evidence. They make fascinating reading – none more so than the decision on the account of Sigmund Freud.[429]

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[427] Subsequently, the PUA amount was increased to $7,250.

[428] *Id.* at 4-5 (quoting *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 149.

[429] *See In re Accounts of Sigmund Freud*. *See also* William K. Rashbaum, *Metro Briefing/New York: Brooklyn: Estate of Freud's Grandson to Get Holocaust Funds*, N.Y. TIMES, Dec. 15, 2005 ("The estate of Sigmund

Freud would die in London, aged 82, only days after the outbreak of the war in September 1939. His four sisters, trapped in Vienna, were less lucky: Maria and Pauline were killed in Treblinka; Rosa died in Auschwitz; and Adolfine died in Theresienstadt. There was never a more public case of the hounding of a Jewish depositor with the Swiss banks. But the records kept by the banks were nowhere near as clear. Investigators [at the CRT] found one document bearing the name of Sigmund Freud: a customer card, showing that he had held one custody account and two demand-deposit accounts, one of which was denominated in Dutch guilders. The address on the card matched Freud's. But the card also showed that all the accounts had been closed – the guilder-denominated account on June 30 1938 and the other two on July 31 and September 19. There were no details of the amounts in the accounts. Nor was it clear to whom the accounts had been paid.

When Anton Walter Freud [Sigmund Freud's grandson] came forward in 2001, it was easy to prove his relationship to his grandfather, and that Freud had been a victim of the Nazis. Walter Freud could even show that he had joined his grandfather in the flight from Vienna. Both of these steps would be much more difficult for other claimants. But it was unclear how much money Walter Freud was due. The published historical details of what had happened to Freud's assets after he left Austria were quite weak. But, the lawyers [at the CRT] reasoned, they could prove that the Nazis continued to hound Freud for his money, even in exile. And the date given for the closure of the guilder-denominated account was crucial. It showed that it had been closed 18 days before the Nazi currency office demanded that he turn it over. Further, Freud's correspondence made clear that he still thought he had control over the account weeks after it had in fact been closed.

On this basis, [the CRT] ruled it "plausible" that the accounts' proceeds had not been paid over to Freud or his heirs. This was enough, given the tribunal's deliberately relaxed standards of proof. The amount paid out was a work of total conjecture. The average held in custody accounts in 1945 as SFr 13,000, while deposit accounts had an average of SFr 2,140. So Freud's accounts were assumed to have been worth SFr 17,280 in 1945. Taking into account changes in interest rates and inflation over the intervening 60 years, it would by 2005 have been worth SFr 216,000 …. The court wrote a [check] for this amount. It was much more than a token, and it represented the conclusion to an all-out and honest attempt to settle the issue with justice.

If this was the fate of one of the most famous figures of the 20th century, the problems for other claimants can be easily imagined. Even the matching of names to accounts was much harder than expected. Jews used different languages and different alphabets in different countries across Europe. For example, the

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Freud's grandson will receive about $168,000 in the latest awards in the $1.25 billion settlement of a lawsuit against Swiss banks brought on behalf of Holocaust survivors and their descendants").

> archives at the Yad Vashem Holocaust memorial in Jerusalem identify 1,398 variations on the name Isaac and 95 variations of the surname Berkowitz. The problem extends to place names: Yad Vashem's memorial has nine spellings of Bratislava, for example, including "Pressburg" in German. Specific software had to be written to aid the chance of finding matches.
>
> The [CRT] lawyers needed to look through birth certificates and marriage certificates dating back more than a century, and cross-refer to scanty evidence in bank archives for accounts that had ceased to exist decades earlier. This often caused painful delays that served to underscore the logic for hastily coming to a deal back in 1998. Walter Freud never saw his grandfather's stolen money repaid. He died, aged 82, a few months before the tribunal would finish work on his claim; his obituary was included as evidence in their adjudication of his claim.
>
> Many in Switzerland say the difficulties finding claimants for the material restitution undermine the apparent moral victory on those courthouse steps ten years ago. But such a charge does not withstand closer inspection. The slower processes designed to reveal the truth of what happened have finally ground to a conclusion….[430]

The human rights expert and Holocaust survivor Professor Thomas Buergenthal, who served as Vice Chairman of CRT-I, acknowledged that "'[p]eople get very impatient, but what would they want us to do? If we move faster, [we may] deny someone a valid claim, so we'd rather go slower."[431] The CRT-II process was guided by the same principle of providing all interested persons an opportunity to put forth their claims and have them carefully considered.

B. Concerns About Prioritizing Bank Account Claims

Some observers disagreed with the decision to place priority upon the Deposited Assets Class claims. Financial journalist John Authers explained the tension as follows:

> [H]ad the lawsuit ever come to court, the people with the strongest legal cases for recompense were those with claims on accounts…. [I]n 2000, [the Court] decided they should be allocated $800 m[illion] of the settlement. Almost nobody who had been involved in the investigations, on either the Swiss or the Jewish sides, thought it would be possible to find claimants for anything like this amount of money. That aroused resentment among other claimants.[432]

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430 John Authers, 2008 Financial Times article, at 26-28.

431 Marilyn Henry, *Holocaust Victims' Ardent Umpire*, JERUSALEM POST, June 15, 1999.

432 John Authers, 2008 Financial Times article, at 26.

Some individuals in the U.S. suggested, not long after the claims process had started, that the Deposited Assets Class program needed to be completed. They stated that funds were being held in reserve pending the determination of claims to Swiss bank accounts. They believed that the Court should reallocate the sum reserved for the Deposited Assets Class:

> At the present time, this Court is in control of a substantial sum of money from the settlement of the Swiss Bank Class action, believed to be between $650 million and $700 million, *in excess* of the amounts earmarked and currently payable to claimants in the Deposited Assets Class, the Slave Labor Classes I and II, and the Refugee Class…
>
> [It is understood] that there are still bank account and insurance claims to be processed from the Settlement Funds.... Nevertheless, it would appear from the information available that a very significant number of the claims likely to be successful have already been approved by Special Master Bradfield and the Court. Similarly, it appears that a large number of the claims likely to yield *high* individual dollar payouts have also already been approved.[433]

The Court subsequently sought suggestions for the use of residual funds, if any, that might remain from the up to $800 million reserved for the Deposited Assets Class. In response, some stated that the CRT process was essentially concluded, and that all funds not yet distributed from the $800 million should be reallocated to the Looted Assets Class, through a process to be determined.[434]

The District Court, in a decision affirmed by the Second Circuit, held that the individualized process for the bank account claims was at the heart of the case, and needed to run its course.

> The $800 million that was set aside for individuals with claims against the Swiss Banks for deposited assets (of which approximately $650 million now remains) belongs to *those* survivors or their heirs. It was not set aside for, nor does it

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[433] *See* Motion for Immediate Interim Distribution of Swiss Settlement Proceeds at 2-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 11, 2003) (emphasis in original) (citations omitted). This viewpoint underestimated how much the Court would be able to repay to depositors, and also did not anticipate some of the most significant bank account awards, including the multi-million-dollar award to the Bloch-Bauer family (Maria Altmann and her relatives), issued later. *See, e.g.*, *In re Account of Österreichische Zuckerindustrie AG Syndicate; see also* William Glaberson, *For Betrayal by Swiss Bank and Nazis, $21 Million*, N.Y. TIMES, Apr. 14, 2005.

[434] Issues concerning the Looted Assets Class distribution programs also were raised. For more information, *see* the chapter of this Final Report entitled "The Looted Assets Class *Cy Pres* Program."

> belong to, the survivor community as [a] whole. This large sum was set aside in part because, of all the claims asserted against the Swiss Banks, only the claims of the Deposited Assets Class have any legal merit. The other claims could not have withstood a motion to dismiss. As the Second Circuit explained in affirming my decision:
>
> > [The Deposited Assets Class] claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation. By contrast, the claims of the other four classes are based on novel and untested theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate.
>
> Under these circumstances, I have a legal and moral obligation to the Deposited Assets Class not to use the funds that belong to it for a *cy pres* distribution until I am *certain* that the claims to those funds will not exceed the amount set aside. The $800 million set aside already takes into the account the certainty that, due to the passage of time, the destruction of documents and the slaughter of millions, claims awarded will not equal the current value of accounts identified by the Volcker Committee as probably or possibly belonging to survivors. Indeed, it is a half billion dollars less than the present value of such accounts. Moreover, as I explained in my order of February 19, 2004, the accounts identified by the Volcker Committee as probably or possibly belonging to Nazi survivors understate significantly the number of accounts once belonging to survivors....[435]

The then-New York State Banking Superintendent shared a similar view. She pointed out in testimony at the Court's hearing on possible residual funds that substantial sums still needed to be returned to the bank account owners:

> Based on our experience, the Banking Department is aware of the difficulties encountered by those trying to research [bank] claims and that's what information has survived in the banks through often fragmentary information claimants can provide…. [T]he Banking Department's Holocaust [C]laims [P]rocessing [O]ffice [HCPO] has been working closely with the CRT office in an effort to expedite those claims to Swiss bank accounts. While only five percent of the CRT claims originated with our department, more than ten percent of the CRT's payments to date have been made to claimants who have worked with us.
>
> I say this to illustrate that I know whereof I speak. This is hard, exhausting and exhaustive work, as you know. We are clearly faced with a Herculean task. The overwhelming majority of claims remain unresolved. This is the main reason I would respectfully submit to you, Judge Korman, that before this court

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[435] *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 93-94 (E.D.N.Y. 2004) (citations omitted), *aff'd*, 424 F.3d 132 (2d Cir. 2005); *cert. denied*, 547 U.S. 1206 (2006).

> determines how to allocate any so-called residual funds, the CRT be given an opportunity to complete its work on the claims it has received.
>
> Until this has been achieved, there is no accurate means of determining just what may be left at so called residual funds. Moreover, I must confess that from where I sit, as difficult as it may be for those representing so many commendable projects here today, I rather hope that there be no funds left. That is, I sincerely hope that we can identify as many rightful owners of bank accounts as possible and extend awards to their heirs as quickly as possible. That is what I have always understood our priority to be.[436]

The bank account claims process sought to achieve the goals expressed by the New York State Banking Superintendent: to "identify as many rightful owners of bank accounts as possible and extend awards to their heirs as quickly as possible,"[437] and to value the accounts as accurately as possible.

The effort to ensure that owners of Swiss bank accounts were treated fairly also adhered to many of the standards recommended by many Holocaust survivors in connection with another kind of asset: insurance policies. In testimony before the United States Congress, certain survivors stated that lawsuits should be permitted to proceed against Holocaust-era insurers. They considered inadequate the multilateral agreements providing for insurance claims to be resolved through mechanisms established by the German Foundation and ICHEIC. They supported legislation that would oblige insurance companies doing business in the United States to publish names of possible Holocaust-era policyholders. The proposed legislation also would provide a right of action in court for Holocaust-related claims.[438]

Congress was advised that much work still remained to be done in the area of insurance. "Hundreds of thousands of relevant archive files were not reviewed [in the ICHEIC process]. Another significant failure is the incomplete examination of European archival records to locate

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436 Apr. 29, 2004 Hearing Transcript at 9-11.

437 *Id*.

438 *See, e.g., Holocaust Era Insurance Restitution After International Commission on Holocaust Era Insurance Claims (ICHEIC): Hearing Before the S. Subcomm. on Int'l Operations and Orgs., Democracy and Human Rights of the Comm. on Foreign Relations*, 110th Cong. 2 (May 6, 2008) ("May 6, 2008 Senate Hearing") (Opening Statement of Hon. Bill Nelson) (the proposed legislation "directs all companies doing business in the United States that issued insurance policies during the Holocaust era to disclose all the names of policyholders to the National Archives for publication. They also seek a new Federal cause of action that will enable them to sue in Federal court for damages and attorney's fees for the compensation for their Holocaust-era insurance policies"), available at http://www.gpo.gov/fdsys/pkg/CHRG-110shrg47851/pdf/CHRG-110shrg47851.pdf.

files of Jews' asset declarations from the Gestapo which in many cases showed the name of the victims' insurance company and the value of the policy."[439] ICHEIC's evidentiary standards, which were said to have imposed heavy burdens of proof upon claimants, were questioned. It was stated that ICHEIC had routinely denied claims "by simply saying, even when a claimant believes he or she is a relative [of] a person named on the ICHEIC Web site, that 'the person named in your claim was not the same person.'"[440] ICHEIC also was said to have improperly rejected claims to insurance policies that were paid out under duress.[441]

Many of those who supported Holocaust-related insurance legislation believed there had been a "rush to judgment" to "close the books on restitution." When it appeared that the insurance claims process was to end, just as access was about to become available to an important Holocaust-era archive (the International Red Cross records at Bad Arolsen, Germany), some said that it was premature to shut down. "Now, with 16 miles of previously suppressed documents from the Nazi period being made public, isn't it time to halt the rush to judgment, the rush for 'closure,' and require the full, transparent accounting that we survivors are morally and legally entitled to move forward without any further impediments?"[442] Similarly, when a survivor was asked if he was concerned that it would take a long time to pursue insurance claims in federal court, he stated: "Not necessarily. At least we have a right to go to court, even if it takes 2 years, 3 years, or 5 years. If not us, our children or our grandchildren will be able to follow it up.... They've been taught what happened to us. They should follow it up if I'm not around."[443]

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439 May 6, 2008 Senate Hearing at 77 ("May 2008 Senate Hearing Statement").

440 *Id.* at 79.

441 *Righting the Enduring Wrongs of the Holocaust: Insurance Accountability and Rail Justice: Hearing Before the H. Comm. on Foreign Affairs*, 112th Cong. 43 (Nov. 16, 2011) (describing insurer's 2000 statement to the insured's sons that the policy had been paid out and thus that there could be no restitution; however, "years later, [the heir] managed to obtain the "repurchase" document. The date was Nov. 9, 1938 — Kristallnacht. If either Allianz or ICHEIC had given him the document as they were required to do under ICHEIC rules, [the heir] could have informed them that his father surely did not stop at the [insurance] office on his way to Buchenwald to cash in his life insurance policy that day").

442 *Opening up of the Bad Arolsen Holocaust Archives in Germany: Hearing before the H. Subcomm. on Europe of the Comm. on Foreign Affairs*, 110th Cong. 26 (Mar. 28, 2007) ("March 28, 2007 Arolsen Hearing").

443 May 6, 2008 Senate Hearing at 27.

The extensive CRT process for Holocaust-era Swiss bank accounts adopted the principles that many survivors believed were necessary to a fair claims program for Holocaust-era insurance policies. The CRT examined all available records, including archival documents, and continued to seek access to additional materials for as long as the claims process continued. Where documents did not exist, rather than assuming that the lack of a complete evidentiary record precluded the claim, the CRT favored the claimants. Following U.S. law, the CRT presumed that the documents that were destroyed would have demonstrated the merits of the claim, applying the adverse inference, and so the claimant generally received an award. The CRT also sought to locate all possible accounts to which a claimant might be entitled, whether explicitly claimed or not. Thus, the CRT matched the names of all relatives mentioned in claimant submissions — not just persons specifically believed to have held accounts — against the database of Swiss accounts. Where valid matches were found, claimants were paid.

Another example demonstrated that the CRT sought to incorporate procedures highlighted as being necessary to an equitable Holocaust compensation process. This related to the valuation of assets. By way of comparison, Congress was advised, in the case of Holocaust-era insurance policies, that those assets had been underpaid:

> [L]et me just tell you another fraction. The Germans and ICHEIC paid 10 cents on the dollar on the fair value. They paid at the same rate they were allowed to restitute policies [] after World War II. So when we hear that fair value was paid by German companies, that's not true. My question is, they paid $82 million when a conservative valuation would have been $550 million. Why should Germany today be paying Marshall Plan valuations?[444]

In contrast to the valuation standards said to be inadequate for insurance policies, the CRT claims process for bank accounts sought to repay accounts at their fair values. CRT Special Master Junz recommended that the Court increase presumptive values for Swiss bank accounts in order to more accurately estimate the real value of Swiss bank accounts. This would result in additional payments to the heirs of the account owners. Special Master Junz reached this recommendation because of the information gathered from the CRT's review of all documents that could possibly be made available. Thus, the CRT looked at not only the files prepared by the auditors, but also the underlying bank records. In many cases, the CRT also was able to

[444] May 6, 2008 Senate Hearing at 63.

obtain, following many requests to the defendant banks, additional materials in the bank files beyond the records collected during the ICEP audit. The significant information yielded through this "voluntary assistance" process, as well as through other measures such as research into European archives, demonstrated that the original presumptive values assigned by the auditors at the outset of the claims process were too low and that claimants had been underpaid. Special Master Junz proposed adjusting these values, which would result in additional payments to bank account claimants.

However, Special Master Junz's recommendation to increase payments to bank account heirs was questioned.[445] Some of those raising these concerns had challenged ICHEIC's rules and payments. The suggested that the valuation rules for the CRT did not have to be adjusted. They stated that the claims of needy class members (the Looted Assets Class) had "both moral and legal legitimacy, and their claims on the excess funds now at issue carry equal or greater weight than the claims of heirs of owners of accounts as to which no documentation exists establishing the amount of the claim."[446]

The State of Israel also questioned Special Master Junz's proposed adjustment for bank account awards, engaging an expert who stated that because "new account information not previously available to the ICEP came through a different data generating process than the original sample," the data were less reliable.[447] This view appeared to indicate that the CRT's effort to obtain "voluntary assistance" from the banks was not warranted, when actually it was in accordance with the Court's directives in approving the Settlement Agreement. The Court had made clear from the very outset that the banks' cooperation in good faith with the claims process was a condition to their obtaining releases under the Settlement.[448]

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[445] *See* Class Members' Objections to Revaluation of Deposited Asset Awards, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 1, 2006); Objections by the State of Israel to Special Master Gribetz's December 19, 2008 Report, *In re Holocaust Victim Assets Litig.*, No. 09-160 (E.D.N.Y. Feb. 13, 2009) (Declaration, ¶ 9) (Feb. 12, 2009).

[446] Objections by the State of Israel to Special Master Gribetz's December 19, 2008 Report, *In re Holocaust Victim Assets Litig.*, No. 09-160 (E.D.N.Y. Feb. 13, 2009), Memorandum of Law, at 27.

[447] Objections by the State of Israel to Special Master Gribetz's December 19, 2008 Report, *In re Holocaust Victim Assets Litig.*, No. 09-160 (E.D.N.Y. Feb. 13, 2009) (Declaration of Charles H. Mullin, Ph.D., ¶ 9) (Feb. 12, 2009).

[448] *See In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 158.

The State of Israel sought access to the data studied by Special Master Junz in analyzing presumptive values, seeking the materials supporting what it called the "sample" Special Master Junz had used.[449] Special Master Junz had not looked at a "sample," however; she had analyzed every account available to the CRT (*i.e.*, the approximately 37,000-account "Account History Database").[450] The State of Israel also sought to review the accounts and samples analyzed by the Volcker Committee in calculating the original presumptive values, but this was not possible as "neither the CRT, nor Special Master Junz, nor the Court, had access to bank records for the original [pre-scrubbing] 54,000 accounts upon which the [original] presumptive values [were] based."[451]

Lead Settlement Counsel, Professor Neuborne, who responded to these concerns, observed that the State of Israel did "not claim – nor could it – that its representatives are more competent to make such determinations than are the individuals who have been studying Holocaust-era Swiss bank records and related materials for more than a decade."[452] The effort to "independently review[]" the bank records questioned the "reliability of the Special Master [Junz] on whose reputation and expertise the Court has relied (and indeed, so has the State of Israel in other contexts)."[453] Thus, "the State of Israel, as a member of ICHEIC, sought out Dr. Junz for her expertise in determining the average value of one type of Holocaust-era asset: insurance policies. It is difficult to understand how the State of Israel now can question Dr.

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449 *See* Notice of Motion by the State of Israel for Access to Documents, Data and Information Examined or Utilized as Part of the Junz Recommendation; and for an Interview with Special Master Junz, *In re Holocaust Victim Assets Litig.*, No. 09-160 (E.D.N.Y Feb. 13, 2009); State of Israel Letter to Hon. Edward R. Korman (May 28, 2009); Objections by the State of Israel to Special Master Gribetz's April 9, 2009 Report (June 9, 2009); State of Israel Letter to Hon. Edward R. Korman (Apr. 9, 2010); Objection of the State of Israel to Recommendation of Class Counsel to Distribute Funds to the Detriment of the Looted Assets Class and Memorandum Responding to the Declaration of Class Counsel Advocating Against Disclosure of the Data Underlying the Junz Recommendations, (June 7, 2010).

450 Letter from Professor Neuborne to Hon. Edward R. Korman at 2 (Mar. 4, 2010) ("March 4, 2010 Neuborne Letter") (citing "Dr. Junz's Letter to the Court, March 31, 2009, at 3"); *see also* Declaration of Professor Neuborne, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 23, 2010) ("April 23, 2010 Neuborne Declaration"); Response by Class Counsel to Objections and Memoranda Filed by the State of Israel Dated June 7, 2010 (June 14, 2010).

451 March 4, 2010 Neuborne Letter at 2-3.

452 *Id.* at 3.

453 April 23, 2010 Neuborne Declaration ¶ 15.

Junz's ability to analyze the average value of another Holocaust-era asset: a Swiss bank account."[454]

Judge Korman adopted Special Master Junz' recommendation and authorized additional payments for many members of the Deposited Assets Class. Ultimately, nearly $720 million of the up to $800 million allocated to that class was repaid.

* * *

The late journalist Marilyn Henry observed, of the issues relating to the bank account claims process, that these concerns had not taken into consideration the principle that "victims are entitled to recover the property stolen from them." She commented:

> Repeat after me: bank accounts, bank accounts, bank accounts. In the mid-1990s, Jewish organizations and a handful of lawyers — some savvy, some less so — demanded the return of Nazi era Jewish accounts in Swiss banks. The accounts had become dormant because the Jewish depositors did not survive the Holocaust, or because crucial documents did not survive, leaving families unable to prove their rights to the accounts.
>
> . . . .
>
> [The District Court], whose decisions were upheld by a US appellate court, did a noble service to the needy.
>
> But this compassionate aid should not distort the essential purpose of the Swiss banks settlement. The lawsuit was a restitution case about bank accounts, bank accounts, bank accounts. It was a claim with legal and moral legitimacy. But when … more cash [was sought] for their own purposes, they did not simply stall the conclusion of the Swiss banks settlement. Instead, they ran roughshod over individual property rights and undermined the moral basis of every Jewish claim: that victims are entitled to recover the property stolen from them.[455]

For those accounts for which valuation information had been destroyed or appeared to be unavailable based upon the auditors' reports, two options were available: to deny the claimants any recovery even though the data was missing through no fault of their own, or, instead, to move forward with payments despite incomplete information. Other Holocaust-related claims programs have been more restrictive. ICHEIC, it was said, was unwilling to compensate

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[454] April 23, 2010 Neuborne Declaration ¶ 15 n.9 (citations omitted).

[455] Marilyn Henry, *Metro Views: Bank accounts, bank accounts*, JERUSALEM POST, June 27, 2010.

Holocaust victims and heirs (with the exception of $1,000 so-called "humanitarian" payments), absent a complete documentary record demonstrating precisely what the asset was worth, and where that asset ended up. Similar statements were made about the State of Israel's restitution program. Although there were many bank accounts opened in what was then Palestine by individuals who would become victims of the Nazis, Israeli banks appeared reluctant to return these assets to their owners or heirs.[456]

The Court, however, deemed a restrictive approach to be inappropriate to the circumstances of the Holocaust. The CRT thus incorporated principles and inferences that would favor owners and heirs of Swiss accounts, who had been deprived of their property for so long, and whose legal claim to compensation was beyond question.

X. COMPLETION OF THE CLAIMS PROCESS

With the final review of the last of the over 104,000 claims filed for Holocaust-era Swiss bank accounts, the Court ordered the CRT and SDAP to begin to wind down their work and to close their offices. To do so, a number of steps had to be taken.

A. Completion of All Payments

1. "Last Call Letters"

In the interest of ensuring that Holocaust survivors and/or heirs were given ample opportunity to receive their payments, the Court directed SDAP to contact those claimants who,

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[456] *See, e.g.*, Michael J. Bazyler, *Unfinished Justice: A Conversation with Michael Bazyler*, REFORM JUDAISM MAG., Spring 2008, at 79, 86, 103 ("One of the most powerful accusations against the Swiss banks — which ultimately led them to settle — was the banks' heartless strategy to stall until elderly claimants died, thereby minimizing their financial losses. Sadly, when the same accusation was made against Israeli banks and the government, they both continued to stall. It took an Israeli parliamentary commission created in 2000 four years to issue its report on the bank assets held by the government and the private banks, and another two years for the government to create a state corporation — the Company for Location and Restitution of Holocaust Victims Assets — responsible for collecting and distributing these assets to Holocaust victims"). *See also* Cam Simpson, *Battle for Holocaust Assets Roils Israel*, WALL ST. J., Nov. 12, 2008 ("The Israeli law sets up a process similar to the one in Europe. Verified heirs are supposed to get paid first, with needy Holocaust survivors getting the rest. But there's a crucial difference from the earlier settlements: The Company [established by the Israeli Parliament to handle claims] must target each institution over each asset that it allegedly held…. this gives the targeted institutions a chance to fight claims case-by-case....").

thus far, had not accepted their awards, or had not sent SDAP the documentation necessary to process payment. The Court authorized SDAP to initiate one final communication with those claimants. Individuals living within the United States were provided thirty (30) days, and individuals living outside the United States were provided sixty (60) days, from receipt of SDAP's letter, to resolve any outstanding payment issues and to provide SDAP with the necessary materials, including a signed Acknowledgment Form. Any payments that could not be processed within this time frame were to revert to the Settlement Fund for distribution to other class members.

In total, SDAP contacted 878 individuals who had not accepted their awards or provided documentation permitting payment: 36 who had failed to accept their original awards issued through the Zurich office (*i.e.* those based upon bank records or other documentary evidence); 133 who had not accepted their presumptive value increases; 317 who had not accepted their PUA payments (*i.e.* awards based upon plausible but undocumented evidence of an account); 388 who had not accepted their PUA increases (*i.e.* the additional $2,250 payment approved by the Court in June 2010); and 4 who had not accepted their payments upon approval of appeals by Special Master Bradfield.

2. Withdrawals

After SDAP had sent these letters to the claimants, and the 30/60 day deadlines had lapsed, a number of Deposited Assets Class awards still remained unpaid. Notwithstanding SDAP's ongoing attempts to resolve open issues, some claimants still declined to accept their awards and/or did not provide SDAP with the appropriate documentation. In other cases, claimants did not provide the CRT with updated contact information, and SDAP thus was unable to locate those individuals despite extensive efforts to trace their whereabouts over the course of several years. In these cases, SDAP conducted exhaustive searches to locate individuals who could not be found. SDAP first attempted to locate any alternate contact persons listed in the claim form(s) or IQ(s). Thereafter, SDAP conducted extensive internet inquiries on numerous search engines, in U.S. and country-specific government databases and search engines, country-specific local listings for each claimant, mailings to last known addresses, and inquiries into internal databases.

In certain instances, PUAs and their corresponding "PUA bump-ups" were withdrawn because the recipients, after being notified of the PUA, had become ineligible to receive such awards. Some PUA recipients previously had received a payment from CRT-I (the predecessor to the Court-supervised CRT-II) in connection with their ownership of one or more Holocaust-era Swiss bank accounts. In other cases, some persons who received PUAs later received awards based upon the CRT's determination that bank records or other documentation demonstrated their ownership of Holocaust-era Swiss bank accounts. In a few cases, SDAP determined that PUA recipients had filed fraudulent or duplicate claims. These individuals were not eligible for payment, and the previously-authorized PUAs were withdrawn.

A total of 1,189 awards, primarily representing PUA awards, were withdrawn on December 13, 2012, and 4 awards were withdrawn on January 17, 2013. The corresponding funds ($5,258,787.84) reverted to the Settlement Fund for distribution to other class members.

B. Liquidation of the CRT and Archiving of CRT and Bank Records

As a condition to obtaining access to bank records, the CRT was obligated to operate in Switzerland and to comply with that nation's legal and administrative requirements in carrying out the distribution process (for example, in connection with human resources, accounting and other issues). Similarly, Swiss law also controlled the wind-down of CRT activities. Under Swiss law, the CRT was required to be formally liquidated by persons located in Switzerland. Thus, upon the Court's request, the CRT's Zurich-based outside counsel undertook to oversee this process:

> The [CRT], which under the Court's authority has been processing claims for Swiss bank accounts principally by heirs of those who perished in the Holocaust, has now concluded its work. The CRT, located in Zurich, Switzerland, operated as an association under Swiss law. Consequently, the affairs of the CRT cannot be concluded without a formal process of liquidation of the association under Swiss law. I appoint Andreas Casutt and Thomas Graf[f], who are members of a Swiss law firm that has represented the CRT over the ten years of its existence, to be the liquidators of the association and I have directed them to commence liquidation of the CRT in accordance with the procedures required by Swiss law.[457]

[457] Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 9, 2012).

The CRT's liquidation was finalized in 2016.

In addition to winding down the CRT's administrative functions (*e.g.*, leases, contracts, personnel obligations, and the like), an area of particular importance was the determination of rules to govern the archiving of CRT files, including documents relating to claims and to bank records. To ensure clarity for purposes of archiving, an order was issued specifying the different treatment to be accorded to different types of files, particularly distinguishing between bank records and other files:

> The purpose of this order and the accompanying amendment of the CRT Rules is to specify that certain files may be archived in either the United States or Switzerland, or in both places, as directed by this Court.
>
> Article 45 of the CRT Rules, "Archives," as it presently reads, states that "[a]fter the resolution of all Claims, all files of the CRT shall be archived in Switzerland according to guidelines approved by the SFBC [Swiss Federal Banking Committee]." As of January 1, 2009, the SFBC was merged into the Swiss Financial Market Supervisory Authority (FINMA). I now amend the CRT Rules to confirm that certain files of the CRT, an administrative agent of the United States court, may be archived outside Switzerland in a manner determined by this Court, without reference to guidelines approved by FINMA (previously the SFBC).
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> [I]t is hereby ORDERED that Article 45 of the CRT Rules is amended to read as follows:
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> > "Archives
> >
> > After the resolution of all Claims, all claim files shall be archived in the United States and/or elsewhere, including Switzerland, as determined by the Court. All internal business files of the CRT shall be archived in the United States or Switzerland, as determined by the Court. All bank documentation obtained from Defendant Banks will be archived in a location to be determined following consultation with Swiss authorities, including, as appropriate, FINMA."[458]

Much of the archiving took place in the context of the Victim List Project, to ensure eventual access to materials of historical interest that have been produced and collected in the

[458] Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. July 20, 2011).

context of the Distribution Process. The Victim List Project, including the archiving of data, is described at length elsewhere in this report. In brief, however, under mechanisms negotiated by the Special Masters and the Director of the Victim List Project under the Court's authority:

- Documents relating to Deposited Assets claims and claimants were archived with the United States Holocaust Memorial Museum; and
- Bank files were archived with the Swiss Federal Archives.

Both sets of materials are subject to data protection requirements and embargo periods in recognition of the privacy laws of the United States, Switzerland and other nations, as well as the confidentiality expectations of claimants.

XI. CONCLUSION: SOME REFLECTIONS ON THE DEPOSITED ASSETS CLASS CLAIMS

The Swiss Banks Settlement claims process overseen by the Court and Special Masters and administered by the CRT provided what historian Michael Marrus has called "some measure of justice" to Holocaust victims. However, it could have and should have been avoided entirely, had the banks responded promptly to the post-Holocaust pleas of their clients (and heirs) to open their files and their vaults. Instead, the banks repeatedly "insist[ed] that they ha[d] little such 'holocaust cash' and claim[ed] disingenuously that they ha[d] no interest in holding dormant accounts (even though they [could] use the cash lying in them)."[459] When the issue arose again in the mid-1990s, the banks' response was reflexive: "Following a brisk search [in 1995], they claimed to have found a trifling SFr39m ($32m) in such accounts, some of which may not even have Jewish links…. The holocaust issue ha[d] spooked the banks on and off for half a century. Shortly after 1945, they agreed to hand over to the allies $250m-worth of gold deposited by the Nazis, some of which had been plundered from Jews. Another search, in the early 1960s, which was prompted by Jewish pressure, produced a meagre SFr10m in cash, which went to Jewish charities."[460]

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459 *Swiss banking secrecy: Something nasty in the vault?*, ECONOMIST, May 11, 1996, at 69.

460 *Id.*

One journalist who spent a fair amount of time in Switzerland before the outcry over Holocaust assets, and who then followed the dispute for years, was Jane Kramer, the long-time European correspondent for *The New Yorker*.[461] Kramer noted in 1997 that the accusations that were being leveled against the Swiss were not new:

> People have been talking about the provenance of Switzerland's gold reserves, and about the Jewish money that disappeared in its banks, ever since the war ended — beginning with the Allies, who first demanded an accounting, and now, finally, with the Swiss themselves.[462]

Kramer placed the blame for these problems upon the banks.

> The Swiss are wildly successful bankers, and the problems they are having now come at least in part from their behaving like bankers. They are rigid, they are greedy, and they are legalistically inhumane. They do not disclose anything until the law makes them disclose it, or part with cash until the law makes them part with it, or spend time and money looking into the provenance of deposits made fifty or sixty years ago (or, for that matter, yesterday) until they are faced with lawsuits or bans or boycotts or the kind of political pressure they were faced with this year in America. The Swiss banking secrecy law was written to make them happy. The Swiss government existed to keep them happy — something it accomplished for years with what the bureaucrats in Bern refer to proudly as "our foreign policy of no foreign policy."[463]

As pointed out in the Volcker Report and by Judge Korman, confronted by "broad-based efforts to uncover assets of Nazi victims," the "'banks and their Association lobbied against legislation that would have required publication of the names of such so called 'heirless assets

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461 Jane Kramer "has split her forty years at *The New Yorker* between writing about America and Europe, alternatively leaving one and reintroducing herself to the other …. In the 1970s, Kramer began splitting her time between America and Europe, becoming *The New Yorker's* European correspondent in 1981." ROBERT S. BOYNTON, THE NEW NEW JOURNALISM (2005), www.newnewjournalism.com/bio.php?last_name=kramer (last visited Mar. 24, 2016).

462 Jane Kramer, *Manna from Hell: Nazi Gold, Holocaust Accounts, and What the Swiss Must Finally Confront*, NEW YORKER, Apr. 28 & May 5, 1997 ("Kramer"), at 74, 74. *See also* Regula Ludi, *Waging War on Wartime Memory: Recent Swiss Debates on the Legacies of the Holocaust and the Nazi Era*, 10 JEWISH SOC. STUD. 116, 119-20 (2004) (the "scandal awoke the Swiss to a reality that had been ignored by most of the public for decades" and it "called into question a specific narrative of wartime history that was at the core of Swiss self-perception during the Cold War").

463 Kramer at 77.

accounts,' legislation that if enacted and implemented, would have obviated … the controversy….'"[464]

However, by the late 1990s, the controversy had not been obviated, and also no longer could be avoided. Now the banks were under pressure not just from the victims, but from many in the financial community. As the *Economist* urged in 1996: "Now, half a century on, it is time for the banks to come clean and, if necessary, pay out."[465] The *New York Times* observed: "For decades the Swiss banking industry arrogantly thwarted inquiries about its role in the Nazi period, and effectively discouraged the relatives of Holocaust victims searching for long-dormant accounts. The Swiss stonewall has now broken down under intense pressure from Jewish organizations and the unearthing of documentary records that show the shameful extent of Swiss banking cooperation with the Nazis."[466]

Interest in these issues ran especially high after UBS was found in January 1997 to be shredding documents. The *New York Times* stated: "No one is making a better case that Swiss bankers may have looted the accounts of Jewish depositors who were killed in the Holocaust than the bankers themselves. For years the bankers coldly rebuffed inquiries from relatives of depositors, then resisted international efforts to investigate the matter. Now the Union Bank of Switzerland, the country's largest bank, has been caught shredding documents that might be relevant to several investigations belatedly opened in recent months …. There is no need for the current generation of Swiss bankers to shield the unseemly practices of their predecessors. Openness and cooperation now can help make up for past misdeeds, and the reimbursement of assets to those who have legitimate claims is only just."[467] In another editorial, the *New York Times* noted that the "search will not be easy and the amount of gold and other assets may prove

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464 *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 311 (quoting VOLCKER REPORT ¶ 48).

465 *Switzerland and the Jews: Some lessons learned*, ECONOMIST, May 11, 1996, p. 15.

466 Editorial, *The Secrets of Swiss Bankers*," N.Y. TIMES, Sept. 25, 1996, http://www.nytimes.com/1996/09/25/opinion/the-secrets-of-swiss-bankers.html (*The Secrets of Swiss Bankers*).

467 Editorial, *Swiss Stonewalling*, N.Y. TIMES, Jan. 18, 1997, http://www.nytimes.com/1997/01/18/opinion/swiss-stonewalling.html.

smaller than imagined. But in a matter of historical accountability like this, monetary value is less important than honesty and openness. This is a reckoning long overdue."[468]

The "amount of gold and other assets," however, did not "prove smaller than imagined."[469] It was far larger. As a result, the banks seemed to revert to a familiar pattern of behavior. Initially, the banks had accepted a temporary waiver of banking secrecy to permit Paul Volcker and the major accounting firms he engaged to conduct their review, and had urged Judge Korman to dismiss the class action litigation on the grounds that the lawsuits would interfere with the important work of the Volcker audit,[470] which they pledged to support. At hearings before the U.S. House of Representatives Committee on Banking and Financial Services on December 11, 1996, for example, the SBA's Chairman, Georg Krayer, had stated that "the SBA, its members and the Swiss bank supervisors are committed to providing their full support and cooperation to the [Volcker] audit and abiding by its results…. Second, the auditors will have full access to all relevant information. Third, because of this access, the audit findings will

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468 *The Secrets of Swiss Bankers*. *See also* Editorial, *Banking on Switzerland*, WASH. POST, Jan. 17, 1997, https://www.washingtonpost.com/archive/opinions/1997/01/17/banking-on-switzerland/5dff0f15-afe6-4872-b9c9-c7fee212d12b/ ("This affair is about whether banks let deposits of Jews who were later killed in the Holocaust remain in their vaults without attempting to compensate surviving relatives. A further question is whether neutral Switzerland laundered assets looted from Jews and others in the war. These are somber issues. Even to raise them is painful for many Swiss. But for a country whose signature industry, banking, is built on trust, these issues touch the national core"); Editorial, *Switzerland's Debts*, N.Y. TIMES, May 14, 1997, http://www.nytimes.com/1997/05/14/opinion/switzerland-s-debts.html ("Apportioning responsibility today for misconduct half a century ago is not easy. The United States, which led the Allied battle against Germany, made its own mistakes, including decisions not to accept more Jewish refugees and not to bomb the rail lines leading to Nazi concentration camps…. That Switzerland was not alone in its misjudgments does not excuse it from making appropriate restitution today").

469 *The Secrets of Swiss Bankers*.

470 Alfred Defago, the Swiss Ambassador to the U.S., wrote to Judge Korman that "the suit would violate Swiss sovereignty" and "hamper" Paul Volcker's inquiry. The "Government of Switzerland believes that the conduct of this litigation in the United States will interfere with the extensive ongoing and proposed efforts in Switzerland.… The most effective and just means for dealing with these matters are in Switzerland, not in a United States court." *See* David Rohde, *Swiss Envoy Asks U.S. Judge To Dismiss a Suit Against Banks*, N.Y. TIMES, July 30, 1997, http://www.nytimes.com/1997/07/30/world/swiss-envoy-asks-us-judge-to-dismiss-a-suit-against-banks.html.

The *New York Times* appeared to agree that the "discovery phase of the litigation, if concurrent with the audits, could make the bankers reluctant to cooperate with Mr. Volcker. The suit is justified but should await completion of the [Volcker] commission's work." The editorial noted that "[w]ith the banks still in a state of denial about their history, it is crucial that an unfettered inquiry be conducted" by the Volcker Committee, which "offers the best hope of determining what happened to the assets of Jews who mistakenly placed their money and their trust in Swiss banks as the Nazi terror engulfed Europe." Editorial, *More Blundering by Swiss Banks*, N.Y. TIMES, Aug. 3, 1997, http://www.nytimes.com/1997/08/03/opinion/more-blundering-by-swiss-banks.html.

represent the best attainable results and therefore must be accepted as conclusive by all responsible parties."[471]

That support for the Volcker audit, however, was less evident when the Volcker Committee issued its findings. On the same day that the Volcker Report was released (December 6, 1999) — which concluded that some 54,000 accounts probably or possibly belonged to Holocaust victims, an order of magnitude vastly higher than the banks previously had acknowledged in earlier surveys over the prior decades — the Swiss Federal Banking Commission ("SFBC") announced that it, alone, was solely responsible for decisions on publishing further lists of accounts. The SFBC added that it would conduct additional analysis before reaching a decision on the Volcker Committee recommendations.[472]

The SFBC declined to adopt the Volcker Committee's recommendation to make available to the claims process all of the 4.1 million accounts that existed in Swiss banks in the relevant 1933-1945 period.[473] Instead, following a "scrubbing" process that reduced the 54,000 accounts to 36,000, with limited exceptions, the claims process was allowed access only to those 36,000 accounts. Only 21,000 accounts were published initially, augmented by another 3,000 following further litigation. The "failure of the SFBC to mandate compliance with the recommendations of the Volcker Committee, coupled with the unwillingness of the private or cantonal banks that are non-party releasees to voluntarily cooperate in permitting publication of information relating to some or all of their accounts that may be included within the 54,000 [later 36,000] accounts referred to in the Volcker Report, … created substantial impediments to administration."[474]

An attorney who represented the Swiss defendants before the Court, and later represented German entities in connection with the slave labor lawsuits, noted that the "good start the Swiss

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[471] December 1996 House Hearing at 69.

[472] Statement of the Swiss Federal Banking Commission, 6 December 1999 ("The ICEP recommendations in this final report are mainly directed to the SFBC, which is solely responsible for decisions on publishing further lists of accounts. The SFBC will analyze individual ICEP recommendations on archiving data, further publication of unclaimed assets, and handling of claims. It will decide on the ICEP recommendations in the first quarter of 2000 after consulting other parties concerned").

[473] Distribution Plan, Vol. I, at 59.

[474] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 155-158 (citations omitted).

made toward resolution and reconciliation" later "foundered," followed by "a period of acrimony and stalemate."[475] His explanation was that the "Swiss populace, once convinced of the need to engage in national self-examination and restitution, came to feel strongly that Switzerland should devise and implement its own steps for addressing the questions that had arisen. Swiss citizens did not want the United States to dictate to their country, and they felt abused by what they saw as an unappreciative, unfair, and unremittingly anti-Swiss attitude emanating from America." When "Swiss public opinion moved toward a decidedly more nationalistic and less cooperative stance, the Swiss government retrenched from playing a leadership role in attempting to resolve the controversy and instead adopted the view that Switzerland's problems in the United States, relating to World War II, were something the Swiss banks, who did business there, had principal responsibility for resolving."[476]

On the other hand, the revelations about the banks were accepted by at least one important member of the Swiss banking community. Hans Baer, "[o]ne of the most powerful bankers in Switzerland and former head of the family bank Julius Baer," and an alternate member of the Volcker Committee, appointed by the SBA, was "deeply involved in the controversy." His 2008 memoirs "make[] plain his distress at what he discovered about the Swiss banking industry, in which he spent nearly a lifetime."[477] Baer credited Michael Bradfield with expanding the Volcker audit's scope, so that a process that began as a review of "open" and "dormant" account ultimately led to an examination of accounts that in some ways were even more troublesome: those that were closed, unknown to whom. Bradfield "dug more deeply into the dossiers, constantly increased the search criteria for the auditors, and expanded the framework of the investigation...Bradfield made these 'closed accounts' his pet project."[478] As a result, the value of the accounts was far greater than the amounts that had been reported in survey after survey in the decades before the Volcker audit.

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[475] Roger M. Witten, *How Swiss Banks and German Companies Came to Terms, in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 80, 82 (Michael J. Bazyler & Roger P. Alford eds., N. Y. Univ. Press 2006).

[476] *Id.* at 83.

[477] John Authers, 2008 Financial Times article, at 28, discussing Baer's 2008 memoir: "HANS J. BAER, IT'S NOT ALL ABOUT MONEY: MEMOIRS OF A PRIVATE BANKER (Beaufort Books 2008) ("Baer").

[478] Baer at 447.

> **If you add the 36,000 accounts "closed, unknown by whom" and use an average base deposit of SFr 10,000, the billion-franc mark is crossed quickly**, at least to the extent that the 23,000 accounts [*i.e.* the 21,000 published accounts] are considered, which were burdened for so long with closing and administrative charges that in the end nothing was left...
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> . . . .
>
> [T]he auditors were denied the opportunity to examine closed accounts because the banks had plundered them. They, and all of us, came too late to the conclusion that the real scandal was not the dormant assets but the closed accounts. The cantonal banks, whose great political weight an outsider like [Paul] Volcker could not assess, had pressured the Swiss Federal Banking Commission to set a last deadline for the auditors to complete their work and in doing so had bought the idea that in the end, the whole truth would not come out. As a result, the cantonal banks — unlike all the other banks — were not required to publish accounts that "probably" should have been assigned to a Holocaust victim.[479]

The promise of transparency and adherence to the Volcker Committee's recommendations may have receded in the face of Swiss discomfort with Volcker's findings, which, as Baer noted, "crossed quickly" the "billion-franc mark" when all accounts were considered.[480] When the Volcker audit ended, Swiss banking authorities did not provide the kind of access and cooperation that had been envisioned when the audit had begun. The result was a claims process that had to operate, in effect, with one hand tied behind its back.

Even so, Holocaust victims who had waited so long were to be given every possible opportunity to find their lost Swiss bank accounts. For that reason, rather than limiting the process to the 33,000 formal claim forms, the Court expanded the program by accepting additional categories of claims, including tens of thousands of Initial Questionnaires that only

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[479] *Id.* at 450-51 (emphasis added). Under the nomenclature of the audit, these were known as the "Category 3" accounts. These were the same accounts that contributed substantially to Special Master Junz's reevaluation and recommended adjustment of account values, an undertaking supported by Special Master Bradfield and ICEP auditor Frank Hydoski.

[480] *Id. See also In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 153 (citing VOLCKER REPORT, Annex 4, ¶¶ 41-42 and n.23). As the Court observed, "[t]he significance of the report of the Volcker Committee, which included three members appointed by the Swiss Bankers Association, is that it provided legal and moral legitimacy to the claims asserted here on behalf of the members of the Deposited Assets Class. The findings suggest that the value of deposited assets held by the Swiss banks could exceed the $1.25 billion settlement amount." When the CRT reexamined the AHD valuation data (excluding any accounts that might have been in the 4.1 million-account TAD, to which the CRT did not have access except in limited cases), the value of just those 36,000 AHD accounts was estimated to be approximately $1.63 billion. *See* Special Masters' Interim Report, at 16 n.17, 34-35.

alluded to a possible Swiss account. Rather than restricting the search for assets to those who were specifically named as account owners, the Court authorized the CRT to look beyond those names and consider virtually any family member listed by the claimant as a possible account owner, resulting in over 415,000 names that needed to be analyzed. Rather than limiting the database of accounts to that set forth by Swiss banking authorities at the outset of the claims process, the Court encouraged the CRT to keep looking for other assets held in Swiss banks. Post-settlement litigation, archival research, and ongoing requests to the banks for additional data through the "voluntary assistance" process yielded additional data. More than 1.5 million "matches" of possible owners to accounts were generated by all of these efforts. These matches needed to be studied case by case, an analysis impacted and delayed by the absence of millions of records that had been destroyed by the banks. Rather than allowing this destruction of records to thwart victims' claims, however, the Court shifted the burden of proof to the banks, so that the lack of records was to be considered evidence that an account that had once had existed had been improperly turned over to the Nazis, or taken into profits.

Thus, what began in 1947 with an announcement from Swiss banks that they had (reluctantly) surveyed their holdings and had found only SF 482,000 in Holocaust-related assets,[481] ended up many decades later with a judicially-supervised process that found and returned nearly $720 million in bank accounts to Holocaust victims and their families.

* * * *

It is appropriate to close this chapter with the perspective of some of the individuals who have benefited from the Deposited Assets Class claims process, a program that sought to restitute property and make a record for history.

> It was the view of survivors like [Alice] Fischer [one of the first to call attention to the Swiss bank account issue] that triumphed. Rather than use the Swiss pay-out for a big charitable gesture, the US legal system had pulled the settlement towards a different version of justice. Banks could make good on their faults, and the often long-deceased owners of their accounts could receive the dignity they deserved, only if the court made every last attempt to make sure every surviving claimant received exactly their due. That meant more delays and more frustration,

[481] *See* VOLCKER REPORT, Annex 5 ("Treatment of Dormant Accounts of Victims of Nazi Persecution"), ¶¶ 26-30.

but it was the closest to "justice" that the Holocaust's victims were likely to get.[482]

These are the words of some of the Nazi victims and heirs who received compensation through the Deposited Assets Class Program under the Swiss Banks Settlement:

- *From Bratislava, Slovakia*: "I would like to thank all of you, who undertook the task to force the [S]wiss banks to return the money, which did not belong to them!... Of course there are few luxuries I will be able to afford, please don't laugh I would like very much to have a bottle of my favorite perfume, ha ha! And also I will be able to walk into a book shop and buy all the books I would like to have…. I am living in a home for retired people …. [S]ince the day I got this letter, I am breaking my head what to do with the money, which I will not be able to spend anymore. I am not in the best health and therefor[e] I will have to act fast…. I am thinking about a project perhaps in some synagog[ue], which serve now as [c]ulture centers, open a library with all literature in English language, or upkeep of[] old [J]ewish cemeteries which are in bad shape."[483]
- *From Surrey, United Kingdom*: "… I would like to let you know how enormously I appreciate this settlement. In the first instant it enables me to go ahead with long delayed maintenance on my home, and to indulge in a few minor luxuries which make old age more cheerful. My main concern now is to find a suitable way to let some of the funds meet the acute needs of others who find themselves disadvantaged or whose life is exceedingly hard...I have been…fortunate of escaping the [H]olocaust and am appreciative of this every moment of my life. Not all members of my family have been in that favourable position. I feel gr[a]teful also to my father who had the foresight to stack away some funds and that these, even belatedly, are proving very useful and now help to defray the increasing costs of dependency on caring services."
- *From New York, New York*: "… Through the aid of my mother's uncle in Indianapolis, Ind. we were able to go to the Philippines to await our quota number for immigration to the USA. Unfortunately we ended up in the Japanese concentration camp in Manila, where my dad died of severe starvation eleven days after liberation. We had nothing…. All important papers, etc. had vanished…. When the Swiss matter came up, a dear friend of mine insisted I gather every shred I could find and apply. My parents were most honorable, and taught me to be the same. It was a very bad feeling to come with so minute amounts of information. Therefore I wish to take this opportunity to thank you in your trust in me and allowing me to have this money, which gives me back a little bit of my parents[´] identity and all that was lost… Thank you. I am honored to be believed."

---

[482] Authers, 2008 Financial Times article, at 28.

[483] These and other similar letters, with identifying data redacted to preserve claimant confidentiality, are available on the Court's docket.

- *From Ramat-Gan, Israel*: "During World War II I was in Auschwitz and fortunately managed to survive it until the war was ended. While in Auschwitz I got sick with Tuberculosis and after the war had to spend more than a year in a hospital to recover. In addition, [a] few years ago I had a [heart] surgery. Both events force me to take many medicines every day. The Money that I received from you helps me a lot in the payments for these medicines and for this I thank you!"

- *From Versailles, France*: "It is the first time I received something back from my father from his life in Rumania though I am 71 years old now. You must also know that I asked many lawyers up to now and spent a lot of money for having nothing. Thank you for your organization, thank you for not feeling being a thief by my claim, or only a [J]ew interes[t]ed by money as I was told. Continue to work like that, people feel better."

- *From Novato, California*: "I cannot thank you enough for the time and effort you have put into examining my claim. Since shortly after the war that has caused so much grief to so many, first my mother then I, tried to obtain some reparation from Germany, Switzerland and France for the many losses and pain she and I had endured. She died in 1964 without any success. When I finally had the courage to attempt some justifiable claims of my own, I undertook this difficult and heartrending project without expectations of success. It is emotionally draining to recall all the events one needs to submit to the eyes of strangers and I did it only without much hope after being told by multiple organizations that it was too late, the claims were closed or I did not have the documentation to back my statements. For these reasons I want to express my deep gratitude and appreciation to you, an organization with a heart and with the recognition that the very circumstances made it impossible to keep each and every supporting document. In the years since the war I have been destitute and homeless several times. It is a wonder that I still had as many documents as I did."

- *From São Paulo, Brazil*: "I have to thank you for the time and effort spent in driving this case to an end, being recognized in the mean time the rights of the successor. As a special remark, I have to mention that reading your summary I had a picture in front of my eyes of my family history. In good English. I would say that this was an unexpected fringe benefit, which deserves a special 'Thank You!'"

- *From Vienna, Austria*: "It is the first time I got something for my father, whom I missed so much when I was a little girl, and I always thought that he would come back after the war. My aunt, she went to England 1939, found me after the war (we had lost our flat) and she told me that my father was killed in 1943. In the years 1950-1965 my aunt…tried to get the money from Switzerland, but it was not possible… So thank you very, very, very much you really made a big present to me."

- *From Haifa, Israel*: "I read and re-read the 'CRT' report approved by Judge Edward R. Korman, the presiding judge in the Holocaust Victim Assets Litigation, and was truly moved by the amazing … work you put into this specific claim. I truly appreciate the efforts you made in this matter. I will share this award with my family and enable them to improve on their living standards. I believe in giving whilst I am still alive and enjoy watching their happiness, once I am gone [it is] all theirs anyway so why wait till then, let them enjoy it now."

- *From Vancouver, British Columbia*: "We wanted to express our gratitude for your outstanding work that achieved our award, and all other awards, by contacting you - how best to create a fund for the benefit for all of you - as the best way to express our thanks. We were told that your rules strictly prohibit this, and that the best and only way to thank you is to write this letter. We would have much preferred to give you tangible evidence of how much we appreciate your dedicated time and effort that must have been involved in researching and then assembling the thousands of claims involved, resulting in awards such as ours. As it is, this letter must convey our thanks and admiration…What is evident is the meticulous and time consuming research that accomplished the composition of this award. All in all, our award reads like a labour of love on behalf of Holocaust victims, and not the work of a paid staff."

- *[Residence not specified]*: "Let me express my sincerest thanks…, mainly to all those who again worked out the detailed additional background information which I received together with this Award Amendment. I feel greatest esteem and respect to the whole matter. To the historic research around everything, what happened to my ancestors as well as to their destiny itself. This Amendment Award [shook] up again, what I shall never forget anyway. The whole matter keeps me mentally busy…In the (unexpected) case of the need for further contacts, please contact me as well as my mum … mentioned as Claimant. As she just has celebrated her 87th birthday, one never knows how things are going on. Thank you for your understanding!"

- *[Residence not specified]*: "Your research reads like a detective story and brings out more memories for me. Yes, … my uncle - I remember him well, he tried to persuade my mother and grandmother to emigrate, but like many people, they didn't want to leave what they knew and go into the unknown with nothing. Too bad! On his way to the U.S. he stopped in [our home] and we sat around the table and my grandmother brought out her diamonds, breaking them out of their settings, so that he could take them…. Yes, this award means so much to me, not only financially."

- *From Manitou Springs, Colorado*: "On behalf of my mother…who is now age 92 and has little comprehension about the claim on which I filed on her behalf, I would like to thank you…I am a professor of history with a specialty in Holocaust Studies and realize how little justice has been granted to Holocaust Victims. I am particularly pleased that the Swiss Banking System was forced to release the names of accounts which had lain dormant since 1945. The Swiss have always claimed 'neutrality' regarding their participation in World War II. Because of your efforts, it is now clear and documented that the banking system was not neutral and in fact can be seen in the light of an ally to National Socialism. More importantly the Swiss have proven themselves to follow a policy of obstructing justice by having to be forced by your tribunal to reveal the names which belong to those long dormant accounts...To die in a concentration camp represents death in absentia; to withhold funds which rightfully belong to those victims is to kill them all over again."

* * *

Journalist Marilyn Henry's assessment bears repeating here: "Repeat after me: bank accounts, bank accounts, bank accounts."[484] As she so aptly observed, the "lawsuit was a restitution case about bank accounts, bank accounts, bank accounts. It was a claim with legal and moral legitimacy" grounded in "individual property rights" and the most compelling "moral basis": "that victims are entitled to recover the property stolen from them."[485]

[484] Marilyn Henry, *Metro Views: Bank accounts, bank accounts*, JERUSALEM POST, June 27, 2010.

[485] *Id*.

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This chapter accompanies and supplements the section of the Final Report on the Swiss Banks Holocaust Settlement Distribution Process entitled "The Deposited Assets Class Claims Process." This addendum, entitled "Summaries of Selected Deposited Assets Class Decisions" sets forth detailed summaries of several hundred (of the several thousand) decisions approved by the Court in connection with claims to Holocaust-era Swiss bank accounts. The decisions are available in their entirety on the Court's website for this settlement.[1]

I. AWARDS TO CLAIMANTS

A. ACCOUNTS PAID TO THE NAZIS

1. Accounts Transferred Under Duress

i. In re Accounts of Arthur Albers (SF 615,884.38)[2]

Arthur Albers was born in Czechoslovakia and later resided in Vienna, where he owned a large timber company. The claimant, who was Arthur Albers' great-granddaughter, advised the CRT that after the *Anschluss*[3], Mr. Albers was imprisoned in Buchenwald until he forfeited his entire fortune. This information also was recounted in a 1941 book by Bruno Heilig, *Men Crucified*, which the claimant submitted to the CRT. In that book, Mr. Albers was described as "one of the biggest Viennese timber merchants," whose release from the camp was conditioned upon "the surrender of his great business" to the Nazis.[4] The claimant also submitted a written statement from Mr. Albers' daughter, who stated that she had witnessed the Gestapo raid her

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1 http://www.swissbankclaims.com/DepositedAssets.aspx.

2 http://www.crt-ii.org/_awards/_apdfs/Albers_Arthur.pdf. For ease of reference throughout this document, CRT decisions will be cited by case name only (*i.e.*, "*In re Accounts of Arthur Albers*").

3 "*Anschluss*" is a "German word meaning connection or annexation that is used to refer to the takeover of Austria by Germany in March 1938...On March 13, 1938 German troops marched into Austria, and declared the country a part of the German Reich. The *Anschluss* was supported by many Austrians, among them Austrian Nazis, who saw it as a political, social, and cultural reunification with their brother country, Germany. Thousands turned out to greet Adolf Hitler, the native son who was returning to his homeland." *Anschluss*, YAD VASHEM, http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%205740.pdf (last visited Aug. 3, 2015).

4 Unless otherwise noted, all quotations are from the CRT decisions.

parents' apartment in Vienna, at which time books and papers were confiscated. During the raid, the SS knocked Mr. Albers and an employee down a flight of stairs.

Mr. Albers later escaped via London to the United States, where he eventually established another timber business. In the U.S., Mr. Albers was one of the earliest Nazi victims to seek recourse from that nation's judicial system, in 1946 bringing suit against a Swiss bank in the City Court of New York. In that lawsuit, *Albers v. Credit Suisse* — subsequently cited by Judge Korman in this proceeding and incorporated within the CRT Rules[5] — Mr. Albers contended and the City Court agreed that the Swiss bank should not have complied with a Holocaust-era transfer order that the bank knew or should have known had been made under duress. The City Court pointed out that the bank "cannot escape the implication of its conduct – that it knew [Mr. Albers] was one of those persons who was not free to communicate with it, who was not free to use the mails for the conduct of his personal affairs or business affairs, and that it was useless for it to attempt to communicate with him [as evidenced by the fact that the Bank[6] wrote to Mr. Albers confirming that it had executed a transfer order to the Nazi-controlled bank Creditanstalt made while Mr. Albers was in a concentration camp; *see infra*]. And above all [the bank] knew that [Mr. Albers] was not likely of his free will to transfer property of his located in Switzerland to a bank in German territory controlled by the German Government."[7]

Decades later, in the claims review process under the Court's authority, the CRT revisited this case. The CRT located records relating to the accounts held at the bank that was the subject of the 1946 litigation. These documents indicated that Arthur Albers had owned a custody account numbered L59626, opened on December 29, 1937. The account contained bonds with a nominal value of $5,000. It was closed between January 20-29, 1939. In addition, Arthur Albers

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5 *Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946), cited in *In re Holocaust Victim Assets Litig.*, 302 F.Supp.2d 59, 66 (E.D.N.Y. Feb. 19, 2004), amended 319 F. Supp. 2d 301, 308 (E.D.N.Y. June 1, 2004), and in the Rules Governing the Claims Resolution Process, as amended ("CRT Rules"), Article 28(j), note 5.

6 CRT decisions generally capitalized the word "Bank" to refer to the particular Swiss bank at which the account at issue was held. That format is adopted here for direct quotations from the CRT decisions, but other references to "bank" or "banks" are not capitalized herein unless otherwise specifically noted. Similarly, although CRT decisions generally capitalized the terms "Claimant" and "Account Owner," that format is adopted here only for direct quotations from CRT decisions; otherwise, lower-case format is used.

7 188 Misc. at 244; 67 N.Y.S.2d at 234.

held a demand deposit account which was closed on January 31, 1940. The CRT reviewed bank memoranda and minutes from meetings of the bank's legal department, dated April 1942 and January 1944, which recounted most of the facts set forth in the 1946 New York City Court decision. These records also noted that the bonds were credited to the *Österreichische Creditanstalt* account at *Chase City Bank* in New York. As described by the CRT, in October 1939, ten months after executing the order from the *Creditanstalt*, Arthur Albers informed the bank of his new London address and instructed the bank to sell his bonds. The bank responded that the bonds already had been sold for the benefit of the *Creditanstalt*. The CRT observed that on "16 December 1939, the Account Owner, who was reportedly astonished to learn that his account had been closed, demanded compensation from [the bank], and ordered his remaining account there, a demand deposit account, to be closed immediately" and the SF 1,000 proceeds to be transferred to Arthur Albers' representative in Zurich. The bank complied with this demand.

As a result of the ICEP audit and the CRT investigation, including a request by the CRT to the banks for "voluntary assistance,"[8] the CRT also located evidence of other accounts held by Mr. Albers at a different Swiss bank; namely, two custody accounts and a demand deposit account. One of the two custody accounts was closed on May 7, 1938. The second custody account was opened on May 9, 1938 and closed on February 16, 1939. The demand deposit account (information about which was obtained from records relating to a 1962 Survey of Swiss accounts[9]) was opened on August 8, 1938. It was frozen in the 1945 Freeze[10], at which time it

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[8] Under Article 6 of the CRT Rules, "Voluntary Assistance From Banks" is defined as follows: "When necessary to obtain information to resolve claims to Accounts that is unavailable to the CRT under Articles 1-5, the CRT may seek the voluntary assistance of banks that may have information in their files on such an Account."

[9] By Federal Decree of December 20, 1962, the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss-based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since May 9, 1945 and who were known or presumed to have been victims of racial, religious, or political persecution. *See Glossary: In re Holocaust Victim Assets Litig., available at* http://www.swissbankclaims.com/Glossary.aspx ("1962 Survey**").**

[10] *See* http://www.swissbankclaims.com/Glossary.aspx ("1945 Freeze"): "Pursuant to an accordance with a "decree of the Swiss Federal Council, all assets in Switzerland belonging to citizens of Germany and the territories incorporated into the Third Reich were frozen on February 16, 1945. A Swiss government ruling of May 29, 1945 required that all German assets in Switzerland had to be reported to the Swiss Compensation Office. The freeze was lifted pursuant to the agreements concluded between Switzerland and Western Germany and between Switzerland, USA, France and the United Kingdom in August 1952. These agreements entered into force on 19 March 1953."

held a balance of SF 987.50, and was unfrozen in June 1955. By September 7, 1959, the account held a balance of SF 911, and by December 12, 1963, it held SF 801. The account was closed in 1982.

Additionally, the CRT located Arthur Albers' 1938 Census,[11] which showed that he was arrested by the Gestapo on April 21, 1938 and imprisoned in a camp on April 29, 1938. The records indicated that his assets "were seized by the Gestapo and … his business was to be liquidated." His census form, dated August 8, 1938, was signed by Felix Kozar, a Nazi-appointed asset manager, who reported that Arthur Albers owned real estate, business interests, and accounts and securities in banks in Vienna, Paris and Zurich. The 1938 Census further indicated that Arthur Albers held a custody account at the first bank (the subject of the 1946 New York litigation), and a custody account at the second bank, each containing bonds with a nominal value of $5,000. By December 31, 1938, according to the Census, all of Arthur Albers' foreign securities except those held in Switzerland had been transferred to the *Creditanstalt* bank. A letter of May 4, 1939 contained in the Census file stated that the Finance Ministry did not object to the Albers' family emigration, since all of Arthur Albers' fortune had been confiscated as of October 25, 1938.

The CRT award compensated the Albers family for the difference between the amount received through the 1946 City Court lawsuit, and the market value of the bonds actually held at the bank. The award recognized that Mr. Albers himself, from London, had closed the demand deposit account at the same bank, when Mr. Albers learned that the bank had turned over the custody account to the *Creditanstalt.* The CRT therefore did not award that account. The three other accounts (located at a second bank) were awarded, however. The CRT observed that two of the accounts appeared to have been closed while Arthur Albers had been imprisoned, and thus under duress. The third account had been closed in 1982, long after his death, and so could not have been closed by Mr. Albers. Nor were there any bank records indicating that Mr. Albers'

[11] By decree of April 26, 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria (as well as Germany), and who held assets above a specified level, to register all assets as of 27 April 1938. The records for the 1938 Census for Austria are currently housed in the Austrian State Archive (Archive of the Republic, Finance). *See* http://www.swissbankclaims.com/Glossary.aspx ("Austrian Census").

heirs had closed that account. Because the lack of bank records was due not to the claimants' behavior, but due to the banks' post-War destruction of records for millions of accounts, the CRT applied the "adverse inference" to award the three accounts at the second bank to the claimants at their presumptive values.[12]

ii. In re Account of Robert Anninger (SF 37,575.00)

Dr. Robert Anninger was born in 1909 in Vienna, where he owned the textile manufacturing company *Spinnerei-Weberei Teesdorf AG*. He also was entitled to receive annual profits from the company *Wm. Abeles & Co.*, one-half of which was owned by his father. Dr. Anninger fled with his family (including his daughters, the claimants) to the United States in 1938, and died in Thurgau, Switzerland in 1971. His wife died in Massachusetts in 1985.

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[12] On December 6, 1999, the Volcker Committee released its final report. Its research showed that some 6.8 million Swiss bank accounts were open or opened during the relevant period of 1933-1945. Of these, the banks had destroyed documents relating to approximately 2.7 million accounts. Despite this massive document destruction, records still remained for approximately 4.1 million Holocaust-era Swiss accounts. The auditors researched approximately 300,000 of these 4.1 million accounts. The Volcker Committee determined that of the 300,000 accounts investigated, a total of approximately 54,000 had a "probable" or "possible" relationship to victims of Nazi persecution. These accounts — subsequently reduced to 36,000 by a so-called "scrubbing" process — were to constitute the Accounts History Database ("AHD"); *i.e.*, the database of accounts that would be made available to the CRT for use in the claims process. The Volcker Committee further recommended that approximately 21,000 of the 36,000 AHD accounts should be published. The remaining approximately 15,000 accounts were not to be published, but were to be available to the CRT for review in the event that a Holocaust victim or heir submitted a claim that appeared to match to an unpublished account. As to the bulk of the 4.1 million Holocaust-era accounts for which records continued to exist, but which were not included as part of the AHD, the Volcker Committee recommended that those remaining accounts should be consolidated into a "Total Accounts Database" (TAD) that also would be available for use in a claims process. Swiss banking authorities declined to adopt the Volcker Committee's recommendation to create a Total Accounts Database for all of the 4.1 million accounts that existed in Swiss Banks in the relevant 1933-1945 period. *See* Glossary ("Total Accounts Database [TAD]").

In response to the banks´ destruction of documentation, the Court authorized the CRT to take into consideration the "adverse inference" principle in assessing claims. "'It is a well-established and long-standing principle of law that a party's intentional destruction of evidence relevant to proof of an issue at trial can support an inference that the evidence would have been unfavorable to the party responsible for its destruction. *Kronisch v. United States*, 150 F.3d 112, 126 (2d Cir. 1998). '[A]n adverse inference should serve the function, insofar as possible, of restoring the prejudiced party to the same position he would have been in absent the wrongful destruction of evidence by the opposing party.' *Id.* While these presumptions can of course never return the account holders to the position they would have been in were it not for decades of bank stonewalling and document destruction, they can help to balance the equities." *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 317 (E.D.N.Y. 2004).

In 1939, the Nazi confiscation of the company *Wm. Abeles & Co.* ("*Abeles*") was the subject of litigation in New York. A New York cotton broker, *M. Hohenberg & Co.* ("*Hohenberg*"), brought an interpleader action in New York Supreme Court (the trial court level of the New York court system), seeking permission to pay into court the sum of $8,572. That was the amount owed by *Hohenberg* to *Abeles*, which by 1939 had been handed over by the Reich to a Nazi liquidator, Josef Schmied. In its decision, *Anninger v. Hohenberg*, 172 Misc. 1046, 18 N.Y.S.2d 499 (Sup. Ct. 1939), Justice William T. Collins observed that one of the owners of *Abeles* (identified in a December 8, 1939 New York Times article as Friedrich Unger[13]) had been imprisoned in Austria, and after he was ransomed for $34,000, he was able to escape to the United States.

The New York Supreme Court twice denied the motion for interpleader (including on reargument), observing that all that the liquidator could assert would be a "simulated claim to the funds." 18 N.Y.S.2d at 501. The Court condemned the liquidation as "sheer confiscation" and stated that

> …. To grant this motion would be an acknowledgment that the claim of the liquidator in Austria has a status here. Put differently, it would mean that our Courts will not only recognize but render assistance to the confiscatory, proscriptive policies of the German Reich. To this doctrine I am unwilling to subscribe. To be sure, we may be powerless to extend the jurisdiction of this Court to Austria, but when it is essayed to invoke our legal weapons to execute policies which are rejected here, we can and do refuse to lend our aid.

Id. at 500-501. On reargument, the Court added: "I cannot bring myself to lend assistance to what impresses me as a scheme of nefarious expropriation." *Id*. at 502.

Nearly six decades later, Dr. Anninger's daughters achieved another legal victory through the CRT process, receiving the proceeds of their father's Swiss bank account.[14] The bank records available to the CRT indicated that Dr. Robert Anninger "from Vienna" owned a safe deposit box that was opened on April 14, 1938 and closed on May 6, 1939. The CRT awarded

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[13] Friedrich Unger also owned an art collection, which was among 148 "significant collections" plundered by the Nazis. *See* SOPHIE LILLIE, WAS EINMAL WAR: A HANDBOOK OF VIENNA'S PLUNDERED ART COLLECTIONS (Czernin Verlag 2003).

[14] *See* http://www.crt-ii.org/_awards/_apdfs/Anninger_Robert.pdf.

the average value of a safe deposit box, observing that although the account was closed at a time when the account owner was outside Nazi-dominated territory, "the Bank's record does not indicate to whom the account was closed," and the "Account Owner may have had relatives remaining in his country of origin and … may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety."

Subsequently, following the Court's June 16, 2010 approval of Special Master Junz's recommendation to increase presumptive values for most account types,[15] the claimants received an additional award of SF 22,075 ($18,244).[16]

iii. In re Account of Arthur Bauer (SF 47,400.00)

Arthur Bauer was born in 1909 in Erlangen, Germany, and worked in his family's real estate business. He was arrested in Munich during *Kristallnacht* ("Night of Broken Glass") in November 1938[17] and was imprisoned in Dachau. Upon his release, he fled to Switzerland and

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[15] *See In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010). At the outset of the claims process, the Volcker Committee auditors provided the CRT with recommended "presumptive" or "average" values to apply in those cases where the banks had destroyed documentation that would have shown the actual account values. After years of study of underlying bank records and other evidence, CRT Special Master Junz recommended that most of the presumptive values be adjusted upward. The Court adopted this recommendation in 2010, authorizing retroactive payments for accounts previously awarded at the lower values, as well as adjusting awards going forward.

[16] Most of the decisions cited herein reflect this presumptive value increase in the total of the award as included next to the case name for each decision described in this summary. These presumptive value increases were calculated well after the initial decisions were released and published on the CRT website. The published decisions were not revised to reflect the presumptive value increases. Accordingly, the amount reflected in each published CRT decision (available at www.crt-ii.ch and www.swissbankclaims.com) generally is lower than the amount ultimately awarded. The presumptive value increases were authorized by the Court and each payment recommendation was docketed, but these adjustment decisions — as they were not substantive but rather reflected administrative recalculations —were not posted on the internet. They are, however, publicly available thorugh the Court docket. Furthermore, as part of the audit of CRT payments, on January 30, 2014, the Settlement Fund accountant, EisnerAmper LLP, filed several reports and charts, including a detailed report calculating and tabulating all payments made in connection with each and every CRT award (including original awards, amendments, presumptive value adjustments, and in some instances other adjustments as well). This chart is available on the Court docket (docket no. 4941). An additional report, detailing each and every payment to every Deposited Assets Class recipient, also is available but has been filed under seal as it contains the names of claimants (most of whom had requested and were granted confidentiality when they filed their claim forms). A second version of this same report, redacting recipient names, is available on the docket.

[17] "*Kristallnacht*, literally, 'Night of Crystal,' is often referred to as the 'Night of Broken Glass.' The name refers to the wave of violent anti-Jewish pogroms which took place on November 9 and 10, 1938, throughout

remained there from March 1939 to June 1939, at which time he emigrated to the United States. He served in the United States Army from 1942 through 1945, and was married in Philadelphia in 1948.

In 1972, according to the claimant, Arthur Bauer's daughter, her father visited Switzerland and was informed by the bank that a search of the records to locate an account owned by his family members would not be possible without a death certificate. In 1996, in response to the family's request for information, the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks advised that further data was needed, as well as payment of SF 300, before an investigation into Swiss bank accounts could be undertaken.

The bank records finally were made available for review years later, as part of the Court-supervised CRT claims process. These documents indicated that Arthur Bauer held an account of unknown type and value. The auditors presumed it was closed and found no evidence of activity after 1945. The CRT awarded the account at its presumptive value, observing that the "facts of this case are similar to other cases that have come before the CRT in which account owners are interned in the Dachau concentration camp for a relatively short time, and then, near the time of their release, Swiss accounts held by the account owners are closed unknown to whom or are transferred to Nazi-controlled banks….[T]he CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis." The CRT also pointed out that the bank had "rejected the Claimant's family's inquiry regarding accounts held by Arthur Bauer."[18]

Germany, annexed Austria, and in areas of the Sudetenland in Czechoslovakia recently occupied by German troops." *See* Holocaust Encyclopedia, U.S. Holocaust Memorial Museum (USHMM) ("Kristallnacht").

[18] The banks were concerned about "double liability": they previously had transferred the account to Nazi authorities, and did not want to have to pay the same amount to the actual account owners. As the Court pointed out in its 2004 opinion on the banks' behavior during and after the Holocaust era, concern for double liability motivated the banks' in "stonewalling" Holocaust victims and their heirs. *See In re Holocaust Victim Assets Litig.*, 302 F.Supp.2d 59, amended and superseded on June 1, 2004, 319 F. Supp.2d 301, 308-316 (E.D.N.Y. 2004).

iv. In re Account of Beger & Röckel (SF 49,375.00); In re Accounts of Wilhelm Marx (SF 289,087.50)

Beger & Röckel was a printing factory in Munich, owned by Wilhelm Marx, who was born in 1875 in Nördlingen, Germany. In addition to *Beger & Röckel*, Wilhelm Marx also owned another printing factory, *Graphia - Kunstanstalt und Druckerei.* With other members of his family, including his son-in-law, Hans Archenhold, Wilhelm Marx was arrested and imprisoned in Dachau in November 1938, and his businesses were confiscated by the Nazis. The *Beger & Röckel* printing plant was converted to build Messerschmitt fighter planes.[19]

After his release from Dachau, Wilhelm Marx and other members of his family fled from Germany to England in March 1939, and then to the United States in early 1940. Hans Archenhold, who had been a "creative force" at his father-in-law's company, *Beger & Röckel*, "walked into [the Hallmark greeting card offices in Kansas City] without an appointment and asked for a job." He was hired, and instituted new practices at the factory enabling Hallmark to "shift to a more efficient, mechanized system to meet the growing demand for greeting cards." He "kept Hallmark on the leading edge as American printing technology began to outpace Europe's."[20]

In connection with their audit of Holocaust-era Swiss bank accounts, the ICEP auditors did not report an account belonging to *Beger & Röckel*, and thus the account was unpublished. The account presumably is among the millions for which records were destroyed by the banks in the post-Holocaust era.[21] Nevertheless, the CRT located evidence of the account by examining the 1938 Census. These records indicated that Wilhelm Marx owned *Beger & Röckel* as well as *Graphia*, and that aryanization[22] proceedings against the companies began before November 12,

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[19] *See* Patrick Regan, *Hans Archenhold: New Life in the New World*, *in* HALLMARK - A CENTURY OF CARING 71 (Hallmark 2009).

[20] *Id.*

[21] *See, e.g., In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 155 (E.D.N.Y. 2000), *aff'd.*, 2001 WL 868507 (2d Cir. July 26, 2001), reissued as a published opinion on July 1, 2005, 413 F.3d 183 (2d Cir. 2005), citing Volcker Report's determination that of approximately 6.9 million Holocaust-era accounts, records for approximately 2.8 million had been destroyed by Swiss banks in the years following the Holocaust.

[22] "Aryanization" (*Arisierung*) refers to the "the transfer of Jewish-owned businesses to German ownership throughout Germany and German-occupied countries. The Aryanization process included two stages: from 1933–1938 the Jews were gradually removed from German economic life, termed by the Nazis as "voluntary"

1938 and concluded on February 15, 1939. As described by the CRT, on February 17, 1939, the companies were sold for RM 243,024.07, and Wilhelm Marx was credited with RM 146,640.07 (as compared to the higher RM 339,827 value of the companies that Wilhelm Marx had reported in his Census declaration). On March 21, 1939, tax authorities blocked these and other assets, allowing Wilhelm Marx to withdraw up to RM 1,500 monthly for living expenses and payment of official charges. The blocking order stated that the subjects were "non-Aryan" and that "recent experience" had shown that "non-Aryans, after the sale of their businesses, would attempt to evade the foreign exchange regulations and move the liquid assets they had received abroad."

As noted, the evidence of the Swiss account was contained in the 1938 Census; specifically, in a December 10, 193[8] letter "written on the company's letterhead" to the Munich Tax Office. The letter stated that Wilhelm Marx's partners guaranteed payment of any flight tax that would be due if Mr. Marx were to leave the country.[23] The letterhead indicated

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exclusion; after 1938, Jewish businesses and property were forcibly confiscated by the Nazis." *See* SHOAH Research Center, The International School for Holocaust Studies, at http://www.yadvashem.org/. *See also* FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR 322-23 (Pendo Verlag GmbH 2002) (*available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf) (also known as the Bergier Commission after its chair, and hereinafter cited as "BERGIER FINAL REPORT") ("As early as 1933, Jewish businessmen were being made to sell their companies. During the first few years, however, the firms were mostly left in peace by the authorities. The owners were free to decide to whom they would sell and the selling price was agreed between the two parties. Even if they were based at the time on the agreement of both parties, such take-overs cannot be termed 'fair deals' without closer investigation. The contracts were not drawn up on a legal basis and under free-market conditions. Instead, the situation was one in which the Jewish businessmen were under great pressure to sell. Furthermore, in view of the currency and tax restrictions it was difficult to use the income from the sale... From the middle of 1936 on, sales contracts had to be submitted to … regional economic advisors... Towards the end of 1937, pressure on large firms in particular increased, and from 1938 on take-overs had to be approved by the authorities. At this stage it was possible to sell a firm only at a price well below its real value. Economic persecution turned a new corner after the annexation of Austria … in March 1938, when within a few weeks thousands of Austrian companies were 'Aryanised' or liquidated. This 'uncontrolled Aryanisation' was followed by state regulation and an organized 'Aryanisation' which manifested the state's economic interest. The authorities imposed an 'Aryanisation tax' … and tried to ensure as great a margin as possible between the amount paid to the vendor and the actual sale price, the difference being paid into the state coffers").

The Independent Commission of Experts Switzerland - Second World War was the commission assigned the task of investigating many aspects of Switzerland's activities during the Second World War. It is also known as the "Bergier Commission" after its chair, Jean-Françoise Bergier. Before her appointment as CRT Special Master, Dr. Helen Junz had been a member of the Bergier Commission.

[23] A substantial tax, the so-called "flight tax," was levied upon those able to flee Nazi Germany. As described in the BERGIER FINAL REPORT (at 274), beginning in 1938, "many special taxes and levies were introduced such as the so-called '*Sühneleistung*' (atonement fine) instituted after the pogrom in November 1938 [*Kristallnacht*] and the *Reichsfluchtsteuer* (emigration tax), which were extended and already levied on people who were likely

that the company owned business accounts in Munich, Vienna, Austria, and the St. Gallen, Switzerland branch of the bank in question.

The CRT awarded the claimants, the great-grandson and grand-children of Wilhelm Marx (one of whom also was the daughter of Hans Archenhold), the presumptive value of an account of unknown type. The CRT observed that Wilhelm Marx had been imprisoned in Dachau and his assets had been aryanized, and so it was plausible that the account had not been returned to its rightful owner.

The same individuals also received an additional award of SF 189,250 for the published accounts of Wilhelm Marx. The CRT noted that the bank records indicated that Wilhelm Marx of Munich owned a demand deposit account as well as a custody account, both of which had been opened on October 12, 1930 and closed on July 14, 1933. "Given that after coming to power in 1933, the Nazi regime embarked on a campaign to seize the domestic and foreign assets of the Jewish population through the enforcement of discriminatory tax and other confiscatory measures, including confiscation of assets held in Swiss banks; that the Account Owner remained in Germany until 1940, and would not have been able to repatriate his accounts to Germany without losing ultimate control over its proceeds; that the Account Owner's assets were confiscated by the Nazi regime; that there is no record of the payment of the Account Owner's accounts to him; that the Account Owner and his heirs would not have been able to obtain information about his accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability; given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules Governing the Claims Resolution Process, as amended … the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner…."[24]

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to emigrate. To avoid the high penalties and meet the financial burden, many Jews and others who were persecuted had to withdraw their assets and securities from Switzerland."

[24] Over five years after the award was approved, additional claimants (who were distant cousins of the awardees) contacted the CRT contending that their grandfather was co-owner of the firm *Beger & Röckel.* They sought a share of the award. The CRT advised the claimants that they had not filed a timely claim, nor did their late claim qualify for consideration under the terms of the Court's December 30, 2004 order relating to late claims:

v. In re Accounts of Dr. Robert Blum (SF 281,517.50)

Dr. Robert Blum was born in 1883 in Frankenthal, Germany, where he practiced law. He was forced to shut down his legal practice and was interned in Dachau several times, including for three weeks in November 1938. He fled with his family to São Paulo, Brazil, where he died in 1941.

The bank records indicated that Robert Blum owned a custody account as well as a demand deposit account. Among the documents in the bank files was a power of attorney signed by Robert Blum while he was in Dachau. This document gave general power to his wife, Luise, to make bank declarations and conclude contracts relating to the receipt or disposal of the Blums' assets. Based upon this declaration, executed while the account owner was held at Dachau, the ICEP auditors determined that the accounts had been paid to Nazi authorities. The accounts were awarded to the claimants, Robert Blum's grandchildren, at their respective presumptive values.

vi. In re Account of Robert and Marie Blumka (SF 281,517.50)

Robert Blumka was born in Vienna in 1886. His wife, Marie Blumka, was born in 1898, also in Vienna. Robert Blumka was a bank manager in Vienna. In 1939, he was forced to flee with his family to England.

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the claimants were not the account owners, spouse or children of the account owners; they did not provide an "unusually compelling reason for failing to comply with the filing deadlines;" and they did not demonstrate "by clear and convincing evidence that the claimed account was awarded erroneously." However, the claimants were further advised that had their claims been timely and had they shown that their grandfather in fact had owned one-half of the firm, they would have been entitled to one-half of the award. Accordingly, the late claimants were provided with copies of the Acknowledgment Forms that their cousins had signed, in which (as true for all awardees) the recipients had agreed to share or transfer the payment to relatives equally or better entitled to the award. The late claimants were advised to attempt to "reach an agreement [outside the CRT process] about the distribution of the award amount and any potential award amount adjustment in the future."

The CRT observed that the bank records included "an excerpt from a list of accounts that were transferred to German or Austrian banks." The list demonstrated that Robert Blumka owned a demand deposit account, and that he and his wife also jointly owned a custody account, both of which were transferred on April 7, 1938 to the Nazi-controlled bank *Öesterreichische Kreditanstalt* (*i.e.*, transferred by the bank to the Nazis). The accounts were awarded at their presumptive values.

vii. In re Account of Dr. Hans Brück (SF 287,017.50)

Hans Brück was born in 1898 and lived in Vienna, where he was an attorney and secretary of the managing director of the factory Gerngross A.G.[25] After the *Anschluss*, he could no longer work as an attorney and was instead forced by the Nazis to assist in managing the factory. He and his family fled to Australia in November 1938.

The bank records indicated that Hans Brück's custody account was transferred in August 1938 to the *Österreichische Kreditanstalt Bankverein*, while his demand deposit account was closed after the *Anschluss* in April 1938. The ICEP auditors determined that both accounts had been paid to the Nazis. The CRT agreed, and awarded the demand deposit at presumptive value, while awarding the custody account based upon the amount reported in Mr. Brück's 1938 Census form.

Subsequently, in an amendment, the CRT increased the custody account award. The CRT noted that, in accordance with the principle adopted by court order of October 12, 2004 and incorporated into the CRT Rules, Nazi victims may have understated the assets in their 1938 Census forms. Accordingly, the balance reported in the Census was unreliable, absent evidence to the contrary, and so was increased.[26]

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[25] In a separate decision, the Court also authorized an award and award amendment to the heirs of the owners of *A. Gerngross A.G.* *See In re Accounts of Albert Gerngross, Paul Gerngross, Martha Gerngross, and A. Gerngross A.G.*, discussed elsewhere herein.

[26] Under the October 12, 2004 order, the Court adopted the presumption that those who reported their Swiss accounts in the 1938 Nazi Census had an incentive to underreport the actual values of these accounts.

viii. In re Accounts of Ernst Brücke and Dora Brücke-Teleky (SF 578,175.00)

Ernst Brücke was born in 1880 in Vienna and was married in 1930 to Dora Brücke-Teleky, who was his second wife. The claimant, the granddaughter of Ernst Brücke and his first wife, stated that her grandfather was a neurophysiologist and a prominent faculty member at the University of Innsbruck. Dora Brücke-Teleky was a well-known gynecologist. Ernst Brücke was classified as a *Mischling* (mixed Jewish blood) under the Nuremberg Laws, and Dora Brücke-Teleky was Jewish.

Dora Teleky. Dec. 10, 1910. https://de.wikipedia.org/wiki/Dora_Br%C3%BCcke-Teleky#/media/File:Dora_Teleky.jpg. Photo courtesy of Wikimedia.

Accordingly, for all accounts reported in these Census forms with values below the presumptive values adopted by the CRT, awards were authorized to be made at the higher amount; *i.e.*, the presumptive value. On January 7, 2005, the Court adopted the same presumption for accounts reported by the banks at values lower than the CRT's presumptive values. Both orders were intended to incorporate into the CRT process certain presumptions favoring claimants where, because of the banks' destruction of records, the account documents did not exist or were insufficient.

Ernst Theodor von Brücke. 1927. https://de.wikipedia.org/wiki/Ernst_Theodor_von_Br%C3%BCcke. Photo courtesy of Wikimedia.

According to an article provided by the claimant,[27] and based upon the CRT's independent research, in 1916, Brücke "was appointed Professor and Chair of Physiology at the University of Innsbruck," where he "published well over 100 papers." He studied such fields as "binocular vision and visual illusions" and "comparative anatomy and physiology of organs innervated by the autonomic nervous system." His later focus was upon "the electrophysiology of nerve and muscle …, in particular the mechanisms of reflex excitability and inhibition."

In 1921, Brücke and a colleague at Harvard Medical School, Alexander Forbes, began a correspondence which eventually led to the rescue of Brücke and his wife from Nazi Europe. Forbes, a grandson of Ralph Waldo Emerson, like Brücke specialized in reflex physiology and nervous inhibition. Forbes and Brücke had met at a conference in Boston, Massachusetts, and spent time together in Innsbruck, Austria. "In April 1938, shortly after the [*Anschluss*], von Brücke was abruptly dismissed from his university position; the reason given by the new Nazi authorities for their action was that von Brücke's mother, née Milly Wittgenstein [the aunt of the

[27] Ernst-August Seyfarth, *Ernst Theodore von Brücke (1880-1941) and Alexander Forbes (1882-1965): Chronicle of a Transatlantic Friendship in Difficult Times*, *in* PERSPECTIVES IN BIOLOGY AND MEDICINE 45 (John Hopkins Univ. Press 1996) ("Seyfarth").

philosopher Ludwig Wittgenstein], and his second wife, Dora Teleky, a well-known Viennese gynecologist, were of Jewish descent."[28]

When Forbes learned of these events, "he immediately began negotiations in his department and - unknown to von Brücke - organized a campaign among his American colleagues to collect funds to secure a research position for von Brücke at Harvard…. In October 1938, Harvard University agreed to provide a temporary position as a 'Research Associate' in the Department of Physiology. Forbes assumed a personal responsibility for funding von Brücke's salary; he also solicited contributions from other colleagues and organizations such as the Emergency Committee in Aid of Displaced Foreign Medical Scientists in New York City."[29] After months of bureaucratic difficulties and negotiation, Brücke was allowed to leave Vienna via Switzerland, France, Belgium, and Britain. He arrived in the United States two weeks before World War II broke out, and his wife followed on September 15, 1939. He resumed his experimental work in Forbes's laboratory, and the two collaborated on several research papers. Brücke died unexpectedly in June 1941. Forbes continued to assist Dr. Teleky-Brücke after her husband's death, and after the War "sent food parcels to Austria to support von Brücke's children and their families."[30]

The bank records indicated that Professor Ernst Brücke owned a demand deposit account that was opened in 1930 and closed on an unknown date. As described by the CRT, the customer card related to the account "contains a note from 12 July 1938 that in future all deposits and transfers were to be reported by letter to the New York Trust Company in favor of the *Österreichische Kreditanstalt* in Vienna." Brücke also owned a custody account that was opened in 1930. According to the bank records, it was transferred on September 24, 1938 to the *Oest. Creditanstalt-Wiener Bankverein.*

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[28] Seyfarth, at 49. The Wittgenstein family's separate claim to CRT accounts is discussed elsewhere herein.

[29] *Id.*, at 49-50. Seyfarth noted that despite his prominence, Brücke's escape was by no means certain. In 1938, "émigré scientists from Austria trying to come to countries such as Great Britain or the United States were faced with an almost hopeless situation. Thousands had already been admitted from Germany, and the strict quotas imposed by the host countries made the placement of additional European refugees extremely difficult. Von Brücke's opportunities were further constrained by his relatively advanced age of 57…" *Id.*, at 49.

[30] Seyfarth, at 53.

Dr. Teleky-Brücke owned a custody account that was opened in 1935 and "was labeled closed on 25 July 1938 after the funds were repatriated to Austria." A document in the bank files "entitled 'Closed custody accounts of Austrian clients, the market value of which is still to be calculated' indicates that the amount in the account as at 28 July 1938 was SF 16,640.00. This entry is accompanied by a handwritten note dated 30 May 1938 which states that the securities had been surrendered …, and another one dated 14 July 1938 which states that gold coins had been sent to the Main Office of the *Reichsbank* in Vienna on 14 July 1938."

In addition, as described by the CRT, an August 15, 1963 letter in the bank files "from the Bank's legal department entitled 'Estate of Dr. med. Dora von Brücke-Teleky' indicates that the last executor of the will, a Mr. Albert Hauser, had contacted the Bank, was accepted by the Bank, and was provided with full information about the balance of another, then still open, account owned by the late account owner …. The letter did not mention the custody account closed in 1938 and the ICEP audit concluded that, as the reason for closure was the repatriation of funds to Austria and it is not known whether Account Owner Brücke-Teleky or her heirs received restitution, this account remained reviewable."

The CRT also determined, based upon its examination of 1938 Census, that Dr. Brücke-Teleky owned an additional account at the bank, a demand deposit account with the reported value of SF 448. Dr. Brücke-Teleky noted in this Census form that her husband was Protestant and was a *Mischling* of the first or second degree.[31] As described by the CRT, the Census file "further contains a series of letters from late 1938 and early 1939 regarding certain foreign securities that Dr. Brücke-Teleky was expected to 'offer' to the Nazi authorities in Vienna." A January 10, 1939 investigation report in the file stated that Dr. Brücke-Teleky had departed for Milan in August 16, 1938, and that her former housekeeper, "who was still living in her former employer's apartment, showed the authorities the tax clearance that Dr. Brücke-Teleky had received from the fiscal authorities," which allowed for her departure. The 1938 Census files also contained a January 29, 1939 letter from Professor Brücke "in which he stated that in the

[31] The CRT explained that an "Interior Ministry ruling on the Nuremberg Laws" provided that "a person descended from two Jewish grandparents, who neither adhered to the Jewish religion nor was married to a Jew from 15 September 1935 (the date the laws came into effect) was classified as a *Mischling* of the first degree. A *Mischling* of the second degree was a person with only one Jewish grandparent."

past few years he had only occasionally seen his wife, with whom he had never shared a residence, and that therefore he did not know where she was currently residing."

The CRT awarded the accounts to Professor Brücke's granddaughter and the cousins she was representing (a total of 12 individuals). All accounts were awarded at presumptive value, with the exception of the custody account reported at the value of SF 16,640 (an amount higher than the presumptive value then in effect). The CRT concluded that the accounts either had been turned over to the Nazis and/or that the presumptions under the CRT Rules warranted the conclusion that the account owners had not received the proceeds.

The CRT observed that although Professor Brücke's heirs had filed claims, Dr. Brücke-Teleky's heirs had not. Therefore, it was "consistent with the principles of fairness and equity to divide her accounts according to the same criteria" used for Ernst Brücke's accounts. The CRT determined that the claimant was entitled to 3/16 of the value of the accounts; two of her cousins each were entitled to 1/12 of the value; seven of her cousins each were entitled to 1/16 of the value; and one of her cousins was entitled to 5/24 of the value. Since one of the 12 claimants was the spouse of a claimant and thus a less direct heir of the Brückes, that individual was not entitled to a share of the award.

ix. In re Accounts of Martin Cohn (SF 1,966,773.88)

Dr. Martin Cohn was born in 1884 and was a dental surgeon in Berlin. His office was destroyed during *Kristallnacht*. He reopened it in 1940 in a different location in Berlin. Dr. Cohn also had inherited his father's share of a scrap metal company and thus held the title of "businessman." Dr. Cohn and his wife were deported to Auschwitz in March 1943, where they perished. One of his two daughters survived Theresienstadt, but died in 1947. His other daughter, the claimant, escaped to England on a *Kindertransport*.[32] She did not file a Swiss

[32] "*Kindertransport* (Children's Transport) was the informal name of a series of rescue efforts which brought thousands of refugee Jewish children to Great Britain from Nazi Germany between 1938 and 1940." Under the program, "British authorities agreed to allow an unspecified number of children under the age of 17 to enter Great Britain from Germany and German-annexed territories (that is, Austria and the Czech lands). Private citizens or organizations had to guarantee payment for each child's care, education, and eventual emigration

Banks claim form. Instead, the CRT accepted as a claim the documents she had filed with the New York State Banking Department's Holocaust Claims Processing Office (HCPO), and with ATAG Ernst & Young under an earlier claims process pre-dating the Settlement Agreement, as well as the Initial Questionnaire she had filed after the Settlement was announced.[33]

The bank records made available to the CRT as a result of the Court's claims processes indicated that Dr. Cohn owned six different accounts: a custody account opened on June 15, 1926 and closed on September 10, 1938; a custody account closed on October 1, 1938; a safe deposit box opened on February 27, 1931 and closed on April 28, 1933; and three demand deposit accounts, closed respectively on October 20, 1934, December 20, 1935 and January 10, 1939.

The bank records made available to the CRT also contained a letter from an "Advisor for Jewish immigrants," stating that Dr. Cohn was subject to proceedings by the Foreign Currency Division, and requesting the bank to provide a detailed list of the securities held by Dr. Cohn. The bank responded that the information could be disclosed to public authorities provided that it was in the account owner's interest, and requested further information about the proceedings. Notations in the bank records indicate that the bank received a letter of November 27, 1937, and so the "advisor's" request could be fulfilled. The bank records also contained an informal

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from Britain. In return, the British government agreed to allow unaccompanied refugee children to enter the country on temporary travel visas." *See Kindertransport 1938-1940,* USHMM HOLOCAUST ENCYCLOPEDIA, *available at* https://www.ushmm.org/wlc/en/article.php?ModuleId=10005260.

[33] "Initial Questionnaires" were informational documents solicited from claimants after the litigation settled. By order of July 30, 2001, the Court provided that Initial Questionnaires containing information sufficient to support a Deposited Assets claim were to be incorporated into the CRT claims process, to help minimize confusion among claimants who might not have understood that they were required to file separate claim forms in addition to Initial Questionnaires. By Order dated December 30, 2004, the Court similarly authorized the CRT to treat as timely any claims on behalf of "victims or targets of Nazi persecution" that were filed with entities authorized to treat these claims prior to the Settlement Agreement: ICEP, Ernst & Young (one of the ICEP auditors), and CRT-I.

The background to CRT-I is as follows. The CRT was established in 1997 and its original mission was to arbitrate claims to 5,570 dormant accounts in Swiss banks that were published in 1997, prior to the completion of the ICEP audit in 1999. That arbitration process is now referred to as CRT-I. The accounts adjudicated by CRT-I dated from 1933 to 1945 and remained open and dormant. Those accounts were owned both by Victims of Nazi persecution, and by non-Nazi victims. Ultimately, CRT-I adjudicated over 9,000 claims to accounts published in 1997. The work of CRT-I was completed in the spring of 2001. *See* Glossary ("CRT-I").

decision by the bank's legal department, and an internal memorandum listing the securities in one of Dr. Cohn's custody accounts.

The CRT awarded all six accounts, observing that the Volcker Committee (ICEP) auditors had concluded that the Nazis had confiscated the custody account. It was plausible that the other accounts also had been confiscated as well, in light of the fact that the banks had destroyed many of the account documents, warranting application of the adverse inference presumption. Since Dr. Cohn had been killed in Auschwitz, he could not have retrieved the accounts himself.

Subsequently, following the CRT's ongoing requests to the banks for additional documentation through of the "voluntary assistance" process negotiated as part of the Court's approval of the settlement, Credit Suisse provided the CRT with more records in 2008, several years after the award had been issued. As a result, the CRT was able to evaluate the type and value of securities held in one of Dr. Cohn's custody accounts. This information had not been available in the bank records provided at the outset of the claims process.[34] These documents showed that the account had held twenty different securities, including shares in AEG, IG Farben, and other major corporations. Based on the new data, the CRT was able to determine that the actual value of the securities at the time they were confiscated was SF 127,835.57, an amount significantly greater than the SF 9,856.50 that was reflected in the records available to the CRT when the award was originally authorized. After deducting the SF 9,856.50 that had been awarded, and applying the 12.5 multiplier,[35] the award was increased by SF 1,474,738.38 to reflect the actual value of the custody account.

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[34] *See* Order of June 30, 2008, authorizing amendments that had been derived from valuation information provided by defendant bank Credit Suisse, following several years of effort by the CRT to obtain additional documentation concerning Holocaust-era Swiss bank accounts.

[35] In connection with the work of the Volcker Committee, the economist Henry Kaufman chaired a "Panel on Interest, Fees and Other Charges." The panel prepared a report in 1998 which adopted a "multiplier" — a current value adjustment factor of ten — to be applied to any awards to be issued by the CRT (at that time, CRT-I), to bring 1945 values to current values. This factor was calculated by determining the compounded nominal value of a long term Swiss Federal Government bond ("CNV") over the period from 1939 to 1998. The precise value in 1998 was 10.18, which was rounded to ten. Under the oversight of then-CRT Special Master Paul Volcker, former Chairman of the United States Federal Reserve Board and head of ICEP, and Special Master Michael Bradfield, the "Kaufman Factor" multiplier was increased several times during the claims process to ensure an appropriate current value of the accounts.

x. In re Accounts of Dr. Heinrich Fink (SF 305,275.00)

Heinrich Fink was born in approximately 1914 in Radoschau Upper Silesia, Germany, and later lived in Breslau. He was killed in Auschwitz.

The bank records showed that Heinrich Fink was a doctor of medicine ("*Dr. med.*") and that he held a custody account as well as an account of unknown type. Internal bank correspondence referred to the Seventh Implementation Order to the Law of Foreign Exchange Control of November 19, 1936, which required German owners of foreign securities to deposit their securities with a German bank or, for holdings outside Germany, into an account of a German bank in that location. The original deadline for such transfers was December 4, 1936. Bank correspondence dated February 16, 1937 indicated that in the period between the effective date of November 19, 1936 through January 31, 1937, securities from 291 customer custody accounts in the amount of SF 6,266,7609 were transferred to various banks in Germany.

The records showed that securities in the amount of SF 5,000 were transferred on December 14, 1936 from Dr. Fink's custody account to the Dresdner Bank in Berlin, a Nazi-controlled bank.

The custody account was awarded to the claimant, Dr. Fink's niece (who had filed her claim through the HCPO), based on the transfer of the account to a Nazi bank. The second account, of unknown type, was awarded in reliance upon the adverse inference and other presumptions under the CRT Rules. Since the original award had been based upon the actual value reported in the account, an amount below presumptive value, an additional award subsequently was authorized to bring the amount up to presumptive value.

xi. In re Account of David Israel Frischer (SF 47,902.25)

David Israel Frischer was born in 1876 in Poland, and later moved to Vienna, where he owned a company called *David Frischer Papiergrosshandlung*. He died in Vienna in 1940, and his wife was deported to Theresienstadt and later to Auschwitz, where she perished in 1945.

The ICEP auditors did not report any bank records for David Frischer. However, the CRT determined through additional research that David Frischer owned a Swiss bank account. He had filed a 1938 Census form which he amended — presumably under duress — by letter dated July 18, 1938, to include a declaration of an account in Zurich in the amount of SF 2,945.50. He stated:

> …. [I] request to excuse the oversight due to my being an old and forgetful man who did not have any intention to withhold this asset, which is already evident from the fact that I timely registered this deposit with the main office of the Reichsbank and offered it for purchase.

The account was awarded to David Frischer's daughter, the claimant (who had filed an Initial Questionnaire and an HCPO claim, although not a claim form). She herself had been unaware that her father had amended his 1938 Census form to include his Swiss account.[36]

Subsequently, following the Court's Order authorizing the CRT to increase to presumptive value any accounts reported in the 1938 Census at amounts lower than presumptive value, the CRT awarded the claimant an additional SF 12,556.25.

xii. In re Accounts of Leo Fürst (SF 338,462.50)

Leo Fürst was born in 1873 in Austria. He was a director of petrol companies. Shortly after the *Anschluss*, he was arrested by the *Gestapo* and was imprisoned for several weeks in the Rossauerländ jail in Vienna. He fled Austria for Nice after June 24, 1938, and lived in Nice until his death there in 1941.

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[36] *See, e.g.*, William Glaberson, *Settling Accounts, But Not Minds; Holocaust Survivors Relive Past In Case Against Swiss Banks*, NY TIMES, Nov. 13, 2002, at B1 (describing several CRT awards, including that for Mr. Frischer's account).

The claimant, the nephew of Leo Fürst, submitted with his claim form correspondence between his uncle and Nazi authorities in Vienna concerning the required "flight tax."[37] In a letter dated May 30, 1938, Leo Fürst stated that he owned an account at a bank in Zurich, worth SF 1,318. He subsequently reported in a June 21, 1938 letter that the account now carried a balance of SF 715, and that it had not been confiscated. The letter also indicated that as of January 1, 1938, Leo Fürst's total assets were 112,571 Reichsmark, and that he owned five different securities, including Swiss Federal Railway bonds 1899/1902; Austrian Federal International Bonds 1930; and City of Vienna Bonds 1931, as well as two other bonds. Leo Fürst's letter made it clear that the bonds were denominated in Swiss Francs, but gave no indication where they were held.

The claimant also provided a copy of a June 24, 1997 letter from a Swiss law firm that had been hired to pursue the search for Leo Fürst's assets in Switzerland. The firm reported that the bank had advised that it had failed to locate any information regarding Leo Fürst's accounts.

The CRT explained that, contrary to the bank's statement to the Swiss law firm in 1997, records concerning Leo Fürst's accounts did indeed exist, and the Volcker Committee auditors had located them. In fact, Mr. Fürst owned a custody account closed on March 30, 1939, and a demand deposit account opened on November 10, 1929 and closed on March 31, 1939. The CRT observed that the case was "similar to other cases … in which, after the *Anschluss*, Austrian citizens who are Jewish report their assets in the 1938 Census and, subsequently, their accounts are closed and are transferred to Nazi-controlled authorities."

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[37] As stated by Gerald D. Feldman, *Confiscation of Jewish Assets, and the Holocaust, in* CONFISCATION OF JEWISH PROPERTY IN EUROPE, 1933-1945: NEW SOURCES AND PERSPECTIVES-SYMPOSIUM PROCEEDINGS 1,4 (USHMM 2003): "De-emancipation of the Jews had to be done 'legally,' which explains both the distortion of existing laws to exploit the Jews as well as the incredible proliferation of laws, decrees, and regulations concerning them. The Reich 'Flight Tax,' for example, was created by the Brüning regime in 1931 to prevent capital flight from Germany; it did so by forcing emigrants to pay twenty-five percent of their assets. Although it had nothing to do with Jews as a group, its 1934 revision reducing the assets and income thresholds at which such taxation began was deliberately designed to soak the Jews, who had become Germany's leading emigrants, and was justified by the allegation that they 'owed' the state for not having to pay German taxes in the future. Similarly, the system of foreign exchange controls became a powerful tool for limiting the amounts of money Jews could take out of the country. Increasingly, Jews seeking to get out had to monetize their assets and often place their money in blocked accounts to guarantee that the various taxes and impositions… would be paid. Thus Jews cashed in their insurance policies and then used the money to pay their taxes and the cost of emigration."

The CRT awarded the presumptive value for a custody account and demand deposit account. As to the account of unknown type reported by Leo Fürst in his May 30, 1938 letter, the CRT awarded the SF 1,318 noted in that letter (applying the multiplier to all three accounts). Subsequently, the CRT amended the latter account to increase the award by SF 32,900, representing the difference between the SF 1,318 and the SF 3,950 presumptive value for an account of unknown type, in accordance with Article 29 of the CRT Rules authorizing accounts of lower than presumptive value to be paid at presumptive value.

Several years after issuing the initial award, the CRT amended the initial decision to reflect new information that had been provided to the CRT by one of the banks through the "voluntary assistance" process. The CRT explained that the new information showed that Leo Fürst had held a custody account with six different securities, all of which had been sold in late 1938 and 1939, after Mr. Fürst had fled Austria for Nice. As described by the CRT, "this portfolio, with one exception, is identical to that listed in Leo Fürst's letter to the Flight Tax Authorities, dated 21 June 1938, as securities denominated in Swiss francs, without however specifying the location of these securities." The exception related to one type of bond that was exchanged on March 21, 1938 and later sold in two lots. "Any other differences between the portfolio values shown in … Leo Fürst's correspondence" and those provided in the newly-received bank records, the market values of which the CRT calculated through independent research, "stem from the difference in valuation dates: 1 January 1938 for the former and the post-*Anschluss* transaction dates as given in the Bank information for the latter."

Since the supplemental bank records now demonstrated that Leo Fürst's custody account actually was worth SF 17,365, or SF 4,365 more than the presumptive value of SF 13,000 that had been awarded in the initial decision, the CRT awarded Leo Fürst's nephew the difference, adjusted by the 12.5 multiplier to SF 54,562.50.

xiii. In re Accounts of Albert Gerngross, Paul Gerngross, Martha Gerngross, and *A. Gerngross A.G.* (SF 1,179,262.70)

Albert Gerngross was born in 1874. He was unmarried and lived in Vienna, where he and his brother, Paul Gerngross, born in 1880, were owners and board members of the large department store *A. Gerngross A.G.*[38]

The Gerngross shopping centre, which was founded by Viennese Jews. Vienna, Austria, circa 1904. https://en.wikipedia.org/wiki/History_of_the_Jews_in_Vienna#/media/File:Gerngross_Wien_1904.jpg. Photo courtesy of Wikimedia.

[38] The Gerngross family's assets were described by the Bergier Commission: "The case of Albert Gerngross, a businessman who had obtained Swiss nationality in the 1920s, shows the different ways in which assets were dealt with. Gerngross and his brother, who was Austrian, owned a house in Vienna. While the brother's half of the house was expropriated without compensation, Albert Gerngross was allowed to keep his half of the property. He was, however, forced to sell the 34,153 shares he held in A. Gerngross AG, one of the city's leading department stores, to the Creditanstalt." BERGIER FINAL REPORT at 340. *See also* Brigitte Hamann, *Hitler's Vienna - A dictator's apprenticeship: Jews in Vienna*, PORGES.NET, *available at* http://www.porges.net/JewsinVienna/1HistoricalBackground.html ("There were spectacular success stories in trade and economy, such as that of department store king Alfred Gerngross, which after his death in 1908 was told everywhere. Having emigrated from Frankfurt to Vienna with his brother in 1881, he opened up a fabric store, then bought one house after the other on Vienna's largest business street, Mariahilfer Strasse, and built a huge department store. He left his eight children a fortune of more than four million kronen.").

Gerngross, Mariahilfer Straße, Wien. Vienna, Austria, Aug. 22, 2015. https://commons.wikimedia.org/wiki/File:20150822_Gerngross_2881.jpg. Photo courtesy of Wikimedia and Ailura. Creative Commons Attribution-Share Alike 3.0 Austria.

Paul Gerngross was married to Martha Gerngross, born in 1885. In 1939, Albert Gerngross fled to Switzerland, where he died in 1969. Paul and Martha Gerngross fled to England in 1939, and later to Uruguay, where they remained until the end of World War II. They then returned to Austria. Paul Gerngross died in Vienna in 1954.[39]

The bank records demonstrated that the Gerngross accounts were reviewed by the bank as early as March 17, 1938, just after the *Anschluss*, when the bank stated in an internal notice that it "would soon complete a list of over 1,000 custody accounts belonging to Austrian citizens." The bank records for these accounts also included "a list of custody accounts belonging to customers residing in Austria which were transferred to Austrian or German banks in 1938."

These records showed that Albert Gerngross owned a custody account that was transferred in April 14, 1938 to the *Oesterreichische Creditanstalt Wiener Bankverein* in Vienna, with a balance of SF 47,000. The account was closed on April 30, 1938. Further, Paul Gerngross and Martha Gerngross each owned a custody account. Both accounts were transferred on August 16, 1938 to the *Länderbank Wien A.G.*, at which time the accounts respectively held

[39] Paul and Martha Gerngross also owned an art collection, which was among 148 "significant collections" plundered by the Nazis, according to historian Sophie Lillie in her work, WAS EINMAL WAR: A HANDBOOK OF VIENNA'S PLUNDERED ART COLLECTIONS.

balances of SF 16,500 and SF 1,900. The accounts were closed on September 6, 1939. The ICEP auditors concluded that all three of these accounts had been paid to Nazi authorities.

The bank records also showed that the company *A. Gerngross A.G.* held an account of unknown type. In addition, the 1938 Census for Paul and Martha Gerngross showed that among their many assets (including real estate, stocks and bonds, and bank accounts), Paul Gerngross owned a demand deposit account at the bank with a reported value of SF 84.61. The 1938 Census also demonstrated that the Gerngrosses were forced to pay a total of 740,999 Reichsmark in atonement tax (*Judenvermögensabgabe)*, and flight tax (*Reichsfluchtsteuer)* of RM 152,875. Albert Gerngross' 1938 Census form showed that he had fled to Switzerland in 1939.[40]

The CRT awarded all of the accounts to the claimants, the nieces and nephew of the Gerngrosses, concluding that the three custody accounts were turned over to the Nazis. Moreover, there was no evidence that the account owners had received the proceeds of the other two accounts (the account of unknown type and the demand deposit account).[41]

Subsequently, the CRT amended the award insofar as the original decision had calculated Martha Gerngross' custody account based upon its reported value. The CRT determined that the account was to be awarded at SF 13,000 (the presumptive value then in effect) rather than the SF 1,900 reported in the bank files. In addition, the CRT also increased the award for Paul Gerngross' demand deposit account reported in the 1938 Census, noting that "as evidenced in a

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[40] Several individuals were listed in the bank records as having power of attorney over these accounts, including Robert Gerngross, who resided at the same address as Albert Gerngross. Robert Gerngross and his wife were included on Transport No. 17, which "left the Aspang train station in Vienna on April 9th, 1942 for Izbica in the General Government. The transport consisted of 1000 Jews (346 of them older than 61 years); among them was the owner of a well-known department store, Robert Israel Gerngross and his wife." *See* http://db.yadvashem.org/deportation/transportDetails. The Yad Vashem essay explains that prior to deportation, the victims who were shipped on transports such as No. 17 (including the Gerngrosses) were forced by the "staff of the Central Office for Jewish Emigration in Vienna" to declare their property. "Then they had to sign a document confirming that they transferred everything to the state. They were also forced to hand over all valuables and cash to the representatives of the Central Office for Jewish Emigration. The Jewish property was sold by the Gestapo after the transport left." As to Transport No. 17, "most of them were sent to the Belzec extermination camp, where they were murdered in the gas chambers. Of all 1000 Jews that went to Izbica with transport no. 17, not a single person survived the Holocaust." *Id.*

[41] In a separate decision discussed elsewhere herein, *In re Account of Dr. Hans Bruck*, the CRT located and returned accounts owned by the attorney and secretary of the managing director for *A. Gerngross A.G.*, Dr. Hans Bruck. As true for his employers, Dr. Bruck's Swiss accounts likewise were confiscated by the Nazis.

number of cases, … Paul Gerngross may not have declared all his assets, or he may have understated their value, in the belief that this might help him safeguard some of them."

xiv. In re Account of Wilhelm Gewitsch (SF 49,375.00)

Wilhelm Gewitsch was born and lived in Vienna. He and his wife had one child, who was born in 1883. Mrs. Gewitsch perished in Theresienstadt in September 1942, and the Gewitschs' daughter was deported to Minsk, where she perished in August 1942. As to account owner Wilhelm Gewitsch (the claimant's great-grandfather), his fate was unknown.

The bank records demonstrated that the account of Wilhelm Gewitsch was transferred to the *Reichsbank Berlin* on February 14 of an unspecified year, and the account was closed on that same date. The CRT awarded the account (of unknown type) at presumptive value, based on the fact that it was closed and transferred to the Reichsbank. Although it was not clear if the account owner was a Nazi victim, his wife and child, his immediate heirs, who would have been entitled to receive the account, were killed by the Nazis.

xv. In re Account of Walter Herzog (SF 250,375.00)

Walter Herzog was born in 1887 in Krefeld, Germany. He lived in Krefeld until 1939, where he owned a silk tie company, *Wilms & Herzog*. On December 10, 1941, he was deported to the ghetto in Riga, Lithuania. In 1943, Walter Herzog was sent to Buchenwald, where he died in 1945.

Walter Herzog. http://db.yadvashem.org/names/name Details.html?itemId=1226964&language=en. Photo courtesy of Yad Vashem.[42]

The bank records made available to the CRT as part of the Court's claims process showed that Walter Herzog owned a custody account, which held SF 20,000 on January 28, 1937, at which time the bank evidently transferred the account to the Nazi-controlled *Deutsche Bank und Disconto-Gesellschaft* in Berlin. Among other documents, the bank records included a list of accounts that were transferred to German banks in 1936 and 1937, pursuant to Germany's Seventh Ordinance regarding implementation of the Foreign Exchange Control Law (effective November 19, 1936) as well as the First Announcement regarding the Custody of

[42] *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemID=146533&language=en (last visited Aug. 3, 2015), citing GEDENKBUCH: OPFER DER VERFOLGUNG DER JUDEN UNTER DER NATIONALSOZIALISTISCHEN GEWALTHERRSCHAFT IN DEUTSCHLAND 1933-1945 (Bundesarchiv 1986).

The Central Database of Shoah Victims' Names is one of the most significant achievements of the Court-funded Victim List Project, with the creation of a vast online platform of millions of Nazi victim names. In addition to containing archival data, the Central Database also contains Pages of Testimony, often containing photographs (such as for account owner Walter Herzog, as shown above). As described by Yad Vashem:

"Pages of Testimony are special forms designed by Yad Vashem to restore the personal identities and to record the brief life stories of the six million Jews murdered by the Nazis and their accomplices. Submitted by survivors, remaining family members or friends in commemoration of Jews murdered in the Holocaust, these one-page forms, containing the names, biographical details and, when available, photographs, of each individual victim are essentially symbolic 'tombstones.' Since its inception Yad Vashem has worked tirelessly to fulfill our moral imperative to remember every single victim as a human being, and not merely a number...In addition to Pages of Testimony, The Central Database of Shoah Victims' Names contains names from varied archival sources, bringing the total number of individual victims registered to four and half million." *See* http://www.yadvashem.org/archive/hall-of-names/pages-of-testimony.html.

Foreign Securities (effective November 20, 1936). The bank records contained a letter from the *Deutsche Bank und Disconto-Gesellschaft* informing the bank that all custody accounts containing foreign securities noted on the German Stock Exchange should be transferred to a *Devisenbank*, a German bank entitled to deal with foreign currency, and advising that the services of the *Deutsche Bank* were at the Swiss bank's disposal.

The Swiss bank records also included correspondence between its main branch and its Zurich branch describing preparation of lists of account owners subject to the law. The CRT observed that in one letter, "the Bank's General Director agree[d] to the Zurich branch's suggestion to charge their clients a transfer fee, in addition to the usual securities charge, of ½% - 1% of the total value of the securities transferred to a German *Devisenbank*." In other words, for clients who were forced to turn over their accounts to the Nazis, the bank decided to charge its customers additional fees for the bank's services in arranging this transfer.

Based on these documents and the fact that the account was paid to the Nazis, the CRT awarded the account at its actual value (after application of the multiplier of 12 then in effect) to the claimant, the granddaughter of Walter Herzog.

xvi. In re Accounts of Hermine Marie Hordliczka (SF 57,999.13)

Hermine Hordliczka was born in 1875 in Vienna. She and her husband had one daughter who died in Vienna in 1932, at the age of 27. Hermine Hordliczka fled Vienna for Paris in 1939, hoping to emigrate to São Paulo, Brazil, but she died in Paris on April 23, 1939.

Hermine Hordliczka's accounts were not reported by the ICEP auditors. However, they were located by the CRT in connection with the CRT's review of 1938 Census. In her 1938 Census, Hermine Hordliczka reported three Swiss accounts: two demand deposit accounts and one custody account holding three different securities. Along with her Census declaration, she also submitted an August 2, 1938 letter to the Office in the Austrian Ministry for Economics and Labor charged with registering and administering Jewish-owned property

(*Vermögensverkehrsstelle or VVSt.)*, stating that she had only reported her assets because she was not yet in possession of her certificate of Aryan origin. On August 30, 1938, she wrote another letter stating that she had received copies of her mother's and maternal grandparents' baptism certificates, showing them to be Catholic and "Aryan."

However, the VVSt. responded that it considered Hermine Hordliczka to be Jewish. On November 8, 1938, the VVSt. wrote to Hermine Hordliczka, by then in Paris, demanding that she turn over foreign securities by December 17, 1938. The 1938 Census also contained a December 14, 1938 protocol stating that Hermine Hordliczka's apartment had been sealed, and that all of her remaining property of value had been confiscated.

On December 20, 1938, the VVSt. advised the *Reichsbank* as well as the Austrian office for state pensions that Hermine Hordliczka was considered to be Jewish. A criminal investigation had been opened based on her failure to turn over foreign securities. The CRT observed that on August 17, 1938, "the VVSt. renewed the criminal complaint related to Hermine Hordliczka, indicating that although she provided documents, including baptismal certificates, which showed that her mother and her maternal grandparents were Catholic by confession, their names showed that they were certainly of the 'Jewish race.'"

The CRT awarded to the claimant (Hermine Hordliczka's great-niece) the two demand deposit accounts at presumptive value. The CRT also awarded the custody account at the market value for the securities as reported in the 1938 Census (an amount higher than presumptive value). The CRT observed that the case was similar to others "in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich."

xvii. In re Account of Journalisten- und Schriftstellerverein Concordia (SF 582,990.98)

The claimant was an entity, the *Presseclub Concordia, Vereinigung Österreichischer Journalisten und Schriftsteller*, an independent organization of journalists and writers in Vienna.

Prior to the *Anschluss*, it had been a primarily Jewish group. The organization held an unpublished Swiss account under the name *Journalisten- und Schriftstellerverein Concordia.*

The CRT determined from its independent research, including examination of the work of the Austrian Historians' Commission, that the *Journalisten- und Schriftstellerverein Concordia* was formed in 1859. On March 17, 1938, its assets, including its headquarters, were ordered seized by Nazi authorities. One month later, an individual named Walter Petwaidic was appointed by Nazi officials as the new leader of the organization. He withdrew membership from 243 members of the group (*i.e.*, the Jewish members). The remaining members consisted of 77 non-Jewish individuals.

The CRT observed that "Petwaidic was successful in securing for the Reich the organization's assets held in custody accounts at banks in Austria, but he encountered some resistance in obtaining the assets held by the organization in a custody account at the Zurich branch of the [Swiss bank in question]." The bank advised Petwaidic in a July 1938 letter "that it was unable to recognize Petwaidic's rights to the organization's account without a resolution made at a general meeting of the organization and indicating Petwaidic's rights to access the Swiss account. On 5 August 1938, the Commissioner for Suspensions issued an order that all of the organization's assets be seized, 'in particular all cash and securities contained in custody account number 56269 at the Zurich branch of [the bank]...Furthermore, on 30 September 1938, a brief general meeting of the newly-aryanized organization was held, with the purpose of formally electing new leadership that could then be recognized by the [bank] as having rights to access the organization's account at their bank."

After the War, "the organization was reconstituted under its original name, and it applied for restitution of its assets from the Austrian government." A restitution settlement agreement was reached on June 28, 1956, indicating that the organization's account at the Zurich bank was still open with a 1956 value of SF 5,888.65.

The bank records, which were not reported by the ICEP auditors but were obtained by the organization and provided to the CRT, indicated that the organization's custody account held ten different bonds. Most had been sold or transferred out of the account on December 24, 1938,

after the group had been "aryanized." The CRT noted that after the *Anschluss*, Nazi authorities had submitted "several requests to the Bank for the transfer back to the organization of the securities contained in the account," and "the Bank was suspicious enough of this request to require a resolution of the organization indicating that the parties requesting the funds from the Bank were entitled to access the account."

The CRT awarded the bonds to the present-day organization (the claimant) at the higher of market or nominal value after conducting independent research as to the bonds' values, applying Special Master Junz' Guidelines for Valuation of Securities[43], and subtracting the 1956 restitution settlement from the total. The CRT also observed that one type of bond held in the account had been sold on March 12, 1938, but that since "the research that [the CRT conducted] indicates that the Account Owner's assets first began to be seized on 17 March 1938," the "Account Owner would have received the proceeds of these bonds," and so the CRT did not award their value.

xviii. In re Accounts of Bertha Kaufmann, Hedwig Landesmann, and Hermine Hirsch (SF 797,234.50)

Bertha Kaufmann, her sister Hedwig Landesmann, and their mother Hermine Hirsch, all were born and lived in Vienna. The claimant, New York attorney Robert M. Kaufmann, was the son of Bertha Kaufmann and the nephew and grandson, respectively, of Hedwig Landesmann and Hermine Hirsch. Robert Kaufmann was sent to England on a *Kindertransport* in December 1938. His sister followed in January 1939. Their father was imprisoned in Dachau and fled to England in May 1939. Bertha Kaufmann, Hedwig Landesmann and her husband, and Hermine Hirsch followed a few months later, in August 1939. In 1940, the Kaufmanns moved to the United States, while the Landesmanns and Hermine Hirsch remained in Cambridge, England.

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[43] *See, e.g., In re Accounts of Ernst Eisner* (amendment) at 3 ("According to the Guidelines for the Valuation of Securities, circulated to the CRT by Special Master Helen B. Junz, as a general rule, the face value of bonds not in default shall be awarded if the market value was below the face value on the date the account owner is deemed to have lost control over the account. The CRT presumes that the account owner, if able to decide freely, could have opted to hold the respective bond[s] to maturity to avoid a capital loss. The market value of the bonds shall be awarded if that value was above the face value on the date the account owner is deemed to have lost control over the account.").

Hedwig Landesmann's husband was confined to an institution in England, where he died. Hedwig Landesmann committed suicide in England in 1945. Her daughter, Hermine Hirsch (the claimant's grandmother) moved to the United States, where she died in the early 1950s. Bertha Kaufmann, the claimant's mother, died in the United States in 1984.

The bank records made available as part of the claims process showed that the account owners held four accounts. An account opening card for one account, owned jointly by Bertha Kaufmann and Hedwig Landesmann, contained a notation that the account was closed on August 22, 1938. According to a list of custody accounts closed in 1938, "the assets totaling 4,500.00 Swiss Francs in that account were transferred … to an undisclosed bank … pursuant to the Austrian legislation restricting foreign currency transactions." Bertha Kaufmann's 1938 Census form indicated that she held a joint custody account with Hedwig Landesmann at the bank, valued at SF 4,214. On August 31, 1938, Hedwig Landesmann opened a custody account (the second account) and instructed the bank to hold all correspondence. That account was closed on January 21, 1939.

The third and fourth accounts were owned by Hermine Hirsch. One of the accounts was a custody account opened by July 10, 1931, which held SF 5,400 as of August 22, 1938, when it was transferred to an undisclosed bank pursuant to Austrian foreign currency regulations. The account was closed on November 23, 1939. Hermine Hirsch's 1938 Census declaration indicated that she owned securities at the Swiss bank valued at SF 5,566. The fourth account was a demand deposit, opened by July 10, 1931 and closed on November 23, 1939.

The CRT awarded all four accounts to the claimant, pointing out that two of the accounts had been reported in the 1938 Census. Since these accounts "were transferred to an undisclosed bank" pursuant to the Reich's legislation "restricting foreign currency transactions," and absent evidence to the contrary, it was plausible that the Swiss bank that held the accounts assisted in arranging "a coerced transfer" to the Nazis, as was often the case in similar circumstances. Given the fate of those two accounts, the CRT presumed that the family members similarly did not receive the proceeds of the other two accounts, since the bank had destroyed all records that would have enabled the CRT to determine precisely what happened to the Kaufmann accounts. The destruction of documents warranted an adverse inference that the Swiss bank had permitted

the accounts to be turned over to the Nazis under duress, particularly since one family member had been imprisoned in Dachau, and given that the family sought (and was able) to flee from Germany.

In determining the amount of the award, the CRT observed that the two custody accounts were reported at values lower than presumptive value, but that since the reported amounts in the bank files and the 1938 Census were similar, the CRT concluded that these amounts (SF 4,500 and SF 5,566, respectively) represented the actual value of the accounts. The other two accounts were awarded at presumptive value, for a total award of SF 302,472.

Mr. Kaufmann described his reaction to this award in a 2002 article in *The New York Times*:

> In his Manhattan office, Robert M. Kaufmann thumbed a fresh photocopy of a list his father compiled in 1938 to comply with Nazi laws requiring Jews to itemize their property. Among the possessions in his family's Vienna apartment, his father told officials 64 years ago, were two baskets, 42 soupspoons and a 10-by-13-foot carpet.
>
> "This has brought back so many memories," said Mr. Kaufmann, who is now 72 and a prominent New York lawyer. The details on the form he first saw this summer, he said recently, brought back images of a life long ago, before his family came to the United States as refugees in 1939. He could picture, he said, the apartment he last saw as a 9-year-old, with its big Viennese stove where he had once slyly warmed a thermometer to avoid school.
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> * * *
>
> Mr. Kaufman's journey through memories of long-ago Vienna began when a distant relative told him that she had noticed the names of his deceased mother, grandmother and a maternal aunt on a published list of people who had once held Swiss accounts. He was astonished, he said. Though he had heard of the Holocaust lawsuit, he had no idea that it had anything to do with him.
>
> "Sixty years and suddenly this appears," he said. "I think I had tears in my eyes all that day."
>
> Mr. Kaufman, a partner at the Proskauer Rose law firm in Manhattan and a former president of the City Bar Association, began gathering documents. He sketched out the family tree. Death certificates had to be pulled out of files. In the stark terms of many of the claims, he described the trauma of those times. He and,

> later, his older sister, he wrote, had been sent to England on the rescue trains known as the Kindertransport. He was 9 when he traveled alone in December 1938.
>
> His mother joined them in 1939 with his father, he wrote, 'who had first been arrested and sent to Dachau because he was Jewish.'
>
> The toll on Mr. Kaufman's family continued even after their escapes. Although his uncle and aunt, the younger sister his mother had fussed over, also made it to England, his uncle was placed in a psychiatric institution where he later died. In 1945, his aunt committed suicide by walking in front of a London bus.
>
> The … employees of the tribunal in Zurich compare the information provided by claimants with unpublished bank records and government filings. When a tribunal lawyer sent Mr. Kaufman that Jewish property [C]ensus form from 1938, his parents' handwriting and the detailed catalog of their holdings down to their saltshakers, transported him.
>
> "I was picturing our apartment in Vienna," he said. "I hadn't thought of it in 30 or 40 years."[44]

In a letter filed with the Court, Mr. Kaufman advised that he had created the Robert M. Kaufman Fund No. 2 at the New York Community Trust, partly with funds received from the Swiss Banks Settlement (as well as with funds from an Italian Holocaust-era insurance policy and from Austrian reparations). As of the date of the letter, Mr. Kaufman had made grants of more than $340,000 to a variety of charities, including the Visiting Nurse Service of New York; New York Lawyers for the Public Interest; the Refugee and Immigrant Fund; Resources for Children with Special Needs; the Association of the Bar of the City of New York; the Israel Heart Fund; Legal Momentum; the Kindertransport Association; and New York University School of Medicine in support of the Bellevue/NYU Program for Survivors of Torture.

Subsequently, the CRT amended the award to take into account the presumption that the amounts reported in the 1938 Census were not necessarily reliable, in that victims tended to underreport their assets. The claimant accordingly was awarded an additional SF 106,250, representing the difference between the presumptive value of two custody accounts and the amount that had been awarded.

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[44] William Glaberson, *Settling Accounts, But Not Minds; Holocaust Survivors Relive Past in Case Against Swiss Banks*, N.Y. Times, Nov. 13, 2002.

xix. In re Accounts of Karl Kautsky, Luise Kautsky, Benedikt Kautsky and Charlotte Kautsky (SF 606,887.50) ("Kautsky"); In re Accounts of Marie Ronsperger, Luise Ronsperger, and Marianne Hantsch (SF 317,800.00) ("Ronsperger"); In re Accounts of Bruno Hantsch and Marianne Hantsch (SF 260,375.00) ("Hantsch")

In three awards and one award amendment, the claimant, the granddaughter of the renowned journalists Luise Kautsky and Karl Kautsky, and her cousins, were compensated for a number of Holocaust-era Swiss accounts owned by their grandparents and other relatives.

Karl and Luise Kautsky, BG C2/644. https://socialhistory.org/ en/news/leading-iish-collections-made-available-online. Photo courtesy of the Int'l Inst. of Soc. History.

Luise Kautsky (née Ronsperger) was born in 1864 in Vienna, and was married to Karl Kautsky (born in 1854 in Prague). They had three sons, including Benedikt Kautsky, all of whom were born in Stuttgart. Conducting its own research on the Kautskys, the CRT explained in the *Hantsch* award that

> Luise Kautsky, née Ronsperger (1864-1944) was a journalist and translator, an intimate of Rosa Luxemburg, and a contributor to the feminist periodical "*Gleichheit*" ("Equality")...Additionally, Luise Kautsky co-authored several works with her husband…, who was a founder of the German Socialist Party journal "*Die Neue Zeit*" and the author of numerous works on socialist theory,

> including "*Die materialistische Geschichtsauffassung*" ("The Materialist Conception of History")...An acquaintance of both Karl Marx and Friedrich Engels, [Mr.] Kautsky later sharply criticized Communism in his books "*Demokratie und Diktatur*" ("Democracy and Dictatorship") and "*Terrorismus und Kommunismus*" ("Terrorism and Communism"), to which Leon Trotsky replied in the polemic "*Terrorismus und Kommunismus: Anti Kautsky*" ("Terrorism and Communism: Anti-Kautsky") and V. I. Lenin attacked in "*Die Diktatur des Proletariats und der Renegat Kautsky*" ("The Dictatorship of the Proletariat and the Renegade Kautsky")…. Before being transported to Auschwitz, where she perished on 8 December 1944, Luise Kautsky arranged for the transfer of the couple's personal papers to the *International Institute of Social History* in Amsterdam. This archive contains approximately 15,000 letters sent by 3,000 persons, copies of the Kautskys' own letters, manuscripts of published and unpublished texts, and files of family members [including] letters from [redacted] to Bruno Hantsch and Marianne Hantsch, née Ronsperger; from Bruno Hantsch to Luise Kautsky; from Marianne Ronsperger to other members of the Kautsky family; and from Luise Kautsky to [redacted].

Luise and Karl Kautsky fled from Vienna to Amsterdam in 1938, where Karl Kautsky died shortly after, on October 17, 1938. Following the Nazis' occupation of the Netherlands in 1940, Luise Kautsky was deported to Auschwitz, where she perished in 1944.

"Stolperstein" (stumbling block), Luise Kautsky. https://www.stolpersteine-berlin.de/de/biografie/4465. Photo courtesy of the Koordinierungsstelle Stolpersteine Berlin.[45]

[45] In the *New Yorker*, journalist Elizabeth Kolbert described "Stolpersteine" as follows: "When I looked into it, I learned that the *Stolpersteine* were a public art project, the work of a German painter named Gunter Demnig, who lives in Cologne. In contrast to most memorials, which aim to command attention, *Stolpersteine* are understated—literally underfoot. Each one consists of a block of concrete onto which a plain brass plaque has been affixed. The block, which is about the size of a Rubik's Cube, is embedded in the sidewalk, or inserted among the cobblestones, so that the plaque's surface lies flush with the ground. Every plaque is stamped by

The Kautskys' son Benedikt was deported first to Dachau (as reflected on his 1938 Census form) and later to Buchenwald, and then Auschwitz. He died in Vienna in 1960. Charlotte Kautsky, who was married to one of the Kautskys' other two sons and was the claimant's aunt, fled to the U.S. from Austria shortly after the *Anschluss.* She died in California. Luise Kautsky had a niece, Marianne Hantsch, née Ronsperger, who was married to Bruno Hantsch.

In the *Kautsky* award, the CRT determined that the bank records indicated that the accounts owned jointly by the Kautskys and their son Benedikt had been opened on May 16, 1924. One was a custody account, which contained *Swiss Confederation* gold bonds expiring in 1940, and worth $4,517.18 on May 28, 1924. The other three accounts were demand deposit accounts. On March 19, 1938, the Kautskys requested that the bank not send any correspondence to Vienna. On March 25, 1938, the custody account and one of the three demand deposit accounts were closed. Another demand deposit was closed a few days later on March 28, 1938. The third demand deposit account (which was not reported by the ICEP auditors. but was discovered by the CRT during its research) was closed on a date and at an amount unknown.

The CRT awarded all four accounts to the claimants (the grandchildren and children of the account owners). The CRT noted that the accounts were closed "after the *Anschluss*," at a time when the "Nazi-dominated regime had … begun a major effort to confiscate the assets of the Jewish population, including Swiss bank accounts." Karl and Luise Kautsky had fled Vienna, and Luise had died in Auschwitz, while their son Benedikt had been interned in several concentration camps. The CRT awarded all four accounts at their respective presumptive values, including the custody account containing gold bonds, finding that the recorded amount for that account "cannot be relied upon to determine the value of the account because the account was closed in 1938, almost 14 years after the deposit of the gold bonds, during which period the

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hand, as a gesture, according to Demnig, of opposition to the mechanized killing of the camps." Elizabeth Kolbert, *Letter from Berlin: The Last Trial - A great-grandmother, Auschwitz, and the arc of justice*, NEW YORKER, Feb. 16, 2015, at 24.

value of the account may have fluctuated." The account owners "could have accessed the account freely during this period."

With respect to the account owned by the Kautskys' daughter-in-law Charlotte Kautsky (the mother of one of the cousins represented by the lead claimant), the bank records showed that the owner had written "several letters to the Bank, dated 19 March 1938, 2 April 1938, and 30 January 1939, requesting it not to send correspondence to Vienna." Charlotte Kautsky's account, a custody account that had been opened on October 2, 1934, was closed on April 26, 1939. The CRT awarded this account to the claimant (at presumptive value), observing that although Charlotte Kautsky was "outside Nazi-dominated territory" when the account was closed, she "had relatives remaining in her country of origin" when she fled Vienna, and "may therefore have yielded to Nazi pressure to turn over her account to ensure their safety."

In the *Ronsperger* award, the CRT determined that the accounts, jointly owned by *Frau* Marie Ronsperger, *Frl.* Luise Ronsperger, and *Frau* Marianne Hantsch, née Ronsperger, who lived in Vienna, owned two demand deposit accounts and one custody account. The custody account was closed on March 31, 1938, and the demand deposit accounts were closed no later than May 1938. The CRT awarded all three accounts, observing that the bank records indicated a residence of Vienna. One of the account owners (Luise Ronsperger, later Luise Kautsky) died in Auschwitz. Subsequently, upon receipt of valuation information from one of the banks through the "voluntary assistance" process, revealing the types and values of the securities held in the custody account, the CRT amended the award to reflect this new information, thus increasing the original presumptive value payment to reflect the actual value of the account.

In the *Hantsch* award, the CRT observed that the bank records indicated that a custody account owned by Bruno and Marianne Hantsch had been included on "a list of closed custody accounts owned by customers domiciled in Austria." Internal bank correspondence dated March 17, 1938 indicated that the bank had prepared a list "of over 1,000 custody accounts belonging to Austrian citizens pursuant to the Reich's legislation regarding foreign-held assets. The bank's records indicated that, pursuant to this legislation, [the account] was transferred to the *Oesterreichische Industriekredit-A.G.* in Vienna" on April 8, 1938, at which time it was reported to have held a balance of SF 10,500. The account subsequently was closed on November 30,

1938. Given that the account was repatriated to Austria after the *Anschluss*, the CRT awarded the account to the claimants at its presumptive value.

xx. In re Accounts of Liselotte Löhner and Eva Löhner (SF 2,516,187.50)

Liselotte Löhner was born in 1927 and her sister, Eva, was born in 1929, both in Vienna. They were the daughters of the renowned librettist Fritz (Friedrich/Bedrich or "Beda") Löhner and his wife Helene, the claimants' aunt.

According to research conducted by the CRT, Löhner, born in Czechoslovakia in 1883, by the 1920s had become one of the most sought-after lyricists and writers in Vienna. He later teamed with the composer Franz (Fritz) Léhar, with whom he wrote several operettas, including "*Das Land des Lächelns*" ("The Country of Smiles") (1929). He also was the author of "*Freunde, das Leben ist lebenswert*" ("Friends, life is worth living"), which became one of the most popular songs in Germany in the 1940s. The copyright for these musical successes had made Löhner a millionaire before the *Anschluss*. [46]

[46] Fritz and Helene Löhner also owned an art collection, which was among 148 "significant collections" plundered by the Nazis. *See* Lillie, WAS EINMAL WAR: A HANDBOOK OF VIENNA'S PLUNDERED ART COLLECTIONS.

Fritz Löhner. 1928. https://upload.wikimedia.org/wiki-pedia/commons/7/7e/Fritz_L%C3%B6hnerBeda_%281883%E2%80%931942%29_1928_%C2%A9_Karl_Winkler_%28Detail_aus_9997094%29.jpg. https://www.bildarchivaustria.at/Pages/ImageDetail.aspx?p_iBildID=9997094. Photo courtesy of Karl Winkler.

On March 13, 1938, immediately after the *Anschluss*, Löhner was arrested and interned in the prison on Elisabethpromenade in Vienna. Two weeks later, on April 1, 1938, he was deported to Dachau in the "*Prominenten-Transport Nr. 1*" (the first transport of prominent persons). In September 1938, Löhner was deported from Dachau to Buchenwald.

Even in Buchenwald, he continued to write music. With the composer Hermann Leopoldi, he created the "Buchenwald March." This piece was played every morning during the prisoners' roll-call and as they marched to perform slave labor.[47]

The CRT observed that Löhner continued to hope that his former friend and colleague, Fritz Léhar, would help secure his release. However, by then, Léhar had aligned himself, and had developed good contacts with, the Nazi party. Léhar celebrated his seventieth birthday at the Vienna Opera in 1940, conducting "*Das Land des Lächelns*" in the presence of Hitler himself (who considered Léhar one of his favorite composers). Löhner, the co-writer of the operetta, was not mentioned on the program.

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Hermann Leopoldi. 1928. https://www.wienbibliothek.at/veranstaltungen-ausstellungen/ausstellungen/drei-wien-hermann-leopoldi. Photo courtesy of the Vienna City Library.

Herman Leopoldi's release from the camp was reported in *The New York Times*: "Herman Leopoldi, Viennese song writer and comedian who spent nine months in Nazi concentration camps, arrived yesterday on the United States liner City of Baltimore… As he stepped off the gangplank Mr. Leopoldi lay down and kissed the ground. [He] spent four months in the concentration camp at Dachau and five months at Buchenwald. He declined to discuss the treatment he received because he still has relatives in Vienna, including a brother who he feared might suffer if he spoke against the Germans. 'It was not so bad for me … because I was singing all the time to entertain my comrades and keep up their spirits. The worst thing about the camps is that nobody knows what is going to happen to him. While I was in the camps I composed a work - 'March for Prisoners.' The words were written by another prisoner, Dr. Fritz Beda (Löhner), who was the librettist for Franz Lehar.' He said that he lost his home in Vienna and his wife lost her jewelry, but that his 'greatest pain' was the loss of his piano." *Reich Refugee Hails U.S. Soil With Kiss; Vienna Comedian 9 Months in Nazi Camps*, N.Y. Times, Mar. 21, 1939, at 8.

In 1942, Helene Löhner, her mother, and the Löhners' two young daughters (Liselotte and Eva) were deported to Minsk. They were killed at the Maly Trostinec concentration camp. That same year, Löhner was deported to Auschwitz-Monowitz, where he was forced to perform slave labor for *IG Farben.* As the CRT explained, five directors of the company saw Löhner working too slowly one day and complained that '"the Jew there could work faster.'" A Kapo leader beat Löhner to death on December 4, 1942.

The Swiss bank records and archival documents showed that several accounts existed in different Swiss banks held in the names of Löhner's daughters. Dr. Löhner's 1938 Census form reported that he owned Swiss bank accounts, containing securities worth SF 45,000 and £ 5,000, in the name of Liselotte Löhner. The Census form indicated that it was filled out by another individual at the authorization of Fritz Löhner, who at that time was imprisoned in Dachau. Census forms for Liselotte and Eva Löhner likewise were completed by the same individual. Liselotte Löhner's Census form indicated that she was a minor and the daughter of Fritz Löhner. She held a custody account at the bank containing two different bonds with market values of, respectively, SF 51,504.00 and SF 122,000.00, as well as cash or savings of SF 1,117.30.

At a second bank, for which records were, in fact, contained in the bank files reviewed by the ICEP auditors (in contrast to the accounts held at the first bank as described above, for which records were located only in the 1938 Census files), *Frl.* Liselotte Löhner owned a demand deposit account opened in 1931. The account held an initial balance of SF 2,071.10. Correspondence was to be sent to Fritz Löhner-Beda. The account was transferred to a suspense account on May 8, 1957, at which time a total of SF 50.10 in commissions and fees was charged to the account for the period 1938 to 1957. At the time of its transfer, the account held a balance of SF 2,021.

At a third bank, *Frl.* Eva Löhner held a demand deposit account opened on March 10, 1931, and a custody account opened on March 13, 1932. The accounts were closed, respectively, on October 18, 1938 and December 31, 1938. Although the bank records available to the ICEP auditors and the CRT did not indicate the amounts held in the accounts, the 1938 Census forms contained relevant information. From Dachau, Löhner authorized his representative to report in his Census form that securities worth SF 20,000 were on deposit at that bank in the name of his

daughter Eva. Eva Löhner's own Census records indicated that she was a minor and the daughter of Fritz Löhner; that she held a custody account at that bank containing bonds with a market value of SF 20,900.00; and that she also owned cash or savings worth SF 384.00.

The Census form also contained various correspondence between Löhner's representative and Nazi authorities, describing the difficulties the representative was having in obtaining the necessary documentation about the Löhners' assets, including bank statements. The Nazi authorities responded by advising the representative to take all necessary steps to obtain the required information and granted an extension to complete the Census form until August 25, 1938. On August 24, 1938, the representative submitted a supplemental declaration describing bank records that had been obtained from two of the three banks, and also providing the Nazi authorities with a letter from the music publisher *Glocken-Verlag* detailing the profits Löhner was entitled to receive from his various compositions, including *Giuditte*; *Friederike; Land des Lächelns* and others. The 1938 Census further indicated that by January 13, 1939, Löhner had been deported to Buchenwald, and that he was assessed flight tax of RM 40,000, due on March 10, 1939.

The CRT awarded all of the accounts to the claimants, cousins of Liselotte and Eva Löhner. The CRT noted that "the facts of this case are similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the Reich reported their assets in the 1938 Census and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich…. [I]n this case, the records from the Austrian State Archive provide concrete evidence that the Nazis corresponded with" the representative of Fritz Löhner "in order to ensure that assets held by the Löhner family were turned over to the Nazis."

The CRT further pointed out that the two Swiss banks had taken the additional step of giving the Nazis account statements for the *daughters* of Dr. Löhner — "even though Fritz Löhner's letter granted … power of attorney only with regard to the completion of his [own] 1938 Census declaration and not to the accounts belonging to his daughters, and even though this power of attorney was expressed in a letter that clearly indicated that the writer was imprisoned in the Dachau concentration camp."

As to the account held by Liselotte Löhner at the remaining bank, that account likewise was awarded to her cousins, the claimants, given that Liselotte "perished in the concentration camp at Maly Trostinec in 1942; that the account was transferred to a suspense account on 8 May 1957, after her death;" and there was no record that the account had been repaid to her heirs.

The CRT awarded the three demand deposit accounts at their respective presumptive values, observing that although specific account values were recorded in the 1938 Census forms for two of the accounts, "as evidenced in a number of cases, the person who completed the 1938 Census on behalf of Fritz Löhner's minor children may not have declared all their assets, or may have understated their value, in the belief that this might help the family safeguard some of them." The third account, reported in the bank records at an amount lower than presumptive value, similarly was awarded at the higher presumptive value as provided under the CRT Rules. As to the two custody accounts, their respective values as reported in the 1938 Census forms exceeded the presumptive value then in effect, and thus the higher (reported) amount was awarded. The total historic value of the five accounts was SF 200,824, which upon application of the 12.5 multiplier resulted in a total award of SF 2,510,300.

In a December 30, 2004 letter, the award recipients, cousins living respectively in California and Australia, wrote to Special Master Junz. Their purpose was to "exten[d] [their] gratitude for your help in bringing this case to conclusion. Many thanks for the endless hours of research, necessary to access these dormant accounts of our dear little cousins who perished at the age of 11 and 13 yrs. due to the cruelty of monsters. Thank you for preserving, in spite of hitting many dead end roads, which resulted in this large award. With mixed emotions, we are so very grateful."

xxi. In re Assets of Gertrude Löw and Marianne Hamburger- Löw (SF 12,632,136.25)

Gertrude Löw was born in 1902 in Vienna. Her husband's sister, Marianne Hamburger-Löw, was born in 1901 in Vienna. They were part of the Löw family, major shareholders in an

Austrian sugar refinery (*Österreichische Zuckerindustrie AG or ÖZAG*), the subject of the largest award issued in the Swiss Banks Settlement Process (approximately $22 million). The *ÖZAG* award is discussed at length below. In addition to owning a portion of *ÖZAG*, members of the Löw family had extensive additional holdings throughout Europe. These assets, including gold bars and coins, securities and bank notes held in Swiss banks, were confiscated during the Holocaust, and some of these assets were the subject of a separate award to the heirs of Gertrude Löw and Marianne Hamburger-Löw.

The ICEP auditors did not report accounts belonging to Gertrude Löw or to Marianne Hamburger-Löw. Evidence of the accounts was located in archival sources, including 1938 Census and post-War restitution records.

Because of the unique circumstances of the Swiss banks' involvement with the Löw assets, it was necessary for the CRT first to determine whether the assets were in fact "Deposited Assets" under the terms of the Settlement Agreement; *i.e.*, whether the assets "were deposited in Switzerland in a manner that engendered fiduciary responsibility by a Swiss institution or fiduciary to their owners," the Löw sisters-in-law.

With respect to the gold owned by the sisters-in-law, the CRT concluded that these assets, originally on deposit at the Midland Bank in the United Kingdom, ultimately became assets that were held in a Swiss bank for at least some period of time. In connection with 1963 restitution proceedings, however, the Swiss bank in question had disclaimed responsibility for the gold. The bank stated, first, that it no longer possessed records for the year 1938 (the year in which the gold was transferred), and second, even if "as posited by the Löws' lawyer" the bank "had received the gold assets for further shipment elsewhere [*i.e.* eventually to the *Reichsbank*] on the order of the authorized party, the receipt would not have been viewed as an actual, or effective deposit … and therefore not carried in [the bank's] books. In essence, [the bank] argued that the gold was not deposited with it, but merely transferred through it, and that it thus assumed no fiduciary duty" to Gertrude Löw and to Marianne Hamburger-Löw.

The CRT rejected the arguments the bank had made in 1963, noting that "notwithstanding [the bank's] assertions, [the documents] indicate that the Löws' gold assets

were held at [the bank] for at least six weeks, from 22 April 1938 (when the *Midland Bank* received confirmation of its receipt from [the bank] to 1 June 1938 (when … [a second Swiss bank] would receive the gold in the name of the *Reichsbank*). During this time, the gold remained in the legal possession of the Löw Sisters-in-Law…." The CRT thus concluded that the gold assets were in fact "deposited" at one and possibly two Swiss banks. The CRT reached a similar determination as to SF 55,000 in bank notes that, like the gold, originally had been held at the Midland Bank.[48]

Some of the securities owned by the Löw sisters-in-law — specifically, 3½% War Loan bonds — were determined, however, not to have been "Deposited Assets." Although the War Loan bonds had been held in the Midland Bank account, when they were transferred for the purpose of ultimate delivery to the Nazis, they were deposited in an account in Switzerland that belonged to the Austrian *Kathrein Bank*. "Thus, while [the Swiss bank] had a fiduciary obligation to *Kathrein Bank*, it had no fiduciary obligation to any depositors, other than *Kathrein Bank* itself, of assets in *Kathrein Bank's* account."

As to the remaining securities owned by the Löw sisters-in-law and at issue in the decision, these assets were indeed deposited in a Swiss bank (a different one from the two banks involved in the transfer of the gold and bank notes), "in an account in which the Löw Sisters-in-Law had a beneficial interest, and therefore constitute Deposited Assets within the meaning of the Settlement Agreement." However, in contrast to the gold and bank notes, the bank had handed these securities over to an authorized party acting on behalf of the Löws. Therefore, the securities had been returned to the owners via their agent, and so the transfer was not compensable under the Settlement Agreement. The CRT recognized that the agent for the Löws later was obligated to turn the securities over to the Austrian *Kathrein Bank* and thus ultimately

[48] By contrast, where the evidence demonstrated that the claimed account owner did not own a deposit at the Swiss bank but, rather, that the bank served merely as a conduit for a transfer, the claim was denied. *See, e.g.*, *In re Account of Salamon Kornbaum* (denied on appeal) (letter provided to CRT by claimant showed only that the bank was a conduit for a payment from the claimant's father to a creditor; the letter stated that money was transferred "through" [*"durch"*] the bank, and not "from" [*"von"*] an account owned at the bank); *In re Account of Eva Gabor* (claimant submitted a receipt which showed only that a Swiss bank had received a payment order and, pursuant to that order, had paid an amount to the claimant that had been received from another banking institution*); In re Accounts of Walter Kary (*claimant's father's passport contained stamps showing that his father had bought currency for traveling, as well as notes from three Swiss banks at which his father had cashed travelers' checks).

to the Nazis. As to the Swiss bank, however, it had fulfilled its fiduciary duty in turning the assets over to someone acting on behalf of, and at the direction of, the account owners.

As to the awardable assets (the gold and bank notes), the CRT observed that there had been 9 gold bars as well as nearly 4,000 gold coins at issue (in denominations of U.S. $10.00 and U.S. $20.00). The 1938 Census as well as post-War restitution records valued the gold as having been worth approximately SF 983,645. The bank notes had been reported as worth SF 55,500. After deducting certain parts of post-War restitution the Löws had received for payment of flight taxes (paid in part from the aforementioned gold and bank notes), the awardable amount was determined to be SF 1,010,570.90, or SF 12,632,136.25 upon application of the 12.5 multiplier. The award was shared among the children and grandchildren of Gertrud Löw and Marianne Hamburger- Löw.

xxii. In re Accounts of Österreichische Zuckerindustrie AG Syndicate ("ÖZAG") (SF 26,450,993.36)

The ÖZAG award, totaling approximately $22 million based on the exchange rate at the time the decision was issued (2005), was the largest award authorized by the Court under the Settlement Agreement.[49] In addition to its size and its unique facts, the award also is noteworthy in that the claimant, Maria Altmann, born in Vienna in 1916, one year later went on to prevail in a well-publicized proceeding against the Austrian government for looted art. The art decision followed over seven years of litigation, including before the United States Supreme Court. In 2006, Ms. Altmann finally was able to reclaim her family's paintings, among them the celebrated "Portrait of Adele Bloch-Bauer" by Gustav Klimt.[50] The successful struggle to obtain the painting was portrayed in the 2015 film, "*Woman in Gold*."[51]

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[49] The award subsequently was published in a law journal, INTERNATIONAL LEGAL MATERIALS. *See Claims Resolution Tribunal (CRT) for Swiss Bank Account cases: In Re Holocaust Assets Litigation, Case No. CV 96-4849*, 44 I.L.M. 1307, 2005 WL 3576642 (Nov. 2005).

[50] *See, e.g.*, Richard Bernstein, *Austrian Panel Backs Return of Klimt Works*, N.Y. TIMES, Jan. 17, 2006, www.nytimes.com/2006/01/17/arts/17klim.html?scp=9&sq=Altmann%20and%20Klimt&st=cse; Diane Haithman & Christopher Reynolds, *Court Awards Nazi-Looted Artworks to L.A. Woman*, L.A. TIMES, Jan. 17, 2006, at A1; and The Associated Press, *Austria Agrees to Return Five Paintings Stolen from a Jewish Family by*

Maria Altmann with Gustav Klimt's *Portrait of Adele Bloch-Bauer I*. Photo courtesy of E. Randol Schoenberg.

Nazis, HAARETZ, Jan. 18, 2006, www.haaretz.com/print-edition/news/Austria-agrees-to-return-five-paintings-stolen-from-a-jewish-family-by-nazis-1.62482.

51 "*Woman in Gold*" tells the "incredible story of Maria Altmann, a Jewish refugee who is forced to flee Vienna during World War II. Decades later, determined to salvage some dignity from her past, Maria has taken on a mission to reclaim a painting the Nazis stole from her family: the famous Lady in Gold, a portrait of her beloved Aunt Adele. Partnering with an inexperienced but determined young lawyer [the attorney E. Randol Schoenberg, who also assisted Ms. Altmann and family members with their claims to Swiss bank accounts], Maria embarks on an epic journey for justice 60 years in the making." *See* http://trailers.apple.com/trailers/weinstein/womaningold/. *See also* Patricia Cohen, *The Story Behind 'Woman in Gold': Nazi Art Thieves and One Painting's Return*, N.Y. TIMES, Mar. 30, 2015.

See also ORLAND, A FINAL ACCOUNTING, at 103 ("Maria [Altmann], after unsuccessful efforts to retrieve the portraits from the Austrian government's Leopold Museum, instituted suit in federal court in California. [The court] denied Austria's motion to dismiss, rejecting defense claims derived from the Foreign Sovereign Immunities Act. The Ninth Circuit affirmed and the United States Supreme Court, in a landmark ruling affirmed the denial of Austria's motion to dismiss and held that the applicable federal statute could be applied retroactively. On remand, the district court again denied defendant's motion to dismiss and set a trial date. The parties then agreed to arbitration in Vienna. In January, 2006, the arbitration panel ruled that the Nazis improperly seized the painting and awarded the painting to the Bloch-Bauer heirs").

Ms. Altmann's success both in her Swiss bank account and looted art claims may be due to the fact that she sought the return of property, and "[l]awsuits to recover identifiable assets or tangible property sometimes succeeded" — in contrast to other types of claims — "most prominently in *Austria v. Altmann*." The *Altmann* case, however, "was the exception, not the rule." Michael Thad Allen, *The Limits of Lex Americana: The Holocaust Restitution Litigation as a Cul-de-Sac of International Human-Rights Law*, 17 WIDENER L. REV. 1, 36 (2011). For a more detailed discussion of the distinction between claims seeking to recover for Holocaust-related personal injuries, as opposed to those seeking return of property, *see* Distribution Plan, Vol. I, Annex D ("Heirs"), at D-4 to -5 ("[T]he Special Master is presented with a limited Settlement Fund and a seemingly limitless number of deserving claimants...The Special Master has sought to avoid a plan which makes millions of symbolic *de minimis* payments to all those who could potentially claim membership in the classes...Faced with these concerns, the Special Master has reviewed the treatment of heirs under various compensation programs, focusing specifically on those programs which distributed funds among groups of persecutees or victims of some type of personal injury such as torture or suffering. Most of these programs have confined their compensation to the original victim or, if deceased, sometimes to a very narrow class of relatives, such as spouses and children. In contrast, programs aimed at returning specific items of identifiable property, or compensating individuals for the wrongful taking thereof, typically include a broad category of heirs as eligible claimants").

ÖZAG's shareholders included, among others, Ms. Altmann's uncle, Ferdinand Bloch-Bauer, born in 1864 in Austro-Hungary (now the Czech Republic). Ferdinand Bloch-Bauer was the brother of Ms. Altmann's father, and the husband of the subject of Klimt's painting, Adele Bloch-Bauer. Adele Bloch-Bauer, who at age 26 died of meningitis, was the sister of Ms. Altmann's mother.

As described by the CRT, after the *Anschluss*, Ferdinand Bloch-Bauer "found refuge first at his summer home in Czechoslovakia, a large castle and estate outside Prague. When the Nazis annexed the Sudetenland in September 1938, Ferdinand fled to Zurich, Switzerland, and his estate outside Prague was later used as the principal residence for Reinhard Heydrich, the Nazi commander of the so-called Protectorate of Bohemia and Moravia. By early 1943, Ferdinand's entire art collection, including all the Klimt paintings, had been liquidated and expropriated. Ferdinand died on 13 November 1945 in Zurich, never having recovered any of his property."

Otto Pick, father of Ms. Altmann's sister-in-law and another ÖZAG shareholder, had "owned a large collection of silver objects and gold boxes from Augsburg, Germany, which was kept in his residence at Reisnerstrasse 40 in Vienna." The home was owned by his daughter Antoinette Bloch-Bauer. It was occupied by the SS immediately after the *Anschluss*. In July 1938, the house was confiscated by the Nazi Party for use by the Reich's Propaganda Office. The Nazis also seized, "among other assets belonging to Antoinette Bloch-Bauer, a Stinson S R-9 recreational airplane."

On the night of the *Anschluss,* Antoinette Bloch-Bauer, with her husband Leopold, their son and other family members, escaped to Czechoslovakia. As described by the CRT, "Leopold Bloch-Bauer accompanied his family as far as the border to ensure that they had reached safety, and then returned to Austria…. [but he] was later arrested and imprisoned by the Nazis. [Two reports] prepared after the Second World War by the Property Control Branch of the United States Allied Commission for Austria [the "Perry" and "Industry" Reports] confirm that Leopold Bloch-Bauer was arrested by the Gestapo shortly after the *Anschluss*. According to these reports, his release was negotiated by the Vienna *Merkurbank* (later *Länderbank*) in return for Mrs. Leopold Bloch-Bauer and the Pick family putting their assets in Austria under 'trust administration' of the bank and contingent upon Leopold's promise to procure the transfer of a

packet of his relatives' ÖZAG shares that were held, in main part, in Switzerland." The post-War Industry Report prepared by the U.S. government specifically categorized this as a transfer made under "duress."

ÖZAG was Austria's most important pre-War sugar refiner, with approximately one-fifth of the market. According to the Industry Report, the shares occasionally were traded on the Vienna stock exchange, and were quoted at about 300 to 350 Austrian Schilling, or 200 to 230 Reichsmark per share, before the *Anschluss.* On March 5, 1938, one week before the *Anschluss*, Ferdinand Bloch-Bauer, together with other major shareholders, moved to keep the Nazis from gaining control of their company. Accordingly, they set up a syndicate representing 89% of the company's shares.[52] This agreement restricted the sale of shares and the manner of shareholder voting. Under the agreement, slightly over 50% of the share capital was held, on behalf of the shareholders, by the bank in the bank's name. Further shareholders were to block any shares held outside the bank at the place of their deposit, and the institutions where they were deposited were to be informed that they could be disposed only with the consent of the bank. The Syndicate participants owned 71,246 shares. Of these, 40,195 were held at the bank in Zurich in the bank's name on behalf of the members of the Syndicate.[53]

As the CRT explained in an Executive Summary of Opinion, the owners "instructed the Bank, which physically held these shares, as well as other depositories holding the remainder of their shares, that the shares subject to the Syndicate Agreement could not be sold or transferred without the consent of the Bank. Moreover, it was also explicitly provided in the Syndicate Agreement that the Bank could not give its consent to such sales or transfers without the unanimous agreement of the beneficial owners. The clear objective was to set up a barrier to

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[52] In 1938, of the 80,000 shares, 94.5% were held as follows: 21,665 by Loew group (Austrian, Jewish); 16,480 by the Graetz Group (part Jewish, held through a family foundation in Switzerland); 13,687 by Otto Pick (Czech, Jewish); 6,500 by Davies Lloyd group (British agents acting for Otto Pick); 12,580 by Bloch Bauer Group (Czech and Austrian, Jewish); 4,480 by Patzenhofer Group (Austrian, non-Jewish); with a remainder of 4,370 shares, of which 1,093 was widely dispersed.

[53] The ownership of these 40,195 shares was as follows: 16,480 Graetz Family Foundation, St. Gallen, Switzerland; 16,500 Sapafin AG, Chur Switzerland (Otto Pick); 7,215 Ferdinand Bloch Bauer and family members, of which 200 shares were owned by Maria Altmann. The remaining 31,051 shares owned by Syndicate members were deposited outside Switzerland; of these Ferdinand B-B owned 3,300, Gustav B-B owned 2,335 and Otto Pick owned 3,687.

enforced sale or confiscation that depended almost entirely on the mutual expectation, embodied in their Syndicate Agreement with the Bank, that the Bank could not cooperate with, or give in to, the Nazis." As the lawyer acting on behalf of the heirs of ÖZAG's major shareholders explained in a 1956 restitution proceeding, the deposit of the shares in the bank was taken as a protective measure, which later proved to be ineffective.

Immediately after the *Anschluss*, most of the Syndicate members fled Austria, "often after surrendering or abandoning all their possessions." The nephew of Ferdinand Bloch-Bauer and the son-in-law of Otto Pick, Leopold Bloch-Bauer, was arrested. He was held captive by the Nazis until he agreed to abandon all of his property and to help procure a transfer of ÖZAG shares to a so-called purchaser. As the CRT observed, "[c]riminal tax proceedings, supported by an audit report drafted by a self-proclaimed anti-Semite and Nazi party member, were commenced within days against the company by Nazi functionaries in an avowed effort to drive down the price of ÖZAG shares in order to enable a distress sale at a fraction of true value to a hand-picked Nazi 'purchaser,' Clemens Auer — a Cologne businessman with close ties to the Nazi party."

Thus, "[i]n a letter dated 3 December 1938, the Nazi authorities, apparently concluding that the tax proceedings would induce ÖZAG's shareholders to accept an offer at a fraction of the shares' true value, instructed the *Länderbank Wien* to purchase all available shares of the company and nominated Clemens Auer … and *Martin Brinkmann A.G.* of Hamburg as ultimate purchasers." By letter of December 20, 1938, Auer "instructed the *Länderbank* to acquire the shares for his account. He authorized the *Länderbank* to offer RM 70.00 per share or, in the event that more than 20,000 shares (25% of the total) could be obtained, RM 75.00 per share" (which of course was but a fraction of the RM 200 to 230 per share value before the *Anschluss*).

The bank conveyed this offer to the Syndicate members by letter dated December 22, 1938. The bank wrote: "'[W]e were unable to achieve the [required] unanimous agreement of the syndicate during the conferences on the sale, while some members of the syndicate did not find the Vienna offer worthy of discussion, other members appeared not averse [sic] to a sale in the event of an improvement of the offer.' The letter continued: 'Not only in case of these difficulties is the continuation of the syndicate hard, but also because the addresses of several

members of the syndicate are no longer known. Because of these difficulties and also because the situation has changed since the foundation of the syndicate we should like to propose the syndicate be dissolved according to the decision made at the beginning of March 1938 [the date the Syndicate Agreement was concluded]. If we have not received information to the contrary by 15 January 1939 we shall assume your approval.'"

As the CRT observed, "the Bank disingenuously characterized the discussions as lacking consensus and cited this alleged lack of consensus as a basis for the dissolution of the Syndicate. In fact, there *had* been consensus among Syndicate members about the offer." The consensus was that the members were opposed to this offer. "More fundamentally, even if there had been no consensus, the Syndicate Agreement was designed specifically to govern those circumstances in which unanimous consent regarding the sale of shares was lacking and therefore could not be the basis for its proposed dissolution."

Nevertheless, the bank did not wait even until January 15, 1939 "before permitting the sale of Syndicate shares to Auer." Instead, the bank apparently commenced the sale on December 30, 1938. According to the Industry Report, the Nazi appointee "Clemens Auer acquired, from December 1938 to October 1939, 78,968 shares of ÖZAG (98.7 percent of the total) for RM 6.5 million, or at an average price per share of about RM 82.00." After his purchase, "Auer transformed the corporation into a sole proprietorship and renamed it *Brucker Zuckerfabrik Clemens Auer* ('*Brucker Zucker*')." The tax proceedings "were terminated once the Nazis gained control of the company."

The CRT observed that "[s]adly, the Bank did not live up to the expectations of the ÖZAG shareholders or to its legal and fiduciary commitments." The bank had "actively cooperated with the forced sale of their ÖZAG shares by unlawfully transferring those shares that were held by the Bank to a designated Nazi 'purchaser' at a small fraction of the shares' value, without obtaining the unanimous consent of the Syndicate Agreement participants."

The CRT further pointed out:

> The Bank's unilateral attempt to dissolve the Syndicate Agreement in the context of its sale of 32,980 shares without the unanimous consent of the other members

> of the Syndicate clearly violated the fiduciary duties it owed to other members of the Syndicate. Moreover, by violating its contractual commitments as contained in the Syndicate Agreement, the Bank clearly violated the legal obligations it had not only as a party to the agreement, but also as a member of the Syndicate itself.
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> * * *
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> The CRT notes that, with the Syndicate Agreement in place, the Nazis were forced to obtain the consent of the Bank in order to acquire the majority of the ÖZAG shares (which were in the Bank's name), and that the Bank could not legally grant such consent because it did not have the unanimous consent of the Syndicate members for the sales. The Nazis, typically anxious to conform to the form, if not the substance, of law in their efforts to obtain the property they desired, apparently did not want to expropriate shares in an Austrian company if the Bank would not give its consent to the transfer of the shares, as required by the Syndicate Agreement. The Bank, unilaterally and in violation of its legal and fiduciary obligations, gave its consent, or obviated the need of the Nazis to obtain its consent, thus exposing the Syndicate members to Nazi coercion that forced them to sell their shares at confiscation level prices.
>
> By permitting the sale of the shares absent unanimous consent of Syndicate members while the Syndicate Agreement was in force, by attempting to dissolve the Syndicate without authorization, in the context of its unauthorized and illegal sale of shares that it held in its own name on 30 December 1938, thus breaking the Syndicate, the Bank facilitated the confiscation and/or sale of the remaining ÖZAG shares, and by violating its contractual commitments as contained in the Syndicate Agreement, the Bank clearly placed its business interests with Nazi Germany ahead of the interests of the Syndicate members and clearly violated the fiduciary duties and legal obligations it owed to the ÖZAG shareholders.

The CRT awarded the value of the 33,037 ÖZAG shares owned by the Bloch-Bauer and Otto Pick groups that were lost, due to the bank's breach of the agreement. These shares were calculated at their market value on the date that the bank had violated the terms of the Syndicate Agreement, "less any sums received by the Claimant [and other heirs] in connection with the shares."[54]

In assessing the amount of the award, the CRT explained that it had considered "two measures of liability, both of which reach the same result. One measure of liability views the Bank as an aider and abettor of the Nazis' unlawful activities in forcing a distress sale of the

[54] In a subsequent decision, the CRT awarded the value of the Graetz family shares to the heirs of those account owners.

ÖZAG shares to a hand-picked 'aryan' purchaser at a fraction of their true value. Under such a measure of liability, the Bank, as an aider and abettor, is jointly and severally liable to the sellers for the unjust enrichment obtained by the Nazi 'purchaser' in being able to acquire the shares at a fraction of their value. The measure of damages under such a theory is the difference between the true value of the shares and the compensation actually received by the sellers. The shares' true value is appropriately measured by an average of the most recent pre-*Anschluss* sales." The "second measure of liability is based on the Bank's actions in making unauthorized sales of shares and in otherwise unlawfully undermining the Syndicate Agreement as a breach of contract and fiduciary duty owed to the members of the Syndicate. Under such a theory, the Bank is liable to the sellers for damages caused by the breach of contract, measured by the difference between the price actually received and the true price that should have been received if the Syndicate Agreement had not been breached by the Bank (the true market value, calculated without regard to the discriminatory tax proceedings)."

Under either theory of liability, the CRT would have reached the same result: "the true value of the ÖZAG shares, measured by the most recent pre-*Anschluss* sale price of ÖZAG shares as certified by the Vienna stock exchange without regard to the discriminatory post-*Anschluss* Nazi market manipulations, less any amounts received by the sellers in connection with the post-war Austrian restitution proceedings."

The CRT observed more generally that the award, although "unique in its size," was "unfortunately, representative of several general findings by the CRT":

> First, this Award is merely a striking example of the widespread betrayal of Jewish clients by Swiss banks. Having marketed themselves to the Jews of Europe as a safe haven for their property, Swiss banks repeatedly turned Jewish-owned property over to Nazis in order to curry favor with them. Second, this Award is striking in that no record of the rise and fall of the ÖZAG Syndicate was found in the Bank's records. Rather, the documents upon which this Award is based were submitted by the Claimant and/or obtained by the CRT from archival sources. We will never know how many other examples of betrayal were buried in the records of the 2,757,950 accounts (of the 6,858,116 opened in Swiss Banks between 1933-45) the Banks concede they have destroyed completely or would have been found in the remaining accounts for which only fragmentary records survive. Third, this case reflects the strategies used by Nazis to seize control of Jewish property, ranging from outright theft to sophisticated distress sales

orchestrated by compliant tax officials and faithless banks and disguised by the veneer of "law." Finally, the Award reflects the special difficulties faced by Austrian Jews in seeking restitution. It is enough to note that the representative of Austria overseeing the restitution proceedings regarding ÖZAG in 1956 was himself a member of the Nazi party and had worked in the office responsible for the confiscation of Jewish assets beginning in 1938.

xxiii. In re Accounts of Dr. Heinrich Oppenheimer (SF 507,750.00)

Dr. Heinrich Oppenheimer was born in 1896 in Germany. He was an attorney who lived in Hamburg from 1921 through 1936. He was arrested in November 1936 and imprisoned until September 1939. The claimant, Heinrich Oppenheimer's son, advised the CRT that his father was forced to turn over his property to Nazi officials in 1939 or 1940. Dr. Oppenheimer's wife fled to the U.S. in 1939, and upon his release from prison, Dr. Oppenheimer joined her.

The bank records showed that Dr. Heinrich Oppenheimer owned two custody accounts, both of which were closed by an unknown entity in April 1937. The CRT awarded the two accounts at presumptive value, since the accounts were closed during the period when the account owner was imprisoned by the Nazis. Even if he had "agreed" to the release his funds, he would have been acting under duress.

xxiv. In re Accounts of Josef and Hilda Palugyay (SF 289,087.50)

Josef Palugyay was born in 1890 in Presburg, Czechoslovakia, and his wife Hilda was born in 1892. They resided in Vienna, where Josef Palugyay was a medical doctor. Josef Palugyay was not Jewish but his wife Hilda was, and the claimant (their nephew) advised the CRT that the Palugyays were persecuted because of his aunt's religion.

The bank records consisted of a March 17, 1938 letter from the Zurich branch of the bank to the bank's executive board in Basel. As described by the CRT, the bank "indicat[ed] that it would soon complete a list of over 1,000 custody accounts belonging to Austrian clients, as well

as a copy of the Swiss federal legislation relating to foreign exchange transactions with Austria as of 23 March 1938. Also included in the Bank's records is a list of accounts transferred to German or Austrian banks in 1938." The records showed that the account owners were Prof. Dr. Josef Palugyay and *Frau* Hilda Palugyay of Vienna, and that they owned a custody account and a demand deposit account. The bank records indicated that the accounts were transferred on April 1, 1938 to the *Österreichische Creditanstalt-Wiener Bankverein* in Vienna. The custody account held SF 5,325 on the date of transfer, while the demand deposit account held SF 1,332.50.

The CRT awarded both accounts to the owners' nephew. The accounts had been paid to a Nazi-controlled bank, and the proceeds would not have been at the free disposition of the account owners. Both accounts evidenced recorded values below presumptive values and so the accounts were paid at higher amounts; *i.e.*, at their respective presumptive values.

xxv. In re Accounts of Rudolf Pollak (SF 353,302.75)

Rudolf Pollak was born in 1864 to the prominent Borkenau-Pollak family of Vienna. The CRT's research indicated that one member of the family, Moriz Pollak, Ritter von Borkenau, was an Austrian financier. He was sent by the city of Vienna as a delegate to the coronation of the King of Hungary in 1867. He was made chairman of the executive committee of the Vienna Exposition in 1873, for which he received from the Austrian emperor the title "Von Borkenau." He served as a bank examiner and director-general from 1885 to 1889, and as an examiner of the Austro-Hungarian bank. He "took a very active part in the affairs of the Jewish community." He was also a lawyer and university professor in Vienna. In 1896, according to the claimant (Rudolf Pollak's grandson), Rudolf Pollak converted to Roman Catholicism, but under the Nuremberg laws, the Nazi authorities considered him to be Jewish. He died in Vienna in February 1939. His wife was deported to Theresienstadt in July 1942 and died there in July 1944.

The bank records showed that Prof. Dr. Rudolf Pollak of Vienna held one demand deposit account, which was closed on March 30, 1938, and one custody account, which was

closed on December 22, 1938. Following the CRT's receipt of additional records through the "voluntary assistance" process, the CRT determined that Rudolf Pollak's custody account held ten different securities.

The CRT also examined 1938 Census, which revealed that Rudolf Pollak held securities (a total of sixteen), which the CRT observed "very closely approximate, but do not exactly mirror, the securities listed in the Bank's records." The Census file also contained letters from the Office in the Ministry for Economics and Labor charged with registering and administering Jewish-owned property. These letters informed Dr. Rudolf Pollak that all foreign assets, including securities, needed to be transferred to the Reichsbank (August 1938), and demanded the proceeds from the required sale of securities (November 27, 1938). A letter from Dr. Rudolf Pollak confirmed that the securities were sold as of October 27, 1938 and the proceeds turned over to the Reichsbank. In an undated letter, as well as a November 28, 1938 letter, Dr. Pollak listed the securities he had sold.

The assets listed in the 1938 Census (but not expressly indicated in the Census as having been deposited in a Swiss account) approximated the assets set forth in the bank records that the CRT obtained through the "voluntary assistance" process. In light of the fact that these assets were seized by the Nazis, and given that Dr. Pollak lived under Nazi rule, and his wife was killed in Theresienstadt, the CRT awarded the accounts to the grandson of Dr. Pollak. Upon application of Dr. Junz's Guidelines for the Valuation of Securities, the CRT determined that the custody account held assets worth SF 25,967.22. With the demand deposit account (awarded at presumptive value since the actual value was unknown), and upon application of the 12.5 multiplier, the claimant was awarded a total of SF 351,340.25.[55]

[55] Albert Pollak, a relative of account owner Rudolf Pollak, owned one of 148 "significant [Viennese art] collections" plundered by the Nazis. *See* Lillie, WAS EINMAL WAR: A HANDBOOK OF VIENNA'S PLUNDERED ART COLLECTIONS.

xxvi. In re Account of Jules Roos N.V. (SF 49,375.00)

Jules Roos N.V. was an Amsterdam bank wholly owned by Jules Roos, who was born in 1882 or 1883 in Chemnitz, Saxony, Germany, and who lived in Amsterdam. The claimants were, respectively, the daughter of Jules Roos, and her nephew, Jules Roos' grandson (who had filed an Initial Questionnaire but not a claim form). They advised that in August 1939, anticipating Nazi persecution, Jules Roos abandoned his business and home and emigrated to Montreal. He died in 1968 in Lima, Peru.

The bank records showed that the Amsterdam bank *Jules Roos N.V.* held a custody account which was closed on April 30, 1940, as well as a second account of unknown type, which was closed as of July 28, 1942.

After the company was aryanized, the accounts became a subject of some discussion within the bank. As described by the CRT, "[a]ccording to a letter from the Account Owner to the Bank, dated 4 May 1942, *Jules Roos N.V.* was placed under a Nazi administrator, *Herr* (Mr.) Heinrich G. Fousek, by order of the *Reichskommissar* … for the occupied Dutch territories. The firm's letter advised the Bank of this fact and notified it that the administrator's signature was being added to the set of joint signatures required for account dispositions on file at the Bank. In an internal Bank memorandum, dated 5 May 1942, the Bank noted that Jules Roos had left for America before the War and that the firm no longer was listed as a member of the Dutch Stock Exchange."

The bank memorandum also observed that the account owner had advised the bank that the Nazi-appointed administrator Heinrich F. Fousek "now supposedly was authorized to sign on the company's behalf" together with another individual, a Miss Bierlee. "The memorandum concludes that the Bank could not recognize Mr. Fousek's authority, not only because of the general principle that Dutch war-time regulations were not applicable in Switzerland, but also because the 4 May 1942 letter contained only the signature" of one of two individuals supposedly authorized to sign on the company's behalf, based on a July 31, 1939 letter sent to the bank by the company, and so "therefore Mr. Fousek's signature was irrelevant in Switzerland."

On May 11, 1942 (a week after the company's May 4, 1942 letter to the bank), the bank wrote to its main office in Basel that it had "received notice from *Jules Roos N.V.* that it had been placed under the authority of an administrator. Before responding in the 'usual manner' …, the Bank requested the main office to inform it whether liabilities existed in other branches of the Bank against the SF 15.00 credit balance in the account." The following day, the main office responded that there were no liabilities against *Jules Roos N.V.*

On May 15, 1942, the bank wrote to the company "requesting a copy of the commercial register reflecting the changes in signatory power." At the same time, the bank froze existing deposits, ordered that no further deposits from the firm be accepted, and asked that communication be directed to the bank's legal department. On June 24, 1942, the company sent the bank the requested information from the commercial register, "reflecting the addition of the names of three Germans," including Fousek. A July 28, 1942 bank memorandum indicated that the signatures in the commercial register were not in order, but that the bank would not pursue the matter because the account's value was only SF 15.00.

The CRT awarded the account of unknown type at presumptive value to the daughter and grandson of Jules Roos, observing that "the account remained open after the closure of the custody account and was still open as of 3 June 1942. The CRT notes that at this time, *Jules Roos N.V.* was under the authority of a Nazi-appointed administrator and that, although the Bank did not fully recognize the right of this administrator to dispose over the account, it had agreed internally to honor the requests of the administrator to dispose of the account since the account had a low balance of SF 15.00."

xxvii. In re Accounts of Walter Rosenbaum (SF 381,572.75)

Dr. Walter Rosenbaum was born in 1889 in Poland. He lived in Vienna, where he was a lawyer. He fled Vienna for Holland with his family. He returned to Vienna in 1946, where he died in 2002. His birth was recorded in a registry of Jewish births. His marriage and death certificates indicated that he was Protestant and he and his wife declared that they were Protestant. However, Walter Rosenbaum was forced to file a 1938 Census form, and to pay

flight and atonement taxes. The 1938 Census further reflected that he was forced to sell securities in 1938. In 1939, Nazi authorities wrote to him at a hotel in Holland to order him to "offer" to sell his remaining foreign currency to the Vienna branch of the *Reichsbank.*

The bank records showed that Dr. Walter Rosenbaum held a custody account closed on March 22, 1939, and a demand deposit account closed on March 31, 1939. The CRT awarded the accounts at presumptive value to the claimant, Dr. Rosenbaum's daughter-in-law. The CRT noted that "the accounts were closed … after the Account Owner fled Austria for Holland" and when he was "outside Nazi-dominated territory." However, "given that the Bank's record does not indicate to whom the accounts were closed, that the Account Owner fled his country of origin due to Nazi persecution; that his 1938 Census file demonstrate[s] that the Account Owner was required to register his assets to Nazi authorities, and that these authorities were aware of his address in Holland; that the Account Owner may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety," it was "plausible that the account proceeds were not paid to the Account Owner or his heirs."

After the award had been issued, following the CRT's ongoing request for "voluntary assistance," the bank provided the CRT with other documents demonstrating that the custody account had held six different securities at the time it was closed. Several of the securities were transferred into account number 2269. The CRT observed that the "Bank's records do not indicate who owned account 2269… and that this account appears as the transfer destination for other, unrelated accounts. Even if account 2269 was held in part or in whole by the Account Owner, the records do not indicate when the account was closed, or the disposition of the securities contained within it. Accordingly, the CRT concludes that the Account Owner did not receive these securities or their proceeds."[56]

Based upon Dr. Junz's Guidelines for the Valuation of Securities, the CRT determined that the market value of the assets held in the account was SF 190,360.25 greater than the

[56] For additional awards involving transfer account no. 2269, *see, e.g., In re Accounts of Adolf Egger* (SF 273,947.51); *In re Accounts of Moriz Kuffner* (SF 2,592,496.25).

amount originally awarded utilizing presumptive values. The CRT therefore recommended, and the Court approved, an additional payment to Dr. Rosenbaum's daughter-in-law.

xxviii. In re Account of Simon Rosenstein (SF 260,375.00)

Simon Rosenstein was born in 1872 and lived in Vienna. He was an employee of the *Kuffner* company.[57] Simon Rosenstein and his wife Elfriede were killed in concentration camps. The claimant, the Rosensteins' grandson, fled Vienna in 1938 with his sister as part of a *Kindertransport*.

The bank's records indicated that Simon Rosenstein owned a custody account opened in 1937. The records also "consist of an extract from a list of custody accounts belonging to clients domiciled in Austria that were closed; a letter dated 17 March 1938 from the Zurich branch of the Bank to the Bank's Head Office in Basel concerning a request to the branch to provide both a list of its liabilities to Austrian clients and the value of … securities it held on their behalf as well as a copy of an extract of the Austrian law gazette dated 23 March 1938 containing the … Austrian foreign currency law." The records showed that the account was closed on October 18, 1938 and the balance was transferred on October 20, 1938 to the Nazi-controlled *Länderbank Wien A.G.* in Vienna.

Based on the fact that the account was transferred to a Nazi bank, the CRT awarded the presumptive value of a custody account to Simon Rosenstein's grandson, and to other grandchildren whom the claimant represented.

xxix. In re Accounts of Julian Schachian and Siegfried Schachian (SF 841,550.00)

Julian Schachian was born in 1880 in Berlin, Germany. He was an attorney with the title of Doctor of Law. He was deported to Riga, and he perished in 1942.

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[57] *See also In re Accounts of Moriz Kuffner* (SF 2,592,496.25).

"Stolperstein" (stumbling block), Julian Schachian. Schleswiger Ufer 5, Berlin-Hansaviertel, Germany, Jan. 31, 2013. https://commons.wikimedia.org/ and wiki/File:Stolperstein_Schleswiger_Ufer_5_(Hansa)_Julian_Schachian.jpg. Photo courtesy of Wikimedia and OTFW.

Siegfried Schachian, the brother of Julian Schachian, was born in 1876 in Berlin, Germany. Siegfried Schachian was deported to Theresienstadt in 1942. He subsequently was sent further east, where he perished in 1944. Their niece claimed their accounts.

The bank records showed that Dr. Julian Schachian was a lawyer and notary, and that he held a custody account opened on January 19, 1930, as well as a demand deposit account. The claimant, who at the time of the award was 91 years old, apparently did not remember (because she did not mention in her claim form) that in 1933, at the age of 26, she herself personally had visited the bank on behalf of her uncles. The bank records, however, did record the fact of this visit. These files included, among other documentation, the claimant's calling card. On July 4, 1933, the claimant met with a bank representative, and instructed the bank no longer to send account statements and correspondence to her uncle, Julian Schachian. She told the bank that her uncle also would destroy any account information that he held at his home.

Nevertheless, despite the entreaties of the claimant, Dr. Schachian's niece, on December 22, 1936, the Swiss bank transferred the assets in Dr. Julian Schachian's custody account (with a market value of SF 41,900) to an account belonging to the *Deutsche Bank und Disconto-Gesellschaft* in Berlin. That transfer was made following an order issued by the Reich in

November 1936, requiring that the German owners of foreign securities held abroad deposit those securities in a custody account belonging to a German bank. The account was closed on December 19, 1938.

With respect to the claimant's other uncle, Siegfried Schachian, the bank records showed that he held the title of *Dipl. Ing*. (Engineer) and owned custody and demand deposit accounts. As with his brother, the Swiss bank transferred the securities in his custody account (with a December 22, 1936 market value of SF 6,300.00) to an account belonging to the *Deutsche Bank und Disconto-Gesellschaft* in Berlin. The account was closed on September 30, 1938.

Given that the bank transferred the accounts to the Nazis, and that there either was no information about the values of the accounts (or, in the case of Siegfried Schachian's custody account, its known value was lower than presumptive value), the CRT awarded the accounts to the brothers' 91-year-old niece at the accounts' respective presumptive values.

xxx. In re Account of Robert Schwarzkopf (SF 47,400.00)

Robert Schwarzkopf was born in 1889 in Iglau, Czechoslovakia. He lived in Vienna with his wife Selma, and their daughter and son (the claimant). Robert Schwarzkopf was a banker. He fled to England in 1940, and later immigrated to the United States with his family. He and his wife died in New York, respectively, in 1981 and 1998.

The bank records indicated that Robert Schwarzkopf held an account of unknown type, which was transferred and closed on March 30, 1938 to an unknown entity. Records from the 1938 Census included a report filed by the Vienna police regarding a search of the office and apartment of Robert and Selma Schwarzkopf, which as described by the CRT "was carried out by the police on 12 March 1938, for assets to be reported. Among the items discovered in the search were … Swiss Franc-denominated City of Vienna bonds with a par value of 18,000.00 Swiss Francs, which were confiscated by the police."

The CRT awarded Robert Schwarzkopf's son an account of unknown type at presumptive value, observing that "coincident with the *Anschluss* on March 12, 1938, the Nazis initiated a

concerted plan to seize and confiscate the wealth of Austrian Jews. In pursuance of this plan, the search of the Account Owner's office and apartment took place on 12 March 1938, together with the seizure of his financial assets. His Swiss account was closed 18 days later on 30 March 1938." Based on these facts, it was plausible that the Swiss account was closed improperly.

xxxi. In re Accounts of Bruno Spiro (SF 289,087.50)

Bruno Spiro was born in 1875. He lived in Hamburg with his family, where he was a weapons dealer. He died in a concentration camp.

Picture of Major Crawford and arms dealer Benny Spiro. March 1914. https://en.wikipedia.org/wiki/Larne_gun-running#/media/File:MajorCrawford.jpg.[58] Photo courtesy of Wikimedia and London Somme Ass'n.

The ICEP auditors did not report an account belonging to Bruno Spiro. However, the CRT located documents relating to the account in the archives of the City of Hamburg. Thereafter, the CRT requested "voluntary assistance" from the banks, and subsequently received records confirming that Bruno Spiro did, in fact, hold accounts with a Swiss bank: a custody account (closed on September 25, 1937) and a demand deposit account (closed on October 23,

[58] Bruno Spiro supplied weapons to the Ulster Unionist Council, which sought to form an army to oppose British rule over Ireland. *See* https://en.wikipedia.org/wiki/Larne_gun-running. "The Council approached Major Frederick H. Crawford to act as its agent to purchase the guns needed to equip such an organisation...Crawford secured the services of the *SS Fanny* to transport 216 tons of guns and ammunition which he had purchased from Benny Spiro, an arms dealer in Hamburg." *Id.*

1937). The account was noted on an unknown date as being owned by "Bruno Spiro's heirs," thus indicating that the bank had been notified that the account owner had died. The account thereafter was published on the 2005 List[59] and claimed by Bruno Spiro's heirs.

As to the archival records the CRT had located from the City of Hamburg, these documents showed that Bruno Spiro had been prosecuted for tax fraud, "treason to the German people," and "impermissible possession and sale of securities." The records indicated that Mr. Spiro was an arms dealer and a member of a "'society of international Jewish arms dealers'" who sold machine guns, rifles, and other weapons to groups in Palestine and in Czechoslovakia. He was arrested by the Gestapo in July 1936 for arms smuggling. During its investigation, the Gestapo learned that Bruno Spiro had owned securities held in a bank in Lucerne. He had sold these securities between 1933 and 1934 for his own business in Switzerland, rather than repatriating the proceeds to Germany.

The archival records showed that Bruno Spiro committed suicide on September 29, 1936, while imprisoned in the concentration camp at Fuhlsbüttel near Hamburg. The records also contained a decision from the Hamburg District Court denying the request of the state solicitor's office to seize funds from Bruno Spiro's German bank account to offset the value of the foreign-held securities. The court ruled that the seizure would negatively impact Mrs. Spiro, who did not appear implicated in her husband's business affairs.

The CRT concluded that although Bruno Spiro or his heirs did receive the proceeds of the securities held in the bank in Lucerne, "the archival records do not indicate that all securities in the custody account were sold by 1934. In fact, … the custody account and demand deposit account were not closed until 25 September 1937 and 23 October 1937," approximately one year after Bruno Spiro had died in the Fuhlsbüttel concentration camp (in September 1936). Based on

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[59] Of the approximately 36,000 accounts that the Volcker Committee determined had "probably" or "possibly" belonged to Holocaust victims, Swiss banking authorities authorized publication of approximately 21,000 names (*i.e.*, the "probable" victim accounts). This list was published on the internet on February 5, 2001, as directed by the Court's Order of December 8, 2000, as amended (the "2001 List"). On January 13, 2005, following ongoing litigation with the Swiss bank defendants, the CRT published an additional list of names of approximately 2,700 account owners and 400 power of attorney holders of Swiss bank accounts whose owners were probably or possibly Victims of Nazi persecution. *See* http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("2001 List" and "2005 List").

the fact that "Nazi authorities were aware that the Account Owner held assets at the Bank," the CRT awarded the claimants the presumptive value of these accounts.

xxxii. In re Accounts of Emil Taub (SF 271,125.00)

Emil (Michael) Taub was born in 1885 in Vienna, where he lived with his wife Hermine and their two children, the claimant and his twin brother, until the *Anschluss*. The family fled to Palestine (now Israel) in October 1938. Emil Taub died in Israel in 1975, and his wife died there in 1993. Their son, the claimant's twin, was killed in the Sinai during the Yom Kippur War, on October 19, 1973.

The bank records showed that Emil Taub, who held the honorary title *Baurat* (for distinguished engineers in Austria), owned a custody account and a savings/passbook account. Both accounts were opened on March 24, 1930, and both were closed on March 31, 1939. Hermine Taub held power of attorney over the accounts. As of March 30, 1938, all correspondence was to be withheld by the bank. The bank later was instructed to send all correspondence to an address in Tel Aviv, care of Leo Saphir, who resided in Gedera.

In addition to the bank files, the CRT also reviewed 1938 Census for Emil Taub and Hermine Taub. The Census records showed that the Taubs' house was valued by an "Aryan appraiser" and sold under the terms of a January 23, 1939 contract, by which time the family had fled to Palestine. The Office in the Ministry for Economics and Labor charged with administering Jewish-owned property, the *Vermögensverkehrstelle* (VVSt.), approved the sale, "but insisted that the proceeds of the sale of the house would be placed in a blocked account in Austria that could only be accessed with the permission of the VVSt. The records further include an internal VVSt. memorandum" dated March 7, 1939, in which the author asked for information "regarding all remaining assets belonging to Emil and Hermine Taub, who had emigrated to Gedera" in Palestine.

The CRT awarded the accounts to the Taubs' son at presumptive value. The CRT observed that although the accounts were closed when Emil Taub was outside Nazi territory,

there was no indication in the bank records as to who had closed the accounts. The CRT noted that the Account Owner may have yielded to Nazi pressure to turn over accounts to ensure the safety of relatives who remained behind. Further, the "Austrian Census records indicate that the Nazi authorities blocked the proceeds of the sale of the Account Owner's house," and "inquired regarding any remaining assets that he held following his flight to Palestine." The CRT concluded that it was plausible that the Swiss bank accounts were among these assets.

xxxiii. In re Accounts of *Hermann Tietz & Co.*, Georg Tietz, Martin Tietz and *Grundwert Aktiengesellschaft Kaiserdamm* (SF 1,156,350.00); In re Account of Georg Tietz (SF 47,400.00)

Georg Tietz was born in 1889 in Gera, Germany. He lived with his wife and two children (the claimants) in Berlin. The Tietzes fled Germany in 1937, first to Liechtenstein; then to Luzern, Switzerland (1938); then to London (1939); then to Havana, Cuba (1940); and finally to New York. Georg Tietz died in Munich in 1953, and his wife died in New York in 1984. In its initial decision, *In re Account of Georg Tietz*, the CRT observed that Georg Tietz had co-owned a chain of German department stores. In a subsequent decision, the CRT further described the well-known Tietz chain of stores; the persecution its owners suffered at the hands of the Nazis; and the specific attention given to the company by Hitler himself.

With respect to the accounts owned by Georg Tietz personally, the bank records made available as a result of the ICEP audit indicated that the account owner resided in Berlin, and that he later moved to Havana. He owned an account of unknown type opened on September 9, 1931, which remained open and dormant. As of June 1998, the account held a balance of SF 1,260. Because the account had not been repaid to its owners but instead remained open, and since the recorded balance was lower than presumptive value, Georg Tietz's children were awarded the presumptive value for an account of unknown type.

Subsequently, the CRT located several additional accounts belonging to Georg Tietz, other relatives, and their businesses. Expanding upon the data that had been provided to the CRT by the children of Georg Tietz, the CRT observed that a "significant amount of available public information regarding the *Hermann Tietz* department store exists. The *Hermann Tietz* company was founded in 1882 by members of the Tietz family, who opened a small store in Gera, Germany. The company grew quickly in size, with further Herman Tietz stores opening with ten years in Weimar, Karlsruhe, Munich and Hamburg." As the CRT explained, in 1899, "the company opened its first department store (*Warenhaus*) in Berlin. The company continued to expand, and in 1927, it acquired rival department store *Kaufhaus des Westens*, also known as *KaDeWe*."[60]

KaDeWe. Tauentzienstraße, Berlin, 1910. https://www.kadewe.de/en/das-kadewe-die-geschichte/. Photo courtesy of the KaDeWe.

[60] *See* Katja Born, *Arisierung im Nationalsocialismus am Fallbeispiel der Hermann Tietz Konzerne im Vergleich zur Enteignung bei Wertheim*, Grin Verlag, at 4-5; Michael Blumenthal, *"Mehr als ein Gourmet-Tempel", Welt Online*, Oct. 14, 2007, http://www.welt.de; Inge Braun & Helmut Huber, *Verführung aug sieben Etagen: Das Kaufhaus des Westens und seine Geschichte. SWR2 Feature am Sonntag*, Transcript, all cited in the CRT award. *See also* Simone Ladwig-Winters, *The Attack on Berlin Department Stores (Warenhäuser) After 1933, in* PROBING THE DEPTHS OF GERMAN ANTISEMITISM: GERMAN SOCIETY AND THE PERSECUTION OF THE JEWS, 1933-1941 249 (Berghahn Books 2000) (the well-known Wertheim department store — the subject, several years ago, of a significant restitution proceeding — was the "top *Warenhaus* in Germany throughout the first decade of the century," but the "ranking within this sector changed during the 1920s. Now the enterprises with the highest sales were Karstadt and Hermann Tietz (which had been founded by Oscar Tietz with the financial backing of his uncle Hermann Tietz), followed by Leonhard Tietz, Wertheim, and Schocken"). The Schocken heirs also received a Deposited Assets Class award. *See In re Accounts of Lilli Schocken and Einkaufszentrale I. Schocken Söhne GmbH (supra).* As noted by the historian Richard Evans, "by 1930 the Tietzes owned fifty-eight department stores." RICHARD J. EVANS, THE THIRD REICH IN POWER, 1933-1939 379 (Penguin Press 2005).

Kaufhaus des Westens (KaDeWe). Berlin, Aug. 29, 2018. Photo courtesy of Ruediger Mahlo.

As described by the CRT, when the Nazis came to power in 1933, the company "was suffering financial losses caused by the recession and high unemployment in the country," and thus "required a substantial loan. The Nazi financial authorities seized their chance to assume some measure of control of the company. The consortium of banks (including *Deutsche Bank* and *Dresdner Bank*) to which the company applied for the credit consulted with Reich Economic Minister Kurt Schmitt for advice regarding the granting of the credit; Schmitt, in turn, felt that the decision whether to grant the credit to the Jewish-owned company, and thereby to prolong its existence, was too great for him to make alone. *Hermann Tietz* employed over ten thousand Germans in 1933, and consequently, in the Nazi regime's view, to allow the company to fall into bankruptcy was not a desirable solution from an economic perspective. Schmitt, new in his post, therefore sought Adolf Hitler's personal approval of the credit arrangements. Hitler ultimately gave his approval based on purely economic grounds."

However, the "credit guarantee was not granted without significant conditions… In July 1933, the creditor banks formed a second company, *Hertie Waren und Kaufhaus GmbH*, which would subsequently participate in the management of *Hermann Tietz.* The Nazi financial officials appointed Georg Karg, previously the director of textile purchasing for *Hermann Tietz*, and Helmut Friedel," neither of whom was Jewish, as *Hertie's* representatives. Georg and Martin Tietz initially were allowed to retain their management roles but were "forced to take personal liability." Their third partner, a brother-in-law, was forced to leave the company.

However, in mid-1934, after the company was audited, the two Tietz brothers were compelled to resign as well, although not before being forced to offer their shares in the company — valued at RM 24 million — for one-third of that value, RM 8 million. After additional charges were filed against them, Georg and Martin Tietz were supposed to receive a payment of RM 800,000. As the CRT noted, however, "the two brothers were not permitted to take any of this amount with them when both of them fled Germany in subsequent years."[61] They were left with nothing.

In its Final Report, the Bergier Commission pointed out that Swiss banks were well aware of the precarious position in which the Nazi regime had placed the Tietz company: "In view of the 'politicisation of the economy,' the directors of Credit Suisse were no longer entirely confident about the future prospects of Jewish companies. They tended more to concern themselves with loans already granted to such firms, in particular with some of the department-stores which were being badly harassed by the Nazis, such as Leonhard Tietz AG and Rudolph Karstadt AG."[62]

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[61] Ladwig-Winters (at 256-57) observed that "liquidation of Hermann Tietz was out of the question on account of the 14,000 jobs that would thus have been eliminated, but also in light of the further consequences for industrial and agricultural suppliers and — above all — for the creditor banks. Hitler had no alternative but to assent to the loan that assured the company's continued existence." However, as the CRT pointed out, salvaging the company as an ongoing concern did not benefit its owners at all; they were instead "forced out in 1934 after a lengthy audit …. From now on the stores were known under the name *Hertie*, which ingeniously kept the link to their founder's name while at the same time advertising to everyone that the business had been placed on a new footing; Leonard Tietz's stores were renamed with the neutral-sounding title of *Kaufhof*, or 'shopping court.'" Evans, at 380.

The campaign against the Tietz family and their department stores was recounted contemporaneously in the New York Times. *See, e.g.*, *Nazi Raids Causing Financial Uneasiness*, N.Y. TIMES, Mar. 13, 1933 ("There were … demonstrations against the Woolworth, Karstadt and Tietz establishments, and Tietz shares on the Boerse fell to half their recent high price"); *Trade Confidence Hard Hit by Nazis - Berlin Prices Sag as Result of Anti-Jewish Activities and Stalheim Friction*, N.Y. TIMES, Mar. 31, 1933 ("The stock which is the leading victim of the anti-Jewish campaign is that of the Tietz department stores"); *Big Berlin Stores Reopen - Only 'Christian' Clerks Now in Former Tietz Establishments*, N.Y. TIMES, Mar. 10, 1934 ("Three big Berlin department stores formerly belonging to the brothers Tietz, Jewish merchant princes, reopened after a reorganization today with only 'Christian' clerks. The stores were recently sold by the Tietz chain. Their new name is Union Limited, and, it was explained, the capital is 'purely Christian.' The dissolution of the Tietz chain, the largest in Germany, is continuing…. What remains of the chain is only nominally in the hands of the Tietz family").

[62] BERGIER FINAL REPORT at 265.

An SA picket stands in front of the Jewish-owned Tietz department store wearing a boycott sign that reads: "Germans defend yourselves; don't buy from Jews!" Berlin, Apr. 1, 1933. https://collections.ushmm.org/search/catalog/pa3867. Photo courtesy of the U.S. Holocaust Memorial Museum and the Nat'l Archives & Records Admin., College Park.

With the exception of the account owned by Georg Tietz, bank records of the Tietz individual and corporate accounts were not included in the "Accounts History Database" (AHD) created as part of the ICEP audit. Rather, the accounts were located in the "Total Accounts Database" (TAD), to which the CRT had only limited access, on a case-by-case basis and under restricted terms. In the TAD, the CRT located accounts belonging to *Hermann Tietz*; Georg Tietz; Martin Tietz; and *Grundwert* and *Hermann Tietz.*

Hermann Tietz: The *Hermann Tietz* accounts consisted of a custody account numbered 4996 (to which assets from another custody account had been transferred after July 17, 1933); a foreign currency demand deposit account in Reichsmark; and a demand deposit account in Swiss Francs. The bank records indicated that although correspondence for the accounts had been directed to a Dr. Konrad Bloch in Zurich, as of November 6, 1933, the bank's legal department had ordered that correspondence instead be sent to an address in Berlin.[63] The bank records

[63] Dr. Bloch acted for a number of other Jewish account holders, as evidenced in several claims. *See, e.g., In re Account of Dr. Paul Karplus; In re Assets of Gertrude Löw and Marianne Hamburger-Löw; In re Account of*

referenced a "blocked" account, and further indicated that any correspondence from the bank's securities department first needed to be reviewed by Dr. Erny of the bank's legal department.

Georg Tietz: The accounts owned by Georg Tietz consisted of a custody account numbered 33457, and a demand deposit account. A notation dated November 6, 1933 indicated that according to instructions from Dr. Erny, as described by the CRT, "all correspondence related to Georg Tietz's custody account and demand deposit account should indicate [his] personal address [in Berlin] but be sent to lawyer Dr. Konrad Bloch" in Zurich. The two accounts were closed on November 20, 1934.

Martin Tietz: Like his brother Georg, Martin Tietz also owned a custody account and a demand deposit account at the bank. The records contained instructions similar to Dr. Erny's direction that correspondence should reflect Martin Tietz's personal address in Berlin, but should be sent to Dr. Konrad Bloch in Zurich. The two accounts, as true for those owned by Georg Tietz, were closed on November 20, 1934.

Grundwert Aktiengesellschaft Kaiserdamm and *Firma Herman Tietz & Co*: The CRT located a custody account owned jointly by the businesses *Grundwert Aktiengesellschaft Kaiserdamm* and *Firma Herman Tietz & Co.*, which were located at the same address in Berlin. The joint account was closed on December 21, 1934.

The CRT awarded all of the accounts, at their respective presumptive values, to the claimants, the children of Georg Tietz, and the niece and nephew of Martin Tietz. The CRT observed that all of the accounts had been "closed between November and December 1934…. According to research conducted by the CRT, the accounts were closed after Georg and Martin Tietz were forced to resign from *Hermann Tietz* in mid-1934 and after Georg Karg assumed the leadership of the company with the permission of the creditor banks." Georg Tietz had "remained in Germany until 1937, and would not have been able to repatriate his accounts to Germany without losing ultimate control over their proceeds." The *Hermann Tietz* store was aryanized by the Nazi regime in 1933 and 1934. Its Jewish owners were forced to resign in mid-

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Österreichische Zuckerindustrie AG Syndicate; and *In re Accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, Wistag AG and Wistag Partnership.*

1934 and to sell their shares "at a substantial loss." Thus, it was "plausible that the account proceeds were not paid" to the owners or their heirs.

xxxiv. In re Account of Elsa Turmann (SF 260,375.00)

Elsa Turmann was born in 1892. She lived in Vienna with her husband, Heinrich. They had no children. On May 15, 1942, the Turmanns were deported to Izbica, Poland. According to the claimant, their great-nephew, they were never heard from again.

The bank records, which were not included in the AHD but rather were contained in the TAD, showed that Elsa Turmann was married to Dr. Heinrich Turmann, and that she resided in Vienna, Austria and Walkerburn, Scotland. Elsa Turmann owned a custody account, which was opened in January, 1937 and closed on August 5, 1938.

The CRT also located records for Dr. Heinrich Turmann in the 1938 Census, which included an August 10, 1938 form letter from the Office in the Ministry for Economics and Labor charged with administering Jewish-owned property. The letter compelled Dr. Turmann to offer his foreign securities for sale to the Vienna branch of the Central Bank of the Reich ("*Reichsbankstelle"*).

The CRT awarded the Turmann's great-nephew the presumptive value of the custody account, observing that Elsa Turmann had "resided in Nazi-controlled Austria and was subsequently deported to Izbica," and "there [was] no record of the payment of the … account to her."

xxxv. In re Account of Ernst Victor (SF 364,872.62)

Ernst Victor lived in the Altona district of Hamburg, Germany with his non-Jewish wife and their children. In 1936, the Nazis forced Ernst Victor (who held the designation *Dipl. Ing*.) to sell his family company, Regenhardt AG. He sought refuge in Zurich in 1938, but was denied entry. Hoping to save his family from further persecution, he committed suicide in December 1938.

Ernst Victor. Germany. http://www.stolpersteine-hamburg.de/?&MAIN_ID=7&BIO_ID=1438. Photo courtesy of Privatbesitz (the private collection of) Tim A. Osswald.

The bank records showed that Ernst Victor of Altona, *Dipl. Ing.*, owned a custody account and a demand deposit account, both opened in 1929. The demand deposit account was closed on June 20, 1935, and the custody account was closed on December 9, 1936. The CRT determined in an initial decision that it was plausible that Ernst Victor had not received the proceeds of the custody account. The CRT noted that when the account was closed in 1936, Nazi legislation would have compelled owners of foreign custody accounts to repatriate those accounts. In addition, Ernst Victor's company had been subject to forced sale that same year. The CRT awarded the account to Ernst Victor's grandchildren at the presumptive value then in effect. The CRT held in abeyance a decision on the demand deposit account.

Subsequently, in a separate decision, the CRT awarded the demand deposit account to the same claimants. The CRT relied upon its presumptions relating to the inability of an account owner to receive his account proceeds in Germany in the period prior to 1938, when Ernst Victor had committed suicide due to Nazi persecution.

Thereafter, in response to the CRT's ongoing request to the banks for "voluntary assistance," the CRT received information that revealed the actual values of the assets that Ernst Victor had held in his custody account. These documents indicated that some of the assets were transferred into an account with the number 21637. "[E]ven if this account were owned by"

Ernst Victor," the records did not indicate when the account was closed, or the disposition of the securities contained within it. Accordingly, the CRT concluded that the account owner did not receive these securities or their proceeds. Thus, the additional value of the securities, SF 185,455.12, was awarded to the grandchildren of Ernst Victor.

xxxvi. In re Accounts of Alfred Wolff (SF 64,597.50)

Alfred Wolff was born in 1875 in Berlin, where he lived with his wife and child (the claimant). Alfred Wolff was a medical doctor whose practice was boycotted after 1933. In 1934, the Nazis arrested him. He died in Berlin in 1935.

The bank records indicated that Alfred Wolff owned a safe deposit box opened in November 1931 and closed on May 26, 1934, and a demand deposit account opened in March 1922 and closed on May 31, 1934.

The CRT awarded the accounts at their respective presumptive values, observing that Alfred Wolff "was arrested in 1934, the same year in which his Swiss account was closed, exposing him to the coerced disclosure and confiscation of his assets including those located abroad."

xxxvii. In re Account of Fritz Wolff (SF 257,968.75)

Fritz Heinrich Wolff was born in 1891 in Berlin, where he lived with his wife and worked as an engineer. He was arrested and incarcerated four times between 1933 and 1943. In March 1943, he was deported to Auschwitz, and was killed shortly after his arrival.

Fritz Heinrich Wolff. http://yvng.yadvashem.org/nameDetails.html?itemId=1307558&language=en. Photo courtesy of Yad Vashem and Aviva Gold.[64]

The bank records showed that Fritz Wolff owned a custody account which was opened on March 22, 1933 and closed on February 23, 1934.

The CRT awarded the account to the nieces and nephews of Fritz Wolff at the presumptive value for a custody account. Fritz Wolff had been "arrested and incarcerated by the Nazis four times between 1933 and 1943," thus "exposing him to the coerced disclosure and confiscation of his assets including those located abroad." Further, Fritz Wolff had remained in Germany until his 1943 deportation to Auschwitz, and so "he would not have been able to repatriate his account to Germany during this period without its confiscation."

Subsequently, as a result of the CRT's request for "voluntary assistance," the bank made available to the CRT additional records indicating the type and value of the security that was held in Fritz Wolff's custody account. Based upon application of Special Master Junz' Guidelines for the Valuation of Securities, the CRT awarded an additional sum representing the difference between the market value and the presumptive value originally awarded.

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64 *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://db.yadvashem.org/names/nameDetails.html?itemID=146533&language=en (last visited Aug. 3, 2015), citing GEDENKBUCH - OPFER DER VERFOLGUNG DER JUDEN UNTER DER NATIONALSOZIALISTISCHEN GEWALTHERRSCHAFT IN DEUTSCHLAND 1933-1945 (Bundesarchiv 1986). The photograph is contained in a separate entry in the Central Database, a Page of Testimony submitted by Fritz Wolff's niece.

2. Accounts Transferred Under Duress With Evidence of Post-War Misinformation

i. In re Accounts of Hedwig Bendix (SF 183,780.00)

Hedwig Bendix was born in 1895 in Berlin. She moved to Qualisch B/Trutnov, Czechoslovakia, where she lived with her daughter and her husband, who owned a business (*Julius Bendix & Söhne)*. The claimant, the Bendix' niece, advised the CRT that Hedwig Bendix and her family were deported to the Lodz Ghetto. They were killed either in Lodz or in Theresienstadt.

The bank records indicated that Hedwig Bendix owned a demand deposit account which held SF 7,415. It was closed on February 28, 1939 "and transferred, per request of a letter, dated 20 February 1939, via Berlin, to the Reichsbank." Hedwig Bendix also owned two accounts of unknown type, one closed on July 29, 1939, and the other in 1945.

According to the bank records, on November 23, 1945, Hedwig Bendix' son wrote to the bank to inquire about his parents' assets, emphasizing that both parents had been killed in a concentration camp during World War II. The bank replied on December 4, 1945, stating that the persons mentioned in the son's letter "have no relations with the Bank." In response to a November 29, 1945 letter from a Zurich attorney on behalf of the Bendix' son, the bank replied on December 7, 1945, "this time admitting the existence of clients" by the name of Hedwig Bendix and her husband, but stating that they "no longer had any business relations with the Bank." On October 21, 1947, The National City Bank in New York wrote to the Swiss bank, inquiring on behalf of the Bendix' son about the accounts of his parents, who were killed during World War II. The [Swiss] bank replied on November 5, 1947 that "'no assets are deposited with our head-office.'"

In light of the Swiss banks' denial of the accounts' existence — even when the bank still had records demonstrating that the Bendixes in fact had held accounts at the bank that now were closed, that one of these accounts had been reported in the bank files as having been transferred to the Reichsbank, and that the bank's customer had died in the Holocaust — the CRT awarded

all three accounts to Hedwig Bendix's niece. The demand deposit account was paid at its actual value, while the two accounts of unknown type were paid at presumptive value.

ii. In re Account of Nelly Fleischmann (SF 287,500.00); In re Account of Nelly Fleischmann (SF 29,012.50)

Nelly Fleischmann was born in 1900 in Bayreuth, Germany, where she lived with her husband, Ludwig Fleischmann. The claimant, their son, advised the CRT that his mother was persecuted by the Nazis because she was Jewish. She died at the Jewish Hospital in Fuerth, Germany in 1938.

In 1997, Nelly Fleischmann's son filed a claim with the Swiss Banking Ombudsman at the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks. He paid the requisite fee of SF 300. Subsequently, in connection with his CRT claim, he advised the CRT that he had discovered documents belonging to his father, including a September 20, 1956 letter to a Swiss bank, as well as the bank's October 3, 1956 response. As described by the CRT, in the letter to the bank, "the Claimant's father stated that, per the deposit receipt for custody account 43500, the Bank held bonds in the name of his late wife, Nelly Fleischmann, worth approximately 25,000.00 Swiss Francs. The letter then went on to state that, pursuant to German legislation at that time, the Bank was instructed by the Claimant's father in December 1938 to sell the bonds and to transfer their proceeds to the *Deutsche Golddiskont Bank*. The Claimant's father wrote that the Bank acted pursuant to these instructions. The Claimant's father requested confirmation of the transaction so that he could pursue the possibility of restitution in Germany. The Bank responded that it was not possible to confirm the transaction as it no longer possessed files from 1938."

The bank told Ludwig Fleischmann in 1956 that "it no longer possessed files from 1938." This statement was not correct. Bank records did still exist. The records showed that Nelly Fleischmann of Bayreuth held a custody account numbered 43500, which had been opened on May 31, 1931 and closed on January 10, 1939. As the CRT observed, "the bank files contain evidence that an account still existed in the Account Owner's name in 1956, at the time of the

Claimant's father's inquiry," yet there is "no indication that the bank informed the Claimant's father that this account was still in existence." The bank had information about its relationship with the account owner that it did not disclose.

The CRT awarded Nelly Fleischmann's son the SF 25,000 Ludwig Fleischmann had described in his 1956 letter (applying the multiplier of 11.5 then in effect). The CRT observed that the 1956 letter was "a relatively contemporaneous statement of the account value by a person who was in a position to know the value of his wife's account. Further, he would have had no motive to undermine the credibility of his claim by exaggerating its value when writing to the Bank, which he knew held the account and had full information concerning its value."

Subsequently, the CRT was able to locate an additional account, an unpublished demand deposit account, and awarded that account at the presumptive value then in effect (SF 26,750). The CRT increased the award by an additional SF 300 (to SF 27,050) as reimbursement for the search fee the claimant had been forced to pay to the Swiss Bank Contact Office in 1997.

Several years after issuing the original award for the custody account, the CRT's ongoing effort to obtain additional documents from the banks through the "voluntary assistance" process yielded further information about Nelly Fleischmann's custody account. The new documents confirmed that Ludwig Fleischmann's 1956 recollection of the 1938 account value had been accurate. In 2008, the bank provided the CRT with records demonstrating that Nelly Fleischmann had held in her custody account almost precisely the amount described by her husband in his 1956 letter to the bank: SF 25,000.

iii. In re Accounts of Rudolf Goldmann and Hedy Hock (SF 478,525.00)

Rudolf Goldmann was born in 1876 in Teplitz, Austria (today the Czech Republic). His co-account owner, Hedy Hock, was the sister of Dr. Goldmann's first wife, who died of cancer in 1934. Dr. Goldmann remarried in 1940. Hedy Hock never married, and died in 1941. According to the claimant, Dr. Goldmann was an engineer in Vienna, and the deputy minister in

the Finance Ministry. After his retirement from the Finance Ministry in 1936, he began to work for the Vienna Jewish Community. Dr. Goldmann and his second wife fled to Belgium in 1941. They were captured in July 1943 and deported to Auschwitz, where they perished.

The bank records showed that in 1946, Dr. Goldmann's son wrote to the bank requesting information about his father, as well as other relatives, including Hedy Hock. The CRT observed that the son "specifically asked whether any one of the three named individuals had an account at the Bank at the time the War broke out, and whether any account in their names still existed." He also had provided a form demonstrating that in 1939, while still in Vienna, Dr. Goldmann had granted his son power of attorney.

As described by the CRT, the bank stated in a December 1946 letter to its client's son that "due to Swiss legal requirements, it would only be able to respond to his request after he presented documents authenticated by the relevant Swiss consulate," since the son at that time resided in Haifa. These documents allegedly were needed to prove that the son was the rightful heir, or that he acted with power of attorney for the rightful heir. The bank sought payment of at least SF 40 in advance.

Subsequently, in 1948, the London office of the bank requested on behalf of Dr. Goldmann's cousin information about any accounts owned by Rudolf Goldmann or Hedy Hock. The Zurich branch of the bank advised the London office that it was not holding any assets belonging to either individual.

Notwithstanding the bank's denials in the 1940s, however, the bank records reviewed by the CRT showed that Hedy Hock of Vienna had indeed held a custody account, a demand deposit account, and a time deposit account. The custody account was closed on August 16, 1938, and the other two accounts were closed no later than that date. The records further showed that Dr. Rudolf Goldmann was given full power of attorney for Hedy Hock on November 29, 1934. In addition, the 1938 Census for Hedy Hock showed that she owned an account at the bank in Zurich with a balance of SF 11,205.

The CRT awarded to the claimant — the grandson of Dr. Goldmann and the great-nephew of Hedy Hock — the demand deposit account owned by Dr. Goldmann, and the custody and time accounts owned by Hedy Hock. These accounts were awarded at their presumptive values, since no actual values were available from the bank records. The CRT also awarded Hedy Hock's demand deposit account at the value recorded in the 1938 Census (as multiplied by 12.5).

In awarding the accounts, the CRT observed that the account owners' heirs "attempted to obtain information about the accounts, but were turned away by the Bank, even though the records clearly still existed and were ultimately identified during the ICEP investigation." The CRT referred to Judge Korman's 2004 opinion, in which he described the banks' stonewalling of Holocaust owners and heirs, "particularly those that were the subject of forced transfers or transfers ordered under duress." The CRT observed that this case "provides yet another example of the typical method Swiss banks used to deflect inquiries made by heirs of Jewish victims whose assets had been transferred, under duress, into the Reich."

The CRT further noted that Dr. Goldmann had perished in Auschwitz, while Hedy Hock had died in Austria in 1941. Thus, they "could not have repatriated the assets in her custody account, which was closed on 16 August 1938, without losing ultimate control over their proceeds."

iv. In re Accounts of Hanna Hartmann (SF 474,949.38)

Hanna Hartmann was born in 1876 in Germany. She lived in Berlin with her husband, a director of the well-known corporation, AEG. He died in or about 1926. The following year, Hanna Hartmann moved to Vienna. She was deported on April 27, 1942, and was believed by the claimant, her niece, to have died in a Nazi ghetto in Poland.

In the 1960s, the claimant began to try to locate her aunt's Swiss bank accounts. According to documents that the claimant provided to the CRT, she corresponded with the Swiss Ministry of Justice in Bern and the Trade Development Bank in Geneva between 1964 and 1967.

In a June 27, 1967 letter, Swiss authorities reported that they had found no evidence of an account in the name of Hanna Hartmann. Decades later, the claimant paid a fee of SF100 to the Swiss Banking Ombudsman in support of her request to Swiss authorities to continue to look for Hanna Hartmann's account. On November 8, 1996, the Ombudsman informed the claimant that its member banks had reported no records of any dormant account belonging to Hanna Hartmann. In 1997, the claimant filed a claim with the HCPO, which subsequently transferred the claim to the CRT.

Notwithstanding the bank's denials, however, the ICEP auditors did in fact locate bank records evidencing Hanna Hartmann's Holocaust-era Swiss bank account. These bank records showed that Hanna Hartmann was a widow and that she had owned three accounts. One was a demand deposit account held in United States Dollars, closed on March 20, 1938; one was a demand deposit account held in Swiss Francs, closed on August 10, 1938; and the third was a custody account, closed on May 23, 1938. The CRT also determined that Hanna Hartmann had been forced to report her assets in the 1938 Census.

The CRT awarded Hanna Hartmann's niece the three accounts at their respective presumptive values, observing that although Hanna Hartmann had not specifically disclosed her Swiss accounts in the 1938 Census, the "facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Jewish Austrian citizens are arrested, searched, or report their assets in the 1938 Census, and, beginning immediately thereafter, and in many cases within the same year, their accounts are transferred to Nazi-controlled banks or closed unknown to whom. In the present case, the Account Owner was deported from Vienna and killed, and the existence of any account in her name was denied by Swiss authorities in 1967 and as late as 1997."

Several years after the accounts were awarded, the bank "made available to the CRT additional information" about the custody account — the existence of which the bank repeatedly had denied for decades. This included "detailed documentation on the portfolios held in the account." Utilizing Special Master Junz's Guidelines for the Valuation of Securities, the CRT determined that Hanna Hartmann had held bonds which were in default and trading at 55%, when they were surrendered ("*ausgeliefert*") on May 18, 1938. Because the bonds were in

default, they were valued at their market value on the date of delivery, equivalent to SF 34,085.15. Although in default, the assets in the custody account still were worth more than the SF 13,000 presumptive value then in effect for custody accounts. After subtracting the presumptive value previously paid to the claimant from the actual value of the bonds, the claimant was owed, and was paid, another SF 21,085.15, increased to SF 263,564.38 upon application of the 12.5 multiplier.

v. In re Accounts of Emil E. Herz and Gabriele Herz (SF 920,300.00)

Emil Herz was born in Warburg, Germany in 1877, and his wife Gabriele was born in Vienna in 1886. The couple resided in Berlin, where Emil Herz was chief editor at the *Ullstein Publishing House* from its inception in 1903 until he was forced by the Nazis to relinquish his position in 1934. During Emil Herz' tenure, the company became the leading newspaper publisher in Germany, controlling many local periodicals. As the CRT discovered through its independent research, among the leading newspapers under the Ullstein banner were the *Berliner Morgenpost* and the *Berliner Zeitung*. The company also included several book publishers.

Emil Herz. Circa 1920. https://de.wikipedia.org/wiki/Emil_Herz_(Verleger)#/media/File:Emil_Herz.jpg. Photo courtesy of Wikimedia.

Emil and Gabriele Herz and their children, the claimants, fled Germany in 1937. They initially went to Lugano, Switzerland, then to Italy, and finally, in 1940, to the United States. Gabriele Herz died in New York in 1957, and Emil Herz died in New York in 1971.

The bank records provided to the CRT as part of the claims process indicated that Emil Herz unsuccessfully had tried for decades to obtain information about his accounts. Although these still-existing bank documents demonstrated that the bank understood that Emil Herz was forced to turn over some of his Swiss assets to the Nazis, the bank repeatedly stated after the War that it could not provide any records, and in any event, it was not obligated to keep documents beyond ten years.

However, records did still exist. These showed that Emil and Gabriele Herz had jointly owned two demand deposit accounts, one in Swiss Francs and one in United States dollars, as well as a custody account. Emil Herz separately held a custody account. On or before May 21, 1938, the account owners instructed the bank to transfer certain securities from one of the custody accounts to an account belonging to the New York branch of a bank in Stockholm, Sweden. The demand deposit account in dollars and the custody account were closed in

December 1938, while the demand deposit account in Swiss Francs was closed on December 20, 1940.

In the early 1950s, Emil Herz sought restitution from Germany. He turned to the Swiss bank for assistance in obtaining the information necessary to file a German compensation claim. On December 3, 1951, his legal representative in Frankfurt wrote to the bank explaining that Emil Herz had fled Germany for Switzerland in the fall of 1937, and later fled to the U.S. The representative explained that Emil Herz had been able to transfer assets from Germany to Switzerland, but (presumably because of the confiscatory exchange rates applied by the Nazi authorities to such transfers) had sustained losses as a result. The bank was asked to provide yearly account statements. This December 3, 1951 letter contained "handwritten notations, apparently written by Bank employees, that reference the existence of two demand deposit accounts, which were closed in 1938, and a custody account, which was closed in 1940, that had been held in" Emil Herz's name. "Nevertheless, in its reply of 11 December 1951, the Bank explained that it could not provide" any information "without a power of attorney" from Emil Herz, "and that in any event, pursuant to Swiss law, the Bank was only obliged to maintain records for ten years."

Two months later, on February 2, 1952, Emil Herz himself wrote to the bank, explaining that he had been a long-time client and requesting "as a favor" that the bank provide him with information. He explained that he had left Germany due to Nazi persecution and that he had opened a custody account at the Swiss bank "about which he was required to provide information to the Berlin Foreign Currency Transactions Office (*Devisenstelle Berlin*) until he left Germany. He explained that the *Devisenstelle* had permitted him to dispose of two securities held in Switzerland but that the remaining assets "had to be transferred to the *Deutsche Reichsbank*." As a result, "the [Swiss] Bank had to deliver [the] remaining securities to the *Reichsbank* or to a bank designated by the *Reichsbank* between June 1937 and September 1937, and that in return [his] personal account at [the Swedish bank] was credited with an amount of approximately SF 47,000."

He further explained that many of his records had been lost "in the course of emigrating," and that he required specific account information to seek German restitution. He observed that

the forcibly transferred securities were worth over U.S. $10,000. He appealed to the bank's loyalty to its "old client," and offered to pay the bank for its time and effort in recovering the data. Bank employees made notes on this letter, referring to an August 2, 1937 letter, "which was apparently available to the Bank at that time." However, on February 14, 1952, the bank responded to its client's February 3 letter by stating that it was "unable to provide him with the requested information as their records from 1937 and 1938 were incomplete, as they were legally not required to retain records after a period of ten years."

A few months later, on May 7, 1952, "the Bank's legal department" added a note to the Emil Herz file, which stated that "even though the Bank had delivered certain of [Emil Herz's] assets to the German state in 1937," Mr. Herz "had continued to deal with the Bank after he fled to Switzerland." The CRT observed that this note probably was motivated by the bank's "concern for double liability." The note also indicated that Mr. Herz had had an acquaintance who had contacted the bank on his behalf, and that a bank employee had recommended that Mr. Herz "should turn again to the Bank and 'insist' that he is only seeking information about the securities in his custody account in order to seek restitution from the German government."

Subsequently, at the end of December, 1953, and again at the beginning of January, 1954, "a director of the *Schweizerische Volksbank*" wrote on behalf of Emil Herz, appealing to the bank to check its records and reiterating that the information was being sought only to lodge a restitution claim with Germany. The bank responded as it had previously, stating that "the correspondence file from year 1937 was still missing, and thus it was not possible to provide a list of securities transferred to Germany…." The bank gave the same response to Emil Herz, who contacted the bank again in the early months of 1954. The bank replied on March 31, 1954 "that the only documents they had were internal receipts and a register, of which they were not permitted to provide copies." In response, Emil Herz wrote again, asking for the bank to provide documentation of the financial relationship between Germany and Switzerland during the War, reiterating that the bank had transferred to Germany securities belonging to him, and appealing for assistance because it was impossible to obtain information from the *Reichsbank*, which was located in the Soviet-occupied part of Berlin. On April 27, 1954, the bank replied in the negative.

Nearly a decade later, on December 8, 1963, Emil Herz again wrote to the bank, explaining that the German restitution court had requested information about the securities transferred to Germany. He asked whether the *Reichsbank* had had a custody account at the Swiss bank in 1937 to which his securities could have been transferred. The bank responded on December 19, 1963, advising that due to banking secrecy, it could not disclose the information to "unauthorized third parties," and recommending that Emil Herz "attempt to obtain such information from the *Reichsbank*" or its successor.

Based on this record, evidencing that the account owner had been forced to turn over his assets to the Nazis; that the bank was aware of this; but that the bank nevertheless had misinformed its clients for many years about the records still in its possession, the CRT awarded the claimants the presumptive value of the demand deposit accounts and custody accounts jointly owned by Emil and Gabriele Herz. As to the custody account owned solely by Emil Herz, the CRT deducted the value of the securities which Emil Herz had explained to the bank had been freely sold. The claimant was awarded the value of the securities that had been transferred to Germany or otherwise unaccounted for in the bank files.

vi. In re Account of Else Israel (SF 342,764.75)

Else Israel was born in Germany. In 1916, Else Israel and her husband adopted their daughter (the claimant's mother), who was five years old. In 1934, Else Israel's daughter fled to Palestine. Else Israel, who had resided in Berlin, died in Theresienstadt on August 17, 1942.

The bank records consisted of a letter to the bank dated October 8, 1949 from the claimant's father in Riverdale, New York. The claimant's father had been recognized in a Berlin inheritance certificate as the legal representative for the claimant, Else Israel's granddaughter and sole heir. The claimant also provided a copy of the October 14, 1949 reply from the bank.

As the CRT explained, "[i]n his letter, [claimant's father] referred to a bank statement, which appears to be copied onto the bottom of his letter, that references a custody account, numbered 45914, which [claimant's father] identified as belonging to Else Israel." The letter

listed five different bonds and specified their nominal values. "In its reply, the Bank wrote that it usually did not respond to inquiries about accounts of clients who were deceased until the inquirer had demonstrated that he/she was the legitimate heir of the account owner." However, the bank said that it would make an exception to spare the claimant's father unnecessary expense. The bank advised that Else Israel had not had a relationship with the bank since 1936, and that, "because Swiss law required the retention of correspondence with account owners for only ten years, it had already destroyed all its files that were dated prior to 1939."

The CRT observed that the bank files made available pursuant to the ICEP audit in fact held the same copy of the letter to the bank that the claimant's father had written. The copy "contains handwritten notations, mostly illegible, that appear to have been made by Bank employees and that appear to address the various securities listed in the statement. One of the notations appears to refer to a demand deposit account belonging to Else Israel that was closed ('*saldiert*') on 16 December 1936."

The CRT pointed out that the bank's response to the claimant's father, in which it had stated that "it had destroyed all its correspondence with account owners that was dated prior to 1939," was "disingenuous at best." In this case, "internal Bank notations on [the claimant's father's] letter clearly indicate, despite their illegibility, that the Bank had information pertaining to the disposition of these securities, and chose not to reveal it…." The CRT noted that "the year cited by the Bank as the year during which its customer relationship with the Account Owner ended (1936) is the same year during which more stringent Nazi legislation requiring the repatriation of foreign-held securities became effective." The CRT observed that this is "readily explained by [the banks'] concern for double liability."

The CRT awarded the demand deposit account at presumptive value. It awarded the securities in the custody account at the higher of market or nominal value (in accordance with Special Master Junz' Guidelines for the Valuation of Securities), pointing out that the bank itself considered the claimant's father's copy of a bank statement listing the securities in the account to be "sufficiently reliable to allow it to respond to [the] inquiry without requiring him to prove himself to be the rightful heir of the Account Owner." Given that the Nazis in 1933 had "embarked on a campaign to seize the domestic and foreign assets of the Jewish population," and

that the demand deposit account was closed in 1936 while Else Israel was still in Germany (where she remained until she was deported to Theresienstadt), the CRT determined that Else Israel had not received the proceeds of her account.

Subsequently, in response to the CRT's ongoing requests for "voluntary assistance" from the banks, the CRT received additional documents from the bank relating to Else Israel's custody account. The bank provided documentation confirming that each of the five bonds that had been included in the list the claimant's father had sent to the bank in his 1949 letter had, in fact, been in Else Israel's custody account. The account also contained one additional bond. One of the five bonds that had been discussed in the letter had been sold in 1935, and the other four had been transferred on December 14, 1936 to another account at the bank, numbered 20184. The additional bond (revealed only when the bank records were produced) also had been transferred to the numbered account.

The CRT observed that the bank's records "do not indicate who owned the account numbered 20184, into which some of these securities were transferred. Even if this account were owned by the Account Owner, the records do not indicate when the account was closed, or the disposition of the securities contained therein." The CRT reiterated its original conclusion "that the Account Owner did not receive these securities or their proceeds."

vii. In re Account of Oskar Kraus (SF 796,700.22)

Oskar Kraus was born in 1881 in Vienna, where he was the director of a factory. In 1939, Nazi authorities forced him to move to another district of Vienna. The claimant, Oskar Kraus' son, informed the CRT that he recalled that his father had owned at least two accounts in Zurich, and that he had been able to retrieve one account by transferring it under his own name before he was forced to emigrate to the U.S. in 1938. The claimant believed that Nazi authorities had intercepted monthly bank statements for the other account, as his father had received them until the *Anschluss*. Oskar Kraus and his wife died in Vienna in 1939.

The bank records showed that *Dir.* Oskar Kraus owned one custody account opened in 1931 and closed by an unknown entity on August 5, 1938, as well as one demand deposit account. The records indicated that Swiss shares in the custody account were sold for the benefit of the account owner, but the proceeds of these shares (SF 26,444.85), along with the value of the demand deposit account, were transferred to the *Deutsche Golddiskontbank.* Other assets in the custody account (German bonds as well as various German shares) were transferred to the *Öestereichische Credit-Anstalt* in Vienna. The ICEP auditors determined that both the custody and demand deposit accounts had been paid to Nazi authorities. In addition to the bank records, the 1938 Census for Oskar Kraus also showed that Mr. Kraus owned assets in a Swiss bank which were transferred to the *Deutsche Golddiskontbank.*

In addition, Oskar Kraus owned accounts in a second bank. The records for this bank showed that on May 19, 1946, Oskar Kraus' son had written to ask for a list of assets held by his late father as of March 1938. A bank employee determined that the account at issue was closed in 1938. An internal bank memorandum dated May 24, 1946 indicated that the custody account was liquidated "'by the order of the Account Owner'" and transferred to Nazi-controlled banks.

On May 25, 1946, the bank advised Oskar Kraus' son (the claimant) "that for reasons of principle it could not disclose the information sought, and it requested official documentation establishing the death of the Claimant's father and the fact that the Claimant was his heir."

Based upon the fact that at least one account had been reported in the 1938 Census, and the other accounts had been paid to Nazi authorities, the CRT awarded the claimant two custody accounts and one demand deposit account.

Subsequently, the second bank provided the CRT with additional records which demonstrated that Oskar Kraus had held ten different securities in his custody account. The actual value of the assets in the custody account was somewhat lower than the amount that had been awarded, which had been based upon presumptive value. On the other hand, the award for the demand deposit account needed to be increased: the award had been made at the value of assets as reported in the bank records, whereas the Court subsequently authorized accounts to be increased to presumptive value if the reported values were lower than presumptive value. After

these two adjustments, the CRT determined that the award had been overpaid by SF 1,757.68 (using 1945 values). The CRT observed that the initial award had been "based upon information available to the CRT at the time. Accordingly, the CRT does not seek outright repayment of the overpayment from the Claimant. However, because the original … Award was overpaid, no further amount is awarded in this Award Amendment. Moreover, the overpayment amount shall be deducted from any award amendment that may be forthcoming."[65]

viii. In re Accounts of Sara (Särle) Levi, Martha Baldauf and Ilse Lebrecht (SF 2,939,449.88); In re Accounts of Sara (Särle) Levi, Martha Baldauf and Ilse Lebrecht (SF 1,682,419.63)

Sara Levi was born in 1872 in Laupheim, Germany. After her marriage, she lived with her husband in Münsingen, Germany until 1942. She was deported to Theresienstadt, where she died in 1943. Her son, the claimant's late husband, was born in 1900 in Münsingen, and died in New York in 1972.

Sara Levi had four siblings, including Martha Baldauf, who was born in 1877 and was killed in a hospital in Mannheim on November 13, 1940. Sara Levi, her sister Martha Baldauf, and their two other sisters received an inheritance from their brother, who also was the uncle of account owner Ilse Lebrecht. The claimant informed the CRT that the four sisters agreed to open four separate accounts in a Swiss bank, where they deposited their inheritances.

The ICEP auditors did not locate documents relating to the accounts in the files of the Swiss banks. Rather, the Holocaust Claims Processing Office (HCPO), which was contacted by the claimant prior to the Settlement, obtained records from the bank and provided the records to the CRT.

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[65] The latter statement referred to the Court's June 16, 2010 order authorizing an upward adjustment of presumptive values. The Court authorized the CRT to recoup any overpayments that might have been made by offsetting that amount from any presumptive value adjustment that might have been due to a claimant, whether in the same award or in a different award for another account or account owner. *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279, 291 (E.D.N.Y. 2010).

In an April 7, 1998 letter to the HCPO, the bank stated that "[c]orrespondence during the 1950s and 1960s between [the bank] and a German lawyer who represented the heirs of Martha Baldauf [Berthold Wolf] shows that the lawyer sought and received assistance from [the bank] in his attempt to obtain compensation from the German government." The CRT observed that "[a] close examination of the documents, however, indicates that the 'assistance' provided to Mr. Wolf came about only after the Bank initially refused to provide him with information; only after Mr. Wolf visited the Bank in person with a document substantiating the existence of an account; only after Mr. Wolf called upon the Director of the Bank, whom he knew through mutual contacts, to intervene on his behalf; and that assistance then was provided only reluctantly and in qualified terms. Moreover, despite [a] statement in the Bank's letter of 7 April 1998, there is no evidence at hand that the heirs of Martha Baldauf were successful in obtaining compensation from the German government for the proceeds of the securities she held at the Bank which she was forced to repatriate. Nor is there evidence that the securities held by Ilse Lebrecht at the Bank that were forcibly repatriated were ever compensated."

Thus, as described by the CRT, Berthold Wolf first contacted the bank by letter of October 28, 1958, asking about accounts owned by Ilse Lebrecht and Martha Baldauf that probably had been forcibly repatriated to the Reich. Among the handwritten notations on the letter by bank employees was the question: "'Can information be given?'" On November 10, 1958, the bank responded by stating that "as a general principle, the Bank could not provide any information about account activities that took place over ten years ago, because its files are destroyed after this period of time."

On December 22, 1958, Berthold Wolf responded that the bank previously had provided information helpful to a different branch of the family, and suggested that "the Bank's research might also be made easier if he [Wolf] assured them that no claims against the Bank could be brought on the basis of its information." A handwritten note, evidently by a bank employee, refers to the existence of a custody account numbered 52260 and a different notation asks, "'Can we tell how the custody account was closed?'" On December 31, 1958, the bank advised Berthold Wolf that based on renewed research, it had no documents that would allow it to determine whether assets belonging to Martha Baldauf had been handed over to Nazi authorities.

On January 28, 1959, Berthold Wolf wrote to the bank to explain that he had learned that the securities in Martha Baldauf's custody account had not been repatriated to the Reich, but instead had been sold in Zurich in 1936. The proceeds, in U.S. dollars, had been transferred to another account at the bank (belonging to the *Bankhaus L. Mainz sen.* in Frankfurt). Mrs. Baldauf was forced to sell these dollars, and Reichsmark were credited to her account at the *Bankhaus Mainz*. The CRT observed that a notation on the letter asked, "'Can we confirm this?'" The bank responded by February 6, 1959 letter, stating that it confirmed the contents of its December 31, 1958 letter. The bank reiterated that it had no information about these accounts.

On June 17, 1959, Berthold Wolf personally visited the bank. He spoke with Dr. Pache, the director of the bank's legal department. The bank wrote to Mr. Wolf on June 18, 1959, stating that based on Mr. Wolf's visit and his presentation to Dr. Pache of a "'new document,'" the bank "took another look in its books and found, through this new document, entries, which although incomplete, allow the Bank to provide Mr. Wolf with at least partial confirmation of certain facts." The bank asked Mr. Wolf to provide the "'usual papers'" evidencing his authority to act on behalf of the account owners' heirs.

The following week, on June 24, 1959, Berthold Wolf responded and provided power of attorney forms and other documents. On June 26, 1959, the bank wrote to Mr. Wolf and stated that "it now could inform him that, according to entries in its books, a dollar account in the name of Martha Baldauf at the Bank showed a balance of US $25,376.50 on 26 October 1936" and that the bank "'cannot determine anything further.'" On July 3, 1959, Mr. Wolf asked if the bank could confirm that the account was debited US $26,276.50 on that same date, October 26, 1936, and so reduced to zero, or alternatively, to confirm that it was not possible to determine to whom the remaining balance was transferred. Mr. Wolf explained that this question was of central importance to the family's restitution claim in Germany. On July 6, 1959, the bank responded that "'we cannot determine anything further.'"

On July 9, 1959, Berthold Wolf wrote to the bank's director, Mr. Jenny, whom he knew from another matter. He said that he would be grateful if Mr. Jenny could provide him with evidence as requested in the July 3, 1959 letter. The bank responded on July 14, 1959,

reminding Mr. Wolf that "'we are not obliged, according to Swiss law, to preserve our books and files for more than ten years." However, the bank stated that "from our books we can tell, as our legal department already informed you, that in October 1936 a dollar account existed in the name of Martha Baldauf and that it had a balance of US $25,376.50. This account was reduced to zero on 27 October 1936."

The records also contained a March 29, 1962 letter from Berthold Wolf in which he apprised the bank of the current status of the German restitution proceedings. He explained that "his clients' claim for compensation might be recognized if it could be proved that the dollars that were confiscated came from the sale of securities that had been deposited in a custody account at the Bank...Handwritten notations on the letter, apparently made by Bank employees, indicate the existence of a custody account numbered 52260. Another notation questions 'Possible?' (*'Möglich?')* Another notation refers to '$25,500.—3½ U.S.A. 1st Liberty loan bonds per 15.6.1947.'"

On April 3, 1962, the bank advised Mr. Wolf that the approximately $25,000 balance in the account "did indeed constitute the equivalent value of securities," but that the bank could not determine the origin of the securities "'because, according to Swiss law, we destroy correspondence that goes back over ten years...'"

In awarding Sara Levi's custody account to her daughter-in-law, the CRT observed that "in the course of its correspondence with Mr. Wolf, the Bank repeatedly asserted that it could provide no information about any activities that occurred more than ten years ago, in spite of the fact that the various notations on the letters clearly indicate that the bank did indeed have information about the accounts in question and in spite of the fact that the actual records still exist (and were forwarded to the HCPO and CRT). The presumption that the Bank was withholding or misstating account information in response to Mr. Wolf's inquiries because of its concerns regarding double liability was implicitly addressed in Mr. Wolf's letter of 22 December 1958, when he assured the Bank that no action against it could be brought on the basis of any information it might provide." The CRT noted that the Court had addressed precisely "this type of stonewalling behavior" in its 2004 opinion on the banks' conduct during and after the Holocaust.

After deducting restitution from the German government that Sara Levi's son (the claimant's husband) had received for the securities in 1961 — an amount equivalent to SF 29,047.42 — the CRT awarded the balance of the custody account, SF 206,108.57 (multiplied by 12.5, for a total of SF 2,939,449.88). The CRT observed that it was awaiting the results of inquiries with German restitution authorities and that it would thereafter address the accounts owned by Ilse Lebrecht and Martha Baldauf, to which the claimant also was entitled.

In a subsequent decision, the CRT explained that "with the generous assistance of the HCPO, [it had] approached various Restitution Offices in Germany… in an effort to ascertain the outcome of the restitution proceedings regarding Martha Baldauf's assets. Similar research regarding the potential restitution of Ilse Lebrecht's assets also yielded no information indicating that restitution had been made for these assets." The CRT observed that given the circumstances surrounding the Sara Levi accounts; the fact that Martha Baldauf had sold the securities in her custody account and was forced to sell the proceeds to the Reich in 1936, and had been killed in 1940; and that Ilse Lebrecht had transferred the securities in her own custody account to the *Deutsche Bank* in 1938, the account owners presumably had not received the proceeds of their accounts. Based on the value of the securities in the accounts, the CRT awarded the claimant an additional SF 1,663,119.88.

Following the adoption of Special Master Junz' Guidelines for the Valuation of Securities, the CRT reviewed its earlier decisions, and determined that the claimant was entitled to an additional SF 19,299.75. This sum was based on the fact that the face value of the two bonds in Sara Levi's custody account had been, respectively, SF 18,000 and £ 1,750, whereas the market value had been somewhat higher: respectively SF 19,170 and £ 1,767.50. The CRT increased the award to reflect the higher market value at the time that Sara Levi was presumed to have lost control over her assets.

ix. In re Account of Victor Portheim (SF 1,077,587.50)

Victor Portheim was born in 1871 in Prague. He was one of seven children. He never married, and lived in Vienna. He committed suicide in 1939 following persecution by the Nazis.

Two of his brothers were deported to Theresienstadt, where they perished, and a sister committed suicide after learning of her own impending deportation. Of the seven siblings, only two survived the War.

The bank records initially made available to the CRT showed that Victor Portheim owned a custody account. On July 29, 1938, some of the account's assets (SF 2,000) were transferred from the account to the *Öesterreichische Credit Anstalt - Wiener Bankverein* in Vienna. The bank records showed that the account owner was deceased by November 29, 1939, and that the account had been blocked on November 28, 1939, with access to the account to be determined by the bank's legal department. The account was closed on September 9, 1941.

The CRT awarded the account at its presumptive value to several claimants: the niece, grand-nephew and grand-niece of (and thus descendants of the parents of) Victor Portheim. The CRT determined that other claimants, who were less closely related in that they were descendants of Victor Portheim's grandparents, were not entitled to share in the award. The CRT observed that the award was appropriate in light of the fact that some of Victor Portheim's assets had been transferred to the *Öesterreichische Credit Anstalt - Wiener Bankverein;* that he had committed suicide in Vienna in 1939; and that his account was closed two years after his death.

Several years after issuing this award, the CRT received extensive additional information from the bank in response to the CRT's ongoing request to the banks for "voluntary assistance." The additional information shed light not only on the value of the account, but the complex and suspicious circumstances of its closure. As described by the CRT:

> A review of the new documents received through Voluntary Assistance indicates that two parties claimed the estate of [Victor Portheim]: [an] unrelated third party couple identified as beneficiaries of [Portheim] in a will signed on 15 March 1939 (the "Beneficiaries")," and Victor Portheim's brother, his lawful heir, "who contacted the Bank about the custody account" in 1947. According to the Bank's records, in 1941 the Bank credited [Portheim's] assets … to the account of the *Reichsbankdirectorium Berlin* for the benefit of the Beneficiaries...
>
> The new documents indicate that the Bank transferred [Victor Portheim's assets under the terms of] a decision in a legal proceeding in Austria regarding

Portheim's estate. The CRT notes however, that certain details evidenced in the correspondence regarding the development and execution of this proceeding cast a pall over the propriety of the eventual disposition of the assets of the Account Owner by the Bank. Most importantly is the fact that the legal proceedings regarding the Account Owner's estate were commenced more than three months after his death on 8 August 1939 [and that there had been a year of] correspondence between the Vienna District Court and its representatives and the Bank [without mention of these Beneficiaries] … [nor do the bank records mention] the Bank ever having reviewed a copy of the will before paying out the assets of the Account Owner.

At the outset, the CRT notes that the decision of the Vienna District Court of 31 October 1940 indicates that the Beneficiaries, who were especially identified by the court as "German citizens" (*i.e.*, not Jewish), were appointed in a will signed on 15 March 1939. The CRT also notes that the Beneficiaries were of no ascertainable familial relationship to [Portheim], who at that time had other relatives living in Austria and abroad…

[The CRT's independent research indicated that according] to the law at that time, there were two procedures available to the Account Owner to create a will: he could have either signed the will in the presence of a judge or notary, whereupon it would have been deposited with the court and kept there until his death, or he could have chosen to hand-write his own will without witnesses, and then either deposit it with the court, hold onto it himself, or give it to a third party … [Portheim] died on 8 August 1939 and the first letter from [an individual named] Dr. Jussel to the Bank in his capacity as a representative of the Vienna District Court occurred in November 1939. The existence of this three month delay argues against the first procedure for the creation of the Account Owner's will, because if the will was in the possession of the court, presumably contact with the Bank would have been initiated by the court much earlier. Given that, then the only remaining procedure for [Portheim's] will to have come into existence was that he wrote his will by hand, and gave it to a third party, presumably the Beneficiaries. However, again, the existence of a three month delay between [Portheim's] death … and the first contact by the court with the Bank seems odd, as the appropriate action was for the third party to give the will to the court immediately upon learning of the death of the Account Owner. Indeed, this was required by the law. [Citation omitted] …

Additionally, upon the first contact made with the Bank regarding [Portheim's] assets … occasioned by Dr. Jussel on 23 November 1939, no mention of the Beneficiaries or the existence of a will is made, but rather he informed the Bank that he had been "appointed by the Court to compile an inventory of the assets of Victor Portheim." The Bank responded with a form letter indicating that no duty to share information was evidenced, thus no information could be given. A second request was sent four months later from the Vienna District Court directly to the Bank on 7 March 1940, asking for "an accounting of the depot numbered

31013" of the Account Owner, but again without making any reference to the Beneficiaries or the existence of a will.

...Supposing a will existed at the time Dr. Jussel first approached the Bank in November 1939, it is odd that he did not indicate to the Bank that he was acting on behalf of the heirs, or as the court-appointed executor. Instead, he indicated simply that he was appointed 'to compile an inventory of the assets of the account owner' and asks for statements of the depots and accounts of the Account Owner as of his date of death. The knowledge that [Victor Portheim] held an account at the Bank must have been obtained from somewhere, and indeed, the court's second request to the Bank on 7 March 1940 asks pointedly for "an accounting of the depot numbered 31013" of the Account Owner, but again without making any reference to the Beneficiaries, the existence of a will, or the appointment of Dr. Jussel as the executor.

After this second request, the Bank again replied that no duty to share information with the Vienna District Court existed, and no mention of the Beneficiaries is made by either party until [a] 9 September 1940 conversation between a representative of the Bank and [a Viennese attorney] Dr. Indra[66], regarding the formalities that would have to occur in order to settle the estate of the Account Owner…

Subsequently, the Bank received [a] decision of the Vienna District Court of 31 October 1940, which indicated the existence of the will and the Beneficiaries, and further indicated that [a] Dr. Egger was the representative of the heirs and had been appointed as the executor. Of interest is the fact that this decision indicated that the information relating to existence of the custody account, and the specific three securities held within it, was based ***on the report of the heirs*** (*Nach dem Bericht der Erben*). As mentioned above, the original contact of Dr. Jussel with the Bank in November 1939, and the subsequent contact by the Vienna District Court with the Bank in March 1940 which asked for an "accounting of the depot numbered 31013" were considered by the Bank to have occurred on behalf of the ***court***, thus the Bank was unable to reply to their request; and it is only within the text of this decision, a year later, that any mention of the heirs is made...[T]he facts of the situation could easily be interpreted that the court was evidently approached by an agent of the Reich, who became aware of the existence of the accounts of the account owner through spurious means, and upon failing to convince the Bank to cooperate with its requests for information outright, quickly "found" a will and some heirs apparent in order to fulfill the procedural requirements presented to them by the representative of the Bank …

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[66] Dr. Indra is referenced in a number of other CRT cases. Although his precise role is unclear, it appears that during the Holocaust era, he was trusted by Nazi authorities to act on their behalf. After the war, he appears to have acted on behalf of individuals who benefited from aryanization and then sought restitution for any losses in value. *See, e.g., In re Accounts of Sigmund Freud; In re Accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, Wistag AG and Wistag Partnership*.

> ...[On May 5, 1947], the Bank was contacted by a representative of the brother of the Account Owner … who had survived the Second World War in London, who informed the Bank that he was the legal heir of [Victor Portheim], and requested information about the custody account of the Account Owner, naming the specific securities held within it. Had a freeze of assets of Reich-resident Account Owners been in place during the Second World War, the proper resolution of the true heir of the Account Owner could have been reviewed at that time. Instead, the Bank, having already paid the account, replied to the request with a letter which indicated that the Bank would only examine the issue if they were presented with an authenticated document naming the legal representative of [Victor Portheim's brother] as the legal representative of the heirs, and directed his attention to an enclosed circular describing the documents needed to legitimize a claim. The fact that the Bank chose to reply in such a way, and not inform the brother of the Account Owner that the assets of the Account Owner had already been paid out to the Beneficiaries, is typical of the behavior of Swiss banks in dealing with requests for information about forced transfers effected during the Nazi-era, as detailed in the Court's 2004 Order [*In re Holocaust Victim Assets Lit.*, 302 F.Supp.2d 59, amended and superseded on June 1, 2004, 319 F. Supp.2d 301 (E.D.N.Y. 2004)].

Victor Portheim's brother died shortly after contacting the bank in 1947.

The CRT observed that the foregoing facts confirmed its earlier conclusion that the account had not been properly paid to Victor Portheim's heirs. Furthermore, the information provided from the banks under the "voluntary assistance" process indicated that Victor Portheim's custody account had held three different securities, with a value of SF 83,910 (*i.e.*, SF 70,910 more than the SF 13,000 that had been awarded — based on presumptive values — in the initial award). In addition, the new records also showed that Victor Portheim owned another account at the bank, a demand deposit account, which was awarded at presumptive value.

x. In re Accounts of Amalie Reiss, Friedrich Reiss and Felix Reiss (SF 648,212.50)

Felix Reiss lived in Vienna prior to the *Anschluss*. He fled with his daughter (the claimant) in 1938. His mother, Amalie Reiss, fled to the U.S. from Vienna in 1941. His brother, Friedrich Reiss, was imprisoned in Dachau and Buchenwald. Felix Reiss survived the Holocaust and emigrated to the U.S. The claimant advised the CRT that both her father and her uncle had

held the title of Doctor and that her uncle had received a law degree in Vienna. "The Claimant also stated that she and her father traveled to Zurich after the Second World War in an attempt to recover the bank accounts, but were unable to receive any assistance as they had no documentation." Felix, Friedrich and Amalie Reiss all died in Ann Arbor, Michigan.

The bank records showed that Dr. Felix Reiss of Vienna held one custody account and one account of unknown type. The records showed that the custody account was closed, but the closure date was illegible. The records further showed that the account of unknown type was transferred on October 15, 1938 to the *Länderbank Wien* in Austria, and then was closed.

The bank records contained a letter dated October 16, 1968 from an attorney acting on behalf of the Estate of Felix Reiss, requesting information concerning certain securities held at the bank by Felix, Amalie or Friedrich Reiss. As described by the CRT, the attorney "explained that he required the information in order to claim restitution for those securities. In its response on 13 November 1968, the Bank stated that 'according to our extensive investigations, the … securities … did not exist in any deposit under the name mentioned above or under the names mentioned in your letter.'" The bank also noted that it was not obligated to keep records longer than ten years.

However, the bank records available to the CRT contradicted the bank's 1968 statements. With respect to Amalie Reiss, the bank records contained, among other documents, information concerning the 1945 Freeze, as well as a list of closed custody accounts held by Austrian customers. The records indicated that Amalie Reiss had granted power of attorney over her accounts to Friedrich Reiss. The records showed that Amalie Reiss held one custody account and one demand deposit account. Some of the securities in the custody account (worth SF 1,700) were transferred to the *Länderbank Wien* on September 6, 1938. Amalie Reiss ordered the bank to hold all correspondence on August 10, 1939. The custody account was blocked during the 1945 Freeze, "at which time it contained bond certificates and coupons without any market value." The account was unblocked in April 1955, and closed in May 1957. The demand deposit account was closed prior to February 17, 1945, but the closure date is not recorded.

With respect to Friedrich Reiss, the bank records consisted of a closing register of numbered accounts. The CRT explained that the bank record "indicates that the account was paid out ('*ausgeliefert*') in October 1938 and subsequently closed."

The CRT observed that two of the three owners' accounts (or the assets therein) were transferred to the *Länderbank Wien*, while others were closed on dates unknown. As to Friedrich Reiss' account, although the records normally would indicate (by the term *ausgeliefert*) that the account was paid to an apparently authorized party, in this case, the claimant's information as well as data in the 1938 Census indicated that the account was closed at a time when Friedrich Reiss actually was interned in Dachau. As the CRT observed, "if the account was paid out to a party authorized by Account Owner Friedrich Reiss, then his authorization could have only been given under duress."

The CRT also took note of the bank's 1968 letter to an attorney acting for the Reiss family, stating that it was obligated to keep records only for ten years. The CRT observed that the Court had indicated in its 2004 opinion that this was a typical response to inquiries about accounts that had been the subject of forced transfers or closed under duress. "The Court noted that, in authorizing such sales or transfers to the German Reich, the policy of Swiss banks 'constituted a clear violation of the banks' fiduciary duty to their account holders — individuals who were being persecuted daily.'"

In view of the bank's behavior, and in light of the fact that the account owners had fled Austria, there was no record of Felix or Amalie Reiss' accounts having been paid to them, and Friedrich Reiss' account was closed under duress, the accounts were awarded to the claimant, each at its respective presumptive value.

xi. In re Account of Wilhelmine Schoenholz (SF 1,980,000.00)

Wilhelmine Schoenholz was born in 1862 in Neuss am Rhein, Germany. She was engaged to be married, but her fiancé died in 1889 en route to the U.S. Wilhelmine Schoenholz

had one child, a daughter, who was born in Osnabruck, Germany in 1889, shortly after the death of her father (the fiancé of Wilhelmine Schoenholz). Wilhelmine Schoenholz' daughter had two children, the claimants, who filed claims with the HCPO and CRT-I, as well as Initial Questionnaires.

Wilhelmine Schoenholz lived in Germany for 35 years, where she owned a corset and lingerie shop. The claimants advised the CRT that their grandmother had been a purveyor to the court of the Queen of Wûrttemberg, the Grand Duchess of Hesse, and the last Russian Tsarina. She was considered wealthy and independent, and until 1932 traveled regularly to Switzerland. After the Nazis' rise to power, she was forced out of her residence and ordered to move to her shop. She was relocated several times, as was her shop. In 1942, she was deported to Theresienstadt and presumably died in the Holocaust, as she was never heard from again after World War II.

In 1929, according to the claimants, Wilhelmine Schoenholz had inherited $250,000 from the family of her late fiancé. In 1931, she used SF 165,000 of this inheritance to open a Swiss bank account. In 1958, her family visited the bank in person to inquire about this account, and they were asked to leave.

No records for the account of Wilhelmine Schoenholz were reported by the ICEP auditors. However, archival documents provided to the CRT by the claimants indicated that Wilhelmine Schoenholz owned a Swiss bank account valued at SF 165,000. Specifically, in the "Jewish file" (*Judenkarte*) created by Nazi authorities, numbered 9722, the cover page included the notation "*ûber 165,000 Schweizerfranken"* ("over 165,000 Swiss Francs"). The file also included an undated document wherein Wilhelmine Schoenholz applied for access to her "*Sicherungskonto"* (account frozen by the Security authorities), and stated that she was 77 years of age, very poor, and living on social welfare. The file indicated that the application was denied on the basis of her owning a Swiss bank account. The file also contained a notation that "measures" were being taken regarding the matter. A document dated October 2, 1942 indicated that Wilhelmine Schoenholz was "evacuated," and that the security order was completed and would be noted on her "*Judenkarte*."

In addition to the Nazi-era files, the claimants also provided the CRT with their grandmother's will, dated November 7, 1935, in which she designated her daughter (the claimants' mother) as her sole heir. Among the assets listed in the will were precious stones and metals, jewelry, and cash, including SF 165,000 in a Swiss bank account.

The CRT awarded the account to the claimants at the SF 165,000 described in the documentation (multiplied by 12.5, yielding an award of SF 1,980,000). The CRT observed that the account's existence had been disclosed in archival documents that had been obtained from the German government, as well as confirmed in the account owner's Holocaust-era last will and testament. The CRT noted that these submissions were entitled to "great weight" as to the account's existence as well as its value, "in the absence of any information on the value in the bank records and in light of the possibility that the account information might not have been retained because of the Bank's concern about the possibility of double liability due to the indications … that the account may have been paid to Nazi authorities."

xii. In re Account of Angelus Simon, Rosa Simon-Lang, Grete Koretz-Lang, Ernst Koretz, and Susan Koretz (SF 49,375.00)

The account owners (the claimant's great-uncle and his family) lived in Karlsbad, Czechoslovakia. Grete Koretz-Lang, born in 1899, was married to an attorney, Dr. Ernest Koretz, and they had a daughter, Susan Koretz, born in 1933. Angelus Simon died prior to World War II. His wife, Rosa Simon-Lang, their daughter Grete, and Grete's husband (Ernest) and daughter (Susan) all perished in the Holocaust.

The bank records showed that the ICEP auditors reported the existence of an account "based upon repeated inquiries to the Bank from a Mr. Frank Lang and his legal representative [Paul Weiden, a New York attorney] regarding assets that had potentially been held at the Bank by his relatives", the five account owners described above. The auditors referenced a handwritten note apparently made by a bank employee on June 14, 1946, which appeared to indicate that at least one owner held an account of unknown type in U.S. dollars ("$147.—").

In a letter dated December 30, 1946, the bank wrote to Mr. Weiden, then in Zurich, advising that in connection with Mr. Weiden's recent visit to the bank, "'we would inform you that, as far as our investigations show, no assets are deposited with the Zurich Office of our bank" in the names of the five account owners. Mr. Weiden responded on January 28, 1947, noting that at the time of his visit, "[y]ou [the bank] told me that a thorough investigation in the matter had resulted in only very little money being found. However, you were to confirm this in writing. May be that your letter was misplaced by the hotel, or by post." In response, on February 5, 1947, the bank forwarded Mr. Weiden another copy of its December 30, 1946 letter.

Mr. Weiden subsequently wrote to the bank on November 22, 1949, stating that he was again in Zurich and that "'I believe that a not-insubstantial account existed at your Bank [in the account owners'] names.'" A handwritten note at the bottom of the letter, apparently written by a bank employee, stated: "'the matter has already been investigated, and Mr. Weiden has been informed both verbally and in writing that no assets [currently] exist with us.'"

Subsequently, in an internal memorandum dated August 4, 1950, the bank noted that Angelus Simon of Prague had died and that if he held any assets, they should be blocked. No assets were reported. The following week, the bank's legal department wrote an internal memorandum (dated August 10, 1950) which stated: "'[O]n the occasion of any further visit from Mr. [REDACTED] of New York in relation to the assets of Angelus Simon, Rosa Simon, or Grete Simon, Ernst Koretz, please simply tell him verbally the following (do <u>not</u> confirm in writing): 'There are no assets in the names of the four mentioned individuals in our branch [of the Bank], as far as our investigations can tell.' Mr. Lang will not likely request further investigations regarding assets that may have existed <u>earlier</u>. If that does happen, we will have to deny his request on the basis of basic considerations.'" (Emphasis in original.)

Thus, by this memorandum, the bank's legal department was explicitly advising bank employees to deny the existence of *current* assets, and in the unlikely event that an inquiry was made about *past* assets, that request too should be deflected.

The next month, by letter dated September 14, 1950, the bank was contacted by a relative of the account owners. The relative, who lived in New York, explained that the account owners

had lived in Karlsbad but had later moved to Prague, and that they all died "'as a result of the war.'" The relative advised that he had legal documents indicating that the individuals had died and that he was their legal heir. The bank responded a few days later, on September 19, 1950, advising that according to the bank's investigations following the heir's last visit, there were "'currently no assets in the names of the referenced individuals in our branch of the Bank.'"

Notwithstanding the bank's repeated denials of the existence of any accounts, the ICEP auditors concluded otherwise. As described by the CRT, "based upon the handwritten note made by a Bank employee on the letter from Mr. Weiden dated 14 June 1946, the auditors reported the existence of an account of unknown type, denominated in United States Dollars … held by at least one of the individuals from whom information had been sought in the repeated inquiries to the Bank."

Given the evidence in the bank documents, and in light of the fact that the account owners all had died in the Holocaust, the CRT awarded an account of unknown type at presumptive value. As the CRT observed:

> The Bank's records indicate that a Bank employee made a handwritten notation on the 14 June 1946 letter received from the representative of one of the Account Owners' heirs that indicates that assets totaling US $147.00 were held or had been held at the Bank under at least one of the Account Owners' names. According to the letter from Mr. Weiden dated 28 January 1947 contained in the Bank's records, this information was confirmed verbally by the Bank to Mr. Weiden during his visit to the Bank in Zurich in approximately December 1946. The records further indicate, however, that by 1950, the Bank refused to provide any further information to the heirs regarding these assets; that the Legal Department recommended that no information regarding this account be given in writing; that the Bank specify in all future correspondence with the heirs that there were no assets existing at the present time only and only at the main branch of the Bank; that the bank surmised that the heirs were unlikely to inquire about whether assets belonging to the Account Owners had previously existed at the Bank; and that if they did so inquire, such inquiries should be declined.

xiii. In re Accounts of Hermann Stark and Melanie Stark (SF 615,546.75)

Hermann and Melanie Stark lived in Vienna, Austria where Hermann owned the cinema *Schönbrunner Schlosskino*. According to the claimant, their cousin, in 1939 the Starks fled from Vienna to Brussels, Belgium to escape Nazi persecution. They were not successful. They were deported to concentration camps, where they perished.[67]

The Starks' 1938 Census indicated that by December 9, 1938, Hermann Stark's business interests had been aryanized. According to these records, Hermann and Melanie Stark's assets were assessed atonement and flight taxes.

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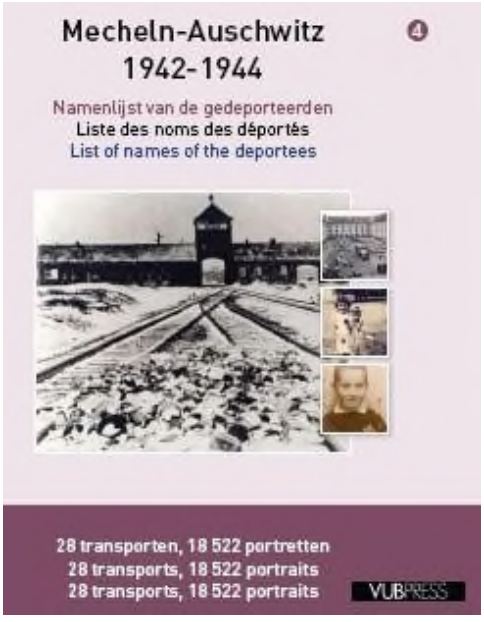
[67] At the time that the CRT was analyzing the claim, specific information about the Starks' deaths was not available. However, as a result of the Central Database of Shoah Victims' Names (created, in part, through the Court's support under the Victim List Project), further details are now accessible. Thus, according to the Central Database: "Melanie Starck nee Buchwald was born in Wien, Austria in 1892. She was a housewife and married [to] Herman. During the war she was in Caserne Dossin (Malines-Mechelen), Belgium. [She was] [d]eported with Transport XXIV from Malines, Caserne Dossin, Camp, Belgium to Auschwitz Birkenau, Extermination Camp, Poland on 04/04/1944. Melanie was murdered in the Shoah. This information is based on a Deportation list found in List of the Jews deported from Belgium - Jewish Museum of Deportation and Resistence at Mechelen / Malines."



See The Central Database of Shoah Victims' Names, YAD VASHEM http://yvng.yadvashem.org/nameDetails.html?itemId=7842312&language=en (last visited Aug. 3, 2015).

The bank's records indicated that Hermann Stark opened a safe deposit box at the Zurich branch on January 19, 1934. On February 18, 1939, the bank transferred four gold bars from the safe deposit box into a new custody account, per Hermann Stark's instructions from Belgium. The bank's records further indicated that the custody account was closed on March 22, 1939.

Hermann Stark also owned a demand deposit account at the bank, with a balance in French Francs ("FF"), at some date after January 1, 1933.

The bank records showed that between February 1953 and November 1953, Hermann Stark's sisters and their attorney wrote to the Zurich branch to inquire about their brother's accounts. Hermann Stark's sisters also tried to approach the bank through a long-standing private customer, who forwarded the sisters' letters to the bank. An internal memorandum dated March 9, 1953 indicates that one division of the bank wrote to the Estate Matters division in Zurich, noting that Hermann Stark's sister had contacted them, and that she stated that her brother held an account, which still contained assets, at "a Swiss bank." The bank noted that the account also could have been held under the name "*Frau* (Mrs.) Mela Stark." The bank indicated that it would be grateful if the Estate Matters division would conduct the appropriate research regarding these assets. The Estate Matters division replied with its own memorandum dated March 16, 1953, indicating that its research had not revealed any assets within its division in the names of the account owners.

The bank's records did not contain a response to any of Hermann Stark's sisters, or to their representatives. However, the bank's records did contain some handwritten notes on the letters that Hermann Stark's sisters and representatives had written to the bank in 1953. A February 10, 1953 letter from one of the sisters contained a handwritten notation indicating that there was neither a savings/passbook account nor a safe deposit box under the stated name. However, the same notation pointed out that there was, in fact, a custody account that was closed on March 22, 1939. A later letter (November 3, 1953) from the sisters' representative to the bank contained the handwritten notation: "Had (word illegible) No. 1297; closed on 18 February 1939!"

The CRT received "voluntary assistance" from the bank, including records of two accounts at the bank's London branch. These records indicated that the account owners held a joint custody account and a joint demand deposit account. The custody account was opened on April 7, 1939 using a Brussels address. On March 27, 1939, three gold bars were transferred from the bank's Zurich branch to the bank's London branch and deposited into the Starks' custody account.

Although the bank did not advise the Starks' family members and representative that Hermann Stark had held a custody account, the bank nevertheless continued to assess "safekeeping charges" on this undisclosed account. Aside from these charges, both accounts in London remained dormant, until they were suspended by the bank on April 21, 1980.

Regarding the London custody account, the bank's records indicated that from its opening to its suspension, it held three gold bars. As noted, the bank had assessed fees on the custody account, but did not advise the Stark relatives that the account existed. The value of the custody account was adjusted to reflect standardized bank fees and hold mail fees charged to the account between 1945 and 1980.

Regarding the Zurich custody account, the CRT could not determine from the available bank's records whether it contained further assets in addition to the four gold bars. Since there was no available balance, the CRT awarded that account at presumptive value.

As for the Zurich demand deposit account, it had a balance as of an unknown date after January 1, 1933. The bank's records did not reveal the date that this balance was recorded, the date that the account was closed, or the account's closing balance; therefore, the account was awarded at its presumptive value.

xiv. <u>In re Account of Max Steinthal (SF 260,375.01)</u>

Max (Maximillian) Steinthal was born in 1850 in Berlin. He was a member and director of the supervisory board of the *Deutsche Bank*, and chairman of *Mannesman*, a large

metallurgical consortium. He held the title of *Geheimer Kommerzienrat* (Privy Counselor of Commerce), conferred on distinguished businessmen.

Max Steinthal. Circa 1893. https://de.wikipedia.org/wiki/Max_Steinthal#/media/File:1893_Max-Steinthal.jpg. Photo courtesy of Wikimedia.

After the Nazis rose to power, Steinthal was forced to retire from the *Deutsche Bank* in 1933 and from *Mannesman* in 1935. He was forced to sell his house to the *Luftwaffe* and move to the Hotel Eden in Berlin in 1939. The remainder of his property was confiscated in 1939. He died on December 8, 1940 in Berlin, and his wife died there on October 5, 1941. One of their children was killed in Auschwitz in 1942, and their other children were forced to emigrate from Germany.

The CRT conducted independent research concerning Max Steinthal, which indicated that he was a man of diverse interests. He was "considered one of the most influential figures in the history of *Deutsche Bank.*" He was a "well-known art collector and patron of the arts, and is credited with having initiated a corporate tradition of cultural philanthropy at *Deutsche Bank.*" Steinthal also was considered a "'founding father'" of the Berlin subway system.

Relief Steinthals auf der Gedenktafel imU-Bahnhof Klosterstraße (relief portrait of Steinthal - Berlin subway system). Berlin, Feb. 22, 2008. https://de.wikipedia.org/wiki/Max_Steinthal#/media/File:Relief_Steinthal.jpg. Photo courtesy of Wikimedia and Axel Mauruszat.

A history of the *Deutsche Bank* prepared by a panel of independent historians, examined by the CRT, stated that when Hitler acceded to power in January, 1933, Max Steinthal at the age of 82 still was chairman of the bank's supervisory board. By the end of that year, however, Steinthal no longer was listed in the bank's annual statements, and he was dropped from the board in May 1935. The historians observed that the "state authorities harassed Steinthal relentlessly … At the end of 1939 he was obliged to sell his house in Charlottenburg to the Luftgau-Kommando, moved with his family … to a smaller house, found that too requisitioned, and then stayed in a hotel room, where on 8 December 1940 he died."[68] The CRT obtained research from the Jewish Museum Berlin, which confirmed the confiscations, and also revealed that the "'whereabouts of the Steinthal [art] Collection was unknown for decades. But in summer 2003, the collection of paintings was found in the Pillnitz Palace, the depot of the Dresden State Art Collections, and restored to the heirs.'"

[68] In an interview, one of Max Steinthal's grandsons, Michael Max Montfort-Steinthal, remembered his grandfather as "'of that element among German Jewry who felt themselves totally assimilated. He had all his sons baptised. I was never brought up in the Jewish faith, but was baptised as a Lutheran...From the religious point of view, there was nothing tying us to Jewry which was why it came as such a terrific shock for people who belonged to that particular tranche of society that their German nationality was taken away from them.'" Louise Jury, *Six decades after being plundered, the art the Nazis stole is set to make millions*, INDEPENDENT, Nov. 12, 2004.

The records from the Swiss bank ("Bank 1") indicated that *Geheimer Kommerzienrat* Max Steinthal, chairman of the *Deutsche Bank* supervisory board, held a custody account opened on August 7, 1931 by a transfer of securities from a *Deutsche Bank* account in Berlin. Various trades of securities, including "CHADE" shares, were made during 1932 and 1933. The account was closed on November 15, 1933 by transfer of the remaining securities to a custody account at a second Swiss bank, "Bank II."

In August 1946, one of Max Steinthal's sons contacted Bank I, advising of his parents' deaths. He stated that he was acting on behalf of all heirs and inquired about accounts at the bank, which he believed held CHADE shares among other assets. The bank responded on August 15, 1946 by advising the family that "'[a]though it is not our practice to give such information to heirs without underlying documentary evidence, we can exceptionally inform you that we held no securities or cash amount on behalf of the above-named persons at the date of their death.' The letter bears the internal annotation: 'D.44897 *Geheimrat* M. Steinthal, Berlin, closed on 15/11/33 by transfer of 250 shares CHADE 'E' to [Bank II].'"

On December 3, 1946, a Swiss attorney contacted the bank inquiring about a significant amount of assets held there at least ten years before. The letter contained an internal annotation, "Note by the WK," which was dated December 5, 1946 in Zurich and referred to custody account 44897. Despite the internal reference to a custody account, however, the bank advised the attorney by letter dated December 10, 1946 that "in the last ten years, it had held no assets in the name of Max Steinthal or his wife …. However, Bank I's letter went on to state that it suspected that Bank I had held certain assets in the names of the cited persons before this time, but that it could provide no information about them, because it possessed virtually no documentation from this time." Bank I did not state that the account had been closed and the remaining assets transferred to Bank II.

The CRT observed that Max Steinthal had "resided in Nazi Germany until his death on 8 December 1940; that there is no record of the payment of the Account Owner's account to him, nor any record of the account at all at Bank II; that after the Second World War the Account Owner's heirs were not able to obtain information from Bank I regarding the transfer of the Account Owner's assets to Bank II and would not have been able to obtain information from

Bank II due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability." The CRT awarded the custody account to the claimants (two great-grandchildren of Max Steinthal) at the market value of the securities held in the account.

xv. In re Account of Otto Strakosch (SF 1,020,995.46)

Otto Strakosch was born in 1884 and lived in Vienna with his wife Grete (née Hecht). They had no children.

Otto Strakosch. http://yvng.yadvashem.org/nameDetails.html?itemId=11093244&language=en#!prettyPhoto. Photo courtesy of Yad Vashem and Yvonne Hassid.

Otto Strakosch was killed in Auschwitz in 1942.[69] The claimant, Otto Strakosch's niece, advised the CRT that she believed that her uncle had held accounts at the Zurich branches of the two defendant banks ("Bank I" and "Bank II"), valued at approximately SF 350,000.

The records for Bank I showed that Otto Strakosch held a custody account closed on February 6, 1937; a custody account closed on April 29, 1938; and a demand deposit account

[69] Through the Central Database of Shoah Victims' Names, it is now known that "Otto Strakoch [sic] was born in Wien, Austria in 1884. During the war he was in France. Deported with Transport 30 from Drancy, Camp, France to Auschwitz Birkenau, Extermination Camp, Poland on 09/09/1942. Otto was murdered in the Shoah. This information is based on a List of deportation from France found in Le Memorial de la deportation des juifs de france, Beate et Serge Klarsfeld, Paris 1978." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=3222166&language=en#!prettyPhoto (last visited Aug. 3, 2015).

closed on April 30, 1938. The records for Bank II showed that Otto Strakosch owned a custody account closed on April 23, 1938. The bank had been instructed to hold mail to Mr. Strakosch as of March 23, 1938.

In 1950, according to Bank I's records, an American lawyer representing the administrator of Mr. Strakosch's estate (who had been appointed by the New York Surrogate's Court) contacted the bank. As described in the CRT's decision, the bank responded by stating "that it did not recognize the rights of an appointed administrator to a customer's account as being legally valid, because the Account Owner was not an American resident. That same year," the administrator "replied to Bank I in a letter in which he claimed that he and his sister were the legal heirs of the Account Owner, according to the Account Owner's will. In response, Bank I stated that it could provide no information because it had no proof that they were the legal heirs, and it did not keep customer records for more than ten years. In addition, Bank I would require a death certificate of the Account Owner."[70]

The CRT conducted additional research, obtaining the 1938 Census for Otto Strakosch. These files included receipts from Bank I and Bank II, showing that Mr. Strakosch owned custody accounts at both banks. The 1938 Census also indicated that Otto Strakosch had placed his trust in someone who chose to betray him to the Nazis. As described by the CRT, the files contain "correspondence between Otto Strakosch and *Sturmhauptführer* Franz Neukirchner (an SS officer), between Neukirchner and his superior officer, and between Otto Strakosch and Dr. Alfred Redlich, a lawyer who was appointed by the Nazis to manage Otto Strakosch's estate." The CRT explained that in "a letter from Neukirchner to his superior officer, dated 5 December 1938, Neukirchner stated that … Strakosch asked him for a personal favor. According to Neukirchner, Otto Strakosch asked him to access the safe deposit box of his friend, Frau Grete Hecht, which was located in a bank in Vienna, and to take an envelope contained therein and destroy it. Instead of complying with Otto Strakosch's wishes, Neukirchner opened the envelope

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[70] *See also In re Account of Otto Strakosch* (more fully described in the discussion of "CRT Denials" below, concluding that certain accounts owned by Otto Strakosch were closed prior to the *Anschluss* and thus were closed by the rightful owner. The decision notes that the administrator advised the bank that the account owner and his wife fled Vienna to Paris in 1938, and later to Cahors, France, where they remained until they were deported to Nazi Germany in 1942. "The Bank replied to this inquiry by demanding documentation proving that the Account Owner was deceased.")

and made a list of the bank receipts that were in it that were for the accounts held by Otto Strakosch, which he attached to the letter to his superior officer." The receipts in Frau Hecht's safe included information about shares of U.S. railroads that Otto Strakosch was holding in his custody accounts at the Swiss banks (Bank I and Bank II), totaling SF 67,411.59.

Neukirchner also found a receipt from Bank I showing that on January 29, 1937, at the request of Mr. Strakosch, the Bank had sold English gold coins worth 1,800 Pound Sterling (valued at SF 64,260).

The CRT explained that Neukirchner told his superior officer "how he compared the census form Otto Strakosch submitted to the Nazi authorities and his flight tax receipt" to the list of securities in the safe "and noticed that Otto Strakosch had withheld" assets on the list "and had not reported them to the Nazis before he left for France. Neukirchner further reported that Otto Strakosch had more assets invested in gold at Bank I than what he had reported to the Nazis."

The CRT pointed out that Mr. Strakosch "must have been contacted about these discrepancies in some way, because, in November 1938, he responded to Neukirchner's allegations in a letter to Neukirchner and Redlich." He stated that "although these assets were invested in his name, they did not belong to him but rather to his cousin in the United States. He apologized and explained that he had paid all his taxes before he left Austria, that he did not list these assets because they were not his, that he sold the gold in order to buy shares and bonds in American railroad companies and that, in any case, these shares and bonds had lost two-thirds of their value. He offered, however, to turn over all the assets which he took with him when he left Austria, which he estimated to be worth 43,000.00 Reichsmark, if the Nazis would remove the warrant issued for his arrest for tax evasion. A Nazi document, dated 2 March 1941, indicates that Otto Strakosch's citizenship was removed and all his assets were confiscated." However, as noted previously, these confiscations did not save his life; he was transported to Auschwitz the following year, where he perished.

The CRT observed as to three of Mr. Strakosch's accounts that they were all closed in April 1938, after the *Anschluss.* Two of these accounts had been declared in the 1938 Census,

and the banks apparently had complied with the Nazis' demand to turn over the accounts. As to the post-war behavior of the Swiss banks, the CRT observed that the records "contain evidence that the heirs of the Account Owner sought information related to the accounts held at Bank I" and that "Bank I deliberately withheld relevant information regarding these accounts."

In a subsequent decision, the CRT amended its decision by increasing the payment to Otto Strakosch's niece for one of the custody accounts by an additional SF 86,538.88. The account originally had been based upon the sum reported in the 1938 Census. Under the Court's order of October 12, 2004, such amounts were to be increased to presumptive value based on the determination that historically, Nazi victims tended to underreport their assets in these Census forms, in a usually unsuccessful attempt to shield some of their property from total confiscation.

3. Accounts Reported to the Nazis by Swiss Bank Employee Dörflinger

i. <u>In re Account of Charlotte Amsterdam (SF 49,375.00)</u>

Charlotte Amsterdam was born and resided in Warsaw, where her husband (whom she married before 1910) was a high-ranking executive at a large bank. The claimant, their nephew, advised the CRT that his aunt and uncle were believed to have died in the Warsaw Ghetto.

The bank records indicated that Charlotte Amsterdam's account was reported to the Nazis by a spy employed by a Swiss bank, August Dörflinger. August Dörflinger was suspected of having betrayed 85 account relationships to Nazi authorities, as set forth in a December 2, 1942 protocol contained in the bank files, entitled "Existing Accounts and Depots" (*Bestehende Konti & Depots)*. The protocol, which was created during a meeting among a prosecutor, a bank representative, policemen, and Dörflinger, indicates that Dörflinger was accused of acting as a spy for the Nazis and violating bank secrecy laws by reporting 74 account holders to the authorities in Nazi Germany, a charge Dörflinger admitted. Nine additional relationships were suspected of having been betrayed, and an additional two also were suspected of being associated with Dörflinger. The total 1942 value of these 85 accounts was nearly SF 1.6 million, or nearly SF 20 million when adjusted to present-day values (at the multiplier of 12.5).

With respect to Charlotte Amsterdam, the December 2, 1942 protocol indicated that she held an account of unknown type with a balance of SF 884 as of that date. The CRT awarded her nephew the presumptive value of an account of unknown type, in view of the fact that his aunt was presumed to have perished in the Holocaust, and that her account was reported to Nazi authorities by a Swiss bank employee.[71]

ii. In re Accounts of Samuel Stiebel (SF 96,887.50)

Dr. Samuel Stiebel was born in 1879 in Langenschwarz, Germany. He was a physician and lived with his family in Hamburg until 1933. The claimant, his daughter, advised the CRT that in 1933, Dr. Stiebel was informed by the Nazis that he would be arrested if he continued to treat communists and Jews. The family shortly thereafter fled to Switzerland. Dr. Stiebel attempted to withdraw money from a bank account he owned in Switzerland, but was advised by a bank employee that the only way to withdraw anything from his account was from Germany. The family fled to Palestine later that year.

The bank records indicated that Dr. Stiebel owned three demand deposit accounts and one savings account. Dr. Stiebel's accounts were reported to the Nazis by August Dörflinger, the Swiss bank employee arrested for spying on behalf of Germany.

The bank files contain "excerpts from the transcript of the interrogation of a Bank employee, August Dörflinger, conducted by the State Prosecutor of Basel on 2 December 1942, and a letter dated 15 February 1950 to the Bank written by August Dörflinger while he was in

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[71] Other examples of awards of accounts reported by the spy Dörflinger include *In re Account of Richard Emrich (SF 47,400.00)* (account owner owned a jewelry manufacturing company in Pforzheim, Germany, and moved to the United Kingdom to open a branch there; in 1939, the German company was seized by the Nazis and most of the family fled, but several family members were murdered in Auschwitz; Richard Emrich's account of unknown type with a balance of SF 208.50 was on the list of 85 accounts reported by Dörflinger); *In re Accounts of Marcus Manasse (SF 81,270.00)* (account owner was a physician from Berlin who held a demand deposit account transferred in 1974 to a suspense account, and an account of unknown type which was included on the list of 85 accounts reported by Dörflinger); *In re Account of Alfred M. Schwarzschild (SF 49,375.00)* (Alfred Schwarzschild, an artist born in Frankfurt who later lived in Munich, had difficulty selling his art beginning in 1933 and fled to England in 1936, his wife and children following him in 1938. His account appeared on the Dörflinger list, which indicated that as of December 2, 1942, the account held a balance of SF 2,943.50).

prison." According to the transcript, as described by the CRT, "August Dörflinger, a convicted German spy, reported two of the Account Owner's accounts to the Nazi authorities. This document shows that as of 2 December 1942, the Account Owner held a demand deposit account, with a balance of 1,240.00 Swiss Francs, and a savings account, numbered 50352, with a balance of 734.00 Swiss Francs, and that the Account Owner's accounts were not closed after having been reported to the Nazis."

As the CRT explained, the transcript further indicated that "the Account Owner was among 85 account owners who were reported by August Dörflinger, a Nazi spy working at the Bank, to the Nazi authorities…. As noted in a Department of State Report [the May 1997 Eizenstat Report], 'as U.S. officials received reports that in the early 1930s the Germans had placed French-speaking Nazis in leading Swiss banks, they grew increasingly concerned that Nazi elements may have infiltrated the Swiss banking system.' The Nazi Germans were even so brazen as to take out newspaper ads offering rewards to those who came forward with information on Jewish depositors."

Swiss authorities did prosecute Dörflinger for his crimes. However, in connection with the claims process, while the CRT had obtained information about two additional account owners on the list of 85, "the banks did not provide the CRT with "the full text of the Dörflinger interrogation or the list of the other 82 Account Owners who apparently incurred the same deposit confiscations as suffered by the Account Owner in this case as a result of the information provided to Nazi authorities by Dörflinger. A full accounting by the banks of the role played by spies, the names of the persons who they identified, and their impact on the accounts of Nazi victims, would be of very substantial value to the CRT in fulfilling its mandate to return the deposits in Swiss banks to these victims or their heirs."

The CRT awarded all four accounts to Dr. Stiebel's daughter, observing that two were reported to the Nazis, and one was transferred to the bank's suspense account for dormant assets, where it remained open. Given the fate of these three accounts, the CRT presumed that the fourth account likewise was not returned to its owner.

The accounts were awarded at the values reflected in the bank records. One of the demand deposit accounts was held in Chilean Pesos. The CRT determined that the account held SF 5,508.88 (after application of the multiplier).

Subsequently, the CRT amended the decision to award an additional SF 33,694.12, adjusting three of the accounts upward to reflect their respective presumptive values rather than their recorded values, in accordance with the Court's May 31, 2002 order authorizing the CRT to presume absent evidence to the contrary that accounts reflecting values lower than presumptive values may have been underreported by their owners, or that fees and other charges may have been taken by the banks.

B. AWARDS BASED ON PRESUMPTIONS UNDER UNITED STATES LAW AS INCORPORATED INTO THE CRT RULES

1. Account Remained Open and Dormant

i. In re Account of Albert Brandt (SF 11,148.25)

Albert Abarbanel (alias Albert Brandt) was born in 1896 in Hamburg. He attended the University of Heidelberg with Joseph Goebbels, the Reich Minister of Propaganda and a close associate of Hitler. As such, Goebbels was familiar with Albert Abarbanel's early anti-fascist views. Albert Abarbanel fought for Germany in World War I and was wounded eight times, earning five medals, including the Iron Cross.[72] He became a philosophy professor in Hamburg and encouraged his students to resist the Nazis.

The claimant, his wife, advised the CRT that in approximately 1933, as Albert Abarbanel was preparing lecture materials, he received a frantic call from his mother. She warned him to leave home immediately because the "brownshirts" were looking for him. He escaped to the United States in 1933 and continued to speak out against the Nazis, writing books and magazine articles under the pseudonym "Albert A. Brandt" (to protect his family still in Europe), and

[72] *Concise Dictionary of American Jewish Biography*, AM. JEWISH ARCHIVES, http://media.americanjewisharchives.org/docs/concise/a.pdf (last visited Aug. 3, 2015).

appearing on a weekly radio program. He was attacked and beaten in New York by Nazi supporters.

The bank records indicated that Albert Brandt held a savings account, still open and dormant at the time of the Volcker Committee audit, with a last known recorded value of SF 0.06. As the account had not been returned to its owner, and given the banks' practice of deducting administrative charges from dormant accounts as well as evidence of account balances being plundered, the CRT awarded it at presumptive value.

ii. In re Account of Leo Davidsohn (SF 240,360.00)

Leo Davidsohn was born in 1866 and lived in Berlin. As a retired widower, he supported other family members, including the claimant's mother (Mr. Davidsohn's niece). Leo Davidsohn was transported to Theresienstadt in July 1942. He perished there a month later.[73]

The bank's records demonstrated that the Leo Davidsohn owned an account that was still open with a balance of SF 20,000 as of January 1946, over three years after Leo Davidsohn was killed.

The records further showed that Leo Davidsohn lived at Wielandstrasse 23 in Berlin. This street address appeared to conflict with the address the claimant had provided, Kurfurstendamm 1855 in Berlin, which would have suggested that the claimant's relative was not the same person as the account owner. However, the CRT conducted independent research and determined that the two seemingly conflicting addresses essentially were the same. The CRT observed that "Kurfurstendamm intersects Wielandstrasse at Wielandstrasse 23 and

[73] The Central Database of Shoah Victims' Names contains the following information: "Leo Davidsohn was born in Hohensalza, Poland in 1866. Prior to WWII he lived in Berlin, Germany. During the war he was in Berlin, Germany. Deported with Transport I/22 from Berlin, Germany to Theresienstadt, Ghetto, Czechoslovakia on 14/07/1942. Leo was murdered in the Shoah. This information is based on a List of deportation from Berlin found in Gedenkbuch Berlins der juedischen Opfer des Nazionalsozialismus, Freie Universitaet Berlin, Zentralinstitut fuer sozialwissenschaftliche Forschung, Edition Hentrich, Berlin 1995." http://yvng.yadvashem.org/nameDetails.html?itemId=4094484&language=en (last visited Aug. 3, 2015).

Kurfurstendamm 185." As a result of the CRT's investigation, the addresses were reconciled and the account was awarded.

The account was of unknown type, with a reported value of SF 20,000 as of January 31, 1946. The CRT increased that amount by SF 30 to reflect standardized bank fees charged to the account between 1945 and 1946, for a total of SF 240,360 upon application of the multiplier of 12 then in effect.[74]

iii. In re Account of Selma Loehnberg (SF 11,476.25)

Selma Loehnberg (Lohnberg) was born in 1874 and lived in Hamm (Westphalia), Germany, where her husband had a medical practice. Their daughter, the claimant, advised the CRT that Dr. Lohnberg died in 1926 after being thrown down a flight of stairs by two anti-Semitic patients.

His widow, Selma Lohnberg, moved to Waldeck, Germany, where she converted her large country house into a hotel. In 1935, after being threatened by local police, she was forced to sell the hotel with its contents, including valuable art works, and its surrounding meadows and forests. She received 30,000 Reichsmark from the sale. She deposited this sum with a German bank and directed it to transfer these funds to a bank in Ascona, Switzerland, where her sister lived. She fled Germany to join her sister, and learned that the Swiss bank had taken the position that it had not received the funds transferred from the bank in Germany.

Without money to support herself, Selma Lohnberg was not allowed to stay in Switzerland, and thus went to Brussels. After the Nazi invasion, Belgian officials arranged a pro forma marriage so that Selma Lohnberg could be protected, but she was arrested in early 1944

[74] The award was discussed in *New York Times* article, *Settling Accounts, But Not Minds*: "An 80-year-old retired scientist, who loathes the attention that a sudden cash award will bring and insisted on anonymity, said a young lawyer at the tribunal helped him prove family lore that a bachelor uncle named Leo had a Swiss account. Recently, he received $160,000 [based on the exchange rates in effect at the time of the award]…'I accepted it,' the retired scientist said, 'as a gift from the time of darkness.'"

and imprisoned until Belgium was liberated in September 1944. She lived in the United Kingdom with her daughter (the claimant) until her death in 1967.

Although the Swiss bank had told Selma Loehnberg that it had never received the funds she had ordered to be transferred there from the bank in Germany, the bank records examined by the CRT were to the contrary. These records included an undated list of foreign account owners with whom the bank had had no contact since May 1945, as well as a printout from the bank's database of open accounts. The bank documents showed that Dr. Selma Lohnberg of Ascona, Switzerland held a savings/passbook account, from which SF 400 was withdrawn on April 15, 1935. The ICEP auditors concluded that the account had been dormant for at least ten years after 1945. As of September 1998, the account held a balance of SF 13.10, and it remained open and dormant. The CRT awarded the claimant the presumptive value of a savings account.

iv. In re Account of Charles Ulrich (SF 49,375.00)

Charles Ulrich was born in 1901 in Berlin-Charlottenburg, Germany. He was an engineer who traveled extensively for business, and lived in Chile between 1929 and 1939. He tried to return to Germany in 1939 to visit his mother. His wife and children later were to follow him. However, due to the outbreak of war, the ship upon which Charles Ulrich was traveling was redirected and returned to South America. Charles Ulrich's mother remained in Germany and died there, and her sister presumably died in Germany as well.

The bank records showed that Charles Ulrich owned a numbered account of unknown type. It was transferred to a suspense account in 1987, at which time it had a balance of SF 7.00.

The CRT awarded the account to the claimant, the daughter of Charles Ulrich, observing that the case was exceptional in that account owners who left Europe prior to the Relevant Period (1933-1945) were considered not to have been Nazi victims. However, in this case, Charles Ulrich's daughter had "provided documentary evidence, consisting of her mother's passport with a German entry visa valid from August to October 1939, to show that her father, who was Jewish, attempted to return to Germany in 1939…. Although the Claimant did not explicitly

state that her father was attempting to return to Germany in an attempt to rescue his mother and aunt, the CRT finds that, given the historical circumstances, this is the only reasonable explanation why he would do so. The Claimant explained that her father's ship was turned away because of the outbreak of the War. The CRT notes that the Claimant's father admittedly could have attempted to enter Germany by other means, but that in any case he would have been targeted for persecution and perhaps deported if he had entered the German Reich. Despite these risks, he attempted to return, was turned away, and never saw his mother or aunt again…. Accordingly, the CRT concludes that the Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution," and awarded the claimants the presumptive value of an account of unknown type.

v. In re Account of André Weber (SF 10,750.00)

Andre Weber, the claimant and account owner, was born in 1930. Prior to the Nazi occupation, he lived in Papa, Hungary. Andre Weber's parents imported fruits and vegetables from Trieste, Italy, and distributed them throughout Hungary. They also acted as agents for various companies selling sweets. The family business and other property were looted after the Nazi invasion, and the Webers, with their son, were forced to perform slave labor in Mühldorf. They were thereafter deported to Auschwitz.

The bank records showed that Andre Weber owned a savings account, numbered 6944, which was considered dormant, and was transferred to a suspense account on or before April 6, 1954. At that time, it held SF 5.60.

Although there was little additional information about the account in the bank files, the CRT awarded the account to the claimant, observing that he had provided documentary evidence that he was Andre Weber. Among other records, the claimant had provided a document issued by the Camp of Feldafing, which confirmed that he (Andre Weber) had been imprisoned at Mühldorf and Auschwitz. Because the reported value of the account was lower than the presumptive value of a savings account, the claimant was awarded the higher sum; *i.e.*, the presumptive value.

vi. In re Account of Rahel Zeisler (SF 10,750.00)

Rahel Zeisler, née Dzialoschinsky, was born in 1894 in Kempen/Posen, Germany. She lived with her husband and children in Gailingen, Germany on the Swiss border, between 1930 and 1939. Rahel Zeisler's husband worked in Switzerland as a sales representative for a Czech firm, *Texwa A.G.*, and he maintained an address in Baden, Switzerland. When the War broke out, Rahel Zeisler and three of her children gained entry into Switzerland, but Mr. Zeisler was denied entry. The family thus returned to Germany. In 1942, Mr. Zeisler was sent to a concentration camp. He was killed in Auschwitz in 1943. Rahel Zeisler also perished in 1943.[75] Three of their children likewise were killed in concentration camps.

Rahel Zeisler's account was claimed not only by her surviving children but also by an individual who stated that Rahel Zeisler was "a friend of the family." This claimant stated that Mr. Zeisler, a commercial traveler for a Czech leather goods firm, "often took monies into Switzerland for others." He said it was his belief that Mr. Zeisler had deposited 50,000 Reichsmark in Switzerland for the benefit of his (the claimant's) grandfather.

The bank records showed that Rahel Zeisler, a Swiss resident, held a savings/passbook account which was transferred to a suspense account for dormant assets on or before July 16, 1949. The account held SF 92.35 at the time of its transfer.

The CRT awarded the account to the surviving children of Rahel Zeisler, at the presumptive value for a savings account (since the recorded value was below presumptive value). As to the other claimant, the CRT observed that "there is no information in the Bank's records to indicate that the account at issue was opened for the benefit of anyone other than" Rahel Zeisler, and thus that claimant was "not entitled to any share of the award amount."

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[75] "Rahel Zeisler nee Dzialoszynski was born in 1894. Prior to WWII she lived in Frankfurt am Main, Germany. Rahel was murdered in the Shoah. This information is based on a List of murdered Jews from Germany found in Gedenkbuch - Opfer der Verfolgung der Juden unter der nationalsozialistischen Gewaltherrschaft in Deutschland 1933-1945, Bundesarchiv (German National Archives), Koblenz 1986." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=11659974&ind=2 (last visited Aug. 3, 2015).

vii. In re Account of Eugen Zimmermann (SF 48,536.40)

Eugen Zimmermann, the claimant, was born in 1926 in Gyor, Hungary. His father, a wine and liquor distributor in Gyor, was deported with his wife and child (the claimant) to Auschwitz. Both parents perished. Eugen Zimmermann advised the CRT that he remembered his parents discussing their significant Swiss bank accounts, and that he went to Zurich in the 1960s to inquire about the family's assets, but was told that he needed account numbers to investigate further.

The bank records showed that Eugen Zimmermann held a numbered account of unknown type, which was transferred to a suspense account on or before February 19, 1993, several decades after the claimant had visited the banks in Zurich. At the time of the transfer, the account held a balance of SF 89.70, and it remained open and dormant. The CRT awarded the account to the claimant at its presumptive value.

2. Account Closed or Presumed Closed, Unknown to Whom

i. In re Account of Rosel Ascher (SF 28,712.50)

Rosel Ascher was born in 1899 and lived in Bamberg, Germany, where she was a partner in the family company S. Hess.

Rosel Rakhel Ascher. http://yvng.yadvashem.org/nameDetails.html?itemId=1277061&language=en. Photo courtesy of Yad Vashem and Friedrich Hess.

She was confined to a psychiatric institution in December 1940, and later deported to a concentration camp. Although the claimant, Ms. Ascher's niece, did not know her aunt's fate, the CRT conducted its own research. It analyzed the victim database made available as part of the ICEP audit (including a Yad Vashem database) and determined that Rosel Ascher was gassed on June 14, 1942.

The bank records demonstrated that on June 20, 1942, six days after Rosel Ascher was killed, her demand deposit account of unknown value was closed. The account, which had not been returned to the account owner or her heirs, was awarded at presumptive value.

ii. In re Account of Adolf Bauer and Clara Bauer (SF 289,087.50)

Adolf and Clara Bauer resided in Frankfurt, where Adolf Bauer was a businessman. Adolf Bauer, who was born in 1864, died in January 1936. His wife, Clara, who was born in 1882, was deported to the Lodz ghetto in 1941, where she perished.[76]

The bank records indicated that upon Adolf Bauer's death, his wife assumed ownership of her husband's demand deposit account. The records did not indicate if she also assumed ownership of her husband's custody account at the same bank. The records did not show when the accounts were closed, nor did they show the value of the accounts. The ICEP auditors presumed that the accounts were in fact closed and that there was no evidence of activity after 1945.

The CRT awarded the accounts at their respective presumptive values to the claimant, the Bauers' granddaughter, based on the fact that Adolf Bauer had died in Germany and his wife had perished in the Lodz ghetto. The CRT also applied the adverse inference principle adopted under the CRT Rules (as elaborated by the Court in its 2004 opinion), noting that "there is no record of the payment of the Account Owners' accounts to them, nor any record of a date of closure of the accounts; … the Account Owners and their heirs would not have been able to obtain information about their accounts after the Second World War from the Bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability."

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[76] "Clara Bauer nee Dessauer was born in 1882. Prior to WWII she lived in Frankfurt am Main, Germany. Clara was murdered in the Shoah. This information is based on a List of murdered Jews from Germany found in Gedenkbuch - Opfer der Verfolgung der Juden unter der nationalsozialistischen Gewaltherrschaft in Deutschland 1933-1945, Bundesarchiv (German National Archives), Koblenz 1986." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://db.yadvashem.org/names/nameDetails.html?itemId=3777755&language=en (last visited Aug. 3, 2015). The Central Database entry records Clara Bauer's place of death as the Lodz Ghetto.

iii. In re Account of I. Louis Breslauer (SF 28,712.50)

Louis Israel Breslauer was born in 1883 in Jarotschin, Posen, Germany (today Jarocin, Poland) and resided in Düsseldorf, where he had been a horse dealer and later an insurance agent. His children, the claimants, advised the CRT that Louis Breslauer was beaten during *Kristallnacht.* Although his Swiss-born wife and children were able to flee to the U.S. in 1939, Mr. Breslauer was unable to join them.

Studio portrait of a German-Jewish family prior to the emigration of the wife and children. Pictured from left to right are Paul, Rosa, Louis and Henni Breslauer. Sept. 11, 1933-Dec. 5, 1939. http://collections.ushmm.org/search/catalog/ pa1161428. Photo courtesy of the U.S. Holocaust Memorial Museum and Henni Padawer.

Louis Breslauer sought but was denied entry into Switzerland. His house and other assets were seized, and he was forced to perform slave labor in a construction battalion at a satellite concentration camp on the outskirts of Düsseldorf. He was able to flee to the United States in 1941 or 1942.[77]

[77] As described on the website of the USHMM: "Henni Breslauer (later Padawer) is the daughter of Louis Breslauer and Rosa (nee Herz) Breslauer. She was born in Duesseldorf on January 26, 1928. Her brother Paul was born two years earlier. Rosa Herz was born in Solothurn Switzerland where her father served as a cantor and kosher butcher. Louis Breslauer was born in Jarocin Poland near Posen. As a young man he worked as a horse trader, but he later became an insurance agent. Though her family was religiously observant, Henni attended Catholic elementary school since it was one of the only two elementary schools available; she was given free time during the religious instruction. However, after the Nazi regime prohibited Jewish children from attending non-Jewish schools, Henni went to a newly created Jewish school housed in the conservative synagogue. She also participated in the Maccabi sports club. In September 1938 Henni's aunt and uncle immigrated to the United States and prepared an affidavit for Henni's family. The Breslauers decided to learn new trades to facilitate their immigration status. Louis trained as a masseur and learned how to make chocolate

Based on information published by the USHMM, the Breslauers settled in New Jersey, where they became chicken farmers.

A German-Jewish refugee couple work on their chicken farm in Vineland, NJ. Pictured are Rosa and Louis Breslauer. 1942-1946. http://collections.ushmm.org/search/catalog/pa1161430. Photo courtesy of the U.S. Holocaust Memorial Museum and Henni Padawer.

The bank records, which were obtained from the Total Accounts Database (TAD) and not the AHD, consisted of data from the 1941 Freeze, *i.e.* assets that had been blocked under the

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candies. Though still children, Henni and Paul both learned how to make jewelry from wood and copper. On Kristallnacht night, November 9 1938, SA men barged into the Breslauer's house, hit Louis with a night stick and broke his arm. Soon afterwards the family went to the American consulate in Stuttgart to apply for visas. They learned that since Louis and Rosa had been born in separate countries, they fell under under separate quota restrictions. Swiss nationals enjoyed a relatively short wait, whereas immigrating from either Germany or Poland was much more difficult and time-consuming. On September 11, 1939 the American consulate granted Rosa and the two children permission to immigrate. A couple of months later, they left Germany and briefly stayed in The Netherlands with an aunt who had married a Dutch convert to Judaism. (He later was responsible for saving many Jews.) From there on December 5, 1939 they sailed to New York on board the Staatendam. However Henni's father had no choice but to remain in Duesseldorf. Shortly thereafter he was conscripted for slave labor to do road construction though he was already in his 60s. Louis Breslauer finally received permission to immigrate in March 1941, but only after Rosa had raised a $2000 guarantee that her husband would not become a ward of the state. She had earned what money she could by selling stockings and pastries door-to-door. Henni's brother Paul helped out by selling newspapers and shining shoes. After Louis joined his family, they moved to a chicken farm in Vineland, New Jersey. In 1949 Henni married another German-Jewish émigré. Sadly though, her father died shortly before the wedding." http://collections.ushmm.org/search/catalog/pa1161428 (last visited Aug. 19, 2015).

U.S. Trading with the Enemy Act.[78] Louis Breslauer held a demand deposit account with the bank in New York, the balance of which was $227.53 as of June 14, 1941. The auditors presumed the account was closed, and found no evidence of post-1945 activity.

The CRT observed in awarding the account that the account "was frozen in the 1941 Freeze…. The Account Owner emigrated to the United States in 1941 or 1942…. [T]he Account Owner's family arrived in the [U.S.] in 1939, but there is no indication that either the Account Owner or [his] family accessed or attempted to access the account. Furthermore, the Bank's record does not indicate when the account was closed, there is no record of the account being released to the Account Owner, and no evidence that the account was closed to any other authorized party…. [A]lthough persecutees who had arrived in the [U.S.] by 23 February 1943 could, under the provisions of the US Treasury's general licensing system, access their accounts, there is no documentation on the extent to which eligible persons availed themselves of these provisions. Furthermore, there is no indication in the Bank's records of such a release of funds."

The CRT further observed that according to the 2000 Report of the Presidential Advisory Commission on Holocaust Assets in the United States,[79] "many Holocaust victims did not recover their frozen assets or the full value of their assets." Thus, "[a]bsent evidence in the Bank's records and, in this case, in the official records of the State of New York," the account was awarded at its presumptive value.

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[78] "During the Second World War, the United States government froze certain foreign assets located in the United States, under the powers of the Trading with the Enemy Act of 1917 (50 U.S.C. App.). On 14 June 1941, President Roosevelt extended freezing controls to cover all of continental Europe (the 1941 Freeze). Executive Order 8785 Regulating Transactions in Foreign Exchange and Foreign-Owned Property, Providing for the Reporting of All Foreign-Owned Property, and Related Matters (6 Fed. Reg. 2897). *See* Plunder & Restitution: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report, SR-44 (United States Government Printing Office, 2000)" (cited in, *e.g., In re Account of Aaron Pieck).*

[79] PLUNDER AND RESTITUTION: Findings and Recommendations of the Presidential Advisory Commission on Holocaust Assets in the United States and Staff Report, December 2000 (*see* http://govinfo.library.unt.edu/pcha/PlunderRestitution.html/html/Home_Contents.html).

iv. In re Accounts of Sigmund Freud (SF 317,800.00)

The world-renowned psychiatrist and founder of psychoanalysis, Sigmund Freud, was born in 1886 in Wandsbek, Germany. He lived and practiced in Vienna until 1938, when he was forced to flee to London. He passed away in London in 1939.

Freud family group. Circa 1876. https://commons.wikimedia.org/wiki/File:_Freud_family_group._Photograph,_c.1876._Wellcome_V0027598.jpg. Photo courtesy of Wikimedia and Wellcome Images.

As noted by the CRT in a related decision discussed elsewhere herein (*In re Alexander Freud and Harry Freud*, concerning accounts owned by Sigmund Freud's brother and nephew), extensive diplomatic efforts were made to ensure Dr. Freud's safety, even before the *Anschluss*. Dr. Freud's diary, edited by Michael Molnar, reflects that certain United States authorities, one of whom was a former Freud patient, notified President Roosevelt and Secretary of State Cordell Hull of the dangers facing Dr. Freud in Nazi Vienna.

The CRT observed that on the same day that telegrams about Freud's plight were sent to these U.S. leaders, March 15, 1938, "groups of S.A. men raided the premises of Freud's publishing house and his home at Bergasse 19. Among the items seized during those raids were the Freuds' passports, approximately 6,000.00 Austrian schillings, and a copy of Freud's will, which referred to assets he held outside Austria." This information may have been suppressed pending Freud's escape by the person whom the Nazis had assigned to supervise the liquidation of Freud's press and other assets, Dr. Anton Sauerwald, who had been a student of one Dr.

Freud's friends. Also on the same day, another friend, Ernest Jones, a pioneering psychoanalyst and Freud's official biographer, visited Freud and convinced him to leave Austria.

Freud's home was raided again on March 22, this time by the Gestapo. His daughter Anna was arrested and interrogated for several hours. As described by the CRT, Ernest Jones observed in his biography of Sigmund Freud that the Nazis learned that Freud's Collected Writings had been set aside for safekeeping in Switzerland. The Nazis demanded that the writings be returned to Vienna, and when they were, they were "'more or less ceremoniously burned…. Of course, Freud's bank account was confiscated.'"

Freud was able to enter the United Kingdom, but before emigration, he was required to report his assets and pay the flight tax (which was actually paid by his friend Marie Bonaparte, Princess George of Greece). The family left for London on June 4, 1938. The New York Times reported on June 5, 1938 that Dr. Freud's publishing house and "'all his money'" had been confiscated.

The CRT observed that the sources it had analyzed had revealed that "Freud was targeted by the Nazis even after his [June 6, 1938] arrival in London." Nazi officials learned of his Swiss accounts "within weeks." His Swiss demand deposit account held in Dutch guilders was closed on June 30, 1938, as the bank records indicated, although Freud did not know of the closure. He continued to write to his Viennese attorney, Dr. Alfred Indra, in July 1938 of his "'painful surprise'" when he learned that "the foreign exchange office demands the sale of "'the assets in the account 'on deposit in Zurich.'"

In addition to the demand deposit account in Dutch guilders, the bank records showed that Sigmund Freud held another demand deposit account (in Swiss francs), which was closed on July 31, 1938. His custody account was closed on September 19, 1938.

The CRT awarded to the claimant, Freud's grandson, all three accounts at their respective presumptive values. The CRT observed that "the Bank's record does not indicate to whom any of the accounts were closed; that the Account Owner fled his country of origin due to Nazi persecution; that the Account Owner believed that the demand deposit account denominated in

Dutch guilders was still open over two weeks after it had been closed, and that he believed that he still had control over the account; that the Account Owner had four sisters remaining in Vienna, who were eventually deported to concentration camps, where they perished [*see In re Accounts of Alexander Freud and Harry Freud*]; that he may have had other relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his accounts to ensure their safety; [and] that biographical information about the Account Owner clearly demonstrates that the Nazi regime was aware of the Account Owner's assets in Switzerland, and demanded that the Account Owner surrender many of his assets in exchange for his personal belongings and for being allowed to emigrate."

v. In re Accounts of Max Friede (SF 1,385,000.00)[80]

Max Friede was born in 1880 in Bocholt, Germany, where he owned a blanket factory. He sent two of his children to Switzerland to continue their education when it was no longer possible to study in Germany, and opened a Swiss account to pay for his daughters' tuition and other expenses. Max Friede, his wife and two other children fled Germany in 1939, eventually reaching New York in 1940. His daughters studying in Switzerland also went to New York in 1940.

The bank records showed that Max Friede owned two custody accounts, one of which was closed in March 1937, and the other in September 1938 (held at "Bank I"). Max Friede also owned a custody account at a second Swiss bank ("Bank II").

The records contained correspondence from 1949 to 1950 regarding Mr. Friede's efforts to retrieve his assets at Bank II. He advised the bank that he had owned a custody account which, in the summer of 1931, was worth approximately SF 50,000. The CRT observed that in its initial response to Mr. Friede, the bank stated that he "must have confused the name of Bank II and that Max Friede's account must have been held at another bank. In another letter from Bank II, … Bank II explained that because it would take many hours to research whether Max

[80] Another award to this account owner was issued as well as a presumptive value adjustment, but are not discussed here. The total amount awarded for this account owner was SF 1,413,712.50.

Friede held an account, Bank II required a payment of 25.00 Swiss Francs (presumably per hour) to carry out his request." The ICEP auditors observed that there was no evidence of account activity after 1945. As described by the CRT, "Bank II may have improperly responded to claims made on an account owned by a possible Victim of Nazi Persecution."

The CRT awarded three custody accounts to the claimants (two daughters of Max Friede and their children). Two of the custody accounts were awarded at presumptive value, while the third, which Mr. Friede had stated in 1949 had been worth SF 50,000, was awarded at actual value.

Subsequently, after Bank I provided the CRT with additional documents relating to the value of one of the custody accounts, the CRT determined that only one custody account, rather than two, had been held in that Bank. The account had been closed in 1937 and then reopened in 1938. However, the CRT also determined that the custody account that was opened in 1938 held bonds of considerably higher value than the presumptive value that previously had been awarded. Thus, after deducting the overpayment for one custody account (which, as noted, had been paid at presumptive value), and calculating the value of the bonds held in the other custody account, the CRT awarded an additional SF 473,000.

vi. In re Accounts of Lina Hahn (SF 289,087.50)

Lina Hahn was born in Kleinlangheim, Germany. She was a senior nurse who had served in the German army during World War I. She later worked and lived at the Jewish hospital in Munich. The Nazis deported Lina Hahn and her sisters Sophie and Jette to Theresienstadt. Because of her service during World War I, the Nazis gave Lina Hahn a choice: she could remain in Theresienstadt, or she could be deported with her sisters to Auschwitz. She chose to join her sisters. All three were gassed in Auschwitz.[81]

[81] The Central Database of Shoah Victims' Names indicates that the murders of all three sisters were recorded in the "Yizkor book of the Kitzingen community with names and biographic data of Jews who perished during the Holocaust." *See* http://yvng.yadvashem.org/nameDetails.html?itemId=10779525&language=en (Lina Hahn); http://yvng.yadvashem.org/nameDetails.html?itemId=10779505&language=en (Jette Hahn) and

After the war, their brother (the claimant's grandfather) tried to locate his sisters. On January 11, 1946, he placed a missing person notice in a newspaper. The claimant provided a copy of this notice to the CRT. It stated that the three women, including Lina Hahn, head nurse in Munich hospital, probably had been deported to Auschwitz.

The bank records showed that *Fräulein* Lina Hahn had held a demand deposit account, closed October 26, 1935, and a custody account, closed November 5, 1935. Based on the fact that Lina Hahn had died in Auschwitz, and that the Nazi regime had begun to confiscate assets of its Jewish population beginning with the Nazi accession to power in 1933 (*see* CRT Rules, Appendix C),[82] the CRT awarded Lina Hahn's great-niece the respective presumptive values of the demand deposit and custody accounts.

vii. In re Accounts of Emmerich Kalman (SF 1,852,193.75)

Emmerich Kalman, born in 1882 in Siofok, Hungary, was a well-known composer who lived in Vienna. Because he had retained his Hungarian citizenship, he was able to flee Vienna with his family after the *Anschluss*. The family fled to Paris, then to Portugal, Mexico, and finally to the U.S. in 1940. Emmerich Kalman and his wife returned to Paris after the War. Emmerich Kalman died in Paris in 1953.

Emmerich Kalman's daughter, the claimant, submitted materials including a copy of a 1938 Census form as well as a monograph entitled *A Survey of the Operettas of Emmerich Kalman.* The CRT also conducted its own extensive research. It observed that Emmerich Kalman was known as a "founding composer of the 'Silver Age' of Viennese operetta." He

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http://yvng.yadvashem.org/nameDetails.html?itemId=10779524&language=en (Sophie Hahn) (last visited Aug. 3, 2015).

[82] By Order of April 24, 2003, the Court amended the CRT Rules by adopting "Appendix C," authorizing the CRT to presume in the absence of evidence to the contrary that accounts belonging to German owners closed on or after January 30, 1933 were closed improperly. The presumption was based upon historical analysis of the confiscations that began for many Jewish victims in Germany shortly after Hitler's accession to power, as well as the application of the "adverse inference" available under United States legal principles concerning destruction of evidence ("spoliation").

"achieved international fame" with works such as "Autumn Maneuver," "The Gypsy Virtuoso," "The Gypsy Princess," "Countess Maritza" and "The Circus Princess."

Imre (Emmerich) Kálmán. http://lfze.hu/en/notable-alumni/-/asset_publisher/fLQ9RSuRgn0e/content/kalman-imre/10192;jsessionid= 0F689DF6AD9FC2251665FB9A6DAF199B. Photo courtesy of the Liszt Academy, Budapest, Hungary.

The CRT observed that "[d]espite being Jewish, Emmerich Kalman was one of Hitler's favorite composers, and after the *Anschluss*, Hitler instructed a general to approach Emmerich Kalman with an offer for the composer to be allowed to remain in Vienna as an 'honorary Aryan.'" Doubting whether the offer could be guaranteed, Kalman did not accept and instead fled to Paris. His works were banned in Germany as *Entartete Musik* ("Degenerate Music"). Kalman learned that his two sisters had perished in the Holocaust, and he suffered a heart attack upon learning this news.

The bank records showed that Emmerich Kalman, a *Komponist* (composer), owned a demand deposit account closed on April 30, 1938, and a custody account closed on May 5, 1938. Subsequently, the CRT received "voluntary assistance" from the bank, including documents showing that the custody account had contained two different bonds.[83]

[83] The additional documents showed the type of securities; their face value; and date of transfer from the account.

Utilizing Special Master Junz's Guidelines for the Valuation of Securities, the CRT awarded Emmerich Kalman's daughter the actual value of the assets in the custody account as of the date of their transfer out of the account (*i.e.* the date upon which the account owner was deemed to have lost control over the account). The demand deposit account was awarded at presumptive value. The CRT observed that it was plausible that neither Emmerich Kalman nor his heirs had received these assets, given that the accounts were closed after the *Anschluss,* and that Kalman had resided in Austria after that time, and could not have received the account proceeds without losing control of their disposition.

viii. In re Account of Arthur Lehmann (SF 161,088.13)

Arthur Abraham Lehmann was born in 1877 in München Gladbach, Germany. He lived with his wife Anna and their three children in Mannheim, where he was an architect and author. Anna Lehmann died in 1932. The Lehmanns' son, the claimant, lived in Milan, Italy. In 1939, Arthur Lehmann visited his son in Milan, who convinced him to stay there due to the outbreak of World War II and the increased persecution of Jews in Germany. In 1941, the Lehmanns moved to Rome. Arthur Lehmann was deported from Rome to an internment camp in Ferramonti, Italy.

Jewish inmates in their barracks at the Italian concentration camp Ferramonti di Tarsia. Italy, between 1940 and 1943. https://www.ushmm.org/wlc/en/media_ph.php?ModuleId=0&MediaId=2081. Photo courtesy of the U.S. Holocaust Memorial Museum and the Jewish Historical Museum, Belgrade.

Arthur Lehmann was liberated in 1944 and left for the United States. Once in the United States, he lived for two years in the Oswego refugee camp at Fort Ontario, New York.[84]

[84] In 1944, President Roosevelt "announced his plan to create a free port at Fort Ontario in Oswego, New York. Roosevelt circumvented the rigid immigration quotas by identifying these refugees as his 'guests,' but that status gave them no legal standing and required their return to Europe once conditions permitted their repatriation…. [T]he refugees were not permitted to leave Fort Ontario, even to work or to visit family members already settled in the United States…. Advocates for the refugees continually lobbied Congress and the President to allow them to stay in America. Finally, after eighteen months in the camp, President Truman permitted their legal entry into the country. The camp closed a short time later in February 1946." "Fort Ontario Emergency Refugee Shelter," www.ushmm.org. *See also* http://www.archive.org/stream/fortontariorefugeef001#page/n0/mode/1up (listing all 982 Oswego refugees, including Abraham Arthur Lehmann).

American military police admit a father and daughter, both displaced persons, to the refugee shelter at Fort Ontario. Oswego, New York, after Aug. 4, 1944. https://encyclopedia.ushmm.org/content/en/photo/fort-ontario-refugee-shelter. Photo courtesy of the U.S. Holocaust Memorial Museum and the Nat'l Archives and Records Admin., College Park, Md.

Arthur Lehmann died in Niagara Falls, New York in 1948; his two daughters (the claimant's sisters) died in Germany in 1989 and 1993, respectively.

The bank records showed that Arthur Lehmann of Milan held a demand deposit account in foreign currency, which held a balance equivalent to SF 12,887.05 as of the account's closing on September 1, 1936. The account was published as part of the 2005 List.

The CRT observed that it was "plausible that the Claimant resided in Milan at the time the account was open and that his father, who resided in Germany, may have opened the account [at some unknown time] using his address." The CRT awarded the account at its actual value (after application of the multiplier), noting that although the account was closed in 1936, Arthur Lehmann had "remained in Germany until 1939, and would not have been able to repatriate his account to Germany without losing ultimate control over its proceeds."

ix. In re Account of Irma Lustig-Lowenthal (SF 256,425.00)

Irma Lustig-Lowenthal was born in 1891 in Bad Kissingen, Germany. She lived with her husband, Seli Lustig, and their daughter (the claimant) in Wurzburg and Neustadt, Germany. She left Germany for Voorburg, Holland, in 1934, and later lived in Amsterdam until 1943. She was killed in the Ravensbruck concentration camp on September 12, 1944.[85]

The bank records showed that Irma Lustig-Lowenthal owned an account, but neither its type nor its value was reported. The CRT awarded the account at its presumptive value. The CRT observed that Irma Lustig-Lowenthal had left Germany in 1934. She had lived in Holland until 1943, and she perished in the Holocaust in 1943. "[T]here is no indication in the bank records that the Account Owner accessed the account or received the proceeds" during this period. Further, the "application of confiscatory laws in Holland by the Nazi Regime during the 1940s … makes it unlikely that the Account Owner received the proceeds herself." Since she had perished during the Holocaust, she "could not have received the assets herself following the Second World War."

Several years after the decision was issued and the claimant was paid, following the CRT's continuing request for supplementation of the available bank and ICEP records through the "voluntary assistance" process, the bank provided the CRT with additional documents concerning the assets of Irma Lustig-Lowenthal. These new documents demonstrated that the account had been a custody account. It had been jointly owned by Irma Lustig-Lowenthal and her husband, Seli Lustig, of Neustadt, and it had been reported in the 1962 Survey of Swiss banks. The CRT accordingly awarded Irma Lustig-Lowenthal's daughter an additional SF 113,125, representing the difference between the presumptive value of a custody account and the presumptive value of an account of unknown type (as multiplied by 12.5).

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[85] "Irma Lustig was born in Bad Kissingen, Germany in 1891. During the war was in The Netherlands. Irma was murdered in the Shoah. This information is based on a List of murdered Jews from the Netherlands found in In Memoriam - Nederlandse oorlogsslachtoffers, Nederlandse Oorlogsgravenstichting (Dutch War Victims Authority), `s-Gravenhage (courtesy of the Association of Yad Vashem Friends in Netherlands, Amsterdam)." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4269002&language=en (last visited Aug. 4, 2015).

x. In re Accounts of Elisabeth Magnus (SF 488,828.63)

Elisabeth Magnus was born in 1888 and lived in Berlin. Her daughter (the claimant's mother) attended a Swiss boarding school. Elisabeth Magnus performed military service in Germany until the Nazi authorities learned that she was Jewish. She was killed in Lodz in 1941.[86]

The bank records showed that Elisabeth Magnus owned a demand deposit account, closed in April 1934, and a custody account, closed in December 1936. The CRT took note of the presumptions of Appendix C of the CRT Rules, recognizing that Nazi confiscations in Germany began in 1933. The CRT also observed that the account owner "would not have been able to repatriate her accounts to Germany without losing ultimate control over their proceeds," and that she had been killed in Lodz. Accordingly, the CRT awarded the accounts at presumptive value.

After the award was issued, the bank located and made available to the CRT new records relating to the contents of the custody account. The records demonstrated that Elisabeth Magnus had owned nine different securities. Certain of these securities had been transferred into accounts numbered, respectively, 15200 and 1211, which "appear as the transfer destination for other, unrelated accounts held by apparently unrelated account owners." The CRT further observed that "two of these securities" were held in London, and that it was "common practice for most British-issued securities to remain physically in England, deposited in an English bank," but that "the Bank in Switzerland was ultimately in control of the disposition of these assets."

After calculating the actual value of these securities in accordance with Special Master Junz's Guidelines for the Valuation of Securities, the claimant received an additional award of

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[86] "Elisabeth Magnus nee Weigert was born in 1888. Prior to WWII she lived in Berlin, Germany. During the war she was in Berlin, Germany. Deported with Transport 1 from Berlin, …Germany to Lodz, Ghetto, Poland on 18/10/1941. Elisabeth was murdered in the Shoah. This information is based on a List of deportation from Berlin found in Gedenkbuch Berlins der juedischen Opfer des Nazionalsozialismus, Freie Universitaet Berlin, Zentralinstitut fuer sozialwissenschaftliche Forschung, Edition Hentrich, Berlin 1995." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4119273&language=en (last visited Aug. 4, 2015).

$297,616.13, representing the difference between the actual value of the account and the amount previously awarded based on presumptive values.

xi. In re Account of Albert Mendel (SF 45,425.00); In re Account of Albert Mendel (SF 37,575.00)

Albert Mendel was born in 1875 in Germany, and he lived in Cologne, where he was a silk and fabrics wholesaler with customers such as *Bally* in Switzerland. He was deported to Theresienstadt, where he perished.[87] His wife was deported to Auschwitz in 1944, where she too perished.

In 1956, the claimant, the Mendels' daughter, wrote to the Swiss bank seeking information about her father's account. The CRT observed that "[i]n its response to the Claimant's letter, the Bank disingenuously stated that due to Swiss law, which did not require banks to keep business records for more than 10 years, such information was not available. In fact, the Bank confirmed internally that the Account had existed but failed to provide the Claimant with that information." The bank records demonstrated that Albert Mendel actually had owned two accounts, one of unknown type opened in 1929 and closed on July 27, 1939, and the other a safe deposit box opened in 1930 and closed in 1936.[88]

The CRT determined in an initial decision that the account of unknown type should be awarded to Albert Mendel's daughter at presumptive value, as there was no evidence that the account owner had received the proceeds. In a subsequent decision, the CRT determined that the safe deposit box should be awarded as well, noting that "the Nazis embarked on a campaign in 1933 to seize the domestic and foreign assets of Jewish nationals in Germany through the

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87 "Albert Mendel was born in 1875. During the war was in Koeln [Cologne], Germany. Deported with Transport III/7 from Koeln, Koeln, Rhine Province, Germany to Theresienstadt, Ghetto, Czechoslovakia on 02/10/1942. Albert was murdered in the Shoah. This information is based on a List of Theresienstadt camp inmates found in Terezinska Pametni Kniha/Theresienstaedter Gedenkbuch, Terezinska Iniciativa, vol. I-II Melantrich, Praha 1995, vol. III Academia Verlag, Prag 2000." *The Central Database of Shoah Victims' Names*, YAD VASHEM http://db.yadvashem.org/names/nameDetails.html?itemId=4816607&language=en (last visited Aug. 4, 2015).

88 This case thus provides a further example of bank misinformation disseminated to account owners and heirs in response to post-War inquiries.

enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks;" that "the Account Owner remained in Germany until 1941 and would not have been able to repatriate his account to Germany without its confiscation;" and taking into consideration the "deportation in 1941 and death of the Account Owner in a concentration camp as a result of Nazi persecution."

xii. In re Account of Bankgeschäft E.J. *Meyer* (SF 260,375.00)

Bankgeschäft E. J. Meyer was a bank located in Berlin that was aryanized by the Nazis. One of the bank's owners, the father of the claimant, had been born in 1886 in Berlin. He was married to a woman who was a cousin of the renowned Warburg family, which owned *Warburg & Co.* in Amsterdam and *M. M. Warburg* in Hamburg. The claimant and her parents fled Nazi Germany via Amsterdam and Lisbon, arriving in the United States in June 1941.

The bank records, which were not part of the Account History Database (AHD) compiled as part of the ICEP audit but rather were located by the CRT in the Total Account Database (TAD), indicated that *Bankgeschäft E.J. Meyer* held a custody account. It was closed on August 2, 1934.

In awarding the account, the CRT observed that the Nazis had begun their campaign of confiscations after coming to power in 1933. The account had been closed thereafter, in 1934. The CRT further noted that one of the bank's owners had remained in Nazi Germany until he fled, and the bank was aryanized. The CRT awarded the account to the claimant at presumptive value. Although the bank (and thus its Swiss account) had been owned by two other individuals in addition to the claimant's father, based on CRT Rule 25(2), the claimant was entitled to the entire proceeds: "in cases where a joint account is claimed by relatives of only one or some of

the joint account owners, it shall be presumed that the account was owned as a whole or in equal shares by the Account Owners whose shares of the account have been claimed."[89]

xiii. In re Accounts of Nachlass C. L. Netter (SF 306,812.50)

Dr. Carl Leopold Netter was born in 1864 in Bühl, Germany. He was a lawyer, and also owned a steel business in Berlin, *Wolf Netter & Jacobi*, in which his son-in-law, Julius Seligsohn-Netter, was a partner. According to the claimant, the great-great-grandson of Dr. Carl Leopold Netter, Dr. Netter was a board member of his synagogue. He was also a *Kommerzienrat* (councilor of commerce) and a *Handelsrichter* (commercial judge). He died in 1922 in Baden-Baden, Germany.

In addition to the data provided by the claimant, the CRT obtained through its independent research information indicating that "Carl Leopold Netter was a prominent industrialist as well as an active leader of the Jewish community in Germany. After taking over the management of his father's firm in Strasbourg, he moved its operations to Berlin and developed it into one of the most important companies in Germany's iron industry. After the Nazis came to power in 1933, the company was seized and turned over to the Mannesmann concern. Netter was also a founder of the metal exchange in Berlin, a member of the chamber of commerce and a trustee of the Commercial Academy of Berlin." In addition, the CRT noted, as reported in the Universal Jewish Encyclopedia, Carl Leopold Netter was a founder of the Jewish Hospital of Berlin, the Academy of Jewish Science, and other Jewish organizations.

[89] The CRT Rules provided that in the event of a valid, later timely-filed claim (or a late claim deemed to have shown an excusable reason for lateness), family members were required to share their awards with relatives of equal entitlement, and to transfer the entire award to relatives better entitled to the account.

Max Liebermann Portrait of Kommerzienrat Dr. Carl Leopold Netter. 1917. https://commons.wikimedia.org/wiki/File:Max_Liebermann_Portrait_Kommerzienrat_Netter_1917.jpg. Photo courtesy of Wikimedia and Kunsthaus Lempertz.

Julius Seligsohn-Netter (the claimant's great-grandfather and the son-in-law of Carl Leopold Netter) served as managing agent of the family steel firm. He died in London in 1964. Another family member, Julius L. Seligsohn, brought his relatives to safety in England in 1938 or 1939. He returned to Germany to help other Jewish families. However, near the end of the War, he was captured and deported to a concentration camp, where he died.

The bank records indicated that the Estate (*Nachlass*) of *Kommerzienrat* Dr. C. L. Netter (whose power of attorney holders included Dr. Julius Seligsohn-Netter and Dr. Julius L. Seligsohn) owned a custody account and a demand deposit account. Two of the three power of attorney holders needed to authorize any transactions involving the accounts. The accounts were opened no later than February 2, 1933, and were closed on January 26, 1934.

The CRT awarded the accounts to Dr. C. L. Netter's great-granddaughter (the claimant's mother, whom the claimant represented). The CRT noted that although Dr. C. L. Netter had died in 1922, and thus was not a Nazi victim, his Estate and its beneficiaries were victims. The CRT pointed out that the accounts were closed in 1934, and at least one power of attorney holder had remained in Germany through 1940, while another died in a concentration camp. The heirs would not have been able to repatriate the account proceeds to Germany without losing ultimate control over the assets. The CRT awarded the presumptive value of the demand deposit account. The custody account held bonds that were in default at the time the account owner lost control

over the account, and thus in accordance with Special Master Junz' Guidelines for the Valuation of Securities, the CRT awarded the prevailing market value as opposed to the nominal value.

xiv. In re Account of Isaac Pardo (SF 28,712.50)

Isaac Pardo was born in 1898 in Plovdiv, Bulgaria. He owned a currency exchange company in Sofia with business connections in Switzerland and France. He had a business associate named Salomon Pappo, who also worked as a currency dealer in Paris. According to the claimant (the son of Isaac Pardo), Salomon Pappo had a daughter named Jacqueline, and a son who was a dentist. The claimant advised the CRT that in 1940, before the family fled from Bulgaria to Greece, Isaac Pardo talked to Salomon Pappo about accounts in Swiss banks. In opening his Swiss account, he may have provided a Paris address, because his acquaintance Pappo lived in Paris. The Pardo family subsequently emigrated to Palestine (now Israel). The claimant studied in Paris between 1957 and 1962, where he met with Salomon Pappo.

The bank records indicated that the account owner was Isaac Pardo, who lived in Paris. He held a demand deposit account which was opened in April 1940 and closed in September 1940.

To assist the claimant, the CRT conducted its own investigation of the possible ties between the Pardo and Pappo families. As described by the CRT, since "the Claimant stated that his father had close connections to Paris, France, but could not provide documents to confirm that his father may have used a French address, the CRT requested that the Claimant attempt to locate one of the children of his father's business associate, Salomon Pappo. The Claimant stated that since he had not had any contact with the Pappo family for the last 40 years it would be impossible for him to locate them. The CRT, therefore, conducted research in electronic databases and French telephone directories."

The CRT "provided the Claimant with contact information for persons named Jacqueline Pappo and male dentists named Pappo in Paris." Shortly thereafter, "the Claimant informed the CRT that he had located Jacqueline Pappo, the daughter of his father's former associate, based

on the information provided to him by the CRT. On the same date, the CRT received a telephone call from Jacqueline Pappo of Paris. In this telephone call, after the caller confirmed her identity, Jacqueline Pappo stated that her father was Salomon Pappo, a stockbroker from Paris. She further stated that her father and the Claimant's father, Isaac Pardo, were business associates." She confirmed that her brother was a dentist and that her father and Isaac Pardo had had business relations during the 1950s. She could not provide information about their relations in the 1940s, as she was a young child at that time. She said that her father had lived in hiding in France during World War II. She confirmed her statements in a follow-up letter to the CRT.

Based on these biographical details, which showed that it was plausible that Isaac Pardo of Bulgaria had had a close associate in Paris, and thus may have given the bank a Paris address, and in light of the fact that he was "expelled from Bulgaria a few months after the account was opened; that the account was closed on 13 September 1940, after France was occupied by the Nazis", and that the account owner and his family had lived in hiding in Greece, "which was invaded by Italy in 1940 and was occupied by the Nazis in 1941," the CRT awarded the claimant the demand deposit account at its presumptive value.

xv. In re Account of Julius Rosenthal (SF 260,375.00)

Julius Rosenthal was born in 1875 in Hainau, Germany. He owned and managed a transportation and communications company, *Rote Radler*, in Königsberg, Germany (now Kaliningrad, Russia). Julius Rosenthal subsequently lived in Berlin, and then fled with his wife in 1939. After being denied entry to Switzerland, the Rosenthals fled to Amsterdam. The *Rote Radler* company was confiscated by the Nazis, and the Rosenthals were arrested in Amsterdam and deported to a concentration camp, where they died on an unknown date between 1943 and 1945.

The bank records indicated that *Direktor* (director or managing director) Julius Rosenthal resided in Amsterdam, and owned a custody account. The ICEP auditors presumed that the account had been closed, as there was no evidence of activity after 1945. The CRT awarded the account to Julius Rosenthal's daughter, the claimant, who had not submitted a claim form but in

1999 had filed two Initial Questionnaires. As Julius Rosenthal had been killed in a concentration camp and there was no evidence that the account had been returned to him or to his heirs, nor was there evidence of the account's value, the CRT awarded the custody account at its presumptive value.

xvi. In re Accounts of Amalie Roth and Leiser Roth (SF 366,750.00)

Amalie Roth was born in 1889 in Rudnick, Poland. She lived with her husband Leiser in Stuttgart, Germany. Leiser Roth was a partner in a feather business in Stuttgart, while Amalie Roth owned a bridal goods store in the same city. The claimant, their niece, informed the CRT that at age seven, she was sent by her parents from her home in Poland to live with her aunt Amalie Roth (her mother's sister) for three years in Stuttgart. She travelled with her aunt during the 1930s, including a visit to Switzerland. She stated that she was her aunt's favorite niece. Her aunt was able to flee to Switzerland in 1939, and she moved to New York in 1948. The claimant was forced to remain behind in Germany, where her parents had moved. Her parents were killed in concentration camps, as was her uncle, Leiser Roth.

The bank records indicated that Amalie Roth and Leiser Roth owned a custody account opened on June 8, 1936 and closed on December 10, 1936. They also owned an account of unknown type, of unknown opening and closing dates. The CRT awarded the custody account based on the presumption that Nazi confiscations of assets owned by Jewish nationals in Germany began in 1933 (*see* CRT Rules, Appendix C), and the Roths could not have repatriated their accounts to Germany without confiscation. The account of unknown type was awarded based upon its likely confiscation, along with the custody account.

After the award was issued, the CRT determined that another claimant also had filed a timely claim to the account, but the claim had been unavailable for matching when the CRT had reviewed the claim filed by the Roths' niece. The second claimant also was a niece of the Roths; Amalie Roth was her paternal aunt. The CRT awarded the second claimant the share to which she would have been entitled had her claim been available for review when the accounts were

awarded originally. The CRT observed that over two years had passed since the award had been issued to the first niece and that there was no indication that that individual was aware that "another equally entitled relative had filed a claim." Thus, the original claimant was not asked to return the overpayment, while the second claimant was paid her share of the award.

xvii. In re Account of Josef Schmidt (SF 37,575.00)

Josef Schmidt was born in 1904 in Romania. As the CRT observed, he "began his career as a cantor and became an internationally known opera star and recording artist." He "died at the age of 38 in Switzerland, where he had fled as a refugee and had been interned in the Gyrenbad refugee camp."

The CRT conducted extensive research to supplement the information provided in claim forms and other documents filed by seven different claimants. The CRT traced Josef Schmidt's career from his '"first vocal training … as a classic Hebrew singer in the local synagogue in Cernowitz,'" through his studies of voice and piano in Berlin and his military service from 1926 to 1929, followed by "international acclaim," including performances in German films in the early 1930s, and at Carnegie Hall in 1937.

Joseph Schmidt. https://en.wikipedia.org/wiki/Joseph_Schmidt#/media/File:JosefSchmidt.jpg.
Photo courtesy of Wikipedia and Roman Vishniac.

However, after touring the United States, Schmidt interrupted his career and returned to Cernowitz in 1939 "'for a final visit with his recently widowed mother. As war erupted he tried to make his way to America, but made it only as far as a Swiss refugee camp in Gyrenbad.'"

The CRT noted that Schmidt's experiences had been discussed in "a seminal work on Swiss refugee policies, 'The Lifeboat is Full' (*Das Boot ist Voll).*"[90] The CRT quoted the book:

> The fate of Joseph Schmidt, the singer, cannot be forgotten. The sudden death of this internationally known and loved artist, who starred in the film *A Song Goes Round the World (Ein Lied Geht um die Welt)*, among many others, was reported at the end of November 1942 by Dr. Fritz Heberlein [in several Swiss newspapers]. Joseph Schmidt was removed on October 27, 1942 from the Gyrenbad camp to the cantonal hospital in Zurich, where his illness was diagnosed as a minor laryngitis and tracheitis. He was then discharged as cured, although he complained of chest pains. He was very fearful at the thought of returning to the camp, because he dreaded — and certainly not without reason — the serious damage to his most precious asset, his voice, that might result from the extremely bad hygienic conditions and the dust of the straw pallets in Gyrenbad. A private physician was prepared to accept him into his own clinic after his

[90] ALFRED A. HÄSLER, THE LIFEBOAT IS FULL: SWITZERLAND AND THE REFUGEES, 1933-1945 268-70 (Charles Lam Markmann trans., Funk & Wagnalls Co. 1969).

> release from the hospital, give him a thorough examination, and treat him. But the camp authorities, without any malevolence, refused permission — in fact, on the ground of democracy — because even refugees of means were supposed to be treated only in cantonal hospitals. So the thirty-eight-year-old singer finally went back, to the camp. As a concession, the camp commander billeted him in the inn that adjoined the camp.
>
> The next morning Schmidt died of a heart attack.
>
> Granted that his death cannot be simply ascribed to the functionaries. But if they had been somewhat less bureaucratic and thus avoided agitating the singer, at least they would not have been vulnerable to the charge of contributing to his death.

The "'story did not end with Schmidt's death.'" Dr. Heberlein, who reported on the death, asked that conditions at the refugee camp be investigated. Instead, Dr. Heberlein was informed that his writings "fell within the definition of possible rumor-mongering and it was possible that his eulogy of Josef Schmidt might be injurious to Switzerland's reputation in the United States!'"

The CRT observed that in the Bergier Final Report, Josef Schmidt's treatment in Switzerland likewise was given special attention. The Bergier Commission pointed out that although Schmidt's death "'shocked the public in 1942,'" the "'protest brought no changes in the mandatory assignment of work'" in Swiss refugee camps.

In addition to having been a refugee, Josef Schmidt also was a depositor in Switzerland. The bank records indicated that Josef Schmidt of Vienna had opened a safe deposit box on September 18, 1933. The closing date of the safe deposit box was illegible in the bank files. The CRT determined that an award for the presumptive value of a safe deposit box (as multiplied by 12.5) was appropriate, "[g]iven that [Josef Schmidt] resided in Nazi-occupied territory during parts of the period from 1938 to 1942, and that in 1942 he fled to Switzerland, where he died in a refugee camp."

The CRT was presented with multiple claims for the account, and considered extensive documentation in determining which, if any, of the seven groups of claimants were entitled to share in the award. The claimants submitted, variously, Initial Questionnaires, ATAG Ernst &

Young claims, and other documents, all indicating that they were related or otherwise connected to the famous opera singer. Among the claimants were:

- Claimant 1, who was born in Romania, who stated that Josef Schmidt was her grandfather's half-brother;
- Claimant 2, who was born in Tirgu-Mures, Romania, who stated that Joseph Schmidt was her grandfather's cousin (*i.e.*, her great-grandfather and Joseph Schmidt's father were brothers);
- Claimant 3, who was born in Romania, who stated that Josef Schmidt was her uncle (her father's older brother);
- Claimant 4, who was born in Antwerp, Belgium, who stated that Josef Schmidt was a friend who had owed her family money for unpaid room and board; the claimant stated that Josef Schmidt had lived with her family rent-free in Antwerp in approximately 1939, and later became a famous opera singer;
- Claimant 5, who was born in 1955, who stated that Joseph Schmidt was his grandfather's cousin;
- Claimant 6, who was born in Frasin (Romania), who stated that Josef Schmidt was her mother's brother. Among the documents the claimant submitted were a photograph of her mother's gravestone, indicating that the mother of Claimant 6 was the sister of chamber singer Joseph Schmidt, as well as a photograph of Josef Schmidt with his niece (the claimant) at a piano; and
- Claimant 7, who was born in Glewitz, Germany, who stated that Joseph Schmidt was his cousin (the son of his father's sister).

The CRT concluded that under Article 23 (1)(d) of the CRT Rules, "if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's *parents* [emphasis added by CRT] who have submitted a claim, in equal shares by representation. In this case, [Claimant 6] and [Claimant 3] are the descendants of two of the Account Owner's siblings. Accordingly, [Claimant 6] and [Claimant 3] are each entitled to one-half of the total award amount…. [N]either [Claimant 2], [Claimant 5], nor [Claimant 7], who are the descendants of the Account Owner's grandparents, nor [Claimant 1], who is the descendant of only one of the Account Owner's parents, are entitled to a portion of the Award. Furthermore, [Claimant 4], who is not a relative of the Account Owner, also has no entitlement to the proceeds of his account."

xviii. In re Accounts of Lilli Schocken and Einkaufszentrale I. Schocken Söhne GmbH (SF 781,125.00)

Lilli Schocken was born in 1889 in Frankfurt. She lived in Zwickau, Germany with her husband Salman, with whom she owned a chain of department stores (*Kaufhaus Schocken*), which in turn was owned by the parent company *Einkaufszentrale I. Schocken Söhne GmbH.*[91]

View of the Schocken department store in Stuttgart, Germany. Oct. 4, 1928. http://collections.ushmm.org/search/catalog/pa1146756. Photo courtesy of the U.S. Holocaust Memorial Museum and Ehud Loeb.

In 1934, Lilli and Salman Schocken fled to Palestine. Their business was confiscated by the Nazis in 1938. In 1940, the Schockens emigrated to Scarsdale, New York, where Lilli Schocken died in 1958, and where Salman Schocken died in 1959. In their wills, they designated their five children as heirs. The wills made reference to restitution of the family's German business prior to January 1, 1954.[92]

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[91] *See also In re Accounts of Hermann Tietz & Co., et al., infra*, awarding the Swiss accounts held by another major German department store, Georg Tietz (KaDeWe). As set forth in the *Tietz* award, department stores owned by Jewish individuals were an early target of Nazi confiscations.

[92] The Schocken family received certain restitution for the seizure of the business, an amount that was increased in 2014 following litigation in Germany. *See* Karin Matussek, *Jewish Family Gets $68 Million for 1938 Nazi Store Seizures*, BLOOMBERG, June 12, 2014, http://www.bloomberg.com/news/articles/2014-06-12/jewish-family-awarded-68-million-for-1938-nazi-store-seizures ("The heirs of a Jewish family that owned Schocken AG, a German department-store chain seized by the Nazis, were awarded an extra 50 million euros ($68 million) in compensation by a Berlin court. The German government, which has already paid about 15 million

The CRT's research indicated that in addition to owning the department store chain with branches throughout Germany, Salman Schocken also was a well-known publisher. In 1915, with Martin Buber,[93] he co-founded the Zionist journal *Der Jude*; in 1929, he established the Schocken Institute for Research on Jewish Poetry; and in 1931, he founded the publishing house Schocken Verlag. After fleeing from Nazi Germany, he built the Schocken Library in Jerusalem and bought the newspaper Haaretz. He founded the Schocken Publishing House Ltd. and later opened a New York branch, Schocken Books, which in 1987 became part of Random House, Inc. The CRT observed that according to the Random House website, Schocken's authors include Sholem Aleichem, Martin Buber, Franz Kafka, Harold S. Kushner, Elie Wiesel and Simon Wiesenthal.

Salman Schocken's collection of Jewish books was smuggled out of Germany. As described by the CRT, the books "have a permanent home at The Schocken Institute" in Jerusalem. The Institute's website explains that the "'Schocken Library is a rare book and research library serving scholars in Israel and throughout the world. The nucleus of the collection contains the private collection of the late Zalman Schocken, whose dedication to public affairs was immeasurable. Unlike other collectors, Zalman Schocken neither collected books for collection's sake alone nor for the sheer purpose of exhibiting them. He was guided by a deep sense of respect and awe towards the books in the 'Wandering Jew's' traveling sack. Those books became the portable homeland of the people in exile - setting it apart, as well as uniting it.'"

The CRT's research also revealed that, as described in a *Publisher's Weekly* review of Anthony David's biography of Salman Schocken: "'Like so many German Jews, his belief in German rectitude and culture blinded him to the seriousness of the Nazi threat, and only very late

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euros to the family for a building in Chemnitz, must put up the additional amount for the assets, the court ruled. The heirs live in Israel and the U.S., court spokesman Stephan Groscurth said in an e-mailed statement today").

93 "The work of the prolific essayist, translator, and editor Martin Buber (1878-1965) is predominantly dedicated to three areas: the philosophical articulation of the dialogic principle (*das dialogische Prinzip*), the revival of religious consciousness among the Jews (by means of the literary retelling of Hasidic tales and an innovative German translation of the Bible), and to the realization of this consciousness through the Zionist movement." Michael Zank, *Martin Buber*, THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (FALL 2008 EDITION), http://plato.stanford.edu/archives/fall2008/entries/buber/.

and with a great deal of good fortune was he able to move his family and some of his wealth to Palestine.'"[94]

Shlomo Zalman Schocken ran the department store chain until forced out by the Nazis. http://www.haaretz.com/jewish-world/jewish-world-news/1.598484. Photo courtesy of Alfred Bernheim.

The bank records showed that Lilli Schocken owned an account over which her husband Salman Schocken and the business *Einkaufszentrale* held power of attorney. Lilli Schocken owned a custody account (No. 36684) which the ICEP auditors presumed had been closed, as there was no evidence of post-1945 account activity.

The bank records also contained documents relating to the 1993 reconstitution of *Einkaufszentrale* for the purpose of restitution. The company was represented at that time by two individuals living in Israel, both of whom subsequently were represented as claimants in the CRT proceeding.

Following the CRT's request to the bank for "voluntary assistance," the bank provided additional documents showing that Lilli Schocken held a custody account (No. 19899) which was opened on November 17, 1936 and closed on January 26, 1940. The records further showed that *Einkaufszentrale* owned a custody account (No. 10228), which was opened on October 21, 1930 and closed on December 8, 1936.

[94] https://www.publishersweekly.com/978-0-8050-6630-2.

The CRT determined that the claimants were entitled to all three custody accounts. As to Account No. 36684, the CRT noted that there was neither a record of a closing date nor of payment to the account owner, and thus the account was presumed not to have been paid to its owner.

As to Account No. 10228 (owned by *Einkaufszentrale*), the CRT observed that "even though records regarding the restitution of assets belonging to *Einkaufszentrale* appear in the Bank's records, it is not clear whether the Claimant and/or her other family members … received the proceeds of the account." Although the records included a restitution decision by a German court, "there is no evidence that the Bank provided information about this account, its contents, or the circumstances of its closure to the restitution court in Germany." The account thus was presumed not to have been returned to its owner.

Finally, as to Account No. 19899, although the account was closed in January 1940, "at which time … Account Owner Schocken was outside Nazi-dominated territory," the bank records "do not indicate to whom the account was closed." Since Lilli Schocken had fled due to Nazi persecution, she "may have had relatives remaining in their country of origin." She "may therefore have yielded to Nazi pressure to turn over their accounts to ensure their safety."

The CRT awarded the accounts to the Schockens' 18 heirs, their children and grandchildren. The CRT determined that two heirs each were entitled to 1/10th of the award; seven heirs each were entitled to 1/15th of the award; four heirs each were entitled to 1/20th of the award; two heirs each were entitled to 1/30th of the award; and three heirs each were entitled to 1/45th of the award.

xix. In re Account of Emil Seidler (SF 28,712.50)

Emil Seidler was born in 1891 in Olomouc, Moravia, Czechoslovakia, where he lived with his wife. He was a coal distributor there until 1939. He fled to Nice in 1939, and then to Lisbon. He emigrated to the U.S. in 1942. He died in New York in 1981, and his wife died there in 1983.

The bank records showed that Emil Seidler owned a safe deposit box closed on August 11, 1934; a demand deposit account closed on July 31, 1939; a custody account closed on August 9, 1939; and a demand deposit account closed on November 18, 1974.

The CRT observed that the safe deposit box had been closed in 1934, prior to the Nazi occupation of Czechoslovakia, and when Emil Seidler still was living in that country. As to the accounts closed in 1939, while Emil Seidler was living in Nice, the CRT observed that those accounts similarly had been closed prior to the Nazi invasion of France. Thus, the CRT determined that Emil Seidler had closed all three of these accounts himself and that he had received their proceeds.[95]

However, as to the demand deposit account closed in 1974, the CRT awarded the account at presumptive value to the claimant, Emil Seidler's grand-nephew. The CRT observed that there was no record that the account had been paid to the owner or his heirs, and the auditors had found no evidence of post-1945 activity on the account.

xx. In re Accounts of Henry Seligmann (SF 289,087.50); In re Account of Milton Seligman (SF 260,375.00)

Henry Seligmann: Henry Seligmann was born in 1909 in Frankfurt, Germany, where he lived until 1928. He left Germany to study physics in Lausanne, Switzerland. After obtaining his doctorate in physics, he returned in 1937 to Frankfurt, and later that year fled with his parents to the United States. After the War, Henry Seligmann moved to the United Kingdom, where he headed the Isotopes section of the Atomic Energy Research Establishment near Harwell, Oxfordshire, "the main centre for atomic energy research and development in the United Kingdom from the 1940s to the 1990s."[96]

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[95] *See also* Order of November 29, 2006, confirming that accounts closed prior to the date that the account owner's country of residence had been occupied by or allied with Nazi Germany were presumed to have been closed properly by the account owner, absent evidence to the contrary.

[96] *See* Wikipedia, *Atomic Energy Research Establishment*, https://en.wikipedia.org/wiki/Atomic_Energy_Research_Establishment (last visited Aug. 26, 2008); *see also* Canadian Nuclear Society home page [https://www.cns-snc.ca] (describing the "long list of … chemistry

The bank records indicate that Henry Seligmann held a custody account closed on September 7, 1933, and a demand deposit account closed on October 31, 1933.

The CRT awarded the accounts to the claimants, Henry Seligmann's children, at presumptive value. The CRT observed that although the accounts were closed at a time when Henry Seligmann was living outside Nazi territory, he may have "yielded to Nazi pressure to turn over his accounts" to ensure the safety of relatives still living in Germany, and "it is plausible that the account proceeds were not paid to the Account Owner or his heirs."

Milton Seligman: In a different decision, the CRT awarded the accounts of Henry Seligmann's father, Milton Seligman, to his daughter and grandson, the son of Henry Seligmann. Milton Seligman was born in 1866 in Frankfurt and was married to Marie Bernhardine Seligman (Seligmann), with whom he had five children. According to the claimant, Milton Seligman was a district court judge in Frankfurt, and fled Germany after the Nazis' rise to power. He died in Villars sur Ollon, Switzerland in 1948.

The bank records indicated that Dr. Milton Seligman owned a custody account that was closed on April 20, 1934. The CRT awarded the account at its presumptive value, observing that "the Account Owner remained in Nazi Germany until 1937, and would not have been able to repatriate his account to Germany without its confiscation."

xxi. In re Account of S. Steinlauf (SF 28,712.50)

Siegfried (Zobel) Steinlauf was born in 1902 in Frankfurt, and in the 1930s moved with his wife to Belgium to flee Nazi persecution. However, the Steinlaufs eventually were deported to concentration camps, where they both died; Siegfried on September 8, 1942 and his wife on October 24, 1942. The claimant, Siegfried Steinlauf's nephew, advised the CRT that just prior to

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alumni from Chalk River [Laboratories, a nuclear research facility in Ottawa] who have made their mark in the U.K. …. [including] Henry Seligmann [who] of course became director of isotope manufacture and distribution at Wantage.").

his deportation, Siegfried had attempted to obtain the release of his brother (the claimant's father) from Nazi imprisonment, using money held in Switzerland.

The bank records showed that S. Steinlauf of Frankfurt and Basel held a demand deposit account that was opened on November 10, 1931 and closed on July 10, 1934. The CRT awarded the account at presumptive value to Siegfried Steinlauf's nephew. The account owner had been killed in a concentration camp, and "in 1933 the Nazis embarked on a campaign to seize the domestic and foreign assets of Jewish nationals in Germany through the enforcement of flight taxes and other confiscatory measures including confiscation of assets held in Swiss banks [*see* Appendix C]; … [and] the Account Owner, shortly before his own deportation, attempted to use what he believed to be his Swiss funds in 1942 to obtain the release of his brother, eight years after the closing of the account, plausibly indicating that the Account Owner was unaware of the 1934 account closure."

xxii. In re Account of Jenny Sterner-Masius (SF 285,137.50)

Jenny Sterner-Masius was born in 1878 in Mannheim, Germany. She was arrested in Mannheim in October 1940, and deported to the concentration camp in Gurs, France. She perished there two months later.[97]

The bank records indicated that Jenny Sterner-Masius owned an account of unknown type. Since there was no evidence of post-1945 activity on the account, the ICEP auditors presumed that the account was closed. The CRT awarded the account to the granddaughter of Jenny Sterner-Masius. The award was based on the presumptive value of an unknown account at the multiplier then in effect (11.5).

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[97] "Jenny Sterner was born in Mannheim, Germany in 1878. During the war she was in France. Jenny was murdered in the Shoah. This information is based on a List of deportation from France found in Le Memorial de la deportation des juifs de france, Beate et Serge Klarsfeld, Paris 1978." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=3221903&language=en (last visited Aug. 4, 2015).

Several years after issuing the first award, as a result of documents received from the bank in response to the CRT's ongoing requests to the banks for "voluntary assistance," the CRT was able to determine that the "unknown type" of account held by Jenny Sterner-Masius actually was a custody account. The CRT subsequently amended its earlier decision to award the owner's granddaughter an additional SF 113,125, the difference between the amount originally awarded and the presumptive value of a custody account (multiplied by the 12.5 multiplier in effect at the time of the amendment).

The bank records provided to the CRT through the "voluntary assistance" process also showed that Jenny Sterner-Masius had held a demand deposit account in addition to the custody account. The demand deposit account was awarded at its presumptive value as multiplied by 12.5 (*i.e.* SF 26,750). The CRT observed that Jenny Sterner-Masius had "perished in 1940 in France" and that there was "no record of the payment of the … account to her or to the Power of Attorney holders, nor any record of a date of closure of that account."

xxiii. In re Accounts of Aleksandar Weiss and Emanuel Weiss (SF 75,150.00)

Emanuel (Emil) Weiss was born in 1885 in Hungary and lived with his wife, Erna Weiss, in Kamienica (near Bielsko), Poland. They later lived in Bielsko. Emanuel Weiss owned a wood export business, which was confiscated along with other assets after the Nazis invaded Bielsko. Emanuel Weiss fled to eastern Poland and later was deported to the USSR. He returned to Bielsko after the War. His application to emigrate to Israel with his wife was rejected by the Polish government, and he died in Bielsko in 1951.

His son, Aleksandar Weiss, the claimant and joint account owner (who had submitted an Initial Questionnaire but not a claim form) was born in 1927 in Cieszyn, Poland. Aleksandar Weiss lived with his parents in Bielsko. He moved to his aunt's house in Krakow in 1939. He was interned in the Krakow ghetto and was a slave laborer, including at Plaszow. Aleksander Weiss escaped from Plaszow in January 1945. He emigrated to Israel in 1950.

The bank records showed that Emanuel Weiss and Aleksandar Weiss owned two safe deposit boxes, held under the numbered relationship "14047." The accounts, of unknown amounts, were closed on June 15, 1954. The accounts were not included in the AHD but rather were located in the TAD ("Total Accounts Database").

In awarding the accounts, the CRT noted that the Weisses had resided in Nazi-occupied Poland; they had respectively fled to the USSR (Emanuel) and had been imprisoned in slave labor camps (Aleksandar); and they had resided in a Communist country after the War. The CRT further pointed out that Emanuel Weiss had died in 1951, prior to the accounts' closure. Based on these facts, the CRT awarded the joint account owner and claimant, Aleksandar Weiss, the presumptive value of two safe deposit boxes.

xxiv. In re Account of Dr. Leonhard Winkler (SF 37,575.00)

Dr. Leonhard Anton Winkler was born in 1888 in Alzenau, Germany. He lived with his wife and five children in Speyer, Germany, where he was a doctor in the public medical service. He was dismissed from his post in 1933 because of his political opposition to the Nazis. In 1935, the Nazi regime impounded Dr. Winkler's passport. In 1938, the Gestapo declared Dr. Winkler to be mentally handicapped. He was confined to a psychiatric institution and then the nursing home *Heil-Pflegeanstalt* in Lohr am Main, Germany. He remained there after the fall of the Nazi Regime, and died in 1959 in Neustift/Stubaital, Austria.

The bank records indicated that Dr. Leonhard Winkler, a doctor in the public medical services residing in Speyer am Rhein, Germany, owned a safe deposit box that was closed on December 14, 1933.

The CRT awarded the presumptive value of the account to Dr. Winkler's son. The CRT observed that the Nazis had targeted Dr. Winkler in 1933 as a political opponent and had persecuted him thereafter, ultimately declaring him to be mentally incompetent and confining him to a psychiatric institution.

xxv. In re Account of Ida Wolf (SF 28,712.50)

Ida Wolf was born in 1905 in Grumbach, Germany and lived in Partenheim bei Mainz, Germany, where her husband Charles was a cattle dealer. The family intended to flee Germany in 1937, but had to "abandon these plans at the last minute." However, in 1938 they were able to secure the safety of their then 18-month-old daughter, the claimant. On a bridge connecting Kleinbliederstroff, Germany to Grosbliederstroff, France, the Wolfs handed their baby over to her aunt and uncle, who lived in France. Charles Wolf was arrested and deported in early 1938, and Ida Wolf was deported in early 1940. Both were killed in a concentration camp in 1944 or 1945. Their daughter survived in hiding. From 1941 to 1945, she lived in the convent of St. Juste at St. Etienne sur Loire. Her aunt and uncle were deported to Drancy, but survived the Holocaust, and later adopted her.

The bank records showed that Ida Wolf of Mainz, Germany owned a demand deposit account that was opened on January 10, 1940, and closed to an unknown party a few months later, on April 30, 1940. While the bank records do not show why an account was opened by Mrs. Wolf and then closed by an unknown party within a period of under four months, based on other CRT cases, it was plausible that by April, the bank itself was managing the account.

The CRT awarded the account to the claimant (who had submitted an Ernst & Young claim and an Initial Questionnaire, but had not filed a CRT claim), observing that Ida Wolf had lived in Germany until she was deported in 1940; had later died in a concentration camp; and that there was no evidence that she or her heirs closed the account.

xxvi. In re Accounts of Lucie Wolff (SF 289,087.50)

Lucie Wolff was born in 1868 in Germany. She lived in Berlin with her husband and two sons. Her husband died in Berlin in 1928, and she herself died there in February 1932. One of their sons fled from Germany to Palestine in 1933, where he died in 1974, and the other son was killed in Auschwitz in 1943. The claimants, the grandchildren of Lucie Wolff, advised the CRT

that the Wolffs were wealthy. For tax purposes, they spent three or four months a year outside Germany, often in France and Switzerland.

The bank records, some of which were prepared as part of the 1962 Survey, indicated that Lucie Wolff of Villars s/Ollon, Switzerland owned a demand deposit account and a custody account. As described by the CRT, the "notation *Erben* (heirs) was later added to the customer card," and as of 1933, all correspondence was to be directed to Lucie Wolff's son in Tel Aviv. The bank records indicated that Lucie Wolff corresponded with the bank from Geneva at least once. Lucie Wolff's last known contact with the bank was in 1933. Her custody account, of unknown value, was closed on September 6, 1933. Her demand deposit account, which had a reported value of SF 109.50 when it was reviewed in connection with the 1962 Survey (but ultimately not registered in the Survey), was closed on January 28, 1975.

The CRT awarded the accounts to Lucie Wolff's grandchildren in accordance with the terms of a joint inheritance certificate for Lucie Wolff's estate that had been issued in 1994 by the Civil Court of Charlottenburg, Berlin. The CRT observed that although Lucie Wolff herself had died before Hitler's accession to power, her sons — her immediate heirs — both were Nazi victims. The CRT noted that although the custody account was closed when one of Lucie Wolff's heirs (her son) was outside Nazi-dominated territory, the bank records did not show to whom the account was closed. In addition, one son had fled "due to Nazi persecution" while the other had remained in Germany and was killed in Auschwitz, and "either heir may therefore have yielded to Nazi pressure to turn over the accounts in an attempt to ensure their safety." The CRT also awarded the demand deposit account, given that it was closed in 1975 unknown to whom, one year after Lucie Wolff's surviving son and heir had died in Israel, and had been considered for inclusion in (but omitted from) the 1962 Survey.

3. Account Frozen in 1945[98]

i. In re Account of Käthi Labermeier (SF 10,750.00)

Käthi Labermeier was born in Munich in approximately 1890. She was physically handicapped, with a leg impairment. She traveled to Switzerland for health reasons. She died in Munich in 1979.

The bank records showed that Käthi Labermeier held a savings/passbook account, which was blocked in the 1945 Freeze. The account was released from the Freeze in May 1953, at which time it held a balance of SF 127.90. The bank wrote to Käthi Labermeier on February 7, 1957 to advise her that the account had been released from the 1945 Freeze and that it remained at the bank at the account owner's free disposal. The letter was returned to the bank on February 19, 1957. The balance was transferred to a suspense account for dormant assets on July 15, 1997, and the account remained suspended.

Based on the fact that the account remained suspended and that its owner was disabled, and thus a Victim or Target of Nazi Persecution under the Settlement Agreement, the CRT awarded the claimant, the nephew of Käthi Labermeier, the presumptive value of a savings account.

ii. In re Accounts of Robert Stern (SF 228,865.00)

Robert Stern was born in 1891 in Brno, Czechoslovakia, where he was a dentist. He never married. He was deported to Izbica, Poland and died there on March 11, 1942.[99]

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[98] *See Glossary: In re Holocaust Victim Assets Litigation*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 1, http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("1945 Freeze"): "In accordance with a "decree of the Swiss Federal Council, all assets in Switzerland belonging to citizens of Germany and the territories incorporated into the Third Reich were frozen on February 16, 1945. A Swiss government ruling of May 29, 1945 required that all German assets in Switzerland had to be reported to the Swiss Compensation Office. The freeze was lifted pursuant to the agreements concluded between Switzerland and Western Germany and between Switzerland, USA, France and the United Kingdom in August 1952. These agreements entered into forced on 19 March 1953."

[99] "Robert Stern was born in 1891. He was a physician. Prior to WWII he lived in Brno, Czechoslovakia. Robert was murdered in the Shoah. This information is based on a List of persecuted persons *The Central Database of*

The claimant, Robert Stern's nephew, filed a claim with the HCPO in 1999, stating that he had seen his uncle's name on a list of accounts published in connection with the 1962 Survey. In response to an inquiry by the HCPO, as described in the CRT decision, the bank's "Legal & Compliance Department" advised that "'to date, our searches have not yielded any information on a customer relationship …. with Mr. Stern's uncle, Mr. Robert Stern,' despite the fact that Robert Stern from Brno was included in the above mentioned list."

The bank records showed that Mr. Robert Stern of Brno held two accounts of unknown type, one of which held SF 2,292 as of February 17, 1945 and the other which held SF 5,407 as of the same date. The accounts were not part of the AHD but rather were located in the TAD at the bank. The account records were contained in a database listing accounts frozen in the 1945 Freeze.

The CRT awarded Robert Stern's nephew the value of the accounts recorded in the bank records (adjusting for fees taken by the bank and applying the multiplier of 12.5), observing that Robert Stern "perished in 1942 and the account continued to exist in 1945 [and his assets] were reported in the 1962 Survey."

Subsequently, the CRT amended the award, authorizing an additional payment of SF 20,537.50 to increase the payment to presumptive value, reflecting that fees and other charges often were imposed by Swiss banks upon Holocaust-era accounts.[100]

In a later award, the CRT determined that the accounts awarded in the original decision, which appeared to have been reported both in the 1945 Freeze and then in the 1962 Survey, actually were different accounts. Following continuing litigation with the defendant banks concerning access to Holocaust-era Swiss account records, the CRT was provided access to additional documents several years after the claims process had commenced. The CRT observed that in this case, after the original award had been issued, "the full records relating to the accounts reported in the 1962 Survey were made available to the CRT by the Swiss Federal

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Shoah Victims' Names, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=7716923&language=en (last visited Aug. 4, 2015).

[100] *See* Order of May 31, 2002.

Archive. Upon close examination of these documents and the documents relating to the accounts previously awarded, the CRT determines that the documents refer to separate accounts. In particular, the CRT notes that the accounts awarded [in the first decision] were held at a different bank than the account dealt with in the present award." Thus, more accounts were due to the claimant.

The records from the Swiss Federal Archive showed that Robert Stern of Krapfengasse 31, in Brünn (Brno) Czechoslovakia, held an account with a balance of SF 8,652.20 as of September 1, 1963. The records indicated that the owner's last known contact with the bank was October 30, 1937, and that the account had been dormant since Hitler's annexation of Czechoslovakia.

The claimant (Robert Stern's nephew) had provided the CRT with a seemingly conflicting address, stating that his uncle had worked in an office located on Koblizna ulice in Brno. However, the CRT determined that there was no conflict after all: "between 1918 and 1939, Krapfengasse was used as the German language version of the original Czech name, ulice Koblizna." Accordingly, the CRT awarded an additional SF 111,715, reflecting the value recorded in the account as of 1963, adjusted for fees and increased to present-day values.

4. Bank Management of Account After Account Owner's Death

1. Account activity by bank after the Holocaust era: accounts closed by banks; transferred to Swiss Custodian; transferred to suspense account; transferred to collective account; trading of assets.

i. <u>In re Account of Rudolf Aronson (SF 274,491.88)</u>

Rudolf Aronson was born in 1884 in Brasov, Romania, and resided in Bucharest, where he owned an international travel company. Rudolf Aronson, who was the second husband of the claimant's grandmother, died in April 1940. Rudolf Aronson's relatives' assets were confiscated

by Nazi-allied authorities in Romania after 1940, and at least two of his relatives were killed in Auschwitz.

The bank records (including some produced through the "voluntary assistance" process) indicated that the bank actively managed Rudolf Aronson's account long after his death. The bank was advised that Mr. Aronson had died in approximately 1942. The account later was reported in the 1962 Survey. The records indicated that Mr. Aronson's demand deposit account had a balance of SF 21,674.35 as of September 1, 1963, and SF 21,570 on December 31, 1964. A savings account was opened on November 15, 1968; the demand deposit account was closed on November 21, 1968; and a custody account was opened on December 10, 1968.

The two accounts opened in 1968 continued to be held by the bank in Mr. Aronson's name, although he had died over two decades earlier. On June 30, 1969, the bank purchased bonds in the name of Mr. Aronson, deposited the bonds in the newly opened custody account, and arranged for income from the bonds to be transferred to the newly opened savings account. An internal bank memorandum indicated that accounts such as these were to be liquidated and transferred to a collective account for heirless assets held by the Swiss government. In July 1973, the savings account was closed and transferred to the Swiss Federal Accounting Office in Bern. The custody account similarly was closed in 1973 and the securities it held were transferred to the same office.

As the CRT observed, "[b]ased upon these records, it is clear that the Bank continued to manage the account after becoming aware of the Account Owner's death in 1942 and even after it was reported in the 1962 Survey so that the account would generate additional income, and that this additional income, together with the amount originally in the account, was transferred into the Swiss Heirless Assets Fund."

Mr. Aronson's heirs were awarded the actual value of the demand deposit account as recorded in 1963, increased by the 12.5 multiplier, and also increased by SF 250 in fees that the bank had taken against the account.

ii. In re Account of Anna Barth (SF 47,400.00)

Anna Barth was born in approximately 1895. She lived in Vienna and was widowed in 1928. In January 1939, she sent her son, the claimant, to England, intending to follow. Instead, she was deported to a concentration camp, where she was killed.

The bank records demonstrated that the assets in Anna Barth's account (which was of unknown type) were transferred in December 1957 to a suspense account, which remained open and dormant. At the time of the transfer, the value of the assets was SF 12.60, an amount lower than presumptive value. Accordingly, the claimant was awarded the higher presumptive value.

iii. In re Account of Günther Brann (SF 28,712.50)

Dr. Günther Brann was born in 1892 in Berlin, and practiced dermatology at the University of Rostock in Germany. His medical practice was suspended in 1933, and the family fled to Rome and then to Amsterdam, where they awaited passage to the United States. In 1939, the Branns were able to send their son (the claimant) to England, but the Branns stayed in Amsterdam and went into hiding. They were imprisoned in Westerbork until 1943 and then deported to Auschwitz, where Dr. Brann was killed in October 1944.[101] According to a book provided to the CRT by the Branns' son, *"Between life and death in Auschwitz,"* Dr. Brann was beaten and then shot after he refused to give up a golden glass to a Nazi guard. Dr. Brann's wife Lili also perished in Auschwitz.

[101] "Dr. Guenther Braun was born in 1892. During the war he was deported with Transport XXIV/7 from Westerbork, Camp, The Netherlands to Theresienstadt, Ghetto, Czechoslovakia on 04/09/1944. Deported with transport Er from Theresienstadt, Ghetto, Czechoslovakia to Auschwitz Birkenau, Extermination Camp, Poland on 16/10/1944. Dr. Braun was murdered in the Shoah. This information is based on a List of Theresienstadt camp inmates found in Terezinska Pametni Kniha/Theresienstaedter Gedenkbuch, Terezinska Iniciativa, vol. I-II Melantrich, Praha 1995, vol. III Academia Verlag, Prag 2000." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4840629&language=en (last visited Aug. 4, 2015).

Dr. Günther Brann. http://stolpersteine-hamburg.de/index.php?MAIN_ID=7&BIO_ID=3027. Photo courtesy of Yad Vashem.

The account records were not obtained from the bank files, but rather from the 1962 Survey records maintained by the Swiss Federal Archive. The account was published in 2005 in connection with the post-settlement litigation in which access was sought to additional accounts for publication and for use in the CRT process. The archival files showed that Dr. Gunther Brann was living "care of" another individual in Amsterdam as of 1940. He held one demand deposit account at the bank, with a balance of SF 588 as of September 1963. Dr. Brann's assets were reported to the Registration Office for Assets of Missing Foreigners in February 1964, and in 1966, the Guardianship Authority of the City of Zurich appointed Dr. H. Haberlin as custodian (guardian) of the account.

The account was awarded at presumptive value (given that the recorded amount was lower than presumptive value), based upon the fact that it remained open as of 1966, although the account owner had been killed in Auschwitz over two decades earlier, in 1944.

iv. In re Accounts of Dr. Rafael Dallet (SF 289,087.50)

Dr. Rafael Dallet was born in approximately 1896 in Poland. He was Jewish and homosexual. He lived with his life partner (the claimant's great-uncle) in Bielsko, Poland, where both were attorneys. Dr. Dallet and his partner were deported to the Lwow Ghetto, where both perished in 1942.

In 1998, following the appearance of Dr. Dallet's name on the July 1997 list of dormant accounts published by the Swiss Bankers Association, the claimant filed a claim with CRT-I seeking return of the assets of Dr. Dallet, who was her godfather as well as her great-uncle's life partner. CRT-I concluded both in its initial determination and on appeal that there was no evidence that the assets in Dr. Dallet's account belonged to the claimant's great-uncle. CRT-I also determined that the claimant herself was not Dr. Dallet's heir. Thus, the claim was rejected.

However, "CRT-II" (*i.e.* the process operated under the Court's authority) reached a different conclusion. CRT-II reviewed bank records, including documents relating to the 1962 survey, which demonstrated that Dr. Dallet had owned a custody account and a demand deposit account. The bank's last contact with Dr. Dallet was in 1938. In 1942, the bank sold 30 of 175 bonds held in the custody account to cover a negative balance in the demand deposit account. Between 1964 and 1965, the bonds were recalled, and in 1966 the bank transferred SF 5,746 (the value of the bonds at that time) to Dr. Dallet's demand deposit account, which remained open and dormant. The bank then closed the custody account.

The CRT, in awarding the account, observed that CRT-I was obligated to apply the laws of Poland, which had prohibited same-sex marriages, and so the claimant thereby was not an heir under that nation's laws. By contrast, "the Settlement Agreement specifically provides for the inclusion of homosexuals as class members…. [T]he CRT has to assume that the parties to the Agreement recognized, especially because of the widespread death of whole families in the Holocaust, that considerable plausibility would be necessary in recognizing eligible claimants to the accounts of such class members. It is entirely consistent with this necessary grant of flexibility for the CRT to recognize in this case the close relationship of the Account Owner with the Claimant's great-uncle and her close relationship with both men…. The CRT notes that the

Claimant has plausibly established that her great-uncle and the Account Owner were life partners."[102]

v. In re Account of Adolf Denes and Elisabeth Denes-Deutsch (SF 27,642.50)

Elisabeth (Erszebet) Denes-Deutsch and Adolf Denes, born respectively in 1896 and 1893, were married. They lived with their daughter Eva (born in 1926) in Oradea, Romania. Adolf Denes was a banker and manager of the English-Hungarian Bank in Oradea. The entire family was killed in Auschwitz.

Adolf Denes. http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=1082948&ind=0. Photo courtesy of Yad Vashem and Edith Deutsch.

[102] *See also In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407, 417 (E.D.N.Y 2004), *aff'd*, 424 F.3d 168 (2d Circ. 2005), in which the Court observed in connection with a challenge to the Looted Assets Class distribution mechanism by an organization representing homosexual and lesbian Holocaust survivors that "there is a clear record of awards being made based on accounts once held by homosexual victims of Nazi persecution" and that "I have taken the step of recognizing homosexual partners as heirs to insure that they would be fairly represented" even where CRT-I had rejected the same claim (*citing In re Accounts of Dr. Rafael Dallet*).

Erszebet Denes (and possibly Eva Denes). http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=1084270&ind=0. Photo courtesy of Yad Vashem and Edith Edit Deutsch Doich.

The bank records demonstrated that Adolf and Elisabeth Denes held a demand deposit account, and that they had used the fictive name "W. Aden" and the password "Silos." The account was transferred to a suspense account in September 1965 and closed to fees in 1966. The bank records also showed that the last contact with the account owners was before the end of World War II. The account was reported in the 1962 Survey and subsequently was reported in November 1965 to the Cantonal Guardianship Authority of Zurich.

The bank records further showed that two claims to the account had been submitted to the Swiss Justice Department, including one in August 1965 by a relative who lived in Tel Aviv, Josef Deutsch, who was the claimant's husband, and the brother of Elisabeth Denes-Deutsch. The Swiss Justice Department instructed Josef Deutsch to withhold any evidence and documentation relating to his claim until he was expressly requested to hand it in. However, correspondence from 1968 indicates that Mr. Deutsch never was told to present this evidence.

In 1966, the bank closed the account to fees, notwithstanding Mr. Deutsch's earlier attempt to claim his sister's account. Mr. Deutsch was advised of this closure in 1968. Over

three decades later, the CRT awarded the account to Mr. Deutsch's widow, at the presumptive value for a demand deposit account.

vi. In re Accounts of Ernst Eisner (SF 289,087.50)

Ernst Eisner was born in Germany in the late 1800s and, with his wife Luise, had two sons, born respectively in 1909 and 1920. Mr. Eisner owned three cinemas, a film import/export and distribution business, and real estate in several German cities. He was killed by the Nazis shortly after the regime came to power in 1933.

The bank records showed that Ernst Eisner owned a demand deposit account and a custody account, one closed on March 20, 1935 and the other a few days later on March 25, 1935. The CRT awarded the accounts, in light of the fact that they were closed more than a year after the account owner had been killed, relying upon the adverse inference presumption as well as the presumption that confiscations in Germany began in 1933, after the Nazis came to power.

Subsequently, following the CRT's ongoing requests to the banks for "voluntary assistance," in 2008 the bank located additional information about the Eisner accounts, including records relating to Mr. Eisner's custody account. Based on this information, the CRT determined that the account had held five different securities, some of which had been transferred to another account at the bank, numbered 15200.[103] The CRT amended the earlier award to reflect the actual account value as revealed by documents that were not available in the original account records or ICEP files but, rather, were provided by the bank after the account had been awarded. Thus, the actual amount in the account was approximately one-third higher than the presumptive value that originally had been awarded.

[103] The CRT noted that Account No. 15200 "appears as the transfer destination for other, unrelated accounts, suggesting that it was not owned by the Account Owner." Other cases involving the transfer of Holocaust victim assets to Account No. 15200 include *In re Account of Artur Zadek; In re Accounts of Elisabeth Magnus (Certified Award Amendment);* and *In re Accounts of Heinrich Strauss (Certified Award Amendment).*

vii. In re Account of S.L. Epstein (SF 47,400.00); In re Account of S.L. Epstein (SF 28,712.50)

Simon Levi Chmaja Epstein was born in 1879 in Eichstetten, Germany, and after the death of his first wife, was married to Ester Epstein. Simon Epstein owned a metal products business in Freiburg, *S.L. Epstein - Epstein Metall*, with branches in Karlsruhe, Germany; Basel, Switzerland; and Strasbourg, France. As described by the claimant (Simon Epstein's grandson), despite entreaties, Simon Epstein refused to leave Germany for Israel after the Nazis' rise to power because "he was a proud German." Simon Epstein's business was destroyed after *Kristallnacht*, and his house was set on fire. He and his wife tried to escape to Switzerland, but were denied entry, despite having a business in Basel. They were able to flee to Milan but, according to their grandson, were shot in the street after escaping from a train on its way to Auschwitz.

The bank records for the unpublished account located by the CRT indicated that S.L. Epstein, who lived in Milan, held an account of unknown type closed in 1942. Simon Epstein's grandson, the claimant, was awarded the presumptive value for an account of unknown type (SF 47,400 at the time of the award).

Subsequently, in a separate decision, the CRT located an additional published account owned by S.L. Epstein that was held by the Swiss Custodian. The CRT observed that "the Custodian is not a bank and was not included" in the ICEP investigation but that under the Settlement Agreement, assets held at the Custodian constituted "Deposited Assets," and the Custodian was included among the Releasees under the Settlement Agreement.[104]

Moreover, the account was included in the 1962 Survey, and as described by the CRT, records obtained by the CRT from the Swiss Federal Archive showed that S.L. Epstein of Milan

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[104] *See also, e.g., In re Account of Martin and Paula Wolff (SF 105,337.50)* (awarding accounts deposited at the Swiss Custodian on the basis of documents provided by claimant, including a January 3, 1942 letter from a notary in Bern to Hans George Wolf in New York, explaining that his parents [Martin and Paula Wolff] were likely to be deported to Poland and that a shipment of the Wolffs' possessions had arrived at the Custodian in Basel on December 23, 1941. The notary stated that he had delivered the key to the Custodian. Independent research by the CRT revealed that an office building continued to exist at the location specified in the letter as the site of the Custodian, and also revealed that the individual named in the letter as a notary indeed was so registered as a Swiss notary between 1936 and 1978).

"held a post check account … with a value of 49.09 Swiss Francs … as of 27 November 1947. In addition, these documents indicate that an envelope containing an account statement, issued on 27 November 1947, was sent to the Account Owner; however, this envelope was returned to the Custodian with the notation of 'missing' ('*Verschollen'*). The records indicate that after the statement was returned, the Custodian held the funds in the account for five years for the benefit of the Account Owner, after which the amount in the account was incorporated by the Custodian for its own disposal, per the Swiss postal traffic law."

Since this account had not been returned to the account owner or his heirs, but rather had been taken by the Swiss Custodian, the CRT awarded this account (at the presumptive value for a demand deposit account, then SF 26,750) to Simon Epstein's grandson.

viii. In re Account of Fritz von Fischer-Ankern (SF 10,750.00)

Fritz von Fischer-Ankern was born in 1883 in Austria. He worked as a consul for the Austrian government in St. Gall, Switzerland, where he resided until 1926. He also owned and managed agricultural property in Eggendorf, Austria, where he lived after 1926, and in Kirchberg, Austria after 1929. Fritz von Fischer-Ankern was homosexual and unmarried. In 1941, Fritz von Fischer-Ankern adopted a child. The claimant was the son of that child, and the grandson of account owner Fritz von Fischer-Ankern.

In 1943, Fritz von Fischer-Ankern was imprisoned by the Nazis for alleged crimes against morality, and his agricultural property was placed under public administration. In 1944, his remaining assets were seized. He died on January 5, 1951 in Kirchberg. Fritz von Fischer-Ankern's grandson submitted, among other evidence, "a 1942 decision for the custodial seizure of his grandfather's property by the Nazi authorities in Austria due to incarceration for 'crimes against morality,'" as well as a 1944 legal notice announcing that the Nazis had seized Mr. Fischer-Ankern's property.

The bank records showed that Fritz von Fischer-Ankern owned a savings account, which was transferred to a suspense account on or before October 22, 1951, at which time the account held a balance of SF 250.90. The ICEP auditors presumed that the account subsequently was closed.

The CRT awarded the account to Mr. Fischer-Ankern's grandson, observing that Fritz von Fischer-Ankern had been persecuted by the Nazis as a homosexual; his account was transferred by the bank to a suspense account after the owner's death; and later it was closed. Because the reported value of the account was lower than the presumptive value of a savings account, the claimant was awarded the higher sum; *i.e.*, the presumptive value.

ix. In re Accounts of Alexander Freud and Harry Freud (SF 28,712.50)

Alexander Freud was born in Vienna in 1866. He was the brother of the eminent psychoanalyst Sigmund Freud, the claimant's grandfather.[105] Alexander Freud's son, Dr. Harry Freud, was born in Vienna in 1909. Alexander and Harry Freud (the claimant's great-uncle and cousin, respectively) owned the publishing company *Verlag Allgemeiner Tarif-Anzeiger A. Freud Zentralverkaufsstelle für Tarife* in Vienna. As did Sigmund Freud, Alexander and Harry Freud fled Vienna in 1938 for London. Alexander Freud passed away in Toronto in 1943, and Harry Freud passed away in New York in 1968.

The CRT observed that "the life of Sigmund Freud, the brother of Alexander Freud, has been the subject of numerous volumes of scholarly and historical works. In considering the Claimant's claim, the CRT has reviewed materials available in the Freud Museum in London …, in contemporaneous newspaper articles written about Sigmund Freud's flight from Austria; as well as in books and articles cited in various reference guides, including numerous sites on the world-wide web."

[105] The accounts owned by Sigmund Freud himself were awarded in a separate decision discussed herein.

As described by the CRT, after "extensive interventions on his behalf, and after having most of his assets confiscated and paying flight tax (*Reichsfluchtsteuer)*, … Sigmund Freud was able to escape Austria on 4 June 1938, eventually emigrating to England, but his four sisters who remained in Vienna were less fortunate." In a November 12, 1938 letter (two days after *Kristallnacht*), Freud wrote of his concerns to his patron Marie Bonaparte, Princess of Greece: "'The latest horrifying events in Germany aggravate the problem of what to do about the four old women between seventy-five and eighty. To maintain them in England is beyond our powers. The assets we left behind for them on our departure, some 160,000 Austrian schillings, may have been confiscated already, and are certain to be lost if they leave.'" However, Freud's sisters could not be saved: two were killed in Treblinka, one in Auschwitz, and one in Theresienstadt.[106]

The bank records, including records from the 1945 Freeze, indicated that Alexander Freud and Dr. Harry Freud held a joint demand deposit account, and that Harry Freud also held an account of unknown type. The demand deposit account was frozen in 1945 and its balance decreased successively to SF 115 as of January 1951, and to SF 95 as of June 1955, when it was unfrozen. In 1963, the account was transferred to a suspense account, where it remained. The account of unknown type was listed on a closing register for numbered accounts and was transferred to London on September 10, 1938. The CRT concluded that the latter account was retrieved by the account owners, who had fled to London by the time of the transfer. The demand deposit account, which remained suspended and thus had not been returned to the account owners, was awarded at presumptive value.

[106] The CRT, quoting the scholar Martin Gilbert, observed that an "'eye-witness has recorded how, at Treblinka, after the arrival of a train from Vienna, Sigmund Freud's sister approached [the SS Second Lieutenant Kurt Hubert Franz] …and 'asked to be given lighter work on account of her poor health.' Franz 'assured her that her arrival in Treblinka was a mistake, in view of her poor health, and that as soon as she had had her bath, she would be put on the first available train back to Vienna.'" MARTIN GILBERT, THE HOLOCAUST: A HISTORY OF THE JEWS OF EUROPE DURING THE SECOND WORLD WAR 475-476 (Holt, Rinehart & Winston 1985).

x. In re Account of Auguste Hirsch (SF 10,750.00); In re Account of August Hirch (SF 49,375.00)

Auguste Hirsch was born in 1897 in Frankfurt, and lived in Paris with his wife Hélène. He worked in the toy business in France and Switzerland. After Hélène Hirsch's death in 1941, Auguste Hirsch attempted to flee to Switzerland, but was denied entry. The claimant, the Hirschs' niece, advised the CRT that Auguste Hirsch was deported either to Majdanek or to Auschwitz, where he perished.[107]

The bank records originally made available to the CRT in connection with the ICEP audit indicated that Auguste Hirsch owned a savings account numbered 8769. That account was transferred on April 26, 1954 to a suspense account for dormant assets. At the time of the transfer, the balance of the account was SF 22.95. The account, which remained open and dormant, was awarded at the presumptive value then in effect for savings accounts.

Subsequently, following ongoing litigation with the banks stemming from the CRT's effort to obtain access to additional Holocaust-era documents and accounts, the CRT determined from files in the Swiss Federal Archive that Auguste Hirsch owned at least one additional account. In connection with the 1962 Survey, the bank reported that it had not had contact with the account owner since before 1945. On January 21, 1946, the bank had sent a letter to August Hirsch's last known address, which, as described by the CRT, "was returned to the bank with a note marked 'deported and missing' (*deportiert & verschollen*). The records indicate that Auguste Hirsch held an account numbered V 13080, which had a balance of SF 52 as of September 1, 1963."

The CRT awarded the account to the niece of Auguste Hirsch, at the presumptive value for an account of unknown type. Auguste Hirsch had died in a concentration camp, and the account subsequently had been registered in the 1962 Survey. In addition, the bank evidently

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[107] "August Hirsch was born in Frankfurt, Germany in 1897. During the war was in France. Deported with Transport 51 from Drancy, Camp, France to Majdanek, Camp, Poland on 06/03/1943. August was murdered in the Shoah. This information is based on a List of deportation from France found in Le Memorial de la deportation des juifs de france, Beate et Serge Klarsfeld, Paris 1978." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=3185221&language=en (last visited Aug. 4, 2015).

was aware as of 1946 that its customer had been deported and was missing, but there was no indication that the bank took any steps to locate its customer's heirs. After the account was reported in the 1962 Survey, it was reported in 1966 to the Municipal Guardianship Authority. In 1969, the Guardianship Authority of the City of Bern contacted the Justice Department about the custodianship (guardianship) of the account. The Swiss Federal Archive records do not indicate the ultimate disposition of the account but, as the CRT observed, there is "no evidence in these records that the Account Owner or his heirs closed the account and received the proceeds themselves."

xi. In re Account of Monika Hofmann (SF 49,375.00)

Monika Hofmann, the claimant and account owner, was born in 1933 in Swinemünde, Germany. The claimant, who filed an Initial Questionnaire (but not a claim form), stated that her father was Romani. He owned a five-stage puppet theater until 1934, when Nazis looted the theater. Monika Hofmann's father was a forced laborer for the German military between 1944 and 1945.

The bank records showed that Monika Hofmann owned an account of unknown type, which on November 10, 1976 held SF 65.05 and was transferred to a suspense account. The account remained in the bank's suspense account. The CRT awarded the account to the claimant, the account owner, at its presumptive value.

xii. In re Account of Erika Kickton (SF 10,750.00)

Dr. Erna Erika Christine Marie Kickton was born in 1896 in Berlin. She was a writer and university lecturer who lived in Switzerland during the 1920s and 1930s. She was a lesbian, and lived with her partner at Villa Paradisa in Locarno-Monti, Switzerland beginning in 1929. Erika Kickton returned to Germany, and in 1942 resided in Potsdam. She was detained by the Nazis for fourteen days for refusing the Hitler salute. She died in 1967 in Wiesbaden. Her sole heir,

according to inheritance documents, was a cousin, the claimant's husband. The claimant, in turn, was her husband's sole heir.

The bank records showed that Erika Kickton had held a passbook-savings account. The bank had no contact with the account owner after 1941, and the account was transferred to a collective account for dormant assets. The last known date of the accounts was July 24, 1951, at which time the account held SF 53.65. Among the records evidencing this account was an "undated list of accounts that were transferred to a collective account for dormant assets because there had been no movement on these accounts from 9 May 1945 and the nationality of the owners of the accounts could not be established," and "a list, dated 24 July 1951, of savings accounts with low balances in which there had been no movement for the previous ten years and for which the Bank could not get any information about their owners."

Given that the account had been transferred to a collective account, and therefore had not been returned to its account owner, the savings account was awarded to Erika Kickton's heir at its presumptive value.

xiii. In re Accounts of Erwin and Babette Koblitz (SF 216,993.75)

Erwin Koblitz was born in 1892 in Vienna. His wife, Babette Koblitz (née Wulkan) was born in 1897 in Bielsko, Poland, where they resided with their daughter, the claimant. Erwin Koblitz was the *Prokurist* (authorized representative) of a company and Babette Koblitz was a housewife. They both perished in 1942.[108]

[108] According to Pages of Testimony submitted to Yad Vashem by their daughter: "Babette Koblitz nee Vulkan was born in Ostrava, Czechoslovakia in 1897 to Herman and Emilia. She was a housewife and married Ervin. Prior to WWII she lived in Bielsko, Poland. During the war she was in Uzbekistan (USSR). Babette was murdered in the Shoah." In addition, "Erwin Koblitz was born in Wien, Austria in 1892 to Zigmunt and Karolina. He was a jurist and married Babette. Prior to WWII he lived in Bielsko, Poland. During the war he was in Uzbekistan (USSR). Erwin was murdered in the Shoah." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=1783944&language=en, http://yvng.yadvashem.org/nameDetails.html?itemId=1248670&language=en (last visited Aug. 4, 2015).

The Koblitz' daughter advised the CRT that she had made a claim to her parents' accounts after World War II and had received a quantity of British gold coins during the late 1990s.

The bank records showed that Erwin and Babette Koblitz held at least one account, opened in May 1934. Documents received following the CRT's request to the bank for "voluntary assistance" demonstrated that the Koblitzes owned more than one account at the bank. These were registered in May 1940, under the British Trading with the Enemy Act of 1939. Specifically, the Koblitzes owned a custody account containing 150 British gold sovereigns, and one demand deposit account. The latter account held a negative balance of 8.15.5 Pound Sterling as of May 1942. Over the decades, the demand deposit account was reduced by fees and charges, including maintenance fees for the custody account. As of April 1977, the account had reached a negative balance of 230.40 Pound Sterling. Both accounts (the demand deposit and custody accounts) were closed in March 1980, and transferred to a suspense account for dormant assets.

In determining that the account owners' daughter was entitled to an award, the CRT observed that although she had received from the bank British gold sovereigns during the 1990s, there were no records indicating whether the account had held any other assets, and thus it was "plausible that the full proceeds of the custody account were not paid to the Account Owner or their heirs."

The claimant was awarded the presumptive value of the custody account, minus the value of the gold coins previously returned (*i.e.* SF 5,767.50), resulting in an award of SF 7,232.50 (thereafter multiplied by 12.5). As to the demand deposit account, it had been suspended, at which time it had held a negative balance, due partly to the fact that the bank continued to charge fees against the account, including fees for the separate custody account.[109] The account was awarded at its presumptive value.

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[109] *See In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d at 315-16 (describing one bank's decision to charge fees against an account, leading to a negative balance, which was "seemingly inexplicable" but actually "easily understood once one recognizes that the client also had a safe at the bank." The safe contained gold which was used to offset the fees on the other account).

xiv. In re Account of S. Lichtig (SF 28,712.50)

Simon Juan Lichtig was born in 1922 in Tarnow, Poland. He was interned in the Tarnow Ghetto, from which he escaped in July 1942 by using false documents. In December, 1942, he was forced into the *Organisation Todt* labor battalions. He performed slave labor in Schmerinka, in occupied Russia, and later Saarbruecken and Saargemuend, Germany, until his liberation in December 1944.

Simon Lichtig filed an Initial Questionnaire (although not a claim form), stating that he himself owned a Swiss account. The CRT located an unpublished account owned by S. Lichtig, and determined that the account in fact belonged to the claimant.

The bank records indicated that there had been extensive internal bank communication about the Lichtig account specifically, and also about overall bank policy as to dormant accounts in general, of a nature such that the Bergier Commission had referenced the Lichtig account in its study of Holocaust-era Swiss bank accounts.[110]

The CRT noted that the bank records showed that S. Lichtig owned a demand deposit account. The account was considered dormant by "Bank 1," and it was transferred to a suspense account on June 30, 1938, at which time it held SF 13.00. The account was closed to fees on July 12, 1946. As described by the CRT, "[i]nternal correspondence concerning the takeover of Bank 1, dated 26 June 1946 and addressed to the Basel directorate-general of Bank 2, explains that the Basel and Geneva branches of Bank 2 had followed a directive from Bank 1's headquarters, supported by an opinion of the Bank's legal department, that dealt with 'uncashed check withdrawals' … and 'creditors with unknown whereabouts' … whose accounts had been inactive for several years. Accordingly, these two branches had deleted such assets from the liability side of their balance sheets and had booked them to a suspense account … in their internal reserves."

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[110] *See* 15 BARBARA BONHAGE, HANSPETER LUSSY, & MARC PERRENOUD, NACHRICHTENLOSE VERMÖGEN BEI SCHWIEZER BANKEN 404-405 (Unabhängige Expertenkommission Schweitz-Zweiter Weltkrieg, Chronos Verlag 2001) (cited by the CRT in the decision).

However, the "Zurich branch of Bank 1 did not follow the directive, taking the position that, as a matter of principle, 'a bank could not act in this way with impunity, because creditors, even after lengthy periods of non-communication, still had to be considered creditors, and their claims be considered genuine liabilities, though they could perhaps legally be written off pursuant to OR 127 [the statute of limitations]; morally, however, a bank seeking to maintain its impeccable standing was required to consider itself liable and to pay these liabilities on demand. It was therefore not proper to transfer these creditors' assets to internal reserves.'"

The CRT observed that after balancing credit and debit entries, the funds totaled SF 59,553.75 "and consisted of items that could be closed to expenses, items that according to [the statute of limitations] could be considered to have passed [the statute] and items that could still be claimed, with the latter accounting for SF 51,054.45 of the total. The letter continues that the entire entry should have been categorized as a potential liability, rather than as a reserve asset, since it represented actual accounts held by Bank 1 customers, and that this 'unfortunate error' was due to questionable accounting practices and an inability to differentiate between 'real' and 'unreal' liabilities on the part of Bank 1's accountant."

The CRT noted that the writer had "corrected this lapse by ordering that the amount in the suspense account be shown as a liability on Bank 1's balance sheet at the end of 1945, and it would be available to the account owners if they were to resurface, until their accounts lapsed under the applicable statute of limitations, after which Bank 1 could refuse to pay the accounts. The letter then posits that it appeared likely that repayment of these funds would never be demanded and that all of them would become subject to the statute of limitations, or could be prematurely canceled based on the imposition of expenses. However, the letter also notes that closing accounts based on these grounds 'conflicts with [Bank 2's] opinion, which I share, and practice, according to which banks seeking to maintain their good reputation cannot turn to the statute of limitations when dealing with their creditors.'"

The CRT awarded the account owner, Simon Lichtig, the presumptive value of a demand deposit account, observing that the account had been held at "Bank 1's" Geneva branch (which, with the Basel branch, had taken a position different from that recommended for the Zurich branch as described in the June 26, 1946 memorandum). The account was closed to fees shortly

afterward, on July 12, 1946. "These records thus provide an example of certain banks' attempts to minimize the volume of assets in dormant accounts by both booking them to internal reserves and burdening them with a maximum of expenses."

xv. In re Account of Ursula Meyer (SF 49,375.00)

The account of Ursula Meyer was awarded as a "Multiple Plausible Match" ("MPM") to three different claimants.[111]

The first claimant was Roma. She identified herself as the account owner. She was born in February 1933 and lived in Germany. Her husband was killed in Auschwitz, and she herself was persecuted as well. She submitted documents demonstrating that she received compensation from Cologne, Germany.

The second claimant also identified herself as the account owner. She was Jewish, and was born in 1925 in Münster, Germany, where her father was a lawyer. She was sent to England in May 1939 on a *Kindertransport*. Her father was deported to Theresienstadt in July 1942 and died there in January 1944, while her mother was killed in Auschwitz in 1945. Her brother died in 1944 while serving in the British army.

The third claimant identified the account owner as his sister, born in 1922 in Hanover, Germany. The family was Jewish. Their father worked as a velvet and silk wholesaler and traveled throughout Europe. He was arrested by the Nazis and accused of selling his products in Switzerland. In 1938, he and his daughter (the account owner) were detained at a border crossing into Holland. The family fled Germany for the U.S. in October 1938.

The bank records showed that Ursula Meyer held account number 8830, which was considered dormant by the bank and transferred to a suspense account in May 1980. At the time

[111] A "Multiple Plausible Match" refers to the CRT's determination that the relatives of two or more unrelated claimants plausibly matched the account owner. In such instances, if it was determined that an award of the account(s) was appropriate, the payment was divided *pro rata* among the claimants.

of the transfer, it held SF 6.85. No other information about the account or the owner was available in the bank records or from any other sources.

Based on the equally plausible claims submitted by all three claimants, the account (of unknown type and value) was awarded at presumptive value and was divided *pro rata*. Each claimant thus received one-third of the award.

xvi. In re Account of Edith Moser (SF 10,375.00); In re Accounts of Ernst Moser (SF 126,481.24); In re Accounts of Ernst Moser (amended by SF 62,750.00)

(a) Account of Edith Moser: The account of Edith Moser was claimed by the account owner herself, and her brother. Prior to her marriage, the claimant's name was Edith Moser, and she was born in 1921 in Vienna. Her father was a lawyer (Dr. Ernst Moser) and the family lived in Mödling, Austria. At age 17, she fled Austria to the United Kingdom after the *Anschluss*, and became a domestic servant. Within two years, she became a laboratory assistant, and then a researcher in chemical pathology and a scientific translator until her retirement in 1981.

The bank records showed that Edith Moser owned a savings/passbook account numbered 4424, which was transferred in November 1981 to a suspense account for dormant assets, where it remained open. At the time of the transfer, the account held SF 13.05. The account was awarded at presumptive value to Edith Moser, who, as the account owner herself, was better entitled than the co-claimant, her brother.

(b) Accounts of Ernst Moser: The brother and sister who claimed the account of Edith Moser also claimed the account of their father, attorney Dr. Ernst Moser.

Bank records showed that Ernst Moser held a demand deposit account, which in May 1965 held SF 24.50 and was transferred to a suspense account for dormant assets. The account remained open.

The records also showed that in a second Swiss bank, Ernst Moser held two additional accounts, both of unknown type. As to the first account, in June 1937, the account held SF 30.80

and was transferred to a suspense account for dormant assets. The bank transferred the account to its profit and loss account in 1942. As to the second account, which was held at the Biel branch, the bank records showed that the bank last had contact with Ernst Moser on January 18, 1936. The account was transferred in February 1977 to a suspense account for dormant assets, at which time it held SF 1.05.

All three accounts were awarded to the claimants (as noted, the children of Ernst Moser) at their respective presumptive values.

(c) Accounts of Ernst Moser (Certified Amendment): As a result of the CRT's transition to an updated database and claims processing system, Initial Questionnaires (IQs) that met certain criteria and contained information sufficient to be treated as CRT claim forms were incorporated into the CRT matching program. The updated system also enabled the CRT to adopt broader matching criteria to account for variations in spellings of names and geographic locations. Accordingly, when entered into the new database, Initial Questionnaires (as well as claim forms) that had not been previously available sometimes matched to accounts that already had been awarded. In most instances, the Court authorized the CRT to award the newly-matched claimant the amount to which he or she was entitled even where the account had been paid to one or more different claimants, to ensure that all timely claimants were treated equitably.

In the case of the Ernst Moser account, the updated database enabled the CRT to locate another potentially matching claim (which had not been submitted as an actual claim form but as an Initial Questionnaire, and thus was not able to be "matched" until the CRT undertook its review process for Initial Questionnaires). The "new" claimant was not related to the brother and sister who had received the previously described Moser awards, but this new claimant had provided information demonstrating that he, too, had a plausible claim to the account.

The "new" claimant stated that his father, Dr. *med.* (medical doctor) Ernst Moser, a dentist in Berlin, was born in 1889. He lived in hiding in Germany from 1943 to 1945, and was repeatedly refused permission to enter Switzerland, unsuccessfully requesting admission at the Swiss Consulate in Berlin. He later attempted to cross the border via Kostanz and then via Bregenz. The claimant eventually was able to review his father's files maintained by the Reich's

Main Security Office (files which had been confiscated by American authorities in 1945), which documented Dr. Moser's escape attempts.

The "new" claimant, whose claim was timely but had not been "matched" at the start of the claims process, plausibly identified an individual named Dr. Ernst Moser as his father, as had the other claimants. As noted, the bank records demonstrated that the accounts had been transferred to suspense accounts, or closed to the bank's profit and loss account, and so the "new" claimant received an award. The original claimants were not asked to return the portion of the original award that otherwise would have been distributed to the "new" claimant had the Initial Questionnaire been available for matching: "over two years [had] passed since [the original award] and that there is no indication that [the original recipients] were aware that another equally entitled person had filed a claim." The new claimant was awarded what would have been his share of the original award (*i.e.* one-half of SF 125,500, or SF 62,750).

xvii. In re Accounts of David Noskes, Charla Noskes and Louis Noskes (SF 410,349.38)

David Noskes, who was married to Charla Noskes, lived in Zagreb, Croatia, where he owned a shipping company called *Schenker & Company*. David and Charla Noskes (the claimant's great-uncle and great-aunt) had a son, Louis Noskes, who held the title of doctor of law. All three died in a concentration camp in Croatia.[112]

The bank records showed that *Generaldirektor* David Noskes, *Frau* Charla Noskes, and Dr. Louis Noskes lived in Croatia and owned a joint savings account, as well as a joint custody account. In May 1940, they ordered the bank to withhold correspondence. The bank records showed that the last contact with the owners was on May 6, 1941, when the bank received a transfer order via Manufacturers Trust Bank in New York.

[112] "David Noskes was born in Zagreb, Yugoslavia in 1872 to Simon. He was an employee. Prior to WWII he lived in Poland. During the war he was in Zagreb, Yugoslavia. David was murdered in the Shoah. This information is based on a List of murdered Jews from Yugoslavia found in Zrtve Rata 1941-1945: Jevreji, Savezni zavod za statistiku, Beograd 1992 (courtesy of the Museum of Genocide Victims in Belgrad)." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4383841&language=en (last visited Aug. 4, 2015).

In 1963, the savings account held SF 6,327.95. According to handwritten notations on an account statement dated September 6, 1963, the custody account held securities of SF 24,600, including Yugoslav bonds. A second account statement dated March 23, 1969 showed additional securities, including other Yugoslav bonds. The CRT observed that the "Bank's records indicate that although the accounts were considered for inclusion in the 1962 Survey, they ultimately were not reported. The reasons the Bank gave for not reporting the accounts were 'no indication of persecutions' [sic] and '[t]he name is certainly not Jewish.'" The savings account was closed on January 6, 1978; there was no information about the closing of the custody account.

The CRT awarded the accounts based upon their actual values (as multiplied by 12.5). The CRT observed that the bank records showed that the bank sought to profit from the account many years after the last contact with the account owners. "[T]he Bank's records indicate that between 1963 and 1969 the Bank exchanged the Yugoslav bonds that were in the custody account for a new series of Yugoslav bonds and also that by 1963 the Bank had acquired bonds issued by the International Bank for Reconstruction and Development, showing that, at least in the 1960s the Bank, in this case, was managing the account actively."

xviii. In re Accounts of Alexandre Rado, Helene Rado and *Geopress S.A.* (SF 536,602.13)

Alexandre (Sandor) Rado was born in 1899 in Ujpest, Hungary. His first wife, Helene, was born in approximately 1906 in Germany. They had two children who died in France in 1965 and 1980, respectively. As described by the CRT, the claimant, their nephew, stated that Alexandre Rado conducted a clandestine intelligence operation on behalf of the Russians during World War II, while living in Geneva, Switzerland. His company, *Geopress S.A.*, which he established in France before 1934, produced maps.[113]

[113] *See also* Louis Thomas, *Alexander Rado: the head of a famous Soviet wartime spy net now collects geographic intelligence in Budapest*, CIA.GOV, https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol12i3/html/v12i3a05p_0001.htm (last visited June 22, 2011). Thomas described how Rado was a "brilliant" student in Budapest who "became one of the first members of the Hungarian Communist Party when

The claimant stated that "Alexandre Rado's intelligence operation was exposed in 1943 and all the property in his apartment in Geneva was seized by the Swiss military police," by which time Alexandre Rado had fled to France. He was "tried by a Swiss court in 1947 in absentia, sentenced to three years in prison and banned from entering Switzerland for fifteen years, and was therefore unable to return to retrieve his assets in Switzerland." He was "handed over to the Soviet authorities in 1945 by the British authorities in Egypt," where he had sought asylum, "and was imprisoned by the Russian authorities until 1955 in [the] Gulag for

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it was formed in November 1918." He was forced to leave Hungary "when the short-lived Communist government was ousted in 1919," and went to Austria and then to Germany. He married Helene Rado (nèe Jansen), "an avid German Communist then working as [a] secretary to Lenin," who "participated extensively in his intelligence activities." The Rados moved to Paris in 1933, "where he founded, with Soviet financial backing, a press agency known as Inpress, specializing in maps and geographic data related to current events." In 1936, "German officials of Nazi persuasion …. sought out Rado for [an] Italian assignment [relating to mapping]" — the results of which Rado transmitted to Germany, Italy, and secretly "to the Russians" — an assignment which "remains a mystery."

In 1936 or 1937, again with Soviet funding and with a Swiss citizen as a silent partner, "Rado organized Geopress," which like Inpress specialized in maps and geography. "As cover for an intelligence operation it proved ideal." In secret, while in Switzerland, Rado held the Red Army rank of "Major General" and was awarded the Order of Lenin in 1943. With his network, he "accomplished much with the knowledge and tacit approval of officially neutral Switzerland. German pressure on the Swiss rather than independent Swiss initiative brought about the breakup of the net." After their discovery, the Rados sought refuge in Paris, and in 1944 "contacted friends in the French Resistance and spent five or six months working with the Maquis in southern France, for which they were later awarded the Legion of Honor by the French Government. They did not attempt to report to the Soviets until Paris was liberated in 1944," after which Alexander Rado was "ordered to report to Moscow for consultation."

With doubts about the fate that awaited him in the U.S.S.R., Rado attempted to leave when his plane landed in Cairo, but was "picked up by the British-directed Egyptian police, who were puzzled and uncertain as to how he should be handled." He attempted to present himself "as a victim of persecution and devoted to the Allied cause while holding on to a minimum of revelations that might increase the ire of Moscow." He sought to defect to the British but was turned down. He was handed over to Soviet authorities and flown to Moscow, where he was confined for more than a year to the Lubyanka prison, and may have performed forced labor in the Siberian coal mines. He was released in 1945 and returned to Budapest, where his family joined him and where his first wife died in 1958. He married a university librarian in 1959.

As author Louis Thomas concluded, "there seem to have been few times from the early 1920's through World War II when Alexander Rado was not engaged in some phase of intelligence collection. Whether his work upon returning to Hungary in 1955 was intended from the beginning to include such collection is moot. The fact remains that an emphasis on procurement became noticeable in the Hungarian mapping milieu shortly after he appeared on the scene and has increased steadily to the present. At some stage Moscow seems to have given him a green light to make Hungary a special instrument for the collection of geographic intelligence on the West." *See also Alexander Rado (KV 2/1647-1649)*, THE NATIONAL ARCHIVES UK, *available at* http://webarchive.nationalarchives.gov.uk/+/https://nationalarchives.gov.uk/releases/2004/may21/rado.htm (visited on June 22, 2011) ("Rado was [an] intelligence officer living under cover in Switzerland who from 1936-1943 controlled the Rote Drei spy ring, with the aid of his wife Helene");

collaborating with the United States and Great Britain." According to the claimant, Helene Rado died in Budapest in 1959, and Alexandre Rado died there in approximately 1980.

Alexander Rado at age 60. https://www.cia.gov/library/center- for-the-study-of-intelligence/kent csi/vol12i3/html/v12i3a05p_0001.htm.

The claimant submitted a copy of his uncle's will, dated April 23, 1945, signed while Alexandre was in Egypt. This will listed among his assets an account held "at the Cornavin branch of the Bank in Geneva, an account at the Bank at Nassau Street in New York, New York, and an account at the Geneva Post Office Bank."

The bank records indicated that Alexandre and Helene Rado of Vienna owned a numbered custody account, and with the company *Geopress S.A.* also owned an account of unknown type, which was frozen at the Basel branch of the Swiss bank on January 3, 1944. The freeze evidently was in response to a letter of that same date from the state prosecutor in Bern to the bank, requesting that the bank block all accounts belonging to Alexander Rado, Helene Rado, and *Geopress S.A.* The bank records also contained a memorandum to the file prepared by the ICEP auditors, identifying Alexandre Rado "as a Jewish Russian spy in Switzerland during the Second World War who was expelled from Switzerland around the time that his accounts were frozen and stating that he resurfaced behind the Iron Curtain in Hungary in 1955." The

memorandum also indicated that he owned an account of unknown type at the bank's New York branch, which was frozen in 1941.

The CRT awarded the Rados' nephew their custody account as well as their two accounts of unknown type (all at presumptive value), observing that "[t]he CRT is unaware of any legal process in Switzerland that deprived the Account Owner of his accounts," and relying upon the presumptions of the CRT Rules. As for Alexandre Rado's unique activities, the CRT observed: "Alexandre Rado was Jewish and … he was a Russian spy operating in Europe during the Second World War. As a Jewish person who was actively involved working for the defeat of the Nazis during World War II, the Account Owner clearly qualifies as a Victim or Target of Nazi persecution."

Subsequently, as a result of improvements in the CRT database and "matching" program, the CRT was able to locate the Initial Questionnaire that had been filed by Alexandre Rado's stepson, the son of Alexandre Rado's second wife. The CRT determined that the stepson was entitled to an award. The stepson expanded upon some of the information that had been provided by the original claimant. The newly-added claimant explained that the Rado family had lived in Paris from 1934 to 1936, where Alexandre Rado was "the head of the anti-Nazi press office," and that he was a "renowned geographer" who also led "an undercover anti-fascist organization that worked for the Red Army," and who went into hiding and later escaped to Paris when the organization was discovered. One of the Rados' sons was "beaten and interrogated by the Nazis; the family lost their wartime food rations, and the family's property and accounts were left behind in their haste to flee." According to the stepson, Alexandre Rado died on August 20, 1981; his mother (Rado's second wife) died in November 1974.

The claimant submitted a copy of Alexandre Rado's will, dated October 12, 1973, bequeathing his estate to his second wife, and if she predeceased him, then to his stepson (*i.e.* the claimant). The will specified that Alexandre Rado's sons with his first wife "were not to receive any portion of the estate." Based upon the will, the CRT determined that this claimant had a better entitlement to the shares owned by Alexandre Rado than did the account owner's nephew (the recipient of the original award), as well as a better entitlement to the share of the accounts held by Alexandre Rado's company, *Geopress S.A.* After determining the stepson's appropriate

share of the three accounts awarded in the prior decision, the CRT recommended and the Court approved an amendment of SF 212,295.88. The CRT observed that "almost three years have passed" since the original award and "there is no indication that the [Rados' nephew] was aware that another equally entitled relative had filed a claim," and thus did not seek return of the original award.

xix. In re Account of Bertha Siegal (SF 47,400.00)

Bertha Siegal was born in 1906 in Volochisk, Ukraine. She lived in Ukraine, where she was a school professor until 1941. She briefly lived in Switzerland in the 1920s. When the Nazis invaded Ukraine in the summer of 1941, Bertha Siegal and her two children (one of whom was the claimant) tried to escape, but were seized and detained in the Stanislavchik Ghetto. Bertha Siegal died in Vinitsa, Ukraine in 1957.

The bank records showed that Bertha Siegal, who resided in Acquarossa Terme, Switzerland, held an account of unknown type, which had been transferred to a suspense account on or before December 20, 1948. The bank records included a February 19, 1964 memorandum addressed to the bank's Legal Department, referring to the 1962 Survey. As described by the CRT, the memorandum "references a telephone conversation held that day" and "encloses a list of accounts held at the Bank which had balances under 100.00 Swiss Francs. The memorandum 'requests [the Legal Department] to inform them which of the persons listed could be considered to be a Jew, so that we, in such cases, can close those accounts off the books.'" The account was closed by fees and charges on that same day, February 19, 1964.

Because the account had not been returned to its owner, the CRT awarded Bertha Siegal's son the presumptive value of an account of unknown type (as increased by the multiplier of 12 then in effect).

xx. In re Account of Hermine Szabo, Eugen Szabo, Gabriella Kasztner, Ernest Kasztner, Ana Feder Glanz, and Richard Feder (SF 49,375.00)

Eugen Szabo was born in 1879 in Czegled, Hungary, and his wife Hermine was born in 1876 in Romania. They had three daughters, including Gabriella (born in Cluj in 1910), who married Ernest Kasztner in 1933, and Ana (born in Cluj in 1911), who married Richard Feder in 1934. The family owned a department store in Cluj, *S.A. Eugen Szabo Jeno R.T. Casa De Moda Si Textile*, and according to the claimants had business relationships with textile companies elsewhere in Europe, including Switzerland.

Eugen Szabo, the claimants' grandfather, died in Cluj in 1940. Hermine Szabo, her daughters and their husbands were expelled from their homes in Cluj in 1944, and forced into the Jewish ghetto there. They were imprisoned for six months in Bergen-Belsen, and in December 1944 were taken to Switzerland as part of the "Kasztner" transport.[114] Three of the account owners are included in a database of 1,350 names of individuals who were in Bergen-Belsen from July 1944 until December 1944. Hermine Szabo died in a Swiss hospital in 1945; Richard Feder died in Cluj in 1956; and the other family members reached Israel in June 1949.

The bank records showed that six account owners together held a numbered account, and correspondence on the account was directed to an individual in Budapest. The bank was contacted in 1945 by an unidentified person who advised that account owner Richard Feder had divorced his wife, Ana Feder, and Richard Feder's name was crossed out from the bank record. The account was "controlled" (reviewed) in November 1949, and was indicated to be closed. The account was reviewed again in 1956 during Switzerland's internal survey to identify dormant accounts, and again on July 9, 1986. There is no indication to whom the account was paid, or its value.

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[114] The "Kazstner" transport refers to a trainload of approximately 1,684 Jews who fled in 1944 from Nazi-allied Hungary. The train was named after Rudolf Kazstner, a Hungarian Jewish leader who was a principal player in the negotiations that led to the rescue of these Jews for a ransom of cash, jewels, gold and shares of stock. Despite the agreement that the train would go directly to a neutral country, it went instead to the concentration camp at Bergen-Belsen. Several hundred of the prisoners in that train later were sent on to Switzerland. *See In re Account of Max Grünfeld*, citing https://www.scrapbookpages.com/BergenBelsen/BergenBelsen06.html.

The CRT awarded the account on the basis that it still existed in November 1949. "The CRT notes that the Bank's records show a closing in November 1949, after some of the Account Owners had left Switzerland and arrived in Israel in June 1949; but this apparent closing does not appear to be a final closing …. because of the further reviews of the account in 1956 and 1986." The account was awarded at the presumptive value for an account of unknown type.

xxi. In re Account of Karl Weinberg (SF 37,665.75)

Karl Weinberg was born in 1897 in Herne, Germany. He lived in Dusseldorf, where he was a manufacturer. He fled with his family to Amsterdam. He was deported to Auschwitz, where he perished.[115] His sister (the grandmother of some of the claimants) and other relatives likewise were killed during the Holocaust.

Although the ICEP auditors did not report an account belonging to Karl Weinberg, the Swiss Federal Archive contained records relating to Karl Weinberg's account. The records indicated that Karl Weinberg was the Director of the *N.V. Dassenfabriek "Derby"* in Amsterdam. Karl Weinberg's assets were registered in the 1962 Survey, and the registration form indicated that he held a 25-year term life insurance policy at the Winterthur branch of the Custodian with a face value of SF 25,000, which matured on March 1, 1954. Karl Weinberg was both the policy holder and the insured. In the event of his death, his beneficiary was his wife. The records showed that the premium was last paid on March 1, 1935. As of September 1, 1963, the policy had a value of SF 4,055.

In January 1966, the Registration Office for Assets of Missing Foreigners asked the Guardianship Office of the city of Winterthur to appoint a guardian as authorized under the Federal Decree, and a guardian was in fact appointed. In 1970, the Guardian informed the

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[115] "Carl Weinberg was born in Herne, Germany in 1897. During the war he was in The Netherlands. Carl was murdered in the Shoah. This information is based on a List of murdered Jews from the Netherlands found in In Memoriam - Nederlandse oorlogsslachtoffers, Nederlandse Oorlogsgravenstichting (Dutch War Victims Authority), `s-Gravenhage (courtesy of the Association of Yad Vashem Friends in Netherlands, Amsterdam)." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://db.yadvashem.org/names/nameDetails.html?itemId=4308601&language=en (last visited Aug. 4, 2015).

Guardianship Office that he had contacted an attorney in Germany and was attempting to locate Karl Weinberg's heirs, and therefore a "Missing Persons Proceeding" (*"Verschollenheitsverfahren"*) should be postponed. In a January 12, 1971 letter, as described by the CRT, "the Guardianship Office inquired as to the status of the Guardian's search and informed him that if the heirs could not be located, the Missing Persons Proceeding should be rescheduled, as the time period allotted according to the Federal Decree relating to the 1962 Survey was expiring and would not be extended."

An extract of proceedings of the Guardianship Office, dated October 28, 1973, "indicates that although the Guardian had contacted the lawyer representing the family of the Account Owner, because the assets of the Account Owner had yet to be claimed and the Federal Decree regarding the 1962 Survey had expired, the Guardian was released from his responsibility and directed to transfer" Karl Weinberg's assets to the Heirless Assets account at the Federal Accounting Office. The Guardianship Office directed the Guardian to inform the Weinberg family's attorney that the "assets would be deposited in the Heirless Assets account" and could be claimed within the next five years.

The CRT noted that in 1999, Swiss authorities published certain names that had been reported in the 1962 Survey and that "[a]ccording to confidential information the CRT received from Swiss authorities," a claim "was received for the above account." After "research by those authorities, an amount of SF 11,980.00, representing the 1 September 1963 value of the account adjusted for interest, was paid out to the persons who filed the claim." The CRT concluded that the claim had been filed by and paid to the children and grandchildren of Karl Weinberg.

The CRT awarded the claim based upon the difference between the amount that had been paid in 1999, and the amount that would have been awarded had the claim been processed by the CRT, applying the 11.5 multiplier then in effect. The CRT observed that the assets "stem from an insurance policy, rather than a bank account" and that the Settlement Agreement does include "provisions to address restitution for insurance policies…." However, here, "the insurance carrier who issued the policy for the Account Owner is not among the Participating Insurance Carriers that participate in the Settlement Agreement. Further, the name of the Account Owner

was not included in any list of policies published in connection with the Insurance Claims Process associated with" the Settlement Agreement.

The CRT concluded that this insurance policy was treated differently from those analyzed under the Insurance Claims Process, in that the assets remained with the carrier upon maturity in 1954, and the carrier registered the assets pursuant to the 1962 Survey. The policy was authorized for publication by Swiss banking authorities in 2005 under the name "Karl Weinberg," and it was listed as a bank account, rather than an insurance policy. Accordingly, the CRT determined that it was appropriate to treat the policy as an account of "other" type, and the award was calculated on the basis of the value of such account (minus the assets previously restituted in 1999).

xxii. In re Account of Fritz Zucker (SF 260,375.00)

Fritz Zucker was born in 1894 in Bukovina, Romania. He worked in engineering, textiles, and real estate, according to the claimant, his great-grandson. He and his son (the claimant's grandfather) were attacked during the Holocaust. Fritz Zucker died, but his son was able to escape into the forest. His son moved to Palestine after the War.

The bank records, which were not reported by the ICEP auditors but were obtained by the CRT from the Swiss Federal Archive in connection with documents compiled as part of the 1962 Survey, indicated that Fritz Zucker owned a custody account. In a January 27, 1941 letter to Fritz Zucker from the bank in Zurich, the bank confirmed that the account held various items of jewelry: a gold bracelet; a gold pocket watch with the monogram "AW;" a broach with diamonds and pearls; a gold broach with a figure of a small owl; a small rectangular broach with four small diamonds; a small broach "in a simple rod shape" with four small diamonds; two ladies' rings, "one with a green stone and gold setting, the other with a blue stone and white metal setting;" and one pair of gold cufflinks. The archival records did not contain values for these objects.

Records from the Swiss Federal Archive indicated that the last contact with Fritz Zucker had been before the end of the War. On January 7, 1964, Fritz Zucker's assets were reported to the Registration Office for Assets of Missing Foreigners. A note on the registration form stated, "'right of retention reserved.'" The bank indicated that "there was no possibility to value the objects." The bank also included a note stating that Fritz Zucker owed the bank SF 250.00 for outstanding custody fees. As described by the CRT, a "stamp on the registration form notes that the account had [not] yet been charged with the costs and fees associated with the investigation and registration of these assets, and that these costs and fees were a minimum of SF 100.00…" A custodian (guardian) over the assets was appointed on December 2, 1966.

On May 12, 1970 and again on January 5, 1971, the Registration Office wrote to the custodian to request that the assets be examined so that it could be determined whether the assets could be considered to be of minimal value, thus warranting their exclusion from further processing. On March 8, 1971, the custodian stated that he was waiting further instructions from the Federal Justice Department.

The CRT awarded the account to Fritz Zucker's great-grandson at the presumptive value for a custody account, observing that the account had been registered in the 1962 Survey, and "as of that date, it was open and dormant", and further noting that Fritz Zucker had perished during the Holocaust.

5. Safes Forced Open After the Death of the Account Owner or After the Holocaust

i. <u>In re Accounts of Frl. Lilli Adler (SF 36,955.00)</u>

Lilli Adler was born in Berlin in 1926. She was killed in the Holocaust with her parents. The claimant, her cousin, was born in Germany, and later resided in Haifa, Israel.

The bank records demonstrated that Lilli Adler owned a safe deposit box opened in 1939, frozen in 1946 under the 1945 Swiss freeze of German assets, and released in 1951. The bank records showed that the safe deposit box was forced upon by bank officials at the time it was

frozen. As described by the CRT, the bank listed the safe as containing a golden powder compact; a golden cigarette case; a precious stone (probably a diamond); two diamond (possibly platinum) brooches; and SF 280. The money was transferred into a blocked demand deposit account in the name of Lilli Adler. The remaining assets in the safe were not accounted for.

Since the account owner perished in the Holocaust, was German with a German address as recorded in the bank file, and owned a safe forced open after the Holocaust and released several years later, the CRT presumed that neither the account owner nor her heirs had received the proceeds of her account. The award was paid at average value for a safe deposit box because, although the safe was known to contain jewelry, its value was unknown. Further, the CRT had no information as to the other assets that may or may not have been in the safe.

ii. In re Accounts of Ignaz Berger and Fanny Berger (SF 86,950.00)

Ignaz Berger was born in 1869 in Przemysl, Austria-Hungary (today Poland). His wife, Fanny, was born in 1872 in Katowice, Prussia (today Poland). Ignaz Berger owned a chemical factory in Vienna. He died on March 26, 1938, while his house was being searched for weapons by Austrian Nazis. Shortly thereafter, Fanny Berger fled to Milan, where two of their sons lived. She died in Milan in 1943.

The bank records indicated that Ignaz Berger's safe deposit box, rented in January 1932, was forced open in March 1946 in the presence of bank authorities and representatives of the Swiss Clearing Office. The opening protocol indicated that the safe held business contracts relating to the chemical factory, which were deemed valueless, and deposited with the bank for safekeeping.

The 1938 Census indicated that Fanny Berger owned an account of unknown type at a second Swiss bank, and reflected her Austrian address, as well as the fact that she had emigrated to Milan.

The CRT awarded the presumptive value of the safe deposit box to the claimant, the grandchild of the account owners (who had submitted a Deposited Assets claim through the Holocaust Claims Processing Office). The CRT found unreliable the bank's assessment that the assets in the safe were of no value. It was not likely that someone would have opened a safe deposit box in Switzerland only to deposit valueless assets. The CRT also awarded the presumptive value of the unknown type account disclosed in the 1938 Census, noting that "the facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who were Jewish report their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to Nazi-controlled banks."

iii. In re Account of Malvine Fischl and Martha Reichmann (SF 37,575.00)

Malvine Fischl was born in 1886 in Prague, where her husband owned a pharmaceutical company. She perished in the Lodz ghetto.[116] The two claimants were both nieces of Malvine Fischl, and one also was the daughter of co-account owner Martha Reichmann. The latter claimant stated that she had been given a key to a safe deposit box owned by her aunt, Malvine Fischl.

The bank records indicated that Malvine Fischl and Martha Reichmann owned a safe deposit box. The box was forced open in February 1973. It contained a platinum watch; a pearl necklace; a diamond broach; diamond rings; and a gold bracelet. There had been no customer contact since 1940, according to the bank, and so the bank sold the broach in 1973 for SF 2,500 to cover outstanding and future costs for renting the safe. The safe was reopened in October

[116] "Malvina Fischlova was born in 1886. During the war she was deported with Transport D, Train Da 17 from Praha, Praha Hlavni Mesto, Bohemia, Czechoslovakia to Lodz, Ghetto, Poland on 31/10/1941. Malvina was murdered in the Shoah. This information is based on a Deportation list found in Terezinska Pametni Kniha/Theresienstaedter Gedenkbuch, Terezinska Iniciativa, vol. I-II Melantrich, Praha 1995, vol. III Academia Verlag, Prag 2000." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4900852&language=en (last visited Aug. 11, 2015).

1996. The contents were placed in a sealed envelope in a closed custody account in Lausanne. A jeweler appraised the contents at SF 5,000 at that time.

The CRT awarded the value of a safe deposit account at average value, noting that the 1973 sale of the broach was unreliable, since it could not be determined whether the sale had been conducted at arm's length. The CRT also observed that "although the Bank's financial obligations to the Claimants were fulfilled through payment of the Settlement amount, in this case, the Bank … expressed its desire to return the contents of the safe deposit box to the Claimants in a gesture of good will. The CRT is prepared to facilitate arrangements between representatives of the Claimants' estates and the Bank, should the representatives so desire." In addition, the CRT noted that although "in other cases, restitution previously received by the Account Owner or his or her heirs has been deducted from the award amount," in this case, the claimants had not yet received restitution. Thus, "it is not appropriate to deduct any amount from the award based upon any possible return of the safe's contents in the future." The award was issued to both claimants, each receiving one-half of the value of their aunt Malvine Fischl's share, and the second claimant receiving the full value of her mother Martha Reichmann's share.

Subsequently, family members from England and the Czech Republic personally visited Switzerland to collect the items from the bank. In the presence of CRT and bank personnel, the items were returned to the owners' heirs.

iv. In re Accounts of Otto and Maria Fuchs (SF 7,141,273.50); In re Account of Otto Fuchs (SF 10,750.00)

Otto Fuchs was born in 1881 in Prague, Czechoslovakia. He lived at 4 Cernovicka Street in Brünn, where he was a patent attorney. He had one child, the claimant. Otto Fuchs' sister Maria, the claimant's aunt, lived in Berlin, where she was a concert singer. Otto Fuchs was arrested by the Nazis and deported to a concentration camp. He survived the War and died in Brünn in 1957. His sister, Maria, who was unmarried and had no children, fled from Berlin to

Brünn. There, she was captured by the Nazis, deported to a concentration camp in Poland, and perished in 1942.

The bank records showed that Otto Fuchs held an account at a Swiss bank ("Bank I") that was closed in 1941, unknown to whom. His sister Maria owned several additional accounts, none of which her niece (the claimant) had claimed, but all of which nevertheless were located by the CRT and awarded to the claimant as Maria Fuchs' heir.

Specifically, Maria Fuchs held seven accounts at the Zurich, Basel and Lausanne branches of a second Swiss bank ("Bank II"). The ICEP auditors determined that all seven of Maria Fuchs' accounts were frozen under the 1945 Swiss Freeze of German assets, which by that point already was some years after the account owner had been deported to Poland and killed in a concentration camp.

The first of Maria Fuchs' seven accounts was a safe deposit box which, as described by the CRT, "was forced open on 21 March 1946, and was found to contain 1,000.00 Swiss Francs in an envelope marked '*for Dr. Ing. Otto Fuchs, Brunn 17, Cernowitzerstr.4*'" — the same street address separately reported in the bank records in connection with Otto Fuchs' account — "as well as two separate sealed bags containing gold coins valued at 20,000 Swiss Francs and 5,000 Swiss Francs." The last known date of the account's existence was October 18, 1952. The ICEP auditors presumed the account was closed.

Maria Fuchs also owned a custody account which, on May 13, 1946, had been frozen pursuant to the 1945 Freeze. As of June 20, 1946, the account held a balance of SF 39,125. The account was released from the freeze on January 12, 1951. "The account was reported by the Zurich branch [of the Bank], and on 13 January 1951, the Bank inserted a comment on the record stating that the Account Owner died in 1942 and that either the Bank could not locate the Account Owner's heirs or that the bank was restricted from contacting the Account Owner's heirs. It is not clear whether the account was closed by the Bank at some stage or remained open and dormant."

The other five accounts owned by Maria Fuchs likewise were frozen on various dates in 1945 and 1946: (1) a safe deposit box with an unknown balance as of February 16, 1945, frozen on March 23, 1946 and released on an unknown date; (2) an account of unknown type with a balance on February 16, 1945 of SF 15,973, frozen on September 25, 1945 and released prior to 1952; (3) an account of unknown type with a balance of SF 10,193 as of February 16, 1945, frozen on August 14, 1945 and released on February 11, 1949; (4) an account of unknown type with a balance of SF 11,281 as of February 16, 1945, frozen on August 14, 1945 and released on February 11, 1949; and (5) an account of unknown type with a balance of SF 486,941 as of February 16, 1945, frozen on August 14, 1945 and released on February 11, 1949.

With respect to the account owned by Otto Fuchs, the CRT observed that the account "was closed in March 1941 and the Account Owner was a Czech national." Given that Otto Fuchs had been sent to a concentration camp, and the account had been closed two years after the Nazi invasion of Czechoslovakia, the CRT concluded that Otto Fuchs had not received the proceeds of the account.

As to Maria Fuchs, given that she was "murdered by the Nazis during the War and that each of her seven accounts was frozen pursuant to Swiss law in 1945, and most of them were not released for several years after the War, the CRT [found] it plausible that Account Owner Maria Fuchs did not receive the proceeds of her accounts." After adjusting for interest and fees, the CRT awarded a total of USD $4,828,808.96 to the claimant for the accounts that had been owned by her father, Otto Fuchs, and her aunt, Maria Fuchs.[117]

[117] The Fuchs accounts were described in the 2002 New York Times article, *Settling Accounts, But Not Minds; Holocaust Survivors Relive Past in Case Against Swiss Banks.* As the newspaper reported: "The investigations uncovered lost family stories. A Czech woman submitted a claim for the account of her father, a Prague patent lawyer. Using databases of Holocaust victims and matching them to Swiss bank records, investigators at the tribunal showed that the woman's aunt also had accounts, seven in Lausanne, Basel and Zurich. The aunt, a concert singer, was killed in a concentration camp in Poland. The tribunal concluded it was unlikely that any relatives had obtained the money because of Swiss banks' practice of "withholding or misstating account information in their responses to inquiries." The banks have argued that such misleading actions were aberrations, not policy. The award to the Czech woman, approved last week, was $4.8 million."

v. In re Account of Joseph Goldberg (SF 66,287.50)

The account of Joseph Goldberg was claimed by two equally plausible claimants or groups of claimants. The account records relating to Joseph Goldberg's assets contained data sufficient for the CRT to determine that each claimant plausibly had demonstrated that he or she was related to a Holocaust victim named Joseph Goldberg. However, the records did not contain information sufficient for the CRT to determine whether the actual account owner was the relative of one claimant, as opposed to the other.

The first claimant identified the account owner as his grandfather, who had been born in 1875 and lived in Radomsko, Poland. He was deported to Treblinka in 1942, where he perished. The second claimant, who was not related to the first claimant, identified Joseph Goldberg as her father, who had lived in Lithuania. With his family, he was sent in 1941 to the Kaunas ghetto. The family was deported in 1945 to concentration camps including Stutthof, where all but the claimant perished.[118]

The 1962 Survey records obtained by the CRT from the Swiss Federal Archive showed that an individual named Joseph Goldberg had owned a safe deposit box at the bank. The records did not show the domicile of Joseph Goldberg. The records did show, however, that the bank's last contact with Mr. Goldberg had been in 1938, when he had visited the bank in person. The records showed that the bank had learned from correspondence from an unnamed private party that Joseph Goldberg had been deported to a concentration camp.

Following the 1962 Survey, the bank forcibly opened the safe, found a camera and a diamond ring, and sold the ring for SF 1,000. The bank deducted fees and costs from these

[118] Other less plausible claims also were filed to the account of Joseph Goldberg. The CRT observed that there was "very little information" about the account owner and that usually, "the CRT considers such factors as an account owner's city or country of residence, his profession, nationality, and/or names of family members. Since such information about the account owner is not available in this case, the CRT considers other, more detailed and nuanced factors. Such factors include, but are not limited to, whether a claimant identified an exact spelling of the account owner's name; whether the claimant was able to provide documentation linking his or her surname to that of the account owner, thereby demonstrating a familial relationship to a person with the same name as the account owner; whether a claimant identified the account owner's name prior to its publication, or despite the fact that the name was never published; and/or whether the fate of the claimant's relative is consistent with the disposition of the claimed account. Based upon these considerations, matches between this account and less plausible claims were disconfirmed, and those claims were excluded from this decision."

proceeds, and transferred the balance of SF 647 to a demand deposit account that it opened in the account owner's name. A guardian was appointed over these assets in 1967, and in 1970, the SF 571.80 remaining in the account was transferred to the Swiss federal government's fund for dormant accounts.

The account had not been returned to the account owner, whom the bank knew had been sent to a concentration camp. The CRT thus awarded the presumptive value of a safe deposit box and a demand account, dividing the amount equally between the two claimant groups.

vi. In re Account of Rosa Jacobson-Granaat (SF 37,575.00)

Rosa Jacobson, née Granaat, was born in 1888 in Amsterdam, where she lived with her husband, a medical specialist, and their adopted daughter, who died in 1990. Rosa Granaat and her husband tried to hide on a farm to escape the Nazis, but they were discovered and deported to Westerbork. On September 3, 1944, they were sent to Auschwitz. They perished in Auschwitz three days later, on September 6, 1944.

In 2006, the Dutch Advisory Committee for the Assessment of Restitution Applications for Items of Cultural Value and the Second World War returned a painting from her great-aunt's collection to the claimant (Rosa Granaat's great-niece).

The bank's records showed that Rosa Jacobson-Granaat owned a demand deposit account, a custody account, and a safe deposit box. According to these records, the last known contact with the account owner was in February 1939, and the account owner perished in Auschwitz on September 6, 1944. The accounts were reported in the 1962 Survey.

The bank records indicated that the demand deposit and custody accounts were paid to the heirs of Rosa Jacobson-Granaat after these individuals (including her adopted daughter, then living in Malta) were located in 1970. However, the ICEP auditors reported that the contents of the safe deposit box had not been remitted to the heirs. It was unclear why this was so. The records showed that the safe deposit box had been forced open by the bank on December 23, 1963. It contained a case and a purse in ivory; a jewelry box containing a broach, a diamond

bracelet, and an identification tag with the name "Rosa;" a case containing a knife and fork, with mauve stone handles; a comb with a tiara; a golden business card case and a rectangular golden case; a case containing a diamond ring; a diamond broach with a small pendent in a jewel case; and a small handkerchief. The ICEP auditors reported that these items remained in the custody of the bank.

Since the assets held in the safe deposit box had not been returned to the heirs, the CRT awarded the claimants the presumptive value of a safe deposit box. The CRT observed that, as in the case of *In re Account of Malvine Fischl and Martha Reichmann* (*supra*), "although the Bank's financial obligations to the claimants were fulfilled through payment of the Settlement amount, in the past, the Bank, upon learning that the CRT had received claim forms from claimants who definitely identified the Account Owners as their relatives, expressed its desire to return the contents of the safe deposit box to the claimants as a gesture of good will. Should the Bank and the Claimant desire in this case to pursue this course of action in the same manner, the CRT is prepared to facilitate arrangement between the Claimant and the Bank." Since it was unclear if the assets would be returned, no deduction was made from the award.

vii. In re Account of Ernst Menko (SF 36,955.00)

Ernst Menko was born in 1908 in Enschede, The Netherlands, where he worked at a textile factory owned by his father. He was deported to Auschwitz in 1942. He perished there in October 1944.[119] The claimant, Ernst Menko's niece, submitted a November 29, 1940 government certificate indicating that the family factory had been confiscated by the Nazis on September 14, 1940. The document listed the names and addresses of family members, including Ernst Menko.

[119] In the Central Database of Shoah Victims' Names, Ernst Meno's year of birth is listed as 1898. "Ernst Menko was born in Enschede, The Netherlands in 1898. During the war was in The Netherlands. Ernst was murdered in the Shoah. This information is based on a List of murdered Jews from the Netherlands found in In Memoriam - Nederlandse oorlogsslachtoffers, Nederlandse Oorlogsgravenstichting, `s-Gravenhage (Dutch War Victims Authority) (courtesy of the Association of Yad Vashem Friends in Netherlands, Amsterdam)." *The Central Database of Shoah Victims' Names*, YAD VASHEM http://yvng.yadvashem.org/nameDetails.html?itemId=4271034&language=en (last visited Aug. 11, 2015).

The bank records showed that Ernst Menko owned a safe deposit box that was forced open on May 27, 1941. The account was awarded to Ernst Menko's niece, given that his "property was confiscated by Nazi authorities in September 1940, he was deported in 1942, murdered in 1944" and his safe deposit box was forced open in 1941. Because the contents and value of the safe deposit box were unknown, the account was awarded at presumptive value.

viii. In re Accounts of Henriette Roos (SF 260,375.00)

Henriette Roos lived with her husband in Mainz, Germany. Their son Fritz, who was born in Mainz in 1878, owned vineyards, malt factories and an import/export hops business. Fritz Mainz perished in Theresienstadt; his mother Henriette also died in a concentration camp.

The bank records showed that Henriette Roos owned a safe deposit box as well as a custody account. Henriette Roos requested that the bank not forward any but the most urgent correspondence to her. The safe deposit box was forced open by the bank on November 18, 1938, in the presence of the Basel Public Notary, at which time the account held five different bonds. A bank employee removed the bonds from the safe deposit box.

The CRT awarded the market value of the bonds to the claimant, the granddaughter of Henriette Mainz and the daughter of Fritz Mainz.

ix. In re Account of Bedrich Spielmann (SF 37,575.00)

Bedrich Spielmann was born in Prostejov, Czechoslovakia, and lived there as well as in Germany and Austro-Hungary. The claimant, his great-nephew, believed that Bedrich Spielmann was an attorney or a businessman. He was killed in a concentration camp.

The bank records showed that Bedrich Spielmann held a safe deposit box rented on August 13, 1938. The account was considered for the 1962 Survey, but was not reported because, according to the bank, the account owner was "not persecuted." The safe deposit box was emptied on May 19, 1964 and its contents deemed valueless.

Based upon the fact that Bedrich Spielmann was killed in the Holocaust, and in the absence of any evidence indicating that the account was closed properly, the CRT awarded the owner's great-nephew the presumptive value of a safe deposit box. The CRT observed that notwithstanding the bank's indication in May 1964 that the contents of the safe were without value, "the CRT considers it implausible that an account owner would hold a safe deposit box for the purpose of depositing valueless objects. In this regard, the CRT notes that an account owner would have been charged SF 500.00 in fees from 1 January 1945 to 19 May 1964. The CRT considers it implausible that an account owner would pay fees to rent a safe deposit box to hold valueless objects."

6. Swiss Agreements with Poland, Hungary and Romania[120]

i. In re Account of Ascher Bank (SF 83,943.75)

Ascher Bank lived in Tarnow, Poland, and subsequently in Berlin, where he manufactured garments. He was married to the claimant's sister, who last heard from her sister and her husband in approximately 1940. The account owners presumably died in the Holocaust.[121]

The bank records demonstrated that Ascher Bank, of Polish nationality and residing in Berlin, owned an account of unknown type valued at £ 219.15.10 as of December 2, 1942. The account was reported by a bank employee, the Nazi spy August Dörflinger, who disclosed the names of Swiss bank account holders to the authorities in Nazi Germany.

In addition to the account reported by Dörflinger, the CRT also located an additional account held by Ascher Bank at the same Swiss bank, a demand deposit account. This account

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[120] The Court described these agreements as involving "money … taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized," *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 313-314. There was also a similar agreement with Romania.

[121] The account was reported on the 2001 List as having been owned by an "institution" (*i.e.*, a bank), but the CRT subsequently determined upon analysis of the bank files and claimant documents that the account actually was owned by an individual.

was reported in the 1962 Survey. As of September 1, 1963, it had a value of £ 205.00.00, or approximately SF 2,460. As described by the CRT, the "records indicate that the assets were reported by the Bank as a 'doubtful case' … in the course of the 1962 Survey. Furthermore, according to the bank records, the account at issue was reported by the Bank to the registration office for assets of missing foreigners at the Swiss Justice Department" on February 28, 1964, and was reported in 1965 to the Cantonal Guardianship Authority of Basel-City.

The bank files also showed that Ascher Bank's sister-in-law (the claimant) had written to the Cantonal Guardianship several times. Correspondence dated January 12, 1966, August 30, 1966 and October 24, 1967 indicated that the Cantonal Guardianship had asked for additional documentation, including a death certificate and a last will and testament. As the CRT observed, despite the fact that "the Account Owner's heir contacted the Registration Office and claimed the account" in 1966, ten years later, in 1975, the Swiss authorities nevertheless transferred the account to the Polish National Bank on August 15, 1975. This was part of a June 25, 1949 Polish-Swiss Compensation Agreement, which had called for "the payment of dormant assets held in Swiss banks by Polish nationals to the government of Poland in return for compensation to Swiss banks and Swiss life insurance companies that had suffered financial loss as a result of nationalizations in Poland."

As the CRT observed, the Court had discussed this specific agreement in the context of its 2004 opinion on the behavior of the Swiss banks toward its Jewish depositors. In this decision, the Court noted that the Swiss-Polish agreement was an example of the banks' "devotion to secrecy and … repeated acts of stonewalling," which "were not based on principles – they were profit driven."[122]

The CRT awarded the claimant the adjusted value of the demand deposit account that had been turned over to Poland (SF 2,765.50) as well as the presumptive value of the account that Dörflinger had reported to the Nazis, for a total award of SF 83,943.75.

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[122] *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 313 (E.D.N.Y. 2004) (quoting BERGIER FINAL REPORT at 455).

ii. In re Account of Oswei Epstein (SF 28,712.50)

Oswei Epstein was born in 1877 in Motol, Belarus. He was a wood exporter who lived in Danzig (today Gdansk, Poland) and in Warsaw. He died in Danzig in November 1937, and his wife died in the Pinsk ghetto.

Oswei Epstein's account was reported in the 1962 Survey. In December 1965, a custodian (guardian) was appointed for the account. The proceeds were transferred in May 1970 to the Heirless Assets Fund in Bern. On August 15, 1975 the proceeds were transferred to the Polish National Bank.

Records for the account also were available from the Polish Ministry of Finance. As the CRT observed, "[i]n the publication entitled *Nasze finance*, published by the Press Office of the Polish Ministry of Finance, number 25, dated February 1998, there is information concerning the assets of Oswei Epstein." The records showed that Oswei Epstein was Jewish and "resided at Sienna 43 A, in Warsaw, Poland, and was a wood exporter. These records indicate that the Account Owner held an account with a balance of SF 794.00, of which SF 134.00 was taken as bank fees. The records further indicate that the account had a balance of SF 660.00 on 15 August 1975, when it was transferred to the Polish National Bank." The CRT observed that although Oswei Epstein himself was not a Nazi victim, as he had died prior to the Nazi occupation of Poland, his wife and heir, who died in a ghetto, had been a victim. Thus, the CRT awarded the account proceeds to the Epsteins' grandsons, at the presumptive value for a demand deposit account.

iii. In re Account of Sigmund Fichmann (SF 49,375.00)

Sigmund Fischmann was born in 1884 in Kalush, Poland (now Ukraine). He lived in Budapest during World War II. He worked as a sales representative for a Swiss textile wholesaler. He died in Budapest in 1951.

Sigmund Fischmann's account was reported in the 1962 Survey and, following litigation seeking to obtain access to bank records and accounts beyond those provided at the outset of the

claims process, the account was published as part of the 2005 List. The bank records indicated that Mr. Fischmann, a Hungarian national and textiles salesman, had not been heard from since the 1944 occupation of Budapest.

In January 1964, a businessman in Zurich, Gottfried Schaerer, registered assets totaling SF 1,992.65 with the Swiss Federal Department of Justice. Mr. Schaerer stated that these assets represented a balance that he owed to Mr. Fischmann. He asked where he could deposit the assets. As described by the CRT, the Swiss Federal Department of Justice advised in February 1964 that the assets should be transferred to an account administered by Swiss authorities, and Mr. Schaerer did so. In December 1966, the city of Zurich's custodial authorities named a custodian (guardian) for the assets. The records did not indicate the ultimate disposition of the assets.

Documents provided by the claimants, Sigmund Fichmann's niece and great-nephew, indicated that the account had been published at least once prior to the 2005 List. It also had been published in connection with the 1997 "list that was given to the Hungarian Ministry of Foreign Affairs." At that time, Sigmund Fischmann's niece was "disputing the validity of the inter-state agreement of 1972 on both the Hungarian and Swiss sides, and requested details about the account and payment of the assets to the Hungarian state."

The claimants also provided documents showing that several years later, Sigmund Fischmann's great-nephew had written to the Contact Office for the Search of Dormant Accounts Administered by Swiss Banks. The Contact Office responded: "'Unfortunately, we are not in possession of the information concerning the account of Mr. Fichmann. As far as the possibility of a claim for compensation is concerned, you should consult with a lawyer specializing in international law.'" Assessing this response, the CRT observed: "It is not clear why the Contact Office did not have access to the files of the assets registered pursuant to the 1962 Survey …, why it was not aware of (or did not draw attention to) the account's apparent inclusion in the 1972 transfer of assets from Switzerland to Hungary, or why it simply did not refer [the claimant] to the CRT."

The account owner had died in Budapest in 1951. He was behind the Iron Curtain and could not have had his funds repatriated to him. Therefore, the CRT awarded Sigmund Fischmann's heirs the presumptive value of an account of unknown type.

iv. In re Account of Eugen Halasz (SF 47,400.00)

Eugen Halasz was born in 1887 or 1894 in Vadafalva, Transylvania (today Odesti, Romania). He lived in Budapest with his family, where he was forced to hide from the Nazis during World War II. Eugen Halasz died in Budapest in June 1949.

In 1997, Eugen Halasz' grandson (the claimant) discovered the name "Eugen Halasz" on a published list of "heirless" Hungarian accounts that had been held in Swiss banks and transferred to the Hungarian government. Eugen Halasz' name also was included in a report created by the Swiss Task Force for the Assets of Nazi Victims.

The bank records showed that Eugen Halasz' name was indeed included on a January 27, 1997 list of 33 unclaimed accounts of Hungarian nationals who had vanished. He had owned an account of unknown type, which had a balance of SF 842.30 in September 1963, when it was reported as part of the 1962 Survey. The bank transferred the assets to the Swiss government, which then transferred the money to the Hungarian government on February 19, 1975 as part of a general settlement of claims with Hungary.

As described by the CRT, under this settlement, the Swiss-Hungarian Compensation Agreement of March 26, 1973, "Switzerland gave assurances in a confidential side protocol [that] it would compensate Hungary with 325,000 Swiss Francs for the transfer to the Unclaimed Assets Fund of unclaimed assets belonging to Hungarian nationals presumed to be deceased, in disregard of the claim of the Hungarian state to the reversion. Hungarian counterclaims amounting to 400,000 Swiss Francs were offset directly against the sum compensating dispossessed Swiss property owners, which amounted to Swiss Francs 1.8 million. The two governments made public only the net compensation of 1.4 million Swiss Francs. On 19 February 1975, on instructions from the Federal Justice Department, the Federal Financial

Administration transferred 325,000.00 Swiss Francs from the Unclaimed Assets Fund to the account kept by the Political Department to the Hungarian government."

Since the account had been turned over to the Hungarian government rather than repaid to its owner, the CRT awarded the account (of unknown type) at its presumptive value.

v. In re Account of Walter Loevy (SF 49,375.00)

Walter Loevy was born in the 1890s in Danzig, Germany (today Gdansk, Poland). He lived there with his wife and two children, where he was a timber merchant. He moved with his family to Warsaw in 1938. The entire family perished in the Warsaw Ghetto in approximately 1942.

The documents relating to Walter Loevy's account were contained within the records of the Swiss Federal Archive, as well as the information published by the Polish Ministry of Finance. The archival records showed that Walter Loevy held one account containing 12 golden Double Eagle coins, worth SF 2,160 as of September 1, 1963. The account was reported in the 1962 Survey, and a custodian (guardian) for the account was appointed in 1966. In addition, the account was reported in the Polish Ministry of Finance Press Office publication "*Nasze finance*," which indicated that the account of Walter Loevy (SF 3,378) was transferred on August 15, 1975 to the Polish National Bank, pursuant to the Swiss-Polish agreement. The CRT awarded the account at presumptive value to the claimants, the nieces of Walter Loevy.

vi. In re Account of Adalbert Löw-Beer and Nelly Haimann (SF 300,664.32); In re Account of Adalbert Löw-Beer, Frau Löw-Beer and Frau Nelly Haimann (SF 235,724.00)

Adalbert Löw-Beer was born in approximately 1894 in Bekecs, Zemplén-megye, Austria-Hungary. Nelly Haimann, his co-account owner, was one of his two sisters. Adalbert Löw-Beer lived in Budapest from 1919 until 1924, when he moved to Timisoara, Romania. In Timisoara,

he owned a successful electrical appliances factory. In the late 1930s, he was forced to sell his share of the factory to his business partner. He returned to Budapest, where his home was ransacked by Nazi troops. He was deported to Auschwitz in 1944, where he died. Account owner Nelly Haimann was interned in the Budapest Ghetto. She died shortly after the war.

The claimant, the nephew of the account owners, submitted an October 1, 1946 letter addressed to him from the Swiss bank at which the accounts were held, relating to accounts owned by other relatives. The bank advised the claimant that his relatives' accounts, which together were worth $10,176, had been frozen. The claimant advised the CRT that in 1957, he had traveled to Zurich to visit the bank. At that time, he "was informed that he could not make a successful claim to the account because of a limitation period imposed by the Bank regarding older accounts."

The CRT observed that "the HCPO [which had assisted the claimant in pursuing his relatives' accounts] learned through contacts with the Bank that the Bank had transferred funds from the account on 21 June 1950. The Bank stated that it does not know who received the assets." The CRT awarded the account, in light of the fact that in 1950, at the time the bank allegedly had transferred the funds in the account, "it would have been difficult and dangerous for the Claimant or the other members of his family to access the account from Communist Eastern Europe."

In a subsequent decision involving an account owned by Adalbert Löw-Beer and Nelly Haimann, along with an additional account owner, Frau Löw-Beer (the wife of Adalbert Löw-Beer), the CRT described additional documentation relating to the account owners. These documents included "a letter from the bank to the HCPO, dated 10 June 1998, confirming the existence of the two accounts and their inclusion in the freeze of Hungarian assets, and stating that, 'following the unblocking [in 1947], [the Bank] transferred the proceeds of Mr. Löw-Beer's accounts in accordance with customary bank procedures and applicable legal requirements.'" The bank asked the claimant for "'any additional information concerning who might have received the account proceeds upon account closure.'" The HCPO advised the bank that the claimant and his family "lived in Hungary from 1949 to 1954, and … that 'any contact with the West resulted in extremely harsh repressive measures, including imprisonment." On March 18,

1999, the bank reiterated that it could not locate further documentation and also observed that "it 'did not mean to imply that [Claimant] or his family received the assets.'"

The CRT awarded the account, of unknown type, to the claimant and another relative, determining that the claimant was entitled to two-thirds and his relative was entitled to one-third. The CRT observed that the Löw-Beers had died during the Holocaust. As to the surviving account owner, Nelly Haimann, she would not have been able to obtain information about the account after the War, nor would she or other heirs have been able to receive the proceeds, since they were living in Communist Hungary and Romania. In addition, the account had been included in the freeze of Hungarian assets, and by the time of its transfer in 1950, all three account owners were deceased.

vii. In re Account of Samuel Rabinow (SF 39,893.75)

Samuel Rabinow was born in 1907 in Pinsk, Poland. He lived in Lodz and studied engineering in Belgium and France. He was an agent for a Swiss company producing silk nets for flour mills. The claimants, respectively the cousin and second cousin of Samuel Rabinow (representing several other cousins), believed that he perished either in the Warsaw Ghetto, the Lodz Ghetto, or Auschwitz.

The account was published on the 2005 List. In connection with the records relating to the 1962 Survey, filed with the Swiss Federal Archive in Bern, the CRT had located documents relating to the registration of assets belonging to the engineer Samuel Rabinow. The records included a February 1964 letter from a Mme. Finkelstein, named as a contact person for the account. Mme. Finkelstein stated that Samuel Rabinow of Lodz was believed to have perished in 1942 or 1943 in the Warsaw Ghetto (thus confirming the claimants' belief that their cousin might have perished there). The records indicated that Samuel Rabinow held a demand deposit account which, as of February 1964, held a balance of SF 2,906.50.

In addition to the 1962 Survey records, the CRT observed that in a "publication entitled *Nasze Finanse*, published by the Press Office of the Polish Ministry of Finance, number 25,

dated 1998, there is information concerning the assets of Samuel Rabinow. According to these records, the Account Owner was *Ing.* Samuel Rabinow, who perished in 1942 or 1943 in the Warsaw Ghetto, Poland." These records indicated that the account held a balance of SF 2,906.50 as of August 15, 1975. On that date, the proceeds of the account were transferred to the Polish National Bank. Since the account was not paid to the owner or his heirs, but rather to the Polish National Bank, the CRT awarded the account to Samuel Rabinow's cousins (increasing the recorded amount of SF 2,906.50 by SF 285 to reflect standardized bank fees taken between 1945 and 1963, and multiplying that amount by 12.5). The award was divided among nine different individuals, two of whom the CRT determined each were entitled to 1/6 of the account. The remaining seven each were entitled to 1/9 of the account.

viii. In re Account of Klara Ramer, Salomon Ramer and Samuel Herzig (SF 47,400.00)

Klara Ramer was born in 1878 in Krakow. She died in Auschwitz between 1943 and 1945. Her husband, Dr. Salomon Mandel Ramer, was born in 1873 in Sanok, Poland. He died in Dolina, Poland on November 7, 1939 while fleeing after the September 1, 1939 invasion. The Ramers had two children, one of whom perished with his mother in Auschwitz, and the other who survived and died in New York in 1992. The children of the latter individual (*i.e.* the grandchildren of the Ramers) claimed the account.

The bank records showed that Frau Klara Ramer, Dr. Salomon Ramer and Dr. Samuel Herzig owned an account, and used the code name *Waisenhaus, Sanok, Polen*. Their last known contact with the bank was in 1935. The account, of unknown type, was registered in connection with the 1962 Survey. On September 1, 1963, it had a balance of SF 917. The CRT explained that the account on that date "was paid to the Polish Government in accordance with the Agreement between Switzerland and Poland of 1949. This Agreement effectively provided for use of victim depositors' funds to assist in the compensation of Swiss nationals whose property was expropriated by the Polish Government." The CRT awarded the account at presumptive value to the owners' grandchildren.

ix. In re Accounts of Henryk Ruziewicz and Zofja Ruziewicz (SF 28,712.50)

Henryk Ruziewicz was born in approximately 1888 in Warsaw, Poland. He owned a large oilcloth factory located at the same address as his house, which, according to the claimant, was located at approximately 80 Czerniakowska Street. Henryk Ruziewicz perished in a death camp in 1942, and other family members also died in the Holocaust.

The CRT conducted additional research to assist the claimant, a cousin of Henryk Ruziewicz. The CRT located the Warsaw telephone directories for the years 1931-32 and 1939-40. These directories indicated that the oilcloth and artificial leather factory for the "Ruziewicz brothers & Krywicki M." was located at 84 Czerniakowska Street. The directories also identified other individuals with the last name Ruziewicz living at 82-84 Czerniakowska Street, including Maksymiljan Ruziewicz, Antonina Ruziewicz and Eugenia Ruziewicz.

Account of Henryk Ruziewicz: The bank records included a 1955 internal survey of accounts belonging to owners domiciled in Poland in 1939 who had not been in contact with the bank since 1945, as well as records relating to the 1959 and 1962 Surveys. The records showed that Henryk Ruziewicz owned a demand deposit account opened in 1931; that the last communication with him had taken place in 1936; and that on June 30, 1955, the account held a balance of $73.20.

The documents also included a July 13, 1955 letter from the Swiss Bankers' Association to its member banks. The letter referred "to an agreement reached between the Swiss and Polish delegations on 25 June 1949, according to which, after a period of five years, Swiss banks were to create a list of accounts owned by Polish citizens who were domiciled in Poland as of 1 September 1939 and from whom no information had been received since 9 May 1945. Pursuant to this agreement, assets in these accounts were to be transferred to the Swiss National Bank and to be credited to the Polish National Bank. In return, Poland was to indemnify Swiss interests in Poland that had been nationalized after the War. The letter notes that the five year waiting period had passed, and set forth guidelines for the reporting of relevant accounts." The CRT

observed that the account "was considered for inclusion in the 1962 Survey" but "ultimately not registered," and also noted that the records "do not indicate why … fees were continued to be deducted from an account that had been identified by the Bank as dormant."

Accounts of Zofja Ruziewicz: Although the claimant had not claimed the account of Zofja Ruziewicz, the CRT, through its independent research, including its analysis of 1930s Warsaw telephone directories, discovered that Zofja Ruziewicz in fact was a relative of the claimant's. She, too, owned a Swiss account, to which the claimant was the potential heir.

The bank records showed that Zofja Ruziewicz was born in 1928, and owned a custody account as well as a demand deposit account. Until Zofja reached the age of majority in 1949, the depositor Maks Ruziewicz had the right to dispose of the assets in Zofja's accounts. Maks Ruziewicz granted power of attorney to several individuals living in Warsaw, including Henryk Ruziewicz, Eugenia Ruziewicz, Antonina Ruziewicz and Ada Ruziewicz. The correspondence address was 84 Czerniakowska Street. On March 17, 1937, the bank was instructed to hold mail. The accounts were closed on April 4, 1939.

Pursuant to the CRT's request to the bank for "voluntary assistance," the bank provided the CRT with other documents, including records indicating that Zofja Ruziewicz was the niece of Maks Ruziewicz. The documents confirmed that her accounts were closed in April 1939. The proceeds, including $8,350 in gold coins, were transferred to the Chase National Bank in London pursuant to transfer order by Henryk Ruziewicz and Ada Ruziewicz.

The CRT awarded the account of Henryk Ruziewicz based upon the fact that the account owner had died in the Holocaust; his account was included in three bank surveys, including the 1962 Survey; and the account may have been part of the Swiss-Polish agreement. The CRT determined that Zofja Ruziewicz's accounts were transferred to London in accordance with the directives of the powers of attorney holders. The account owner or other entitled parties had received the proceeds of the accounts, and so the CRT did not recommend that these accounts be awarded.

x. In re Accounts of Ionica Weiss (SF 744,720.00)

Ionica Weiss was born in 1888 in Hungary. She lived with her husband Geza, an optician, and their children in Oradea and later in Nagyvarad. On June 3, 1944, Ionica and Geza Weiss were deported to Auschwitz. They were gassed upon arrival. One of their children moved to France after the War; the other (the claimant) lived in Romania until 1960, when she emigrated to Israel.

The bank records indicated that Ionica Weiss of Romania held an account of unknown type, valued at SF 62,000 on August 20, 1948. The account was included on a list of Swiss bank accounts "that were registered by Romanian citizens who were compelled by the Romanian Communist Regime to report their foreign assets, or by the Regime itself when it determined that its citizens owned assets held in Swiss banks." The August 20, 1948 date upon which the account was valued was "recognized by the CRT as that of the Swiss Government's Freeze of Romanian Assets."

The CRT awarded the account to the daughter of Ionica Weiss (who had filed an Initial Questionnaire but not a CRT claim form), observing that "the account belonged to a Romanian citizen and was still open as of 1948, which was four years after the Account Owner died in Auschwitz, and therefore may have been subject to the Freeze of Romanian Assets in August 1948." The CRT noted that the Freeze was lifted in 1950 and that approximately "one year later, in August 1951, Switzerland and Romania entered into an agreement on compensation for Swiss property that had been nationalized by Romania's communist regime. As part of that arrangement, the Swiss Government agreed to assist the Romanian Government in finding the dormant account assets of deceased Romanian nationals and residents in Swiss banks."

Thus, the CRT concluded, "there is a possibility that, as in the case of expropriated property compensation agreements with Poland and Hungary, the Swiss Government, which is a Releasee under the Settlement, may have used the account of the Account Owner, and others similarly situated, as leverage to obtain compensation for the property of Swiss citizens expropriated by the Romanian government by agreeing to assist that Government in locating the dormant account of the deceased Account Owner. A direct agreement to transfer unclaimed

assets was apparently not part of the Romanian agreement due to an international outcry against the Swiss Government agreement with Poland and Hungary in 1950, which did provide for such transfers." In any event, there was no evidence that Ionica Weiss or her heirs had received the proceeds of the account.

xi. In re Account of Erna Zimet-Achselrad (SF 289,087.50)

Erna Zimet-Achselrad (Axelrad) was born in approximately 1880 in Skala, Poland (now the Ukraine). She lived with her husband in Warsaw until their deportation in 1939.

Bank records relating to the accounts were not reported by the ICEP auditors but were located in the Swiss Federal Archive. The account subsequently was published in 2005.

In December, 1964, the account owner's niece, Zilla Hass-Axelrad (the claimant's mother), filed a claim with the Swiss Registration Office for Assets of Missing Foreigners, which was part of the Swiss Department of Justice. As described by the CRT, in an August 17, 1965 response to an attorney representing Zilla Hass-Axelrad (Dr. Weil), Dr. Weber of the Registration Office "stated that assets valued at a few thousand francs had been reported to the Registration Office, and that pursuant to 1962 Survey regulations, several legal measures must be completed. He explained that these measures would take considerable time, and that the Account Owner's legitimate heirs should therefore not expect payment any time soon. He noted that documents showing proof of identity should only be submitted upon the expressed written request of his office."

The bank records, however, indicated that as of January 23, 1964, eighteen months before the Swiss Registration Office wrote to the claimant's mother, Erna Zimet-Achselrad was known to have held a custody account containing bonds issued by the bank worth SF 2,000.00. She also owned a demand deposit account with a value of SF 493.82. These assets were reported by the bank in the course of the 1962 Survey. Although the account owner's niece had claimed the accounts by the end of 1964, over one year later, on February 1, 1966, Dr. Weber, the Swiss representative, nevertheless wrote to the Guardianship Authorities of the city of Basel to

establish a guardianship over the account. While Dr. Weber did advise the authorities that Zilla Hass-Axelrad had claimed assets belonging to Erna Zimet-Achselrad, an April 3, 1967 resolution of the Guardianship Authorities still placed the assets under the legal care of Dr. Heinz Häberlin. "Dr. Häberlin was instructed to report to the Guardianship Authorities should a credible claim be made to these assets, so that the legal representation could be rescinded."

On December 23, 1967, Dr. Weber wrote to the family attorney, Dr. Weil, with reference to a visit Dr. Weil had made to the Registration Office on December 11, 1967. Dr. Weber stated that on August 17, 1965, his office had informed Zilla Hass-Axelrad that assets belonging to her aunt had been reported pursuant to the 1962 Survey. He explained that to prove her rights to the assets, Zilla Hass-Axelrad needed to submit certain documents to Dr. Häberlin, who was handling the matter.

Records from the Swiss Federal Archive contained an April 9, 1973 resolution of the Guardianship Authorities pertaining to the assets of Erna Zimet-Achselrad. As described by the CRT, "the resolution notes that names of owners of assets reported in the 1962 Survey shall not be published and that no missing person proceedings shall be conducted for such owners in those cases in which such actions may cause difficulties for the missing person." The resolution noted that a "presidential order of 8 March 1972 permitted the Registration Office to transfer funds affected by this provision to an 'Heirless Assets' fund" and that the assets could be "transferred to the Federal Department of Finance. A copy of the resolution was sent to Dr. Weil as the representative of Zilla Hass-Axelrad, who in 1966 was the last person to file a claim to the assets."

Over two decades later, in February 1998, the Polish Ministry of Finance issued a publication entitled *Nasze finance.* This pamphlet made clear that Erna Zimet-Achselrad of Warsaw had held a custody account containing bank bonds worth SF 2,000.00, and a demand deposit account with a value of SF 493.82. These records indicated that an amount equal to SF 2,849.00 was transferred on August 15, 1975 to the Polish National Bank. The records also indicated that Zilla Hass-Axelrad of Israel had made an application to this account.

In awarding the account, the CRT observed:

> The difficulties Zilla Hass-Axelrad and her legal representatives encountered in establishing her rights to her aunt's account seem to have been in line with the general circumstances referred to in Peter Hug and Marc Perrenoud, *In der Schweiz liegende Vermögenswerte von Nazi-Opfern und Entschädigungsabkommen mit Oststaaten*, Bundesarchiv Dossier 4, Bern, 13 December 1996/January 1997. The conditions laid down by the Swiss authorities represented a veritable Catch-22: with regard to account owners from behind the Iron Curtain, no search was undertaken, nor were account owner names publicized, in order to protect these persons from their own governments' pressure to then transfer these funds; for heirs of account owners, who in the meantime had moved to the West, the general procedure of first proving that the disappearance of the account owners was such that death could legally be assumed (*Verschollenheitsverfahren)* and then providing the necessary inheritance documentation was virtually impossible. All this helps to explain why the ultimate amount transferred to Poland by Swiss authorities, SF 463,954.55, was about equal to the approximately SF 500,000.00 that had been registered in 1962 as dormant accounts belonging to Polish account owners considered victims of Nazi persecution.

The CRT pointed out that the Polish – Swiss Compensation Agreement of June 25, 1949 "called for the payment of dormant assets held in Swiss banks by Polish nationals to the government of Poland in return for compensation to Swiss banks and Swiss life insurance companies that had suffered financial loss as a result of nationalizations in Poland." The Swiss Federal Archive records "indicate that the Guardianship Authorities were granted permission to transfer the funds to the Heirless Assets Fund administered by the Federal Department of Finance, though these records do not indicate the ultimate disposition of the assets." The Polish Ministry of Finance records "indicate that the amounts in the accounts were paid to the Polish National Bank on 15 August 1975. The CRT notes that these accounts were paid to the Polish National Bank in 1975 even though the Account Owner's heir contacted the Registration Office and claimed the account over ten years previously, in 1964."

As noted in the CRT's decision, the Court had cited the Polish-Swiss arrangement as an example of the "Swiss banks' devotion to secrecy and their repeated acts of stonewalling," which "were not based on principles – they were profit-driven."[123] The Court explained:

[123] 319 F. Supp. 2d 301, 313 (E.D.N.Y. 2004).

> A particularly telling example of profits being placed over "banking secrecy" is the secret post-war deals reached by the Swiss with Poland and Hungary to loot unclaimed accounts belonging to Holocaust Victims. "[T]he primary aim of [these deals] was to favour Swiss interests in the wake of nationalization of assets in Poland and Hungary." The Bergier Commission was conservative when it wrote that this was "the primary aim" of the deals. What actually happened was that money was taken from dormant accounts of murdered Polish and Hungarian citizens and transferred to Swiss citizens to ameliorate the claims these citizens were raising against the Polish and Hungarian governments after their assets had been nationalized…. What is most striking about these secret agreements is that, as the Bergier Commission pointed out, "[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up." Indeed, "[n]either private property rights nor banking secrecy had been a barrier to the release of these assets."[124]

In the case of Erna Zimet-Achselrad, this took place even though Swiss authorities were aware that the account owner's niece had sought to recover these accounts as early as 1964.

Although the recorded amount of the custody account was SF 2,000, since that amount was lower than presumptive value, the great-niece of Erna Zimet-Achselrad was awarded the custody and demand deposit accounts at their respective presumptive values.

C. AWARDED ACCOUNTS LOCATED BY THE CRT FROM SOURCES OUTSIDE THE ACCOUNT HISTORY DATABASE (AHD), SUCH AS THROUGH ARCHIVAL AND 1938 CENSUS RECORDS OR TAD

1. Accounts Located Through 1938 Census Forms or Archives

i. <u>In re Account of Leopold Liebes (SF 260,375.00)</u>

Leopold Liebes was born in 1868 in Germany. He owned a business in Hamburg, *Goldtree and Liebes.* The business is included on a list of aryanized Hamburg companies

[124] *Id.*

compiled by the Holocaust economic historian, Frank Bajohr.[125] After the aryanization of his company, Leopold Liebes fled to El Salvador, where he died in 1945.

The ICEP auditors did not report an account belonging to Leopold Liebes; rather, the CRT located documents evidencing the account in the *Oberfinanzdirektion Berlin* archive. The account subsequently was published on the 2005 List. The archive contained a 1938 Census declaration from Leopold Liebes, which he signed in San Salvador on October 1, 1938. The Berlin archive also contained an October 24, 1938 letter from the bank to Leo Liebes at an address in Hamburg. The letter indicated that as of October 20, 1938, Leo Liebes owned a custody account containing a type of Chilean gold bond, with a market value of approximately RM 2,000, held in Switzerland. The records further indicated that Leopold Liebes was assessed an atonement tax of RM 37,400 on October 26, 1939, which he contested on the ground that he was a citizen of El Salvador.

The CRT awarded the account to Leo Liebes' granddaughter (who was represented by her son, the claimant), observing that the case was similar to others in which "Jewish residents or nationals of the Reich reported their assets in the 1938 Census and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich."

ii. In re Account of Josef Novak (SF 49,375.00)

Josef Novak was born in 1879. He was a gynecologist in Vienna. He fled to Prague, and then to the United Kingdom, later settling in New York. Two unrelated individuals claimed the account. One claimant identified Josef Novak as her father; another identified the same individual as her husband's uncle, Prof. Josef Novak of Vienna, who had fled from Austria to the U.S.

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[125] *See* FRANK BAJOHR, 'ARYANISATION' IN HAMBURG: THE ECONOMIC EXCLUSION OF JEWS AND THE CONFISCATION OF THEIR PROPERTY IN NAZI GERMANY 297 (Berghahn Books 2002) ("Bajohr") (listing 625 "Aryanized Jewish Firms" based in Hamburg, including Goldtree & Liebes, described as a bulk export business located at Neue Burg 29).

No accounts in the name of Josef Novak were reported in the Accounts History Database (AHD), the database of Holocaust-era Swiss accounts made available by Swiss banking authorities to the CRT. Accordingly, the claimants initially received "No Match Letters" advising that the CRT had been unable to match the names of their relatives to the AHD database.[126]

Josef Novak's daughter, the first claimant, thereafter submitted records from the 1938 Census, which showed that Dr. Novak had owned an account of unknown type at a Swiss bank, and had reported an account value of SF 708 as of April 1938. On reconsideration, the CRT awarded the account to the first claimant (Dr. Novak's daughter, who had a stronger claim to the account than did the spouse of Dr. Novak's nephew, the second claimant). The CRT observed that the account was reported in the 1938 Census and that it was plausible that the account had been transferred to banks in the Reich, or closed unknown to whom. In addition, based on the principle that Nazi victims may have underreported the value of their assets in Census forms, the account was awarded at the higher presumptive value, as opposed to the SF 708 reported in the Census form.

iii. In re Account of Julius Philipp (SF 260,375.00)

Julius Philipp was born in 1878 in Wandsbek, near Hamburg, Germany. He was a metal merchant in Hamburg until 1934, when the family fled to Amsterdam. Julius Philipp again established a metal business in Amsterdam. According to the claimant (a daughter of Julius Philipp), in 1941 that business was seized by Nazi authorities. The family was deported to Westerbork in 1943, and then to Bergen-Belsen. Both Julius Philipp and his wife perished there: Julius Philipp, in 1944, and his wife, two weeks before the camp was liberated in 1945.

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[126] The CRT used advanced name matching systems and computer programs in conducting its matching analysis. Further, the CRT matched not only the names of persons specifically claimed to have owned a Swiss bank account, but the names of other family members identified by the claimant. A "no match letter" or "no match decision" notified the claimant of the CRT's determination that the name of the relative claimed to have owned Holocaust-era Swiss bank accounts, and the names of account owners made available to the CRT by the Swiss banks or located via other sources, did not match.
See http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("No Match Decision").

Jechiel Yulius Philipp. https://yvng.yadvashem.org/nameDetails.html?language=en&itemId=1602495&ind=2. Photo courtesy of Yad Vashem and Herbert Avraham Filip.[127]

The CRT conducted research indicating that in "1901 Julius Philipp founded what eventually became a global commodity trading giant." Julius Philipp (age 23) "had hardly any capital," but the "family had important connections, two of whom helped provide seed capital. Together with a grant from a Jewish-owned facility in Hamburg established to help young men set up their own businesses, this capital sufficed to start the firm, which initially was run from the family home with Julius' sister" as the only employee. The firm thrived and expanded to London in 1909, later surviving the depression.

[127] The photograph is part of a Page of Testimony submitted to Yad Vashem by the son of Julius Philipp. *See also The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4279336&language=en (last visited Aug. 11, 2015) ("Julius Philipp was born in Wandsbek, Germany in 1878. During the war he was in The Netherlands. Julius was murdered in the Shoah [Bergen-Belsen]. This information is based on a List of murdered Jews from the Netherlands found in In Memoriam - Nederlandse oorlogsslachtoffers, Nederlandse Oorlogsgravenstichting, `s-Gravenhage (Dutch War Victims Authority) (courtesy of the Association of Yad Vashem Friends in Netherlands, Amsterdam)").

Julius Philipp; Philipp Bros. Inc. Bolivia Office; Oscar Philipp. Circa 1928. http://www.phibro.com/history/. Photo courtesy of Phibro LLC.

However, "[s]hortly after the Nazis' takeover in 1933, Hamburg, in a total reversal of its earlier liberalism, became notorious for its virulent and early aryanization activities, well before Berlin anchored them in legislation. This abrupt change from what had been an unusually easy environment must have been a yet greater shock to Hamburg's Jewish population and may have played a part in Julius' decision to leave for the Netherlands as early as 1934. Upon his arrival, he established Julius Philipp NV, which, after a rough start, had become a solid enterprise in the late 1930s." Julius Philipp did not leave Europe, because of his "confidence in Holland's ability to maintain neutrality, a confidence with deadly consequences." Storm troopers arrested the family in March 1943. Almost all of the family members were killed. Two of the Philipp children became part of a prisoner exchange from Bergen-Belsen in January 1945, and reached Switzerland.

The CRT noted that although "Julius Philipp NV had disappeared, the name Philipp returned to Amsterdam in 1950 when Philipp Brothers New York, Inc. opened an office there, which in 1951 became Philipp Brothers (Holland) NV." The company "continued to grow into a trading giant, later known as Phibro, with reported assets of US $1.35 billion, when in 1981, it acquired Salomon Brothers." Phibro subsequently became a wholly owned subsidiary of Citigroup Global Markets Holding, Inc. and later of Occidental Petroleum. In January 2016 Phibro was acquired by Energy Arbitrage Partners (EAP). Today, Phibro is an independent firm headed by Simon Greenshields (CEO).

In its examination of the 1938 Census files, the CRT determined that these records indicated that Julius Philipp had fled in 1936, whereas the claimant (Julius Philipp's daughter) had indicated that her family had fled in 1934. A history of the Philipp Brothers also indicated that the family had moved to Amsterdam in 1934. The CRT concluded that "the fiscal authorities may have put the date of his leaving Germany as 1936," coinciding with Julius Philipp's withdrawal from his firm in April 1936, and so the inconsistency in the dates was not significant.

The 1938 Census obtained by the CRT from archives in Berlin showed that Julius Philipp had an account at a Swiss bank which held securities worth 2,314 Reichsmark.

Based on the fact that the account held securities, the CRT determined that it was most likely a custody account, and awarded it at presumptive value. The CRT noted that the "facts of this case are similar to other cases that have come before the CRT in which Jewish residents or nationals of the Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich." It is "plausible in such situations that the proceeds of the account ultimately were confiscated by the Nazi regime." The CRT further observed that although Julius Philipp, who ultimately perished in Bergen-Belsen, "resided outside the Reich" at the time of the Census report, "Nazi authorities had his address" and he "may have had relatives remaining in Germany and … may therefore have yielded to Nazi pressure to turn over his account to ensure their safety."

iv. In re Accounts of Oskar Silberknopf and Hans Silberknopf (SF 135,512.50)

Dr. Oskar Silberknopf was born in 1877 in Vienna. He lived there until his 1941 deportation to Yugoslavia, where he perished.[128] His co-account owner, Hans Silberknopf, was born in 1890, and also lived in Vienna.[129]

[128] "Oskar Silberknopf was born in 1877. During the war he was in Wien, Austria. Deported with Transport from [not specified] Yugoslavia to …Camp [not specified]. Oskar was murdered in the Shoah. This information is based on a List of murdered Jews from Austria found in Namentliche Erfassung der oesterreichischen

The claimant (a cousin of the account owners) provided the CRT with a copy of the March 12, 1938 will of Hans Silberknopf. In his will, which was dated as of the *Anschluss*, Hans Silberknopf indicated that he had decided to commit suicide. He bequeathed the assets of his company to four employees, with instructions for them to keep operating the company as its shareholders, and if that was not possible, to sell the company and divide the proceeds. He listed the company's assets, including its account at a Swiss bank, as well as accounts in other European banks. The account was not reported by the ICEP auditors. No other records evidencing Hans Silberknopf's bank account were located by the CRT.

As to Dr. Oskar Silberknopf, the 1938 Census included a May 5, 1938 letter to the account owner from the bank, indicating that Oskar Silberknopf held three demand deposit accounts at the bank's subsidiary in Amsterdam. The records further showed that Dr. Silberknopf was assessed flight tax in September 1938 and that his Austrian bank assets were frozen in January 1939. By order of the Gestapo dated August 24, 1941, Dr. Oskar Silberknopf was stripped of his Austrian citizenship, and the rest of his assets were confiscated.

The CRT observed that Hans Silberknopf wrote his will "shortly before committing suicide," and that it was directed to his "family and friends, who were to become his heirs, and therefore he would not have had any interest in either adding spurious assets to his estate or exaggerating its size." Given the credibility of this document, the CRT awarded the claimant an account of unknown value at presumptive value. As to Oskar Silberknopf's accounts, the CRT observed that the account owner had been forced to report these accounts in the 1938 Census. Thus, it was plausible that the "proceeds of the accounts ultimately were confiscated by the Nazi regime," especially since the account owner had lived in Vienna until his 1941 deportation. He

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Holocaustopfer, Dokumentationsarchiv des oesterreichischen Widerstandes (Documentation Centre for Austrian Resistance), Wien." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4971174&language=en (last visited Aug. 11, 2015).

[129] "Hans Silberknopf was born in Wien, Austria in 1890. During the war he was in Wien, Austria. Hans was murdered in the Shoah. This information is based on a List of murdered Jews from Austria found in Namentliche Erfassung der oesterreichischen Holocaustopfer, Dokumentationsarchiv des oesterreichischen Widerstandes (Documentation Centre for Austrian Resistance), Wien." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4959220&language=en (last visited Aug. 11, 2015). The Yad Vashem database shows Hans Silberknopf's date of death as April 13, 1938, just one month after the *Anschluss*.

"could not have repatriated the accounts without losing ultimate control over [their] proceeds." The three demand deposit accounts were awarded at presumptive value, since the values provided in the 1938 Census were lower than their presumptive values.

v. In re Accounts of Simon Sonabend (SF 98,750.00)

Simon Sonabend was born in 1899 in Warsaw. He was a watch importer and wholesaler. He lived with his family in Brussels from 1940 to 1942. On August 9, 1942, the Sonabends fled to Switzerland and arrived in Biel. They stayed with a watch manufacturer, Ernst Schneeburger, who advised the authorities of the family's arrival. Simon Sonabend's two children (the claimants) stayed with a different watch manufacturer, Jacques Wollman. Simon Sonabend was apprehended and taken to the Porrentruy prison, and a few days later the Swiss police deported the Sonabend family to occupied France. They were immediately captured by the Nazis. Simon Sonabend and his wife, Lili, were detained in the Drancy concentration camp and then deported to Auschwitz, where they perished later that month.[130]

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[130] Simon Sonabend's plight as a refugee is more fully described elsewhere in this Final Report (*see* chapter of this Final Report entitled "The Refugee Class Claims Process") as well as in the Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"). Simon Sonabend was interrogated by Swiss police and "despite intervention on the family's behalf by '[t]hree prominent Swiss watch manufacturers, and a member of the Swiss Parliament, who knew Simon Sonabend' and 'tried to prevent the family from being deported by stating that the Sonabends would not be a burden on the Swiss economy,'" the family "was deported by Swiss police who deposited Simon Sonabend, his wife, and two children at the French border in the night without a map." The family was "'immediately captured by Nazi Regime soldiers' and imprisoned in France, and the 'parents were put on a train to Drancy and then transported to Auschwitz where they were executed on August 24, 1942.'" *See* Distribution Plan, Vol. II, Annex J ("The Refugee Class"), at J-27, citing *Sonabend et al. v. Union Bank of Switzerland et al.*, No. 96-5161, at Par. 11-14, one of four complaints consolidated as part of the class action lawsuits. The Sonabend children survived the war and later brought a lawsuit in Switzerland, which was settled out of court. The settlement was the "'first-of-its- kind,'" as "'Bern has never before voluntarily agreed to make payments to make up for the country's wartime deportations of thousands of Jews who were seeking to flee Nazi troops.'" Distribution Plan, Vol. II, at J-29 (citing Elizabeth Olson, *Swiss Apologize To 2 Jews Denied Wartime Refuge*, INT'L HERALD TRIBUNE, May 24, 2000).

In the Central Database of Shoah Victims' Names, Simon Sonabend's date of birth is listed as 1889: "Simon Sonnabend was born in Warszawa, Poland in 1889. During the war he was in France. Deported with Transport 23, Train 901-18 from Drancy, Camp, France to Auschwitz Birkenau, Extermination Camp, Poland on 24/08/1942. Simon was murdered in the Shoah. This information is based on a List of deportation from France found in Le Memorial de la deportation des juifs de france, Beate et Serge Klarsfeld, Paris 1978." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=3220541&language=en (last visited Aug. 11, 2015). *See also The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=6798538&language=en (last visited Aug.

The ICEP auditors did not find any bank records evidencing Simon Sonabend's account. However, the claimant provided documents demonstrating the existence and amount of the assets his family had deposited in Switzerland. He submitted a statement dated August 16, 1942, which his father Simon Sonabend had given to the Swiss police, detailing the family's flight to Switzerland and his belief that he had enough funds to pay the costs of internment. Specifically, according to the police statement, Mr. Sonabend stated that he had brought $5,000 in bank notes, 65,000 French Francs, jewelry worth approximately SF 3,000, and a check for $7,000.

In addition, the claimant also provided the CRT with an August 22, 1942 report from local police authorities to the District Chief of the Cantonal Police in Porrentruy, "stating that the Claimants' family left a suitcase behind upon deportation and that the suitcase, supposedly containing clothes, was to be handed over to a local schoolteacher. This report bears a notation by the office the Cantonal office stating that the suitcase was locked and its contents unknown. According to the report, Mr. Sonabend stated that he also left a suitcase containing money and foreign currency with Mr. Jacques Wollmann."

The claimant also submitted a February 9, 1963 report from the Bern Cantonal Police, transmitted on February 11, 1963 to the Federal Department of Justice. The report stated that the Federal Department of Justice had requested on February 1, 1963 that the police investigate the fate of the goods that the Sonabends had left in Biel when they were expelled in 1942. The report referred to two suitcases, one given to Mr. Wollmann, and the other to Mr. Schneeburger. According to the report, Mr. Wollmann opened the suitcase on October 11, 1942 and found it to contain $1,400. Mr. Wollman withheld $1,200 to cover a loan owed to him by Mr. Sonabend, and deposited the $200 balance in the Biel branch of the bank, in the name of Sonabend. The report stated that the latter amount was believed to have been seized shortly thereafter by a watch manufacturer, *Langendorf Watch* company. A second company, *Frey & Co.*, reported on September 2, 1942 that it was seeking to safeguard its customer's interests. It asked that Mr.

11, 2015) ("Simon Sonabend was born in 1899. During the war he was in Porrentruy, Switzerland. This information is based on a List of persecuted persons found in List of Jewish refugees in Switzerland who were returned by the Swiss authorities to the country from which they arrived").

Sonabend's suitcase and other items left by him be released to the company, which would deposit the items with a bank.

The CRT observed that Simon Sonabend had perished in Auschwitz, and the police reports indicated that he had had assets that he was forced to leave behind when he was expelled from Switzerland. The CRT awarded Mr. Sonabend's children the presumptive value of two accounts of unknown type (one based upon the $200 deposited by Mr. Wollmann; the other based upon the account that *Frey & Co.* stated it would open in Simon Sonabend's name).

vi. In re Account of Hedwig Ullman (SF 260,375.00)

Hedwig Ullman was born in 1872 in Frankfurt, Germany, where she was an art collector. Her husband died in 1912. The Ullmans had two sons. One son moved to Milan in 1929 to work as managing director of a local IG Farben subsidiary. The other son fled to Milan a few years later, in 1935. Hedwig Ullman likewise escaped from Germany and joined her sons in Milan in the mid-1930s. In 1939, the family fled to Melbourne, Australia, where Hedwig Ullman died in 1945.

The ICEP auditors did not report an account belonging to Hedwig Ullman. However, the CRT located the 1938 Census form filed by Hedwig Ullman. It indicated that, among other assets, she owned an account at the Basel branch of a Swiss bank. Specifically, the Census records included a July 15, 1938 statement from the bank to Hedwig Ulllmann, indicating that she owned a custody account containing various securities, including those of the U.S. company RCA. A December 28, 1938 memorandum from the Reich Finance Office in Frankfurt (*Finanzamt*) to the Berlin office stated that Hedwig Ullmann had emigrated to Milan on May 25, 1938, and discussed the amount of atonement tax that was to be paid.

The CRT awarded the account to the claimants — the children and grandchildren of Hedwig Ullman — at presumptive value, because the value of the securities recorded in the 1938 Census form was lower than presumptive value. The CRT observed that this case was "similar to other cases that have come before the CRT in which Jewish residents and/or nationals of the

Reich reported their assets in the 1938 Census, and, subsequently, their accounts are closed unknown to whom or are transferred to banks in the Reich."

2. TAD Accounts

Examples of "TAD" cases are discussed elsewhere in this Report and include In re Account of I. Louis Breslauer; In re Account of Elsa Turmann; and In re Accounts of Aleksander Weiss and Emanuel Weiss.

3. Swiss Refugee Accounts

i. In re Accounts of Mario Calfon (SF 289,087.50)

Mario Calfon was born in 1896 in Florence, Italy. He was in the jewelry and weaving business in Milan. Mario Calfon, his wife and one daughter (the claimant, who filed an Initial Questionnaire but not a formal claim form) escaped to Switzerland in 1943. His two other daughters went into hiding in Italy. While in Switzerland, the jewelry Mario Calfon had brought with him was confiscated by the Swiss authorities. This action was taken pursuant to a March 12, 1943 decree of the Swiss Federal Council providing that assets of refugees who entered the country after August 1, 1942 were to be placed in a Swiss bank and managed by Swiss police authorities. Mario Calfon was forced to work in refugee camps near Lugano, and he and his wife were hospitalized while in Switzerland.

The bank records, which were not reported by the ICEP auditors but were provided to the CRT by the claimant, included a letter from the chief of the Police Division to the management of the refugee camp "Majestic," with a copy to the bank. The letter instructed the camp's managers to order Mario Calfon to sell assets in his custody account to cover the sum of SF 539.17 accrued in hospitalization costs in early 1944. Mario Calfon wrote to the bank requesting that the gold jewelry in his account not be sold. Based on a July 2, 1944 letter he wrote to the Police Division, the bank gave Mr. Calfon a credit of SF 600 to pay his hospital debt. The bank authorized only the amount of the hospital costs, as well as "stamping costs," but absent police

authorization would not grant Mario Calfon's request to provide him with the remaining SF 70 credit, although he had sought that amount to buy supplies for his family.

Subsequently, the bank demanded that Mario Calfon sell his jewelry to pay off his debt. Instead, Mr. Calfon was able to reach an agreement on October 3, 1944, whereby another individual acted as his guarantor in the event that the debt was not repaid within one year. On October 4, 1944, the Police Division sent an invoice to Mario Calfon debiting his demand deposit account for his cost of living at the refugee camps (SF 1,289.50), as well as his wife's hospitalization costs (SF 202.20). On October 13, 1944, the Police Division informed Mario Calfon that another SF 50 was debited as a fee for searching for his children. Another SF 100 was blocked to cover additional costs that might arise.

As described by the CRT, Mario Calfon wrote several additional letters between 1945 and 1957, after he had returned to Florence. He repeatedly raised the matter of his deposited jewelry. Further, he objected to the fact that he had been charged for his cost of living at the refugee camps, while not being reimbursed for the work he had performed there. He also noted that the medical expenses he had incurred in Switzerland, for which he was now supposedly indebted, were caused by his forced labor in the refugee camps.

Although the bank informed the Police Division by letter of March 11, 1947 that it had returned Mario Calfon's assets to him and had closed his custody account, the bank records indicated that these assets actually were not returned. Rather, they were used to cover the hospital debt Mario Calfon supposedly owed, despite his express instructions to the bank not to dispose of the gold jewelry.[131] The records showed that the custody account was closed

[131] *See also In re Account of Minia Nussenbaum* (claimant submitted an ATAG Ernst & Young claim form as well as an Initial Questionnaire although no claim form, and identified herself as the account owner; she was interned in slave labor camps in France and subsequently in a camp in Charmilles, Switzerland; upon her arrival at the camp, her money (2,650 French Francs) was confiscated and deposited by Swiss authorities at the bank. Records from 1998 indicated that the bank responded to Minia Nussenbaum's request to search for her accounts by explaining that her French Francs had been converted to SF 41.05, from which SF 15.20 was deducted for "pocket money", SF 3.45 was deducted for bank fees, the remaining SF 22.50 was transferred to the refugee camp, and so the bank had no further obligations to the owner as of 1944*); In re Account of Fernando Vitale (SF 49,375.00)* (claimant's father, an engineer, fled with his family in 1943 from Italy to Switzerland, where their valuables were confiscated and deposited in a Swiss bank. Although no bank records were reported by the ICEP auditors, the claimant provided the CRT with a December 6, 1943 receipt from the Locarno, Switzerland police department, showing that Fernando Vitale had a Swiss account with a balance of 62,000 Lira. Since

sometime before March 11, 1947 and did not show the fate of the jewelry deposited in this account. As to the demand deposit account, the bank records did not indicate when the account was closed.

The CRT awarded Mario Calfon's daughter the presumptive value of the custody and demand deposit accounts, observing that the bank's assessment of the value of the jewelry in the custody account was not reliable. The CRT noted that Mario Calfon "was not provided with an invoice for the alleged costs of living and that the work he performed was not credited towards any of the alleged costs. Significantly, the Account Owner was not consulted prior to the deduction of these costs from his demand deposit account, nor was his consent obtained by the bank before his account was debited." Therefore, Mario Calfon did not have "dominion" over this account. As to the custody account, despite the bank's assertions that the assets in the account had been returned to Mario Calfon, the evidence showed otherwise.

Citing the Bergier Commission's studies, which focused particularly upon the role played by the Swiss Volksbank in handling refugee accounts, the CRT observed that Mario Calfon, as true for other refugees in Switzerland "whose assets were placed in accounts at the Bank by the Swiss authorities generally could not freely dispose over their accounts." A "number of refugee accounts could not be retrieved by account owners" and "complaints of refugees mostly concerned the fact that their deposit assets were not returned."

ii. In re Accounts of Jenny Gans and Max (Moses) Gans (SF 28,712.50)

Jenny Gans was born in 1919, and her husband Max Gans was born in 1917. Max Gans, an antiques dealer, lived with his wife in Amsterdam until they fled to Switzerland in July 1942.

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there was no evidence that this account was repaid and in light of the fact that "owners of refugee accounts generally could not freely dispose over their accounts," and "a significant number of refugee accounts could not be retrieved by account owners," the account was paid at presumptive value for an account of unknown type). For additional CRT awards involving refugee accounts, *see, e.g., In re Accounts of Emma Kuckel-Pipersberg; In re Account of Franco di Alberto Levi;* and *In re Accounts of Gerson Goldschmidt and Cecile Goldschmidt.*

They were detained in Swiss internment camps, where they performed forced labor. Upon their release, they resided as refugees in Geneva.

Since they were not permitted to work in Switzerland, they were dependent upon the financial assistance they received from an acquaintance in New York, who regularly transferred funds to Max and Jenny Gans from the Chase National Bank in New York. To receive these funds, in November 1942, Jenny and Max Gans opened a US dollar denominated account at the Geneva branch of "Bank I." By October 1943, all assets belonging to refugees living in Switzerland were to be managed by and held at a second bank, "Bank II." The Ganses requested that Bank I transfer all financial assistance payments received from New York to their new account at Bank II. In July 1944, Max Gans requested that Bank I open an account at the Bern branch in his and his wife's names.

The bank records, which were not located in the files made available to the CRT by the banks, were obtained by the claimants (Jenny Gans and her son) and were sent to the CRT. With respect to Bank I, the records demonstrated that an individual living on Riverside Drive in New York regularly transferred various dollar amounts to the accounts held by Jenny and Max Gans at Bank I. The records also showed that an account was opened in July 1944 at the Bern branch of Bank I, and that Bank I paid the entire balance of this account to Max Gans on December 14, 1944. With respect to Bank II, the records showed that Bank I had been requested to transfer all sums received for Max Gans to the account at Bank II, in accordance with the orders of the Police in Bern and the Swiss regulations regarding refugee assets.

The CRT determined that the Bern account at Bank I had been closed and the proceeds returned to the owners. As to the account at Bank II, however, "given that refugees in Switzerland whose assets were placed in accounts at Bank II by the Swiss authorities generally could not freely dispose over their accounts; that a number of account owners could not retrieve the value of those accounts following the Second World War; that complaints of refugees mostly concerned the fact that their deposited assets were not returned; that the last-dated bank record provided by the Claimants evidencing the Account Owners' contact with Bank II is dated 14 March 1944;" and based on the presumptions of the CRT Rules, the CRT awarded the demand deposit account at its presumptive value.

4. Other Documentary Evidence of Account

i. In re Account of Kleiderfabrik Josef Schneider (SF 49,375.00)

Josef Schneider lived in Munich, where he owned the coat factory *Kleiderfabrik Josef Schneider*. Josef Schneider was arrested on March 7, 1933. He died three days later, on March 10, 1933, from injuries sustained when he was severely beaten by the Nazis.

No records evidencing the account were located by the ICEP auditors, and thus the account presumably was among the 2.1 million accounts for which all documentation was destroyed by Swiss banks after the Holocaust. However, the claimant, Josef Schneider's great-nephew, submitted other documents that the CRT determined provided sufficient evidence demonstrating the existence of a Holocaust-era Swiss bank account. The documents consisted of letterhead from *Kleiderfabrik Josef Schneider*, showing that the entity was a business located at Aberlestrasse 1 in Munich. The letterhead also showed that the company had an account of unknown type at a specific Swiss bank.

The CRT observed that the documents provided by the claimant plausibly demonstrated that the account owner had held a Swiss account. The CRT noted that it "has previously awarded accounts to Claimants when the ICEP Investigation failed to locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database). The evidence submitted by these Claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archives Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence

submitted by Claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank." [132]

Given that Josef Schneider, the owner of the factory that held the Swiss account, was killed in 1933 by the Nazis, the CRT awarded Josef Schneider's grand-nephew the presumptive value of an account of unknown type.

II. DENIALS

A. INSUFFICIENT EVIDENCE OF SWISS ACCOUNT

i. In re Account of Ad Adler (AKA Adolphe Adler) and Account of Emil Zeisel and Adolf (or Alfred) Zeisel (or Adler)

Emil Zeisel was born in 1902 in Brünn (Brno), Austria-Hungary (later Czechoslovakia; today Brno, the Czech Republic). According to his cousin, the claimant, Emil Zeisel was a senior officer for the Union Bank in Brno. The claimant further advised the CRT that between Autumn 1938 and March 1939, Emil Zeisel transferred two small cases to one of the named defendant banks, by way of the Union Bank in Brno. The claimant stated that he possessed

[132] *See also In re Account of Selly Haase* (Certified Award upon Request for Reconsideration) (award of SF 650,250.00 based upon claimant's presentation of "a copy of restitution claim against the German Reich, dated 8 November 1955, containing an extract of an affidavit by the Account Owner, dated 24 October 1951. Because this document (1) indicates that it was submitted to the German government by the Account Owner's widow approximately ten years after the end of the Second World War and (2) contains detailed indicia of an account in a claim submitted by the Account Owner himself to the German government approximately six years after the War," the CRT concluded that this was "facially reliable evidence" of an account); *In re Account of Eugen Forgacs (SF 1,260,000.00)* (although the ICEP auditors did not report an account, the claimant provided CRT with a copy of a December 29, 1938 letter from the bank to her father, Eugen Forgacs of Budapest, indicating the type and value of securities held in his custody account between July 24, 1937 and January 31, 1938); *In re Account of Samu Spiegel (SF 49,375.00)* (no account reported by ICEP auditors; however, claimant provided a copy of a certificate of deposit and a September 26, 1939 letter from a Swiss bank indicating a deposit of Pound Sterling made on behalf of the claimant's uncle); *In re Account of Dr. Leopold Balint (Certified Award Upon Request for Reconsideration) (SF 377,062.50)* (after receiving a "No Match Letter," claimant provided additional documentation to the CRT, including a December 26, 1955 estate asset report regarding the estate of Dr. Lipot Balint, which was submitted to the municipality of Mol, Yugoslavia [today Serbia]. The report included a passbook for a bank account at an unidentified Swiss bank. The CRT noted that the evidence of the account was especially reliable given that it was submitted in connection with estate proceedings in a Communist nation).

"what he believes to be a key to a safe deposit box at Bank II [*i.e.* one of the two defendant banks] with the inscriptions *#63* on the grip and *#321228* on the shaft."

The claimant stated that another cousin, Adolf (Alfred) Zeisel (Adler), born on 1874 in Brno, owned the company *Firma Bauunternehmen Zeisel & Pokora* in Brno, which was aryanized in 1939. Adolf Zeisel was deported to Auschwitz, where he perished. According to the claimant, Adolf Zeisel owned a Swiss bank account.

The CRT located an account owned by an Ad (Adolphe) Adler in the Account History Database (AHD), although the account was located not at "Bank II" (the bank named by the claimant) but at a second Swiss bank, "Bank I." However, the CRT determined that the account owner was not the same individual as the claimant's relative. While the claimant's relative lived in Austria-Hungary, the actual account owner lived in a different country not specified by the claimant.[133] Accordingly, the claimant was issued an "identity denial" for this account, meaning that the account owner and the claimant's relative might have had the same or similar name, but were not the same person.

With respect to the account that the claimant believed to have existed at Bank II, the CRT observed that the ICEP auditors had not reported an account owned by any of the individuals named by the claimant. The CRT concluded that the information the claimant had provided did not demonstrate that a Holocaust-era bank account had existed:

> Without addressing the authenticity of the information provided by the Claimant, the CRT has determined that the evidence submitted by the Claimant is insufficient to justify an award. According to Article 17 of the Rules, the CRT shall use the records and files available from the Account History Database, the Account Dossiers, and the Total Accounts Database, the information submitted by the Claimants, and to the extent that the CRT deems relevant, other sources of information to determine whether an award is justified. While the CRT has previously awarded accounts to Claimants when the ICEP Investigation failed to

[133] In identity denials such as this one (of which a total of 6,046 were issued), identifying information contained in the bank files about the account owner was not publicly disclosed for two reasons. First, disclosure of such information was not permitted under the terms of the agreements authorizing the CRT to operate in Switzerland and to have access to bank files. Second, in the event that the account was later claimed by another individual, to confirm whether the account owner was that claimant's relative, the CRT needed to be able to review data in the new claim against information in the bank files that had not been publicly disclosed.

> locate an account belonging to their relative (an account not included in the Account History Database, the Account Dossiers, and the Total Accounts Database), the evidence submitted by these Claimants falls into very limited categories. Article 17 of the Rules lists certain categories of evidence that the CRT has used to justify an award when an account is not identified in the ICEP Investigation. These categories include Austrian State Archive Records and other government records, records of the New York State Holocaust Claims Processing Office, and any other historical and factual material available to the CRT. Examples of facially reliable evidence submitted by Claimants include actual bank documents, documents submitted to an official governmental agency, and official letterhead indicating a connection to a Swiss bank. While the CRT bears in mind the difficulties of proving the existence of an account after the destruction of the Second World War, it has determined in this case, because the information provided by the Claimant does not fall into any of the categories discussed above, nor does it indicate an official connection to Bank II or reference to the existence of an account open between 1933 and 1945, it is insufficient to support the existence of a bank account.

Thus, the CRT was unable to make an award to the claimant.[134]

ii. In re Account of Kux, Bloch & Co. (SF 162,500); Denial of Claim for Claimed Account Owner: Kux, Bloch & Co.

The part-owner of the bank *Kux, Bloch & Co.*, was born in 1883 in Vienna. After the *Anschluss*, he lost his share in the business as well as real estate and art. He fled to London in 1939, and died there in 1968. The claimants provided a variety of documents demonstrating that

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[134] For additional examples of "insufficient evidence" denials, *see, e.g., In re Account of Osias Rupp* (the claimant, who initially filed her claim through the HCPO, provided the HCPO with a copy of a safe deposit box key containing the notation "Zurich." The HCPO contacted the manufacturer of the key, which forwarded this information to three major banks in Zurich. The banks found no evidence of an account belonging to Osias Rupp. For the same reasons set forth in the Adler decision, *supra*, the CRT determined that the evidence provided by the claimant was insufficient upon which to base an award); *Certified Denial to Claimant [TK][REDACTED TO PRESERVE CLAIMANT CONFIDENTIALITY]*(claimant stated that he was the account owner and submitted copies of certificates pertaining to 300 shares issued in Zurich on December 3, 1932, each with a nominal value of SF 40, of the Swiss company *Cementia Holding A.-G. Zurich*. The CRT observed, first, that there was no evidence that the shares were deposited in a Swiss bank during the Holocaust era; second, since the claimant stated that he had the certificates in his possession, he himself had retained dominion over these assets); *In re Accounts of Willy Glaser* (travelers checks and letters of credit which were remitted to payment at Lausanne branches of the defendant banks, but which did not refer to accounts at Swiss banks or contain the name of the alleged account owner, were insufficient to support the existence of a bank account).

the part-owner was their father, and further demonstrating that he was a partner in the bank *Kux, Bloch & Co.*, including his 1938 Census form.

The bank records indicated that the bank owned a custody account with a recorded balance of SF 500 as of September 27, 1938, when the account was closed and its assets transferred to a bank in Zurich for disposition by the *Länderbank Wien*. The CRT observed that the *Länderbank Wien* "cooperated closely with Nazi authorities to expropriate Jewish-owned assets." The part-owner had been forced to flee Austria. Because the recorded value was lower than presumptive value, the CRT awarded his children the presumptive value of a custody account.

However, a second claim by a different claimant was filed to this same *Kux, Bloch & Co.* published account. After extensive analysis of documents provided by the additional claimant, as well as independent research, the CRT denied the second claim.

The claimant in the second claim (*Claimed Account Owner: Kux, Bloch & Co.)* stated that his grandfather's cousin was born in 1886 in Paris, and that he was a "medic" involved with the sale of medical equipment and insurance. In 1931, according to the claimant, his grandfather's cousin moved to Vienna after he was invited by other owners to become a "founder," "investor" and "co-owner" of the bank *Kux, Bloch & Co.* The claimant stated that the bank "'was held both in Austria and Switzerland;'" that he was providing the CRT with the bank's Vienna street address, which was "'not openly published' anywhere;" and that after the *Anschluss*, the bank's financial activity "'moved completely from Austria to Switzerland.'" The claimant provided the CRT with copies of the entry for the bank in the Vienna corporate registry. He stated that his grandfather's cousin was ordered to remain in Switzerland, and later was returned to France. He eventually was deported to Drancy and then to Auschwitz, where he perished.

As the CRT explained, the claim by the second claimant was not credible for a variety of reasons:

- The Vienna corporate registry entry for the bank *Kux, Bloch & Co.* tracked the ownership of the bank beginning in 1922, when two individuals became the

authorized signers for the bank. Over the years, the registry recorded a variety of new authorized signatories on behalf of the bank, and personally liable partners. In December 1938, the bank was placed under provisional administration; it was liquidated in January 1939; and dissolved in November 1939. Nowhere in any of these entries did the name of the claimant's relative appear, although the claimant stated that he held a significant role in the bank as a founder, investor and co-owner.

- The CRT analyzed a study of the bank *Kux, Bloch & Co* by the Austrian Historical Commission, which was based upon the Commission's archival research. The study contained no reference to the claimant's relative. Moreover, the study indicated that the bank was founded in 1922 (as confirmed by the fact that the first entry in the corporate registry provided by the claimant was dated 1922). The founding of the bank in 1922 contradicted the claimant's statement that his relative, who he stated joined the bank nine years later in 1931, was a "founder" of the bank.

- The claimant provided a copy of a letter dated March 28, 1938, which the claimant stated had been written by an individual who appeared in the corporate registry as an owner of the bank. The CRT determined that this letter was "not a reliable piece of evidence," because "the quality of the German language in which the letter is written is extremely poor; the letter is barely comprehensible. In contrast, the CRT received claims from the legitimate heirs of the part-owner of the bank, to whom the CRT awarded the account addressed in this decision. Those claimants included numerous samples of letters written by the part-owner of the bank, who, those claimants indicated, was a native of Vienna, Austria. All of those letters are written in excellent, fluent German. There is a vast difference in the quality of the language used in the letter submitted by the Claimant, versus the letters submitted by the claimants who are the legitimate heirs of [the part-owner of the bank]." Moreover, the CRT pointed out that in the letter submitted by the claimant, the name of the part-owner had been typed, using one spelling of his first name, yet the signature directly underneath used a different spelling. Further, all of the documents submitted by the heirs to the part-owner used one spelling.

- The claimant submitted a copy of a *Kux, Bloch & Co.* balance sheet, which contained two garbled headings that were evidently mistranslations into German of English financial terms, and did not use the proper German terms.

- The claimant's statement that the address he had provided for the bank had not been "'specified in any open official documents'" was contradicted by the Austrian Historians' Commission report, a publicly available document, which provided the same address "in the very first sentence of the entry regarding" *Kux, Bloch & Co.*

- Although the claimant stated that the bank "'moved completely from Austria to Switzerland'" after the *Anschluss*, neither the archival records, nor the corporate registry, nor the Austrian Historians' Commission report, made any mention of a move to Switzerland.

The claim accordingly was denied. The CRT left undisturbed its original determination awarding the *Kux, Bloch & Co.* account to the first group of claimants, whom the CRT had confirmed were the legitimate heirs of the part-owner of the bank.

B. DISPOSITION DENIALS (DETERMINATION THAT THE ACCOUNT OWNER RECEIVED THE PROCEEDS)

i. In re Accounts of August Löw Beer, Walter Löw Beer, Alice Bettina Löw Beer, Gusti Löw Beer, Georg Löw Beer, Herbert Löw Beer, Hugo Keller, Marie Keller, Leontine Pick, Camilla Silberstern, Royaltex and Supertex

August and Walter Löw Beer, a third brother, and Marie Keller, née Löw Beer, were siblings who were born in Brno, Czechoslovakia.

Walter Löw Beer was born in 1881. He was married to Alice Bettina Löw Beer, and they lived mainly in Brno with their three children. In 1939, they fled Brno and stayed briefly in Switzerland before arriving in Paris, which they fled after the Nazi invasion of France in 1940. They settled in England, where they died, respectively, in 1954 and 1991.

August Löw Beer was born in 1883. He was married to Alice Löw Beer. He lived with his wife and their two children in Brno, where he served as Austrian Consul General. They fled in 1938 and lived in Switzerland for several months in 1939. They then lived in Paris until the Nazi invasion, whereupon they fled for London, and then moved to Scotland. August Löw Beer died in Scotland in 1942, and his wife died in London in 1979.

The third brother lived in Brno with his wife Gusti and his three children. He died in Brno before 1933. Gusti Löw Beer fled to France, and in 1941 to Brazil, where she remained until the end of the War. She moved to New York after the War, and died in North Carolina in 1975.

Marie Keller lived in Brno with her husband, the banker Dr. Hugo Keller, and their son. Marie Keller and her son were killed in concentration camps. Hugo Keller fled to France, where he died in 1966.

The Löw Beer family owned the textile company *Aaron & Jacob Löw Beer's Söhne*, with factories in Czechoslovakia and divisions throughout Europe, including the Swiss division *Supertex* and a division named *Royaltex* in the Netherlands, France and Vienna.

View of the factory premises of Moses Löw-Beer in Svitavka, Czechoslovakia (around 1930). http://www.low-beerovy-vily.cz/album/firma-moses-low-beer-historicke-%20dokumenty-a-fotografie/a01-tovarni-areal-jpg/.

The CRT analyzed numerous records in connection with the claims, which were filed by the children and grandchildren of the Löw Beer siblings. In addition to examining bank records (including records obtained through the "voluntary assistance" process), the CRT also studied documents the HCPO had obtained from archives in the Czech Republic including the City Archive of Brno, the Moravsky Zemsky Archive in Brno, and the Czech National Archive. The latter contained files created by the Nazi authorities in Czechoslovakia, including "correspondence and reports by the *Devisenschutz Sonderkommando* (foreign exchange security special unit) and the Gestapo; a report on the aryanization of *Aaron & Jacob Löw Beer's Söhne* and its financial condition during the first half of 1940 prepared upon the order of the *Oberlandrat* (local authority) in Brno; and an application to appoint a non-Jewish trustee of *Aaron & Jacob Löw Beer's Söhne* pursuant to an ordinance on Jewish wealth in the Reich Protectorate of Bohemia and Moravia."

The CRT concluded that "members of the Löw Beer family were able to take measures to protect the family's assets that were located outside of Nazi-controlled territory." The CRT observed that "a non-Jewish trustee was appointed to manage *Aaron & Jacob Löw Beer's Söhne*" but that "foreign corporations owned by the firm" in Amsterdam, Paris and Zurich were "'uncontrollable' (*uncontrollierbar*), and that most of the firm's foreign assets had been 'cashed out (*einkassiert*) to its owners after they fled Czechoslovakia.'" In addition, the "audit report prepared in 1940 for the Brno *Oberlandrat*" stated that after the Nazi "occupation of Holland and the resumption of postal traffic, it became apparent that [fictitious sales by August Löw Beer to a London firm] were nothing other than Jewish machinations …. We believe that things in the case of Zurich and Paris are no different, although demands were made from there, no settlement by post could be managed, because the Jew August Löw Beer hung around in Zurich and Paris after his flight to the West."

The CRT concluded that the Löw Beer siblings and the companies they owned held numerous accounts at four different Swiss banks. The evidence demonstrated that the owners had received the proceeds of all of these accounts.

Thus, at "Bank 1," the siblings held more than 40 different accounts under approximately 16 different account numbers. Several of these were constituted as custody accounts under "asset management" (*Vermögensverwaltung*) account relationships. "Under the terms of these asset management relationships, Bank 1 officials held broad authority to transact business on the accounts, including the power to buy and sell securities, gold, and foreign currency on behalf of the account owners."

In addition, "several of the Account Owners' accounts in Zurich included special dossiers, in which the assets were actually held on deposit at Bank 1 branches in London and New York, and at the bank *Brown Brothers Harriman & Co.* in New York" *("Brown Brothers")*. These "dossiers were established under special conditions," with the Zurich branch remaining owner of record, and the individual Account Owners holding power of attorney. Each special dossier "contained a sealed envelope which was to be opened only under certain conditions: either upon receipt by the special dossier's custodian" (*i.e.*, the New York or London branch of the bank, or *Brown Brothers*) of a letter from the Zurich branch bearing a "special code word,"

or in the event that the Swiss frontier was breached by military troops of any nation, serious rioting in Switzerland, or the like. "The sealed envelopes contained instructions to the respective custodian banks to withdraw all assets from the special dossiers and to open accounts at the custodian banks in the names of the respective power of attorney holder of the assets in the dossiers" — *i.e.*, the Löw Beer siblings or their companies — "and to deposit all the assets from the special dossiers into those new accounts."

The CRT determined from the bank records and other documents that August and/or Walter Löw Beer activated a number of the special dossiers between June and September 1940, thereupon triggering the transfer of these accounts to the New York branch of the bank. Other accounts were closed during the same period. "Given the correspondence between the dates of activation of the special dossiers, the dates of transfer of other accounts to New York, and the dates of closure of other accounts, and the fact that Bank 1's records show that the special dossiers were activated upon the instructions of August and/or Walter Löw Beer, the CRT concludes that the transfer or closure of the other accounts in the same period also occurred upon the instructions of" the brothers.

For the same reason, the CRT concluded that the other accounts owned by the two brothers or their spouses that were closed before September 1940 likewise were closed properly. The CRT observed that in addition to the evidence that the brothers had actively managed specific accounts, and had kept the bank informed of their addresses, Walter Löw Beer also had maintained an active banking relationship with Bank 1. As late as January 1944, while he was living in London, he gave the bank instructions about certain of his accounts via the London firm *S. Japhet & Co.* "It is unlikely that Walter Löw Beer would have continued to entrust his assets to Bank 1 in January 1944 if any of the other accounts that he owned or co-owned at Bank 1 had been closed improperly before that date."

As to other accounts owned by August Löw Beer at Bank 1, the CRT observed that the bank was informed of his death, after which certain of these accounts were transferred to a former secretary at the *Supertex* affiliate of *Aaron & Jacob Löw Beer's Söhne*, a personal and professional associate of the family. Other accounts were transferred to the United Kingdom, where Walter Löw Beer and his wife were living.

In addition, the CRT determined that accounts owned by Hugo Keller at Bank 1 likewise were closed properly. These accounts had remained open until 1966, the same year that Hugo Keller died. "Given the evidence that these accounts remained open after the Second World War and that Hugo Keller was in contact with Bank 1 and transacted business on at least one of these accounts after [the War]," the CRT concluded that Hugo Keller or his heirs had closed the accounts themselves.

With respect to accounts owned by Gusti Löw Beer, the CRT noted that a new custody account had been created after the account owner, who by then had fled to Brazil, had applied to the Federal Reserve Bank of New York to change the record ownership of the assets from the name of Bank 1 Zurich to her own name. Gusti Löw Beer wrote to the bank on December 1, 1945, advising that she was now residing in New York. After that, the assets were transferred to a custody account in her name, with power of attorney given to her daughter. Accordingly, her accounts were closed properly.

As to an account over which Gusti, Walter and August Löw Beer together held power of attorney, the CRT observed that on February 19, 1940, the assets in the account were transferred to a joint account at the bank in the names of the three individuals. In addition, "just one day after the opening of this account, on 20 February 1940, August Löw Beer signed an affidavit in Zurich regarding another account." Given this evidence, as well as the fact that Gusti, Walter and August Löw Beer "actively managed their other accounts at Bank 1 after this date," the CRT determined that they had access to and managed this account as well.

With respect to a custody account owned by Gusti Löw Beer at the Lausanne branch of Bank 1, the CRT noted that the account was closed on February 5, 1942 by transfer to a bank in Rio de Janeiro, Brazil, where Gusti Löw Beer was living at the time, and therefore she had obtained the proceeds.

As to an account owned by August and Walter Löw Beer, the bank records showed that the account was paid after the War to the administrators of the estate of August Löw Beer, and to an account owned by Walter Löw Beer.

With respect to accounts owned by Georg Löw Beer, the accounts were frozen in the 1941 Freeze, at a time when Georg Löw Beer was living in Rio de Janeiro. "Given the evidence that Georg Löw Beer maintained contact with Bank 1 following his arrival in Rio de Janeiro, and given the evidence that he received the proceeds of his share of another account at Bank 1 two months after the closure of" a different account, the CRT determined that these accounts had been actively managed, and that the owner had received their proceeds.

As to accounts owned by Walter and Alice Bettina Löw Beer at Bank 1, the CRT observed that the owners and/or their heirs had actively managed other accounts held at the same bank. The CRT concluded that these accounts likewise had been so managed, and the account owners had obtained their proceeds.

In addition to their holdings at "Bank 1," the Löw Beer siblings also owned accounts at three other Swiss banks.

As to the account held at Bank 2, it was closed on September 29, 1938, "one day before the Nazi annexation of the Sudetenland region of Czechoslovakia under the Munich Agreement and six months before the annexation of the Czech territories of Bohemia and Moravia," where the account owners lived. Thus, the CRT concluded that the account owners had closed the accounts themselves.[135]

With respect to assets held at Bank 3, the CRT observed that August and Walter Löw Beer had deposited funds at the bank's Geneva branch in January 1940. As of November 12, 1946, "there was an account at Bank 3, possibly in the name of *Royaltex*, which was to be transferred to Bank 2; and *Royaltex*, which was reportedly owned by Walter Löw Beer, held two accounts at Bank 3 which were released from the 1945 Freeze pursuant to an application" on November 11, 1948. "Given that August and Walter Löw Beer deposited funds at the same Bank 3 branch where assets were held in the name of *Royaltex*, which were actively managed after the Second World War, and that Walter Löw Beer remained in contact with Bank 3 after reaching safety in England," the CRT concluded that "these accounts were closed properly."

[135] In addition, one of the claimants had submitted a memorandum to the CRT "indicating that there were 'no accounts' remaining at Bank 2 as of 12 November 1946."

Finally, as to Bank 4, the CRT observed that a variety of documents "together show securities and cash held at Bank 4 by members of the Löw Beer family. However, these records show that the securities were transferred to *Brown Brothers Harriman & Co.* in New York at the end of March or the beginning of April 1939." Additionally, two demand deposit accounts may have existed in the bank; if so, they were held in the name of affiliates of *Aron & Jacob Löw Beer's Söhne*. However, "the firm's Nazi-appointed administrator in Czechoslovakia was unable to exercise control over the firm's foreign affiliates … and most of the firm's foreign assets were believed to have been cashed out by the Löw Beers." Given these facts, as well as the siblings' active management of all of their other Swiss accounts, "the CRT determine[d] that they also received the proceeds of the two demand deposit accounts at Bank 4."

Accordingly, no award was made for these accounts, all of which had been actively managed and properly returned to the rightful owners or their heirs.

ii. In re Account of Lucian Brunner

Lucian Brunner was an Austrian bank founded by the claimants' paternal grandfather, Lucian Brunner, who was born in 1850 in Hohenems, Vorarlberg, Austria. Lucian Brunner, who had five children, died in Vienna in 1914. His son, an engineer, took over the bank's ownership.

Lucian and Malwine Brunner, approximately 1890. http://www.hohenemsgenealogie.at/en/genealogy/showmedia.php?mediaID=39&medialinkID=42.

The CRT's independent research, including analysis of the work of the Austrian Historical Commission, indicated that the bank had been founded in 1886 and operated chiefly in the field of asset management. Lucian Brunner's son emigrated to France in 1937. The bank was liquidated by the Austrian authorities after the *Anschluss*; its banking license was withdrawn; and it was struck from the corporate register on April 15, 1940.

The Austrian Historical Commission reported that Austrian archival records "indicate that an unnamed London bank refused to transfer a relatively small amount of British pound-denominated assets belonging to Lucian Brunner to the Nazi financial authorities. The Austrian archives … indicate that British banks refused to recognize the provisional, Nazi-backed management of formerly Jewish-owned companies such as *Lucian Brunner*, and refused to transfer requested assets belonging to such companies to the Nazi authorities."

The CRT also investigated the German archives (specifically, the Brandenburg Main Regional Archive) and confirmed the conclusion that had been reached by the Austrian Historical Commission: the British branch of the Swiss bank in which the *Lucian Brunner* accounts were held had refused to honor the Nazis' demand to turn over the assets. Thus, as

described by the CRT, the archives contain "a list of foreign currency denominated securities … filed by *Lucian Brunner* in response to the decree under which holders of such securities were obligated to offer them for sale" to the Reichsbank. The form, dated April 11, 1939, indicated that *Lucian Brunner* owned a custody account at the London branch of a Swiss bank, as well as other custody accounts at different banks in New York and Vienna.

As the CRT observed, the Brandenburg archival record "contains a handwritten notation from a representative of the *Reichsbank* relating solely to the securities held by *Lucian Brunner* at the London branch of the Bank and at the New York bank. The notation reads: 'The *Lucian Brunner* company is under provisional administration. The banks at which these securities are held have refused to honor sell-orders relating to the accounts belonging to these types of companies. Request dropped.'" The CRT further noted that a "second notation relating to the securities held by *Lucian Brunner* at the London branch of the Bank and at the New York bank indicates that those banks had thus far refused the *Reichsbank's* request."

The CRT also located the 1938 Census relating to members of the Lucian Brunner family. These records "make no mention of assets held in a Swiss bank account."

Based on the archival records, as well as the conclusions of the Austrian Historical Commission concerning the Swiss accounts owned by the *Lucian Brunner* bank, which demonstrated that the London branch of the Swiss bank refused the request to transfer the account owner's assets to the *Reichsbank*, and which further demonstrated that the *Reichsbank* thereafter dropped its request for the transfer, the CRT concluded that the owner of the *Lucian Brunner* bank "retained dominion over the claimed account and received the proceeds himself."

iii. In re Account of Sigmund Samuel Feist and Toni Feist

Dr. Sigmund Feist was born in 1865 in Mainz, Germany. His wife Antonie (Toni) was born in 1880, in Schmieheim, Germany. The claimant, their grandchild, stated that Dr. Feist was a well-known German linguist. According to the claimant, beginning in 1906, Dr. Feist could not obtain a position as a university professor due to anti-Semitism. The family moved to Berlin,

where Dr. Feist became a director of an orphanage for Jewish children, which he ran with his wife until his retirement in 1935. While living in Berlin, Dr. Feist published a Gothic German dictionary. In 1939, the family fled to Copenhagen, where Dr. Feist died in 1943. Toni Feist fled to Sweden and then in 1945 (via the United Kingdom) to the United States. She died in New York in 1952.

Elisabeth, Toni, and Sigmund Feist, late 1920s. http://www.bard.edu/archives/voices/Felix/felix.htm.Photo courtesy of the Bard College Archives and Special Collections.

The bank records, including documents provided by the claimant, demonstrated that the Feists were able to access their Swiss accounts. A July 10, 1941 letter from the *Dresdner Bank* to Dr. Feist or *Frau* Feist at an address in Copenhagen confirmed that SF 207.08 was being transferred to their account at a bank in Zurich. An August 6, 1941 letter to Dr. Feist, residing at the same Copenhagen address, referred to the opening of a joint demand deposit account in the names of Dr. Feist and his wife. As described by the CRT, "[t]his correspondence clearly shows that the Account Owners were able to access their assets in Germany, transfer them to their account at the Bank, and maintain contact with the Bank about their account while they were in Copenhagen."

In addition, the account was closed on February 27, 1946, at a time when Toni Feist already had left Europe and was living in the United States. Thus, "[g]iven that the Account Owners maintained contact with the Bank while in Copenhagen, that they were able to transfer money from the *Dresdner Bank* in Berlin to their account at the Bank in July 1941, [and] that the account at the Bank was closed after the War and while Account Owner T. Feist resided in the

United States," the CRT concluded that Toni Feist "had access to the account and was able to receive the proceeds herself."[136]

iv. In re Account of Felix Israel

Felix Israel was born in 1881 in Poland. He lived in Berlin until 1934, when he fled to Spain. He lived in Barcelona, where he sold buttons and owned a business, *Casa Feliz*. He emigrated to Havana, Cuba in January 1941. His daughter, the claimant, lived in Zurich with her Swiss mother (Felix Israel's second wife) from 1936 until 1941, and then joined her father in Havana. They emigrated to New York on June 13, 1941. According to the claimant, Felix Israel held accounts at a bank in Zurich, and opened an account at the bank's New York branch while living in Barcelona.

The claimant advised the CRT that she had identified her father's name on a list published in 1997 by the World Jewish Congress. "This list contained names of owners of Swiss bank accounts that had been held in New York branches of Swiss banks and that had been frozen on 14 June 1941 pursuant to … the Trading With the Enemy Act (the '1941 Freeze'). The Claimant stated that this list provided the following information: 'Israel, Felix, Address Havana, Cuba, Nationality Unknown, Amount $3,408.43.'" Felix Israel moved to California in December 1941, where he became a chicken farmer, and he died on September 21, 1946.

The bank records (which were not reported by the ICEP auditors but were obtained by the claimant and forwarded to the CRT) indicated that Felix Israel of Barcelona owned an account of unknown type, which was closed on March 18, 1948. Further, the claimant provided the CRT with a September 22, 1997 letter from the bank, which indicated that the account was

[136] *See also In re Accounts of Fritz Levy* (the account owner's demand deposit account was frozen in the 1945 Freeze; the bank records indicated that the bank "communicated with the Account Owner regarding this account on 24 December 1947, and that the account was subsequently closed on 10 January 1948…The Account Owner informed the Bank of his move to New York, "which occurred between 1947 and 1950." Accordingly, "the Account Owner had access to the demand deposit account once he arrived in New York and after it was released from the 1945 Freeze," and thus "he closed this account and received the proceeds himself") (*see infra* for discussion of additional accounts owned by Fritz Levy, closed while he was living in Luxembourg but prior to the Nazi invasion of that country).

frozen on June 14, 1941. As described by the CRT, the 1997 letter advised that "because the Account Owner resided in the United States, government regulations at the time would have allowed him to make periodic withdrawals from his account for living expenses. The letter also stated that the Bank concluded that the Account Owner may have utilized this provision of the law to withdraw the assets which had been deposited with the Bank, resulting in the closing of the account."

In its analysis of the claim, the CRT confirmed the bank's statement that the account owner would have been permitted to make periodic withdrawals from the account while living in the United States. "Moreover, because the Account Owner immigrated to the United States before the United States entered the War, somewhat more liberal rules applied. As Special Master Helen B. Junz noted in a paper for the United States Presidential Advisory Commission,

> Having chosen the broad prohibition route in pre-war days, it [Federal Funds Control] came to rely on a far-flung licensing system to meet its objectives during the period of the war. In the process, the accounts of bona fide refugees who had been residing and were domiciled in the United States since June 17, 1940 had been freed with the issuance of General License 42 (GL 42) on June 14, 1941. Recognizing that this rationed out many refugees who had difficulties in obtaining immigration visas, Treasury liberalized the provisions of GL 42 by issuing a new license, General License 42A (GL 42A), which dropped the domicile requirement. On February 23, 1942 there was a further easing of controls for bona fide immigrants and refugees, as GL 42 was amended to include all who had arrived in the United States as of that date and to eliminate the domicile requirement.

The CRT further observed that "after the signing of the Washington Agreement on 25 May 1946, all Swiss assets deposited in the United States were unfrozen, contingent upon certification of non-enemy interest by Swiss authorities, and that this was more than three months prior to the Account Owner's death. Given these circumstances, the CRT concludes that the Account Owner received the proceeds of the claimed account."

v. In re Account of Imre Mayer and Berta Mayer

Imre Mayer was born in 1895 in Hungary. He was married to Berta Mayer in the late 1930s. According to the claimant, their nephew, they lived in Budapest, where Imre Mayer was a merchant and distributor of Swiss watches. The Mayers had one son, born in 1922, who died in the Holocaust. The Mayers survived in hiding and left Hungary for Biel (Bienne), Switzerland in 1946. They moved to the United States in 1956. Berta Mayer died in the United States in the mid-1970s, and Imre Mayer died in Los Angeles in 1980.

The bank records, which the HCPO obtained on behalf of the claimant and forwarded to the CRT, indicated that Imre Mayer and Berta Mayer received the account proceeds after the War. As described by the CRT, "in 1950 … the Bank was in communication with Account Owner Imre Mayer." In a letter dated October 27, 1950 addressed to Imre Meyer in Bienne, the bank acknowledged the existence of his account. The letter indicated that the Meyers owned a joint account that was frozen pursuant to the United States' Trading with the Enemy Act (1941 Freeze). The letter stated that the bank was willing to help Imre Mayer close the account if it received a response prior to November 5, 1950.

The bank records indicated that the account was closed on October 9, 1957, "at which time, according to information provided by the Claimant, the Account Owners were still alive and living in the United States, where the account was located."

Based on this information, the CRT determined that the account owners "were able to access this account and that they received the proceeds of the account themselves."

vi. In re Account of Alexander Politzer

Alexander Policzer (Politzer) was born in 1895 in Hungary. In addition to Hungary, he also lived in Vienna, Milan, and Buenos Aires, as well as Lugano, Switzerland (1945). According to the claimant, the nephew of Alexander Policzer, his uncle owned a textile factory in Vienna and conducted business with a company in Milan.

The bank records, as supplemented by documents obtained through the "voluntary assistance" process, indicated that the account owner was in communication with the bank throughout the 1940s, and after the War. As described by the CRT, "the Bank sent account statements to the Account Owner to Argentina in 1947, and … the Account Owner confirmed the statements." Further, the records indicated that Alexander Policzer visited the bank's branch in Zurich on November 21, 1949, at which time he informed the bank of the death of the power of attorney holder (Miklos Pontos) and signed a new power of attorney form for the benefit of Sofia M. de Politzer. "Therefore, the CRT concludes that the Account Owner had free access to his account and initiated activity on it after 1945."

vii. In re Account of Julius Schwartz

Julius Schwartz was born in Lessen bei Grudenz, Germany. He lived with his wife in Berlin, where he was a physician. With one of their children, the Schwartzes fled Germany for Shanghai in January 1939, while the other child was sent to England. Julius Schwartz' wife died in Shanghai in 1944. Julius Schwartz left Shanghai for Montreal in 1948, where he died in 1950.

The bank records were not reported by the ICEP auditors but were obtained by the claimants, the children of Julius Schwartz, and forwarded to the CRT. The records, consisting of two letters from the bank (respectively dated November 11, 1939 and January 25, 1940) indicated that Julius Schwartz had written to the bank on October 19, 1939, "requesting the Bank to forward the equivalent of his account with the Bank to the *American Express Cy.*, Shanghai. The letter further stated that the account held a balance of [SF] 1,414.00 …, of which 1,400.00 had been remitted through the *American Express Cy.*, Zurich, to the *American Express Cy.* in Shanghai, that the equivalent amount in Shanghai Dollars was to be paid to the Account Owner, and that the Account Owner would be debited with the cost." Based upon these documents indicating that the funds were sent to the owner in Shanghai, the CRT concluded that Julius Schwartz received the proceeds of his account.

C. DISPOSITION DENIALS BASED ON THE PRE-OCCUPATION / PRE-NAZI ALLIANCE CLOSING DATE OF THE ACCOUNT

1. Germany: January 30, 1933[137]

i. In re Accounts of Max Lindner

Max Lindner was born and lived in Germany. He was a manufacturer and owner of a business that produced and sold mustard and vinegar throughout Bavaria. He died of a heart attack in Stuttgart in 1940, and his widow perished in Auschwitz in 1944. Max Lindner owned two Swiss bank accounts, a custody account and a demand deposit account. The custody account, which was opened on November 30, 1934 and closed on December 16, 1938, was awarded at presumptive value. However, the demand deposit account, which was closed on December 20, 1932, was not awarded because it was closed before the Relevant Period (1933-1945). Moreover, "the demand deposit account was closed before the Nazi party came to power in Germany in 1933" and so the account owner "was able to access and close the account."

2. Italy: October 25, 1936

i. In re Account of Emilio Oblath and Maria Oblath

The account owners lived in Trieste, Italy from 1920 until 1938, where Emilio Oblath was a businessman and the one-time Italian consul to Finland. After he died in 1941, his widow, Maria Oblath, fled with her children from Italy to Switzerland. As the CRT observed, the bank's "records indicate that the proceeds of the accounts owned by Emilio Oblath and Maria Oblath were transferred to an account numbered 31023, which was held by a different, unrelated account owner, and were closed on 31 May 1935. The CRT notes that the accounts numbered 37093 [*i.e.* other accounts owned by the Oblaths] were closed before the conclusion of Italy's formal alliance with Nazi Germany on 25 October 1936. Accordingly, the CRT concludes that

[137] *See also* CRT Rules, Appendix C (presumption that confiscation of property began in Germany upon Hitler's accession in January 1933).

the Account Owners were able to access and control their accounts, and that they received the proceeds of those accounts themselves."

3. Austria: March 12, 1938

i. In re Account of Otto Strakosch

The account owner lived with his wife in Vienna. They fled to Paris and later to Cahors, France, until 1942, when they were deported to Auschwitz, where they perished. Otto Strakosch's demand deposit account and custody account were awarded in a separate decision. However, another custody account was closed on February 6, 1937, one year before the *Anschluss*, and thus was not awarded.

ii. In re Accounts of Robert Weiss and Emil Weiss

The Weisses were brothers who owned a jewelry store in Graz, Austria. Robert Weiss was interned in Dachau. Upon his release, he emigrated with his brother to the United States. In a separate decision, their heirs received an award for six accounts. However, two additional accounts were not awarded, as the accounts were closed in February 1936, two years prior to the *Anschluss*.

iii. In re Account of Josef Maschler and Marie Maschler-Neumark

Josef Maschler was an ophthalmologist in Vienna, who left Austria for Palestine in 1938 after he was forced out of his employment. The bank records indicated that Josef Maschler and Frau Marie Maschler-Neumark, who resided in Brno, Czechoslovakia, owned a custody account that was closed on January 20, 1938. The CRT concluded that the account owners received the proceeds because the accounts were closed prior to the dates upon which the account owners' countries of residence, Austria and Czechoslovakia, fell under Nazi control.[138]

[138] For additional decisions involving accounts closed prior to the *Anschluss* in Austria, *see, e.g.*, *In re Account of Bertha Hirschmann* (account owner lived in Austria, then in Prijedor, Yugoslavia [now Bosnia-Herzegovina], and others in the family lived in Prague, at which time the claimant stated they opened several Swiss accounts

4. Czechoslovakia/Sudetenland: September 30, 1938

i. In re Accounts of Rudolf Roubitschek and Gisa Roubitschek

The Roubitscheks lived in Prague and later in Karlsbad, the Sudetenland, where Rudolf Roubitschek was a physician. They fled to France in 1940 using Bolivian passports. Rudolf Roubitschek died in France in 1945, and his wife died in New York in 1964. The claimants (their grandchildren) were awarded their grandparents' custody and demand deposit accounts in a separate decision. However, the account owners also held a demand deposit account in foreign currency that was closed on January 20, 1935, over three years before the Nazis annexed the Sudetenland. The account therefore was not awarded.

ii. In re Account of Paul Edelstein

Paul Edelstein lived in Reichenberg, Czechoslovakia (today Liberec, the Czech Republic), where he owned a garment manufacturing business. He was deported to Theresienstadt and then to Lodz, where he perished. He owned a safe deposit box that was opened on July 8, 1938 and closed on July 21, 1938, more than two months before the Nazi occupation of the Sudetenland, where Reichenberg was located. The account therefore was not awarded.

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under the names of various family members. Bertha Hirschmann's custody account, which was awarded in a separate decision, was closed on May 2, 1942. However, her demand deposit account was not awarded, as it was closed on March 10, 1938, prior to the *Anschluss* in Austria as well as the Nazi invasion of Czechoslovakia and Yugoslavia); *In re Account of Firma Frau Gisela Huth* (account owner, a clothing manufacturing business in Vienna owned by Nazi victims whose property was aryanized and who fled to Argentina and then the United States, held a demand deposit account that was closed more than one year before the *Anschluss*, on October 10, 1936, and so not awarded).

5. Czechoslovakia/ Remainder: March 15, 1939

i. In re Account of Oskar Huppert

The account owner was a businessman who lived in the former Czechoslovakia, although the claimant (the account owner's great-nephew) did not specify the city of residence. The bank records, however, indicated that Dr. Oscar Huppert resided in Brno, Czechoslovakia as well as in Zurich. He had a demand deposit account that was closed on January 31, 1939. The CRT "note[d] that the Nazis occupied Brno, which was located in Bohemia and Moravia, on 15 March 1939." The account was closed over a month before the Nazi occupation of Brno, and therefore was not awarded.

ii. In re Account of Edgar Perl

Edgar Perl lived with his wife in Prague. He also maintained a residence in Bielitz (Bielsko), Poland, where he was a director of an insurance company. The claimant stated that his wife, Irene, was the heir to her father's large department store and other assets in Troppau (Opava), Czechoslovakia (Czech Republic). The Perl family was killed in Auschwitz. The CRT concluded that the account was closed on June 30, 1938, over eight months prior to the Nazi invasion of the non-Sudetenland region of Czechoslovakia, where the Perls lived, and more than a year before the invasion of Poland, where the Perls also maintained a residence.[139]

6. Poland: September 1, 1939

i. In re Account of Leon Steigler

The account owner was born in Tarnopol, Poland. He lived in Krakow, where he owned a shoe business named *Delca*. He remained in Poland after the War began to attend to the family's business, and was killed in Krakow in 1942. Leon Steigler owned a demand deposit

[139] For additional decisions involving accounts closed prior to the invasion of the non-Sudetenland portion of Czechoslovakia, *see, e.g., In re Accounts of Irma Arend* (account owner lived in Prague and was deported to Lodz, where she perished; she owned a custody account closed on February 24, 1939 and a demand deposit account closed on February 28, 1939, weeks before the invasion*); In re Account of Helene Heller* (account owner lived in Prague and perished in the death camp in Maly Trostinec, Ukraine; her account [of unknown type] was closed on October 12, 1934, several years before the invasion).

account that was closed on March 31, 1939, five months prior to the Nazi invasion of Poland, and thus the account was not awarded.

ii. In re Accounts of Wolf Szapiro

The account owner was born in Poland, where he owned a lumber business and real estate. He owned two custody accounts that were closed, respectively, on January 23, 1939 and February 14, 1939, more than six months prior to the Nazi invasion. The accounts therefore were not awarded.

iii. In re Account of Anna Szpilfogel and Izraël Szpilfogel

The Szpilfogels were born in Poland. They lived near Warsaw, where Izraël Szpilfogel was an engineer. Both were killed in the Holocaust. The Szpilfogels owned a demand deposit account that was closed on June 23, 1939, more than two months before the Nazi invasion. The accounts accordingly were not awarded.[140]

7. Denmark: April 9, 1940

i. In re Accounts of R. Henriques Jr.

R. Henriques Jr. was a firm of stockbrokers with offices in Copenhagen. Its owners, described by the claimant as members of an ancient Jewish Portuguese family who emigrated to

[140] For additional decisions involving accounts not awarded because they were closed prior to the invasion of Poland, *see, e.g., In re Account of Karol Better* (account owner lived in Bielsko, where he died in the 1930s; his family lived in Poland until fleeing on September 1, 1939; his safe deposit box was closed on July 1, 1939, three months before the invasion); *In re Accounts of Willy Borger* (account owner lived in Bielsko, and fled to Brazil in 1939; his two demand deposit accounts were closed, respectively, on February 10 and February 20, 1939, and his custody account was closed on February 11, 1939, over six months before the invasion); *In re Accounts of Herman Chwat* (account owner lived in Lodz and was killed in Treblinka; his custody account was closed on June 22, 1939, over two months before the invasion*); In re Accounts of Henryk Poznanski* (account owner lived in Warsaw, Poland and Paris France; his demand deposit account and custody account were closed on February 10, 1939, more than six months before the invasion of Poland and over one year before the invasion of France); *In re Accounts of Isidor Rapaport* (account owner lived in Krakow; his demand deposit account was closed on May 10, 1939, over three months before the invasion of Poland*); In re Account of Ella Rosenthal* (account owner lived in the Free City of Danzig; her custody account was closed on April 11, 1939, over four months before the invasion); and *In re Accounts of Roman J. Schaff* (account owner lived in Lwow, Poland; his custody, demand deposit and time deposit accounts were all closed on February 7, 1939, over six months prior to the invasion).

Denmark in the early nineteenth century, fled from Denmark to Sweden, where they managed the company using a trusted employee. They returned to Denmark to continue to run the company after the War, until they sold it in 1969. The firm's two custody accounts were closed, respectively, on September 21, 1939 (more than six months prior to the German invasion) and January 27, 1940 (over two months before the invasion), and so were not awarded.

8. Norway: April 9, 1940

There are no CRT decisions relevant to the date of the Nazi occupation of Norway.

9. Belgium: May 10, 1940

i. In re Accounts of Fernand Wolff and Marguerite-Ady Flore Wolff-Nyst

The Wolffs were born and lived in Belgium. Fernand Wolff was an engineer, and shareholder and administrator of a tennis racket factory. As a member of the Resistance, he was killed by the Nazis in Brussels on December 3, 1943. The Wolffs owned a custody account and a demand deposit account, both of which were closed on August 16, 1939, over eight months before the Nazi invasion of Belgium. The accounts thus were not awarded.

10. France: May 10, 1940

i. In re Account of Max Lazard

The account owner, Max Michel Lazard, was described by his son (the claimant) as a "merchant" who was born in Prussia (now Germany). He lived near Paris, and later in Moulins-lès-Metz and Pont-à-Mousson, France. In 1942, he was deported to Drancy and then to Auschwitz, where he perished. The bank records indicated that in 1936, "nearly four years prior to the occupation of France by Nazi Germany, the Bank purchased securities and gold from the Account Owner, and … the proceeds were sent to the Account Owner directly (in demand notes

and by check) or transferred to the Account Owner's account at *Lazard Brothers & Co., Ltd.* in London." The accounts therefore were not awarded.

ii. In re Accounts of Marius Rosenbaum and Eugénie Rosenbaum

The Rosenbaums lived in Paris, where Marius Rosenbaum was a banker. His co-account owner, Eugénie Rosenbaum, was his nephew's wife. The Rosenbaums fled from Paris to Spain, and later to Biarritz and Arcachon, France. However, they returned to Paris when Marius Rosenbaum became ill, where Marius died in 1942 and Eugénie in 1957. The bank records indicated that the account owners' two demand deposit accounts were closed several days before the Nazi invasion of France, on May 3, 1940. The accounts therefore were not awarded.

iii. In re Accounts of Moïse Maurice Wolff and Ann Wolff

The Wolffs were born in Germany. They lived in Paris with their children, where Moïse Wolff was chairman and managing director of the *Compagnie Géneréle des Papiers.* The Wolffs died before the Nazi occupation of France, but their children were Nazi victims. The Wolffs' demand deposit account was closed on January 11, 1935 while their custody account was closed in August 1935, approximately four years prior to the Nazi invasion. The accounts therefore were not awarded.[141]

11. Luxembourg: May 10, 1940

i. In re Accounts of Nathan Hertz and Lenny Hertz

The claimant stated that Nathan and Lenny Hertz were his uncle and aunt (his aunt's name was "Jenny", rather than "Lenny" as reflected in the published account. They lived in Bertholet, Luxembourg, where Nathan Hertz owned a fur business, *Fourreur Jenny*. They left

[141] *See also In re Account of Ernest Gans and Eric Weil* (account owner Weil was born in Germany and lived in Paris from 1930 until he fled to Portugal in 1940, and returned to Paris in 1950; the claimant, Eric Weil's son, identified co-owner Ernest Gans as his maternal uncle but could not provide information about him; the joint demand deposit account was closed on January 13, 1940, nearly four months before the Nazi invasion of France).

Luxembourg for New York in 1939, before the Nazi invasion, and returned to Luxembourg in 1945. The Hertzes owned three demand deposit accounts, two of which were closed on June 30, 1939, and the other closed no later than June 30, 1939. Because the accounts were closed nearly a year prior to the Nazi invasion, they were not awarded.

ii. In re Accounts of Fritz Levy

Fritz Levy lived in Germany with his wife and child. He managed and was the major shareholder in the family textile business, *Ludwig Levy GmbH.* In November 1938, he fled to Switzerland, and thereafter joined his mother in Luxembourg. After his mother's death, he fled to the Netherlands and lived in hiding. He moved to the United States after the War and died in New York in 1954. Fritz Levy owned several Swiss bank accounts, all of which the CRT determined had been accessed by the account owner, including a custody account that had been closed on April 19, 1940, some weeks before the Nazi occupation of Luxembourg.

12. Netherlands: May 10, 1940

i. In re Account of Paul Auerbach

The account owner lived in Amsterdam and perished in the Holocaust. He owned a custody account, which was closed on October 1, 1937, and a demand deposit account, which was closed on June 20, 1944. The CRT awarded the demand deposit account to the claimant, a cousin of Paul Auerbach's, in a separate decision. However, the custody account was closed over two years prior to the German invasion of the Netherlands, and was not awarded.

ii. In re Account of Benno Hess

Benno Hess lived in Germany until 1934, when he fled to Amsterdam. He was arrested in 1943 and deported to Theresienstadt, from which he was liberated in 1945. He died in Amsterdam in 1984. The CRT observed that "the account [of unknown type] was closed on 2 January 1939, and … the proceeds of the account were transferred to a bank in Amsterdam, the Netherlands. The CRT notes that the Bank's records indicate that the Account Owner resided in Amsterdam" and that "the account was closed over a year before the occupation by Nazi

Germany of the Netherlands beginning on 10 May 1940." Accordingly, the accounts were not awarded.

13. Greece: October 28, 1940

i. In re Accounts of Peppo L. Cohen

The account owner, who was born in Thessaloniki, Greece. He owned a timber agency and also was a representative of a Yugoslavian-Serbian bank in Greece. He was killed in Auschwitz with his wife and daughter. He owned a demand deposit account and a custody account, both of which were closed on March 22, 1939, more than two years before the Nazi occupation of Greece. The accounts were not awarded.

ii. In re Account of Salomon A. Arditti

The account owner lived in Thessaloniki. He represented the French shipping company *Messagerie Maritime* and also was honorary consul of Portugal. Salomon Arditti and his wife were arrested by the Nazis in March 1943, and later perished in Auschwitz. His account, of unknown type, was closed on August 16, 1939, nearly two years prior to the Nazi invasion, and so was not awarded.

14. Hungary: November 20, 1940

i. In re Account of Dezsö Waldmann

The account was identified by two unrelated individuals, one stating that the account owner was a businessman who lived in Hungary and was killed in Auschwitz; the other stating that he had little information but knew the account owner had lived in Budapest. Since both claimants stated that the account owner had lived in Hungary, the account (a safe deposit box) was not awarded because the records showed that it was closed on March 2, 1940, over eight months prior to the November 20, 1940 alliance between Hungary and Germany.

ii. In re Account of Laszlo Rozsa

Two unrelated claimants sought the account. The first stated that the account owner was a businessman living in Budapest, who was a slave laborer who survived the Holocaust and died in Budapest in 1971. The other claimant stated that the account owner was a trader of agricultural goods and motor vehicles, who was a slave laborer who survived Mauthausen, among other camps, and who died in Budapest in 1986. However, neither claimant was entitled to the account (a safe deposit box), because it was closed on November 18, 1939, one year before the alliance between Hungary and Germany.[142]

15. Romania: November 20, 1940

i. In re Accounts of Leo Kapralik

The account owner lived in Bucharest with his wife. He was the General Director of the *Dresdner Bank* in Bucharest. Although most of the family fled Romania in 1939, Leo Kapralik stayed behind, and was killed in the Holocaust. He owned a custody account and two demand deposit accounts, all of which were closed on May 28, 1940, five months before Romania entered into the Tripartite Agreement allying it with Nazi Germany. The accounts were not awarded.

ii. In re Account of Moise Landau

The account owner resided in Rozavlea, Romania, and was deported to several concentration camps. He died in the Holocaust. He held an account of unknown type, which was closed on December 24, 1938, almost two years before the alliance. The account therefore was not awarded.

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[142] For additional decisions involving accounts closed prior to the alliance between Germany and Hungary, *see, e.g., In re Account of Miklos Fényes* (account owner had a business related to journalism, according to the claimant (a cousin) and lived in Budapest, where he died in the 1980s or 1990s; his demand deposit account was closed on April 19, 1939, approximately 1½ years before the alliance); *In re Accounts of Helene Grosz* (account owner lived in Arad, Hungary [now Romania] and owned real estate and other property; she moved to Israel in the late 1940s, and died there in the 1950s. She owned a demand deposit account closed on August 26, 1938; a custody account closed on September 20, 1938; and two demand deposit accounts closed on September 30, 1939. The CRT concluded that the account owner had had access to her accounts, since all were closed between one and two years before the alliance).

iii. In re Account of Franz Joseph Popper

The account owner resided in Bucharest, Romania prior to the War; the claimant, his daughter, did not provide further information. The CRT concluded that Franz Joseph Popper had received the proceeds of his account (of unknown type), because it was closed on April 21, 1939, approximately 1½ years before the alliance.[143]

16. Bulgaria: March 1, 1941

i. In re Accounts of Rebekka Goldman

Rebecca Goldman lived with her family in Sofia. Her husband was an egg exporter who was decorated by the king of Bulgaria. Her husband died in Sofia in 1941, and Rebecca Goldman died there in 1945. Their son, the claimant's husband, was a slave laborer. Rebecca Goldman owned a custody account, which was closed on January 29, 1939, and a demand deposit account, which was closed on March 24, 1939, two years before the Nazi invasion of Bulgaria. The CRT also observed that the accounts were closed over one year before the enactment of the first Bulgarian anti-Semitic laws, on October 7, 1940. The accounts were not awarded.

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[143] For additional decisions involving accounts closed prior to the Romanian alliance with Germany, *see, e.g., In re Accounts of Samuel and Adela (Adele) Breger (*account owners lived in Bucharest and then moved to France to avoid the fascist regime in Romania; Adela Breger and the couple's two sons were killed in Auschwitz, while Samuel Breger escaped and later founded an organization in Romania "dedicated to protecting the interests of Romania[n] Jews and others in Europe who were deported;" the CRT awarded five of Adela Breger's accounts in a separate decision, but determined that four additional demand deposit accounts owned by Adela Breger (who was reflected in the bank records as having addresses both in Vienna and in Romania) and Samuel Breger were closed, respectively, on August 24, 1934, June 10, 1935, August 31, 1935, April 10, 1936, several years prior to the Tripartite Agreement as well as two to three years prior to the *Anschluss); In re Accounts of Josef Goldstein* (account owner lived in Iasi, Romania, where his home and property were looted and where he was imprisoned; he lived in Romania until 1950 and died in Israel in 1960; his two demand deposit accounts were closed, respectively, on March 31, 1938 and April 30, 1939, approximately 1 ½ to 2 ½ years before the alliance); *In re Account of Elemer Hirsch* (account owner lived in Cluj, and fled for Palestine in 1944; he died in Cluj in 1953 and his wife died in Israel in 1992; his account [of unknown type] was closed on September 30, 1940, almost two months before the alliance); and *In re Account of Mendel Katz* (account owner lived in Cernauti, Romania and died in the Holocaust; his safe deposit box was closed on April 12, 1940, over six months before the alliance).

17. Yugoslavia: March 25, 1941

i. In re Account of Emmanuel Schotten

The account owner, who was born in Austria-Hungary, owned a wholesale china and glass business in Zagreb, Croatia. He fled with his family in 1944 to Rab, Yugoslavia (now Croatia), then under Italian occupation. The account owner and his wife were deported to and perished in Auschwitz in 1944. Emmanuel Schotten's children (the claimants) received an award for his custody account in a separate decision. However, no award was made for his account of unknown type, which was closed on March 4, 1939, two years before the Nazi invasion.

ii. In re Accounts of Lajos Schulhoff

The account owner was born in Szabadka, Hungary (later Yugoslavia, and now Subotica, Serbia). He managed real estate and vineyards in Hungary and Yugoslavia. He maintained dual residences in Padej, Yugoslavia (which was confiscated by the Nazis in 1941), and Budapest, where he was imprisoned by the Nazis. He moved to Montreal in the early 1950s, and died there in 1962. His account of unknown type at one bank was closed on April 5, 1939. His demand deposit account at a second bank was closed on April 10, 1939, at a time when he lived in Yugoslavia, and two years prior to the Nazi invasion.[144] The accounts thus were not awarded.

18. Switzerland:

In addition to the countries eventually occupied by or allied with Nazi Germany, the CRT also considered several cases involving account owners who were living in Switzerland, which never was occupied by or formally allied with Germany, but instead considered itself "neutral."

[144] For additional decisions involving accounts closed prior to the invasion of Yugoslavia, *see, e.g., In re Accounts of Julius Gedalja* (account owner lived in Belgrade, and he was killed in 1941; his two demand deposit accounts were closed respectively on January 31, 1940 and May 20, 1940, approximately one year before the invasion); *In re Account of Hermine Loebl* (account owner lived in Senta, Yugoslavia, and was killed with his family in Auschwitz in 1944; his demand deposit account was closed on June 20, 1940, more than ten months before the invasion); *In re Accounts of Ilonka Rosenberg* (account owner lived in Beocin, Yugoslavia, and died in a concentration camp; her demand deposit account was closed on April 20, 1939 and her custody account was closed on April 29, 1939, nearly two years before the invasion).

In the absence of specific evidence indicating that the account was confiscated or not returned, the CRT did not award these accounts to the claimants, concluding that the account owner was able to access the account and receive the proceeds while living freely in Switzerland.

i. In re Account of Hugo Grünfeld

The account owner was born in Vienna. He lived in Budapest, where he was a lawyer who also co-owned a liquor business. In 1944, he was deported with other family members on the Kasztner Transport to Bergen-Belsen, and then to a refugee camp in Switzerland. The family lived in a vacant hotel that was being used for a detention camp in Caux sur Montreux. According to the claimant, her mother (the account owner's sister-in-law) had deposited funds at a Swiss bank in Geneva in 1939, which made it possible for family members to leave the camp at Caux, for Geneva. The bank record indicated that Dr. Hugo Grünfeld of Budapest owned a safe deposit box that was opened on August 20, 1938 and closed on May 12, 1945, "which, the CRT notes, is just a few days after the cessation of hostilities in Europe." Given that the claimant's mother had deposited funds in Geneva, which the family used to leave the internment camp at Caux, and based on the fact that the account was closed after the War in Europe had ended, the CRT concluded that the account owner was able to access his account and receive its proceeds.

ii. In re Accounts of Martin Goldschmidt

The account owner was born in 1878 in Germany. He was a hotel and bank director in Berlin until 1933, when he fled with his family to Switzerland. His daughter-in-law, the claimant, stated that Martin Goldschmidt transferred his assets to Switzerland before leaving Germany. His children attended boarding school in Vevey, Switzerland, and the family lived in Switzerland until 1939, when they left for the United States (via Japan). Martin Goldschmidt died in New York in 1944 and his wife died in 1958. The bank records indicated that Martin Goldschmidt owned a custody account closed December 13, 1938. The records also indicated that the account owner lived in *Hotel Verenahof* in Baden, Switzerland. Further, the documents

showed that Martin Goldschmidt had owned a custody and demand deposit account at a second bank (closed, respectively, on June 30, 1939 and July 11, 1939). The CRT concluded that Martin Goldschmidt accessed all of these accounts himself, because the records for the first bank "indicate that the Account Owner resided in Switzerland in December 1938" and that all of his accounts at both banks were closed between December 13, 1938 and July 11, 1939, when he was living in Switzerland.

D. ENTITLEMENT DENIALS (CLAIMANT DETERMINED NOT TO BE ENTITLED TO ACCOUNT, DUE TO LACK OF FAMILY RELATIONSHIP OR OTHER FACTORS)

i. In re Account of Dubied & Cie ED. S.A.

David Dynin and his wife, Franciska Dynin, lived in Lodz. He owned a company in Lodz named *D. Dynin.* In 1939, the Dynins fled in fear of Nazi occupation, and in 1946, they reached Palestine. According to the claimants, the children of the Dynins, their parents had business connections with Swiss companies. They stated that commissions due to the Dynins from Swiss metal industry manufacturers between 1933 and 1939 were left in a Swiss account managed by the Swiss company *Edouard Dubied & Cie.* in Neuchâtel. The claimants stated that their parents unsuccessfully tried to get their money back from this company. David Dynin died in Tel Aviv in 1985, and his wife died there in 1999.

The ICEP auditors did not locate an account belonging to the Dynins, or to the companies mentioned by the claimants. However, "the claimants submitted a list of accounts to the CRT which they stated were deposited in Swiss bank branches in New York" and were "frozen in 1941. According to this list, the Account Owner was *Dubied & Cie. Ed. S.A.*, which had an address in Neuchâtel, Switzerland. This list also indicates that the *Dubied & Cie. Ed. S.A.* was a Swiss company. Furthermore, the list indicates that the balance of the account was 47,153.04 United States Dollars."

The CRT determined that the claimants were not entitled to the account because they had not shown that their parents had an ownership interest in the company that held this account. As described by the CRT:

> According to Article 23(3) of the Rules, if the Account Owner is a legal or other entity (such as a corporation, association, organization, etc.), the Award will be made in favor of those Claimants who establish a right of ownership to the assets of the entity. In this case, the Claimants stated that the Account Owner managed their parents' account. The Claimants did not provide documents demonstrating that their parents, or the company *D. Dynin*, were the actual beneficiaries of the claimed account, or had any rights to the account. The Claimants did not provide documents showing that their parents' account, managed by the Account Owner, was part of the claimed account. Therefore, as the Claimants did not establish a right of ownership to the Account, they are not entitled to the claimed account.

ii. In re Account of Jacques Levylier (Power of Attorney Holder Jean Pierre Bernheim)

Jean Pierre Bernheim was born in 1904. He lived in Paris with his wife. They moved to Basel, Switzerland, where they lived until 1939. They then returned to France, where they resided for the remainder of the War. Jean Pierre Bernheim was an industrialist in the textile business, with an office in Paris.

The bank records showed that the account owner was Jacques Levylier, who resided in Neuilly sur Seine, France. The power of attorney holder for this account was Jean Pierre Bernheim. The bank records showed street addresses for both individuals.

The CRT concluded that the claimant was not entitled to the account. Although the claimant identified the power of attorney holder, Jean Pierre Bernheim, as her father, she had not identified or demonstrated a relationship to the account owner, Jacques Levylier. The CRT explained that "under Swiss law, a power of attorney holder is not considered to be the owner of an account. After a power of attorney holder dies, his or her powers in an account no longer exist, and they do not pass to his or her heirs. Therefore, even if the Claimant had identified the Account Owner, the Claimant would not have been entitled to the account unless there was

evidence in the Bank's records that the Power of Attorney Holder and the Account Owner were related." The CRT further noted that in the "absence of a family relationship between the Claimant and the Account Owner or the Account Owner and Power of Attorney Holder, or a will or testamentary documents indicating that the Claimant is a beneficiary of the Account Owner," the claimant was not entitled to the account owner's account.[145]

E. IDENTITY DENIALS (ACCOUNT OWNER AND CLAIMANT'S RELATIVE WERE DIFFERENT PERSONS)

i. Claimed Account Owner: Abraham Katz

Eleven different unrelated individuals claimed an account published in 2001 as that owned by *Abraham Ber Katz (Vijnita, Romania).* For purposes of the ICEP audit, the account was identified as number 5035022.

One of the eleven claimants, acting on behalf of her cousin and other family members, demonstrated that the account owner was her uncle. In her claim form, she identified her uncle as Abraham Bernhard Katz, who was born in Vijnita, Romania in 1905 and who moved to Berlin before the Nazis came to power. He fled Germany to Vichy, France in 1939, and then to New York in 1942. He died in Haifa, Israel in 1989. Prior to submitting her claim form, the claimant and her cousin each had submitted an Initial Questionnaire, identifying various members of the Katz family as having been born in and/or resided in Vijnita, Romania. Thus, the claimants had

[145] *See also, e.g., In re Account of Paul Prager (Power of Attorney Holder)* (claimant identified account owner Paul Prager as her father's employer and advised the CRT that Paul Prager was not a relative; thus, she was not a proper heir of the account owner); *Claimed Account Owner: Sara (Rosa) Guttmann* (CRT located a match between the claimant's relative, Sara Guttmann, and an S. Guttmann and R. Guttman, each respectively a power of attorney holder to accounts appearing in the AHD. However, in addition to erroneously identifying each account owner as female when they both actually were male, the claimant also did not indicate that she was related to the actual account owner). In other instances, the CRT has been able to connect the claimant to the account owner and establish a family relationship, thus warranting awarding the account to the claimant as an heir, even where the claimant himself/herself had not identified the account owner as a relative. *See, e.g., In re Account of Otto Löb* (the claimant identified the published power of attorney holder as her grandfather, Ludwig Löb of Frankfurt, Germany, who died in the Holocaust. The CRT observed that although the claimant "did not identify the Account Owner," Otto Löb, he lived in Darmstadt, Germany (34 kilometers from Frankfurt) and thus lived in essentially the same city as the power of attorney holder, and he also shared the same surname as the claimant's grandfather. The CRT observed that the claimant "was born only in 1943" and that it was plausible that she "would not know the names of all of her father's European relatives;" accordingly, it was plausible that the claimant was related to the account owner and thus entitled to his account).

established a family relationship to the city of Vijnita before that city was publicly identified in 2001, when the first list of CRT accounts was disseminated.

The bank records indicated that the account, of unknown type, was opened on September 30, 1938. The bank records did not show when the account was closed, or the value of the account. Since the ICEP auditors did not find the account in the bank's system of open accounts, the auditors presumed it was closed. The claimants were awarded the presumptive value of an account of unknown type, which the CRT divided among the cousins and other represented parties (a total of seven persons). *See In re Account of Abraham Ber Katz (Certified Award).*

To complete the analysis of the Abraham Katz account, however, the CRT also was required to assess ten other claims that had been filed to the same account. In nine of these ten cases, the claimants failed to provide information about their relatives which matched basic data contained in the bank files, thus disqualifying their claims and warranting "Identity Denials." Whereas the actual account owner had lived in Romania, the claimants' relatives had lived in other countries:

- Claimant 1 stated that his relative, Abraham Katz, lived in Vilna, Poland (today Lithuania);
- Claimant 2 stated that his relative, Abraham Katz, lived in Poland;
- Claimant 3 stated that her father, Abraham Mayer Katz, lived in Austria in the 1930s through 1938, at which time he fled to Palestine (today Israel);
- Claimant 4 stated that her relative, Abraham Katz, lived in Poland;
- Claimant 5 stated that his relative, Abraham Katz, lived in Czechoslovakia and Hungary, and that Abraham Katz had deposited assets in a Swiss bank on behalf of the Roth family;
- Claimant 6 stated that her relative, Abraham Katz, lived in Hungary;
- Claimant 7 stated that his relative, Abraham Adolf Katz, lived in Munkacs, Hungary (now Munkachevo, Ukraine);
- Claimant 8 (a group of three siblings) stated that their uncle, Abraham Katz, lived in Kishinev, a major city approximately 350 kilometers from Vijnita; and

- Claimant 9 stated that his relative lived in Poland.

Another claimant, Claimant 10, stated that her great-uncle, Abraham Katz, was born in Vijnitz, Romania and that he had perished in the Holocaust. However, although the information about the claimant's great-uncle matched the name and town of the account owner as published, bank records provided to the CRT through "voluntary assistance" indicated that the actual account owner had used the full name of "Abraham Ber Katz." Claimant 10 did not indicate that her great-uncle had, or used, a middle name.

However, although these ten claimants were ineligible to receive an award based upon the documented account of Abraham Katz of Romania, their claims nevertheless were analyzed in accordance with the criteria for Plausible Undocumented Awards. Thus, the CRT took into consideration the fact that although the claimant may not have been related to the actual published account owner, the claimant nevertheless may have had a close relative (child, spouse, parent, grandparent or sibling)[146] named Abraham Katz who owned a Swiss bank account, and that the records relating to such account(s) might have been destroyed in the post-War era.

Two of the ten claimants were determined to have satisfied the PUA criteria, and each received payment of $7,250. The other eight claimants did not receive PUAs for a variety of reasons: one claimant already had received an award for a different, documented account (disqualifying the claimant for a PUA under the terms of the Court order authorizing PUAs, since PUAs were intended to compensate for the lack of any bank records relating to *any* accounts); for several claimants, their relative "Abraham Katz" was not a close family member as specified under the PUA criteria (child, spouse, parent, grandparent or sibling) but rather was more distantly related; in other cases, the claimants had not met the standard of plausibility as required for a PUA.

[146] Among the criteria for determining whether a PUA was warranted is whether the claimed account belonged to a family member within the "circle of heirs" (child, spouse, parent, grandparent or sibling). *See* Order of February 17, 2006.

ii. Claimed Account Owner: Berta Faeber

The claimant stated that his relative, Berta Faeber, resided in Breslau, Germany (now Wroclaw, Poland). He stated that "Faeber" was his relative's maiden name.

Although a "Frau Berta Faeber" was included in the AHD as an account owner, the bank records showed that her maiden name was not "Faeber" but, rather, another name. Accordingly, the CRT was unable to award the account, as it did not belong to the claimant's relative, but, rather, to another person.

iii. Claimed Account Owner: Rosa Opperman

The claimant stated that his relative, Rosa Opperman, lived in Vienna, Austria.

Although a "Rosa Opperman, Germany" was included in the AHD as an account owner, the bank records showed that she had lived in Germany, not Austria. Accordingly, the CRT was unable to award the account, as it did not belong to the claimant's relative, but rather to another person.

iv. Claimed Account Owner: Heinrich Wyss

The claimant stated that his father, Heinrich Wyss, lived in Lodz, Poland. The CRT matched the name "Heinrich Wyss," as well as several variations of each name ("Henryk" and "Emil", and "Weiss"), against the AHD, and identified several accounts that potentially matched to the claimant's father's name. However, upon further investigation, the CRT determined that these matches were not valid:

- The AHD contained an account for a "Heinrich Weiss." However, the claimant had stated that his father had lived in Poland, whereas Heinrich Weiss lived in a different country.
- The AHD contained two accounts for a different "Heinrich Weiss," of Bucharest, Romania. However, claimant's father had lived in Poland, not Romania.

- The AHD contained an account for a "Heinrich Weiss" of Romania. However, claimant's father had lived in Poland, not Romania.

- The AHD contained an account for a "Heinrich Weiss" of Pforzheim, Germany, with "Luise Weiss" designated as the power of attorney holder. However, claimant's father had lived in Poland, not Germany. Moreover, the claimant did not identify "Luise Weiss," who apparently was a close relative of the actual account owner (Heinrich Weiss of Pforzheim, Germany).

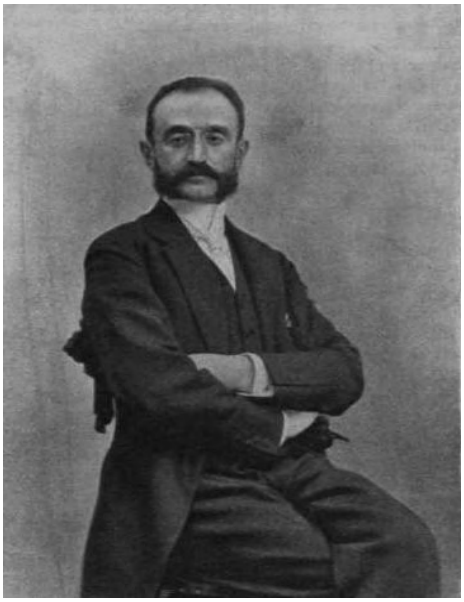
III. APPEALS

A. APPEALS FROM THE CONCLUSION THAT THE ACCOUNT OWNER RECEIVED THE PROCEEDS

i. In re Account of Fanny Hatvany

Baroness Fanny Hatvany was born on July 1, 1868 in Budapest. She was married to a leading industrialist.

Kossuth Lajos tér, Grassalkovich-Hatvany kastély, Hatvany Lajos Múzeum. Hungary, 1950. https://commons.wikimedia.org/wiki/File:Kossuth_Lajos_t%C3%A9r,_Grassalkovich-Hatvany_kast%C3%A9ly,_Hatvany_Lajos_M%C3%BAzeum._Fortepan_5202.jpg. Photo courtesy of Wikimedia and Kurutz Márton. Creative Commons Attribution-Share Alike 3.0 Unported.



Sándor Hatvany-Deutsch (Joseph Hatvany). Vasárnapi Ujság, Dec. 13, 1903, at 825. https://commons.wikimedia.org/wiki/File:Hatvany-Deutsch_ S%C3% A1ndor.jpg. Photo courtesy of Wikimedia and Mór Erdélyi.

This case concerned the claim of the great-grandson of Fanny Hatvany, née Latsko, for assets Fanny Hatvany held in an account at the Geneva branch of a French bank ("the French Bank"), numbered C.637/637. The claimant also represented his half-brother, born of their mother's second marriage. The claimants submitted in support of their claim a December 31, 1947 statement of assets, according to which the account held 13 gold bars as well as various securities. The claimants also provided a family tree. It showed Baroness Fanny Hatvany and her husband as having only two children, namely, their grandmother and her sister. The claimants further asserted that the account owner, Fanny Hatvany, her children, and their children, all had passed away before 1980.

The claimed account was not included in the "AHD," which identified accounts "probably" or "possibly" belonging to victims of Nazi persecution. This was so, because the rules specifically excluded subsidiaries and branches of non-Swiss banks from the Volcker Committee's audit. The claimants accordingly received a "No Match" decision (or "NML" - "No Match Letter"), indicating that the accounts they had sought did not match to any accounts in the database made available to the CRT. The claimants appealed this decision, explaining that they were seeking restitution of assets which, as later described by the CRT, allegedly were

"held in an account numbered C. 637 or 637 for Fanny Hatvany in the name of [the Geneva branch of] a French bank in secondary depository institutions, including the Swiss Depository, in London, England." In support of their appeal, they provided their original submission, and two pieces of correspondence between the American and the British lawyers the Hatvany family had engaged to help restore control of the assets held by the family in the U.S. and the U.K.[147]

The claim thus was based on documentation provided by the claimants, which was somewhat augmented at the time of their appeal in 2006, and supplemented in 2009 and 2010 during the subsequent appeals process. The additional materials were not provided initially but, rather, in response to several requests from the CRT, and then a court order. This information was further augmented extensively by research undertaken by the CRT, including documentation that the CRT obtained from one Swiss bank under the "voluntary assistance" process. Ultimately, the case file contained more than one thousand pages of documentation.

According to the documentation, the content of the claimed account was held by the French Bank in its name, on behalf of Fanny Hatvany, at a number of financial institutions in New York and London, including at the London branch of a Swiss bank, together with two British institutions. In other words, the assets were held in the name of the French Bank in so-called omnibus accounts to preserve the anonymity of the actual owners. As a consequence, such assets were frozen during the war under the respective Trading with the Enemy Acts of the United States ("TEA") and the United Kingdom ("TWEA"), until such time as the bank could provide proof that the actual holder was not a national of an enemy or blocked country.

Fanny Hatvany was a Hungarian national who had spent the entire war in Hungary. Well before her arrival in the United States on November 9, 1946, she and the family had begun to consider what options they had to regain the free disposition of her (and the family's) assets that had been frozen, blocked or confiscated in the United States and the United Kingdom. Fanny's U.S. lawyers were poised to move quickly upon her arrival, so that on November 19, 1946, she was recognized as a "generally licensed individual." This meant that she was not considered to be a person in the United States who was a national of any blocked or enemy country.

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[147] To avoid confusion, in what follows the immediate family of Fanny Hatvany is referred to as "the Hatvanys" and the broader family as "the family."

Henceforth, she would be treated as a national of the United States. Accordingly, the release of the contents of account 637 that was held in the United States was no longer at issue.

The claimants acknowledged in their appeal letter that after the war "some securities had been released" from the London accounts to their proper owners. However, they also stated that none of the gold held in London had ever been returned to either Fanny Hatvany, or to any of her relatives or her heirs. According to the documentation, the French Bank valued the account on November 13, 1946 at US$ 290,497.53, predominantly in gold (132 kg. with a value of US$ 201,105.03), the bulk of which (112 kg.) was held in a British safe deposit institution, and the remainder (50 kg.) at the London branch of the Swiss bank.

Fanny Hatvany's husband was a scion of the very wealthy Hatvany family. The family's prosperity originated with Ignacz Deutsch, an industrialist who in the 19th century founded the Bank Ig. Deutsch & Sohn in Budapest. The bank managed the family assets, which were largely held in an investment fund called the "Hatvany Family Management" (the "Family Fund"). The family members pooled their inherited assets into this fund. Upon a member's death, his/her assets were allocated to his/her descendants according to agreed-upon percentages. An important part of the Family Fund's assets consisted of major sugar refineries in Hungary and Czechoslovakia, and other real and financial assets in Hungary and Yugoslavia, and a holding company, the British Sugar Corporation, in the UK. The Family Fund was shared in equal parts by the families of the three grandsons of Ignacz Deutsch: Joseph, Charles and Alexander Hatvany. Joseph died intestate in 1913, and Alexander also died in 1913. Charles died approximately in 1943.

The bulk of the Family Fund was held with, and managed through, a security firm called the *Comptoir Financier* in Geneva. The CRT obtained information about this aspect of the family's management of assets from its analysis of a proceeding in which the Hatvanys had sought restitution of certain assets in Yugoslavia. The Hatvanys had filed this claim in the early 1950s with the United States Foreign Claims Settlement Commission ("FCSC"), a quasi-judicial, independent agency within the Department of Justice which adjudicates claims of U.S. nationals against foreign governments. The FCSC decision on the Hatvany claim explained that the *Comptoir Financier* was a Swiss security management firm "which holds and manages securities and other property for clients, utilizing the Geneva branch of the Bank for the safekeeping of the

assets." The bank was not informed of the client's name; records were kept in the name of the *Comptoir Financier.* A client wishing to transact his/her securities would notify the *Comptoir Financier*, which would then instruct the bank to take the requested action by reference to an account number.

As the CRT discovered from its analysis of the FCSC decision, the *Comptoir Financier* held Hatvany family assets both in the name of the Family Fund, as well as in the names of individual family members, including Fanny Hatvany and each of her four children.

Three family groups shared ownership and management of the Hatvany wealth in the post-war period:

1) Fanny Hatvany (the account owner in question) and four children, Antonia, Lili, Andrew and Bertalan.

At the relevant time, their son, Bertalan, who was an orientalist and art collector of fame, lived in France. He escaped to Geneva, Switzerland, and returned to France in 1947. He died in Paris on July 24, 1980. He had married the courier who had assisted in his escape (his second marriage). He had one son, József, from his first marriage, who thus was a grandson of Fanny Hatvany. József was born in 1926, and he was an internationally renowned computer scientist. He died on July 11, 1987 in Budapest. He may have had a daughter who was born in Budapest in 1947.

Lili and Antonia, the daughters of Fanny Hatvany and her husband, lived in the United States. Antonia, who had emigrated to the United States in 1926, had been a US citizen since 1935. Lili was in the process of gaining citizenship in 1947. Antonia remained unmarried, and died in 1974 without children. Lili married twice, and had children from each of these marriages. The original claimant was the son of Mariella, the daughter born of Lili's second marriage. In his claim, he also represented his half-brother (born of Mariella's second marriage).

Among the family members, only Fanny and Andrew had remained in Hungary throughout the war. Fanny went into hiding when the Germans entered Hungary on March 19, 1944. Andrew was imprisoned by the German occupation forces, but managed to escape and join his mother in her hiding place. After the war, Fanny Hatvany secured a Russian exit visa in June 1946. She emigrated to the United States via Switzerland, arriving in New York on November 9, 1946. Andrew resided in France from February 1947, and later in England. He

eventually emigrated to the United States on an unspecified date. Though he used an address in New York in January 1948, this may have been a temporary address, but he resided in the United States by 1951. He died there, childless, in 1961.

2) Charles (Karoly) Hatvany died approximately in 1943, leaving his widow Regina and two children, Jean Hatvany and Marietta Kerekes née Hatvany, and a grandson, George Kerekes. Regina still remained in Hungary in 1946, but by March 1947 resided in France. Jean and Marietta resided in France and Switzerland from 1924 and 1937 respectively. George resided in France as of an unspecified date.

3) Alexander Hatvany had a son, Francis Hatvany, and two great-grandchildren, Pierre and Mary de Charmant. Francis had remained in Hungary during the war, but by March 1947, he resided in France. Pierre and Mary, nationals of Liechtenstein, and their father, Severin de Marchant, had resided in Switzerland since before the war.

These three branches of the family, located in the U.S., France and Switzerland, were involved in energetic post-war efforts to reclaim the family's, as well as their personal, assets. They were also involved in active post-war management of these assets. In particular, Andrew Hatvany in the United States, Jean Hatvany in France and Pierre de Marchant and his father, Severin, in Switzerland, were engaged in the family's wealth management, including through the *Comptoir Financier*. Further, as shown in the documentation eventually provided by the claimants, Bertalan also was involved in the management of account 637.

The documentation made available to the CRT tracked in detail the family's sophisticated maneuverings to recover control over their assets in the United Kingdom and elsewhere. Following the release of the assets in the U.S., with the full cooperation of the French Bank, the Hatvanys concentrated their efforts on the de-blocking of Fanny's account. Prior approaches had focused on the assets of the family's British holding company (the British Sugar Corporation ("BSC")), which had been seized by the UK authorities, as the BSC was considered to be an enemy company. The petition for the release of the BSC assets was to be a test case for establishing the non-enemy status of family members, thus eliminating the need for family members to remain anonymous. However, the BSC matter turned out to be more complicated than first thought. It dragged on until 1952, when these assets were finally returned to the family. By that time, according to contemporaneous records of the Hatvanys' U.S. attorney,

Hans Frank, the Hatvanys had long retrieved all the other assets that had been held in the UK, including those in account 637 held at the Swiss bank. As the CRT noted: "Thus, Hans Frank wrote in a letter dated 12 March 1952, that now that the funds for the release of which they had applied (the *British Sugar Corporation* shares, the redemption proceeds of a *British Sugar Corporation* bond, and accumulated dividends and interest) were at the free disposal of the entitled persons, his and his colleague's services would no longer be needed." Hans Frank specifically stated:

> "…[S]ince the petition was filed at the time for the purpose of testing the attitude of the [British] Board of Trade with respect to the non-enemy status of some of the participants who had additional assets in the United Kingdom, and since apparently *these applicants have succeeded by other methods to gain control over such assets, there is additional reason why our services can now be dispensed with.* [Emphasis added by CRT.]" This statement by Hans Frank clearly shows that, by the date of his letter, the Hatvany family had gained control over their assets in the United Kingdom, including the assets claimed here.

This release, and the methods employed to gain it, were well documented. The attorneys' correspondence showed that Fanny and her four children decided in 1947 to have Antonia, who was a US citizen, petition for the release of the assets the French Bank held in London at the Swiss bank on behalf of Fanny. They had already in 1946, for that purpose, drawn up a draft trust agreement in which Antonia was the trustee, and the inheritance rights of her three siblings had been established. That document contained a Declaration signed by Lili, Andrew and Bertalan Hatvany certifying their agreement to the provisions of the Trust, and specifically citing that it concerned the assets in Fanny Hatvany's account 637. This Declaration reflected the fact that Fanny Hatvany's husband had died intestate. Under Hungarian law his widow, Fanny, had rights to the income from the estate during her lifetime, but the four siblings retained equal rights, *i.e.* one quarter each, to the capital. This understanding had been verified by the Hatvanys' lawyers. It underlay the various trust agreements drawn up by the Hatvany family regarding the release of the assets in London as well as elsewhere.

On May 5, 1948, the Hatvanys submitted Antonia's application, as owner of the assets in account 637 and as a U.S. national of pre-war standing, for the release of all these assets. The documentation the CRT obtained from the Swiss bank detailed each step to transfer the gold from the name of the French Bank into Antonia's own name, and finally to her account at

Samuel Montagu & Co. in London. This process was paralleled by the release, and ultimate transfer, of the contents of account 636 (one bar of gold and French gold coins), which had initially belonged to Andrew Hatvany, to the claimants' grandmother, Lili Hatvany. This account was not part of the claim. The whole process was completed in just under a month, with the cooperation of the Swiss bank and the French Bank.

The documentation available to the CRT showed that the Hatvany family as a unit, and individually, continued to maintain their relationship with the French Bank in subsequent years.

The CRT's investigation revealed that at the same time that the claimants pursued their CRT claims, they also had advanced essentially the same claim along two additional avenues.

First, a few months after they transmitted their claim to the CRT, the Hatvany claimants filed a claim for the same assets with the UK's Enemy Property Claims Assessment Panel (EPCAP). EPCAP was established within the UK Department of Trade and Industry. It was part of the UK's Enemy Property Payments Scheme, a program set up to "'provide compensation to victims of Nazi persecution who had property in the United Kingdom which was confiscated by the British Government during the Second World War under UK legislation on trading with the enemy, and who have not had their property returned.'" The program was administered by the Secretariat of EPCAP. Claims were determined by a Panel, with two levels of appeal. In the Hatvanys' case, the Panel denied the claim in 2009, and it was then denied on appeal in 2010, and again thereafter. On March 31, 2011, the claimants acknowledged to the CRT that "'no more avenues of appeal are available [for the gold claim] via EPCAP.'"

The CRT eventually received much of the documentation relating to the EPCAP claim, but not all the underlying documentation referred to in the EPCAP assessments. For example, the claimants appeared to have provided EPCAP with the documentation they received from the Swiss bank regarding the release of the 4 bars of gold to Antonia (as discussed below). On the basis of this documentation, the claimants dropped their claim at the CRT to the 4 bars of gold held at the Swiss bank, but continued to seek the remaining 9 bars held at the UK institution.

Second, in November 2006, three months after the claimants filed their appeal of the CRT's "No Match Letter," they instituted litigation before Judge I. Leo Glasser in the Eastern District of New York against the French Bank, the Swiss bank, and others. This proceeding was

wholly separate from the Swiss Banks Holocaust Settlement and the CRT process supervised in the Eastern District of New York by Judge Korman.

In the case before Judge Glasser, the claimants requested recovery of the gold bars allegedly unreturned from the Holocaust era, or in the alternative, the value of the bars. In response, the Swiss bank produced evidence demonstrating conclusively that the four gold bars had been returned to the Hatvanys: the documentation regarding the release to Antonia of the 4 bars of gold it held in account 637 in London. This included the June 7, 1948 letter from the French Bank to the Swiss bank, in which the French Bank started the procedure of releasing the gold to the free disposition of Antonia Hatvany. This letter included a copy of Antonia's non-enemy declaration, as certified by the British Consul in New York, which constituted her application for the de-blocking of all the account 637 assets held in London, including those held at the Swiss bank. On June 10, 1948, the Swiss bank responded to the French Bank. The Swiss bank confirmed that it had received and understood the instructions regarding the disposition of the 4 bars of gold, once they were released. On July 8, the Swiss bank confirmed that the gold had been put at Antonia's disposition, as instructed.

As a result of the documents produced during discovery, the claimants voluntarily dismissed with prejudice their lawsuit against the Swiss bank, and dropped their claims against the other banks. Judge Glasser entered an order of dismissal on November 15, 2007. The CRT, having become aware of this litigation, requested and obtained the documentation from the Swiss bank.

The claimants then amplified their original claim before the CRT, which was to the London-held assets in account 637, to include assets held in the account through 1980. This amplification was accompanied by an extensive set of bank account statements, requiring the CRT to substantially expand the scope of its inquiry. The securities placed in issue by the claimants had been contained in an account that was closed in December 1980.

After analyzing the extensive documentation, including the case files for the various proceedings before Judge Glasser and EPCAP, the CRT determined that the account appeared to have been closed by the heir of one of Fanny's four children: Bertalan's son, József. The claimants had ignored Bertalan's existence, and therefore did not acknowledge that there was another Hatvany heir, József. They queried in a May 4, 2009 letter to CRT Special Master

Bradfield: "Who withdrew these funds? Who withdrew all the funds so that the account was empty and closed on December 22, 1980? How these proceeds were removed is what puzzles us." In an August 20, 2009 letter to the CRT, the claimants reiterated: "We do not understand how it is possible that the Account was closed in 1981. All the potential inheritors of the account were long dead." In a June 23, 2010 letter to the CRT, the claimants added: "The problem with these statements from the banks [that eventually were provided after the CRT's repeated request for a complete set of records] is that the Account was closed after all the Hatvany family members that had access to the Account had died. Additionally and astoundingly, there was no record of who closed the account."[148]

In analyzing the available documentation, the CRT found that account 637 was actively managed during the war and throughout the post-war period, as demonstrated by voluminous portfolio statements. Specifically, Bertalan had access to the account, with periodic payments made to him during the war, while he resided in Switzerland. There was evidence that he was involved in its management (via the *Comptoir Financier*) after the war as well. For example, a January 17, 1963 order from the *Comptoir Financier* to the French bank instructed the latter to buy nine shares of a communal investment fund, with the notation that the shareholder was a foreign resident, and with the hand-written notation "H.B." — the initials of Bertalan Hatvany (in the European style of placing the last name first). Further, in 1971, there was a "significant capital injection," increasing the account's value, which would not have happened "without active management on the part of the actual owner." Finally, the account's closure came in December 1980, five months after Bertalan's death. The most plausible explanation was that Bertalan's heir, József, after selling the assets in the account, withdrew the cash proceeds in December 1980, and then closed the account. In its decision denying the claim, following the claimants' appeal, the CRT cited extensive precedent and noted that no awards had been issued in the face of such obvious post-war management of the account by an owner or heir.

On appeal, the CRT reaffirmed its denial of the claim on the basis of several factors.

First, with respect to the original claim for the assets in account 637 held in the name of the French Bank at the Swiss Bank and another institution in London, there was clear evidence

[148] Because of the claimants' submission of documents in piecemeal and sometimes incomplete fashion, on November 5, 2010, the Court ordered the claimants to affirmatively represent that they had provided the CRT with all documents in their possession related to the claimed assets.

from documentation provided by the successor of the parent bank of the Swiss bank that the gold held at the Swiss Bank had been released to Antonia Hatvany in July 1948. Although this documentation dealt with the gold at the Swiss bank only, the documentary evidence that the release of the assets at the Swiss bank was promptly effected by the French Bank and the Swiss bank following Antonia's application for their release, together with the fact that the application specified all the assets held for the account in London, indicated that all of these assets were released in the same way.

This conclusion was further supported by the claimants' admission that the securities may have been released to Antonia, and by the fact that the assets held in London in account 637 were mentioned only once more after July 1948 in the subsequent voluminous correspondence about the release of assets, both in London and elsewhere. This was when the Hatvany's U.S. lawyer, Hans Frank, writing to Andrew Hatvany on March 12, 1952 about the finalization of the BSC matter, said with respect to those applicants in the BSC matter (the family's shares of the British Sugar Corporation that had been seized) who had other assets in the United Kingdom: "…[S]ince apparently these applicants succeeded by other methods to gain control over such assets there is additional reason why our services can be dispensed with."

Second, with respect to account C.2.637/052637 N at the French Bank, the claimants asserted that it was the continuation of account 637, and that the assets had never been returned to the family. The CRT concluded that the evidence did not support this assertion, based upon the true nature of the family relationships and heirs. The claimants had submitted a family tree with their initial claim, which indicated that Lili and Antonia Hatvany were Fanny Hatvany's and her husband's only children, that Antonia had no children, and that Lili had one daughter, Mariella, who in turn had two sons, the claimants, who were half -brothers. However, in July 2006, the claimants submitted additional documentation, including a document that indicated that Fanny Hatvany and her husband actually had four children: Lili, Antonia, Andrew and Bertalan Hatvany, all of whom were involved in the Hatvany's post-war efforts to regain control of the family's assets. The claimants thereafter did not provide consistent information about the Hatvany heirs, and never indicated that Bertalan had heirs. He did, however, have a son, József. The various trust documents and wills drawn up to facilitate the release of account 637 to the Hatvanys affirmed that while Fanny had the right to the income generated by these assets, the

four siblings, or their heirs, retained the right to the capital in equal shares. Thus, Bertalan, and after his death József, shared in the ownership of account 637, and in the successor account, C.2.637/052637 N.

With regard to who controlled the account, the CRT found that it was managed by one or several Hatvany family members, who gave instructions to the *Comptoir Financier*. That entity, in turn, relayed these instructions to the French Bank. Bertalan had access to the account and probably had full control of it, as supported by the fact that account 637 was no longer mentioned after 1948.

With regard to the closing of the account, the CRT found that there was clear evidence of the Hatvanys' management of the account after the war. The assertion that the French Bank would have closed the account for its own benefit contradicted the relationship of trust that demonstrably existed between the Hatvanys, the family and the Bank in the post-war period. The CRT further noted that at the time the account was closed, Fanny, Andrew, Lili and Bertalan all had died, but Mariella (the claimants' mother) and József, Bertalan's son, were alive. With the closure of the account coming about five months after Bertalan's death, it most likely had been closed by József.

The claimants appealed again, arguing, among other things, that the CRT had relied too extensively upon EPCAP's rejection of the Hatvany heirs' claim, which the claimants contended had been wrongly decided. The Court rejected that argument, finding that the CRT's decision was "clearly correct and in accord with … CRT precedent," and that the claimants' argument relating to subsequent proceedings in the EPCAP case was "frivolous and disingenuous."

ii. In re Accounts of Siegfried Levy, Sigfried Levy, Paula Levi and Schuhkonzern Aktiengesellschaft Zürich

The Court approved a Certified Denial (the "denial") with regard to published accounts held by Siegfried Levy, Sigfried Levy, and Paula Levi, and unpublished Swiss bank accounts held by *Schuhkonzern Aktiengesellschaft Zürich*. With regard to accounts held by Siegfried Levy, Sigfried Levy and Paula Levi, the CRT concluded that although the claimants, who were related to each other, also were related to persons named Siegfried Levi and Paula Levi, they did

not establish their relationship to the account owners, who had the same or substantially similar name as the claimants' relatives. The primary focus of the denial concerned two custody accounts and one demand deposit account held by claimants' relative, Siegfried Levi, at the Zurich branch of the Bank.

The CRT explained that Siegfried Levi was the sole owner of *Schuhfabrik Luwal Aktiengesellschaft* ("*Luwal*"), a shoe manufacturing company located in Luckenwalde, Germany. *Luwal* was capitalized at 600,000.00 Reichsmark ("RM"), consisting of RM 10,000 in preferred shares held by Siegfried Levi, and RM 590,000 in common shares held by *Schuhkonzern*, a Swiss joint stock company that was owned entirely by Siegfried Levi. The CRT explained that *Schuhkonzern* held three Swiss bank accounts, two custody accounts and one demand deposit account, all of which were opened in 1928. One custody account was closed on December 31, 1936 and the other custody account and related demand deposit account were closed on March 2, 1938.

As support for their claim, a legal representative of some of the claimants submitted a partial decision of the Brandenburg Regional Authority for Settlement of Unresolved Property Issues (*Landesamt zur Regelung offener Vermögensfragen Brandenburg*, the "*Landesamt*"), dated November 19, 1998 (the "1998 Partial Decision") concerning claims to assets that had belonged to *Luwal*. The 1998 Partial Decision was issued upon application by the Conference on Jewish Material Claims Against Germany (the "Claims Conference"). The Partial Decision explained that as of January 1, 1936, all of *Luwal*'s 10,000 preferred shares, as well as the 590,000 common shares, were in the sole possession of Siegfried Levi. The common shares were held by a Swiss holding company, *Schuh-Konzern AG-Zürich*, which were acquired by Siegfried Levi, in exchange for his claim on the *Schuhkonzern* in the amount of SF 381,856.95.

As Siegfried Levi owned all of *Luwal*'s outstanding shares, the Nazi regime considered *Luwal* to be a 100 percent Jewish-owned company. *Luwal* was aryanized in 1938, resulting in acquisition of the 10,000 preferred *Luwal* shares and 390,000 common shares by Theodor Loeben of Luckenwalde; and of the remaining 200,000 common shares by Dr. Albert Mülhaus of Hanover.

According to the Partial Decision, on June 12, 1946, *Luwal*, which was located in the former German Democratic Republic (East Germany), was nationalized without compensation. Subsequently, in 1953, as part of the West German post-war restitution program, settlements relating to the *Luwal* shares were reached between Siegfried Levi and the aryanizers of *Luwal*. As a result, Siegfried Levi received 20,000 Deutsche Mark ("DM") from Theodor Loeben and DM 10,000 from Dr. Albert Mülhaus. The total DM 30,000 received by Siegfried Levi represented RM 300,000. The Partial Decision noted that Siegfried Levi's heirs had brought an additional equalization proceeding in Germany, resulting in a November 16, 1976 decision holding that Siegfried had suffered damages in the amount of RM 1,290,000 (of which he had already received the equivalent of RM 300,000) through the forced sale of *Luwal*.

Following the Partial Decision, German restitution authorities rendered seven additional decisions for real estate and other assets of *Luwal*, resulting in payment to the Claims Conference, as legal successor to unclaimed Jewish assets in the former East Germany, of 2,578,117.22 Euros. Of that amount, the claimants received 2,039,234.03 Euros (after deduction of fees by the Claims Conference). According to archival records obtained by the CRT, Siegfried Levi also secured the return of additional real estate and compensation for or restitution of other assets after the Second World War. Siegfried's widow and sole heir obtained additional compensation for flight tax and atonement tax that had been assessed against her and her husband.

Schuhkonzern held three Swiss bank accounts: two custody accounts and one demand deposit account. With regard to the custody account closed in 1936, the bank's records showed that the account held a declaration of guarantee extended by Siegfried Levi for a line of credit in the amount of approximately SF 300.000 issued by the bank to *Schuhkonzern*. There was no evidence that the account contained any assets. According to a report dated August 23, 1937, the declaration of guarantee was returned to the company in a letter dated January 14, 1937, after the bank had recovered the credit. The CRT concluded that since the account contained only the declaration of guarantee, it was properly closed on December 31, 1936 after the outstanding credit was recovered, and the declaration of guarantee was returned shortly thereafter, the account was not eligible for an award.

With regard to the custody account and related demand deposit account closed in 1938, the CRT concluded that the custody account held the RM 590,000 (nominal value) in *Luwal* common shares, the dividend payments from which were received by the demand deposit account. The CRT explained that the *Luwal* shares had been pledged as security to the bank for a debt in the approximate amount of SF 42,000.00 owed to the bank by *Schuhkonzern*. Upon payment of the debt, *Schuhkonzern* agreed to transfer the shares to an account at a German bank in the name of Siegfried Levi. According to a report dated March 25, 1938 of the *Luwal* board, the shares had been delivered to an account at the *Deutsche Bank und Diskonto-Gesellschaft* in Stuttgart. Accordingly, the CRT concluded that the *Luwal* shares, which comprised the sole asset of value in the custody account, along with the related demand deposit account, were transferred to an account in Germany under Siegfried Levi's name, and subsequently closed.

With regard to the value of the *Luwal* shares and any dividends that may have accumulated in the demand deposit account, after the Second World War, Siegfried Levi and his heirs pursued various claims for which, as described in the 1998 Partial Decision, restitution of or compensation for the assets was received. The CRT determined that Siegfried Levi and/or his heirs were fully compensated for the value of the *Luwal* shares and any related dividends. Accordingly, the CRT concluded that no award was appropriate for the accounts at issue.

The claimants appealed with regard to the custody account that held common shares of *Luwal* worth RM 590,000, and the related demand deposit account. In an Order denying the appeal (the "Order"), the Court explained that the primary grounds for the appeal were that the CRT supposedly had not considered the findings of the *Landesamt* that the *Schuhkonzern* shares were transferred to a blocked account, and therefore confiscated by Nazi authorities; the CRT did not consider the dividends that accrued on the *Schuhkonzern* shares and were then deposited in the claimed demand deposit account; and the amount in Euros received by the claimants from Germany in connection with the seven payments did not represent the full amount to which they were entitled, as an additional 538,883.19 Euros was kept by the Claims Conference. In addition, the appeal included a claim that the CRT wrongfully stated that the Levi family had

been fully compensated, and that the claim should not have been denied simply because restitution had been received for the family's losses in Germany.[149]

On appeal, the Court observed that the CRT had acknowledged the Nazis' confiscation of the *Luwal* shares contained in the custody account. However, the CRT did not recommend an award because the account owner and his heirs already had received restitution for the value of the assets in the custody account and related demand deposit account. The Court noted that the post-War restitution proceedings, described in the 1998 Partial Decision, indicated that the amount of restitution received based on the 1998 Partial Decision (RM 50,423,590) had exceeded the value of the *Luwal* shares (RM 1,290,000) that had not been previously restituted or paid to Siegfried Levi (RM 750,000). The Court further noted that, with regard to any dividends deposited in the demand deposit account, there was no evidence that any dividends that were distributed were ever repatriated to the Reich and confiscated by Nazi authorities.[150]

The Court then discussed the 538,883.19 Euros received by the Claims Conference in connection with compensation for the *Luwal* assets, to which the claimants asserted a claim of entitlement. The Court noted that under the Claims Conference's Goodwill Fund established in 1994, former Jewish owners (and their heirs) of property that had been nationalized in the former East Germany, and who had missed the German filing deadlines, could apply for payments that the German restitution authorities had awarded to the Claims Conference as legal successor to unclaimed Jewish assets in the former East Germany. Under the relevant payment program, eligible applicants (like the claimants) were able to receive approximately 80 percent of any amount awarded to the Claims Conference. The Court noted that without the services rendered by the Claims Conference, the claimants would not have had a restitution payment at all.[151]

Finally, the Court characterized as frivolous the claimants' assertion that their claim should not have been denied because they had received compensation for their family's losses in Germany. The Court noted that in all cases, the CRT evaluated the disposition of the accounts at

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149 *In re Holocaust Victim Assets Litig.*, 2012 WL 911820 (E.D.N.Y. Mar. 16, 2012), at *2.

150 *Id.*, at *2-3.

151 *Id.*, at *4.

issue to determine who had received the proceeds. If an account owner received account proceeds in full — either at the time of closing or later during restitution proceedings — then no award from the Settlement Fund was appropriate. If the account owner had received partial restitution, then that amount was deducted from the total amount awarded. Accordingly, as the claimants previously had received full restitution of *Luwal* shares and any dividends that may have accrued, the Court upheld the CRT's decision and concluded that no further award was appropriate.

B. APPEALS FROM THE CONCLUSION THAT NO DOCUMENTATION SUPPORTED THE EXISTENCE OF AN ACCOUNT

i. In re Account of Mihail Atias (SF 62,500.00)

The account owner was born in 1885 in Romania. He resided with his wife in Bucharest, where he was a banker with the Romanian Credit Bank. The claimant was the account owner's son. He stated that during World War II, a non-Jewish man named Mihail Stefanescu, a friend and banking client associated with the firm *Grivita*, helped his father hide assets from the Gestapo and Romanian authorities. The account owner and his wife emigrated to Israel in 1962.

In its initial decision, the CRT advised the claimant that no accounts in the name of the account owner had been located in the AHD. The claimant therefore received a "No Match Letter." On appeal to the CRT Special Master, the claimant "submitted an extract from the United States' *Congressional Record*, which contains 'a list of balances held by [the Custodian] for nationals who are also residents of Romania, Hungary, Bulgaria, Croatia, Moravia, Slovakia, France, Holland, and Denmark.' On this list, the name Mihail Arias of Bucharest, Romania, appears beside an account balance of 5,000.00 Swiss Francs." The new document constituted facially reliable evidence that a Swiss account had existed during the relevant period, and the CRT Special Master remanded the decision to the CRT for further review.

On remand, the CRT initially observed that the "custodian" with whom Mihail Atias' assets had been deposited was an international shipping inspection firm based in Geneva. The

Custodian's founder, Jacques Salmanowitz, "who was Jewish, reportedly helped to secure the personal safety as well as the assets of many Victims of Nazi Persecution." The CRT explained that the "evidence of the account in this case is an extract from the *Congressional Record* containing a statement by former United States Senator Alfonse D'Amato and a report by the American Legation in Bern, Switzerland, originally filed on 12 July 1945 in the course of 'Operation Safe Haven,' which was an American investigation conducted immediately after the Second World War to locate and identify Nazi assets and looted assets in Europe (the 'Safe Haven report'). Senator D'Amato stated that his staff discovered the Safe Haven report among declassified US military intelligence documents in the course of 'an inquiry into the return, by Swiss banks, of assets deposited by European Jews and others in the years preceding the Holocaust.'" The Safe Haven report included a list of 182 account owners and balances held by the Custodian, including the SF 5,000 balance shown as held on behalf of Mihail Atias.

Conducting further research into the Safe Haven accounts, the CRT learned that, in response to a 1996 letter from Senator D'Amato, the Swiss Custodian had commissioned an audit. This audit concluded that "all but four of the accounts on the Safe Haven list had already been claimed by their owners or heirs, and all but two of the account owners had survived the War." Due to confidentiality requirements, the Custodian withheld the names of the four unclaimed account owners.

In awarding the account, the CRT observed that although all but four of the 182 accounts were said to have been returned to their owners, the audit "was compiled in 1996, many years after the death of the Claimant's father (1970) and mother (1987). Moreover, in the time between the deaths of the Claimant's parents and the compilation of the report, the account could not have been claimed, because the Claimant himself was not aware that the account existed with the Custodian until he saw it referenced in the *Congressional Record* in 1996. In support of this likelihood, the CRT notes that, as detailed above, the Claimant stated that his attempts to contact the Custodian regarding this account were unsuccessful, even though the assets were held in his name. Based on these factors, the CRT is unable to rule out the possibility that the Claimant's account is among the four unclaimed accounts discovered in 1996." In the absence of plausible evidence to the contrary, it was presumed that the heirs had not received the proceeds of the

account. The CRT awarded the account based upon the SF 5,000 reported in the Safe Haven report, increased by the 12.5 multiplier.

ii. In re Accounts of Lazar Bujaker (award of SF 2,837,600.00 on appeal)

Lazar Bujaker was born in 1897 in Romania. He was a clock and jewelry dealer in Bucharest. According to his great-nephew, the claimant, he traveled to Zurich frequently on business. Lazar Bujaker was murdered on January 23, 1941 by the Romanian Iron Guard.[152]

After the end of World War II, the claimant's father, Igor Alexander Bujaker, unsuccessfully attempted to retrieve his uncle Lazar Bujaker's assets deposited in Switzerland. On August 16, 1947, the family was advised by its representative that he had inquired with Swiss banks. He was apprised by one bank ("Bank 1") that a numbered account had existed until the end of 1945, "at which time it was closed 'when all foreign and German accounts were seized.'" The representative further advised that there was another account at "Bank 2." This bank had acknowledged the account, but refused to open it or hand over its contents. The representative "encouraged Igor Alexander Bujaker to contact a Swiss attorney named Dr. M. Moll, and indicated that a journey to Zurich would be worth the effort since 'an amount of 220,000.00 Swiss Francs' was at issue."

In 1962, Igor Alexander Bujaker contacted a lawyer, Mr. Jacober. He stated in a September 1, 1962 letter that he had accompanied his uncle to Zurich in October and November 1940, when Lazar Bujaker had opened a safe deposit box at Bank 2 ending in the numbers "224." He described what he remembered to be the contents of the safe deposit box, as well as a visit to a second bank (Bank 1), which he stated was "close to the main railway station in

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[152] "Lazar Bujaker was born to Moshe. Prior to WWII he lived in Bucuresti, Romania. During the war he was in Bucuresti, Romania. Lazar was murdered in the Shoah. This information is based on a List of persecuted persons found in List of Jews murdered in a pogrom in Bucharest, 21-23/01/1941." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=10636733&language=en (last visited Aug. 11, 2015).

Zurich." This 1962 letter explained that in 1959, the Romanian authorities had indicted Igor Alexander Bujaker for holding Swiss accounts.

The CRT determined, based upon the claimant's initial submission, that the AHD did not contain a record of any Swiss accounts belonging to any Bujaker family members, including Lazar Bujaker and Igor Alexander Bujaker. The claimant received a "No Match Letter" indicating that his claim had not matched to any accounts reported by the Swiss banks. The claimant subsequently supplemented his claim with additional documents. One such document, which the claimant stated he had obtained from the Romanian archives in July 2006 (during the time that his claim was pending with the CRT), was a copy of "an official indictment issued against his father by the Romanian government in 1959." As described by the CRT Special Master on appeal, the indictment "indicates that Igor Alexander Bujaker 'illegally' held at the Banks in Switzerland two accounts, one at Bank 1 numbered 43-5648 containing 10,000 United States Dollars and SFr 169,000.00, and a safe deposit box account, numbered 2249, held at Bank 2 containing watches and jewelry that were valued at SFr. 12,000.00. The indictment indicates that the Romanian government obtained the information pertaining to the accounts from 'banking documents in German' and 'other mail' as well as from an heir certificate used in December 1947, numbered 2457, with respect to the appellant's father, which indicated that Igor Alexander Bujaker was the holder and heir of the deposits at issue as a result of the death of the original owner. The indictment further states that by holding assets abroad, the appellant's father was 'undermining' the national economy." The claimant also provided the CRT with a document issued by the Romanian "State Security Council dated 4 March 1969, which confirms that Igor Bujaker was 'deprived of freedom through an administrative act' from 26 September 1959 until 16 January 1960."

Based upon the new evidence submitted on appeal, the claimant was awarded his great-uncle's accounts. The CRT Special Master's appellate decision observed that Lazar Bujaker was killed in 1941 and that for years after, the claimant's father, Igor Alexander Bujaker, had tried to recover the accounts. The Special Master noted that although in 1947, Bank 1 had made reference to the 1945 "seizure" of Lazar Bujaker's account, implying that the account might have been frozen rather than closed, "there is no evidence that the account at issue was frozen, and a

statement by Bank 1 with respect to the disposition of the account cannot be given decisive weight considering that the Swiss banks adopted a policy of not providing information, or providing inaccurate and misleading information, to victims of Nazi persecution seeking to access accounts after the Second World War."

The CRT Special Master further observed that the "continued deposit recovery efforts of [Igor Alexander Bujaker] were the apparent cause of his indictment in 1959 on suspicion of holding accounts in a Swiss bank," when his "letter to the Swiss counsel in Bucharest concerning the recovery of his Swiss accounts" might have been "leaked to the Romanian authorities." The Special Master also observed that in her last will and testament of April 1, 1984, Igor Alexander Bujaker's wife (the claimant's mother) left to her son "two accounts held at Bank 1 and Bank 2 valued at SF 223,950.00 as of 1940 that her husband … inherited from his uncle, Lazar Bujaker," indicating that the heirs never had received the proceeds of these accounts.

As further evidence that the heirs had not received the proceeds, Special Master Bradfield also made note of the "agreement between Switzerland and Romania, whereby unclaimed assets in Swiss banks of Romanian citizens were to be transferred to the Romanian government as part of a deal in which compensation would be paid by the Romanian authorities for Swiss property that had been nationalized by Romania's communist regime. As noted previously, Swiss banks froze Romanian assets in 1948 pursuant to a Decree of the Swiss Federal Council.[153] Romanian accounts were unfrozen in October 1959. Approximately one year later, in August 1961, Switzerland and Romania entered into an informal agreement, modeled after the formal agreements between the Swiss government and the governments of Poland and Hungary."

Based on the fact that the value of the two accounts was set forth in "various contemporary and independent sources" dating from shortly after the account owner's death, the Special Master applied the 12.5 multiplier, awarding SF 2,837,600.00.

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[153] *See In re Account of Alfred and Marie Körner*; *In re Account of Samuel and Betty Leb*; *In re Accounts of Rachel Sperling and Julius Sperling*; *In re Account of F. Sufrin*; *In re Accounts of Stefan and Gisela Ullmann*; *In re Account of Iosif Varnay*; *In re Account of Theodor Victor*; and *In re Account of Avram Weinbaum.*

iii. In re Accounts of Mozes Fleischmann, Mirjam Fleischmann, Olga Fleischmann and Juliska Veber[154]

Mozes Fleischmann was born in 1895 in Budapest. He was married to Mirjam Fleischmann, née Veber (Weber), who was born in 1899 in Zalaegerszeg, Hungary. The Fleischmanns were the claimant's parents. Mozes Fleischmann had a sister, Olga Fleischmann, the claimant's aunt, who was born in 1888 in Vienna. Another aunt, Juliska Veber, was born in 1903 in Hungary. The claimant sought to recover Swiss bank accounts for all four relatives.

According to the claimant, his father, Mozes Fleischmann, was an important businessman in the Hungarian wine industry, owning several vineyards, wine cellars and a distribution company. In 1944, the family was moved to the International Ghetto, a group of 30 buildings rented by the Swedish diplomat Raoul Wallenberg, intended to protect Hungarian Jews from Nazi persecution. The family obtained Schutzpasses.[155] However, the claimant's parents nevertheless were captured and murdered in Budapest in November 1944. The claimant's aunts, Olga Fleischmann and Juliska Veber, both were killed in Auschwitz.

In support of his claim, the claimant submitted a photocopy of a small handwritten note which the claimant stated had been given to him by his father in 1944. The claimant stated that the note indicated the name of a Swiss bank, as well as information relating to three accounts of unknown type held in Zurich: one opened by his parents in 1938, containing $965,000; one opened by his father and his sister in 1940, containing $985,000; and one opened by his mother and her sister in 1940, containing $890,000, for a total of $2,840,000. The note also stated (in Hungarian): "*One day all this will be yours! Daddy.*" The claimant stated that based upon the

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[154] In addition to the CRT decision denying the claim, the information set forth herein relating to the *Fleischmann* case also is taken from the decision on appeal, which upheld the denial. *See* Letter of January 25, 2011 from Special Master Michael Bradfield to the claimant and his representative.

[155] "The Schutzpass was a document that bore the official stamp of the Swiss Legation and stated that the person possessing the Schutzpass had a valid passport and was part of a Swiss emigration collective. It did not grant its holder permission to enter Switzerland. It provided targets of Nazi persecution in Hungary a degree of protection from Hungarian government authorities who were allied with Nazi Germany. The Swiss Legation in Budapest issued several thousand Schutzpasses to individuals between 1942 and 1945." *See, e.g., Report and Recommendations of the Conference on Jewish Material Claims Against Germany, Inc. for the Twenty-first Group of Claims in In re Holocaust Victim Assets Litigation (Swiss Banks) - Refugee Class (January 6, 2004)*, at 3.

note, he attempted, but failed, to retrieve the proceeds of the accounts in Switzerland in 1955 and 1977.

Although the CRT searched both the Accounts History Database (AHD) and the Total Accounts Database (TAD), no accounts were located belonging to the claimant's relatives. The CRT further determined that the claimant's note was not facially reliable evidence upon which to base an award. It did not fall into any of the categories of documentation upon which the CRT relied in the absence of Swiss bank files; *e.g.*, 1938 Census or other archival records; documents obtained by the HCPO; documents submitted to an official government agency; and official letterhead indicating a connection to a Swiss bank.

On appeal, the claimant contested the CRT's conclusion that there was no documentation to support the existence of a Swiss bank account. He provided additional information attesting to his family's wealth; his father's involvement in the Hungarian wine industry (offering an affidavit in which the attestor called the claimant's father a "wine king"); and his father's connection to the Hungarian Royal Court and to the Alliance of Jewish Communities of Hungary. With respect to the note, the claimant stated that he was present when his father wrote it shortly before he perished, and that thereafter, he carried the note around his neck in a miniature Tehilim (prayer book) until the end of his military service in Israel in 1955. The claimant also provided results of testing by persons who had been hired to authenticate the note.

Special Master Bradfield authorized additional testing to be performed to determine "whether it is possible to conclude that the Note is genuine and dates from the Relevant Period." As described in the decision on appeal:

> [T]he Note was subjected to date-testing by several leading experts in the field: Jane Klinger, Chief Conservator of the United States Holocaust Memorial Museum; Joseph G. Barabe of McCrone Associates, who turned to Walter J. Rantanen of Integrated Paper Services, Inc. for additional analysis; and Greg Hodgins of the University of Arizona. None of these experts has been able to pinpoint a year of manufacture for the paper on which the text of the Note is written, with all acknowledging that it is possible and even likely, that the paper was manufactured after the conclusion of the Second World War.

Furthermore, the note had been written in pencil, "which cannot be date-tested." In addition, one of the experts, Mr. Rantanen, had "indicated in a report prepared for Appellant in June 2006 that the fibers in the Note were consistent with those present during the Relevant Period," but later concluded in an October 2007 report to the Special Master "that the Note was likely manufactured after the Second World War."

Special Master Bradfield also observed that although the claimant had provided "present-day" affidavits on appeal from individuals who corroborated the statement that the family had been wealthy and extensively involved in the Hungarian wine industry, the claimant had not provided contemporaneous (*i.e.* Holocaust-era) evidence to that effect, such as Hungarian property records or newspaper excerpts from the 1930s or 1940s. On the other hand, there was contemporaneous evidence demonstrating that in 1925, the claimant's relative, Mozes Fleischmann, had a very different profession: he was Deputy Chairman of the Komet Trading Company, a Hungarian distributor of German sewing machines. Other documents indicated that Mozes Fleischmann was an engineer and the owner of the firm *Miklos Fleischmann Dipl. Mechanical Engineer*, which had a license to import machines used in the sewing and textile industries.

Special Master Bradfield also obtained the results of research that he had requested of the United States Holocaust Memorial Museum. Its chief Hungarian archivist, Ferenc Katona, provided information which "indicates that Appellant's father was a certified mechanical engineer, and a 'dealer of technical gadgets' and manufacturer of *passementerie*, an ornament worn with traditional Hungarian clothing." The decision on appeal observed that it is "important to note that Appellant did not identify his father's involvement in the distribution of sewing machines until prompted to submit information demonstrating his father's role in the Hungarian wine industry, which has not been provided. It is also important to note that while there was a Fleischmann family that figured prominently in the Hungarian wine industry, this family does not appear to have been related to Appellant."

The decision on appeal noted that the claimant had been offered "both substantial time and assistance in his effort to submit information demonstrating that his father was a Hungarian wine mogul, as claimed." However, the evidence did not support the claimant's assertion.

Rather, it demonstrated that his father was involved in a different field, and one which did not generate "a profit sufficient to provide for the level of wealth indicated on the Note." Based upon those facts, and given that the Note could not be traced to the Holocaust era, the appeal was denied.

The appellant then sought review by the Court, which confirmed that the appeal had been appropriately denied. The Court observed that Special Master Bradfield had undertaken "extensive and comprehensive efforts … to authenticate the note" the appellant had provided but that the results were inconclusive.[156] However, even if the CRT Special Master had determined the note to be authentic and the Appellant's father to have been involved with the Hungarian wine industry, "this note in itself is insufficient to justify an award." The note, "even if authentic, remains an assertion by the Appellant's father regarding the existence of Swiss bank accounts, for which no collaborating evidence has been found."[157] However, because the claim was "determined to contain sufficient information to warrant a Plausible Undocumented Award," the Appellant was "entitled to receive a total payment of U.S. $7,250 for this PUA."[158]

The claimants thereafter appealed to the United States Court of Appeals for the Second Circuit. Thereafter, the appellants filed a stipulation of dismissal with prejudice, thus bringing the case to its final conclusion.

C. APPEALS CHALLENGING THE AMOUNT OF THE AWARD

i. In re Accounts of the Estate of Sophie Cohen, and Accounts of Alexander Oppler, Berthold Oppler, and Sigmund Oppler (SF 341,551.63)

The Court approved a CRT award with regard to unpublished accounts held by the Estate of Sophie Cohen (the "Estate") at certain Swiss Banks Bank I, Bank II, Bank III, and Bank IV.

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156 *In re Holocaust Victim Assets Litig.*, 2011 WL 1104093 (E.D.N.Y. Mar. 23, 2011), at *1.

157 *Id.*, at *2.

158 *Id.*

The award also addressed unpublished accounts held by brothers Alexander Oppler, Berthold Oppler and Sigmund Oppler (the "Oppler Brothers") at Bank I. The Estate held one custody account and one demand deposit account at each of the Banks (for a total of eight accounts held by the Estate). Alexander, Berthold and Sigmund Oppler each held one custody account and one demand deposit account at Bank I. Thus, the Oppler brothers owned a total of six accounts.

The award was for SF 239,751.63, which represented accounts held by account owners Alexander Oppler and Sigmund Oppler at Bank 1. One of the claimants was a grandchild of Alexander Oppler and the other claimant was the grandchild of Sigmund Oppler. The award noted that the CRT previously had awarded the claimants the proceeds of Berthold Oppler's accounts, in a decision approved by the Court on June 3, 2003. The claimants appealed the conclusion that none of the accounts held by the Estate of Sophie Cohen at Bank 1, Bank 2, Bank 3 or Bank 4 were eligible for an award.

The award explained that Sophie Cohen, who was Jewish and resided in Germany, had inherited a large estate worth several million Reichsmark ("RM"). Upon her death on May 13, 1933, her will (the "Will") directed that her three cousins, the Oppler brothers, were to be the principal (residuary) beneficiaries of her Estate. Alexander Oppler died in 1937; Berthold Oppler committed suicide in 1943[159]; and Sigmund Oppler fled to Amsterdam in 1939, where he and his wife, Lilli, committed suicide in 1942. According to the Will, the three Oppler Brothers each were entitled to receive a minimum of RM 250,000.00.

Sophie Cohen was very wealthy. Upon the 1930 death of her mother, American-born Ida Kuhn (of the Kuhn banking family), Sophie Cohen's share in her mother's estate, which included residues of Sophie's father's and grandfather's estates, was valued at over RM 1 million. That inheritance still was not fully settled at the time of Sophie's death, due to disputes with the tax authorities over the amount of estate tax due on her father's and grandfather's estates.

[159] "Berthold Oppler was born in 1871. Prior to WWII he lived in Muenchen, Germany. Berthold was murdered in the Shoah. This information is based on a List of murdered Jews from Germany found in Gedenkbuch - Opfer der Verfolgung der Juden unter der nationalsozialistischen Gewaltherrschaft in Deutschland 1933-1945, Bundesarchiv (German National Archives), Koblenz 1986." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=3835421&language=en (last visited Aug. 11, 2015).

Accordingly, Sophie Cohen's share of these still-undistributed assets, along with the associated estate tax liability, were rolled into her own Estate, valued at RM 3,457,749.84 at the time of her death. Of the total value of the Estate as of Sophie Cohen's death, RM 3,256,955.26 was in financial assets, the bulk of which (RM 2,902,891.46, augmented by distributions from the Ida Cohen estate and interest and stock dividends to RM 3,341,891.33) were foreign currency-denominated securities held outside the *Reich* in Swiss and Dutch banks. The Estate held a portion of the foreign currency denominated assets in Switzerland, the proceeds from the sale of which (following the sale of most of the foreign security portfolio by the Estate's Executors) totaled RM 856,121.66 (SF 1,054,726.70). The proceeds from the Swiss-held assets thus accounted for just over one-third of the proceeds of virtually all the foreign currency denominated securities held by the Estate.

The award explained that the Estate's Executors (Sophie Cohen's banker Robert Steger, her sister Emilie (Mimi) Borchardt and her cousin Sigmund Oppler) were concerned about preserving the Estate's value, particularly in light of the devaluation of the U.S. Dollar. Accordingly, the Executors decided to convert the Estate's Swiss-held U.S. Dollar assets into Swiss Francs. While such a decision also was consistent with foreign exchange regulations then in place ("*Anbietungs*"), the *Anbietungs* requirement — which at the time the assets were sold were not confiscatory — were not the reason the Executors sold the Swiss-held assets. Part of the Swiss Franc proceeds would be used to cover the estate tax liability of the Oppler Brothers (the three main heirs of the Estate), via transfer of the Swiss Francs to the *Reichsbank* and receipt by the Estate of the RM counter value. This process was in keeping with the then-prevailing *Anbeitungs* requirements for payment of the Estate liabilities. The award noted that at the time the Estate Executors sold the securities and transferred the proceeds to the *Reichsbank* (for receipt of the RM counter value), the prevailing regulation regarding the inability of residents to retain "newly" acquired foreign currency denominated securities (in this case, the "newly acquired" securities a result of inheritance of the estate) pre-dated the Nazi regime's rise to power. In other words, in this situation, the regulation applied to all residents of the Reich, whether or not they were Jewish, and was not the result of discriminatory Nazi policy.

According to the banks' records and documents obtained from the Heidelberg Archive by the CRT, with the exception of 30 units of *6% Argentinian Rentenbons Compania Hispano-Americana de Electricidad, Madrid 1920* (the "*Chade* bonds") and a £ 100 *7% Deutsche Kali Syndicate* bond (the "*Kali* bond"), the securities held in Sophie Cohen's Swiss custody accounts all were sold between July 1933 and September 1933, at the direction of the Executors. The foreign exchange proceeds were delivered to the *Reichsbank*. The *Chade* bonds were the subject of the award with regard to the accounts of Alexander Oppler and Sigmund Oppler (Berthold's account already having been previously awarded to the claimants). The Executors sold the *Kali* bond on January 12, 1934.

The award cited several examples of proof of receipt by the Estate of the RM counter of the Swiss-held sale proceeds. Documentation contained in the record included interim status statements provided by Robert Steger to the Executors between September 1933 and November 1934, and correspondence of the Executors following Sophie Cohen's death and at the time the securities contained in the Swiss-held portfolio were sold. The record showed that at the time of their meeting in Basel, Switzerland on July 6, 1933, the Executors were concerned with upholding their fiduciary duty to the Estate and legatees, rather than focusing upon discriminatory legislation leveled at the Estate by the Nazis.

The Executors were concerned about the declining value of the US Dollar, which comprised the majority of the Estate's Swiss holdings. The Executors therefore moved to sell off the Swiss-held portfolio to obtain the RM counter value for payment of Estate taxes. Although such a decision was consistent with the *Anbeitungs* requirements prohibiting retention of foreign-held securities, the *Anbeitungs* were not a motivating factor in the Executors' decision. The CRT decision noted that the *Anbeitungs* requirements pre-dated the Reich's ascension to power in 1933 and it prohibited all German residents, whether or not they were Jewish, from retaining foreign-denominated securities acquired after July 1931.

The award concluded that: 1) there was no evidence of discrimination or targeting of the Estate by the Nazi regime; 2) the foreign exchange regulations with which the Executors' decision to sell the Swiss-held assets were compliant were not, at the time of sale, applied in a discriminatory manner toward Jews; 3) the Executors' decision to sell the Swiss-held portfolio

was made without regard toward such requirements, prior to any contact with the *Reichsbank* and with a focus on maximizing the value of the Estate; and 4) the record supported a conclusion that the Estate received the RM counter-value of the proceeds from the sale of the Swiss-held portfolio. Accordingly, the award determined that no payment was appropriate for any of the accounts held at the Banks by the Sophie Cohen Estate.

The claimants appealed, arguing that: 1) the Nazis ordered the transfer of the Estate's Swiss-held assets to the *Reichsbank*; 2) those assets were consequently delivered by the Estate to the *Reichsbank* under duress, and subsequently confiscated by the Reich in the period 1933-1934; 3) there were no records "specifically" showing a Sophie Cohen *Reichsbank* account distribution to the Oppler Brothers; and 4) the Estate's delivery of the assets held in the Swiss portfolio to the *Reichsbank* in 1933 and 1934 therefore triggered the presumption of Article 28(a) of the CRT Rules, as well as Appendix C, providing for a conclusion that the Estate did not receive the proceeds of the accounts at issue.

On appeal, the claimants did not challenge the award's conclusion that the Estate received from the *Reichsbank* the RM counter value following the sale of the Estate's foreign currency denominated assets. The claimants disagreed, however, that the Oppler Brothers received amounts to which they were entitled according to the distributions recorded by the Executors of the Estate. The claimants' representative asserted that Robert Steger's distribution reports showed - on paper only - how the Estate's residual liquid assets, after having been credited with the counter value in RM - also on paper only - and used to pay estate taxes and other bequests to foreign legatees, were divided and distributed among the Oppler heirs.

In a denial decision approved by the Court, (the "Appeal Denial"), Special Master Bradfield observed that Sophie Cohen had died on May 13, 1933, three and a half months after the date Hitler became Chancellor. The process of administering the Estate stretched out over the period 1933-1938, when the Nazi financial persecution of the Jews in Germany was in process of full implementation.

In reviewing the appeal, Special Master Bradfield's office (the "SMO") set out five primary issues: 1) did the Estate receive the proceeds of the sale of the Swiss assets; 2) what did

the Estate do with the money it received; 3) did the Estate pay the Brothers their share of the Estate; 4) did the Oppler brothers receive the money, if any, disbursed to them by the Estate; and 5) was the tax paid confiscatory? Each of these questions is described in greater detail below.

1. Receipt of the Swiss-held sale proceeds by the Estate

Special Master Bradfield concluded that the available documentation provided at least a partial picture as to the amount that the Estate turned over to the *Reichsbank*, as well as the RM compensation the Estate received from the *Reichsbank* in return. As of November 1934, the Estate's Swiss portfolio had been completely liquidated, with the bulk of the portfolio sold in July 1933 immediately following the Executors' July 1933 meeting in Switzerland. It was not until several days after that meeting, by which time the Executors had sold the majority of securities held at Banks 1 and 2, that the Executors were formally informed by their counsel that assets held by the Estate were subject to the *Anbietungs* requirements. It was not possible to conclude that the Executors sold the securities under duress since those rules applied to all residents of the Reich.

Special Master Bradfield described several documents supporting a conclusion that the Estate received the proceeds of the sale of the Swiss assets. This documentation included correspondence dated August 10, 1933, from Robert Steger (Sophie Cohen's banker, an Executor of the Estate, and a partner in the Estate's bank, *Moriz Stiebel Sohne*) to the *Reichsbank*'s Main Office in Frankfurt. In that document, Steger reported on behalf of the Executors that as of August 10, 1933, more than RM 1.7 million in foreign exchange had been delivered to the *Reichsbank* (of which approximately RM 700,000.00 represented the Swiss portfolio at that time). Steger also indicated that his bank, *Moriz Stiebel Sohne*, had undertaken the transfer to the *Reichsbank* of the proceeds generated from the sale of Estate assets held outside the Reich, and that his bank had, in turn, received the counter value in RM on behalf of the Estate.

In addition, a letter dated March 25, 1938 from Steger to Hans Eiseck (a legatee) indicated that payment of Eiseck's legacy had been made from the proceeds of foreign currency-

denominated assets that had been held by the Estate, which had been offered for purchase by the *Reichsbank*.

2. Payments Issued by the Estate

Special Master Bradfield upheld the CRT's conclusion that the Estate was able to use all of the value of the foreign exchange assets of the Estate to make Estate-related payments, including payments to the Oppler brothers. Steger's first report in the record was from September 15, 1933, followed by additional reports as of December 11, 1933, April 13, 1934, and November 13, 1934. The record also contained a final report of November 1938. These reports illustrated that the Estate had paid the Oppler Brothers RM 901,468.93, of which Berthold Oppler and Sigmund Oppler received RM 300,489.64, and Alexander Oppler received RM 300,489.65. Of those amounts, each brother had received RM 175,456.68 in securities and the remainder in cash.

3. Payment by the Estate to the Oppler Brothers

Special Master Bradfield explained that correspondence between Steger and the Oppler Brothers supported the conclusion that the Estate issued payments to the Opplers. Steger's reports demonstrated that of the total amount paid to the Oppler brothers (RM 300,489.65 to each), 85% (RM 255,667) was paid in the 14 months from September 15, 1933 to November 13, 1934. The remaining 15% (RM 44,822) was paid in the four years to November 1938. In a letter from Sigmund Oppler to Steger dated September 1, 1933, Sigmund Oppler requested that, with respect to funds about to be distributed, Steger transfer RM 2,000.00 to the account of Ellen Oppler; RM 8,800.00 to the account of Alexander Oppler; and RM 1,200.00 to himself. Steger followed up with letters to Alexander, Berthold and Sigmund Oppler, dated September 4, 1933, informing them that *Moritz Stiebel & Sohne* had on that date transferred RM 12,000.00 to each brother (with the funds for Alexander distributed according to the instructions described above). The amounts and the timing of the payments match the amounts Steger reported the Brothers had received (*i.e.*, RM 12,000.00 each) as of Steger's interim report of September 15, 1933.

Additional correspondence further supported the CRT's conclusion that the Estate issued payments to the Oppler Brothers, including: 1) a letter dated November 9, 1933, from Steger to

Sigmund Oppler, in which Steger attached a letter to the Frankfurter Bank ordering that it transfer RM 50,000.00 6% tax free Reichsloan of 1929 to Sigmund's account at Gebr. Damman, and asked Sigmund to sign and forward the letter. Steger further advised Sigmund that RM 50,000.00 would be transferred from *Moritz Stiebel Sohne* to Sigmund's account the next day; 2) a letter from Steger to Alexander Oppler dated November 20, 1933, in which Steger informed Alexander that the Executors that day ordered the Frankfurter Bank to send the RM 50,000.00 tax-free Reichsloan of 1929 to Alexander's account at Bank Wassermann. Steger stated that he would inform Alexander as soon as further distribution of securities has been decided. Additional correspondence in the record indicated that further payments were issued to the Oppler brothers by the Estate.

Special Master Bradfield noted that the record did not contain account statements from the German banks involved in payments issued by the Estate to the Oppler Brothers as residual heirs. The absence of such formal documentation, however, did not justify a presumption that the Estate failed to issue payments to the Oppler Brothers, or that the Oppler Brothers in turn failed to receive payments from the Estate. The record of the five reports prepared by Steger in the ordinary course of fulfilling his role as an Executor of the Estate described in detail the payments made by the Estate to the Oppler Brothers, as did various correspondence recording the arrangements for payment by the Estate to the Oppler Brothers. These documents constituted a persuasive record verifying that the Estate had the funds to make the described payments to the Oppler Brothers, and that these payments actually resulted in funds being transferred to the Oppler Brothers.

4. Receipt by the Oppler Brothers of funds disbursed to them by the Estate

The appellants asserted that the Oppler Brothers did not receive the full value of their inheritance from the Estate, and that the cash and securities listed in Steger's reports as having been received by the Oppler Brothers originated from Sophie Cohen's German bank accounts. The appellants asserted that none of these payments represented proceeds generated by the sale of the Estate's Swiss portfolio.

Special Master Bradfield concluded that the funds in the Estate for payment to the Oppler Brothers were diminished as a result of losses on sales of the foreign currency denominated assets, amounts paid in expenses and taxes, and specific bequests for specific legatees as directed by Sophie Cohen's Will. Accordingly, the payment to the Oppler Brothers as residual heirs was necessarily smaller than had been anticipated. The record provided no evidence that the Estate-related payments were determined or influenced by interference of the Nazi authorities. There was nothing in the record, covering a period of eight years, reflecting pressure or duress on the Estate, its Executors, or its beneficiaries with respect to the administration of the Estate.

5. Analysis of the type of tax paid by the Estate on behalf of the Oppler Brothers

Having concluded that the Estate received the proceeds in RM equivalent of the Estate accounts in Swiss banks; that the Executors used these funds and other funds in the Estate to administer the Estate, pay its administrative costs and the estate taxes of the legatees and residual heirs, as well as fulfill the bequests specified in the Will; and that the Oppler brothers received the payments made by the Estate, Special Master Bradfield evaluated whether the taxes paid on behalf of the legatees and residual heirs were confiscatory.

The appellants asserted that the estate tax rate applied to the Oppler brothers' share of the Estate was confiscatory. That assertion was based on what the appellants believed was the prevailing inheritance tax rate of 24%, which was assessed on the before-tax legacy of RM 100,000 received by another beneficiary of the Estate. Special Master Bradfield explained that the estate tax was not a flat tax. According to the Estate Tax Law of September 1925 (the "Estate Tax Law"), which applied to the Sophie Cohen Estate, a gross of RM 100,000 to someone considered in "Category V" (not close family) was subject to the 24% tax rate. However, that same tax law provided that the before-tax share of each Oppler brother, which fell into the upper range of the RM 600,000 to 700,000 bracket, was subject to a 37.5% rate.

The Estate tax paid on behalf of the Oppler Brothers was consistent with a graduated inheritance tax scheme that pre-dated the Reich. Thus, it was not possible to conclude that the amount of tax levied on the Oppler Brothers was a result of Nazi confiscatory measures directed at the Oppler Brothers.

The Court agreed with Special Master Bradfield's conclusion that the presumptions of Article 28(a) and Appendix C of the CRT Rules did not apply in this case. Specifically, there was strong evidence that: 1) the Estate received the proceeds of the sale of Sophie Cohen's foreign currency denominated assets held in Swiss banks; 2) the Estate used the proceeds fully and responsibly to administer the Estate, pay its running expenses, pay the estate taxes on the beneficiaries as required by German law, and pay the bequests due to the legatees and residual heirs (including the Oppler Brothers) to the full extent they were authorized to do so under the will of Sophie Cohen; 3) the Oppler Brothers actually received the payments made to them by the Estate; and 4) the taxes paid by the Estate on behalf of the beneficiaries of the Estate were not confiscatory. Accordingly, the appeal as to the amount of the award was denied.

ii. In re Accounts of Alfred Benesch, Else Benesch and Josef Benes (SF 330,363.25)

The original award determined that the appellant and his cousin, ("Claimant A."), had identified the account owners as their relatives, Alfred and Else Benesch. Josef Benes was the appellant's paternal great-grandfather, and Claimant A.'s paternal grandfather. The appellant stated that his father, Josef Benesch, was Jewish. He was born in Vienna, Austria on November 24, 1910. He held a "doctor" title and managed the family's five leather goods stores after the death of Alfred Benesch, appellant's grandfather, whose father was also named Josef Benesch. Claimant A. indicated that her grandfather, Josef Benesch, lived in Czechoslovakia before moving to Vienna, where he died in approximately 1933.

The appellant and his sister each were awarded one-quarter of the accounts held by account owners Else Benesch and Alfred Benesch, while another party represented by the appellant was awarded the remaining one-half of those accounts. Claimant A. received one-half of the account held by Josef Benes, with one-quarter distributed to the represented party and one-eighth each to the appellant and his sister. Alfred Benesch's custody account was awarded at presumptive value, as was Josef Benes's demand deposit account. Else Benesch's account of unknown type was awarded at its recorded value of 603.20 Reichsmark (SF 1,058.50). The total award amount was for SF 194,382.00 (following application of the multiplier).

According to Else Benesch's Nazi-mandated Census of Jewish-owned assets of April 1938, she held an account of unknown type at Bank II with a balance of 603.20 Reichsmark as of April 27, 1938. The award presumed that this account was transferred to the Nazis. The 1938 Census showed that the account of unknown type was closed on April 20, 1943, but did not show when the account was opened, by whom it was closed, or the amount in the account on the date of its closure.

On appeal, the appellant asserted that Josef Benes was his father, rather than his great-grandfather, both of whom had the same name. The appellant stated that his great-grandfather died prior to the Second World War, and that he most likely owned a small business that would not have required a Swiss bank account, whereas his father, Josef Benesch, took over the large, multinational leather-goods company owned by Alfred Benesch. The appellant claimed that it was likely that his father, Josef Benesch, opened a Swiss bank account in connection with his business. Although the appellant's father resided in Vienna, his business was also located in Hungary and Czechoslovakia, where he may have listed a business address when opening a Swiss bank account. The appellant also asserted that the awarded value of account owner Else Benesch's account of unknown type was less than the actual value of that account.

Special Master Bradfield upheld the CRT's conclusion that Josef Benes was the appellant's great-grandfather. The Special Master noted that the bank's records indicated that several accounts held by Josef Benes were opened and closed prior to the Relevant Period. The appellant's father would have been too young to own such accounts at that time, and would not have held the title "General Director," as did Josef Benes. The Special Master also explained that Josef Benes's title, "General Director," was consistent with the title of the appellant's great-grandfather, as indicated in the birth record of Robert Benesch (Claimant A.'s father), whose father (Josef Benes) was identified as a businessman. In contrast, the appellant's father used a "Dr." title. Accordingly, the Special Master determined that the account held by account owner Josef Benesch had been correctly divided between the appellant (and represented parties), and Claimant A.

In support of his assertion that the amount of the award issued with regard to Else Benesch's account was less than the actual value of the account, the appellant submitted excerpts

of 1938 Census forms pertaining to his father and aunt (Alfred and Else Benesch's children). These records, as compared with Else Benesch's asset registration, indicated that Else Benesch held a one-quarter interest in the account, which the award noted was valued at 603.20 Reichsmark (SF 1,058.50). Else Benesch's son also held a one-quarter interest in the account (SF 1,058.50), and her daughter held a one-half (1/2) interest in the account (SF 2,117.00), for a total account value of SF 4,234.00.

Special Master Bradfield noted that the CRT had previously revised the value of Else Benesch's account in an Award amendment (the "Amendment"). The Amendment reflected the difference between the amount allocated for the account in the Award, SF 1,058.50, and the average value of an unknown type of account as provided by Article 29 of the Rules, SF 3,950.00, for a difference of SF 2,891.50. That amount was multiplied by a factor of 12.5, in accordance with Article 31 of the Rules, for a total Amendment value of SF 36,143.75, which was awarded to Appellant and represented parties.

However, the Amendment did not address the information contained in the 1938 Census forms indicating that Else Benesch's son and daughter held ¼ and ½ of the account, respectively, amounting to a total account value, inclusive of Else Benesch's ¼ share of the account, of SF 4,234.00. As the actual value of the account was SF 284.00 more than the presumptive value of the account awarded in the Amendment (SF 3,950.00), the decision on appeal awarded the appellant and the represented parties SF 284.00, multiplied by a factor of 12.5, for a total of SF 3,550.00.

iii. In re Accounts of Fanny Margulies and Serafine Margulies (SF 520,750.00)

The original claimants received an award of SF 211,875.00 for the accounts of their relatives, Fanny Margulies and Serafine Margulies. The award determined that Serafine Margulies held one custody account, and Fanny Margulies held one account of unknown type. The award determined that the account owners' father, Friedrich Margulies, had opened the accounts on behalf of his daughters. The appellant was awarded Fanny Margulies's account of

unknown type (SF 49,375.00, the average or presumptive value of an account of unknown type). The appellant's two cousins (who were siblings) were awarded the custody account held by Serafine Margulies (SF 81,250.00 each, for a total of SF 162,500.00, the presumptive value of a custody account).

The appellant asserted that since Serafine Margulies had held a custody account, Fanny Margulies also must have held a custody account, rather than an account of unknown type. The appellant claimed that it was unlikely that their grandfather, who held power of attorney over both of his daughters' accounts, would have treated his two daughters differently, going to the trouble of traveling to Switzerland with his two daughters of roughly the same age, only to open a different type of account for each. The appellant noted that the accounts of both Fanny and Serafine Margulies were opened on the same day in 1931, when both daughters were unmarried and living at home.

The award had concluded that Fanny Margulies held an account of unknown type, because the records for her account contained one additional document not present in the records for her sister Serafine's account. Each account contained a document signed by Friedrich Margulies that referenced a "Titeldepot," which was treated as a custody account, in the absence of evidence to the contrary. However, an additional printout was included in the records for Fanny Margulies's account indicating that the power of attorney form for that account was located in a source of bank documents related to accounts other than custody accounts ("*Ex Konti Vollmachten*"). In such cases, the CRT presumed that the *Ex Konti Vollmachten* form constituted evidence rebutting the presumption that a particular account was a custody account.

Special Master Bradfield determined on appeal that the account owners' father had opened the same type of account for each of his daughters, a conclusion supported by a "Titeldepot" reference in each of the power of attorney forms. The Special Master noted that there was evidence of the father's consistent and equal treatment of his two daughters, including that he held power of attorney over their accounts, and that he had opened the two accounts on the same date, using the same account opening form. Further, the account owners were very close in age and lived at home with their parents. The presence of an *Ex Konti Vollmachten* form

for the account of Fanny Margulies did not detract from this conclusion, given the incomplete state of Holocaust-era Swiss bank records.

Accordingly, the decision on appeal awarded the appellant SF 113,125.00, the difference between the average value of a custody account, SF 162,500.00 adjusted to then-present day value, less the value of an account of unknown type, or SF 49,375.00, which the appellant had previously received.

iv. In re Accounts of Franziska Rosenstern (SF 1,535,444.00)

Franziska Rosenstern was born in 1867 in Berlin, where she lived with her husband. Franziska Rosenstern was a teacher. Her husband was a senior executive at a brokerage firm. They had two children, one of whom was the claimant's mother. Franziska Rosenstern's husband died in 1925. On June 18, 1942, Franziska Rosenstern was deported to Theresenstadt, where she perished on October 5, 1942.

In its initial award, the CRT determined that based upon the information on a bank registry card, Franziska Rosenstern, whose temporary address was reported as the "*Pension Florhof*" in Zurich, had owned two demand deposit accounts. These accounts respectively were closed on July 17, 1936 and February 9, 1938. The CRT awarded these two accounts to the claimant, Franziska Rosenstern's grandson, observing that Franziska Rosenstern had died in a concentration camp; the Nazis had begun to confiscate assets of the Jewish population in Germany beginning in 1933; and there was no evidence that the accounts had been returned to the account owner or her heirs.

The claimant appealed the award amount, submitting additional documents, including Swiss bank statements. The CRT determined that these newly submitted documents demonstrated that Franziska Rosenstern had owned a substantial amount of assets held in an account that had not been reported by the ICEP auditors. The claimant himself had obtained the documentation for this other account. Specifically, the claimant provided the CRT with

documents demonstrating that his grandmother had owned a variety of securities. Some of the securities were sold, and the proceeds were used to purchase other securities. The CRT determined that Franziska Rosenstern had had control over the securities that she sold, and therefore did not award these assets. Additionally, the CRT determined that the proceeds of some of the securities that were sold had been deposited in the owner's demand deposit accounts, which had been awarded in the original decision. Other securities, however, had been transferred to the *Deutsche Bank und Diskonto-Gesellschaft*, some directly, and some by way of a bank in Amsterdam (*Handel-Maatschappij H. Albert de Bary & Co. N.V.*). In total, nine different securities were transferred to the Nazi-controlled *Deutsche Bank* over a period of several years, beginning in 1934, and continuing through 1938.

In addition to these documents, the claimant also provided the CRT with an excerpt from a file of the Office of the Chief Regional Finance Officer (*Oberfinanzpräsident* or "OFP"), which indicated that Franziska Rosenstern had been deported on June 18, 1942, and that her assets had been confiscated by Gestapo order dated May 1, 1942.

Franziska Rosenstern's daughter (the claimant's mother) had sought restitution for her mother's securities in 1964, decades before the CRT process began. Specifically, she had filed an application with the Restitution Tribunal of the Regional Court of Berlin. That Tribunal rejected the claim, finding that Franziska Rosenstern did not act under duress and did not lose control of her assets. As described by the CRT, the Berlin tribunal stated that "the person seeking restitution must prove that the assets were confiscated by the Reich." The Berlin tribunal concluded that although "'the claimant maintains that the securities made their way to Berlin, this is obviously only an assumption. But assumptions do not suffice to meet the burden of proof required according to § 5 of the Federal Law of Restitution.'"

The CRT reached a different conclusion. It noted that "the Berlin Restitution Tribunal ignored not only the historical reality of the systematic expropriation of Jewish-owned assets at the hands of the Nazi authorities, but also the concrete evidence in the form of the note from OFP, which confirmed that the Account Owner's assets were confiscated by Gestapo order dated 1 May 1942 and that the Account Owner was deported shortly thereafter. In denying her restitution claim because no records existed to support the assets' confiscation by Nazi

authorities, the [Berlin] Tribunal punished the Account Owner's daughter for the Reich's – and by extension, the Bank's – spoliation of evidence. Given these circumstances," and given that the Nazis had embarked on a policy of confiscation, and that the account owner had perished in Theresienstadt, the CRT awarded the securities reported in the documents provided by the claimant.

In accordance with Special Master Junz' Guidelines, the CRT awarded the higher of the market or nominal value for the bonds that had been confiscated, all in good standing at the time of confiscation. The CRT determined that one of the bonds had been transferred to a demand deposit account (awarded in a previous decision) and deducted the amount awarded for that account, still leaving a substantial balance for the bond that had not been compensated in the earlier award. After calculating the value of the other bonds owned by Franziska Rosenstern, the CRT awarded her grandson an additional SF 1,479,981.50.

D. APPEALS CHALLENGING THE DIVISION OF THE AWARD

i. In re Accounts of Leopold Herzog, Zdenka Herzog and Margarete Tedesko (SF 764,500.00)

The appellants appealed the total amount of the SF 325,000.00 award in which they shared. That amount was based on the average value of one custody account jointly held by account owner Leopold Herzog, account owner Zdenka Herzog, and account owner Margarete Tedesko; and the average value of one custody account held by account owner Margarete Tedesko, over which Hugo Bunzl and Lotte Tedesko, Alice Tedesko, and Wilhelm Pokorny held power of attorney. The Court's presumptive value order of June 16, 2010[160] resulted in an additional SF 195,750.00 for the two custody accounts at issue, increasing the total value of the two accounts to SF 520,750.00.

The original award was divided between three individuals and their represented parties: Claimant B., who was related to the account owners by marriage via the first cousin relationship

[160] *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010).

of Claimant B.'s grandparents to Margarete Tedesko's husband, Frederic Tedesko; Claimant T., who was related to the account owners through the first cousin relationship of Claimant T's grandfather to Margarete Tedesko's husband; and the appellants, a father and his son, whose daughter and sister, respectively, was the sole beneficiary of Margarete Tedesko's daughter, Lotte Tedesko, who held power of attorney over Margarete Tedesko's account. Lotte Tedesko had been designated the sole beneficiary of her sister, Alice Tedesko, who also held power of attorney over Margarete Tedesko's account.

The original award determined that Claimant B. and Claimant T. and their represented parties each were entitled to share one-half of Margarete Tedesko's custody account, based on their respective relationships to account owner Margarete Tedesko's husband. The award also determined that the appellants were entitled to the other one-half share of that account, based on the fact that their relative was the sole beneficiary of both of Margarete Tedesko's daughters, Alice Tedesko and Lotte Tedesko. As a power of attorney holder does not have any right of ownership in an account according to Swiss law, the award determined the appellants' entitlement to a portion of Margarete Tedesko's account to be based upon Article 23(2)(c) of the CRT Rules, which provided for the equitable assumption, in the absence of a Will, that Margarete Tedesko would have bequeathed her assets to her two daughters, Alice Tedesko and Lotte Tedesko. The appellants provided copies of two daughters' wills, which identified the appellant's respective daughter and sister as the ultimate beneficiary of the estates of Alice Tedesko and Lotte Tedesko.

The award further determined that Claimant B. and Claimant T. and their represented parties were entitled to one-half of the account jointly held by all three account owners, and that the appellants were not entitled to any share of that account.

Margarete Tedesko's Will had not been submitted to the CRT at the time of the initial decision. On appeal, Special Master Bradfield determined that a chain of inheritance pertaining to the estates of Alice Tedesko and Lotte Tedesko had been made available. In the absence of inheritance documents pertaining to account owners Herzog, who were the parents of Margarete Tedesko, it would have been consistent with the principle of fairness and equity provided in Article 23(2)(c) of the CRT Rules that Margarete Tedesko, the Herzogs' only child, would be

entitled to her parents' respective shares of the jointly held account. Margarete Tedesko, in turn, would have bequeathed those assets to her own children, Alice and Lotte Tedesko, who in turn willed their assets to the appellants' relative.

Further, on appeal, the appellants submitted inheritance documents indicating that Leopold Herzog had bequeathed his estate in equal shares to his wife, Zdenka Herzog, and daughter, Margarete Tedesko; and that Margarete Tedesko was declared the sole beneficiary of account owner Zdenka Herzog's estate.

The CRT Special Master observed that had Lotte Tedesko submitted a claim, she would have been considered the child of Margarete Tedesko and grandchild of the Herzogs, and consequently would have been considered more entitled to her mother's and grandparents' accounts than Claimant B. and Claimant T., who were related to the account owners by marriage.

The award was therefore modified, to award the appellants the full award amount of SF 520,750.00, minus the amount they had already received pursuant to the award.

E. APPEALS CHALLENGING THE DETERMINATION THAT THE CLAIMANT WAS NOT ENTITLED TO THE ACCOUNTS

i. In re Accounts of Nettie Königstein

Nettie Königstein was born in 1874 in Rochester, New York. She was married in 1918. She lived with her husband in Vienna, where her husband, a doctor, died in 1924. In 1929, she remarried (again to a doctor) and continued to live in Vienna. Her second husband died in Vienna on June 20, 1937. Nettie Königstein committed suicide in Vienna on March 14, 1938, just after the *Anschluss*.

The CRT first became apprised of the possibility that Nettie Königstein owned Holocaust-era Swiss bank accounts when Special Master Gribetz asked the CRT to conduct independent research. The request was prompted by a June 25, 1940 *New York Times* article, "Heirs and Fortune Vanish in Austria," indicating that Mrs. Nettie Königstein was a former

American citizen who had lived in Austria, and who had committed suicide less than 48 hours after Austria had been incorporated into the Reich. As described by the CRT, the "article stated that Nettie Königstein made specific bequests in her will totaling over [$] 150,000 … and that she had further provided for the distribution of the balance remaining after payment of those legacies. According to this article, the appraiser's report disclosed that Mrs. Königstein's first choice as executor of her estate was unable to serve, since he was one of the early prisoners in the Nazi concentration camps in Austria, and that her second choice was likewise unable to serve, because he was Jewish. According to the report, as a result a German government official was representing the estate."

In response to the Special Masters' request, the HCPO conducted additional research, including in the Vienna City archive, and also reviewed the records from the Jewish Community of Vienna (*Israelitische Kultusgemeinde Wien)*. Further, the HCPO located and submitted to the CRT a February 6, 1943 report to the Austrian court ("*Testamentsausweisung*"), submitted by the appointed executors of the estate. This document gave a status update of 41 bequests set forth in Nettie Königstein's will and codicil, respectively dated October 6, 1937 and October 9, 1937. The document described specific bequests of a rental house at Landstrasse-Hauptstrasse 75 in Vienna, and a portrait of Nettie Königstein's husband, which had been fulfilled. The report also described other specific bequests, including cash payments to various individuals, ranging from $100 up to $50,000. The report included the names of two Jewish charities in Vienna, the *Stiftung Waisenhaus für Israelistische Mädchen Charlotte Merores Itzeles* (a Jewish orphanage for girls), and the *Israelitisches Blindeninsitut Hohe Warte* (a Jewish institute for the blind), "and noted that neither of these institutions was in existence" as of June 28, 1941. The HCPO also provided a chain of wills relating to Nettie Königstein's estate. The CRT observed that "none of these persons" had "filed a claim to these accounts." However, ultimately, certain individuals did assert that they were the proper heirs to Nettie Königstein's estate, including her Swiss accounts, by virtue of being heirs to individuals named in the will.

In addition to the foregoing documents, the CRT also reviewed the 1938 Census files relating to the estate of Nettie Königstein. This file included correspondence from a Dr. Gustave Bauer to the VVSt. in Vienna, the office charged with registering and administering Jewish-

owned property (*Vermögensverkehrsstelle).* In these letters, Dr. Bauer informed the VVSt. that Nettie Königstein had named several relatives and other individuals as legatees, and that she had named two individuals as her heirs. She had given the "specific instructions that they were to receive the house at Landstrasse-Hauptstrasse 75 but otherwise nothing else from the estate, and that after all other bequests were paid, they were obligated to pay the remainder of her estate to two charitable institutions." Dr. Bauer wrote "that these two heirs … thus had inherited the house but otherwise are only the executors of the estate."

Dr. Bauer further advised that Nettie Königstein's entire estate was estimated at RM 1,200,000, and that it included approximately SF 542,007 in assets on deposit at "Bank 1" in Zurich. He stated that the Foreign Exchange Office in Vienna (*"Devisenstelle")* had instructed the heirs to transfer the securities on deposit in Zurich to a bank in the Reich. The heirs, in turn, had requested the Swiss bank to make the transfers. The CRT noted that "Dr. Bauer wrote that these transfers were not completed, however, because several legatees had filed a suit at the district court in Zurich …, which had caused these assets to be frozen."

In addition to the records relating to the estate of Nettie Königstein, the Austrian State Archive also contained records relating to the two individuals named as legatees in Nettie Königstein's will. The documents quoted from her will of October 6, 1937, in which she bequeathed the two individuals the house in Vienna, and the portrait of her late husband. "The quoted section of her will also asks" the two individuals "to ensure that, after her various legacies have been paid, the remainder of her estate be paid to" the two Jewish charities noted above (the orphanage and the institute for the blind). The two individuals "further explained in this document that, pursuant to Mrs. Königstein's will in general and, specifically, these provisions, the house was the only object of value that they were to receive from Mrs. Königstein."

The bank records showed that Nettie Königstein held one numbered custody account, one demand deposit account denominated in U.S. dollars, one demand deposit account denominated in Swiss Francs, and one savings/passbook account. On April 22, 1938, the bank was informed of Nettie Königstein's death. As of June 2, 1938, "the Bank's legal department was to handle all

correspondence." The custody account was frozen and subsequently closed on June 1, 1939. The three remaining accounts were closed on or before that date as well.

The CRT concluded that there were no existing parties or individuals entitled to receive the proceeds of Nettie Königstein's Swiss accounts. The CRT observed that Nettie Königstein "specifically identified two Jewish charitable organizations…that served needy members of her Jewish community as the beneficiaries of her residual estate, and that she drafted her will carefully in order to ensure that these two organizations would receive the residue of her estate after the specific bequests were fulfilled. Given that the Claimants are heirs of persons who were identified as receiving specific bequests, the CRT determines that they are not entitled to the assets of the claimed accounts, as these assets are part of Nettie Königstein's residual estate." The CRT further observed that "[t]o the extent that assets belonging to Nettie Königstein are not distributed to Deposited Assets Class members because no proper heirs exist under the terms of the Königstein will, and therefore such assets become 'residual funds' to be distributed via Looted Assets Class programs to the neediest Holocaust survivors, the CRT notes that such result would appear to comport with the original intent of the testator, Nettie Königstein, who likewise called for her residual estate to benefit needy persons (*i.e.*, Jewish orphans and blind persons in Vienna)."

The Court, which as of July 27, 2011 had assumed direct authority for reviewing the few remaining appeals from CRT decisions[161], denied the claim on appeal.[162] The Court observed that it was appropriate for the CRT to recognize that the proceeds of Nettie Königstein's Swiss accounts would benefit charitable programs for the needy supported through Looted Assets Class programs under the Distribution Plan. The Court noted that "[i]n fact, the *cy pres* remedy which has been applied on behalf of members of the Looted Assets Class in this settlement is derived from circumstances in which a testator's intent to benefit a charity is in danger of failing."

The Court rejected the appellants' contention, based upon the analysis of an expert on Austrian inheritance principles, that they were entitled to the accounts under operation of

[161] *See* Memorandum & Order, July 27, 2011.

[162] *See* Memorandum & Order Denying the Appeal to the Certified Award Denial *In re Accounts of Nettie Königstein*, June 14, 2011.

Austrian law. The Court pointed out that "the CRT, which operates under supervision of this Court in connection with oversight of a class action settlement, does not look at the will of the account owner with a view as to how it would be 'probated' under the applicable laws of the country of residence/nationality of the account owner…. Rather, the CRT looks at the will of an account owner, when available, in order to determine the account owner's clear intent for the distribution of their estate…." The Court noted that here, "it was the clear intent of Nettie Königstein that [the two specified individuals] receive only the specified bequests, but otherwise nothing else from the estate." The Court pointed out that Nettie Königstein had included a "no-contest" clause in her will, "which specifically mandated that should any persons named in the will contest the conditions set forth in it, they would forfeit all legacies granted to them in the will."

Finally, the Court rejected the appellants' contention that the CRT "'is not supposed to conduct research, and is not supposed to provide evidence, that third parties might have a better right,'" noting that "there is nothing in the Rules that prohibits the CRT from conducting research regarding a claimant's entitlement to an account. In fact, the entire claims process relies extensively upon the CRT's independent research in an effort to fill in the evidentiary gaps left by the banks' destruction of documents. And in fact, I have approved numerous decisions based in whole or in part upon the CRT's independent research."

F. APPEALS FROM IDENTITY DENIALS

i. <u>In re Account of Milan Laus (SF 49,375.00)</u>

Milan Laus lived in Zagreb, Yugoslavia (now Croatia). He owned a café, which he turned over to his brother, Vilim, when the business encountered financial difficulties. When the Nazis occupied Yugoslavia, they looted the café, as well as Vilim Laus' house. Vilim Laus (Lausch) and his family, including his daughter (the claimant and the niece of account owner Milan Laus), were imprisoned in the concentration camp Zbor, in Savska Cesta, Zagreb. The family later fled to Italy in an attempt to reach Switzerland. However, Vilim Laus, his wife and

one daughter were captured and sent to Buchenwald, where they perished. Another daughter was killed in Auschwitz.

The bank records showed that Milan Laus owned an account of unknown type, which was transferred to a collective suspense account, where it remained.

In its initial decision, the CRT denied the claim of Milan Laus' niece (*see In re Claimed Account Owners Vilim Lausch and Milan Laus*), because of the discrepancy between the last name of the claimant's father (Vilim Lausch) and the individual who the claimant said was her uncle (Milan Laus). On appeal to the CRT Special Master, the claimant submitted new information, including sworn affidavits indicating that the two brothers in fact had spelled their last name differently. Upon review of these documents, the case was remanded to the CRT.

The CRT observed, on remand, that in 1955, the claimant's aunt had submitted a Page of Testimony to Yad Vashem, and had spelled the claimant's parents' name "Laus." "[U]pon careful review of the appellate decision and the facts contained in the records," the CRT "conclude[d] that the Claimant ha[d] plausibly identified the Account Owner" – Milan Laus – as her relative. The CRT thus awarded the account to the niece of Milan Laus, based upon the presumptive value for an account of unknown type.

ii. In re Accounts of Moritz Mayer (SF 326,662.50)

Moritz Mayer was born in 1884 in Alsheim, Germany. He was a wine merchant in Worms, Germany until 1942, when he was deported to Poland. He died in the Sobibor death camp.

In its initial decision, the CRT observed that the claimant, the son of Moritz Mayer, had stated that his father had resided in Germany, whereas the bank files showed that the account owner had resided in a different country not identified by the claimant. The claim accordingly was denied, on the basis that the claimant's father and the account owner, although sharing the same name, were two different individuals.

On appeal, the claimant advised that in July 1938, prior to deportation in 1942, his father Moritz Meyer had been imprisoned in the Osthofen concentration camp. Moritz Meyer also had been imprisoned in Buchenwald a few months later, in November 1938. In addition, the claimant advised that his father had a brother, Sally Mayer, who was born in Worms and lived in Milan, where he was a successful businessman. The claimant submitted new documents for review, including an excerpt from a book about Jewish Italians indicating that Sally Mayer, born in Worms, lived in Milan. The claimant stated that on behalf of his brother, Moritz, Sally Mayer opened a Swiss account using a Milan address to conceal these assets from the Nazis.

The bank records indicated that Moritz Mayer of Milan, Italy held three accounts at the Lugano branch of the bank: a demand deposit account opened on an unknown date and closed on September 30, 1937; a custody account opened on November 30, 1935 and closed on December 10, 1937; and a safe deposit box opened in 1935 and closed on January 20, 1939. Thus, the claimant identified the unpublished city of Milan as a place to which his father plausibly had a connection, through his brother.

The appellant established on appeal that it was plausible to conclude that his father's brother, Sally Mayer, a prominent businessman who was Jewish and resided in Milan, opened the accounts from Milan on behalf of Moritz Mayer in an effort to conceal these assets from the Reich. In support of his appeal, the appellant submitted several documents including an original postcard written from his father in Germany to Sally Mayer in Milan; appellant's birth certificate identifying Appellant's father as Moritz Mayer of Worms, Germany; and an excerpt from a book about Jewish Italians (*"Scritti in Memoria di Sally Mayer")* that indicated that Sally Mayer resided in Milan and was born in Worms to Marco Mayer and Maria Weil. In addition, as described by the CRT, the Yad Vashem database contained a record for Moritz Mayer of Worms, submitted to Yad Vashem by the appellant in 1975, identifying Moritz Mayer's father as Marx Mayer.

As the appellant identified Moritz Mayer's unpublished city and country of residence; established that both Moritz Mayer and Sally Mayer were from Worms, and were born to Marx (Marco) Mayer and Marie (Maria) Weil; and provided an original postcard written from Moses

Mayer of Worms to Sally Mayer of Milan, Special Master Bradfield determined that it was plausible that the appellant had identified the account owner as his father.

iii. In re Account of Frau Erna Paul

The appellant received a denial decision informing him that his sister, Erna Pohl, née Atlas and the account owner, Erna Paul, who had a name similar to that of the appellant's sister, were two different people.

In his claim form, the appellant had stated that his father opened a Swiss bank account for his sister to provide for her studies in London, England. The appellant also stated that his family was from Lwow, Poland; that his parents and another sister were killed in a Nazi concentration camp in 1941; and that he and his sister Erna resided in London, and survived the Second World War. The appellant also indicated that Erna, who was born Erna Atlas in 1912, married a lawyer with the last name "Pohl," with whom she moved to Australia after the Second World War.

The claim concluded that the appellant's sister and the account owner were not the same person, for several reasons. The married name of the appellant's sister, Erna Pohl, differed from the account owner's name, Erna Paul; there was no indication in the bank's records that the account was opened by a person other than the account owner, in contrast with the appellant's statement that his father opened the account on behalf of the appellant's sister; and the appellant did not provide information establishing his relationship to a person named Erna Pohl or Erna Paul.

On appeal, the appellant provided an Australian Landing Permit from 1945, which indicated that the appellant had been admitted to Australia under the guarantee of his sister, Erna Pohl. Special Master Bradfield concluded that while that document established the appellant's relationship to a person named Erna Pohl, it did not establish that the appellant was related to a person named Erna Paul, the name of the account owner. There was no evidence that the appellant's sister had changed her name from Pohl to Paul. Further, the appellant's sister had passed away in Australia in 1994, but there was no record of any attempt by her or her children

to reclaim assets deposited in a Swiss bank account either prior to or after her death. The CRT Special Master determined that to the extent the appellant's sister may have held assets in a Swiss bank that she had been prevented from accessing, she and/or her children and grandchildren would have undertaken some effort to obtain those assets, and for these reasons denied the appeal.

iv. In re Accounts of Marcel Marcovici (SF 104,825)

The appellant appealed the conclusion of a denial decision that her brother and the account owner were not the same person. The denial decision was issued with respect to the published accounts of Marcel Marcovici at the Lausanne branch of the Bank.

In her claim form, the appellant stated that her brother, Marcel Marcovici, was born in 1908 in Botosani, Romania. He studied in Berlin, Germany in the early 1930s until 1934, at which time he fled Germany and returned to Romania, where he resided in Bucharest and worked as an engineer. He remained in Romania until the 1970s when he moved to Israel, where he died in 1979 or 1980.

The CRT decision denying the claim noted that the ICEP auditors had reported three accounts whose owner's name matched the name of the appellant's brother, and the appellant previously had been awarded one of these accounts. The name of the appellant's brother matched the name of the account owner, and the appellant had identified the account owner's published city and country of residence, Bucharest, Romania. The decision noted that the appellant had submitted a passport and marriage certificate identifying her maiden name.

The bank records indicated that the owner of the remaining two accounts, both of which were demand deposit accounts, was Marcel Marcovici, who resided in Milan, Italy. The bank records also indicated that these accounts were opened at the Lausanne branch of the bank on September 6, 1941. Both were closed, unknown by whom, in what appeared to be the late 1940s, possibly 1948. The exact dates of their respective closures were illegible. The notation "*It. reklammat. Konto saldiert*" ("according to complaint. Account closed") appeared on the

back of the account registry card after the closure date of the first account. The front of the account registry card included the stamp "*Rev. 1948*". The bank records did not contain information regarding the value of the accounts.

The CRT concluded that these accounts did not belong to the appellant's brother, but, rather, to a different person with the same name. Whereas the appellant's brother had returned from Germany to Romania in 1934, the account owner resided in Italy, a country to which the appellant had not demonstrated any connection. Consequently, the CRT concluded that the account owner and the appellant's brother were not the same person.

On appeal, the appellant submitted additional information about her brother, and his family's connections to countries in Europe. The appellant stated that her father, Menasche Marcovici, was a businessman from Botosani, Romania where he owned, together with his father-in-law, Meir Haimovici, a fabric and woodworking factory. In his capacity as a business owner, her father maintained numerous import and export relationships in many countries, including Italy, France and Switzerland. In addition, according to the appellant, one of Marcel Marcovici's brothers, Carol Marcovici, resided in Zurich, Switzerland between 1928 and 1933 or 1934, where he established relationships with those in a position to act as intermediaries on his family's behalf. The appellant stated that her father often rented an apartment in Milan, Italy where she and her siblings, including Marcel Marcovici, would visit on study breaks. She stated that her brother may have used the address of the apartment in Milan, Corso Vescelli no. 2 (possibly no. 20), when he opened the Swiss bank accounts. The appellant said that her father rented an apartment in Nancy, France, another address her brother may have used when opening his Swiss bank account.

Special Master Bradfield determined that the information on appeal plausibly established that the appellant's brother was the account owner. The appellant had identified the account owner's unpublished city of residence, Milan, Italy, by including in her appeal information regarding an apartment her father rented in that city. In addition, the appellant previously was awarded the account owned by Marcel Marcovici. In this case, although the accounts were not held at the same bank as the accounts in the award, and although the cities and countries of

residence were different, the Special Master determined that the appellant had established a plausible connection to Marcel Marcovici and to Milan.

The Special Master determined that it was clear from the available information in the bank's records that the accounts were closed sometime in the late 1940s, possibly 1948. The appellant stated that the account owner remained in Romania until the 1970s, when he immigrated to Israel, where he died in 1979 or 1980. Given the persecution of Jews in Romania and the confiscation of Jewish assets during the War, the Communist dictatorial regime, and the Swiss banks' practice of withholding or misstating account information to account owners and heirs after the War, it was plausible that the account proceeds were not paid to Marcel Marcovici. It was also possible that the proceeds were paid by Switzerland to Romania as part of an arrangement between the two countries concluded in 1951. As previously discussed, Swiss banks froze Romanian assets in 1948 pursuant to a Decree of the Swiss Federal Council. Romanian accounts were unfrozen in October 1950. Approximately one year later, in August 1951, Switzerland and Romania entered into an agreement whereby unclaimed assets held by Romanian citizens in Swiss banks were to be transferred to the Romanian Government, in return for compensation for Swiss property that had been nationalized by Romania's communist regime. The CRT Special Master noted that the account owner's accounts, which were closed in the late 1940s, possibly 1948, could have been held for use in this arrangement.

The appellant was therefore awarded SF 47,400, which represented the average value of two demand deposit accounts adjusted for current value.

G. LATE CLAIMS: THIRD PARTY CHALLENGES TO AWARDS

i. In re Accounts of Braunsberg & Co., AG (SF 133,572.50)

The award in this case had been issued to a timely filed claimant ("Claimant J."), and was subsequently amended to address the omission from the award of another timely filed claimant ("Claimant W."). The award and amendment explained that the account owner was *Braunsberg*

& Co. AG, a large textile firm with factories in Germany, which was owned in equal shares by Franz Hermann ("Hermann") Braunsberg, and his three brothers: Julius Braunsberg, Salo Braunsberg, and Max Braunsberg. Claimant J. was the nephew of the widow of one of the owners of the textile firm (the account owner), and Claimant W. was the daughter of another of the firm's owners.

The appellant, the daughter-in-law of another of the firm's owners, filed a late claim asserting that she was entitled to a share of the payment, which totaled SF 53,500.00. Special Master Bradfield determined that the appellant satisfied all criteria of the Court's December 30, 2004 "late claims order," which required a late claimant to establish that he or she was the account owner, the account owner's spouse, or the account owner's child; to provide an unusually compelling reason for failing to file a timely claim; and to demonstrate by clear and convincing evidence that the relevant accounts were awarded erroneously.

The appellant demonstrated that she was considered to be the child of one of the account owner's owners, as she was one of their daughters-in-law. She submitted her husband's birth certificate identifying his father, and her husband's death certificate, identifying his father as Julius Braunsberg, and identifying herself as his wife. She stated that she failed to submit a timely claim because she had suffered a stroke in June 1999, after which she developed Alzheimer's disease.[163]

The Special Master noted that the record in this case included a list of the heirs of the account owner's owners, which was submitted by Claimant W. That list, in fact, had identified the appellant as the widow of one of the firm owners' sons. Given that the appellant fulfilled all criteria of the Late Claims Order, and was explicitly identified as one of the account owner's heirs, the award amendment was modified on appeal to include her.

Article 23(3) of the CRT Rules provided that if the account owner were a legal or other entity, as here, the award would be made in favor of claimants who had established a right of ownership to the entity's assets. According to information provided by the textile company's

[163] The appellant's physician verified her condition.

liquidator, the company was owned by Hermann Braunsberg, Claimant W.'s father; the appellant's father-in-law; and their two brothers. The information provided by the liquidator listed Claimant W., her represented parties and the appellant as heirs of Hermann and another brother, respectively. As the company was owned equally by the four Braunsberg brothers, including Claimant W.'s father, Hermann, and the appellant's father-in-law, it was appropriate to consider the account as having been held jointly by Hermann and his three brothers. Article 25(2) of the CRT Rules provided that in cases where the joint account was claimed by relatives of only one or some of the joint account owners, it was presumed that the account was owned as a whole in equal shares by the account owners whose shares of the account had been claimed. The appellant and Claimant W. were the only family members, other than Claimant J. and his represented party, who were related to one brother by marriage, to have submitted a claim.

Accordingly, with regard to the appellant's father-in-law's share of the account, the Special Master determined that the appellant, who was considered to be her father-in-law's child, was entitled to the full amount of his share of the accounts, for a total of SF 13,375.00. With regard to the shares of the account received by the heirs of two of the firm owners, the Special Master determined that the appellant was entitled to one-half of the shares held by the previously-identified firm owners, for a total of SF 13,375.00. Accordingly, the appellant was entitled on appeal to receive a total of SF 26,750.00.

ii. In re Accounts of Dr. Simon Gutmann (SF 437,085.00)

The appellant, the account owner's son, appealed his exclusion from the original award, which totaled SF 165,960.00. The award was issued to a timely filed claimant and to his brother (the "awardees"), who plausibly identified the account owner as their uncle. The awardees stated that their uncle, Simon Gutmann, was a medical doctor who resided in Munich, Germany. He was married, and had two sons. He went into hiding during the Second World War, but was subsequently arrested and killed by the Nazis.[164] His wife, who was Catholic, survived the war

[164] "Simon Gutmann was born in 1889. Prior to WWII he lived in Muenchen, Germany. Simon was murdered in the Shoah [Riga]. This information is based on a List of murdered Jews from Germany found in Gedenkbuch - Opfer der Verfolgung der Juden unter der nationalsozialistischen Gewaltherrschaft in Deutschland 1933-1945,

in hiding with her two children, who also survived. Dr. Gutmann's wife and one son had passed away, while no information was provided about the other son (the appellant).

Following the Court's approval of the award, the appellant submitted a late claim. He demonstrated that his father was Dr. Simon Gutmann of Munich, by submitting a copy of his family register and Certificate of Baptism. He explained that his father, to mitigate oppression of his wife and children by the Nazis, had divorced his mother. He believed that by doing so, and in raising their children in the Catholic tradition, his wife and children would be safe in Germany. The appellant explained that he remained traumatized by the Second World War, and, because he was raised as a Catholic in a small German village, he did not have exposure to Jewish-related media, or a reason to consult such media, nor did he have access to the internet. Thus, he stated that he did not have sufficient information prior to the filing deadline to be aware that a claim for his father's accounts was possible.[165]

The record on appeal indicated that the awardees were aware of the appellant's existence and his superior claim to Dr. Gutmann's accounts, but they had made no effort to contact the appellant to try to include him in their claim. The appellant was the account owner's son, whereas the awardees were only his great-nephews. Accordingly, Special Master Bradfield awarded the appellant the full amount of the award, adjusted to SF 172,875.00 to reflect the increased adjustment factor (from 12 to 12.5) since the time the award originally had been issued.

Bundesarchiv (German National Archives), Koblenz 1986." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=140786&language=en (last visited Aug. 11, 2015).

[165] A lack of knowledge of the CRT process was, as a general matter, not considered an "unusually compelling reason" for failing to file a timely claim. In this case, the Special Master concluded that an exception could be made given the facts and circumstances of the appellant's family history, his isolation, and the lack of knowledge of any of the appellant's close family members regarding their Jewish heritage.

iii. In re Accounts of Bernhard Goldstein and Lilien-Leinwand-Unternehmung (SF 75,619.31)

The appellant submitted a late claim to the accounts of Bernhard Goldstein and *Lilien-Leinwand-Unternehmung*. The appellant was the daughter-in-law of the account owner's founder, Bernhard Goldstein, Sr., and widow of Bernhard Goldstein's son who, along with Emmanuel Bernard Goldstein's mother and sister, inherited a majority share of the account owner (a business entity) following Bernhard Goldstein's death.

The information provided by the appellant on appeal, as well as records from the 1938 Census, demonstrated that the appellant's husband, mother-in-law and sister-in-law held a combined 68.51% majority ownership interest in the business. These records also showed that the original awardee's great-uncle, as well as another individual, Oskar Doktor, who was the father of a third claimant ("Claimant H."), each held minority interests of 15.51% and 15.98%, respectively, in the business. On appeal, it was noted that although two accounts had been identified as jointly held by Bernhard Goldstein and Lilien-Leinwand-Unternehmung, both accounts were held only in the name the company, which was called *Lilien-Leinwand-Unternehmung Bernhard Goldstein*. One of these accounts was closed in 1934, prior to the *Anschluss*, rather than in 1938, as indicated in the award, and therefore should not have been awarded.

The appellant demonstrated on appeal that her husband's family owned a majority share of the business, whereas the original awardee's family had held a minority share. As the widow of the son of the account owner's founder, who assumed ownership of the business after his father's death, as well as the daughter-in-law of Bernhard Goldstein Sr., who founded the business, Special Master Bradfield determined that the appellant satisfied the first criterion of the late claims order requiring a late claimant to be the account owner, spouse or child. Further, the appellant had provided an appropriate reason for filing a late claim; she suffered from multiple sclerosis, as verified by her physician. The Special Master further determined that the appellant had submitted persuasive information demonstrating that the awardee had knowingly concealed information regarding the true ownership structure of the business, and also had concealed information regarding Bernhard Goldstein Sr.'s wife and children.

The Special Master concluded that the appellant was entitled to receive 68.51% of the average value of one demand deposit account, or SF 1,466.11, and that Claimant H., the child of the other minority owner of the account owner, along with Awardee's great-uncle, was entitled to receive 15.98% of the average value of a demand deposit account, or SF 341.97. As the multiplier had increased from 12 to 12.5, the total amount awarded to the appellant was SF 18,326.38.

iv. In re Account of Leiba Kochas (SF 54,392.50)

Appellant submitted a late claim to the account of Leiba Kochas, which was previously awarded to a timely filed claimant. The award totaled SF 25,680.00,

the average value of a demand deposit account. The appellant, who established her status as the Leiba Kochas' child, asserted that the awardee was not related to the account owner and had filed a fraudulent claim, and that the appellant alone was entitled to the award.

The appellant demonstrated that she was the child of the account owner by submitting her birth certificate identifying her parents as being born in Kowno (Kaunas), Lithuania; documents from the Lithuanian State Archives, including passport information containing the photographs and signatures of both of her parents, verifying that Leiba Kochas was born in 1894, had married his wife in 1930, and had a daughter with the same name as the appellant; the death certificate of the appellant's mother, identifying the appellant as the informant; and the Last Will and Testament of the appellant's mother, identifying the Testator and the appellant as her daughter. Appellant also submitted original photographs of her mother and father, which matched images contained on the passport documents obtained from the Lithuanian State Archives.

The appellant explained that she had been unable to submit a timely claim because she had been consumed with caring for her dying companion. She was unaware of the claims process until after her companion passed away. The appellant submitted a copy of her companion's obituary, which indicated that that individual had died after the filing deadline, after suffering a long illness, and that the appellant had been his longtime companion.

The bank records indicated that Leiba Kochas, who owned a company named Firma L. Koch, held a demand deposit account. There was no information regarding the closure date. The bank records further indicated that Leiba Kochas resided at Ozeskienes gatve 3 in Kaunas, Lithuania, and that a third party was authorized to access the account under certain circumstances. The account was included on a 1959 list of dormant accounts prepared by the Zurich branch of the bank pursuant to an internal bank survey, at which time the amount of the account was 86.50 Swiss Francs.

The original award determined that the awardee had identified Leiba Kochas as her maternal grandfather, whose name and city of residence were published on the 2001 List. The awardee had stated that her grandfather was first married to her maternal grandmother, and that they had had one child, the awardee's mother. After his first wife died, Leiba Kochas married another woman, whose name the awardee did not identify in her claim form. The awardee asserted that her grandfather's second wife did not wish to care for the awardee's mother, and so she was sent to live with an aunt. The awardee stated that she did not recall where her grandfather lived before 1940, but believed that he resided at ulica Gedimina 15 in Kaunas from 1940 to 1941. She also stated that her grandfather and his second wife disappeared in 1941 and were never heard from again.

Although the awardee originally indicated to the CRT that she could not remember the name of her grandfather's second wife, she later stated that she did remember this name. She also said that Leiba Kochas' date of birth in Naumiesty, Lithuania was May 23, 1894. She indicated at that time that she had been able to procure a photograph and signature sample of Leiba Kochas, which she subsequently sent to the CRT. Based on this new information, particularly the awardee's identification of the unpublished name of the third party authorized to access the account, as well as a copy of the account owner's signature, the CRT concluded that the awardee plausibly had identified Leiba Kochas as her grandfather.

On appeal, Special Master Bradfield determined that the copy of the signature sample submitted by the awardee, which also included a photocopy of Leiba Kochas' picture, was an exact copy of the signature sample and photograph contained on the passport document submitted by the appellant. This document was available to the public in the Lithuanian State

Archive. In contrast to the complete passport document submitted by the appellant, however, the awardee had extracted only the photograph and signature sample, blocking out the rest of the document that contained other identifying information for Leiba Kochas, such as his date and place of birth. The awardee had provided such information to the CRT in a telephone call, having initially indicated she did not know those biographical details. There were similar records in the Lithuanian State Archive for Leiba Kochas' second wife, to which the awardee had access, which indicated that she was married to Leiba Kochas.

On appeal, the appellant explained that her father married her mother in 1930, and that they moved in 1935 with their two children (the appellant and her brother) to 16 Darius-Gireno Str. in Taurogen, Lithuania, following the 1934 death of the appellant's grandfather. Special Master Bradfield noted that that this address matched an additional unpublished address of Leiba Kochas in the bank records. The appellant stated that her family was taken to the Kovno Ghetto in 1941, where they were confined until July 1944. Her father thereafter was sent to Dachau, where he perished in December 1944. The appellant and her mother were sent to the Stutthof concentration camp, and from there to a labor camp, which was liberated by the Russians in 1945. After the Second World War, the appellant and her mother remained in a displaced persons camp in Germany, after which they emigrated to England in 1949, and from there to South Africa in 1952.

The Special Master requested that the awardee comment on the appellant's assertions, and provide information to support the awardee's claim of a relationship to Leiba Kochas. The Special Master also requested a copy of the awardee's mother's birth certificate to identify her mother's father as Leiba Kochas. The awardee explained that she did not have a copy of her mother's birth certificate, and that her mother had never told her many details regarding her relationship to her father. The awardee asserted that Leiba Kochas had left his daughter (the awardee's mother) in favor of a new wife, and that the awardee's mother was not aware that she had a half-sister (*i.e.*, the appellant). In contrast, the Lithuanian State Archive indicated to the Special Master that it had been unable to find any information regarding the persons whom the awardee asserted were the account owner's first wife and daughter, respectively.

The awardee further explained, with respect to a query as to where she had obtained the photograph and signature sample of Leiba Kochas submitted to the CRT, that she assumed her grandfather and the aunt to whom the awardee's mother was sent to live stayed in contact. She said that the aunt must have given the awardee's mother the name and address of her grandfather's second wife. She claimed that her mother left all family records with a cousin, who had sent to her (the awardee) a copy of the signature sample and photograph for inclusion as part of her claim to the CRT. The Special Master noted that this information was not provided to the CRT at the time the awardee had submitted her claim form. She had not at that time provided Leiba Kochas' date and place of birth, nor had she provided the name of his wife. That information was not submitted by the awardee to the CRT until a telephone conversation and follow-up communication, by which time she would have had ample opportunity to obtain such information from the Lithuanian State Archive. In contrast to the appellant, who had established her relationship to the account owner, the awardee had not submitted information demonstrating her relationship to a person named Leiba Kochas.

Given that the appellant had demonstrated that Leiba Kochas was her father, the Special Master's Office concluded that the appellant was entitled to the full award of SF 26,750.00.

v. In re Account of Lotte Dobrin (SF 28,712.50)

The appellant submitted a late claim asserting that the account owner Lotte Dobrin, and power of attorney holder, Moritz Dobrin, were her mother-in-law and father-in-law, respectively. The account previously had been awarded to a timely claimant.

Special Master Bradfield informed the appellant that she had not established that she was the daughter-in-law of Lotte Dobrin. Further, although the appellant asserted that her claim was submitted on time, there was no record of a claim from her prior to the late claim, which was filed nearly four years after the deadline. Nor did appellant provide an unusually compelling reason for failing to file a timely claim, as required by the Court's late claims order. Thus, her late claim was not eligible for consideration in the claims process.

vi. In re Account of Alexander Conitzer (SF 623,330.00)

The appellant submitted a late claim to the accounts of Alexander Conitzer, which had been awarded to timely filed claimants. The award, which totaled SF 181,680.00, was for two accounts held at the Zurich branch of the bank. The appellant asserted that he was Alexander Conitzer's nephew, and that the awardees knowingly had excluded him from the award.

The original award had determined that the awardees plausibly had identified Alexander Conitzer as their uncle. The awardees stated that he was born on April in Goslerhaussen, Germany; that he was unmarried and did not have any children; and that he was deported from Berlin to Auschwitz, where he perished.[166] The award noted that the awardees had submitted a family tree in support of their claims, which identified the account owner as the brother of their father, Heinz Conitzer.

The award determined that Alexander Conitzer held two accounts of unknown value: a demand deposit account, and a custody account. Applying the then-prevailing presumptive values and the multiplier, the claimants were awarded SF 181,680.00.

On appeal, the appellant explained that his mother was Alexander Conitzer's sister, and the awardees' aunt. He submitted documents including his mother's birth certificate; a copy of his mother's passport; and a document issued by the state of New York naming the appellant as the Executor of his mother's estate. This information matched information about the account owner that had been provided by the awardees.

The appellant stated that he and the awardees had engaged in frequent contact, in large part due to a transaction between them regarding real estate in Berlin that was left to them by

[166] "Alexander Conitzer was born in Gosslershausen, Poland in 1905. Prior to WWII he lived in Berlin, Germany. During the war he was in Berlin, Germany. Deported with Transport 17. Osttransport (Welle XX) from Berlin, Germany to Auschwitz Birkenau, Extermination Camp, Poland on 11/07/1942. Alexander was murdered in the Shoah. This information is based on a List of deportation from Berlin found in Gedenkbuch Berlins der juedischen Opfer des Nazionalsozialismus, Freie Universitaet Berlin, Zentralinstitut fuer sozialwissenschaftliche Forschung, Edition Hentrich, Berlin 1995." *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?itemId=4093784&language=en (last visited Aug. 11, 2015).

their grandfather in his will. The appellant submitted documentation dated at various times between the 1990s through 2002, to support his assertion that the awardees were aware of his existence at the time they had filed their claim with the CRT.

Special Master Bradfield determined that the appellant had credibly established his relationship to Alexander Conitzer, and that he had shown that the awardees were aware of his existence and had failed to include him in their claim. The award therefore was modified on appeal. The Special Master increased the total award to SF 189,250.00, of which the appellant was entitled to one-half.

vii. In re Accounts of Heinrich Kalman, Aranka Kalman, Michael Kalman and Adalbert Heltai (SF 116,909.09)

The appellant was the child of account owner Michael Kalman. She appealed her exclusion from the award, which totaled SF 73,080.00. The award had been issued to two claimants who were siblings, and who plausibly identified Heinrich Kalman and Aranka Kalman as their grandparents, and Michael Kalman as their uncle. The awardees were the children of the Kalmans' adopted daughter, Gizela Kalman. The Kalmans and their son Michael were Jewish. They lived in Budapest, Hungary, where Heinrich Kalman was the general manager of the English-Hungarian Bank (Anglo-Magyar Bank). Heinrich Kalman was arrested by the Gestapo shortly after the occupation of Hungary by Nazi Germany, and was subsequently deported to a concentration camp. The awardees stated that Aranka Kalman died in Budapest in 1953; Michael Kalman died in England in 1948; and Gizela Kalman died in Budapest in 1992. The awardees did not identify any descendants of Michael Kalman.

The bank's records indicated that Heinrich, Aranka and Michael Kalman jointly held one demand deposit account, for which the last recorded balance was SF 1,146.00.00. Further, Heinrich Kalman jointly held an additional account (of unknown type) with Adalbert Heltai. Its value was not known. Special Master Bradfield noted that the appellant was identified in the award as the recipient of a wire transfer in the amount of SF 1,748.00 from Heinrich Kalman, which was sent from the demand deposit account via Barclays Bank to the appellant, in care of

her father, in London, on April 23, 1942. The records pertaining to this transfer included information regarding the appellant's address in London.

Following approval of the award, the appellant submitted a late claim. The CRT Special Master gave decisive weight to the fact that she was the child of account owner Michael Kalman and that the original awardees were aware of her existence at the time they filed their claims with the CRT, but did not disclose her existence.

The appellant explained that she knew one of the awardees ("Claimant M.") very well. She stated that both she and Claimant M. resided in Hungary, and that a friend of the appellant's father became her guardian. The guardian, his wife, Claimant M. and Claimant M.'s husband all emigrated to Australia, where they lived close to each other, and were friendly until the death of the appellant's guardian in the late 1990s. The appellant stated that her guardian kept in touch with her until his death, and that Claimant M. sent the appellant letters indicating that the appellant's guardian had kept Claimant M. updated on the appellant's life. The appellant also stated that she and Claimant M. spoke on the telephone whenever Claimant M. visited the United States. The appellant indicated that at the time the awardees submitted their claim to the CRT, she resided at the same address to which Claimant M. had previously sent her letters. She also stated that Claimant M. had contacted her from New York, indicating that he had located her via the internet. She stated that at that time, Claimant M. did not mention the CRT process to her, and did not indicate that he had submitted a claim to an account held in the names of the appellant's father, and all of their grandparents. The awardees did not deny the appellant's existence or her relationship to the Kalmans once her claim was brought to their attention.

The Special Master concluded that if the appellant had submitted a timely claim, or had the awardees included her in their own claims, the appellant would have received the full amount of her father's share of the award and a portion of her grandparents' respective shares. Thus, the appellant was awarded SF 42,520.75 (as the adjustment factor had increased from 12 to 12.5 as of the date of the appeal).

viii. In re Account of Dr. Karl Herschmann (SF 253,875.00)

The original award totaled SF 156,000.00, and was for one custody account held by Dr. Karl Herschmann. The award determined that two claimants, who were cousins, each were entitled to $60,465.12.

Following payment of the award to the awardees, the appellant, who passed away during the evaluation of his appeal, informed the Special Master that he was Dr. Herschmann's nephew and was equally entitled to the account. Special Master Bradfield determined that the appellant's late claim did not satisfy the criteria of the Court's late claims order. The Special Master also determined, based upon a review of the record, that the awardees had indicated in correspondence with the CRT that their cousin, the appellant, also was entitled to the claimed account, and that they believed the appellant to have possibly filed his own claim.

Following their receipt of the award, the awardees submitted a letter to the CRT indicating that while they were both grateful for the award, they did not understand why the appellant had been excluded. Although the awardees had mentioned their cousin in their claims, neither awardee had formally represented the cousin in the claims process, nor had the appellant submitted a timely claim. Thus, the appellant had not been eligible for consideration in the award at the time it was issued.

The Special Master informed the awardees that had their cousin submitted a timely claim, he would have been entitled to share in the award. The Special Master therefore requested that the awardees consider the appellant's claim to Dr. Herschmann's account, particularly in light of their previous acknowledgment of his entitlement to a portion of the award, and in accordance with the principle of equity and fairness central to the claims process.

The awardees informed the Special Master that the appellant had passed away, and that they each were beneficiaries of the appellant's estate, along with another individual. The awardees submitted the appellant's death certificate and inheritance documentation showing that that the awardees each were entitled to one-fourth of the appellant's estate, and another individual was entitled to the remaining one-half. The Special Master determined that if the appellant had been included in the award, he would have been entitled to one-third of the total

($40,309.41). Pursuant to the provisions of the appellant's inheritance certificate, the third beneficiary was entitled to $20,154.71, which represented one-sixth of the total award amount (one-half of the appellant's one-third share). The awardees each were entitled to $10,077.36, which represented one-twelfth of the total (one-fourth of the appellant's one-third share).

The awardees each promptly returned $10,077.36 to the Special Master. That sum, in turn, was distributed to the appellant's third beneficiary.

H. APPEALS OF INADMISSIBILITY DECISIONS

i. Claimed Account Owner Angela Freifrau von Biel

The appellant had submitted a claim identifying the account owner as her late husband's stepmother, Angela Freifrau von Biel (also known as Freifrau Anna von Biel), née Jenöi (Szombati). The appellant stated that until July 1943, her husband's stepmother, who was Catholic, resided in Ortenburg, Germany. She was arrested and sentenced to death as an opponent of the Nazi regime. The appellant further stated that the sentence was commuted to imprisonment. Her husband's stepmother spent two years in concentration camps until her liberation by Russian forces in May 1945. Her husband's stepmother, who died in 1970 in Munich, Germany, became physically disabled as a result of the treatment she suffered in the concentration camps. Her husband's father, who was Protestant, also was imprisoned by the Nazi regime in 1943. He committed suicide while awaiting trial on charges of high treason against the Reich.

The appellant identified her husband's stepmother as Catholic, and her husband's father as Protestant. She stated that her relative's disability was a result of imprisonment in Nazi concentration camps, rather than the reason the Nazis imprisoned her (which was due to her stance against the Nazi regime). Accordingly, the Special Master agreed with the CRT's determination that the claim was inadmissible, as the account owner was not a "Victim or Target of Nazi Persecution" within the meaning of the Settlement Agreement.

I. SETTLEMENTS UPON APPEAL

i. In re Accounts of Bankhaus M. *Thorsch & Söhne*, Alfons and Marie Thorsch, and Alfons Thorsch ($3,757,657.19)

The Court approved the CRT's denial of claims (the "denial") submitted by grandchildren of Alfons and Marie Thorsch to 29 published and unpublished accounts held by the Thorsches, or *Bankhaus M. Thorsch & Söhne* ("*Thorsch & Söhne*"), which was owned by Alfons Thorsch. The denial concluded that the claimants, the grandchildren of the account owners, were not eligible for an award, because the Thorsches had retained control over their assets, and had received the proceeds of the claimed accounts.

The Thorsches, who were Jewish, resided in Vienna, Austria, where Alfons Thorsch was a banker who owned *Thorsch & Söhne*. According to the claimants, their grandparents, along with their daughter Dorothea, fled Austria for Italy in February 1938, and from Italy to Zurich, Switzerland on March 13, 1938 (following the *Anschlüss*). The family subsequently moved to England in the summer of 1939. As of 1941, they resided in Montreal, Quebec and, as of 1942, in Victoria, British Columbia. Marie Thorsch died in Montreal in September 1944. Alfons Thorsch died in Victoria in 1945.

The records submitted by the claimants, as well as those the CRT obtained through independent investigation, indicated that the Thorsches and their bank held 29 accounts at the Zurich, Basel, Bern and Geneva branches of the *Schweizerische Bankverein* ("Bank I"); the London agency of the *Schweizerische Bankverein* ("Bank II"); the Zurich and Geneva branches of the *Schweizerische Kreditanstalt* ("Bank III"); the *Kantonalbank Bern* ("Bank IV"); the *Zürcher Kantonalbank* ("Bank V"); the Zurich branch of the *Schweizerische Bankgesellschaft* ("Bank VI"); the Zurich branch of the *Eidgenössiche Bank* ("Bank VII"); the *Basler Handelsbank* ("Bank VIII"); and the Zurich branch of *Darier & Cie.* ("Bank IX").

Of the 29 total accounts, 21 were held by *Thorsch & Söhne* (12 demand deposit accounts, seven custody accounts and two accounts of unknown type). Five accounts jointly were held by Alfons and Marie Thorsch (three custody accounts and two demand deposit accounts). Three

accounts were held individually by Alfons Thorsch (one custody account, one demand deposit account and one safe deposit box).

The denial concluded that of the 21 accounts held by *Thorsch & Söhne* ("TS"), one was closed prior to 1933. Accordingly, that account fell outside the jurisdiction of the CRT, which was authorized to resolve claims to accounts open or opened in Swiss banks during the Holocaust era (1933 - 1945). The denial determined that the account owners had closed 14 of the 21 accounts prior to the *Anschlüss*, at which point they retained control over their accounts and received the proceeds.

The denial further concluded that six of the 21 accounts held by TS remained open after the *Anschlüss.* The contents of two demand deposit accounts, one each at Bank IV and Bank V, were transferred to an existing demand deposit account held by TS at the Zurich branch of Bank III, per instruction of the account owners. The demand deposit account at Bank III received TS's deposit of the proceeds of the two demand deposit accounts held at Bank IV and Bank V, as well as a second demand deposit account held by TS at Bank I.

The assets in the accounts at Bank III and Bank I, totaling SF 27,502.00, were the subject of litigation in Switzerland between the *Cassen-Verein*, as *kommissarischer Verwalter* of TS, together with TS, and Alfons Thorsch, in 1938 and 1939. Alfons Thorsch petitioned the Zurich District Court for protection of assets, and the assets were then frozen temporarily. Subsequently, after the Zurich court found in favor of Alfons Thorsch, the accounts were transferred to the custody of the court. The litigation concluded in 1939, with a finding by the Superior Court in favor of Alfons Thorsch, resulting in the *Cassen-Verein* writing off the funds in the books of TS on December 31, 1939. Two additional demand deposit accounts, one each at Bank I and Bank II, also were written off by the *Cassen-Verein* in the books of TS on December 31, 1939.

With regard to the two demand deposit accounts held at Bank IV and Bank V, the CRT concluded that the accounts were closed pursuant to instructions of the Thorsches, in the context of transferring the contents of those accounts to a demand deposit account at Bank III. The two demand deposit accounts held at Bank III and Bank I, respectively, were the subject of the

litigation described above, in which Alfons Thorsch prevailed. Accordingly, the CRT concluded that the funds were turned over exclusively to Alfons Thorsch. The CRT based its conclusion on documentation pertaining to the litigation; correspondence between Alfons Thorsch's lawyer and Alfons Thorsch's heirs in 1950s; and specific information provided to the CRT by the Zurich Superior Court. With regard to the two demand deposit accounts held at Bank II and Bank I, respectively, both accounts were written off in the books of TS on December 31, 1939, at a time when Alfons Thorsch resided outside of the Reich's control. Accordingly, the CRT concluded that Alfons Thorsch retained dominion over his assets, and received the proceeds himself.

In addition to the 21 accounts held by TS, Alfons and Marie Thorsch jointly held five accounts, and Alfons Thorsch individually held three accounts, for a total of 29 accounts. Two of the accounts jointly held by the account owners, a custody account and related demand deposit account at Bank III, were transferred to Thorsch accounts in Amsterdam at a time when the Thorsches resided in Switzerland. The CRT therefore concluded that the Thorsches, residing outside of the Reich's control, maintained dominion over the disposition of those accounts and received the proceeds themselves.

A third account jointly held by the Thorsches, a second demand deposit account held at Bank III, was closed on September 20, 1939, which was one day following the Swiss Superior Court's decision in favor of Alfons Thorsch (who resided in England at that time). As the Superior Court had issued explicit instructions with regard to release of the assets at issue to Alfons Thorsch, the CRT concluded that Alfons Thorsch had received the proceeds of that account. With regard to the two custody accounts jointly held at Bank IV and Bank V, the CRT concluded that, despite a lack of information regarding the precise circumstances under which the accounts were closed, it was unlikely Bank IV and Bank V would have turned the accounts over to the Reich, given the banks' knowledge of the litigation Alfons Thorsch had initiated with regard to his TS accounts. The CRT further noted that Alfons Thorsch had issued specific instructions to Bank IV not to grant access to anyone other than himself or his wife.

With regard to the custody account Alfons Thorsch held at Bank III, the CRT concluded that the securities contained in the account were transferred to other Thorsch accounts in Amsterdam in 1932 and 1938, and that as of 1939, those securities were held at Barclays Bank in

Montreal, Canada. The CRT therefore concluded that the assets in that account remained under Alfons Thorsch's control, and that he received the proceeds himself.

With regard to Alfons Thorsch's safe deposit box account at Bank III, the account was closed in December 1938, at a time when he resided in Switzerland, and less than two weeks after the conclusion of the litigation in which the Superior Court found in his favor. The CRT therefore concluded that Alfons Thorsch accessed his safe deposit box, and received the proceeds himself.

With regard to the demand deposit account held by Alfons Thorsch at Bank III, the CRT concluded that although the relevant bank files did not indicate when the account was closed, the record contained evidence sufficient to rebut a presumption that Alfons Thorsch did not receive the proceeds of the account. Specifically, given that one of the two accounts at issue in the litigation Alfons Thorsch had initiated was held at Bank III, it was unlikely that Bank III would have handed over another account held by the same person while the litigation was pending.

Accordingly, the CRT concluded that all 28 accounts open during the Relevant Period (1933-1945) were properly closed, and that no award was appropriate.

The claimants appealed. They asserted that they were entitled to the proceeds of two of the 29 accounts at issue in the denial: the two custody accounts jointly held at Bank IV and Bank V, for which records indicating the exact disposition of the accounts were unavailable. The claimants agreed with the CRT's conclusion regarding the remaining 27 accounts.

Upon review, the Court issued an order terminating the appeal. The order explicitly rejected the claimants' assertion that it was appropriate to presume that the Thorsches did not receive the proceeds of the accounts. The order also noted that while "not persuasive," the claimants' assertions were "not frivolous," nor was claimants' alternative theory upon which a recovery of assets could be based. While it was unclear whether that theory would warrant recovery under the Settlement Agreement, the Court and claimants agreed that it was in the best interest of the Deposited Assets Class to terminate the proceedings in a manner equitable both to the Thorsch heirs, and other claimants to the Settlement Fund. Accordingly, the appeal was

settled at a discount of 15 cents on the U.S. Dollar, providing for an award to claimants of US $3,757,657.19.

ii. In re Accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, Wistag AG and Wistag Partnership (SF 7,337,341.72)

The CRT issued a denial with regard to claims submitted by several claimants to the accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer (née Wittgenstein), who were siblings, and *Wistag A.G.* and/or *Wistag A.G. & Cie K.G.* ("*Wistag Partnership*"). The CRT noted that the accounts of Paul and Hermine Wittgenstein, which were held at Bank I, were published. The account of Helene Salzer at Bank I was unpublished, as were accounts held by *Wistag A.G.* at Bank I, Bank II and Bank III, and accounts held by the *Wistag Partnership* at Bank I, Bank III and Bank IV.

The account owners were part of the famed Wittgenstein family, whose members included the philosopher, Ludwig Wittgenstein, as well as wealthy industrialists and patrons of the arts. Paul Wittgenstein, one of the account owners, was a concert pianist. After losing his right arm in the First World War, he taught himself to play one-handed, and commissioned works by eminent composers including Richard Strauss, Sergie Prokofiev and Maurice Ravel.

Paul Wittgenstein. https://commons.wikimedia.org/wiki/File:Paul_Wittgenstein_3_(c)_BFMI.jpg. Photo courtesy of Wikimedia and Bernard Fleischer Moving Images. Creative Commons Attribution 3.0 Netherlands.

The claimants asserted that based upon an agreement between Paul Wittgenstein and the *Reichsbank*, his sisters Hermine and Helene Wittgenstein had lost their shares in the *Wistag Partnership*, and that Paul Wittgenstein had lost all but SF 1.8 million of his *Wistag Partnership* share. The claimants also asserted that based upon an entry in *Wistag A.G.*'s balance sheet dated July 13, 1940, Paul Wittgenstein lost an additional SF 90,386.00, and that Hermine and Helene Wittgenstein lost the assets in their personal accounts at a Swiss bank. The claimants, who were related, included the Trustee of a Trust established under the Will of Paul Wittgenstein for the benefit of his son, Paul Ludwig Wittgenstein (the "Trust").

The bank records showed that *Wistag A.G.* held a total of 12 Swiss bank accounts during the Relevant Period: ten accounts at Bank I (6 custody accounts and 4 demand deposit accounts), one account at Bank II (a demand deposit account), and one account at Bank III (a custody account). *Wistag A.G.* also held one account at Bank I for the benefit of Paul Wittgenstein. The record also showed that *Wistag Partnership* held a total of 11 Swiss bank accounts during the Relevant Period: five accounts at Bank I (three custody accounts and two demand deposit accounts), three accounts at Bank III (a custody account and two demand deposit accounts), and three accounts at Bank IV (a custody account and two demand deposit accounts).

Finally, the record showed that Paul Wittgenstein and Hermine Wittgenstein each held one custody account and associated demand deposit accounts at Bank I, and that Paul held one additional custody account.

Paul Wittgenstein was born on November 5, 1887 in Vienna, Austria. He resided in Vienna until he fled to Zurich, Switzerland in August 1938. Subsequently, he immigrated to the United States, where he arrived in New York by ship in December 1938. Hermine Wittgenstein was born on December 1, 1874 in Bohemia (today, the Czech Republic). She resided in Vienna from 1913 until her death in February 1950. Helene Salzer (née Wittgenstein) was born on August 23, 1879 in Vienna, where she died in 1956.

The claimants submitted numerous documents, including materials referring to negotiations held in the spring and summer of 1939 between the Wittgenstein family and the *Reichsbank*; documents regarding *Wistag A.G.* and *Wistag Partnership* that were obtained from the Commercial Register of Zug, Switzerland; and a Decision of the Arbitration Panel for Restitution in Kind (*Schiedinstanz für Naturalrestitution*), dated July 12, 2006 (the "Arbitration Panel Decision"), which was filed by the claimants' representative under the provisions of the Austrian General Settlement Fund for Victims of National Socialism to Paul Wittgenstein's one-third share of property in Neuwaldegg, Austria, which had been jointly owned by the Wittgenstein siblings.

The CRT noted that the three Wittgenstein siblings were the children of Karl and Leopoldine Wittgenstein (née Kallmus). Karl Wittgenstein's father, Hermann Wittgenstein, had cut himself off from the Jewish community, but in 1839 married Fanny Figdor, who came from a prominent Austrian Jewish family. Hermann and Fanny moved to Germany where, in 1839, they were baptized in the Lutheran Kreuzkirche, after which Hermann was recognized as a citizen of Leipzig. Hermann and Fanny returned to Vienna in 1851, where Hermann remained outside the Jewish community. All of Hermann's children, including the three account owners, were baptized as Protestants. They were forbidden by Hermann to marry Jews. Karl Wittgenstein was the only child to defy his father's instruction when he married Leopoldine, who was half-Jewish (but had been raised Catholic).

Karl Wittgenstein amassed an immense fortune in iron and steel. Upon his death in 1913, his assets were equally divided among his wife and six children: Kurt, Paul, Ludwig, Hermine, Helene and Gretl, who married an American citizen, Jerome Stonborough.

Ludwig Wittgenstein's five siblings: (back) Hermine, Helene, Margarete, (front) Paul and Ludwig. Circa 1890s. https://commons.wikimedia.org/wiki/File:Ludwig_Wittgenstein_siblings.jpg. Photo courtesy of Wikimedia.

Kurt Wittgenstein committed suicide in 1918. Ludwig, desiring to rid himself of his inherited wealth, insisted upon turning his fortune over to Hermine, Helene and Paul. Gretl was excluded from Ludwig's irreversible transfer, as her inheritance was greater than that of her siblings, due to investment of her assets in U.S. securities, whereas Hermine's, Helene's and Paul's assets had been greatly devalued following the First World War, due to investment in Austrian war bonds. Despite transferring his assets to his siblings, Ludwig took an active role in protecting the family's wealth. In 1919, he invested nearly all of the family's wealth in a limited partnership in one of the biggest private banks in the Netherlands, with himself as trustee. Following Ludwig's death in 1925, Dr. Max Salzer (Helene's husband), took over as trustee.

In 1932, the Dutch bank abruptly terminated its relationship with the Wittgenstein family. They subsequently established two legal entities in Zug, Switzerland to hold their assets: *Wistag A.G.* and *Wistag Partnership* (of which *Wistag A.G.* was the guaranteeing partner), capitalized at SF 1 million and SF 8 million, respectively. At the time of its creation, *Wistag A.G.* was owned by American citizens (Gretl Stonborough and her son, Thomas), but was owned 100 percent by Paul Wittgenstein as of 1939. As of 1938, Paul, Hermine and Helene held 31.7 percent, 25.1 percent and 21.1 percent, respectively, of *Wistag Partnership*. The CRT noted that it was not

clear how the remaining 22.1 percent of *Wistag Partnership* was divided. As of June 6, 1939, the *Wistag Partnership*'s Statement of Accounts indicated that the value of the *Wistag Partnership* was SF 7,845,160.37, excluding the SF 1 million capital contribution of *Wistag A.G.* Nearly one-half of that amount was held in accounts at Bank I, Bank III and Bank IV, with the remainder held in non-Swiss banks in the United States and the Netherlands.

Although the Wittgensteins were aware of their Jewish origins, they believed their standing in upper-class Austrian society, together with their Christian upbringing, set them apart. However, as three of their four grandparents had been Jewish, the Nuremburg Laws (in which the Reich distinguished Jews from non-Jews) were fully applied to the Wittgensteins, whom the Reich considered at that time to be "full Jews." Accordingly, the Wittgensteins were subjected to the anti-Semitic decrees of the Reich, first enacted in Vienna on March 12, 1938 (the day of the *Anschluss*). The Wittgenstein siblings attempted to exempt themselves from the discriminatory laws, asserting that their paternal grandfather, Hermann Wittgenstein, actually had been the illegitimate child of the House of the Princes of Waldeck, and therefore was not Jewish by blood. Having two Jewish grandparents, rather than three or four, would have resulted in a designation of "*Mischling*" status (*i.e.*, of Jewish and non-Jewish parentage), with some protection from the anti-Semitic laws.

On April 26, 1938, the Nazis required all Jews who resided within the Reich, and/or who were nationals of the Reich, including Austria, and who held assets above a specified level, to register their assets. The CRT obtained asset registration forms for Hermine Wittgenstein, Paul Wittgenstein, Helene Wittgenstein, and Jerome and Margaret (Gretl) Stonborough from the Austrian State Archive ("1938 Census"). These records had been registered with the Reich on July 15, 1938 and were updated in December 1938 (Hermine, Paul and Helene) and July 7, 1938 (Jerome and Margaret), respectively. Hermine, Paul and Helene indicated they had applied for a release from asset reporting, based on their belief that their paternal grandfather, Hermann Christian Wittgenstein, was "not a full Jew." The text of their declaration indicated that they based their belief on "his physical appearance and his way of life, as well as by the physical appearance of his direct descendants . . . [F]or the past 100 years all members of the Wittgenstein family without exception were born and brought up as Christians . . . "

In their 1938 Census, Hermine, Paul and Helene reported the nominal value of their shares in the *Wistag Partnership*'s holdings: SF 2,008,086.40; SF 2,536,731.20 and SF 1,689,434.32, respectively (for a total of SF 6,234,251.92). Those holdings included SF 3,852,347.97 held in Swiss banks, or 61.79 percent of the total nominal value of the siblings' *Wistag Partnership* shares. In addition, Hermine reported securities in U.S. Dollars, with a market value of RM 325,950.35, which matched records related to Hermine's custody account held at Bank I. She also reported a demand deposit account at Bank I, with a balance of U.S. $63.00. Paul reported securities denominated in U.S. Dollars with a market value of RM 421,322.99, which matched records related to Paul's custody account held at Bank I. Paul also reported a demand deposit account at Bank I, with a value of U.S. $63.00. Helene's 1938 Census indicated that she held securities denominated in U.S. Dollars, with a market value of RM 427,566.67, which matched information about her custody account at Bank I. She also identified her demand deposit account at Bank I, for which she indicated a value of SF 814.10.

Hermine, Paul and Helene stated in their 1938 Census that as of November 12, 1938, they had transferred to the Reich Finance Office RM 242,850.00, RM 218,700.00 and RM 192,600.00, respectively. This was equal to five percent of their individual net assets. These funds represented payment of the first installment of the siblings' "atonement tax." Each filing included a clarification that a decision as to whether each sibling, was in fact, liable for the tax, was pending (*i.e.*, a decision as to their racial status had not yet been established). The siblings also noted that they had sold a number of securities as of November 12, 1938, and that through the receipt of the counter value of the proceeds in RM, their cash assets had increased.

In Margaret Stonborough's 1938 Census, she: 1) declared herself to be an American citizen; 2) did not include the proviso regarding her racial status under the Nuremburg Laws; 3) stated that, as a foreign national resident in the Reich, she was only required to report assets held within the Reich; and 4) reported owning real estate worth RM 429,000, claims deriving from real estate sales of RM 26,294.00, and other valuables, including art objects, worth RM 20,235.00. As Jerome Stonborough predeceased the filing of his 1938 Census, his form was signed by his wife, Margaret Stonborough, who reported only assets that he held in the Reich, which consisted of art objects and collections worth RM 64,900.00.

While attempts to establish the siblings' status as *Mischling* rather than as fully Jewish continued, Paul was charged with "racial defilement." He was considered to be a Jewish man residing with a non-Jewish woman, with whom he had two children (unbeknownst to his family), which violated the discriminatory laws in effect. Paul subsequently fled to Switzerland in August 1938, after unsuccessful efforts to convince his sisters to leave Austria. In November 1938, the Reich's Genealogical Research Office rejected the family's claims regarding their *Mischling* status, and informed them they were considered to be fully Jewish. However, in 1939, the *Reichsbank* and the Wittgenstein family began negotiations, as the Reich was eager to obtain funds for the anticipated war effort.

According to the Implementation of the Ordinance on Foreign Exchange Control dated May 23, 1932, and the Law on the Management of Foreign Exchange dated December 12, 1938, shares in a foreign partnership fell outside the general requirement that all residents of the Reich had to offer their foreign currency denominated securities, foreign currency and gold for sale to the *Reichsbank* in exchange for RM. In this regard, the CRT also noted that the *Wistag Partnership* agreement specifically required that the partnership's capital remain intact until 1947. In addition, *Wistag A.G.*, which was the *Wistag Partnership*'s guaranteeing partner, was at the time of the *Wistag Partnership*'s creation owned by Margaret Stonborough and her son, Thomas, both of whom were U.S. citizens, and therefore exempted from reporting assets held outside the Reich. By December 1938, Paul, who owned almost one-third of the *Wistag Partnership*'s assets, resided in the United States. Ludwig, who was a director of the *Wistag Partnership* (even though he had ceded his share to his siblings), resided in England. In addition, the *Wistag Partnership*'s assets were deposited in Swiss banks in Switzerland, and in non-Swiss banks in the U.S. and the Netherlands.

With these obstacles to a forced transfer in place, the Reich, to obtain access to the *Wistag* Partnership's foreign currency denominated assets, needed the agreement of the owners. Margaret therefore sought an agreement in which the restrictions preventing access to the *Wistag Partnership*'s funds would be set aside, in exchange for *Mischling* status for Hermine and Helene, who wished to remain in Vienna. The siblings offered their vested, foreign exchange denominated assets for sale to the *Reichsbank* in exchange for RM. In return, the *Reichsbank*

was required to: 1) grant *Mischling* status to Hermine and Helene of a type that would exempt them from the Nuremburg Laws, enabling them to remain in Austria; 2) allow retention of the RM counter value of the foreign currency denominated assets sold to the *Reichsbank*; and 3) allow Paul to retain a certain part of the foreign currency assets he held in the *Wistag Partnership*. The remainder of his share of the *Wistag Partnership* assets would be delivered, in the RM counter value, to Hermine and Helene.

The family began negotiations with the *Reichsbank* in the Spring of 1939, with a meeting of May 2, 1939, described in Hermine's memoirs as the beginning of "our friendship with the Reichsbank." For his part, Paul, who did not wish to return to the Reich, sought to preserve as much of his assets as possible, while ensuring the safety of his sisters, who wished to remain in the Reich. Negotiations therefore were tense, with Hermine complaining that Paul's advisors were "without exception Jews." Paul was purported to have agreed to turn over SF 2.5 million worth of gold to the Reich as a goodwill payment prior to conclusion of the agreement, and without any concessions from the Reich in return. The CRT did not consider the record to contain sufficient evidence that such payment actually was made.

The Wittgensteins reached an agreement with the *Reichsbank* on August 21, 1939 (the "Agreement"). The Agreement provided that Paul was to receive SF 1,800,000.00 from the *Wistag* Partnership's funds, plus advances he had made toward covering the SF 300,000.00 in expenses and legal fees owed to the Wittgenstein lawyers. According to correspondence from Margaret to Ludwig after the conclusion of the agreement with the *Reichsbank*, the *Reichsbank* ultimately agreed to pay the SF 300,000 itself. The remainder of the *Wistag Partnership*'s funds, after provision for any taxes and other charges owed to Swiss entities, was to be transferred to the *Reichsbank*. Those funds were then to be credited, in the RM counter value, to Wittgenstein bank accounts. The *Reichsbank* agreed to issue a decree setting out the *Mischling* status of the Wittgenstein siblings "in the most favorable way as possible for them." That decree was issued on August 30, 1939. The *Reichsbank* also made arrangements for Paul to convey his RM assets and real estate located in the Reich to his sisters, Hermine and Helene.

The Agreement was accompanied by two Side Agreements, both dated August 21, 1939: one agreement between Paul and his nephew, John Stonborough ("Side Agreement 1"), and the

other between Paul and his sisters ("Side Agreement 2"). Side Agreement 1 stipulated that Paul would confer all his rights in *Wistag A.G.* and its assets to John Stonborough. In turn, John agreed to transfer the equivalent of SF 500,000.00 from the *Wistag A.G.*'s funds to Paul, and would agree to support Hermine and Helene whenever the need arose. Side Agreement 1 would be null and void, if no ultimate agreement was reached between Paul and the *Reichsbank*. Side Agreement 2 stipulated that in view of Hermine's and Helene's determination to stay in Austria, Paul agreed to convey all his RM assets and his real estate in the Reich to his sisters, aside from certain payments related to the shipment of his personal property abroad, and any payments to discharge obligations that may have been asserted against him in the Reich, such as his flight tax obligation. The CRT noted that the record did not contain any evidence confirming payment by Paul of flight tax, and that in any case, there was no indication of any flight tax paid by Paul or on his behalf, via assets held in a Swiss bank. Side Agreement 2 was to be effective only if the agreements between Paul and the *Reichsbank* and Paul and John Stonborough were completed.

Subsequently, the Reich's Genealogical Research Office issued a "Ruling regarding the Family's Origin" dated August 30, 1939, which was included in Hermine's 1938 Census. According to the Office's verification, Hermine Maria Franciska Wittgenstein was declared a Jewish *Mischling*. That status was confirmed in a letter from Dr. Kurt Mayer, head of the *Sippenstelle* in Berlin, dated February 10, 1940. Mayer stated that Hermann Wittgenstein was deemed to be "the German blooded ancestor of all descendants," and that certifications of the family's *Mischling* status was provided to numerous descendants of Hermann Wittgenstein, so that there would be no further difficulties with respect to their racial classification according to the Nuremberg laws. The CRT noted that both Hermine and Helene not only survived the Second World War while residing openly in Austria, but were able to maintain the life to which they were accustomed before the *Anschlüss*.

In a letter dated May 30, 1940, Paul summarized the negotiations with the *Reichsbank* to his nephew, Felix Salzer (Helene's son), who at that time resided in New York. As the CRT noted, Paul explained that the negotiations resulted in a declaration of Aryan (*i.e.*, *Mischling*) status, which allowed Hermine and Helene to remain in the Reich and to retain their assets. Paul

explained that his sisters were required, like all other Aryans, to put their foreign currency at the disposition of the *Reichsbank*, for which they received the counter value in RM.

With regard to the 11 Swiss bank accounts held by *Wistag Partnership* (three custody accounts and two demand deposit accounts at Bank I; one custody account and two demand deposit accounts at Bank III; and one custody account and two demand deposit accounts at Bank IV), the CRT explained that the assets in the Swiss accounts held by *Wistag Partnership* were distributed in accordance with the Agreement and Side Agreements. The CRT therefore addressed the disposition of the assets in the *Wistag Partnership* accounts in the context of total *Wistag Partnership* assets presumed to have been held in Swiss banks by each Wittgenstein, and not necessarily account by account.

The CRT explained that with respect to the presumed Swiss-held SF 1,221,075.68 share of the *Wistag Partnership* held by Paul Wittgenstein, Paul retained SF 1.8 million from the total *Wistag* Partnership funds, pursuant to the Agreement. The *Reichsbank* agreed to pay SF 300,000 in legal fees, resulting in retention by *Wistag Partnership* of SF 350,000 that it had set aside to pay such fees (as confirmed by an internal Bank III memorandum). That amount still was intact after the Second World War, and reverted to Paul Wittgenstein. Of the amount of Paul's share of *Wistag Partnership* held in Swiss banks, he received 91.68 paid out directly to him (SF 1,119,480.00), with the remainder transferred to the *Reichsbank* in accordance with the Agreement and Side Agreement 2, which in turn credited the RM counter value to bank accounts held by Hermine and Helene.

The CRT noted that this finding was consistent with a statement made in a letter to the CRT from Paul Wittgenstein's son, Paul Wittgenstein, Jr. He wrote: "At the end of August 1939 all the Wistag money was liquidated in a final agreement between my father and his sisters. My father got most of his money and the sisters had to transfer their money to Austria/Germany. That is, the sisters didn't lose their money. For this reason I would ask again that nothing further be done in this matter."

With regard to Hermine's and Helene's SF 966,845.41 and SF 812,717.36 in the *Wistag Partnership* that were presumed to have been held in Swiss banks, these amounts were

transferred to the *Reichsbank*, in accordance with the Agreement. The counter value in RM was deposited into the Wittgenstein bank accounts. The CRT therefore determined that the Wittgensteins received the proceeds of the assets transferred to the *Reichsbank.* They were able to freely dispose of those assets, given the *Mischling* status obtained in accordance with the Agreement.

With respect to the 12 Swiss bank accounts held by *Wistag A.G.*, the negotiations with the *Reichsbank* affected only the assets of *Wistag Partnership*, leaving *Wistag A.G.* intact. Pursuant to Side Agreement 1, concluded between Paul Wittgenstein and John Stonborough, Paul conferred all his rights in the *Wistag A.G.* and its assets to Stonborough, who in turn transferred the equivalent of SF 500,000.00 from the *Wistag A.G.*'s funds to Paul. He agreed, if the need arose, to support Hermine and Helene (who wished to remain in the Reich), up to the amount available after the SF 500,000 payment to Paul. The CRT concluded that the Wittgensteins remained in control of the *Wistag A.G.*'s assets during the Relevant Period, and that the *Wistag A.G.* continued to function until it went into liquidation in 1948, and was subsequently dissolved in 1949. The CRT noted that a payment of SF 90,386.00 to the *Reichsbank*, specifically asserted by the Claimants to have been lost "to the German Reichsbank," was in fact paid by Stonborough in accordance with Side Agreement 1. The counter value of those funds was received in RM for the benefit of Hermine and Helene. Accordingly, an award of the accounts held by *Wistag A.G.* was not appropriate.

With regard to the three custody accounts at Bank I held by Paul, Hermine and Helene, the siblings had sold all of their securities between June and December 1938, and had received the RM counter value of the sale of their Swiss security holdings in accounts at their free disposition. With regard to three demand deposit accounts in U.S. Dollars held by the siblings, closed on April 20, 1938, the CRT noted that Paul actively managed a second custody account at Bank I over one month after the closure of the three demand deposit accounts. This indicated the siblings' continued dominion over their account. That second custody account contained 19 bars of gold, from which 4 gold bars were removed by Paul prior to the *Anschlüss.* The remaining 15 bars were transferred by Paul to the *Wistag Partnership*'s custody account at Bank I on May 27, 1938, after which Paul closed his custody account on June 1, 1938. The CRT also noted that in

accordance with the Agreement and related Side Agreements, any transfer of funds to the *Reichsbank* would have been returned via receipt by the siblings of the RM counter value. Moreover, as the siblings were granted *Mischling* status, they were absolved of any liability for atonement tax, and were freely able to manage their accounts.

The CRT noted that despite his *Mischling* status, Paul was liable for payment of flight tax, which applied to all persons who were citizens of the Reich as of March 31, 1931, who resided in the Reich as of January 1, 1928 and subsequently gave up their residency in the Reich. However, there was no indication in the record that any flight tax paid by Paul - if paid at all - was paid through transfer of Swiss-held funds directly to a blocked account in the Reich.

The CRT therefore did not recommend an award. The claimants, represented by counsel, submitted an appeal. The appeal was supplemented by additional documentation.

The Court resolved the appeal. The Court explained that in connection with the appeal, the claimants' legal representative had, for the first time, disclosed that two awards had been issued previously with regard to some of the claimed assets. According to the representative, one award had been issued to the Wittgenstein heirs pursuant to the Austrian Bank Settlement (date not provided), and the other award was issued in 2009 by the Austrian General Settlement Fund for Victims of National Socialism ("GSF"). The legal representative did not provide the claims and supporting materials for those proceedings, and he did not provide the actual award decisions. Accordingly, the Court ordered production of the original claims, and any and all supporting documentation, along with the original decisions issued by the Austrian Bank Settlement and GSF.

Subsequently, after reviewing all written submissions, the Court heard oral argument. Thereafter, the Court issued an order in which it observed that discussions between the claimants' representative and lead counsel for beneficiaries of the Settlement Fund had resulted in a proposed settlement of the claim for $6,063,918.88. The Court noted that while it was unclear whether the claimants would have prevailed on all of their arguments with regard to various points raised in the decision, the Court nevertheless was satisfied that there was sufficient merit to the claim that justified a settlement in the proposed range. Accordingly, the

Court ordered payment of the settlement amount, termination of the appeal, and final resolution of all claims based upon assets held by Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, *Wistag AG* and *Wistag Partnership*.

iii. In re the Assets of Siegfried Budge (SF 5,566,000.00)

The CRT initially issued a Certified Award and Award Denial (the "decision") with regard to an account published in January 2005, under the name of Emma Budge. The decision pertained to the assets of Siegfried Budge, who was one of Emma Budge's named heirs, and whose assets comprised a portion of the assets originally held by Emma Budge at the Zurich branch of the *Schweizerischer Kreditanstalt* (the "Bank"). The decision awarded SF 1,394,979.18 to the heirs of Siegfried Budge (the "claimants"), who was the nephew of Emma Budge's husband. The claimants challenged the amount of the decision, and the appeal ultimately was settled for $4,600,000.00.

The CRT explained that Emma Budge, née Lazarus, was Jewish. In 1879 she married Henry Budge, who came from a prominent banking family in Hamburg, Germany. By the beginning of the twentieth century, Emma's husband, who, like his wife, became a citizen of the United States in 1882, had amassed an enormous fortune through his partnership in the bank *Hallgarten & Co.* in New York.

Emma (born Lazarus, born 17.2.1852 Hamburg, died 14.2.1937 Hamburg) & Henry Budge (banker, born 20.11.1840 Frankfurt a M., died 20.10. 1928 Hamburg). http://www.alaintruong.com/archives/2014/06/13/ 30067615.html.[167]

Henry Budge died on October 20, 1928, leaving the bulk of his wealth to his wife. Emma Budge died on February 14, 1937. In her will (the "Will"), she stipulated that her residual estate should go to the descendants of her siblings, the descendants of Henry Budge's siblings, and to the charitable foundations Henry and Emma had established.

Emma's Will left specific bequests to several individuals, with her residual estate divided among 17 heirs. Ten of the heirs (the "domestic heirs"), including three charitable foundations, resided or were located in the Reich at the time the bulk of the Estate was distributed. The other seven heirs, including one charitable organization in New York, were outside the Reich (the "foreign heirs") at the time of the Estate's distribution. Emma's Will, which included five Codicils, reflected Emma's growing concern over the dangers to the Jewish community posed by Hitler's regime. She was aware of the need to protect her estate, and the intended uses of her bequests, from the Nazis. All executors were to be Jewish, and she directed that the share of the Estate to which any deceased heir was entitled would fall to their respective heirs by

[167] "Emma and Henry Budge had returned to Germany in 1903 after Henry had made his fortune financing American railroads. They built a magnificent villa in Hamburg, along the grand Harvestehuder Weg, which they extended to included a Versaille style Hall of Mirrors. It became the venue of many philanthropic charity balls and became the centre of the city's cultural and social life and Emma Budge filled their home with fine antiques. The Budge[s] were advised by the Hamburg Museum's legendary curator, Justus Brinckmann, and by the First World War, Emma had amassed one of the most important decorative arts collections in Germany." http://www.alaintruong.com/archives/2014/06/13/30067615.html ("American fortune used to buy stunning porcelain collection stolen by Nazis, for sale at Bonhams") (June 13, 2014).

representation. As the CRT explained, 53% of the Estate's residual assets were allocated to domestic heirs, and 47% were allocated to foreign heirs.

The gross value of the Estate at the time of Emma Budge's death was 6,774,927.94 Reichsmark ("RM"), with liabilities against the Estate of RM 247,360.81. The CRT explained that 59.1 percent of the gross value of the Estate - RM 4,004,813.59 - was held at the Bank in Switzerland, with the remaining 49.9 percent - RM 2,770,114.35 – was held within the Reich. The estate tax levied against the Estate, after deduction of liabilities, was RM 2,088,815.00 as of March 17, 1938, of which RM 1.2 million already had been paid as of that date. The remainder, RM 888,782.70, was to be paid by April 20, 1938 from assets located in the Reich (the funds on deposit in Switzerland were not yet available to the executors), even though the estate tax was based upon the entire value of the Estate, including assets held in Switzerland.

By late summer/fall of 1938, the Foreign Exchange Office (the "*Devisenstelle*") had been forced to accept that it generally could not apply the Reich's foreign exchange regulations to the foreign-held assets of an undistributed estate, especially if the estate involved foreign-held interests - as did Emma's Estate. The *Devisenstelle* therefore increased its pressure on the executors and domestic heirs to force distribution of the Swiss-held assets of the Estate, so that the *Devisenstelle* could obtain the foreign currency proceeds of the shares that fell to the domestic heirs. Accordingly, the *Devisenstelle* took severe measures to prevent the domestic heirs from leaving the Reich before they repatriated their shares of the Estate's Swiss-held assets. By December 1938, the residual value of the Estate, after reduction due to the loss in market value of securities in its portfolio; augmentation from the proceeds from the sales of real estate, art works, and income on financial assets; and taking account of contingencies and excluding unsold physical assets, was put at a rounded pre-tax amount of RM 4.5 million.

The *Devisenstelle* realized that to effect a prompt transfer of the Estate's Swiss-held assets, it would have to negotiate, as the Swiss courts would likely protect the heirs. To that end, the *Devisenstelle* put pressure on the four executors, one of whom resigned in fear of a threat to his own imminent emigration. That left three executors, with only two executors needed to form a majority in order to approve a distribution plan (the "Budge distribution plan") with the *Devisenstelle.* On March 23, 1939, the Budge distribution plan was approved by only two of the

four executors (in contrast to the Will's stipulation that in the event of a disagreement, majority would rule). A reserve of US $303,000 would be set aside against U.S. estate tax liabilities and associated settlement costs. The foreign heirs would receive their full shares from the remaining Swiss-held assets, and the domestic heirs would share the then-remaining amount according to the Will.

On April 1939, as part of a negotiated settlement with the *Devisenstelle*, the Bank distributed the Swiss-held assets to the foreign heirs directly, and to the domestic heirs via an account at *M. M. Warburg*, where the assets for each heir were specifically identified. Eventually, larger distributions were made into blocked accounts belonging to the domestic heirs, much of which appeared to have been either paid in discriminatory taxes to Nazi authorities, or confiscated outright. The CRT noted that after the Second World War, the domestic heirs, or their heirs, successfully filed restitution claims for those assets.

As part of its investigation, the CRT obtained "voluntary assistance" from the Bank, which provided records from its files. Subsequently, the CRT received thousands of pages pertaining to Emma's Estate from the Hamburg State Archive and the Hessen State Archive.

The Bank's records showed that Emma Budge originally held five accounts at the Bank: 1) a demand deposit account denominated in U.S. Dollars that was opened on an unknown date and closed on November 10, 1939; 2) a demand deposit account denominated in Swiss Francs that was opened on May 28, 1934 and closed on November 20, 1939; 3) a demand deposit account denominated in British Pounds that was opened on an unknown date and closed on November 20, 1939; 4) an account denominated in Argentinian Pesos that was opened on an unknown date and closed on December 20, 1939; and 5) a custody account that was opened on May 28, 1934 and closed on November 16, 1939.

The Bank had made a full distribution of the Estate's holdings by the time the Swiss accounts at issue had been closed. A detailed deposit statement by *M. M. Warburg*, dated April 19, 1939, showed that Siegfried Budge's account had been credited with each security on the Bank's list, except one, plus the same amount of cash as listed by the Bank, for a total value of RM 236,740.31 as of March 20, 1939. At the time of the distribution, the Bank opened six new

accounts into which assets from the Estate were transferred. Five of the new accounts belonged to foreign heirs who resided in Europe. The sixth account held the assets retained as reserves, and assets held for the Budge foundations. As no final accounting was available to the CRT, it could not be determined whether any settlement was made with respect to the individual heirs' estate tax liabilities, or whether further distributions were made that would affect the assessment of the fate of Siegfried Budge's assets that were transferred into the Reich.

The CRT determined that it was plausible that, with certain exceptions, Siegfried Budge did not have free disposition over his share of the Estate's assets that were transferred into the Reich. The CRT also determined that the distribution of the Estate's Swiss-held assets had not been in the best interest of the domestic heirs, including Siegfried Budge, and was the result of extreme pressure by the Reich's authorities, particularly on the domestic heirs and the executors. The Bank knew or should have known that the transfer of assets from Switzerland into the Reich would be made into blocked accounts under the control of the *Devisenstelle*, and would result in eventual confiscation by the Nazis. The CRT noted that the Bank was fully aware that at least some of the heirs resided or were located within the Reich, and were subject to Nazi persecution.

Siegfried's total share (11 percent) of the distributions made from the Swiss-held assets in 1939-1940 amounted to RM 276,468.11 (equivalent to US$ 110,897.76), of which RM 264,163.31 was transferred into the Reich. Siegfried had no disposition over the account into which the funds were transferred, as it was secured by order of the *Devisenstelle*. From the amount transferred into the Reich, the CRT deducted: 1) RM 2,903.97 in pre-assigned funds to a creditor, *Hallgarten & Co.*, in New York; 2) RM 21,494.71 in releases from Siegfried's blocked account at *M. M. Warburg* for his personal use; 3) RM 134,306.05 for Siegfried's share of German estate tax payments attributed to the Swiss-held assets transferred into the Reich; and 4) RM 42,405.52 representing the Swiss share of restitution received for financial assets and securities in the post-War period. Accordingly, the remainder of the amount eligible for an award, after taking these deductions, was RM 63,053.06, which translated to SF 111,598.33. The CRT multiplied that amount by a factor of 12.5 to obtain the current value of the account, for an award amount of SF 1,394,979.18.

The CRT concluded that the claimants, who were heirs of Siegfried Budge, were not eligible to expand the scope of their claim to Siegfried Budge's assets to include additional claimants (*i.e.*, the heirs of Emma Budge's other named heirs) and additional account owners (*i.e.*, Emma Budge's other named heirs). The CRT explained that: 1) such an attempt was tantamount to submitting a late claim, which, after multiple extensions of the filing deadline, no longer was permitted by the Court; 2) many of Emma Budge's heirs other than Siegfried resided outside the Reich, and had received their assets upon distribution of the Estate; 3) many, if not all, of the other heirs had received restitution after the Second World War; and 4) the terms of the Will provided that Siegfried Budge was to receive only 11% of the Estate.

The claimants appealed, alleging that 1) the CRT did not properly calculate the value of assets that originated from the Swiss-held assets of the Estate, and which were restituted after the Second World War to the heirs of Siegfried Budge; 2) the CRT did not properly calculate the estate tax payments made by the Estate to the Nazi authorities; and 3) the CRT did not properly consider the claimants' entitlement to the assets of other heirs of Emma Budge.

The Court, on appeal, addressed and resolved the "three main arguments" that the Budge appellants had raised.[168] The first argument was that the CRT "did not properly calculate the value of assets that originated from the Swiss-held assets of the Estate of Emma Budge, and which were restituted after the War to the heirs of Siegfried Budge. The CRT decision had valued the restitution amount in *Reichsmark*, calculated the corresponding value in Swiss Francs, and deducted that amount from the 1945 value of the award amount. The claimants argued that the restitution deduction should have been based on the currency used and received after the War, *deutschmarks*, which would have resulted in less of a deduction on the basis of the restitution received."[169] After consulting with CRT Special Masters Junz and Bradfield, the Court had determined that "the claimants' argument is correct." After recalculating the restitution deduction, the claimants were entitled to an additional SF 833,354.25.[170]

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168 *See* Memorandum & Order Terminating Appeals in *In re the Assets of Siegfried Budge*, February 14, 2013 (*In re Holocaust Victim Assets Litig.*), 2013 WL 638613 (E.D.N.Y. Feb. 14, 2013).

169 2013 WL 638613, *1.

170 *Id.*

Second, the Court determined that although the appellants contended that the CRT had not used the proper currency in deducting the estate tax payment from the award, the issue was not whether the currency was appropriate, but whether the deduction itself was correct. "An estate tax is the charge that a government imposes as a transaction tax allowing the transfer of assets from one generation to the next. In this case, however, the estate tax was not imposed as a transaction tax on transfer of assets from one generation to the next, but, rather, was imposed on the forced and coerced transfer of assets from one generation to the confiscating government. Under these circumstances, there is no issue as the currency to be used for calculating the deduction, as there should have been no deduction." The appellants accordingly were entitled to another adjustment of SF 2,971,372.79.[171]

With respect to the third argument, the Court recapped the bases for the CRT determination that the heirs were entitled only to the assets of Siegfried Budge, and noted that the appellants' challenge on this point was not persuasive. However, it also was "not frivolous." Therefore, the Court agreed to approve an "off-the-record discussion" between "counsel for the claimants and lead counsel for the beneficiaries of the Settlement Fund," resulting in a total additional award of $4.6 million. Since the Budge dispute was the last pending element of the CRT claims program, that settlement "conclude[d] the CRT process; free[d] significant sums for immediate distribution to other class members; and avoid[ed] unnecessary additional expense and protracted delay in distributing the remaining settlement fund assets to class members."[172] Shortly after issuing the *Budge* decision, thus terminating the CRT process, the Court allocated the remaining residual funds, primarily to Looted Assets Class programs benefiting the neediest survivors, with some additional funds allocated to the Victim List Project on behalf of all class members.[173]

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171 *Id.*

172 *Id.*, at *2.

173 *See In re Holocaust Victim Assets Litigation*, 2013 WL 2152667 (E.D.N.Y. May 13, 2013) (allocating $50 million in residual funds to needy victims using the same *cy pres* mechanisms set forth under the Distribution Plan); *In re Holocaust Victim Assets Litigation*, 2013 WL 2153101 (E.D.N.Y. May 13, 2013) (allocating $4.5 million in remaining residual funds to the Victim List Project, paralleling prior 45% increases to other class members).

THE LOOTED ASSETS CLASS *CY PRES* PROGRAM

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I. INTRODUCTION

The distribution process for the Looted Assets Class provided for the neediest class members to benefit from humanitarian aid programs providing food, medicine, shelter and similar assistance. The Looted Assets Class potentially included millions of people, since all Holocaust victims and their heirs had been looted. The vast size of the class, coupled with the impossibility of determining whether specific property was transacted through a Swiss entity, rendered an individualized claims process impracticable. Instead, the Court agreed with the Special Masters' recommendation of a "*cy pres*" (the "next best thing") remedy targeting the neediest Holocaust survivors.

With its allocation of more than $256 million to the Looted Assets Class, the Court has helped to provide basic assistance to more than 237,400 of the neediest Nazi victims around the world. Those elderly survivors include:

- Tanya and Yakov D. of Illischevsk, Ukraine, both 74 years old when the Court authorized funding in 2001. The couple, who were Jewish, had met in the Obodovka concentration camp near Odessa and escaped together. They were hidden until the end of the war. Tanya worked as a nurse's assistant and Yakov was a shoemaker. They lived in a government-issued, third floor, one-room apartment. The apartment was rent free, but the family was required to pay for utilities, which at that time could cost over $50 a season. Their income consisted of Yakov's monthly pension (then $16), Tanya's (then $18) and an extra $6 a month they received for being ghetto survivors. Before Tanya was hospitalized for high blood pressure, diabetes, heart disease and a rare form of backbone disease, she had not left her apartment for several years. As a result of programs in the former Soviet Union supported by Court funding, a volunteer helped the couple with household tasks and grocery shopping. They also received monthly food packages. Yakov and Tanya also received prescription drugs, medical consultations, warm blankets and sweaters. They explained that before these programs provided assistance, "all of our pension was spent on medicines. Now our pension is spent on food and utilities."[1]
- Rosa, who was Jewish, was born in 1914 in Kiev. "When the Nazis approached Kiev in 1941, she escaped on foot with her husband. In a forest outside of Kiev she was caught by the Nazis and [sent to a] concentration camp. She escaped yet again and was hidden in the forest by a non-Jewish family until the end of the war. At 89, Rosa

[1] *See* American Jewish Joint Distribution Committee, Report on the First Eighteen Months of Welfare Programs in the Former Soviet Union (June 28, 2001 - December 31, 2002), App'x VII ("Client Case Stories") (July 31, 2003).

survives on a monthly pension of $28. She is bedridden and suffers from diabetes and heart disease. Rosa receives occasional food packages, medicine for some of her medical conditions, winter relief and sporadic home care …."[2]

- "Mr. S." was an 80-year-old Jewish concentration camp survivor. He had no immediate family. Although frail, Mr. S. maintained an independent life style. However, he fell in the street and injured his back. In addition to having difficulty walking, he became extremely nervous about the possibility of falling again. Without any family to assist him, he quickly became homebound, and had trouble purchasing basic grocery items and cleaning his apartment. Using funding from programs funded by the Court, the local Jewish social service hired a part-time companion who assisted him in the home and helped Mr. S. shop until he recovered sufficiently to feel comfortable to walk unaided. Thus, Mr. S. was able to maintain his independence, continuing to live at home.[3]
- Johanna, a Roma survivor living just south of Moldova in Romania, "came to pick up her [Court-funded] assistance package in the village square, more of a sloping open space and livestock cross over. She showed off the winter boots she had received from the project … which had replaced rags with which even in deep snow some Roma women still wrapped their feet." The director supervising programs for Roma and other non-Jewish victims in this region "had to insist on carrying Johanna's package for her. She said and may have been right, that she was the stronger of the two. We hiked to her cabin, a collapsing thatch roofed structure made of mud and straw lit by cooking oil received thanks to the settlement." The program director "left Johanna with her kind hospitality, her profound thanks and her gentle blessing…, feeling that" he had "just met the poorest European" he had "yet encountered" in his "21 year career of international humanitarian assistance."[4]

Tanya and Yakov, Mr. S., and Johanna are but four of the more than 237,400 elderly, needy Holocaust survivors who have received aid through the Looted Assets Class programs. This assistance has come in a variety of forms: a side of beef delivered to Roma victims in remote Eastern European villages; a hot meal trucked in to a shtetl in Ukraine; an emergency grant to a survivor in New York to pay for dental work not covered by health insurance.

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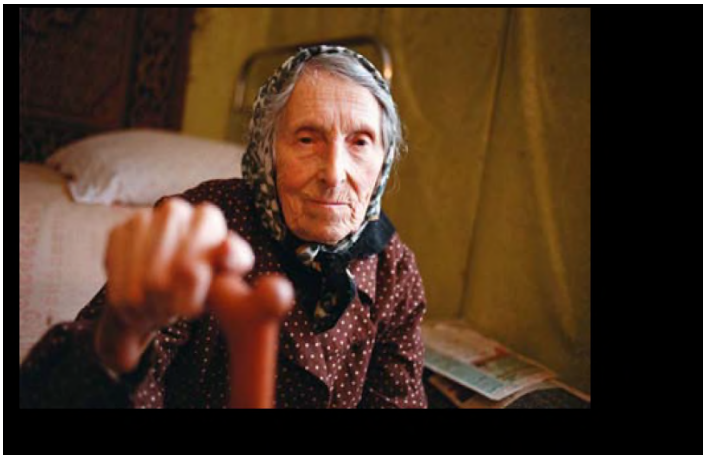
[2] Transcript of Civil Cause for Hearing Before the Honorable Edward R. Korman, United States Chief District Judge, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 29, 2004) ("Residual Funds Hearing Transcript"), Statement of CEO of the American Jewish Joint Distribution Committee ("JDC"), at 46.

[3] *See* Conference on Jewish Material Claims Against Germany, Inc., ("Claims Conference"), *Proposal for the First Six Months of Operations*, at 1 (Feb. 27, 2001).

[4] Apr. 29, 2004 Hearing Transcript, Statement of Director of Humanitarian Assistance Programme ("HSP") funded partly by the Court and Deputy Director of Compensation Programmes, International Organization for Migration ("IOM"), at 65.

Survivor; recipient of Court-funded monthly food packages, meals-on-wheels, homecare, medical and winter relief. Tbilisi, Georgia. Photo courtesy of the JDC and James Nubile.



Homebound survivor; recipient of Court-funded food packages and medicine. Nizhny Novgorod, Russia. Photo courtesy of the JDC and James Nubile.

Jehovah's Witness survivor; recipient of Court-funded assistance. Briceni district, Moldova, Apr. 2004. Photo courtesy of the IOM and Stephen Chambers.

Roma man with IOM aid worker; recipient of Court-funded assistance. Fejér county, Hungary, May 2003. Photo courtesy of the IOM and Delbert Field.

An important legacy of the Swiss Banks settlement is that a court in New York has been able to touch the lives of so many impoverished survivors, often living tens of thousands of miles away from the courthouse. The programs that reached these victims were not necessarily envisioned under the Settlement Agreement, and were certainly not specified as part of the settlement of Looted Assets claims. To the contrary, the Looted Assets Class had posed

particularly difficult allocation and distribution issues, and required a unique solution. As the Court has explained:

> There were several original purposes of this lawsuit. For members of the Deposited Assets Class, it was to recover property once held in Swiss banks that was either improperly transferred to the Nazis or never paid to the account holder. For members of the Refugee Class, it was to achieve some degree of restitution for being refused entry to Switzerland or otherwise harmed by Swiss immigration policies during the Nazi era. For members of the Slave Labor Classes, it was to achieve some degree of restitution for being forced to work for companies that were using Swiss financial institutions to flourish. And for members of the Looted Assets Class, it was to recover the value of assets that were looted by the Nazis and passed through Swiss banks. The original purposes of the first four classes have been roughly achieved, albeit with limited sums of money. But … trying to precisely fulfill the original purpose in connection with the Looted Assets Class was impracticable.
>
> I decided that distributing funds to the neediest survivors of Nazi persecution would be [the] "next best" distribution solution for the Looted Assets Class. Such a distribution is "as near as possible" to the original purpose of the Looted Assets Class as a court with limited funds can achieve. While the strategy I employed will by no means provide restitution to every member of the plaintiff class, it provides meaningful restitution to those "most in need of assistance." *See In re Agent Orange Product Liability Litig.*, 818 F.2d 145, 158 (2d Cir. 1987).[5]

The Settlement Agreement did not call for any special consideration of Nazi victims in dire economic straits. No reference was made to the urgent need among many survivors for the most basic of services: food, medicine, heat. It was only the Court's firm insistence upon providing *meaningful* compensation that transformed what could have been a token distribution of perhaps a few dollars each to everyone who claimed to have been looted, into a targeted humanitarian aid program — a "*cy pres*" or "next best" remedy[6] — which likely sustained many lives for more than a decade.

The allocation mechanism recommended by the Special Masters and adopted by the Court represented an attempt to salvage some portion of the Settlement Fund for those who

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[5] *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407, 416 (E.D.N.Y. 2004).

[6] "Cy pres" is a "remedy for relief through a class-wide benefit program where it is difficult or impractical to provide direct monetary compensation to individual class members; also referred to as the 'next best thing.'" *See Glossary: In re Holocaust Victim Assets Litigation*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 6, http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("Cy Pres").

otherwise would have had no recourse against, and no recompense from, the defendant Swiss Banks. These survivors could not have proven a clear link between their personal stolen items, and Swiss financial institutions. "The settlement's 'looted assets' class, not well understood by some and exploited by others, created additional problems [beyond those associated with the banks' destruction of documents]. In theory, it would have required a mechanism to determine whether property, from among more than a million potential claimants, had been looted and whether it passed through Switzerland. Such a mechanism would have been prohibitively expensive and an administrative nightmare."[7]

The "alternative remedy" devised

> a system to benefit the neediest survivors who, in this specific instance, wouldn't have been eligible for payments under the Swiss banks settlement. The humanitarian aspects were not negotiated under the settlement; the original parties to the suit did not advocate for the interests of needy survivors. Nonetheless, the judge was within his judicial discretion when the settlement provided $205 million [now more than $256 million] to help some 231,000 [now over 237,400] needy survivors, primarily in the former Soviet Union, obtain food, medical care, winter relief and emergency grants.[8]

The determination to use some portion of the Settlement Fund to alleviate the plight of the neediest of the survivors, the majority of whom lived (and still live) in Central and Eastern Europe, derived in part from an acute awareness of the fact that so many of these victims had not previously received any form of Holocaust compensation. Thus, as Ernst Katzenstein, a German-born Jewish lawyer who fled to Palestine after Hitler's rise to power, and who "returned to West Germany as the Claims Conference's representative and laboured for decades as a draftsman, legal monitor and relentless lobbyist for German legislation to expand compensation for Nazi victims," pointed out in the early 1980s:

> "All I had suffered when the Nazis came to power was the ousting from the German Bar on May 1, 1933, whereupon I emigrated to Palestine. That was all the persecution I personally suffered, and for this I draw a BEG annuity[9] for

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7 Marilyn Henry, *Metro Views: Bank accounts, bank accounts*, JERUSALEM POST, June 27, 2010.

8 *Id.*

9 In 1953, following negotiations with the Claims Conference, the Federal Republic of Germany enacted its first Holocaust compensation statutes, collectively known as the "BEG" (*Bundesentschädigungsgesetze*). The program was administered by German authorities. It provided for compensation for wrongful death, disability,

> damage to profession, which now amounts to DM 2,200 — per month," Katzenstein wrote after a 1983 visit with some Eastern European survivors living in Israel. They had been in concentration camps, or were driven underground, or had lived under the shadow of the threat of violent death. Each one, he wrote, "was totally excluded from any BEG benefits, needy and in poor health as result [sic] of the persecution suffered, and all he could hope for was a one-time *ex gratia* payment of DM 5,000."[10]

As limited as this minimal compensation from Germany was for survivors who had managed to leave Eastern Europe for Israel, the difficulties were magnified for those survivors who could not leave for Israel or other Western nations, and who for decades were ineligible for Holocaust compensation.

In addition to the funds allocated to Jewish class members, most of whom lived and continue to reside in the former Soviet Union ("FSU"), the Looted Assets Class humanitarian assistance program reached over 75,000 other victims who had long been neglected by most prior Holocaust compensation programs: over 71,000 elderly and desperately needy Roma survivors, as well as needy Jehovah's Witness, homosexual and disabled survivors.

Professor Michael Bazyler, who has taught and written extensively on the Holocaust litigation that began in the late 1990s, has characterized these programs as "found money," and an "unexpected gift:"

> There is no legal basis for any of the Swiss banks funds to be distributed to anyone other than those in the dormant account class. The looting case cannot be proven in a court of law, and there is no practical basis by which the claims process can be set up. Nevertheless, [over $256] million has already been distributed to that class, meaning to needy survivors worldwide, with 75% going to the FSU.[11]

For other victims, as well as heirs, who were not necessarily among the neediest, but who could claim membership in the Looted Assets Class, the Court established a "Victim List Project." The program was designed to encourage and help organize the compilation and greater

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injury to health, incarceration, and damage to professional and economic standing, and to a more limited extent, property loss. *See* Distribution Plan, Vol. II, Annex E ("Holocaust Compensation"), at E-16 to -40.

[10] MARILYN HENRY, CONFRONTING THE PERPETRATORS: A HISTORY OF THE CLAIMS CONFERENCE xi, 64 (Vallentine Mitchell 2007).

[11] Michael J. Bazyler, *Unfinished Justice: A Conversation with Michael Bazyler*, REFORM JUDAISM MAG., Spring 2008, at 79, 83.

accessibility worldwide of the names of individuals whom the Settlement Agreement was intended to benefit: Jewish, Romani, Jehovah's Witness, homosexual and disabled victims or targets of Nazi persecution, those who survived as well as those who perished.[12]

The programs providing assistance to the neediest survivors of the Holocaust were highly successful, and also faced some legal challenges. Some of the following issues arose during the distribution process:

- the *cy pres* remedy was claimed to be unlawful; it was stated that the Court should distribute individual *pro rata* payments (whatever the amount) to every Looted Assets claimant;
- assuming a *cy pres* remedy was lawful, it was stated that the Court was not permitted to assess need on a global scale but, rather, needed to allocate funds in proportion to the percentage of survivors living in a given region (*e.g.*, U.S., Israel, FSU, and elsewhere);
- the definition of "survivor" was reviewed, with some saying that it had to be limited to those who were in concentration camps or ghettos (although other types of victims, such as those who fled ahead of the Nazis were looted too, even if not incarcerated); and
- it was initially believed that only a limited number of needy Roma, disabled or homosexual survivors would be located, thus leading some to state that projects for Holocaust education and memory were of particular importance.

These issues ultimately reached the District Court, the Second Circuit Court of Appeals, and in one instance, the United States Supreme Court. The Looted Assets Class program was upheld by each court, and it provided many needy survivors around the world with meaningful assistance.

[12] The Victim List Project is discussed elsewhere in this Final Report.

II. THE LOOTED ASSETS CLASS PROGRAM: GOALS AND MECHANISMS

A. The *Cy Pres* Remedy for the Looted Assets Class

The difficulties in devising a remedy for Holocaust survivors who had been looted were many.[13] As described by the Court, the class was potentially vast.

> The Looted Assets Class is incredibly large. It consists of:
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> Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Looted Assets or Cloaked Assets or any effort to recover Looted Assets or Cloaked Assets.
>
> Settlement Agreement, Section 8.2(b). As the Special Master correctly reasoned, "[t]here is scarcely a victim of the Nazis who was not looted, and on nearly an incomprehensible scale."[14]

Nothing was overlooked in the vast effort to strip Nazi victims of all they owned. "'The robbery by the Nazis of the Jewish population in Germany, Austria, and Czechoslovakia, and in the countries occupied by the German army during World War II, is unparalleled in history. Finally, the principle was simply to take from the Jews every scrap of material possessions and the means of subsistence; and it was executed with German thoroughness and with a macabre show of legality. Stage by stage their movable and immovable property was confiscated, and they were excluded from all professional and economic life, used as slave labour in the war till they dropped, and then done to death. When the extermination culminated in the gas chambers of Auschwitz, the last bits of clothing, the dentures, and the hair of the victims was duly collected and listed.'"[15]

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[13] *See In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 95 (E.D.N.Y. 2004), *aff'd*, 424 F.3d 132 (2d Cir. 2005), *cert. denied*, 126 S. Ct. 2891 (2006).

[14] *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d at 95 (citing Distribution Plan, Vol. I, at 111). *See also Whiteman v. Dorotheum GmbH & Co. KG*, 431 F. 3d 57, 59 (2d Cir. 2005) (citing *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d at 95).

[15] *In re Holocaust Victim Assets Litig.*, 302 F. Supp.2d at 95, citing Special Masters' Distribution Plan, Vol. I, at 111-112 (quoting Norman Bentwich, *Nazi Spoliation and German Restitution: The Work of the United Restitution Office*, 10 LEO BAECK INST. Y.B. 204 (1965)).

Historian Martin Dean has observed that the "'removal of the Jews from economic life required the tacit cooperation of many strata of society and directly involved bank clerks, realtors, auctioneers, lawyers, and stockbrokers, as well as policemen and tax officials. German housewives and refugees, second-hand booksellers, Bulgarian or Belorussian villagers, and the numerous victims of Allied bombing all competed for their share of the spoils at the bottom of the food chain. Public auctions of former Jewish property in countries such as Norway or Belorussia, as well as the Reich, left little to the imagination concerning the origins of the items.'"[16]

Many participated, and very little was missed. "Gold and jewelry, valuables and works of art, rugs and furniture, contents of apartments and clothing, bank and safe deposits, securities and foreign currency and deeds to homes, assets and factories were all amassed in the coffers of the Third Reich through well-formulated administrative channels. Some disappeared en route into the pockets of the murderers themselves. And all of this was carried out under [SS economic administration head Oswald] Pohl's unequivocal order to transfer all Jewish property to the ownership of the Third Reich."[17]

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[16] Dan Stone, *Robbing the Jews: The Confiscation of Jewish Property in the Holocaust, 1933-1945*, 12 J. GENOCIDE RESEARCH 287, 288 (2010) (reviewing MARTIN DEAN, ROBBING THE JEWS: THE CONFISCATION OF JEWISH PROPERTY IN THE HOLOCAUST, 1933-1945 (2008)) ("Dean reveals the shockingly large extent of the cooperation across Europe with the expropriation, and hence murder, of the Jews, which went well beyond Goering's well-known taste for looted art) (quoting DEAN at 359).

Another reviewer of Martin Dean's work observed: "Martin Dean's study undoubtedly sets a new standard of scholarship in the search for knowledge about the Nazis' attitude toward Jewish property not only in the Reich and in Austria until 1939, but also and especially during the war and the Final Solution period. After having read his book, one can hardly believe that the academic corpus has mostly failed to look at the parallels and causalities before and after 1939, and at the economic factors behind radicalization after 1939. Basing himself on a broad archival foundation, Dean can prove that the seizure of Jewish property and the growing radicalization of the entire confiscation policy formed, among others, an important factor and precondition of the Holocaust that was everywhere and was always practically preceded and/or accompanied by *Aktionen* focused on Jewish property. The vision of obtaining Jewish property was a key driving force for the beneficiaries and collaborators, as well as for the perpetrators themselves to want to play an active part in the murder that made the Holocaust a Europe-wide crime. This is true not only for individuals, but also for governments that welcomed the introduction of German measures or laws (Slovakia, Romania, Hungary, France) and needed no convincing by the Germans to embrace the Nazi way of doing things." Ingo Loose, *Plunder by Decree*, 38 YAD VASHEM STUD., no. 2, 2010, at 221, 231-32 (reviewing MARTIN DEAN, ROBBING THE JEWS: THE CONFISCATION OF JEWISH PROPERTY IN THE HOLOCAUST, 1933-1945 (2008)).

[17] RAUL TEITELBAUM & MOSHE SANBAR, HOLOCAUST GOLD - FROM THE VICTIMS TO SWITZERLAND: TRAILS OF THE NAZI PLUNDER 38 (Amy Teibel trans., Moreshet 2001).

However, with respect to Switzerland in particular – the subject of the class action claims – it was not clear that specific items could be traced to or through that nation. It is "well accepted by historians, including those representing Switzerland, that a primary purpose of the Nazi plunder was to transform loot (especially, but not only gold) into foreign currency by marketing these items in neutral nations, including Switzerland… With only limited exceptions, however, the current historical record simply does not permit precise determinations even as to the material losses in total, much less the nature and value of the loot traceable to Switzerland or Swiss entities."[18]

Therefore, the Court agreed with the Special Masters' recommendation to presume that all Nazi victims suffered looting, with or without proof of loss or a demonstrable connection to Switzerland.

> To prevent the expenditure of incredible sums on administration, the Special Master recommended that for allocation purposes, I assume that all survivors of the Holocaust and their heirs were valid members of this class, even if they could not prove an injury directly tied to a Swiss entity. I agreed.[19]

Having accepted this proposition, the Court then confronted

> two obvious and unsatisfactory possibilities for how to govern the distribution of money to this enormous class. I could have used a claims resolution facility to determine the validity and value of claims on a case-by-case basis, or I could have ordered a *pro rata* distribution to every member of the class. The first option, given the complete lack of adequate records, would have resulted in an "unwieldy and enormously expensive apparatus to adjudicate hundreds of thousands of claims, for losses which can barely be measured and hardly be documented, and whose connection to Switzerland, or a Swiss entity, if ever it existed, probably no longer can be proven." [Distribution Plan, Vol. I,] at 114-15. The second option …was equally problematic. [It has been stated] that there should be a *pro rata* distribution to the approximately 500,000 Looted Assets Class members who filled out "detailed claim forms." …. These "detailed claim forms" were non-binding questionnaires that explicitly stated that an individual could later make a claim without having filled out such a questionnaire. The class, therefore, is not

[18] 302 F. Supp. 2d at 95.

[19] *Id.*

> limited to these 500,000 individuals. Rather, for allocation purposes, the class includes all those who were victims of the Holocaust *and their heirs*.[20]

The *pro rata* proposal was not workable.

> A *pro rata* distribution would have resulted in the payment of literally pennies to each of the millions of individuals who would fall into this class. Such a distribution scheme is not uncommon in class action cases where members of the class get pennies or coupons, the cumulative total of which is used to justify awarding millions of dollars in legal fees. But such a plan is wholly unsatisfactory here because it promises almost no benefit to members of the class….[21]

However, there was "a more reasonable alternative" to establishing a claims resolution facility to review each claim on a case-by-case basis, or dividing a portion of the settlement *pro rata* among millions of claimants (including heirs). Instead, the Court accepted the Special Masters' recommendations, first, to exclude heirs from participation in any Looted Assets Class programs; and second, "to adopt a *cy pres* remedy targeting the neediest survivors in the Looted Assets Class."[22]

> [T]hese individuals "perhaps would be less in need today had their assets not been looted and their lives nearly destroyed" during the Nazi era. [Distribution Plan, Vol. I,] at 117. I agreed that using the funds to provide relief to these neediest survivors over the course of ten years would be the way to most benefit the class as a whole.[23]

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[20] *Id.* at 96 (emphasis in original).

[21] *Id.*

[22] *Id.*

[23] *Id.* The Distribution Plan further observed that there was "historic precedent for this recommendation. 'Bulk' settlement of Holocaust-related compensation claims, with payments from the resulting settlement funds directed primarily to the needy, dates back to the immediate post-War period, when successor organizations in the United States, British and French military zones utilized the proceeds of sales of apparently heirless or unclaimed properties to resettle and rehabilitate survivors, including the thousands remaining in 'displaced persons' camps." Distribution Plan, Vol. I, at 116-17 n.344. *See also* Distribution Plan, Vol. I, Annex D ("Heirs") (describing "bulk settlement" with the United States arising from unclaimed property apparently belonging to Nazi victims; the resulting fund was disbursed by the Jewish Restitution Successor Organization to programs serving needy survivors); Vol. II, Annex E ("Holocaust Compensation") (discussing use of sales from unclaimed and heirless property within the former East Germany primarily to fund programs providing food, medical and winter relief to needy survivors in the former Soviet Union, Israel, North America and elsewhere).

Moreover, as early as 1945, the United States had begun to formulate a reparations policy that anticipated that the Allies would use the assets Germany had looted to assist needy survivors:

> "'Relief distributed from the fund so established should be made available primarily on the basis of need and of opportunities for rehabilitation rather than on that of size of loss. The administering

The mechanism for distributing the funds was designed "to reduce administrative costs." The assistance would be given to survivors by way of designated organizations.

> [They] were already providing relief to survivor communities and could quickly provide aid. I reserved the right to grant other *cy pres* remedies as worthwhile proposals [were] presented, but my principal decision was consistent with Second Circuit law. *See In re Agent Orange Product Liability Litig.*, 818 F.2d 145, 158 (2d Cir. 1987) (explicitly authorizing a district court to "give as much help as possible to individuals who, in general, are most in need of assistance" because it is "equitable to limit payments to those with the most severe injuries"). Indeed, the Second Circuit agreed. *See In re Holocaust Victim Assets Litig.*, 14 Fed. Appx. 132 (2d Cir. 2001) [reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005)] (finding that appellants' challenge to my decision to apply the *cy pres* doctrine to the Looted Assets Class "lack[ed] merit").[24]

The Second Circuit agreed with the *cy pres* remedy twice, first in 2001, and again in 2005.[25] The Court of Appeals took note of the very large number of individuals who theoretically could have been eligible for compensation as members of the Looted Assets Class:

> As the Special Master explained [in the Distribution Plan],
>
> The estimate of Jewish survivors of Nazi persecution alone ranges from 832,000 to 960,000, a number increased by the varied estimates of Roma, Jehovah's Witness, disabled and homosexual survivors. Moreover, each of the five classes includes, among others, "heirs," a term undefined by the Settlement Agreement but governed by New York law. New York law does not limit "heirs" to children, spouses or even near relatives. Rather, the definition of "heirs" extends well beyond even great-grandchildren of grandparents - and, moreover, must be determined at the time of the decedent's death. Under this definition, the Special

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> agency should have broad discretion to use the fund in whatever ways it judges will most effectively promote the relief and rehabilitation of persons or groups in the eligible classes.' …. By emphasizing the criterion of 'need' rather than 'size of loss,' [the U.S.] endorsed the concept that the funds be spent on all the Jewish DPs [stateless Displaced Persons] rather than on the surviving remnants of the German Jewish communities."

Ronald Zweig, *Restitution and the Problem of Jewish Displaced Persons in Anglo-American Relations, 1944-1948*, 78 AM. JEWISH HIST. SOC'Y Q. 54, 61 (1988).

[24] 302 F. Supp. 2d at 96-97.

[25] *In re Holocaust Victim Assets Litig.*, 14 Fed. Appx. 132 (2d Cir. 2001), reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005); *In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 140 n. 9 (2d Cir. 2005). *See also* PRINCIPLES OF THE LAW OF AGGREGATE LITIGATION §3.07, at 222 (AM. L. INST. 2010) ("For an example of a court's creative use of cy pres in a complex settlement involving millions of class members, *see In re Holocaust Victim Assets Litig.*, 424 F.3d 132 (2d Cir. 2005) (one of several Second Circuit opinions affirming trial court's use of cy pres to distribute part of $1.25 billion class-action settlement to the neediest victims of Nazi looting).").

> Master believes that heirs of Nazi victims, all apparently class members, easily number in the millions.[26]

The Distribution Plan instead had proposed a *cy pres* remedy, allocating $100 million (and ultimately more than $256 million) of the $1.25 billion settlement for the needy, all presumed to have been looted. Of that sum, 90% was designated for Jewish survivors. The "remaining 10% [was to] be distributed to needy Roma, Jehovah's Witness, disabled, and homosexual survivors." This "90/10 ratio was 'based upon precedent' from previous allocations of recovered assets 'dating back to 1945' and was 'warranted by current demographics … of surviving "Victims or Targets of Nazi Persecution" as defined under the Settlement Agreement.'"[27]

The neediest victims lived in the former Soviet Union and therefore were to receive the largest portion of funds:

> The Jewish survivor community is concentrated primarily in Israel, the former Soviet Union, North America and Europe, with additional concentrations in other regions including Australia, Argentina and elsewhere. Their post-War experiences have been extraordinarily diverse. In most Western nations, Nazi victims generally have benefited from relatively strong economies and "social safety net" programs intended to assist the needy and the ill. Equally significant, Nazi victims in the United States and Israel, as in most Western nations, have been eligible for a wide range of indemnification and restitution programs intended to provide modest to sometimes significant recompense for the material losses suffered at the hands of the Nazis and their accomplices. However, notably absent from most post-Holocaust compensation programs are the victims of Nazi persecution who remain behind what was once the Iron Curtain.

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[26] *In re Holocaust Victim Assets Litig.*, 424 F.3d at 140 n. 9 (quoting Distribution Plan, Vol. I, at 9).

[27] *Id.* at 141 n. 12 (citing Distribution Plan, Vol. I, at 118-19). The Distribution Plan (Vol I, at 118 n. 346) noted that the 90% / 10% division of assets between Jewish and non-Jewish victims, like the decision to recommend the "*cy pres*" remedy, similarly was based upon historical precedent. The Five Power Agreement of 1945 had allocated 90% of non-monetary ("victims") gold, and 95% of heirless assets in Germany, to direct assistance programs for Jewish survivors. The recommended division of funds also had precedent in the Swiss Humanitarian Fund (established in 1997 by Swiss banking authorities "to support persons in need who were persecuted for reasons of their race, religion or political views or for other reasons, or otherwise were victims of the Holocaust/Shoa, as well as to support their descendants in need;" *see* Distribution Plan, Vol. II, Annex K ("Swiss Fund for Needy Victims of the Holocaust/Shoa"), at K-4). Although the benefits conferred by the Swiss Humanitarian Fund were not limited to the five "Victim or Target" groups of the Settlement Agreement but instead included additional non-Jewish survivors, the Fund nevertheless adopted a similar allocation formula. Eighty-eight percent of the Swiss Humanitarian Fund was allocated to Jewish victims, while twelve percent was allocated to non-Jewish victims.

> Because their situation is so dire, their number so great, and their half century of virtual exclusion from compensation programs so inequitable, … of the $90 million designated for the Jewish members of the Looted Assets Class, a substantial sum — 75% ($67.5 million) — should be earmarked for programs assisting destitute, elderly Jewish victims of Nazi persecution in the former Soviet Union…. The remaining 25% ($22.5 million) should be allocated to programs in Israel, North America, Europe and other parts of the world which likewise serve the neediest elderly Nazi victims.[28]

This recommendation, allocating 90% of Looted Assets Class funds to Jewish Holocaust survivors — of which 75% of such funds were designated for programs serving the neediest victims in Central and Eastern Europe — guided the humanitarian aid programs adopted as part of the distribution process.

B. The Rationale for a *Cy Pres* Remedy: The Scope of the Looting

Many of the victims of looting had fled for their lives in advance of the Nazis or lived under occupation. They had been ineligible for most prior compensation programs. Most of those programs had been limited to survivors who spent specified periods of time in concentration camps or ghettos officially recognized under German law, or lived in hiding for a requisite length of time. Nevertheless, as was true for Nazi victims across Europe, Jews in the former Soviet Union who lived in, owned property in, or fled from areas under Nazi occupation lost virtually all of their material possessions to the Third Reich's plunder. In Eastern Europe, this campaign was led by the notorious *Einsatzgruppen*, often assisted by the local population.[29]

Some of the victims in Central and Eastern Europe had served in the Red Army. In contrast to other combatants, Jewish members of the Red Army were treated not as enemy soldiers, but as Jews. As described by Holocaust scholar Raul Hilberg, "the German regulations against Jewish prisoners of war from the western armies were in no way comparable to the drastic measures that were applied to the Jewish prisoners from the Red Army. The only western Jewish prisoners subject to shooting were the emigrants from the Reich, who were shot

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[28] Distribution Plan, Vol. I, at 119-20.

[29] *See generally* Distribution Plan, Vol. II, Annex G ("The Looted Assets Class").

immediately upon ascertainment of their identity…prior to the transfer of the prisoners to the permanent Stalags."[30]

Jewish Soviet prisoner in a prison camp. USSR, Aug. 1941.
Photo courtesy of Yad Vashem and Bundesarchiv.

Regardless of economic status or geographic residence, all Jewish Holocaust victims were subject to looting. Historian Jan Gross has noted that there has been an emphasis in "current legal disputes" concerning "'forced sales' (defined as transactions that would not have taken place had there been no Nazi rule)," particularly concerning the ownership of art, based

[30] RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWS 661-662 (Holmes & Meier 3d ed. 2003); *see also id.* at 346-347 ("On July 16, 1941, barely four weeks after the opening of the eastern campaign, [Head of Reich Security Main Office] Heydrich concluded an agreement with the chief of the General Armed Forces Office [on the treatment of Soviet prisoners of war] …. On the next day, Heydrich alerted his regional machinery to prepare for the selection (*Aussonderung*) of all 'professional revolutionaries,' Red Army political officers, 'fanatical' Communists, and 'all Jews') (citing Operational Order No. 8, July 17, 1941, NO-3414, and "earlier draft referring to 'all Jews' by RSHA IV-A-1, June 28, 1941, PS-78") (*id.* at 347 n.4)); *id.* at 1100-1101 (war crimes defendant claimed that his "order to remove Jews from Soviet prisoner-of-war battalions in his area" was "'entirely superfluous'" because, "to begin with, there were no Jews among these prisoners, for the selection had already taken place in Germany (*i.e.*, the Jewish prisoners had already been shot as they were shuttled through the Reich)"). *See also* Shmuel Krakowski & Yoav Gelber, *Prisoners of War*, *in* 3 ENCYCLOPEDIA OF THE HOLOCAUST 1189 (Israel Gutman ed., MacMillan Publishing 1990) (Jewish soldiers from Western nations "were treated no differently [by Germany] than other POWs from these countries;" by contrast, German policy for Jews serving in the Red Army "was immediate and total annihilation, with no delay"); Yitzhak Arad, *Soviet Jews in the War against Nazi Germany*, 23 YAD VASHEM STUD. 73, 83 (1993) ("Already in the first months of the war Jewish soldiers realized that the Germans fought against them both as soldiers of the Red Army and as Jews;" "if captured they could expect torture and death").

upon the point that a "forced sale was a method of plunder disguised as a legitimate transaction." This principle, however, "would apply to more than the sale of art objects, or, for that matter, businesses and luxurious villas. Poor Jews selling their furniture, bedding, assorted household goods, or winter clothes to Aryan neighbors for pennies had also been plundered. If anything, their losses were more dramatic because they brought on life-threatening pauperization. Simply put, those who availed themselves of the opportunities to acquire Jewish property for less than its real worth because there was Nazi rule, no matter how (un)valuable it was to begin with, partook in the spoliation of European Jewry. This applies not just to governments, museums, galleries, and entrepreneurs, but to millions of ordinary people who fleeced their neighbors."[31]

No corner of Europe was omitted, and no Jew escaped looting. "Wartime plundering of Jews became a continent-wide affair. It took place from the Atlantic Ocean in the west to as far east as German armies reached in their campaign against the USSR, and was accompanied by opportunistic behavior of the local population (despite the locals also being subject to exploitation by Nazi conquerors)."[32]

The following photographs provide just a few examples of the vast geographic reach of this theft. From west to east, whether in France and Germany, Greece and Slovakia, or Lithuania and Ukraine, Nazis rounded up Jews for deportation, taking care to gather all of their victims' belongings and sometimes offering up this treasure for auction to the local populace, before shipping the Jews off to death or slave labor.

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[31] JAN T. GROSS & IRENA GRUDZIŃSKA GROSS, GOLDEN HARVEST: EVENTS AT THE PERIPHERY OF THE HOLOCAUST 41-42 (Oxford University Press 2012).

[32] *Id.* at 78. *See also* Sarah Gensburger, *The Banality of Robbing the Jews*, N.Y. TIMES SUNDAY REV., Nov. 17, 2013, at 8-9 (describing the plunder of France, Belgium and the Netherlands ("Möbel Aktion") and noting that the "supervisors of "Möbel Aktion" reserved "the most appealing items — porcelain, fine linens, fur coats — for themselves and their friends…. Shipments of spoons, dishes, clothes and other items were regularly sent on to Germany [and] distributed to German civilians as compensation for losses caused by the Allied bombings or to support their immigration eastward …. But the systematic looting and redistribution of everyday goods of little value and often in poor condition suggest a motivation that goes well beyond economic calculation in a time of hardship…. because one of its fundamental objectives was to destroy all trace of the Jews' very existence").

FRANCE:

Deportation of Jews from France (deportation of Jews from Marseilles and its environs). Photo courtesy of Yad Vashem.

Clocks looted from Jewish apartments during Möbel-Aktion on display at one of the M-Aktion camps. Photo courtesy of the ERR Project, Database of Art Objects at the Jeu de Paume, http://www.errproject.org/jeudepaume/.[33]

[33] "Beginning in the spring of 1942, art objects were brought to the Jeu de Paume as part of the loot collected by the ERR [Einsatzstab Reichsleiter Rosenberg, a 'direct result of the professed ideological objective of the Reich leadership to 'study' Jewish life and, in particular, Jewish culture'] offshoot, the Möbel-Aktion (M-Aktion; literally "Furniture Operation"), which stripped furnishings from the homes of Jews who had fled or were deported." ERR Project, Database of Art Objects at the Jeu de Paume, https://www.errproject.org/jeudepaume/about/err.php (last visited June 1, 2016).

GERMANY:

Jews preparing to board a deportation train. Hanau, Germany, May 30, 1942. Photo courtesy of Yad Vashem.

Auction of abandoned Jewish property in Hanau, Germany. Photo courtesy of the U.S. Holocaust Memorial Museum and Bildarchiv Preussischer Kulturbesitz.

GREECE:

Jewish deportation victims wait under guard to be transported. Probably Ioannina, Mar. 25, 1944. Photo courtesy of Bundesarchiv, Koblenz and the Topography of Terror, Berlin.

SLOVAKIA:

Deportation of the city's Jews by the Slovakian militia. Stropkov, Slovakia. Photo courtesy of Yad Vashem.

LITHUANIA:

Jews in the Kovno ghetto are boarded onto trucks during a deportation action to Estonia. Photo courtesy of the U.S. Holocaust Memorial Museum and George Kadish/Zvi Kadushin.

A member of the Lithuanian auxiliary police, who has just returned from taking part in the mass execution of the local Jewish population in the Rase Forest, auctions off their personal property in the central market of Utena. Photo courtesy of the U.S. Holocaust Memorial Museum.

UKRAINE:

Jews, near the Dniester River in Yampol, Ukraine, being deported to Transnistria. July 1941. Photo courtesy of the U.S. Holocaust Memorial Museum and Yad Vashem.

Romani victims of the Nazis similarly were stripped of their belongings, and marked for slave labor and death.

Prussian police escort Gypsies who are being deported to Auschwitz-Birkenau. Germany, 1943. Photo courtesy of the U.S. Holocaust Memorial Museum.

Deportation of the Sinti and Roma of Remscheid to Auschwitz. Mar. 1943. Photo courtesy of the Historical Centre, Remscheid and the Topography of Terror, Berlin.

Gypsies and Serbs have been captured by the Ustasa and are marched to deportation from the Jasenovac concentration camp, Yugoslavia. Photo courtesy of the U.S. Holocaust Memorial Museum.

Those in the east were victimized and impoverished just as were those in the west. In the east, however, Nazi victims also suffered through decades of post-War deprivation in a manner generally not experienced by those in Western Europe, and the Court's *cy pres* programs recognized them as the neediest of the victims.

C. The Distribution Mechanism: Non-Governmental Organizations

In all areas in which needy victims lived, wherever possible, already-existing service agencies were engaged to provide material assistance.[34] "One important goal … [was] that the court maximize the resources available for service expenditures by operating projects through existing provider organizations rather than by creating a new organization…. In addition, making grants to existing service providers can help strengthen worthy projects already in place, and can prime the pump for programs that will persist and prove useful after the … Settlement Fund is exhausted."[35] Consistent with this objective, for Jewish class members, the Court accepted the Special Masters' recommendation to appoint the JDC and the Claims Conference to handle day-to-day management. Their monitoring and administration of these programs were subject to the ongoing supervision of the Special Masters and the Court.[36]

The two organizations had extensive experience in the field. Between them, they had more than

> one hundred and fifty years of unmatched expertise in serving the needs of Nazi victims. The Claims Conference was created in 1951 specifically to negotiate with Germany for material recompense on behalf of Jewish Holocaust victims, and has had a singular role in post-Holocaust compensation ever since. Virtually every significant German and Austrian indemnification and restitution program is directly attributable to the Claims Conference's initiative and strenuous

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[34] *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at *4 (E.D.N.Y. Nov. 22, 2000), *aff'd*, 14 Fed. App'x 132, 136 (2d Cir. 2001) (reissued as published opinion, 413 F.3d 183 (2d Cir. 2005)).

[35] *In re Agent Orange Prod. Liab. Litig.*, 689 F. Supp. 1250, 1274 (E.D.N.Y. 1988). *See also* Distribution Plan, Vol. I, Annex B ("Legal Principles Governing Distribution of Class Action Settlements").

[36] As the Distribution Plan observed (at Vol. I, 120-21): "Tellingly, when the Allies negotiated the 1946 Paris Reparations Agreement provisions for the assistance of so-called 'non-repatriable' Nazi victims, the JDC was one of only two non-governmental organizations to which the Allies assigned responsibility for allocating and distributing the 'Jewish' portion of these funds — recognizing, as is true for this Settlement Fund, that it is 'essential that the administering agency should not create a large and expensive field organization, but should operate by allocating the funds under its control to public and private organizations which themselves have facilities for operating in the field.'" *See* "Background" Statement to Paris Reparations Agreement, Article 8, "Allocation of a Reparations Share to Non-Repatriable Victims of German Action," Par. G (declassified by the United States National Archives in 1996, Document A 203486) ("With a fund as small as that provided in the present Agreement, it seemed essential that the administering agency should not create a large and expensive field organization, but should operate by allocating the funds under its control to public and private organizations which themselves have facilities for operating in the field. Thus it should be expected that, as a normal matter, the Inter-Governmental Committee will carry out its responsibilities by inviting such agencies as the Friends Service Committee, the various national Red Cross organizations, and the American Joint Distribution Committee to present programs for the resettlement or rehabilitation of particular classes and numbers of persons, and by allocating funds for the support of approved programs").

negotiations on behalf of hundreds of thousands of Nazi victims. Of equal importance … the Claims Conference has utilized the proceeds of sales of restituted properties in the former East Germany to fund an ever-growing network of social welfare programs designed primarily for the benefit of needy and ill elderly Jewish victims of Nazi persecution. *See* Annex E ("Holocaust Compensation"). The JDC, in existence since 1914, is a humanitarian agency of equal international renown. In addition to resettling Holocaust victims immediately after the War, the JDC paid more than half the costs of maintaining those Jewish refugees who were admitted into Switzerland during World War II, relieving the overwhelmed Swiss Jewish community, which until then was heavily burdened with these expenses (*see* Bergier Refugee Report, at 196);[37] airlifted Ethiopian Jews for resettlement in Israel; and sent medical aid, food and other supplies to victims of the recent conflicts in the Balkans, Jews and non-Jews alike.[38]

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[37] *See* JEAN FRANÇOIS BERGIER, INDEP. COMM'N OF EXPERTS, SWITZERLAND AND REFUGEES IN THE NAZI ERA (1999) ("BERGIER REFUGEE REPORT").

[38] Distribution Plan, Vol. I, at 121-122 n.353, citing, *e.g.*, "American Jewish Joint Distribution Committee," Encyclopaedia Judaica – CD-ROM Edition (Judaica Multimedia (Israel) Ltd.); Yehuda Bauer, *American Jewry and the Holocaust: The American Jewish Joint Distribution Committee, 1939-1945* (Detroit: Wayne State University Press 1981)

The JDC also assisted victims who had been deported to the ghettos. For example, a "short time after Warsaw was occupied by the Germans, the Jewish community organized a social welfare committee known as the Zydowska Samapomoc Spolczna (Jewish Social Self-Help), or the ZSS, in order to provide social assistance to the Jewish residents. Funding for the activities came primarily from the Polish branch of the … American Jewish Joint Distribution Committee …. Because it was an American institution, the Joint was permitted to continue its activities in occupied Poland. During the first half of 1940 the organization's aid activities focused on opening public soup kitchens and distributing food to the needy, on taking in thousands of Jewish refugees and captives who were pouring into Warsaw, and establishing institutions for child care. In addition to funds, the Joint sent food packages and clothing from the USA to Jews in Warsaw, and these were distributed to the ZSS and other organizations, such as the TOZ (Health and Sanitation Organization)." *See* https://www.yadvashem.org/yv/en/exhibitions/warsaw_ghetto/organization.asp.

As to the former Soviet Union, a particularly difficult place to reach:

> For the past fifty years, the JDC has remained the central agency providing relief to Jewish victims of Nazi persecution in Central and Eastern Europe and the former Soviet Union. Recognizing the growing capabilities of local organizations, the JDC's more recent programs in those nations have been undertaken and implemented upon consultation with local communities with the aid of the Claims Conference. In Israel, North America, Western Europe, Australia, South America and other parts of the world, similar social welfare programs have been funded, and their implementation supervised by the Claims Conference, with the direct input of local survivor communities. Significantly, virtually all of the recommended programs for the needy are already functioning, and will incur no start-up costs and relatively low administrative expenses, a crucial concern in light of the Special Master's duty to minimize such deductions from the Settlement Fund.[39]

Nazi victims residing in the former Soviet Union were to be aided through "the network of social service programs known as the '*Heseds*,' created by the JDC in 1992 to assist destitute, elderly Jewish victims of Nazi persecution still living in the former Soviet Union. Beginning in 1995, the Claims Conference began to contribute significantly to the *Hesed* program, in recognition that many, and often nearly all, program participants are Jewish victims of Nazi persecution."[40]

Toddlers in a shelter for abandoned children, from an album of the ZSS. Photo courtesy of Yad Vashem.

[39] Distribution Plan, Vol. I, at 121-122.

[40] *Id.* at 122; *see generally* Distribution Plan, Vol. II, Annex E ("Holocaust Compensation").

The term "Hesed" was drawn from the "Hebrew word meaning 'acts of loving kindness.'" Most of the elderly clients served by the program" had "suffered an absence of *Hesed* for much of their lives."[41]

> These Jews, whose lives were largely and demonstrably ruined directly by the Holocaust, have spent their entire postwar lives at the site of "their" part of the Holocaust. Even now, … every daily move is haunted by the relatives, friends and neighbors who "once walked these streets." …. Their ongoing relationship to the Holocaust is incalculably more profound — and immediate — than their counterparts who started new lives elsewhere a half-century ago. Moreover, the forces of history have cruelly conspired against Holocaust victims who still live in their homeland. After Hitler came the worst of Stalinist communism and, more recently, loss of life savings and a series of economic catastrophes that have rendered the state pension woefully inadequate to a minimally dignified old age.[42]

Yet "[j]ust as their personal needs were increasing with advancing age, many of these Nazi victims watched as their savings were consumed by the hyperinflation that followed the demise of the Soviet Union, their once adequate pensions dramatically declined in value and often arrived months late if at all, and they no longer had resources sufficient to purchase even basic foodstuffs, clothing, medicines or fuel for heat and cooking."[43]

The *Hesed* program attempted to "fill the vacuum by providing elderly Nazi victims with the basic necessities of life through a 'network of independent, community-based welfare centers.' Major *Hesed* program services include food, medical relief, home care and winter assistance. *Hesed* programs include the provision of services in the home, at local community sites, and at multi-service centers in larger cities where the elderly can receive medical and welfare assistance under one roof."[44] By 1999, over half of all funding for the *Hesed* program came from the Claims Conference, targeting services for Nazi victims. The Claims Conference funds were derived from the proceeds of sales of unclaimed property of Nazi victims located in the former East Germany.

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41 Distribution Plan, Vol. I, at 123.

42 *Id.* at 124 (quoting Dovid Katz, *How to Help the Holocaust's Last Victims*, FORWARD, Sept. 24, 1999, at 9).

43 *Id.*

44 *Id.* at 124-125.

Jewish Nazi victims in other parts of the world would be assisted through programs managed and operated by the Claims Conference, largely through pre-existing emergency assistance measures, but in some instances through programs established specifically to achieve the Court's goal of reaching the neediest victims wherever they lived. In Israel, where a substantial number of needy victims resided, the Court, through the Claims Conference, funded projects overseen by the Foundation for the Benefit of Holocaust Victims in Israel, which had been created in 1993. In North America, survivors were aided through established organizations such as Selfhelp Community Services; Guardians of the Sick Alliance; Jewish Family Services; Blue Card; and other local agencies, all under the umbrella of the Claims Conference. In other parts of the world, including Europe, South America and elsewhere, pre-existing programs served the same role to the greatest extent possible.

Another non-governmental organization, the IOM, was tasked with responsibility for locating, and in many instances creating from scratch, social service programs for the benefit of needy Roma survivors. The Court ultimately was able to assist over 71,000 Roma victims, and most of these individuals never had been helped or even located before. The IOM also was charged with reaching needy Jehovah's Witness, homosexual and disabled victims.[45] This

[45] As the Distribution Plan noted of the IOM (at 140 n.385), the IOM had "'participated in virtually every emergency involving large-scale movement of people since it was founded in 1951. IOM offers its services to vulnerable populations in need of evacuation, resettlement or return. While such services are often urgent and vital in the initial phases of an emergency, they may become even more relevant during the critical transition from emergency humanitarian relief, through a period of rehabilitation, to longer-term reconstruction and development efforts.'" IOM Mission Statement, http://www.iom.int/iom/Mandate_and_Structure/mission_statement-eng.htm (visited July 10, 2000). "IOM has provided humanitarian assistance in a variety of arenas: during 1956-57, it resettled 180,000 Hungarian refugees; organized the 1968 emigration of 40,000 Czechoslovakian refugees; resettled refugees in Southeast Asia during the 1970s; repatriated 165,000 people from the Persian Gulf area in 1990 after Kuwait's invasion by Iraq, at the request of the United Nations; provided support and medical aid to displaced populations in Yugoslavia in 1992; and, since 1996, has coordinated aid to Bosnian refugees outside the former Yugoslavia." *Id.* As of 2000, "[a]mong the member states of IOM are Bulgaria, the Czech Republic, France, Germany, Hungary, Israel, Latvia, Lithuania, the Netherlands, Norway, Poland, Romania, Slovakia, Switzerland (where IOM has its headquarters, in Geneva), and the United States. Among the IOM's observer states are Belarus, Bosnia and Herzegovina, the Russian Federation, Ukraine, the United Kingdom and Yugoslavia. A wide variety of international governmental and non-governmental organizations hold observer status with IOM, including numerous United Nations offices, HIAS Inc., Catholic Relief Services and the International Rescue Committee." *Id.*

More recently, the IOM has been at the forefront in assisting refugees caught up in the global migration crisis. *See, e.g.*, Andrea Meller & Marisa Pearl, *First Night in America*, N.Y. TIMES, May 2, 2017, https://www.nytimes.com/2017/05/02/opinion/hotel-usa-refugee-op-doc.html ("The men and women of IOM, identified by their blue vests [at U.S. airports and other sites], guide refugees from their initial travel point, where they also conduct health assessments and cultural competency classes, all the way to their domestic flight

complex assignment mirrored that given to the IOM by the contemporaneous German slave labor compensation program, the Foundation "Remembrance, Responsibility and Future" ("German Foundation"), which had selected the IOM to manage a DM 24 million (then $21 million) program "for social purposes vis-à-vis the … persecuted Sinti and Roma.'"[46]

III. A SUMMARY OF THE *CY PRES* PROGRAMS BENEFITING NEEDY JEWISH, ROMA, JEHOVAH'S WITNESS, HOMOSEXUAL AND DISABLED VICTIMS

A. Court Programs for Needy Jewish Nazi Victims

For 15 years, Looted Assets Class funds helped to provide food, medicines, fuel, warm clothing, home health care and other critical services to the neediest Nazi victims around the world.

1. Assistance to Jewish Nazi Victims in the Former Soviet Union, 2001-2011 (JDC)

The advantages of funding a long-standing program such as the JDC's, which reached into the farthest corners of the former Soviet Union, were apparent from the outset. The following discussion describes the annual accomplishments of the program supported by the Swiss Banks Holocaust Settlement.

a. 2001-2002

In its first proposal following its selection as one of the Settlement Fund's administrative agents (February 28, 2001), the JDC explained that its *Hesed* system encompassed 145 individual Hesed centers and 3 similar systems in the Baltics, serving 220,000 elderly Jews, of

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in the states. The majority of IOM agents we met had come here as refugees themselves and could vividly recall their own first moments in the United States"); James Politi, *Italy struggles to cope with migrant surge*, FIN. TIMES, May 12, 2017, https://www.ft.com/content/3d9ea99a-3706-11e7-bce4-9023f8c0fd2e (quoting IOM spokesperson on significant increase in asylum seekers crossing the Mediterranean Sea into Italy).

[46] Distribution Plan, Vol. I, at 139 (quoting German Foundation Legislation, Section 9(4)4).

whom 120,000 were Nazi victims.[47] "[E]ach year some funds will be used to augment the program by providing additional services to Nazi Victim clients, while other funds may be used to maintain the existing level of care and lengthen the existence of the program for at least the next ten years."[48]

The specific services included medical assistance (consultations with doctors and nurses); filling some 143,000 prescriptions (up from 31,000 in 1997), assisting 25% of Hesed clients; emergency grants under the "SOS Program" (80% of which were used for medical purposes such as prescriptions, operations, prostheses, emergency dental care, hospitalization costs, clothing, fuel, blankets, home appliances, household repairs, utility debts, emergency food supplies, and funerals); and other "general Hesed welfare services … provided to the … almost 120,000 Nazi victims who have currently been identified."[49]

In accordance with the Court's requirement of local consultation, first year allocation decisions were to be "conducted with the Chairs of the Hesed Boards and the umbrella organizations. In subsequent years JDC staff will discuss Settlement allocations with individual Hesed Boards as part of the annual process of preparing the Hesed budget."[50]

As to oversight and monitoring, the JDC had a "comprehensive existing audit program for all funds spent by the Heseds... These auditing procedures will also apply to any Hesed that receives funding under the Swiss Banks settlement." The JDC advised at the outset of the program that it would annually submit a "financial report which indicates utilization of allocated funds per region and remaining balance" to be "audited by external auditors," recommended to be Ernst & Young, which also audited Claims Conference grants for the Hesed program. In addition, the JDC intended to submit "an annual programmatic report which will explain and illustrate the programmatic portions of the budget utilized during the fiscal year. This report will

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47 *JDC Proposal for the First Year of Operations*, at 2 (Feb. 28, 2001) (proposal approved by Order, April 13, 2001; funding approved by Order, June 28, 2001, after Lead Settlement Counsel advised that the "Settlement Date" had been reached; i.e., distribution of the Settlement Fund could proceed as all challenges to the settlement had been withdrawn).

48 *Id.* at 3.

49 *Id.* at 4-6, 8.

50 *Id.* at 6.

be statistical and based on average cost per program and estimated number of clients who benefit from the program."[51]

Eighteen months later, the JDC reported on its use of the first tranche of funds.[52] It advised that it was operating 177 Hesed centers in 13 countries serving 135,000 "double victims" (up 15,000 from the 120,000 reported in February 2001), as well as other elderly Jews. Over two-thirds (67%) of the funds had been allocated to General Welfare (of which 79% was for food packages and hot meals; 16% for home care; and 5% for winter relief); 17% for medical assistance; and 16% for SOS grants.[53]

The "program of services [was] 'bare-bones.' Simply stated, Nazi victims in the FSU receive fewer welfare services than provided to their 'double victim' counterparts in Central and Eastern Europe or to Nazi victims in other parts of the world." Thus, approximately one-quarter of JDC's FSU budget in 2001 and 2002 had come from the Settlement Fund, and that aid reached approximately 30% (40,000) of needy Nazi victims in the Hesed system. A total of 43% of these funds were allocated to the Ukraine, as 42% of all Nazi victims clients lived there at that time (56,443), served by 57 Hesed centers.[54]

Some of the specific programs for needy survivors in the FSU over the first 18 months of operations included the following:

i. <u>Food:</u>

In the first 18 months of the program (June 2001 - December 2002), more than half of the Swiss Banks Settlement funds allocated to survivor assistance programs in the FSU were used for hunger relief: food packages and hot prepared meals in Hesed centers or meals-on-wheels. This was based on the "recognition that the relief of starvation and hunger is the core life sustaining program that Hesed programs must provide and remains the service most needed by the most Nazi victims in the FSU." The food packages were distributed monthly or quarterly

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51 *Id.* at 7.

52 *JDC Report on the First Eighteen Months of Welfare Programs in the Former Soviet Union (June 28, 2001 - December 31, 2002)* (July 31, 2003) ("JDC Eighteen Month Report").

53 *Id.* at 6-8.

54 *Id.* at 8, 10.

and on four holidays (averaging eight 8 times per year). In the first 18 months of operations, 413,774 packages, containing staples such as flour, pasta, rice, grains, beans, sugar, oil and a protein (canned fish), were distributed to 40,352 victims. In addition, 2,241,010 hot meals were served in group centers, and, through meals-on-wheels, 5,558 victims also were reached. These meals were distributed on average once per day and four times per week. Those who received hot meals generally were ineligible for monthly food packages. The JDC noted that many of the program's 14,000 volunteers were themselves needy Nazi victims.[55]

ii. Homecare:

Services provided for needy Nazi victims included assistance with ADLs (activities of daily living) such as eating, bathing, dressing, walking, and going outside. The funds also covered assistance with IADLs (instrumental activities of daily living) such as preparing meals, managing medications, shopping, and light housework. Other assistance included minor household repairs, installation of aids such as handrails, pumping water and chopping firewood for heating. Home care funding was crucial, as "Soviet successor state social welfare services, if they provide homecare at all, do not offer ADL assistance. State-funded IADL assistance is limited to occasional home delivery of groceries and prescriptions." The "institutional care situation is even more perilous. There is virtually no proper institutional care, whether in the form of nursing homes or assisted living facilities."[56]

Even with the infusion of these funds, the number of hours that could be provided for each victim was quite low: on average, four hours per week, for 4,258 Nazi victims. Nevertheless, even these four hours meant "the difference between having a measure of dignity and being soiled, dirty, malnourished or starving, dying in isolated, bereft and forgotten circumstances." Home health care was particularly critical, since 42.5% of Jewish Nazi victims were childless and thus could not depend on family support.[57]

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55 *Id.* at 13-17.

56 *Id.* at 17-19.

57 *Id.* at 12, 19-20.

iii. Winter Relief:

During the first period of program funding, the Swiss Banks Settlement was able to provide 3,688 winter relief kits (once per person per winter), which typically included fuel for heat and cooking, blankets, coats and boots. "There are no government subsidies for heating in any FSU successor state, and sufficient heating can cost $50 for a season — double the average monthly pension." At that time, the service was "unique among the dozens of countries where JDC provides welfare services and shows the extreme conditions and needs in the FSU."[58]

iv. Medical Services:

Swiss Banks Settlement funds supported medical programs for 19,118 Nazi victims in the FSU from June 2001 to December 2002. "[V]irtually all health indicators in the FSU show evidence of continuing decline," with "antiquated, ill equipped and inefficient" state-run hospitals where patients must bring their own supplies such as medicine, bedding and food, and pay for incidentals such as doctors' coats, as well as for major treatments such as for cataracts, Alzheimer's disease, hip fractures, surgeries and dentistry.[59]

v. SOS Grants:

"Were it not for Court funds, the [SOS/emergency grant] program," established in 1999, "would no longer exist." The Swiss Banks Settlement provided 60,359 grants for "those whose personal needs are too expensive for the regular program budget." Services covered by the grants included health essentials (drugs, hearing aids, glasses, emergency dental care, hospitalization costs, adult diapers, bedding, medical tests, transportation, laundry, prostheses, and rehabilitation equipment and treatment); food; utilities; extra winter relief; home repairs; household goods and appliances; and other aid such as "the purchase of pots and pans, sinks, and toilets; dentures; bedpans; adaptation of bathrooms for the elderly; special medical equipment; provision of water jugs to enable a Nazi victim to bring water from a well to her home and

[58] *Id.* at 20.

[59] *Id.* at 21-22.

outhouse; the purchase of a cow to provide milk for a client in a remote rural area; connection of a gas pipeline to heat a home; and payment of rent to prevent eviction."[60]

The JDC provided examples of victims who had been assisted, to that date, under the Looted Assets Class program:

- Klavdia K.: "Klavdia was born in Kiev in 1928. When World War II began, she, her mother and her youngest sister were evacuated to the northern Caucasus town of Kluhori, which was subsequently occupied by the Nazis. Her mother was killed in a bombing raid and she and her sister spent six months in the ghetto. After the liberation of the town by the Soviets they returned to Kiev in 1946. Klavdia married in 1970 and supported her disabled husband by working in a paper factory and bookbinding workshop. As a pensioner, she now receives $28 per month." She did not receive reparations from Germany. The Hesed program provided monthly food packages, medications and winter relief.
- Victor M.: Victor M., a 74-year-old, who was "one of 200 Jews living on the island of Sakhalin, off the far eastern coast of Russia's mainland, benefits from the Court funded program. A survivor of Dachau and Naustaum concentration camps, he became a career officer in the Soviet navy. However, by the time he retired in 1990, his savings were virtually wiped out by rampant inflation and he had no other financial resources besides his monthly pension of $35, of which $27 a month was spent on medications for his heart condition. JDC fieldworkers from the Hesed center in Khabarovsk, 500 miles away, went to Sakhalin and contacted Victor. He currently receives food packages, prescription drugs and fuel."[61]

b. 2003

By 2003, there had been "an almost 13% growth in Nazi victim clients" since 2001, attributable to several factors: more Nazi victims had come forward to request services as they aged; funds from the settlement had enabled Hesed programs to expand in several regions and draw in new clients; and clients had been "resurveyed" and additional individuals were classified as Nazi victims.[62]

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60 *Id.* at 24-26.

61 *Id.* at 11, 23; *see also* examples at page 1-2 *infra*.

62 *Request for Second Period Funding for Welfare Programs in the Former Soviet Union for January 1, 2003 to December 31, 2003* at 4 (Sept. 17, 2003).

The JDC reported on the three major programs funded through Looted Assets Class programs: food relief; medical aid; and emergency grants. As to food, new information indicated that in Russia, "according to data released by the State Statistics Committee at the end of 2002, the cost of the minimum set of foodstuffs … during the third quarter of the year amounted to almost a full two-thirds of the average pension." As to medicine, the JDC had been able to "significantly increase its ability to respond to unmet needs for basic medication. It allows Hesed centers to purchase manufactured drugs, and provide clients with familiar medications. Given the prescription drug costs in the FSU, this service is highly significant."[63]

A total of 128,198 Jewish Nazi victims in the FSU were aided in 2003 through Looted Assets Class program funds. The relief included the following:

- 66,086 victims received 413,990 food packages (approximately 6 times per year), "a minimal service received by only 52% of needy Jewish Nazi [v]ictims in the FSU."
- 11,539 victims received 2,025,455 hot meals (9% of needy Jewish victims served by the Hesed program), approximately 3.4 times per person per week.
- 11,704 (9.1% of victims) received 2,533,085 hours of home care, approximately 4.2 hours per person per week.
- 14,617 (11.4% of victims) received winter relief kits averaging $50 each.
- 63,052 (49% of victims) received medical services averaging approximately $55 per person annually.
- 28,831 SOS grants of $62 each were made.[64]

c. 2004

In 2004, 128,067 Jewish Nazi victims were served through Looted Assets Class funds;[65]

- 93,728 victims received 911,088 food packages (approximately 9.8 times per year), "a minimal service received by 73% of needy Jewish Nazi victims in the FSU." Food packages now included "both the dry-goods packages previously reported to the Court" containing "non-perishables," as well as "Fresh Food Sets" containing dairy

63 *Id.* at 7, 11.

64 *See JDC Third Proposal: Report on 2003 Activity and Request for 2004 Funding for Welfare Programs for Jewish Nazi Victims in the Former Soviet Union* at 3 (Oct. 21, 2004).

65 *JDC Report on 2004 Welfare Program for Jewish Nazi Victims in the Former Soviet Union* (Aug. 4, 2005).

products, eggs, fruit, vegetables and chicken. The latter "food-to-home service was significantly expanded in 2004."

- 7,011 victims received 1,283,553 hot meals, approximately 3.5 times per person per week.
- 9,098 (7% of victims) received 2,014,806 hours of home care, approximately 4.3 hours per person per week.
- 14,195 (13% of victims) received winter relief kits averaging $50 each.
- 50,802 (40% of victims) received medical services averaging approximately $55 per person annually.
- 32,952 SOS grants averaging $62 each were made.[66]

d. 2005

In 2005, 122,996 Jewish Nazi victims in the FSU were served through the Swiss Banks Settlement Fund:[67]

- 83,325 victims received 809,664 food packages (approximately 9.7 times per year), "a minimal service received by 68% of needy Jewish Nazi victims in the FSU."
- 11,657 victims received 1,558,581 hot meals, approximately 2.5 times per person per week.
- 10,151 (8% of victims) received 2,174,856 hours of home care, approximately 4.1 hours per person per week.

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[66] *Id*. at 2-3. Additionally, in 2004, in response to the Court's invitation for proposals on the use of residual funds that might remain from the sum allocated to the Deposited Assets Class, the JDC submitted a detailed analysis of the ongoing needs of Holocaust survivors living in the FSU. *See* Residual Funds Recommendation, Annex D ("Summaries of Proposals"), at D-5 to -12.

[67] *JDC Report on 2005 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 2 (Sept. 8, 2006). The JDC also requested and was granted permission by the Court to make some adjustments to its administrative structure to reflect the infusion (in 2002 and 2003) of significant additional funds into the Looted Assets Class programs. "For the past five years, JDC and its funding partners have covered the administrative costs of the Hesed services provided under the Looted Assets Class. Since the inception of the program, however, the Court subsequently has approved the allocation of additional funds to the Looted Assets Class, resulting in an expansion of additional services as well as additional clients assisted. In order to appropriately distribute these increased resources for the greatest benefit of the Jewish Nazi victims served by the programs, it has become important for the Hesed programs to have additional resources for administrative and staffing costs involved in operating their program. This may include costs associated with the case management that is required to properly assess client needs or with financial or support staff that are necessary to ensure proper accountability of the program. Such Hesed administrative expenses will be taken directly from the Looted Assets Class allocation per Hesed region and not exceed 10% of the regional grant." *See* Letter from JDC Executive Vice President to Hon. Edward R. Korman (May 9, 2006). The Court approved this request by Order of May 10, 2006.

- 27,556 (22% of victims) received winter relief kits averaging $50 each.
- 48,724 (40% of victims) received medical services averaging approximately $55 per person annually.
- 15,089 SOS grants averaging $88 each were made.[68]

e. 2006

In 2006, 117,541 needy Jewish Nazi victims in the FSU were served through Court funds:[69]

- 51,146 victims received 433,794 food packages (approximately 8.5 times per year), at an average cost of $10 per package, "a minimal service received by only 44% of needy Jewish Nazi [v]ictims in the FSU."
- 3,779 victims received 943,048 hot meals, at an average cost of $2.50 per meal, approximately 4.8 times per person per week.
- 8,031 (7% of victims) received 1,831,378 hours of home care, at an average cost of $2.43 per hour, and averaging approximately 4.4 hours per person per week.
- 8,633 (7% of victims) received winter relief kits averaging $28 each.
- 31,449 (27% of victims) received medical services averaging approximately $85 per person annually.
- 11,440 SOS grants averaging $117 each were made.[70]

Although these services were extensive and crucial, there were some reductions in programs in 2006 due to changing survivor needs, with some portion of funding shifted from food programs to home health care services.

> JDC notes for the Court that several factors have come together and resulted in a diminution of services provided in 2006, when compared to services provided in 2005. Inflation in FSU countries, combined with the devaluation of the US Dollar, has resulted in an average overall 10-12% decrease in purchasing power. This had a major impact on homecare services, which along with food programs, is the most essential assistance provided to destitute Jewish Nazi victims, and is

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68 *JDC Report on 2005 Welfare Programs*, at 3.

69 *JDC Report on 2006 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 2 (Oct. 12, 2007).

70 *Id. at* 3.

> only available to them from Hesed. From 2005 to 2006 the cost of homecare workers rose 71%, from an average of $1.42 per hour to $2.43 per hour.
>
> Hesed leadership in the FSU determined that their top priority was to maintain the level of homecare provided to the neediest of Jewish Nazi [v]ictims who depend on this vital service. In order to maintain a comparable level of essential homecare, some funds were shifted from food programs, which remain a critical priority for Hesed clients, and winter relief to homecare. In spite of this shift of funds, in 2006 Hesed programs were still only able to provide an average client needing homecare with just 4.38 hours of assistance per week, usually the only assistance provided at home since there are no other governmental or private homecare services for poor Jewish Nazi [v]ictims in the FSU.[71]

f. 2007

In 2007, a total of 100,105 needy Jewish Nazi victims in the FSU were served through Court funds:[72]

- 33,763 victims received 196,951 food packages (approximately 5.8 times per year), "a minimal service received by 34% of needy Jewish Nazi victims in the FSU."
- 5,400 victims received 707,150 hot meals, approximately 2.5 times per person per week.
- 5,277 (5% of victims) received 1,267,773 hours of home care, approximately 4.6 hours per person per week.
- 6,300 (6% of victims) received winter relief kits averaging $28 each.
- 30,754 (31% of victims) received medical services averaging approximately $85 per person annually.
- 8,439 SOS grants averaging $147 each were made.[73]

g. 2008

The JDC advised the Court that it was piloting a new FSU food card in 2008.

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[71] *Id.* at 3-4.

[72] *JDC Report on 2007 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union* at 2 (Oct. 16, 2008).

[73] *Id.* at 3.

> In 2008, in select cities in the FSU, some Jewish Nazi victim clients who previously received food packages will now instead get a "food card" or "voucher" in lieu of a food package. This debit card or voucher can be used by the client at certain supermarkets, by prior arrangement with the Hesed center, and its use is restricted to the purchase of food items only. This system provides greater dignity to a client — who becomes a consumer of products, rather than a recipient of a food package. An additional benefit is that food cards and vouchers enable clients to purchase grocery items based on their individual dietary needs instead of getting a predetermined standard food package. [74]

In 2008, 3,550 needy Nazi victims received these food cards. In total, 90,592 Jewish Nazi victims were served:[75]

- 11,182 victims received 65,147 food packages (approximately 5.8 times per year), "a minimal service received by 12.3% of needy Jewish Nazi [v]ictims in the FSU."
- 4,516 victims received 454,009 hot meals, approximately 1.9 times per person per week.
- 3,550 victims received "'food cards,' which are a debit card or voucher that can be used at certain supermarkets, by prior arrangement with the Hesed center, for the purchase of food items."
- 3,751 (4.1% of victims) received 831,824 hours of home care, approximately 4.3 hours per person per week.
- 2,880 (3.2% of victims) received winter relief kits averaging $28 each.
- 25,633 (28.3% of victims) received medical services averaging approximately $97 per person annually.
- 7,376 SOS grants averaging $155 each were made.[76]

The JDC also provided a December 2007 report that updated and compared conditions among needy Holocaust victims in the FSU, as contrasted with those victims in other parts of the world. The report, which was prepared by a research team at Brandeis University, was based on available data about FSU Nazi victims, "including information from the database system maintained by the JDC to track clients of its *Hesed* system." The report focused upon the four

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[74] Letter from JDC Executive Vice President, to Hon. Edward R. Korman (Apr. 4, 2008) (requesting approval of the 2008 budget).

[75] *JDC Report on 2008 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 3 (Sept. 23, 2009).

[76] *Id.*

FSU countries "in which the vast majority of Jews, including Nazi victims, live" (Russia, Ukraine, Belarus and Moldova).[77]

The report included the following findings:

- "Nazi victims in the FSU are clearly disadvantaged and in need of a broad range of social welfare and health services in order to survive and live in dignity," with over 114,000 Jewish Nazi victims in the FSU, with high rates of disability and limited mobility, "more likely … to live alone with no family nearby compared to other elderly," a situation worse for female victims.
- "FSU victims live in countries that are struggling to a far greater extent than the European Union, United States, and Israel to provide adequate support systems for their aging populations."
- "Age dependency ratios — a measure of how large the elderly dependent population is in relation to the working age population — rose rapidly in the last decade in FSU countries, an indicator of the increasing burden on social and economic protection systems for the elderly. The relative size of the aged and child populations has shifted toward the elderly in FSU countries, in contrast to the EU, Israel and the United States, where the relative size of the child and elderly populations has remained stable."
- "Compared to the FSU four-country average of $8,608, the per-capita GDP adjusted for purchasing power is over four times higher in the United States, slightly over three times higher in the EU and over two times higher in Israel. Of course the gap is much greater in countries such as Moldova."
- "Per capita health expenditures in 2004, the most recent year that data are available, were not as great as in 2000; nevertheless, after adjusting for purchasing power, the differences between per capita health expenditures in the United States, EU and Israel, and the four FSU countries are very large ($6,096, $2,334 and $1,972 vs. $138 to $583 in the FSU)."
- "Life expectancy is significantly lower — by more than 10 years — in each of the FSU countries (66 to 68) than in the EU (80), Israel (80), or the United States (78)."
- As to the number of Nazi victims per region, "[a]s a source of information on Jewish Nazi victims in the FSU, the *Hesed* database is unparalleled. No other source of systematic data on this specific target population exists, either in the FSU or in any of the other major regions in which victims reside (i.e., the United States, Israel or Europe). The database describes in its entirety the population of those victims who receive services. This information is updated regularly, so that data on the size and characteristics of the client base is current. This is, however, a database of *served*

[77] *See* Elizabeth Tighe, Leonard Saxe and Fern Chertok, "Jewish Elderly Nazi Victims in the Former Soviet Union: Ongoing Needs and Comparison to Conditions in Europe, Israel and the United States" ("2007 Brandeis Report for the JDC").

clients. Thus, nothing can be inferred about those who do not seek assistance through the *Hesed* system."

- "A majority of the victims, both male and female, are relatively 'young,' that is, in the 65-74 age group. This fact indicates a sizable population of victims who will continue to need services as they age."[78]

h. 2009

In 2009, 90,880 needy Jewish survivors in the FSU were served through Court funds:[79]

- 30,908 victims received 142,596 food packages (approximately 4.6 times per year), "a minimal service received by 34% of needy Jewish Nazi [v]ictims in the FSU."
- 2,443 victims received 232,198 hot meals ("only 2.7% of destitute Jewish Nazi [v]ictims in the FSU"), approximately 1.8 times per person per week.
- 21,328 (23.5% of victims) received food cards (accounting for the "commensurate decrease in hot meals provided").
- 3,555 (3.9% of victims) received 831,511 hours of home care, approximately 4.4 hours per person per week.
- 81 received winter relief kits.
- 22,815 (25.1% of victims) received medical services averaging approximately $96 per person annually.
- 8,402 SOS grants averaging $133 each were made.[80]

i. 2010

A total of 84,568 Jewish Nazi victims in the FSU received services funded under the Looted Assets Class programs in 2010:[81]

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78 2007 Brandeis Report for the JDC, at 1-2, 9-11, 14-15.

79 *JDC Report on 2009 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 3 (Sept. 7, 2010).

80 *Id.* at 3-4.

81 *JDC Report on 2010 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 3 (Dec. 22, 2011).

- 25,342 victims received 98,160 food packages (approximately 3.9 times per year), "a minimal service received by 30% of needy Jewish Nazi [v]ictims in the FSU."
- 2,526 victims received 264,607 hot meals ("only 3% of destitute Jewish Nazi [v]ictims in the FSU"), approximately twice per person per week.
- 19,287 (23% of victims) received food cards.
- 1,666 (2% of victims) received 499,332 hours of home care, approximately 5.7 hours per person per week. "In 2010 additional funds, primarily from the German Government (via, and as a result of, Claims Conference negotiations) were available to be used specifically for homecare and that accounts for the decrease in clients who received their homecare from Settlement funds."
- 4,158 (5% of victims) received winter relief kits.
- 22,815 (25.1% of victims) received medical services averaging approximately $128 per person annually.
- 7,782 SOS grants averaging $144 each were made.[82]

j. Assessment of Needs in 2013

Under the original parameters of the Distribution Plan, which provided for ten years of funding beginning in 2001, the *cy pres* programs were to terminate in 2011. However, in 2013, the Special Masters advised the Court that it appeared that approximately $50 million in residual funds would remain. Based upon the Court's strong preference to allocate any such funds to needy survivors, the Special Masters obtained updated assessments of needs from the three administrative agencies charged with overseeing the Looted Assets Class programs.

The JDC advised that:

- "A review of homecare services to Hesed clients in the FSU over the last several years shows a steady increase in the number of clients eligible for homecare and the number of hours of homecare provided...Currently, less than 25% of Hesed clients receive homecare services, and for an average of only about 49 hours a month."
- "[T]he number of clients who are homebound, bedridden, or suffering from Alzheimer's/dementia is increasing each year;…between 2008 and 2012, this neediest group increased in size by over 25%."

[82] *Id.* at 3-4.

- "In 2012, JDC provided Nazi victims an average annual per capita equivalent of $256 in Russia and $552 in Ukraine for material support (food, medicine and winter relief). This level of support (ranging from $21 to $46 per month) is limited by budget constraints but clearly cannot meet the extent of the existing medical, food and winter relief needs of clients, and is not sufficient to close the gap created by a lack of government infrastructure and financial support."

- "When JDC reported to the Court in 2004 on the most desperate needs facing elderly in the FSU, food was one of the most, if not the most, critical. As the community has aged, JDC analysis has demonstrated that homecare fills the most critical need, since there is no alternative for those who require daily care. This prioritization does not negate the importance of food assistance but rather, illustrates the difficult choices resulting from budgetary constraints. As client expenses continue to grow, support in the form of cash equivalence programs continues to serve as a lifeline for Hesed clients, who are unable to purchase sufficient food."[83]

The Court authorized the residual funds to be allocated to programs serving the needy, thus extending the humanitarian assistance programs for the Looted Assets Class for several years beyond the 2011 termination date originally provided under the Distribution Plan.

k. 2013

For victims in the FSU, the funds made available in 2013 provided the following assistance:

- 221 Nazi victims received 2,155 food packages.

- 324 received 12,343 hot meals.

- 9,259 received food cards.[84]

- 843 received 5,774 fresh food sets.

- 1,474 received 49,356 hours of homecare, for an average of 33 hours per year; it was "the only homecare service they receive[d] since none is provided by the state or other private charities."

- 3,227 received winter relief.

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[83] *"Presentation on the Conditions and Needs of Jewish Victims of Nazi Persecution in the Former Soviet Union,"* American Jewish Joint Distribution Committee, March 2013, at 7-9.

[84] Food assistance in the FSU has shifted in recent years from food packages and hot meals to food cards.

- 4,630 received medical services.
- 2,009 emergency assistance grants were made.[85]

l. 2014

Residual funds served 66,566 "poor elderly Jewish victims of Nazi persecution" in the FSU in 2014. The aid included the following:

- 628 Nazi victims received 4,649 food packages.
- 587 received 29,994 hot meals.
- 9,378 received food cards or bank cards designated for food purchases.
- 1,094 received 7,340 fresh food sets.
- 6,028 received 90,617 hours of homecare.
- 469 received winter relief.
- 6,627 received medical services, averaging about $160 per person per year.
- 6,486 emergency assistance grants were made, "averaging about $185 per situation."[86]

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[85] *JDC Report on 2013 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union* at 3 (July 29, 2015).

[86] *JDC Report on 2014 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 2-3 (February 3, 2016. As the JDC's May 20, 2014 funding request for 2014 indicated, the JDC's recommendations had been impacted by geopolitical upheaval in the region:

> In light of the recent events in Ukraine, we take special note of the situation of the approximately 25,000 Jewish Victims of Nazi Persecution now living in Ukraine who are assisted by the Hesed programs, representing more than one-third of the Jewish Nazi Victims in the FSU, many of whom are assisted by Settlement Funds. In Ukraine, the Hesed centers have worked hard to make sure that their clients continue to receive all needed services during the crisis. They are providing additional food supplements and subsidies to ensure critical necessities are met, including food cards to purchase provisions, additional food packages and fresh food sets, hot meals, and meal delivery. Additional medicine subsidies and supplements will be made available as prices have risen and some medications have become scarce.

m. 2015

Residual funds served 61,482 "poor elderly Jewish victims of Nazi persecution" in the FSU in 2015. The aid included the following:

- 603 Nazi victims received 5,537 food packages.
- 157 received 32,960 hot meals.[87]
- 10,565 received food cards or bank cards designated for food purchases.
- 1,626 received 8,352 fresh food sets.
- 3,317 received 57,557 hours of homecare.[88]
- 457 received winter relief.
- 3,793 received medical services, averaging about $91 per person per year.
- 19,901 emergency assistance grants were made, "averaging about $70 per situation."[89]

> Hesed staff and volunteers have contacted and visited clients in areas plagued by violence to deliver food, medicine and other critical supplies; they have done so on foot, and in mobile units packed with supplies. As needed, in some cases the Hesed homecare workers have stayed the night with clients…. Planning has begun to alleviate the situations of those elderly whose state pensions may be suspended due to Ukraine's disastrous financial situation.

Letter from JDC Assistant Executive Vice President to Hon. Edward R. Korman, May 20, 2014.

[87] The JDC noted that the "number of clients receiving these hot meals decreased in 2015" as compared with prior years, primarily "due to the availability of alternative food programs providing greater flexibility, such as food/bank cards, and also to the transitioning of older recipients to homecare, with their meals now being prepared by a homecare worker." The number of meals remained stable and in some cases increased in various locations, "due to an increase in the purchasing power of local FSU currencies." *JDC Report on 2015 Welfare Programs for Jewish Nazi Victims in the Former Soviet Union*, at 3 (April 19, 2017).

[88] The decrease in homecare assistance from 2015 was "mainly explained by additional German Government funding designated primarily for homecare that became available in 2015." *Id.*

[89] *Id.*, at 2-3. "Due to changes in the regulations of the medical assistance program, as well as increased costs engendered by the economic crisis [in the FSU], many lifesaving and/or expensive medicines were classified as part of the SOS program in 2015." *Id.*, at 4.

n. 2016 - 2017

In accordance with the 2013 residual funds order, the Court authorized additional distributions in 2016, and final distributions in 2017, for programs serving needy elderly survivors in the FSU.

2. Assistance to Jewish Nazi Victims in the United States, Israel, Europe, South America and Elsewhere, 2001-2011 (Claims Conference)

Like the JDC, the Claims Conference was able to distribute humanitarian assistance, on behalf of the Swiss Banks Settlement, through well-established programs.

a. 2001

For its initial tranche of funding, the Claims Conference proposed a six-month program in 10 nations with existing survivor assistance programs: Argentina, Australia, Canada, Hungary, Israel, the U.S., England, France, the Czech Republic and Poland.[90] Looted Assets Class funds would be used to support the Claims Conference's Emergency Assistance Program:

> Through the provision of emergency cash grants, the program assists Nazi victims with basic and essential needs. The program is implemented by central Jewish social service agencies in communities across the world. Thus, the program benefits Nazi victims not only by providing cash assistance to cope with emergency situations but also by assuring the involvements of social welfare professionals in the lives of vulnerable Nazi victims.[91]

Grants were used for rent to prevent eviction; medical care not funded by government programs; medical equipment (wheelchairs, beds, hearing aids); "heavy-duty house cleaning;" winter relief; food assistance; prescription drugs; dentures; home care; emergency utility payment (heat, hot water, electricity); and home equipment/repair.

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[90] *Proposal for the First Six Months of Operations*, at 1(Feb. 27, 2001) ("Claims Conference February 27, 2001 Proposal"). The Court approved the proposal on April 13, 2001 and authorized funding on June 28, 2001.

[91] *Id.*

Grant recipients were determined following assessment by "social work professionals," who evaluated the survivor's "medical condition, housing situation, mental status, financial status, current services being received, and availability of family support." Advisory committees of Nazi victims reviewed individual requests for assistance and helped to publicize the program. Eligibility varied among countries and was based on "several factors, including the economic situation, the availability of government funded benefits, and the specific needs of Nazi victims as identified by the advisory committees."[92]

The Emergency Assistance Program adhered to the following reporting requirements for Looted Assets Class funds:

- Grants of less than $30,000: The local agency administering the grant was to submit a "year end report which includes documentation of the financial activity on the program;" a "statistical report … which includes number of clients served for each category and amount of funds disbursed for each category of service (i.e. dentures, medical equipment, rent);" and the agency "should be prepared to present documentation confirming that a recipient of funds distributed through the emergency cash grants program was a Jewish victim of Nazi persecution and meets the eligibility criteria for the program."
- Grants of $30,000 to $75,000: Allocations "must be reviewed by the Claims Conference," which will "review the financial documents associated with the emergency cash grants program and perform a random sample of test cases to confirm the recipients' eligibility for the program." A "full audit may be requested … at the discretion of the Claims Conference."
- Grants of over $75,000: Allocations "must be audited by an accredited accounting company in accordance with international standards on auditing as issued by the International Federation of Accountants. The audit must examine, on a test basis, evidence supporting the amounts and disclosures. In addition, the auditors should assess the accounting principles used and significant estimates made by management."[93]

The Court would receive an "annual financial report which details the utilization of allocated funds per country," providing an "external auditors report where appropriate," and an "annual programmatic report" describing the program by country for that year.[94]

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92 *Id.* at 2.

93 *Id.* at 7.

94 *Id.* at 8.

In the years following its pilot proposal, the Claims Conference expanded the scope of these programs, adding several new countries and projects.

b. 2002

The Claims Conference recommended and the Court approved programs in 10 additional countries in 2002: Austria, Belgium, Bosnia, Bulgaria, Croatia, Germany, Romania, Slovakia, Sweden and Yugoslavia.[95]

c. 2003

In 2003, another three countries were added: Greece, Italy and the Netherlands. The Claims Conference reported that the "past year and a half has been very difficult as repeated acts of violence have plagued our nation and the world at large. We have suffered through the terrorist attacks of September 11th on the World Trade Centers and the Pentagon; continue to live through the rampant suicide bombings in Israel; and witness rising anti-Semitism in Europe. Furthermore, the war with Iraq has instilled an impending fear and sense of doom, of which none can escape. Holocaust survivors, in particular, are suffering from increased anxiety and fear during these times. Social service agencies providing assistance to Nazi victims are in need of additional financial support to increase services to this vulnerable population. Hotlines, originally established to prevent loneliness and isolation, are flooded daily with calls from survivors who are afraid to leave their homes."[96]

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[95] *Second Claims Conference Looted Assets Class Proposal: Emergency Assistance Programs for Jewish Nazi Victims* (July 11, 2002).

[96] *Third Claims Conference Looted Assets Class Proposal: Emergency Assistance Programs for Jewish Nazi Victims* at 2 (Apr. 7, 2003).

d. 2004

In 2004, the Emergency Assistance program was expanded to Brazil, Mexico and Uruguay. In addition, the scope of services was enlarged due to the infusion of substantial additional funds following the Court's decisions in 2002 and 2003 to supplement funding to the Looted Assets Class programs:

> Since the financial scope of the program [for needy survivors] has grown since inception [*i.e.*, from $100 million to $145 million as of 2004, and ultimately to over $256 million in total] and given that funding for the program will be in place through 2010, it is requested that the guidelines for the program be modified to allow funding to be used for needs that are also on-going in nature. For example, on-going grants would be provided to Nazi victims for the provision of prescription drugs, food vouchers, or homecare services that would be needed throughout the year.[97]

e. 2005-2006

In 2005, the Claims Conference requested and the Court granted "approval . . . of funding over a two-year period, rather than one year as the Claims Conference has requested in the past, [which] will enable agencies to more effectively plan the distribution of funds to the neediest Nazi victims and will assure them of continuity of service through 2006."[98]

In a programmatic report detailing funding and activities for the first phase of operations, 2001-2006, the Claims Conference advised that a total of $24,742,786 had been distributed and that 74,155 Emergency Assistance Program grants had been made.[99] Typically, funds had been distributed "in the form of cash grants to vendors" to "help defray expenses in seven areas: housing and related costs, dental care, food, medical care, home care, transportation and other expenses, such as needed clothing and funeral expenses, as well as program administration" not exceeding "10% of the Looted Assets Class allocation per agency." These grants "allow Jewish

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[97] *Fourth Claims Conference Looted Assets Class Proposal: Emergency Assistance Programs for Jewish Nazi Victims*, at 3 (July 21, 2004).

[98] *Fifth Claims Conference Looted Assets Class Proposal: Emergency Assistance Programs for Jewish Nazi Victims*, at 1 (Sept. 22, 2005).

[99] *Claims Conference Report on the Holocaust Survivor Emergency Assistance Program, 2001-2006 and Proposal for 2007-2008*, at 1-2 (March 2007).

Nazi victims to maintain their independence for as long as possible and 'age in place' so they can remain active in their own communities." The program by then had been expanded from 10 to 26 nations.[100]

Some examples of grants included:

- Housing: Payments made directly to vendors such as landlord, utility company or repair person: payment of rent, property taxes, utility bills, home/appliance repair, telephones for the hearing-impaired.
- Dental care: X-rays (not usually covered by government funding), deductibles and co-pays, dentures.
- Food: On a case-by-case basis, provision of Meals-on-Wheels and food packages.
- Medical care: On a case-by-case basis, fees for hospitalization, medical services, medicines, equipment. "Most of the countries where Jewish Nazi victims reside have universal health care for the elderly. There are, however, cost-sharing requirements …. [and] while relatively modest, these costs can add up …."
  - "Similarly, there are many goods and services either excluded from public coverage or with high cost-sharing requirements," such as eyeglasses, hearing aids, orthotics, prosthetics, adult diapers, bed pans, wheel chairs, chairs, shoes, and safety devices.
  - Assistance with purchase of supplemental insurance (*e.g.*, Medigap in the U.S.).
- Home care: Chore/housekeeping services including meal preparation, grocery shopping, money management, light household chores and transportation assistance; personal/nursing care including assistance with eating, continence, dressing and bathing, and short-term nursing; and respite care including adult day care services. The Claims Conference noted that "public funding" was the most important source for these services, but there were "restrictions either on the quantity (number of hours available) or quality of services, as well as cost-sharing requirements," which Looted Assets Class funding helped to defray, particularly in conjunction with case management.
- Transportation: Transportation to respite care, congregate meals, religious services, medical appointments, shopping, and errands; grants for auto repair and insurance.
- Other: Defraying of costs of clothing, shoes, bed linens and blankets, pots and pans, funeral expenses, and legal assistance (*e.g.*, landlord-tenant disputes, public benefits hearings, immigration services).[101]

[100] *Id.* at 3.

[101] *Id.* at 5-8.

Some of the local agencies responsible for allocating individual grants to survivors and monitoring their use had not spent all of the funds approved by the Court. "[A]ll agencies have been informed that any funds remaining unspent and unreported by March 31, 2007 — from all grants to date — will be cancelled. Thus, in a subsequent proposal to the Court, the Claims Conference will recommend the reallocation of any unused funds."[102]

In 2008, several such grants, totaling $1,559,626.81, were cancelled and reallocated.[103] The Claims Conference noted that certain of the local implementing agencies had been unable to use the funds during the designated year, but would be able to do so in the near future. These grants were recommended to be moved ahead to other years, rather than cancelled. These included programs at Jewish Care-New South Wales, Australia (which resolved certain administrative difficulties); the Foundation for the Benefit of Holocaust Victims in Israel (which had drawn upon sources other than Swiss Banks Settlement funds in consultation with the Claims Conference, thus shifting Court funding to subsequent years); Fonds Social Juif Unifie in France and Memoria y Tolerancia in Mexico City (each of which initially had "difficulty establishing the emergency assistance program and working out the logistics of coordinating a country-wide program"); and Jewish Family Services ("JFS") programs in New Jersey and Philadelphia (which in consultation with the Claims Conference had used government grants available only for a limited time and had shifted Court funds to subsequent years).[104]

However, certain agencies did not use the funds and had "ceased operation" of the emergency assistance programs. Some programs were shifted to more centralized agencies and others were funded from different community sources. These grants were cancelled. The cancelled programs included the UJA Federation program in Toronto (responsibility for programs was shifted to Montreal); World Jewish Relief in London (funding was shifted to the Association of Jewish Refugees in London); and the JFS of Buffalo and Erie County, New York; Rochester, New York; Salt Lake City, Utah; and Richmond, Virginia. Other programs did not

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[102] *Id.* at 9.

[103] *Report and Recommendations of the [Claims Conference] for Cancellation and Reallocation of Funds Allocated from July 2001 through December 2006, Allocation of Accrued Interest, and Extension of Time Frame for 2007 and 2008 Allocations*, at 1 (June 5, 2008).

[104] *Id.* at 4-6.

use their complete grants and the unused portions were cancelled: Vancouver Holocaust Education Center; JFS of Winnipeg and Calgary, Canada; JFS of Palm Springs, California; Albuquerque, New Mexico; Columbus, Ohio; Pittsburgh, Pennsylvania; and El Paso, Texas.[105]

The cancelled grants were transferred to other agencies including those in Israel; Germany; France; Canada; Italy; Uruguay; and the U.S. (California, Connecticut, Florida, Michigan, New Jersey, New York, Ohio and Pennsylvania).

f. 2007

In 2007, Looted Assets Class funds assisted 19,365 Jewish Nazi victims in countries outside the FSU, including the U.S. and Israel:[106]

- 1,500 victims in 22 countries received housing assistance through EAP (Emergency Assistance Program) funds;
- 331 victims in 13 countries received dental care;
- 744 victims in 15 countries received food assistance;
- 5,687 victims in 24 countries received medical assistance;
- 12,081 victims in 11 countries received home care services;
- 652 victims in 14 countries received transportation assistance; and
- 355 victims in 9 countries received miscellaneous assistance (clothing, winter relief, furniture, funeral costs, and emergency living expenses).[107]

g. 2008 - 2011

In a report to the Court, the Claims Conference summarized the Looted Assets Class funding it had supervised from inception of the program through what was then believed to be

[105] *Id.* at 2-4.

[106] *Claims Conference Report on the Holocaust Survivor Emergency Assistance Program 2007* (Apr. 7, 2009).

[107] *Id.* at 2-3.

the completion date — a date that was later extended by the Court through infusion of residual funds, as more fully described below. The programs funded to that point were as follows:[108]

- Year 1 (July 1, 2001 - December 31, 2001): $1,071,500
- Year 2 (January 1, 2002 - December 31, 2002): $2,678,500
- Year 2 Supplement (2002/2003): $1,687,500[109]
- Year 3 (January 1, 2003 - December 31, 2003): $3,625,000
- Year 4 (January 1, 2004 - December 31, 2004): $5,416,826
- Years 5 & 6 (January 1, 2005 - December 31, 2005; January 1, 2006 - December 31, 2006): $10,263,460
- Years 7 & 8 (January 1, 2007 - December 31, 2007; January 1, 2008 - December 31, 2008): $9,978,364
- Year 9 (January 1, 2009 - December 31, 2009): $4,561,539 to be sought
- Year 10 (January 1, 2010 - December 31, 2010): $4,561,539 to be sought
- Year 11 (January 1, 2011 - June 30, 2011, when the Looted Assets Class program originally was to terminate under the ten-year program authorized under the Distribution Plan): $2,280,769 to be sought.[110]

With respect to the programs supported during the period 2008-2010, the Claims Conference reported that settlement funds provided the following services to Holocaust victims:

- Housing and Related Expenses: Rent, maintenance fees, property taxes, moving expenses, utility bills, and home and appliance repair.
- Dental care: X-rays (not usually covered by government funding), deductibles and co-pays, dentures.
- Food: Home delivery of hot kosher meals; direct payments to vendors for groceries, food packages or food vouchers.

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[108] *Seventh Claims Conference Looted Assets Class Proposal: Emergency Assistance Programs for Jewish Nazi Victims, Proposal for Calendar Year 2009 and 2010 and January 1 - June 30, 2011* (Apr. 7, 2009).

[109] "The original Distribution Plan provided for an allocation of $9.75 million over the first 3 1/2 years…. It was increased by 45%," pursuant to the Memorandum & Order of September 25, 2002 authorizing distribution of excess interest and unanticipated tax refunds. "Starting in calendar year 2004, it was increased again by an additional $60 million that was allocated over 7 1/2 years proportionately among the same victim groups and geographic distribution as identified in the Distribution Plan." *Id.* at 1. In 2013, residual funds were allocated to needy class members, and an additional $11.25 million was designated for programs for needy survivors in Israel, the United States and other parts of the world outside of the FSU and Central and Eastern Europe.

[110] *Id.* at 1-4.

- Medical care: Office visits, hospitalization, prescription drugs, durable medical equipment (such as wheelchairs), costs of eyeglasses, hearing aids, and installation of home safety devices.
- Home care: Chore/housekeeping services including housekeeping services, personal and nursing care, and respite care.
- Client Transportation: Transportation to and from programs providing respite care, congregate meals, religious services, medical appointments, shopping, and errands; grants for auto repair and insurance.
- Other: Defraying of costs of clothing, shoes, bed linens, funeral expenses, tax payments, insurance premiums, winter relief, counseling, and legal assistance (*e.g.*, landlord-tenant disputes, public benefits hearings, immigration services).[111]

The Claims Conference advised that $15,815,526 had been provided over the three-year period — $6.2 million in 2008; $5 million in 2009; and $4.6 million in 2010 — to Nazi victims throughout the world, other than the FSU and Central and Eastern Europe, which were managed by the JDC. The largest two categories of grants were for home care (19,304 separate grants) and medical care (15,037 grants). Grants also were made for housing (5,694); food (2,012); dental care (1,637); other expenses (1,284) and transportation (635).[112]

The grants were made in 26 different countries: Argentina (through the Tzedaka Foundation); Australia (Jewish Care - Victoria; Jewish Care - New South Wales); Austria (Israelitische Kultusgemeinde Sozialabteilung); Belgium (Service Social Juif); Bosnia-Herzegovina (La Benevolencija); Brazil (União Brasileiro-Israelita [UNIBES]); Bulgaria (Shalom); Canada (Cummings Jewish Centre for Seniors - Montreal; JFS - Toronto); Croatia (Jewish Community Zagreb); the Czech Republic (Terezin Initiative); France (Fonds Social Juif Unifie); Germany (ZWSt); Greece (Central Board of Jewish Communities in Greece); Hungary

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[111] *Claims Conference Report on the Holocaust Survivor Emergency Assistance Program 2008-10 and Proposal for 2012-13*, at Part I, 1-2 (Dec. 2012) ("Claims Conference Report, 2008-10"). The Claims Conference submitted a variety of accompanying appendices including IA ("Reported Spending for Emergency Assistance Services Provided Outside of the United States to Jewish Nazi Victims from Swiss Banks Settlement Looted Assets Class Funds by Area of Service" for each of the three reporting years); Appendix IIA ("Reported Spending for Emergency Assistance Services Provided in the United States to Jewish Nazi Victims from Swiss Banks Settlement Looted Assets Class Funds by Area of Service" for each of the three reporting years); and Appendix III - Audit Reports (for agencies receiving larger grants). The Claims Conference filed 2008, 2009 and 2010 Audit Reports for the Fonds Social Juif Unifie (France); 2008, 2009 and 2010 Audit Reports for the Hungarian Jewish Social Support Foundation; 2008, 2009 and 2010 Audit Reports, as well as the 2001 - 2006 Reallocated Funds Audit Report, for the Foundation for the Benefit of Holocaust Victims in Israel; and the 2008 Audit Report for FEDROM (Romania).

[112] *Id.* at 2-3.

(Hungarian Jewish Social Support Foundation); Israel (Foundation for the Benefit of Holocaust Victims in Israel); Italy (Union of Italian Jewish Communities); Mexico (Memoria y Tolerancia); Netherlands (Dutch Jewish Social Services); Poland (Central Jewish Welfare Commission); Romania (FEDROM); Serbia (Federation of Jewish Communities in Serbia); Slovakia (Central Union of Jewish Religious Communities in the Slovak Republic); Sweden (the Jewish Community of Stockholm); the United Kingdom (Association of Jewish Refugees in Great Britain); the United States (see below); and Uruguay (Fundación Tzedaká del Uruguay).[113]

As to the United States, programs had been funded in more than 20 states, mainly through the network of local JFS programs as well as similar groups. The Claims Conference noted that grants for several United States agencies needed to be cancelled in all three reporting years, due to lack of use and/or appropriate reporting (almost $20,000 in 2008; approximately $54,000 in 2009; and approximately $43,000 in 2010).[114]

The specific U.S. agencies funded were as follows: Arizona (JFS - Tucson); California (JFS agencies in Long Beach, San Francisco, Berkeley, Los Angeles, Irvine, San Diego and Los Gatos [Silicon Valley]); Colorado (JFS - Denver); Connecticut (JFS - West Hartford); Florida (Ferd & Gladys Alpert JFS - West Palm Beach, JFS - Clearwater, Jewish Community Services of South Florida - North Miami, JFS - Plantation, and Ruth Rales JFS - Boca Raton); Georgia (JFS - Atlanta); Illinois (Jewish Federation of Metropolitan Chicago); Maryland (Jewish Community Services - Baltimore, Jewish Federation of Howard County - Columbia, Jewish Social Service Agency - Rockville); Massachusetts (JFS of Greater Boston); Michigan (JFS of Metropolitan Detroit); Minnesota (JFS of Minneapolis); Nevada (Jewish Family Service Agency - Las Vegas); New Jersey (Association of Jewish Family Service Agencies - Elizabeth); New York (Bikur

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[113] *Id.* at 4-18, 31-32.

[114] Claims Conference Report, 2008-10, Part I, at 18; *see also id.*, Part II, at 1-3 (listing cancellations of funds to various service providers, mostly JFS agencies, in areas Long Beach and Berkeley, California, approximately $9,000 in grants cancelled in total; North Miami, Florida, approximately $2,200 cancelled; Minnetonka, Minnesota, approximately $1,100 cancelled; Elizabeth, New Jersey, over $27,000 cancelled; Monsey, New York, over $14,000 cancelled; Beachwood, Ohio, over $25,000 cancelled; Philadelphia and Harrisburg, Pennsylvania, over $49,000 cancelled in total; and Milwaukee, Wisconsin, nearly $19,000 cancelled). Other grants cancelled during the reporting period involved service providers in Austria (ranging from $85 to $1,805); France (approximately $33,000 in 2008); Italy ($301 in 2010); Mexico ($1,024 in 2008, and $25 in 2010); and the Netherlands (approximately $22,500 in 2008 and approximately $25,600 in 2009). *Id.*, Part I, at 6, 11, 14-15.

Cholim of Rockland County, The Blue Card - New York, Guardians of the Sick Alliance/Bikur Cholim of Boro Park, Metropolitan New York Coordinating Council on Jewish Poverty, Pesach Tikvah of Williamsburg and Selfhelp Community Services - New York); Ohio (JFS of Cleveland, JFS of Greater Cincinnati); Oregon (JFS - Portland); Pennsylvania (JFS of Greater Philadelphia, JFS of Greater Harrisburg, JFS - Scranton); Texas (JFS of Greater Dallas, JFS of Houston); Virginia (JFS of Tidewater); Washington (JFS - Seattle); and Wisconsin (JFS - Milwaukee).[115]

In addition to reporting on the period 2008-2010, the Claims Conference also requested the Court's approval to reallocate the funds that had been cancelled during the period 2008-2012 due to the local agencies' failure to use the funds, or failure to provide the proper reporting in accordance with Claims Conference requirements. The total cancelled sums, $575,117.59, and ILS (Israeli shekels) 4,136,000.79, respectively, were reallocated "for the continuation of the emergency assistance program for needy Nazi victims to partner agencies that have implemented the [Looted Assets] program previously in order to continue the program in 2012 and 2013."[116]

h. Assessment of Needs in 2013

In 2013, the Court authorized residual funds to be allocated to programs serving the needy. The Special Masters sought and obtained the Claims Conference's recommendations for allocating such funds in regions outside the FSU: Israel, the United States and the rest of the world.

In considering the best way to allocate the funds, the Claims Conference noted that medical care comprised the largest category for all expenditures, at over 40% annually between 2007 and 2011. For those survivors who received emergency grants, 66% of those individuals received grants for medical assistance, such as prescriptions, eyeglasses and hearing aids.

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[115] Claims Conference Report, 2008-10, at Part I, 18-31.

[116] Claims Conference Report, 2008-10, at Part II, 1. *See also* Memorandum & Order, *In re Holocaust Victim Assets Litig.* (Dec. 10, 2012) (granting the Claims Conference request to reallocate the cancelled funds).

The second-largest category of expenditures during the period 2007-2011 was for housing expenses, including emergency rent grants to avoid eviction, property taxes, moving fees, utility payments and home repair costs. Nearly 30% of all emergency assistance expenditures were allocated to housing, and some 26% of survivors in the program received grants of this nature.

Dental care comprised nearly 13% of emergency assistance grants. "Due to the relatively high costs of dental care, the proportion of beneficiaries [was] relatively small, approximately 6.1% of all Jewish Nazi victims served," with utilization highest in the United States. In addition, approximately 11.6% of emergency assistance recipients received grants relating to food aid during 2007-2011. The Claims Conference anticipated that future needs would be essentially similar.[117]

i. 2015 - 2017

In accordance with the 2013 residual funds order, the Court authorized additional distributions for the years 2015 - 2017 for programs serving needy elderly survivors in the United States, Israel and other regions outside the FSU and Central and Eastern Europe.[118]

B. Court Programs for Needy Roma, Jehovah's Witness, Homosexual and Disabled Nazi Victims, 2001-2006; 2013-2016 (IOM)

When the Distribution Plan was proposed and then adopted by the Court, some concerns were voiced about the feasibility of providing humanitarian aid to many of the non-Jewish class members. Although the Jehovah's Witness community was well organized and well-connected with survivors of the Nazi regime, the other three non-Jewish "victim or target groups" did not

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[117] *"An Examination of the Swiss Banks Looted Assets Class Emergency Assistance Program ending in 2011 as a method to consider the use of future available funds for the Jewish Nazi Victims Worldwide, excluding Soviet Successor States,"* Conference on Jewish Material Claims Against Germany, March 2013 ("March 2013 Claims Conference Report"), at 4 - 6.

[118] *See* Claims Conference August 25, 2015 proposal for 2015 funding, approved on September 4, 2015*;* Claims Conference May 25, 2016 proposal for 2016-2017 funding, approved on July 8, 2016.

have a strong infrastructure for purposes of locating Nazi victims. The largest of the groups, the Roma community, was known to be particularly difficult to reach. Most Roma survivors continue to live in dire poverty, in rural conditions and in isolation, and even the more organized Roma groups often had fractious relations both within and outside their immediate communities. Accordingly, the Court was asked to abandon its plan to try to locate and assist needy elderly survivors, and instead was urged to direct funding toward other purposes, such as educational and memorial programs.

The Court, however, assumed that some inroads could be made with the proper support, and thus appointed the IOM to find and assist Roma survivors. The IOM also accepted the same responsibility for needy Jehovah's Witness, homosexual and disabled survivors.

As the IOM has explained, the goal was not to "'do the impossible' of reaching every living member of each target group;" however, the IOM "did seek to locate and meaningfully assist as many as time and resources permitted, in recognition of the suffering endured by all group members." [119]

By the time the program was completed, funding from the Swiss Banks Settlement had helped over 71,000 desperately needy Roma survivors, who received some of the most basic necessities of life: food, coal, winter supplies and medicines. Others benefitted from Court-funded home health care; legal assistance enabling them to apply for ongoing social welfare benefits from which they had been long excluded; and socialization projects. Jehovah's Witness, homosexual and disabled survivors also received significant assistance through the Looted Assets Class programs.

The IOM was able to expand its services by coordinating the Looted Assets Class program with the aid process established under the German Foundation, which had authorized DM 24 million in "humanitarian funds" to be allocated to Sinti and Roma through the IOM.

As true for Jewish class members, assistance for non-Jewish class members was directed particularly toward survivors in "Central and Eastern Europe as most former victims still lived

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[119] INT'L ORG. FOR MIGRATION, HUMANITARIAN AND SOCIAL PROGRAMMES: FINAL REPORT ON ASSISTANCE TO NEEDY, ELDERLY SURVIVORS OF NAZI PERSECUTION 11 (2006) ("IOM Final Report").

there and were in greater need than those of group members living elsewhere." For "many survivors the assistance represented the first recognition of their suffering in nearly 60 years. It came at a time when, by their own account, life had not been worse for them since the Second World War." What was common to all Looted Assets Class members living in Central and Eastern Europe was that some victims, without the Court's aid, "might have frozen or starved to death."[120]

The IOM described the particular difficulties posed by undertaking one of the first humanitarian assistance programs ever initiated for these survivors, particularly the Roma:

> IOM had to consider a number of important variables, in particular local living conditions, victim concentrations, their most urgent needs, service provider capacities, the Organization's own capacity to monitor and, of course, available donor resources. IOM's approach to each victim group was of necessity varied, depending on the case. Specific modes of communication and beneficiary sensitivities had to be respected. Non-beneficiary group neighbours, equally poor, were likely to be envious. In deference to Roma law, for example, otherwise competent NGO partners sometimes refused to assist, or even to acknowledge, members of another clan.
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> . . . .
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> That [IOM's] efforts were effective is supported by the fact that some of IOM's initial detractors eventually became its implementing partners, that the Roma press has written favourably about [the programs] and, most importantly, that the assistance got through.[121]

The project was further complicated by the fact that the IOM was attempting to satisfy the requirements of two different donors – the Court and the German Foundation – with one program for needy Roma victims. While in most instances, combining the resources of two programs accomplished precisely what the Court had intended in selecting the IOM – economies of scale, and maximization of assistance to the greatest number of Holocaust victims – the goals of the two programs did not always mesh.

Specifically, initially, there was a divergence on the issue of food packages. The Court, cognizant of the dramatic success of the JDC's Hesed program, of which food assistance was a

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[120] IOM Final Report at 17.

[121] *Id.* at 18-19.

major component, asked the IOM to provide food aid to hungry Roma survivors. The German Foundation, however, took a different approach, initially supporting programs that it believed were more self-sustaining and which might impart a sense of self-sufficiency. As the IOM's Final Report observed, "[i]nternational donors understandably prefer sustainable assistance as less costly and more likely to leave behind something of 'lasting value.'"[122] The Court's view, however, was that needy elderly survivors were not necessarily in a position to develop such skills at that late date, after decades of deprivation and the onset of old age.

> Early on the German Foundation excluded payment for food packages from its share of HSP project resources. *For 16 months the US Court paid all costs connected with this most popular form of aid to Roma survivors.* The Foundation eventually agreed to fund up to EUR 3 million in food packages in countries where needs were particularly severe and more sustainable forms of assistance unavailable.[123]

In assessing the components of the program, IOM explained in its Final Report that "[f]ood packages, followed by winter assistance (predominantly home-heating fuel) and hygienic supplies (soap, disinfectants, towels) were the kind of available aid most requested by beneficiaries. All were considered essential for daily survival" and "accounted for nearly 72 percent of all HSP assistance delivered."[124]

The German Foundation eventually decided that the IOM's Court-supported food and direct assistance program was a success, and agreed to provide its own supplemental aid. As a result of the funding under the Swiss Banks Settlement and German Foundation agreement:

> The IOM was ultimately able to identify 70,000 [Roma] eligible for humanitarian relief in thirteen Central and Eastern European countries [and subsequently, through additional programs using residual funds, over 71,000].

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122 *Id.* at 203.

123 *Id.* at 22 (emphasis added). *See also* IOM Supplemental Proposal to the Court, at 3 (June 10, 2002) ("On 17 May 2002, the German Foundation asked IOM not to apply its funding in respect of food package assistance. Regrettably this decision jeopardizes synergies in respect of HSP in regards specifically to food package projects and generally to the administration and management of the combined programme. The decision seems to be based on unspecified bad experiences with German NGOs. Nevertheless, IOM continues to view food packages as a viable form of assistance, when … [i]t has been proposed by local Roma NGOs in a good position to gauge localized victim needs; [a]ssistance will be able to be delivered in a timely manner; and [a]ssistance can be properly monitored").

124 IOM Final Report, at 198.

> In organizing direct assistance, the IOM relied on collaboration with the small number of local agencies who had experience in delivering such aid. The IOM program served primarily to provide material assistance, mostly in the form of food supplies. The provision of the most basic relief goods such as food, clothing, and heating fuel often served to build confidence and pave the way for counseling and encounter projects.
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> The original intent of the humanitarian aid was to contribute to a fundamental improvement of the living situation of the Sinti and Roma. In practice, however, this objective proved illusionary. In places where no social structures existed, attempting to build sustainable structures would have required so much time that the results of such efforts would likely have only benefited the descendants of the survivors, and not the survivors themselves. While globally active development aid organizations normally focus their efforts on promoting long-term skills and integration among the younger generations, the IOM concentrated on getting direct aid as quickly as possible to the most needy elderly Sinti and Roma.[125]

In meeting with local service providers, the IOM explained the "beneficiary eligibility criteria, i.e. persecution group membership, born before 9 May 1945, presence on German occupied territory and subsistence on US$ 4 or less a day. It was soon discovered that many victims were living on considerably less."[126] The IOM ultimately entered into "74 agreements with external service providers based in Belarus, the Czech Republic, Hungary, the former Yugoslav Republic of Macedonia, Moldova, Poland, Romania, the Russian Federation, Serbia and Montenegro, Slovakia, Ukraine and the United States of America," while IOM itself "implemented seven HSP projects directly."[127] Local providers "operated on an individual timetable" and were "required to submit detailed reporting to IOM Geneva every two or three months, according to the agreements, on activities and expenditures."[128] IOM, in turn, "reported annually on HSP … to its donors as well as to the [IOM's] members."[129]

By the time the original program had ended, the IOM had been able to assist over 73,500 Roma, Jehovah's Witness, homosexual and disabled Holocaust victims, and so had reached

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[125] Michael Jansen, Günter Saathoff, & Kai Hennig, *Final Report on the Compensation Programs Carried Out by the 'Remembrance, Responsibility and Future' Foundation*, *in* "A MUTUAL RESPONSIBILITY AND A MORAL OBLIGATION": THE FINAL REPORT ON GERMANY'S COMPENSATION PROGRAMS FOR FORCED LABOR AND OTHER PERSONAL INJURIES 87, 137 (Michael Jensen & Günter Saathoff eds., Palgrave Macmillan 2009).

[126] *Id.* at 24.

[127] *Id.* at 25.

[128] *Id.* at 28.

[129] *Id.* at 29-30.

"approximately half of the eligible survivors [of these victim groups] in Central and Eastern Europe." The "unexpectedly high number of victims identified proved that Holocaust survivors were both originally more numerous and have lived longer than was previously thought." The IOM noted that in response to the call for proposals for use of possible residual funds in 2004, it had determined that another $59 million to $214 million in assistance would enable the IOM to identify and assist additional eligible survivors, especially among the Roma and disabled communities.[130]

The IOM's programs for each of the four survivor groups it was charged with assisting are described below.

1. Roma Victims

Providing assistance to needy Roma survivors was not an easy task. The first issue was how to find those eligible for aid.

> At first, IOM had little reliable information on Roma survivor populations at its disposal. Official census figures were not always dependable. Individual Roma, whether out of fear or in a spirit of assimilation, often identify with another ethnic group or nationality. The representative of one Roma group, while seen by outsiders as an objective source of information, may neglect to recognize persons belonging to another Roma group as Roma.
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> In 2001, IOM contracted a specialized research firm [A.B. Data, which also had worked on class action notice when the Swiss Banks litigation settled] to locate potential Roma beneficiaries. The firm conducted an extensive survey through Roma organizations in 17 European countries. Potential beneficiaries were identified according to criteria agreed upon by IOM and its donors [i.e. the Court and the German Foundation].
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> The survey identified some 45,453 potentially eligible Roma survivors in 4,906 locations. This number was already much higher than had previously been anticipated. Though the survey process was limited by time constraints, the

[130] *Id.* at 201. *See also Thousands of Romani Survivors Destitute After Reparations Fund Dries Up*, FORWARD, Apr. 21, 2006, http://forward.com/articles/1259/thousands-of-romani-survivors-destitute-after-repa (with the conclusion of funding for humanitarian aid programs for Roma Nazi victims, there could be "dire consequences for the 70,000 Romani survivors in Eastern Europe previously served by the organization"). Through the use of residual funds, the Settlement Fund was able to assist approximately 75,000 needy survivors, in total, through IOM programs.

> remoteness of some communities and local rivalries, the results were important in identifying large concentrations of needy victims and to help non-Roma service providers, IOM's initial partners in several countries, reach many individual victims.[131]

The IOM ultimately was able to locate and assist over 71,000 elderly needy Roma survivors — a number much larger than anticipated at the outset of the program, yet still only about half of those potentially eligible under the Settlement Agreement and the Looted Assets Class.

> Based on four years of programme implementation, IOM now estimates that its 2001 survey located just over 30 per cent of…potential beneficiaries. Ongoing research by field offices and local service providers indicates that there may be some 144,000 needy Roma Holocaust survivors in Central and Eastern Europe alone.[132]

There were some important lessons learned in working with Roma survivors in the most impoverished parts of the world. For generations, Roma "have resisted assimilation into mainstream cultures," and most Roma in Central and Eastern Europe are "confined to substandard, often illegal, rural or urban housing, far from services the state can no longer afford to provide."[133]

In addition, "Roma often make little distinction between their historical persecutors: 'Germans, Russians, Hungarians – they all treated us the same.'" Impoverished Roma in different regions rarely contacted one another, and there may have been "factions within Roma communities" that were "often in competition with each other." At the same time, throughout Europe, anti-Roma sentiments remain "high."[134]

Those attempting to assist Roma may be regarded with suspicion, and many Roma were "convinced that NGOs steal money coming from the UN, the EU and other donors instead of spending it on their community." As to international Roma associations, those were "often super-imposed constructs intended to give an outward appearance of unity," which may or may

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131 IOM Final Report, at 14.

132 *Id.*

133 *Id.* at 160.

134 *Id.*

not be based in reality. "IOM has resisted various demands to work 'exclusively' with certain Roma NGOs. When IOM contracted with another Roma NGO in the same location, accusations of corruption and fraud often followed." Nevertheless, "[m]ost Roma NGOs said they appreciated IOM's close monitoring of projects," which "led to improved capacity and permitted mid-project changes" as well as "timely closure when things failed to proceed as planned."[135]

With respect to specific country programs, IOM reported as follows:

- Belarus:

  IOM worked with the Belarusian Gipsy Diaspora to distribute humanitarian assistance to 1,806 Nazi victims, only 10% of whom received a monthly pension, usually of less than $30. Projects lasted from December 2002 through June 2005. One particular problem was the failure of local representatives "to distinguish between elderly victims and others just as needy;" in response, "IOM reminded the service provider to apply strict eligibility requirements."[136]

- Czech Republic:

  In the Czech Republic, IOM's Prague office "oversaw a total of seven HSP projects," two of which were terminated "early." A total of 3,498 Roma survivors were assisted through programs beginning in June 2002 and ending in November 2004. The service providers had some initial difficulties, such as: overestimating "capacity to deliver aid" and falling behind in project reporting; reluctance among Roma survivors "to have 'strangers' in their homes" – although "homecare soon became a preferred form of aid;" and prejudice, as exemplified by the reluctance by "several wholesale suppliers . . . to allow Roma beneficiaries" and their service providers "to enter shops to select needed goods."[137]

- Hungary:

  IOM Budapest "assisted 15,220 Roma survivors of the Holocaust through five projects" lasting from August 2002 through February 2005. One difficulty IOM faced was that "[p]rominent Roma leaders criticized" one of IOM's "non-Roma-run" projects, arguing that "material assistance, in particular instead of cash, was

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[135] *Id.*

[136] *Id.* at 35-39.

[137] *Id.* at 43-49.

demeaning and inappropriate. Nevertheless, … [the] beneficiaries expressed their gratitude to IOM and emphasized that it had provided essential sustenance."[138]

- Latvia and Lithuania:

  In Latvia and Lithuania, IOM "had first sought to identify external entities that could act as service providers in these countries. When these efforts proved unsuccessful, IOM offices in Riga and Vilnius worked together to deliver assistance directly. HSP helped 769 needy Roma survivors" as a result of projects lasting from April 2004 through January 2005. One of the most pressing needs was for "material assistance," including "five cubic meters of firewood" which "were delivered to all beneficiaries." In addition, each aid recipient in Latvia "could select basic clothing items from specially contracted shops." This service was "unavailable in Lithuania" and thus "was made up for with additional firewood." In both countries, survivors also received "two food and hygienic packages." Some victims also were provided with emergency financial support as well as legal assistance to help recover missing documents, obtain state social service benefits, and avoid eviction.[139]

- Macedonia:

  A total of 2,585 elderly Roma "in the areas surrounding Skopje, Prilep and Bitola, where many survivors reside," as well as Suto Orizari, "probably the largest Roma settlement in Europe" with 2,000 survivors, were assisted through projects beginning in October 2003 and lasting through August 2005. The programs were carried out by the IOM and local NGOs. The IOM noted that the "most vulnerable elderly Roma in Macedonia live in the eastern part of the country," some of whom had "fled several years before from the war in Kosovo and were living in some of the most desperate physical conditions seen in the course of [the program]." Among the most appreciated projects were the establishment of two social clubs, staffed by lawyers, doctors, nurses and social workers, as well as by younger Roma who provided homecare assistance. "Following the phase-out of HSP activities, IOM … continued to develop projects to meet the needs of broader Roma communities in Macedonia."[140]

- Moldova:

  IOM Chisinau "managed two HSP projects" which assisted 2,342 Roma during the period May 2003 through August 2005. The IOM observed that unemployment and poverty "have prompted unskilled and landless Roma" in Moldova to seek work abroad, leaving older family members behind to care for children. "Elderly Roma

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[138] *Id.* at 53-61.

[139] *Id.* at 63-68.

[140] *Id.* at 71-77.

without formal work histories receive a state allowance of US$ 4 per month" – an amount drastically lower than the IOM's definition of "need" as living below $4 *per day*. "Many cannot afford to buy coal and have to gather firewood from the forest, often illegally." The IOM confronted and resolved a number of problems in Moldova, including that "[s]ome eligible Roma sought to register in more than one district." Some leaders "disagreed about beneficiary identities and accused the Salvation Army [one of the local service providers] of helping persons who were not 'pure' Roma." Other individuals were "reluctant to work with a non-Roma organization."[141]

- Poland:

From January 2003 through November 2004, the IOM's office in Warsaw oversaw a program that assisted 1,825 Roma survivors through 11 different projects. One of the projects, operated by the Polish Red Cross, "sometimes encountered opposition from majority populations, town officials and the media when having to explain that only some were eligible for IOM assistance." Officials "had to intervene with one local government to prevent HSP beneficiaries from losing state assistance on account of their inclusion in HSP." Another project, led by the Union of Polish Gypsies, "was responsible for some of HSP's more visible and enthusiastically received assistance": delivery of a side of pork to each beneficiary at Christmas, "reviving a tradition few could now afford." These two programs, along with the Association of Romani Women in Poland, worked with the IOM to assist Roma after the HSP programs were completed.[142]

- Romania:

The IOM's office in Bucharest assisted 10,245 Roma survivors through four programs operating from September 2002 through January 2006. Romania had "possibly the largest Roma population of any HSP target country." The majority of Roma survivors "lived in rural communities, many of them remote and isolated from other villages or settlements." Their houses "were made of mud bricks, shacks of tin sheeting, plywood, plastic or straw," with dirt floors and no insulation. Some Roma survivors lived in tents, in accordance with tradition. One of the IOM's service agencies, the Romanian Orthodox Church, "faced significant challenges, including resistance from Roma leaders who disagreed with HSP's strict focus on the elderly. Other Roma leaders sought to gain political capital through association with HSP." While the Church relied on contacts in the Roma community "to achieve community access and to help with deliveries," other Roma "tried to block assistance, either

[141] *Id.* at 79-83.

[142] *Id.* at 87-93.

because they were unable to take credit for it, or ineligible neighbours [were] angry at being excluded from aid."[143]

- Russian Federation:

From June 2003 through September 2005, four HSP projects in the Russian Federation provided aid to 9,163 Roma survivors living in areas occupied by Germany during World War II. One of the projects initially began with home visits. It was found to be too time-consuming, and thus the program evolved to one in which the local organization transported beneficiaries by minibus to a clinic. "All beneficiaries were scheduled for two visits with follow-up as needed. Many had initially refused despite their obvious need, as they were unaccustomed to being welcomed at public facilities. For some medical care was a luxury and they did not believe such services would be free. Positive feedback from HSP's first patients attracted others." Some of the doctors and dentists initially approached "refused to receive Roma patients." The program also met with "hostility from some Roma communities" and had to withdraw from the Tosno region "due to the local fear of outsiders, distrust and attacks" on the staff. Another problem was posed by eligibility verification, as some survivors had not had official documentation issued since the 1950s. "Some Roma said outsiders had never helped them before. HSP had an emotional impact on elderly Holocaust survivors who had felt that no one knew or cared about them."[144]

- Serbia and Montenegro:

HSP projects began in September 2002. Through seven projects operated by local providers and the IOM Belgrade and Podgorica offices, a total of 4,746 Roma survivors were assisted. As true for many other Roma communities, some survivors "confused HSP with other compensation programmes. Staff took pains to explain the differences between programmes and that receipt of HSP assistance did not disqualify a person from receiving financial compensation for slave or forced labour. Some beneficiaries believed they had been given low-cost humanitarian assistance instead of hoped-for cash, asserting that the service provider had pocketed the difference. On occasion, younger community members threatened IOM's partners." One group especially in need was the "large number of internally displaced Roma" from Kosovo, "whose desperate living conditions required particular attention."[145]

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[143] *Id.* at 95-106.

[144] *Id.* at 109-117.

[145] *Id.* at 121-130.

- Slovakia:

  IOM Kosice managed three projects in Slovakia, particularly in the "poorer east where great numbers of Roma survivors live[d]," assisting 8,995 Roma between September 2003 and January 2006. "Although most beneficiaries expressed surprise and gratitude for assistance provided, the IOM still encountered obstacles. Some municipal offices claimed that no assistance was needed, or denied that Roma lived nearby. Others, including Roma, were again s[k]eptical of assistance. In one case, an organization had come and tricked elderly Roma into paying 50 SKK (US$ 1.53) to register for aid that never came. As elsewhere, actual assistance soon put these fears to rest."[146]

- Ukraine:

  "Ukraine was one of the first countries to offer HSP assistance." Through 15 service providers and 23 projects between June 2002 and September 2005, a total of 8,905 Roma survivors in Ukraine were aided. "Although Roma are dispersed throughout Ukraine, the highest concentration of needy survivors is in the Transcarpathia region on the western border of the country. Roma there often live in *tabors*, segregated settlements on the outskirts of towns ranging in size from a few families to several thousand persons. Many live on the edge of starvation. Houses, without running water and sanitation, seldom have electricity or heat. Some families squat in abandoned cabins." The Court-funded programs had a lasting impact in Ukraine, where the IOM "initially found limited assistance infrastructures." By the end of the program, the Court process had "left behind a network of credible, if still struggling, Roma NGOs. IOM reached a substantially greater number of survivors than anticipated."[147]

2. Jehovah's Witness Victims

In contrast to the Roma, "Jehovah's Witness victims" were the "most accessible and uniform beneficiary group" served by the IOM.[148] After the Court appointed the IOM as an administrative agent, the Jehovah's Witness Holocaust Era Survivors Fund ("JWHESF") advised the IOM that approximately 2,000 Jehovah's Witness survivors potentially were eligible for

[146] *Id.* at 135-138.

[147] *Id.* at 145-156.

[148] *Id.* at 14.

assistance through Looted Assets Class programs. Ultimately, 1,876 individuals were reached. This population was needy, although "generally less disadvantaged" than other victim groups.[149]

The most beneficial method of reaching victims was to "respect[] the organization and principles of the Jehovah's Witness world community," with assistance from the JWHESF. Although this "sometimes [resulted in an] uneven level of responsiveness," and "community members" who were asked to assist had "limited experience" in humanitarian aid programs, this "was compensated by the excellent access" that IOM had to survivors "still affiliated with the group." Initial project development was coordinated between IOM Geneva (the main office) and the JWHESF in New York "according to the latter's wishes," and "[a]s a result, IOM field staff found it especially challenging to monitor the project effectively due to the lack of established local relationships or regular contact with institutional counterparts at the country level."[150]

Members of the Jehovah's Witness community provided "substantial input" that was "not charged to the programme," keeping administrative expenses relatively low. "Nevertheless, the lack of administrative funds allocated by IOM's partner [JWHESF] to its country teams also contributed to making the regularity of their work, reporting and follow-up with beneficiaries problematic."[151]

A total of 1,876 Jehovah's Witness survivors in seven Central and Eastern European countries (the largest, in Ukraine) received Court-funded assistance during a program through the JWHESF network of local *bethels* (church centers) and volunteers. "JWHESF procedures for aid delivery and monitoring allowed the transfer of funds to beneficiaries who then purchased the needed assistance. Receipts were collected by local community leaders," and survivor records "were regularly updated by project staff and volunteers."[152]

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[149] *Id.* at 14-15.

[150] *Id.* at 196.

[151] *Id.*

[152] *Id.* at 190 - 193.

3. Disabled Victims

As true for Roma survivors, the disabled survivor population initially was difficult to determine, prompting some calls for redirection of the Looted Assets Class funds to projects for education and memorialization. Extensive efforts were undertaken to locate potential aid recipients. The IOM spent "nearly 18 months" conducting "extensive research and subsequent outreach" to some 360 "national and international organizations for the disabled," but "very few eligible victims were located." It was only when the "IOM began its systematic investigation at the community level" that it gained "access to promising sources of information." The IOM was able to assist 1,861 needy elderly disabled Holocaust victims. Another 3,000 persons potentially were eligible for aid.[153]

For "more than 60 years, thousands of blind, deaf, mentally and physically disabled Holocaust survivors have had only limited contact with the world outside their immediate communities," living on low pensions and "often unaware if they do not receive their full social entitlements." IOM outreach efforts "were successful only after IOM began working directly and intensively with local state agencies," which had gathered extensive information about disabled individuals under the communist regimes. On the other hand, "[n]ational and international pro-disabled associations did not, at first, prove to be a useful source of information," although they provided valuable assistance later, after beneficiaries had been located.

As to the type of assistance, "[i]ndividually selected and packaged material assistance was important for beneficiaries who did not have the means to locate or purchase the clothing or special foodstuffs they needed." The program funded by the Court and the German Foundation "played a lasting role in drawing the attention of many local social service agencies to the needs of elderly disabled persons. It helped them update records and rectify deficiencies in benefits." In general, however, "[s]upport from civil society for the disabled is a new phenomenon in Central and Eastern Europe. What exists is poorly funded and concentrates on younger generations."[154]

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[153] *Id.* at 16.

[154] IOM Final Report at 182.

Specific Court-funded programs for disabled survivors were as follows:

- Czech Republic:

  "With information provided by a former official of the 'Swiss Fund' [Swiss Fund for Needy Victims of the Holocaust/Shoa],[155] IOM identified five eligible mentally disabled survivors institutionalized at the Marianum convent in Opava," who already received "basic institutional care." They "still greatly appreciated IOM's regular visits, as most of them had no family and very little contact with the outside world." The survivors received personalized assistance, such as food, clothing, boots and a hearing aid. "The convent could not have provided this sort of assistance with its own, limited resources."[156]

- Moldova:

  "Despite IOM's efforts, for over two years no service provider willing to investigate, locate and serve disabled victims came forward. Only a few months before HSP was set to phase out in Moldova," a local NGO came forward and, after compiling a list of 775 potentially eligible beneficiaries, provided IOM with a list of 40 of the neediest. "The former service provider remain[ed] in regular telephone contact" with those who were assisted.[157]

- Poland:

  IOM Warsaw "contacted and requested information from hundreds of institutions at the federal, regional and municipal level," identifying 1,700 potentially eligible disabled survivors, and providing direct assistance. Although the victims were geographically scattered, with a "wide range of disabilities and disability levels, as well as access to suitable and efficient communication channels," the IOM eventually was able to assist 922 disabled survivors in Poland. They received medical care, rehabilitation equipment, home repairs and other aid.[158]

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155 *See* Distribution Plan, Vol. II, Annex K. On February 26, 1997, the SBA announced the formation of the Swiss Fund for Needy Victims of the Holocaust/Shoa (the "Swiss Humanitarian Fund" or the "Fund"). The Swiss Humanitarian Fund was established "to support persons in need who were persecuted for reasons of their race, religion or political views or for other reasons, or otherwise were victims of the Holocaust/Shoa, as well as to support their descendants in need." *Id.* at K-4. The Swiss Humanitarian Fund distributed SF 295 million to 312,000 Nazi victims worldwide. *See* Final Report, Swiss Fund for Needy Victims of the Holocaust/Shoah, available at https://www.files.ethz.ch/isn/109711/FDA_Final%20Report%20on%20Swiss%20Fund%20for%20Holocaust%20Victims_engl.pdf.

156 IOM Final Report at 164-166.

157 *Id.* at 166-168.

158 *Id.* at 168-171.

- Russian Federation:

  IOM Moscow enlisted the assistance of the Russian Red Cross, eventually establishing projects through seven branches in locations that had been occupied by the Nazis. In the region of Pskov, most "disabled survivors had been hidden by their parents to escape deportation or internment in a camp. The greatest number of eligible beneficiaries identified in Pskov were deaf-mute or had been crippled by polio before the beginning of the war." Others were assisted in the Belgorod and Orel regions. The program was hampered by the "unpaved rural roads" along which many victims lived, the difficulty in communicating with deaf and mute beneficiaries, and the refusal of several blind victims to "let staff into their homes" or to sign for assistance without being able to read the receipt form. Nevertheless, those assisted advised the IOM that medical aid "was especially meaningful," as "many survivors had not visited a doctor in over ten years."[159]

4. Homosexual Victims

The homosexual survivor population was also difficult to locate, despite intensive efforts. "IOM first sought to reach eligible homosexual victims through 67 gay support organizations and 22 specialized publications. These efforts yielded virtually no information concerning the existence or location of potential beneficiaries."[160] Homosexual survivors were few in number, "scattered and extremely hard to reach. Survivors of the Holocaust persecuted for homosexuality are generally at least ten years older than members of other groups assisted by IOM." Homosexuality was illegal under communism and survivors were reluctant to self-identify.

Still, the IOM from the beginning of the program in 2001 "sought to locate eligible homosexual survivors of the Holocaust," focusing extensive outreach efforts "towards international homosexual NGOs and the media. IOM also made substantial attempts to contact service providers with access to the homosexual survivor community," but these efforts were mostly unsuccessful.

"In August 2003, IOM contacted the Programme Coordinator for Europe of the United States Holocaust Memorial Museum. He provided IOM with the names, contact information and persecution accounts of four homosexual survivors living in Western European countries":

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[159] *Id.* at 172-175.

[160] *Id.* at 16.

Austria, France and Germany. IOM contacted these individuals and transferred funds directly to them, which the survivors used for IOM-approved medical and homecare needs. Since all four beneficiaries lived in countries with relatively strong social safety nets, "assistance [was] more likely to have been perceived as recognition than as life-saving support. IOM found, nonetheless, that HSP addressed basic needs, such as medications and homecare, that beneficiaries could not have met" without the Court's assistance.[161]

5. 2013 Assessment of Needs: Roma, Jehovah's Witness, Disabled and Homosexual Nazi Victims

When it became clear that some residual funds would be available for needy Nazi victims, the IOM provided the Court with an update on services to non-Jewish victims. Since Roma victims were in the most difficult situation of the non-Jewish victims designated under the Settlement Agreement, Roma survivors would be targeted for the following types of assistance:

- "Food packages - contains locally purchased and pre-packed basic food items based on need assessment and local alimentary regime. Roma communities, especially elderly, have been severely affected by the ongoing economic crisis and the increased food prices. Based on our prior experience food packages are the most welcomed type of assistance among the beneficiaries."

- "Hygienic items - contains various pre-packed items necessary for personal and domestic hygiene. The provision of this type of assistance improves the sanitary conditions and contributes to the general health of the beneficiaries."

- "Winter Assistance - Winters in Central and Eastern Europe are usually very severe. This is especially true for the remote mountainous areas where many Roma settlements are located. The sub-standard housing, infrastructure and prevailing poverty further compound the problem...."

- "Medical Assistance - The overall health condition of the elderly Roma is very poor…. These health problems are further aggravated by the complete lack of or very limited health care access. Due to the lack of health care insurance many elderly Roma are not included in the national health care systems…. [T]he

[161] *Id.* at 184-188.

> beneficiaries very often have to choose between visiting … a doctor and buying food. For them, the choice is obvious."[162]

In an interim report on residual funds filed on March 11, 2016, the IOM reported that its activities had been concentrated in three nations that were considered to have the neediest populations of Roma survivors:

- Serbia, where more than 5,250 beneficiaries were located, who were assisted through programs operated by the IOM in conjunction with the Roma Community Center, the Italian Consortium for Solidarity and the Novi Sad Humanitarian Center;

- Macedonia, where 2,377 beneficiaries were located, who were assisted through programs operated by the IOM in conjunction with the local service provider Sumnal; and

- Bosnia and Herzegovina, with 1,336 beneficiaries, who were assisted through programs operated by the IOM in conjunction with the local service provider Romalen.[163]

The "initial estimate based on the IOM experience from the previous Roma Holocaust survivors programmes implemented between 2003 and 2011 was that IOM and its partners would be able to reach up to 10,000 eligible beneficiaries." Because of the "higher than average mortality rate among Roma and the advanced age of the eligible beneficiaries," somewhat fewer survivors than expected — 8,981 — had been identified, although efforts to locate additional eligible recipients would continue. The "basic needs have remained unchanged… they consist of food, non-food items (hygienic and clothes), medical and dental care, legal assistance, winter support and specifically social assistance, i.e. social clubs and activities."[164]

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[162] *"Project Proposal for Roma Holocaust Survivors Humanitarian and Social Programmes (RHS-HSP),"* International Organization for Migration, March 22, 2013, at 5.

[163] *See* "Roma Holocaust Survivors - Humanitarian and Social Project (RHS-HSP) Interim Report, 01 June 2013 - 31 December 2015," submitted March 11, 2016 ("IOM Interim Report on Residual Funds"), at 2. The Geneva office of the IOM "was responsible for the overall management, coordination and monitoring of the activities," while the non-governmental partner organizations in each country "were responsible for timely implementation in accordance with the project documents." *Id.*, at 9.

[164] IOM Interim Report on Residual Funds, at 3. Some local service providers had proposed "small fund allocations for the purpose of commemorative multi-media projects which would not only document the assistance provided by the project and its impact to beneficiaries but also contribute to the understanding of the Roma genocide and suffering under the Nazi regime. The idea subsequently was discussed with the Special Masters, who advised that the Court's intention was to keep the focus on delivery of direct tangible assistance." *Id.*

In 2016 the IOM also sought, and received, the balance of funds remaining from the $5 million allocated under the 2013 residual funds order, a total of approximately $562,000. This was to be applied to a five-month project expected to serve 7,170 Roma survivors in Serbia, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, and additionally Moldova.[165]

The services were to be similar to those provided during the first phase of funding, with food assistance remaining a high priority. "Roma communities, especially the elderly, have been severely affected by the ongoing economic crisis and the increased food prices. Based on our prior experience food packages are the most welcomed type of assistance among the beneficiaries." Winter relief also remained crucial. "Winters in Central and Eastern Europe are usually very severe. This is especially true for the remote mountainous areas where many Roma settlements are located. The sub-standard housing, infrastructure and prevailing poverty further compound the problem. Without external assistance, the elderly Roma are usually forced to gather for burning various and not always healthy heating material. The packages will contain wood, wooden brickets, coal and in some cases heating equipment such as stoves." With respect to medical aid, "[d]ue to the lack of health insurance many elderly Roma are not included in the national health care systems." Many "have to choose between visiting … a doctor and buying food," and "medical centers and clinic can be located very far from the Roma communities." Other needs included home health care ("public services or social care are either non-existent or they don't have enough capacity to cover Roma communities"); socialization programs; and legal assistance ("[m]any elderly Roma still lack personal ID documents and property deeds," and "due to the prevalent illiteracy and the lack of legal advice many elderly Roma are not aware about their entitlements to state pensions or social protection").[166]

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[165] *See* IOM Project Proposal, Roma Holocaust Survivors Humanitarian and Social Assistance Final Phase, 11 March 2016, at 2-4, approved by order dated May 11, 2016. On July 6, 2016, the Court granted the IOM's request to expand the program to a fourth nation, Moldova.

[166] *Id.*

IV. LEGAL CHALLENGES TO THE *CY PRES* PROGRAMS

The *cy pres* remedy and humanitarian assistance programs for members of the Looted Assets Class gave rise to additional post-settlement litigation.

A. Legal Challenges to the Distribution Plan

When the Court approved the Distribution Plan in its entirety in November 2000, including the humanitarian assistance projects recommended in place of individual monetary payments, six appeals were filed. Four of the six appeals shortly were withdrawn, including one filed by an organization representing certain U.S. survivors.

Another appeal was filed on behalf of certain Roma class members. That submission was withdrawn before briefing and argument. It was believed that the allocation to the Deposited Assets Class was too high, and that the Looted Assets Class should have received more funds. As characterized by Lead Settlement Counsel Professor Burt Neuborne, it was also contended that "the plan favored Jews at the expense of other victims."[167] It was further stated that the IOM was not up to the task and would be unable to locate Roma Holocaust survivors; was not trusted in the Roma community; and would not be able to work with Roma groups to coordinate a humanitarian assistance program. Thus, the objectors believed that Looted Assets funds should be increased in amount, and directed toward programs supporting Roma education and Holocaust remembrance.

After the District Court denied this objection, an appeal was filed in the Second Circuit. Following extensive briefing, after a meeting during which the appellants were able to "express their concerns personally to the Court," the appeal on behalf of certain Roma class members was withdrawn on July 6, 2001.[168]

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[167] Declaration of Professor Burt Neuborne in Connection With Services Rendered to the Plaintiff-Classes as Lead Settlement Counsel, at 33, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (Nov. 1, 2005).

[168] *Id.* at 34. In 2002, and again in 2003, there was a renewed request for support of educational and memorial programs on behalf of Roma victims of the Nazis. In an August 2, 2002 letter, the Court was informed of "progress made toward establishing a Romani education fund. A July 15, 2003 letter requested an allocation of "not less than" $25 million with the "understand[ing] that final determinations of Deposited Assets claims have been made and that allocation and distribution for proposals for remaining funds can proceed."

Thus, the Second Circuit was left with one formal challenge to the Distribution Plan, filed by two survivors from Brooklyn. In a July 26, 2001 opinion affirming the District Court's order, the Second Circuit explained that appellants "object to … the application of the doctrine of *cy pres* to resolve the claims of the 'Looted Assets' class, rather than require — or permit — claimants to put forth documentary evidence of their actual losses."[169] The Court of Appeals concluded that the appeal "lack[ed] legal merit."[170]

B. Legal Challenges to the Increases in Funding to the Looted Assets Class

In September 2002, as a result of unexpected additional income generated by a tax exemption on interest earned by the Settlement Fund, as well as interest income, the Special Master advised the Court that there were sufficient excess funds to warrant an increase in payments to members of Slave Labor Class I, the Refugee Class and the Looted Assets Class. The tax refund was the result of discussions among the Court, Special Masters, Settlement Fund accountant and plaintiffs' class counsel, who observed that interest on the $1.25 billion Settlement Fund was subject to taxation, and perhaps so too might be distributions to claimants. The matter was brought to the attention of members of the United States Congress, resulting in a provision of the 2001 Economic Growth and Tax Relief Reconciliation Act, Section 803, entitled: "No Federal Income Tax on Restitution Received by Victims of the Nazi Regime or their Heirs or Estates." The law exempted from taxation the interest earned on the Swiss Banks Settlement Fund, the fund established under the International Commission on Holocaust-Era Insurance Claims ("ICHEIC"), and similar Holocaust compensation funds.[171]

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169 *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001) (reissued as published opinion July 1, 2005).

170 *Id.*

171 By the end of the claims process, virtually all allocations (and thus all payments) had been increased by 45%, a process first initiated in 2002 when it became clear that the Settlement Fund had benefitted from the accrual of unanticipated interest, as well as the enactment of a U.S. law in 2001 that expressly exempted taxes on the fund as well as payments made therefrom. *See, e.g.*, Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002); *see also In re Holocaust Victim Assets Litig.*, 270 F.Supp.2d 313, 325 (E.D.N.Y. 2002) ("After Special Master Judah Gribetz called attention to the diminution of the Settlement Fund by taxes on earned interest as well as the taxation of benefits awarded to the members of the classes," a successful effort was made "to persuade Congress to adopt legislation exempting from taxation interest earned by the Settlement Fund and payments to its beneficiaries").

In addition to refunding to the Settlement Fund the taxes that already had been paid on interest earned, Section 803 of the U.S. tax law – initiated largely by those involved with creating and overseeing the Swiss Banks Settlement Fund – resulted in overall savings to the Settlement Fund of approximately $25 million, the sum that would have been due, had the exemption not been enacted. These savings were passed along to class members as distributions from the Fund. The tax law also exempted from taxation the individual payments that were made from the Swiss Banks Settlement and other Holocaust compensation funds. This benefited many thousands of U.S. citizens by ensuring that such payments did not need to be reported as taxable income.[172]

Due to these tax savings as well as interest earned on the Settlement Fund, the Court was able to authorize an increase in the amount of individual payments under Slave Labor Class I and the Refugee Class, and also authorized another $45 million to be added to the humanitarian aid funds available to the Looted Assets Class.[173]

Thereafter, on November 17, 2003, the Court adopted the Special Masters' recommendation to allocate an additional $60 million in excess funds that had become available mainly because of interest accruing on the principal. By then, the sum allocated to the Looted Assets Class had more than doubled, from $100 million to $205 million. Additionally, the Court signaled that in the event that excess funds remained from any portion of the $1.25 billion settlement, that sum, too, would be earmarked for the Looted Assets Class.[174]

With considerably more than the $100 million originally allocated to the Looted Assets Class available for humanitarian aid programs, there was new litigation relating to the *cy pres*

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[172] *See, e.g., In re Holocaust Victim Assets Litig.*, 528 F.Supp.2d 109, 112 (E.D.N.Y. 2007) (Block, J.) (noting that the "Congressional legislation making the settlement fund tax exempt" resulted in a "potential savings of 25 million dollars").

[173] *See* Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002). Subsequently, following resolution of additional litigation, the Court authorized a 45% increase in payments allocated to members of Slave Labor Class II. *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 22, 2004).

[174] *See, e.g.*, Memorandum & Order Adopting Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 17, 2003) (soliciting proposals for assistance to "needy Nazi victims"). The Special Masters analyzed these proposals in their report of April 16, 2004, and the Court held a related hearing on April 29, 2004 (*see infra*).

remedy. The definition of "neediness" was questioned by certain individuals. When that objection was not accepted by either the District Court or the Second Circuit Court of Appeals, the United States Supreme Court was asked to consider the argument that an allocation based upon survivor needs was unlawful, and that only a claims-based process was appropriate under class action law.[175] As discussed below, these challenges did not succeed.

Upon the Court's approval in September 2002 of a 45% increase in funding to the Looted Assets Class, certain survivors in the United States believed that they should have received the same allocation as survivors in the former Soviet Union. They stated that Holocaust victims' needs were the same around the world, and that allocations should be based on the survivors' geographic distribution, not on an assessment of their relative need.

The *Forward*, a newspaper based in New York which emphasized issues of concern to the Jewish community, wrote of this issue:

> The long quest for justice for victims of Nazi persecution may have gotten a little bit longer last month, after [certain] Holocaust survivors decided to challenge a federal court's plan for distributing a piece of the Swiss bank restitution fund... The Brooklyn court overseeing the Swiss case wants most of [the sum designated for] humanitarian aid directed toward destitute survivors in the former Soviet Union. The challengers say that's unfair….
>
> * * *
>
> . . . . They … demand more for American survivors, which means less for Russians. Some in the group … suggest that Holocaust survivors in the former Soviet Union aren't necessarily Holocaust survivors, since many avoided the Nazis by fleeing to Siberia….
>
> Admittedly, what the challengers want isn't inherently unreasonable. They're demanding better home health care for the increasingly aged and infirm survivor population in this country. We'd like the same thing. As this newspaper has noted before, America is the only nation in the industrialized West that doesn't recognize healthcare as a human right but leaves it to the whims of the market. Even within this country, government-funded care varies wildly by state. According to one recent study, state spending averages on home healthcare for the elderly range from a per capita high of $1,131 in New York to a low of $60 in

[175] *See* Petition for Writ of Certiorari at 8, 547 U.S. 1206 (Apr. 3, 2006).

> Florida...No wonder [those filing objections] want more. They're entitled to it. But their beef isn't with the Swiss banking fund. It's with their own legislators.[176]

The *Jewish Week*, another publication based in New York, noted that the objectors had cited the "latest national Jewish population study," showing that "[o]ne-fourth of Holocaust survivors in the United States are living below the poverty level, not the 7 percent previously believed," to "buttress their claim that they are being shortchanged in the distribution of the $1.25 billion Swiss bank settlement of Holocaust-era claims because the current allocation plan gives them only 4 percent of the money."[177]

C. Objections to the Proposed Use of Possible Residual Funds

1. The District Court's Decision

Additional submissions were filed, including a "Response" to the "Special Masters' Interim Recommendation" (September 27, 2002), and a "Motion for Immediate Interim Distribution of Swiss Settlement Proceeds" (September 11, 2003). An "immediate distribution" of "residual funds" was sought for members of the Looted Assets Class. This was to be drawn from the then-$670 million in funds allocated, but as yet undistributed, to the Deposited Assets Class.[178]

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[176] Editorial, *Justice Delayed, Peevishly*, FORWARD, Sept. 13, 2002.

[177] Stewart Ain, *U.S. Survivors: We're Being Shortchanged*, JEWISH WEEK, Nov. 21, 2003. The article noted that Lead Settlement Counsel Professor Neuborne had observed that it was "'unclear' what proportion [of United States survivors living below the poverty line] have unmet needs 'similar to the needs of destitute survivors residing in the Former Soviet Union.'" The article quoted one of these individuals as stating that needs in the U.S. and the FSU were similar, "whether the survivor lives in Boston or Belarus.'" *Id.* *See also* William Glaberson, *Holocaust Survivors in U.S. Say Settlement Slights Them*, N.Y. TIMES, Nov. 14, 2003, at B4.

[178] Others also communicated with the Court on this issue, including the then-Chief Financial Officer for the State of Florida. He stated in a June 12, 2003 Declaration that he had "seen data that suggest … that current allocations are based on estimates that unfairly reduce the reported proportion of Survivors or Nazi victims who live in the United States…. [T]he near unanimous opinion of Survivors today is that unclaimed funds from the restitution process should be available so that every Survivor who cannot provide for themselves can receive adequate home and health care, emergency services, and medications, food and shelter…. [T]his Court's effort in assuring that all rightful claimants receive full restitution has my full support. I further support a process that allocates 100% of unallocated funds be [sic] earmarked for adequate home and health care for needy Survivors. I would respectfully suggest that the cost of home care in the U.S. is greater than Israel and Europe which may require an offset. Additionally, a new population analysis must be completed to make sure that all Survivors receive their adequate share of a secondary distribution." Declaration of Chief Financial Officer for the State of Florida, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 12, 2003).

These objections were dismissed by the District Court on March 9, 2004. The Court noted that there appeared to be agreement "that funds allocated to the Looted Assets Class should be distributed through a *cy pres* distribution to the neediest survivors," but disagreement with the program adopted. Those objecting stated that the funds first needed to be distributed among different countries on a pro rata basis, depending on the number of survivors in that country. "Put differently, [they] argue[] that a survivor community in a given country should be allocated (for the benefit of its neediest survivors only) a percentage of the Looted Assets Class funds equal to whatever percentage of the world survivor community it represents. This proposal is tailored to benefit individuals who are a part of a small group of needy survivors within a large nationwide survivor population. Not surprisingly, needy survivors in the United States …are just such a group." The Court considered this proposal to be "inconsistent with law, morality, and most importantly, the settlement of this lawsuit."[179]

As an initial matter, although the motion was characterized as a request for an "immediate distribution" of funds, it was actually seeking the creation of a committee to assess distribution proposals. The Court was asked to set aside $50 million "'in trust to be spent in accordance with the decisions of a committee of …survivors,' representatives of other organizations, and 'the Court.' This … 'Committee,' of which [they] propose[] to make [the Court] a member, would make decisions" on the use of Looted Assets Class funds, "foreshadow[ing] a drawn-out process rife with potential for disagreement among its members."[180]

Beyond being inconsistent "with the control — not a seat on a committee — that the law requires that [the Court] exercise over the distribution process," the "time [was] simply not ripe for a larger 'immediate distribution' of residual funds to members of the Looted Assets Class." It was unclear how much, if any, residual funds would remain from the $800 million allocated to the Deposited Assets Class. These were the only claims that would have withstood a motion to dismiss had the case not settled, and the only class legally entitled to compensation. The Court noted that the motion was based upon the contention that

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179 *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 95 (E.D.N.Y. 2004).

180 *Id.* at 93 (citation omitted).

"[t]here is over $670 million under the Court's control right now, sitting in the bank, helping no one other than the bankers." [The objectors] continue[], "[t]his money is, legally and morally, *the Survivors' money.*" These statements reveal [a] basic misunderstanding of the settlement. The $800 million that was set aside for individuals with claims against the Swiss Banks for deposited assets (of which approximately $650 million now remains) belongs to *those* survivors or their heirs. It was not set aside for, nor does it belong to, the survivor community as [a] whole. This large sum was set aside in part because, of all the claims asserted against the Swiss Banks, only the claims of the Deposited Assets Class have any legal merit. The other claims could not have withstood a motion to dismiss. As the Second Circuit explained in affirming my decision:

> [The Deposited Assets Class] claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation. By contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate.

In re Holocaust Victim Assets Litig., 14 Fed. Appx. 132, 134 (2d Cir. 2001) [reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005)].

Under these circumstances, I have a legal and moral obligation to the Deposited Assets Class not to use the funds that belong to it for a *cy pres* distribution until I am *certain* that the claims to those funds will not exceed the amount set aside. The $800 million already takes into account the certainty that, due to the passage of time, the destruction of documents and the slaughter of millions, claims awarded will not equal the current value of accounts identified by the Volcker Committee [after investigating the Swiss accounts] as probably or possibly belonging to survivors. Indeed, it is a half billion dollars less than the present value of such accounts…

Nevertheless, [it is] argue[d] that "$200 million is a sum that no reasonable person would argue is too high of a minimum estimate of the amount that will remain from the $800 million set aside for Deposited Assets such that the allocation of the amount today would interfere with the payment of meritorious pending claims." I disagree. Whether $200 million will remain from the $800 million set aside for the Deposited Assets Class is not yet knowable.[181]

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[181] *Id.* at 93-94 (citations omitted) (emphasis in original). *See also* Editorial, *Divided Funds, And Loyalties*, JEWISH WEEK, May 14, 2004, at 6 ("[T]his is not charitable money to be allocated, but a bank account settlement, converting looted assets into financial aid. And the allocations being so passionately debated are hypothetical at this point, since depositors with valid claims are still being sought, and it is their money that would be used").

At the end of the extensive CRT claims process, only $54.5 million in residual funds remained (i.e., about one-fourth of the amount the objectors considered to be available for redistribution). Over $726 million of the up to $800 million allocated to the Deposited Assets Class was returned to bank depositors and their heirs.

The allocation formula, which required consideration of Holocaust victims' relative needs, also was questioned. The Court noted that a "comparison of needy survivors is by definition an odious process. All individuals who survived the Holocaust bear scars, and all merit relief. Nevertheless, left with limited funds to distribute, [the Court] had to render a judgment as to whose need was the greatest."[182] As to the specific decision to allocate 75% of the funds for Jewish class members to those in the former Soviet Union, and 4% to those in the United States, it was based upon "the number of impoverished survivors in each country, their relative need, and their other available sources of support."[183]

Approximately 19-27% of all Holocaust survivors lived in the FSU and 14-19% lived in the U.S., numbers that were supported by a Brandeis University study.[184] The Court observed that the Brandeis Report "confirmed the assessment of the Special Master that the population of *needy* survivors is distributed quite differently than the population of survivors."[185] The primary reason for this "differential distribution" was the Cold War, which cut off survivors in the former Soviet Union from the West and resulted in "survivors behind the Iron Curtain" receiving "next to nothing" in Holocaust compensation. Those in the U.S., however, were able to take part in at least "ten major compensation efforts" after the war, including the "Federal German Indemnification Program ('BEG Pensions'), payments by the Israeli Ministry of Finance, the Hardship Fund, the Article 2 Fund, the Central and Eastern European Fund, and the German Slave Labor Fund." By 2004, approximately $53 billion in restitution had been distributed from these and other programs, of which $14.8 billion (28%) had "gone to survivors in the United States." Only $444 million (0.8%) had reached FSU survivors.[186]

As Professor Dovid Katz of the University of Vilnius had noted, the "last elderly Jews of Eastern Europe, whose lives were ruined by the Holocaust, and who choose to live out their days in the towns of their ancestors, are suffering acutely from malnutrition, poverty and lack of

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182 302 F. Supp. 2d at 97.

183 *Id.*

184 *See* ANDREW HAHN ET AL., JEWISH ELDERLY NAZI VICTIMS: A SYNTHESIS OF COMPARATIVE INFORMATION ON HARDSHIP AND NEED IN THE UNITED STATES, ISRAEL, AND THE FORMER SOVIET UNION (Brandeis University 2004) ("BRANDEIS REPORT").

185 302 F. Supp. 2d at 98 (emphasis in original).

186 *Id.*

medicine, while the millions (or billions) from Germany, Switzerland and the great American Jewish organizations pass them by."[187]

In addition, FSU survivors "had to suffer through decades of Communism" and thus were "double victims" — a term favored by former Deputy Secretary of the Treasury Stuart Eizenstat, "who was instrumental in the efforts of the United States to bring about Holocaust restitution agreements."[188] The FSU survivors' situation worsened with the collapse of Communism.

The Brandeis researchers reached several conclusions about survivor needs worldwide. First, in the FSU, the survivor community constituted "between 32% and 40% of the total Jewish population," whereas the survivor community constituted 2.5% of the total U.S. Jewish population. This meant that in the former Soviet Union, there was "'a comparatively small Jewish community available to support victims.'" The problem was "exacerbated by the fact that while 56% of survivors in the United States are married and 96% have children, only 41% of survivors in the FSU are married and only 44% have children," so that "family and community support networks are stretched thin in the FSU." Furthermore, "[a]verage pensions now do not exceed $20 [to $30] in any of the countries of the former Soviet Union."[189]

The situation regarding medical services in the FSU was no better. "Diagnostic testing, specialties services and all but the most urgent hospital care are unavailable to those unable to pay for them, a group that includes virtually all of the Jewish elderly, and even when admitted to a hospital as an emergency[,] out of pocket payment must be made for pharmaceuticals and medical equipment used during the hospitalization!"[190] The "services most people receive are at best comparable to those available in the U.S. in the 1950s, and they are in striking contrast to the high-quality care and advanced technologies to which elderly patients in the U.S. and Israel

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187 *Id.* at 99 (quoting Dovid Katz, *How to Help the Holocaust's Last Victims*, FORWARD, Sept. 24, 1999, at 9) (also cited in the Distribution Plan, Vol. I, at 124).

188 *Id.*

189 *Id.* at 100.

190 *Id.* at 101 (quoting Letter from President of Montefiore Hospital and member of the JDC Board of Directors, to Special Master Judah Gribetz (Jan. 15, 2004) ("Montefiore Letter")).

have access on a routine basis and for which, with a few exceptions, governmental or private payment is available."[191]

The IOM, which by 2004 had been distributing Court-funded aid in the field for several years, confirmed the desperate situation in Central and Eastern Europe. The IOM noted that conditions there had "worsened considerably since the end of communism." The "elderly, and persons 'living on the edge' such as the Roma, have been hardest hit by the universal collapse of state services which once sought, however imperfectly, to meet some of their most basic material, social and medical needs."[192]

Thus, as the District Court observed, "funds from the Swiss Banks Settlement for many people have meant the difference between subsistence and hunger." Even with these Court-funded "hunger relief programs," which were "at the heart of the JDC's relief efforts and have by all accounts been a great help," these programs still "only benefitted 40% of the survivors served by the Hesed network." More than half "received no hunger relief" from the Settlement Fund, "despite desperate need."[193]

As to survivors in the U.S., their "economic plight" was "less well documented" but "also clearly less pressing." The U.S. survivors questioning the allocation to the FSU had relied upon the National Jewish Population Survey ("NJPS"), including its conclusion that approximately one-quarter of U.S. survivors were "living in households that fall below the federal poverty line" ($9,000 per individual / $12,000 per couple). However, only a small fraction of these survivors — 2% — stated during their telephone surveys that they "'can't make ends meet.'" Another 35% stated "that they were 'just managing,' and 63% responded that they were either 'comfortable,' 'very comfortable,' or 'wealthy.'"[194] The explanation was that "they have a social safety net on which to fall back:" "government entitlements" which "generally assure a minimum income provided through the Social Security Administration," as well as "an adequate

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[191] *Id.* at 101-02 (quoting Montefiore Letter).

[192] *Id.* at 102 (quoting Letter from Director of IOM Humanitarian and Social Programme (HSP), to Judge Korman (Dec. 4, 2003)).

[193] *Id.* at 102-3 (quoting Judah Gribetz and Shari C. Reig, *Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds*, at 88 (Oct. 2, 2003) ("Special Masters' Interim Report")).

[194] *Id.* at 104, 105 (quoting NJPS report).

level of health care provided through Medicare, a program designed to aid the elderly, and Medicaid, which supplements Medicare for needy elderly persons." The programs "are intended to ensure that the majority of elderly residents maintain a sustainable, although hardly lavish, standard of living."[195]

The Court also addressed the "Ukeles New York Report,"[196] which based its findings upon approximately 4,500 interviews with New York area residents including 412 Nazi victims. New York area survivors, like those in the rest of the United States, had "an exceptionally strong social safety net that will generally prevent the kind of destitution faced by almost all of the survivors in the FSU."

While not "mak[ing] light of the need in the United States survivor community," it was "of a different kind than that faced by survivors in the FSU."[197] The "premise that geography should be the controlling factor" led to the belief that "needy survivors in the United States should be awarded 25% of the funds because approximately 25% of survivors live in the United States." Beyond the fact that the data, including various surveys, did not bear out the 25% figure, "there is no Looted Assets Class sub-class composed of United States survivors. The relevant sub-class is the Looted Assets Class itself, and it is composed of *all* victims of Nazi persecution *and* their heirs whose assets were looted by the Nazis. It is not subdivided geographically." Allocating 25% of Looted Assets funds to U.S. survivors would be warranted only if "25% of the most pressing need among Jewish survivors globally was in the United States," and this was not the case. The proposal "would provide these relatively few needy survivors [in the U.S.] with a disproportionate benefit solely because of the overall size of the survivor community in the United States," an allocation that the Court did not consider to be reasonable.[198]

More specifically, the proposal would give 25% of the Looted Assets Class funds "to, *at most*, 12,000 survivors in the United States for supplemental home health services," a number

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[195] *Id.* at 105 (quoting Distribution Plan, Vol. II, Annex F ("Social Safety Nets")).

[196] UKELES ASSOCIATES, SPECIAL REPORT, NAZI VICTIMS IN THE NEW YORK AREA: SELECTED TOPICS (2003) ("Ukeles New York Report").

[197] 302 F. Supp. 2d at 106.

[198] *Id.* at 109.

based upon 4,000 individuals already identified, and an estimate that another 8,000 survivors in need of assistance potentially could be identified through outreach. The program would require an outlay of $30 million annually, of which "$10.5 million [was] needed for home care services for the already identified needy survivors; $3 million [was] needed for emergency services; $3 million [was] needed for transportation services; $3 million [was] needed for outreach; and $10.5 million [over one-third of the funds sought] [was] needed for services to those survivors who would be newly discovered as needy through the outreach." The Court found the proposal to be based upon inaccurate demographic data; it would exhaust funds allocated to the Looted Assets Class in less than two years; and it was "vague" in that some number of the 4,000 individuals identified as in need of home health care already were receiving services from other sources.[199]

The Court further noted that there appeared to be "differential views as to survivors of the Holocaust." Although comparison of survivors was "odious," the process was not made easier by the suggestion that "survivors living in the FSU (or by the same logic, former FSU survivors who have immigrated to Israel and the United States) are not 'true survivors.'"[200] The concern was raised that "[m]ost Jews currently residing in the FSU never saw a Nazi uniform…. [B]y the time the Nazis invaded Russia, they used 'Einsatzgruppen' to kill most of the unfortunate Jews they captured…. [M]ost of those that fled eastward were able to take their most precious belongings along and did not own the real-estate they left behind," and thus these individuals supposedly could not be "considered to be legitimate members of the 'Looted Assets' Class or any other class."[201]

However, historical evidence demonstrated otherwise. Many of the victims in the FSU might have had less, but what they had was stolen, as true for every region under Nazi control.[202]

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199 *Id.* at 110-11 (emphasis in original).

200 *Id.* at 112.

201 *Id.*

202 *Id.* (citing Yitzhak Arad, *Plunder of Jewish Property in the Nazi-Occupied Areas of the Soviet Union*, 29 YAD VASHEM STUD. 109 (2001)). *See also* Distribution Plan, Vol. II, Annex G ("Looted Assets") (citing USHMM and other studies demonstrating that those in the FSU, although they might have owned less, were plundered as ruthlessly as those in the West). *See also* YITZHAK ARAD, THE HOLOCAUST IN THE SOVIET UNION (Ora Cummings transl., University of Nebraska Press 2009).

In addition, the Court noted that the "overwhelming majority of the most needy survivors in the United States [were] recent immigrants from the FSU."[203]

> [T]he survivors still in the FSU are the same as the survivors [considered to be] "true survivors" once they immigrate to the United States and who, by consistently being among the neediest survivors in America, bolster [the] claim that the survivor community in the United States is in desperate need. Indeed, as the Brandeis Report concluded, in "the United States, poverty rates are especially noteworthy among recent immigrant victims from the FSU." Brandeis Report, at 44. Or in the words of the Ukeles study, "Nazi Victims in Russian-speaking households are much more likely to be poor [81% as compared to 21%] than Nazi victims in non-Russian-speaking households." Ukeles New York Study, at 6. This is not because individuals living in Russian-speaking households cannot succeed in New York; it is because 67% of those in Russian-speaking households have arrived in the United States since 1990. *Id. Essentially, the fact of being a recent immigrant from the FSU is the best predictor of poverty for survivors in the United States.*[204]

There were two additional issues "that warrant[ed] additional comment." First, the objection that the Distribution Plan represented a "'de facto exercise of charity using their money'" was "inconsistent with [their] own proposal." At most, under 10% of the U.S. survivor population would benefit from the health care plan that had been advanced. "It is hard to see how this proposal would survive [their] own objection" to the Distribution Plan.[205]

Second, the claim that survivors would have opted out had they known the terms of the Looted Assets Class allocation" could "apply with equal — or greater — force to [the objectors' own] proposed plan of allocation, a plan that would exclude 90% of the survivors in the United States from any share in the *cy pres* distribution to the Looted Assets Class." Furthermore,

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[203] 302 F. Supp. 2d at 113.

[204] *Id.* at 113 (emphasis in original). *See also, e.g.*, Michael J. Bazyler, *The Gray Zones of Holocaust Restitution: American Justice and Holocaust Morality, in* GRAY ZONES: AMBIGUITY AND COMPROMISE IN THE HOLOCAUST AND ITS AFTERMATH 339, 344 (Jonathan Petropoulos & John K. Roth eds., Berghahn Books 2005) ("Many of these still-living elderly Jews [in the former Soviet Union] managed to flee or were evacuated from Soviet territory before it became occupied by the Nazis. Some even served in the Red Army during the war. According to [certain U.S. survivors who filed objections], however, these FSU Jews are not actual survivors of the Holocaust because the Nazis never directly persecuted them"); Editorial, *Divided Funds, And Loyalties*, JEWISH WEEK, May 14, 2004, at 6 ("Some here maintain that the residents of the FSU, for all the hardship they have faced in their lifetime living under Nazi and then Communist rule, are not authentic Holocaust survivors because they may not have lived in concentration camps… [But] how does one define a survivor — by a quantifiable number (six months of enduring a death camp, yes, but five months no) or by the level of suffering, which no one can detect within another's soul?").

[205] 302 F. Supp. 2d at 113-14.

because survivors in the FSU received so little benefit from the Settlement Fund other than through Looted Assets Class funds — in contrast to U.S. survivors, who had received about one-third of all Settlement Funds distributed — FSU survivors arguably "would have had much more of an incentive to opt-out than survivors in the United States."[206]

2. Objections on Behalf of Certain Homosexual and Disabled Survivors

Two organizations representing, respectively, certain homosexual and disabled individuals, also filed objections. They stated that "not all unclaimed funds should be distributed to needy survivors of the Holocaust."[207]

IOM staff members, working on the Court's behalf, had engaged Roma clans and local humanitarian assistance groups, and had visited remote villages throughout Central and Eastern Europe, finding Roma Holocaust survivors throughout the region. By the end of the program, funds from the Swiss Banks Settlement had enabled the IOM to locate and deliver food, heat, medicines and other life-saving assistance to over 71,000 elderly needy Roma Nazi victims.

However, homosexual and disabled Nazi victims were more difficult to locate, despite the IOM's extensive outreach effort.[208] An organization advocating for homosexual Nazi victims contended that the residual funds recommendation did not "adequately account for homosexual victims because homosexual victims are nearly impossible to identify and thus have not often been among the needy survivors receiving settlement funds." The group requested "that in order to adequately account for homosexual victims, 1% of excess funds be allocated not to needy survivors, but to programs devoted to research and education regarding the plight of homosexuals in the Nazi era and its aftermath."[209] Another organization, "a non-profit law center founded to represent individuals with disabilities," stated that disabled Nazi victims "have been cut off from society and have thus not adequately benefitted from compensation programs."

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206 *Id.* at 114.

207 *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407, 408 (E.D.N.Y. 2004).

208 *See infra.*

209 311 F. Supp. 2d at 408.

They sought "between 2% and 3% of all residual funds" to be allocated "not to needy survivors, but to a 'short term Trust that will provide grants to disability oriented, non-profit, non-governmental organizations.' While victims of Nazi persecution who were targeted because of a disability could be among the beneficiaries of this 'trust,' so too could any other disabled individual or disability rights organization."[210]

As to the concerns relating to certain homosexual victims, the Court noted that despite extensive outreach and exhaustive inquiries, it "has simply been extremely difficult to identify survivors of Nazi persecution who were targeted for victimization because they were homosexual." The advocacy group itself had identified only seven needy victims targeted because of their homosexuality.[211]

The Court referenced the "terrible history" of Nazi persecution of homosexuals. The objectors had stated that "what makes homosexual victims of Nazi persecution different, and what makes them worthy of a distinct *cy pres* allocation in this case, is their post-war experience," including exclusion from post-Holocaust compensation, ongoing harassment, and even re-imprisonment. "[B]ecause of the precise form of Nazi era and post-war persecution of homosexuals, it is no surprise that the IOM has been unable to find more than a handful of needy homosexual survivors." Thus, as the Court explained, "1% of excess and common funds" was sought, which was to be "distributed for a separate *cy pres* remedy encouraging the remembrance of homosexual victims of Nazi persecution as a group," recommending four specific initiatives: a "modest monthly pension" to the identified needy homosexual victims; support of scholarly research focused on Nazi crimes and possibly identifying additional victims; general education about Nazi persecution of homosexuals; and support of efforts to prevent persecution of homosexuals.[212]

As to the objections raised on behalf of certain disabled survivors, it was stated that the "distributions thus far have not adequately accounted for the suffering of Nazi victims who were specifically targeted because of physical and mental disabilities." The Court noted that "[a]s

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[210] *Id.* (citation omitted).

[211] *Id.* at 411-12.

[212] *Id.* at 413-14.

with homosexual victims of the Nazis, it is undisputed that the Nazis committed unspeakable atrocities against people solely because they were disabled" and that the IOM similarly "has had difficulty identifying" such victims. The IOM had reported that it had contacted 23 non-governmental organizations throughout Europe, and relatively few victims had been located.[213] It was stated that the disabled nevertheless should be compensated on a broader basis, and the proposal was for 2-3% of residual funds to be placed into a trust to provide "'grants to disability oriented, non-profit, non-governmental organizations'" to further the rights of the disabled. Of that sum, 10% should be allocated to memorial and commemorative programs, and the remainder to "countries where needy Holocaust survivors reside, but they would in no way be limited to providing direct (or indirect) relief for survivors," but rather would be directed toward "improv[ing] the social standing of people with disabilities" where they were marginalized.[214]

The Court noted that homosexual and disabled Nazi victims were "only entitled to … distributions as individuals — not as a group. There are no sub-classes within the Looted Assets Class or any other Class." Just as there was no "United States survivors' share," there also was "no homosexual victims' share and … no disabled victims' share." The intent was to assist individual Nazi victims, regardless of why they were targeted. Given the "current level of need experienced by individual members of the Looted Assets Class," remembrance programs could not be justified.[215]

Further, there was no reason to assume that "overall, homosexuals and disabled survivors have not received a proportionate share of the total distributions in this case…. Surely some proportion of the Jewish, Romani and Jehovah's Witness Victims have been homosexual, even if not explicitly identified or targeted by the Nazis as such." In addition, "not only some, but a vast majority of survivors receiving funds from the settlement have been disabled," even if not originally targeted by the Nazis due to their disabilities. It "hardly seems debatable that when giving money to people who had assets looted by the Nazis because they were then disabled

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213 *Id.* at 414 (citing Special Masters' Interim Report at 105 n.147).

214 *Id.* at 415.

215 *Id.* at 416-17.

becomes impossible, the 'next best' solution is to give the money to people who had assets looted by the Nazis and are now disabled and suffer the same prejudice."[216]

Thus, although "[t]he goals of remembrance, education and advocacy are important, particularly for groups such as homosexuals and disabled victims whose place in the Holocaust is often improperly overlooked," such purposes "can only come after I am satisfied that life sustaining needs of the neediest victims of Nazi persecution are met. Because so many survivors continue to face life-threatening needs on a daily basis, I cannot now justify ordering the separate *cy pres* distribution;" rather, the Court must "continue to give money to needy survivors."[217]

3. The Special Masters' Recommendations for Allocation of Possible Residual Funds

The Court approved the Special Masters' recommendation to allocate "$60 million in currently available excess funds" to the Looted Assets in the same manner as the original allocation. The Court also adopted the Special Masters' recommendation to solicit proposals "for the allocation of possible unclaimed residual funds from the $1.25 billion Settlement Fund." "Any person or organization who seeks to offer a plan for providing assistance to needy Nazi victims" was asked to "file a proposal specifying at least the following information": (1) number and geographic location of Nazi victims to be served by program; (2) number and geographic location of "needy Nazi victims;" (3) assessment of survivor needs, including whether needs included medication, food, nursing care and similar assistance, "taking into account different social safety nets available by geographic location" and survivor longevity; and (4) specific

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[216] *Id.* at 417-18. With respect to the belief that homosexual and disabled victims were unfairly excluded because they were unlikely to have had "'surviving children,'" *id.* at 418 (citation omitted), the issue of heirs was relevant only for the Deposited Assets Class, since with limited exceptions only survivors were eligible for compensation under the other four classes, not heirs. The definition of "heirs" for bank account owners was broad, encompassing not only children, but far more distant relatives. To the extent that homosexual and disabled victims may have died heirless, so, too, did other victims, as "entire families were slaughtered." *Id.*

[217] *Id.* at 418-19.

distribution recommendations, including number of victims to be served, costs and types of assistance, as well as proposed distribution agencies.[218]

In response to this 2003 call for proposals, some 100 organizations and individuals filed materials with the Court. These proposals were studied to formulate recommendations about the use of possible residual funds.[219] The Special Masters presented an analysis of the proposals and recommended general principles to guide any secondary distribution, while noting that it was unclear whether, or in what amount, there would be any such distribution in light of the ongoing analysis of bank account claims.[220]

The "detailed proposals and studies submitted" confirmed that "survivor needs unfortunately remain[ed] essentially the same as when they were assessed in connection with the Distribution Plan." Of all needs, such as "medical treatments, prescription drugs, home health care, transportation and the like, the most urgent requirement often is food."[221] The Special Masters prepared a summary of proposals based upon the type of assistance requested and the number of Nazi victims expected to be served. While the proposals did not present an "exhaustive representation of all Nazi victim needs," and "may be both under-inclusive and over-inclusive," the suggestions nevertheless provided a highly "useful measure of current Nazi victim needs as perceived by those . . . who work with needy individuals every day."[222] The following trends were apparent as of 2004:

- Service providers in Israel indicated that in the calendar year 2004, approximately 17,105 Jewish Nazi victims in that nation needed food programs – canteen meals, food packages and meals-on-wheels. In the United States, service providers reported that 2,272 Jewish Nazi victims needed food programs. In the FSU, service providers reported that 121,600 Jewish Nazi victims needed food programs. In other parts of the world, including Central and Eastern Europe, approximately 2,080 Jewish Nazi

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218 Memorandum & Order Adopting Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds, *In re Holocaust Victim Assets Litig.*, No. 96-4849, at 2-3 (E.D.N.Y. Nov. 17, 2003) (emphasis in original).

219 The proposals may be found on the internet at http://www.swissbankclaims.com/Archives.aspx. A list of the proposals also is annexed as an exhibit to this Final Report.

220 Judah Gribetz & Shari C. Reig, *Special Masters' Recommendations for Allocation of Possible Unclaimed Residual Funds* at 6 (Apr. 16, 2004) ("Special Masters' Residual Funds Recommendations").

221 *Id.* at 7.

222 *Id.* at 7-8.

victims were reported as needing food programs. In sum, service providers indicated that approximately 12% of those in need of food were in Israel, approximately 1.6% were in the U.S., 85% were in the FSU, and 1.45% were in Central and Eastern Europe and other parts of the world.

- The food assistance sought for victims in the former Soviet Union included either a monthly food package consisting of "pasta, flour, beans, canned fish, rice, sugar and oil;" or a hot meal once a day. This was often "the only hot meal [these individuals] will receive during the course of a week, and their only source of protein;" or 2.5 "fresh food sets a month" (eggs, poultry, cheese and milk).

- Winter relief (fuel and warm clothing) was another pressing need in some parts of the world. In the former Soviet Union, 10,000 Nazi victims would be aided by an allocation of unclaimed residual funds, if such funds remained. In Israel, service providers sought winter relief for 1,000 Nazi victims. In the U.S., 1,400 victims would be assisted by winter relief. No proposals were filed seeking winter relief for Jewish Nazi victims in other parts of the world. Thus, the proposals indicated that for a second "subsistence" program funded by the current "Looted Assets Class" allocation, winter relief, approximately 8% of those in need were in Israel, 11.3% were in the U.S. and 80.7% were in the FSU.

- "Emergency financial assistance," consisting of grants for those facing a sudden and unaffordable expense such as rehabilitative equipment, medical procedures, rent and utility payments, and the like, was another key element of the Looted Assets Class allocation. According to the proposals, in 2004, 21,000 individuals in Israel, 3,375 in the U.S., 10,000 in the FSU and 1,600 in other parts of the world required this type of assistance; i.e., approximately 58.4% were in Israel, 9.4% in the U.S., 27.8% in the FSU and 4.45% in Central and Eastern Europe and other parts of the world.[223]

Taking into consideration requests for food, winter relief and emergency financial assistance, the service providers indicated that approximately 20.4% of those in need were in Israel, 3.7% were in the U.S., 74% were in the FSU and 1.9% were in Central and Eastern Europe and other parts of the world. With the exception of Israel, where the original allocation of Looted Assets Class funds was approximately 12%, the information offered by the service providers indicated that the original geographic allocations of 75% of funds to the FSU and 25% to the rest of the world remained consistent with the actual distribution of pressing victim needs (75% in the FSU; 12% in Israel; and 4% in the U.S.), if need was defined as "food," "winter relief" and "emergency financial aid."[224]

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[223] *Id.* at 8-10.

[224] *Id.* at 10-11.

The proposals made clear some of the "guarantees that living in America" provided for the elderly at that time, including Nazi victims. In Florida, for example, "[h]ome delivered meals [were] covered through the regular senior Meal program funded through Federal funds with a local Jewish community match through the Area Alliance on Aging. Most of those receiving home health care received meals. (5 meals per week are provided under this program)."[225] Thus, as the Court observed, federal funds and local philanthropy offered assistance even in "a state with one of the least extensive social safety nets in the country."[226] As another example of the U.S. safety net, the National Jewish Population Survey indicated that 71% of Nazi victims in the United States who reported the disability of someone in the household noted that "a government program such as Medicare [was] paying for the supervision or assistance, compared to 54% of non-victims. In addition, 19% of Victims [relied] on personal savings compared to just 6% of non-victims. Conversely, proportionally more non-victims (22%) report[ed] their personal insurance cover[ed] the cost of supervision or assistance for the disability than Victims [did] (5%)."[227]

The World Jewish Restitution Organization ("WJRO"), working with eight organizations, filed a request for residual funds on behalf of the State of Israel. Israeli social safety nets were fairly extensive. "Nazi victims in Israel [had] available a variety of assistance programs supported by the government and the NGO [non-governmental] sector," including "many forms of special assistance available to new immigrants (pensions, income supplement, health insurance, etc.)."[228] Although political unrest, the resulting increase in government expenditures on defense, and the deterioration in global financial conditions had worsened the situation in Israel, nevertheless, there was still a "floor of assistance that [was] by any reasonable measure far more generous than supports available to survivors in the FSU."[229]

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[225] *See* United Jewish Communities, *A Proposal to Expand Services to Nazi Victims in the United States*, Attachment F ("Miami Dade Holocaust Survivors Data for Swiss Bank Settlement Proposal, 1/23/04") (Miami-Dade County, Florida proposal submitted as part of UJC Proposal) (submitted Jan. 30, 2004) ("UJC Proposal").

[226] 302 F. Supp. 2d at 108.

[227] United Jewish Communities, *A Proposal to Expand Services to Nazi Victims in the United States*, Attachment B (NJPS report) at 10-11. *See also infra* (describing governmental funding of home care in the United States and Israel).

[228] BRANDEIS REPORT, at 41.

[229] *Id.* at 41-42.

As the submission filed by the WJRO on behalf of the State of Israel indicated, the "Ministry of Social Affairs and various NGOs assist[ed] these indigent elderly with subsidies for various services, such as payment of travel to treatments, providing necessary equipment and basic furnishings for the home, help[ed] pay for heating the house in winter in colder regions, [provided] assistance for dental treatments and purchase of needed items in accordance with indicators of neediness and eligibility."[230] While "many needs remain[ed] unmet,"[231] there were other government funded benefits including fifty percent discounts on public transportation and cultural events (the "Law of Elderly Citizens"); "pension payments for the most infirm elderly who remain in the community;" subsidized participation in Elder Care Day Centers; visiting nurse/home housework assistance (the "Nursing Insurance Law"); and "short, temporary respite-care recovery stays in healthcare-vacation facilities for the infirm elderly following hospitalization."[232]

A demographic study provided with the State of Israel/WJRO submission stated that "[n]eedy Jews who settled in countries where the socioeconomic situation is objectively better – thanks to the existence of safety nets but also better housing and other facilities – should not be penalized for their choices."[233] However, since the Court's goal was to assist the neediest

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230 *See* Application from the World Jewish Restitution Organization in cooperation with the Conference on Jewish Material Claims Against Germany for Funding from the Swiss Bank Claims for Assistance to Services for Needy Shoah Survivors in Israel, at 4, No. 96-4849, *In re Holocaust Victim Assets Litig.* (Feb. 27, 2004) (one of eight proposals submitted by the State of Israel and the WJRO). *See also* Motion of the State of Israel for Leave to File Supplemental Memorandum and Accompanying Materials with the Special Master, No. 96-4849, *In re Holocaust Victim Assets Litig.* (Mar. 24, 2004) ("State of Israel Motion").

231 *Id.*

232 *Id.* at 4-5. While the safety net may have weakened given the global economy, *see* State of Israel Motion, at 5 ("Sadly, Israel's storied social programs are not meeting the needs of these survivors as well as they once did"), the programs were still extensive. The WJRO advised in a proposal submitted on behalf of the State of Israel that services provided by the government included "old-age pensions, additional income allowance for those elderly who do not have a work-related pension, at-home personal nursing and care services for disabled elderly in the community (according to the National Insurance Law), and additional community services through the social system.... Health care is universal, through the National Health Insurance Law. Institutional services subsidized by the state include institutions for the frail elderly ... nursing homes for the elderly who are severely disabled and/or cognitively impaired ... specialized wards in mental institutions... and more." *See* Request for Aid in Financing Nursing Home Placements for Needy Shoah Survivors: Application from the WJRO at 6, No. 96-4849, *In re Holocaust Victim Assets Litig.* (Feb. 27, 2004). For many Israeli Holocaust survivors, significant additional benefits were provided by the Finance Ministry. *Id.* at 6-7.

233 Prof. Sergio DellaPergola, *Neediness Among Jewish Shoah Survivors: A Key to Global Resource Allocation - Final Report Presented to the Hon. Nathan Sharansky, Minister of Diaspora, Social and Jerusalem Affairs, Government of Israel, Jerusalem and World Jewish Restitution Organization, Jerusalem*, at 22 (Jan. 27, 2004) (submitted with State of Israel Motion).

survivors, the existence of "safety nets," "better housing" and "other facilities" was relevant, and the failure to take these governmental and private services into account would penalize needy survivors who did not have them.[234]

The Special Masters noted that many of the proposals reflected the disparate needs of different survivor populations. "Every survivor need should be considered, and in a perfect world with unlimited funds, every need would be addressed. But in a world where difficult choices must be made, the specific proposals and the costs – including the relative annual costs per person – are revealing."[235] Some examples of the types of assistance sought (and their estimated costs) were as follows:

- In one Central European nation, an organization sought to build a "complex social facility" or "Old Age Home" to serve approximately 100 Nazi victims in the region. The facility was to include approximately "35 beds in predominantly single rooms, medical case space, daily center, kitchen and boarding, [and a] multifunctional hall for 80 people." The total cost would be $2.7 million to $3 million, of which 90% was sought from the Settlement Fund ($2,430,000 to $2,700,000); thus, the cost per survivor would be $24,300 to $27,000. Another organization in that country sought to assist 1,550 survivors by creating a senior center with "60 residential rooms and ... daycare center with ... counseling and medical care." The total cost was expected to be $6 million, of which approximately $2,160,000 (averaging $1,394 per person) was requested from the Settlement Fund.[236]

- In one U.S. state, 7 survivors "identified as very needy" would be provided home care services at an annual cost of $183,984. The cost therefore was over $26,000 per person, per year.[237]

- In another U.S. state, $373,200 annually was sought to assist 60 victims (approximately $6,220 per person per year): services were to include $10,000 for "home health care and medication assistance" to 3 needy victims; primarily "bathing assistance" twice weekly to 30 victims; weekly "homemaker assistance" ("assisting

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234 *See also* Editorial, *Israel and the Swiss Banks*, FORWARD, Apr. 30, 2004, at 6 (the State of Israel was seeking "nearly half of any funds left over after the legal claims [to bank accounts] have been satisfied"; while "a significant number of the destitute survivors in the former Soviet Union have relocated to Israel in recent years, increasing Israel's burden … The crisis in social welfare is largely a result of government cuts …. It's true that Israel must cope with a huge defense burden and declining international investment. It's also true that Israel has managed over the past two decades to work its way from first to last among industrialized nations in income equality. It's not clear that this is the sort of hardship for which the Swiss humanitarian funds were intended").

235 Special Masters' Residual Funds Recommendation, at 62-63.

236 *See id.* at 63.

237 *See id.* (citing UJC Proposal at 14).

with chores, shopping, light cleaning and companion[ship]") to 50 victims, and "assisted living in a Jewish facility for 6 survivors" at "$2,800 per month" or "$201,600" for 12 months.[238]

- In the former Soviet Union, a program was proposed that would provide 121,600 Nazi victims with food, at a cost of $39 per person, per year. The recipient would receive either one hot meal daily, or one monthly package of dry food, or 2.5 monthly packages of fresh food. Alternatively, for $150 per person per year, each of the 121,600 victims in the program would receive a monthly fresh food package, thereby providing them with a second daily meal.[239]

- For several thousand Nazi victims living in Israel, considered under the national definition to suffer from the highest disability (150%), it was proposed that each person receive 10 hours of home care per week. This was to be in addition to the up to 24.5 hours for which that person might be eligible through other governmental and non-governmental support. For 2004, the program would assist 8,640 people and would cost $34.56 million, or $4,000 per person.[240]

- For the former Soviet Union, it was proposed that home health care hours be brought to within 80% of the then-current Israeli government-funded model, to approximately 14 hours weekly (2 hours daily), up from the then-current level in the FSU of up to 4 hours per week, at a cost of approximately $8.85 million annually and $520 per person, per year. The program would reach over 17,000 Nazi victims.

- An organization sought $12 million to $15 million to build, for the benefit of "at least 1,000 survivors [who] are tightly clustered" in a particular U.S. neighborhood, a "community center to be used for delivery of social services and socialization and to build a community for the generations of survivors that are left – and for generations and generations to come." Services would include "case management ... for those that need to access benefits, assistance with transportation services and most importantly funding tuition vouchers for their children." Assuming 1,000 survivors

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238 *See id.* (citing UJC Proposal at 9-10).

239 *See id.* (citing American Jewish Joint Distribution Committee, "Presentation on the Condition and Needs of Jewish Victims of Nazi Persecution in the Former Soviet Union" (JDC Proposal on FSU). *See also* Melissa Radler, *Acts of Kindness*, JERUSALEM POST, Oct. 17, 2003, at 26 (the JDC's *Hesed* program currently "spends an average of $250 on services for each survivor annually").

240 *See* Special Masters' Residual Funds Recommendation, at 64 (citing one of eight proposals submitted by the State of Israel/WJRO). The Special Master noted that while elderly persons who were completely disabled ("150%") needed several hours of home care daily, they already were eligible to receive between 9.75 and 15.5 hours of home care per week through governmental programs under Israel's Long-term Care Insurance Law. Those elderly who were Nazi victims received up to another 9 additional hours of home care per week through the Foundation for the Benefit of Holocaust Victims. *Id.* at 69-70. Thus, in 2004, disabled Nazi victims in Israel were eligible for up to 24.5 hours of home care per person per week.

were benefited by the community center, including tuition vouchers, the assistance provided to each person would total $12,000 to $15,000.[241]

- An association in Europe sought approximately $42 million over 20 years to "support 105 needy Holocaust victims" by providing an additional monthly pension. The group proposed further services, with an annual cost per person of approximately $12,398.[242]

- Elsewhere in Europe, an organization sought $60,090 for programs that would serve approximately 240 Roma Nazi victims (at an annual cost of approximately $250 per person), who had been "left out from any social and health programs, living in their houses without any medical help, very poor nutrition, without running water."[243]

These examples, "as true for all the proposals, demonstrate[d] that the unmet needs of Nazi victims around the world [were] vast. They further demonstrate[d] that the needs [fell] into a wide range of categories and expenses, and that the programs offering life-sustaining assistance to the greatest number of survivors often [were] able to do so at the lowest per capita costs."[244]

As to the suggestion that possible residual funds should be held in reserve in anticipation of locating new clients, the Special Masters noted that "[e]xtensive efforts to locate Nazi victims have been under way for many years in a variety of arenas, including but certainly not limited to this lawsuit. Unfortunately, for many service providers, there is no shortage of clients right now." Therefore, "with relatively limited resources, the goal should be to reach those now known to be most in need of assistance. There is not enough information about those who are not yet known to service providers (and who may never be found) to hold funds in reserve for needs that may prove to be speculative."[245]

The proposals indicated that while these emergency-level needs were vast, they were not limitless. Depending upon the amount of the residual funds, if any, it might be possible to assist the very neediest victims with food, winter relief and emergency financial aid, while still having enough funds remaining to address other victim needs as well. Should residual funds remain, it

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241 *Id.*

242 *Id.* at 64-65.

243 *Id.* at 65.

244 *Id.*

245 *Id.* at 75.

was possible that home health care, medical assistance and other programs also could be supported.[246]

Based on the needs presented, it was recommended that any residual funds be allocated as follows:

> 1. The first priority should be the provision of food and winter relief for those in need of this sustenance. Emergency cash grants also should be made to survivors facing sudden and unexpected crises…[T]hese are essentially the same *cy pres* humanitarian assistance programs now in effect for the Looted Assets Class...[T]he main (although not sole) beneficiaries of this "first tranche" of residual funds, should such funds exist, are the Nazi victims living in Central and Eastern Europe and the Former Soviet Union. The emergency financial assistance programs will provide aid to victims in all parts of the world.
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> 2. [T]he second priority should be the provision of home health care and medicines/medical equipment, where the needs are otherwise unmet by governmental or other programs. The potential beneficiaries reside all over the world: in the United States and Israel,…but also in the FSU, Central and Eastern Europe and elsewhere.
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> 3. The third priority should be the provision of additional assistance such as case management services, mental health care and support groups.[247]

4. The Hearing on the Allocation of Possible Residual Funds

The Court held a hearing on the Special Masters' recommendations. A total of 63 individuals spoke at the hearing, including many survivors, who described their experiences during the Holocaust and their financial hardships as they aged.[248]

Some speakers urged that it was premature to consider allocating "residual" funds while bank account claims were still being analyzed, among them then-New York State Banking

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[246] Special Masters' Residual Funds Recommendations, at 11. *See also* William Glaberson, *Deciding Which Wrongs to Right: Brooklyn Judge Has to Winnow Requests for Holocaust Fund*, N.Y. TIMES, Mar. 13, 2004, at B1.

[247] Special Masters' Residual Funds Recommendations, at 11-12 (emphasis in original).

[248] Transcript of Civil Cause for Hearing Before the Honorable Edward R. Korman, United States Chief District Judge, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (Apr. 29, 2004) ("Residual Funds Hearing Transcript") (Table of Contents).

Superintendent, whose Holocaust Claims Processing Office ("HCPO") worked closely with the CRT on a number of Deposited Assets claims. The Banking Superintendent observed:

> Based on our experience, the Banking Department is aware of the difficulties encountered by those trying to research [bank] claims and that's what information has survived in the banks through often fragmentary information claimants can provide.
>
> . . . .
>
> [T]he Banking Department's Holocaust [C]laims [P]rocessing [O]ffice has been working closely with the CRT office in an effort to expedite those claims to Swiss bank accounts. While only five percent of the CRT claims originated with our department, more than ten percent of the CRT's payments to date have been made to claimants who have worked with us.
>
> I say this to illustrate that I know whereof I speak. This is hard, exhausting and exhaustive work, as you know. We are clearly faced with a Herculean task. The overwhelming majority of claims remain unresolved. This is the main reason I would respectfully submit to you, Judge Korman, that before this court determines how to allocate any so-called residual funds, the CRT be given an opportunity to complete its work on the claims it has received.
>
> Until this has been achieved, there is no accurate means of determining just what may be left [of] so called residual funds. Moreover, I must confess that from where I sit, as difficult as it may be for those representing so many commendable projects here today, I rather hope that there be no funds left. That is, I sincerely hope that we can identify as many rightful owners of bank accounts as possible and extend awards to their heirs as quickly as possible. That is what I have always understood our priority to be.[249]

Many participants at the hearing noted their agreement with "the legal and moral obligation initially to take every step possible to provide for the claims of the deposited assets class prior to the creation of the residual fund,"[250] but also offered specific suggestions about how to spend any residual that might remain. The comments were diverse. Several speakers

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[249] Residual Funds Hearing Transcript, at 9-11. Holocaust survivors Greta Beer and Alice Fischer, both of whom had spent decades seeking their respective fathers' accounts, and who played leading roles in the late 1990s in bringing the issue of Swiss bank accounts to the public's attention, also urged the Court not to reallocate Deposited Assets Class funds until that claims process had been completed.

[250] Representative of a Jewish charitable organization, Residual Funds Hearing Transcript, at 31. *See also, e.g.*, Israel Singer, then-Chairman of the World Jewish Restitution Organization and President of the Claims Conference, *id.* at 83 ("we need first to do one thing and that is to pay all people who had accounts back, if possible"); Natan Sharansky, then-Minister of Diaspora, Social and Jerusalem Affairs, *id.* at 78 ("the State of Israel agrees with the Court that the first priority is to find the owners of the accounts … to the Swiss banks").

advocated on behalf of survivors in the U.S. Others spoke on behalf of survivors in Israel and in the former Soviet Union. Some advocated in favor of non-Jewish class members, including Roma, homosexual and Jehovah's Witness survivors; others asked that memorial and educational projects be embraced; and others urged the Court to recall and compensate the institutions that had been looted during the Nazi era.

The following examples typify the wide-ranging testimony provided at the hearing:

- *On the needs of survivors in the U.S.:*
    - **Representative of a Jewish Charitable Organization:** "[E]ven while acknowledging and supporting the great need for commemoration, remembrance and research, we are in agreement that the basic human needs of Nazi victims must be taken care of first. We agree that in the event that there are unclaimed residual funds to distribute, the provision of food, shelter and emergency aid for the desperately needy Nazi victims represents the first priority for humanitarian assistance. The Federation System of North America fully recognizes that conditions of Jewish survivors in the former Soviet Union are among the most difficult in the world. Indeed, the Federation System itself has long been committed to helping these populations through regular and special fundraising campaigns. We recognize, as well, the distressed condition of many survivors in the State of Israel and elsewhere. We also appreciate your recognition of the urgent needs of an extremely vulnerable segment of Nazi victims in the United States, especially in the home health care and medical areas. We welcome your acknowledgment that the safety net system in the US has serious flaws resulting in significant unmet needs."[251]
    - **Representative of Certain U.S. survivors:** "I would like to think that I speak on behalf of the dead. They, too should be factored into these proceedings. The dead cannot make monetary claims but the dead have the right to assert moral claims on all of us. The task before you, Judge Korman, is an unenviable one. It is a true [S]olomonic dilemma…Yet, as you have indicated, you intend to disproportionately favor the survivors of the Former Soviet Union in your allocation decision. They will ultimately receive a greater amount of the settlement proceeds. Regardless of their proportionate numbers, regardless of the needs of the Holocaust survivors who lived elsewhere anywhere in the world and regardless of where there is a direct connection between the origins of these looted assets and the property lost by the survivors of the former Soviet Union during the war."[252]

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[251] Representative of United Jewish Communities, Residual Funds Hearing Transcript, at 31-32.

[252] *See* Residual Funds Hearing Transcript, at 144-158. The Court noted that this testimony implied that "American survivors have not really benefitted from the Swiss settlement," which was not accurate. "Now,

- **Counsel for Certain U.S. Survivors:** "[M]y client[s] object...about the timing issue, about the indefinite delay about letting more money be available for looted assets. And they object to the allocation formula...[T]here is something of a sort of safety net in this country and some Americans have access to it. We're not disputing that. But the New York City Federation Study and the poverty study of those survivors makes it extremely clear that a large, large number of the poor survivors in this community do not have access to many of those social safety nets...[T]he assumption that the social safety net eliminates the poverty level, we don't believe is well founded…[M]y client[s'] position is the looted assets funds should be allocated to survivors in need wherever they live. And that due to the substantial needs that exist in the US, the FSU and Israel, that the only allocation formula that satisfies [Federal] Rule [of Civil Procedure] 23 in our view and one that benefits … the class as a whole is one based upon each country's relative share of the survivors of Nazi victim population."[253]

- *On Jewish and Roma survivors in the FSU and Central and Eastern Europe:*

  - **Representative of the JDC:** "Today, in the former Soviet Union, the JDC using funds from restitution sources, including from this [C]ourt under the Swiss Bank[s] settlement, as well as the Claims Conference, is caring for over 120,000 Jewish victims of Nazi persecution. JDC also cares for a similar number of poor elderly Jews in the FSU using charitable donations … from the American Federation System. As someone who has observed poverty deprivation around the Jewish world, I can clearly state that these elderly Jews in the FSU and in particular the victims of Nazi persecution are the poorest, neediest Jews on earth. However, JDC strongly supports the notion that all Holocaust survivors in desperate need wherever they reside in the world deserve help."[254]

  - **Representative of the IOM:** "That Roma survivors in Eastern and Central Europe are old and increasingly infirm[], is no surprise. This comes with the passage of time. Yet two other factors set them apart, their numbers and their needs…. IOM estimate[s] that almost 145,000 very needy former victims in the region could benefit from its humanitarian assistance. That count is based on multiple sources, the foremost IOM's first hand field experience in building the current program from the ground up... Four years ago, the Court saw fit to hear their cry [Roma victims] and to respond … with a measure of modest, if still life

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they may have benefitted because the money was theirs but they benefitted..." *See* Residual Funds Hearing Transcript at 147. In addition, the Court observed that the "looted assets class is for people who lost assets[,] not for people who necessarily suffered. It's a class of people who lost assets. If you were a flight case and you ran from the Nazis, you lost property..." *Id.* at 158.

253 Counsel for certain U.S. survivors, Residual Funds Hearing Transcript, at 230, 246, 250, 255.

254 Executive Vice President of the JDC, Residual Funds Hearing Transcript, at 35.

sustaining, recognition. Recognition to which the old Roma respond with tears and disbelief that someone might really wish to help, asking nothing in return."[255]

- *On survivors in Israel:*

  - **Representative of the Israeli Ministry of Finance:** In recent decades, "the standard of living in Israel actually deteriorated compared with the level in the U.S. And again [it] is widening over the last 30 years. This was the situation before the year 2000. In the year 2000, especially in the last quarter of the year 2000, the Israeli economy experienced two major shocks [ ]. And the first one, the most important one was the start of Palestinian terrorism which affected many segments of the economy … but gradually, over time, it also affected private consumption, investment, foreign investment and domestic investment. The other major shock which occurred at the same time was the global high tech crisis. And Israel is much more dependent [on] the global high tech market than any other country in the world, including the U.S."[256]

  - **Counsel for the State of Israel:** "We know that there are 19 percent [of elderly in Israel] living below the Israeli poverty line. That's 95,000 survivors... And the Israeli poverty line at today's exchange rates is $382 a month for a context. We know that there are 19 percent of the Israeli elderly who face food insecurity of some kind. That's 95,000 survivors. And we know that 17 percent of the elderly who [are] Israeli recorded that they cannot afford the cost of calling or visiting their own children."[257]

  - **Representative for the State of Israel:** "I think the … good intention is to enhance the survival of the Shoah survivors but I feel that the distinction between food and fuel on the one hand and basic health care not otherwise covered is one that … is difficult to follow especially when the able assistance in our case cannot ignore the need to preserve basic human dignity of those assisted. A person needs to be sufficiently healthy in order to be able to absorb food. And separation between the two things [is] artificial and hard to explain on nullity grounds."[258]

- *On alternatives to the Court-approved cy pres remedy:*

  - **Member of Settlement Class Counsel:** "[T]he legal standards to be applied here based upon [the] Agent Orange [line of class action cases concerning the *cy pres* remedy] is that when money cannot be distributed on a claims made basis, the Court may look to an equivalent distribution based on *cy pres* to the entire class.

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255 Director of IOM Humanitarian Assistance Programme on behalf of the Court and the German Foundation, and Deputy Director of IOM Compensation Programmes, Residual Funds Hearing Transcript, at 73-74.

256 Chief Economist of the Ministry of Finance of the State of Israel, Residual Funds Hearing Transcript, at 87.

257 Counsel for the State of Israel, Residual Funds Hearing Transcript, at 95.

258 Prof. Sergio DellaPergola, Professor of Jewish Population Studies, Hebrew University, Residual Funds Hearing Transcript, at 104.

But what the Court can't do, I submit, is to single out a subclass of the neediest and say that that satisfies the [A]gent [O]range standard. It is a question of matching the persons to be benefitted with the people in the class. There has to be congruence between the people being benefitted and the people in that subclass because your Honor has ruled and the [S]econd [C]ircuit has upheld the fact that we cannot do distribution to the looted assets sub class based on a claims made basis. I accept that. However, the Court then has to come up with a solution for a *cy pres* award which benefits the entire class... The next point I wish to make is that the proposal that I made on behalf of the class is the only proposal that satisfied the Second Circuit criteria for a *cy pres* distribution. I propose the reimbursement of medical expenses or medical insurance premiums up to $1,000 to all members of the — actually I was proposing it to the Holocaust survivor members of the looted assets subclass... [T]here is an issue between survivors and heirs, which your Honor is very familiar with and which we tried to deal with to some extent in the settlement agreement. The — dealing with healthcare [sic] satisfies a universal need… It's egalitarian. You give people freedom of choice. They don't have to be handed food packs. Some people may prefer food packs but I believe it's relatively small compared to all those who would prefer to be given legal tender or a reimbursement procedure where they decide."[259]

- *On memorial, educational and institutional projects*:

  - **Counsel for Certain Roma Survivors:** "Every Romani who died lost assets. They didn't do much with the banks. They don't have much in bank deposits in all probability although there were some rich, you know, in Romani[a] and Poland and elsewhere. They did wear gold and they kept their assets in the gold because … they could hang on to it and protect it and they lost all of that. Even in refugees and slave labor, they're vastly underrepresented because they're hard to find…Now this fund [proposed to support educational programs for Roma] [is] headed by first what I would consider the preeminent Romani leader in the world. He has spent his life on that matter, pretty much … [H]e has served a term on the … U.S. Holocaust Memorial [Museum]. The board is made up of Romani leaders and heads of Romani organizations. . ."[260]

  - **Counsel for Certain Homosexual Survivors:** The proposal on behalf of educational and memorial projects relating to homosexual Nazi victims "was intended to address not only the unique problems faced by gay victims in participating in the looted assets class and in *cy pres* distribution in connection with that class, but also with respect to participation in any of the other classes, deposited assets, slave labor[,] refugee[s], in which those victimized because of their homosexuality might be included. It's now virtually impossible to identify more than a small handful of survivors of the Nazi persecution of gay victims.

[259] Member of Settlement Class Counsel, Residual Funds Hearing Transcript, at 140-42. The Court observed at the hearing that the proposed medical insurance plan would cover survivors for a few months, at most.

[260] Counsel for Certain Roma Survivors, Residual Funds Hearing Transcript, at 294-297.

These victims are largely lost in the historic records and to meaningful inclusion in the claims process and this class action. For this reason, we've sought a *cy pres* allocation of a very small, modest amount of funds left over after all things are paid …. We are asking for just that very small portion of the proposal be for the coalition to distribute humanitarian financial assistance consistent with the Court's priority of using *cy pres* funds to help those in need, the seven needy gay survivors who have been identified world wide after all of these years, only seven men left who would qualify as needy who can even be found." [261]

- **Representative of a Jewish Charitable Organization:** I am here primarily to make a … moral case or perhaps a legal case on behalf of a group that to this point, at least, has been totally ignored in this settlement and also more generally in the entire restitution process. And the group that I am speaking about are those institutions of Jewish learning and of Jewish communal life that were sought to be destroyed by the Nazis and have since been recreated and rebuilt in various parts of the world, whether in the United States or in Israel or in the countries of destruction themselves in the former Soviet Union and Eastern Europe. And while, of course, we support and believe there is an extraordinary moral claim on behalf of survivors themselves to receive substantial allocations to help make their final years on this earth more comfortable, more pleasant where the [S]pecial [M]aster has pointed out very correctly in his report in many cases, livable all together. It's not just a question of comfort but it's life itself. And it's no question that they have a very substantial moral claim on restitution assets generally and on Swiss Bank funds specifically. But there's also a moral claim on behalf of the institutions here. The settlement specifically spoke of victims who were targets of Nazi persecution as including not only individuals but also any community, congregation, group, organization or other entity which was persecuted or targeted for persecution by the Nazi regime because they were or were believed to be Jewish [or] various other groups. And this recognition builds directly into the settlement agreement, thus far at least, has not achieved any tangible recognition as the settlement process has moved forward…. [T]here seems to have been some definitive determination that, in fact, an entire category, an entire group that is part of the class will be excluded from any benefits under the settlement."[262]

Following the all-day public hearing, certain appeals were filed with the United States Court of Appeals for the Second Circuit, and later with the United States Supreme Court.

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[261] Counsel for Certain Homosexual Survivors, Residual Funds Hearing Transcript, at 323-325.

[262] Counsel for a Jewish Charitable Organization, Residual Funds Hearing Transcript, at 331- 334.

D. The Appeals to and Decisions of the United States Court of Appeals for the Second Circuit

Three different appeals were brought in the United States Court of Appeals for the Second Circuit. Each appeal related to the *cy pres* remedy. The Court of Appeals upheld the District Court's decisions, observing that the allocation and distribution process had been conducted in an "exemplary" manner.

1. The Appeal by Certain U.S. Survivors

Certain U.S. survivors contended that the allocation to the Looted Assets Class "inappropriately relied on geographic differences in Holocaust survivors' needs because these needs are largely a function of historical events that followed the injuries inflicted by the Nazi regime and by the Swiss bank defendants."[263] The Court of Appeals upheld the District Court's allocation. "[I]n the circumstances presented by this case, we think the equitable principles of the *cy pres* doctrine permit the geographic variation that the District Court adopted. As that Court pointed out, survivors residing in the FSU had been cut off by the Soviet regime from the ten prior major efforts at Holocaust reparations, and of the $53 billion that has been provided to Holocaust victims through these prior efforts, $14.8 billion or 28% has gone to survivors in the United States and only $444 million or 0.8% has gone to survivors in the FSU. This extraordinary circumstance understandably prompted the District Court to consider the variation in *current* financial need in making the geographic allocation."[264]

The Court of Appeals noted that "[l]ike appellants, we are unaware of any other court that has relied on this particular combination of factors in allocating settlement funds" — namely, "the history of previous compensation efforts, material deprivations associated with decades of life under a Communist regime and the effects of that regime's collapse, and access to family and community support networks." However, "unlike appellants, we believe that consideration

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[263] *In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 147 (2d Cir. 2005) (citation omitted).

[264] *Id.* (emphasis in original).

of these factors, in the circumstances presented, was entirely appropriate and well within the wide discretion afforded to the District Court."[265]

The Court of Appeals also held that there was no particular "share" of the fund to which certain categories of survivors were entitled. "We find no legal or equitable support for [appellants'] view" that "Jewish Holocaust survivors who reside in the United States today are legally entitled to a particular share of the settlement fund based on their *total* number (rather than the number of *needy* survivors among them)."[266] "[F]rom the perspective of the *worldwide* population of needy Holocaust survivors — the population for the benefit of which the funds allocated to the Looted Assets Class are being distributed — there is nothing equitable about an allocation methodology that provides the 'relatively few needy survivors' in the United States 'with a disproportionate benefit solely because of the overall size of the survivor community in the United States.'"[267]

The Court of Appeals expressed regret that "[m]ore than six years after the creation of the settlement fund, the desired harmony among its beneficiaries has not been achieved. Indeed, the instant appeal is but one of a series of challenges to the District Court's allocation and distribution orders. Yet the objections raised by appellants here — and the zeal with which these objections have been pursued — have in no way undermined the thoughtful analysis and scrupulous fairness with which Chief Judge Korman has approached every step of this litigation."[268] Similarly, the Court of Appeals rejected the claim that there had been a "flawed judicial process." "To the contrary, the careful consideration that the District Court, the Special Master, and the Lead Settlement Counsel have accorded to every step in the allocation and distribution of this historic settlement has been exemplary."[269]

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265 *Id.*

266 *Id.* at 148 (emphasis in original).

267 *Id.* at 148-149 (citing District Court's opinion) (emphasis in original).

268 *Id.* at 149.

269 *Id.* at 149 n.15.

2. Appeals on Behalf of Certain Homosexual and Disabled Survivors

a. Appeal on Behalf of Certain Homosexual Survivors

It was stated on appeal that "under these circumstances — where extensive efforts to locate victims of Nazi persecution against homosexuals have yielded only a handful of individuals — the District Court 'lacked discretion' to allocate residual settlement funds solely for the benefit of needy Holocaust survivors."[270] The appellants "contend that so few victims of Nazi persecution against homosexuals have been located that the District Court was *obligated* to take the further steps of allocating funds for scholarly, educational, and outreach efforts."[271]

The Court of Appeals held that while the District Court had "discretion to adopt" this proposal, there was no obligation to do so.[272] Further, there was "no support for the proposition that a group entitlement to a particular share of the settlement fund had ever been contemplated, much less established." Although the District Court had adopted a "90/10 formula" (i.e., allocating 90% of Looted Assets funds to Jewish class members and 10% to Romani, Jehovah's Witness, homosexual and disabled class members), that "formula permitted the District Court to utilize social agencies with experience in serving *particular communities* for the day-to-day distribution of funds to needy *individual* victims. This administrative process took advantage of existing community ties to facilitate the distribution of funds to individual victims, but we find no evidence that this process vested any rights in the relevant communities themselves."[273]

Finally, the Court of Appeals was not persuaded by the argument that "'[b]y not providing for any real distribution from the settlement funds to homosexual victims as such, the District Court joined the long-standing historical refusal to recognize the suffering of thousands of homosexuals who remained forgotten victims of Nazi persecution for decades after the end of the Third Reich.'" The Court of Appeals stated that "[a]lthough the District Court concluded that payments to needy Holocaust survivors take priority over the scholarly, educational and outreach

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[270] *In re Holocaust Victim Assets Litig.*, 424 F.3d 158, 166 (2d Cir. 2005).

[271] *Id.* (emphasis in original).

[272] *Id.*

[273] *Id.* at 168 (emphasis in original).

programs proposed by [appellants], it never underplayed the suffering caused by Nazi persecutions against homosexuals."[274]

The Court of Appeals observed that "[f]or over six years, Judge Korman and Special Master Gribetz have pursued the monumental challenge of allocating limited funds among the victims of a limitless atrocity. Although appellants agree that the District Court's task is 'unenviable,' they nonetheless contend that the Court erroneously rejected [appellants'] request .... We now hold that the District Court acted within its discretion by rejecting [appellants'] proposal and concluding that the neediest among the identifiable survivors — be they Jewish, homosexual, Jehovah's Witnesses, disabled or Romani — must first be brought some comfort in the final years of their lives."[275]

b. Appeal on Behalf of Certain Disabled Survivors

It was contended that a percentage of the fund needed to be allocated for the benefit of disabled Holocaust victims. Although individual survivors were difficult to find, the fund would be put to use for memorial and educational projections on behalf of those victims. It was also stated that notice had been "inadequate," and that disabled class members had not been accorded due process.[276]

The Court of Appeals noted that its disposition of the issues raised on behalf of certain homosexual survivors "foreclose[d] the bulk of the claims raised by appellants here." "We fully recognize that the historical and current challenges facing Holocaust survivors who are members of the disabled community are in many respects distinct from those facing survivors who are members of the gay and lesbian community. We nonetheless hold that our rejection of the appeal [on behalf of certain homosexual survivors] compels us likewise to reject appellants' claim that the District Court exceeded its discretion by declining to adopt [its] proposal."[277]

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[274] *Id.* at 169 (alteration in original).

[275] *Id.* (citation omitted).

[276] *In re Holocaust Victim Assets Litig.*, 424 F.3d 169, 171 (2d Cir. 2005).

[277] *Id.* at 172.

E. The Appeal to the United States Supreme Court

Following the ruling by the Court of Appeals for the Second Circuit, certain U.S. challengers stated, in a petition seeking leave to appeal to the United States Supreme Court, that the adoption of a *cy pres* remedy in the Swiss Banks Settlement was "unlawful."

In earlier court proceedings, the appellants ("petitioners" in the U.S. Supreme Court) had not made that argument. For example, the Second Circuit, in its 2005 decision, had described "the aspects of the District Court's opinion that [the] appellants are *not* challenging. Appellants do not dispute that the District Court may, as a general matter and in the appropriate circumstances, distribute settlement proceeds to the neediest class members, pursuant to the *cy pres* doctrine…. Rather, they question whether the District Court exceeded the bounds of that general principle in this case by allocating funds partly on the basis of geographic disparities in the provision of basic needs."[278] The Second Circuit also had noted that the appellants "d[id] not dispute the findings that underlie the District Court's initial decision to distribute the settlement funds in this case to the neediest class members — namely, the findings that (1) a case-by-case valuation of Looted Assets Class members' claims, 'would have resulted in an unwieldy and enormously expensive apparatus,' and (2) '[a] *pro rata* distribution would have resulted in the payment of literally pennies to each of the millions of individuals who would fall into' the Looted Assets Class."[279] The Second Circuit indicated in its 2005 ruling that such a submission at that stage of the proceedings probably would have been moot, as "[i]n any event, we have previously affirmed the District Court's use of a *cy pres* remedy in this case."

In their appeal to the Supreme Court, the petitioners questioned the legality of the "use of a *cy pres* remedy in this case."[280]

> To be perfectly clear, it is and has been Petitioners' position that distribution of funds based on current need, unrelated to the claims being resolved, is unlawful. Period. [Citation omitted.] Petitioners do not endorse current need as a distribution criterion, whether applied across or within national boundaries. They

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[278] *In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 146 (2d Cir. 2005).

[279] *Id.* (citing *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 96 (E.D.N.Y. 2004)) (second alteration in original).

[280] *Id.*

> proposed various solutions such as having state insurance commissioners use settlement proceeds to fund an insurance policy that would be available to *all* survivors, not just the needy. Petitioners' position was and remains that the funds belong equally to all Looted Assets Class members.[281]

Lead Settlement Counsel Professor Neuborne noted, in response, that prior to the *certiorari* petition, the petitioners had supported a distribution that was to be based upon "need." For example, the September 10, 2003 challenge to the District Court's Looted Assets allocation ruling urged the funds to be allocated to the needy, "*to meet the human services needs of Class members who are currently being underserved*…." Similarly, its "January 30, 2004 submission to the District Court [was] denominated as a "Plan For Providing Assistance For *Needy* Nazi Victims in the United States."[282]

Professor Neuborne noted that the *certiorari* petition did not align with other statements by the organization to which the petitioners belonged, "which has consistently urged the District Court to allocate Looted Assets funds for the relief of needy survivors, albeit pursuant to a 'national residence quota' formula that would benefit needy survivors residing in the United States."[283] Professor Neuborne further noted that challenges seeking "proportional geographic distribution" had not been accepted by the District Court and the Court of Appeals.[284]

The *Forward*, a New York-based newspaper focusing on matters of interest to the Jewish community, stated in an editorial that the Supreme Court appeal "could undermine the settlement and threaten the larger process of Holocaust restitution."[285] With the appeal, it was

> theoretically possible that the whole structure of Holocaust restitution could collapse if the cases were forced back into court. The one major class-action suit that did go to court [in contrast to settling], a slave labor case against two German companies, was thrown out in 1999 by a federal judge in New Jersey because it had no legal merit. The judge, Dickinson Debevoise, wrote in a devastating, 90-page opinion that questions of restoring property and reconstituting a world

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281 Reply in Support of Petition for Writ of Certiorari at 5-6, 547 U.S. 1206 (May 31, 2006) (emphasis in original).

282 *See* Respondents' Brief in Opposition to Petition for *Certiorari* at 15, 547 U.S. 1206 (Apr. 28, 2006); Respondents' Supplemental Brief in Opposition at 2-4, 547 U.S. 1206 (June 6, 2006) (emphasis in original) (citations omitted).

283 *Id.* at 4-5.

284 Petition for Writ of Certiorari at 20, 547 U.S. 1206 (Apr. 3, 2006) (emphasis in original).

285 Editorial, FORWARD, May 12, 2006, http://forward.com/articles/1395.

> devastated by World War II had been settled by treaty in the 1950s, following years of negotiation among the great powers….
>
> The Debevoise ruling has hung over every restitution negotiation since then. European governments negotiated anyway, because they faced the moral pressure of their wartime roles, coupled with the combined political pressure of Washington, Jerusalem and world Jewry. But the major agreements were reached ages ago, in the uncharted time before 2001, the intifada and the Iraq War. It's not at all clear that the political and moral calculus operating in Europe in 1999 would look the same in 2006. On the contrary.

One of the Plaintiffs' Settlement Counsel, who had raised a question about the *cy pres* programs at the residual funds hearing, also sought Supreme Court review. He contended that the Court of Appeals decision "fails to apply any legal standard for *cy pres* distribution," and that the "distribution is also highly contentious."[286] Predicting that minimal additional distributions would be made for Deposited Assets Class claims, he stated that the "amount available for discretionary distribution by the lower court in the instant case — about $700 million — is far in excess of any amount ever distributed on a discretionary basis by any federal court…. An Article III court is not a foundation and should not take on the [mantle] of a foundation." He further claimed that the "lower court used two factors totally unrelated to the cause of action or settlement in awarding 75% of $205 million to class members: financial need, and residence in former 'iron curtain' countries. While the gesture may be admirable and the recipients worthy, the legal justification is lacking."[287]

In response, Professor Neuborne stated that this challenge was premature and did not raise "an Article III case or controversy." The attorney petitioner had made "no effort to challenge the District Court's past *cy pres* distribution orders, conceding that he supported the distribution of *cy pres* funds in the Court below, and that his concerns in this Court are purely prospective in nature."[288] Professor Neuborne explained that it was uncertain what residual funds, if any, would remain from the allocation to the Deposited Assets Class because of a proposal that recently had been filed by CRT Special Master Helen Junz. The proposal could

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[286] Cross Petition for Writ of Certiorari at 5, *Weisshaus v. Union Bank of Switzerland*, No. 05-1416, 547 U.S. 1206 (May 3, 2006).

[287] *Id*. at 7-8.

[288] Lead Settlement Counsel's Brief in Opposition Filed on Behalf of the Settlement-Classes at 6, *Weisshaus v. Union Bank of Switzerland*, No. 05-1416, 547 U.S. 1206 (May 17, 2006).

significantly increase the Deposited Assets Class payments, and limit the availability of residual funds.

> [B]eginning in May, 2004, Special Master Junz meticulously compared the awards in the cases for which information exists concerning the actual balance in a given account with the presumed value awards, and discovered that the presumed value averages appear to understate significantly the actual value of Holocaust-victim owned accounts. Accordingly, on March 31, 2006, … Special Master Junz recommended a substantial retroactive re-valuation of the presumed value awards which, when added to the additional awards currently in process, would exhaust the $800 million allocated to the Deposited Assets Class, leaving little or no settlement funds for residual *cy pres* distribution. The revaluation issue is currently under active consideration in the District Court.[289]

Professor Neuborne also questioned whether there was standing to bring the cross-petition for certiorari, in that no specific individuals had been identified as being represented in the appeal.[290]

On June 19, 2006, the Supreme Court denied *certiorari*.[291] The Supreme Court's decision thus left intact the decision of the United States Court of Appeals, as well as the District Court's earlier opinions, directing the greatest share of the funds allocated for humanitarian aid to the neediest victims.[292]

F. After the Supreme Court Litigation: The Legal Challenges to Special Master Junz's Presumptive Value Recommendations

For Deposited Assets Class claims, "presumptive values," or average values, were utilized to determine the amount of an award for a particular Holocaust-era Swiss bank account,

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289 *Id.*

290 *Id.* at 16.

291 *See* 547 U.S. 1206, 126 S. Ct. 2891 (2006) (denying certiorari).

292 *See also* Marilyn Henry, Letter to the Editor, *War crimes compensation*, INT'L HERALD TRIB., June 20, 2007 ("The Swiss banks case was a restitution case, not a discretionary fund for all Nazi victims. Of the 1998 settlement of $1.25 billion, some $800 million was set aside [and nearly $720 ultimately distributed] for those individuals and heirs who had Nazi-era bank accounts in Switzerland; there also were funds for Jews and non-Jews who performed slave labor …. [T]he looted assets piece was 10 percent of the settlement, and it was distributed on the basis of survivors' poverty, not their residence"). Marilyn Henry was a journalist with expertise in Holocaust compensation issues, particularly looted art; she was the author of CONFRONTING THE PERPETRATORS: A HISTORY OF THE CLAIMS CONFERENCE (Vallentine Mitchell 2007).

where bank records containing the actual valuation data no longer existed. To fill the gap posed by incomplete bank records, which may have documented the existence of an account but contained no information about the account's value, awards were made at designated "average" amounts based on the type of account. These average amounts — or "presumptive values" — were assigned by the Volcker Committee auditors early in the claims process, and were part of the CRT Rules. The amounts varied depending on the type of the account: savings; demand deposit; custody; safe deposit box; account of unknown type; and other (accounts not falling into the above categories). The presumptive value for a savings account was calculated at a 1945 value of SF 830; for a demand deposit account, SF 2,140; for a custody account, SF 13,000; for a safe deposit box, SF 1,240; for an account of unknown type, SF 3,950; and for other accounts, SF 2,200. A multiplier ranging from 10 at the outset to 12.5 by the end of the claims process was applied to bring these amounts to current values.

In mid-2004, CRT Special Master Junz alerted the Court that she intended to submit a proposal to increase presumptive values for certain types of Swiss bank accounts, which would likely significantly increase payments to Deposited Assets Class members, and thus decrease any residual funds that might remain from the up to $800 million allocated to bank account claims. Her reassessment was based upon her analysis of bank records and other documents that had not been made available when the Deposited Assets Class program began, but were later obtained because of the ongoing insistence that the banks cooperate with the claims process. Special Master Junz's proposal, and the Court's ultimate decision to adopt her recommendations, is described in detail elsewhere in this Final Report.[293]

The State of Israel and certain U.S. survivors took issue with CRT Special Master Junz's proposal, stating that

- the reassessment of average account values was not warranted because the original values had been assigned by the auditors for the Independent Committee of Eminent Persons ("ICEP," led by Chairman Paul A. Volcker);
- new information about Swiss bank accounts located by the CRT that had been unavailable at the time of the audit should not impact account values; and

[293] *See* chapter in this Final Report entitled "The Deposited Assets Class Claims Process."

- accounts in the category ICEP had reported as "closed unknown to whom" should not be taken into consideration in determining average values.

Special Master Junz's new recommendations followed the valuation principles proposed in other Holocaust compensation contexts. Her expertise was acknowledged in other areas, such as in the case of Holocaust-era insurance policies, where Special Master Junz's guidance had been sought in an effort to ensure that Holocaust victims and heirs were repaid, as closely as possible, for the value of what had been taken.[294] However, in the case of Swiss bank accounts, some of her recommendations were questioned.

1. The State of Israel's Objections to the Presumptive Value Recommendations in the Context of Programs for Israeli Survivors

a. Israel's Objections

The State of Israel did not support Special Master Junz's recommendation to increase many presumptive values (and thus increase many Deposited Assets awards, leaving less of a residual fund) because the proposal was said to be "premised on what appears to be unsound

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[294] As Professor Neuborne pointed out in his April 23, 2010 Declaration concerning the presumptive value issue:

> The Court is not alone in relying upon Dr. Junz' expertise. So, too, has the State of Israel, as a member of the International Commission on Holocaust-Era Insurance Claims (ICHEIC). ICHEIC sought expert assistance "on the overall volume and estimated value of potential claims" and so created a "task force to report on the estimated number and value of insurance policies held by Holocaust victims." The task force "was staffed by outside experts as well as ICHEIC members." *See* Statement of the Honorable Lawrence S. Eagleburger and Diane Koken, Former Chairman and Vice Chairman, International Commission on Holocaust Era Insurance Claims, before the U.S. Senate Foreign Relations Subcommittee on International Operations and Organizations, Democracy, and Human Rights, Hearing on "Holocaust-Era Insurance Restitution After ICHEIC," May 6, 2008 (Statement of Eagleburger/Koken), at 5-6. One of the "outside experts" was "economist[] ... Helen Junz, a member of the Presidential Advisory Commission on Holocaust Assets in the United States who assisted the Volcker Committee with a project on estimating the size and structure of the wealth of the Jewish population in Nazi-affected countries before World War II ...." The task force prepared an analysis which "provided data that allowed [ICHEIC] to assess the scope and size of the European pre-Holocaust insurance market relevant to Holocaust victims and their heirs." Among other things, the report prepared by Dr. Junz and other experts on behalf of the State of Israel and its fellow members of ICHEIC "estimat[ed] the average value of life insurance policies, based on the scope of the insurance market and the size of the Jewish population in each country." Statement of Eagleburger/Koken, at 6. In other words, the State of Israel, as a member of ICHEIC, sought out Dr. Junz for her expertise in determining the average value of one type of Holocaust-era asset: insurance policies. This seems to have contrasted with its decision to question Dr. Junz' ability to analyze the average value of another Holocaust-era asset: a Swiss bank account.
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> Declaration of Professor Neuborne, at 12 n.9, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (Apr. 23, 2010).

methodology and analysis."[295] Special Master Junz's proposal, it was stated, would detrimentally impact "the large number of needy survivors living in Israel — especially those survivors who emigrated from the Former Soviet Union (FSU)…. If this Court approves an upward adjustment to the presumed values for the Deposited Assets Class, the funds available to the Looted Assets Class will be significantly less than expected. Needy class members in Israel will be hit harder by the decrease in available funds due to the over-weighted allocation to FSU countries in the previous allocations. Notably, these allocations did not take into … account the large migration of the neediest class members from the FSU countries to Israel."[296] Relying upon a report on neediness among Israeli Holocaust survivors, Israel stated that more FSU Holocaust victims lived in Israel (180,000) than remained in the FSU (146,000), and that "a very substantial portion of the most needy class members (118,000) are immigrants to Israel from Russia and other poverty-stricken regions of the FSU."[297]

The State of Israel stated that although it had "unequivocally supported the Court's determination to exhaust all reasonable efforts to locate and provide compensation to members of the Deposited Asset [sic] Class," it would now be "inconsistent with the Court's duties to assure fairness to all members of the class" to adopt the presumptive value recommendations, particularly since it was unclear whether the District Court's determination (also adopted by the Second Circuit) that only the Deposited Assets Class claims had legal merit, would prevail. "[A]ny forecast or projection by this Court of the strength of the Looted Asset[s] Class' claims was just that — a projection. No one can say how such claims might have fared as a matter of law in the Second Circuit or the Supreme Court," or that "such claims would have been untenable before a jury."[298]

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[295] Objections by the State of Israel to Special Master Gribetz's December 19, 2008 Report, at 14, *In re Holocaust Victim Assets Litig.*, No. 09-160 (Feb. 13, 2009). The filing was submitted in response to the report by Special Master Judah Gribetz and Deputy Special Master Shari C. Reig: "CRT Special Master Junz' Proposal for Adjustment of Deposited Assets Class Presumptive Values in the Context of the Settlement Agreement and the Distribution Plan, December 19, 2008."

[296] Objections by the State of Israel to Special Master Gribetz's December 19, 2008 Report, at 28-29, *In re Holocaust Victim Assets* Litig., No. 09-160 (Feb. 13, 2009).

[297] *Id.* at 29-30 (citing JENNY BRODSKY & SERGIO DELLAPERGOLA, HEALTH PROBLEMS AND SOCIOECONOMIC NEEDINESS AMONG SHOAH SURVIVORS IN ISRAEL 25 (Myers-JDC-Brookdale Inst., Jerusalem, 2005)).

[298] *Id.* at 25-27.

In a subsequent filing, the State of Israel reiterated its view that the adoption of Special Master Junz's presumptive value recommendations "would negatively impact the neediest survivors by almost $200 million" and that "[m]any of these class members are unable to meet even the most basic daily needs." The State of Israel advised that "some 176,100 [survivors] … live near or below Israel's poverty line," "146,000 had insufficient heat in the winter," "107,400 had to choose between food and other basic needs," and "86,000 could not afford the cost of calling or visiting their children."[299]

b. Programs for Israeli Survivors

The Court asked the State of Israel to describe its assistance programs for Holocaust victims. In its response, the State of Israel explained that its programs for those who had been in camps and ghettos were more extensive than those for other survivors of the Nazis. The "Settlement Agreement's definition of the [Looted Assets] Class encompasses many individuals who would not meet the requirements for most other programs' support of survivors."[300] The State of Israel noted that Israel's 1957 Disabled Nazi Victim Persecution Law provided a pension to many categories of victims, including those who had fled from the Nazis, but "those who immigrated from the [FSU] in the 1970s and 1990s, are ineligible for benefits." A different survivor assistance program, the "Hashava" fund, also did not apply to those who had fled.

As part of a separate program addressed by a "November 2007 Government resolution," Israel had increased its budget for social services for the *Shoah* survivors," including those "who fall within the Court's definition of 'survivor' but outside [] the definitions operative in Israeli law,"[301] but not in equal amounts. Pursuant to Resolution 3940 ("The Benefits for *Shoah* Survivors Law"), financial assistance to survivors had been increased in accordance with the

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[299] Objections by the State of Israel to Special Master Gribetz's April 9, 2009 Report, at 8, *In re Holocaust Victim Assets* Litig., No. 09-160 (June 9, 2009); *see also id*. at 7 ("the [Junz] Recommendation disregards the duty of this Court to safeguard and protect the rights of the Looted Assets Class. This is an oversight that is intolerable to the State of Israel").

[300] Letter from Counsel for the State of Israel to Hon. Edward R. Korman, United States District Judge, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (May 7, 2010). Seventeen major worldwide Jewish organizations, including the Jewish Agency for Israel, had signed formal "Endorsements" of the Settlement Agreement, including the Settling Parties' (not the Court's) broad definition of the Looted Assets Class, covering virtually anyone in the five "victim or target" groups who was looted.

[301] *Id*.

"Group" to which the individual belonged. Thus, those "who were imprisoned in a concentration camp, ghetto, or forced labor camp and do not receive monthly assistance" were eligible for an "annual 'replenishing' grant of $545", a monthly pension of $285, and an annual "'recuperation' fee of $1,938." Those "who are entitled to monthly payments from the Claims Conference Hardship Fund" (i.e., primarily individuals who had lived in the FSU and had fled) were not eligible for the monthly pension or "recuperation fee," but would receive the annual $545 grant. Survivors who had not previously received compensation would receive the annual $545 grant, another annual grant of $1,167, and "10% rent aid."[302]

The State of Israel advised that its population of "approximately 180,000 individuals who fled the Nazis or suffered at the hands of the Nazis or their collaborators but never endured a concentration camp, ghetto or forced labor camp," like "all elderly Israeli citizens," were entitled to various social services. These included an average monthly pension of $484; rent, transportation and phone bill discounts; and electricity subsidies. Even with this help, which "allow[ed] some flight victims to meet their daily needs, the poorest of them cannot stretch the benefits to cover basic necessities in a country that struggles with a notoriously high cost of living." The State of Israel noted that "neediness persists," and "[a]mong those who suffer the most are the nearly 85,000 survivors who immigrated relatively recently from the Former Soviet Union."[303]

2. Objections by Certain U.S. Survivors

Certain U.S. survivors also did not support Special Master Junz's proposal, stating that it would "radically alter the Settlement in this case, eliminating the likelihood that substantial funds would remain for reallocation to the Looted Assets Class.[304] In addition, the United States government filed a "Statement of Interest," which noted the Court's "broad supervisory powers

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302 *Id.*

303 *Id.*

304 Class Members' Objections to Revaluation of Deposited Asset Awards, at 1-2, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (June 2, 2006); *see also* U.S. Survivors' Renewed Objections to Revaluation of Deposited Asset Awards and Request for Hearing and Briefing Schedule, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (Jan. 9, 2009); U.S. Survivors' Submission in Response to Court's January 14, 2009 Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (Feb. 13, 2009).

over the administration of the class-action settlement to equitably allocate proceeds among the claiming class members." The "Statement of Interest" added that "the foreign policy interests of the United States, which favor providing crucial resources to the neediest Holocaust survivors both here and around the world, may be considered by the Court as it determines how best to allocate the remaining settlement funds."[305]

Special Master Junz's recommendations to increase presumptive values followed standards that U.S. survivors had supported in the context of other Holocaust-era property rights programs. For example, the U.S. Congress was asked to enact a law that would permit individuals to bring suit against insurance companies for unreturned Holocaust-era policies. Congress was advised that no stone should be left unturned in locating relevant records relating to their property rights. The U.S. survivors who testified stated that such efforts should be allowed to continue as long as necessary, even if their children and grandchildren eventually had to pursue these insurance claims.[306]

3. The District Court's Presumptive Value Decision

On June 16, 2010, the District Court adopted Special Master Junz's presumptive value proposal, allocating $100 million of the up to $800 million reserved for the Deposited Assets Class to adjust the account values that had been set by the Volcker Committee auditors at the

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[305] The Statement of Interest annexed a letter from "Ambassador Stuart E. Eizenstat, Special Advisor to the Secretary of State for Holocaust Issues, and Ambassador J. Christian Kennedy, [then-]Special Envoy for Holocaust Issues," describing the 2009 Terezin Declaration, which had been "affirmed by the United States and 45 other countries, and how this Court's decision may impact the United States' foreign policy interests as regards that Declaration." Statement of Interest of the United States, at 1-2, *In re Holocaust Victim Assets Litig.*, No. 09-160 (Oct. 27, 2009), annexing Letter to Assistant Attorney General Tony West from Ambassadors Stuart Eizenstat and J. Christian Kennedy (Oct. 23, 2009) ("Letter of Ambassadors Eizenstat and Kennedy"). The letter referred to the "needs of the U.S. survivor community," which it described as "pressing and well-documented," and noted that as the Court "evaluates the proper distribution of the remaining Deposited Assets Class funds, we hope it will give serious consideration to significant social welfare needs of survivors in the Looted Assets Class." *Id.*

[306] *See, e.g.*, Holocaust Era Insurance Restitution After International Commission on Holocaust Era Insurance Claims (ICHEIC): Hearing Before the S. Subcomm. on Int'l Operations and Orgs., Democracy and Human Rights of the Comm. on Foreign Relations, 110th Cong. 2 (May 6, 2008) ("May 6, 2008 Senate Hearing"), at 27.

outset of the bank account claims process.[307] The Court observed that "even if the objections had any merit, it would not result in an increase in the award to the Looted Assets Class that the objectors seek." The assumption that the Court "would award the residue to the Looted Assets Class," increasing "the $205 [million] allocation that I have already made to the members of this Class, of which $105 million reflects two earlier upward adjustments" was not accurate.[308]

The Court reiterated that the only claims with legal merit were those of the Deposited Assets Class:

> If the Swiss Banks had succeeded in destroying all records indicating the value of particular accounts, thereby making it impossible to establish actual or average values for different categories of accounts, I would have simply divided the award *pro rata* to those claimants who made a satisfactory showing of an entitlement to an account. Because all of those records were not destroyed, however, there was a reasonable basis on which to judge the average values for particular categories of accounts. No objection was voiced to the calculation of the average values in 2001.
>
> Dr. Junz, as I have already observed, has simply used data that were not available at the time of the initial audit by the Volcker Committee to recommend an upward adjustment. Nevertheless, even without the new data on which she relied, I would not have taken funds that belonged to the Deposited Assets Class and awarded them to members of the Looted Assets Class. Instead, I would have done something comparable to the intra-subclass *pro rata* approach described above, and the result for the members of the Looted Assets Class — who were not legally entitled to any award — would not have changed.[309]

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307 *See* Memorandum & Order Approving Adjustment of Presumptive Values Used in the Claims Resolution Process and Authorizing Additional Payments for Deposited Assets Class Plausible Undocumented Awards, *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010). The decision is discussed in further detail in the chapter of this Final Report entitled "The Deposited Assets Class Claims Process."

308 731 F. Supp. 2d at 287.

309 *Id.* at 288 (citing, *e.g.*, John Authers, *The Road to Restitution*, FIN. TIMES WEEKEND, Aug. 16/17, 2008, at 23 ("Rather than use the Swiss pay-out for a big charitable gesture, the US legal system had pulled the settlement towards a different version of justice. Banks could make good on their faults, and the often long-deceased owners of their accounts could receive the dignity they deserved, only if the court made every last attempt to make sure every surviving claimant received exactly their due"). *See also id.* at 289 (the "'next best' use that would serve the interest of class members," in the event residual funds remained, "would be an allocation to the members of the Deposited Assets Class and not to the members of another class whose claims are unsustainable. Indeed, the case for such an intra-subclass *cy pres* distribution is far stronger than the case for the comparable *cy pres* distribution to members of the Looted Assets Class. Unlike the members of the latter class, who cannot establish any connection to specific wrongdoing by any Swiss entity that would entitle them to relief, a *cy pres* distribution within the Deposited Assets Class would benefit only those who have made a satisfactory showing of entitlement to assets deposited in Swiss banks during the Holocaust era").

The Court pointed out that if not for the unique approach adopted for the Looted Assets Class under the Settlement Agreement, there would have been no allocation to the needy at all:

> When it became clear that it would have been administratively inefficient to create an individualized claims process intended to determine, from among more than a million potential claimants, including victims and heirs, what property was looted and whether it was transacted through Switzerland, I adopted a *cy pres* remedy to benefit the neediest members of the Looted Assets Class whose assets had been presumed to have been looted. But for this program, the neediest survivors would not have been eligible for any special payments whatsoever under the Swiss Banks settlement. The humanitarian aid programs were not negotiated under the settlement by the objectors, nor by any other interested parties. Rather, these assistance programs are the result of the recommendations set forth in the Proposed Plan of Allocation and Distribution of Settlement Proceeds, and my agreement that the Settlement Fund should provide a measure of meaningful, not token, compensation to members of the Looted Assets Class. Because of the adoption of this intra-subclass *cy pres* remedy, more than 231,000 [and ultimately over 237,400] needy survivors throughout the world have received food, medical assistance, emergency grants, winter relief and similar aid through Court-funded programs.[310]

Accordingly, Special Master Junz's recommendations were adopted, increasing presumptive values for most accounts, and authorizing additional payments to many members of the Deposited Assets Class.

4. Allocation of Residual Funds and Subsequent Litigation

After the presumptive value adjustments were made and the bank account payment process neared completion, $54.5 million remained undistributed from the Settlement Fund. Following review of the recommendations of Special Master Gribetz and Deputy Special Master Reig, the Court in 2013 approved the allocation of $50 million in residual funds for programs assisting the neediest Holocaust survivors.

> As I have previously made clear, my intention is to distribute residual funds that might remain to the neediest Holocaust survivors as members of the Looted Assets Class. *See In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89 (E.D.N.Y. 2004), *aff'd*, 424 F.3d 132 (2d Cir. 2005). Since the inception of the

[310] 731 F. Supp. 2d at 289.

> distribution process, I have made three allocations of funds to the neediest survivors — $100 million, $60 million; and $45 million — for a total of $205 million. I am pleased now to be able to make a fourth allocation of an additional $50 million from the Settlement Fund, which with the previous additional allocations … now represents a 155% increase over the initial $100 million allocation. These funds will continue to make a significant difference in the lives of many of those who suffered so grievously as a result of Nazi actions and today live with tremendous needs.[311]

The Court "sought an update on current economic conditions for Nazi victims," retaining the "eminent research institution" that "previously had provided the Court with data on Holocaust victims, the Brandeis University Cohen Center for Modern Jewish Studies & the Steinhardt Institute for Social Research ('Brandeis')."[312]

The Brandeis researchers advised that survivor needs over the years had remained "'essentially the same.'" While there had been some recent "'tangible increases in the humanitarian assistance available to Nazi victims,'" there were also "'new challenges as a result of the global economic crisis that ha[d] exacerbated income inequality. In addition, although the victim population is smaller, it is also more elderly and in need of services. Despite these challenges, the relative deprivation and disparities among victims living in the three regions where most of the population reside — the Former Soviet Union (FSU), the United States, and Israel — remains fairly consistent with what was observed in 2004 [when Brandeis originally had reviewed the data on behalf of the Court]. Although there [were] clearly victims in need across all regions, the victims in need in the FSU struggle[d] with poor conditions of housing, low income, minimal social services, and poor access to health services. Further, they lack[ed] the well-developed and functioning social safety nets that exist[ed] in the United States and Israel.'"[313] Similarly, as to "Roma victims of the Nazis, the situation remain[ed] dire."

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311 *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2013 WL 2152667, at *2 (E.D.N.Y. May 13, 2013).

312 *Id.* Brandeis University previously had supplied information on survivor needs in reports commissioned by the JDC.

313 *Id.* (citing ELIZABETH TIGHE, RAQUEL MAGIDIN DE KRAMER, LEONARD SAXE, BEGLI NURSAHEDOV & MICHA RIESER, BRANDEIS U. COHEN CENTER FOR MOD. JEWISH STUD. & STEINHARDT INST. FOR SOC. RES., JEWISH ELDERLY NAZI VICTIMS: UPDATE - REPORT PREPARED FOR THE HONORABLE EDWARD KORMAN, DISTRICT JUDGE, EASTERN DISTRICT OF NEW YORK (2013)).

Therefore, since conditions were "essentially the same … as when the humanitarian assistance programs were adopted in 2000, and revisited in 2004 in connection with possible additional funding, the residual funds" were to be "allocated in accordance with the original terms of the Distribution Plan." Of the $50 million available, 90% was allocated to needy Jewish victims, of which 75% was allocated to needy victims in the FSU through programs managed by the JDC ($33,750,000 allocated over five years). Of the remaining 25% ($11,250,000 allocated over five years), 12.5% was allocated to needy victims in Israel through programs managed by the Claims Conference, and 12.5% to needy victims in the rest of the world, also through Claims Conference programs. The remaining 10% of the $50 million in residual funds was to be allocated to needy Roma victims through IOM programs ($5,000,000 allocated over 15 months).[314]

By separate order of the same date (May 13, 2013), the Court allocated the remaining $4.5 million in residual funds to the Victim List Project. This was originally a $10 million program created for the benefit of all Class members, which "encourages and helps to organize the compilation and greater accessibility worldwide of the names of individuals whom the Settlement Agreement is intended to benefit — Jewish, Romani, Jehovah's Witness, homosexual, and disabled victims or targets of Nazi persecution, those who perished and those who survived — for research and remembrance."[315]

Certain challenges were filed regarding the Court's appointment of the JDC and the Claims Conference as administrative agents charged with distributing residual funds. Judge Korman addressed these concerns in decisions issued respectively on May 23, 2014 (relating to the JDC) and May 30, 2014 (relating to the Claims Conference).[316] By separate order dated May

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[314] *See In re Holocaust Victim Assets Litig.*, 2013 WL 2152667 at *3 (noting that the program recommended by the IOM was to be somewhat more limited than that undertaken previously). The IOM had observed in its proposal to the Court that based on its "'past experience, the current funding limitations and, most importantly, the intention to assist the neediest among the survivors, [its] project proposal focuse[d] only on Roma Holocaust Survivors in three less affluent European countries (not members of the European Union)'." *Id.* at *3 n.2. The program later was expanded to a fourth country.

[315] *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2013 WL 2153101, at *1 (E.D.N.Y. May 13, 2013). The Court noted that the increase in funding would "establish parity between the Victim List Project and the four non-Looted Assets Class programs" that previously had received 45% increases due to tax exemptions and the accrual of interest on the Settlement Fund.

[316] *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2014 WL 2171144 (E.D.N.Y. May 23, 2014) and *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2014 WL 2547582 (E.D.N.Y. May 30, 2014), respectively.

30, 2014, the Court also addressed an objection filed by an individual who had not previously participated or appeared in any proceedings relating to the settlement or its distribution.[317]

With respect to the JDC, that organization had been chosen to administer the funding and programs for the Jewish Nazi victims in the FSU "because the JDC was already on the ground providing assistance to elderly Jewish survivors in need, and my choice of the JDC obviated the necessity to create a new and expensive distribution process."[318] However, the Court now was being asked to "conduct 'a searching investigation and public hearing into their handling of previous allocations.'" The objectors also sought a stay. The Court observed that "[p]resumably, in the interim, these victims would be deprived of the necessities of life. This effort to halt the distribution of assistance to the victims of Nazi persecution in the FSU" would deny or diminish the assistance provided to these victims."[319]

The Court denied the motion for rehearing and for a stay on three grounds. First, there was no legal standing to raise these matters. Second, the submission was based upon facts "long known," and did not "provide the basis for a motion for rehearing. Third and finally, the motion [was] without merit."[320]

As to whether there was legal standing to raise the argument about the JDC, the Court noted that the "beneficiaries of the funds distributed by the JDC are the neediest victims in the FSU;" thus, "whether the JDC or any other entity administers the allocation in the former FSU is of no consequence" to those not living in the FSU. In addition, the process had become more difficult with certain observers "repeatedly suggesting that the survivors living in the FSU (or by the same logic, former FSU survivors who have immigrated to Israel and the United States) are not 'true survivors.'"[321] Several years earlier, the Court noted, they had "petitioned for a writ of certiorari" in which it was stated that "'it is and has been Petitioner's position that distribution of

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317 *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2014 WL 2440612 (E.D.N.Y. May 30, 2014).

318 *In re Holocaust Victim Assets Litig.*, 2014 WL 2171144, at *3.

319 *Id.* at *3-4.

320 *Id.* at *4.

321 *Id.*

funds based on current need, unrelated to the claims being resolved, is unlawful. Period.'"[322] If this viewpoint had been accepted, it "would have deprived even the needy survivors in the United States, whom they claim to represent, from receiving any assistance based on their need."[323]

As to the second point, Judge Korman observed that the "attack on the integrity of the JDC as the administrator of the funds goes back well over a decade," and thus raised no new arguments.[324]

Finally, the JDC had "responded on the merits to the baseless allegations that have been made against it." The court rejected those arguments, quoting "several paragraphs from the preamble of a United States Senate resolution that was passed [in] December [2013] on the occasion of the 100th anniversary of the JDC." In its resolution, the Senate noted the JDC's "'historic and enduring relationship'" with the United States Government. This relationship had "'evolved from cooperating in life-saving work in Europe through the American Relief Administration following World War I and the War Refugee Board during World War II to the more recent partnerships between the JDC and the Department of Agriculture, the Department of State, and the United States Agency for International Development.'" The Senate's resolution — and the Court's decision —observed that the JDC "'creates programs and solutions that benefit the neediest populations in communities around the world and confronts the most difficult challenges, such as natural disasters, extreme poverty, political instability, and genocide.'"[325]

A question also was raised as to whether the Claims Conference should serve as an administrative agent for purposes of distributing residual funds. This was based partly on the

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[322] *Id.* at *5 (citing Reply in Support of Petition for Writ of Certiorari at 5-6, 547 U.S. 1206 (May 31, 2006)).

[323] *Id.* The Court stated: "The representation they made to the Court regarding their position that they had previously taken 'that distributions of funds based on current need, unrelated to claims being resolved, is unlawful,' [*see*] Reply in Support of Pet. for Writ of Cert. (May 31, 2006), at 5-6, is contrary to the record" and a "breach of their obligation to the needy victims in the United States whom they claim to represent," *id.* at *5 n.3, because if that position had prevailed, no needy survivors — whether in the U.S. or elsewhere — would have been eligible for assistance under a Court-funded *cy pres* program.

[324] *Id.* at *6.

[325] *Id.* at *7.

fact that there had been a criminal fraud involving a separate program administered by the Claims Conference on behalf of Germany, the Article 2 pension program.[326] The objection was denied on two grounds. First, "after reviewing the record," there was "no justification for the inquisition" being sought. "Second, because of the manner in which the Claims Conference administers the funds for the neediest victims, there is no reasonable likelihood of any impropriety, much less one that could not easily be discovered."[327]

The Court explained:

> Unlike the JDC, the Claims Conference does not directly provide assistance to needy survivors. Instead, it provides funds to agencies who serve that population. As Greg Schneider, the Executive Vice President of the Claims Conference writes in his declaration in response to [this] motion:
>
> > "We have attached a list of all Claims Conference distributions from the Swiss Banks Settlement Looted Assets Class. Each participating agency had ample opportunity, over the course of ten years, to alert the Claims Conference or complain to the Court if any of the funds in question did not reach an intended recipient. Surely, if a sum of money designated for a particular agency was not received, the agency would have made that known. There has not been one such accusation of impropriety."
>
> Not only [is there no] evidence of a single instance of impropriety with respect to the Claims Conference administration of funds from the Looted Assets Class, but the Claims Conference's current application [for residual funds, in accordance with the five-year program established by order of May 13, 2013] contains a list of every agency to which it intends to provide funds in 2014…. [One] can easily determine by inquiry to those agencies whether the funds designated for them have been received.[328]

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[326] In November 2009, the Clams Conference discovered a fraud involving its Article 2 and CEEF programs, perpetrated by certain Claims Conference staff, claimants and third party facilitators. The fraud, which the Claims Conference reported to the FBI, was investigated both by the FBI and the then-United States Attorney for the Southern District of New York, Preet Bharara (who thanked the Claims Conference for its cooperation in reporting and investigating the fraud). Several individuals were charged and convicted. The fraud was estimated at approximately $60 million. *See* Declaration of Greg Schneider in Support of Conference on Jewish Material Claims Against Germany's Opposition to U.S. Survivors' Rule 59 Motion for Rehearing or to Alter or Amend May 13, 2013 Orders Allocating Remaining Settlement Funds, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Nov. 7, 2013), at 15-17.

[327] *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2014 WL 2547582 at *3 (E.D.N.Y. May 30, 2014).

[328] *Id.* (citation omitted).

The Court noted that the Claims Conference had allocated "'several billion dollars'" in funding over the years for "'welfare programs which provide, among other support, homecare, emergency assistance, and medicine for the benefit of hundreds of thousands of Holocaust survivors worldwide. And no independent fraud has been found related to the social welfare funds and programs administered by the Claims Conference.'"[329]

In addition, needy survivors in the U.S. were to receive 4% of the allocation (i.e., $356,500 in 2014), and there had been no showing "sufficient to justify a stay, even for the expenditure of $356,500." As to the remaining funds allocated through the Claims Conference, "$1,102,500 [was] for needy survivors in Israel." While the State of Israel "ha[d] previously appeared in this action on behalf of those survivors," it had objected neither to the residual allocation nor to the "Claims Conference's proposed distribution for 2014." There was "no standing to object to the Claims Conference's administration of Looted Assets funds for any country other than the United States."[330]

Finally, as to the integrity of the Claims Conference, the Court called "attention to a letter of Stuart Eizenstat. Mr. Eizenstat has served in various positions in the administration of Presidents Carter and Clinton," including Deputy Secretary of the Treasury in the Clinton Administration. "Mr. Eizenstat led the team from the Claims Conference that negotiated an agreement with the Federal Republic of Germany that provide[d] for 'approximately $1 billion over the four year period, 2014-2017, for homecare for Jewish Nazi victims, with the annual amount increasing every year through 2017.'"[331] In a letter to the Claims Conference's Chairman, Ambassador Eizenstat had "express[ed] his gratitude to Greg Schneider, the Executive Vice President of the Claims Conference, for his contribution to that agreement."

The Court quoted the letter as follows: "I wanted to personally let you know of my gratitude to Greg Schneider for having the vision and drive to organize this campaign, which has culminated in this agreement. Greg has [made] it a priority to gather detailed information and data on the growing plight of aging Nazi victims and present it to the German government in an

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329 *Id.*

330 *Id.* at *4.

331 *Id.* at *4-5 (citation omitted).

effective and compelling fashion in order to demonstrate their increasing needs to the German government. His dedication and professionalism are above and beyond what could be expected, and he made it clear throughout this process that he was absolutely committed to obtaining the funding to which the Finance Ministry ultimately agreed. Greg's passion and integrity are well appreciated by our German government interlocutors. The lives of tens of thousands of Holocaust victims will be made easier in their old age due to Greg's skill and vision."

The Court denied the motion for rehearing and a stay, observing that the "needy Holocaust survivors have benefitted from the extraordinary efforts of Mr. Schneider and the Claims Conference. They deserve praise, rather than scorn, for their work."[332]

The Court also denied a motion to intervene that had been filed by an individual who had never previously been involved with the lawsuit, settlement or distribution process until 2013. The individual cited "various grievances" concerning "the manner in which the JDC was distributing money in Poland."[333] The Court stated that the main concern "was that the JDC has not provided Beit Warszawa, a so called 'registered Jewish Progressive community in Poland,' which 'seeks a portion of the settlement fund,' with sufficient funds."[334] The motion to intervene was denied for three reasons: there was no standing; the motion was untimely, and a proper pleading had not been filed.

As to standing, the Court stated there was no showing of "an interest in the litigation as it exists today," as legally required for a valid motion to intervene. The "only remaining funds are to be distributed to 'the neediest Holocaust survivors as members of the Looted Assets Class.'" However, the objector did not allege "that he is a needy survivor or that he resides in the FSU." Rather, "the record suggest[ed] that he is an extraordinarily wealthy survivor" living in the U.S. Further, it was not alleged that Beit Warszawa "is even composed of Holocaust survivors, much less needy victims of Nazi persecution who reside in the FSU."[335]

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[332] *Id.*

[333] *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2014 WL 2440612 at *1 (E.D.N.Y. May 30, 2014).

[334] *Id.* at *2.

[335] *Id.* at *2-3.

As to the timing of the motion, the Court observed that the objector "was not involved in the case at the outset or at the time the settlement of the case was approved. He did not seek to intervene when the plan of allocation was adopted, nor when [the Court] entered orders on September 25, 2002 and November 17, 2003 allocating additional funds, nor when [the Court] entered [its] order of May 13, 2013 allocating the residual funds remaining in accordance with the plan … originally adopted." By the time the motion to intervene had been filed, "the time for reconsideration of my May 2013 order had run."[336]

Thus, the motion was untimely. Although the objector stated that he had "first learned of this litigation in June 2013, he certainly should have known about it many years ago - when notice of the settlement was disseminated to class members worldwide…. [W]hen the case was settled in 1998, and in subsequent years until the present, it … received extraordinary media coverage, and the Special Masters have created a website — www.swissbankclaims.com — containing all relevant information regarding the case…. If the only newspaper he read were the Jerusalem Post, from which he claims to have first heard about the case 17 years after it commenced, he would have come across dozens of articles, in its print and online editions, describing various aspects of the case." [337] In addition, the motion seeking to intervene was filed "after the judgment was entered," a request "not often granted," and one that would create "yet another round of time consuming litigation that is costly to the judicial process, if not the parties."[338] Third, the objector had not filed a pleading, as required to intervene.[339]

V. CONCLUSION

Most of the post-settlement litigation involving the *cy pres* remedy related to essentially the same issue, often raised by the same individuals. The class, by contrast, consisted of hundreds of thousands of individuals, and the vast majority did not dispute the Court's

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336 *Id.* at *3.

337 *Id.* at *4- 6 (citations omitted).

338 *Id.* at 7.

339 *Id.* at 8 (citation omitted).

determination to channel the greatest amount of aid to the neediest people. Nor was this determination disputed by any of the courts that considered and reviewed it.

Although there was litigation over the Court's decision to direct a substantial part of the Looted Assets Class funds to the former Soviet Union, and it was suggested by some that survivors in that part of the world were receiving a disproportionate level of assistance, the reality is that the Settlement Fund was not large enough to provide meaningful aid to all needy Holocaust victims. The Court's assistance certainly did not come close to resolving the problems of the victims in the FSU. Their needs were, and remain, too vast.

Nevertheless, the Looted Assets Class distribution process provided important help to many of the most impoverished elderly survivors throughout the world, among them, Jewish and Roma victims in Central and Eastern Europe. The program "reflected … 'the recognition that the settlement fund, while insufficient to repay even a small fraction of what was looted in the Holocaust, presented an opportunity to provide meaningful assistance to the Looted Assets Class members who are in the greatest financial need.'"[340] With the distribution of over $256 million in food, home health care, medicines, medical equipment, heating supplies, clothing and other critical services to over 237,400 Nazi victims, the program accomplished the goal proposed in the Distribution Plan and embraced by the Court: to provide some relief to "the neediest elderly survivors of the Holocaust — who perhaps would be less in need today had their assets not been looted and their lives nearly destroyed."[341]

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[340] *In Re Holocaust Victim Assets Litig.*, No. 96-4849, 2014 WL 2171144 at *1 (E.D.N.Y. May 23, 2014) (citing *In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 141 (2d Cir. 2005)).

[341] *Id.*

THE SLAVE LABOR CLASS I CLAIMS PROCESS

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Female prisoners performing forced labor. Ravensbrück, Germany, 1939. Photo courtesy of Yad Vashem and the German Federal Archive.

Jews from Mogilev on the way to forced labor. Belarus, 1941. Photo courtesy of Yad Vashem.

I. INTRODUCTION AND FINAL STATISTICS

The "Nazi Regime exploited the slave labor of hundreds of thousands of 'Victims or Targets of Nazi Persecution' in every corner of its realm, and that slave labor not only was integral to Nazi policy goals but also critical to the Nazi war effort, particularly in its later years. Jews and other 'Victims or Targets' performed slave labor in a variety of settings: in labor details (clearing rubble, building roads and bridges), in concentration and forced labor camps (constructing and maintaining the camps, working in SSA-and privately-owned entities), and in

ghettos (working in municipal workshops and private enterprises), among others. As the War progressed, the Nazis increasingly turned to concentration camp inmates to fill their labor needs in the armaments and other industries, and 'external camps' were constructed near factories themselves."[1]

By 1943, "almost every major firm in Germany was woven into the military economy," so that "it is not surprising that BMW, AEG-Telefunken, Siemens, Daimler-Benz, and IG Farben were also among the principal exploiters" of slave labor, much like the "state-owned firms — like Brabag, the Hermann Goring works, and Volkswagen," as well as munitions and arms makers such as Dynamit Nobel, Rheinmetall-Borsig, Krupp, Messerschmidt, Heinkel and Junkers.[2]

Slave Labor Class I of the Swiss Banks Settlement process was intended to recognize this slave labor, and the intricate and profitable ties between slave labor-using entities and Swiss financial and other institutions. Under this program, the Court approved payments to over 198,000 former slaves for the Nazi regime (and, for those who had passed away after the settlement, their heirs). The Court's administrative agents, the Conference on Jewish Material Claims Against Germany ("Claims Conference") and the International Organization for Migration ("IOM"), analyzed nearly 330,000 claims, resulting in total payments from the Swiss Banks Settlement Fund of over $280 million. A considerable portion of these payments were made within the first two years of the claims program, with over $200 million having been approved for distribution to more than half of the total recipients before the end of 2003.[3] After

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1 Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, Sept. 11, 2000 ("Distribution Plan"), Vol. I, at 144. The Court adopted these recommendations in their entirety on November 22, 2000 ("Distribution Plan"). *See In re Holocaust Victim Assets Litig.*, 2000 WL 33241660 (E.D.N.Y. Nov. 22, 2000), *aff'd*, 2001 WL 868507 (2d Cir. July 26, 2001), reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005).

2 Peter Hayes, *Profits and Persecution: Corporate Involvement in the Holocaust*, *in* PERSPECTIVES ON THE HOLOCAUST: ESSAYS IN HONOR OF RAUL HILBERG 51, 62 (James S. Pacy & Alan P. Wertheimer eds., Westview Press 1995). *See also* Peter Hayes, *Forced and Slave Labor: The State of the Field*, *in* FORCED AND SLAVE LABOR IN NAZI-DOMINATED EUROPE-SYMPOSIUM PRESENTATIONS 1, 6 (U.S. Holocaust Memorial Museum 2004) ("regarding the applications of forced labor in Nazi Germany, scholars have made much progress in recent years in demonstrating the ubiquity of the phenomenon; even the Christian churches are now known to have availed themselves of the system").

3 *See* Judah Gribetz & Shari C. Reig, Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds 60-61 (Oct. 2, 2003) ("Special Masters' Interim Report") ("In little more than two years, $203,487,200 has been approved for distribution to 140,336 surviving

ensuring that survivors themselves were paid, the remaining payments were distributed to direct heirs of victims who would have been eligible but who had died after February 15, 1999 (the date was selected because that was when the slave labor claims program was announced).

Each of the more than 198,000 former slave laborers compensated by the Court survived an unimaginable experience. Because the Notice of Pendency of Class Action, claim forms, and related materials all promised claimants confidentiality (in recognition of the sensitivity of the information provided in support of their claims), the claimants' names are not disclosed here, but their names, and all other relevant identifying information, are known to and were filed with the Court under seal.

Some examples of their experiences are as follows:

- "Claimant was born in the city of Lodz, Poland on November 26, 1927 to a Jewish Orthodox family. After September 1939 the 12-year-old was forcibly resettled in the city's slum area called Baluty (location of the Lodz Ghetto). Claimant worked in a metal factory and a nail factory, 12 to 14 hours a day, 7 days a week. When the Ghetto was liquidated, claimant was transported to Birkenau-Auschwitz with his mother and older brother. Selections separated them. In Auschwitz he was put to work laying bricks and in a cleaning detachment. At the evacuation of Auschwitz, claimant was transferred first to Sachsenhausen (Germany), then to the work camp of Lieberose, where he cleared woods and laid tracks for narrow-gage trains. Transported to Mauthausen (Austria) in January 1945, claimant survived the "White Night" during which inmates, drenched in freezing water, were made to march naked until they collapsed and died, because the Nazis had run out of space to house them. Claimant was liberated at Gunskirchen in May 1945. His archival records were found at the German Federal Indemnification (BEG) archives of the *Landesentschädigungsamt-Munchen.*" (Claims Conf. No. 5-5201[4])
- "Claimant was born in Adelain, Hungary on March 1, 1897. In April 1942, along with thousands of Jewish males old enough to be drafted into the army, claimant had to join a forced labor battalion. Claimant's unit served on the Eastern front and in Galicia (present day Ukraine). The claimant spent two and a half years building roads, clearing minefields and digging antitank ditches, until he escaped, went into hiding and was liberated in Hungary. Using information available in his Article 2 Fund compensation file, including caseworker interviews, the Claims Conference

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slave laborers throughout the world. In a remarkable achievement, $201,660,200 has been processed through the Claims Conference on behalf of the Court to 139,076 Jewish survivors. The remaining payments of $1,827,000 have been made through the IOM to 1,260 non-Jewish class members, primarily to Roma survivors").

[4] This number is a designation used by the Claims Conference, one of the Court's two administrative agents responsible for reviewing Slave Labor Class I claims. As noted, the IOM was the other Court-supervised entity under this class.

confirmed his eligibility for slave labor compensation. The claimant is 106 years old and lives with his wife, also a survivor (see below)." (Claims Conf. No. 11-3724)

- "Claimant was born in Satu Mare (Transylvania, Romania) on March 20, 1918. In the spring of 1944, Satu Mare (by then a part of Hungary) was occupied by the Nazi forces and the claimant was interned in the city's ghetto. In May 1944, claimant was deported by cattle car to Auschwitz, and shortly afterwards to Neuengamme. The claimant was liberated in a sub-camp of the Neuengamme complex in May 1945. Her persecution history was verified by documents, originally from Yad Vashem, in her Article 2 Fund file.[5] The Claimant lives with her 106 year-old husband, also a survivor (see above)." (Claims Conf. No. 11-3725)

- "Claimant was born in Budapest, Hungary on December 3, 1917. In 1942, the fascist government of Hungary drafted all Jewish males over the age of 18 into forced labor battalions. The claimant spent two years working in Hungary in conditions resembling those of a concentration camp. He was released from forced military service in April 1944, only to be imprisoned in the Leva ghetto awaiting deportation. The claimant was sent to the copper mines in Bor, Yugoslavia, infamous among labor camps for embodying the Nazi policy of 'extermination through labor,' with conditions so brutal that the SS measured the useful lifespan of Bor laborers in weeks. The claimant was liberated in March 1945. The claimant's application to the Article 2 Fund contained a copy of his liberation certificate from Bor, which was used to validate his slave labor claim." (Claims Conf. No. 12-2962)

- "Claimant was born in Vienna, Austria on October 4, 1926. Five days after his sixteenth birthday, he was arrested by the *Geheime Staatspolizei Wien* (Vienna Gestapo) and deported to the Ghetto at Theresienstadt, where he remained for two years. The Claims Conference located a photocopy of the original Gestapo files on transports from Vienna to the East, including Theresienstadt, and claimant's original Dachau entry register. According to the records of the International Tracing Service of the Red Cross, the Claimant was sent to Auschwitz on October 1, 1944 by the transport labeled 'Em,' identified as a 'worker.' Ten days later, claimant (Prisoner Number 115545) was transferred westward again, to Austrian territory and Dachau's sub-camp 'Kaufering' (*Kommando Kaufering*)." (Claims Conf. No. 8-262)

- "Claimant was born in Koln, Germany, on April 8, 1928. In October 1940 he was deported to Camp Gurs in France, where he was forced to clean latrines, remove human excrement and assist in digging graves and in burying the dead. In April 1941, he was sent to the camp of Les Milles, where he remained for the next seven months. Although the claimant was ineligible to receive the Article 2 Fund pension under the [then-]current German government eligibility guidelines that require[d] internment for a minimum of 18 months, the Claims Conference was able to use his Article 2 Fund file, supported by further BEG research, to substantiate his slave labor claim.[6] Claimant died shortly afterwards. His widow wrote to the Claims

[5] "Article 2" was one of the compensation programs established by the Federal Republic of Germany and administered by the Claims Conference.

[6] The "BEG" was the first compensation program established by Germany in the post-Holocaust era.

Conference to say that her husband had died feeling vindicated at last, his suffering as a young man recognized and acknowledged." (Claims Conf. No. 8-7033)

- "Claimant was born in Boryslaw, Poland (present-day Ukraine) on March 27, 1930. She was confined with her family to the Boryslaw Ghetto from June, 1941 until its liquidation. The young girl was interned in a forced labor camp (ZAL, *Zwangsarbeitlager*) near Boryslaw until January 1944, when she managed to escape, living first in hiding in the woods, then with a Christian family until August 1944. The archives at Yad Vashem and the German BEG files at the *Bezirksregierung Düsseldorf* contain data verifying her experiences." (Claims Conf. No. 7-11430)

- "Claimant was born in Baia, Romania on January 1, 1918. The claimant could provide no information about her persecution in her application form, as she is completely incapacitated, unable to speak or to move as a result of a stroke. Nevertheless, her German BEG records were located, substantiating that she performed slave labor in Mogilev (Belarus)." (Claims Conf. No. 12-4712)

- "Claimant was born in Amsterdam, Holland on May 24, 1929. In March 1943, claimant and her family were deported to Theresienstadt. The claimant was forced to clean latrines, maintain food kettles, and split mica. She was liberated in May 1945. The Claims Conference found confirmation of claimant's internment in Theresienstadt through its research effort matching survivors' names against ghetto and camp lists at the [USHMM]." (Claims Conf. No. 11-926)

- "Claimant was born on July 16, 1929 in Beregszas, Hungary (present day Ukraine). She remembers enduring the 'selection' upon arrival in Auschwitz eight days before Shavuot in 1944. At the whim of Dr. Mengele, claimant's father was sent to the men's line; her mother and five siblings were sent directly to the gas chambers. The claimant was selected for a labor crew. The Claims Conference researchers at Yad Vashem located records confirming her internment in the Beregowo ghetto, Auschwitz, Ravensbruck and Malchow." (Claims Conf. No. 10-5266)

- "Claimant was born in Dvinsk, Latvia on December 25, 1909. From September 1941 through May 1944, he was interned in the Vilna ghetto (Lithuania). Claimant was transferred to Kovno and later, with a small group of ghetto laborers who survived the liquidation of the ghetto, he was deported to Dachau, and finally was liberated in May 1945. Claims Conference researchers matched claimant's name to the list of Dachau prisoners currently in the collection of the [USHMM]." (Claims Conf. No. 10-5097)

- "Claimant is a Romani who was born on March 12, 1931 and who currently lives in the Czech Republic. The claimant performed slave labor at Dubnica nad Vahom from November 1944 through April 1945. The claimant wrote in her personal statement that the Germans came to her family's home at 6 A.M. and took the claimant and her entire family away in wagons to Humenne. There, they waited two days in a building for railcars to be made available. At night, the Germans took young women away for the evening. The Germans infected the claimant's sister-in-law with a sexual disease and then shot her at the camp. On the way to the camp, the Nazis stabbed one of the claimant's sisters with a bayonet. At the camp Dubnica nad Vahom, her father and oldest brother were separated from the rest of the family. The

claimant and some of her siblings dug pits and dug out and cleaned potatoes under the coercion of the Nazis." (IOM No. 3103127)

- "Claimant is a Romani who was born on September 15, 1920 and who currently lives in the Czech Republic. The claimant performed slave labor at Pardubice and Terezin from December 1944 through May 1945. In July 1942, the claimant was sent to Schwainic to fix rail cars. However, he refused to work for the Germans and escaped after eight months. He stayed in hiding with friends until December 1943 when he was caught by the Czech police and taken to Hradec Kralove. From there he was transferred to Pardubice, where he remained until February 1944. The claimant was released and was supposed to return to work at Schwainic but again went into hiding. He was arrested again in December 1944, at which point he was taken by the Gestapo to Hradec Kralove, and from there to Terezin. After liberation, the claimant returned home where he did not regain his health until 1947." (IOM No. 3105893)[7]

The Slave Labor I payments issued to these and nearly 200,000 other Holocaust survivors supplemented the larger awards authorized under one of two contemporaneous slave labor programs ("foundations") in Germany and Austria: in Germany, the Foundation "Remembrance, Responsibility and Future" ("German Foundation") and in Austria, the "Austrian Reconciliation Fund" ("Austrian Foundation").

With respect to Jewish former slave laborers, the Court approved the claims of 173,914 such victims. Of these individuals, over 171,000 — nearly 98% — also were approved for compensation by the German or Austrian slave and forced labor programs. Specifically:

- Approximately 157,000 of the 173,914 individuals compensated under Slave Labor Class I of the Swiss Banks Settlement also were approved for payment under the German Foundation's slave labor program. Their claims under both programs (the Swiss Banks Settlement and the German Foundation) were processed by the Claims Conference.

- 4,600 Slave Labor Class I approvals also were approved by the German Foundation under the category "forced labor without deportation."[8] Their claims under both programs were processed by the Claims Conference.

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[7] A sample of the Holocaust-era experiences of some of these 174,000 Jewish slave laborers who received compensation from the Settlement Fund can be accessed on the internet at http://www.swissbankclaims.com/Documents/2017/Claims%20Conference%20SL%20I%20Summaries.pdf. Summaries of the Holocaust-era experiences of some of the 24,000 Roma, Jehovah's Witness, homosexual and disabled slave laborers can be accessed at http://www.swissbankclaims.com/Documents/2017/IOM%20SL%20I%20Case%20Summaries.pdf.

[8] As described by the Claims Conference in its November 17, 2004 Slave Labor Class I Group 19 submission to the Court (emphasis in original):

- 6,200 Slave Labor Class I approvals also were approved by the German Foundation through programs administered by the five partner organizations designated by the German Foundation as responsible for former laborers living in Central and Eastern Europe. Their Slave Labor Class I claims were processed by the Claims Conference.

- 2,700 Slave Labor Class I approvals also were approved by the Austrian Foundation. Their claims under both programs were processed by the Claims Conference.

- 720 Slave Labor Class I approvals also were determined eligible under the parameters of the German Foundation or Austrian Foundation but, as late claims, had to be submitted to the two Foundations under a separate program known as the "Additional Labor Distribution Amount" or "ALDA."[9] Their claims were processed by the Claims Conference.

There were approximately 2,900 Jewish individuals approved under Slave Labor Class I who were not compensated by the German or Austrian Foundations. Some had had their claims denied by these Foundations for technical reasons, such as not filling out the appropriate claim form. Others were barred under German Foundation rules because they had received payments from programs related to slave labor claims negotiated in the 1950s with a handful of companies. These circumstances did not affect eligibility under Slave Labor Class I. Many already were

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"The German Foundation Law defines slave laborers as *persons who were held in a concentration camp as defined by the German Indemnification Law or in another place of confinement or a ghetto under comparable conditions and were subjected to forced labor*. In addition, the German Foundation Law defines eligible forced laborers as persons *who were deported from their homelands into the territory of the German Reich, according to the borders of 1937, or to a German occupied area, subjected to forced labor or subjected to conditions resembling imprisonment or similar extremely harsh living conditions* ('forced labor without deportation'). Forced laborers who were not deported from their homeland into the territory of the Third Reich did not meet the eligibility criteria of 'forced labor without deportation.' However, the German Foundation has reviewed and approved the attached cases as 'forced labor without deportation.' In the case of *In re Holocaust Victim Asset Litig.*, under Slave Labor Class I, slave labor is defined as *work for little or no remuneration actually or allegedly performed by individuals involuntarily at the insistence, direction or under the auspices of the Nazi regime and its Axis allies.* There is no distinction under the Settlement Agreement between slave and forced labor, nor is there a requirement of deportation. Therefore, Holocaust survivors who were 'forced laborers without deportation' as categorized by the German Foundation are eligible for payment as slave laborers under Slave Labor Class I."

[9] The "Additional Labor Distribution Amount" was described by the Claims Conference in its March 27, 2007 Slave Labor Class I Group 28 submission as follows:

> "This fund was negotiated by the Claims Conference from the Austrian Reconciliation Fund and is being used, in part, to compensate Holocaust survivors who would otherwise have been eligible under the German Foundation but applied between the December 31, 2001 deadline of the German Foundation and May 28, 2004. Applicants were asked for their reason of request for late application which included first claim being lost, illness, death in the family during the application period, hardship during the application period, and misunderstanding of the deadline."

receiving Holocaust-related pensions from Germany. Based upon the criteria for such pensions, they were determined to be eligible under the Settlement Agreement, even if ineligible under the German or Austrian Foundation programs.[10]

As to heirs, who were eligible for payment if the survivor had passed away after February 15, 1999, of the approved claims for Jewish slave laborers, 14,690 involved payments to one or more heirs of the victim.

With respect to Roma, Jehovah's Witness, homosexual and disabled Nazi victims, the claims of 24,109 slave laborers were approved, of whom 22,667 were Roma,[11] 1,095 were Jehovah's Witnesses, 91 were disabled, 20 were homosexual, and 236 were Jewish.[12] Of the

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[10] The pensions were made via either the Article 2 Fund or the Central and Eastern European Fund ("CEEF"). The Article 2 Fund was established by Article 2 of the Implementation Agreement to the German Unification Treaty of October 3, 1990. It is paid by the German government and administered by the Claims Conference to compensate survivors of the Holocaust who had previously received little or no indemnification from Germany. Eligibility is restricted to survivors who meet certain defined criteria, including income limitations and minimum incarceration periods. The CEEF was created after January 1998 negotiations between the German government and the Claims Conference. Germany agreed to provide compensation, for the first time, to Jewish victims of Nazi persecution in Central and Eastern Europe and the former Soviet Union. As with Article 2 pensions, eligibility criteria are restrictive. *See* www.swissbankclaims.com ("Glossary").

[11] International Organization for Migration, "History, Responsibility, Acknowledgement: The Holocaust Victim Assets Programme - Swiss Banks, Final Report," submitted to the Court on May 31, 2013 ("IOM Final Report"), at 88, 145. As part of the Settlement Fund accountant's final reconciliation work, a minor discrepancy was noted in the number of approvals the IOM reported to the Court (24,054) versus the number of individuals actually approved (24,109). The IOM appears to have omitted 55 awards from the count set forth in its Final Report. This discrepancy represents less than 0.25% of amounts authorized for Slave Labor Class I claimants under the program administered by the IOM. *See* Swiss Banks Settlement Fund Final Distribution Statistics, December 31, 2017 ("Distribution Statistics"), *available at* http://www.swissbankclaims.com/New%20Docs/Distribution%20Stats.pdf.

The IOM utilized the 24,054 figure in tabulating other data, such as the number of individuals paid within each of the victim groups for which IOM was responsible. Since the vast majority of Slave Labor Class I approvals under the IOM program were for Roma victims, it is assumed that the additional 55 individuals paid by IOM (but not included in IOM's Final Report) likewise were Roma. Accordingly, while the IOM reported that 22,612 Roma were paid (*id.)*, that figure has been adjusted herein to 22,667 Roma survivors.

[12] Although the Claims Conference, not the IOM, was appointed both by the Court and the German Foundation to process claims on behalf of Jewish slave laborers, some claimants were unaware of this designation and submitted claims to the wrong entity. Where possible, the administrative agencies forwarded improperly submitted claims to the correct partner organization. IOM Final Report, at 88. As the claims process neared completion, the IOM (with the Court's approval) directly submitted to the Court any claims that had been erroneously filed with the IOM by Jewish slave laborers. The Court approved all such eligible claims, and the IOM handled the payments to these Jewish Nazi victims.

24,109 approved claims, 20,790 claims were approved for survivors and 3,319 for heirs (with the heirs' share distributed among 4,161 eligible individuals).[13]

Further, for the Claims Conference, of the 173,914 approved claims, 166,133 were approved initially and another 7,781 were approved on appeal. For the IOM, of the 24,109 approved claims, 23,934 were approved initially (on first instance) and another 175 were approved on appeal.[14]

Holocaust survivors living in 74 different nations were compensated under Slave Labor Class I. The greatest percentage of recipients lived in Israel, followed by the United States and Hungary. Approximately 93% of all recipients lived in ten countries. With respect to the United States, recipients lived in all 50 states as well as the District of Columbia and Puerto Rico. The greatest number lived in New York, followed by California and Florida. The vast majority (nearly 90%) lived in one of nine states. The geographic data is set forth in the following charts:

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[13] IOM Final Report, at 180. To reconcile the 55-person discrepancy reflected in the IOM Final Report, the number of claims approved for survivors as reported by IOM (20,735) has been adjusted herein to 20,790.

[14] IOM Final Report, at 182. The 55 additional approvals not reflected in the IOM Final Report have been added to the category, "approved on first instance," so that the IOM's reported number of 23,879 has been adjusted herein to 23,934, as the vast majority of claims were approved initially rather than on appeal.

Slave Labor Class I (Jewish Nazi Victims): Geographic Distribution of Approved Claimants by Country and Award

Country	Approved Claimants	Amount Paid
Albania	1	$ 1,450
Argentina	641	$ 929,450
Aruba	1	$ 1,450
Australia	4,014	$ 5,820,300
Austria	547	$ 793,150
Azerbaijan	1	$ 1,450
Bahamas	1	$ 1,450
Belarus	295	$ 427,750
Belgium	791	$ 1,146,950
Bermuda	1	$ 1,450
Bolivia	19	$ 27,550
Bosnia-Herzegovina	46	$ 66,700
Brazil	888	$ 1,287,600
Bulgaria	411	$ 595,950
Canada	7,873	$ 11,415,850
Chile	122	$ 176,900
Colombia	29	$ 42,050
Costa Rica	25	$ 36,250
Croatia	175	$ 253,750
Cyprus	1	$ 1,450
Czech Republic	1,370	$ 1,986,500
Denmark	198	$ 287,100
Dominican Republic	2	$ 2,900
Ecuador	20	$ 29,000
Estonia	16	$ 23,200
Finland	5	$ 7,250
France	2,780	$ 4,031,000
Germany	3,724	$ 5,399,800
Georgia	1	$ 1,450
Great Britain	927	$ 1,344,150
Greece	180	$ 261,000
Guatemala	8	$ 11,600
Hungary	16,228	$ 23,530,600
India	1	$ 1,450
Ireland	5	$ 7,250
Israel	81,902	$ 118,757,900
Italy	157	$ 227,650
Ivory Coast	1	$ 1,450
Japan	2	$ 2,900
Kazakhstan	22	$ 31,900

Country	Approved Claimants	Amount Paid
Latvia	73	$ 105,850
Lithuania	177	$ 256,650
Luxembourg	8	$ 11,600
Macedonia	1	$ 1,450
Malta	1	$ 1,450
Mexico	64	$ 92,800
Moldova	263	$ 381,350
Monaco	4	$ 5,800
Netherlands	996	$ 1,444,200
Netherland Antilles	1	$ 1,450
New Zealand	41	$ 59,450
Norway	61	$ 88,450
Panama	3	$ 4,350
Paraguay	8	$ 11,600
Peru	18	$ 26,100
Poland	1,505	$ 2,182,250
Portugal	3	$ 4,350
Romania	1,296	$ 1,879,200
Russian Federation	1,207	$ 1,750,150
Serbia-Montenegro	172	$ 249,400
Slovak Republic	793	$ 1,149,850
Slovenia	19	$ 27,550
South Africa	91	$ 131,950
Spain	32	$ 46,400
Sweden	1,197	$ 1,735,650
Switzerland	268	$ 388,600
Tunisia	12	$ 17,400
Turkey	1	$ 1,450
Ukraine	2,141	$ 3,104,450
United States	39,222	$ 56,871,900
Uruguay	149	$ 216,050
Uzbekistan	20	$ 29,000
Venezuela	180	$ 261,000
Zimbabwe	3	$ 4,350
Total	**173,461**	**$ 251,518,450**[15]

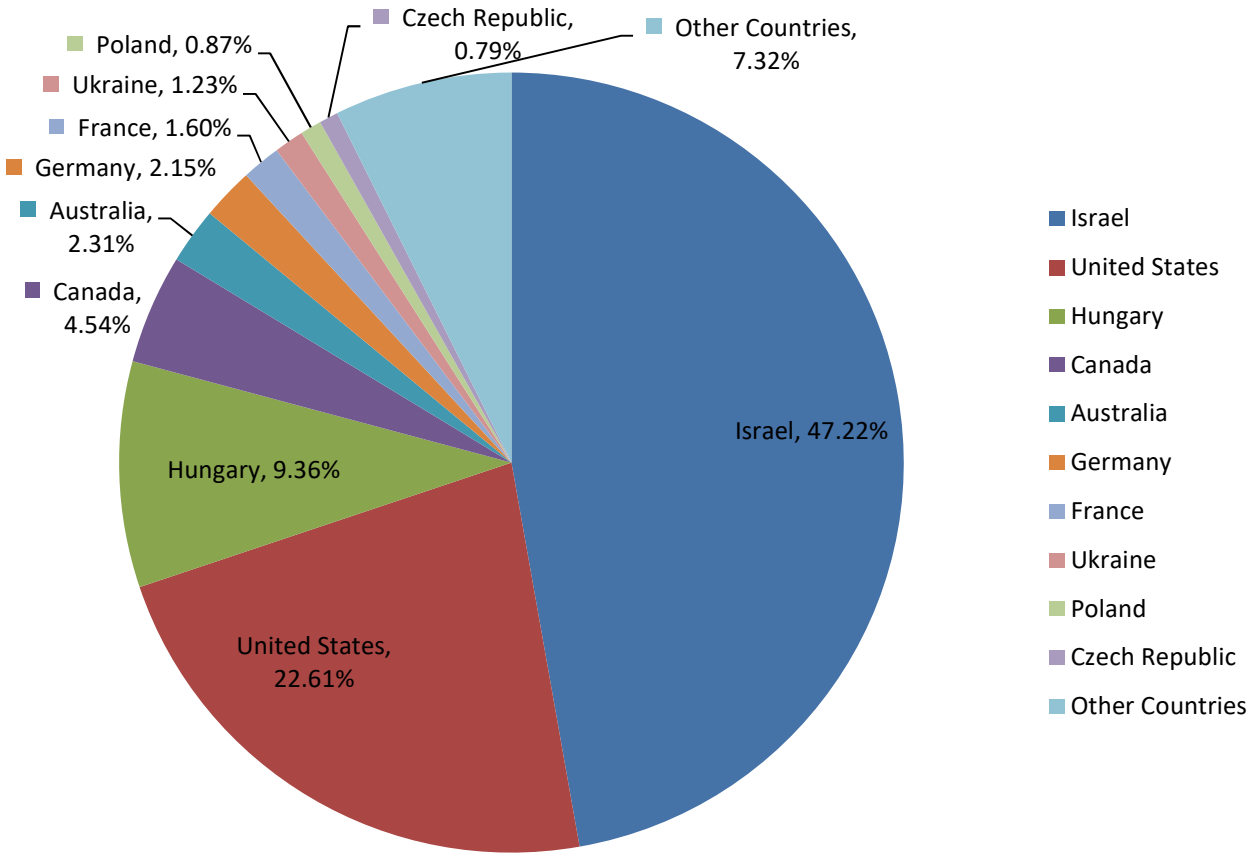
[15] The database from which this spreadsheet derives these statistics was dated as of July 13, 2012. Since that date, the final data have been adjusted and reconciled. As reflected in the Distribution Statistics posted at www.swissbankclaims.com and as confirmed by the Settlement Fund accountant, a total of 173,914 Jewish Nazi victims were authorized to receive payment of $252,175,300 under Slave Labor Class I (and, due to inability to locate certain claimants and for other reasons, were paid $249,484,114). This geographic distribution chart reflects a total of 173,461 Jewish Nazi victims; *i.e.* 453 fewer than the final number as reconciled, an insignificant discrepancy of 0.3%. Likewise, this geographic distribution chart reflects total

Slave Labor Class I (Jewish Nazi Victims): The Ten Countries with the Greatest Number of Recipients

Country	Approved Claimants	Amount Paid	% of Total
Israel	81,902	$ 118,757,900	47.22%
United States	39,222	$ 56,871,900	22.61%
Hungary	16,228	$ 23,530,600	9.36%
Canada	7,873	$ 11,415,850	4.54%
Australia	4,014	$ 5,820,300	2.31%
Germany	3,724	$ 5,399,800	2.15%
France	2,780	$ 4,031,000	1.60%
Ukraine	2,141	$ 3,104,450	1.23%
Poland	1,505	$ 2,182,250	0.87%
Czech Republic	1,370	$ 1,986,500	0.79%
Total	**160,759**	**$ 233,100,550**	**92.68%**
Other Countries	12,702	$ 18,417,900	7.32%
Grand Total	**173,461**	**$ 251,518,450**	**100.00%**

payments of $251,518,450; *i.e.* $656,850 less than the final total of authorized payments as reconciled, an insignificant discrepancy of 0.3%.

Slave Labor Class I (Jewish Nazi Victims): Demographics by Country



Slave Labor Class I (Jewish Nazi Victims): U.S. Recipients - Geographic Distribution of Approved Claimants

US State	Approved Claimants	Amount Paid
Alabama	29	$ 42,050
Alaska	1	$ 1,450
Arizona	267	$ 387,150
Arkansas	2	$ 2,900
California	5,082	$ 7,368,900
Colorado	210	$ 304,500
Connecticut	482	$ 698,900
Delaware	23	$ 33,350
District of Columbia	18	$ 26,100
Florida	4,979	$ 7,219,550
Georgia	199	$ 288,550
Hawaii	8	$ 11,600
Idaho	2	$ 2,900
Illinois	1,195	$ 1,732,750
Indiana	84	$ 121,800
Iowa	17	$ 24,650
Kansas	55	$ 79,750
Kentucky	32	$ 46,400
Louisiana	37	$ 53,650
Maine	15	$ 21,750
Maryland	735	$ 1,065,750
Massachusetts	624	$ 904,800
Michigan	714	$ 1,035,300
Minnesota	153	$ 221,850
Mississippi	2	$ 2,900
Missouri	148	$ 214,600
Montana	3	$ 4,350
Nebraska	32	$ 46,400
Nevada	157	$ 227,650
New Hampshire	19	$ 27,550
New Jersey	2,790	$ 4,045,500
New Mexico	28	$ 40,600
New York	17,585	$ 25,498,250
North Carolina	48	$ 69,600
Ohio	1,013	$ 1,468,850
Oklahoma	17	$ 24,650
Oregon	93	$ 134,850
Pennsylvania	957	$ 1,387,650
Puerto Rico	3	$ 4,350
Rhode Island	46	$ 66,700

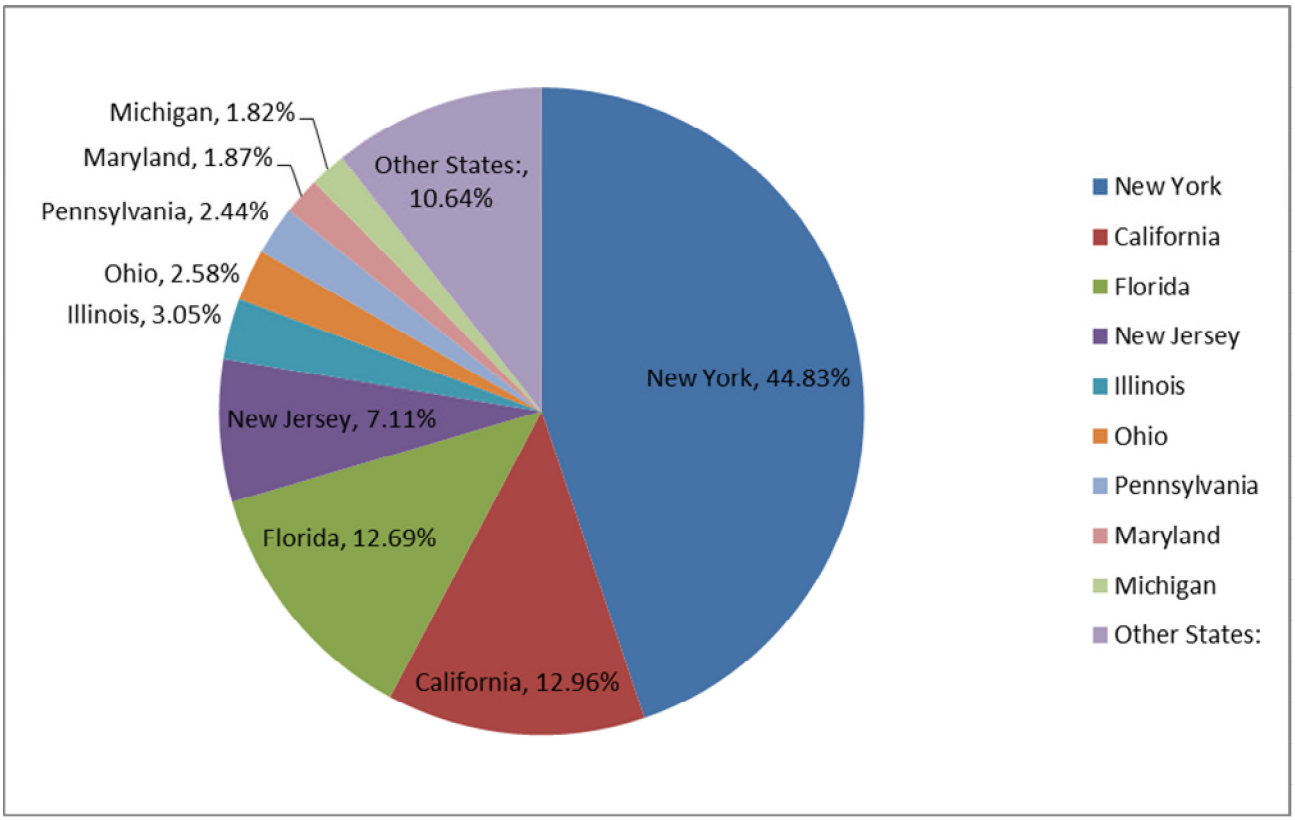
US State	Approved Claimants	Amount Paid
South Carolina	28	$ 40,600
South Dakota	1	$ 1,450
Tennessee	69	$ 100,050
Texas	327	$ 474,150
Unknown	402	$ 582,900
Utah	8	$ 11,600
Vermont	9	$ 13,050
Virginia	115	$ 166,750
Washington	178	$ 258,100
West Virginia	1	$ 1,450
Wisconsin	176	$ 255,200
Wyoming	4	$ 5,800
Total	**39,222**	**$ 56,871,900**[16]

[16] Due to differences in the tracking of awards (for example, recording residence as of the date of award, versus the date of payment), there are 402 approved claimants in the United States for whom the state of residence is not known. This represents 1% of U.S. payments for Slave Labor Class I, and is therefore immaterial.

U.S. States with Greatest Number of Recipients ($1 million or more) under Slave Labor Class I (Jewish Nazi Victims)

US State	Approved Claimants	Amount Paid	% of Total
New York	17,585	$ 25,498,250	44.83%
California	5,082	$ 7,368,900	12.96%
Florida	4,979	$ 7,219,550	12.69%
New Jersey	2,790	$ 4,045,500	7.11%
Illinois	1,195	$ 1,732,750	3.05%
Ohio	1,013	$ 1,468,850	2.58%
Pennsylvania	957	$ 1,387,650	2.44%
Maryland	735	$ 1,065,750	1.87%
Michigan	714	$ 1,035,300	1.82%
Total	**35,050**	**$ 50,822,500**	**89.36%**
Other States:	4,172	$ 6,049,400	10.64%
Grand Total:	**39,222**	**$ 56,871,900**	**100.00%**

Slave Labor Class I (Jewish Nazi Victims): Demographics by U.S. States



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In addition to providing a measure of compensation to nearly 200,000 individuals around the world who had never previously been recognized for the labor they performed for the Nazi regime – profiting not only German but also Swiss entities – the Slave Labor Class I program was successful in a variety of other ways.

- The program represented the first significant compensation for Roma and other non-Jewish victims of the Holocaust. As the scholar Michael R. Marrus has noted, it is "often not appreciated that, for the greatest part of the restitution campaign, having to do with forced and slave laborers, the number of non-Jewish victims predominated, receiving more than three-quarters of the funds" from all programs, German, Swiss and otherwise.[17] With respect to just the Swiss Banks Settlement, over 23,000 Roma victims received Slave Labor Class I payments from the Court.
- The worldwide notification program helped bring attention to the hundreds of thousands of Nazi victims who fortunately had survived and lived all over the world, offering victims a number of opportunities to benefit from a new claims program and from others that followed.
- The Slave Labor Class I program provided a platform for important scholarly research, confirming and furthering still-incomplete knowledge about the economic aspects of the Holocaust, such as the pervasive financial ties between German slave labor-using entities and Swiss institutions; the widespread reach of Nazi labor sites; the impact of slave labor policies upon the Roma; and the little-known mistreatment of other victim groups.

II. THE SLAVE LABOR CLASS I CLAIMS PROGRAM: FORMULATION AND IMPLEMENTATION

A. The Distribution Plan: Presuming That All Proceeds of Slave Labor Were Transacted Through Swiss Entities

Under the terms of the Settlement Agreement, Slave Labor Class I was comprised of Jewish, Roma, Jehovah's Witness, homosexual or disabled Nazi victims who had performed slave labor "for companies or entities that actually or allegedly deposited the revenues or

[17] MICHAEL R. MARRUS, SOME MEASURE OF JUSTICE: THE HOLOCAUST ERA RESTITUTION CAMPAIGN OF THE 1990S 111 (Univ. of Wis. Press 2009).

proceeds of that labor with, or transacted such revenues or proceeds through, Releasees," *i.e.*, through Swiss entities.[18]

In formulating a distribution proposal, the Special Masters noted that the class definitions "contain[] elements difficult to satisfy, in large part because, as many scholars agree, the economic history of the Holocaust remains incomplete." At the time the Distribution Plan was under consideration, there was "no scholarly research that ha[d] yet traced the 'revenues or proceeds' of slave labor from a specific slave labor-using entity to its ultimate destination." Many of the survivors could not "even identify the name of the corporation for which they labored; they know only what they did, where they did it, and the generally sub-human conditions in which they were forced to do so."[19] There had been little significant scholarly research about the relation between Switzerland and Nazi-era slave labor.

As Special Master Judah Gribetz and Deputy Special Master Shari C. Reig described in their chapter, "The Swiss Banks Holocaust Settlement," in the 2009 book *Reparations for Victims of Genocide, War Crimes and Crimes*,[20] the review undertaken for the Court at the outset of the process indicated that slave labor was pervasive during the Holocaust era. Virtually all German entities, public and private, made use of slaves. Otto Count Lambsdorff, who represented the German government in the negotiations that led to the establishment of the German Foundation, observed that "there was hardly a German company that did not use slave and forced labor during World War II."[21]

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18 Settlement Agreement, Section 8.2(c).

19 Distribution Plan, at 143, 147-148.

20 Judah Gribetz & Shari C. Reig, *The Swiss Banks Holocaust Settlement, in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 115 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Martinus Nijhoff Publishers 2009) ("Gribetz and Reig/Reparations"). The study was a companion piece to a two-day symposium at The Hague in which Deputy Special Master Reig presented remarks on the Swiss Banks Settlement. *See* Conference on Reparations for victims of genocide, crimes against humanity and war crimes: Systems in place and systems in the making, The Peace Palace, The Hague, The Netherlands, 1-2 March 2007 (proceedings available at http://www.redress.org/downloads/publications/ReparationsVictimsGenocideSept07.pdf).

21 Cited in testimony of Deputy Treasury Sec'y Stuart E. Eizenstat before the House Banking Comm. on Holocaust-Related Issues, Sept. 14, 1999 at 6 (*available at* https://www.treasury.gov/press-center/press-releases/Pages/Is96.aspx).

Jews at Forced Labor in Breslau. Germany, 1941. Photo courtesy of the U.S. Holocaust Memorial Museum, Bundesarchiv and Transit Film.

Just as the German use of slave labor was extensive, so too were the financial relationships between these slave labor-using enterprises and Swiss financial institutions, starting with the fact that virtually all members of German industry held Swiss accounts.

> "[M]ost significant German slave labor users had Swiss bank accounts."[22] There were extensive ties among German slave labor-using companies, the Nazi government, and Swiss financial institutions, as became clear from documentation [the Court and Special Master] received after months of negotiations with the defendant banks and with the assistance of the Volcker Committee[23] and the Swiss Federal Archives. [The Special Master] obtained a copy of the 1945 "Frozen Assets List," a document relating to a freeze of German assets instituted by Swiss authorities at the behest of the Allies, finally undertaken by the Swiss when the inevitability of an Allied victory became clear. The list demonstrates that hundreds of German companies known to have used slave labor, as well as the German government itself, held Swiss bank accounts as of 1945.[24]

There also were Swiss subsidiaries of German slave-labor using entities, and they had their own financial ties to Switzerland.

> Many "German entities, including a large number of the German corporations that exploited slave labor, established Swiss subsidiaries, and it is not unfair to presume that a Swiss entity would have maintained a domestic bank account or

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22 Gribetz & Reig, at 138, citing Distribution Plan, at 144.

23 The "Volcker Committee" was authorized by the government of Switzerland to investigate Holocaust-era Swiss bank accounts. It was led by Paul A. Volcker, former U.S. Federal Reserve Board Chairman.

24 Gribetz and Reig/Reparations, at 139, citing Distribution Plan, at 146.

> other asset in Switzerland." [In addition], the Nazi Regime itself also employed slave laborers, and "governmental reports analyzing movements of Nazi gold, as well as other scholarship, confirm that the Nazi Regime and Nazi-controlled entities banked in Switzerland, which served as a vital conduit for needed hard currency exchange" during the Second World War.[25]

The research therefore showed that virtually every private and governmental entity in Nazi Germany that used slave labor during the Holocaust had some sort of financial link with a Swiss entity.

In light of these facts, the Special Masters recommended, and the Court adopted, the presumption that all German slave labor enterprises had done business in, or with, Swiss institutions. As such, all survivors who performed slave labor for German entities were presumed to have some financial connection with Switzerland, in that the proceeds of their labor ended up in that country. They were therefore all part of Slave Labor Class I. This presumption was significant for the claims process. It would "'simplify the administration of Slave Labor Class I by making it unnecessary for each claimant to prove a link between the German company for which slave labor was performed and a Swiss bank.'"[26]

> Accordingly, the "elderly members of this class" were "relieved of the burden of demonstrating precisely which company enslaved them and whether and how that company channeled revenues or proceeds of their slave labor through a Swiss entity. The fortuity that the apparent Swiss banking relationships of many slave labor-using entities has been documented [w]ould not prejudice those class members who performed slave labor for enterprises whose financial ties to Swiss entities may not yet have been demonstrated with the present state of research and scholarship."[27] …. [M]any former slaves "cannot even identify the name of the corporation for which they labored; they know only what they did, where they did it, and the generally sub-human conditions in which they were forced" to work.[28]

Since the historical evidence warranted the presumption that the proceeds of Holocaust-era slave labor were transacted through Switzerland, the compensation and payment process

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[25] *Id.; see also* Distribution Plan, Annex H and exhibits.

[26] Distribution Plan, at 147.

[27] *Id.*, at 147.

[28] *Id.*, at 147-48, citing BENJAMIN B. FERENCZ, LESS THAN SLAVES 114 (Harvard Univ. Press 1979). Benjamin Ferencz, the Chief Prosecutor in the Nuremberg trial against the Nazi *Einsatzgruppen* units, later became a key advocate on behalf of compensation for Holocaust victims, as well as a leading supporter of the International Criminal Court.

could be somewhat streamlined. That presumption also enabled the Court to operate essentially in tandem with a larger program negotiated specifically to compensate former slave laborers: the German Foundation, established in Berlin on July 17, 2000, a few days before the Court approved the Settlement Agreement on July 26, 2000.

> Every former slave laborer would receive payment from the Swiss Banks Settlement Fund. [The Special Master was] able to recommend a Slave Labor Class I process that would essentially mirror the larger $5 billion German Foundation slave labor program, which had been finalised by German legislation shortly before the Special Master filed his distribution recommendations in the Swiss Banks case. Thus, each Jewish, Roma, Jehovah's Witness, homosexual and disabled former slave laborer who was to be compensated under the German Foundation legislation also would receive an additional payment from the Swiss Banks Settlement.[29]

The Distribution Plan provided that every payment was to be in the same amount, "regardless of the length of time spent as a slave laborer or the nature of the work performed." By contrast, "the few German companies that established limited slave labor compensation funds in the 1950s and 1960s required detailed case-by-case inquiries. From the descriptions that have been provided by Nuremberg prosecutor and Claims Conference negotiator Benjamin Ferencz in his seminal work, *Less Than Slaves*, the bureaucratic and emotional morass into which the survivors were forced in order to meet the settling firms' stringent requirements hardly seems worth the effort."[30]

> No one could foresee that the process of deciding the claims would take as long as it did. The questionnaires, which came from all parts of the world, were often illegible or incomplete. Addresses changed and envelopes were returned unopened. The information received had to be compared with records stored at the International Tracing Service of the Red Cross in Arolsen, where millions of concentration camp dossiers were filed. Screening committees, working after normal working hours, could handle only a limited number of cases at a session. They frequently would ask the claimant to come back with additional evidence or witnesses. . . . Legal forms had to be signed and authenticated. . . . Thousands of claims had to be turned down when the applicant was unable to prove that he had

[29] Gribetz and Reig/Reparations, at 140.

[30] Distribution Plan, 157-158, citing Ferencz, at 53-54.

> been a concentration camp inmate employed in one of four designated Farben plants at Auschwitz."[31]

The Slave Labor Class I claims process was designed to minimize these burdens for the elderly claimants by adopting presumptions of labor no matter the duration, location, or beneficiary of the proceeds.

B. Creating a Claims Process

1. Administrative Efficiency - Incorporating the German Slave Labor Claims Program

The legislation authorizing the German Foundation program (sometimes referred to as the "German Fund") was of historic significance. That law explicitly and for the first time recognized that the Nazi regime

> inflicted severe injustice on slave laborers and forced laborers, through deportation, internment, exploitation which in some cases extended to destruction through labor, and through a large number of other human rights violations, [and further recognized] that German enterprises which participated in the [Nazi] injustice bear a historic responsibility and must accept it……[32]

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[31] *Id*. The screening committees consisted of "*Kameraden* (old comrades)" who would "interview persons whom no one seemed to remember, and give their opinion whether the claimant had really worked for Farben at Buna. An applicant who did not know when the typhoid epidemic had broken out or where the latrines were located was soon disqualified. Many ineligible claimants conceded that they must have been mistaken and their claims were apologetically withdrawn." Ferencz, at 52. Similar difficulties arose in connection with implementation of the German Indemnification Laws. In the words of Danish psychiatrist Henrik Hoffmeyer, who criticized the stringent eligibility requirements under the "damage to health" provisions of the BEG: "After the deportees have risked their health in conditions having no equal in history, they return to a society that attempts to calculate the material restitution they deserve with administrative pedantry. The sick are sent from doctor to doctor …. The results of these examinations are reviewed by a huge, impersonal administrative apparatus that considers itself capable of judging whether a person who has gone through such hell is an 8, 10, or 12 percent invalid …. [T]his method is what often gives the sick person the feeling that he is suspected of being a parasite on society." CHRISTIAN PROSS, PAYING FOR THE PAST: THE STRUGGLE OVER REPARATIONS FOR SURVIVING VICTIMS OF THE NAZI TERROR 96-7 (Belinda Cooper trans., Johns Hopkins Univ. Press 1998).

[32] *See Gesetz zur Errichtung einer Stiftung "Erinnerung, Verantwortung und Zukunft"* [Law on the Creation of a Foundation "Remembrance, Responsibility and Future"], Aug. 12, 2000, BGBl. I at Preamble, last amended by Gesetz, Sept. 9, 2008, BGBl. I. In 2013, the United States Department of State appointed Deputy Special Master Shari C. Reig to serve on the Board of Trustees of the German Foundation; in August, 2016, this appointment was renewed for a four-year term.

The establishment of the German Foundation nearly simultaneously with the Swiss Banks Settlement Fund "obviated the need for the Special Master to recommend creation of a free-standing entity to determine claimants and to administer payments to members of Slave Labor Class I."[33] Instead, the Court could use many of the same claims processing agents, mechanisms, deadlines, research, and if appropriate, legal and historical analyses as the German Foundation. The "Distribution Plan also recommended that the Court use the same fundamental compensation principle: payments to all former slave laborers would be in identical amounts regardless of the length of time spent in slave labor or the nature of the work performed. At this stage of their lives, the Court agreed that it would have been unseemly to encourage survivors to engage in a competition to demonstrate who had suffered 'more.' As Judge Korman has observed, 'comparisons among survivors are odious.'"[34] In this way, too, the Swiss Banks Settlement was similar to the German Foundation program, which "anticipat[ed] … a lack of evidence," and therefore "no distinction was made between different *lengths* of the suffering by victims of forced labor."[35]

Thus, drawing upon the parameters of the German Foundation that were in place or anticipated, the Distribution Plan proposed and the Court adopted a number of fundamental principles to govern Slave Labor Class I claims.

First, each "Jewish, Roma, Jehovah's Witness, disabled and homosexual former slave laborer who received a payment from the German Fund (whether as a 'slave' or 'forced' laborer)" also was to receive *an additional payment* from the Swiss Banks Settlement Fund. Heirs of those who died after February 15, 1999 also were eligible for payment, as true for the German Foundation. Payments originally were expected to be made in two tranches, as under the German Foundation.[36]

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[33] Distribution Plan, at 148.

[34] Gribetz and Reig/Reparations, at 140, citing *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d at 97.

[35] THE GERMAN COMPENSATION PROGRAM FOR FORCED LABOR: PRACTICE AND EXPERIENCES 35 (Günter Saathoff, Uta Gerlant, Friederike Mieth & Norbert Wühler eds., Foundation Remembrance, Responsibility & Future 2017) (emphasis in original).

[36] Gribetz & Reig/Reparations, at 140 (emphasis in original), citing *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d at 97. After the Court received information concerning the projected overall payments, in the interest of claimant convenience and administrative efficiency, the Court authorized payments to be issued in their

Second, the Slave Labor Class I payment was to "augment the amount each such individual [was] to receive from the German Fund. A payment to a member of Slave Labor Class I should not be used as an offset against the amount that person [was] to receive under the terms of the German legislation."[37]

Third, the Court diverged from the German Foundation legislation in its selection of administrative agents. Under the German Foundation rules, payments were to be "carried out by seven 'partner organizations.' The partner organizations include[d] five foundations established in Central and Eastern European countries, which [were] responsible for payments to former slave and forced laborers (Jewish and non-Jewish alike) living in nations covered by the respective foundations. The five foundations [were to] make payments to persons living in Poland; Ukraine and Moldova; Russia, Latvia and Lithuania; Belarus and Estonia; and the Czech Republic. For non-Jewish individuals living in the rest of the world, the IOM [was] designated to make payments. For Jewish recipients living in the rest of the world, the Claims Conference [was] designated to make payments."[38] However, the Distribution Plan sought to streamline the German "partner organization" program by designating only two of the seven partner organizations to serve as administrative agents for the Court: the Claims Conference and the IOM. These two organizations agreed to "assume responsibility for distributing payments from [the] Settlement Fund to 'Victims or Targets' who reside[d] in the nations within the mandate of the [other] five foundations; *i.e.*, Poland, Ukraine, Moldova, Russia, Latvia, Lithuania, Belarus, Estonia and the Czech Republic." The claims of all Jewish slave laborers would be processed by the Claims Conference, and the claims of all Roma, Jehovah's Witness, homosexual and disabled slave laborers would be processed by the IOM.

The Claims Conference and IOM also were appointed to act on behalf of the Court to "arrange for processing and distribution of payments" to Slave Labor Class I claimants "who

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entirety, rather than in two stages. The German Foundation noted in its 2017 publication that the two-installment rule "had the regrettable, although unavoidable, effect of upsetting many beneficiaries when they did not receive the full amount of their compensation right away. However, a worse option would have been to pay out the full amount only after all claims were processed and decided upon, when the amount available for each eligible claimant would be clearly allocated …. [I]t was preferable to at least pay some compensation earlier." Saathoff, Gerlant, Mieth & Wühler, *supra*, at 105.

[37] Distribution Plan, at 149 (emphasis in original).

[38] *Id.*, at 150-51.

labored in Austria, although the German Fund provide[d] for separate procedures for such individuals." [39]

Payments would not be determined solely by whether the applicant had been found eligible by the partner organization responsible for his or her region. Rather, "[a]ny person who was denied compensation from the five Central or Eastern European foundations but believe[d] he or she nevertheless [was] entitled to compensation under this Settlement Fund [was entitled to] make a direct application to the IOM or Claims Conference."[40]

To the greatest extent possible, the Court sought to utilize (but was not bound by) the German Foundation definitions of eligibility, with one major exception: although the German Foundation distinguished between slave and forced labor, the Settlement Agreement did not. Thus, under the German Foundation:

> Slave laborers were "defined under Section 11(1)1 of the [German] legislation as 'persons who were held in a concentration camp as defined [under] the German Indemnification Law [BEG] or in another place of confinement outside the territory of what is now the Republic of Austria or a ghetto under comparable conditions and were subjected to forced labor." Such individuals were eligible for payments of up to DM 15,000 (approximately $7,500).
>
> Forced laborers were "defined under Section 11(1)(2) of the legislation as 'persons who were deported from their homelands into the territory of the German Reich (according to the borders of 1937) or to a German-occupied area, subjected to forced labor in a commercial enterprise or for public authorities there, and held under conditions other than those mentioned [under Section 11(1)(1], or were subjected to conditions resembling imprisonment or similar extremely harsh living conditions; this rule does not apply to persons who because their forced labor was performed primarily in the territory of what is now the Republic of Austria can receive payments from the Austrian Reconciliation Foundation." Such individuals were eligible for payments of up to DM 5,000 (approximately $2,500).[41]

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[39] *Id.*, at 156 n.424.

[40] *Id.*

[41] *Id.*, at 151-152. *See also* GERMAN FINANCE MINISTRY, COMPENSATION FOR NATIONAL SOCIALIST INJUSTICE 12 (June 2009) ("Under the [German Foundation] Act, the following were entitled to apply: [1] Persons who were detained in a concentration camp as defined in Section 42(2) of the Federal Compensation Act or detained under comparable conditions in some other prison camp outside the present-day territory of the Republic of Austria or in a ghetto and who were subjected to forced labour …. [2] Persons who were deported from their native country to the territory of the German Reich within its borders of 1937 or to a region occupied by the

The Distribution Plan, however, provided that all laborers, whether "slave" or "forced," would receive the same payment. This reflected the terms of the Settlement Agreement, which did not distinguish among the five "victim or target" groups (Jewish, Roma, Jehovah's Witness, homosexual and disabled). Furthermore, the Settlement Agreement referred only to "slave labor," which it defined as "work for little or no remuneration," a term that did not distinguish between slave and forced labor, or between places of enslavement.[42]

The Court authorized a 45% increase in payments to members of Slave Labor Class I (as well as the Looted Assets Class and the Refugee Class) after receipt of unexpected additional income generated by a tax exemption on interest earned on the Settlement Fund. The Slave Labor Class I payment thus was increased in September 2002 from $1,000 to $1,450 per person.[43]

The Court adopted the German Foundation's limitation of payments almost entirely to survivors. In the event that a slave laborer died after the effective date of the law — February 15, 1999 — a designated group of heirs would be entitled to receive the slave laborer's payment in the following order: spouse, children, grandchildren, siblings, and those named in a will. "With this, the Foundation Law established a so-called 'self-contained regime' with its own definition of 'legal successors' which could, and in a number of cases did, differ from national inheritance laws. This system was not uncontested since it meant disappointing persons who were heirs according to their respective national inheritance law including those who were designated as a beneficiary in the will of the deceased person. However, given the large number of beneficiaries, the system avoided the challenge of having to establish first, which national inheritance law applied, and then who was an heir under such national inheritance law. It would have been very difficult, time consuming, and costly for the partner organizations to identify and

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German Reich and were subjected to forced labour in an industrial or commercial enterprise or in the public sector and were detained under conditions other than those named above or were subjected to prison-like conditions or comparable exceptionally hard living conditions. This does not apply to persons who are able to receive payments from the Austrian reconciliation fund for forced labour performed mainly in the present-day territory in the Republic of Austria…. In addition, the Act contained a catchall clause which allowed the partner organizations charged with implementation to provide assistance to other victims of National Socialist injustice, in particular to forced labourers in agriculture. Forced labour as a prisoner of war was not a cause of entitlement").

[42] *See* Distribution Plan, at 151-152 (describing German legislation).

[43] *See* Memorandum & Order, Sept. 25, 2002.

then apply different national inheritance laws, particularly for those partner organizations that covered a large number of countries, like the IOM and JCC [Claims Conference]."[44]

The rationale for limiting payments primarily to survivors (and in limited cases, to designated heirs) was even more compelling in the Swiss Banks case. The Settlement Fund was smaller than that administered by the German Foundation, and it had to be shared among several different classes.

> As noted by Deputy Secretary of the Treasury Stuart E. Eizenstat in a February 16, 2000 speech before the Bundestag, under the German Fund, heirs generally will not receive direct payments 'largely for practical considerations, as the number of such heirs would be in the millions and there would simply not be enough money available to make payments to both survivors and heirs.' That precise concern applies to this $1.25 billion Settlement Fund, which is considerably smaller than the German Fund to begin with, and will be substantially reduced even further once all Deposited Assets Class claims are repaid.[45]

The German Foundation established application deadlines of eight months for all claimants, except for those individuals for whom the IOM was responsible, in which case the application deadline was set at 12 months. Those deadlines ultimately were extended, as were the deadlines established by the Court for Slave Labor Class I.[46]

2. Organizing the Claims Program

a. Outreach

For both the Swiss Banks Slave Labor Class I program and the German Foundation slave labor program, the claims process was designed to rely, wherever possible, upon information

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[44] Saathoff, Gerlant, Mieth & Wühler, *supra*, at 37.

[45] Distribution Plan, at 157, citing Statement by Deputy Sec'y of the Treasury Stuart E. Eizenstat concerning the German Found. 'Remembrance, Responsibility, Future' before the German Bundestag Comm. on Domestic Affairs, Berlin, Feb. 16, 2000, at 16. "Deputy Secretary Eizenstat observed that '[i]nstead of receiving direct payments from the Foundation, it was agreed that the Future Fund would 'support projects that serve to benefit the heirs.' [citation omitted] A similar program benefiting all the heirs (and all other class members), the Victim List Foundation [now Victim List Project], is recommended here." *Id.*, at n. 426.

[46] Distribution Plan, at 153, citing German Found. legislation, Sections 13 and 14.

already available from prior restitution programs. The focus was on simplifying the application process, both for the convenience of the claimants — many of whom previously had applied for and were receiving other types of Holocaust compensation, which often had required detailed applications and archival documentation — and for the benefit of the Settlement Fund and other class members.

However streamlined the program was meant to be, it was by no means simple, given the elderly survivor population the claims process sought to serve. For each of the Court's administrative agents, the slave labor program required an unprecedented global mobilization of resources. The goal was to locate potential claimants, analyze their histories, and pay claims in as short a period as possible, while supported by documentary evidence and adhering to the parameters established by the German Foundation and the Settlement Agreement, to ensure a legally and historically accurate record of the scope of slave labor throughout Nazi-occupied Europe.

i. Claims Conference

To "prepare for the large logistical undertaking of processing applications from around the world, the Claims Conference undertook a series of steps including:

- Identifying survivors most likely to be eligible;
- Mailing applications to survivors who had received previous compensation and were most likely to be eligible for slave labor compensation;
- Launching an international media and advertising campaign to announce the claims process;
- Engaging a network of 350 local survivor and Jewish organizations around the world that could provide assistance in the application process; [and]
- Contacting 500 homes for the elderly in Israel, asking them to inform residents of the program, and opening nine help centers for survivors throughout the country."[47]

[47] Gideon Taylor, Greg Schneider & Saul Kagan, *The Claims Conference and the Historic Jewish Efforts for Holocaust-Related Compensation, in* REPARATIONS FOR VICTIMS OF GENOCIDE, WAR CRIMES AND CRIMES AGAINST HUMANITY: SYSTEMS IN PLACE AND SYSTEMS IN THE MAKING 104, 109 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Martinus Nijhoff Publishers 2009) ("Taylor, Schneider & Kagan"). *See also* CLAIMS CONFERENCE, 2006 ANNUAL REPORT WITH 2007 HIGHLIGHTS 15 ("Claims Conference 2006 Annual Report").

An important component of the program was the institution and utilization of the most updated technology available. Thus, the Claims Conference "created an advanced system of computerized processing where every application form was digitally scanned. The computer system provided global linkage between regional processing offices in New York, Tel Aviv, Frankfurt, and Budapest. The database permitted unlimited information input, storage and retrieval while allowing staff to trace the progress and the status of every application in the system. Hundreds of thousands of claims were further electronically sorted and analyzed to identify and then group them for streamlined procedures."[48]

The shifting of much of the claims process to a highly computerized system did not, however, eliminate the need for careful individualized study of the claims. To take one example of the complexity of this process:

> Information given by survivors on the application form for the Program for Former Slave and Forced Laborers varied widely. Case workers [not computers] logged more than 1,600 different spelling and misspellings [provided by claimants] for the camp known as "Auschwitz-Birkenau" alone. Some examples are below:
>
> | | | | |
> |---|---|---|---|
> | Acushwitz | Awsvitz | Auschchwitz | Auzhwitc |
> | Aishwitz | Birkenau | Aushwis | Aucswitz |
> | Aosivz | Brzezinka | Ausvich | Aschwiz |
> | Aoushwitz | Osvenz | Auwvitz | Atzshvitz |
> | Asvenzim | Osviecim | Aushcviz | Aucvitz |
> | Auchwich | Oswencim | Auschwist | Ascwitz |
> | Auschewitz | Oswiecim | Ausvici | Auachwitz |
> | Auschwitz | Ausghwitz | Auzchsitz | Aucvizh |
> | Aushvits | Aushwinzim | Aushevitsc | Ashcwitz |

[48] Taylor, Schneider & Kagan, at 109.

Aushvitz Ausvich Aushwit Asschwicz

Aushwitz Auswswitz Ausvicz Aufshviz.[49]

Another manual and labor-intensive task included the identification and exclusion of duplicate applications, a process by which a computer system could identify "potential matches" but which then "each ha[d] to be reviewed manually" with a "trained caseworker [determining] for each case if in fact there [was] an identity match."[50]

The claims processing programs were technologically sophisticated, and were supplemented by appropriate communication mechanisms. Thus, in consultation with the Court and the Special Masters, early in the process the Claims Conference established facilities devoted to survivor outreach. As described by the Claims Conference in a report to the Court, the programs included the following:

- Call Center: The Call Center in New York employed between 7 and 14 staff members between February 2001 and December 2003. Calls from class members were also answered by the Claims Conference offices in Israel, Frankfurt, Vienna and Budapest, and in Claims Conference liaison offices in Eastern Europe. The operators worked six days a week for approximately six months, then resumed a five-day work week. Claims Conference staff members spoke over 11 different languages and spent all day personally answering calls from survivors in English, Czech/Slovak, French, German, Hebrew, Hungarian, Italian, Romanian, Russian, Spanish and Yiddish…. [A]n off-site hotline/call center … was also utilized [which] handled all toll-free calls… [and] was staffed 24 hours a day, 7 days a week, … for almost a year…. The Program for Former Slave and Forced Laborers alone has handled 174,088 phone calls from class members and the public since February 2001."

- Services Department: The department "answer[ed] letters and emails from the public and survivor community and respond[ed] to detailed telephone questions received by the Claims Conference. The department also assisted class members with completing application forms. Since 1999 [when the start-up of the slave labor program was first anticipated], the Services Department of the Claims Conference in New York has employed between 8 and 25 staff members who are experienced in answering queries

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[49] Claims Conference 2006 Annual Report, at 15. *See also* Taylor, Schneider & Kagan, at 110 (noting that "[o]ne of the main challenges that the Claims Conference faced in processing claims was sorting through the more than 700,000 separate places of persecution named by survivors in their applications").

[50] *See* Claims Conference Letter to Special Masters (Sept. 25, 2003) ("September 25, 2003 Claims Conference Letter"), annexed as part of Exhibit 5 to the Special Masters' Interim Report. *See* Special Masters' Interim Report.

> regarding differing restitution programs and services for Holocaust survivors. The Department … [was] able to provide assistance in Hebrew, German, Russian, Polish, Hungarian, French, Spanish, Portuguese, Italian and Rumanian…. It is estimated that the average number of the telephone calls handled by this department for the 18-month period between January 2001 and June 2002 was approximately 50,000 [and approximately] 11,000 emails [were answered], in addition to several thousand letters."

- Town Meetings and Open Houses: "During 1999 and the period leading up to the establishment of the German Foundation's slave labor compensation program as well as the approval of the Swiss Banks Settlement, the Claims Conference undertook a systematic information campaign across North America to reach out to large groups of Holocaust survivors and services organizations in 'town meeting' settings, which were conducive to detailed Q & A and one-on-one sessions…. In addition, to coincide with the beginning of the application process, the Claims Conference organized over 15 'Open Houses' to assist survivors in completing the application forms for the [slave labor program] and to answer any related restitution questions…."[51]

ii. IOM

The IOM created a similar outreach program. As it described in its Final Report to the Court on its Information and Outreach Campaign:

> IOM launched its Public Information and Outreach Campaign for HVAP [the IOM's "Holocaust Victim Assets Program" for Slave Labor Class I, Slave Labor Class II and the Refugee Class] with two simultaneous press conferences in Tel Aviv and New York on 17 April 2001 [at which the Claims Conference, and Special Master Bradfield on behalf of the Claims Resolution Tribunal, handling bank account claims for the Court, participated as well]. By that time, IOM had already prepared print and other materials for broad distribution. The Court had also appointed a notification company to publish notices about the Programme in print media worldwide….
>
> IOM coordinated with victims' associations and field offices in the development of visual identity and images as well as the production of information material in 28 languages. Information … was disseminated through more than 80 IOM field offices and with the assistance of partners in countries where IOM does not have a presence…. IOM endeavoured to cooperate closely with victims' associations, target group organizations, local governments and authorities, international organizations, minority group representatives, international and national newspapers as well as TV and radio stations.

[51] Claims Conference Declaration, Sept. 18, 2008, at 4-7.

> Simultaneously, a special programme website was developed and updated regularly….[52]

The IOM placed over 500 print advertisements in 20 languages in media located in 34 different countries, and also broadcast multilingual radio and television announcements. "A web banner providing a direct link to the IOM home page was placed on the CNN website and target group web pages."[53] The IOM "developed its own special web page describing" the Swiss Banks program and "answering Frequently Asked Questions in English, German, French and Spanish, held 46 press conferences in 30 countries, and published 15 press releases." The IOM also publicized the Court's deadlines, including extensions.[54]

The IOM took further steps as part of its "international joint GFLCP/HVAP campaign" to disseminate notice of the claims program to the specific victim groups designated under the Settlement Agreement.[55]

With respect to Roma class members, the IOM held a special press conference in Bratislava at the inception of the program. In addition, because Roma "even today … often live in isolated communities, lacking both active participation in the societies of their home countries and access to mass media, IOM contracted with AB Data, Ltd. … for targeted outreach services to Roma in Central and Eastern Europe. In addition to IOM field offices, AB Data contacted eligible Roma claimants in the following 18 countries, distributed, assisted with preparation, and collected claim forms from them: Belarus, Bosnia and Herzegovina, Czech Republic, Croatia, Estonia, Hungary, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovakia, Slovenia, and Ukraine."[56]

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[52] *See* IOM, INFORMATION AND OUTREACH CAMPAIGN FINAL REPORT: JANUARY - DECEMBER 2001 (June 12, 2003) ("IOM Outreach Report"), at 9-10.

[53] IOM Final Report at 59-61 (describing outreach for all three claims programs: Slave Labor Class I; Slave Labor Class II; and the Refugee Class); *see* IOM Outreach Report at 19-20 (providing details of media outreach efforts).

[54] *Id*.

[55] IOM Outreach Report at 10-11. "GFLCP" stands for the IOM's "German [Foundation] Forced Labour Compensation Programme."

[56] IOM Final Report, at 62.

With respect to homosexual class members, the outreach program "was one of the greatest public information challenges…. Although the estimated number of homosexual survivors was expected to be very low — historians estimated a 60 per cent death rate of homosexual concentration camp inmates — it seemed to be worthwhile to set up a special campaign to make sure that those few potential claimants were reached. Therefore, IOM together with a professional communications agency in Germany selected on the basis of its track record and access to gay and lesbian networks, implemented special outreach activities geared towards this target group. This targeted media approach was expected to have a snowball effect that would spread to the US, Canada, and Australia, where some homosexuals had sought shelter from Nazi persecution." The campaign was launched at a press conference in Berlin which was "covered live by international media, including CNN."[57]

For disabled class members, since it was "very difficult to find eligible individuals through IOM's general public information campaign" due to the "brutal mistreatment of disabled persons under the Nazi regime and the extremely low survival rates of victims," the IOM initiated a "targeted information campaign." It "appealed to the media, organizations for the disabled, and the general public to assist in locating potentially eligible victims." The IOM also "conducted a broad-based survey" to "find relevant media and organizations working with disabled persons and to create a specialized database for the dissemination of relevant information;" held press conferences in Bonn and in Washington, D.C.; and used direct mailings to relevant organizations.[58]

Together with the Jehovah's Witness Holocaust-Era Survivors Fund ("JWHESF"), the IOM launched a campaign to reach out to Jehovah's Witness class members, in recognition that "congregation life is central to the Jehovah's Witnesses and that frequent contact and interaction promote a close-knit atmosphere among members." As a result, the "outreach carried out by Jehovah's Witness congregations was very effective."[59]

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[57] IOM Final Report, at 65; IOM Outreach Report, at 10-11.

[58] IOM Final Report, at 63-64; IOM Outreach Report, at 10-11.

[59] IOM Final Report, at 64-65; IOM Outreach Report, at 10-11.

b. Deadlines

A crucial component of the global notification was the dissemination of clear filing deadlines. For the program to be successful, claimants needed to apply promptly so that the expected hundreds of thousands of claims could be reviewed and paid to the elderly Nazi victims, who already had waited for too many decades. The goal was first to compensate the survivors, and only secondarily the heirs, and so time was of the essence.

Thus, the Court, again following the lead of the larger German Foundation program, established a claim filing deadline of August 31, 2001. Because of the proactive approach that had been undertaken by the Claims Conference in consultation with the Court and the German Foundation, reaching out to surviving slave laborers even before the German and Swiss slave labor programs were officially finalized and announced, those filing deadlines largely were met and hundreds of thousands of applications were received by the application date. Nevertheless, given that Nazi victims lived all over the world, including in rural communities with minimal communication facilities or infrastructure, the German Foundation and the Court both determined that it was appropriate to extend their filing deadlines. Thus, as true for the German Foundation, the Court extended the Slave Labor Class I deadline to December 31, 2001.

The Court also adopted the recommendation of the German Foundation to accept "'informal applications' (*i.e.*, requests for applications or some form of communication — fax, email, phone call, letter — indicating that the person was interested in applying and requesting information as of December 31, 2001)," on condition that "the application form itself … be received by the partner organization within 3 months from the date that the partner organization dispatches the form."[60]

While the December 31, 2001 deadline "was not formally extended again, there were several instances where individuals provided plausible explanations for their failure to meet the 31 December 2001 deadline or otherwise demonstrated 'excusable neglect' …. Any [German Foundation] claims that had been received by victims' associations within the deadline were also generally considered as timely received by IOM even if IOM actually received them after the

[60] *See* Claims Conference Letter to Court, Jan. 18, 2002; IOM Letter to Court, Jan. 21, 2002. The Court approved both requests by Order dated Jan. 22, 2002.

formal deadline." Moreover, the Court also accepted the German Foundation rules providing that "a claim form timely received by any German Federal Foundation partner organization or the ARF Austrian Reconciliation Foundation and subsequently transferred to another would be deemed to have been received on the earlier date, so some eligible [slave labor] claims were received by IOM even as late as mid-2005, automatically making their [Swiss Banks claims] timely received. This was especially true of claims transferred to IOM from the ARF, for which the programme deadline ultimately was extended" to December 31, 2004.[61]

In its final Slave Labor Class I submission, the Claims Conference, following consultation with the Special Masters and the Court, advised that it was winding down the program and that the final closing date had been established:

> As the [remaining] recipients are mainly resident in countries of the former Soviet Union, time is required to transmit funds. As such, we are asking the deadline for payment to be set at May 31, 2009. This time will allow the recipients to claim their funds and for the Claims Conference to resolve any outstanding payment issues on previously awarded funds. As of May 31, 2009, no further payments will be issued or re-issued.
>
> Further, the entire program will close as of June 30, 2009, allowing the final 30 days for any outstanding payments that may have been re-issued through May 31, 2009 to be cashed. At June 30, 2009, all outstanding payments will be closed and no further financial transactions will be allowed.[62]

c. Heirs

The filing deadlines were not open-ended, because the "top priority was to pay as many living Holocaust survivors as quickly as possible."[63] For the same reason, payments to heirs were made only later. As the Claims Conference has observed about the (now-closed) Slave Labor Program:

> In 2005, the Claims Conference began making compensation payments to eligible heirs of former slave laborers. Throughout the slave labor program, the Claims Conference's top priority was to pay as many living Holocaust survivors as

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61 IOM Final Report, at 74-75.

62 *See* Group 33 Report, Jan. 28, 2009, at 3.

63 Claims Conference 2006 Annual Report, at 19.

> quickly as possible…. Payments were made to heirs who applied directly to the program and to heirs of survivors who had applied…. The payments were to be divided among all eligible heirs of any one survivor.[64]

As with claims filed by survivors, the criteria for heir claims were established by the German Foundation and applications from heirs were subject to the German Foundation's audit.[65]

Although heir claims were relatively few in number, paying these claims was one of the more complicated elements of the program. As observed in a final report prepared by the German Foundation:

> If an applicant died while an application was still pending, the surviving spouse or certain descendants could receive the benefits from an approved claim. The Foundation Establishment Act stipulated that the partner organizations were not to apply the inheritance laws of their respective countries, but must apply the special legal succession arrangements formulated in the Act. After all, payments were being disbursed across one hundred countries on this planet, and lawmakers wanted to avoid applying a hundred different sets of inheritance rules. This would have made the processing of applications much more complicated, particularly for the JCC [Claims Conference] and the IOM, and would have dragged out the process by many years.
>
> But the application of common rules on legal succession also produced unexpected difficulties. For one thing, when legislators passed the Foundation Establishment Act in 2000, they failed to stipulate the period within which legal heirs would need to file a "substitute" claim. The law was eventually amended to include a six-month filing deadline starting from the date of death of the original applicant. Secondly, the act of locating legal heirs and applying the share arrangements spelled out in the Act proved to be the greatest problem of all. A beneficiary who had lived, for example, in the Czech Republic, could very well have eligible children living in other countries. Since most payments had to be divided between the surviving spouse and the children, processing such payments became very complex and extremely time-consuming; and was the main reason the partner organizations required more time than originally foreseen to process all applications.[66]

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64 *See* http://www.claimscon.org/index.asp?url=slave_labor/heir_payment ("Heirs").

65 Claims Conference 2006 Annual Report, at 19.

66 Michael Jansen, Günter Saathoff, & Kai Hennig, *Final Report on the Compensation Programs Carried Out by the 'Remembrance, Responsibility and Future' Foundation, in* A MUTUAL RESPONSIBILITY AND A MORAL OBLIGATION: THE FINAL REPORT ON GERMANY'S COMPENSATION PROGRAMS FOR FORCED LABOR AND OTHER PERSONAL INJURIES 121-122 (Michael Jansen & Günther Saathoff eds., Palgrave Macmillan 2008).

The same concerns applied equally to the payment of heirs to Slave Labor Class I awards.

d. Appeals

Claims were to be processed by the Claims Conference and IOM, respectively, and their recommendations were to be reviewed by the Special Masters and, if appropriate, submitted to and approved by the Court. As true for all of the German Foundation partner organizations, the German law establishing the program provided for the German Foundation "to act as a supervisor of the procedure, thus performing a control function. In practice, it did so by regularly dispatching German supervisory teams to conduct on-site inspections of the partner organizations' work."[67]

Beyond this initial review, the German Foundation legislation required the partner organizations "to create appeals organs that [were] independent and subject to no outside instruction."[68] Both the Claims Conference and the IOM established such processes and received the approval of the German Foundation. The two agencies thereafter submitted their respective appellate programs to the Court for review, and upon consideration, the Court approved each as appropriate for Slave Labor Class I.

With respect to the appeals process for Jewish class members, the Court noted that the "independent appellate mechanism that has been established under the German Foundation Law for Jewish former slave and forced laborers comports with due process under the laws of the United States and also satisfies the objectives of efficiency and convenience to class members as set forth under the Distribution Plan." The Court observed that the Chairmen of the appellate authority, both of whom had been born in pre-War Europe and later resided in Israel, were highly

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The process of locating and paying heirs was even more complicated for the separate Deposited Assets Class under the Swiss Banks Settlement, because the amounts of the awards were often substantial; the division of the award was more complex and depended upon the relationship of a particular heir to a particular account owner; and the heirs sometimes did not disclose the existence of other heirs or objected to the inclusion of certain heirs in the award. This is discussed more fully in the chapter of this Final Report entitled "The Deposited Assets Class Claims Process."

[67] Constantin Goschler, *Introduction* to COMPENSATION IN PRACTICE: THE FOUNDATION 'REMEMBRANCE, RESPONSIBILITY AND FUTURE' AND THE LEGACY OF FORCED LABOUR DURING THE THIRD REICH 1, 11 (Constantin Goschler ed., Berghahn Books 2017) ("Goschler").

[68] *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849, at 1 (E.D.N.Y. Feb. 11, 2003) ("February 11, 2003 Order"), approving the Claims Conference's appeals process for Slave Labor Class I.

qualified: Jakob Hirsch was an Israeli attorney who had served for two decades in the Office of the State Comptroller of Israel; Ze'ev Victor Sher likewise had served in the Office of the State Comptroller of Israel and also had been Economic Minister to the United States and Canada as well as Deputy Attorney General of Israel.[69]

However, the Court reserved its right to deviate from opinions of the appellate body, as well as those of the German Foundation. "To the extent that issues may arise during the appellate process that are unique to Slave Labor Class I, the Claims Conference shall so advise the Court and the Court or its designee, in its discretion, may review *de novo* that portion of the appellate decision relating to Slave Labor Class I, or may issue supplemental guidelines which shall govern the appellate process for appeals rising under Slave Labor Class I. In the event that a conflict may arise between the appellate body appointed pursuant to the German Foundation Legislation and the Court, the determination of the Court shall be dispositive as to Slave Labor Class I."[70]

As to appeals for Roma, Jehovah's Witness, homosexual or disabled class members, the Court similarly approved the appellate procedures the IOM had recommended, which had been adopted by the German Foundation. The Court noted the professional qualifications of the three-member review board. The Chairman, Matti Pellonpää, was a Judge at the European Court of Human Rights in Strasbourg who previously had served on the Iran-United States Claims Tribunal at The Hague, the Supreme Administrative Court of Finland in Helsinki and the United Nations Compensation Commission in Geneva. Nataša Zupančič, the second member, was a counselor in the International Law Department of the Ministry of Foreign Affairs in Slovenia, and also was a member of IOM's Steering Group of Most Involved Victims' Associations. The third member, Les Kuczynski, was a United States lawyer who served as National Counsel for the Polish National Alliance, as well as National Executive Director of the Polish American Congress, and was a member of IOM's Steering Committee.

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[69] The Claims Conference subsequently advised the Court that one of the chairmen of the appeals committee had resigned "for personal reasons," and recommended both to the German Foundation and to the Court that attorney Herb Kronish be appointed as the replacement Chairman of the Appeals Authority. The German Foundation approved the request by letter dated Oct. 12, 2006, and the Court likewise issued its approval by order dated Nov. 7, 2006.

[70] *See* Order, Feb. 11, 2003.

The Court concluded that, as true for the Claims Conference appeals structure, the IOM's appeals program satisfied due process as well as the objectives of efficiency and convenience. In the event of a conflict with the IOM appeal body, the Court's determination would be dispositive. The IOM's appellate rules also incorporated an "addendum" to govern unique aspects of Slave Labor Class I, such as the requirement that the claimant be a member of one of the five defined groups of "victims or targets of Nazi persecution," which did not apply to the German Foundation.[71]

III. ANTICIPATING THE NUMBER OF SURVIVING SLAVE LABORERS ELIGIBLE FOR PAYMENT

A. Historical Background

In formulating the recommendations in the Proposed Plan of Allocation and Distribution of Settlement Proceeds, and later in assessing slave labor claims, it was necessary to estimate the number of potentially eligible claimants. This was not an exact science. The scholarship concerning the economic aspects of the Holocaust, including the use of slave labor, was still in a relatively nascent stage at the time the Settlement Agreement was reached. As noted in the Distribution Plan:

> There is no definitive means to determine the actual number of Jews and other "Victims or Targets of Nazi Persecution" who were forced to perform slave labor. Nor can it be precisely determined how many of those persons survived the War. As the Allies marched through Germany at the end of the War, they liberated prisoners not only from well-known concentration camps (like Auschwitz and Dachau), but also from hundreds of lesser-known and incompletely researched factory websites, external work detachments, "death marches," and other types of imprisonment and enslavement. Thus, assessments of the number of survivors that include only those liberated from 'official' concentration camps generally

[71] *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849, at 3 (E.D.N.Y. Apr. 25, 2003). The Court ultimately authorized $250,850 in payments based upon "positive decisions by the IOM Appeals Body …. Despite this relatively small amount, the existence of an independent appellate procedure for Slave Labour Class I was an important element in IOM's efforts to establish an objective, fair and efficient claims review procedure." IOM Final Report, at 144.

> underestimate the numbers of Jews and others who labored in that system and who were able to escape with their lives.[72]

Prisoners at forced labor building airplane parts at the Siemens factory in the Bobrek labor camp. Auschwitz, Poland, circa 1944.[73] Photo courtesy of the U.S. Holocaust Memorial Museum and Henry Schwarzbaum.

Lutz Niethammer, who served as the German Foundation's historical expert, offered a similar assessment of the limited knowledge available at the outset of the compensation process.

> We have partial sets of data relating to work carried out for certain companies or camps and we have estimates for ghettos. But the overall dimension, doubtless in the millions, is impossible to determine. As a result, no figures could be given prior to the payment of compensation. In 1999 experts involved estimated that former slave laborers among the Holocaust survivors, including those able to escape at an early stage of the persecution, accounted for only about 60% of the applications that were approved for payment, *i.e.*, 158,600.[74]

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[72] Distribution Plan, Annex H ("Slave Labor Class I"), at H3-H-4.

[73] "The Siemens factory in Bobrek, a sub-camp of Auschwitz, employed 220 male prisoners from Auschwitz, mostly Jews and a few Polish prisoners. There were also 37 Jewish women…. On January 18, 1945 Germans evacuated the factory and sent the prisoners on a death march to Gleiwitz. From there they were taken to Buchenwald, where some of them remained until liberation; others were sent on to Berlin." *Photo Archives*, USHMM, http://digitalassets.ushmm.org/photoarchives/detail.aspx?search=&id=1117258&index=16 (last visited Apr. 26, 2016).

[74] Lutz Niethammer, *From Forced Labor in Nazi Germany to the Foundation 'Remembrance, Responsibility and Future' - A Tentative History*, *in* A MUTUAL RESPONSIBILITY AND A MORAL OBLIGATION: THE FINAL REPORT ON GERMANY'S COMPENSATION PROGRAMS FOR FORCED LABOR AND OTHER PERSONAL INJURIES 15, 22 (Michael Jansen & Günter Saathoff eds., Palgrave Macmillan 2009). Niethammer "proposed and supervised

Those estimates proved too low, for a variety of reasons. While the picture still remains incomplete, newer scholarship has challenged some of the traditional concepts concerning Nazi policies toward Jewish labor. Whereas historians originally shared the "widespread thesis that compulsory work was organized only by the SS and that exploitation was only an intermediate tactic on the way to mass murder or, rather, that it was only a facet in the destruction of the Jews,"[75] a somewhat more nuanced interpretation has emerged. That view holds that "deportations were modified in favor of forced labor and that the National Socialists even coordinated the genocide program with the requirements of the labor market and the economy in Germany and in Poland." This analysis "fundamentally refutes the thesis that compulsory work was only an intermezzo on the way to mass murder, or rather was only an element of the destruction of the Jews,"[76] a long-standing theory that had as one major consequence the "inexcusabl[e] underestimate[ion]" of "the duration, extent, and historical significance of forced labor."[77]

The Austrian Reconciliation Fund, in its final report on compensation programs for those who had performed slave and forced labor in Austria, observed that such labor was integral to the Nazi war effort.

> [T]he German economy had begun to suffer from a shortage of labor soon after the outbreak of war…. [O]ne is forced to agree with Ulrich Herbert, who in his article *Die politische Ökonomie des Holocaust* concluded that, "the deployment of forced labor in the German war economy was no side effect initiated by the regime, but was one of the major prerequisites for the six-year war conducted by Germany," as "no later than winter 1941/42 when the tide of war began to turn, the German economy was dependent on the employment of foreign forced laborers with no alternative."[78]

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the research that was carried out by Ulrich Herbert" in the 1980s "on the subject of foreign workers and was to be of key relevance in [the] context" of formulating the German Foundation. *Id.*, at 79 n. 1.

[75] WOLF GRUNER, JEWISH FORCED LABOR UNDER THE NAZIS: ECONOMIC NEEDS AND RACIAL AIMS, 1938-1944 ix (Kathleen M. Dell'Orto trans., Cambridge Univ. Press in Ass'n with USHMM 2006).

[76] Gruner, at xviii.

[77] *Id.*, at xi.

[78] HUBERT FEICHTLBAUER, FUND FOR RECONCILIATION, PEACE AND COOPERATION: LATE RECOGNITION, HISTORY, TRAGIC FATES 67, 68 (Austrian Reconciliation Fund 2005) ("Austrian Reconciliation Fund Final Report"); *see also* Ulrich Herbert, *Zwangsarbeiter im 'Dritten Reich' und das Problem der Entschädigung, in* DIE POLITISCHE ÖKONOMIE DES HOLOCAUST 219 (Dieter Stiefel ed., 2001).

No scholar has yet been able to draw a line under these subjects: the scope of the Nazi use of slaves, and the number of human beings who were dragged into the German slave labor machine. What was clear was that slave labor was pervasive and integral to the Nazi war effort. Even with the field of research still developing, however, when formulating the Distribution Plan recommendations, there were reliable sources from which to draw some broad conclusions about the number of victims who might have survived the Holocaust. This information included the continuing scholarship about the vast number of camps and ghettos in the Nazi system; data from prior restitution programs; and the ongoing discovery of new lists of victims' names, some of which were the direct result of the Victim List Project, a program established by the Court to gather and recognize the names of Victims or Targets of Nazi Persecution — those who perished and those who survived.[79]

B. The Developing Scholarship About Slave Labor Use and Survivors

The Distribution Plan observed that "[d]espite all of the published literature on World War II and the Holocaust, significant gaps remain regarding the Nazi use of slave labor. Indeed, Richard J. Evans of the University of London" wrote in 1989 that "intensive research into the broader question of the Nazi economic exploitation of its prisoners 'has only recently begun.' Avraham Barkai echoed this observation in 1991 and noted that 'the various and sundry activities of German entrepreneurs in the occupied territories is a chapter that has been little investigated to date.' And, in his 1998 study, Peter Hayes of Northwestern University observed that it is only now 'becoming possible to write a systematic and comprehensive history of the

[79] The Victim List Project was established "to encourage and help organize the compilation and greater accessibility worldwide of the names of individuals whom the Settlement Agreement was intended to benefit: Jewish, Romani, Jehovah's Witness, homosexual and disabled victims or targets of Nazi persecution, those who survived as well as those who perished." There has been "good progress made by the United States Holocaust Memorial Museum (USHMM), in cooperation with Yad Vashem, towards the creation of a worldwide catalog of all known archival and testimonial sources of the names of those who perished and of survivors who suffered; the acquisition of major archival sources of names; the mass digitization of the individual names of the victims of the Nazis and their allies; and the provision of public access to this information." *See* Order, Apr. 24, 2012, at 1.

role of German big business in the Nazi assault on European Jews.'"[80] A few years later, writing in 2004, Professor Hayes noted that while knowledge was improving, "a good deal of work remains to be done. I am not familiar with a single military history of World War II that directs readers' attention to who built the bunkers that defended Normandy, though few fail any longer to comment on who assembled the V-2's and under what conditions. Even studies that center on forced and slave labor have trouble keeping track of its most horrible sites - the IG Farben factory at Auschwitz is always mentioned, but seldom that at nearby Blechhammer where the inmate construction force was larger and the death toll also may have been, at least in 1944."[81]

As to the number of slave laborers, that knowledge, too, is incomplete. The Distribution Plan noted that the Holocaust economic historian Ulrich Herbert had considered that the "number of Jews who were deployed to forced labor … cannot be estimated precisely enough," and that areas in need of further research included "the 'activities of German industry in Poland and the occupied regions of the Soviet Union, the deployment of concentration camp inmates as forced labor in the Reich (especially during the final phase of the War), as well as the Head Office for Economy and Administration … of the S.S.'"[82] A scholar of the Skarzysko-Kamienna

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[80] Distribution Plan, at H-8 - H-9, citing RICHARD J. EVANS, IN HITLER'S SHADOW 142 (Pantheon Books 1989); Avraham Barkai, *German Entrepreneurs and Jewish Policy in the Third Reich*, 21 YAD VASHEM STUD. 122, 141 (1991); and Peter Hayes, *State Policy and Corporate Involvement in the Holocaust, in* THE HOLOCAUST AND HISTORY: THE KNOWN, THE UNKNOWN, THE DISPUTED, AND THE REEXAMINED 197 (Michael Berenbaum & Abraham J. Peck eds., Ind. Univ. Press 1998). *See also* Peter Hayes, *Profits and Persecution: Corporate Involvement in the Holocaust, in* PERSPECTIVES ON THE HOLOCAUST: ESSAYS IN HONOR OF RAUL HILBERG 51 (James S. Pacy & Alan P. Wertheimer eds., Westview Press 1995) ("Half a century after the onset of the Nazi assault on the European Jews, we [still] lack a systematic and comprehensive study of the role of German big business in this terrible process").

[81] Peter Hayes, *Forced and Slave Labor: The State of the Field, in* FORCED AND SLAVE LABOR IN NAZI-DOMINATED EUROPE-SYMPOSIUM PRESENTATIONS 1, 6 (U.S. Holocaust Memorial Museum 2004). In general, knowledge about the scope of the Holocaust has "exploded," but the "research remains unfinished," as described by Wendy Lower, the Acting Director of the USHMM's Center for Advanced Holocaust Studies. *See* Wendy Lower, *The History and Future of Holocaust Research*, TABLET, Apr. 26, 2018, https://www.tabletmag.com/jewish-arts-and-culture/culture-news/260677/history-future-holocaust-research. There are "more scholars … engaged in the topic than ever before," but "contrary to public belief, we do not know all there is to know about the Holocaust." *Id.* Further, "most of the non-German documentation across Europe and around the globe has only become accessible in the past 25 years or so, and major collections are just being opened now…. In December 2015, the French Ministry of Defense opened up its postwar trial records, and the Dutch National Archives is declassifying theirs now and allowing the United States Holocaust Memorial Museum to survey and digitize them (they will be available in 2025)…. Of late, the history of the Holocaust has been losing its center in Germany and has become a subject of European history, and especially of Eastern European history, or what Timothy Snyder described as the Bloodlands." *Id.*

[82] Distribution Plan, at H-9, citing Ulrich Herbert, *Forced Laborers in the Third Reich - An Overview, in* COMPENSATION FOR NS-FORCED LABOR (Klaus Barwig ed., Comprehensive Language Center, Inc. trans.,

slave labor camp and a survivor herself, Felicja Karay, similarly observed that "hundreds of anonymous slave labor camps across the face of Europe have remained a blank page in the history of the Third Reich. The lack of scholarly interest in the subject stemmed from a dearth of German documentary sources, which had either been lost or deliberately destroyed, the unappealing nature of the subject and language difficulties (the testimonies of former prisoners have been recorded in every European language imaginable and never translated into English)."[83]

Although there are gaps in the historical knowledge, efforts have been made to estimate the number of Jewish individuals who survived the Holocaust, and more specifically, the experience of slave labor. The Distribution Plan noted that although there were "'no reliable, agreed-upon, statistics on the number of Jewish Nazi victims living in the world today,'" as a starting point, estimates of the number of surviving Jewish victims ranged from 832,000 to 960,000.[84] Holocaust historian Raul Hilberg believed that "[m]ore than a million Jews who had lived under direct German control or in countries allied with Germany, and who had not fled to safety before or during the war, were still alive after May 1945. The largest cluster in this remainder consisted of Jews who had not been engulfed in the final phase of the destruction process," such as in Romania, Bulgaria, Budapest and parts of Western Europe.[85]

Nomos Verlagsgellschaft 1992); Ulrich Herbert, *Labour and Extermination: Economic Interest and the Primacy of Weltanschauung in National Socialism*, 138 PAST & PRESENT 144 (1993).

[83] *Id.*, at H-9-10, citing FELICJA KARAY, DEATH COMES IN YELLOW: SKARZYSKO-KAMIENNA SLAVE LABOR CAMP xvi (Sara Kitai trans., Harwood Academic Publishers 1996).

[84] Distribution Plan, Annex C ("Demographics of 'Victim or Target' Groups"), at C-8, quoting UKELES ASSOCIATES, INC., PAPER #2: AN ESTIMATE OF THE CURRENT DISTRIBUTION OF VICTIMS OF NAZI PERSECUTION 2-2 (in Assoc'n with Claims Conference Planning Comm. June 28, 2000). In determining the range of estimates of surviving Jewish victims, the Distribution Plan reviewed the demographic studies prepared by the Spanic Committee (organized by the Israeli Prime Minister's Office), which assessed the number of surviving Jewish victims during the period May-July 1997 and was cited in the Notice Plan; the data from Ukeles Associates; and other reports. Distribution Plan, at C-8-9.

[85] RAUL HILBERG, PERPETRATORS, VICTIMS, BYSTANDERS: THE JEWISH CATASTROPHE 1933-1945 186 (Harper Collins Publishers 1992). *See also* RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWS 1128, (Yale Univ. Press 3d ed. 2003), Table 11: The Jewish Population Loss, 1939-1945 (indicating that in 1945, a total of 3,682,500 Jews had survived the War; excluding the nations of the former Soviet Union, a total of 1,182,500 had survived); MICHAEL R. MARRUS, THE UNWANTED: EUROPEAN REFUGEES IN THE TWENTIETH CENTURY 331 (Oxford Univ. Press 1985) ("We now know that about one million [Jews] remained in Europe outside the Soviet Union").

Data on surviving members of other "Victim or Target" groups was even more difficult to locate. The Notice Plan, adopted by the Court following its proposal by Settlement Class Counsel, reported that "the number of Roma who survived concentration and forced labor camps and those who survived by going into hiding cannot be estimated accurately."[86] The claims process revealed that the number of Roma survivors was substantial, and considerably higher than had been estimated. Likewise, while some estimates were available at the end of the War about survivors who were Jehovah's Witnesses, homosexual or disabled, no accurate information existed about the number of survivors as of 2000. In place of such estimates, the Distribution Plan took note of alternate sources of data, such as the number of Initial Questionnaires submitted by individuals who identified themselves as Roma, Jehovah's Witness, homosexual or disabled.[87]

More recent investigations have unearthed a wealth of new data about another source of information: the sites at which slave labor likely was used. This research has been conducted on behalf of the leading Holocaust research institutions — Yad Vashem and the USHMM — as well as the Claims Conference, and the German Foundation itself.

The German Foundation compiled an extensive list of thousands of concentration camps and other places of detention in support of its efforts to analyze slave and forced labor claims. As the German Foundation explained:

> The directory of places of detention of the foundation ["Remembrance, Responsibility and Future"] (EVZ) provides information on approximately 3,800 camps and places of detention, which had been taken into consideration along the lines of the payments to former forced labourers by the foundation "Remembrance, Responsibility and Future" www.stiftung-evz.de/eng/. The directory includes information on their purpose as places of detention for forced labourers, their geographical position as well as literature and bibliography list of sources….

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86 *See* Distribution Plan, at C-18 - C-19.

87 The Distribution Plan also took into account statistics made available by the Swiss Fund for Needy Victims of the Holocaust/Shoa, a program to assist needy Nazi victims established by the Swiss government in 1997 after the Swiss Banks litigation commenced, but which was unrelated to that lawsuit and settlement. The Swiss Humanitarian Fund reported as of 2000 that it had compensated approximately 250,098 Jewish survivors; 14,917 Roma survivors; 69 Jehovah's Witness survivors; 32 disabled survivors; and 9 homosexual survivors. *See* Distribution Plan, Annex C; *see also* Annex K ("Swiss Fund for Needy Victims of the Holocaust/Shoa"), at K-29.

The directory … originated from the occasion of the payout to former forced labourers. It was a tool to determine the eligibility for benefits of former forced labourers in terms of the law for the establishment of a foundation "Remembrance, Responsibility and Future" dated 2nd August 2000. The law provided that whoever had been imprisoned in a concentration camp or in any other place of detention outside of the territory of what now belongs to the Republic of Austria or in any ghetto under similar conditions subjected to forced labour could receive up to 15,000 Deutschmarks. Concentration camps are those camps, that according to § 42 section 2 of the "Bundesentschädigungsgesetz" are considered to be such. Corresponding lists were published in the Federal Law Gazette in 1977 and 1982 (BGBl. I 1977, 1786-1852 and 1982, 1571-1579). In addition to these camps, there were other places of detention where the prison conditions were in fundamental aspects similar to those of a concentration camp although they did not belong to the system of National Socialist concentration camps. Hence the Foundation Law provided the opportunity of classifying further places of detention into this group. The Foundation Law determined that the following three features were required:

> inhuman prison conditions,
>
> poor nutrition,
>
> lack of medical care.

The directory of places of detention of the foundation "Remembrance, Responsibility and Future" includes places of detention that match all these three features. The directory is the result of the processing of applications of the partner organisations of the foundation that are concerning this matter. Some partner organisations had already submitted existing camp directories. Corresponding directories of places of detention have been published in Poland, the Czech Republic, Belarus, Ukraine and Russia [*i.e.* five of the seven partner organizations]. A further basis for the existing directory was the directory of places of detention led by the "Reichsführer SS" which was established by the International Tracing Service in Bad Arolsen in 1979. Sometimes the partner organisations suggested certain camp categories from these directories regardless of whether there actually was an applicant from each individual camp, like for example the forced labour camps for Jews. Other partner organisations have only applied for those camps from where people survived. The foundation "Remembrance, Responsibility and Future" asked historians from Germany and the countries of the partner organisations for votes on the presence of the required three characteristics and based on these statements they decided upon the inclusion of the camp in the directory.

> Based on this some 3,800 camps have been recognised as places of detention and taken into consideration in the payments made to former forced labourers.[88]

By the close of the claims process, the German Foundation had determined that there were actually "about 3,900 additional places of confinement" (as opposed to the 3,800 cited above). The "verification of this information turned out to be more complex than anticipated," and the "emergence of new historically relevant information slowed down the claims processing."[89]

In addition to the research on places of detention conducted by the German Foundation, other institutions similarly have undertaken extensive new analyses of ghettos, camps and other sites where slave labor was likely to have occurred. In 2012, the USHMM announced the publication of two volumes of its *Encyclopedia of Camps and Ghettos, 1933-1945*.

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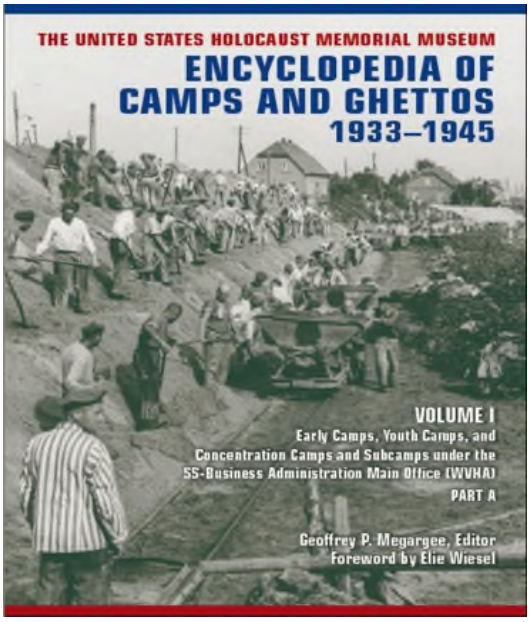
[88] http://www.bundesarchiv.de/zwangsarbeit/haftstaetten/index.php.en (last accessed Oct. 10, 2018). "The database-supported Internet directory provides different search options: Search by keyword, camp, location, country." *Id.* In subsequent legislation enacted in 2007, the German government formally recognized that at least in certain situations, Nazi victims, including those who were Jewish, may have performed compensable labor in ghettos even if the employment was not "coerced." Under the Directive, a one-time payment was to be made to those "who had not previously received compensation under the slave/forced labor provisions of the German Foundation, and likewise had not been compensated under statutory insurance schemes," nor was the payment to be made "in respect of periods spent in a labour camp or concentration camp." Instead, to qualify, "[i]t is important that the individual worked without coercion during this time. However, there is no requirement that the work constituted employment within the meaning of the law on pensions. Instead, it suffices that the work was taken upon referral by the Jewish council or ghetto labour office and the working conditions were structured in such a way that the work could be undertaken without the direct application or threat of physical violence." *See* GERMAN FINANCE MINISTRY, COMPENSATION FOR NATIONAL SOCIALIST INJUSTICE 37 (June 2009).

See also Jansen, Saathoff & Hennig, at 122 ("The great number of camps recognized as 'other places of confinement' clearly shows just how widespread forced labor had become during the Third Reich. Camps in which people were held under brutal conditions and subjected to forced labor existed from Norway to Tunisia and Libya, and from southern France to deep inside Russia. The Foundation's list of 'other places of confinement' names twenty-four different countries").

[89] Saathoff, Gerlant, Mieth & Wühler, *supra*, at 47.



In the words of one reviewer, the "massive two-volume set edited by Martin Dean and Geoffrey Megargee … focuses specifically on the ghettos of Nazi-occupied Eastern Europe. It stands without doubt as the definitive reference guide on this topic in the world today. This is not hyperbole, but simply a recognition of the meticulous collaborative research that went into assembling such a massive collection of information."[90]

The USHMM collection leaves no doubt that the number of ghettos is considerably larger than had been previously known:

> Even after decades of in-depth Holocaust research, excruciating details are only now emerging about more than 1,100 German-run ghettos in Eastern Europe where the Nazis murdered hundreds of thousands of Jews.
>
> And there were about 200 more ghettos than previously believed, said Martin Dean, editor of the recently published "Encyclopedia of Camps and Ghettos, 1933-1945, Volume II." It's part of a long-term effort to document every site of organized Nazi persecution, beyond the well-known Warsaw ghetto and extermination camps like Auschwitz….
>
> It "gives us information about ghettos that would slip into historical oblivion and be forgotten forever if we didn't have this volume," Holocaust scholar Lawrence Langer said. "Who knew there were more than 1,000 ghettos?"….

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90 Waitman Wade Beorn, 28 HOLOCAUST & GENOCIDE STUD. 348, 348 (2014) (reviewing THE UNITED STATES HOLOCAUST MEMORIAL MUSEUM ENCYCLOPEDIA OF CAMPS AND GHETTOS, 1933-1945, VOL. 2, GHETTOS IN GERMAN-OCCUPIED EASTERN EUROPE (2012)).

> Researchers and writers scoured the world to find new witnesses, study archives opened after the fall of communism and survivors' texts and testimonies in many languages….
>
> Another encyclopedia of World War II ghettos was published in 2009 by Yad Vashem in Jerusalem …. The two projects are "complementary," says Dan Michman, the head of Yad Vashem's Institute for Holocaust Research who wrote the introduction to its encyclopedia. The rest of the seven-volume U.S. project is expected to be completed in the next decade, tracking more than 20,000 sites of wartime persecution of both Jews and non-Jews.
>
> The new volume covers ghettos from Moscow to today's German border, and St. Petersburg to Yalta, in Ukraine. The next volume will cover camps and ghettos run by states aligned with Nazi Germany like Vichy France, Romania, Bulgaria, Hungary, Slovakia, Italy and Croatia.[91]

As the leader of the USHMM project, Dr. Martin Dean, explained, source materials were becoming more readily accessible. "[S]ince 1991 the extent of our knowledge has improved. The opening of Soviet archives, increased access to postwar criminal investigations, and the collection of further testimonies and eyewitness accounts have made it possible to research the topic in further detail. In particular, considerable progress is now being made in piecing together the history of the many smaller ghettos from scattered archival collections in various languages."[92]

When the USHMM neared completion of the first phase of its work on its encyclopedia, the *New York Times* headlined its article: "The Holocaust Just Got More Shocking."[93] The

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91 Verena Dobnik & Randy Herschaft, *Excruciating Details Emerge on Jewish Ghettos*, HAARETZ, May 10, 2012, https://www.haaretz.com/jewish/details-emerge-on-more-than-1-100-jewish-ghettos-1.5221143.

92 Martin Dean, *Ghettos in the Occupied Soviet Union: The Nazi 'System*, THE HOLOCAUST IN THE SOVIET UNION-SYMPOSIUM PRESENTATIONS 37-38 (U.S. Holocaust Memorial Museum 2005). Dr. Dean observed that "[g]iven this considerable recent progress, it is opportune that the Center for Advanced Holocaust Studies is now preparing its encyclopedia volume of all ghettos under German occupation, intended both as a guide for scholars and as a document of the sites of the Holocaust …. Ghettos under satellite control, especially those in Transnistria and Greater Hungary, will be dealt with in a subsequent volume, covering all the camps of the satellite states… Clearly, previous estimates of probably not more than 200 ghettos having existed in the occupied Soviet Union now have to be revised upward and probably will reach as many as 400 or more, similar to the number in Poland…." *Id.*, at 39, 47.

93 Erich Lichtblau, *The Holocaust Just Got More Shocking*, N.Y. TIMES, Mar 1. 2013, http://www.nytimes.com/2013/03/03/sunday-review/the-holocaust-just-got-more-shocking. The article noted that two of the expected seven volumes of the encyclopedia had been completed (with the final completion date expected by 2025), and that the lead editors on the project were Geoffrey Megargee and Martin Dean. "When the research began in 2000, Dr. Megargee said he expected to find perhaps 7,000 Nazi camps and ghettos, based on postwar estimates. But the numbers kept climbing — first to 11,500, then 20,000, then 30,000, and now

newspaper reported that the museum had spent 13 years at the "grim task of documenting all the ghettos, slave labor sites, concentration camps and killing factories that the Nazis set up throughout Europe. What they have found so far has shocked even scholars steeped in the history of the Holocaust. The researchers have catalogued some 42,500 Nazi ghettos and camps throughout Europe, spanning German-controlled areas from France to Russia and Germany itself…. The figure is so staggering that even fellow Holocaust scholars had to make sure they had heard it correctly when the lead researchers previewed their findings at an academic forum in late January [2013] at the German Historical Institute in Washington. 'The numbers are so much higher than what we originally thought,' Hartmut Berghoff, director of the institute, said in an interview after learning of the new data.'"[94] Although "Auschwitz and a handful of other concentration camps have come to symbolize the Nazi killing machine in the public consciousness," and the Warsaw ghetto similarly has stood in for all such places of confinement, "these sites, infamous though they are, represent only a minuscule fraction of the entire German network…."[95]

In 2017, the USHMM announced that the first two volumes of its "pathbreaking" Encyclopedia were "now freely accessible in their entirety on the Museum's website as part of the Museum's commitment to increasing the visibility, impact, and productivity of the field of Holocaust studies in the United States and abroad."[96] The research "will provide the most

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42,500." As one illustration of this relatively recent expansion of knowledge, even compared to little over a decade ago, *see* Donald Bloxham, *Jewish Slave Labour and its Relationship to the "Final Solution," in* 1 REMEMBERING FOR THE FUTURE: THE HOLOCAUST IN AN AGE OF GENOCIDE 163, 164 (John K. Roth, Elisabeth Maxwell, Margot Levy & Wendy Whitworth eds., Palgrave Macmillan 2001) (writing in 2001 that "[i]t has been estimated that there were 10,000 individuals 'camps' — undefined and under various authorities — throughout Europe") and at 166 (forced labor camps encompassed "a veritable mass of institutions about which little is known").

94 Lichtblau.

95 *Id. See also* Noah Lederman, *Researchers uncover vast numbers of unknown Nazi killing fields*, TIMES OF ISRAEL, Jan. 25, 2017 ("[C]ounting the sites was one of the main challenges or the project. For example, there were camps that changed purposes over time and brothels that existed within camps. To err on the side of caution, sites … were counted only once. Researchers also refrained from counting sub-camps, of which there were tens of thousands. For researchers to conclude that a site had existed, they could not just rely on one person's testimony. It was imperative that multiple witness testimonies and official documents corroborated each other in order for a site to make the series").

96 Press Release, USHMM, United States Holocaust Memorial Museum's Pathbreaking Encyclopedia of Camps and Ghettos, Volumes I and II, Now Available Online at No Cost (June 2, 2017) https://www.ushmm.org/information/press/press-releases/museums-encyclopedia-of-camps-and-ghettos-available-online (last accessed June 5, 2017).

comprehensive survey available of all known Nazi sites of incarceration across occupied Europe."[97] The Museum noted that its investigators had identified "more than 44,000 such sites" – a number exceeding even the 42,500 noted at the time of the project's 2013 announcement– "several times more than anticipated at the project's outset. The Encyclopedia has greatly expanded knowledge of the size and scope of the Holocaust and has changed our awareness of the camp universe and of Nazi Germany as a whole."[98]

The following USHMM map – "Mauthausen subcamps, 1938-1945" – is representative of the developing research illuminating just how many scattered and lesser-known or previously unknown subcamps are linked to but *one* major familiar site of slave labor, Mauthausen:

Mauthausen subcamps, 1938-1945

Mauthausen subcamps, 1938-1945. Photo courtesy of the U.S. Holocaust Memorial Museum.

97 *Id.*

98 *Id.*

The following photograph was taken upon liberation at the Mauthausen subcamp at Linz:

Survivors in the "infirmary" of the Linz concentration camp on the day of their liberation. Austria, May 7, 1945. Photo courtesy of the U.S. Holocaust Memorial Museum and the Nat'l Archives and Records Admin., College Park, MD.

In addition to the USHMM in Washington, D.C., Yad Vashem in Jerusalem also has helped to expand dramatically the knowledge about Nazi sites of incarceration. Professor Dan Michman explained, in his Introduction to Yad Vashem's *Encyclopedia of the Ghettos During the Holocaust*, that in the "first decades after the Holocaust (certainly among Jewish scholars), the ghetto was thought to constitute a preparatory stage for the Final Solution" and that "public awareness and historiography of the Holocaust" had given "special weight to a few large ghettos about which we have abundant and diverse extant documentation."[99] While some 750,000

[99] Dan Michman, *The Jewish Ghettos Under the Nazis and their Allies: The Reasons Behind their Emergence*, THE YAD VASHEM ENCYCLOPEDIA OF THE GHETTOS DURING THE HOLOCAUST xiii, xiv (Guy Miron & Shlomit Shulhani eds., Yad Vashem 2009). Michman noted that the "accepted view of the role of ghettos in Nazi policy as an inevitable way station on the road to the Final Solution was determined during the first fifteen years of research following the Holocaust, and thereafter fixed." He cited the 1961 publication of "Raul Hilberg's influential work, *The Destruction of the European Jews*," as the point at which "[t]his notion became entrenched in the literature," with its description of the Holocaust "as an event that progressed — or perhaps better, regressed — in a linear fashion, from the Nazis' rise to power in 1933 to the systematic murder campaign that began in 1941." Michman noted that the "burgeoning Holocaust research since the end of the 1960s, internationally and among Israeli academics in particular, has largely conceived of the Jewish society in the ghettos as a vibrant community that endured existential challenges." *Id. See also* Robert Jan Van Pelt, *Nazi Ghettos and Concentration Camps: The Benefits and Pitfalls of an Encyclopedia Approach*, 37 GERMAN STUD. REV. 149, 156 (Feb. 2014**)** (the USHMM work "is part of a research program that began in the 1990s, when archival research became more commonplace in Eastern Europe and when Holocaust history became an academic discipline in its own right. In addition, the two tomes of Volume Two, which focus on the ghettos,

individuals were "concentrated" in Nazi ghettos such as Warsaw, Lodz, Bialystok, Vilna, Lublin, Kracow and Kaunas (Kovno), "these sites account for but a tiny fraction, numerically speaking, of all the ghettos — more than 1,100 according to our findings in this encyclopedia — established between 1940 and 1944, not only in Poland, but also in the western Soviet Union, Romania, Theresienstadt, Salonika, and Hungary."[100]

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are part of a much larger project that encompasses tens of thousands of camps, many of which did not play a role in the Nazi genocide of the Jews").

[100] *Id.*, at xiv.

It is the lack of inclusion of the many work sites outside the concentration camp system that may help to explain a viewpoint held by some researchers: that relatively few Jewish victims survived slave labor. Raul Hilberg posited that as of 1999, "a figure of 120,000" surviving slave laborers "could not possibly have been reached," but he indicated that his estimation might have been based upon his consideration of only those who had survived Nazi "concentration camps" *per se*. He also had very specific opinions about which individuals and which locales should qualify for compensation. Thus, Professor Hilberg suggested that it was not appropriate to include camps operated by "satellite governments." He appeared to disagree with the decision of "the foundation operating under German law," *i.e.*, the German Foundation, to "include labor services that had been formed and deployed by satellite governments for their own purposes in the shadow of an adjacent German presence." RAUL HILBERG, THE DESTRUCTION OF THE EUROPEAN JEWS 1287 (Yale Univ. Press 3d ed. 2003), at. *See also* David Ridgen, Canadian Broadcasting Corporation, Interview with Mr. Raul Hilberg, Apr. 22, 2002 (previously available at www.normanfinkelstein.com/article.php?pg+3&ar=50) ("[i]f we talk about slave labor in concentration camps or concentration camp-like conditions, then the number that survives isn't very great … [W]e run into the numbers problem, and the question of whom among those forced laborers should collect [compensation] … Should it be Romanian Jews who worked for the Romanian railways? Well obviously not…."); Mark Spoerer & Jochen Fleischhacker, *Forced Laborers in Nazi Germany: Categories, Numbers and Survivors*, 33 J. INTERDISC. HIST. 169, 191, 193, 202 (2002) (stating that Holocaust scholars Leonard Dinnerstein and Saul Friedlander "set the number of all surviving Jewish CC [concentration camp] inmates (including Polish and Soviet Jews) at no more than 100,000" at the "end of the War;" the authors concluded "that there were approximately 126,000 Jewish concentration camp survivors;" elsewhere, the authors stated that scholar Joseph Billig "arrive[d] at a figure of c. 450,000" while Friedlander "estimates that, at most, 475,000 inmates survived," and "[a]dding the Billig and Friedlander survivors comes close to [a] total of 1.55 million;" the authors concluded that as of mid-2000, approximately 73,000 Jews still survived who were "Former Foreign Laborers Employed in Nazi Germany"); Mark Spoerer & Jochen Fleischhacker, *The compensation of Nazi Germany's forced labourers: Demographic findings and political implications*, 56 POPULATION STUD. 5, 15 (2002) (concluding that there were 75,000 "[s]urviving former forced labourer in Nazi Germany").

However, when examining solely the number of Jews who survived the Holocaust — as opposed to those who survived "concentration camps" — Hilberg's calculation increased by ten-fold. His data indicated that "[m]ore than a million Jews who had lived under direct German control or in countries allied with Germany, and who had not fled to safety before or during the war, were still alive after May 1945. The largest cluster in this remainder consisted of Jews who had not been engulfed in the final phase of the destruction process," such as in Romania, Bulgaria, Budapest and parts of Western Europe. RAUL HILBERG, PERPETRATORS VICTIMS BYSTANDERS: THE JEWISH CATASTROPHE 1933-1945 186 (HarperCollinsPublishers 1992). *See also* THE DESTRUCTION OF THE EUROPEAN JEWS, *id.*, at 1128, Table 11-The Jewish Population Loss, 1939-1945 (indicating that in 1945, a total of 3,682,500 Jews had survived the War; excluding the nations of the former Soviet Union, a total of 1,182,500 survived); MICHAEL R. MARRUS, THE UNWANTED: EUROPEAN REFUGEES IN THE TWENTIETH CENTURY 331 (Oxford Univ. Press 1985) ("We now know that about one million [Jews] remained in Europe outside the Soviet Union").

In addition to the gaps in knowledge about the Nazi camps and ghettos, there is also incomplete knowledge about the victims of the Holocaust. There is not yet a definitive list of names of all who perished in the Holocaust. Nor is there a definitive list of who survived, and how they did so. Indeed, the intent of the Victim List Project established and funded by the Court has been to assist in the development of just such a database: a reliable list of the names of

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The disagreement on the number of surviving slave laborers may be based upon definitional disparities. Particularly before the recent research on the pervasive scope of Nazi slave labor policies and the ubiquity of work sites throughout Europe, efforts to tally the number of surviving slave laborers appeared to focus on one type of survivor only: those who survived the most infamous German concentration camps, such as Auschwitz and Mauthausen. For example, as Hilberg stated, he did not consider those who survived Romanian labor battalions to have been slave laborers. His definition of slave labor is not one that was shared by the German Foundation or by the Court under Slave Labor Class I, in determining which Nazi victims to compensate.

Another Holocaust historian, Yehuda Bauer, has noted that terminology varies, and that it would be misleading to conflate those who survived the infamous death camps with those who survived slave labor. Thus, in one context, he estimated that that there were "around 200,000 Jewish survivors of Nazi camps" (*see* Yehuda Bauer, *Jewish Survivors in DP Camps and She'erith Hapletah, in* THE NAZI CONCENTRATION CAMPS: STRUCTURE AND AIMS, THE IMAGE OF THE PRISONER, THE JEWS IN THE CAMPS: PROCEEDINGS OF THE FOURTH YAD VASHEM INTERNATIONAL HISTORICAL CONFERENCE, JANUARY 1980 491, 492 (Yad Vashem 1984). However, he emphasized that he was not suggesting that *only* 200,000 Jewish victims survived the war. With historian Yisrael Gutman, Yehuda Bauer wrote in an October 2001 letter to the Claims Conference that the "large numbers of Jewish slave laborers who were liberated before the end of the war, in Austria, Poland, Romania (Transnistria), Hungary, Czechia and Slovakia" should not be ignored, and that in terms of calculating the total number of surviving slave laborers: "We have not ourselves done such research, and we feel that serious investigation is needed if one is to arrive at a reasonably sensible figure. In fact, in our own research[] we only related to those Jews who were liberated on German soil at the end of the war."

Several years after expressing the view that the projected number of surviving slave laborers was too high, Hilberg observed that Holocaust research had progressed from what he characterized as the earliest period, just after the War, to the "middle period" when "research became organized," to "the third stage, the stage of complexity," in which researchers "now look for contexts." Raul Hilberg, *The Development of Holocaust Research: A Personal Overview*, 35 YAD VASHEM STUD., no. 2, 2007 at 21. These different contexts were important in terms of assessing differing Nazi goals, including the use of slave labor, at different points in time. He cited the example of his own examination of Slovakia, when the "Slovaks made an offer to the Germans before the Germans were ready" and queried, "Why did the Slovaks offer them the Jews? I had to figure out the answer by reading literature that was entirely different, completely *divorced* from the Holocaust. Namely, the context in these small countries like Slovakia — where (as elsewhere) there was an economic depression and a great deal of unemployment during the 1930s — was the economy. So the Germans said, 'Okay. We now have a war. You can send us 100,000 laborers.' And they started sending laborers. Until they suddenly realized that the depression was over and they did not want to send them anymore. So they offered Jews as a substitute. And the Jews went — not, to be sure, to any German industry. They went to Majdanak and to Auschwitz. But these connections take a while to establish." *Id.*, at 30. With the changing landscape of knowledge of the Holocaust, including the Nazis' slave labor needs and policies, it is not surprising that the German Foundation's own researcher observed that when the negotiations were under way in the late 1990s and early 2000s, "no one knew yet how many former slave and forced laborers were still living in what countries and how their numbers could be accurately determined," although estimates were eventually reached. Lutz Niethammer, *From Forced Labor in Nazi Germany to the Foundation 'Remembrance, Responsibility and Future' - A Tentative History, in* A MUTUAL RESPONSIBILITY AND A MORAL OBLIGATION: THE FINAL REPORT ON GERMANY'S COMPENSATION PROGRAMS FOR FORCED LABOR AND OTHER PERSONAL INJURIES 15, 59 (Michael Jansen & Günter Saathoff eds., Palgrave Macmillan 2009).

those who perished and those who survived the Holocaust. These names, many of which have been inaccessible until recently, may be reviewed through a variety of gateways, including the two museums most directly involved with the Victim List Project, Yad Vashem and the USHMM.

Other internet portals include the genealogy site "JewishGen," affiliated with the New York-based Museum of Jewish Heritage - A Living Memorial to the Holocaust.[101] The JewishGen Holocaust Database is described as a "collection of databases containing information about Holocaust victims and survivors. It contains more than 2.75 million entries, from more than 190 component datasets,"[102] including a large number of databases collecting names of victims of the Holocaust. There is presumably overlap among the various databases (*i.e.*, repetition of individual names). In addition, some of the databases likely contain many names of those who perished, as well as names of those who survived. Nevertheless, these extensive databases give some sense of the scope of information about survivors that has become available and accessible on the internet in relatively recent years, and the variety of sources that claims administrators were able to consult in confirming whether a particular claimant performed slave labor.

Thus, some examples of the many databases that have become accessible for research are the following:

- The *Aufbau* Database: "Names of over 33,000 Holocaust survivors, published in the German-language newspaper *Aufbau* in New York, 1944-1946."
- World Jewish Congress Collection: "Data on more than 72,000 Holocaust survivors, from the files of the World Jewish Congress (WJC)."
- Czech Inmates at Bergen Belsen and Theresienstadt: "610 Czechoslovak Jewish Women liberated in Bergen-Belsen."
- German Jews at Stutthof Concentration Camp: "Names of 2,750 German Jews at this concentration camp near Gdansk."
- Lvov Ghetto Database: "Names of over 10,000 Jews in the Ghetto of Lwów Poland, 1942-1954."

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[101] Special Master Judah Gribetz is a founder of the Museum of Jewish Heritage and has served as a Trustee of the Museum since its establishment.

[102] http://www.jewishgen.org/databases/Holocaust/ (last accessed Aug. 28, 2018).

- Kraków Ghetto Database: "Names of over 19,000 Jews in the Ghetto of Kraków Poland, in 1940.
- Pinsk Ghetto List, 1942: "Data on over 18,000 Jews in the Pinsk ghetto in late 1941 or 1942."
- Vilna Ghetto: Lists of Prisoners: "Over 15,000 Vilnius Ghetto prisoners, from a census of Lithuania in May 1942."
- Răutel Camp Listings: "Data on 2,070 Jewish prisoners in the Răuţel camp, in Transnistria."
- Claims Conference - Hungary: "Data on 135,544 Hungarian Jews whose names appear in records held in the Central Zionist Archives and Yad Vashem."[103]
- Claims Conference - Romania: "Data on 167,815 Romania Jews whose names appear in records held in the Central Zionist Archives and Yad Vashem."[104]
- Bergen-Belsen to Philippeville, Algeria (UNRRA [United Nations Relief and Rehabilitation Administration] Camp): "Data on 200 Jews who arrived at the UNNRA refugee camp in Philippeville, Algeria in 1945."
- Hungarian Jewish Survivors in Buchenwald: "Data on 707 Hungarian Jewish survivors from Buchenwald."
- Flossenbürg Prisoner Lists: "Data on 18,334 prisoners interned in the Flossenbürg Concentration Camp."
- Sarajevo Survivors to Palestine, Dec. 1948: "1,500 survivors from Sarajevo who went to Palestine, December 1948."
- Łódz Ghetto Work ID Cards: "Identification cards for workers in the Łódz Ghetto, including children and the elderly."

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[103] The JewishGen website explains that the USHMM "has the finding aids for the original source material underlying this database. The finding aids consist of two files listing the sources in the Central Zionist Archives (CZA) and in Yad Vashem (YVS)." Examples of the lists comprising the Claims Conference Hungary Database include several "Lists of Veteran Zionists," including some only listing rabbis; "Lists of Special Cases," "Recipients of Packages," "Collective Passports of Hungarian Jews to Switzerland," "Verschlagsliste," "General Government - Poland, Germany, Romania, Holland, Hungary, Slovakia, Yugoslavia, Lithuania, France, Italy," "Youth Aliya Candidates," individuals "authorized to enter Palestine," "List of Persons Detained at Bergen-Belsen Camp," "List Hungarian Chaluzim," "Persons Imprisoned in Terezin," "Mauthausen Wien Lobau," "List of Vatikim," "List of Jews Officers of the Polish Army Liberated in a Prisoner of War Camp in Germany," "Civil German Palestinian Internee Exchange," "List of Krausz People," "Jewish Yugoslav Subjects at Present Residing in Korczula, Dalmatia Who Desire to Immigrate Into Palestine," "Liste de Veterans - Sionistes VITTEL," "List of Veterans Zionists Rumania and Italy," "Ungarische Juden Die Aus Buchenwald Befreit Wurden," "Jewish Orphans from Hungary Liberated from Mauthausen," "Hungarian Jews in Seizleben," "List of House Holders," "List of Budapest Hospital," "Slave Labor Batallion" and "List of Businessmen of Budapest." http://www.jewishgen.org/databases/Holocaust/ (last accessed Aug. 28, 2018).

[104] These are lists that the Claims Conference assembled and arranged for public dissemination. https://web.archive.org/web/20101207220220/http:/claimscon.org/index.asp?url=slave_labor/documentation ("Restituting History: The Search for Documentation") ("Restituting History") ("At Yad Vashem, Claims Conference researchers digitized lists of slave laborers in Romania and Hungary").

- Natzweiler-Struthof Camp: "34,000 inmates of Natzweiler-Struthof concentration camp, in Alsace."
- Zagreb Survivor Lists: "1,200 survivors from Zagreb, from the Croatian National Archives."
- Brest Ghetto Passport Archive: "Identity papers of over 12,000 people in the ghetto of Brest-Litovsk, from Soviet archives."
- Dachau Concentration Camp Records: "Data on 150,000 prisoners, from captured German documents."
- *Pinkas HaNitzolim I* - Register of Survivors: "Names of nearly 62,000 survivors in Europe, published in 1945."
- *Pinkas HaNitzolim II* - Register of Survivors: "Names of nearly 58,000 survivors in Poland, published in 1945."
- Auschwitz Forced Laborers: "Documents on 5,310 who entered Auschwitz, including parents' family names and maiden names."
- Częstochowa Forced Laborers: "4,610 prisoners at the Hasag Pulcery labor camp in Częstochowa."
- Soviet Extraordinary Commission: "Index to testimonials on over 60,000 Holocaust victims."
- Pinsk Records from the Soviet Extraordinary Commission: "Compilation of testimonials about 11,704 Holocaust victims from Pinsk."
- Galician Forced Laborers from Lvov: "Data on 1,110 workers, from a collection of the Lviv State Archives."
- "Jews for Sale": The Rudolph Kasztner Transports: "Names of 1,900 rescued Hungarian Jews, 1944."
- Steyr Forced Labor: Records of 1,437 forced laborers transferred to the Steyr work sub-camp at Mauthhausen."
- Bergen-Belsen Prisoners Liberated at Farsleben: "2,500 prisoners liberated aboard a train from Bergen-Belsen."
- Polish Jewish Prisoners of War Registration Cards: "Registration cards for 2,939 Jewish soldiers held by the Germans at Wehrmacht camps."
- The Voyage of the Olim (Immigrants) of the *Biria*: 1,086 passengers who traveled from France to Haifa in 1946 on the *Biria*."
- Cernăuţi, Romania (Chernivsti, Ukraine) Lists: 3,968 Jewish residents in Cernăuţi, Romania and the surrounding area, from lists of forced labor, police reports, conversion, emigration, ghetto lists, and registration cards."

- Jewish Survivors listed in a Hungarian Periodical: "Names of 17,931 Hungarian Jewish concentration camp survivors, published in the Hungarian periodical *Hirek az Elhurcoltakrol*."
- Forced laborers in Boryslaw and Drohobycz: "Names of nearly 5,000 forced laborers in these two towns in Lwów province, Galicia, Poland (now Borislav and Drogobych, Ukraine)."
- Łódz Ghetto Database: "A record of the 240,000 inhabitants of the Łódz Ghetto."
- Łódz Ghetto – Volume V: "The supplemental fifth volume of *Łódz Names*, with over 20,000 additional entries."
- *Sharit HaPlatah*: Names of 61,387 Jews who survived the Holocaust, published in 1946 in Munich.
- Surviving Jews in the Kielce District: "2,179 survivors from the Kielce district of Poland."
- Displaced Persons from Bergen-Belsen to Sweden: "Data on 1,600 DPs from various countries in Bergen-Belsen and moved to Sweden, 24 July 1945. From U.N. documents."
- Tîrgu Mures Ghetto List, 1945: "Over 2,000 residents of the Tîrgu Mures ghetto, as of Jan 8 1945."
- Radom Prison Records 1939-44: "Files for 14,159 prisoners in the Radom Prison, 1939-1944."
- Klooga, Estonia Forced Labor Camp Prisoners July, 1944: "2,186 Jewish men and women who were held in Klooga, a sub-camp of the Vaivara concentration camp, in July 1944."
- Riese and Gross Rosen Prisoners and Transports: "Records of 4,806 prisoners at Riese and sub-camps, July 1944."
- 1948 Warsaw Survivors List: Names of 5,680 Holocaust survivors from Warsaw, as of 1948."
- Gross-Rosen Victims and Survivors: "Records of 4,843 individuals who were at Gross-Rosen."
- Women in Flossenbürg Branch Camps: "15,842 records of women who worked in sub-camps of Flossenbürg.
- Jews from Iaşi who Survived the Transports: "List of over 1,600 Jews who survived two transports by train from Iaşi (Jassy) Romania."
- Theresienstadt Survivors Sent to Canton St. Gallen: "A list of 1,226 Theresienstadt survivors who were sent to Canton St. Gallen in Switzerland in February 1945."

- Jewish Arrivals in Switzerland, 1938-1945: "Records of 21,730 Jews who arrived in Switzerland between 1938 and 1945."[105]
- New Romanian Lists: "Information on 72,844 individuals, collected from various Romanian lists."
- Dutch Survivors Lists: "Records of 23,163 accounted for as 'Dutch' survivors."
- Piotrków Trybunalski Ghetto Tax List: "10,761 records from the tax lists of the Piotrków Trybunalski Ghetto, 1940-1942."

C. Number of Anticipated Payments Based Upon Prior Restitution Programs

A source of data about the victims who might be eligible for compensation under Slave Labor Class I, and an important resource in analyzing and paying slave labor claims, were the Holocaust compensation systems Germany had established prior to the Swiss Banks Settlement and the German slave labor program.

Based upon the analysis of other Holocaust compensation programs, especially those administered on behalf of Germany, the Special Masters observed in the Distribution Plan that a "conservative measure of the number of slave laborers from across Nazi Europe who survive today [*i.e.*, the year 2000, when the Distribution Plan was proposed and adopted]" was approximately 170,000 individuals, who were receiving monthly pensions under one of four separate German-funded Holocaust compensation programs.[106] Because of the rigorous eligibility requirements under these programs, which required extensive documentary proof concerning the claimant's whereabouts during the Nazi era, it was clear that a large number of these individuals had performed slave labor.[107]

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[105] This is a portion of the list that the Special Masters obtained from the Swiss Federal Archives as part of the investigation into the claims of the Refugee Class. The existence of this list indicated that it would be appropriate to undertake an individualized claims process for survivors who were admitted into Switzerland as refugees but mistreated there. *See* Distribution Plan, Vol. I, at 36, 170 and at Annex [H] ("The Refugee Class"). This issue is discussed more fully in the chapter of this Final Report entitled "The Refugee Class Claims Process."

[106] Distribution Plan, Vol. I, at 145.

[107] Gribetz and Reig/Reparations, at 138-139.

The Distribution Plan described the major compensation programs already in existence and the number of survivors receiving such payments:

> …. [T]here are at least four German-derived indemnification funds for which former slave laborers are currently eligible [*i.e.*, as of 2000]: (1) the BEG, which has its origin in the 1952 Luxembourg Agreement and is administered entirely by Germany, (2) the Israeli Disabled Victims of Nazi Persecution Law, which also arose pursuant to the Luxembourg Agreement, and its provision for German reparations to Israel, (3) the Article 2 Fund, begun in 1993, which is monitored and audited by Germany and administered by the [Claims Conference], and (4) the 1998 Central and Eastern European Fund ("CEEF"), which, like Article 2, is monitored and audited by Germany and administered by the Claims Conference.[108]

In "accordance with Germany's requirements, each of the four programs has stringent eligibility criteria. A recipient must demonstrate that, for a certain specified period of time, he or she was imprisoned in a concentration camp, ghetto, work camp or lived in hiding…. Further, the BEG pensions for damage to health, and the Israeli [Ministry of Finance], Article 2 and CEEF programs, require a showing of disability as a result of Nazi persecution. Moreover, with the exception of the BEG, each of the other pension programs is applicable only to those who do not exceed certain income requirements, or who are presumed needy because of residence in Central or Eastern Europe."[109]

Some 170,565 individuals were receiving compensation under the four programs as of the period 1998-2000, approximately the period during which the Distribution Plan was being formulated: 86,138 under the BEG's "damage to health" provisions;[110] approximately 22,000 through the Israeli Ministry of Finance program; 48,948 under Article 2; and 13,479 under the CEEF. "With the exception of those who lived in hiding (the total number of whom is unknown), it may be presumed that most pension recipients — having been imprisoned in concentration camps, ghettos and/or work camps — performed slave labor. Moreover, since the Israeli, Article 2 and CEEF programs are limited to needy survivors only, and also have other

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[108] Distribution Plan, Annex H ("Slave Labor Class I"), at H-4.

[109] *Id.*, at H-5.

[110] The BEG also provided for other types of compensation such as for loss of life; property damage; payment of taxes; and damage to educational/vocational opportunities — categories not relevant for purpose of assessing possible slave labor claimants. *See generally* Distribution Plan, Annex E ("Holocaust Compensation").

threshold criteria [such as minimum periods of confinement in a camp or ghetto], it may be further presumed that there are a considerable number of surviving slave laborers who are ineligible for these pensions and so are not reflected" in the foregoing statistics.[111]

The Distribution Plan concluded that based upon the large number of Holocaust victims whom Germany had recognized and decided to compensate, and who still survived as of the inception of the Slave Labor Class I program, the "estimate of the [170,000] survivors who may have performed slave labor … appears to be conservative."[112]

D. The German Foundation's Estimates

The German Foundation reached its own estimates of the number of survivors potentially eligible for compensation under the German slave and forced labor program. These figures were comparable to the estimates based on prior compensation programs. As described by the German government's historical expert, Lutz Niethammer, at the time that the slave labor cases were pending and a resolution was under negotiation, it was particularly important to determine the potential number of recipients.

> How was it going to be possible to get a realistic estimate of the number of persons who were entitled to receive compensation payments broken down by categories, eligibility criteria, countries, and/or ethnic groups? …. My initial projections seemed to the representatives of industry to be too high and to the representatives of the victims not to be high enough…. [In September 1999] I was able to present an improved set of data for the forced labor question to … [the] parties to the negotiations. The data had been compiled in a cooperative effort, checked with scientific methods, and unanimously approved.
>
> Broken down by partner organizations, it contained information on category A, "slave labor" in concentration camps, ghettos, and comparable places of detention (214,000 plus 67,700 from other camps), and B, "forced labor," defined as laborers subject to racial discrimination deported to the Reich to work for public and industrial employers (623,000). In addition, there were 154,000 children in slave and forced labor camps. The number of forced laborers who were subject to

[111] Distribution Plan, at H-6.

[112] *Id.,* at H-5-6.

> racial discrimination and used in the Reich as agricultural workers was estimated at 539,500, while the number of laborers of this kind who were used in the occupied territories was estimated at 243,500. The use of forced laborers outside the farm sector was estimated at 567,000 (a rough estimate without documented evidence).
>
> This last figure was not included in the distribution agreements because of the fact that it could not be documented. The figures established for the categories A and B and for the individual partner organizations turned out to be fairly reliable as a basis for the further negotiations on distribution, disqualifying initial skepticism and in some cases even outrage expressed by some parties on the German side with regard to the overall numbers as well as attempts made by parties on the other side to adjust the figures upward.[113]

The distinction between "slave" labor ("Category A") versus "forced" labor ("Category B"), which under the German Foundation program resulted in two tiers of payment, largely was intended to differentiate between Jewish Nazi victims, whom the Nazis intended to work to death, and non-Jewish victims, who, while severely mistreated, generally were not subject to the same brutality as were the Jewish victims. Thus, at the start of the claims process, Germany's expert concluded that over 1.8 million individuals could be eligible for compensation, including over 281,000 persons (as well as others who were children at the time of the Holocaust) who had been imprisoned in camps, ghettos and similar sites, most of whom were Jewish slave laborers.[114]

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[113] Niethammer, at 59-60. *See also* Austrian Reconciliation Fund Final Report at 141-42 ("Major problems arose when it came to ascertaining how many former forced laborers were still alive. Finally, Professor Lutz Niethammer, a German historian …, organized a group of experts in Florence who arrived at the following 'definitive estimates.' Roughly 1.5 million former forced laborers were assumed to be still alive; 670,000 of these had been employed in industry, 590,000 in agriculture and a further 240,000 had been kept as slave laborers under concentration camp conditions").

[114] Ambassador Stuart E. Eizenstat played a pivotal role in the Holocaust compensation movement of the 1990s. The United States government became involved with the matter in 1994, when Ambassador Eizenstat, then serving as U.S. Ambassador to the European Union, initiated an inquiry into the Holocaust-era activities of Swiss banks. Ambassador Eizenstat has served in many other governmental roles, including Deputy Secretary of the Treasury, Under Secretary of State for Economic, Business & Agricultural Affairs, Under Secretary of Commerce, and Special Representative of the President and Secretary of State for Holocaust-Era Issues under President Clinton. He remains actively involved with Holocaust compensation issues.

In his book describing the negotiations leading to the creation of the German Foundation, Ambassador Eizenstat observed that "[t]here were two types of involuntary laborers. Those we came to call slave laborers had been confined in concentration camps and ghettos … They were worked to death, and the Nazis saw this as simply another form of extermination. Slightly more than half the slave laborers were Jewish, the rest mostly Poles and Russians. Forced laborers, almost exclusively non-Jewish workers from Eastern Europe, worked in everything from armaments factories to German farms and even in the postal service. Their living conditions were harsh

Neithammer's early estimates have since been reassessed as having been "unrealistically low": "In summer 1999, Niethammer estimated there were a total of 2,408,700 victims of Nazi forced labour still living. Of these, only about 214,000 fell into category A and 623,000 into category B – under the German side's definition of the categories – *i.e.* a third in all. Hundreds of thousands of people from east central and eastern Europe who had performed forced labour in occupied countries or in agriculture and other non-industrial fields would still not be accounted for."[115] In addition, Neithammer also "had not counted prisoners of war or the hundreds of thousands of civilian workers from western Europe, and made an unrealistically low estimate of the number of those affected in south eastern Europe."[116]

After the program closed, the German Foundation revisited Niethammer's original estimates in its 2017 publication: "The German Compensation Program for Forced Labor: Practice and Experiences."[117] The data demonstrated that over 2.25 million individuals potentially had been eligible for compensation, with 1.66 million paid.

The German Foundation Law determined eligibility. There was enormous variety in individual fates, with an extremely high number of potentially eligible persons all over the world. It had been estimated that of the persons who were still alive, 280,000 had carried out forced labor in concentration camps or ghettos, 623,000 in industry and in the public sector in Germany, 567,000 persons in occupied territories, and 783,000 in agriculture and other types of forced labor in a concentration camp, a similarly bad detention camp, or in a ghetto (category A); forced

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but better than those of slave laborers because they were considered assets of the state." STUART E. EIZENSTAT, IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II 206-07 (PublicAffairs 2003). Ambassador Eizenstat confirmed that the "final estimates" accepted by the parties to the German Foundation agreement "were close to Niethammer's original numbers: 1.5 million workers still alive — 242,000 slave laborers (182,000 of whom had worked for private German industry and 60,000 for Reich-controlled institutions), 670,000 forced industrial workers, and 590,000 agricultural workers." *Id.*, at 240.

115 Henning Borggräfe, *The Long Shadow Cast by Nazi Forced Labour: Changing Concepts of Compensation and Definitions of Persecutees since 1945*, *in* COMPENSATION IN PRACTICE: THE FOUNDATION 'REMEMBRANCE, RESPONSIBILITY AND FUTURE' AND THE LEGACY OF FORCED LABOUR DURING THE THIRD REICH 27, 43 (Constantin Goschler ed., Berghahn Books 2017).

116 *Id.*

117 Saathoff, Gerlant, Mieth & Wühler, *supra*, at 12.

labor in industry after deportation (category B); and an opening clause allowing partner organizations to define additional situations related to forced labor (category C).[118]

The German Foundation observed that "in the case of the forced labor program, acceptance of the estimates of potentially eligible victims and other historical assessments was facilitated by the involvement of expert historians designated by each of the parties involved in the negotiations."[119]

IV. ANALYZING CLAIMS

A. Assessing Eligibility for Those Who Had Received Prior Compensation

At the time of the Settlement Agreement and enactment of the German Foundation legislation, tens of thousands of survivors eligible for slave labor payments under these two new programs were receiving or had received other forms of Holocaust compensation. The eligibility criteria for many of these programs overlapped with the criteria for slave labor compensation, such as imprisonment in a camp or ghetto. In these cases, the evidence supporting the individual's claim for prior Holocaust compensation already had been assembled, reviewed, submitted to and approved by Germany years and even decades before the new Swiss and German slave labor programs. The same evidence therefore generally was sufficient also to prove that that individual had performed slave labor for purposes of the German Foundation and for Slave Labor Class I.

In "over 75% of these cases, the documents proving the applicant's persecution were found in the files of previous compensation programs administered and/or approved, but surely funded, by the German government."[120]

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[118] *Id.*, at 2, 21.

[119] *Id.*, at 24.

[120] Claims Conference Memo, "Process for Verification of Slave Labor Class I and German Foundation Applications," 2002 ("Verification Process Memo").

Prior to the submission of the applications to the German Foundation for payment, Claims Conference researchers check the official government archives of Germany and Israel for every slave and forced labor applicant that previously applied to the following Holocaust-related compensation programs: *Bundesentschädigungsgesetz* ('BEG'), the West German Indemnification program instituted in 1953, administered directly by the German government, which provides compensation to Holocaust survivors worldwide; and the 1957 Israel Finance Ministry Disability Payments Program — which provides Holocaust-related compensation to survivors residing in Israel. Both archives possess the applications to these compensation programs and documentation reflecting the persecution the applicant suffered. The Claims Conference also reviews the records (applications and supporting evidence) of every slave and forced labor applicant who previously applied to certain other, more recent, Holocaust compensation programs, namely, the Article 2 Fund, the Hardship Fund, and the Central and Eastern European Fund.[121]

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[121] *Id.* The Verification Process Memo noted that these programs are "more fully described in the Distribution Plan, Vol. II, Annex E ('Holocaust Compensation'), at E-40-56…. The three programs were adopted by Germany following negotiations with the Claims Conference to provide for compensation to Holocaust survivors, primarily from Central and Eastern Europe, who had been excluded from earlier programs because of geographic restrictions. The Hardship Fund, which began in 1980, provides for one-time payments to those who suffered damage to health; the Article 2 Fund (commencing in 1992) and the Central and Eastern European Fund (CEEF) (1998) provide for pensions to those who were incarcerated for specified time periods and who meet German income requirements. Although the Claims Conference administers all three programs, all applications are reviewed and approved by German officials prior to payment."

The Claims Conference has successfully renegotiated with Germany various provisions of the compensation programs. For example, in recent years, the Claims Conference has achieved a number of new benefits for survivors worldwide: (1) first-ever payments (under the Hardship Fund) to some 80,000 victims still living primarily in the former Soviet Union, including the following: (a) individuals who had fled ahead of the Nazis but who had never been eligible for compensation; (b) individuals who survived the Leningrad siege; and (c) individuals who were within 100 kilometers to the east of the Russian front and fled eastward in the Soviet Union ahead of advancing Nazi troops; (2) first-ever payments (under the Hardship Fund) to those whose liberty was restricted in Morocco; (3) the establishment of a new payment program – the Child Survivor Fund – for survivors who lost their youth to terror or atrocity and were, typically, separated from parents they never saw again; (4) equalization of pension amounts, regardless of the survivors' country of residence; (5) reduction of the amount of time a survivor had to spend in a concentration camp or ghetto to be eligible for a pension (under the Article 2 Fund or CEEF) to 3 months; and (6) reduction of the amount of time a survivor had to spend living under false identity or in hiding to be eligible for a pension (under the Article 2 Fund or CEEF) – originally 18 months, then reduced to 12 months, and later reduced to 6 months – to take into account historical circumstances of survivors in Greece, Italy, Hungary, France and Slovakia, who had been forced into hiding for periods of generally more than 6 but less than 12 months. *See* Press Release, Claims Conference, 80,000 Holocaust Victims in Former USSR to be Paid by Germany for First Time; Claims Conference Attains Historic Breakthrough in Negotiations with German Government (July 9, 2012). Those who fled or lived in hiding or under false identity, however, were not eligible for slave labor payments from the German Foundation or under Slave Labor Class I of the Swiss Banks Settlement.

In total – through all of the compensation programs it administers – the amount of compensation the Claims Conference paid out directly to individual Holocaust victims in 2014 was over $350 million, which was over $50 million more than it distributed in 2013 (when the amount was about $298 million) and approximately $87 million more than it distributed through such programs in 2012 (when it paid out approximately $264 million).

As with the BEG and Israeli Finance Ministry Programs, final approval for each of these programs also rests with the German government as these programs likewise are entirely funded by the German government. However, criteria for these programs and the Slave Labor Program differ, and so each application file must be carefully reviewed. For example, a survivor who qualifies for a pension under Article 2 because he or she suffered persecution by spending at least 18 months in hiding, would not be eligible for a slave/forced labor payment, which does not apply to individuals who were in hiding. Conversely, a concentration camp survivor may be ineligible for the Article 2 Fund payment because his or her income exceeds that program's limit or because he or she does not meet the time limitations specified under the Article 2 program (*e.g.*, a minimum of six months' incarceration). That person nevertheless would qualify for a slave labor payment under both the German Foundation and Slave Labor Class I programs, and his or her Article 2 file may have documents verifying the persecution history.[122]

Thus, between 2012 – 2014 alone, the Claims Conference distributed a total of about $913 million in direct compensation, in addition to extensive social welfare assistance, to victims of Nazi persecution worldwide.

[122] Verification Process Memo, at 2-3. *See also* Claims Conference 2006 Annual Report, at 16 ("Major criteria that the Claims Conference had to consider when evaluating applications included determining exact dates of persecution, whether a person received prior compensation from a German company, verifying the place of persecution, and checking the identity of the individual").

As contemplated by the Distribution Plan, the claims process for Slave Labor Class I adhered closely to the procedures adopted by the German Foundation, maximizing administrative efficiencies and conserving Settlement Fund expenses. Under both the Swiss Banks Settlement and German Foundation programs, the application process was designed to rely heavily upon information concerning Holocaust survivors already available from prior restitution programs, such as the Article 2 Fund and CEEF administered by the Claims Conference on behalf of the German government. Thus, approximately 40,000 individuals receiving Article 2 and CEEF pensions from Germany essentially were "pre-approved" for payment under Slave Labor Class I: these survivors received pensions from Germany because of their confinement to camps or ghettos and, under the rules of the German Foundation and Slave Labor Class I, were presumed to have performed slave labor.

In November 2009, the Clams Conference discovered a fraud involving its Article 2 and CEEF programs, perpetrated by certain Claims Conference staff, claimants and third party facilitators. The fraud, which the Claims Conference reported to the Federal Bureau of Investigation (FBI), was investigated both by the FBI and the United States Attorney for the Southern District of New York and several individuals were charged and convicted. The fraud was estimated at approximately $60 million. The Claims Conference reported to the Court that certain Slave Labor I payments had been based upon fraudulent Article 2/CEEF payments: "As of June 30, 2013, the total amount of payments under [SL I] arising from prior approval under fraudulent Article 2 Fund payments has been determined to be $511,000, with an additional $378,000 having been paid to individuals who have appealed fraudulent determinations by the CC. The $511,000 represents 0.2% of the total of approximately $252 million [approved for payment] by the [Court as recommended by the] CC" to 170,000 survivors and certain heirs. The Claims Conference explained that the payments were under review "and the Court will continue to be kept apprised." *See* Claims Conference Declaration, Nov. 7, 2013, at 15 n.8, filed in connection with the Claims Conference's opposition to a motion by certain survivors challenging the Court's May 13, 2013 orders allocating residual funds (*see In re Holocaust Victim Assets Litig.*, 2013 WL 2152667 (E.D.N.Y. May 13, 2013) (allocation to needy survivors); *In re Holocaust Victim Assets Litig.*, 2013 WL 2153101 (E.D.N.Y. May 13, 2013) (allocation to the Victim List Project). Subsequently, the Claims Conference advised that efforts had been made to recoup the payments (ultimately determined to constitute 0.3% of the $252 million recommended under Slave Labor Class I), including several notifications to each

B. Determining Eligibility of Claimants Who Had Not Previously Received Holocaust Compensation

For those who had not previously received Holocaust compensation, the German Foundation legislation established criteria for assessing claimant eligibility. Under that law, eligibility was to be "demonstrated by the applicant by submission of supporting material. The partner organization shall bring in relevant evidence. If no relevant evidence is available, the claimant's eligibility can be made credible in some other way."[123] The Commentary to the German Foundation legislation noted that "[e]xtensive proofs of the fact of persecution and the use of forced labor already exist. These can and must be used. Written testimony can also be used as documentary evidence within the meaning of this provision. However, the affected persons because of their advanced age should not be burdened with unreasonable or protracted evidentiary requirements. A simple entry, for example, as a concentration camp prisoner or as a forced laborer, in the archives of the International Missing Persons Service in Arolsen is to be accepted as sufficient fulfillment of the proof requirement. In the absence of such material evidence, it is the responsibility of the applicant to make the damages claimed credible."[124]

The German Foundation's decision to accept a wide range of evidentiary proof reflected the reality that, so many decades after the Holocaust, there were limits to the surviving documentation, as well as the survivors' memories. As the Claims Conference observed:

> [D]ocumentation of claims of survivors of Auschwitz seldom came from material actually recorded at the camp. In 1944, most documentation about prisoners there was burned in one of the crematoria at Birkenau, necessitating a search for alternative documentation, which came in the form of transport lists.[125]

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recipient. Further review indicated that additional actions, such as formal litigation, would have been inappropriate under the circumstantces, and likely fruitless, as nearly all of the individuals who had received these payments were impoverished elderly Nazi victims, many of whom appeared to misunderstand the eligibility requirements under the Slave Labor Class I program.

As to the objections filed in 2013, the Court did not find these objections to be valid. *In re Holocaust Victim Assets Litig.*, 2014 WL 2547582 (E.D.N.Y. May 30, 2014). This is discussed in further detail in the chapter of this Final Report entitled "The Looted Assets Class Claims Process."

123 Distribution Plan, at 152, citing German Fund legislation at Section 11(2).

124 *Id.*

125 *See* "Restituting History."

In addition to the gaps in documentation, there were also lapses in recollection. Survivors did not always remember exactly where they had been enslaved. They would sometimes "remember details about a camp but not its name, describing the work they performed or the towns where they were, compelling researchers to search for sources that might provide the missing information. Other survivors could name specific dates upon which they entered a camp, enabling the Claims Conference to verify their persecution by consulting a transport list."[126]

That memories were imperfect so many years later was not unexpected. The former Nuremburg prosecutor and Holocaust compensation negotiator, Benjamin Ferencz, had confronted the same obstacle decades earlier. In the 1950s, he sought to gather evidence to support the first compensation claims against German industry — a frustrating process resulting in only minimal payments, leaving unresolved until the late 1990s the issue of compensating slave labor. As described in the Distribution Plan, and as Mr. Ferencz explained in his seminal work, *Less Than Slaves*, a survivor's incomplete memory by no means indicated that the claim was invalid. Rather, through a painstaking process of piecing together details from many sources and many people, the survivor's recollections could be confirmed:

> During the negotiations with the Claims Conference [in connection with the post-War attempts to establish compensation funds for individuals who had worked at companies notorious for their use of slave labor], AEG, which had acquired Telefunken, insisted that "the number of camp inmates who had been employed was insignificant" and, in response to Claims Conference lists of former AEG or Telefunken slave laborers, "demanded that the lists specify the camp in which each person was employed." Ferencz, at 114. "Complying with AEG's request was not as simple as it sounded. Over a hundred persons, for example, writing independently from different parts of the world, swore that they had worked for AEG at 'Ankers,' yet that name did not appear on any map of the region and AEG absolutely denied that it had ever had a plant at such location. The number of claimants was too large for the [Claims C]onference to dismiss the claims as fictitious, and after close interrogation of claimants, the mystery was unraveled. 'Ankers' was neither a town nor a factory but was the German name for a part of a machine — a belt or *Anker* — which was being manufactured by AEG in Riga.

[126] *Id.*

> The workers only knew that they worked at 'Ankers,' without knowing that it was a thing, not a place."[127]

With an eye toward this history, in connection with the Slave Labor Program under the German Foundation and Swiss Banks Settlement, the "Claims Conference undertook to pro-actively research 150 Holocaust-related archives scattered in 29 countries around the world in order to find documentation that would satisfy the claim verification requirements of the German Foundation. Claims Conference researchers scoured paper and microfilmed lists — often handwritten and not alphabetised — in order to match the names of claimants to any documentation that would meet the guidelines established by the German Foundation."[128] Among the sources consulted were "concentration camp lists, ghetto registers, transport lists, labor battalion rosters, lists of slave laborers in factories and plants, lists of inmates on work gangs, lists of prisoners released or liberated from concentration camps by Allied forces or humanitarian groups, lists of recipients of packages sent by friends and relatives through the Red Cross, and testimonials of survivors produced in the immediate aftermath of the Nazi occupation."[129]

There were other potential additional sources to verify claims for those who had not previously received other types of German compensation:

> In addition to the archives relating to German compensation programs, other sources of verification of an applicant's slave or forced labor history may include the International Tracing Service of the Red Cross at Arolsen, Germany; original source material from Yad Vashem in Jerusalem; and the United States Holocaust Memorial Museum in Washington, D.C. Researchers at Yad Vashem and the United States Holocaust Museum examine the lists of "inmates" — compiled by Nazi or other authorities — in various concentration camps and ghettos housed at those archives, and compare these lists to application information.
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> Further, claims asserting confinement in certain concentration camps, or which were submitted by residents of certain Western European countries, may be sent for verification to "local" archives, including the State Museum of Auschwitz-Birkenau; Gedenkstätte Dachau; the Mauthausen Memorial Museum; KZ-

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[127] Distribution Plan, Vol. II, at E-119 n.388, citing LESS THAN SLAVES.

[128] Taylor, Schneider & Kagan, at 111.

[129] *Id.; see also* Claims Conference 2006 Annual Report, at 16-17.

> Gedenkstätte Neuengamme; Pensioen en Uitkerings Raad (in the Netherlands); Gedenkstätte Ravensbrück; and the Terezin Initiative Institute.[130]

In addition, "reviews of holdings of archives in Europe were carried out by governments, museums, and Jewish organizations in Bulgaria, Belarus, Croatia, France, Germany, Greece, Hungary, Lithuania, the Netherlands, Poland, Romania, Serbia, Slovakia, Ukraine, and by the Shanghai Archives."[131]

As to survivors from the North Africa region, that research "created a particular challenge, since neither Yad Vashem nor the [USHMM] had covered these countries, and experts on the Holocaust in North Africa did not know where lists of slave and forced laborers were to be found. With the assistance of the [USHMM], the holdings of the relevant archives in France, Italy, the United Kingdom, Israel and Germany were scoured, and contact was made with the National Archives of Tunisia and Morocco and with such organizations as the World Association of Tunisian Jews. In view of the absence of Israeli or U.S. diplomatic relations with Libya, assistance was sought from the British Embassy in Tripoli, which kindly arranged for historians at the Libyan Studies Centre to review documents held in the National Archives of Libya."[132]

As the claims process progressed, at least 132 different sources of documentation had been consulted to determine whether Jewish claimants had performed slave labor and thus were entitled to compensation.[133] Examples of these sources included:

- International Tracing Service, Arolsen, Germany
- Buchenwald, Dachau, Majdanek, Stutthof, Stutowie, Neuengamme, Ravensbruck, and Sachsenhausen State Museums

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130 Verification Process Memo, at 3. Another important element of verification was ensuring that claims were "made by living survivors." Thus, all applicants living outside of Israel "were required to provide a notarized signature on an application form, while applicants in Israel were required to provide their identification card, whose relevant information was logged in by postal authorities, in order to have post offices throughout the country accept their slave and forced labor claim forms. In addition, as a condition to compensation, recipients of BEG, Article 2 and [CEEF] pensions annually [were] required to submit a signed life certificate" which the Claims Conference reviewed "prior to approving the claimant's Slave Labor Program application." *Id.*

131 *See* "Restituting History."

132 *Id.*

133 *See* Claims Conference Memorandum to Special Masters (Oct. 15, 2002).

- Transport Lists from the Auschwitz Memorial Archive including:
  - Transport List from Auschwitz to Dachau
  - Transport List from Auschwitz to Mauthausen
  - Transport List from Auschwitz to Ravensbrück
  - Transport List from Auschwitz to Saschenhausen
  - Transport List from Drancy to Auschwitz
  - Transport List from Theresienstadt to Auschwitz
  - Transport List from Auschwitz to Flossenburg
  - Transport List from Auschwitz to Gross Rosen
  - Transport List from Auschwitz to Natzweiler
  - Transport List from Auschwitz to Nurnberg
  - Transport List from Slovakia to Auschwitz
  - Transport List from Vienna to Auschwitz
  - Transport List from Westerbork to Auschwitz
  - Transport List from Auschwitz to Dachau via Gross Rosen
- Entry and Transport Lists from the Mauthausen Memorial Museum including
  - Entry Lists
  - Female Entry Lists
  - Transport Lists
  - Transport Lists of Czech Women for Repatriation
- Kiev, Vinnitsa, Odessa, Rovno, Nikolaev and Zakarpatye State Archives, Ukraine
- KGB Archive
- Moldova National Archive
- Belarus National Archive
- Latvian State Archive
- Slovakia State Archive
- General Procurator's Office, Lithuania
- National Bureau of Compensation and Restitution, Hungary

- Hungarian Antifascist and Resistance League
- Former Residents of Lodz, Israel
- Ministere des anciens combatants, Delecation a la Memoire et a l'Information Historique, France
- Jewish Historical Museum of Netherlands
- Hebrew Immigrant Aid Society, United States, Canada and Australia
- YIVO Institute, New York
- USHMM Archives including:
  - Balta Ghetto List
  - Bedzin Ghetto Identity Photographs
  - Bergen-Belsen Gedenkbuch
  - Bersad List
  - Buchenwald Microfilm
  - Cariera de Piatră [Ladijin]
  - Chechelnik Ghetto List
  - Chernovitz Ghetto List
  - Deportations from Belgium
  - HÄFTLINGE DES KONCENTRATIONSLAGERS BERGEN-BELSEN
  - Hasag Prisoner Index
  - Krakow Ghetto Registration Forms Database
  - Lodz Names Database
  - Pinsk Ghetto Census
  - Terezin Ghetto 1945
  - TEREZINSKA PAMETNI KNIGA
  - Totenbuch Theresienstadt
  - VILNIUS GHETTO: LISTS OF PRISONERS
  - Lists of Lodz Ghetto inhabitants 1940-1944
  - Deportations from France

- Archives relating to Zamosc; Vindiczeni; Tomaspol; Natzweiler; Lemberg/Lewiw/Lwow; Romania; Domanevka; Bogdanovka; and Trihati[134]

In the case of claimants for whom documentation could not be found, they were "invited to describe their persecution experiences and these statements could constitute part of the proof that the claimant was eligible for a payment."[135]

In its 2017 publication reviewing the forced labor program, the German Foundation noted the emphasis that had been placed upon implementing evidentiary rules that were not overly burdensome, under the circumstances of the Holocaust. "It would be meaningless to establish elaborate eligibility criteria when they are difficult to prove or at least to be made credible…. Generally, the German forced labor compensation program provided for a *relaxed standard of proof* because it was conscious of the fact that much time had elapsed since the historical events and that the type of injustice which the program addressed were difficult to prove. Moreover, the long time since the events also implied that the survivors had a very advanced age. Against this background, it was a matter of fairness not to rely on documentary evidence or public records only and that applicants were allowed to support eligibility with a variety of evidentiary means, including credible statements."[136]

Thus, there was wide latitude to assess the validity of the claims, which "could essentially be verified in three ways: either they contained sufficient documentary evidence, or they were verified in external archives, or they were determined to be credible. This was in line with the practice of other claims programs dealing with situations that occurred in the distant past and where the victims, because of the circumstances of the crimes, could not be expected to possess significant documentary evidence."[137]

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134 *Id.*

135 *Id.*

136 Saathoff, Gerlant, Mieth & Wühler, *supra*, at 35 (emphasis in original).

137 *Id.*, at 93.

In reflecting upon its analysis of slave labor claims as the claims process wound down, the Claims Conference noted that it had

> established a sophisticated program of archival research of 150 archives in 29 countries, including Yad Vashem and the United States Holocaust Memorial Museum (USHMM). The approval of slave labor applications (where the applicant did not receive prior compensation) was primarily a result of the Claims Conference's archival research efforts. The Claims Conference had an average of 30 staff working two shifts at Yad Vashem between March 2002 and December 2003, and an average of 9 employees in 2004. Research at Yad Vashem was completed by the end of 2004. In addition, the Claims Conference had between 4 to 10 full time researchers (in addition to volunteers and USHMM staff members assisting the research) working at the USHMM, from approximately June 2002 through December 2006, to locate archival evidence for persons that had not already received a compensation payment or pension…. This archival research on behalf of claimants was unprecedented. It should, however, be noted that even in cases where it could not find evidence of slave labor in any archive whatsoever, the Claims Conference asked the applicant to provide a detailed written description of his/her persecution. That narrative was evaluated by experienced staff with detailed historical knowledge at the Claims Conference, which had the authority to approve applications on the basis of such narrative testimony alone… [a process] approved by the Special Master.[138]

With the support of the Court and the German Foundation, the Claims Conference and IOM similarly were asked to make certain that confusion on the part of elderly and traumatized survivors did not disqualify otherwise valid claims, whether or not the precise details of enslavement were remembered. Thus, after exhausting all possible sources of documentary evidence, "applicants were invited to describe their persecution experiences and these statements could constitute part of the proof that the claimant was eligible for a payment."[139]

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[138] Claims Conference Declaration, Sept. 18, 2008, at 10. *See also* Claims Conference 2006 Annual Report, at 16 ("For survivors who had already received indemnification payments from the German government, Israeli government, or Claims Conference, no further persecution documentation was necessary. However, thousands of applicants who had never before applied for compensation payments lacked any sort of corroboration that they had performed slave or forced labor under the Nazis. The German Foundation, which audited claims approved by the Claims Conference, required such documentation").

[139] Claims Conference 2006 Annual Report, at 17.

C. New Data on the Pervasiveness of Slave Labor: Examples of Work Sites Previously Unrecognized

In many cases, the German and Swiss slave labor compensation programs prompted a reassessment of history, broadening the knowledge of the Third Reich's enslavement policies — which were far more expansive than had been originally thought.

1. Jewish Slave Laborers: Work Camps in Central and Eastern Europe

The Claims Conference presented – and the German Foundation and the Court accepted – new research demonstrating that the Nazi machine had reached into parts of Europe not previously known to have supported slave or forced labor.

In some instances, the Claims Conference requested that the Court approve certain categories of slave labor claims that were then under negotiation with the German Foundation, anticipating ultimate approval by the German Foundation. German Foundation approval was not a pre-condition to the Court's acceptance of such claims, in that the definition of "Slave Labor Class I" was somewhat broader than the definitions set forth under the German Foundation legislation.

Thus, for example, the Claims Conference consulted with the Court and the Special Masters, and confirmed that the Court did not consider itself to be strictly bound by the so-called "places of incarceration" list that had been formally recognized by German authorities at the start of the program in 2001. The German Foundation had taken under advisement, and had not yet decided, the Claims Conference's application urging recognition of places of incarceration in Hungary, Bulgaria and Tunisia. The Claims Conference requested that the Court authorize payments under Slave Labor Class I regardless of the German Foundation's ultimate ruling, as the recommended claims satisfied all of the criteria under Slave Labor Class I.

> [U]nder the German Foundation Law, a person who is eligible as a slave laborer is someone who was in a concentration camp, ghetto or other place of confinement with comparable conditions. The Claims Conference has applied to the German Foundation for a decision recognizing that certain places of

> confinement, not heretofore recognized, had comparable conditions, and awaits a decision from the German Foundation. These decisions are being made on an ongoing basis (for example, a decision granting Hungarian Labor battalions the status as places of slave labor was only made last week). We are still awaiting decisions on forced labor camps in Bulgaria, Tunisia, and other places in North Africa. Ultimately, if the German Foundation does not recognize such places as comparable to slave labor (and since there was no deportation of such Nazi victims from their homeland, which would make them eligible as "forced laborers," as distinguished from "slave laborers," under the German Foundation Law), such persons may be eligible for a payment from [Slave Labor Class I] but not from the German Foundation. As you will recall, in discussions with the Claims Conference, the Court and the Special Masters have made clear that the Court will authorize payment to an individual qualified under the definition of Slave Labor Class I regardless of the decision of the German Foundation on that particular application. While we anticipate that the German Foundation will resolve the status of the remaining unrecognized camps shortly, we will be in a position to make the [Slave Labor Class I] payments within the next 12 weeks under any circumstances.[140]

Based on the historical evidence and the definitions under the Settlement Agreement, the Court approved payments to these victims considerably earlier than did the German Foundation. The German Foundation eventually did, in fact, deem work sites in Hungary and Bulgaria to have been places of slave labor, warranting compensation under that program as well as under Slave Labor Class I of the Swiss Banks Settlement.[141] As described by the Claims Conference, this "comprehensive research" resulted in a "re-evaluation of certain aspects" of the Holocaust.

The following section of this chapter on the Slave Labor Class I Claims Process – "Obtaining Recognition of Slave Labor Camps Under the German Foundation Legislation" – was prepared for the Special Masters by Karen Heilig, the Assistant Executive Vice President and General Counsel of the Claims Conference. Ms. Heilig details the efforts made to ensure that the German Foundation considered every work site at which Jewish Nazi victims performed Holocaust-era slave labor (according to the German Foundation definition of "slave labor"). As a result of this research, which expanded the category of slave labor work sites that the German Foundation formally approved, tens of thousands of additional victims were able to receive

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[140] September 25, 2003 Claims Conference Letter.

[141] Claims Conference Declaration, Sept. 18, 2008, at 11.

compensation from the German Foundation as "slave laborers," and thus automatic approval for compensation under Slave Labor Class I of the Swiss Banks Settlement.

Obtaining Recognition of Slave Labor Camps Under the German Foundation Legislation

Under the Law Establishing the Foundation "Remembrance, Responsibility and Future" (the Law") passed in July 2000 by the Bundestag, slave laborers were defined pursuant to section 11(1)1 as:

> Persons who were held in a concentration camp as defined in section 42 paragraph 2 of the German Indemnification Law or in another place of confinement outside the territory of what is now the Republic of Austria or a ghetto under comparable conditions and were subject to forced labor. [Informal translation prepared by the US Embassy in Berlin.]

The term "another place of confinement" was referred to as "*andere Hafstatte*" in the original German text of the *Gesetz zur Errichtung Einer Stiftung "Errinnerung, Verantwortung und Zukunft.*" Section 12(1) of the Law states that:

> Specific characteristics of **other places of confinement** referred to in section 11 paragraph 1 number 1 are inhumane prison conditions, insufficient nutrition and lack of medical care.

Following the German Foundation's November 2000 adoption of a resolution relating to the process for the approval of "*andere Haftstatte,*"[142] the Claims Conference worked with a variety of historians to provide relevant documentation so that the German Foundation would

[142] In September 2000, two months after the German Foundation had been established by the passage of a Law in the German Bundestag, and prior to the German Foundation's adoption in November 2000 of its approval process for "*andere Haftstatt*e," the Claims Conference informed the German Foundation that it intended to seek recognition for camps in Hungary, Romania, Bulgaria, Slovakia, the former Yugoslavia and North Africa. *See* Claims Conference Letter to German Foundation (Sept. 20, 2000). In this letter, it was noted that the Claims Conference intended to provide research demonstrating that certain camps in all of the above countries should be designated as "*andere Haftstatte*" for the purpose of Section 11(1) 1 of the German Foundation Law, and thus those incarcerated in such camps should receive payments as "slave laborers."

designate a number of camps where Jews were held and performed labor as "*andere Haftstatte*."[143]

The procedures to secure approval by the German Foundation were complex, and it took over three years for the German Foundation to issue final decisions. Each application for recognition as an "*andere Haftstatte*" had to be reviewed by the historians of, or engaged by, the German Foundation and its Board of Trustees. In a report to the Board of Trustees, the Directors of the German Foundation highlighted the significance and utility of the historians' work:

> …. [T]he Federal Foundation was and still is depending on the close cooperation with historians and experts around the world. Here we can point out a continuously excellent cooperation and an extremely high level of assistance. The Federal Foundation is provided with expert opinions, even with a high amount of research required, sometime[s] even free of charge; the same applies to unpublished research results. Inquiries to research institutions and archives here and abroad by the Federal Foundation referring to the examination of applications for places of confinement were usually answered within a very short time. It is also remarkable that the process of recognition of places of confinement itself turned out to be a topic for research or that historians are using results gained during the examination of applications for places of confinement.[144]

Every camp had to be approved individually by name. Often the German Foundation specified the relevant opening or closing dates of the camp, and each individual applicant's incarceration had to fall within these specified dates. Given the number of camps, this was an enormous task. As the German Foundation noted in its 2003 report, the "index of places of confinement," which was "regularly amended by new resolutions," by August 2003 had "achieved a volume of 540 pages."[145] In addition, once a camp was approved, details of the camp (including opening and closing dates) were entered into an electronic "master list" of camps and ghettos that comprised part of the Claims Conference processing system.

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[143] In the Minutes of the Meeting of Board of Trustees in November 2000, the German Foundation set up a process whereby it would rely upon and if necessary engage experts to assist in their determination about camps and work sites. In addition, the partner organizations responsible for processing claims were requested to submit evidence and information for consideration.

[144] Report by the Board of Directors of the Federal Foundation on the recognition of "other places of confinement," presented to the 13th Meeting of the Board of Trustees meeting on 24/25 Sept. 2003 at 3 ("German Foundation 13th Meeting Report").

[145] *Id.* at 4.

The first application by the Claims Conference to the German Foundation sought acknowledgment of those camps already recognized by the German Ministry of Finance in the framework of the Article 2 and CEEF compensation programs, which were limited primarily to those who had been incarcerated in camps and ghettos. In the Fall of 2000, only certain camps were recognized under the Article 2 Fund. These included camps recognized by Germany's Federal Indemnification Law promulgated in the 1950s (the "BEG"), as well as camps recognized by the International Tracing Service ("ITS").[146] The only other additional types of camps for which compensation was permitted as of 2000 were those that had been officially accepted following 1999 negotiations between the Claims Conference and the German Ministry of Finance. These negotiations resulted in the recognition of camps for forced laborers on the Austro-Hungarian border ("camps that constructed the Alpenfestung or Alpine Fortifications"); camps for Hungarians on the Ukrainian front; and the copper mines at Bor.[147]

A report by the Board of Directors to the meeting of the Board of Trustees noted that as of August 28, 2003, the German Foundation at that time had already approved a total of 3,581 "*andere Haftstatte*." The Board of Directors report remarked that while this seemed like a very large number, the majority of places (over 2,000) were forced labor camps and labor battalions for Jews in the East, where there were only few survivors due to the Nazi extermination policy.[148]

The number of camps approved as of August 2003 as a result of these submissions – which the German Foundation noted totaled over 2,000 – did not include camps in Bulgaria, Tunisia, Morocco or Algeria. These were accepted after that date, with the total number of camps estimated to approach 2,300. The final number of camps ultimately approved as "*andere Haftstatte,*" as a result of Claims Conference submissions and research, often represented

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[146] The Article 2 Fund (like the German Foundation) included as concentration camps those camps that were accepted in accordance with section 31 ¶2 or section 42 ¶2 of the BEG. This list comprises over 1600 camps and was published in the Federal German Gazette in 1977 and 1982. The ITS register of camps was published in 1979 and included the camps under the BEG as well as additional places. The BEG and ITS lists were accepted for the Article 2/CEEF compensation programs. Subsequently, one of the first decisions of the German Foundation was to accept those camps on the ITS list as "*andere Haftstatte*."

[147] The request to recognize those camps were sent by the Claims Conference to the German Foundation on October 30, 2000.

[148] *See* German Foundation 13th Meeting Report, at 3.

ground-breaking historical analysis relating to camps located in countries throughout Europe and North Africa.

The German Foundation provided that compensation would be available for those who had been imprisoned in specified places of confinement and who had performed forced labor in those places. In certain cases, labor would be presumed. Thus, the following guidelines were in place:

- Imputation of forced labour for certain types of places of confinement, because they were labour camps (*e.g.* labour education camps or forced labour camps for Jews).
- Imputation of forced labour for individual places of confinement for which there was sufficient information, so that it could be assumed that these places of confinement generally required forced labour.
- Individual evidence of forced labour in places of confinement for which there was no sufficient information supporting the imputation of forced labour in this place of confinement. Therefore the applicant had to document or substantiate the forced labour individually.[149]

In seeking to present information about places of incarceration and the forced labor that was performed there, the Claims Conference provided the German Foundation with numerous submissions from historians, some employed by the Claims Conference, and others affiliated with major research institutions.[150] In addition, where relevant, Jewish communities assisted or were asked to assist in providing evidence from their local archives to supplement other information.[151]

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[149] *Id.*, at 2.

[150] Historians contributing to this project during the three-year period included Dr. Jens Hoppe and Peter Heuss of the Claims Conference Frankfurt office; Dr. Avi Blumenfeld of the Claims Conference Israel office; Prof. Radu Ionid of the USHMM, who also provided historical research in connection with the IOM's work on behalf of Roma and other non-Jewish claimants; Dr. Steven Sage, historical consultant at the Claims Conference, and later researcher at the USHMM; Marc Masarovsky, historical consultant at the Claims Conference and later researcher at the USHMM; and Warren Green and Ruth Weinberger, historians in the Claims Conference New York office.

[151] *See* Jewish Community in Zagreb Letter to the Claims Conference (copying a letter the group sent to the German Foundation) (May 2001).

A letter to the Centre de Documentation Juive Contemporaine from Dr. Jens Hoppe dated February 4, 2002 stated: "the material submitted to date by the Claims Conference did not convince the Foundation. We would therefore like to ask you to let us have copies of as much material as possible from the collection of the Centre de Documentation which proves that forced labour was carried out in the above camps. General regulations,

The applications submitted by the Claims Conference were diverse, both in the location of the slave labor work site, and the number of eligible applicants who could be paid, assuming the site was approved by the German Foundation.

The slave labor work sites for which the Claims Conference sought recognition as "*andere Haftstatte*" included camps in France, Germany, Slovakia, Croatia, islands off the Dalmatian coast in the Italian zone of Croatia, Serbia, Italy, Romania, Hungary, Bulgaria, Libya, Algeria, Tunisia and Morocco. Applications ranged from the Jewish labor battalions in Romania, from which there were a few thousand applicants, to much smaller camps on the islands of Pag, Rab, Hvar, Korcula and Lopud, located in the Italian zone of Croatia on the Dalmatian coast, for which there were sometimes only a handful of applicants.[152]

As to Romania, the Claims Conference provided the German Foundation with information that had been submitted to the German Ministry of Finance in an ultimately successful effort to obtain approval of the Romania Labor Battalions under the Article 2 Fund.[153] The submission was based primarily upon the research of historians Prof. Radu Ionid of the USHMM and Prof. Jean Ancel of Yad Vashem. They found with respect to these labor battalions that conditions were appalling:

> Housing: In wooden barracks or partially buried huts. The workers are not sheltered from rain, cold, and so on. Most sleep on the ground.
>
> Food: Insufficient, since foodstuffs do not reach the kitchen in sufficient quantities in accordance with allocations.
>
> Clothing: Most of the workers are completely naked. A fragment of a sack or an old rug is used to cover their genitals, and they walk around barefoot.
>
> Work: Excessive, since those who can get out of work by giving money can go home, while those miserable persons who remain are forced to perform the work of the others as well as their own.

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descriptions and similar would be helpful as would be individual statements. Only with such additional evidence has the Claims Conference's objection a chance of achieving compensation for many former victims."

[152] In another example, the Claims Conference continued to seek approval of the Topovske Supe camp, near Belgrade, in Serbia, even though there were only an estimated 5 applicants. *See* Dr. Jens Hoppe email to Claims Conference (Mar. 18, 2003).

[153] *See* Claims Conference Letter to German Ministry of Finance (July 25, 2001).

> Sanitary conditions: Catastrophic, given the conditions described above. Parasites proliferate. Parasite extermination cannot go forward because of lack of materials (… pesticides, but especially linen).
>
> Doctors: Have no authority. The sick [formally] exempted from labor are nonetheless forced to work, and even struck. Doctors' reports are met with derision.[154]

Once the German Ministry of Finance approved the Romanian Labor Battalions for the Article 2 Fund pension program, the German Foundation in October 2002 also approved 617 Romanian Labor Battalions as "*andere Haftstatte.*"

As to the islands in the region of Croatia, conditions in these labor camps were horrific. Those who were there, even if few in number, had been abused as slave laborers. The German Foundation's decision of approval, issued in June 2002, was based upon information including a report by historians Dr. Peter Heuss and Dr. Jens Hoppe of the Claims Conference; documents from the Zagreb Jewish Community; and a report that the German Foundation had solicited from Professor Wolfgang Schieder of the University of Cologne. The German Foundation decision noted that regarding these islands:

> The conditions in the camp were not fit for humans (overcrowding, wooden barracks with no furniture, lack of water, typhus, dysentery). There was also no medical care…. [T]here is evidence that the death rate in the Rab camp was very high (4,400 deaths, mortality rate of 26.7%). There was not enough food in the camps. The daily bread ration was 120 – 130 gr., the food was bad quality and often mouldy. Undernourishment caused various diseases (oedema, phlegmasia, scurvy etc.).[155]

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[154] *See* Claims Conference Letter to German Ministry of Finance, quoting from *Documents concerning the fate of Romanian Jews during the Holocaust Bd IV The Regat and Southern Transylvania 1942 – 1944* Selected and edited by Jean Ancel New York 1986 s 699. Translated by Radu Ionid in *The Holocaust in Romania*, 2000, s 113f.

[155] *See* Resolution passed by the German Foundation Board of Directors on "other prisons" on 4 June 2002, at 2. The German Foundation's assessment was based upon historical information set forth in the Claims Conference's report of of November 29, 2001 relating to Slovakian camps, camps in Croatia, Serbia and islands off the Dalmatian coast of the former Yugoslavia. *See* Dr. Peter Heuss & Dr. Jens Hoppe Letter to German Foundation 4, 5 (Nov. 29, 2001).

As late as January 2004, the German Foundation had not been satisfied of the existence of forced labor camps for Jews in a number of areas, including Bulgaria, North Africa, Southern France, camps for half Jews (Mischlinge), and camps for Jews in Hungary as of March 1944.[156]

The Claims Conference's application for recognition of labor camps in Bulgaria was originally presented in August 2001 (and had been mentioned in a fall 2001 letter to the German Foundation), and was again presented in June 2002 together with further materials. In its report in August 2003, the German Foundation noted that "it had asked Facts and Files[157] for a short expert opinion on these camps, received additional documents from the [Claims Conference] and did its own investigation work. As a result of all this research work and the presented documents it has to be assumed that the criteria of Foundation law for these camps will **not** [*emphasis added]* be met. [The Claims Conference] announced it would present further documents on these camps by October 2003. Should these new documents provide new evidence the Federal Foundation will re-examine a possible recognition of these camps…."[158]

In response to this preliminary denial, the Claims Conference sought and obtained an updated expert opinion from Steven Sage, entitled "Jewish Forced Labor Camps in Axis Bulgaria."[159] The "Sage Report" led to the German Foundation's approval of these camps.

> In Bulgaria, long thought to have protected its Jews from the Holocaust, researchers combing through newly available historical records uncovered evidence of 112 wartime labor camps for Jews. Archival documents combined with personal stories, letters and photos from survivors applying for payment led finally to Germany's recognition that Bulgarian Jews were entitled to compensation for their suffering. This discovery meant more than enabling Bulgarian Jews to receive acknowledgment and payment. It restored a long-

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156 *See* German Foundation Letter to Claims Conference (Jan. 20, 2004).

157 "Facts and Files" is a Historical Institute in Berlin. It was commissioned to provide "Expert Reports on forced labour during the Nazi period" for the German Foundation. It created an expert report on Nazi-era Jewish forced labor in various European and North African countries, such as Romania, Serbia, Bulgaria, Hungary, Tunisia, Algeria and Morocco. http://www.factsandfiles.com/en/forced-labour-during-the-nazi-period.html.

158 *See* German Foundation 13th Meeting Report, Attachment ("Anlage") 2, at 4.

159 *See* Steven Sage, Jewish Forced Labor Camps in Axis Bulgaria, 1941-1944 (report prepared for the Claims Conference) (discussing "long-hidden sources" that had become available at the time of the slave labor program, such as the USHMM's 1997 acquisition of "some 360 reels of microfilm documenting in detail the persecution of the Jews in Bulgaria," as well as the USHMM's acquisition in "late October 2003" of information concerning "the labor battalions from the Bulgarian Military Archive in Veliko Turnovo," at 11).

> unknown aspect of the Holocaust to public knowledge, while some of the survivors are still alive. This compensation process enabled the real plight of Bulgarian Jews during World War II to come to light, shattering a long-standing myth that the Bulgarian government had protected its Jewish citizens from persecution, when, in fact, its officials expropriated them, forced them out of their homes, confined them, exploited their labor and expropriated their belongings.[160]

On January 29, 2004, the Board of Trustees recognized 112 forced labor camps for Jews in Bulgaria.[161]

Similarly, the Claims Conference continued to present evidence concerning labor camps in other areas and regions that were previously only sparsely researched, such as in North Africa. The Claims Conference had notified the German Foundation in the fall of 2000 that it would be asking for recognition of labor camps in North Africa. Further applications were submitted in August 2002. In early 2004, a detailed report, "Jewish Forced Labor in North Africa 1942-1943," was submitted by historian Marc Masarovsky, followed by an Addendum. The German Foundation indicated that "[f]urther research was necessary before a decision is reached, particularly on Tunisian camps."[162] In a final attempt to persuade the German Foundation, the Claims Conference sent nearly three dozen extracts from actual testimonies from former Jewish Tunisian inmates of labor camps that had been contained in applications received by the Claims Conference for the slave labor fund.[163]

The final resolution of the German Foundation Board of Trustees accepted this submission, relying upon both the Masurovsky report and the actual survivor testimonies.[164] In substantiating its approval of the Bizerte camp in Tunisia, the German Foundation quoted the testimony of one survivor who stated that

> Prisoners …slept on straw which was never replaced, with no protection from wind or weather. Fleas, parasites and scabies were rife…. Since Bizerte

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160 *See* "Restituting History."

161 *See* German Foundation Letter to Claims Conference (Feb. 2, 2004).

162 *See* German Foundation Letter to Claims Conference (Jan. 20, 2004).

163 These testimonies were submitted to the German Foundation in January 2004.

164 *See* Resolution by the German Foundation Board on "other prisons" dated February 25, 2004.

> commanded a bridgehead it was often bombed [by the Allies] causing injury to prisoners and death.…[165]

An extract from the testimony of another survivor, enslaved in the Saouaf Camp, was presented by the Claims Conference and was also quoted in the German Foundation's decision. In the testimony, the survivor stated: "We were given shovels to clear the road of mud…our shovel turned out to be useless because it got stuck in the road we had to use our bare hands. We had to work at night…."[166]

On February 25, 2004, based on reports and individual testimonies (and supplemented by material that the German Foundation received from the Facts and Files researchers, who provided additional evidence), 36 camps in Algeria, 24 in Morocco and 27 in Tunisia were approved as sites of labor, warranting compensation.

The Claims Conference not only provided evidence as to the existence and conditions of various camps about which little had been previously known, but also the camps' duration, to ensure that once a camp was approved, the German Foundation would recognize as eligible all individuals who had been interned there. In many cases, these efforts affected a potentially large number of applicants. In August 2003, the German Foundation approved as sites of slave labor the forced labor camps for Jews in Greater Hungary, but only for the period beginning in October 1944 and thereafter. The Claims Conference then sought to demonstrate that the relevant date actually was from March 1944 and after, beginning essentially with the Nazi occupation of Hungary. This was eight months longer than the period initially established by the German Foundation, which would enable more survivors to be included as eligible applicants for slave labor payments.

As the Claims Conference argued:

> The conditions in labor camps in Hungary were similar to those in concentration camps from March 1944 because with the German occupation of greater Hungary the conditions for Jews generally and in particular for the inmates of forced labor camps, drastically worsened. Hauptfrontführer Wilhelm Neyer, representative of

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165 *Id.*

166 *Id.*

> the organizations Todt[167] in the Hungarian ministry of defense, now regulated the deployment of forced labor battalions in accordance with the war waged by the national socialists. This way the German occupying authorities had access to all Jewish forced laborers. The Jews were held in fenced and strongly guarded camps where [ ] death was the penalty for leaving the camp without permission. From spring 1944 they had to erect fortifications in Hungary above all and maintain the necessary military infrastructure without getting sufficient food for this physically hard labor as rations - also due to misappropriation - were quite insufficient and there was no meat or fats. At the same time and parallel to the mass deportations from Hungary the brutality of the guard troops increased: Jewish forced laborers were ill treated, were no longer allowed access to medical facilities and apart from suffering from hunger due to the bad conditions also caused diseases such as typhoid fever and tuberculosis. Deaths of forced laborers carrying out labor while railway lines or bridges were being bombed, were taken for granted. The Hungarian forced labor service for Jews did not save them from the Shoah, shown by the fact that in June 1944 a train with forced laborers from the Hatvan camp was sent to Auschwitz with a further train with inmates from Györ and Komarom who were to be deployed in the Austrian Nazi districts.[168]

The German Foundation ultimately recognized 479 forced labor camps that existed in Greater Hungary as of March 1944, thus accepting the Claims Conference's research and extending the relevant date by eight months from the original date of October 1944.[169]

Not all of the Claims Conference's efforts to demonstrate that a forced labor site was an "*andere Hafstatte"* met with success. Thus, in 2004, the German Foundation refused to approve the 301 forced labor battalions called "*Groupements de Travailleurs Etrangers*" (abbreviated to GTE)[170] in Southern France, as these camps were deemed not to have met the criteria under the German Foundation Law.[171] The German Foundation also decided not to approve the Camps of

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[167] This refers to the organization for large-scale construction work in Nazi Germany, named after its founder, the engineer Dr. Fritz Todt (1891-1942). The organization used many foreign workers, prisoners of war and concentration camp inmates to build military factories and fortifications. *See* http://www.yadvashem.org/odot_pdf/Microsoft%20Word%20-%205807.pdf

[168] *See* Claims Conference Letter to German Foundation (Jan. 21, 2004).

[169] *See* German Foundation Letter to heads of Partner Organizations concerning the resolution by Board on February 25/27, 2004 recognizing other prisons (Mar. 4, 2004).

[170] Many of the Jews in areas controlled by the Vichy regime were conscripted into forced labor battalions, also known as GTE in metropolitan France. The Vichy authorities put to "forced labor" mostly the men, able-bodied or not, who were interned in these makeshift camps throughout the southern zone of France. The GTE units were work details of foreign-born Jews allocated to different forms of labor under French jurisdiction toiling for a variety of French and German governmental agencies and private interests.

[171] *See* German Foundation Letter to Claims Conference (June 7, 2004).

the Reich Chief Security Office (*Reichssicherheitshauptamt*, RSHA). The RSHA was formed in September 1939 as the central bureaucracy of the Security Police and the Security Service of the SS, and as of 1943 had its own forced laborers.[172] Likewise, the German Foundation did not adopt the Claims Conference's submission seeking approval of camps for "half Jews" ("*Mischlinge*")[173] located on the territory of the German Reich.[174]

However, those Jews who performed labor at locations deemed ineligible to qualify for compensation as sites of "slave" labor could receive payment of another type under the German Foundation rules. Most Jews who performed forced labor (as opposed to "slave labor") were not deported from their homelands into the territory of the German Reich, and deportation was a requirement to receive payment for forced labor under section 11(1)2 of the Law.[175] However, the Law had a provision known as the "opening clause," whereby

> the Partner organizations may also award compensation from the funds provided to them pursuant to Section 9 paragraph 2 to those victims of National Socialist crimes who are not one of the groups mentioned in Sentence 1 Numbers 1 and 2, particularly forced laborers in agriculture.

In March 2004, when most of the decisions of the Board of Trustees had been finalized regarding "*andere Haftstatte*," the Claims Conference informed the German Foundation that it intended to use the "opening clause" to compensate the following applicants:

- persons who were in a labor camp but not deported
- persons who were forced to work while living at home

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[172] From February 1943 onward, the RSHA consisted of male so-called Jewish Mischlings and members of privileged mixed marriages. In all, about 150 Jews were made to build deep bunkers in the Kurfürstenstrasse in Berlin and in other locations. This extremely difficult physical labor had to be performed 12 through 16 hours a day, including on Sundays and holidays as well. During this time the forced laborers were constantly guarded by SS personnel, who insulted them and maltreated them repeatedly. It was forbidden to leave the place of work.

[173] Persons who had one Jewish parent (known as "*Mischlinge*") were sometimes taken to Germany and France to perform labor. Although the *Mischlinge* were forced to work at Organization Todt facilities, their treatment was usually worse than that of other laborers at the same place. The Claims Conference had sought to have these camps recognized as "*andere Haftstatte."*

[174] *See* German Foundation Letter to Claims Conference (Jan. 20, 2004).

[175] Given the Nazi policy of extermination of the Jews, the Jews who were deported into the borders of the German Reich ended up performing slave labor.

- other persons who were forced to work.[176]

Applicants who fulfilled the conditions of the "opening clause" therefore were approved to receive DM 5000, even if not the DM 15,000 that was received by those who were interned in camps that the German Foundation designated formally as sites of slave labor. For purposes of the Swiss Banks Settlement, however, such distinctions did not matter. All individuals approved for payment by the German Foundation, regardless of category, received payment under Slave Labor Class I in the amount of $1,450 each.[177]

Reflecting upon the successful efforts of the Claims Conference to make certain that no victim who was forced to work for the Nazis was excluded from compensation, one scholar observed:

> The JCC's [Claims Conference's] historical research revealed situations concerning the persecution of European Jews that fell beyond the compass of the foundation as well as other compensation programmes. The Jewish victims of forced labour in Bulgaria, for example, whose fates were not officially recognized as cases of historical injustice, had not come under the provisions of the [earlier compensation programs,] the Article 2 Fund or the CEEF. Nevertheless, the German Ministry of Finance opposed applying the new historical findings to other programmes, holding to the 'prevailing doctrine' set by the previous state of research. However, it was eventually convinced of the significance of the JCC's findings over the course of lengthy discussions, and its resistance crumbled. Similarly, discoveries about the exploitation of Jewish forced labourers in North Africa lent a new dynamic to the compensation debate. The Nazi persecution of Jews in North Africa had been largely overlooked by academic Holocaust research and had only recently begun to be addressed, especially in Israel. The many applications to the foundation mentioning victims' exploitation in Tunisia, Algeria and Morocco brought the grim reality of the forced labour camps in these countries into focus. The Claims Conference was not only able to provide those affected with compensation from the forced labour fund, but also ensured that the North African camps were recognized under the Article 2 Fund. Hence the compensation scheme for forced labour proved to be one element in a dynamic process of articulating and negotiating Jewish restitution claims.[178]

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[176] *See* Claims Conference Letter to German Foundation regarding the "opening clause" (March 8, 2004).

[177] In some instances, Nazi victims who were not eligible for any compensation under the German Foundation rules nevertheless were eligible for, and received, compensation from the Court under Slave Labor Class I; *see infra*.

[178] Benno Nietzel, *The Jewish Claims Conference and Compensation for Nazi Forced Labour 1951-2008*, *in* COMPENSATION IN PRACTICE: THE FOUNDATION 'REMEMBRANCE, RESPONSIBILITY AND FUTURE' AND THE

In total, then, more than 173,000 Jewish applicants who were forced to perform slave labor for the Germans and their Axis allies were compensated as slave laborers under the two separate programs established by the German Foundation and the Swiss Banks Settlement. This number includes tens of thousands more slave laborers than were originally eligible under the German Foundation's preliminary interpretation, due to the efforts by the Claims Conference and other researchers to investigate and document every type and place of labor that was forced upon the victims of the Nazis.

2. Jewish Prisoners of War

Forced labor performed by a prisoner of war was not compensable under the German Foundation legislation.[179] However, the Claims Conference "identif[ied] and search[ed] out groups of potentially eligible claimants, such as the 350 Jewish American soldiers, transferred from a German army POW Stalag to the concentration camp of Berga in Germany. The documentary of their story ('Berga: Soldiers of Another War') was broadcast in the United States as the Program for Former Slave and Forced Laborers progressed. The Claims Conference was able to contact and to compensate the 17 surviving Jewish POWs of Berga."[180]

LEGACY OF FORCED LABOUR DURING THE THIRD REICH 79, 91 (Constantin Goschler ed., Berghahn Books 2017).

[179] *See* September 25, 2003 Claims Conference Letter, Special Masters' Interim Report, at Ex. 5-9 ("There are significant areas of difference in eligibility criteria for the German Foundation and the SLCI. For example … work performed as a POW does not qualify for payment under the German Foundation but does qualify under SLCI assuming the POW was Jewish").

[180] *See* "Restituting History." In 2016, Yad Vashem recognized the first American service member as among the Righteous Among the Nations, a non-Jew who risked his or her life to save Jews during the Holocaust. Master Sgt. Roddie Edmonds, who with his unit of some 1,292 men was taken prisoner after the Battle of the Bulge, "stared down the barrel of his Nazi captor's pistol and refused to say which of his fellow prisoners of war were Jewish," likely saving the 200 Jewish prisoners from death or slave labor. Julie Hirschfeld Davis, *Saying 'We Are All Jews,' Obama Honors Americans' Lifesaving Efforts in Holocaust*, N.Y. TIMES, Jan. 27, 2016. "Jewish soldiers captured on the Western Front could be sent to Berga, a slave labor camp where survival rates were dismal." Cathryn J. Prince, *Posthumous honor for US officer who saved 200 Jewish GIs from the Nazis - and never told a soul*, TIMES OF ISRAEL, Nov. 30, 2016.

For Slave Labor Class I, assuming that the claimant was or was believed to have been a "Victim or Target of Nazi Persecution," the fact that he or she also may have been labeled a "prisoner of war" was irrelevant: that person was entitled to payment from the Settlement Fund.

3. Roma Slave Laborers

Most Roma applicants were not previously eligible for compensation, and Holocaust-era records (and even more recent data) often were unavailable for this scattered and still-persecuted community. Moreover, much of the persecution of the Roma took place in areas that had been under communist rule, where access to archives has been limited.

As USHMM scholar Vadim Altskan observed in connection with two regions known to have been sites of Nazi terror, at the time of the claims program, "[u]nfortunately, the subject of the Nazi persecution of Roma in the Russian Federation and Belarus remains a complete *terra incognita* in terms of any scholarly and academic research. This fact might be attributed to the lack of historical records as well as oral testimonies of Roma survivors. The archival documentation we have at our disposal, at this moment [late 2003], is limited to the records of the Soviet State Commission to Investigate Nazi Crimes on the Territory of the Soviet Union available in the State Archives of the Russian Federation in Moscow, Russia … or the microfilmed copy of this collection in the USHMM archives…."[181]

In recognition of the dearth of individualized documentary proof, the IOM coordinated closely with the Special Masters and the Court to devise alternate methods to prove that a claim was plausible, particularly by consulting with experts at Yad Vashem and the USHMM, and by conducting claimant and witness interviews.

[181] Statement on Roma from the Russian Fed'n and Republic of Belarus, Vadim Altskan, Project Coordinator, Int'l Archival Programs Div., Ctr. for Advanced Holocaust Studies of the USHMM (Dec. 8, 2003), filed in connection with the IOM's Feb. 26, 2004 Group VIII Submission to the Court, approved by Memorandum & Order dated Mar. 31, 2004. *See generally* IOM Final Report, at 89-131.

Some examples of the data revealed by the IOM investigation are as follows:

a. Plavec

The IOM presented to the Court the case of the "Plavec" worksite. That geographic location did not seem to exist on a map, but a number of Roma claimants nevertheless insisted they had performed slave labor there. This was quite similar to the situation posed in the 1950s, when former slaves had described "Ankers," as discussed above and as described by Benjamin Ferencz in *Less Than Slaves*. "Ankers" turned out to have been the name of the object made at the site, not its physical location. As with "Ankers," "Plavec," too, appeared to describe a place of slave labor, notwithstanding that it was not immediately recognizable. As the USHMM observed:

> To date, we have not uncovered any independent historical record of a work camp at Plavec. However, Plavec, while not a large town, was the location of an important railway junction between Poland and both western Slovakia and eastern Slovakia, and leading to Hungary…. [I]t was clearly a strategic military position for the Germans. Enhancing the railroad links between Plavec and Podolinec (to the south-west) and between Presov and Strazski had been important infrastructure projects undertaken by the Slovak government during WWII…. The accounts of the claimants are strikingly consistent. They stated that they were forcibly taken to Plavec and forced to live in a large barn-like structure with straw on the floor. They were forced to dig trenches and bunkers, or chop and collect firewood, or perform other related work. Children occasionally worked with their fathers, helping to clear away the dirt that had been excavated, or carrying water.[182]

In further support of this analysis, the IOM provided a letter written by Dr. Milena Hubschmannova of Charles University, Prague, "a recognized expert in Romani culture and linguistics," who similarly opined that the claims were credible.[183] Those who performed slave labor at "Plavec" thus were compensated under the Slave Labor Class I program.

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[182] *See* IOM May 27, 2003 HVAP Group V Submission.

[183] *See* IOM May 27, 2003 HVAP Group V Submission, IOM Background Historical Summary for Slave Labour Class I claims, Fifth Payment Report, June 6, 2003.

b. Slovakia and Romania

In collaboration with scholars from the USHMM, Charles University in Prague and elsewhere, the IOM identified and described the conditions of other little-known work sites, such as the Lety u Pisku concentration camp in southern Bohemia, the Hodonin u Kunstatu concentration camp in Moravia, and the Dubnica nad Vahom and Krupina camps in Slovakia.[184]

Forced-labor camp for Roma (Gypsies). Lety, Czechoslovakia, wartime. Photo courtesy of the U.S. Holocaust Memorial Museum and Sovfoto/Eastfoto.

For some of these locations, the evidence supporting the survivors' claims was based upon archival records. Thus, in the Czech Republic, documents known as "c.255" certificates had been issued by governmental authorities demonstrating that the bearer of the certificate had been involved in World War II. These certificates were issued to, among others, Roma who had been incarcerated at Lety u Pisku and Hodonin u Kunstatu. As described by the IOM in a report to the Court, among the claims recommended for payment were those of 116 individuals in possession of the c.255 certificate, 101 of whom already had been approved for payment by the German Foundation:

> The c.255 certificate is issued by the former Czechoslovak Ministry of National Defence (and continued by the successor ministry within the Czech Republic) to distinguish several categories of individuals with regard to their involvement in WW II.… The c.255 certificate indicates the name, date and place of birth,

[184] *Id.* The Court adopted the IOM's recommendations and authorized payment of several hundred surviving Roma slave laborers from the former Czech Republic and Slovakia. *See* Order dated May 27, 2003.

> category of activity and dates of activity…. [A]n individual must complete a lengthy questionnaire describing specific WW II activities…. As a matter of practice, the Ministry of National Defence has accepted archival evidence or three sworn witness statements.[185]

Other places of incarceration indicated on these certificates included Dubnica; Auschwitz; Dachau; Bergen-Belsen; and Treblinka.

The data provided by claimants — consisting not only of documentary evidence such as the c.255 certificates but also personal statements (testimonies) — proved to be a unique new source of information about Nazi use of Roma slave laborers. Holocaust scholars pored over the materials assembled by the IOM, and concluded that the information provided by Roma victims was credible and historically significant. The USHMM's Dr. Paul A. Shapiro, then-Director for Advanced Holocaust Studies, and Radu Ioanid, then-Director of Archival Programs, analyzed claims submitted to the IOM from Roma living in Romania during the Holocaust era. Based on these claims and known facts about the Holocaust in Romania, these scholars concluded that the IOM claimant base was "reasonable and consistent with the historical record;" "forced labor by Roma in Transnistria was the general rule and was systematically enforced;" and "[w]hile the list of recognized camp locations in Transnistria that is being assembled by the German Foundation is accurate in the sense that the locations listed were camp and detention sites, the list is far from complete."[186]

> [M]any Roma were moved (*repartizati*) for labor purposes to several locations. They may remember a district, town, locality, village, or simply a collective farm…. The distinction among these, "recognizing" some and "not recognizing" others, would be erroneous, since the Roma deported to Transnistria were held at numerous sites throughout the entire area and moved from site to site and between specific locations as the perpetrators required. Recognition of all of the locations in the highly concentrated areas where the Roma were kept, exploited and killed will reflect the historical reality of this region during the war and will ensure that

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185 *See* IOM May 27, 2003 HVAP Group V Submission.

186 *See* Special Masters' Interim Report, at 64, quoting Dr. Paul A. Shapiro, Dir. for Advanced Holocaust Studies, and Radu Ioanid, Dir. of Archival Programs, USHMM, Statement on Roma Claims from Romania (Aug. 11, 2003) ("USHMM Statement on Roma Claims"). Radu Ioanid is the author of THE HOLOCAUST IN ROMANIA: THE DESTRUCTION OF JEWS & GYPSIES UNDER THE ANTONESCU REGIME, 1940-1944 (Ivan R Dee in Assoc'n with the USHMM 2000). *See also* IOM Final Report, at 89-90 (in addition to the research contributed by Shapiro and Ioanid, IOM also received assistance from "German Holocaust historian, Dr. Mark Spoerer, Hungary Holocaust Historian, Dr. László Karsai, [and] American Holocaust historian, Dr. Laurinda Stryker").

> legitimate claims that may fail to mention a specific location on the current [German Foundation] list are not excluded from the settlement.[187]

The researchers noted that the slave labor performed by individual Roma at these previously little-known sites varied, according to the needs of the Nazi authorities.

> In some cases this meant work burying executed Jews at one site; followed by construction work for German authorities in a town or at a site in the countryside; then agricultural work for German authorities in a town or at a site in the countryside; then agricultural work during the summer and fall on a collective farm, either in the Volksdeutsch, Ukrainian or Romanian population zones of Transnistria. Some locations where work was required were well-known large concentration areas, but a far greater number were small villages and named collective farms (kolkhozes) where labor was performed under extreme conditions. Some of these locations are so small, as in the case of individual farms, that they often do not appear on available maps, but the testimony about them is totally convincing and frightening. In these small locations, deportees were most often penned up in pigsties and animal shelters during their non-work hours.[188]

As true for other slave laborers (such as the Jewish survivors who labored at "Ankers"), the fact that the Roma claimants did not necessarily recall the exact name of the work site had no bearing upon the trustworthiness of their statements.

> Some claims are more specific than others in naming the places deportees were taken, according to the age, memory, and ability to even read the place names. In some cases, place names are remembered incorrectly — Domanovka, for instance — might be remembered as Domovka. Golta district had dozens of locations where labor was performed, for example. Reference to Golta or to one of those more precise locations, including named collective farms, should have equal validity. **Testimonies of the suffering that occurred in all of these locations, which should be added to the German Foundation list, are absolutely convincing.** Many, but not all, can be found on a detailed map of Transnistria, precisely in the zones where Roma were concentrated. **A claim might mention Golta *district;* or Vradievka *commune*; or Comorovka *collective*. All are equally valid; they are simply references to different levels of the administrative structure of the district.**[189]

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187 USHMM Statement on Roma Claims at 5.

188 *Id*. at 2-3.

189 *Id*., at 3 (emphasis in original).

c. Moldova and Ukraine

New information also was revealed as a result of claims filed by Roma slave laborers from Moldova and Ukraine. As confirmed by the USHMM's Vadim Altskan, some 3,000 claimants from those regions had provided testimonies which "mention the following locations": Berezovka (Odessa); Golta, Domanevka, Varvarovka, Kovalevka, and Vradievka (Nikolaev region); and Bershad (Vinnitsa). "These localities and/or regions are the very same ones where Roma from all over Romania were deported in 1942."[190] In addition to the slave labor performed by Roma between 12 and 60, Roma survivors stated that "children aged 5 years and above also performed forced labor. Their parents usually took the younger children to the work details out of fear of leaving them unattended."[191]

Among the types of labor Roma were forced to perform were clearing rubble; restoring damaged railroads; digging trenches; loading and unloading military cargo; carrying stones; working at coal mines and factories; attending wounded German soldiers; cutting wood; and cleaning stables.

Vadim Altskan of the USHMM observed that the "**overall credibility of the claims I reviewed with respect to dates, types of labor performed and geographical localities is very high.** The facts, dates and overall information provided by Roma survivors clearly correlate with the general historical facts (dates of occupation, duration of occupation, locations, types of labor performed, etc.), the existing archival records and published research."[192] Large numbers of sedentary Roma living in Moldova were not deported to Transnistria, but were forced to perform

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[190] *See* Statement on Roma Claims from Ukraine, Vadim Altskan, Project Coordinator, Int'l Archival Programs Div., Ctr. for Advanced Holocaust Studies of the USHMM, Statement of Vadim Altskan (Dec. 27, 2004), annexed to IOM's Jan. 12, 2005 Group XII submission to the Court (Report and Recommendations Made by the International Organization for Migration for the Twelfth Group of Claims Under the Holocaust Victim Assets Programme - Swiss Banks), approved by Memorandum & Order dated Jan. 12, 2005.

[191] *Id.*

[192] *Id.*, at 5 (emphasis in original).

slave labor of a similar sort (agricultural; mills; construction; cleaning and washing for local police).[193]

4. Disabled Slave Laborers

As the IOM explained in its June 12, 2003 report to the Court, it received a number of claims from "*Spiegelgrund Kinder*" - "former inmates of Am Spiegelgrund in Austria. These victims were children during the Holocaust who were persecuted because they were considered to be 'life unworthy of life.' As such, because of actual or perceived handicaps, they were institutionalized at Am Spiegelgrund for 'treatment' and/or rehabilitation." These individuals were persecuted because they were, or were believed to be, handicapped. The German historian, Prof. Dr. Wolfgang Neugebauer, advised IOM that "those who survived Am Spiegelgrund and were not selected for euthanasia, were those who were determined to be fit to work" and "it could be assumed that the children at Spiegelgrund had to perform labor."[194]

Generally, "these victims had entered *Am Spiegelgrund* between 1941-1942 and survived their ordeal only because they were physically able to work …. Some of these *Spiegelgrund Kinder* were also Jehovah's Witnesses who had refused to salute Hitler; others were illegitimate children, or children born to alcoholic or otherwise unsuitable or unworthy parents. Their disabilities were considered innate; all were stigmatized, and all were forced to work."[195] Recent research has suggested that Dr. Hans Asperger, "a pioneer in the study of autism and related disorders," appears to have "ingratiated himself with the Nazi regime and 'actively cooperated'

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[193] *See* Statement on Roma and Jehovah's Witnesses Claims from the Republic of Moldova, Vadim Altskan, Project Coordinator, Int'l Archival Programs Div., Ctr. for Advanced Holocaust Studies of the USHMM, Statement of Vadim Altskan (Sept. 28, 2004), annexed to IOM's Group XII submission to the Court.

[194] IOM June 12, 2003 Interim Report, Holocaust Victim Assets Programme (Swiss Banks), at 4. This group of claimants was considered a special category, persecuted "due to a physical or mental disability who were accused of having an antisocial nature and were forced to work while being forcibly detained in institutions." *See* Oct. 22, 2003 IOM Group VI submission.

[195] IOM Final Report, at 135.

with the Nazi eugenics program by helping to send severely disabled children to Spiegelgrund, which was known as a 'concealed killing center.'"[196]

Some of the victims had been sterilized. While the German Foundation had rejected these claims, the Court adopted the IOM's recommendation for payment in at least five instances which "appeared, on their face, to involve claimants who could be disabled" under the Swiss Banks settlement, and who performed slave labor. The claimants were "victims of *sterilization* who were determined to be physically or mentally 'disabled' by the Nazi Health Regime. These claimants survived because they were economically useful to the Nazi Regime in that they could perform some type of labour generally for the institutions in which they were detained."[197]

5. Jehovah's Witness Slave Laborers

For Jehovah's Witnesses, forced labor for the Nazis often was prompted by the charge of failing to perform military service.

> As a unique strategy in their ideological campaign against the Witnesses, Nazi officials routinely offered Witness prisoners the opportunity to gain release by signing a document of renunciation. The document required the signer to repudiate his religious beliefs and to denounce any Witnesses he came into contact with. Nazi captors often provided "incentives" for Witnesses to sign the document, such as beatings, torture, public executions, punishment labor, solitary confinement, reduced rations, and other extreme intimidation tactics. Refusal to sign precipitated additional abuse. Since the vast majority of Witnesses refused to sign the declaration of renunciation, they were generally condemned to perpetual detention and, presumably, eventual death within the camp or prison system. Thus, although physical extermination may not have been an explicit aim of the

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196 *See, e.g.*, Lindsey Bever, *Hans Asperger, hailed for autism research, may have sent child patients to be killed by Nazis*, WASH. POST, Apr. 19, 2018 (discussing report by medical historian Herwig Czech in the journal Molecular Autism).

197 *See* Mar. 9, 2005 IOM Group XII submission. *See also* IOM Final Report, at 135, 136 ("the most important criterion for determining their survival at all was economic. Those considered to have economic value because they could perform some type of involuntary labour were exempted from starvation, but not necessarily exempted from sterilization").

> regime, Nazi policy regarding Witness prisoners effectively doomed them to death.[198]

Thus, for example, the IOM described the case of 260 Jehovah's Witness claimants who had been charged with refusing to serve in the Romanian army. Their property was confiscated and they were imprisoned, tried, and sentenced to death. The sentences were commuted to terms of 25 years of forced labor. They were forced to work in forests and brick factories, agriculture, and prison laundries.[199] The Court compensated each of these survivors.

As the IOM observed in its Final Report, Jehovah's Witnesses in Central and Eastern Europe, who "found themselves subject to persecution by the Nazi Regime" once the latter had "expanded eastward," generally "fell into [several] groups." There were those who were "deported from Ukraine or other countries of the former Soviet Union to the territory of Germany or Austria to perform forced labour," where they often "worked more than twelve hours per day" and were "subjected to beatings, abuse, and torture when they refused to perform tasks connected with the German military effort;" those who were identified as Jehovah's Witnesses "either before or after deportation to Germany and sent to concentration camps" (although "unlike the practice in Germany itself, and, to some extent in Poland, it does not appear that there was any large-scale or systematic undertaking to deport Witnesses residing within the German-occupied territories of the former Soviet Union to concentration camps"); those from the "Zakarparskaya region of Ukraine, then subject to Hungarian control, who refused to serve in the Hungarian military and were then imprisoned and forced to perform labour;" those from the "Chernovsty region of Ukraine, then subject to Romanian control, who refused to serve in the Romanian military and were then imprisoned and forced to perform labour;" and those "who were not deported to Germany but forced to perform labour for German

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198 *See* Impact of Nazi Persecution on Minor Children of Jehovah's Witnesses in Respect to Claims submitted to the German Forced Labour Compensation Programme, submitted to the Court by the Jehovah's Witness Holocaust-Era Survivors Fund, Inc. (Apr. 19, 2002) ("2002 JWHESF Report"), at p. 2.

199 *See* IOM Mar. 9, 2005 Group XII submission; *see also* Statement on Roma and Jehovah's Witnesses Claims from the Republic of Moldova, Vadim Altskan, Project Coordinator, Int'l Archival Programs Div., Ctr. for Advanced Holocaust Studies of the USHMM, Statement of Vadim Altskan (Sept. 28, 2004), annexed to IOM's Group XII submission to the Court.

authorities in German-occupied Ukraine."[200] The Court authorized compensation for all of these Nazi victims.

6. Homosexual Slave Laborers

In its Final Report, the IOM described the slave labor compensation program for those individuals whom the Nazis had persecuted based upon actual or perceived homosexuality.

> Either from fear of being socially stigmatized after the Nazi Regime and thus hesitating to identify themselves as such, or because they died prior to 16 February 1999, homosexual survivors of the Nazi regime accounted for only 20 among IOM's 24,054 [subsequently reconciled to 24,109] successful Slave Labour Class I claims. Their individual testimonies generally aligned with the known historical facts about the persecution of homosexuals. Some were Eastern Europeans who were forcibly deported to Germany from then Czechoslovakia, and then returned to their home countries for even harsher treatment. Some, from Poland, were sent directly to concentration camps, *e.g.*, Dachau or Auschwitz, and forced to labour there. All performed slave labour, ranging from baking to industrial labour in factories. All reported severe persecution that was not limited only to their guards, although all were also subjected to frequent beatings and other abuse from guards.[201]

Long after the Second World War ended, the infamous Paragraph 175, a Nazi-era law criminalizing homosexuality, remained in effect. Although it was rescinded after German reunification, it was only in May of 2016 that the German government moved to overturn and financially compensate those who were convicted under the statute, including more than 3,500 men convicted after the war.[202]

As to those homosexuals who had been enslaved by the Nazi regime, the IOM conducted extensive outreach supported by the Court and Special Masters, although with limited success, as few such victims could be located. However, as the Court has observed, it is likely that some

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200 IOM Final Report, at 133-34.

201 IOM Final Report, at 137.

202 Sewell Chan, *Germany Says It Will Rescind Convictions for Homosexuality*, N.Y. TIMES, May 12, 2016; Mirren Gidda, *Germany to Finally Overturn 50,000 Convictions for Male Homosexuality*, NEWSWEEK, May 12, 2016; Caroline Mortimer, *German government to pay €30m in compensation to gay men convicted under historical sex laws*, INDEPENDENT, Oct. 10, 2016.

individuals compensated as members of other "Victim or Target" groups also might have been targeted or persecuted as homosexuals, but were reluctant to self-identify.[203]

D. Slave Labor Claims Paid Despite German Foundation Denials

The Distribution Plan made clear that for administrative efficiency, the Slave Labor Class I program was to adhere as closely as possible to the German Foundation program. Nevertheless, the Court did not march in lockstep with the German Foundation. The German Foundation legislation incorporated "distinctions among 'slave' labour that was performed in a concentration camp, a ghetto, or a recognized 'other place of confinement' (Category 1), 'forced' labour performed for a company (Category 3) and 'forced' labour performed in agriculture (Category 4). Within the 'forced" labour categories, there was also a requirement for victims to have been deported from their own country into another country that was controlled by the Nazi Regime. Such category distinctions did not exist [under] Slave Labour Class I, nor did the [German Foundation] deportation to another country requirement apply. For Slave Labour Class I, it sufficed for victims to be members of groups specifically targeted for Nazi persecution … and to have performed 'slave' (involuntary) labour for the Nazi Regime."[204]

Thus, where survivors deemed ineligible under the German Foundation criteria nevertheless met the definition of "slave laborer" under the Swiss Banks Settlement Agreement, those individuals were compensated from the Settlement Fund.

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[203] *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407, 417 (E.D.N.Y. 2004) ("Surely some proportion of the Jewish, Romani and Jehovah's Witness Victims have been homosexual, even if not explicitly identified or targeted by the Nazis as such").

[204] IOM Final Report, at 71.

1. Roma in Hungary

The IOM described the claims of Hungarian Roma, all of whom stated that they were enslaved after the German occupation of Hungary in March 1944.

> While there was never a single, centralized policy of forcing Hungarian Roma to perform slave labour, it is possible all the same to discern general patterns. The first phase of slave labour occurred shortly after the March 1944 occupation, when raids on Roma settlements began, and Roma were rounded up by Hungarian gendarmes, Arrow Cross men or German soldiers and taken to perform slave labour, primarily in agriculture. Often the Roma were confined in barns or sheds on estates where they performed the slave labour…. The second phase of slave labour occurred in late October 1944, after Horthy was removed from the head of government and his successor, the fascist leader, Szalasi, was installed. After this time, the violence against Roma appears to have increased, with executions becoming common, and there were also efforts to begin mass deportations of Roma to concentration and forced labour camps in Germany. Notably, many of the Roma living in the Transdanubian region of Hungary were rounded up and confined in extremely harsh conditions in the fortress of Komarom, which was already functioning as a transit and detention camp for Jews and political prisoners.[205]

The IOM described 369 Hungarian Roma who "were confined in the Komarom camp which was initially used as a transfer point for prisoners being deported from Hungary to Germany in 1944 but was later also used as a detention camp…. under the direct control of the SS and the German Ortskommando" as of October 15, 1944. The German Foundation had not approved the site for Roma labor claims. The IOM explained that the German Foundation appeared to have taken an inconsistent approach, having accepted Komarom as a labor site for Jewish survivors.

> The German Foundation has recognized Komarom as a ghetto for Jewish detainees, thus allowing for the automatic presumption of forced labour to apply. For Roma detainees, however, the German Foundation recognized the camp only as an "other place of confinement" with the qualification that it only awarded compensation to Roma where there is a specific indication that the individual claimant performed forced labour…. However, the conditions were essentially the same for either group. Ultimately, whether Komarom is characterized as a transit camp or ghetto is not decisive. What is controlling is the atrocities that

[205] *See* IOM summary: "Historical Background," Group VII.

> occurred there and the suffering of all who were detained there in the horrendous conditions.[206]

Roma were forced to work at construction, painting and digging graves. Some Roma had failed to mention in their claim forms that they had specifically performed "work" while incarcerated at Komaron, and so they were rejected by the German Foundation on that basis.

The Court took a different approach with these claimants. As the IOM noted, the "severe conditions they describe at the camp are consistent with the research of two of the leading historians, Michael Zimmerman and Ctibor Necas, who have written about the Roma Holocaust in Hungary and Komarom." In addition, "Hungarian historians such as Laszlo Karsai and Szabolcs Szita have also published articles and books about the Hungarian Roma Holocaust and described the conditions at Komarom as being consistent with the statements provided by the claimants and the research of other historians."[207] Thus, all credible Roma claims relating to incarceration at Komarom were compensated under Slave Labor Class I.

2. Residents of Western Europe

The German Foundation did not pay the claims of Western Europeans. The German Foundation determined that the harm suffered by laborers in Western Europe was not of the same magnitude as that suffered by those in Central and Eastern Europe. Exceptions were made for those in camps or ghettos, who had performed slave (not forced) labor.[208] Thus, Jewish Nazi victims in Western Europe for the most part were compensated by the German Foundation. Non-Jewish victims, however, generally were not.

The IOM requested that the Court approve the claims of 83 French Roma. Their claims either had been rejected or not reviewed by the German Foundation. The IOM pointed out that regardless of the work conditions experienced by Western Europeans who were not among the "victims or targets of Nazi persecution," Roma, like Jewish Nazi victims, were uniquely singled

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206 *Id.*

207 *Id.*

208 IOM Final Report, at 72.

out for persecution, and suffered severely. As the Court confirmed in approving the claims, under the definition of Slave Labor I, the geographic location of the claimant was irrelevant. For purposes of the class, all that mattered was whether the claimant was a member of a "Victim or Target" group as set forth under the Settlement Agreement.

The IOM noted that the "largest camp [to which Roma were sent] in the Occupied Zone was established at Montreuil-Bellay where nomads were interned from November 1941 to January 1945. Although fewer camps existed in the Free Zone, Roma were also interned in various locations including Argelès-sur-Mer, Rivesaltes, Saliers…, Gurs, Noè and Lanneemzan….. Aside from camp-related duties such as road building, barrack construction, firewood collection and camp maintenance, inmates of the internment camps were often required to perform labour for external enterprises. At Montreuil-Bellay, inmates, including children, were engaged in the production of camouflage nets. Others were sent to work at an airfield in Terrefort or engaged in agricultural labour. There is also a record of an attempt to send workers from Montreuil-Bellay to the Renault factory at Le Mans….. IOM notes that the dates of confinement stated by Roma [applicants] are in accord with the known dates of operation of the French internment camps. The severe conditions they describe at the camps are consistent with the research of leading historians, such as Denis Peschanski and Jacques Sigot, who have written about the Roma Holocaust in France."[209]

3. Blood Donors

In its Group XII submission, the IOM described 47 Roma who were living in Belarus and Russia and, during the Holocaust, "were adolescents who were forced to supply blood to wounded German soldiers" on "schedule." They were also forced to care for wounded soldiers. Vadim Altskan, then-Project Coordinator for the International Archival Programs Division, Center for Advanced Holocaust Studies of the USHMM, pointed out that there were also "at least several hundred cases of Roma survivors of both genders, who were teenagers during that

[209] *See* IOM Jan. 23, 2006 Group XIV submission.

time, stating that they were constantly forced to donate their blood for the wounded German servicemen."[210] The Court authorized payment for these claims.

4. Laborers Who Were Not Deported

The German Foundation law distinguished between "slave" and "forced" labor — terms that did not appear in the Swiss Banks Settlement Agreement and were not relevant to the Court's distribution process. However, under the German Foundation program, "forced" labor was treated differently from slave labor. A laborer had to have been "deported" to be eligible for the maximum payment.

"Forced laborers who were not deported from their homeland into the territory of the Third Reich did not qualify for a payment under the German Foundation Law as a 'forced laborer without deportation.' Under the German Foundation Law, partner organizations administering claims were able to make limited payments to additional groups of persons … who were victims of Nazi wrongs under a provision known as the 'opening clause.' However, it was clearly stated in the law that this provision could only be used if there were sufficient funds to make full payments to slave laborers."[211]

Thus, "Jews who managed to survive the Shoah in Axis countries without deportation but who were put to forced labor by their fascist governments" were to receive "the maximum payments possible under an agreement reached between the Claims Conference and the German Foundation." Ultimately, some 4,500 survivors were paid through this process by the German Foundation, albeit at a lesser amount than if they had been deemed to have been "slave laborers." However, this distinction was not applicable to Slave Labor Class I, and so all such individuals were paid the same $1,450 sum available to other eligible claimants.

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[210] Statement on Roma from the Russian Fed'n and Republic of Belarus, filed in connection with the IOM's Group VIII Submission to the Court, citing Dec. 8, 2003 Report of Vadim Altskan.

[211] http://www.claimscon.org/index.asp?url=sl/oc_statement ("Payments to Forced Laborers Who Were Not Deported").

Claims by Roma laborers similarly were approved by the Court, even where the German Foundation had rejected them because the work sites were not officially recognized as slave labor locations under the German Foundation law. For example, as part of the February 8, 2005 Amended IOM Group XII submission, the IOM presented 768 claims that had been rejected, for reasons including that "the claimants may not have been confined in a location that was recognized by the German Foundation as a concentration camp or ghetto where there is an automatic presumption of forced labour, or that claimants were confined in a location categorized as an 'other place of confinement' where claimants must specifically assert that they performed forced labour or because claimants who were forced to perform labour were not deported from their country of origin to a German-occupied territory to perform that forced labour and deportation [as] required by the German Foundation … to be eligible for compensation."[212] The Court, reviewing the IOM's evidence, determined that the claims were plausible.[213]

The Court also concluded that it was inappropriate to reject claims on minor technical grounds. Thus, for example, the Court approved the claims of 65 Roma who had performed labor in Romania, but did not specifically state they were deported to Transnistria. As the IOM observed, it was plausible that these individuals had performed slave labor, based upon the historical evidence that the German Foundation already had accepted in other contexts.

> The German Foundation recognized the whole of Transnistria as a slave labour area where forced labour could be presumed based on the review of the claims by and report of United States Holocaust Memorial Museum historians Paul Shapiro and Dr. Radu Ioanid which was supported by the historical record and work of Romanian Holocaust historian Achim Viorel. As a result, all Roma, regardless of age, who were deported to these locations were presumed to have performed forced labour.[214]

The children of Jehovah's Witnesses presented a special case for the Court's consideration, particularly because the German Foundation had advised the IOM that their claims generally were not compensable. As the Holocaust historian Sybil Milton had observed

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[212] *See* Feb. 8, 2005 Amended Report and Recommendations of the International Organization for Migration (IOM) for the Twelfth Group of Claims in *In re Holocaust Victim Asset Litig. (Swiss Banks).*

[213] *See* Amended Order dated Mar. 9, 2005 (approving IOM Group XII submission).

[214] *See* Feb. 8, 2005 Amended IOM Group XII submission.

at the inception of the program, the "fate of these children removed from their families have not been researched, in part because they have been disregarded as survivors in postwar Germany."[215] These children had been forcibly taken from their parents' homes and were "incarcerated in Nazi reeducation homes or were sentenced to 'foster care' with Nazi families. While in detention they were subject to physical and mental abuse and were made to perform hard labor as part of a strategy to punish them for their or their parents' religious views."[216] Most of the children were German and thus "were not deported across a state border," one of the requirements under the German Foundation legislation, nor were they incarcerated in a location "recognized by the Foundation as 'concentration camp-like,'" and thus were ineligible under the German Foundation criteria.[217]

Because Slave Labor Class I did not impose such requirements (*i.e.*, there was no requirement of deportation across national borders, or incarceration in a specifically designated site), the Court, in contrast to the German Foundation, determined that the claims were compensable. The president of the JWHESF wrote to the Court after this decision, noting that "it is the official acknowledgment of injustice that matters most to them. The amount of the monetary reward is secondary. While rejection of their claims by the German Foundation may be difficult to accept, the claimants will greatly appreciate recognition of their suffering as represented by an HVAP award."[218]

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[215] *See* JWHESF Report, Appendix A, at 2, quoting Sybil Milton, *Jehovah's Witnesses as Forgotten Victims*, *in* PERSECUTION AND RESISTANCE OF JEHOVAH'S WITNESSES DURING THE NAZI-REGIME 1933-1945 141, 144 (Hans Hesse ed., 2001).

[216] *See* Letter from JWHESF to Court (June 19, 2002)*; see* JWHESF Report, at 6, discussing personal statements of claimants (*e.g.*, "In this home I was forced to do hard labor from 6 a.m. to 8 p.m.;" "the Gestapo appeared at my school and took me to an orphanage … I was assigned hard labor;" "I was taken to so-called foster parents, a Nazi family … for more than nine years I had to endure life there as their personal slave"); *id.*, Appendix A, at 9 - 23 (*e.g.*, "…I was sent to … a farmer living in Tschischendorf, who exploited me as a cheap nanny for this three children. He also made me carry heavy cattle feed and milk cans in the stable, I also had to help threshing the wheat").

[217] *See* Letter from JWHESF to Court (June 19, 2002).

[218] *Id.*

5. Italian Military Internees

The German Foundation determined in an August 9, 2001 decision that "Italian Military Internees ('IMIs') were not eligible for compensation under the German Foundation Act because of their status as Prisoners of War ('POWs'). If, however, they had been removed from POW camps and thereafter detained in Nazi concentration camps, their POW status became irrelevant and they would be considered as eligible" under the German Foundation program.[219]

By contrast, IMIs could be eligible for compensation under Slave Labor Class I "even if they were held uniquely in POW camps, so long as they were members of at least one of the defined 'victim or target' groups described in the Distribution Plan."[220] As the Special Masters advised the IOM and representatives of the IMIs, however, those individuals also had to satisfy the "slave labor" requirement under the Settlement Agreement, and therefore needed to plausibly show that they had performed such work while interned. Accordingly, IMI claimants were compensated if they otherwise satisfied the criteria of Slave Labor Class I.

E. Denials of Slave Labor Claims

As true for all other components of the Swiss Banks Settlement, the Court encouraged the claims administrators to assist claimants in assembling the data needed to support their claims; to conduct additional research; and to incorporate evidentiary presumptions in favor of the claimants, so as not to penalize them for the lack of documentation and the 60-year gap between their slave labor and their compensation.

Even so, thousands of claims had to be denied for a variety of reasons, including the death of the former slave laborer prior to the February 15, 1999 effective date of the compensation program; the affirmative indication that the claimant was not Jewish, Roma,

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[219] IOM Final Report, at 71

[220] *Id.* More than a million Italian soldiers were disarmed by Germany on September 8, 1943. Of these, some 750,000 were sent to prison camps. Conditions in the camps were harsh, and inmates were subject to forced labor. Prisoners (whom the Nazis preferred to call "Italian Military Internees") were offered the opportunity to return to Italy if they agreed to support Hitler and Mussolini and rejoin their armed forces. A large majority of the prisoners refused, and remained in forced labor in the camps. Nicola Labanca, *The Italian Wars*, *in* THE OXFORD ILLUSTRATED HISTORY OF WORLD WAR II 74, 103-104 (Richard Overy ed., Oxford Univ. Press 2015).

Jehovah's Witness, homosexual or disabled as required under the Settlement Agreement; or the claimant's inability to demonstrate that he or she had performed labor during the Holocaust.

As described by the IOM in its Final Report to the Court:

> The large number of rejections concerned mainly claimants who either did not plausibly demonstrate that they belonged to one of the Slave Labour Class I target groups of Nazi persecution (Roma, Jewish, Jehovah's Witnesses, Homosexuals, or Disabled individuals) or that they performed slave/forced labour under the Nazi Regime. In many instances, appellants had obviously misunderstood the concept of target group and complained about the fact that they were not considered eligible under Slave Labour Class I, especially if the appellant already had received an award under [the German Foundation program].[221]

In its June 29, 2004 Group VII submission, for example, the IOM recommended that the Court reject the claims of 76 Roma:

> While all of the claimants are target group members, they either did not allege that they worked for the Nazi Regime, provided no evidence that they worked for the Nazi Regime, were too young to have performed work, described work performed by persons other than themselves, such as parents or siblings, or described hiding in the woods, or alleged beatings and atrocities performed upon women….. [and] the historical record did not plausibly support that slave labour was performed ….[222]

Similarly, the IOM recommended and the Court agreed that claims submitted by those who were very young children had to be denied, where the claimants affirmatively had stated that they had not performed labor:

> Children between the ages of 2 and 6 at the time their respective countries were occupied by the Axis Forces and clearly indicated that they accompanied their parents to various camps or worksites where their parents were forced to work but did not indicate that they themselves were forced to perform any labour.[223]

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221 IOM Final Report, at 143.

222 IOM June 24, 2004 Group VII Submission. *See also, e.g.*, IOM Dec. 5, 2005 Group XIII submission, (rejecting 1,381 Roma claims for the reasons set forth in Group VII); IOM Feb. 22, 2006 Group XVII submission (rejecting 5,175 Roma claims).

223 *See* IOM Dec. 20, 2005 Group XV submission.

Of the 38,875 claims processed by the IOM, 14,766 — 38% — were denied[224] (and, as noted previously, 24,109 claims were approved).

As to the Claims Conference, of the 321,755 claims the organization processed on behalf of the Court, 147,349 — almost 46% — were denied (and, as noted, 173,914 claims were approved).[225] Of the 115,852 claims rejected, 34,142 – over 29% – were duplicates, that is, applications submitted by or on behalf of claimants who had already submitted a claim. For the remaining approximately 81,000 denials, the principal reasons such claims were rejected were the following: the application was filed after the deadline; the application should have been submitted to the IOM, or another of the partner organizations (although in these circumstances the Claims Conference and IOM did forward such applications to the appropriate organization); the claimant had died prior to the effective date of February 16, 1999; and/or the claimant had provided a place of persecution that could not be deemed a valid site under the historical and factual evidence and the rules of the slave labor program.

V. CONCLUSION

No survivor has received adequate compensation, if such a term ever can be applied to the Holocaust, for his or her losses. Setting aside their incalculable psychological and physical trauma, those who were enslaved by the Nazi Regime and its business and political associates have never been, and never will be, made whole even on a monetary basis. Those who were paid

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224 IOM Final Report, at 145.

225 *See* "Final statistics relating to Conference on Jewish Material Claims Against Germany, Inc. ('Claims Conference') Swiss Banks claims received and paid under the Swiss Refugee and Swiss Slave Labor Class I programs, including funds received from the Settlement Fund to assist Help/Outreach Centers, and for the SDAP Publication Notice, Apr. 12, 2010, filed in connection with the Court's Order of Apr. 15, 2010." *See also* Order for Disposition of Unused Refugee Class and Slave Labor Class I Program and Administration Expenses Funds to Assist Help/Outreach Centers and for the SDAP 2005 Publication Notice.

As part of the Settlement Fund accountant's final reconciliation work, a minor discrepancy was noted in the number of approvals the Claims Conference reported to the Court (173,926) versus the number of individuals actually approved (173,914). The Claims Conference appears to have included 12 additional awards in its April 12, 2010 Final Statistics, as compared with the number determined upon final reconciliation. This is a statistically insignificant.

under the Slave Labor Class I of the Swiss Banks Settlement as well as under the German Foundation received, at most, several thousand dollars. While these amounts certainly were meaningful for many survivors, especially in Central and Eastern Europe, for others, the payments were symbolic. The compensation provided some recognition, decades after the Holocaust, that many business entities profited from the back-breaking free labor that Hitler's victims were forced to endure.

For the members of Slave Labor Class I, though, it is doubtful that any survivor could have demonstrated a sufficient link between his or her slave labor and the Swiss entity that might have benefited from it. However morally strong the claim, it was not necessarily legally sustainable. As Judge Korman has said of the German slave labor lawsuits, which were dismissed by other courts: "I take no position regarding whether these [lawsuits] were correctly decided, or whether they would even apply here. Instead, I cite them as a reality check for those objectors who believe that strong moral claims are easily converted into successful legal causes of action."[226]

The payments from the Settlement Fund were intended to offer the greatest number of Holocaust victims, through a massively complex global process, a straightforward and sure means of compensation in a relatively short period of time. By that measure, a program that in just a few years was able to reach and pay more than 198,000 individuals around the world, the vast majority of whom were the elderly survivors of camps, ghettos, and labor battalions, met those goals.

[226] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 148-49 (E.D.N.Y. 2000).

THE SLAVE LABOR CLASS II CLAIMS PROCESS

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I. SWISS ENTITIES AND SLAVE LABOR

When the lawsuits against Swiss financial institutions and other Swiss entities were filed in the United States courts in the late 1990s, none of the complaints included claims based upon slave labor performed for Swiss companies. The fact that Swiss industry used slave labor during World War II was not widely known. It was the companies themselves that expressed concern about their possible liability for Holocaust-era slave labor, and therefore "Slave Labor Class II" was added to the Settlement Agreement at the behest of the defendants.

The Slave Labor Class II program, which was established because of the defendants' insistence upon an "all-Switzerland" release as a condition to the settlement, was expected to be — and was — complex and labor-intensive. Unlike the other four settlement classes, the class was not limited to "Victims or Targets of Nazi Persecution" (those who were, or were targeted as, Jewish, Roma, Jehovah's Witness, homosexual and/or disabled). Rather, it was open to any victim of the Nazis who labored in a camp owned by a Swiss entity. Who those persons were; where they worked; and whether those companies knew the type of labor they were employing — or even kept records of their Holocaust-era activities — was the challenge faced by the Court and its administrative agents.

Largely due to the litigation and claims process, a little-known but important aspect of Switzerland's history was revealed. In the view of Switzerland's commission of historical experts, the Bergier Commission,[1] the Swiss belief in its wartime neutrality rested on some questionable premises, as indicated by, for example, Switzerland's handling of Nazi gold and its treatment of refugees. In addition, in the case of Swiss companies operating in Germany, many used slave labor. Although they "maintain[ed] their autonomy and their private sector character," at the same time, "through their manufacturing activities and the employment of a

[1] The Swiss Parliament and Federal Council created the Independent Commission of Experts Switzerland - Second World War ("ICE" or "Bergier Commission," after its Chair). The Bergier Commission and its historians and economists were "mandated to conduct a historical investigation into the contentious events and incriminating evidence" of Switzerland's conduct during and after the Second World War. FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR 5 (Pendo Verlag GmbH 2002), *available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf ("BERGIER FINAL REPORT").

vast number of workers, [Switzerland] contributed to the rallying and expansion of the German economy, thus supporting the Nazi system."[2]

II. ANTICIPATING A CLAIMS PROCESS

It was anticipated by the Court and Special Masters that Slave Labor Class II would pose unique administrative challenges due to the (i) minimal availability of historical analysis about Swiss-owned companies using slave labor; (ii) failure of the Settlement Agreement to sufficiently narrow and define the scope of the class (*i.e.*, which companies and subsidiaries were included; ownership changes pre/post War); and (iii) defendants' insistence that the class be open to all Nazi victims, not just the five victim groups included in the definition of Victims or Targets of Nazi Persecution. As a result, any individual who performed slave labor[3] for a Swiss entity — and it was not clear how many Swiss entities were at issue — potentially was a member of the class.

The Settlement Agreement defined Slave Labor Class II as those "individuals who actually or allegedly performed Slave Labor at any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or business concern headquartered, organized, or based in Switzerland or any affiliate thereof, and the individuals' heirs, executors, administrators, and assigns, and who have at any time asserted, assert, or may in the future seek to assert Claims against any Releasee other than Settling Defendants, the Swiss National Bank, and Other Swiss Banks for relief of any kind whatsoever relating to or arising in

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[2] CHRISTIAN RUCH, MYRIAM RAIS-LIECHTI, & ROLAND PETER, INDEP. COMM'N OF EXPERTS, COMPANIES AND FORCED LABOUR: SWISS INDUSTRIAL ENTERPRISES IN THE "THIRD REICH", English summary at 3 (Chronos Verlag 2001), *available at* https://www.uek.ch/en/schlussbericht/Publikationen/pdfzusammenfassungen/06e.pdf ("Swiss Industrial Enterprises in the 'Third Reich'").

[3] The same definition of "slave labor" applied to Slave Labor Class II as to Slave Labor Class I: "work for little or no remuneration actually or allegedly performed by individuals involuntarily at the insistence, direction, or under the auspices of the Nazi Regime." Settlement Agreement Section 1 (Jan. 26, 1999), attached to the Final Report as part of the exhibit entitled "Claimant Application Materials." This definition encompassed work generally known as "forced labor" as well as the "extermination through labor" program more commonly referred to as "slave labor."

any way from such Slave Labor or Cloaked Assets or any effort to obtain redress in connection with Slave Labor or Cloaked Assets."[4]

Further litigation was required to define the parameters of the class, particularly which companies were eligible for releases. Eventually, the Court was able to publish a list of Swiss companies that allegedly or admittedly used slave laborers during World War II. Thousands of claimants applied, and each case had to be reviewed individually by the International Organization for Migration (IOM), the Court's administrative agent for Slave Labor Class II, with very little historical information upon which to assess the claims.

The IOM undertook a broad notice program for Slave Labor Class II. Information and material was presented in 28 languages and disseminated through more than 80 IOM field offices with the assistance of partners in those countries where the IOM did not have a presence. The IOM coordinated with victim associations, target group associations, local governments and authorities, international organizations, minority group representatives, international and national newspapers, and television and radio stations. There were special information campaigns for homosexual, Roma, Jehovah's Witness and disabled or handicapped potential claimants.[5]

The IOM analyzed 16,474 unique claims from individuals in 42 countries around the world. The Court approved payments of $1,450 each to 570 former slave laborers under the Slave Labor Class II program (including 13 on appeal), resulting in total approved payments from the Settlement Fund of $826,500, of which $696,448 ultimately was paid.[6]

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4 Settlement Agreement, Section 8.2(d).

5 *See* Letter from Senior Legal Officer & Team Leader, Int'l Org. for Migration ("IOM"), to Special Masters (Feb. 13, 2004) ("February 13, 2004 IOM Letter to Special Masters").

6 *See* Memorandum from IOM Director, Claims Programmes, to Judge Edward R. Korman, Background Information: Proposal to Return Final Balance Remaining in the Award Account for IOM's Holocaust Victim Assets Programme - Swiss Banks ('HVAP') to the Swiss Banks Settlement Fund, Appendix B - Memorandum of 21 May 2008: Final statistics relating to IOM Swiss Banks claims received and paid throughout the program; other general statistics relating to claims processed by IOM (Oct. 20, 2008) ("IOM Report of October 20, 2008"). Not all funds authorized could be paid, as recipients sometimes moved without a forwarding address (nor could such an address be located after diligent efforts). Other recipients passed away and no heirs could be located.

A. Swiss Efforts to Learn About the Nation's Slave Labor Past

At the time of settlement, there was little data concerning Swiss companies or affiliates that may have used slave labor. As the Court noted in its July 26, 2000 opinion approving the Settlement Agreement as fair, the Special Masters had consulted with representatives of the Swiss Federal Archive (SFA). The SFA confirmed that although "indirect and scattered evidence could be found with time consuming research," "tangible information reflecting the situation of forced labor workers in German branches of Swiss firms" could not be identified.[7]

However, beginning prior to the Settlement and continuing through the implementation of the Distribution Plan, Switzerland started examining its role during World War II. This research included a report by the Swiss Press Agency, the "von Kauffungen Report," and the Bergier Commission's investigation and reports concerning Swiss companies' use of slave labor. Other scholars also investigated Swiss companies' use of slave labor in the context of these companies' economic development in Germany during World War II. This research proved important to the claims process.

1. Von Kauffungen Report

On August 24, 2000, following the Court's issuance of the Final Approval Order and prior to the September 11, 2000 submission of the Proposed Plan of Allocation and Distribution of Settlement Proceeds (the "Distribution Plan"), the National Swiss Press Agency released a news report. This report, entitled "Firms with Swiss Capital and Forced Labour in Germany," was written by the Press Agency's Head of Operations, Roderick von Kauffungen.[8] Von

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[7] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 162 (E.D.N.Y. 2000) (quoting Swiss Federal Archives, *Forced Labor in Swiss Controlled Firms in NS Germany; Records in the Swiss Federal Archives; Preliminary Overview* 2 (Apr. 10, 2000)). With respect to labor performed for Swiss companies, the term "forced labor" often was used in research reports and other documents reviewed by or provided to the Special Masters. It is possible that this term was meant to distinguish such work from that performed by Jewish individuals and others whom the Nazis intended as a matter of policy to work to death ("slave labor"). *See* Distribution Plan, Vol. I, at 142 n. 387. However, the Settlement Agreement made no distinction between "slave" and "forced" labor; the class was defined as "Slave Labor Class II;" and accordingly all references to such labor in this Final Report are described as "slave labor" unless called otherwise by a third party in a direct quotation.

[8] Roderick von Kauffungen, Head of Operations, Nat'l Swiss Press Agency, *Firms with Swiss Capital and Forced Labor in Germany* (Aug. 24, 2000) (informal translation obtained by Special Masters and available at http://www.swissbankclaims.com/Documents/2015/von%20Kauffungen.pdf) ("Von Kauffungen Report").

Kauffungen estimated that "firms in Germany with Swiss capital employed over 11,000 forced laborers" and added that "[it] must nevertheless be assumed that the actual numbers are greater."[9]

As true for a number of categories of records relating to Holocaust-era events in Switzerland, such as with bank accounts and refugees, in the case of Swiss slave labor, the historical records also were incomplete. Von Kauffungen had difficulty obtaining documents and had to consult several sources to make some headway in tracking down the data:

> Firm and bureaucratic archives were bombed, disposed of, destroyed. Others are molding in damp cellars. . .
>
> . . . .
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> In smaller enterprises, the search proves more difficult [than in larger enterprises]. Workers from the West can be determined through residence registration offices, social insurance agencies, and local health insurance institutions. The workers from the East, for whom a tax was owed to the state, can be found among the lists of the tax offices.[10]

Based on the available if somewhat limited information, von Kauffungen determined that all "large industrial enterprises with Swiss capital, that were still productive after 1943, were considered to be vital to the war effort. Only these firms received contingents of forced laborers [and they] were pr[e]scribed what they were to produce."[11] Without the use of such labor, a "steady flow of mass produced products would not have been possible."[12]

Von Kauffungen concluded that Swiss companies involved in the war efforts, such as those "which supplied metal (Alusuisse), produced parts for armament goods (Georg Fischer), processed foodstuffs (Maggi), or made textiles for the Army (Schiesser), continually used forced labor."[13] Another major business, Brown Boverie & Cie, developed into the largest armaments

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9 *Id.* at 2.

10 Von Kauffungen Report at 4-5. The report and cover letter were provided to the Special Masters in their original German. CRT Secretary General Mary Carter, who worked as an attorney in the Special Masters' office in New York before transferring to the CRT in Zurich in the fall of 2001, was fluent in German and translated the documents into English. All page citations are to the English translation.

11 *Id.* at 2.

12 *Id.*

13 *Id.* at 7.

enterprise in Baden. Von Kauffungen discovered that it had used concentration camp prisoners as slave laborers. Specifically, "during the last weeks of the war the [Brown Boverie & Cie] subsidiary Stotz-Kontact moved machines and equipment to the concentration camp Buchenwald. For a short period of time, parts for the unmanned large-scale V2 missile were produced there."[14]

Von Kauffungen reported in detail about the forced labor used by a company called the First German Ramie Company (*Erste Deutsche Ramie-Gesellschaft*), which was located in Emmendingen and was purchased by Swiss brothers in the 1930s.[15] The Emmendingen city archivist estimated the total number of forced laborers at the Ramie company, which produced both textiles and airplane parts, to be 800.[16]

Von Kauffungen concluded that these Swiss-owned firms profited three-fold. First, through the process of "Aryanization," some enterprises were able to buy Jewish businesses cheaply before the war.[17] Second, during the war, Swiss subsidiaries and affiliated companies (and their parent companies) profited from rising sales and profits. Third, at the end of the war, "letters of protection" shielded all enterprises which were able to prove the existence of Swiss capital from threatened dismantling, confiscation and theft by the Allies.[18]

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[14] *Id.* at 8.

[15] *Id.* at 11-12.

[16] *Id.* at 12.

[17] *Aryanization* has been described as follows: "As early as 1933, Jewish businessmen were being made to sell their companies. During the first few years, however, the firms were mostly left in peace by the authorities. The owners were free to decide to whom they would sell and the selling price was agreed between the two parties. Even if they were based at the time on the agreement of both parties, such take-overs cannot be termed 'fair deals' without closer investigation. The contracts were not drawn up on a legal basis and under free-market conditions. Instead, the situation was one in which the Jewish businessmen were under great pressure to sell. Furthermore, in view of the currency and tax restrictions it was difficult to use the income from the sale… From the middle of 1936 on, sales contracts had to be submitted to … regional economic advisors … Towards the end of 1937, pressure on large firms in particular increased, and from 1938 on take-overs had to be approved by the authorities. At this stage it was possible to sell a firm only at a price well below its real value. Economic persecution turned a new corner after the annexation of Austria … in March 1938, when within a few weeks thousands of Austrian companies were 'Aryanised' or liquidated. This 'uncontrolled Aryanisation' was followed by state regulation and an organized 'Aryanisation' which manifested the state's economic interest. The authorities imposed an 'Aryanisation tax' … and tried to ensure as great a margin as possible between the amount paid to the vendor and the actual sale price, the difference being paid into the state coffers." BERGIER FINAL REPORT 322-23.

[18] Von Kauffungen Report at 3.

For a number of companies, von Kauffungen discovered that name lists still existed. Georg Fischer had a computerized database that contained the names of 1,707 slave laborers at its Singen, Germany facility.[19] A study of Aluminum GmbH Rheinfelden identified 2,879 slave laborers by name.[20] Von Kauffungen reported that Swiss employers — Georg Fischer, Aluminum-Industrie Gemeinschafter, and Brown Boveri & Cie — together employed 8,709 slave workers.[21]

2. Bergier Commission

On December 13, 1996, the Swiss Parliament passed a decree establishing the Independent Commission of Experts, in response to continuing allegations that Swiss banks had hoarded Nazi gold and unlawfully retained the bank accounts of Jews who had perished in the Holocaust. The Commission was headed by Jean-François Bergier, a Swiss historian, and consisted of nine other members, including scholars from Switzerland, the United States, Israel and Poland. The Bergier Commission was mandated by the Swiss Federal Council to "examine the period prior to, during, and immediately after the Second World War."[22]

The Bergier Commission issued 18 interim reports and one comprehensive final report over its five-year examination of Switzerland's actions during the Nazi regime. Most relevant to Slave Labor Class II were the Commission's reports on Swiss subsidiary companies in the Third Reich and their use of slave labor.[23] While the information remaining after the war was

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19 *Id.* at 28-29.

20 *Id.* at 21.

21 *Id.* at 2.

22 *See* Distribution Plan, Vol. I, at 63-64.

23 In addition, the Bergier Commission addressed the issue of slave labor in Swiss chemical enterprises in an interim report titled "Swiss Chemical Enterprises in the 'Third Reich.'" The summary reported, for example, that "[a]t the Roche plant in Grenzach, at least 61 prisoners-of-war and 150 foreign forced labourers were deployed between 1940 and 1945; they came from the Ukraine, Slovenia, the Netherlands and France, as well as other countries." LUKAS STRAUMANN & DANIEL WILDMANN, INDEP. COMM'N OF EXPERTS, COMPANIES AND FORCED LABOUR: SWISS CHEMICAL ENTERPRISES IN THE "THIRD REICH", English summary at 3 (Chronos Verlag 2001), *available at* https://www.uek.ch/en/schlussbericht/Publikationen/pdfzusammenfassungen/07e.pdf.

incomplete,[24] there was still sufficient evidence for the Bergier Commission to conclude that Swiss subsidiaries operating in Germany "maintain[ed] their autonomy and their private sector character," and, at the same time "through their manufacturing activities and the employment of a vast number of workers, they contributed to the rallying and expansion of the German economy, thus supporting the Nazi system."[25]

For Swiss companies operating in Germany in 1933, the Bergier Commission found that "none of the parent companies that [were] looked at was guided by ideological motives or by an approbation of Hitler's regime that was anything more than formal."[26] Rather, their objectives were financial:

> The [Swiss] companies maintaining a presence in Germany had made investments that were now expected to produce a return. They had conquered a market and won over a certain clientele. They had taken on, and sometimes specially trained, staff. They had every reason for remaining operational.[27]

However, some Swiss companies "complied readily with the measures taken by the Nazis against the Jews, and in some cases even anticipated them." As early as 1934, a board member of Geigy assured the German authorities that the "company's capital was in purely 'Aryan' hands and that his senior managers were all of 'Aryan descent.'"[28] Other companies followed, dismissing Jewish employees, either spontaneously or on request. There were also companies that resisted as long as they could.[29] Some Swiss subsidiaries jockeyed for a competitive advantage. Maggi, for instance, "enthusiastically even obsequiously compl[ied] with the new regime and … never missed an opportunity to emphasise its German, 'Aryan' character."[30] The Bergier Commission concluded that "[i]t was the desire to survive rather than any ideological convictions which forced these subsidiaries into the arms of Nazism."[31]

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[24] "It is not known how many Swiss companies had subsidiaries in Germany because no lists were made at the time." BERGIER FINAL REPORT at 293.

[25] Swiss Chemical Enterprises in the "Third Reich" at 3.

[26] BERGIER FINAL REPORT at 297.

[27] *Id.* at 296-97.

[28] *Id.* at 297.

[29] *Id.*

[30] *Id.* at 302.

[31] *Id.* at 303.

The Bergier Commission made a number of findings on the Swiss use of slave labor: Swiss subsidiaries used slave laborers and prisoners-of-war; there were "repeated complaints particularly about the poor food situation and the maltreatment of workers by German staff," and "company management on the spot was essentially responsible for this deplorable situation, since there was in fact considerable room for discretion in how forced labour was managed, housed and treated in general."[32]

For example, at the Nestlé plant in Kappeln, Germany, 38 people were packed together in an area of 59.4 square meters (or approximately 640 square feet).[33] One Ukrainian slave laborer recalled that at Maggi GmbH in Singen, Germany, "[t]he work was hard and the food was pitiful: there was soup swimming with maggots. Begging for more bread or better food resulted in merciless beating from the camp commander."[34] Lonza Werke in Waldshut, Germany was "notorious … for the maltreatment taking place in the plant" and "a Ukrainian woman working in Singen spoke of a physically violent camp commander at Aluminum-Walzwerke."[35] There were, however, employees of Swiss subsidiaries that did treat their workers humanely, like the personnel manager at Georg Fischer in Singen, Germany or the Swiss head of the German Nestlé company.[36] There were also Swiss subsidiaries that demanded an increase in food rations, or made their own attempts to obtain additional food for the slave laborers.[37]

The Bergier Commission found that while senior managers at the parent companies in Switzerland were aware that slave labor was being used, there was no evidence as to whether, and to what degree, they knew about the generally poor living and working conditions at the subsidiaries.[38] The Bergier Commission observed that "[a]s a rule [the senior managers at the parent companies] were not worried or uneasy about the situation, and as long as production was

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32 Swiss Chemical Enterprises in the "Third Reich" at 2.

33 BERGIER FINAL REPORT at 315.

34 *Id*.

35 *Id*. at 317.

36 *Id*.

37 *Id*. at 316.

38 Swiss Chemical Enterprises in the "Third Reich" at 2.

maintained they had no thoughts of intervening in the management or personnel policy of their subsidiaries within Nazi territory."[39]

Some Swiss subsidiaries, specifically Aluminum GmbH in Rheinfelden, Baden, Germany, and Lonza-Werke in Waldshut, Germany, were allotted prisoners of war as early as 1940, after the defeat of France.[40] After Hitler ordered a large-scale deployment of Russian prisoners of war on October 31, 1941 "for the needs of the war economy," Lonza-Werke "announced a need for a further 400 workers in the autumn of 1941, and provided accommodation for 200 Soviet prisoners of war."[41] The "deportation of Soviet prisoners of war represented only the prelude to what was effectively the enslavement of large parts of the Soviet population."[42] Soon, Soviet civilians were ordered into slave labor, "the Nazi regime also began to use compulsion against Western Europeans," and the "last group of forced workers to be conscripted were Italian 'military internees,' who were deported to Germany after Italy's capitulation and about-face in September 1943."[43]

The Bergier Commission determined that it was impossible to determine how many slave laborers and prisoners of war were employed in Swiss subsidiary companies, but the figure estimated in the von Kauffungen report of 11,000 slave laborers was "likely to be on the low side."[44] What was clear was that "[a]ll branches of industry and commerce were involved" and "all sizes of businesses were represented, from small workshops or hotels such as the Insel in Konstanz, with only a few employees to large-scale set-ups such as Brown Boveri in Mannheim, which employed over 15,000 workers."[45] The Bergier Commission concluded that Swiss

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39 *Id.*

40 BERGIER FINAL REPORT at 312.

41 *Id*.

42 *Id.*

43 *Id*. at 312-313. More than a million Italian soldiers were disarmed by Germany on September 8, 1943. Of these, some 750,000 were sent to prison camps. Conditions in the camps were harsh, and inmates were subject to forced labor. Prisoners (whom the Nazis preferred to call "Italian Military Internees") were offered the opportunity to return to Italy if they agreed to support Hitler and Mussolini and rejoin their armed forces. A large majority of the prisoners refused and remained in forced labor in the camps. Nicola Labanca, *The Italian Wars*, *in* THE OXFORD ILLUSTRATED HISTORY OF WORLD WAR II 74, 103-104 (Richard Overy ed., Oxford Univ. Press 2015).

44 BERGIER FINAL REPORT at 313.

45 *Id.* at 293.

armament companies and their suppliers employed slave laborers and prisoners of war at higher rates than other industries, with slave labor and prisoners of war making up between 29.4% and 41.6% of their workforce, as compared with an average of 16.9% of the workforce overall at companies in the upper Rhine district.[46] Moreover, whereas von Kauffungen stated that only one Swiss plant had used concentration camp inmates as slave labor, the Bergier Commission concluded that this practice likely had existed at other Swiss corporate subsidiaries.[47]

As for the Swiss parent companies' knowledge about their subsidiaries' use of slave labor, "many Swiss companies tried to justify their passive or even accommodating attitude toward their subsidiaries' joining in the Nazi war effort by claiming that they had not been fully informed."[48] The parent companies "protected their own interests by giving the impression that their subsidiaries operated independently. They backed this up by invoking communication difficulties, inadequate information, and consequently the impossibility of maintaining proper control over their subsidiaries."[49] However, this was "far from the truth in most cases."[50] While the Bergier Commission noted that communication may have been hindered, the claim that parent companies were cut off from their subsidiaries was easily refuted. "On the whole … the information was sufficient, even comprehensive; and it flowed without interruption. It sometimes also went beyond purely business information: Ciba had precise details about the fate of Jews in Poland, and in 1942 Sandoz was fully informed about the 'euthanasia' programme, *i.e.*, the murder of handicapped people."[51]

> One thing is sure: companies did not have to be coerced into taking forced labourers. On the contrary, the dramatic shortage of labour meant that companies — including Swiss subsidiaries — made active efforts to take on some of the forced labourers. It is true that a few businesses rejected the "Eastern workers" allocated to them on the grounds of "health problems and skills shortages, and because of their young age," but in most such cases there were no substitutes.

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46 *Id*. at 314.

47 *Id.* at 311-14.

48 *Id*. at 304.

49 *Id*. at 301-02.

50 *Id*. at 302.

51 *Id.*

> The companies therefore had to accept the workers allocated to them whether they liked it or not . . . .[52]

3. Additional Scholarly Research

The Swiss writer Sophie Pavillon investigated the development and participation in the German war effort of specific Swiss subsidiaries of the large firms Maggi, Georg Fischer and Aluminium Industrie that were established in Singen, southern Germany.[53] As later elaborated by the Bergier Commission, Pavillon found that some Swiss companies operating in Germany tried "to slip into the newly-imposed model of economic and social organization [by choosing] the more eminent members of the Nazi party for the directorate posts alongside the Swiss cadre."[54] Maggi's subsidiary in Singen, Germany

> was especially noted in its manifested sympathies for the authorities of the Third Reich …. In 1935, when the racial laws of Nuremberg were promulgated, the Maggi directors produced a notarized document entitled "Certificate of Aryanhood" demonstrating that Maggi was an "Aryan" company, that all of its shareholders, employees and resources were of "Aryan" origins.[55]

To satisfy demand without increasing the salary-related costs of production, the Singen subsidiaries used slave laborers and prisoners of war. "Maggi exploited 164 prisoners of war and 184 forced laborers, Georg Fischer used 68 prisoners of war and 1,536 forced laborers," while "Aluminium Walzwerke exploited 403 prisoners of war and 792 forced laborers."56

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52 *Id.* at 314.

53 Sophie Pavillon, *Trois filiales d'enterprises suisses en Allemagne du Sud et leur dévelopement durant la période nazie* [Three Branches of Swiss Enterprises in Southern Germany and their Development During the Nazi Period], 23 STUDIEN UND QUELLEN: ZEITSCHRIFT DES SCHWEIZERISCHEN BUNDESARCHIVS 209 (1997). Pavillon partly relied on a book by Wilhelm J. Waibel entitled SCHATTEN AM HOHENTWIEL: ZWANGSARBEITER UND KRIEGSGEFANGENE IN SINGEN [Shadows on Hohentwiel: Forced Laborers and Prisoners of War in Singen] Labhard 2d ed. 1997) (English translations of both works obtained by Special Masters; page citations are to English translations).

54 Pavillon at 8. Specifically, "Rudolf Weiss, Hitler's loyal travelling companion of high rank in the SS … was named as one of the company directors at Maggi." *Id.* at 8-9. "The Georg Fischer corporation assigned Weber, another fervent Nazi, to direct the Singen plant." *Id.* at 9. Finally, "[s]everal local Nazi officials were placed in important positions at the Singen factory of Aluminium Walzwerke." *Id.*

55 *Id.* at 9.

56 *Id.* at 10. Waibel further assumed "to a very high degree of probability, that by the end of the war, the number of foreign workers was at least 3,000; this meant that with a population at the time of 18,000, one of every six inhabitants of Singen [Germany] was either a prisoner of war or an 'alien worker.'" Waibel at 48.

Included among these laborers were "numerous boys and girls under 20 years of age who were forcefully taken from Ukraine by the German army and brought to Germany in cattle cars."57 The directors of these subsidiaries, which were regularly visited by representatives of the parent companies, "treated the forced laborers in the same manner as the Nazis did."58 The laborers were "often beaten, living in unsanitary conditions approaching those of concentration camps, and existing on the edge of survival. The barracks where they were placed were under supervision of the Deutsche Arbeitsfront, an organization … used in the 1930s to destroy the German unions. The camps were surrounded by barbed wire, supervised by armed guards accompanied by watchdogs."[59] Pavillon concluded:

> During the negotiations between the allies and the Swiss industry representatives after the war, it appears that no questions were raised regarding forced labor exploited by the Swiss subsidiaries in Singen [Germany]. Neither the supporters of the Swiss industry, nor the occupying allied authorities seemed to pay any attention to this essential element which cannot be dissociated from the companies' history during the war.[60]

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The Pavillon and von Kauffungen reports, and especially the Bergier Commission studies, provided substantial background to the Slave Labor Class II claims. The Court, the Special Masters and the IOM supplemented this knowledge through further data gained through the implementation of the Distribution Plan. The inclusion of Slave Labor Class II in the settlement and the Court's emphasis upon obtaining as much information as possible from those companies that sought releases, led to a broadening of the knowledge base about Swiss use of slave labor, as well as public discourse about this little-known area of Switzerland's history.

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57 Pavillon at 10.

58 *Id.* at 11.

59 *Id.*

60 *Id.*

B. The Parameters of the Class

The class was not limited to the five categories designated under the Settlement Agreement as "victims or targets of Nazi persecution." Rather, the Settlement Agreement provided that Slave Labor Class II was open to all victims of the Holocaust. Because of the widespread use of slave labor, every survivor of the Nazi era, including millions of non-Jewish survivors from Poland, the former Soviet Union and Western Europe, theoretically could have been eligible for payment from what was conceived to be a limited class requiring minimal funding.

As the Court observed, however, that was not how the class had been presented at the outset:

> When this class was included in the Settlement Agreement, the defendant banks represented that Slave Labor Class II consists of an extremely small number of persons who may have performed slave labor directly for an extremely small number of Swiss companies during World War II. Since then, they have backed off of this representation.[61]

The defendants had stated that their "'assertions about the number of Swiss companies that used slave labor [was] based on our best estimate of historical facts…. No systematic or scientific investigation has been done on this issue.'"[62] Moreover, as the Court noted, the entities whose slave laborers were potentially class members "consist almost entirely of affiliates or subsidiaries of Swiss entities that were incorporated in Germany and elsewhere."[63] For that reason, "members of the class — *e.g.*, those who were forced to perform slave labor for a Swiss company in Germany or elsewhere, but who had no reason to know at the time that the company was Swiss — may not be aware that they are in the class even if they have notice of the settlement."[64] This uncertainty hindered the Special Masters from "mak[ing] an intelligent allocation of the proceeds of the settlement fund."[65]

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61 *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 162 (E.D.N.Y. 2000).

62 *Id*.

63 *Id.*

64 *Id*.

65 *Id*.

Unless the class were narrowed in some way, by requiring Swiss companies to specify themselves if they had some connection to the use of slave labor during the Holocaust, the $1.25 billion Settlement Fund could have been depleted solely by payments potentially owed to claimants under Slave Labor Class II, which had not been the intended purpose of the settlement.

1. Self-identification Requirement, After-Acquired Companies and Subsequent Litigation

Because of the scarcity of publicly available data concerning Swiss-owned companies that utilized slave labor, the Court ordered that "Swiss entities that seek releases from Slave Labor Class II [were] directed to identify themselves to the Special Master within 30 days" of the Court's July 26, 2000 order granting final approval of the settlement (the "Final Approval Order").[66] Swiss entities that failed to identify themselves would be denied releases. Along with the need for more information, the Court explained that this self-identification by the companies was necessary, because "without the ability to notify class members of the names of entities who employed slave laborers, releases against those entities would be worthless in any event."[67] The order did not materially alter the Settlement Agreement. Instead,

> requiring this minimal cooperation as a condition for release does not deny any benefit that the Settlement Agreement confers. Simply stated, this means that a party who seeks to enforce a contract for a release extinguishing the claims of a particular class cannot in good faith withhold its identity from class members who need that information in order to claim benefits to which they are entitled.[68]

Before finalizing the Final Approval Order, the Court informed the defendants that there would be a self-identification requirement under Slave Labor Class II. The defendants objected and threatened to repudiate certain amendments to the Settlement Agreement relating to other classes.[69] Their objection to the self-identification condition was that "'[o]ne of the fundamental premises for our "all Switzerland" settlement was that, in exchange for a payment of $1.25

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66 *Id.*

67 *Id.* at 163.

68 *Id.*

69 *Id.*

billion, all Swiss companies would be released from slave labor claims.'"[70] In addition, they argued that "'[i]t [was] not practical for the defendant banks to make public requests to all Swiss companies to investigate whether any of their subsidiaries used slave labor during World War II in order to respond to such a condition.'"[71]

The Court rejected those objections, pointing out that it was not proposing "to deny releases to which Swiss companies who utilized slave laborers are entitled." Rather, all that was required was for them "to identify themselves and provide information (if they possess it) that [was] critical to the fair and efficient administration of Slave Labor Class II."[72] Moreover, the Court considered the defendant banks' "practicality" concern to be "simply conclusory."[73] The "small number of Swiss companies who the defendant banks suggested utilized slave laborers have good reason to know who they are."[74] Certainty was not required; "the fact that they believe that it was likely or probable will suffice."[75]

In response to the Court's order, 37 Swiss companies wrote to the Special Masters to identify themselves under Slave Labor Class II. These companies were described in Annex I of the Distribution Plan and its Exhibit 1, a table of "Companies Which Seek a Release Under the Settlement Agreement by Identifying Themselves to the Special Master."

The diversity of the companies that did write echoed the Bergier Commission's findings. These companies included "small businesses bankrupted after the War as well as some of the largest industrial conglomerates in Switzerland, and they range[d] across many disparate industries, including, prominently, firms manufacturing pharmaceuticals, aluminum and armaments."[76] Some companies wrote to advise that they had not used slave labor. For example, the German subsidiary of Otto Suhner GmbH manufactured handheld power tools and employed approximately 50 individuals in 1939. Its president stated that the company

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70 *Id*.

71 *Id*.

72 *Id*. at 164.

73 *Id*.

74 *Id*.

75 *Id*.

76 Distribution Plan, Vol. II, Annex I at I-3.

> has no knowledge of slave labor activities at the German SUHNER-company. On August 16, 2000 I [] asked three former employees of our German company, who have been employed before, during and after World War II, about this topic. All three men … assured me that there was no slave labor performed at any time at the German OTTO SUHNER GmbH.[77]

By contrast, the large pharmaceutical company, Novartis AG, enclosed lists of (i) its subsidiaries located in Axis countries or Switzerland between 1933 and 1946; and (ii) companies acquired after 1946 which were incorporated or had production sites in former Axis countries.[78] The lists included dozens of companies, all of which theoretically could have used slave labor.[79]

Several companies stated that their archives were inadequate and they had little information about possible use of slave labor. GABA Holding AG requested a release, stating that after conducting research in its archives, "[o]n the basis of the condition of the files, we cannot judge with certainty whether we employed those types of persons; however, we also cannot explicitly rule it out."[80]

Others stated they did not believe their wartime subsidiaries had employed slave labor, but sought a release because they could not rule out the possibility.[81] For example, Stehli Seiden was a silk weaving company with mills in Switzerland, the United States, Germany and Italy.[82] It reported: "[u]nfortunately we have nearly no archives of this time as we are no longer a textile company. Our researchers did not give any evidence of having had any individuals who performed slave labor or were prisoners of war."[83]

A few companies provided the Special Masters with detailed research.[84] Roche Holding AG, a large Swiss pharmaceutical company, noted that at its production site in Grenzach, Germany, "[d]uring August until November 1942 the Russian prisoners were replaced by 90

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77 Letter from OTTO SUHNER GmbH (Aug. 22, 2000).

78 Letter from Novartis AG (Aug. 18, 2000).

79 *Id*.

80 Letter from GABA Holding AG (Aug. 22, 2000).

81 Distribution Plan, Vol. II, Annex I at I-3 to -4.

82 Letter from Stehli Seiden (Aug. 24, 2000).

83 *Id*.

84 *See* Exhibit 1 to the Distribution Plan, Vol. II, Annex I, for a summary of the correspondence to the Special Masters from companies that sought releases from Slave Labor Class II.

civil persons of Ukrainian nationality (40 men and 50 women). There is reason to believe these persons have been forced laborers."[85] Roche also provided a list of names of individuals who were possibly forced laborers, based on their salary lists, and

> (1) [whose] names sounded of Eastern origin, (2) have indicated no home address on the salary list, but only the mention [of] "Grenzach" or "Herten" (a village near Grenzach) [Germany] appears on the list, [which] can be explained by the fact that the forced laborers [may have been] accommodated collectively in inns located in these two villages, (3) had not a function as foreman or the like or (4) left immediately after the war ended.[86]

Roche stated that the "list is not clear cut evidence but merely an indication."[87]

Clariant AG, a chemical company which was spun off from Sandoz AG in June 1995, provided the Special Masters with a detailed chart of its subsidiaries (and subsidiaries of companies acquired after World War II) that were located in the Axis countries and Switzerland.[88] The chart indicated whether the subsidiary used slave labor and, where possible, an approximate number of slave laborers.[89]

Altogether, the following companies reported to the Special Masters that they had evidence of slave labor use during World War II:

- Alusuisse Group AG
- Brown, Boverie & Cie
- Bucher Industries
- Ciba Specialty Chemicals Holding, Inc.
- Ernst Deutsche Ramie Gesellschaft
- Georg Fischer
- Hesta AG

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85 Letter from Roche Holding AG ¶ 4 (Aug. 18, 2000).

86 *Id*.

87 *Id*.

88 Letter from Clariant AG (Aug. 21, 2000).

89 *Id*.

- Holderbank Financiere Glaris Ltd
- Lonza Group Ltd
- Nestlé S.A.
- Novartis A.G.
- Roche Holding AG
- Villiger Sohne Holding AG

In response to this information, the Special Masters noted:

> Many of the companies which identified their subsidiaries as having employed slave laborers had not previously acknowledged or had not previously been reported to have engaged in such practices. In that regard, Chief Judge Korman's direction that companies seeking a release must promptly identify themselves clearly contributed to a greater understanding of the scope of slave labor use by companies owned by Swiss entities, enabling … formulat[ion] of a recommendation for allocation and distribution to this class.[90]

On December 8, 2000, the Court issued a supplemental order directing the entities that had self-identified to notify the Special Masters, by January 19, 2001, as to whether they possessed the names of former slave laborers, and to provide such names if available.[91] The Court also ordered the IOM, by February 28, 2001, to publish the Slave Labor Class II List, *i.e.*, the list of entities that had identified themselves to the Special Masters and had complied with their good faith obligation to provide available names of former slave laborers.[92]

Several companies responded to this order, including the large global businesses Georg Fischer and Nestlé, providing lists of thousands of individuals who worked for these companies and affiliates during World War II, many of whom may have performed slave labor. A number of companies also offered to assist in identifying former laborers as part of the claims process. The names provided by these companies were compiled to form the "Slave Labor Class II Name List," which the IOM used in the claims evaluation process.

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90 Distribution Plan, Vol. II, Annex I at I-5.

91 Memorandum & Order at 7, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 8, 2000).

92 *Id*.

On April 4, 2001, the Court issued an initial list of companies and affiliates, subsidiaries or predecessors comprising the "Slave Labor Class II List." Each company met the following criteria: "(a) it timely 'self-identified' to the Special Master as required by the Approval Order; (b) it was Swiss-owned in whole or in part during the War era; and (c) it ha[d] provided the Special Master with names of persons believed possibly to have been slave laborers, or it ha[d] represented that such names [were] unavailable despite diligent investigation."[93] The companies on the Slave Labor Class II List were entitled to releases, "subject to their continuing obligation to (1) supplement the information they have provided should additional data become available, and (2) cooperate with the IOM and the Court as needed throughout the claims process."[94] The Court ruled that "companies which did not self-identify [were] not entitled to releases."[95]

The Court further ruled that releases were not appropriate "for slave labor-using companies which were acquired by Swiss entities after the War but which were owned or controlled by German or other non-Swiss interests during the period of slave labor use."[96] The Court relied on the definition of "Releasee" in the Settlement Agreement, which listed several categories of releasees excluded from the settlement:

> The term Releasees also excludes parent companies and other affiliates of Swiss-based Concerns that (1) before 1945 were headquartered, based, or incorporated in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, (2) were not Owned or Controlled Affiliates as defined herein, and (3) disguised the identity, value or ownership of Cloaked Assets or used Slave Labor. A company shall not be deemed a Releasee by virtue of being [an] Owned or Controlled Affiliate if (1) the company was headquartered, based, or incorporated in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, and (2) the company's parent was a Swiss-based Concern for the sole purpose of disguising the identity, value, or ownership of Cloaked Assets.[97]

The defendant banks argued that the first sentence set forth "three cumulative criteria for excluding Swiss companies from the definition of releasees."[98] The Court agreed, but held that

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93 Order at 3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 4, 2001).

94 *Id.* at 3-4.

95 *Id.* at 4.

96 *Id.*

97 *Id.* at 4-5 (quoting Settlement Agreement, Section 1).

98 *Id.* at 5.

"this argument is of no avail to them here because the plain language excludes slave labor-using companies that were acquired by Swiss entities after the war, but which were owned or controlled by German or other non-Swiss entities."[99] The defendant banks' proposed reading would alter the definition of "Owned or Controlled Affiliates" found in the Settlement Agreement by adding a requirement that the affiliates "must also have been established for the sole purpose of disguising the identity, value or ownership of cloaked assets.[100] Accordingly, the Court ruled that "slave-labor using companies acquired by Swiss entities after 1945 plainly are excluded as 'releasees' under the Settlement Agreement."[101]

On August 24, 2001, the defendant banks filed an appeal with the United States Court of Appeals for the Second Circuit. They challenged the District Court's self-identification requirement, as well as its ruling on "after-acquired" companies.[102]

As to the self-identification requirement, the defendant banks sought to "appeal the District Court's April 4, 2001 decision, which applied the self-identification requirement imposed by the District Court's August 9, 2000 Final Order and Judgment, in which the Settlement Agreement was interpreted to exclude Swiss companies seeking a release under Slave Labor Class II that failed to identify themselves to the District Court."[103] Lead Settlement Counsel, Professor Burt Neuborne, responded on behalf of the class. He stated that because "the requirement was clearly incorporated in the District Court's Final Order and Judgment of August 9, 2000," and no appeal was taken from that judgment, the appeal was untimely.[104] The Second Circuit agreed, and held that the challenge was too late. The "District Court clearly imposed the self-identification provision on August 9, 2000 as part of its Final Order and Judgment approving the Settlement Agreement." The defendant banks should have appealed from the Final Approval Order, and not from the April 4, 2001 order that applied the requirement.[105]

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99 *Id.*

100 *Id.* at 5-6.

101 *Id.* at 7.

102 *In re Holocaust Victim Assets Litig.*, 282 F.2d 103, 105 (2d Cir. 2002).

103 *Id.* at 105-06.

104 *Id.*

105 *Id.* at 106-07.

The defendant banks also appealed the "after-acquired companies" ruling in the April 4, 2001 Order. The Second Circuit observed that the Settlement Agreement "provides two confusing exclusions" from the definition of Releasees concerning a time period limitation.[106] Specifically, "[t]o satisfy element (1) of Exclusion I [to the definition of Releasees], a company must be headquartered, based, or incorporated in an Axis country during the period of the Second World War." However, "element (2) of Exclusion 1 incorporates no such explicit time period limitation.… It does not state that after-acquired affiliates are not Owned or Controlled Affiliates for the purpose of receiving a release under the Settlement Agreement."[107] The defendant banks argued "that the District Court's interpretation of Exclusion I to impose such a time-period limitation frustrates the intent of the Settlement Agreement — namely to achieve an 'All-Switzerland settlement.'" Moreover, the defendant banks provided an account of the negotiating history and contended that "the exclusions were added at the request of the plaintiffs, and, according to the Swiss Banks defendants, the purpose of the exclusion was to prevent the Settlement Agreement from releasing from liability those Axis-based companies that had set up Swiss fronts to hide their assets." [108]

The Second Circuit panel stated: "We do not see how the plain language of these dense and difficult provisions can settle this dispute. Plausible, alternative readings of the Releasee section of the Settlement Agreement support the interpretations of both the District Court and the Swiss Banks defendants."[109] The Court of Appeals held that the "Settlement Agreement is ambiguous as to whether Axis-based companies are required to have been Owned or Controlled Affiliates during the Second World War, and thus ambiguous as to whether after-acquired affiliates of Swiss companies may qualify as Owned or Controlled Affiliates for release."[110] The Second Circuit vacated and remanded this ruling for further proceedings to determine whether extrinsic evidence of the Settlement Agreement negotiations would resolve the ambiguity.[111]

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106 *Id.* at 109.

107 *Id.*

108 *Id.* at 110.

109 *Id.*

110 *Id.*

111 *Id.* at 111.

2. The Slave Labor Class II Companies List

The dispute was resolved by stipulation dated October 7, 2003. The stipulation provided that "after-acquired companies" (*i.e.*, companies that sought releases and which became Swiss owned or controlled within the meaning of the Settlement Agreement after World War II) were entitled to releases if they met one of the following conditions:

> (a) their activities during World War II occurred outside the area of Axis occupation and control; (b) they were created subsequent to World War II; or (c) they represent that after investigation they have found no evidence that they used "Slave Labor," as defined in the Settlement Agreement, during World War II.[112]

If an after-acquired company did not meet one of these conditions, it was still "entitled to releases from the Slave Labor Class II … but only from 'Claims' by 'Victims or Targets of Nazi Persecution,' as defined in … the Settlement Agreement."[113] Therefore, "the self-identifying entities listed in the attachments to [the] Stipulation and Order should be listed as Releasees and … the Slave Labor Class II List, as issued by the Court on April 4, 2001, should accordingly be amended."[114] The stipulation attached lists of additional companies that qualified to be on the Slave Labor Class II List.[115] The list included, but was not limited to:

1. Entities that were "Swiss-Based Concerns as of October 3, 1996, or were Owned or Controlled Affiliates during World War II"[116] but which were inadvertently omitted from the Slave Labor Class II List. These entities included, for example, dozens of affiliates of ABB Ltd. (*e.g.*, ABB Kraftwerke Berlin GmbH (Berlin, Germany)) and affiliates of Nestlé S.A. (*e.g.*, Blaue Quellen (Germany)).

2. Entities that "qualify as Owned or Controlled Affiliates as of October 3, 1996, because during World War II they did not engage in business activities in an Axis or Axis-controlled country."[117] These entities included, for example, affiliates of Leica Microsystems International Holdings GmbH (*e.g.*, Bausch & Lomb (U.S.A)) and SIG Swiss Industrial Company Holding Ltd. (*e.g.*, SIG Combibloc Ltd. (Bangkok, Thailand)).

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[112] Stipulation and Order for Amendment of the Slave Labor Class II List of Releasees at 3, *In re Holocaust Victim Assets Litig.*, No. 02-3314 (E.D.N.Y. Oct. 7, 2003).

[113] *Id*.

[114] *Id.* at 3-4.

[115] *Id.* at Attachments A-G.

[116] *Id.* at 4.

[117] *Id.*

3. Entities that "qualify as Owned or Controlled Affiliates as of October 3, 1996, because they were created after World War II."[118] These entities included, for example, affiliates of Bucher Industries AG (*e.g.*, Fahr-Bucher GmbH (Germany)) and Clariant AG (*e.g.*, MB Emacolor (Zaventem, Belgium)).

4. Entities that "qualify as Owned or Controlled Affiliates as of October 3, 1996, because each entity has represented that, after a good faith investigation of available records and to the best of its knowledge, it did not utilize 'Slave Labor' … during World War II,"[119] subject to certain conditions. These entities included, for example, affiliates of Alusuisse Group Ltd. (*e.g.*, Alusuisse Lonza Europe BV (Breda, Netherlands)) and Lonza Group Ltd. (*e.g.*, Lonza Composites Srl (Milan, Italy)).

5. Entities that "were not Swiss-Based Concerns and were not Owned or Controlled Affiliates during World War II, but became Swiss-owned after the War."[120] These entities were entitled to releases only from members of Slave Labor Class II who were Victims or Targets of Nazi Persecution. These entities included, for example, affiliates of Bühler AG (*e.g.*, MIAG Mühlen- und Industrie AG (Braunschweig, Germany)) and Saurer AG (*e.g.*, Volkmann GmbH (Krefeld, Germany)).

6. Entities for which "it is unclear … were Swiss or Swiss-owned as of October 3, 1996,"[121] were able to obtain releases if they clarified in writing that they were Swiss or Swiss-owned as of October 3, 1996. These entities included, for example, affiliates of Novartis AG (*e.g.*, Ateco AG (Biel, Switzerland)) and Alusuisse Group Ltd. (*e.g.*, Alusuisse Lonza GmbH (Singen, Germany)).

7. Finally, entities which "were correctly included in the April 4 Slave Labor Class II List, but their names were either incomplete or incorrectly recorded in the List."[122] These entities included, for example, affiliates of Danzas Holding AG (*e.g.*, Danzas Beteiligungen GmbH (Schwalbach, Germany)) and Schindler Holding Ltd. (*e.g.*, S.A. Schindler NV (Bruxelles, Belgium)).

As expected, and as was necessary to the fair administration of the settlement, the amended Slave Labor Class II List increased the number of claimants. In addition, in a letter to the Special Masters dated February 13, 2004, the IOM stated that it had "identified some claimants who submitted claims mentioning companies that were not included in the original Slave Labour Class II List but are included in the Amended Slave Labour Class II List."[123]

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118 *Id.*

119 *Id.* at 5-6.

120 *Id.* at 6.

121 *Id.* at 6-7.

122 *Id.*, at 7.

123 February 13, 2004 IOM letter to Special Masters at 2.

Specifically, the IOM appended as an exhibit a recommendation to pay a claimant who plausibly demonstrated that she worked for MIAG Mühlen- und Industrie AG, a subsidiary of Bühler AG, a company that appeared in Attachment E of the October 7, 2003 Stipulation.[124]

With the litigation and appeals completed and the Slave Labor Class II List finalized, the claims process finally could begin.

III. THE CLAIMS PROCESS

A. Eligible Applicants

Claimants who filed claims with the IOM and plausibly demonstrated that they performed slave labor for one or more of the companies on the Slave Labor Class II List were eligible to receive compensation.[125] The IOM claim form was generally geared toward the slave labor compensation programs that had been established under Slave Labor Class I, as well as under the German Foundation "Remembrance, Responsibility and Future" ("German Foundation"). For administrative efficiency, the claim form sought additional information that might be helpful under Slave Labor Class II of the Swiss Banks Settlement. Thus, it "requested names of the companies for which slave labour was allegedly performed. In the event that claimants could not remember the names of the companies, they were requested to provide locations or details of their experiences that could support a plausible inference that the company was a Swiss company named under the Swiss Banks settlement."[126]

The Distribution Plan initially awarded each member of Slave Labor Class II a payment of $1,000, the same amount to be paid to members of Slave Labor Class I.[127] Like Slave Labor

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[124] *Id.* at Exhibit 3.

[125] Distribution Plan, Vol. I, at 165.

[126] History, Responsibility, Acknowledgement: The Holocaust Victim Assets Programme - Swiss Banks, Final Report, International Organization for Migration, submitted to the Court on May 31, 2013, at 70 ("IOM Final Report").

[127] Distribution Plan, Vol. I, at 161.

Class I, "only certain heirs of Slave Labor Class II members who died after February 15, 1999 [were] recommended to be paid."[128] The Distribution Plan noted:

> [B]ased on the data provided to the Special Master, several thousand persons performed slave labor for the entities to be named on the published list. If, however, many more eligible former slave laborers for entities on the published list than anticipated make claims, then the Court may have to reconsider the amounts recommended here.[129]

On September 25, 2002, the Court issued an order authorizing a 45% increase in payments to members of Slave Labor Class I, the Refugee Class, and the Looted Assets Class. "Slave Labor Class II payments were not increased at that time because, as explained in the Special Master's August 19, 2002 letter recommending the 45% increase for certain classes, the parameters of Slave Labor Class II were still uncertain due to the pendency of litigation concerning the scope and size of that class."[130] Upon the resolution of the disputes concerning the scope and size of Slave Labor Class II, an update from the IOM concerning anticipated total payments to class members, and based upon "principles of equity," on June 22, 2004, the Court authorized a 45% increase in the amount allocated under the Distribution Plan for members of Slave Labor Class II. That order brought the total award to each member of the class to $1,450.[131]

The Distribution Plan proposed rules for evaluating claims in Slave Labor Class II, which the IOM applied. Under these rules, claimants whose names appeared on the Slave Labor Class II Names List were presumed to have made a *prima facie* showing that they were members of Slave Labor Class II, and therefore were automatically eligible to receive compensation.[132] Claimants whose names did not appear on the Slave Labor Class II Names List could receive compensation if they "plausibly demonstrated to [] IOM that [they had] performed slave labor for one of the entities identified on the Slave Labor Class II List."[133]

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128 *Id.* at 162.

129 *Id.*

130 Order at 1, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 22, 2004).

131 *See id.* Retroactive payments were made to those who already had received their $1,000 awards prior to the Court's June 22, 2004 order.

132 Distribution Plan, Vol. I, at 165.

133 *Id.*

To demonstrate plausibly that they had performed slave labor for one of these entities, claimants had to submit statements that described the company for which they had been forced to work, and were asked to explain the nature of the slave labor performed.[134] They also had to provide evidence, documentary or otherwise, that they may reasonably have been expected to possess in view of the circumstances and the years that had elapsed since World War II.[135] If such documentary or non-documentary evidence was not available, claimants could submit statements providing all details of the slave labor that could be recalled. These details could include the following:

a. the name and address of the location, if known, where slave labor was performed;
b. the type of work performed;
c. a detailed description of the location where slave labor was performed;
d. a detailed description of the conditions under which slave labor was performed;
e. the dates, if known or approximate, when slave labor was performed;
f. the names, if known, of any person or persons performing slave labor with the claimants;
g. the names, if known, of any person or persons supervising slave labor at the locations where the claimants performed slave labor.[136]

Following initial review of a Slave Labor Class II claim, the IOM prepared a written recommendation summarizing the relevant facts and reasons for the recommendation on each such claim, and submitted the recommendation to the Special Masters for review, and then to the Court for review and approval.

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134 *Id.*

135 *Id.*

136 *Id.* at 165-66; *see* IOM Final Report at 146-47.

B. Evaluation Process

Unlike Slave Labor Class I, there was no immediately obvious link between eligibility for payments under the German Foundation and Slave Labor Class II programs. A German Foundation claim could only be construed as validating a Slave Labor Class II victim's eligibility for payment if the company where the slave labor was performed was also included in the Slave Labor Class II List.[137]

The IOM analyzed a total of 16,474 claims under Slave Labor Class II. Of these, 11,871 were submitted directly to the IOM under the Slave Labor Class II program, all of which had to be registered. Another 4,603 were included based upon information provided as part of the claims submitted under the German Foundation and Swiss Banks Slave Labor Class I programs. Using database-assisted techniques, the IOM compared these claims against the Slave Labor Class II Name List.[138]

"Any victims who had submitted claims to IOM for either the [German Foundation or Slave Labor Class I programs] and whose names were found on the Slave Labour Class II Name List were presumed *prima facie* to have plausibly demonstrated their membership in Slave Labour Class II and were thus certified by IOM to the Court for payment."[139] Additionally, the IOM compared the company names on the Slave Labor Class II List against variations of the company names that claimants had included on their claim forms.[140]

Once initial comparisons were complete, "final comprehensive comparisons of the Slave Labour Class II List and the Slave Labour Class II Name List with all victims and companies in the [German Foundation forced labor claims database] were made, with special concentration on those victims who were Western Europeans or Italian Military Internees" ["IMIs"], since "most of those claimants had not received payment in the German programme at all."[141]

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137 IOM Final Report at 69.

138 Claimants were given an opportunity to request consideration for their Slave Labor Class II claim although they originally filed a claim for compensation through the German Foundation.

139 IOM Final Report at 147-148.

140 *Id.* at 148.

141 *Id.*; *see also* Letter from Senior Legal Officer & Team Leader, IOM, to Special Masters (Feb. 25, 2004) ("February 25, 2004 IOM Letter to Special Masters") (detailing results of GFLCP claims, including 130,000 primarily IMI claims) against the Slave Labor Class II Name List).

Special focus was given to the latter claimants, because although under the German Foundation rules, they could not be compensated, they might have been eligible under the Swiss Banks Settlement Agreement.[142] For victims who were from Western Europe, the German Foundation determined, based on the historical record, that the harm they suffered was not of the same magnitude as those who had resided in Central and Eastern Europe. Exceptions were made for those in camps or ghettos.[143] For IMIs, the German Foundation determined in an August 9, 2001 decision that they "were not eligible for compensation under the German Foundation Act because of their status as Prisoners of War ('POWs')."[144] Under the Swiss Banks Settlement Agreement, however, Slave Labor Class II was open to all individuals who had performed slave labor for Swiss companies, regardless of their geographic, religious or national background, sexual orientation, or state of health during the Holocaust. Therefore, at the direction of the Court and the Special Masters, the IOM recommended approval of IMI claims under Slave Labor Class II "if they had performed slave labour for any of the Swiss companies during the Nazi regime, even when they had not met criteria for compensation under the German program."[145] A number of Western European claimants and a few IMIs were, in fact, found eligible for Slave Labor Class II payments.[146]

The IOM faced several difficulties in processing the Slave Labor Class II claims. The "vast majority (over 95%) [of applications] did not name a company on the Slave Labor II List, and many did not name any company at all, further impacting claims analysis."[147] The lists themselves created complexities. "This was especially true … where claims were submitted to IOM in the original Cyrillic and had to be transliterated into English. The individual names contained in the Slave Labour Class II Name List had generally been transliterated already, often incorrectly in the contemporaneous records, from the original Cyrillic into German."[148] Matches

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142 *See* IOM Final Report at 71-72.

143 *Id.* at 72.

144 *Id.* at 71.

145 *Id.* at 148.

146 *See* February 25, 2004 IOM Letter to Special Masters.

147 Judah Gribetz & Shari C. Reig, *Special Masters' Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds* at 83-84 (Oct. 2, 2003).

148 IOM Final Report at 148.

between the Slave Labor Class II Name List and Slave Labor Class II List and the applications were extremely low using conservative matching criteria, such as exact spelling matches. The IOM was more successful using "fuzzy" searches which utilized variations on names and expanded the results. Unfortunately, this also meant there were larger numbers of "false-positive" results, each of which had to be reviewed manually.[149]

As with Slave Labor Class I, claims that were ineligible because victims had died prior to February 16, 1999 were automatically excluded. The IOM also searched for and eliminated duplicate claims.[150]

For potentially eligible Slave Labor Class II claims that could not be validated through list comparisons, the IOM analyzed them on an individualized or semi-individualized basis.[151] "Some grouping could be done where it was found that individuals, especially those who were family members, from certain regions had been taken to locations where companies that [were] plausibly related to Swiss companies were known to have operated."[152] For example, five claimants who were related all had plausibly demonstrated that they had performed slave labor for one Swiss company, *Schweizerische Schleppschiffahrtsgenossenschaft*, so that all five claims could be recommended for compensation.[153] Overall, however, the IOM had to perform detailed individual analysis of thousands of claims, and conducted independent research relating to companies and locations.[154]

The IOM faced an additional issue in evaluating Slave Labor Class II claims: "claimants … having performed slave labour for subsidiaries of companies appearing on the Slave Labour Class II List. Such subsidiaries were often no longer in existence or had been taken over by other companies since the Nazi Regime."[155] Still, "some patterns could be found … for example,

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149 *Id.* at 148-149.

150 *Id.* at 149.

151 *Id.*

152 *Id.*

153 *Id.*

154 *Id.*

155 *Id.* at 150.

claimants deported from the Netherlands, most of whom had worked for *Brown Boverie & Cie*, in Mannheim, Käfertal, so as to justify recommendations for compensation."[156]

Every claim submitted for Slave Labor Class II was checked for a match against one of the two lists: the Slave Labor Class II List and Slave Labor Class II Names List. In general, no other claims were eligible. A limited exception involved several specific companies that were named by claimants, but were not on the Slave Labor Class II List.[157] Historical evidence demonstrated that they were Swiss slave labor-using entities that had not self-identified. The IOM believed "that equity dictates that omission on the part of these companies to self-identify either themselves or a particular subsidiary to the Court may have been inadvertent and should not result in the rejection of claims from claimants who have provided evidence of their forced labour for these companies and who have no other recourse."[158] For example:

- "One claimant has provided evidence confirming that he performed forced labour for Portland Cement in Karldstadt am Main [Germany]. This location was not specifically identified on the Slave Labour Class II List by the parent company, Holderbank Financiere Glaris, Ltd. Although the parent identified several of its subsidiaries, IOM notes that many companies indicated to the Special Master that they did not have complete information about all of their sites in which slave labour was used."[159]
- Another claimant provided evidence confirming that he worked for Portland Zementwerke in Golleschau. The IOM reported: "This company is not on the Slave Labour Class II List. It is unclear whether this company is an affiliate of Holderbank Financiere Glaris, Ltd. which self-identified to the Court. The claimant has provided evidence that a majority of the shares of Portland Zementwerke in Golleschau was held by UBS. Information provided to the Special Master indicates that documents in Berlin show forced labour use at this company and that 400 forced labourers were reported." [160] The IOM recommended payment "because of the evidence that indicates that this company was majority Swiss owned … [and] that it would [be] unfair to recommend this claim for rejection when the company's use of forced

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156 *Id.*

157 *See, e.g.*, IOM, Report and Recommendations Made By the International Organization For Migration for the Eighteenth Group of Claims Under the Holocaust Victim Assets Programme (Swiss Banks) at 8-10, ¶¶ 43-52 (June 12, 2006).

158 *Id.* at 8, ¶ 43.

159 *Id.* at 8, ¶ 44.

160 *Id.* at 8, ¶ 46.

labourers has been confirmed and it appears to be the intention of UBS that any such claims would be covered under the Swiss Banks Settlement Agreement."[161]

- The IOM recommended payment to 11 claimants who indicated they worked for Erste Deutsche Ramie-Gesellschaft. The IOM reported that "[t]his company does not appear in the Slave Labour Class II List. Its successor, Ramie-Seiler AG, disavowed any relationship with the former owners. In a letter to one of the IOM's claimants in 1999, … Ramie-Seiler AG stated that the company used to be fully Swiss-owned and is the same company as the predecessor except with different ownership and management. Information provided to the Special Masters indicates that the Emmendingen Municipal Archive contains the names of 2,016 forced labourers who worked in Emmendingen, where Erste Deutsche Ramie-Gesellschaft was located during WWII and that a large percentage of those forced labourers worked for Erste Deutsche Ramie-Gesellschaft. Claimants have provided work certificates and other documentation indicating that they performed forced labour for Erste Deutsche Ramie-Gesellschaft."[162]

As the IOM noted, in its recommendations to the Court, it did not address whether payments to these claimants "can or should be construed as a suggestion that the [companies] complied with the Court's Orders nor does it suggest that the company is entitled to a release under the terms of the Swiss Banks Settlement Agreement."[163]

Despite the IOM's efforts and the manual review of claims, the IOM correctly assessed at the beginning of the evaluation process that, given the scarcity of information: "Even with the broadest interpretation of Slave Labour Class II and the updated list of releasees, this class is, by far, the least likely in which claimants will be compensated …."[164]

C. Appeals

For all claims in Slave Labor Class II that were not recommended for payment following their initial evaluation, the IOM notified claimants by mail, sent them copies of the decision, and provided them with appeals instructions. If a claimant wanted to appeal, he or she could submit a written request for review within 30 days of the receipt of the recommendation.[165]

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161 *Id.* at 9, ¶ 47.

162 *Id.* at 9, ¶¶ 48-49.

163 *See, e.g., id.* at 10, ¶ 53.

164 IOM February 13, 2004 Letter to Special Masters at 2.

165 *See* Distribution Plan, Vol. I, at 166; *see also* IOM Final Report at 155.

Under the Distribution Plan, "it was initially foreseen that an Independent Review Officer ('IRO') would be designated to review appeals in Slave Labour Class II. The IRO was to conduct a *de novo* evaluation of the claim and then prepare a written recommendation approving or denying the claim on review."[166] Because a relatively small number of appeals were received (1,479), "in the interests of speed and efficiency, the Court requested that [the] IOM perform the initial *de novo* evaluation and review, prepare written recommendations for or against payment, and forward those recommendations directly to the Court for review and approval."[167]

Upon receiving a rejection letter, Slave Labor Class II claimants were advised that any appeal needed to be submitted to the IOM before the deadline specified. They were informed that an appeal was free of charge, and that each request for review should contain a detailed statement of the reasons for the appeal, as well as any new information or documentation that was not submitted with the original claim. The appeals materials were collected together with the materials in the original claim files, and supplemented with historical reports and relevant documents. "All appeals were then reviewed de novo pursuant to the Slave Labour Class II [evaluation] Rules. Recommendations were prepared on an individual or group basis, depending on such factors as the initial rejection group, country of origin, language of the appellants, and the substantive basis for rejection of the initial claim." [168]

Within the prescribed appeals deadline, the IOM received 1,479 requests for review in Slave Labor Class II. Of these, 759 were claims first submitted to the German Foundation and 720 were claims submitted directly to the IOM. A total of 13 Slave Labor Class II appeals were recommended for payment, and 1,466 appeals were rejected, primarily for the same reasons that the original claim had not been accepted (generally, because of the failure to demonstrate that slave labor for a Swiss entity had been performed).[169]

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166 IOM Final Report at 155.

167 *Id.*

168 *Id.* at 156.

169 *Id.*

D. A Summary of the Claims Data

The IOM analyzed 16,474 claims, and recommended that the Court approve payments to 570 former slave laborers under the Slave Labor Class II program, resulting in a total approved payment from the Swiss Banks Settlement Fund of $826,500. Of the 570 approved claims, 532 claims were approved for survivors and 38 for heirs (with the heirs' share distributed among 45 eligible individuals).[170]

In a number of instances (specifically, in 91 cases), approved Slave Labor Class II awards could not be paid despite efforts to do so. As described by the IOM in its May 21, 2008 memorandum: "Most claims that could not be paid were 'claim processing forfeitures,' that is, there was no identifiable eligible beneficiary for an eligible victim who had died after submitting a claim that was approved for payment under HVAP. Other individuals could not be paid because of address problems, basically rendering them uncontactable. In the case of beneficiaries in Russia, beneficiaries also were required to provide new Russian passport information to meet Sberbank payment criteria. Despite repeated mailings from [the] IOM requesting this information, if no response was received or the response that was received was insufficient, [the] IOM could not make payment."[171] Funds that could not be distributed to approved claimants were returned to the Settlement Fund for redistribution to other class members.[172] Another 719 claims were resolved internally at the IOM but were not forwarded for review because they were registered erroneously or withdrawn by the claimants.[173]

E. Slave Laborers for Swiss Entities – Representative Awards

Like those compensated under Slave Labor Class I, those who survived enslavement by companies owned or operated by, or affiliated with, Swiss entities, suffered immensely. Because the Notice of Pendency of Class Action, claim forms, and related materials all promised

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170 *See* IOM Report of October 20, 2008, App. B.

171 *Id.*, App. B at 3; *see also* IOM Final Report at 182.

172 *See* IOM Report of October 20, 2008 at 4; *see also* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Oct. 24, 2008) (ordering return to the Settlement Fund of $4,392,811, the amount of awards authorized but which could not be paid to claimants after ongoing IOM efforts to reach them or their heirs).

173 IOM Final Report at 150.

claimants confidentiality (in recognition of the sensitivity of the information provided in support of their claims), the claimants' names are not disclosed here, but their names, and all other relevant identifying information, are known to and were filed with the Court under seal. Award summaries, which are available for each recipient on the internet, provide detailed information about the personal impact of the use of slave labor by Swiss companies.[174] Some of these summaries follow here:

- The claimant and his family were deported to Germany from occupied Poland in 1944. They were taken to Dachau. There, they were sorted and sent to a work reform camp in Grenzach on the Rhine River in Germany to perform slave labor for Hoffman La Roche, a pharmaceutical company. The claimant was forced to unload coal and clean boilers under supervision. The conditions at the camp were poor and the claimant was forced to live in a barn that had been previously used for animals. At the end of the war, the director of Hoffman La Roche told the claimant to go to Switzerland. At the Basel border, all of his documents relating to his labor for Hoffman La Roche were taken by the Swiss border guards. (IOM Claim No. 3402142).
- On March 10, 1944, the claimant, her parents and her two sisters were deported from her hometown in Crimea, USSR, to Germany to perform slave labor. In Flensburg, they were separated and sent to different employers. The claimant was sent to Kappeln, Germany, to a camp for laborers from Eastern countries. She worked for a milk processing plant, Nestlé. There were some Polish people, many young women and some POWs in the camp. The chief of the camp was a brutal woman. The plant was situated near the river (or a reservoir) Schlei. The claimant worked in the department that produced metallic cans for dry milk. She worked in two shifts. Food and hygienic conditions in the camp were poor. She was liberated by the American Army on May 12, 1945. The claimant's name appeared on the Slave Labor Class II Name List. The claimant plausibly demonstrated that she worked for Deutsche AG Für Nestlé Erzeugnisse (DAN), a company appearing on the Slave Labor Class II List. (IOM Claim No. 3207763).
- After the takeover by the extreme right wing Arrow Party in October 1944 in Hungary, the claimant and his sister were sent to a Budapest ghetto because their mother was Jewish. From there, the claimant was escorted daily to the pharmaceutical company, Dr. A. Wander AG, where he performed light (*e.g.* courtyard cleaning) and heavy (*e.g.* loading and unloading heavy materials to and from trucks) labor. He did not receive food or payment. The claimant carried out his work almost daily until January 1945, when fighting intensified in Budapest and the company closed its operations. The claimant was liberated by the Soviet Army in February 1945. (IOM Claim No. 3205387).

[174] A complete set of case summaries for Slave Labor Class II awards is available at http://www.swissbankclaims.com/SlaveLaborII.aspx.

- In July 1943, the claimant was deported from the Netherlands to Germany to perform slave labor. He was sent to Rheinfelden, Baden, Germany, to work for the company Aluminum Werken Rheinfelden-Baden. He worked 8-hour shifts during the week and 12-hour shifts for two weekends a month. In January 1945, the claimant was transferred to work for Daimler in Wehr, Baden, Germany. On April 20, 1945, he was deported to Basel, Switzerland, and two days later, to Mulhouse, France. The claimant was liberated by the American Army and sent back to the Netherlands. In 1993, the claimant found out that the company he worked for in Rheinfelden was a subsidiary of Alusuisse Lonza Group AG from Zurich, Switzerland. On April 9, 1997, he was interviewed in Rheinfelden for a film titled "Hitler's Slaves." On June 7, 1998, the claimant filed a claim with Alusuisse for his 18 months of slave labor, which was denied. The claimant's name appeared on the Slave Labor Class II Name List. (IOM Claim No. 3205438).

- The claimant was deported from her hometown of Hermanowice, Poland to Germany to perform slave labor. She worked at Maggi GbmH in Singen, Germany. She lived in the Gütterle camp, located on the territory of the factory. The claimant had to share a small room with 16 young women. The room was not heated in the wintertime. After work, the supervisor would lock the room and they were not allowed to go outside. Only after six months was the claimant allowed to write a postcard, to be sent by the supervisor. She could not leave the camp for one year. Then, she was transferred to another place and could leave on Sundays for 4 hours after lunch. She used to sleep two weeks in the camp and one week in the factory, on the floor of the basement. She received 600 grams of bread per week. The claimant worked at Maggi GmbH until April 20, 1945. The claimant's name appeared on the Slave Labor Class II Name List. (IOM Claim No. 3205888).

- On October 28, 1942, the German occupational authorities deported the claimant from Novosanzharskiy Rayon, Poltavskaya Oblast, Ukraine to Germany to perform slave labor. The claimant was sent to Singen, Germany to work at an aluminum plant. At the beginning, he worked at a smelting furnace, and then at the polishing/grinding of stockpiles for the rolling of aluminum sheets. He was not paid. On January 1, 1943, the claimant, with two other workers, attempted to cross the border and flee to Switzerland. They were detained, sent to the Gestapo and beaten. Then they were returned to the aluminum plant. After the claimant's polishing machine tool broke, he was transferred to the Georg Fischer plant. On April 21, 1945, the claimant succeeded in fleeing to Switzerland. He underwent interrogation at a quarantine camp in Bern, and was sent to work in the village of Oberaudorf Dietikon, near Zurich. Later, he was handed over to the Soviet Forces and served in the Soviet Army. The claimant's name appeared on the Slave Labor Class II Name List. (IOM Claim No. 3203943).

- On October 1, 1942, the claimant was sent to Köszeg, to a Hungarian labor camp for Jews. In February 1943, the claimant worked in Devecser, Hungary on the construction of a railway. Later, he performed labor between the mines of Felix and Ajka, where they were building an aluminum factory, and between the mines of Felix and Kolontar, where they loaded railway cars. From July 1943 until April 1944, the

claimant was sent to Szoec, Hungary, where he worked in the Felix mine. The owner of the Felix mine was the Swiss enterprise "Aluminium Industrie A.I.A.G," which had established a subsidiary in Hungary under the name of "Bakonyer Bauxit A.G." A representative of the Swiss company, by the name of Neuschwanger, supervised the claimant's work. In April 1944, the camp was moved to Pass Uzok, Hungary, near the front line. On October 15, 1944, the claimant escaped as the pro-Nazi forces came into power in Hungary. He reached Bratislava, but was captured there by an SS patrol and handed over to the Gestapo. On November 1, 1944 he was sent to the concentration camp Sered, and then deported to the concentration camp Theresienstadt. The claimant was liberated from Theresienstadt on May 5, 1945. (IOM Claim No. 3205156).

- On November 13, 1943, the claimant and her family were deported from Vitebsk, Belarus to Germany to perform slave labor. She was confined to a camp in Ludwigshafen, Germany. Every day, the claimant and her family were taken to the firm of the Brothers Sulzer (Gebrüder Sulzer) to perform general manual labor. She cleared the debris of the factory buildings destroyed by the bombardments and loaded stone, rubble and trash onto wheelbarrows. She was forced to work even during the air attacks. Just before liberation, the barracks in the camp were destroyed during an air strike, and the claimant was transferred to a camp in Mannheim, Germany, as she then believed, for extermination. The American Army arrived, however, and liberated her. (IOM Claim No. 3207385).

- The claimant was a prisoner-of-war, who, in June 1940, after having been injured in combat, managed to get to Switzerland. In Switzerland, he was interned and forced to give up his POW status. He was held in several labor camps, including Churwalden, near Büren an der Aare, Switzerland, and others. He had to perform slave labor, including road construction, work in forestry and agriculture. The claimant also was imprisoned in Lenzburg, Switzerland, and in a psychiatric ward in Königsfelden, Switzerland. Afterwards, he was forced to work at a foundry of the Sulzer factory in Winterthur. Switzerland. He did not receive any payment, as his wages were taken from him to cover his expenses of his preceding imprisonment. He was released after the end of the war. (IOM Claim No. 3204243).

- In March 1943, the claimant was deported from The Hague, Holland to Strasbourg, Alsace, to perform slave labor at an armament-manufacturing factory. In December 1943, the claimant was transferred to Rheinfelden, Germany, to an aluminum factory located on the Rhine river, close to the Swiss border. He was lodged in barracks near the factory and given a minimal allowance. He was prohibited from moving further than four kilometers from the factory. There were several shortages of food and the working conditions were terrible. The factory processed bauxite by melting the raw material in tubs. The claimant's task was to smash the crust, which formed on the surface of the tubs. A harmful gas emanating from the tubs permanently damaged the claimant's health. He was employed in Rheinfelden for approximately seven months. Afterwards, he was transferred to work in a brick factory, where he spent around three months. Then, the claimant was again transferred to an aluminum factory, which might have been in Singen, Germany, where large blocks of aluminum were rolled into sheets. The claimant had to work sharpening band-saw blades. The

working and living conditions were similar to those in Rheinfelden. In April 1945, the claimant was taken to the Swiss border and was sent to Zurich and then to Bern. He spent two days in Bern, after which he was sent back to Holland. He returned home penniless after twenty-five months of hard labor. The claimant plausibly demonstrated that he worked for Aluminium-Walzwerke GmbH, a company on the Slave Labor Class II List. (IOM Claim No. 3205642).

- In June 1942, the claimant was deported from Kerch, Ukraine to Germany to perform slave labor. He was sent to work at the Weser-Hütte plant, in its blacksmith-compressing department. He used a press to punch machine parts. In August 1943, the claimant escaped, but was caught by the Gestapo in Mindon, Germany. He was sent to the prisons of Münster and Dortmund. He was then transferred to the penal camp in Warstein, Germany to work in a quarry. In October-November 1943, the claimant was sent to Rudersdorf, near Singen, Germany, to a small foundry. The claimant performed welding on long cisterns/tanks and prepared stock pilings of sheet metal, which were sent to the centralized plant, Georg Fischer, located in Singen. There were other workers at the plant, whom the claimant encouraged not to work efficiently. For that, he was sent to the prison of Düsseldorf, Germany, and then to the Fuhlsbüttel prison in Hamburg, Germany, where he was tried. By court decision, the claimant was sent to Neuengamme concentration camp and to Salzgitter-Drütte concentration camp. On April 7, 1945, the Salzgitter-Drütte camp was evacuated. After his train was bombed at the station in Zelle, the claimant escaped, but was immediately caught. Together with 300 other people, he was sent to Bergen-Belsen. On April 15, 1945, the claimant was liberated by the British army. (IOM Claim No. 3212427).

- In 1942, the claimant was deported from Ukraine to Germany to perform slave labor. He had to march from Slaviansk, Ukraine to Zaporozhye, Ukraine for eight weeks. No food was provided and he and other detainees had to rely only on the kindness of the people in the villages that they passed through. From Zaporozhye, the claimant was taken to Przemysl, Poland by cattle train. From there, he was sent to Kaufbeuren, Germany, where he had to work for a farmer. He had to work from 4 a.m. until 11 p.m., six days a week and a few hours on Sundays. The food was poor. At the request of the farmer, the police beat the claimant twice for talking to another worker. After the harvest, the claimant was sent to the Kempten labor camp. The camp was located in an abandoned factory building, where the inmates had no privacy. He slept on the floor using straw as a bed. He was awakened at 3:30 a.m. every morning and taken by armed guards to the Nestlé factory. At Nestlé, he had to shovel coal for the furnaces from rail wagons, and perform other heavy labor. Because he was small enough, he also had to climb inside the baking ovens to break out the burned brick lining. Due to the extremely confined space of the ovens and because they were still quite warm, he was very afraid and suffered from claustrophobia and nightmares after the war. The food at the camp was insufficient. The claimant was also sent to perform labor for a number of private owners and at a cheese factory in Opfenbach, Germany. After his liberation, the claimant immigrated to Australia. The claimant plausibly demonstrated that he worked for Nestlé

Deutschland GmbH, a company on the Slave Labor Class II List. (IOM Claim No. 3450980).

IV. CONCLUSION

The Slave Labor Class II claims process was, as anticipated, difficult to administer. However, the program ultimately recognized, for the first time, a group of individuals whose suffering had neither been known, nor compensated, despite the decades that had passed since the Holocaust. Moreover, the inclusion of the class in the Swiss Banks Holocaust Settlement Agreement expanded the historical knowledge of Switzerland's role during the war years, partly because of the new research into the relatively unexplored role of Swiss companies in the use of slave labor. Swiss subsidiaries operating in Germany "maintain[ed] their autonomy and their private sector character."[175] At the same time, "through their manufacturing activities and the employment of a vast number of workers, they contributed to the rallying and expansion of the German economy, thus supporting the Nazi system."[176] Certainly in the view of Switzerland's own historical commission, that nation's long-held belief in its wartime neutrality rested on questionable premises.

[175] Swiss Industrial Enterprises in the 'Third Reich', English summary at 3.

[176] *Id.*

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Switzerland Administrative Map. 2000. https://www.cia.gov/library/publications/resources/cia-maps-publications/map-downloads/switzerland-physiog.jpg/image.jpg. Photo courtesy of the Central Intelligence Agency.

I. SWITZERLAND AS REFUGE?

On March 12, 1938, Germany incorporated Austria within the borders of the Reich (the *Anschluss*), and conditions for Jews in Austria immediately and drastically deteriorated. Of the more than 400,000 Jews now under Nazi control,[1] many sought to flee to safety just across the border to Switzerland. "[D]ue to its geographical position, it was the easiest country of refuge to reach on the continent."[2] Within weeks, however, the Swiss government decided that it was time to stem the tide of refugees. In rapid succession, Switzerland adopted a series of administrative measures that made entry into that country nearly impossible.

Decades later, Swiss historians began to examine Switzerland's response to the unique crises of the Holocaust. Jacques Picard published a report entitled "Switzerland and the Assets of the Missing Victims of the Nazis."[3] The Picard Report raised numerous questions about Switzerland's treatment of assets belonging to victims of racial, religious and political persecution during and after the Holocaust era.[4] Shortly thereafter, the media began to recount cases of Swiss banks dismissing seemingly legitimate claims of Holocaust survivors. Journalist Peter Gumbel wrote an article that appeared on the front pages of *The Wall Street Journal* on June 21, 1995.[5] Gumbel stated that "[f]or 50 years, since the end of the war, [Swiss] banks …

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1 *See, e.g.*, SAUL FRIEDLÄNDER, NAZI GERMANY AND THE JEWS: THE YEARS OF PERSECUTION, 1933-1939 257 (Harper Collins Publishers 1997) ("As the year [1938] began, some 360,000 Jews still lived in the Altreich, most of them in several large cities, mainly in Berlin"); *see also* Bruce F. Pauley, *Austria*, *in* THE WORLD REACTS TO THE HOLOCAUST 473, 476 (David S. Wyman ed., Johns Hopkins University Press 1996) ("By 1938 there were … 185,000 registered Jews in the entire country [Austria]").

2 FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR 5 (Pendo Verlag GmbH 2002) (*available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf) (also known as the Bergier Commission after its chair, Jean François Bergier) (BERGIER FINAL REPORT), at 168.

3 *See* JACQUES PICARD, SWITZERLAND AND THE ASSETS OF THE MISSING VICTIMS OF THE NAZIS § 4.4 (1993) (PICARD REPORT), *reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims Hearing Before the H. Comm. on Banking & Fin. Servs.*, 104th Cong. 2d Sess. 236, 247-49 (Dec. 11, 1996) (December 1996 House Hearing).

4 *See id.* Picard later published a book entitled DIE SCHWEIZ UND DIE JUDEN 1933-1945 (THE SWISS AND THE JEWS 1933-1945) (Zurich 1993).

5 Peter Gumbel, *Heirs of Nazis' Victims Challenge Swiss Banks on Wartime Deposits*, Wall St. J., June 21, 1995, at A1.

have cast a dismissive blanket of silence over the question of what they did with accounts opened by Jews and others who were then persecuted, and often murdered, by the Nazis."[6]

Amidst this media coverage of bank accounts, Swiss President Kaspar Villiger brought to light another concern: he stated that Switzerland needed to apologize for refusing entry into the country to thousands of Jewish refugees from Nazi Germany.[7] This acknowledgment ultimately culminated in a U.S.-based claims process for Holocaust victims who had been denied entry into Switzerland, expelled, or admitted but mistreated. The historical antecedents of this unique compensation program are described below.

* * *

In response to the tide of Austrian refugees who fled, or were expected soon to flee, after the *Anschluss*, the Swiss Federal Council on March 28, 1938 "made it compulsory for all holders of Austrian passports to have a visa." On August 18, 1938, it "decided to refuse entry to all refugees without a visa," thus effectively closing the Swiss borders.[8] To make sure that Jews seeking refuge in Switzerland could not slip into the country undetected, Switzerland next demanded that Germany mark the passports of Jews within the Reich. Following discussions conducted in secret and not revealed until the 1950s,[9] on September 29, 1938, the two countries signed an agreement in which Germany henceforth would mark all Jews' passports with a "J" – the notorious "J-stamp." On October 4, 1938, the Swiss Federal Council introduced "compulsory visas for German 'non-Aryans."[10]

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6 *Id.* at A10.

7 *See, e.g.*, Alfred Defago, *Swiss are Coming to Terms with a Mixed Past*, INT'L HERALD TRIB., Aug. 25, 1997, at 8; John Parry & Nicholas Moss, *Gold Loses Its Luster*, EUROPEAN, Oct. 30, 1997, at 32.

8 BERGIER FINAL REPORT at 108, 129; *see* JEAN FRANÇOIS BERGIER, INDEP. COMM'N OF EXPERTS, SWITZERLAND AND REFUGEES IN THE NAZI ERA 270-71 (1999) ("BERGIER REFUGEE REPORT") (cited in Distribution Plan, Annex J ("The Refugee Class"), at J-6).

9 *See* Jacques Picard, *Switzerland and the Jews, in* SWITZERLAND UNWRAPPED: EXPOSING THE MYTHS 15, 19-20 & 24 n.1 (Mitya New ed., 1997); Regula Ludi, *More and Less Deserving Refugees: Shifting Priorities in Swiss Asylum Policy from the Interwar Era to the Hungarian Refugee Crisis of 1956*, 49 J. CONTEMP. HIST. 577, 577 (2014).

10 BERGIER FINAL REPORT at 108, 129; *see* BERGIER REFUGEE REPORT at 270-71.

Switzerland was not alone. Representatives of 32 nations attended a conference in July, 1938 in Evian, France. The purpose ostensibly was to "set up a permanent organisation whose task would be to facilitate the emigration of refugees from Austria and Germany." However, the conference was not successful. Rather, "the majority of the 32 governments represented seemed to be more concerned about 'getting rid' of the refugees they had already taken in."[11] In the face of narrowing options, tens of thousands of Jewish men, women and children, as well as other victims of the Nazis, sought safety in Switzerland. Many were able to enter that country, but many were not.

A small number of these stories can be told from an unusual perspective: that of the border authorities charged with enforcing Swiss restrictions on refugees. As part of the Swiss Banks Settlement claims process, the records of the Swiss Border Police Post were provided to the Special Masters by the Swiss Federal Archive in response to the Special Masters' request for all available information concerning the identity of those who sought refuge in Switzerland during the Holocaust.[12] These documents provide first-hand accounts of some of the encounters between border authorities and some "60 persons who were turned away."[13]

For example, according to the notes of the Basel Border Police (recorded in the files of the Basel State Archives as notes taken at the "German Reich. Train Station"), a refugee named **Hans Porges** left his home in Germany with his brother Alexander and sister-in-law Bertha.[14] They arrived in Basel on October 23, 1938. All three were stopped at the border. The border police took note of "special entries in [the family's] passport[s]: 'Free borders and relief in travel

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[11] BERGIER FINAL REPORT at 164-67.

[12] The Special Masters' requests and the responses from the Swiss archives and other Swiss representatives are discussed in further detail below.

[13] Letter from State Archivist, State Archives of the Canton Basel-City, to Special Master Judah Gribetz (Aug. 9, 2009) ("Basel-City Archives Letter").

The Basel-City Archives Letter observed: "You receive a copy of this file … with the condition that you omit anything which may hurt the rights of the affected persons." Since the individuals described above are now publicly known to be Holocaust victims, because of the information that subsequently became available through the Yad Vashem and USHMM databases, the Court has confirmed that the narratives provided in this Final Report do not "hurt the rights of the affected persons."

[14] Details concerning the fate of Mr. Porges and other Swiss refugees are contained in the materials provided to the Special Masters by the Basel State Archives.

may not be accorded October 7, 1938.'" The police further observed that "[e]ach person is in possession of a … German passport with 'J' and an annulled Austrian passport. The German passports are not marked with the required 'Assurance of approval for stay in Switzerland,' while in the annulled Austrian passports there are visas No. 145, 146, and 150 entered from the Swiss Consulate Frankfurt am Main on August 24 and 25, 1938 for 4 week stays for recuperative purposes at Reichsmark 1.20. They allegedly want to travel to Zurich to visit Dr. Kratzenstein for 4-5 days and continue traveling to Paris. Visas for France are not present. They report that they spoke to the Swiss Consulate in Frankfurt before they left, where they were reportedly told that they could travel to Switzerland with the visas in their annulled Austrian passports. This information appears, however, to be unbelievable, so that we see it necessary to turn them back, because their continued travel out of Switzerland is not certain."

One month later, **Oskar Elkan**, his wife **Hanny Elkan**, and their 12-year-old daughter **Ilse Elkan** arrived at the Swiss border with their German passports, which had been issued in Berlin on September 21, 1938. At "14:30 o'clock" on November 25, 1938 — presumably fleeing Germany after the November 9, 1938 Kristallnacht rampage — they were "[t]urned away by the cantonal Alien Police, Basel, Herr Merz."

Paul Wagschal, a refugee who sought entry the next day (November 26, 1938), had more success. The Police Inspector of Basel City wrote to the Chief of the cantonal Alien Police, Basel: "In response to your telephone message of November 25 of this year regarding the entry of Austrian Jews from Vienna who are received by Herr Bernasconi, we hereby inform you that today, the following person arrived on Train D 164 at the Basel German Reich Train Station at 20:25 o'clock: Wagschal, Paul, born November 10, 1900 in Verbauti (Romania), German citizen, Salaried employee in the insurance industry, residence in Vienna. This same person has in his possession a German travel passport with 'J,' issued by the police headquarters in Vienna on September 27, 1938[15] … He was picked up by Herr Bernasconi. According to

[15] The date may be inaccurate. The "J"-stamp agreement was signed on September 29, 1938, according to the Bergier Commission. *See* BERGIER FINAL REPORT at 129.

your instructions, we let Wagschal enter the country without the 'assurance of approval for stay in Switzerland' and without stamping his passport."

Hans Louis Enoch, however, did not receive such a welcome. On December 18, 1938, Mr. Enoch, a 24-year-old typewriter mechanic from Vienna, "crossed the Swiss border via forbidden paths on the upper Stettengrabenweg" and was "brought to the Riehen post for the purposes of determining personal information." Hans Enoch "was delivered back to the German customs authorities at the Custom Offices Lörrach-Stetten at 1:30 o'clock after thorough examination," according to the report of "Polm. Schmid, E. Station City Hall Post," Basel-City Police Corps.

The next day, December 19, 1938, the same office reported that "at 3:45 o'clock, … five Jewish refugees … were coming from Vienna over Lörrach-Maienbühl in an attempt to enter Switzerland." They were "stopped by Border Patrol Office Fehr, Station Customs Office, Inzlingerstrasse, on Holweg in Riehen and turned over to the police." Three of the five refugees — a "journeyman tradesman," an "apprentice tailor" and a "roofer" — were 18 years old. The other two were a married couple from Vienna, both 22 years old, **Leo Preis** (a "journeyman locksmith") and his wife **Irma Preis née Riegler**. The Police Corps member who recorded the encounter stated that the refugees were "turned over to the German border authorities at 5:00 o'clock" and that the "notation 'turned away' was marked in their passports. By the revelation that she must return to Germany, Frau Preis fainted and had to be carried to the border."

On March 11, 1939, **Markus Helfer**, according to the notes of the "Border Police Post, Basel, German Reich Train Station," was "stopped by the Border Patrol Corporal Roth Fritz as he tried to enter Switzerland illegally around 20:10 o'clock by Point 4 (cattle ramp). Helfer said that he came from Freiburg im Breisgau with the intent to enter Basel illegally, and then just as illegally to travel on to France, where his family is already supposedly situated. He was forced to take the rapid train at 20:45 o'clock back to Freiburg. We oversaw his return to Germany. He had only 3 Reichsmark in cash, as well as a return ticket to Freiburg."

A few days later, on March 16, 1939, **Erna Ruzek, née Cohn** ("previous married name Isay"), of Czechoslovakian nationality with a Czech passport issued in Frankfurt on April 29,

1935, arrived in Basel. She was there "[s]upposedly to visit the son from her first marriage, Isay, Günther, in Zurich, Universitätsstr. 65, c/o Scheidegger." She was "[t]urned away because lacking a visa." The Basel Border Police ("Basel, German Reich Train Station") noted that Mrs. Ruzek "[a]lready [was] turned away once today in Thayngen."[16]

The Swiss border police did not record, as they presumably did not know, what happened to these refugees after turning them away. But as a result of databases created more than 75 years later, in large part from funding provided by the Court under a program designated as the Victim List Project,[17] the ultimate fate of some of these individuals can be learned. And what is known is that Hans Porges, Hans Louis Enoch, Leo Preis, Irma Preis née Riegler, Markus Helfer, and Erna Ruzek née Cohn did not survive the Holocaust.

- **Hans Porges** was placed on "Transport 29 from Drancy, Camp, France to Auschwitz Birkenau, Extermination Camp, Poland on 07/09/1942," according to a "List of murdered Jews from Austria" at the Documentation Centre for Austrian Resistance in Vienna. His "status" is shown as "murdered."[18]
- **Hans Louis Enoch** was placed on "Transport 43, Train Da 522 from Wien, Vienna, Austria to Theresienstadt, Ghetto, Czechoslovakia on 01/10/1942." He was prisoner number 348 in the transport. Like Hans Porges, his "status" in the source materials

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[16] In the modern era, the drive from Basel to Thayngen, a distance of approximately "141 km," would have taken "about 1 hour 40 mins." Driving Directions from Basel to Thayngen, GOMAPPER, http://www.gomapper.com/travel/directions-from/basel-basel-stadt-to-thayngen.html (last visited Oct. 25, 2016).

[17] As described in the chapter of this Final Report entitled, "The Victim List Project" (Chapter prepared by Dr. Wesley Fisher, Victim List Project Executive Director): "With the Court's support, what is literally the *largest presentation in history* so far of the names of Holocaust victims began as Yad Vashem made its Central Database of Shoah Victims Names publicly available over the internet in November 2004 ... Similarly, with the Court's support, the USHMM in the fall of 2004 began to create the electronic means to present different sorts of lists and the individual names of both non-Jews and Jews in what it called the United States Holocaust Memorial Museum Names Search," later "renamed the Holocaust Survivors and Victim Database").

[18] *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=8986300&ind=5 (last visited July 28, 2014); *see also Holocaust Survivors and Victims Database*, U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/online/hsv/person_view.php?PersonID=5358026 (last visited July 28, 2014) (reflecting "Names from French deportation lists," which are "[e]lectronic data compiled by Georg Dreyfuss regarding deportees from France, based on Serge Klarsfeld's 'Le mémorial de la déportation des juifs de France' and other sources; data includes names, dates of birth and convoy, places of birth and convoy destinations, nationalities and convoy numbers") ("Dreyfuss/Klarsfeld"). Hans Porges' identity, like that of each of the individuals described above, was confirmed by the fact that his name, city of birth and date of birth, as reflected in the Yad Vashem and/or USHMM materials, matched the data the Basel police recorded in their notes.

(the "List of murdered Jews from Austria" at the Documentation Centre for Austrian Resistance in Vienna) is recorded as "murdered."[19]

- **Leo Preis** and **Irma Preis née Riegler** were, respectively, prisoners number 350 and 351 in "Transport F from Brno, Brno Hlavni Mesto, Moravia-Silesia, Czechoslovakia to Minsk, Minsk City, Minsk, Belorussia (USSR) on 26/11/1941," according to a "List of Theresienstadt camp inmates found in Terezinska Pametni Kniha/Theresienstaedter Gedenkbuch Iniciativa, vol. I-II Melantrich, Praha 1995, vol. III Academia Verlag, Prag 2000." Their "status" is shown as "murdered."[20]
- **Markus Helfer** was on "Transport 9 from Drancy, Camp, France to Auschwitz Birkenau, Extermination Camp, Poland on 22/07/1942," where he was "murdered," according to a "List of murdered Jews from Austria" at the Documentation Centre for Austrian Resistance in Vienna. Another document, a "List of Jews murdered in Auschwitz found in Auschwitz Death Registers, The State Museum Auschwitz-Birkenau page 24700/1942," shows that Markus Helfer, son of Isser Helfer and Jente Helfer, née Tajchman, was born in Bobrka, Poland and was married to Jochewet. He was killed a month after his transport, on "25/08/1942." As he had unsuccessfully tried to explain to the Basel border guards, "[d]uring the war he was in Paris, France," as confirmed not only by the Auschwitz-Birkenau State Museum records but also by the "Card file of the Relico committee of the World Jewish Congress in Geneva regarding Jews from various places." A submission to this file by "Helfer, Isaac, RELATIVE," shows Markus Helfer, the spouse of "Jochewed," was a "camp inmate" whose "last known place" was "Paris, Seine, France."[21]
- **Erna Ruzek née Cohn**, whose full name was Eva Erna Ruzek, née Cohn (former marriage to Isay), was the daughter of Salomon Cohn and Rachel Cohn, née Weinstein. Mrs. Ruzek was born in Düsseldorf and lived in Frankfurt Main Höchst,

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[19] *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=4938479&ind=1 (last visited July 28, 2014).

[20] *Id.*, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=4842398&ind=7&winId=-1644414989549898563;

Id., http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=4842209&ind=4 (last visited July 28, 2014).

[21] *Id.*, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=4961882&ind=1;

Id., http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=5390436&ind=2&winId=-1644414989549898563;

Id., http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=7063398&ind=3&winId=-1644414989549898563 (last visited July 28, 2014). *See also Holocaust Survivors and Victims Database*, U.S. HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/online/hsv/person_view.php?PersonID=5224669 (USHMM data derived from the Österreichische Opfer des Holocaust, which is electronic "data compiled from index cards of those deported from Vienna which are held by the Israelitische Kultusgemeinde in Vienna, from an unknown source between 1945 and 1947, and additional data compiled from various databases") (last visited July 28, 2014).

> according to her nieces who submitted a "Page of Testimony" to Yad Vashem.[22] She died in Auschwitz on January 11, 1943, as indicated on a "List of Jews murdered in Auschwitz found in Auschwitz Death Registers, The State Museum Auschwitz-Birkenau page 1324/1943."[23]

Even **Paul Wagschal**, despite being admitted into Switzerland on November 26, 1938 (because of the special accommodations made for him by Herr Bernasconi, and by the Chief of the cantonal Alien Police in Basel), did not escape the Holocaust. For reasons that probably will never be known, he ended up in France. On August 31, 1942, he was deported from Drancy to Auschwitz.[24]

The **Elkan** family, however, did manage to escape Europe — a flight presumably motivated in no small part by the fact that Oskar Elkan had been imprisoned in the Sachsenhausen concentration camp, and was surely in the Nazis' crosshairs. He was released from the camp ("*entlassen*") only a few days before the family was able to reach, but was turned away from the Swiss border.[25] Several weeks later, the Elkans were able to flee by ship (the "Remo") to Melbourne, Australia. They arrived in Victoria on January 16, 1939.

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[22] *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=3633716&ind=1 (last visited July 28, 2014). "Pages of Testimony are special forms designed by Yad Vashem to restore the personal identity and brief life stories of the six million Jews murdered by the Nazis and their accomplices…. [They] are submitted by survivors, remaining family members or friends and acquaintances in commemoration of Jews murdered in the Holocaust." *Hall of Names*, YAD VASHEM, https://www.yadvashem.org/archive/hall-of-names/pages-of-testimony.html (last visited June 19, 2014).

[23] *The Central Database of Shoah Victims' Names*, YAD VASHEM, http://yvng.yadvashem.org/nameDetails.html?language=en&itemId=5410254&ind=2&winId=-1644414989549898563 (last visited July 28, 2014).

[24] *See Holocaust Survivors and Victims Database*, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, http://www.ushmm.org/online/hsv/person_view.php?PersonID=5225370 (citing Österreichische Opfer des Holocaust); *id.*, http://www.ushmm.org/online/hsv/person_view.php?PersonID=5375444 (citing Dreyfuss/Klarsfeld). *See also id.*, http://www.ushmm.org/online/hsv/person_view.php?PersonID=4228182 (indicating that Paul Wagschal had been forced to list his assets pursuant to the 1938 Census, based upon data "now held by the Austrian 'Archiv der Republik'") (last visited July 28, 2014). By decree on April 26, 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all of their assets as of April 27, 1938 (the "1938 Census").

[25] *See id.*, http://www.ushmm.org/online/hsv/person_view.php?PersonID=4445099 (indicating that a record for Oskar Elkan was created in the Sachsenhausen "Strength Reports" on November 22, 1938; the "Strength Reports" are described elsewhere in the USHMM files as an "index" and "inmate/prisoner list);" *id.*,

(*continued on next page*)

Fortunately, not all of the thousands of refugees turned away from the Swiss border (or otherwise denied entry, such as by visa application rejections) perished in the Holocaust. Like the Elkan family, some escaped. Others were caught by the Nazis, but managed to survive the ghettos and camps. Further, over 51,000 refugees did gain entry into Switzerland, and among them, more than 20,000 were Jewish or persecuted as Jews.

It is these individuals — those able to escape the terrible fate that awaited the unsuccessful refugees Hans Porges, Hans Louis Enoch, Leo Preis, Irma Preis née Riegler, Markus Helfer, and Erna Ruzek née Cohn — who were eligible for compensation as members of the Refugee Class of the Swiss Banks Settlement.

II. THE SWISS BANKS SETTLEMENT REFUGEE PROGRAM: AN OVERVIEW

Of the thousands of Swiss refugees who survived the Holocaust, 4,158 were compensated through the Refugee Class programs established by the Court, receiving from the Settlement Fund a total of more than $11.5 million. The vast majority of these individuals were survivors.[26]

Each person who was denied entry or expelled received $3,625; each person admitted but mistreated received $725; and each person who suffered both fates received $4,350.[27]

Of the 4,158 individuals compensated as members of the Refugee Class, 3,923 were Jewish. Their claims were processed on behalf of the Court by the Conference on Jewish Material Claims Against Germany ("Claims Conference"). Of these 3,923 Jewish refugees, 2,514 were expelled or denied entry (with total compensation of $9,113,250); 1,230 were

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http://www.ushmm.org/online/hsv/source_view.php?SourceId=20553 (last visited July 28, 2014). On November 25, 1938, Herr Merz of the Basel Border Police "turned away" Oskar, Hanny and Ilse Elkan.

[26] As with Slave Labor Class I and Slave Labor Class II, compensation was limited to survivors or, in the case of victims who died after February 15, 1999, their heirs.

[27] The original awards were established in the Distribution Plan at, respectively, $2,500 (expulsion/denial of entry) and $500 (mistreatment). As is true for several classes, these amounts were increased by 45% by order dated September 25, 2002. *See* Memorandum & Order at 2-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002) (order increasing award amounts by 45%).

admitted but mistreated (total compensation of $891,750); and 179 suffered both fates (expulsion/denial, as well as mistreatment upon admission to Switzerland) ($778,650), for a total of $10,783,650 authorized, of which $10,743,425 was paid.[28] The 3,923 payments consisted of 3,884 paid in connection with the initial claim, and another 39 paid on appeal.[29]

Another 235 individuals were compensated through the refugee program supervised on the Court's behalf by the International Organization for Migration (IOM), which processed claims on behalf of Roma, Jehovah's Witness, homosexual and disabled class members. Of these 235 non-Jewish individuals, 213 were Roma, 13 were Jehovah's Witnesses, 2 were disabled, and 6 were homosexual.[30] These claimants included 214 who had been expelled or denied entry (total compensation of $775,750); 14 who were admitted but mistreated (total compensation of $10,150); and 7 who suffered both fates (total compensation of $30,450), for a total of $816,350 authorized and $783,051 paid.

Of the 235 approved claims, 212 claims were approved for survivors, and 23 for heirs (with the heirs' share distributed among 39 eligible individuals).[31] Further, of the 235 approved claims, 231 were approved in connection with the original claim and another 4 were approved on appeal, following review by the Special Masters.[32]

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[28] Not all funds authorized could be paid, as recipients sometimes moved without a forwarding address, and such address could not be located after diligent efforts. Others passed away and no heirs could be located.

[29] The Claims Conference processed 5,174 Refugee Class applications in total. *See* Memorandum from Executive Vice President, Claims Conference, to Special Masters, Final statistics relating to Conference on Jewish Material Claims Against Germany, Inc. ("Claims Conference") Swiss Banks claims received and paid under the Swiss Refugee and Swiss Slave Labor Class I programs, including funds received from the Settlement Fund to assist Help/Outreach Centers, and for the SDAP 2005 Publication Notice (Apr. 12, 2010) ("Claims Conference Final Statistics, April 12, 2010"). *See also* [Proposed] Order for Disposition of Unused Refugee Class and Slave Labor Class I Program and Administration Expenses Funds to Assist Help/Outreach Centers and for the SDAP 2005 Publication Notice, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 15, 2010).

[30] One (1) Jewish individual applied through and was compensated by the program under the IOM's management. Because the IOM processed his claim, he is included among the 235 non-Jewish recipients noted above. History, Responsibility, Acknowledgement: The Holocaust Victim Assets Programme - Swiss Banks, Final Report, International Organization for Migration, submitted to the Court on May 31, 2013, at 175 ("IOM Final Report").

[31] IOM Final Report at 180.

[32] IOM Final Report at 182. The IOM received 1,169 Refugee Class claims. Of the claims decided, there were 92 appeals filed. *See* Memorandum from IOM Director of Claims Programmes, to Judge Edward R. Korman,

(*continued on next page*)

Taking both the Claims Conference and IOM programs together, of the 4,158 individuals who received compensation as refugees, 2,728 had been expelled or denied entry ($9,889,000); 1,244 had been admitted but mistreated ($901,900); and 186 had suffered both fates ($809,100); for total approved compensation of $11,600,000, of which $11,526,476 was paid.

For Jewish refugees, the geographic distribution of payments was as follows:

Background Information: Proposal to Return Final Balance Remaining in the Award Account for IOM's Holocaust Victim Assets Programme - Swiss Banks ('HVAP') to the Swiss Banks Settlement Fund, Appendix B - Memorandum of 21 May 2008: Final statistics relating to IOM Swiss Banks claims received and paid throughout the program; other general statistics relating to claims processed by IOM (Oct. 20, 2008) ("IOM Report of October 20, 2008"). Of these, the IOM recommended and the Court approved 235 claims, including 4 on appeal. *Id.; see also* IOM Final Report at 175, 182.

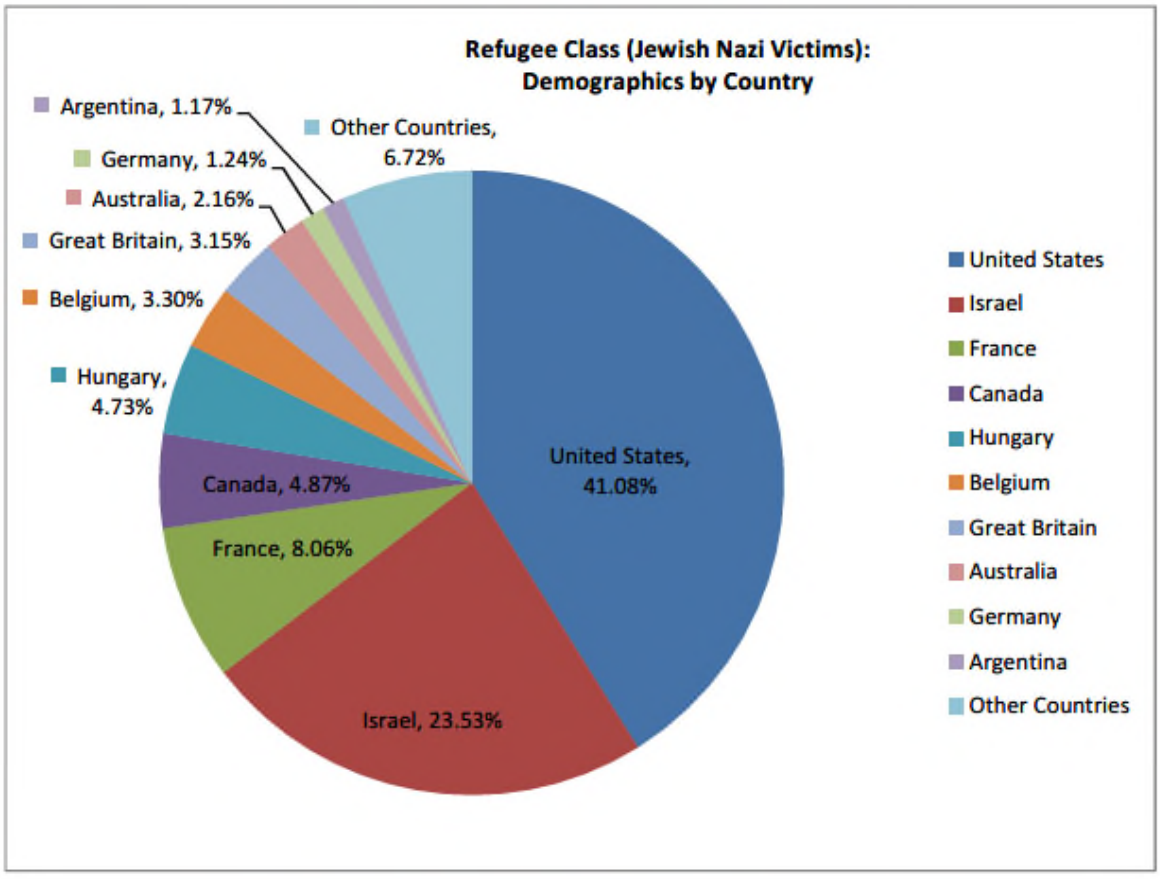
Refugee Class (Jewish Nazi Victims): Geographic Distribution of Approved Claimants by Country and Award

Country	Number of Approved Claimants	Amount Paid
Argentina	39	$ 125,425.00
Australia	81	$ 232,000.00
Austria	35	$ 96,425.00
Belgium	166	$ 354,164.00
Brazil	23	$ 68,875.00
Bulgaria	3	$ 10,875.00
Canada	173	$ 522,725.00
Chile	4	$ 14,500.00
Costa Rica	1	$ 725.00
Croatia	10	$ 18,850.00
Czech Republic	12	$ 35,887.50
France	371	$ 865,288.00
Germany	46	$ 132,676.00
Great Britain	116	$ 337,850.00
Hungary	141	$ 508,225.00
Israel	1,082	$ 2,526,645.00
Italy	33	$ 84,100.00
Lithuania	1	$ 3,625.00
Luxembourg	2	$ 1,450.00
Mexico	10	$ 27,550.00
Monaco	1	$ 725.00
Netherlands	56	$ 86,275.00
New Zealand	2	$ 4,350.00
Panama	1	$ 3,625.00
Peru	3	$ 10,875.00
Poland	1	$ 3,625.00
Romania	5	$ 18,125.00
Russian Federation	2	$ 7,975.00
Slovak Republic	7	$ 23,563.00
Slovenia	1	$ 725.00
South Africa	5	$ 15,225.00
Spain	5	$ 18,850.00
Sweden	19	$ 63,075.00
Switzerland	23	$ 53,650.00
Trinidad and Tobago	1	$ 3,625.00
United States of America	1,429	$ 4,412,111.00
Uruguay	8	$ 21,025.00
Venezuela	5	$ 15,950.00
Yugoslavia	3	$ 7,975.00
Total:	**3,926**	**$ 10,739,209.50**

Note: As reflected in the Distribution Statistics posted at www.swissbankclaims.com and as confirmed by the Settlement Fund accountant, a total of 3,923 Jewish Nazi victims were paid $10,743,425 under the Refugee class. This geographic distribution chart reflects a total of 3,926 Jewish Nazi victims; i.e. 3 more than the final number as reconciled, an insignificant discrepancy. Likewise, this geographic distribution chart reflects total payments of $10,739,210; i.e. $4,215 less than the final number as reconciled, an insignificant discrepancy.

Refugee Class (Jewish Nazi Victims): The Ten Countries with the Largest Payments

Country	Approved Claimants	Amount Paid	% of Total (by Amount)
United States	1,429	$ 4,412,111.00	41.08%
Israel	1,082	$ 2,526,645.00	23.53%
France	371	$ 865,288.00	8.06%
Canada	173	$ 522,725.00	4.87%
Hungary	141	$ 508,225.00	4.73%
Belgium	166	$ 354,164.00	3.30%
Great Britain	116	$ 337,850.00	3.15%
Australia	81	$ 232,000.00	2.16%
Germany	46	$ 132,676.00	1.24%
Argentina	39	$ 125,425.00	1.17%
Total	**3,644**	**$ 10,017,109.00**	**93.28%**
Other Countries	282	$ 722,100.50	6.72%
Grand Total	**3,926**	**$ 10,739,209.50**	**100.00%**

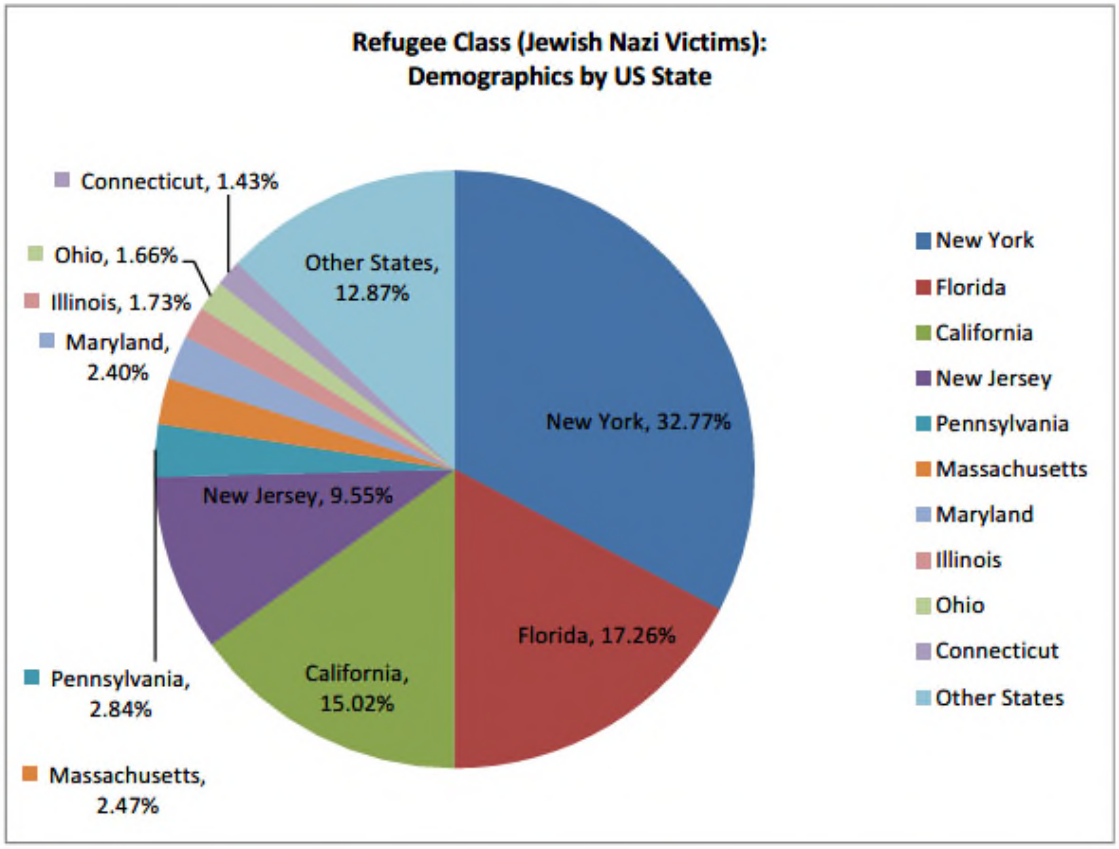


Refugee Class (Jewish Nazi Victims): Geographic Distribution of Approved Claimants by US State and Award

US State	Number of Approved Claimants	Amount Paid
Arizona	21	$ 58,363
California	217	$ 662,650
Colorado	11	$ 39,875
Connecticut	20	$ 63,075
District Of Columbia	5	$ 18,125
Florida	234	$ 761,613
Georgia	6	$ 21,750
Hawaii	4	$ 14,500
Illinois	24	$ 76,125
Indiana	5	$ 15,225
Kansas	2	$ 7,250
Kentucky	1	$ 3,625
Louisiana	5	$ 18,125
Maine	4	$ 14,500
Maryland	37	$ 105,850
Massachusetts	37	$ 109,113
Michigan	12	$ 31,900
Minnesota	8	$ 23,200
Missouri	5	$ 18,125
Nebraska	1	$ 725
Nevada	14	$ 45,675
New Hampshire	2	$ 4,350
New Jersey	134	$ 421,225
New Mexico	7	$ 20,300
New York	482	$ 1,445,772
North Carolina	3	$ 7,975
Ohio	25	$ 73,225
Oregon	8	$ 26,825
Pennsylvania	36	$ 125,425
Rhode Island	2	$ 7,250
South Carolina	4	$ 15,225
Tennessee	4	$ 12,325
Texas	12	$ 37,700
Virginia	14	$ 33,350
Washington	12	$ 34,800
West Virginia	1	$ 3,625
Wisconsin	9	$ 29,725
Wyoming	1	$ 3,625
Total:	**1,429**	**$ 4,412,111**

Refugee Class (Jewish Nazi Victims): The Ten US States with the Largest Payments

US State	Approved Claimants	Amount Paid	% of Total
New York	482	$1,445,772	32.77%
Florida	234	$761,613	17.26%
California	217	$662,650	15.02%
New Jersey	134	$421,225	9.55%
Pennsylvania	36	$125,425	2.84%
Massachusetts	37	$109,113	2.47%
Maryland	37	$105,850	2.40%
Illinois	24	$76,125	1.73%
Ohio	25	$73,225	1.66%
Connecticut	20	$63,075	1.43%
Total	**1,246**	**$3,844,073**	**87.13%**
Other States	183	$568,038	12.87%
Grand Total	**1,429**	**$4,412,111**	**100.00%**



Most of the 4,158 individuals compensated by the Court's programs recalled their harrowing experiences as Swiss refugees in considerable detail.

- Survivors Denied Entry/Expelled: The claimants, who were Jewish, were sisters who were born in Austria. They attempted to enter Switzerland in July 1938. They were informed in July 1938 that they would be placed on a children's transport to St. Gallen, Switzerland. At the train station in Vienna, the older sister was turned away by Swiss officials, who said that she was too old, and would not be accepted into the country. It was six weeks past her tenth birthday. The claimant wrote in her personal statement: "I have never forgotten nor have I forgiven the Swiss for not permitting me to go with the transport and treating a 10-year-old child like an enemy of the state." The younger sister, aged 7, was allowed to board the transport and went to Switzerland, but was sent back to Austria three weeks later. The treatment she received at the children's home in Switzerland for the three weeks she was allowed to remain in the country was "coldhearted." For many years, she had "nightmares." The two sisters and their parents stayed in Vienna. They were later deported to the Riga ghetto. The claimants' father perished in the Holocaust. The older sister became a professor at a New York City university and was the author of several books on the Holocaust, including a 1995 work detailing her family's experiences and describing her unsuccessful attempt to enter Switzerland as a refugee.

- Survivor Denied Entry/Expelled: The claimant, who was Jewish, was born on September 15, 1921 in the Netherlands. She was denied entry into Switzerland sometime between late February and early March 1943 at the French-Swiss border. The claimant fled the Netherlands with his wife and two friends with the help of a smuggler. The smuggler abandoned them along the way but they still managed to reach Le Locle, Switzerland. They were arrested soon after and taken to a local army office. The following day, they were driven across the French-Swiss border and deposited in the forests near a German border patrol. The group later attempted to cross into Spain, but was arrested. The claimant spent the war in various concentration camps, including Auschwitz. The claimant subsequently testified at Nuremberg in the slave labor trial against I.G. Farben.

- Survivor Denied Entry: The claimant – who at the time her claim was reviewed was 91 years old, and a professor of medicine at a California university – was born on April 14, 1912 in Germany. She was denied an entry permit into Switzerland in Berlin in 1938. In May 1938, the claimant, who was Jewish, enrolled at the University of Bern in Switzerland to complete her medical studies. After the first semester, the claimant received permission from the university for a brief trip to Berlin to visit her husband and child, with the understanding that she would return, to continue work on her dissertation. The claimant applied for reentry and residence at the Swiss Embassy in Berlin in July 1938. Her application was denied on November 18, 1938, a few days after Kristallnacht. In April 1939, the claimant and her family left for Belgium and three months later went to England. In August 1941, they immigrated to the United States.

- Survivor Expelled: The claimants, who were Jewish, were seven siblings. With their parents, they were expelled from Switzerland in August 1939. The claimants' father was a rabbi in Berlin. He was forced to go into hiding with his family after

Kristallnacht. The family fled to Switzerland in January 1939. The claimants' family had been active in the Jewish community in Basel, where the father had been born and raised, and where their grandfather had been a rabbi. Nevertheless, they were granted permission to stay in Switzerland for only a few months, and were forced to leave Switzerland in August 1939. The family succeeded in obtaining visas to England, and traveled there through France.

- Survivor Denied Entry: The claimant was a Romani who was born in Germany in 1926. He lived with his family in Herbolzhein, near the Swiss border. On several occasions, the entire family of 16 people tried to enter Switzerland at Lörrach and Singen. The family was denied entry. They were told that they were a "tribe," and tribes were not allowed to enter Switzerland. The entire family was transported to Auschwitz. They had to perform such labor as digging graves and burying the dead, as well as construction work. The claimant was later transported to Buchenwald and performed slave labor in a quarry until he was liberated. He and one brother were the only family members who survived.

- Survivor Admitted but Mistreated: The claimant, who was Jewish, was born on September 27, 1907 in Poland. She entered Switzerland from France with her son. Upon arrival, she was placed in an internment camp where her movement was restricted. While in the camp, the claimant's son became ill, but nevertheless, she was not allowed to leave the camp to seek treatment for him. Her son died. The claimant suffered a nervous breakdown and was hospitalized.

- Survivor Denied Entry/ Admitted but Mistreated: The claimant, who was Jewish, was born on August 11, 1929 in Austria. She and her parents were denied entry into Switzerland at the French-Swiss border in August 1942. The claimant's family left Austria for Belgium in 1939 and stayed there until May 1940. They then escaped to Lyon, France. The claimant and her family attempted to enter Switzerland from Annemasse with a group. At the border, they were caught by armed guards and told that they were not allowed to enter. The claimant recalled crying and shouting at the border, which drew the attention of the German border police. The claimant and her parents were arrested by the Germans and transported to Drancy. From there, her parents were deported to Auschwitz. With the help of the OSE (*Oeuvre de Secours aux Enfants*), the claimant escaped and went into hiding in Chambon sur Lignon, France.[33] On December 22, 1944, the claimant was sent with a transport to

[33] In a 2018 obituary about one of the OSE's leading figures, Georges Loinger, the organization was described as follows: "It had all started as a game. During World War II, when hundreds of Jewish children were hidden at chateaus in the French countryside, kept out of sight from the nation's Nazi occupiers and Vichy collaborators, Georges Loinger entertained them with calisthenics, soccer matches and ball games. Tall and athletic, Mr. Loinger was a Jewish engineer turned physical-education teacher, whose blond hair and blue eyes helped him 'pass' as a non-Jew while he traveled across France, secretly visiting the chateaus and other makeshift refugee centers to keep his young wards healthy with exercise…. The Foundation for the Memory of the Shoah, a French Holocaust remembrance group, credited him with helping more than 350 children cross into Switzerland [sometimes through the pretext of chasing a soccer ball], as well as with finding homes for 125 German Jewish children in central France." Harrison Smith, *Georges Loinger, French resistance fighter who smuggled Jewish children to safety, dies at 108*, WASH. POST, Dec. 30, 2018.

> Switzerland. She was successively transferred to the Henri Dunany Center and then to a children's home in Geneva, then to Tavannes and to Engelberg. The claimant stated that in Geneva, her hair was shaved, and she suffered from brutal treatment.

* * *

In the class action complaints consolidated before Judge Korman, no refugee claims were asserted. As traumatic as their experiences had been, none of these Holocaust victims had brought suit in the United States for compensation against Swiss institutions. Instead, the refugee claims were included in the Settlement Agreement, largely at the instance of the Swiss banks (Settling Defendants), presumably based partly on the fact that several former refugees had brought independent lawsuits in Switzerland. While those proceedings did not result in favorable decisions from Swiss courts, they did result in monetary settlements recognizing the "moral" bases of the claims.[34]

For example, in the summer of 1942, as the Nazis were rounding up Belgian Jews, the father of Charles and Sabine Sonabend — a well-known importer of Swiss watches — made arrangements for the family to flee to Switzerland. Despite intervention by various Swiss residents on the family's behalf, the family "was deported by Swiss police who deposited Simon Sonabend, his wife, and two children [Charles and Sabine] at the French border in the night without a map." The family was "immediately captured by Nazi Regime soldiers" and imprisoned in France. The "parents were put on a train to Drancy and then transported to Auschwitz where they were executed on August 24, 1942."[35] Charles and Sabine Sonabend brought suit in Switzerland, asserting a "state liability claim." They sought compensation of "about $70,000, the highest amount one may be awarded for the loss of two parents."[36] The "Swiss government … denied the state liability claim because, as it claimed, the statute of limitations had expired."[37] The Sonabends appealed to the Swiss Supreme Court. In May 2000,

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[34] *See* Distribution Plan, Vol. II, Annex J, at J-26-29.

[35] *Id.* at J-27.

[36] *See* Marc Richter, Comment, *What Happens Next? - Fifteenth Annual Whittier International Law Symposium*, 20 WHITTIER L. REV. 91, 139, 140 (1998) (Richter was counsel for the Sonabends in the Swiss action).

[37] *Id.* at 140. *See also Swiss Reject Claim Over 2 Jews Deported in '42*, N.Y. TIMES, Feb. 20, 1998, at 11 ("Reached at his home in London, Mr. Sonabend said: 'I think they are a bunch of cowards. A statute of

(*continued on next page*)

they reached a settlement with the Swiss government, receiving $118,000 to cover "costs incurred during their legal battle."[38]

Similarly, in January 2000, in a case that apparently prompted the Sonabend settlement, the Swiss Federal Tribunal "rejected a complaint by an Auschwitz survivor [Joseph Spring] that the Swiss government should be held responsible for handing him over to the Nazis, but awarded him 100,000 francs (dlrs 61,000) in damages anyway. The court ruled that Swiss authorities at the time did nothing illegal in arresting Joseph Spring [,] then 16 [,] as he tried to enter the country from France. It upheld the government's view that the border guards' action did not amount to complicity to genocide, as claimed by Spring's lawyers. But the judges decided that the 73-year-old should be awarded the money [,] the amount he had filed for on ethical grounds and to cover his costs."[39]

However, no such refugee claims were filed as part of the class action lawsuits. The absence of any allegations based upon refugee status may be due at least in part to the uncertain validity of such claims under United States law, which provides certain protections to foreign states for "sovereign" acts.[40] Nevertheless, the Refugee Class was included under the Settlement

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limitations can only start when you have discovered the evidence.' Police records disclosing the deportation of Mr. Sonabend's parents from Bienne, Switzerland, in 1942 came to light only two years ago").

[38] *See* Barth Healey, *Switzerland: An Auschwitz Settlement*, N.Y. TIMES, May 20, 2000, at 4 ("The government reached a settlement with a brother and a sister whose parents died in Auschwitz after the family was deported from Switzerland in 1942, the first such voluntary payment by Switzerland"); Terence Neilan, *Switzerland: Payment to Jews*, N.Y. TIMES, May 26, 2000, at 6 ("Moving to close a painful chapter in its history, government officials met to offer regret and sympathy to an elderly Jewish brother and sister whose parents were gassed by the Nazis after Switzerland expelled the family in World War II"). *See also* Distribution Plan, Vol. II, Annex J, at J-29.

[39] Distribution Plan, at J-28-29.

[40] *See, e.g.*, Declaration of Professor Neuborne in Support of Plaintiffs' Motion for Final Approval of Proposed Class Action Settlement, Nov. 5, 1999, at 5 n.6 (discussing possible sovereign immunity defenses to certain of plaintiffs' claims); *see also* Michael J. Bazyler, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1, 21 n.44 (2000) ("The judicially-created Act of State doctrine 'allows U.S. Courts to abstain from deciding a case involving an international transaction on the grounds that one of the actors in the transaction is a foreign state'") (citation omitted).

Swiss Professor Thomas Maissen has suggested that the payments designated under the Distribution Plan for members of the refugee class were too low, "as the members of the refugee class had arguably suffered most and most directly from Swiss malpractice." Thomas Maissen, *Republican and Liberal Values in Coping with the Memory of World War II: The Swiss Holocaust Assets in a Transnational Perspective*, *in* THE LIBERAL-REPUBLICAN QUANDARY IN ISRAEL, EUROPE, AND THE UNITED STATES: EARLY MODERN THOUGHT MEETS

(*continued on next page*)

Agreement to ensure the "all-Switzerland" release that the Swiss bank defendants demanded to cover all potential Holocaust-era claims. In effect, the private Swiss banks, as the Settling Defendants paying $1.25 billion to end the litigation, demanded that all of Switzerland be insulated from liability in American courts, for any claim arising out of Switzerland's Holocaust-era behavior.

Whatever the origin of these claims, the inclusion of a Refugee Class in the Settlement Agreement enabled thousands of Holocaust victims to recount their experiences, and to be compensated for their suffering at the hands of Swiss officials. These claims comprise an important part of the historical record. That record has been further expanded, in part, as a result of the class action litigation, the settlement and the distribution process.

III. SWISS REFUGEE POLICIES AND MOTIVATIONS DURING THE HOLOCAUST ERA: THE FINDINGS OF THE BERGIER COMMISSION

Switzerland customarily is "considered a country of haven to the persecuted."[41] There was no "European country" with a "longer tradition of receiving persecuted refugees."[42] Its

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CURRENT AFFAIRS 231, 241 (Thomas Maissen & Fania Oz-Salzberger eds., Academic Studies Press 2012). However, American legal principles require an assessment of the relative legal merits of the claims in determining an appropriate allocation. Professor Maissen noted that "Korman and Gribetz considered only the [bank account] assets as actionable in a class action," *id.*, but the Court of Appeals also expressed the same view in affirming the District Court's adoption of the Distribution Plan. *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001) ("[a]ny allocation of a settlement of this magnitude and comprising such different types of claims must be based, at least in part, on the comparative strengths and weaknesses of the asserted legal claims"). With respect to the merits of the refugee claims, no plaintiff had even asserted such claims. Rather, the Refugee Class was included in the Settlement Agreement based on the arguments of the Settling Defendants. Had refugee claims been alleged, their legal validity was, at best, unclear. Thus, the Distribution Plan could not unduly emphasize the Refugee Class claims, however morally compelling, since they were questionable legally. As Judge Korman noted early in the case, in upholding the Settlement Agreement as fair, other courts had dismissed claims based on Holocaust-era injuries: "I take no position regarding whether these cases were correctly decided, or whether they would even apply here. Instead, I cite them as a reality check for those objectors who believe that strong moral claims are easily converted into successful legal causes of action." *In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d 139, 148-49 (E.D.N.Y. 2000).

[41] Shaul Ferrero, *Switzerland and the Refugees Fleeing Nazism: Documents on the German Jews Turned Back at the Basel Border in 1938-1939*, 27 YAD VASHEM STUD. 203, 203 (1999).

[42] MICHAEL R. MARRUS, THE UNWANTED: EUROPEAN REFUGEES IN THE TWENTIETH CENTURY 154 (Oxford Univ. Press 1985) ("Marrus").

acceptance of "outcasts continued through the nineteenth century, when Zurich, Geneva, Basel, and other Swiss cities usually harbored hundreds of colorful exiles from abroad …. Over 15 percent of Swiss inhabitants were aliens in 1914, and although this dropped to 8.7 percent in 1930, Switzerland had the highest proportion of outsiders of all European countries except Luxembourg at that time. Foreigners in major cities, such as Geneva or Basel, numbered as high as 40 percent of their populations."[43]

Despite concerns about the impact of foreigners upon the nation's economy and culture, Switzerland remained generally hospitable to refugees, even during the first years following Hitler's rise to power. Switzerland "admitted large numbers of refugees from Germany in 1933, allowing them to reside temporarily in Switzerland pending reimmigration elsewhere. For about five years, this remained the essence of Swiss policy: the Confederation was seen as a place of transit through which refugees might pass on their way to more permanent sanctuaries."[44] However, as the situation in Germany worsened, "Switzerland was confronted by an unprecedented and particularly grave problem which seriously called this humanitarian tradition into question."[45]

A. The Motivations for and Effects of Swiss Refugee Policies

The Bergier Commission explained in detail the Swiss response to the "unprecedented problem" posed by the flood of refugees, particularly Jewish refugees, who sought safety in Switzerland during the 1930s and 1940s.

The Bergier Commission was established on December 13, 1996, when the Swiss parliament passed a decree authorizing an Independent Commission of Experts (the "ICE" or the "Commission"). On December 19, 1996, the Commission was mandated by the Swiss Federal

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[43] *Id.* at 154-55.

[44] *Id.* at 155.

[45] Ferrero at 203.

Council to "examine the period prior to, during, and immediately after the Second World War."[46] The Commission was composed of ten historians of diverse nationality, including Harold James and Saul Friedländer.[47] Dr. Sybil Milton, formerly a senior historian of the United States Holocaust Memorial Museum, also was a member of the Commission but unfortunately passed away during the period of the study. Dr. Helen B. Junz — who investigated Holocaust-era assets on behalf of the Volcker Committee and whom the Court subsequently appointed as CRT Special Master — thereafter joined the Bergier Commission. Other members included its Chairman, Jean-François Bergier, Wladyslaw Bartoszewski, Georg Kreis, Jacques Picard, Jakob Tanner, Daniel Thürer and Joseph Voyame.

The Bergier Final Report of March 22, 2002 has received less attention than it would appear to merit, considering the years of controversy leading up to the Commission's

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[46] BERGIER REFUGEE REPORT at 9. The BERGIER REFUGEE REPORT was released on December 10, 1999. By apparent coincidence, that date was only four days after the Volcker Committee (ICEP) on December 6, 1999 issued its separate report on Holocaust-era Swiss bank accounts. *See* PAUL VOLCKER, INDEP. COMM. OF EMINENT PERSONS, REPORT ON DORMANT ACCOUNTS OF VICTIMS OF NAZI PERSECUTION IN SWISS BANKS (1999) ("VOLCKER REPORT").

[47] As the Jewish Telegraphic Agency (JTA) pointed out, "[t]here lurks an almost unbearable irony in the appointment of Saul Friedlander to an international commission of nine eminent historians to probe, evaluate and ultimately judge Switzerland's role and conduct during World War II... [O]n Sept. 29, 1942, Friedlander's Czech-born parents tried to cross into Switzerland from Vichy France. They were intercepted by Swiss border guards, who handed them over to French police. The French passed the couple on to the Germans, who shipped Jan and Elli Friedlander to Auschwitz, where both perished. Just before the Friedlanders embarked on their ill-fated attempt, they found a hiding place for their 10-year-old son in a French monastery, where he was raised as a Catholic... 'The Swiss knew what had happened to my parents, that I had written about Switzerland's role in the war, and that I was an Israeli citizen,' said Friedlander. 'Given all that, I took the Swiss offer as a sign that their intentions were really serious.'" *Behind the Headlines: Israeli Scholar's Appointment to Swiss Body Filled with Irony*, JEWISH TELEGRAPHIC AGENCY, May 13, 1997, http://www.jta.org/1997/05/13/archive/behind-the-headlines-israeli-scholars-appointment-to-swiss-body-filled-with-irony-2. *See also* Swati Pandy, *Reading Minds: Personal History*, L.A. TIMES, Apr. 13, 2008, http://articles.latimes.com/2008/apr/13/opinion/op-friedlander13 ("To appreciate the achievement of Saul Friedlander's newest book, 'The Years of Extermination: Nazi Germany and the Jews, 1939-1945,' which won the Pulitzer Prize last week, consider what befell the author during those years. In 1942, Saul Friedlander's parents left their son in a French monastery before leaving for Switzerland. Friedlander was raised there as a Catholic. His parents were stopped by the Swiss, passed back to the French, and in turn, handed over to the Germans. They died in Auschwitz. Now consider what has happened since: Friedlander discovered his parents were dead, reclaimed his Jewish heritage, fought with the Israeli army, was the first to hold a chair in Holocaust studies at UCLA, won a MacArthur genius grant and, among many other achievements, served on a fact-finding commission on Switzerland's role in the Holocaust, recruited by the very country whose wartime leaders had doomed his parents.").

appointment, and in light of the significant findings its members reached.[48] This Final Report on the distribution of the Swiss Banks Settlement therefore quotes extensively from the Final Bergier Report with the hope that the Bergier Commission's important research will be further noted and studied.

As one of its members has observed, in its examination of Swiss activities during the Holocaust era, the Bergier Commission "gave its clearest and harshest answers with respect to refugee policy."[49] While pointing out that Switzerland was far from alone in its reluctance to open its doors to refugees,[50] the Bergier Commission was particularly critical of two crucial determinations reached by Switzerland in 1938 (a year marked by the Austrian *Anschluss* in March, and the Kristallnacht pogrom in November), and in 1942 (the year following the German invasion of the Soviet Union, the Einsatzgruppen round-ups and shootings in the East, and the first wave of mass deportations to the death camps). The two key decisions were, respectively, Switzerland's successful pressuring of Germany to mark the passports of Jewish persons with a "J" stamp (1938); and the sealing of the Swiss borders (August 1942).[51]

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[48] *See, e.g.*, Regula Ludi, *Waging War on Wartime Memory: Recent Swiss Debates on the Legacies of the Holocaust and the Nazi Era*, 10 JEWISH SOC. STUD. 116, 141 (2004) ("The public response to the outcome of Switzerland's most ambitious historical investigation has been disappointing. The media barely took notice of the ICE's [Bergier Commission's] final results.").

[49] Helen B. Junz, *Confronting Holocaust History: The Bergier Commission's Research on Switzerland's Past*, 8 JERUSALEM CENTER FOR PUB. AFF. 1 (2003), *available at* http://jcpa.org/article/confronting-holocaust-history-the-bergier-commissions-research-on-switzerlands-past.

[50] *See, e.g.*, BERGIER REFUGEE REPORT at 40 (describing the failed Evian Conference of July 1938, which had been called to create a "permanent agency that would be responsible for facilitating the emigration of refugees from Austria and Germany," an "initiative" that "inspired high hopes in Jewish circles" but which, "did not, unfortunately, lead to anything much, as most of the thirty-two governments represented were more interested in getting rid of their refugees than in coming to an agreement about their respective capacity for accepting more"); *id.* at 76 ("[I]n Czechoslovakia, Poland, and Hungary, the authorities restricted the admission of refugees. In Italy, as in Sweden, Belgium, and France, the number of obstacles was growing. In July 1938, the Evian Conference's failure demonstrates these countries' intense reluctance to do anything for the victims of the Nazis, whose discriminatory measures were multiplying"). Seymour J. Rubin, Deputy Chief of the American delegation that negotiated the Washington Accord of 1946, likewise has observed "that Switzerland did admit many more refugees, in proportion to its population, than *any* other nation. This is in contrast to a United States that not only denied entry to the desperate *St. Louis* refugees, but systematically failed to fill even the limited immigration quota that was available." Seymour J. Rubin, *The Washington Accord Fifty Years Later: Neutrality, Morality, and International Law*, 14 AM. U. INT'L L. REV. 61, 78 (1998).

[51] *See infra*.

In its preliminary report on refugees released on December 10, 1999, the Bergier Commission strongly condemned both the "J-stamp" and the 1942 border closure:

> What would have happened if Switzerland had not pushed for marking the passports of German Jews with the "J"-stamp in the summer of 1938? What would it have meant if Switzerland had not closed its borders for "racially" persecuted refugees in August 1942?
>
> The introduction of the "J"-stamp in 1938 made it more difficult for Jews living in the Third Reich to emigrate. Without Swiss pressure, the passports would not have been stamped until later, perhaps not at all. This would have made it less difficult for refugees to find a country willing to accept them. For many, Switzerland would not have been the goal of their flight. Without the "J"-stamp, however, many victims of National Socialism would have been able to escape persecution through Switzerland or another country.
>
> In 1942, the situation was completely different. Jews had been forbidden to leave the Nazi areas of occupation since 1941 and many thousands of Jewish men, women, and children were being systematically killed daily. For persecuted people, the journey to the Swiss border was already fraught with great danger. When they reached the Swiss border, Switzerland was their last hope. By creating additional barriers for them to overcome, Swiss officials helped the Nazi regime achieve its goals, whether intentionally or not.
>
> There is no indication that opening the border might have provoked an invasion by the Axis, or caused insurmountable economic difficulties. Nevertheless, Switzerland declined to help people in mortal danger. A more humane policy might have saved thousands of refugees from being killed by the Nazis and their accomplices.[52]

In its Final Report, released on March 22, 2002, the Bergier Commission reaffirmed its 1999 findings. The Commission noted that Switzerland passed a law in the spring of 1933, shortly after Hitler took power, "distinguishing between political and other refugees." While "Federal authorities were extremely reticent to recognize political refugees," and "non-political" refugees were "considered simply as foreigners from a legal point of view" and were subject to a variety of residence restrictions, nevertheless, "[b]etween 1933 and 1938 … the cantons still enjoyed a good deal of freedom in the way they implemented their policy with regard to

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[52] BERGIER REFUGEE REPORT at 270-71.

refugees. Some cantons adopted a very restrictive policy while others freely issued tolerance permits."[53]

However, with the "intensification of anti-Jewish measures in Germany after 1937, the annexation of Austria in March 1938, the pogroms in November 1938, and the subsequent complete exclusion of Jews from the German economy the situation became considerably more tense…. The Swiss Federal Council strengthened border protection and adopted a series of administrative measures: on 28 March 1938, it made it compulsory for all holders of Austrian passports to have a visa; on 18 August 1938, it decided to refuse entry to all refugees without a visa; and from 4 October 1938 on, German 'non-Aryans' were also obliged to obtain a visa."[54]

In April 1938, within a month of the *Anschluss*, thousands of Jewish refugees began to flee Austria. Switzerland "held discussions with Germany in order to set up measures that would enable the border authorities to distinguish between Jewish and non-Jewish German citizens. When the [Swiss] Federal Council was weighing the idea of making it compulsory for all German citizens to obtain a visa, the German authorities feared that this would signal detrimental consequences for foreign affairs and that other countries would introduce similar measures." It

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53 BERGIER FINAL REPORT at 106-7.

54 *Id.* at 108. The fact that the J-Stamp was a Swiss and not a German idea was kept secret for many years. Not until 1954 was it "revealed that the 'J' stamped in the passports of German Jews had been introduced following a Swiss request and was not an invention of the Gestapo, as was commonly believed." *Switzerland*, *in* THE HOLOCAUST ENCYCLOPEDIA 618, 618 (Walter Laqueur & Judith Tydor Baumel eds., 2001). Thus, on October 4, 1938, "the Swiss people were informed that 'German passport holders of German nationality and who, according to German law, are not Aryan' required a visa to enter Switzerland. Utter silence prevailed concerning the active involvement of the Swiss government." *Id.* When the Swiss role was revealed in the 1950s, there were "major reverberations in Switzerland — not least because they differed totally from what Swiss citizens had previously been told by their own government. Federal Councillor Eduard von Steiger, for many years director of the Confederal Justice and Police Department … and accordingly the person mainly responsible for Swiss policy on refugees, professed after the war that the Swiss government had been ignorant of the mass destruction of European Jewry, intimating that 'had we known what was happening over there in the Reich, we might have widened the bounds of what was possible.'" *Id.* The Swiss role in introducing the J-Stamp belied that statement. *Id.* Swiss historian Salomé Lienert disputes the origin of the J-stamp — "Switzerland did not propose the idea of the infamous passport stamp as is sometimes claimed" — but states that Switzerland "clearly carries a significant moral responsibility for it." Salomé Lienert, *Swiss Immigration Policies 1933-1939*, *in* BYSTANDERS, RESCUERS OR PERPETRATORS? THE NEUTRAL COUNTRIES AND THE SHOAH, INTERNATIONAL HOLOCAUST REMEMBRANCE ALLIANCE 41, 48 (Int'l Holocaust Remembrance Alliance ed., Metropol Verlag 2016).

was "for this reason" that the German authorities "agreed to identify the passports of German Jews with a 'J.'"[55]

As historian Michael Marrus has observed, Switzerland's actions had a multiplier effect across Europe. "As a result of this Swiss agreement with Germany and the stamping of Jewish passports, other countries now had the technical means to discriminate against Jews seeking to leave the Reich – even when the Jews attempted to hide their status as refugees."[56]

Conditions continued to worsen rapidly, driving more victims to seek to escape the Nazis. The Bergier Commission traced the chaos after the "German army invaded the Soviet Union in summer 1941," when the "Nazi persecution of Jews developed into systematic extermination."

> In the occupied parts of the Soviet Union German troops, aided by Soviet volunteers, carried out mass murders of Jews and communists. October 1941 saw the start of the systematic deportation of Jews as well as Roma and Sinti from the territory of the Reich; at the same time[,] Jews were forbidden to emigrate. In November 1941, any German Jews that were outside the country were deprived of their German citizenship and their assets confiscated. The first mass murder using poison gas occurred in December in Chelmno; in January 1942, the "final solution to the Jewish question" was drawn up at the Wannsee conference in Berlin. It was at the end of March 1942 that the first Jews were deported from France to Poland and at the beginning of July the French and German authorities agreed to deport all non-French Jews. In the following weeks there were round-ups all over France, and Jews from Western Europe as well as most of the other occupied countries were deported to extermination camps during the following months. The Jews in Western Europe were left with only two channels of escape: either via Spain to another continent, or to Switzerland.[57]

Beginning in the spring of 1942, the "number of refugees who tried to enter Switzerland increased."[58] Some Swiss authorities, including Robert Jezler, the deputy to Federal Police for Foreigners Chief Heinrich Rothmund, appeared to sympathize with the refugees' plight. He observed that "'conditions in the Jewish quarters in the east are so awful that one cannot help but

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55 BERGIER FINAL REPORT at 108.

56 Marrus at 157.

57 *Id.* at 112-113.

58 *Id.* at 113.

understand the desperate attempts made by the refugees to escape from such a fate.'" He suggested that "'[r]efusing them entry is no longer an option.'" That sympathy, however, did not result in an opening of the borders. Rather, Jezler stated that "one could not afford to be 'squeamish' and recommended that the authorities exercise[] 'extreme reticence' in accepting refugees in the future."[59]

On August 13, 1942, the Police Division sent a circular letter to "civil and military authorities" that "laid down the measures to be taken. It stated that the influx of refugees and 'in particular of Jews of all nationalities' was reaching a level similar to that of the exodus of Jews in 1938. In view of the country's limited supply of food, of the need for internal and external security and of the impossible task of housing and supervising so many refugees, as well as finding them a third country to which they could emigrate, it was necessary to refuse them entry: 'Refugees who have fled purely on racial grounds, *e.g.*, Jews, cannot be considered political refugees.' Such people should be refused entry without exception. The first time they tried to enter Switzerland they should be simply sent back across the border; if they tried again they should be handed over to the relevant authorities on the other side."[60]

There were some exceptions: for "refugees from countries such as Belgium and the Netherlands, whose exiled governments took steps to help their citizens;" "[d]eserters, escaped prisoners of war and other military personnel;" "political refugees in the strict sense of the word;" and "so-called hardship cases — old people, the sick, children and pregnant women."[61] Furthermore, notwithstanding the August 13, 1942 order, "several thousand refugees were allowed to enter Switzerland and were sent to detention camps over the following few months,"

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[59] *Id.* (quoting Jezler's "report of 30 July 1942"). *See also* SAUL FRIEDLÄNDER, THE YEARS OF EXTERMINATION: NAZI GERMANY AND THE JEWS 1939-1945 448 (Harper Collins Publishers 2007) (quoting Jezler's July 30, 1942 report).

[60] BERGIER FINAL REPORT at 114. The Bergier Commission questioned the argument that food was limited and so could not be shared with refugees. "Due to the fact that food was rationed and the amount of land cultivated was increased, people living in Switzerland were comparatively well fed, with the result that a real emergency situation with regard to the supply of food, which would have justified the restrictive policy vis-à-vis refugees, never in fact arose." *Id.* at 126. A number of survivors who received compensation from the Settlement Fund for their mistreatment in Switzerland recounted statements by Swiss officials to the effect that the refugees were "eating our food." *See infra*.

[61] *Id.* at 114.

because "it was not possible to control the borders to the extent planned."[62] Furthermore, "the local population repeatedly protested against such deportation," including through a "nation-wide public protest" in the late summer of 1942. However, when the public protests waned, "control was once again tightened and surveillance along the Swiss borders was intensified."[63]

A refugee train under guard at a train station in Zurich, Switzerland. Oct. 1942.
Photo courtesy of Yad Vashem.

Not until July 12, 1944 did the Swiss police authorities issue "an official order that civilians whose lives were threatened should be admitted," an "indirect recognition of Jews as refugees," although "some Jewish people were still refused entry, as were a number of forced labourers from Eastern Europe." [64]

The Bergier Commission anticipated that some might defend Switzerland's refugee policies on the ground that the Swiss authorities were not aware of the magnitude of the threat under Hitler. However, the Berger Commission dismissed that notion.

> The assumption that the Swiss authorities were inadequately informed and would have acted differently "if one had known what was happening in the Third Reich" is false. Up until 1939, the Jews were publicly discriminated against, persecuted and driven out. The Swiss authorities and the population were well informed about the excesses that occurred in Austria after its annexation by Germany in

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62 *Id.* at 115.

63 *Id.*

64 *Id.* The easing of restrictions also was related to the fact that midway through 1944, "the defeat of Nazi Germany [had] bec[o]me a certainty." *Switzerland, in* THE HOLOCAUST ENCYCLOPEDIA 618, 622.

> March 1938 and about the nation-wide pogroms in November 1938. The Nazi regime of course tried to conceal the "final solution," introduced at the end of 1941, whose aim was the complete annihilation of the Jews. Nevertheless, the authorities knew at the beginning of August 1942 that the Jewish refugees were in extreme danger. Although at the time they did not have precise details about the industrially organized extermination camps, information about the mass killings had been reaching Switzerland through various channels since the end of 1941.[65]

The Bergier Commission cited six examples of Swiss knowledge of the extreme dangers facing Jewish refugees. In the words of the Bergier Commission:[66]

1. An important source of information was the Swiss diplomatic corps abroad. As early as the end of 1941, Swiss diplomats — in particular in Cologne, Rome and Bucharest — were sending reports about the deportation of Jews from Germany and occupied territories under terrible conditions and sent quite detailed information concerning the mass killings. In May 1942, Franz-Rudolph von Weiss, the Swiss Consul in Cologne, sent photographs to Colonel Roger Masson, the head of the Military Information Service, which showed the bodies of suffocated Jews being unloaded from German goods wagons.[67]
2. The Swiss military authorities, who were keen to obtain as much information as possible concerning events across the border, gained information by the questioning of refugees. In February 1942, the Swiss Intelligence Service obtained detailed reports and sketches of mass shootings, through the interrogation of German deserters interned in Switzerland.
3. At the end of 1941 and the beginning of 1942, members of the Swiss medical missions on the Eastern front witnessed so-called hostage shootings. In addition, they obtained reliable information concerning the mass slaughter of Jews. In the 1950s, Dr. Rudolf Bucher explained that he had informed Federal Councillor Karl Kobelt in March 1942 of what he had seen. Kobelt denied this. It was in May 1942 that Dr. Bucher first reported these events to the Swiss Medical Council and

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65 BERGIER FINAL REPORT at 119. *See also* Marrus at 256 ("After the war, some Swiss officials claimed that if they had only known the realities of the Final Solution, they might have acted otherwise. But there can be little doubt that, even without a full grasp of the details, every literate Swiss knew that the Jews faced a terrible, mortal threat under Nazi occupation").

66 BERGIER FINAL REPORT at 119-20.

67 *See also Switzerland*, *in* THE HOLOCAUST ENCYCLOPEDIA 618, 620 (describing Weiss' reports and noting that "Swiss intelligence could no longer dismiss German deserters' accounts of conditions in Eastern Europe as anti-German propaganda"). Weiss, like others "bold enough to criticize the German government publicly," had to "pay a price. [He] was denigrated by his superiors in the Berlin embassy as a 'defeatist.'" *Id.* at 621.

held additional speeches even though forbidden to do so by the highest authorities.[68]

4. Throughout the whole war, Switzerland maintained close economic, cultural and political relations with many other countries, so that a good deal of information circulated through private contacts, particularly in business circles. It was in this way that Benjamin Sagalowitz, the Swiss Federation of Jewish Communities (SFJC) press officer, learnt about plans for the total extermination of the Jewish race from a German businessman. Sagalowitz approached Gerhart M. Riegner, the World Jewish Congress representative in Geneva, who passed this information on to the Allies beginning 8 August 1942.

5. The political, religious and humanitarian organisations, whose members included both Swiss and foreigners, also represented a source of information. Carl Jacob Burckhardt, Vice-President of the ICRC [International Committee of the Red Cross] and President of the Association of Relief Organisations *(Vereinigtes Hilfswerk*), had detailed information on the extermination of the Jews which, as he confirmed to Gerhart M. Reigner in November 1942, he had obtained from German sources.[69]

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[68] Because of these speeches, Bucher "was described as 'not normal … in his exhibitionism and his hatred for the German race' and as a 'dangerous fantasist' whose conduct suggested a need for psychiatric assessment. The source of those remarks was Albert von Erlach, a founding member of the Committee for Assistance Operations, which had initiated activities by the Swiss Medical Mission on behalf of the Germans." *Id.*

[69] Despite this information, however, the ICRC decided at its October 14, 1942 plenary meeting that it would not "launch[] a public protest against Hitler's genocide of the Jews," although the draft appeal, evidently seeking some degree of so-called balance, was intended to address "not just Hitler's racial policies but also the Allies' unrestricted aerial bombardment of German cities." Neville Wylie, *The Sound of Silence: The History of the International Committee of the Red Cross as Past and Present*, 13 DIPL. & STATECRAFT 186, 193, 200-01 (2002) (reviewing three books discussing the ICRC). "The sound of the ICRC's silence on 14 October 1942 has reverberated throughout the second half of the twentieth century." *Id.* at 202. In combination with the "[then-]recent assault on Switzerland's wartime record and the tarnishing of Swiss neutrality has inevitably raised fresh doubts over the ICRC's role and the extent to which the institution was able to act independently from Swiss control." *Id.* at 193. There were "[c]lose links" between the ICRC and "Berne," including the fact that "all members of the committee are Swiss nationals" and "a good part of the ICRC's budget has, traditionally, come from Swiss coffers." *Id.* at 195. Thus, the organization's "relationship with the Swiss government is a theme discussed in all the books under review. It cropped up as a recurrent issue in the early discussions of the international committee and … remained an important factor for the ICRC throughout the twentieth century." *Id.* In October 1942, Berne "interven[ed] … in discouraging the [ICRC] from taking a stand on the Holocaust…. The federal officials were not merely alarmed by the tactical ineptitude of the proposed appeal, but were anxious that the action would merely annoy the German government and trigger a new flood of refugees streaming towards Switzerland's frontiers," as "Berne had, barely six weeks before, closed its borders to further refugees and clearly had no wish to cause itself further problems." *Id.* at 196. "When discreet demarches to Berlin failed to bring about any improvement in German behaviour, the [ICRC] decided against making its concerns public, and instead concentrated its physical and emotional energies on developing a relief programme for the concentration camps and helping those few select groups of inmates whose nationality or circumstances singled them out from the huge mass of Hitler's intended victims." *Id.* at 194.

(*continued on next page*)

6. Radio and newspapers too played a role in spreading information. In his radio chronicle of February 1942, Prof. Jean Rodolphe von Salis pointed out that Hitler, true to his custom of issuing his direst threats on the anniversary of his taking power, had announced that "this war will not serve to destroy the Aryan race, but to exterminate the Jews." From summer 1942 on, the press also frequently published articles about the systematic extermination of the Jews. As early as July 1942, Swiss newspapers reported that the Nazis had killed around one million Jews.[70]

The Bergier Commission observed that "[i]n all fairness it should be said that there were grounds for being skeptical about the information received," and "the reports received were so horrendous that even in Jewish circles not all details, for example the industrial use of the bodies of those killed, were necessarily considered to be true, even at the end of August 1942." Nevertheless, when the Swiss borders were closed in August 1942, "the authorities had an accurate picture of what was happening."[71]

A 2003 profile of Switzerland stated of the Red Cross: "This inscrutable institution, accountable to no outside body, is governed by up to 25 elderly Swiss lawyers and businessmen whose predecessors on the International Committee whitewashed conditions in the concentration camps. Allied intelligence reportedly viewed Red Cross officials as nothing more than Nazi agents. Indeed, recently declassified documents from 1943 disclose that the US Joint Chiefs of Staff were so concerned about the role of the Swiss in supporting Nazi Germany that they recommended a total economic blockade on Switzerland. Their advice, however, was rejected by President Roosevelt." Francis Stonor Saunders, *NS Profile: Switzerland*, NEW STATESMAN, Apr. 28, 2003, http://www.newstatesman.com/node/157529.

[70] *Id.* at 119-20; *see also* DAVID M. CROWE, THE HOLOCAUST: ROOTS, HISTORY AND AFTERMATH 353 (Westview Press 2008) ("On July 30, 1942, Eduard Schulte … a German businessman with close ties to prominent Nazi officials, met with Isidor Koppelman, an Austrian-born Swiss banker and an Allied spy. Schulte told Koppelman that he had just learned details about German plans to mass murder all the Jews of Europe. Koppelman shared this information with Dr. Gerhart Riegner … the [World Jewish Congress] representative in Geneva, who passed it on to Sidney Silverman … a member of Britain's House of Commons"). Crowe points out that as early as 1942, similar information was conveyed to other British authorities, as well as to a variety of officials in the United States. *Id.* at 353-54.

As to Switzerland, although the Bergier Commission found that that nation was aware of Nazi extermination policies as early as 1942, and made these findings clear in its 2002 report, it took more than another decade, and a different report, to generate media interest. *See, e.g.*, Cnaan Liphshiz, *Report: Swiss kicked out Jews despite knowing of 'final solution,'* JEWISH TELEGRAPHIC AGENCY, Jan. 28, 2013, http://www.jta.org/2013/01/28/news-opinion/world/report-swiss-kicked-out-jews-despite-knowing-of-final-solution (citing a "report aired by the German-language station SRF" which on January 27, 2013 "publicized" documents "previously unpublished" that had been "received by Eduard von Steiger, federal justice and police minister," including "hundreds of letters, telegrams and detailed reports collected by Swiss diplomats and sent to the federal cabinet during World War II," as well as "photos").

[71] BERGIER FINAL REPORT at 120.

In response to the inevitable question of why Switzerland maintained its "restrictive admission policy" despite this knowledge, the Bergier Commission cited a number of factors. These ranged from xenophobia and fear of "over-foreignisation" to "widespread anti-Semitism" as well as opposition to Roma and Sinti; "economic protectionism" motivated by unemployment and the "fear of added competition on the labour market;" concerns about the "difficulty of supplying the country with food and industrial goods" once the war broke out; and emphasis of the threat the refugees might pose to national security.[72]

On the subject of anti-Semitism, the Bergier Commission noted that the Swiss Federal Department of Justice and Police (EJPD) had "drawn up the ideological and legal basis for Swiss population policy" after World War I, and it had "implemented a policy on foreigners that had an anti-Semitic bias…. It is a known fact that there were strong xenophobic and anti-Semitic tendencies within the EJPD and that the Police Division concentrated its efforts on refusing admission to refugees."[73] Swiss Police Chief Rothmund made it clear that he believed "'Jewification' (meaning an excessive Jewish presence and influence) would arouse antisemitism among the Swiss themselves," although the "Jewish population never exceeded 0.5 per cent of Switzerland's total inhabitants in these years."[74] James G. McDonald, then-League of Nations High Commissioner for Refugees Coming from Germany (and later U.S. Ambassador to Israel), in his diary entry of September 19, 1934, observed of Rothmund: "At the close of our talk" — during which Rothmund had "remained adamant on his definition of a political refugee" (a definition that excluded Jews) — "Rothmund spoke of the [Swiss] Jewish community as being very moderate in its view and very cooperative, but repeated the usual comments about the

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72 *Id.* at 120-27.

Roma — described as "Gypsies" in contemporaneous writings — were similarly unwelcome. *See* BERGIER REFUGEE REPORT at 132-33 (citing a 1936 remark of a "high-ranking customs official" that "'beggars, vagabonds, Gypsies, etc.' are 'to be expelled immediately at the border'"). *See also* IOM Final Report at 171 ("Even prior to World War II, Switzerland had been in the forefront of developing policies aimed at systematically destroying the itinerant way of life of Roma and actively sought international cooperation in the task. Such policies were nourished by pseudo-scientific racist theories and eugenics, in which Roma were described as 'hereditary criminals'").

73 *Id.* at 130.

74 Regula Ludi, *Dwindling Options: Seeking Asylum in Switzerland 1933-1939*, *in* REFUGEES FROM NAZI GERMANY AND THE LIBERAL EUROPEAN STATES 82, 88 (Frank Caestecker & Bob Moore eds., Berghahn Books 2010).

eastern Jews, and the danger of anti-Semitism if there is not care."[75] Rothmund expressed a similar sentiment several years later, in 1938: "[u]nder no circumstances can we allow emigrants to enter the Swiss job market in any way. Our unemployed, among whom can be found numerous Swiss who have returned from living abroad, would resist this and they would be right in doing so. The result would be an antisemitism that is unworthy of our country."[76]

The restrictive refugee policy did not go unchallenged in Switzerland. Rather, there was "criticism from every political camp." Social Democrat Paul Graber of Neuchâtel accused "the Federal administration of anti-Semitic comportment." Albert Oeri, a Liberal from Basel, opposed the notorious remark of Federal Councillor Eduard von Steiger that "the boat is full," responding that "[o]ur boat is not yet overcrowded, let alone full, and as long as it isn't full we would be committing a sin by not taking in those that we still have room for."[77] Nevertheless, the Federal

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[75] ADVOCATE FOR THE DOOMED: THE DIARIES AND PAPERS OF JAMES G. MCDONALD, 1932-1935 478-79 (Richard Breitman, Barbara McDonald Stewart, & Severin Hochberg eds., Indiana Univ. Press 2007).

One example of these tendencies was in the area of children's relief. Despite the "immense popularity of Swiss aid to children," and the organization of a Swiss Red Cross Children's Relief program that "enabled over 60,000 children to stay and recuperate in Switzerland during the war thanks to the generosity and commitment of numerous Swiss families," this generosity was not extended to Jewish children. "[A]s early as May 1941, Rothmund ordered that Jewish children be excluded from the convoys coming to Switzerland." BERGIER FINAL REPORT at 132. Several of the survivors compensated through the Court's Refugee Class program were, in fact, so excluded (*see infra*).

"In view of the public protest and the critical newspaper articles that followed," the Swiss Red Cross-Children's Relief organization "applied for permission to include 200 Jewish children in each convoy arriving for a 3-month stay in Switzerland. This proposal was refused, with the exception of Jewish children of French nationality, because in their case there was a guarantee that they could be sent back to France after 3 months. In August 1942, thousands of children whose parents had been deported were left alone in the unoccupied part of France." BERGIER FINAL REPORT at 132. Despite additional proposals submitted by the relief organization, including one intended to accept "a few thousand children on a temporary basis to prevent their deportation and to enable them to continue on to the USA," Federal Councillor Pilet-Golaz vetoed the proposals and so "[a]ll plans for saving the children were thus dashed." Some Jewish children later were able to enter Switzerland illegally, due to the "commitment of [the] staff of the Red Cross Aid to Children and other organisations operating in France." *Id.* "In comparison, between 1938 and 1940, the British took in 10,000 children" by "collective admissions." Salomé Lienert, *Swiss Immigration Policies 1933-1939*, at 50.

[76] BERGIER REFUGEE REPORT at 48 (quoting a November 18, 1938 letter from Rothmund).

[77] BERGIER FINAL REPORT at 135. *See also* Ludi, *Dwindling Options*, at 83 ("A few weeks after the decision [to close the borders], …von Steiger used the metaphor of a 'full lifeboat' to suggest that Switzerland's capacity to absorb refugees was exhausted").

Council's restrictive policy "gained the support of the bourgeois parliamentary majority, although no vote was held which would have revealed the exact pattern of opinion."[78]

The Bergier Commission pointed out that Switzerland was not alone in its approach. Switzerland's restrictive policy was similar to that of many other nations, and "Swiss refugee policy cannot be understood or judged without taking into account worldwide developments at the time." In "Europe as well as overseas, resistance to 'all things foreign' and anti-Semitism had been widespread since the turn of the century." Like Switzerland, many other countries — including Canada and the United States — adopted significant restrictions against entry.[79]

As early as 1940, U.S. officials had adopted a rational for excluding "immigrants" that essentially paralleled the Swiss aversion to creating an atmosphere of anti-Semitism "unworthy of our country." As described in the June 14, 1940 edition of *The New York Times*, Attorney General Robert H. Jackson announced a change in immigration policy, so that "the doctrine that

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[78] *Id.* at 135. Swiss historians Regula Ludi and Anton-Andreas Speck have pointed out that Switzerland's treatment of Jewish refugees also should be considered in light of that nation's policies toward its own Jewish citizens who lived abroad and were persecuted by the Nazi regime. Ludi and Speck observed that "research has made clear to what extent Swiss Jews became victims of National Socialist race policy, and … the new research has also rescued from oblivion the history of Nazi victims from Switzerland. In reality, the number of Swiss victims of persecution is not inconsiderable. At the end of the 1950s, the government estimated that there were about 1,100 Swiss citizens alone who were not eligible for restitution from the Federal Republic of Germany [due to German restrictions; *see* Distribution Plan, Annex E ("Holocaust Compensation")]." Regula Ludi & Anton-Andreas Speck, *Swiss Victims of National Socialism: An Example of how Switzerland Came to Terms with the Past, in* 2 REMEMBERING FOR THE FUTURE: THE HOLOCAUST IN AN AGE OF GENOCIDE 907, 907 (John K. Roth & Elisabeth Maxwell eds., Palgrave Macmillan 2001). Ludi and Speck estimated that "the actual number of Swiss victims is likely to have numbered several thousand," *id.* at 907, and observed that "even in individual cases where the rights of Jewish citizens had obviously been violated, Switzerland reacted only under pressure from outside. Although the Swiss government was informed about what took place in the extermination camps of the east, the arrest of Swiss Jews did not really become a problem until relatives or other interested parties intervened on behalf of the persecuted individuals." *Id.* at 908. When anti-Semitic legislation was enacted in France in 1941, the "Federal Council took the position that Jews with Swiss nationality could not claim privileged status about those in their host country and chose not to demand equal treatment for all Swiss citizens living in France. This choice confirmed and strengthened the policy followed since the 1930s by Swiss foreign missions in Germany, which did not protest when Swiss Jews were subjected to anti-Semitic measures." *Id.* at 909.

[79] BERGIER FINAL REPORT at 164, 166-67. In the United States, the "delicacy with which the administration felt it had to tread on the issue is illustrated by an incident in 1942 when Lord Halifax, the British Ambassador in Washington, discussed with Roosevelt a proposal for the admission to the U.S. of a group of Polish refugees, women and children, among whom 5 percent might be Jewish. According to Halifax's account the President was particularly nervous about the Jewish aspect of the scheme and he 'admitted that what [the] administration feared was anti[S]emitic agitation.'" Bernard Wasserstein, *The JDC During the Holocaust*, MIDSTREAM, Feb. 1985, at 56, 57.

any person might come here unless it was shown that he was a menace 'must at least temporarily yield to the policy that none shall be admitted unless it affirmatively appears to be for the American interest.'" The "'hateful or unjust treatment of loyal noncitizens may have the result of making them the prey of those who would organize a 'fifth column' here. No greater disservice to the cause of American unity and defense can be perpetrated than the wholesale arousing of hate against persons of foreign birth who have been attracted to this country by our promise of American opportunity.'"[80]

However, the Bergier Commission concluded that the Swiss response to, and impact upon, refugees was particularly troublesome, given Switzerland's unique attributes. First, "[i]t must be noted that Switzerland (like Sweden until the end of 1942) seems to have been the only country to openly apply racist selection criteria according to the Nazi definition."[81] Second, although Swiss refugee policies were not exceptional, their effect on refugees was. "From 1940 on, Switzerland's restrictive admission policy proved to be especially dramatic because, due to its geographical position, it was the easiest country of refuge to reach on the continent, and several thousand refugees were turned back although the authorities knew that this might mean sending them to their death."[82] While "the refugee policy applied in Switzerland in the 1930s was comparable to that pursued by other countries," in 1942 and 1943, "Switzerland found itself in a historically unique position which cannot be compared to that of other countries. The international community as a whole did far less than it might have done to save refugees. In this respect individual countries reacted in different ways to the challenges specific to their own position. Switzerland, and in particular its political leaders, failed when it came to generously offering protection to persecuted Jews."[83]

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80 *See Sharp Limit is Set on Entry of Aliens*, N.Y. TIMES, June 14, 1940, at 9. *See also U.S. Bars All Immigrants Except Where 'in American Interest'*, JEWISH TELEGRAPHIC AGENCY, June 16, 1940, http://www.jta.org/1940/06/16/archive/u-s-bars-all-immigrants-except-where-in-american-interest.

81 BERGIER FINAL REPORT at 168.

82 *Id*. 8

83 *Id*.

In summing up the impact of Switzerland's refugee policies, the Bergier Commission considered the Swiss response to have been

> all the more serious in view of the fact that the authorities, who were quite aware of the possible consequences of their decision, not only closed the borders in August 1942, but continued to apply this restrictive policy for over a year. By adopting numerous measures making it more difficult for refugees to reach safety, and by handing over the refugees caught directly to their persecutors, *the Swiss authorities were instrumental in helping the Nazi regime to attain its goals.*[84]

In a press conference announcing the release of the Final Report, Jean-François Bergier observed that although many individuals and groups sought to ameliorate the impact of Switzerland's strict refugee policies, the nation was "obliged to sustain the affirmation, perhaps provocative in form, but nonetheless in conformity with the facts: The refugee policy of our authorities contributed to the most atrocious of Nazi objectives - the Holocaust."[85]

The Bergier Commission's conclusion that Swiss actions contributed to the Nazi regime's success drew particular attention, including from the renowned historian Gerhard Weinberg. In reviewing the Bergier Report, Weinberg observed that given Switzerland's "unique geographical situation as a possible haven on the one hand and the rigidity of its anti-immigrant policy and procedures on the other," the Bergier Commission "not surprisingly came to the conclusion that 'the Swiss authorities were instrumental in helping the Nazi regime attain its goals.'"[86]

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84 *Id.* (emphasis added).

85 Alexander G. Higgins, *Study Finds Swiss Aided Holocaust*, WORLD-AP EUR., Mar. 22, 2002, http://www.apnewsarchive.com/2002/Study-Finds-Swiss-Aided-Holocaust/id-ff2ead8478dd47eadd80880c7e0115d6 ("A massive, five-year study has made clear that Swiss authorities in World War II knew the fate awaiting Jewish refugees turned back at the border and thus contributed to 'the most atrocious of Nazi objectives - the Holocaust,' a leading historian said Friday").

86 Gerhard L. Weinberg, Book Review, 38 CENT. EUR. HIST. 325, 327 (2005) (reviewing SWITZERLAND, NATIONAL SOCIALISM, AND THE SECOND WORLD WAR: FINAL REPORT BY INDEPENDENT INTERNATIONAL COMMISSION OF EXPERTS SWITZERLAND — SECOND WORLD WAR (2002)). *See also* Elizabeth Olson, *Commission Concludes That Swiss Policies Aided the Nazis*, N.Y. TIMES, Mar. 23, 2002, at A4 ("In its final report, the nine-member panel found that the Swiss authorities in World War II knew that turning back the refugees meant likely death. The authorities cooperated unduly with the Nazis and failed to return assets to their rightful owners when the war ended, the panel concluded").

B. The Bergier Commission's Findings on the Treatment of Admitted Refugees

In analyzing the fates that awaited those refugees who were able to obtain entry into Switzerland, the Bergier Commission provided a snapshot of the various living situations that might have been encountered in 1944.

> The following figures for spring 1944, which are partly based on estimations, illustrate the variety of conditions in which the refugees lived. Out of the 25,000 or so civilian refugees living in Switzerland at that time, 9,300 were living in civilian camps and homes; 3,000 were waiting in reception camps to be admitted to civilian quarters; 5,300 were living with relatives or in boarding houses; 1,600 men and women were working on the land or as domestic staff and had private accommodation; 1,000 people had a "free place" in a Swiss household, and 2,500 children lived with foster families; 580 refugees had access to higher education.[87]

While highlighting the significant numbers of refugees admitted into Switzerland toward the end of the war, the Bergier Commission criticized their treatment. The Commission noted that "[b]efore the refugees were billeted in civilian accommodations, they passed through various camps run by the military. The assembly centres near the border were followed by at least three weeks in a quarantine camp. The refugees had to wait in reception camps, also run by the military, until places were available in the civilian work camps and homes. Many waited several months, some even more than half a year. In many cases, living conditions in the reception camps did not even meet the simplest of standards: often there was no heating, the sanitary facilities were inadequate, and the diet was poor ... Discipline in the camps was maintained [by the military] not only for reasons of necessity but more often out of an educational need that was tainted with an anti-Semitic prejudice."[88]

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87 BERGIER FINAL REPORT at 156.

88 *Id.* at 153-54. *See also* Manfred Gerstenfeld, *Swiss Policy toward Refugees before, during, and after World War II*, 18 JEWISH POL. STUD. REV. 157, 158 (2006) (reviewing SIMON ERLANGER, "ONLY A TRANSIT COUNTRY": WORK CAMPS AND INTERNMENT HOMES FOR REFUGEES AMONG EMIGRANTS IN SWITZERLAND, 1940-1949 (2006)) ("Gerstenfeld review") (Erlanger pointed out "that the internment camps were established partly because of the Swiss authorities' fear that an excessive number of Jewish immigrants would stir up latent anti-Semitism in the country's population. This is striking in light of the fact that Jews constituted far less than 1 percent of the Swiss population").

Swiss historian Simon Erlanger noted that the camp system arose in response to the October 17, 1939 Resolution on Changes in Police Regulations for Foreigners, passed by the Swiss Council of Ministers. The Resolution called on the cantons to deport illegal refugees, while also making it clear that those remaining in the country were to be placed in long-term internment, and to provide work beneficial to Switzerland. "The military was concerned about the presence of suspicious foreigners in strategically sensitive areas, such as the border regions. At the same time, in the winter of 1939-1940, due to the general mass mobilization, there was an acute shortage of laborers for the construction of barriers, fortifications, and roads." Following a March 12, 1940 announcement by the Council of Ministers observing that "labor camps for emigrants are being set up in the interior of the country" and assigning the Federal Department of Justice and the Police the responsibility for organizing and operating the camps, Heinrich Rothmund and his department established a central authority, the "ZL." On April 4, 1940, the first labor camp was established, in Felsberg.[89]

Later, in May, 1942, the ZL established the first "refugee home," in Leysin. The "homes" were intended primarily to house women, children and men unable to work. In 1943 and 1944, the ZL began to establish other types of homes, such as for training, as well as for "'scholars and scientists.'"[90]

In its Final Report to the Court, the IOM described the refugee camp arrangement as follows:

> [Certain] reception camps were set up by the military ... after 1942 and were planned only for short stays. First, there was the assembly camp ("*Sammellager*"), in which refugees were investigated in order to decide in which category they belonged; under certain circumstances, they were expelled. From the assembly camp, they were moved to a quarantine camp ("*Quarantänelager*") for three weeks and then to the reception camp ("*Auffanglager*"). In many places, refugees who were admitted into Switzerland spent their first days there in prison,

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89 Simon Erlanger, *Order Versus Education: The Aims of the Swiss Labor Camps for Refugees and Emigrants*, 31 YAD VASHEM STUD. 175, 179-180 (2003) ("Erlanger, *Order Versus Education*"). The "ZL" was the Zentralleitung der Arbeitslager für Emigranten, the Central Direction for Emigrant Labor Camps.

90 Erlanger, *Order Versus Education*, at 181, describing a home in Frontenex, Geneva, intended to provide "scholarly and scientific work in cooperation with the University of Geneva." *Id.* at 181 n.14.

> without knowing for sure whether they would be returned to the border and expelled or not. They also had to endure interrogations by the military police and were photographed and fingerprinted, often made to feel like delinquents. Daily life in the military-run camps included inspections and roll-calls, even for women and children, and all refugees were subjected to strict discipline. Accommodations were completely inadequate and food was one of the major problems; fresh fruit was never seen, and most people suffered from malnutrition.[91]

The military continued to manage the camps until July 1946, when control was transferred to civilian authorities.[92]

German and Jewish refugees, who have been detained in a Swiss labor camp, work in road construction. 1942-1945. Photo courtesy of the U.S. Holocaust Memorial Museum and Gary Lewitzky.

Although conditions often were difficult, many former refugees have "rejected sweeping judg[]ments of the camp system," expressing their gratitude toward Switzerland for admitting them in light of the dire threat they were facing.[93] "Many refugees had mixed feelings toward the mandatory labour. Many were happy to be occupied and to escape the humiliating existence

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91 IOM Final Report at 169-70.

92 Erlanger, *Order Versus Education*, at 184.

93 *See* BERGIER REFUGEE REPORT at 154 n.325; KEN NEWMAN, SWISS WARTIME WORK CAMPS: A COLLECTION OF EYEWITNESS TESTIMONIES 1940-1945 (NZZ Verlag 1999), cited in Distribution Plan, Vol. II, at J-22 n.68. As one former refugee stated: "At the time when physical self-preservation was our dominant daily priority, we have found in Switzerland a haven and a heaven; we are grateful to this country for having admitted us, thus saving our lives, we are grateful to the Swiss people who had understanding and sympathy for us, the refugees, and who shared their restricted food rations with us." *Id.*

of a petitioner."[94] The labor was, however, "obligatory, not voluntary. Any attempt to avoid such forced internment met with severe penalties and could even lead to expulsion from the country. Internment in a camp often meant the long-term breakup and separation of families. Inmates could be kept in these ZL camps and homes for years on end."[95]

On the other hand, the work requirement was not limited only to refugees. "Swiss citizens, both men and women, were required to perform labor service beginning in May 1940. Tens of thousands of them did such work during the war…."[96] Swiss historian Erlanger in his book on Swiss work camps and internment homes gave a "nuanced picture of the internment camps," noting that "the organization that was responsible for their management made a substantial effort to hire competent personnel. A number of these were genuinely interested in the refugees' wellbeing. Some others stole food from the refugees and sold it on the black market."[97]

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94 IOM Final Report at 170.

95 Erlanger, *Order Versus Education*, at 181.

96 BERGIER REFUGEE REPORT at 165 n.402.

97 *See* Gerstenfeld review at 158 (noting that Professor Erlanger was a lecturer in Jewish history at the University of Lucerne and that his book on refugee camps was his "PhD thesis at the University of Basel"). Erlanger himself described the camp administrative arrangements as follows: "When the ZL [Zentralleitung der Arbeitslager für Emigranten, the Swiss central authority for labor camps] began its work … in 1940 it had a total of four staff members. Under the impact of the rising tide of refugees, that would soon change. Four years later these modest beginnings had burgeoned into a huge apparatus: on January 31, 1944, there were a total of 8,689 refugees and emigrants interned in thirty-seven camps and thirty-one ZL homes. The number of ZL personnel had soared to around 500. Less than one year later, at the end of 1944, the number of emigrants and refugees under the jurisdiction of the ZL had risen to almost 12,000, while the ZL personnel ranks expanded at times to a staff of some 900. At the end of March 1945, there were about 104 camps and homes in operation." Erlanger, *Order Versus Education*, at 184. However, while "fragmentar[y]" records exist which are "scattered among a number of archives," "[n]o intact, self-contained corpus of ZL files or a ZL archive has been found to date." *Id.* at 185. Like many aspects of Swiss refugee policy (as the Bergier Commission explained in addressing the lack of a complete record of those expelled or denied entry; *see infra*), "any reconstruction and evaluation of this key chapter in Swiss refugee policy must, for the present, be based on the scattered documents and records that have been fortuitously preserved elsewhere." *Id.*

Three Jewish children rescued from Theresienstadt rest in the Hadwigschulhaus in St. Gallen. Switzerland, Feb. 11, 1945. Photo courtesy of the U.S. Holocaust Memorial Museum, Stadtarchiv (Vadiana) St. Gallen, and Walter Schweiwiller.

Conditions in the internment camps did prove to be extremely difficult for many refugees. The Swiss official who headed up the labor camp system, Otto Pfister, considered the purpose of the system not "'to carry out a specific type of work,'" but rather "'to exercise an educational, formative impact on its participants'" and to "'integrate the workers into an ordered, healthy and useful existence.'"[98] As Erlanger noted, however, "Pfister seems to have forgotten one point: he was dealing with individuals who, for the most part, had in fact lived a quite 'ordered, healthy and useful existence' in a middle-class milieu until the moment they were excluded from society, persecuted, and driven to flight and exile."[99]

Between 1940 and 1948, "159 persons died in the ZL camps and homes; among them, the world-renowned tenor and cantor Joseph Schmidt,"[100] who in 1933 starred in one of the most successful films in Germany of that year.[101]

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98 Erlanger, *Order Versus Education*, at 197.

99 *Id.*

100 *Id.* at 181.

101 *Reich Bars Jews From Film Field*, N.Y. TIMES, July 1, 1933, at 16 (discussing "a new film law… the most important provision of which is the exclusion of Jews from any part in the production of German films").

Stamp commemorating the birth of Joseph Schmidt (Deutsche Post 2004). The musical score shows the title of his 1933 film Ein Lied geht um die Welt (A song goes round the world). https://en.wikipedia.org/wiki/Joseph_Schmidt#/media/File:Joseph_Schmidt_(timbre_allemand).jpg. Photo courtesy of Wikimedia and Deutsche Post.

Joseph (also known as Josef) Schmidt's poignant story was recounted by the Court's administrative agency charged with reviewing Deposited Assets Class Claims, the Claims Resolution Tribunal (CRT) in Zurich. The CRT recommended that Schmidt's heirs receive an award in the amount of $30,743.80, because Schmidt's Swiss accounts had not been returned. As the CRT observed, Josef Schmidt, who was born in Romania in 1904, "began his career as a cantor and became an internationally known opera star and recording artist."[102] He "died at the age of 38 in Switzerland, where he had fled as a refugee and had been interned in the Gyrenbad refugee camp."

The CRT conducted extensive research to supplement the information provided in claim forms and other documents filed by seven different claimants to Josef Schmidt's Swiss account. The CRT traced Josef Schmidt's career from his '"first vocal training … as a classic Hebrew singer in the local synagogue in Cernowitz,'" through his studies of voice and piano in Berlin and his military service from 1926 to 1929, followed by "international acclaim." He performed in German films in the early 1930s, and at Carnegie Hall in 1937. However, as the CRT explained, after touring the United States, Schmidt interrupted his career and returned to

[102] All quotations referring to Josef Schmidt are drawn from the CRT's decision approved by the Court, *In re Account of Josef Schmidt, available at* http://www.crt-ii.org/_awards/_apdfs/Schmidt_Josef.pdf.

Cernowitz in 1939 "'for a final visit with his recently widowed mother. As war erupted he tried to make his way to America, but made it only as far as a Swiss refugee camp in Gyrenbad.'"

The CRT noted that Josef Schmidt had been discussed in "a seminal work on Swiss refugee policies, *'The Lifeboat is Full' (Das Boot ist Voll).*"[103] Quoting from the book, which described Schmidt's internment as a refugee in Switzerland, the CRT explained:

> "The fate of Joseph Schmidt, the singer, cannot be forgotten. The sudden death of this internationally known and loved artist, who starred in the film *A Song Goes Round the World (Ein Lied Geht um die Welt)*, among many others, was reported at the end of November 1942 by Dr. Fritz Heberlein [in several Swiss newspapers]. Joseph Schmidt was removed on October 27, 1942, from the Gyrenbad camp to the cantonal hospital in Zürich, where his illness was diagnosed as a minor laryngitis and tracheitis. He was then discharged as cured, although he complained of chest pains. He was very fearful at the thought of returning to the camp, because he dreaded — and certainly not without reason — the serious damage to his most precious asset, his voice, that might result from the extremely bad hygienic conditions and the dust of the straw pallets in Gyrenbad. A private physician was prepared to accept him into his own clinic after his release from the hospital, give him a thorough examination, and treat him. But the camp authorities, without any malevolence, refused permission — in fact, on the ground of democracy — because even refugees of means were supposed to be treated only in cantonal hospitals. So the thirty-eight-year-old singer finally went back to the camp. As a concession, the camp commander billeted him in the inn that adjoined the camp.
>
> The next morning Schmidt died of a heart attack.
>
> Granted that his death cannot be simply ascribed to the functionaries. But if they had been somewhat less bureaucratic and thus avoided agitating the singer, at least they would not have been vulnerable to the charge of contributing to his death."

As the CRT noted, *The Lifeboat is Full* pointed out that the "'story did not end with Schmidt's death.'" Dr. Heberlein, who reported on the death, asked that conditions at the refugee camp be investigated. Instead, Dr. Heberlein was informed that his writings "'fell within

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[103] ALFRED A. HÄSLER, THE LIFEBOAT IS FULL: SWITZERLAND AND THE REFUGEES, 1933-1945 268-70 (Charles Lam Markmann trans., Funk & Wagnalls Co. 1969).

the definition of punishable rumor-mongering and it was possible that his eulogy of Josef Schmidt might be injurious to Switzerland's reputation in the United States!'"

In addition to having been a refugee in Switzerland, Josef Schmidt also was a depositor there. He had opened a safe deposit box on September 18, 1933, according to bank records reviewed by the CRT, and there was no evidence indicating that Mr. Schmidt's heirs had received the proceeds. As a result of the Court's claims processes, two of Josef Schmidt's nieces received compensation.

Beyond the work conditions in the camps, which the Bergier Commission concluded had contributed to Josef Schmidt's death, the Bergier Commission also was disturbed by the "separation of parents and their children — which raised legal problems too — [but which] was not due solely to regulations laid down by the authorities, but was also encouraged by the Swiss Committee for Aid to Children of Emigres (SHEK). In the SHEK's opinion for the sake of the development of the children, a 'normal' family atmosphere was preferable to living with their mothers in refugee homes."[104]

The Bergier Commission observed that "[a]t the end of 1943, a turning point was reached in the way the authorities dealt with the refugees: on the side of the authorities there was more willingness to meet the needs and wishes of refugees in homes and camps. The principle of separating families was abandoned. After 1943, students were allowed to continue their studies — which had been interrupted by their flight — at Swiss universities and thanks to private initiatives university camps were set up for students, as well as a high-school camp for Italian teenagers. These changes can be largely explained by the progress of the war: thanks to the Allied victories, the end of the refugees' stay in Switzerland could be foreseen."[105]

The Jewish refugees who gained admission were considered largely the financial responsibility of the Swiss Jewish community. Its members "were in an especially difficult situation, with a heavy financial and moral burden resting on their shoulders. As a tiny minority

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[104] BERGIER FINAL REPORT at 155.

[105] *Id.* at 156-57.

striving for respectability, they were not in a position to oppose official demands, but as the number of impoverished refugees arriving in Switzerland grew and possibilities for transferring assets from Nazi Germany rapidly dwindled, community leaders faced a major dilemma: insisting on a liberal and open asylum policy to save German Jews would sooner or later risk the community's financial ruin. Declaring insolvency, however, would inevitably give the authorities a pretext to send Jewish refugees back to Nazi Germany."[106] The solution "was to tap into the much larger funds of the international relief organisations," and beginning in 1939, "the American Jewish Joint Distribution Committee offered Switzerland's Jewish community its help, and in the following years, it provided 50 per cent or more of the funds needed to support Jewish refugees in Switzerland."[107]

In the view of the Bergier Commission, the "question of cost [of supporting refugees] …. was principally an argument put forward to justify restrictive measures that were, in reality, based on other considerations."[108] Furthermore, as Swiss historian Jacques Picard has pointed out: "Non-Jewish refugees were not classified into Catholic or Protestant categories and the Swiss Catholic or Protestant communities were not expected to pay for their respective refugees. Thus while other refugees were financed by refugee charities in general, the Swiss government

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[106] Ludi, *Dwindling Options*, at 89. *See also* BERGIER FINAL REPORT at 148-9 ("Basically, during the 1930s the authorities and the relief organisations considered that covering the cost of the refugees' stay in Switzerland was a private matter and not that of the state. The refugees should pay their own way as far as possible; if necessary, the appropriate support groups should provide financial support for 'their' people. After the persecution of Jews was intensified in 1938 and tens of thousands of people fled Austria and Germany, the Swiss relief organisations ran out of funds…. From 1940 on, the financial burden on the relief organisations was somewhat alleviated by the fact that emigrants were interned in work camps; from 1943 on, the commitment of the Federal authorities became more substantial as thousands of refugees were sent to camps and homes…. In our opinion, the global cost to the national economy generated by having taken in the civilian refugees, is impossible to calculate. Apart from direct costs for board and lodging plus medical care, any such calculations would have to include the economic benefit gained from the presence of the refugees. This would encompass their manpower or, for example, what they spent on accommodation in boarding houses and with private families").

[107] Ludi, *Dwindling Options*, at 89. *See also* YEHUDA BAUER, AMERICAN JEWRY AND THE HOLOCAUST: THE AMERICAN JEWISH JOINT DISTRIBUTION COMMITTEE, 1939-1945 232-33 (Wayne State University Press 1981) (discussing the important role played by Saly Mayer, who, as president of the SIG (*Schweizerischer Israelitischer Gemeindebund*) and then as JDC representative, "occupied a central place in the care of Jewish refugees in Switzerland" and who, "[i]n order to do his work successfully, … had to keep up his contacts with Heinrich Rothmund"). The JDC was one of the non-governmental organizations authorized by the Court to assist in the administration of programs benefitting the neediest class members. For further information, *see* chapter of this Final Report entitled "The Looted Assets Class *Cy Pres* Program."

[108] BERGIER FINAL REPORT at 151.

in effect relegated the Jews to the status of second-grade refugees and told the Jewish community to sort out and pay for its own refugee problem…. [This was a] racial distinction and morally questionable."[109]

The Swiss reluctance to admit Jewish Nazi victims did not, however, extend to their assets. Decisions on admission into the country "depend[ed] on whether persons or property were involved," and indeed the "influx of European capital took place with practically no obstacles, whereas the border was often hermetically sealed against persons in search of asylum."[110] Those who were admitted as refugees thus found that their assets were also welcome. As discussed in greater detail in the chapter of this Final Report entitled "The Deposited Assets Class Claims Process," the "refugees' stay in Switzerland was characterized by supervision and the removal of personal responsibility," including the confiscation of "valuables and cash," which were "handed over to the Federal Department of Justice and Police to be administered."[111]

Although "[a]s a rule refugees were handed back their assets upon leaving Switzerland,"[112] this was not always the case. The Court approved several CRT awards based upon bank records and documentation indicating that the accounts had not been returned to the refugee (or his/her heirs). For example, in *In re Accounts of Mario Calfon*, the Court authorized a Deposited Assets Class award where the account owner had been required, pursuant to a Swiss Federal Council Decree of March 12, 1943, to deposit his assets in a Swiss bank for management by Swiss police authorities. While forced to work in refugee camps, Mr. Calfon and his wife were hospitalized and incurred a debt. Mr. Calfon tried to negotiate with the bank, noting that he had not been paid for his work as a refugee, but he was unsuccessful. The bank records indicate that Mr. Calfon's gold jewelry and other assets had been used to cover his debts and had not been returned to him. Mr. Calfon's heirs received an award in the amount of SF 289,087.50.

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[109] Jacques Picard, *Switzerland and the Jews*, *in* SWITZERLAND UNWRAPPED: EXPOSING THE MYTHS 15, 23-24 (Mitya New ed., 1997).

[110] BERGIER REFUGEE REPORT at 53.

[111] BERGIER FINAL REPORT at 158.

[112] *Id*. at 159.

As to those who were able to retrieve their assets before leaving the country, "in the meantime most of the balances had decreased considerably. Apart from the repayment for their keep, this can also be explained by the high administrative fees levied by the bank. In addition, the authorities had exonerated the bank from paying the refugees interest on their current accounts. A particularly severe measure from the refugees' point of view was that the Police Division was authorized to sell pieces of confiscated jewelry if necessary (including even family heirlooms) without obtaining the owner's permission."[113]

C. The Number of Refugees Denied Entry or Expelled, and the Number of Refugees Admitted

One of the key questions facing the Bergier Commission was the number of individuals affected by Switzerland's refugee policies. As true for records relating to Swiss bank accounts, much of the necessary documentation on refugees had been destroyed. Like the Volcker Committee, which investigated Holocaust-era Swiss bank accounts,[114] the Bergier Commission had to analyze and draw conclusions from an incomplete historical record.

In its Refugee Report of 1999, the Bergier Commission explained that it had studied "files relevant to refugee policies" that had been opened by the Swiss Federal Archive, "including the personal files of all refugees granted asylum . . . Even though the sources in the Federal Archives generally reflect the views of the government, records of the Swiss Central Office for Refugee Relief (SZF) and the Swiss Jewish Association for Refugee Relief (VSJF), deposited in the Archives for Contemporary History of the Federal Institute of Technology

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[113] BERGIER FINAL REPORT at 159.

[114] The Volcker Committee's work is discussed in the chapter of this Final Report entitled "The Deposited Assets Class Claims Process." Briefly, the Volcker Committee was established in 1996 by the Swiss Bankers Association, the World Jewish Congress, and other Jewish organizations, to conduct an independent audit of Holocaust-era bank accounts. The committee was led by Paul A. Volcker, former Chairman of the U.S. Federal Reserve Bank. Its findings that 6.7 million Holocaust-era accounts had existed, of which records for 4.1 million accounts had been destroyed, informed much of the administration of the Court's Deposited Assets Class claims process.

(ETH) Zurich present a somewhat differentiated picture. Other primary sources include the archives of other relief organizations, oral history, written statements, and personal papers."[115]

Despite the availability of considerable data, "[s]ome files … no longer exist, in particular those containing information about the expulsion of refugees."[116] Further, "[a]mong the most important records lost or partially lost are the register of refugees expelled by the Federal Police Division, the records of the territorial commands (except for Territorial divisions 1 and 4, the State Archives of the cantons Geneva and Tessin), and the records of the Federal Central Office for Refugee Homes and Camps."[117]

Other significant files also had been destroyed, including those of the "Swiss Federal Police for Foreigners," from which data regarding visa applications could have been derived.[118] As to visas, then, "[t]he general practice can only be reconstructed fragmentarily using the few remaining files from Swiss legations and consulates. The relevant files are missing from the foreign missions in Germany. The only still existing files are for the Swiss Legation in Paris and in Vichy."[119]

Similarly, "there are no official reports that document the fate of [expelled] refugees after Switzerland turned them away. For Swiss officials, a 'case' existed only up to the border; what happened after that was outside their field of vision."[120] Thus, the Commission relied upon documents such as letters "found in files pertaining to other matters," or that happened to have

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115 BERGIER REFUGEE REPORT at 17-18.

116 *Id.* at 18.

117 *Id.* at 18 n.40; *see also id.* at 129 n.171 ("Police files on expulsions no longer exist, nor do source materials relevant to refugee policy of many territorial commands and of the police section of the Security and Special Services Division of the military"). With respect to treatment of refugees permitted to remain in Switzerland, "[i]n contrast to the camp system, research about private housing of refugees has been absent because of decentralized sources." *Id.* at 163 n.391. As of December, 1999, the date of publication of its interim report on refugees, the Bergier Commission had been informed that the "Federal Archives are creating a database that is supposed to contain all available information on refugees known to have been expelled." *Id.* at 129 n.172.

118 *Id.* at 108 n.45.

119 *Id; see also id.* at 263.

120 *Id.* at 128.

been sent to attorneys, relief organizations, or the press. However, such "often hastily scribbled reports by refugees" exist "only by chance."[121]

Lastly, the "number of people who did not try to enter Switzerland either following the rejection of their application for a visa by a Swiss consular office, or in the wake of information about restrictive Swiss policy, is uncertain. Thus, the exact number of people Switzerland could have saved from deportation and murder remains unknown."[122]

In addition to these archival documents (however incomplete), the Bergier Commission relied upon the following additional sources in reconstructing the statistical data:

- "Documents on German Foreign Policy," a 1953 publication which "revealed that in 1938 Switzerland had participated in stamping the passports of German Jews with a 'J'."[123]
- *Flüchtlingspolitik*, a report commissioned by the Swiss Federal Council in 1954 and published by legal expert Carl Ludwig in 1957, which "is still regarded today as indispensable for understanding Swiss refugee policies." It comprehensively examined the prevailing legal parameters and named Federal Councillor [Edouard] von Steiger and Heinrich Rothmund, head of the Police Division in the EJPD [Swiss Department of Justice and Police] as primarily responsible;" and claimed that the "restrictive refugee policies" supposedly were warranted by the "'inundation by foreigners' … and the 'strained job market.'"[124]
- DAS BOOT IST VOLL…DIE SCHWEIZ UND DIE FLÜCHTLINGE 1933-1945 (THE BOAT IS FULL) (Fretz & Wasmuth 1967), a book authored by journalist Alfred A. Häsler which "presented to a broad audience the horrifying consequences of expelling and turning back refugees."[125]
- Various "well-researched studies" conducted under the auspices of Swiss universities, including analyses of the operation and division of responsibilities among various

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121 *Id.* at 128 n.165.

122 *Id.* at 263.

123 *Id.* at 16.

124 *Id. See also Swiss Report Urges Wider Asylum Role*, N.Y. TIMES, Oct. 6, 1957, at 7 ("Prof. Carl Ludwig of the University of Basle complained in the report that thousands of refugees, particularly Jews, were left to their fate between 1933 and the end of World War II because of over-rigid rules of asylum").

125 BERGIER REFUGEE REPORT at 16.

governmental departments, Swiss policies toward Jews, refugee internment camps, and "Swiss knowledge about Nazi mass murder policies from 1941 to 1943."[126]

Based upon the available primary and secondary sources, in its 1999 Refugee Report, the Bergier Commission reached the following conclusions regarding the relevant statistical data:

- "[T]he limitations of statistics must be considered. There are hardly any reliable figures available for the years 1933 to 1939."[127]
- "[O]nly those refugees granted asylum were registered individually, enabling us today to compile various figures; however, very little is known about the refugees denied asylum."[128]
- "There is proof that about 24,500 refugees were turned away at the border between January 1940 and May 1945. The actual figure is probably somewhat higher, but a more exact calculation is not possible because of a lack of sources."[129]
- "The exact number of refugees denied asylum at the Swiss border after 1933 can never be reconstructed . . . Important sources were destroyed in the postwar period. Many expulsions before the fall of 1942 were not even registered. The most verifiable exact figure is that a total of 24,398 refugees can be proven to have been expelled during the war years. Between the spring of 1938 and November 1944, the Police for Foreigners also rejected 14,500 of a total of 24,100 entry applications by refugees."[130]

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126 *Id.* at 17.

127 *Id.* at 20.

128 *Id.*

129 *Id.*

130 *Id.* at 129. Guido Koller of the Swiss Federal Archive, with whom the Special Masters had several communications and who provided considerable assistance in analyzing and assembling relevant data, explained these statistics in further detail in his work, *Life and Death Decisions: The Administrative Practice of Swiss Refugee Policy during the Second World War* ("*Entscheidungen über Leben und Tod: Die behördliche Praxis in der schweizerischen Flüchtlingspolitik wärhrend des Zweiten Weltkrieges*"), *in* DIE SCHWEIZ UND DIE FLÜCHTLINGE, 1933-1945 17 (Haupt 1996) ("Koller").

Koller stated that the assessment propounded in the 1950s by Carl Ludwig was that approximately 10,000 refugees were "rejected," a number that "was adopted in most publications on the refugee policy until today," although "[m]ost authors also agree with Ludwig on the point that a much higher number of persecuted, due to the defensiveness of the Swiss, did not even attempt to flee to Switzerland." Koller at 91. However, Koller's subsequent analysis of the existing archival materials led both Koller and ultimately the Bergier Commission – which relied upon his work (*see e.g.*, BERGIER REFUGEE REPORT, Chapter 1 and *passim*) – to conclude that "the number of rejections Carl Ludwig cited must … be revised." Koller at 92.

As Koller observed, Ludwig's analysis of rejections had been

> …based [on] a statistic that was compiled by the police department (PA) in the end of 1945, which was based upon the *Card Index according to Date of Entry*. This card index recorded only those rejected

(*continued on next page*)

- With the closing of the Swiss borders in the summer of 1942, "the number of expulsions rose steeply beginning in August 1942 and remained high until the fall of 1943; more than 5,000 rejections of asylum-seeking refugees are documented in writing during this period alone, out of more than 24,000 documented rejections for the entire wartime period."[131]
- For those granted asylum, "[o]f the 51,100 refugees accepted during the war, 14,000 came from Italy; 10,400 from France; 8,000 from Poland; 3,250 from the Soviet Union; and 2,600 from Germany . . . Among them were 19,495 Jews and 1,809 individuals who were persecuted because of their Jewish ancestry."[132]
- "From September 1 to December 31, 1942, 7,372 refugees were admitted; the statistics on rejection (incomplete) indicate at least 1,628 rejections for the same time period. In the period covering January 1 through August 31, 1943, 4,833 refugees were accepted while 3,331 were (according to official documentation) rejected." [133]

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refugees who on the basis of border guard reports and the rejection lists of the territorial commands (TK) *were known by name*. In the case of rejections immediately on the spot of the border crossing, the border authorities often only passed on anonymous reports. These were statistically recorded by the police department (PA). In their inventories of files, they can still in part be found. It is therefore possible to correct the rejections which are recorded in the card catalogue on the basis of the anonymous information of the border authorities. In such a manner, one obtains a more exact quotation of the *actual registered* rejections during the war.

Koller at 92-93 (citation omitted) (emphasis in original). Accordingly, Koller concluded that approximately 24,000 refugees – not always registered by name – were expelled from Switzerland or turned away at the border. That figure was more than twice as high as Ludwig's.

As for the conclusion in the 1999 report that approximately "14,500 of a total of 24,100 entry applications" were rejected (BERGIER REFUGEE REPORT at 129), Koller explained that the "entry applications" were the result of Switzerland's "introduction of [a] general visa requirement on September 5, 1939," so that "those seeking protection would have been referred to the way to petition for entry." Koller at 97. However, the specific "identities of the rejected male and female applicants can only be documented in a very few cases, as the majority of corresponding personal dossiers of the Foreign Police were destroyed." *Id.* at 97 n.234.

Koller criticized the destruction of refugee files. "Contemporary witnesses cite registrar specific[s], and especially the lack of space as motives. Yet the police department (PA) knew that historically relevant files were to be saved, and, in general, the destruction of files was not to be undertaken without first consulting the federal archivist. However, during the time period in question, the federal archive was often never consulted. In addition, the capacities of the federal archivist were not sufficient to personally inspect inventories. It can not be excluded from the outset that the motive for destruction of the files was to obliterate incriminating evidence. In the connection to the debate about the Ludwig Report, it is hardly imaginable that the significance of the rejection files was not recognized." *Id.* at 100.

131 BERGIER REFUGEE REPORT at 263.

132 *Id.* at 24; *see also id.* at 24, Table 2 ("Nationality and religion of civilian refugees").

133 *Id.* at 146 n.273.

- "In November 1944 nearly 12,000 refugees were housed in reception and quarantine camps."[134]

The Bergier Commission reached similar conclusions in its 2002 Final Report. In the immediate post-War era, Swiss authorities had highlighted what they indicated was the nation's generous refugee policy, in that Switzerland had admitted "some 300,000" refugees. However, the "total of 300,000 refugees admitted that was quoted by the authorities was based on the sum of all possible categories of people who sought refuge in Switzerland, thereby drawing attention away from the central problem: the restrictive policy adopted with regard to Jewish refugees."[135]

Thus, "[m]ore significant [than the refugee admissions into Switzerland] are the numbers of civilian refugees admitted or refused, although there are also numerous difficulties attached to interpreting the figures." The Bergier Commission noted that "sources relating to those refused admission are very scanty." Many of the refusals "were only recorded anonymously," and there was "no record at all of those people who were so discouraged by the restrictive policy adopted by Switzerland that they never even tried to enter the country."[136]

In its Final Report, the Bergier Commission reiterated its 1999 finding that the number of refugees admitted between September 1, 1939 and May 8, 1945 (*i.e.*, the war years) could be determined with some certainty. For that period, there were records of 51,129 refugees "who had entered Switzerland without a valid visa," and were interned. "Of these, just over 14,000 came from Italy, 10,400 held French passports, 8,000 were Poles, 3,250 were from the Soviet Union and 2,600 were German citizens. According to the records, a further 2,200 were stateless persons, although the real number of stateless persons was in fact higher." The "number of Jews was 19,495; another 1,809 refugees had been persecuted because of their Jewish origins."[137]

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134 *Id.* at 156 n.337.

135 BERGIER FINAL REPORT at 116.

136 *Id.* at 117.

137 *Id.*

Thus, Switzerland admitted and kept records of 21,304 individuals who were or were believed to be Jewish, and who were interned as refugees.[138]

In addition to these numbers, several other categories of admitted persons needed to be added: the "2,000 people who were issued a cantonal tolerance permit," the "7,000 to 8,000 mainly Jewish emigrants who were in Switzerland at the outbreak of the war," and the "the small number of political refugees." Thus, in total, Switzerland "offered around 60,000 civilians refuge from persecution by the Nazis for periods ranging from a few weeks to several years. Slightly less than half these people were Jewish."[139]

On the other hand, the Bergier Commission observed — as it had in its 1999 interim report on refugees — that it was "extremely difficult … to calculate the number of refugees who were refused entry." The Bergier Commission was aware that some had raised issues with certain of its 1999 statistics, and responded to these concerns in its 2002 Final Report.

> The figures on refugees refused entry that we published in 1999 based upon earlier research in the Federal Archives, have since been called into question. There is no uncertainty about the 9,703 refugees refused entry who are recorded by name. The register of people refused entry, which no longer exists today, was the basis for the figures published by Carl Ludwig in 1957, according to which Switzerland turned back a total of around 10,000 refugees. This figure represents an absolute minimum, which is accurately documented. The comprehensive research carried out over the past few years has shown, however, that there are statistics referring to some 24,500 people who were refused entry during the war. If one then deducts the 10,000 people who were recorded by name, this leaves a total of 14,500 anonymous refugees who were turned back. Some refugees made several attempts to get across the border and were perhaps finally admitted. Such people would then be included several times in the statistics concerning refusals, and at the same time in those on refugees admitted. Others were handed over directly to the border guards, imprisoned and deported. Still others did not make a second attempt because they knew that if they failed again, they would be handed over to the authorities. Today it is impossible to ascertain how many

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138 Swiss researcher Ruth Fivaz-Silbermann concluded, based on her own studies, that "[i]n total, Switzerland can take responsibility for having saved between 28,000 and 29,000 Jewish li[v]es" by admitting them during the Holocaust. Ruth Fivaz-Silbermann, *Ignorance, Realpolitik and Human Rights: Switzerland between Active Refusal and Passive Help*, *in* BYSTANDERS, RESCUERS OR PERPETRATORS? THE NEUTRAL COUNTRIES AND THE SHOAH 87, 96 (Int'l Holocaust Remembrance Alliance ed., Metropol Verlag 2016).

139 *Id.*

people came into this category. It is precisely because many cases are recorded where refugees were handed back to the very people who had been persecuting them that it may be assumed that the number of refugees included more than once in the statistics is not very high. If one assumes that one in three refugees was refused entry twice, the number of 14,500 anonymous people refused entry corresponds roughly to around 10,000 further cases refused. Finally, it is a recognised fact that not all refusals were recorded. It must therefore be assumed that Switzerland turned back or deported over 20,000 refugees during the Second World War. Furthermore, between 1938 and November 1944, around 14,500 applications for entry visas submitted by hopeful emigrants to the Swiss diplomatic missions abroad were refused. It is not known how many of these people later tried to enter Switzerland just the same and are included in the statistics concerning refugees admitted or refused entry.[140]

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[140] *Id.* at 117-18. The Bergier Commission noted that questions had been raised by Jean-Christian Lambelet in the newspaper *NZZ* and elsewhere (citing, *e.g.*, *NZZ* no. 192, 19/20 August 2000), to which Guido Koller of the Swiss Federal Archive had responded (*Die Weltwoche*, August 31, 2000). "From 10 October 2000 on, a series of 14 articles on this subject appeared in *Le Temps*, including a reply from the ICE [the Bergier Commission] published on 20 October 2000." BERGIER FINAL REPORT at 170 n.37. "Concerning Geneva see also Fivaz-Silbermann, Refoulement, 2000. In the foreword to this publication, Serge Klarsfeld sets out his belief, which is not further justified, that no more than 5,000 Jewish refugees in all were refused entry. It would appear that he is taking into account only the situation on Switzerland's western border and not the events that occurred in late summer 1943 along the border with Italy." *Id.*

In 2013, the Bergier Commission's data again were questioned by the same individuals, who contended that "far fewer Jewish refugees were turned away at Swiss borders than previously thought. Klarsfeld puts the number at 3,000, compared to a previous estimate of 24,500. The higher figure included in the 1999 Bergier report into the refugee policy of Switzerland during the Second World War was based on imprecise archive material which did not specify the rejection of Jews or the reasons for denying people entry, Klarsfeld told the Sonntag newspaper…. Klarsfeld joined forces with fellow historian Ruth Fivaz-Silbermann to conduct more research in France, Italy and Germany." *See* Clare O'Dea, *Nazi hunter says Swiss rejected fewer Jews*, SWISSINFO.CH (Feb. 10, 2013, 3:32 PM), http:// http://origin.swissinfo.ch/eng/nazi-hunter-says-swiss-rejected-fewer-jews/34951620. Marc Perrenoud, who served as Research Adviser to the Bergier Commission, was reported to have responded: "'We never said our figures were definitive'" and "it was always possible that new historic sources would emerge after the commission's report was published." *See Swiss rejected fewer Jews, Nazi tracker says*, LOCAL (Feb. 11, 2013, 10:52 AM), http://www.thelocal.ch/20130211/swiss-rejected-fewer-jews-than-estimated-historian.

In May 2013, Switzerland formally rejected the suggestion that it reexamine the refugee data. "'A new committee would not necessarily yield more accurate figures than the ones reached' through previous inquiries, the Swiss Federal Council said in its reply published Thursday in Le Matin, a Swiss French-speaking daily, to a request by Swiss lawmaker Yvan Perrin to re-open the issue." *Swiss government says won't re-examine deportation of Jewish refugees*, JEWISH TELEGRAPHIC AGENCY (May 24, 2013, 6:34 AM), http://www.jta.org/2013/05/24/news-opinion/world/swiss-government-says-wont-re-examine-deportation-of-jewish-refugees.

Thereafter, Swiss historian Regula Ludi referred to the "[c]onservative estimates" that close to 40,000 refugees were denied asylum. She noted that in "recent years … the accuracy of these figures has been the subject of heated debate and attempts at revision." Regula Ludi, *More and Less Deserving Refugees: Shifting Priorities in Swiss Asylum Policy from the Interwar Era to the Hungarian Refugee Crisis of 1956*, 49 J. CONTEMP. HIST. 577, 580 n.7 (2014).

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The Bergier Commission thus indicated that approximately 20,000 individuals were "turned back or deported," and 14,500 were refused visas, for a total of 34,500 individuals whom Switzerland refused to admit.

The Bergier Commission noted that it was likely that some individuals had made multiple attempts in one or both categories, and there might be some duplicates within the figure of 34,500 individuals turned away. On the other hand, there likely was undercounting too. "The shortcomings associated with the statistics on anonymous refusals which have been discussed here can, however, also be used to yield the opposite effect. In this interpretation, a case file on refugee rejection recorded anonymously could theoretically imply the rejection of several persons, as in the case of a married couple or a family group. Then the figure of refugees rejected would certainly have to exceed the number of registered refusals."[141]

Those who questioned some of the refugee statistics did not appear to directly address the Bergier Commission's finding that not all of the documentation was available, and thus the numbers could never be fully known. Important records were missing or had been destroyed (as also reported by archival authorities to the Special Masters; *see infra*). Further, the Bergier Commission had observed that the names of thousands of individuals turned away at the border were unrecorded. In addition, thousands more applied for but were refused visas. Fivaz-Silbermann more recently has noted that "[s]ome 16,000 requests for legal entry to Switzerland, submitted directly either to the National Immigration Police (*Eidgenössische Fremdenpolizei*) or to Swiss consulates abroad, seem to have been turned down" and "[n]o conclusive figure is possible because the relevant archives have been lost." *See* Ruth Fivaz-Silbermann, *Ignorance, Realpolitik and Human Rights: Switzerland between Active Refusal and Passive Help*, in BYSTANDERS, RESCUERS OR PERPETRATORS? THE NEUTRAL COUNTRIES AND THE SHOAH 87, 89 (Int'l Holocaust Remembrance Alliance ed., Metropol Verlag 2016). In addition, untold numbers of Nazi victims were deterred by the restrictive refugee policies from ever making the attempt. As the Bergier Commission explained, none of these individuals could be counted and none of this missing data could be precisely quantified. However, based upon the evidence that was available, estimates still were possible.

[141] *Id.* Regula Ludi observed that "[o]ne issue of particular contention was the number of refugees to whom Switzerland denied asylum. Based on economic models, the critics attempted to show that chances for refugees to be accepted were considerably higher than is generally assumed. They treated the available data as confirmed figures, even though the actual number of expelled persons cannot possibly be reconstructed: relevant sources were destroyed in the postwar era, and many expulsions left no traces in official records." Ludi, *Waging War on Wartime Memory*, at 137. Ludi agreed with the Bergier Commission's findings that "[b]ased on available documents, the number of 24,000 expulsions carried out during the war has been reconstructed. It has also been corroborated that at least 14,000 visa applications by refugees were rejected. Yet there is no way to find out how many individuals were denied asylum" because, as the Bergier Commission observed, the "identity of most expelled refugees is unknown, and it is impossible to ascertain data for the pre-war period and the first years of the war, when the obligation to keep records was not yet enforced." Some still "claimed that the figures were exaggerated" in that they included multiple attempts by the same persons. *Id.* Professor Ludi reiterated these sentiments in 2010: "For the entire prewar era, no reliable data exist regarding the number of refugees who crossed the borders into Switzerland, who were allowed to stay or expelled, as such

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There were thus thousands of potentially eligible victims under the claims process.

IV. PROCESSING REFUGEE CLASS CLAIMS

A. Research and Assembly of Archival Data

In contrast to the Deposited Assets Class claims process, which was lengthy and difficult not only because the banks had destroyed records relating to millions of Holocaust-era accounts, but because many (although not all) banking authorities also held back other important documents for years, the Refugee Class claims process benefitted greatly from the broad cooperation of Swiss officials, particularly those associated with the Swiss Federal Archive.

In connection with formulating allocation and distribution recommendations for consideration by the Court, the Special Masters communicated with the Swiss government (Ambassador Jacques Reverdin) as well as officials from the Swiss Federal Archive, including Prof. Dr. Christoph Graf and Mr. Guido Koller.[142]

In attempting to provide background information, in a memorandum transmitted to the Special Masters dated March 22, 2000, the Swiss Federal Archive ("SFA") advised that it was

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statistical information was not collected systematically before the Second World War. A centralised registration only emerged after 1939. In addition, authorities changed the categorization of refugees several times between 1933 and 1945, thus aggravating methodological problems. Finally, many of the records that would have allowed the reconstruction of data at local and cantonal levels have been lost or destroyed by the agencies responsible." Ludi, *Dwindling Options*, at 84.

Ludi observed that in light of the "methodological problems," as acknowledged by the Bergier Commission, "the heated debate on numbers appears preposterous." She noted that it "would not have achieved such emotional intensity if there were not more at stake than just mere numbers. Indeed, what the critics called for was a revision of historical interpretation," seeking, among other things, a revocation of the government's "apology to the Jews." Ludi, *Waging War on Wartime Memory*, at 137. *See also* Maissen, *Republican and Liberal Values*, at 250 (Federal Councillor Jean Pascal Delamuraz, with "his colleagues in government, … shared the conviction that the Swiss had no reason to feel ashamed. If somebody dared to accuse them of misdeeds, he or she must be an extortionist. When one dealt with problematic topics, especially the undeniable repulse of Jewish refugees, this was not interpreted as proper misbehavior that might root, for example, in Swiss traditions of anti-Semitism. Swiss refugee policy was considered to have been merely a reaction, even though an awkward one, to the evil incarnated exclusively in Germany").

[142] Guido Koller's research into the status of refugee archives, published in a 1996 volume analyzing Swiss refugee policy, was incorporated into the Bergier Commission's 1999 report.

"trying to establish a list of names of refugees turned back at the Swiss border between 1939-45 with the help of the cantonal archives" but that it would be "possible to collect a small part of the names only." The SFA list as of March 2000 only contained "about 2'500 names," of which "one third have been registered as Jewish."[143]

Following further inquiries from the Court and the Special Masters, the SFA advised Judge Korman by letter dated June 29, 2000 that the Swiss Federal Council had "authorized the Swiss Federal Archive to transmit to the Court the requested data, under the condition that Swiss federal legislation on data protection is respected."[144] Thereafter, by letter dated July 14, 2000, the SFA transmitted "the requested data on 51,417 refugees admitted into Switzerland during World War II" and noted that "[d]ue to technical problems, we won't be in a position to send you the data on refugees not admitted into Switzerland, until a later date."[145]

For those expelled or turned back, some of the most important data would have been maintained by Switzerland's 26 cantons (states). However, of the 26 cantons, only Geneva was likely to have a "substantially complete set of data concerning refugees turned back at the

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143 Letter from Guido Koller & Prof. Christoph Graf, Dir., SFA, to Special Masters (Mar. 22, 2000).

144 Letter from Prof. Dr. Christoph Graf to Hon. Edward R. Korman (June 29, 2000). In a letter dated June 21, 2000, following several communications between the Special Masters and the SFA concerning Swiss legislation protecting data from disclosure, the Court stated: "With my authorization, Special Master Gribetz has already assured you by letter dated April 12, 2000 that the Court is sensitive to Swiss privacy concerns, and that anyone whose name appears on any of the refugee databases you provide will be given a reasonable opportunity to be excluded from publication. I will direct that when notice is provided to the settlement classes of the Special Master's Proposed Plan of Allocation and Distribution of the settlement fund, that notice will instruct potential members of the Refugee Class as to the procedure by which they may exclude their names from publication." Letter from Hon. Edward R. Korman to Prof. Dr. Christoph Graf (June 21, 2000).

145 Letter from Andreas Kellerhals, Deputy Dir., SFA, to Special Masters (July 14, 2000). The letter explained that the list of 51,417 refugees "contains the names of civilian refugees who entered Switzerland between 1936 and 1945 *and* who were legally interned by federal authorities in World War II. These refugees were normally sent to labor camps (men), homes (women, old), Swiss families (children) or schools (youth, students). A few thousand civilian refugees who received a cantonal legal status are *not* included on the list. These refugees were not forced into a residence as the civilian internees usually were. A complete set of data on refugees does not exist in most cantons." *Id.* (emphasis in original). The letter also stated that approximately 21,200 of the people appearing on the list were Jewish, and provided a breakdown of the refugees' respective nationalities. The letter further advised that although the list "*mainly* contains the names of victims of Nazi persecution," it is "essential to acknowledge the possibility that the list may also contain the names of *perpetrators* since many tried to evade capture by the Allies at the end of World War II. Switzerland refused to admit war criminals. However, in spite of strict controls lesser-known perpetrators may have entered Switzerland undetected." *Id.* (emphasis in original).

border."[146] The Geneva archives subsequently provided the requested information. In Basel, archives analyzed by Yad Vashem researchers were located in a specific file, "*Emigranten die von der Grenzpolizei zuruckgewiesen wurden*" ("Emigrants Who Were Turned Back by the Border Police"), which would be provided to the Special Masters at a later date.

On July 26, 2000, Judge Korman gave final approval to the Settlement Agreement, but noted a number of potential problems that could arise in implementing a plan of allocation and distribution. With respect to the names of possible members of the Refugee Class, the Court observed:

> If it proves impossible to assemble the information needed because Swiss entities (including cantonal entities) refuse to provide information that they have in their possession that is needed for the fair administration of the Refugee Class, I will consider an application for modification of the enforceability of releases with respect to those entities.[147]

On July 27, 2000, the Special Masters received another letter from the SFA, by which the archives provided "the requested data on refugees not admitted into or expelled from Switzerland during World War II."[148] The SFA letter advised:

> The data consists of three lists, which have been compiled according to the potential legal status of refugees as *civilian internees* in Switzerland in World War II.
>
> (1) The database *refugees-turned-back-us-dc* contains data on 1,715 civilian refugees turned back at the Swiss border or expelled from Switzerland between March 14, 1938 and May 09, 1945 and collected by the Swiss Federal Archive from various federal and cantonal record groups.

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[146] Letter from Prof. Dr. Christoph Graf to Special Masters (May 16, 2000). The Court noted this response in its decision approving the settlement: "I acknowledge the good faith cooperation of the SFA [Swiss Federal Archive] in compiling this list. Unfortunately, however, SFA officials have informed the Special Master that it 'will be possible to collect a small part of the names only,' and that, '[a]t the moment, this list contains about 2,500' names. This is woefully inadequate. Nevertheless, the SFA further informed the Special Master that it 'is trying to establish a list of names of refugees ... with the help of the cantonal archives,' and that, of the cantons, only Geneva is likely to have a 'substantially complete set of data concerning refugees turned back at the border.' To that end, the SFA has contacted the Geneva archives for assistance in compiling this information." *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 161 (citations omitted).

[147] *Id*.

[148] Letter from Guido Koller to Special Masters (July 27, 2000).

(2) The "Liste de refugiés ayant été refoulés contre leur gré" contains data on 2,159 civilian refugees turned back at the border to Geneva between 1939 and 1945. It has been established and transferred to us by the State Archives of the Canton of Geneva. However, research on the pertinent records is still underway. It is possible that further data on refugees turned back, will be found and forwarded to you.

(3) The list called "Namen von zurückgewiesenen judischen Flüchtlingen aus den Beständen des Staatsarchivs Schaffhausen" contains data on 99 civilian refugees turned back at the border to the Canton of Schaffhausen shortly before and during World War II. The list has been established and transferred to us by the State Archives of the Canton of Schaffhausen.

The SFA letter observed that it was "important to note that:

(1) A complete set of data on refugees not admitted into or expelled from Switzerland exists neither in the federal government archives nor in the state archives.

(2) The lists handed over to you *mainly* contain the names of victims of Nazi persecution. That is, *first* of all Jewish refugees, *second*, Polish, Italian, French or other persons who managed to escape from a slave labor situation and *third*, other persons affected by the Nazi occupation of various European countries and the War. However, it is essential to acknowledge the possibility that the list may also contain the names of *perpetrators* and Nazi collaborators since many tried to evade capture by the Allies at the end of World War II. Switzerland refused to admit war criminals.

(3) A refugee can be mentioned on more than one list."[149]

The State Archives of the Canton Basel-City thereafter advised the Special Masters that since 1995, it had "worked with Yad Vashem," and had "made possible the evaluation of relevant files from the Archives." Beginning in January 1996, it "again began comprehensive investigations into the sources which could refer to the rejection of Jewish refugees."[150] As a result of this research, the State Archives of the Canton Basel-City was able to collect data "regarding circa 60 persons who were turned away (in: PD-REG 3, Nr. 31200 'Emigrants who

[149] *Id.* (emphasis in original).

[150] Basel-City Archives Letter (Aug. 9, 2000) at 1.

were turned away by the border police,' 1938 [-1939])."[151] This file proved a unique source, as it contained not only basic identifying information about the refugees, but narratives by the border authorities who expelled them.

As the Distribution Plan was being finalized, and after it was submitted, the Special Masters continued to receive materials from archivists in Switzerland. The most significant documentation consisted of a list "compiled by the State Archives of the Canton of Ticino, contain[ing] entries to 2,343 refugees turned back at the Swiss border to Italy during World War II, mainly in 1943 and 1944."[152] In addition, the Special Masters received the files from the Canton Basel-City relating to 60 persons who were turned away.

Other cantonal archives provided additional information. As described in a September 11, 2000 letter to the Special Masters from the Swiss Federal Archives: the "Swiss Federal Archives requested the State Archives, in a circular letter of August 7, 2000, to review their research for the US District Court. We are hereby sending you the responses received from 24 [of 26] State Archives. The State Archive of Schaffhausen has advised that it has located no additional information to the data sent on July 27, 2000. The State Archive of the Canton of Valais will respond in the next days. We trust that you will appreciate the good faith cooperation of the State Archives and ourselves with the Court."[153]

In their individual letters, the cantons provided information about their refugee files, and also offered explanations as to what they were, and were not, able to locate.

- A number of cantons advised that all available materials had been conveyed to the SFA, and so any refugee names presumably already had been included on the list of 1,715 individuals that the SFA previously had provided to the Special Masters. This statement was made by, respectively, the Cantons of Aargau; Berne; Freiburg;

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[151] *Id.* (brackets and parentheses in original).

[152] Letter from Guido Koller to Special Masters (Oct. 4, 2000). The letter advised that notwithstanding the list of 2,343 names that was being provided, a "complete set of data on refugees not admitted at the Swiss border to Italy exists neither in the federal government archives nor in the State Archives of Ticino."

[153] Letter from Prof. Dr. Christoph Graf, Dir., SFA, to Special Masters (Sept. 11, 2000), transmitting by diplomatic courier, letters to the Special Master from 24 state archives.

Geneva; Glarus; Jura; Neuchâtel; Schaffhausen; Solothurn; St. Gallen; Ticino; Thurgau and Vaud.[154]

- Certain cantons stated that relevant materials had been destroyed and thus nothing could be provided (Cantons of Appenzell A. Rhoden and Schwyz).[155]
- A number of cantons advised that as non-border states, refugees had not tried to enter the particular canton. This statement was made by, respectively, the cantons of Appenzell A. Rhoden; Appenzell Innerrhoden; Freiburg; Lucerne; Schwyz; Uri; Zug and Zurich.[156]
- Some cantons advised that no searchable lists existed, but that individual inquiries could be investigated on a case-by-case basis. This statement was made by, respectively, the cantons of Appenzell A. Rhoden; Basel-City; Basel-Countryside; Freiburg; Neuchâtel; Obwalden; St. Gallen and Zurich.

Accordingly, at the time the claims process commenced, the Court and Special Masters had been provided with five different lists, with a total of 6,376 names of refugees who were expelled or denied entry: the SFA List (1,715 names); the Geneva List (2,159 names); the Schaffhausen List (99 names); the Basel-City List (60 names); and the Ticino List (2,343 names). [157] While this list of 6,376 refugees was incomplete, either because records had been destroyed, or had never been maintained in the first place — as the Bergier Commission had indicated in its 1999 Refugee Report and later in its 2002 Final Report, and as the Swiss archival authorities acknowledged — it was still a good start.

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[154] The Canton of Graubünden advised that its files had been provided to Yad Vashem. *See* Letter from State Archives Graubünden to SFA (Aug. 30, 2000).

[155] The Cantons of Nidwalden and Valais, in their respective letters, stated that their archives contained no refugee files. *See* Letter from State Archives Nidwalden to SFA (Aug. 14, 2000).

[156] The Canton of Zurich archives advised that despite the common border with Germany, "the Rhine river separates the two territories and constitutes to a large extent an insuperable natural obstacle" and the "rest of the border presents only a few crossings opened to minor roads," so that the "Canton of Zurich is to be considered mainly like an inland canton." Letter from State Archives Zurich to SFA (Aug. 15, 2000).

[157] Based upon the dates of birth shown in the lists, it was clear that many of these individuals were no longer alive. *See* Distribution Plan, Annex J ("The Refugee Class"), at J-37 n.114. Further, as the SFA advised, even if the refugees on the lists were still alive, not all of them belonged to one of the five "victim or target" groups as defined under the Settlement Agreement (*i.e.*, they were not targeted for persecution because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual or disabled).

B. The Claims Review Process

The Distribution Plan recommended by the Special Masters and adopted by the Court provided that the refugee class claims process was to rely considerably upon the lists of names provided by the Swiss Federal Archive and the cantonal archives. With respect to those admitted but mistreated, the Distribution Plan observed: "[T]the Swiss Federal Archives has made available to the Court its list of approximately 50,000 individuals who were admitted into Switzerland as refugees just before or during the War years, approximately 20,000 of whom are registered as Jewish. Claimants who plausibly demonstrate, through documents, a statement or otherwise, that they were admitted into Switzerland as refugees and were detained, mistreated or abused there, and whose names are matched against the List of Refugees Admitted into Switzerland, should receive a payment, identical in amount, of up to $500 (subsequently increased to $725) (but in no event less than $250). Based upon data in the Initial Questionnaires,[158] approximately 3,000 people are expected to make a claim of this nature. If, however, there are many more eligible claimants than currently anticipated, then the Court may have to reconsider the amount recommended here."[159]

As to those denied entry or expelled: "[A] Court-appointed agency should perform an initial evaluation of the claim. This evaluation will include an analysis of the claimant's information, the review of the lists provided to the Court by the Swiss Federal Archives for publication, the examination of additional sources of information relevant to the claim, and the initial recommendation as to whether the claimant should receive an award."

> Claimants who plausibly demonstrate, through documents, an interview or otherwise, that they were denied entry into or expelled from Switzerland, should receive payments, identical in amount, of up to $2500 [subsequently increased to $3625] (but in no event less than $1250). One of the ways that claims will be evaluated will be to compare them to the List of Refugees Expelled From or

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158 *See Glossary: In re Holocaust Victim Assets Litigation*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 11, http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("Initial Questionnaire"): "In connection with notice to the class of the proposed settlement, a six-page Initial Questionnaire was circulated to all potential class members to obtain information on the nature and scope of their claims. Over 600,000 Initial Questionnaires were received from Holocaust victims and heirs residing in more than 100 nations."

159 Distribution Plan, Vol. I, at 172 (citation omitted).

> Denied Entry Into Switzerland, which the Swiss government has authorized for publication.[160] Former refugees expelled or denied entry whose names do not appear on the list also may make a claim, since information other than the published list also will be evaluated; indeed, based upon data in the Initial Questionnaires, approximately 17,000 people are expected to make a claim of expulsion or denial of entry. If, however, there are many more eligible claimants than currently anticipated, then the Court may have to reconsider the amount recommended here.[161]

As true for the two slave labor classes, payments were to be limited "to former refugees or certain heirs of refugees who died after February 15, 1999" (the date selected by the German Foundation "Remembrance, Responsibility and the Future" and adopted by the Court to minimize confusion between the German and Swiss compensation programs, which were established at approximately the same time).

At the time the Distribution Plan was proposed (September 11, 2000) and adopted (November 22, 2000), it was unclear how many class members would file claims or be eligible for payment. However, it appeared that some 20,000 individuals might apply: 3,000 in the "admitted" category, and 17,000 in the "expulsion or denial" category. Thus, as true for the slave labor classes, the Distribution Plan provided that "an initial payment of 50% of the recommended amount" would be made, once an application was approved. "[A]fter all claims have been processed, eligible claimants then may be able to receive a second payment of up to the remaining 50%." Because it soon became apparent that the number of claimants eligible for payment would not exceed the sums allocated, the Court was able to remove the partial payment restriction and authorize all eligible class members to receive their payments in full.[162]

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[160] The Distribution Plan noted that "to comply with Swiss legislation protecting certain personal data from disclosure, the Court has assured the Swiss government that potential members of the Refugee Class will be provided the opportunity to exclude their names from publication. Since the Special Master does not recommend publication of the List of Refugees Admitted into Switzerland, but only of the much more limited List of Refugees Expelled from or Denied Entry into Switzerland, it is unlikely that many individuals will seek to remove their names from the list recommended for publication, although they certainly are free to do so." Distribution Plan, Vol. I, at 173 n.448.

[161] Distribution Plan, Vol. I, at 172-73 (citation omitted).

[162] *See* Memorandum & Order, June 28, 2001 ("With the various claims processes well under way, and based upon the application data that has been reviewed by the Claims Conference and IOM, the Special Master has recommended … that Slave Labor Class I and Refugee Class payments now be made in a one-time payment,

(*continued on next page*)

THE REFUGEE CLASS CLAIMS PROCESS

The Distribution Plan provided for the refugee class claims process to be administered by the Claims Conference (for Jewish class members) and the IOM (for Roma, Jehovah's Witness, homosexual and disabled class members):

> Claims submitted in response to names appearing on the List of Refugees Denied Entry into or Expelled from Switzerland will have to be matched against the published lists. Additionally, to the extent that the claims process must go beyond matching, the entities responsible for initially reviewing the submitted claims will need to have a great deal of familiarity with the Holocaust, with a firm grasp of the historical circumstances surrounding those who sought but were denied refuge in Switzerland. To take but one obvious example, the agencies must be familiar with the geography and wartime circumstances that likely would have propelled one person to the Swiss border, and another to the eastern-most regions of the Soviet Union. In such a case, the evaluating agencies should be capable of determining the claimant's original nationality. Likewise, the agencies also should have the ability to assess the plausibility of a claimant's description of the fate that befell him or her after expulsion from, or denial of entry into, Switzerland. Perhaps most significantly, the agencies should be able to meet the special needs of Nazi victims, maintaining professional objectivity while at the same time providing comfort and reassurance to many traumatized elderly claimants.
>
> In the Special Master's opinion, the organizations ideally suited to this role are the Claims Conference and the IOM…. [T]he Claims Conference already has decades of experience in determining individual Holocaust compensation claims, and, more recently, has been designated, along with the IOM, as one of the agencies responsible for handling distributions under the German Fund. The Special Master has had extensive communications with the Claims Conference throughout his tenure, has been given invaluable assistance from its dedicated staff, and believes that the Claims Conference will efficiently and equitably review refugee claims submitted by Jewish class members. Likewise, the Special Master is confident that the internationally-renowned IOM and its equally committed staff will capably administer the refugee claims process for non-Jewish class members.[163]

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rather than in two phases. The Special Master also has proposed that payments to members of the Refugee Class be made immediately upon recommendation by the Claims Conference and/or IOM, rather than first requiring the class member to be notified of the recommendation prior to transmittal of the payment. I concur with these recommendations").

[163] Distribution Plan, Vol. I, at 174-75. The two organizations also were tasked with reviewing claims of mistreatment.

The Claims Conference and the IOM submitted their proposed operational programs for the Refugee Class as well as the two Slave Labor classes, and the Court approved the proposals on April 13, 2001. An important element in encouraging and simplifying applications was the use of the Initial Questionnaires that had been solicited for informational purposes, when the proposed settlement was announced. Thus, class members who had indicated a possible refugee claim on their Initial Questionnaires were sent refugee program applications either by the Claims Conference or the IOM. As with the other classes, applications also were made available over the internet and at Holocaust survivor help centers around the world. Claim forms were delineated as "Swiss Refugee Program Application[s]" relating to a process in the United States District Court. Beyond the basic identification details, the claim forms also solicited information such as whether the claimant previously had received compensation of any kind relating to the Holocaust (this was for informational purposes only; no offsets were to be taken, as claimants were advised on their claim forms), and whether the claimant had provided information to Holocaust archives such as Yad Vashem and/or the USHMM.[164]

As a new program involving a type of claim that never had been previously compensated on a large-scale basis, the Refugee Class claims program posed unique logistical difficulties. In contrast to the two Slave Labor classes, moreover, the Refugee Class could not be coordinated with the elaborate and widely-publicized German slave labor compensation program. As the IOM observed in its Final Report to the Court on its claims processing activities, "[u]nlike the situation with Slave Labour Class I, there was no immediately obvious link" between the German Foundation payments and Refugee Class eligibility. A German Foundation payment was not "automatic validation for the eligibility of a claim for payment under the Refugee Class because the individual circumstances of the victim's experience with Swiss authorities still had to be reviewed."[165]

The IOM claim form, while geared generally toward slave labor, thus also incorporated additional questions intended to "elicit confidential or sensitive information such as membership

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[164] *See, e.g.*, "Conference on Jewish Material Claims Against Germany - Swiss Refugee Program Application - Holocaust Victims Assets Litigation (Swiss Banks)."

[165] IOM Final Report at 69.

in an ethnic, religious, political, or social group that was Roma, Jehovah's Witness, disabled, or homosexual. So long as other evidence or information provided did not contradict an assertion of membership in one of these groups… IOM accepted claimants' self-identification with these target groups and correspondingly marked such [slave labor] claims for review" under the "Refugee Class, without requiring separate claim forms to be re-submitted to IOM."[166] Those individuals "who indicated potential eligibility for [the] Refugee Class were requested to provide details relating to their experience with Swiss authorities during their attempts to enter Switzerland while fleeing persecution during the Nazi era in order to demonstrate that their claims were plausible."[167]

The Claims Conference adopted a similar approach. It devoted a portion of its website to a description of the "Swiss Banks Settlement: Refugee Class," providing background information about the Settlement Agreement, Distribution Plan, and Bergier Commission.

> A Swiss government list of 6,300 refugees expelled from or denied entry into Switzerland is posted on the Claims Conference website. Several survivors who have received payments told the Claims Conference that they applied for compensation after they found their names on the list. The Claims Conference also worked with its network of 350 partner agencies in local Jewish communities worldwide to provide information and assistance to survivors on an individual basis. [168]

One survivor's surprise in learning that her name was on the list was recounted in a 2001 article in The Jewish Week. At a press conference announcing the first payments to members of the Refugee Class, survivor Ruth Schloss spoke of her experiences as "one of 15 Jews who were denied entry or expelled from Switzerland" who was slated to receive the first payments, with "applications from several thousand other[s] . . . still being processed."[169] Mrs. Schloss's

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166 *Id.* at 69-70.

167 *Id.* at 70.

168 *History of Jewish Refugees to Switzerland*, CLAIMS CONFERENCE, http:// http://claimsconorg.nationprotect.net/?url=swiss/history. The Refugee Program is now described on the Claims Conference website under the heading "Closed Programs." *See* http://www.claimscon.org/about/history/closed-programs/swiss-banks-settlement/swiss-banks/ (last visited Oct. 4, 2018).

169 *See* Stewart Ain, *Atoning for an 'Unforgivable' Act*, JEWISH WEEK, Dec. 21, 2001.

husband "said he discovered his wife's name on the Web site shortly after it was posted a few months ago."[170] Mrs. Schloss, who was 13 when she tried to enter Switzerland, had sought refuge after her parents had been deported from France in 1943; her parents died in Auschwitz. Mrs. Schloss stated that she and two companions had crossed over the Swiss border and were caught. They were not allowed to use the restroom, and were told to "'drink saltwater'" when they said they were thirsty. They were "handed over to German and French guards by a Swiss official, who said to the guards: 'Have a good time.'"[171] Mrs. Schloss was saved by the French priest Alexandre Glasberg, who smuggled her out of a camp used as a staging site for Auschwitz-bound transports. Every Refugee Class claim was analyzed individually by Claims Conference or IOM staff and submitted to Special Master Judah Gribetz and Deputy Special Master Shari C. Reig for consultation and review. Thereafter, each claim recommended for approval was submitted to the Court, often with documentation and/or a detailed narrative, and each decision was summarized in a report filed with the Court and docketed for public review, with claimants' names redacted in the interest of privacy.

The complexity of the process was highlighted by the IOM in its Final Report on claims processing activities:

> Of all IOM's classes in the HVAP [Holocaust Victim Assets Programme / Swiss Banks Settlement] programme, Refugee Class claims were probably the most labour-intensive, in view of the comparatively small number (1,169) of claims received. Database-assisted matching techniques were used to identify targeted victims whose names appeared on the List of Refugees Admitted into Switzerland and also to identify those whose names appeared on the List of Refugees Expelled from or Denied Entry into Switzerland. As with Slave Labour Class I and Slave Labour Class II, database-assisted techniques were also used to exclude patently ineligible claims, such as those on behalf of victims whose dates of death occurred prior to 16 February 1999, and duplicate claims.[172]

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[170] *Id.*

[171] *Id.*

[172] IOM Final Report at 159.

In the case of Roma, who normally led a "nomadic lifestyle,"[173] the claims review process posed particular issues. As the IOM observed, "bureaucracy was generally to be avoided," and the "very nature of the target victim group did not lend itself to official records. Circumstances were exacerbated for all target group victims in that all countries surrounding Switzerland were occupied or controlled by the Nazi Regime. Attempts to enter Switzerland had to be clandestine of necessity for Victims or Targets of Nazi Persecution given the Swiss government's restrictive entry policies, so it is not surprising that refugee claimants' names were most often not present on official lists. As a result, all individual reviews had to consider the credibility of the specific facts and circumstances alleged by the claimants, in the context of the geographical and historical wartime situation for these target groups."[174]

The IOM and Claims Conference followed similar procedures in reviewing their claims, and coordinated closely with each other and with the Special Masters (who in turn regularly consulted with the Court) to ensure consistency of policies and recommendations. The IOM's description, which applies likewise to the Claims Conference, provides an overview of the process:

> Both the Claims Conference and IOM worked closely in consultation with the Special Master[s] in assessing individual Refugee Class claims. They also collaborated in drafting internal procedures for the review of Refugee Class claims, sharing materials, and findings derived from review of individual circumstances. For its own reviews, IOM developed internal assessment forms that assigned credibility weights to certain types of information or evidence provided in the claimants' statements or submitted with the claims. In claims for detention, mistreatment or abuse, this information included the detail in the description provided for the approximate time that the events occurred, names of locations or camps where the detention was alleged to have taken place, descriptions of the abuse(s) suffered, whether children and parents were separated and what happened thereafter. For claims for denial of entry or expulsion, the relevant information included the date(s) when the denial of entry or expulsion was alleged, the method, route or point of attempted entry into Switzerland, the circumstances of the attempted entry or expulsion, and corroborative details such as whether any organizations or individuals had assisted the victims in their

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173 *Id.*

174 *Id.*, at 159-60.

> attempts to enter. The information in the assessment forms was then compared to known historical circumstances, reports and the official practices of Switzerland towards refugees during the periods alleged. One factor that increased credibility was when the circumstances described were consistent with other contemporaneous accounts for similarly situated individuals. Finally, when all circumstances were considered, the accounts were determined either to be generally plausible or not.[175]

The IOM and Claims Conference provided applicants with the opportunity to supplement their claim forms, either by responding in writing or by calling a case worker. For example, in the case of the Claims Conference, claimants who stated that they had been expelled or turned away from Switzerland were asked whether they might have additional information in response to one or more of the following questions:

- "Was there a specific reason that you/your family tried to go to Switzerland?"
- "From what country did you try to get to Switzerland? How did you travel?"
- "Do you remember when you made the attempt to enter Switzerland - any dates, the season, or your age at the time?"
- "Can you recall the specific border, region or town where you made your attempt to enter Switzerland?"
- "What happened at the Swiss border? Do you remember what personnel you encountered? Do you remember what was said or done? Or how long the border encounter was?"
- "What happened immediately AFTER you tried to enter Switzerland? Where did you go? How did you get there?"
- "What happened in the months after you tried to enter Switzerland?" [176]

For claimants who stated that their visa applications had been rejected, or that they had otherwise applied for entry and had been turned away by Swiss governmental authorities, they were requested in some instances to supplement their applications by responding, if possible, to one or more of the following questions:

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[175] *Id.* at 160-61. In addition, as true for Slave Labor Class I claims, the "IOM forwarded lists of claims to the Claims Conference for matching in the Swiss programme so that neither the Claims Conference nor IOM would pay the same victim twice for the same claim." *Id.* at 161.

[176] *See* Claims Conference Swiss Refugee Program, "Additional Information to Complete Personal Statement."

- "Do you recall the date of the attempt to get visa/permission to enter Switzerland?"
- "What specifically was applied for (*e.g.*, visa, special permission, etc.)?"
- "What was the country, region, city or other detail of location of the application for visa?"
- "From what agency or organization was the visa, etc. sought?"
- "Do you remember any other details about seeking the visa, *e.g.*, names of persons or officers; what you or family members were told by officials?"
- "Was there a specific location in Switzerland where you sought to go?"
- "Do you recall a particular reason WHY the visa or other permission was being sought (*e.g.*, business reasons, family or friends living in specific Swiss cities)?" [177]

Claimants who sought compensation for mistreatment while in Switzerland often were contacted by telephone, particularly when their names matched to the List of Refugees Admitted into Switzerland (the list of 51,417 names provided by the Swiss Federal Archive). Such claimants were asked to confirm their identifying information (name, birth date and so forth), as well as to "describe the time you were in Switzerland," if possible, and to state whether there had been "mistreat[ment]" while in Switzerland.[178] As with all of the classes for which individual compensation was available, claims were assessed in the light most favorable to claimant, and with a view to whether the claim was plausible, given the passage of time and general lack of documentation available to claimants.

In the case of those whose claims were found ineligible for compensation under the criteria of the Refugee Class and who then appealed, the Court authorized two approaches. For claims filed with the Claims Conference, the Court requested Lead Settlement Counsel Professor Burt Neuborne to review appeals and to provide the Court with his recommendations. In its

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[177] *See* Claims Conference Swiss Refugee Program, "Embassy Claim - Additional Information to Complete Personal Statement."

[178] *See* Claims Conference Swiss Refugee Program, "Interview Question Guide II." In some instances, claimants who were admitted as refugees had not intended to file claims, as they did not consider themselves to have been mistreated while in Switzerland.

July 12, 2006 submission ("Group 1 Appeals"), the Claims Conference explained that there were 168 appellate decisions to be considered, of which 39 denial reversals were recommended.

> Each of the 168 recommendations, along with the Request for Review submitted by each claimant (with translations provided by the Claims Conference) and relevant documentation from the original application was provided to Lead Settlement Counsel, Burt Neuborne, as requested by the Court. Professor Neuborne has indicated that he concurred in whole with the recommendations of the Claims Conference …. Further, all of the above described material was submitted to Special Master Judah Gribetz and Deputy Special Master Shari C. Reig for review. They too concurred with each recommendation…. Previously, the Court has awarded a total of $10,650,975 on behalf of claims relating to 3,884 Holocaust survivors under the Refugee Class …. With the additional 39 awards recommended herein, the total awards under Refugee Class will aggregate 3,923 at $10,783,650.[179]

As to the IOM, it was originally anticipated that, as true for the Claims Conference, a Court-appointed review officer would evaluate appeals. That approach was reconsidered once the filing deadlines expired. Given "the small numbers of appeals in [the] Refugee Class, as well as … the interests of speed and administrative efficiency, the Court later determined that IOM should perform the initial de novo appellate review, prepare written recommendations for or against payment, and forward the recommendations directly to the Court for final review and approval."[180]

In its January 22, 2007 submission, the IOM recommended approval of 4 claims on appeal, and rejection of 87 claims on appeal (because the claimants were not victims or targets of Nazi persecution; or they had failed to plausibly show that they had been denied entry/expelled, or mistreated).[181] In its May 23, 2007 submission, the IOM recommended rejection of 1 additional appeal.[182]

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[179] Claims Conference Submission, July 5, 2006; *see also* Claims Conference Final Statistics, April 12, 2010. A total of $10,743,425 ultimately was paid.

[180] *Id.* at 174.

[181] IOM Submission, Jan. 22, 2007.

[182] IOM Submission, May 23, 2007.

C. Policy Issues

The Claims Conference and IOM communicated regularly with the Special Masters (who, in turn, consulted with Judge Korman). As was true for the other claims processes, certain unanticipated substantive and procedural issues arose requiring further research and analysis, and in some cases court approval of adjustments in the Distribution Plan or the claims processing procedures. Some examples are described below.

1. Expansion of eligibility to those not appearing on the List of Refugees Admitted into Switzerland

The Distribution Plan had recommended that the "Claims Conference and the IOM … should be appointed to handle the largely administrative task of confirming whether those who plausibly attest to 'detention,' 'mistreatment' or 'abuse' upon entry into Switzerland appear on the List of Refugees Admitted into Switzerland, and certifying valid claims to the Court for evaluation and payment."[183] As the claims process progressed, however, it became clear that a considerable number of applicants who were not on the List of Refugees Admitted nevertheless had provided detailed, plausible claims of having been admitted but mistreated in Switzerland, sometimes accompanied by documentary evidence.

The Claims Conference and the IOM consulted with the Special Masters and, with the Court's approval, broadened the eligibility criteria. The historical record supported this decision, given that the Bergier Commission itself had pointed out that there were several thousand individuals who were admitted or otherwise considered as refugees in Switzerland, but who would not necessarily have been included on the list of internees.[184]

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[183] Distribution Plan, Vol. I, at 175 n.450.

[184] *See* BERGIER FINAL REPORT at 117 (this included several thousand refugees who had been issued a "cantonal tolerance permit" or who had been in Switzerland "at the outbreak of the war," as well as some political refugees).

2. 45% increase in awards

On September 25, 2002, the Court authorized a 45% increase in the amounts allocated under the Distribution Plan for members of the Looted Assets Class, Slave Labor Class I and the Refugee Class.[185] The increase was prompted by unanticipated additional interest income, as well as a tax exemption on interest earned on the Settlement Fund. As a result, payments to members of the Refugee Class were increased from $2,500 (for those denied entry or expelled) and $500 (for those mistreated), to $3,625 and $725, respectively. Retroactive payments were made to those who already had received their awards prior to the Court's September 25, 2002 order.

3. Expulsions prior to the 1938 introduction of the "J-stamp"

Although Switzerland tightened its refugee policies in 1938 with the introduction of the "J-stamp," the Bergier Commission report demonstrated that Jewish refugees had been subjected to hostile treatment from the earliest years of the Nazi regime. The J-stamp did not represent a "bright-line" change in policy but merely a reaffirmation of principles already guiding Swiss officials charged with patrolling the border. Thus, the Claims Conference and the IOM highlighted the historical evidence supporting refugee claims for all applicants, including for those who were turned away in the first phase of the Holocaust era, 1933 to 1938.

In its submission of January 29, 2003 ("Group 6"), the Claims Conference cited the Bergier Final Report in recommending payment to 115 individuals who had been expelled or denied entry, including 10 persons who were turned away before 1938.[186] In its May 20, 2003 submission ("Group 10"), the Claims Conference recommended payment of 7 individuals who had been expelled or denied entry before the introduction of the J-stamp, including one individual who had submitted a June 2, 1933 document "from the Police Department of the Canton of Zurich" which named the claimant, his parents and siblings. The document stated: "'Moving to the Canton Zurich and residency has to be denied for reason of foreign infiltration.

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[185] Memorandum & Order at 2-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002).

[186] Claims Conference Submission, Jan. 29, 2003.

Wife and four children will be included in this order.'" The Claims Conference noted that this was the "earliest evidence of enforcement of Swiss Refugee policy found thus far in the administration of the Swiss Refugee Program."[187]

By the time the claims process was over, the Claims Conference had recommended and the Court had approved payment to 397 individuals who were expelled or denied entry during the years 1933 through mid-1938, when the J-stamp was introduced.

4. Approval of claims for both expulsion or denial of entry, and mistreatment

The Distribution Plan, drawing upon the terms of the Settlement Agreement, originally envisioned two mutually exclusive categories of compensation under the Refugee Class: for (1) expulsion/denial of entry; or (2) mistreatment after admission. However, as the Claims Conference and IOM began to analyze claims and to consult with one another, it became clear that a number of individuals had suffered both types of harm. Typically, these Nazi victims had made one, and sometimes numerous, unsuccessful attempts to enter Switzerland. They eventually managed to secure admission, but were then imprisoned in Swiss camps or otherwise mistreated. In other instances, they had been admitted but subjected to mistreatment, and at some point thereafter, expelled.

For example, the Claims Conference in its October 24, 2002 submission ("Group 5") described a "mother and daughter" who lived in Israel at the time of their application. They had "fled to France after the German invasion of Belgium. From Lyon, they made five separate attempts to enter Switzerland, but were turned back to France each time. Finally, they gained admission and were sent to a Swiss family, where the mother performed hard work. She became ill and was sent to women's camps. Her young daughter was placed with a Swiss family. The mother gave birth in a work camp, where she and the infant did not receive proper nutrition. The

[187] Claims Conference Submission, May 20, 2003.

names of the mother and daughter appear on the List of Persons Admitted to Switzerland provided by the Swiss Federal Archive to the Court."[188]

In its July 31, 2003 submission ("Group 14"), the Claims Conference noted that as to one of the survivors for whom compensation was recommended, his name appeared on both lists that had been provided to the Court by the Swiss Federal Archive: those who had been expelled or denied entry, and those who had been admitted.[189]

Upon consultation with the Special Masters and the Court, it was determined that in such instances, each type of injury should be compensated. Thus, claimants plausibly demonstrating that they were expelled or denied entry, and at some other point during the Holocaust era also admitted into Switzerland but mistreated, received payment of $4,350 each ($3,625 based upon expulsion/denial of entry, plus $725 based upon mistreatment). In total, 186 individuals received such compensation, 179 through the Claims Conference program and 7 through the IOM program.

5. "Schutzpass" claims

During the review process, the Claims Conference alerted the Special Masters to a unique category of claim that appeared to warrant compensation. In its November 19, 2003 submission ("Group 19"), the Claims Conference explained that one claimant had "applied for a visa to Switzerland in Budapest and was denied the visa and given a 'Schutzpass.' The Schutzpass [Schutzbriefe] was a document that bore the official stamp of the Swiss Legation and stated that the person possessing the Schutzpass had a valid passport and was part of a Swiss emigration collective. It did not grant its holder permission to enter Switzerland. It provided targets of Nazi persecution in Hungary a degree of protection from Hungarian government authorities who were

[188] Claims Conference Submission, Oct. 24, 2002.

[189] Claims Conference Submission, July 31, 2003.

allied with Nazi Germany."[190] The Swiss Legation in Budapest, including at the so-called "Glass House," issued tens of thousands of Schutzpasses between 1942 and 1945.[191]

Police attempt to control the crowd of Jews, who are waiting outside a branch of the Swiss legation located in the Glass House on Vadasz Street hoping to obtain Schutzbriefe that would protect them from deportation. 1944. Photo courtesy of the U.S. Holocaust Memorial Museum and Agnes Lutz Hirschi.

The Schutzpass was due largely to the efforts of Carl Lutz, a Swiss consul in Budapest, who "saved tens of thousands of Hungarian Jews from deportation and certain death in Auschwitz by issuing 'collective protection passports' [Schutzpasses]. His reward was to be packed off after the war to an insignificant provincial post. And there were many other men and women – some known and others whose identities remain unknown – who quietly achieved impressive results on behalf of Jewish refugees."[192] In 1957, the Swiss parliament recognized Carl Lutz, and in 1964, Yad Vashem honored him (and in 1978, his wife Gertrud) as "Righteous Among the Nations."[193]

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190 Claims Conference Submission, Nov. 19, 2003.

191 *See, e.g.*, http://collections.ushmm.org/search/catalog/pa12142.

192 *Switzerland*, *in* THE HOLOCAUST ENCYCLOPEDIA 618, 622 (Walter Laqueur & Judith Tydor Baumel eds., 2001). *See also The forgotten Swiss diplomat who rescued thousands from the Holocaust*, BBC NEWS, Jan. 4, 2018, https://www.bbc.com/news/world-europe-42400765 (although Lutz's efforts saved an estimated 62,000 people, after the Holocaust, "[f]ar from being commended for his bravery, Lutz was reprimanded for overstepping his authority").

193 *See, e.g.*, *Swiss Diplomat Carl Lutz Awarded George Washington University's President's Medal*, GEORGE WASHINGTON UNIV., https://mediarelations.gwu.edu/swiss-diplomat-carl-lutz-awarded-george-washington-university%E2%80%99s-president%E2%80%99s-medal (last visited Mar. 17, 2016). *See also The Righteous Among the Nations*, YAD VASHEM, http://www.yadvashem.org/righteous/faq.html (last visited Mar. 18, 2016)

(*continued on next page*)

Ceremony in Honor of Carl and Gertrud Lutz, Bern, 10.11.1966. http://db.yadvashem.org/righteous/righteousName.html?language=en&itemId=4035632. Photo courtesy of Yad Vashem.

In 1999, Switzerland issued a stamp in his honor.

The Claims Conference recommended and the Special Masters and Court agreed that those who had received Schutzpasses, while saved in Hungary by the valiant efforts of Carl Lutz and others who assisted him, at the same time had been denied entry into Switzerland. In total, 18 claimants were compensated on this basis.

6. Actions by Non-Swiss Officials

In its submission of January 12, 2005 (amended on March 10, 2005) ("Group 33" — the last group of refugee claims recommended for payment by the Claims Conference), the Claims Conference requested reconsideration of 41 claims that had been previously recommended for denial.

("Righteous Among the Nations is an official title awarded by Yad Vashem on behalf of the State of Israel and the Jewish people to non-Jews who risked their lives to save Jews during the Holocaust."). In addition to issuing Schutzpasses, Lutz and his wife, Gertrud, rented 76 buildings for people under his protection; followed behind the death marches of November 10-22, 1944, pulling out many Jewish victims from the marches and returning them to relative safety in Budapest; and stayed behind in Budapest to save Jews, at risk to their own lives, when all other diplomatic and consular missions except the Swedish delegation had left the city in response to the Soviet siege. *See The Righteous Among the Nations: Lutz Family*, YAD VASHEM, https://db.yadvashem.org/righteous/family.html?language=en&itemId=4035632 (last accessed Mar. 18, 2016).

The Claims Conference explained that "[u]pon further review of the historical record and in consultation with the Court, the Special Master and the IOM, we recommend that [the 41 cases be compensated.] These … claims initially were recommended for denial and so approved by the Court because the officials directly responsible for barring the claimants from Switzerland were nationals of Germany, France or other nations, and not Swiss, and therefore [the claims were] thought not compensable under the terms of the Settlement Agreement and the Distribution Plan and implementation orders. However, upon further analysis by the Special Master, the Bergier Interim Refugee Report makes clear that Swiss authorities took deliberate steps to ensure that the Reich prevented emigration to Switzerland. Notoriously, in the beginning of March 1938, Swiss authorities negotiated with the German government for the purpose of introducing anti-immigration measures. Significantly, the agreement with Germany stipulated that the German agencies in charge of border surveillance would be obligated to prevent the entry into Switzerland of Jews. As a result of these negotiations, the Swiss legations in Berlin and Austria put political pressure on the German authorities to ensure that the agreement was strictly enforced. Accordingly, after March 1938, to the extent that individuals who attempted to flee to Switzerland were stopped by German, French or other authorities, these entry denials are attributable to official Swiss policy pursuant to its agreement with Nazi Germany."[194]

The Court approved this recommendation, so that the 41 claimants whose applications originally had not been approved later received compensation for denial of entry into Switzerland.

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[194] Claims Conference Submission, Jan. 12, 2005, amended Mar. 10, 2005 (citing BERGIER REFUGEE REPORT at 73-85). *See also* FRIEDLÄNDER, NAZI GERMANY AND THE JEWS: THE YEARS OF PERSECUTION, at 263-264 (within two weeks of the *Anschluss*, the Swiss Federal Council "decided that all bearers of Austrian passports would be obliged to obtain visas for entry into Switzerland," and minutes of the meeting noted that "'Switzerland can only be a transit country for the refugees from Germany and from Austria'" and that to avoid "'an anti-Semitic movement that would be unworthy of our country, we must defend ourselves with all our strength and, if need be, with ruthlessness against the immigration of foreign Jews, mostly those from the East'").

7. Late Claims

As true for all of the classes and claims processes under the Swiss Banks Settlement, the Court sought to maintain a process for the Refugee Class that was both equitable and efficient. Thus, filing deadlines were established, but extended, once it became clear that many elderly Holocaust survivors had some confusion about whether they needed to file claims. While it was important to move the process along so that payments could be issued, that goal was outweighed by the need to reach and include as many survivors as possible.

Thus, in the case of the Refugee Class, by Memorandum & Order dated November 4, 2003, the Court deemed as timely the claims filed by 79 Refugee Class claimants. As set forth in a July 28, 2004 letter to the Court from Special Master Gribetz, although those claimants "had filed their claims after the original filing deadline for the Refugee Class [September 30, 2001], each had made a showing of good faith and excusable neglect, and the Court exercised its equitable authority in accepting the claims."[195]

The Claims Conference and IOM notified the Special Masters in July 2004 that during the period between January 1, 2003 and June 30, 2004, another 340 individuals had filed late refugee claims: 325 with the Claims Conference, and 15 with the IOM. As described in the Special Masters' July 28, 2004 letter to the Court, each claimant had provided a specific reason for his or her failure to adhere to the deadline, including "advanced age; confusion about Holocaust compensation programs, including for the Refugee Class; illness, death or other family hardship; resubmission of a previously filed (but not registered) claim; timely request of a claim form but failure either to receive or to complete it; or filing of other timely claims in the Swiss Banks Settlement."

The Court approved the Special Masters' recommendation to permit the 340 late claims to be considered timely, concurring that the claimants had shown "good faith" and "excusable

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[195] The letter cited, *e.g.*, *In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 844 (E.D.N.Y. 1995) (relevant factors in considering whether there has been "excusable neglect" in meeting filing deadlines include "the danger of prejudice to other parties, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the [claimant], and whether the [claimant] acted in good faith") (internal quotations omitted).

neglect." Further, "accepting these claims as timely will not prejudice other parties: no portion of the $1.25 billion settlement reverts to defendants, while other timely filed Refugee Class claims will continue to be processed and paid in full if eligible."[196]

In some instances, it was the Court and its agents that alerted survivors and heirs to the possibility of a claim, even after the initial deadlines had passed. Because of the close coordination among the Court, Special Masters and claims administrators in New York and Zurich, it was possible for a claim (or possible claims) to be flagged in one program and called to the attention of another. While this sometimes caused delay and added to the complexity of an already intricate, multi-forum system, those concerns were far outweighed by the importance of ensuring aging survivors and their heirs the opportunity to obtain compensation for which they were potentially eligible, and to provide them with a sense of recognition for what they had suffered decades earlier.

Thus, for example, in the course of reviewing preliminary Deposited Assets Class awards prepared by the CRT, the Special Masters noted that several claimants, in describing their experiences with Swiss banks, had alluded to their expulsion or mistreatment as Swiss refugees. The Special Masters called these possible claims to the attention of the CRT, which alerted the claimants and advised them, by letter and then by telephone, to contact the Claims Conference about their possible refugee claims. All of these communications took place after the Refugee Class filing deadlines had passed, and after it had been confirmed that the individuals in question had not, in fact, filed Refugee Class claims. Thus, one claimant was advised: "In [your CRT] claim, you identified your relative, Joseph Ullmann, as the owner of a Swiss bank account. Reference was found in your claim form to the fact that you were a refugee in Switzerland during the Second World War." Another CRT claimant similarly was advised that in her CRT claim, "in which you identified your relative, Amalia Roth, as the owner of a Swiss Bank account," it had been noted "that you attempted to enter Switzerland as a refugee in 1939, but were refused entry." The claimants were advised that the refugee filing deadlines had expired over 18 months earlier, but that they should nevertheless contact the Claims Conference and

[196] Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. July 29, 2004).

explain why they had not filed timely refugee claims. The Claims Conference, in turn, would present the late claims to the Court for consideration.

In both cases, and in many others as well, the claimants ended up receiving compensation under a program that they apparently did not know existed. Thus, the claimant to the Joseph Ullmann bank account – who filed a claim for her father's accounts, but was advised by the CRT that it was actually her uncle who had owned accounts, and that she was the rightful heir — received nearly $53,000 for those assets (*In re Account of Martin Ullmann*), and also was able to receive recognition, and compensation, for her suffering as a refugee. The claimant to the Amalia Roth accounts received nearly $156,000 for assets owned by her aunt (*In re Accounts of Amalie Roth and Leiser Roth*), but she also had her own personal experiences recognized and compensated, under the separate Refugee Class claims process.

D. Refugee Awards: Additional Examples

The decisions on claims made by members of the Refugee Class are docketed with the Court, as true for all other classes for which individual payments have been issued. Because the Notice of Pendency of Class Action, claim forms, and related materials all promised claimants confidentiality (in recognition of the sensitivity of the information provided in support of their claims), the claimants' names are not disclosed here, but their names, and all other relevant identifying information, are known to and were filed with the Court under seal. Summaries of the awards are available on the internet.[197] Some of those decisions, which are representative of the thousands compensated through the Court's programs, are highlighted below.

[197] These summaries originally were prepared by the Claims Conference and IOM, respectively, and can be found at http://www.swissbankclaims.com/RefugeeClass.aspx.

1. Refugees Expelled or Denied Entry

a. Jewish Holocaust Victims

i. Expulsion from Switzerland or Denial of Entry at the Border

- The claimant, born on 01/26/1922 in Germany, attempted to enter Switzerland from France in 1942 with three other people. Upon arrival, the group was stopped by a Swiss military patrol and was taken in for interrogation, which lasted several hours. While two members of the group were allowed to stay, the claimant was accompanied back to the French border and warned never to attempt to re-enter Switzerland. Nevertheless, during the days that followed, the claimant attempted twice more to cross the French-Swiss border at different locations, but was stopped and brought back to French territory each time.
- The claimant, born on 08/01/1923 in Holland, attempted to enter Switzerland with a group of five people at Annemasse. Immediately upon arrival, they were stopped by Swiss border police and were told to return to France. The claimant started screaming and running until the police officers overpowered her. The officers eventually agreed to let the group remain. The group was then placed in a center with other refugees. After three days, they were summoned, and put into a van. Without being told anything, the claimant and the others were transported back to French territory, where they were dropped off and left to walk.
- The claimant, born on 07/12/1927 in Germany, tried to enter Switzerland through Annemasse between April and March 1943. She was among a group of children, organized by the French Child Care Organization OSE. After being jailed in a school in Geneva and being interrogated the next day, the claimant and his sister were not permitted to stay in Switzerland. They were brought back to the border, and forced to go back to France. They made their way back to Annemasse, and then to Limoges, where they hid on the roof of a cathedral. They then went to Grenoble, where they found their parents, but they could not stay there. They next went to Voiron, where they hid in several places, including basements, warehouses, and silos, in the woods and on farms.
- The claimant, born on 12/28/1930 in Austria, was denied entry into Switzerland in 1939. The claimant and her parents left Austria following Kristallnacht. Their apartment and the family's store in Vienna were seized by the Nazis. The family took a train from Vienna to Switzerland. At the border, they were taken off the train so that their passports could be checked. The claimant was told by her mother that they were not allowed to enter Switzerland because of the "J" stamp on their passports. The family returned to Vienna, where they stayed with friends for one month. Subsequently, they went to Hamburg by train, and boarded a boat to Cuba.
- The claimant, born on 05/09/1918 in Hungary, was expelled from Switzerland in August 1939. The claimant left Budapest and intended to enroll at the Federal

Institute of Technology in Zurich. Upon arrival in Zurich, the claimant was told to report to the police station. At the police station, he was questioned about his and his parents' religious affiliation. He was told to leave Switzerland within 24 hours. Within the next few days, the claimant was picked up by the police and escorted by officers in civilian dress to a train to Budapest, Hungary. After he returned to Budapest, the claimant was caught by the Hungarian army. He was forced into labor in Hungary and Transylvania.

- The claimant, born on 03/23/1923 in France, was denied entry into Switzerland at the French-Swiss border in fall 1943. A smuggler drove the claimant and her father, along with other refugees, in a small truck to the French-Swiss border. The smuggler instructed them to cross into Switzerland by running between two German border patrols. They managed to reach the Swiss side, but Swiss guards turned them away. The claimant and her father attempted to cross three times, but were rejected by Swiss authorities each time. They managed to get back to the waiting smuggler and returned to Paris. The claimant later fled to Lyon, where she spent the rest of the war in hiding. The claimant's father was deported to Auschwitz, where he perished.

- The claimant, born on 10/01/1928 in Austria, was denied entry into Switzerland at the Austrian-Swiss border in the summer of 1938. After the claimant and her sister were expelled from school, the family tried to cross illegally into Switzerland. In the summer of 1938, they traveled to the Austrian-Swiss border at Bregenz. Swiss border guards stopped them, searched them, and stole their jewelry and money. The claimant and her family were verbally abused and then sent back. They returned to Vienna. In late 1938, the family sought refuge in Trinidad. They obtained permission to leave for the United States in November 1940.

- The claimant, born 11/05/1932 in Czechoslovakia, was denied entry into Switzerland in 1944. The claimant and her brother were taken to an orphanage in Budapest after it became increasingly dangerous in Czechoslovakia. They were then placed on a children's transport to Switzerland organized by the American Jewish Joint Distribution Committee (JDC) in 1944. At the border, the claimant and the other children remained on the train. They were then told that they could not enter Switzerland. They were forced to return to Budapest. The claimant was placed in a safe house in Budapest and was later forced into a ghetto.

- The claimant, born on 04/10/1916 in Poland, was denied entry into Switzerland with her infant and a group on October 21, 1943 at the French-Swiss border. After her husband was deported, the claimant, with her ten-month-old baby, fled France toward the Swiss border, assisted by two smugglers. At the border, the smugglers cut the barbed wire to let them in. As soon as they crossed, they were confronted by guard dogs and gunfire. The claimant was slightly injured, but her baby was killed in her arms. She was interrogated all night, despite being traumatized, and then sent to Pax prison the next day in France. She was later transferred to a hospital under a false identity.

- The claimant, born on 11/23/1918 in Poland, was denied permission to remain in Switzerland in 1940. The claimant arrived in Switzerland in March 1938 from

Vienna, Austria. He was a student at the University of Geneva. At the outbreak of the war, the claimant came under pressure from Swiss authorities to leave the country, and his visa was cancelled. In April 1940, he was given a train ticket from Geneva to the Italian border. He was told that foreign students who did not leave and could not support themselves would be placed in labor camps. The claimant therefore left Switzerland.

- The claimant, born on 03/29/1927 in Austria, was denied entry in September 1938 at the German-Swiss border. The claimant and his mother had to leave Vienna in 1938, and were unable to secure visas to several countries. They first tried to enter France, but were caught. They then tried to enter Switzerland near Basel in September 1938. A Swiss border patrol stopped them and handed them over to the German border post. The claimant's mother stayed in Freiburg, Germany. The claimant tried to enter Switzerland again at the Basel train station. He was caught by railroad workers and handed over to the Gestapo. The claimant was interrogated and sent back to Freiburg. The claimant and his mother returned to Austria, and on November 10, 1938, they fled to France. They were arrested in Strasbourg. The claimant's mother was imprisoned for thirty days, while the claimant was put in a hospital ward. They then received an order to leave France within three days. The claimant was placed with the OSE. He later was sent to Rivesaltes, and then escaped to St. Martin Vésubie. He later escaped into Italy, where he hid in the mountains from 1942 until 1944. He was liberated in Italy in June 1944.
- The claimant, born on 02/15/1935 in Hungary, was denied entry into Switzerland in 1944. The claimant and his sister were taken to an orphanage in Budapest. The claimant stated that the JDC tried to obtain visas for the children from the Swiss Embassy, but failed. The children were then placed on a children's transport to Switzerland organized by the JDC in 1944. At the border, the claimant and the other children remained on the train. They were told that they could not enter Switzerland and were forced to return to Budapest. The claimant was placed in a safe house in Budapest and was later forced into a ghetto in Budapest.

ii. Denial of Permission to Enter (*e.g.* Denial of Visa)

- The claimant, born on 11/10/1925 in Poland, was denied a visa to Switzerland at the Swiss consulate in Warsaw in September 1939, and again in June 1941. As the owner of a leather factory, the claimant's father had substantial assets in Switzerland. Immediately following the outbreak of war in September 1939, the claimant's family filed applications at the Swiss consulate in Warsaw to obtain visas to enter Switzerland. These visas were denied. A second application to the Swiss authorities was filed in June 1941, but again permission was not granted. The claimant was detained in various ghettos and concentration camps until her liberation from Bergen-Belsen by British forces in April 1945.

- The claimant, born on 07/09/1929 in Czechoslovakia, was denied an entry permit into Switzerland in Zurich, and again in Czechoslovakia in 1938. The claimant's father and his Swiss business partner made several attempts to obtain permission for the claimant and her family to enter Switzerland. Swiss authorities repeatedly denied their requests. In June 1938, the family fled to Mukačevo. They were forced into the Mukačevo ghetto in March 1944. They were transported to Auschwitz in May 1944, and the claimant was separated from the rest of her family. She was transferred to a labor camp in Germany, and later to Bergen-Belsen.
- The claimant, born on 03/14/1938 in Budapest, Hungary, was denied a visa to Switzerland in the summer of 1944 at the Swiss consulate in Budapest, Hungary. The claimant and his parents applied for a visa several times. They were denied each time. On one occasion, they stood in line for hours, until a Swiss official informed them that the consulate would not issue any more visas to Switzerland. He asked them to leave the premises. The claimant returned to the Budapest ghetto and went into hiding until liberation.
- The claimant, born on 10/30/1924 in Romania, was denied a visa to Switzerland by the Swiss Embassy in Budapest, Hungary. On March 18, 1944, the claimant applied for a visa at the Swiss Embassy. She was denied by Swiss officials, who told her that the list of applicants was already full. The Swiss officials advised her to try again in three months. The following morning, the claimant was arrested. She was sent to several concentration camps and forced to work.
- The claimant, born on 12/08/1925 in Czechoslovakia, was denied a visa to Switzerland at the Swiss Embassy in Budapest, Hungary. In March 1944, he applied for a visa at the Swiss Embassy. He was denied by Swiss officials, who told him that the list of applicants was already full. The Swiss officials advised him to try again in three months. In April 1944, the claimant was sent to a ghetto, and from there, to several concentration camps.
- The claimant, born on 03/15/1923 in Czechoslovakia, was denied a visa to Switzerland by Swiss authorities in Prague, Czechoslovakia. In 1939, the claimant's parents applied for visas to Switzerland with the support of friends in Zurich. Their application was denied. Subsequently, the claimant was sent with a Kindertransport[198] to England, where she arrived on July 1, 1939. Her parents were deported and killed in Auschwitz.

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198 "*Kindertransport* (Children's Transport) was the informal name of a series of rescue efforts which brought thousands of refugee Jewish children to Great Britain from Nazi Germany between 1938 and 1940." Under the program, "British authorities agreed to permit an unspecified number of children under the age of 17 to enter Great Britain from Germany and German-annexed territories (namely, Austria and the Czech lands). Private citizens or organizations had to guarantee to pay for each child's care, education, and eventual emigration from Britain. In return for this guarantee, the British government agreed to allow unaccompanied refugee children to enter the country on temporary travel visas." *See Kindertransport 1938-1940*, USHMM HOLOCAUST ENCYCLOPEDIA, available at https://www.ushmm.org/wlc/en/article.php?ModuleId=10005260.

- The claimant, born on 06/27/1927 in Yugoslavia, was denied permission to enter Switzerland by the Swiss consulate in Budapest, Hungary. In September or October of 1942, the claimant's mother applied for permission to enter Switzerland in transit to Palestine. The claimant already had received a Schutzpass. She had been placed on a list of potential immigrants to Palestine. The claimant's mother's application was denied. The claimant remained in hiding for the rest of the war.
- The claimant, born on 04/10/1928 in Hungary, was denied a visa to Switzerland in March 1944. The claimant's father went to the Swiss Legation in Budapest to apply for a visa for the family, but received a Schutzpass. The family was later placed into a ghetto. The claimant's parents were taken by German soldiers to the river Danube, where they were shot. The claimant and her sister were imprisoned in the ghetto until liberation.
- The claimant, born on 03/05/1935 in Hungary, was denied a visa to Switzerland with his family sometime after March 1944, at the Swiss Embassy in Budapest, Hungary. The claimant's father was taken away by the Germans and killed. The claimant's mother applied for a visa to Switzerland, but was denied. Instead, she received a Schutzpass, which enabled the claimant, her mother and her sister to live in a Swiss protected house. Subsequently, Germans arrived at the house. The claimant's mother and sister were taken to a labor camp, and the claimant was sent to the ghetto.

b. Roma, Jehovah's Witness, Homosexual and Disabled Holocaust Victims

- The claimant, a Romani, was born in Ghent, Belgium in 1929. His family fled in the spring of 1940, and tried to seek asylum in Switzerland. An uncle was travelling with them who had Swiss nationality. His mother had papers, but his father did not. They travelled through Belgium and France, and tried to enter Switzerland near "Dissebergern," "Limbern" or "Libain." The claimant could not provide exact name spellings, and was not sure if these names were correct. The family was allowed to enter. They were held in barracks for two days, before being expelled back to France. His father was arrested by the Belgian police. The claimant travelled with his mother throughout France, Belgium and Holland.
- The claimants were three Romani sisters born in 1929, 1932 and 1934, respectively. They lived in Karlsruhe, Germany, prior to fleeing to Switzerland. Their mother was born in Switzerland and they had relatives there. The claimants' family attempted to enter Switzerland with documents in 1939 near Kreuzlingen. They were expelled from Switzerland and delivered to the German police, who took them to Dorfgastein, Austria, where they were interned until 1939. They were sent to a camp near Salzburg (Maxglan) from 1939 to 1942. From 1942 to 1945, they were imprisoned in the Lackenbach concentration camp.

- The claimant, a Romani, was born in Austria in 1934. In the summer of 1942, the claimant, his parents, grandmother and three siblings attempted to flee Austria and seek asylum in Switzerland. The family had a circus business. At the Austrian-Swiss border, they presented their passports and were allowed to enter with their entire circus, including animals. They were detained in Switzerland for a few days before being expelled to Germany. However, their circus was confiscated. They were arrested in Germany and sent to several concentration camps, including Mauthausen and Auschwitz.

- The claimant was born in Moselkèrn, Germany in 1928. During the autumn of either 1939 or 1940, the claimant entered Switzerland with a group of people who were strangers to her. Because she was a child, she did not remember the route that was taken. Her recollection was that German was spoken in the region. She was arrested by the Swiss police, harassed and beaten. The claimant was returned to Germany by train. She was taken to Auschwitz in 1942 and was imprisoned there for approximately 1½ years, where she worked carrying stones and helping to build streets. Six of her siblings were imprisoned in Auschwitz. She was transferred to Norhaudsen/Harz in 1944 and later to Bergen-Belsen, where she remained until liberation by American troops. While at Auschwitz, she was beaten with clubs and sticks because she did not want to leave her siblings.

- The claimant, who was Romani, was born in 1921 in Germany. In the autumn of 1938, the claimant's family sought asylum in Switzerland. They traveled from Baden through the city of Donaueschingen, their father's hometown, to Schaffhausen, Switzerland. They attempted to enter Switzerland legally, with ID cards. However, their entry was denied. Later, in the spring and summer of 1939, the family attempted five times to enter at the border, illegally. However, they were always caught and immediately expelled. On their last attempt, the Swiss border guards handed them over to German soldiers, who sent them back to Baden. In 1943, the family was deported to Auschwitz, where the claimant's child perished. Later, the claimant was transferred to Ravensbrück, Buchenwald and Schlieben concentration camps, where she remained until the end of the war.

- The claimant, who was Romani, was born in 1939 in Geiselhöring, Germany. The claimant and her parents sought asylum in Switzerland between 1941-1942. They traveled to Singen at the German-Swiss border. There, they heard that there were many German soldiers at Singen, and that it would be very difficult to cross the border. Subsequently, they went east along the German-Swiss border, until they arrived at Lake Bodensee, where they attempted to enter Switzerland from the lake near Schaffhausen. However, they were caught by Swiss border guards and were immediately expelled. Soon after, they were caught by German soldiers, who took the claimant away from her parents. Her parents were executed in the forest. The claimant was sent to several ghettos and camps, where she remained until liberation.

- The claimant, who was a Jehovah's Witness, was born in 1927 in Austria. In 1940, he was expelled from primary school because he refused to perform the *Heil Hitler* salute or to join the "Hitler-Youth." In April 1941, the claimant and his father were

arrested. The claimant's father was sentenced to four years of imprisonment. The claimant was transferred to a reform school, where he remained, until he managed to escape in October 1941. In the spring or early summer of 1944, the claimant traveled from Vienna by way of Innsbruck. He attempted to enter Switzerland near Nauders. Before crossing the border, the claimant met American pilots who had been shot down by the German army. The pilots informed him that the only way to enter Switzerland was legally, through the border station at Nauders. They told him that the Swiss expelled all refugees who attempted to enter Switzerland illegally, and that at Nauders, there were no German soldiers. However, 200 meters before the Swiss border, the claimant was arrested by a German soldier. The claimant was transferred to Vienna. Between September 1944 and January 1945, the claimant was forced to work. Later, he was transferred to a police prison in Inglau, where he was detained until April 1945.

- The claimant was born in 1927 in Yugoslavia. As a child, he attended Jehovah's Witness meetings with his parents. The claimant's father was the owner of some coal mines and established trade contacts with Switzerland through his partner, who transported the coal to Davos, Switzerland. The Nazis killed the claimant's father and brother. His father's partner tried to rescue the claimant by sending him to Switzerland with his secretary. The claimant and the secretary traveled from Tuzla via Zagreb, Ljubljana, and Udine. They attempted to enter Switzerland by crossing the Italian border. The claimant did not remember the border point, but recalled that they headed toward the city of Davos. However, the secretary could not convince the border guards to allow the claimant to enter, and the claimant was immediately expelled at the border. Later, the secretary managed to bring the claimant back to Tuzla. In 1942, the claimant was detained in the prison in Tuzla.

- The claimant, a homosexual, was born in Poland in 1924. He was deported to Germany to perform forced labor for an aircraft factory. He remained in Germany until 1943. He had to work in inhumane conditions and suffered from malnutrition. In March 1943, he and his friend decided to flee to Switzerland. Their journey was arranged by a German friend, who purchased their tickets. On March 20, 1943, they reached Bregenz, a small town near Lake Bodensee and the Swiss border. On March 22, 1943, they were caught by Swiss border guards and expelled to Germany. They were arrested, interrogated and sent to a prison in Lindau. A few days later, the Gestapo sent them to a prison in Munich. They stayed in Munich for several days before being transferred to Dachau, where they remained until the end of the war.

- The claimant, a homosexual, was born in 1923 in The Netherlands. Around the summer of 1943, the claimant sought asylum in Switzerland. He attempted to enter Switzerland near Basel. However, his entry was denied. Subsequently, the claimant was deported to Germany, where he performed forced labor for German companies. In 1944, the claimant had an eye infection and was exempted from work; however, he was not allowed to return home. Later, the claimant met a woman who ran an actors' school. As the claimant was an actor, they decided to work together. They moved to Berlin, where the claimant had a role in some of the films that she directed. In Berlin, the claimant met a man who became his partner. By the end of 1944, his partner was

arrested and forced to reveal the claimant's name. Subsequently, the claimant was arrested in 1945 because of his homosexuality. He was detained in a prison in Berlin. After the war, the claimant and his partner lived together again.

- The claimant, a mentally handicapped native of Ukraine, was born in 1926. She was deported to Germany in August 1943 to perform forced labor. She was transferred to a concentration camp in Barby in the spring of 1944. While at this camp, she escaped with some other prisoners. She attempted to enter Switzerland, probably near Lörrach and the canton of Schaffhausen. She stated that she was denied entry because "she was physically ill, swollen from hunger, and suffering from a mental disorder." Her companions were denied entry because they were Jewish.

2. Refugees Admitted into Switzerland but Mistreated

a. Jewish Holocaust Victims

- The claimant, born on 11/06/1926 in Czechoslovakia, entered Switzerland with a group of children at Annemasse on March 10, 1944. The claimant was interned in seven camps, where he felt depressed, nervous and demoralized. In April of 1944, he was transferred to another camp guarded by armed soldiers, where conditions worsened. During Passover, the camp management refused to distribute matzo from local Jews, and the claimant had only water and some potatoes for 9 days. In the prison work camp at Witzwiel, the claimant was incarcerated alongside murderers. He was forced to work on Shabbat, even though he pleaded to work on Sundays instead.
- The claimant, born on 12/15/1931 in Germany, entered Switzerland in 1944. At the border, the claimant and her parents were treated very badly. Her mother pleaded to be allowed to stay in Switzerland; if not, she said she would rather be shot. The claimant and her parents were put into a reception camp, and then in a camp in the Italian part of Switzerland. Her father suffered from angina, and her mother was forced to perform such hard labor that she had a heart attack. Only after that, was the claimant's mother given easier work. The claimant was placed with her grandmother in Zurich.
- The claimant, born on 06/17/1937 in Germany, was smuggled into Switzerland from France with a group of children in April 1943. After crossing the border, she was caught by Swiss soldiers. Even though she was wet, cold and injured from the journey, she had to undergo a brutal and humiliating interrogation. During this long interrogation, she was denied medical treatment, was not given anything to eat or drink, and was not allowed to go to the bathroom. She also was threatened with expulsion. The next morning, the claimant and her group were made to walk the streets of Geneva, wounded and dirty, in front of local residents. The claimant stated she recalled this experience as extremely painful and humiliating. She was later

placed in a refugee camp, where she stated that the conditions were unbearable. From there, she was transferred to a children's institution in Bex Les Bains. She was forced to attend a Catholic school, where she was subjected to insults and taunts because she was Jewish. She was not allowed to move freely, and was denied contact with her brother, who was also in Switzerland. She was later transferred to Engelberg.

- The claimant, born on 06/05/1926 in Germany, entered Switzerland from France with his uncle and his uncle's family in 1942. Upon crossing the border, the family was caught by Swiss Army personnel. They were sent to Camp Augsberg, where they were guarded by armed soldiers and had to sleep on straw. After 6 months, the claimant was separated from the family. Over three years, the claimant was interned in eight different camps in Switzerland. He was forced to perform heavy unpaid labor, including building roads and lifting heavy rocks. He had to work in extreme weather conditions with inadequate clothing. As a result, he contracted pneumonia and had to be hospitalized. The claimant stated that he was a prisoner in Switzerland for three years, his young life was wasted there, and he was deprived of the opportunity to further his education.

- The claimant, born on 05/20/1922 in France, entered Switzerland in September 1942 from Annemasse, France. The claimant was quarantined in Geneva, where Swiss police confiscated most of his money. The claimant was then transferred to Camp Buren, where he suffered from hunger. He was later sent to camps Wald, Eggitswil/Kloten, Eggiwill, and Chantiers Ambulants. While in Switzerland, he was forced to perform hard labor. He worked as a lumberjack and in construction, and stated that he had never done such hard and painful work until the war.

- The claimant, born on 02/06/1922 in Czechoslovakia, arrived in Switzerland on December 7, 1944 from Bergen-Belsen. The claimant was placed in Caux-Montreux, in what she described as a closed camp. She stated that she suffered from severe cold due to the lack of heating, and from hunger due to insufficient food. She also feared being expelled to Algeria.

- The claimant was born on 03/01/1929 in Romania, and she died on 04/07/2000.[199] The claimant was sent from Bergen-Belsen to Switzerland in September 1944. At the border, the group was held for five days. The claimant was then detained in a Swiss refugee camp for several weeks, before she managed to immigrate to Palestine. The claimant stated that she was badly treated while in Switzerland, and held as if she were a prisoner.

- The claimant, who was born on 07/02/1920 in Belgium, entered Switzerland in July 1942 from France. The claimant was detained in Tour Haldimand, Clarons, Chamby, and in Engelberg. During her time in Switzerland, the claimant worked for no pay. She was subject to verbal abuse, constantly being reminded that "the border is close" and that "you are eating our food." She was constantly in fear of expulsion.

[199] Because she died after February 15, 1999, her heirs were eligible to receive compensation, as provided under the Distribution Plan.

- The claimant, born on 06/23/1936 in France, entered Switzerland with her family from France, near Annemasse, in November 1942. They were taken by truck to Bex, where they were detained in a barrack for several weeks. The claimant and her mother were transferred to Morgins, while her father stayed behind to work as an unpaid laborer. After Morgins, the claimant and her mother were transferred to a camp in Champéry. They were there for about a year, and later were joined by her father. Shortly thereafter, she was separated from her parents, and placed in the care of a childless Jewish couple in Basel for two and a half years.
- The claimant, born on 05/17/1926 in Belgium, entered Switzerland from France in September 1942. The claimant entered Switzerland near Geneva, and was taken to the military camp Varembe. She stated that she was treated like a servant and had to clean the canteen. She was sent to the Salvation Army for a week, and then, with her two sisters, to a children's home in Wartheim, Appenzell, for nine months. The claimant had to clean the home every day. She was abused by the director. She was separated from her family and sent to a labor camp in Morgins, where she worked in the laundry. She was not allowed to go to school, and was not allowed to leave the camp without permission. She returned to Belgium in June 1945.

b. Roma, Jehovah's Witness, Homosexual and Disabled Holocaust Victims

- The claimant, a Romani, was born in 1921 in Austro-Hungary. In July 1944, he was deported to Austria to work for Henkel Company. Later, he was transferred to Hauders Company (Tot-Lager 3) at Auschwitz. He worked there until he escaped to Switzerland, and was admitted into St. Margareto. He was forced to work for his landlord for a month before being transferred to Camp Lager in Bern. In August 1945, he left Switzerland for Austria.
- The claimant, a Romani, was born in Germany in 1921. She was married and had two children. During the autumn and winter of 1942, she fled to Switzerland to escape the Nazi regime. She traveled from the Czech Republic through Freiburg, Germany and on to Basel, Switzerland. She was allowed to enter Switzerland, and was interned at a camp on the border near Basel. She recalled the names of other prisoners, including a Jewish family, who also were at the camp. After a few weeks, she was expelled back to Germany. Her children died while the family was in flight, and she never saw her husband again.
- The claimant was born in 1937 in the USSR. Claimant's family members were Jehovah's Witnesses. The claimant believed they were removed from the USSR and persecuted because of their faith. In October 1943, the claimant and her sisters were taken to Estonia, where they were detained in a camp. In February 1944, they were deported to a camp in the city of Friedrichshafen, Germany. After the camp was bombed, they were transferred to a camp in the city of "Gotnatyngen." She did not

perform any labor because she was a child. The Nazis used to leave the children naked so that they would not run to their parents. During the bombardment of the camp in April 1945, they ran and hid in craters to avoid being hurt by splinters. As they later found out, they were in Swiss territory. In the morning, a policeman approached them, told them not to be afraid, and took them to a refugee camp. They were locked inside a large shed for disinfection. Later, they were kept in a camp in the city of Soluthurn behind barbed wire, but were not guarded. In Switzerland, the claimant's sisters were required to work. The claimant's sisters used to leave for work in the morning, but the claimant did not know what kind of work they did. They went back to Russia in September 1945. The claimant also mentioned the names of the cities of "Rikon" and "Tseythayn" in Switzerland.

- The claimant, a Jehovah's Witness, was born in 1930 in Poland. In approximately 1941, she was deported to Buchenwald, where she was detained with other Jehovah's Witnesses. Around 1943, the claimant and some other Jehovah's Witnesses were released from the camp. Subsequently, they sought asylum in Switzerland. They traveled from Innsbruck, Austria and entered Switzerland. They were detained in a refugee camp near Winterthur. While there, they were forced to perform forced labor in agriculture and in the railroads. When the war ended, the claimant was expelled from Switzerland.

3. Refugees Expelled or Denied Entry, and Admitted but Mistreated

a. Jewish Holocaust Victims

- The claimant, born on 05/22/1921 in Austria, entered Switzerland from France in August 1942. The claimant, her husband and mother traveled to Switzerland by train. Germans entered the train. The claimant and her mother were taken off the train, and interrogated in a small village. They were able to rejoin her husband and continued on foot to Switzerland, entering near St. Cergue. They went to the police and were told they had to leave. The claimant stated that she was subjected to terrible anti-Semitic treatment. The claimant and her husband gave the guard diamonds of great value in the hope that they could stay, but they were escorted to the border and expelled. They were in the forest for about two weeks, living in fear. The claimant approached a Swiss soldier. She stated that he was kind and told them how to re-enter Switzerland, and to find a Jewish family who would help them. The claimant and her husband walked back into Switzerland. After finding the family, who provided food and clothes, they went on to Zurich, where they were imprisoned. They were subsequently sent to camps Beatenburg, Adliswil, and Morgins.
- The claimant, born on 01/30/1928 in Germany, was denied entry into Switzerland between 1938 and 1939 at the German-Swiss border near Kreuzlingen. The claimant's father was arrested by the Gestapo on November 10, 1938 and sent to

Dachau. He was released on the condition that he leave Germany. The claimant and her family then traveled from their home in Konstanz to the German-Swiss border. They were denied entry at the border near Kreuzlingen. In October 1940, the claimant and her mother were deported to Gurs, France. In 1941, they were transferred to Rivesaltes, and at the end of December, the claimant was rescued by the OSE and taken to an orphanage. She then went into hiding in Chambery and Annecy, and in May 1943, she crossed the French-Swiss border at Annemasse. The claimant was taken to Swiss officials in Geneva, where, she stated, she was greeted with anti-Semitic slurs. She was sent to a camp in Switzerland, where she slept on straw. She was deprived of proper medical treatment during her time in Switzerland.

- The claimant, born on 10/09/1928 in Austria, was denied entry into Switzerland at the German-Swiss border in 1938. The claimant and her family fled Vienna, Austria. They attempted to enter Switzerland via Waldshut, Germany. They were caught at the border, jailed for three days and then sent back to Germany, where they were imprisoned. After their release, they made a second attempt. This time, they were able to enter Switzerland, and were brought to Zurich. The claimant was not allowed to attend the regular school because she was a Jewish immigrant. Her father was constantly contacted by the police and was asked why he did not leave Switzerland and immigrate to Palestine. In 1941, the family left Switzerland and went to the Dominican Republic. The claimant arrived in Santo Domingo in 1941 with help from the Jewish organization "Dorsa."

- The claimants, with their parents, were denied entry into Switzerland at the French-Swiss border in June 1943. Their parents had fled to Grenoble, where friends helped them organize a guide, who took the family to the Haute-Savoie region of France. The family arrived in Switzerland in June 1943. Swiss border guards denied them entry and sent them back to France. In May 1944, the claimants' parents put the children in the care of the OSE, and they were sent on a transport to Switzerland. At the border, the group was apprehended and arrested by the Gestapo. They were jailed in the Pax prison in Annemasse for two months, and then sent to a children's home under German surveillance. At the end of August 1944, the French resistance rescued the children and sent them to Switzerland. Upon arrival, they were transferred to the reception camp Champel in Geneva, where they stayed for six months. The claimant stated that living conditions in the camp were terrible. They were interned and their movement was restricted. They also were quarantined, due to an outbreak of diphtheria.

b. Roma, Jehovah's Witness, Homosexual and Disabled Holocaust Victims

- The claimant was born in 1920 in Heilbronn, Germany. Her father was Jewish. As her mother was Romani, the claimant identified herself as Romani. In 1933, she and her family entered Switzerland via Weil am Rhein. In 1934, they were expelled to France. Later that year, they were expelled from France to Binningen, Switzerland.

Between 1934 and 1937, she and her family were transferred, by the respective cantonal police, to several locations: Basel, Binningen, Liestal, Lugano, Locarno and other cities. By relocating the claimant's family, the Swiss authorities tried to encourage the family to return to Germany. Around 1937, they were interned at the "White House" in Basel. In 1937, they were expelled from Switzerland by the Swiss police to Schaan, Liechtenstein. In 1940, the claimant came back to Switzerland for a reunion of her father's family. However, she did not receive a work permit, and had to leave Switzerland.

- The claimant was born in 1926 in USSR. He stated that he was born with a birth defect, a deformed leg, and that this was the reason for his persecution by the Nazi Regime. Between the autumn of 1941 and February 1944, he and his family lived under Nazi occupation. In February 1944, the claimant was deported to Germany, where he was forced to perform agricultural labor near Strasbourg. Later, he was transferred to the other side of the Rhine River, where he worked in a saw mill. By the end of the war, the claimant and five other inmates escaped from the saw mill and entered Switzerland near Basel. They were admitted into Switzerland and were sent to a quarantine camp near Lausanne. Later, they were transferred to a wooden barrack near the mountains, where they worked on road construction until August 1945. The Swiss authorities handed the group over to the KGB. Although the claimant had a birth defect, he was drafted into the Soviet Army and had to work with horses. For a long time, the claimant was considered as an "enemy of the Soviet people."[200]

E. Denials

As true for all aspects of the Swiss Banks Settlement claims process, every effort was made to assist survivors in putting forward their claims, such as by performing additional research; reconsidering earlier recommendations in light of additional historical or documentary evidence; and contacting claimants for further details. Moreover, as with all claims processes, the standard was whether the claim was "plausible," taking into account the massive destruction of Holocaust-era documentation and the fading of memories in the decades after the Holocaust.

[200] The IOM sought and received permission to consider individuals expelled from or interned in Switzerland during the period January 1, 1933 through December 31, 1945 as eligible for compensation under the Refugee Class. As the IOM advised in February 16, 2004 correspondence from its Senior Legal Officer: (1) the Nazi Regime was defined in the Settlement Agreement as the National Socialist Government of Germany from 1933 through 1945; (2) the BERGIER FINAL REPORT indicated that refugees interned in Swiss camps and elsewhere were not automatically released on the day the War ended (May 9, 1945) but rather often were interned for months thereafter; and (3) relief organizations still were assisting refugees in Switzerland through early 1946.

Nevertheless, a number of claims were denied, and in the case of the Refugee Class, this often was because the claimants had not met the basic threshold requirements for compensation. As described by the Claims Conference in its May 10, 2004 and January 2, 2005 submissions, the grounds for denial rested upon one or more of the following factors:

A. "No Nexus to Switzerland: Claimant did not allege an attempt to enter Switzerland at the Swiss border or expulsion from Switzerland nor did claimant allege a request for permission to enter Switzerland at a Swiss Consulate or Embassy."

B. "Ineligible Heir: The refugee on whose behalf the claimant filed died on or before February 15, 1999."

C. "Insufficient Information: Claimant did not provide enough information to render the claim plausible. Claimants were given the opportunity to supplement their applications with written questionnaires and/or through telephonic interviews with Claims Conference caseworkers," but nevertheless did not provide sufficient information.

D. "Not Fleeing Nazi Persecution: The date upon which claimant attempted to enter Switzerland at the Swiss border or requested permission to enter Switzerland render[ed] it implausible that claimant 'sought entry into Switzerland in whole or in part to avoid Nazi persecution.'"

E. "Postwar Attempt: Claimant stated that he or she attempted to enter Switzerland after May 9, 1945."

F. "No Statement of Detention, Abuse or Mistreatment: Claimant did not state that he or she was detained, abused or otherwise mistreated while in Switzerland as a refugee. Claimants were given the opportunity to describe their experience in Switzerland in a telephonic interview with a Claims Conference caseworker."

G. "Withdrawals: Claimants stated in writing or a telephonic interview that they wanted their application to the Swiss Refugee Program withdrawn."

H. "Embassy or Consulate Invalid: Claimant stated that a request for permission to enter Switzerland was made in a city or country where there is no record of an active Swiss Embassy or Consulate."[201]

[201] The Claims Conference obtained a list of Swiss embassies and consulates, which showed the city and opening/closing dates of the various Swiss diplomatic offices throughout Europe. *See* Swiss Federal Department of Foreign Relations (Eidgenössisches Department für auswärtige Angelegenheiten), *1798-1998, Zwei Jahrhunderte Schweizer Aussenvertretungen: Two Hundred Years of Swiss Representation*. On the basis of this list, the Claims Conference recommended, and the Special Masters and thereafter the Court agreed, that a claim based upon an alleged effort to obtain a visa in a Swiss embassy or consulate that was known not to have existed at the place and time specified by the claimant was to be rejected.

I. "Not Born at Time of Attempt: Claimant provide[d] a description of his or her family attempting to enter Switzerland that occurred before the claimant's date of birth."

J. "Loss of Contact: Claimant [did not] respond[] to multiple attempts to contact [him or her] by phone or in writing over a period of several months."

K. "Claimant Deceased and No Known Heir: Claimant died after submitting the application and there [were] no known surviving heirs."

L. "Failure to Fulfill the Requirements of Heir Application: Claimant [did] not submit[] the required documentation to complete the Heir Application to the Swiss Refugee Program."

M. "Not a Member of a Target Group: Claimant did not declare membership in one of the target groups nor did [he or she] attest to … membership in a target group in response to supplemental communication."

After conferring with the Special Masters, the Claims Conference recommended and the Court approved a total of 1,313 refugee claims for denial.[202]

With respect to the IOM, in its submission of June 29, 2004 ("Group VII"), a total of 273 refugee claims were recommended for denial. The IOM explained that the claimants had not "declare[d] their membership in one of IOM's Swiss Banks target groups nor did they attest to their membership in a target group in response to IOM's supplemental communication. Other claimants did not allege that they attempted to enter Switzerland to escape persecution because of their target group, nor did they provide information about their Swiss refugee experiences following IOM's supplemental communication."[203] After conferring with the Special Masters, the IOM recommended and the Court approved a total of 504 refugee claims for denial.

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[202] *See* Claims Conference Final Statistics, April 12, 2010.

[203] For similar reasons, the IOM recommended denial of 472 refugee claims in its April 12, 2005 submission ("Group XI"); 13 claims in its December 5, 2005 submission ("Group XIII"); 11 claims in its February 22, 2006 submission ("Group XVII"); and 8 claims in its May 22, 2007 submission ("Group XXI").

V. POST-SCRIPT: SWITZERLAND REVISITS ITS EXPULSION DIRECTIVES

Many Swiss have reflected on whether their country really was such a "full lifeboat" during the years of Hitler's rule that it could not take on any additional passengers. Some raised those questions at the time when it mattered most: during the Holocaust. Not all of the Swiss authorities who interacted with refugees believed that the only option was expulsion. Like many others in Switzerland, a number of officials, acting at considerable risk to their careers and livelihood, defied orders and instead chose to help refugees. "[C]onfronted with the refugees' distress on a daily basis," they "expressed revulsion about the increasingly brutalised methods applied on both sides of the border...."[204]

One such official was Paul Grüninger, "the police captain of St. Gallen, who had a long record of opposition to the hardline stance of the federal authorities. With some of his men, he actively assisted refugees after the border was closed in August 1938 … It is estimated that he saved up to a thousand or even more Jewish refugees from Austria. By the end of 1938, however, as rumours and accusations against him began to multiply, his superiors withdrew their protection, which cost Grüninger his job, his career and his reputation."[205]

As Yad Vashem has said of Grüninger, to "legalize the refugees' status, he falsified their registration, so that their passports showed that they had arrived in Switzerland before March 1938, when entry into the country had been restricted…. Gr[ü]ninger, the policeman who decided to break the law, turned in false reports about the number of arrivals and the status of the refugees in his district, and impeded efforts to trace refugees who were known to have entered Switzerland illegally. He even paid with his own money to buy winter clothes for needy refugees who had been forced to leave all their belongings behind…. [After the] Germans informed the Swiss authorities of Gr[ü]ninger's exploits … he was dismissed from the police force in March 1939… In March 1941 the court found him guilty of breach of duty. His retirement benefits were forfeited, and he was fined and had to pay the trial costs... Ostracized

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[204] Ludi, *Dwindling Options*, at 92.

[205] *Id*. at 93. *See also* BERGIER REFUGEE REPORT at 126 ("Historian Stefan Keller estimates that Grüninger saved hundreds of Jews, perhaps even several thousand").

and forgotten, Gr[ü]ninger lived for the rest of his life in difficult circumstances. Despite the difficulties, he never regretted his action on behalf of the Jews. In 1954 he explained his motives: 'It was basically a question of saving human lives threatened with death. How could I then seriously consider bureaucratic schemes and calculations.'"[206]

In 1971, St. Gallen declared Paul Grüninger's behavior to have been "morally correct." In the same year, he was honored by Yad Vashem as one of the "Righteous Among Nations."[207] He died the next year, in 1972. He was pardoned posthumously by a Swiss court in 1995.[208]

Years after his death, Switzerland enacted a law intended to exonerate others who had undertaken risks of the kind assumed by Grüninger. In January 2004, this "new law took effect … pardoning Swiss citizens who were penalized — even jailed — for helping Jews escape from Nazi Germany, nearly six decades after the fact and too late for many who died with the burden of misplaced shame…. The new law acknowledge[d] that these so-called offenders 'acted out of altruism' and many 'fell into total misery after their condemnation,' according to comments by the Swiss Federal Council…." Those affected, or their families, were given five years to seek to have their court records cleared (although there was no provision for compensation).[209]

Others who sought to thwart Swiss refugee restrictions included Carl Lutz, who arranged for "Schutzpasses" which provided some degree of protection to Nazi victims in Budapest. There were also National Councillors such as Paul Graber and Albert Oeri, who had ardently disputed the notion that the "boat" was "full."[210]

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206 *The Righteous Among the Nations - The Policeman who Lifted the Border Barrier*, YAD VASHEM, http://www.yadvashem.org/righteous/stories/grueninger.html (last visited June 19, 2014).

207 BERGIER REFUGEE REPORT, App. 2, at 298. *See also* CROWE, THE HOLOCAUST: ROOTS, HISTORY AND AFTERMATH, at 352.

208 Elaine Sciolino, *A Swiss Woman Steps Forward Again to Aid Refugees*, N.Y. TIMES, Jan. 14, 2004, http://www.nytimes.com/2004/01/14/world/a-swiss-woman-steps-forward-again-to-aid-refugees.html.

209 *New Swiss Law Pardons Those Who Aided Jews*, N.Y. TIMES, Jan. 2, 2004, at A7. *See also Swiss who broke neutrality law to aid Jews can clear names*, INT'L HERALD TRIB., Jan. 2, 2004.

210 BERGIER REFUGEE REPORT at 95. Those objecting to the official measures "were often from cantons located on the border and thus confronted with this human tragedy," such as Basel, Bern and Ticino. *Id.* at 96, 111 n.65; *see also id.* at 125 (Basel-Stadt was "known for its generous refugee policy in 1938," in part because the head of

(*continued on next page*)

Outside of Switzerland, "two consular employees in Milan, Pio Perucci and Candido Porta, and the consulates in Venice and Trieste distributed entry visas to Austrian refugees," with the Swiss consul in Venice, Ferdinand Imhof, defending his defiance of official policy because he "felt obliged 'for humanitarian reasons' to let people 'who will no longer find shelter anywhere, find refuge in our homeland for at least a short time.'" In Bregenz, Swiss consular employee Ernest Prodolliet "helped several thousand refugees enter Switzerland, ignoring the federal authorities' regulations." During disciplinary proceedings against him, during which he was instructed that "'[o]ur agency is not there to assist Jews,'" he stated that his "'principle was always to help…. I went to great personal lengths and effort to uncover a reason to let people enter legally.'"[211]

In addition, authorities operating from within Switzerland also sought to assist with rescue efforts. A recently-discovered effort undertaken by the "Bernese Group" has been recognized by the United Nations at its Geneva headquarters in its "Passports for Life" exhibition. Polish diplomats based in Switzerland, including the Polish ambassador to Switzerland, "Aleksander Ładoś, his deputy Stefan Ryniewicz, consul Konstatnty Rokicki and deputy consul Juliusz Kühl as well as Abraham Silberschein, a Polish-Jewish lawyer and Rabbi Chaim Eiss, an orthodox Jewish activist," issued "hundreds of illegally obtained Latin American passports" and smuggled them to Jews throughout occupied Europe.[212] The operation rescued hundreds of Nazi victims despite the fact that Swiss police authorities "detained for questioning at some point" the various members of the Bernese Group.[213]

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its Police Division "repeatedly failed to follow the expulsion orders issued by the Federal Police for Foreigners"). However, the "majority of cantonal governments in 1938 followed the Federal Council's restrictive policies," *id.*, including Zurich and Vaud, which were "very reluctant" to accept refugees. *Id.* at 111 n.65.

211 BERGIER REFUGEE REPORT at 106, 107. Yad Vashem honored Prodolliet in 1982, two years before his death. *Id*. *See also* RUTH LICHTENSTEIN, PROJECT WITNESS, WITNESS TO HISTORY 511 (2010).

212 *"Passports for Life" exhibition at Geneva*, PERMANENT MISSION OF THE REPUBLIC OF POLAND TO THE UNITED NATIONS OFFICE AT GENEVA, Jan. 24, 2019, https://www.msz.gov.pl/en/p/genewa_ch_s_eng/news/passports_for_life__exhibition.

213 Cnaan Liphshiz, *Researchers unlock the mystery of Polish diplomats who rescued Jews*, JEWISH TELEGRAPHIC AGENCY, Feb. 15, 2019, https://www.jta.org/2019/02/15/global/researchers-unlock-the-mystery-of-polish-diplomats-who-rescued-jews. "Newly-declassified files" from the interrogation by the Swiss police of "Alfred

(*continued on next page*)

It took decades for Switzerland to reconsider the plight of some of its citizens who had assisted Jewish refugees. Monique Eckmann, a scholar of Holocaust education in Switzerland, has called this "soft denial." [214] An aspect of this "soft denial" was that "not only were their actions criticized in Switzerland, but that their rehabilitation and recognition came so late."[215] Thus, in 2011, Switzerland announced that "it had finally finished the process of rehabilitating more than a hundred people punished during WWII for having helped Jews escape Nazi persecution. But only one of the 137 people vindicated by the report actually lived to see their name cleared." That person was Aimée Stitelman. In 1945, she was sentenced to 15 days' detention "for having helped 15 Jewish children who were fleeing the Nazis, some of them orphans, enter Switzerland." The "rehabilitation commission struck down the conviction in March 2004, when she was 79 years old. She died a year later."[216] Ms. Stitelman, who was a

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Schwarzbaum, a Jewish rescue activist from Bedzin who had managed to flee to nominally neutral Switzerland in 1940," suggest that the police "had the Bernese Group firmly in their sights. All of its members had been detained for questioning at some point, raising the prospect of their deportation to occupied Poland by the Swiss, who were neutral but anxious not to anger the Germans." *Id. See also* Menachem Z. Rosensaft, *A Brave group of Polish diplomats tried to save my father from the Holocaust*, JEWISH TELEGRAPHIC AGENCY, Feb. 21, 2019, https://www.jta.org/2019/02/21/opinion/a-brave-group-of-polish-diplomats-tried-to-save-my-father-from-the-holocaust; *Poland obtains archive of Bern diplomats' efforts to save Jews*, SWISSINFO.CH, Aug. 9, 2018, https://www.swissinfo.ch/eng/society/holocaust_poland-obtains-archive-of-bern-diplomats--efforts-to-save-jews/44312012.

214 Monique Eckmann, *Specific Challenges for Memory and for Teaching and Learning about the Holocaust in Switzerland*, *in* BYSTANDERS, RESCUERS OR PERPETRATORS? THE NEUTRAL COUNTRIES AND THE SHOAH 275, 278 (Int'l Holocaust Remembrance Alliance ed., Metropol Verlag 2016).

215 *Id*.

216 *Swiss acknowledge those who helped Jews flee Nazis*, AGENCE FRANCE PRESSE - ENGLISH, Dec. 28, 2011. *See also* Paul Verschuur, *Switzerland Exonerates Nazi-Era Refugee Helpers to Close Chapter*, BLOOMBERG, Dec. 28, 2011, http://www.bloomberg.com/news/2011-12-28/switzerland-exonerates-nazi-era-refugee-helpers-to-close-chapter.html. The March 2, 2009 Report by the Swiss Parliamentary Commission responsible for rehabilitating those who had assisted Jewish refugees, entitled *The Rehabilitation of Persons who Assisted Refugees During the National Socialist Period — Report of the Committee on Rehabilitation Concerning its Activity in the Years 2004-2008*, noted that the "Commission … decided not to act only after a petition but also *sua sponte*." Commission Report at 3. The *Paul-Grüninger-Foundation*, established in honor of the St. Gallen police captain, had suggested that the Commission "make a purposeful search for sentences of military courts concerning refugee assistance in the Federal Archives." *Id*. at 18. The Commission accepted this suggestion and "pulled for a closer examination" approximately 3,500 of 32,000 penal sentences handed down by Swiss military courts between 1942 and 1945, as the 3,500 were believed to have possibly related to refugee assistance cases. *Id.* The Commission ultimately granted "rehabilitation" in 137 cases. *Id.* at 19.

17-year-old Jewish schoolgirl in Geneva when she aided the children, was the first Swiss citizen to apply for rehabilitation under the 2004 law.[217]

Ms. Stitelman said at the time that it was "'absurd, laughable, to ask to be rehabilitated after 60 years, and I had to be persuaded to do it …. But this is less about the past and more about the future. I want to draw attention to the suffering of immigrants who are here without papers. I want the people of Switzerland to fight against falling into the same situation again without even knowing it.'"[218]

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[217] *See* Sciolino.

[218] *Id.*

THE INSURANCE CLAIMS PROCESS

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I. THE POST-SETTLEMENT CREATION OF AN "INSURANCE" CLASS

When the class action claims were under discussion for purposes of approval of the proposed Settlement, the matter of Swiss insurance claims was raised. Specifically, an issue arose as to whether there had been effective notice that claims were being released for certain Swiss insurers. In the absence of a mechanism to pay valid Holocaust-era insurance claims as part of the distribution of the Settlement Fund, the appropriateness of a release was discussed. In response, counsel for the defendant banks and counsel for the plaintiff class entered into negotiations. These discussions resulted in modifications to the Settlement Agreement to provide for a mechanism to compensate certain insurance claims. The parties agreed to the *de facto* creation of a sixth class of beneficiaries. These individuals would be entitled to file claims against the participating insurance carriers, Swiss Re and Swiss Life. The claims process was to be funded through a $100 million program created by the infusion of an additional $50 million in cash to the settlement fund by the two insurers, as well as the allocation of $50 million of the $1.25 billion Settlement Fund for insurance claims.[1]

Amendment No. 2 to the Settlement Agreement provided that the insurance carriers participating in the Settlement (Swiss Re and Swiss Life, referred to as the "Participating Insurance Carriers" or the "PICs") and the Settlement Fund each were to be responsible for one-half of insurance award payments.

As set forth in Amendment No. 2:

> The Settlement Fund and the Participating Insurance Carriers will each be responsible for one half of the amount awarded on valid Policy Claims for the first $100 million (up to a cap of $50 million for the Settlement Fund, on the one hand, and up to a cap of $50 million for the Participating Insurance Carriers, collectively, on the other hand) . . . If valid Policy Claims exceed $100 million, either the Settlement Fund will pay any amounts in excess of the first $100 million or valid Policy Claims will be paid pro rata within the combined cap of $100 million. Under no circumstances will the Participating Insurance Carriers collectively be responsible for more than $50 million, and . . . all Releasees other than the Participating Insurance Carriers will have no liability for Policy Claims.

[1] *See generally In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 160 (E.D.N.Y. 2000).

> All Looted Assets Claims including those relating to insurance policies will be paid exclusively from the Settlement Fund.[2]

Subsequently, when it became clear that the number of insurance claims was lower than anticipated, the parties revised the Settlement Agreement, so that the insurance program would cover up to $50 million in payments, $25 million of which was to be paid by the insurance carriers and $25 million by the Settlement Fund.[3]

The PICs and their affiliates were listed in Exhibit 1 and Exhibit 1A to Amendment No. 2 and were named "Releasees" under the Settlement Agreement.[4] Three other Swiss insurance companies were *not* released under the Settlement Agreement: *Basler Lebensversicherung Gesellschaft*, *Zürich Lebensversicherung Gesellschaft*, and *Winterthur Lebensversicherung Gesellschaft*. None of the latter three companies participated in the claims process under the Swiss Banks Settlement Fund. Instead, *Basler* worked informally with the German Foundation "Remembrance, Responsibility and Future" (created in 2000 primarily to address claims relating to slave labor), and *Zürich Leben* and *Winterthur* both were members of the International Commission on Holocaust Era Insurance Claims ("ICHEIC").[5]

In the Swiss Banks Settlement insurance process, claims were invited for the following types of policies issued or guaranteed by the PICs and their affiliates listed in Exhibit 1 and 1A to Amendment No. 2: life; annuity; endowment; and education/dowry policies, if purchased in the period from 1920 to 1945. As true for all classes under the Settlement Agreement with the exception of Slave Labor Class II, the categories of potential beneficiaries were pre-defined. The policyholder, insured, beneficiary or heirs to the policy had to have been "Victims or Targets of

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2 *Amendment* No. 2 to Settlement Agreement, Aug. 9, 2000, Section 17.3.

3 The revised amounts were set forth in the June 12, 2001 Claims Process Guidelines (*see* "Step 8": "Participating Insurance Carriers shall be responsible for 50% of the amount … up to a $25 million cap.

4 *See* CRT, *Insurance Claims Resolution Process — Exhibit 1*, available at http://www.crt-ii.org/_insurance/in_exhibit_1.phtm.

5 ICHEIC was established in 1998 following negotiations among European insurance companies and U.S. insurance regulators, as well as representatives of international Jewish and survivor organizations and the State of Israel. ICHEIC was charged with establishing a process to collect and facilitate the signatory companies' processing of insurance claims from the Holocaust period. *See* http://www.swissbankclaims.com/Glossary.aspx.

Nazi Persecution", *i.e.*, Jewish, Roma, Jehovah's Witness, homosexual or disabled Holocaust victims.

Information about the insurance process was included in the worldwide outreach program for the overall distribution process. The initial filing deadline was September 30, 2001. As in the case of bank account claims, several court orders extended the filing deadline until December 30, 2004. Further, pursuant to a proposal by Swiss Re, and in tandem with the publication of additional account owner names following post-settlement litigation, on January 13, 2005 a list of 36 Holocaust-era insurance policyholders was published (the "2005 List"). For these 2005 List accounts, claims were accepted until July 13, 2005. As indicated on the CRT's website, "[t]he 36 Holocaust-era policyholders on the List had insurance policies that were issued in Germany, Austria, Hungary and Poland by the Austrian insurer *Der Anker* that, because of special circumstances [*i.e.*, the fact that Swiss Re had issued guarantees on each of these Austrian *Anker* policies], are covered by the Swiss Settlement."[6]

II. INSURANCE CLAIMS GUIDELINES AND PROCESS

A. The Insurance Guidelines

On June 12, 2001, counsel for the respective parties agreed to the Insurance Claims Process Guidelines (the "Guidelines"), in which they established a claims process and procedures. The introduction to the Guidelines stated:

> Where applicable, the procedures set forth in the Guidelines shall guide the conduct of all of the parties and the Claims Evaluator … that has been designated by the Court to process insurance claims. The parties are committed to follow the letter and spirit of the Guidelines in good faith.[7]

Because the Zurich-based Claims Resolution Tribunal (CRT) already had been selected to administer the Deposited Assets Class claims process on behalf of the Court, the parties recommended, and the Court agreed, that the CRT also should administer the insurance process.

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[6] CRT, *List of Names of Holocaust-Era Insurance Policyholders*, http://www.crt-ii.org/_insurance/list_in.phtm (last updated Jan. 14, 2005).

[7] Guidelines at 1.

Pursuant to the Guidelines, the CRT performed an initial review of each claim to determine whether the claim was complete. In cases where key pieces of information were missing, a CRT staff member contacted the claimant for more information. Once all of the information was assembled and logged into the CRT's database, the claim was copied for submission to the relevant insurance company.

The CRT's role in reviewing insurance claims differed from its role in the bank account claims process. The bank account claims process was administered largely by the CRT, which matched the claims against the available lists of possible Holocaust-era bank accounts, and evaluated the claims. The insurance claims process, however, provided that insurance claims were to be submitted for analysis to the PICs (Swiss Re and Swiss Life). The companies, not the CRT, were supposed to control the matching, research and final determination of claims. The Guidelines set forth a search protocol for the PICs to follow.[8] All research was carried out at the PICs' headquarters. The CRT had no right of direct access to the research process. During the negotiations, the PICs had indicated that they had, and would continue to review, databases in their archives containing names of policyholders, insured persons and beneficiaries.

B. Commencement of the Insurance Claims Process

Following the Court's approval of the Settlement Agreement and Amendment No. 2, the CRT began receiving insurance claims filed directly with the Swiss insurance claims program. While processing these so-called "direct claims," the CRT identified many claims to policies issued by non-Swiss insurance carriers, or by Swiss insurance carriers that did not participate in the Settlement Agreement (*i.e.*, Swiss insurers that were not named in Exhibit 1 and 1A to Amendment No. 2). In light of the information provided by the claimants regarding the companies that issued their Holocaust-era policies, it was clear that many of these claims should have been filed with ICHEIC. Similarly, ICHEIC informed the CRT that it had a number of claims identifying the Swiss PICs, and those should have been filed directly with the CRT.

[8] *See* Guidelines Tabs 3-5.

The CRT and ICHEIC therefore agreed that claims received by the CRT that named insurance companies participating in ICHEIC should be forwarded to ICHEIC for analysis, unless ICHEIC already had received a claim from the same claimant relating to the same policyholder. The CRT, in turn, agreed to accept ICHEIC claims naming the PICs and the affiliates listed in Exhibit 1 and 1A to Amendment No. 2. Based upon this agreement, starting in September 2002, the CRT forwarded 121 claims to ICHEIC, and ICHEIC forwarded 1,295 claims to the CRT.[9]

In total, the CRT received 2,080 claims: 785 claims filed directly with the CRT (including late claims) and 1,295 forwarded by ICHEIC. The CRT sent all insurance claims, both direct claims as well as those received from ICHEIC, to the Swiss PICs for matching and research. Subsequently, the CRT resubmitted certain claims for further research. Certain late claims and claims to policies on the 2005 List were forwarded to the PICs thereafter, so that ultimately 2,050 claims were sent to the PICS.

The PICs recommended that the CRT forward certain claims to the another entity that was processing Holocaust-era insurance claims, the German Foundation "Remembrance, Responsibility and Future" ("German Foundation"), and the CRT sought to do so. The section that follows provides a brief background of the German Foundation, and describes the provisions for the CRT's referral of insurance claims to the German Foundation.

C. Impact of Other Insurance Claims Processes

Beginning in 1998, several class action lawsuits were filed in the United States against German companies arising from their use of slave and forced labor during World War II, and the aryanization of properties.[10] Claims were asserted not only by Jewish slave laborers, but also by

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[9] ICHEIC used a different definition of "victim" in its claims processes than did the CRT, which followed the Settlement Agreement. ICHEIC did not limit victim status to membership in one of the five "victim or target" groups defined by the Settlement Agreement. Consequently, the CRT had no jurisdiction over certain claims forwarded to it by ICHEIC. These claims were returned to ICHEIC.

[10] *Aryanization* has been described as follows: "As early as 1933, Jewish businessmen were being made to sell their companies. During the first few years, however, the firms were mostly left in peace by the authorities. The owners were free to decide to whom they would sell and the selling price was agreed between the two parties. Even if they were based at the time on the agreement of both parties, such take-overs cannot be termed

non-Jewish forced laborers primarily from Poland, Ukraine, and other parts of Central and Eastern Europe. In March 2000, the United States and German governments agreed on the terms of an approximately $5 billion global settlement of these claims, and the German *Bundestag* adopted legislation on July 17, 2000 creating the German Foundation.

The German Foundation identified ICHEIC as the official conduit for all insurance claims. Under Article 1(4) of the German Foundation legislation:

> The Federal Republic of Germany agrees that insurance claims that come within the scope of the current claims handling procedures adopted by the International Commission o[n] Holocaust Era Insurance Claims ("ICHEIC") and are made against German insurance companies shall be processed by the companies and the German Insurance Association on the basis of such procedures and on the basis of additional claims handling procedures that may be agreed among the Foundation, ICHEIC, and the German Insurance Association.[11]

Claimants seeking recovery for policies issued by a German insurance company were instructed to file their claims through ICHEIC. The deadline for filing claims under that process was December 31, 2003.

The Claims Processing Guidelines negotiated by the parties in connection with the Swiss Banks Holocaust Settlement provided for the referral of claims to the German Foundation for German market and looted policies:

'fair deals' without closer investigation. The contracts were not drawn up on a legal basis and under free-market conditions. Instead, the situation was one in which the Jewish businessmen were under great pressure to sell. Furthermore, in view of the currency and tax restrictions it was difficult to use the income from the sale… From the middle of 1936 on, sales contracts had to be submitted to … regional economic advisors ... Towards the end of 1937, pressure on large firms in particular increased, and from 1938 on take-overs had to be approved by the authorities. At this stage it was possible to sell a firm only at a price well below its real value. Economic persecution turned a new corner after the annexation of Austria … in March 1938, when within a few weeks thousands of Austrian companies were 'Aryanised' or liquidated. This 'uncontrolled Aryanisation' was followed by state regulation and an organized 'Aryanisation' which manifested the state's economic interest. The authorities imposed an 'Aryanisation tax' … and tried to ensure as great a margin as possible between the amount paid to the vendor and the actual sale price, the difference being paid into the state coffers." FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR 322-323 (Pendo Verlag GmbH 2002) (*available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf) (also known as the "Bergier Commission").

[11] Agreement Between the United States and Germany Concerning the Foundation "Remembrance, Responsibility and the Future," U.S.-Ger., art. 1(4), July 17, 2000, T.I.A.S. No. 13104 ("German Foundation Legislation"), Article 1(4).

> The Guidelines primarily address Policy Claims, but also provide for research of claims that are covered under the European national foundation initiatives, such as the German Foundation Initiative that covers German market insurance claims and looted asset claims. Such research shall be conducted on the same terms as the research of the claims covered by the Settlement, except that the results of the research of such claims shall be provided to the appropriate European national foundation initiatives for them to resolve.[12]

However, Amendment No. 2 to the Settlement Agreement contradicted the Guidelines on this point. Section 17.3 of Amendment No. 2 indicated that looted assets claims relating to insurance policies were to be paid exclusively by the Settlement Fund, not by any other programs (such as the German Foundation), but apparently with no contribution to be made by the PICs.[13]

Ultimately, and despite lengthy negotiations, ICHEIC, the German Foundation, and the German Insurers Association (*Gesamtverband der Deutschen Versicherungswirtschaft* or "GDV") did not accept many claims from the CRT.[14] To ensure that elderly Holocaust victims (and heirs) were not prejudiced by procedural requirements that may have been misunderstood, particularly those not under the Court's control and not subject to judicial oversight, Judge Korman determined that those claims should be analyzed by the CRT. In the interest of equity, if awards were warranted, they would be paid by the Settlement Fund.

III. CRT INSURANCE RECOMMENDATIONS, DECISIONS AND APPEALS

For each insurance claim submitted to the Court for payment, the CRT had determined the validity of the claim based on the following factors: (1) the claimant had made a plausible

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[12] Guidelines at 1.

[13] *See* Amendment No. 2 to Settlement Agreement, Section 17.3.

[14] For a more detailed discussion of the negotiations surrounding this issue, *see* Memorandum from CRT to Hon. Edward R. Korman (Oct. 11, 2006) (regarding "Chairman Eagleburger's letter of September 11, 2006"), annexed to Letter from Hon. Edward R. Korman to Lawrence S. Eagleburger, ICHEIC Chairman (Oct. 27, 2006). ICHEIC Chairman Eagleburger responded to Judge Korman in a December 22, 2006 Letter expressing appreciation for the decision to allow the CRT to "process and potentially make payment" on four insurance claims. Chairman Eagleburger noted that the "confusion surrounding this category of claims stemmed from ICHEIC's misunderstanding that the list of 71 claims the CRT sent to ICHEIC included only CRT direct claims. We did not realize that this subset included claims that were originally submitted to ICHEIC and which ICHEIC had forwarded to the CRT for matching to Swiss insurance companies' records." Letter from Lawrence S. Eagleburger, Chairman, ICHEIC, to Hon. Edward R. Korman (Dec. 22, 2006).

showing that the policyholder, beneficiary and/or insured person was a "Victim or Target of Nazi Persecution," (2) documentary evidence existed of an insurance policy issued or guaranteed by a PIC or PIC affiliate (with the exception of the German Foundation cases discussed below), (3) the claimant was plausibly related to the policyholder, beneficiary and/or insured person, and (4) the CRT, sometimes contrary to the PIC's recommendation, had determined that neither the policyholder, beneficiary, insured person, nor heirs had received the proceeds of the policy, or that this should be presumed in the absence of contrary evidence.[15]

The Court ultimately approved six "batches" of insurance decisions recommended by the CRT. Each batch presented unique issues and revealed that the Guidelines did not (and perhaps could not) take into account the myriad questions that would arise in what was supposed to be a relatively straightforward process. In many cases, the CRT had to analyze these questions independently, while at the same time adhering as closely as possible to the Guidelines. In the end, the claims process interwove the Guidelines with the more general equitable principles the Court had adopted as part of the bank account claims process. As a result, claimants often benefited from application of more liberal inferences intended to compensate for the destruction of records and the passage of so many decades since the Holocaust.

The first two groups of insurance awards consisted entirely of those recommended by the PICs. These were valued according to the historical policy values that the PICs had assessed. The first group was for a single case in which the ailing claimant had made an urgent request that his claim be processed so that any award could be applied to his medical costs. The second group was for awards in which the claimants themselves had provided policy documents. In only some of those cases did the PICs state that they had located corresponding records in their own archives.[16]

In the third batch of decisions, certain issues arose that had not been addressed in the Guidelines. In the absence of specific direction under the Guidelines, the CRT recommended,

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[15] *See* Amendment No. 2 to Settlement Agreement, Section 17.1; Guidelines at 4-5.

[16] *See* Memorandum & Order Approving Expedited Payment of Claim for the Life Insurance Policy of Brauer from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 13, 2005); Memorandum & Order Approving Expedited Payment of 14 Cases, Involving 23 Claimants, for Life Insurance Policies from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. May 31, 2005).

and the Court approved, an interpretation that was more favorable to claimants than the parties had negotiated: (1) by accepting claims into the insurance process that otherwise would have been barred; and (2) by valuing many policies at higher levels than indicated under the Guidelines.

A. Acceptance of Additional Claims

In 2005, the CRT made various attempts to forward certain claims to the German Foundation, ICHEIC and the GDV. These organizations did not accept the claims for processing, however. They contended that the CRT sought to transfer these claims after ICHEIC's filing deadline, even though the claims had been timely filed by the claimants. To ensure that the affected claimants would not be penalized by bureaucratic obstacles, with the Court's permission, the CRT initiated its own review of all of the German Foundation referral claims. As a result, the CRT was able to recommend an additional group of awards that otherwise would have been barred from review under any of the Holocaust-related insurance claims processes then available.[17]

In approving the CRT's recommendations, the Court summarized the issue as follows:

> In requesting this payment, the CRT notes that 38 of the 54 Awards and all 13 Award Denials involve 64 claims that were recommended for referral to the German Foundation … because the two Swiss insurance carriers participating in the Settlement, *Swiss Re* or *Swiss Life*, and/or their member components, (1) identified a definite, probable, or possible match to a policy issued or guaranteed by a German company; (2) because either the Swiss insurance companies or the CRT found evidence suggesting that the policies had been previously paid out or surrendered (including possible looted policies); or (3) because the claimed policy was purchased in Germany or the policyholder was domiciled in Germany. According to the CRT's Insurance Processing Guidelines, claims falling into these categories are to be treated by the German Foundation. Some of these 64 claims were filed directly with the CRT, while others were filed with [ICHEIC], which then forwarded the claims to the CRT for matching to Swiss insurance

[17] *See* Memorandum from CRT to Hon. Edward R. Korman, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Oct. 11, 2006) ("October 11, 2006 CRT Memorandum"); *see also* Memorandum & Order Approving Payment of 54 Awards for Life Insurance Policies from the Settlement Fund and Approving 13 Award Denials and 391 No Match Decisions, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Oct. 27, 2006) ("October 27, 2006 Order").

> carriers. After the matching results from the Swiss insurance carriers showed that the claims belonged to one of the three categories listed above, the CRT sought to forward and/or return the claims to ICHEIC, which acts as the official conduit for all insurance claims filed pursuant to the German Foundation Agreement. ICHEIC, however, has refused to accept these claims for processing, because the CRT sought to transfer the claims to ICHEIC after ICHEIC's filing deadline, even though the claims themselves were timely filed by the claimants. The CRT recommends approval of the Awards and Award Denials at this time so that payments to the affected claimants are not delayed by bureaucratic obstacles, and suggests continued negotiations with ICHEIC to recoup payments, as appropriate.[18]

B. Valuation Issues

The process for valuing insurance policies under the Guidelines was complex, and also varied from the rules adopted in the bank deposit claims process. For example, the Guidelines indicated that:

> As necessary, insurance actuaries shall calculate the cash surrender value of a given policy at a given point in time. The cash surrender value is based on the face value of the policy, the term of the policy, the amount of time for which the policyholder paid the premiums, and a formula that may be contained in insurance company records or deduced from existing cash surrender value/premium free value charts.[19]

There were 11 steps to this calculation in the Guidelines. However, the PICs generally did not provide adequate information to enable the CRT to utilize this process. The value, term and date of issuance of policies was unknown in many cases; the length of time that the policyholder paid the premiums and the country of issue also sometimes were unknown. Further, information about loans taken against the policies was not usually available. Consequently, absent any other guidance on value, where a policy was awarded at a known value, the CRT employed the net cash surrender value if the policyholder survived the Holocaust. The CRT used the face value if the policyholder had perished.

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[18] October 27, 2006 Order at 1-2. ICHEIC did not reimburse the claims that had been paid at the recommendation of the CRT.

[19] Guidelines Tab 6 at 2 n.4.

Furthermore, in contrast to the Court's processes for the Deposited Assets Class, in which the CRT was directed to apply "presumptive" (average) values where the bank documentation did not indicate the amount held in the account, the Guidelines lacked comparable valuation rules for Swiss Re cases where the policy documents contained insufficient information upon which to calculate an award. For these Swiss Re cases, the CRT recommended that all payments for policies of unknown or low value be based upon the Guidelines applicable to Swiss Life. These rules provided that where valuation documentation did not exist, imputed values, so-called Tier 2a values (calculated at US $11,284.25 if the policyholder perished in the Holocaust) and Tier 2b values (calculated at US $10,784.25 if the policyholder survived) would apply.

According to the Guidelines, the calculation basis for Tier 2a payments was an imputed reduced face value of RM 3,073.56, plus an add-on of US $500.00.[20] Tier 2b payments were based on an average imputed net cash surrender value of RM 3,073.56, without any add-on.[21] Tier 2a applied if the policyholder "perished in a concentration camp." Tier 2b applied if there was no evidence that the policyholder perished. These values were derived from "322 policies listed in the emigrants' lists," according to the Guidelines.[22] However, the CRT was given no further details on these 322 policies, or the emigrants' lists. The Guidelines contained the currency conversion values to be applied for the conversion of various currencies, including Reichsmark, into US dollars. The exchange rate for 1.00 Reichsmark was listed as 0.2807 US dollars. According to the Guidelines, if the actual (documented) value of an award was below the imputed or presumptive values, then the documented value was to be awarded.

By contrast, under the Court's rules governing deposited assets, if the actual value of a bank account was lower than the presumptive value for that type of account, the award was increased to the presumptive value. The historical record demonstrated that Nazi victims' assets were looted on an unprecedented scope. Thus, in the face of the banks' destruction of records,

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[20] According to the Guidelines, Tab 5b, the Tier 2a value was the "[i]mputed reduced face value [of] the sum of the average net cash surrender value of all net cash surrender values of the 322 policies listed in the emigrants' lists: 3,073.56 RM plus an add-on of USD 500 (post valuation)."

[21] According to the Guidelines, Tab 5b, the Tier 2b value was the "[a]verage imputed net cash surrender value: the sum of the average net cash surrender value of all net cash surrender values of the 322 policies listed in the emigrants' lists: 3,073.56 RM."

[22] Guidelines Tab 5b.

and absent documentary evidence to the contrary, the Court directed the CRT to assume that a given account had been looted. For insurance claims, the Court adopted the same approach used in the bank account context, applying an "adverse inference" in favor of claimants.[23] As a result, plausible insurance claims that satisfied other criteria under the Guidelines were guaranteed a minimum award of US $10,784.25.

In accordance with this approach, many of the awards in the first and second groups were amended in the third group, so as to increase the award amount to Tier 2a and 2b values.[24]

In addition to the approvals, the third group of decisions contained the first set of "No Match Letters" ("NMLs") informing the claimants that the PICs had not located any policies that matched their claims. With respect to ICHEIC claims sent to the CRT, these generally did not receive NMLs. Instead, ICHEIC was responsible for notifying these claimants that their claims had been closed. In a handful of cases, because of direct contact between the ICHEIC claimant and the CRT, the CRT issued an NML to an ICHEIC claimant. Given the CRT's lack of access to the insurers' archives, the Court determined that claimants would not have the right to appeal NMLs, as there was no evidence available to the CRT from which to reassess the insurers' determinations.

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[23] Because the banks had destroyed relevant information, the CRT recommended and the Court authorized the application of a standard presumption under U.S. law, the adverse inference. The burden of proof essentially would be shifted away from the claimant, to compensate for the banks' massive destruction of records that otherwise might have proven the fate of the account and/or its value. The Settlement Fund in effect was now standing in the shoes of the bank defendants. The application of the adverse inference meant that as long as some record existed to show that a Holocaust victim had owned a Swiss bank account, the Settlement Fund would compensate a plausible claim, even in the absence of data conclusively demonstrating the fate of the account. For a more detailed discussion of the "adverse inference," *see* chapter of this Final Report entitled "The Deposited Assets Class Claims Process."

[24] *See* October 27, 2006 Order at 2 (noting that 11 awards in the "third batch" consisted of "additional payments to claimants who previously received expedited payments based on their Swiss insurance claims. In orders dated April 13, 2005 and May 31, 2005, the Court recommended expedited payments to 15 claims that had been matched by the Swiss insurance carriers. Based on the valuation calculation for the [German Foundation] Awards, the CRT recommends that 11 of these 15 payments that fall below the presumptive values set forth for Tier 2 payments in the Insurance Guidelines be increased to the Tier 2 presumptive values").

C. Insurance Companies Other than Swiss Re and Swiss Life

In the fourth group of cases, the CRT recommended decisions relating to claims that had been filed for policies published as part of the 2005 List, as well as policies issued or guaranteed by Swiss Re affiliates *Vita Kotwica* and Union Re. The claimants on the *Vita Kotwica* and Union Re policies originally had filed their claims with ICHEIC, which then forwarded the claims to the CRT for matching to Swiss insurance carriers. Each claimant previously had received a so-called "humanitarian" payment from ICHEIC in the amount of $1,000 each. These "humanitarian" ICHEIC payments were somewhat similar to the Plausible Undocumented Awards (PUAs) that the Court had authorized for claimants to Swiss bank accounts (but differing in the amount: Plausible Undocumented Awards were issued at $7,250 each).[25]

The fourth insurance program submission also included claims that the CRT had received after the filing deadline of December 31, 2004. Although technically barred under the Guidelines, with the Court's permission, the CRT nevertheless had forwarded these claims to the PICs for matching, but the PICs advised that they had not located any matches.[26]

D. PICs' "Reconsideration" of Prior Recommendations; Last Groups of Decisions

The fifth group of cases that the CRT submitted to the Court included a recommendation for rescission of a claim.[27] The CRT advised that a claimant who had previously received an

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[25] A "Plausible Undocumented Award" (PUA) was an award authorized by the Court for a claim plausibly indicating entitlement to a Swiss bank account, but for which bank documentation had not been provided, or was no longer available. Awards originally were set at $5,000 per eligible claimant, an amount which, like most of the payments for other claims and other classes, subsequently was increased by 45% to $7,250. Among the criteria considered in determining such claims were the accounts owner's relationship to Switzerland; efforts made by the claimant or other family members to retrieve Swiss bank accounts prior to the finalization of the Settlement Agreement; and the relationship between the claimant and the account owner. *See Glossary: In re Holocaust Victim Assets Litigation*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 13, http://www.swissbankclaims.com/Documents_New/Glossary.pdf ("Plausible Undocumented Award").

[26] *See* Memorandum & Order Approving Payment of 14 Awards for Life Insurance Policies from the Settlement Fund and Approving 3 Identity Denials, 11 Inadmissibility Decisions and 29 No Match Decisions, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 25, 2008).

[27] *See* Memorandum & Order Approving Payment of One Award Amendment for a Life Insurance Policy from the Settlement Fund and Approving One Award Rescission and One Award Denial, *In re Holocaust Victim*

award, which had been divided among three individuals, should not have been included in that award. The CRT noted "that *Swiss Re* ha[d] not identified a matching insurance policy in this case; that ICHEIC arguably had the opportunity to treat the claims which [the claimant] filed with that organization; and that, with [a] limited exception … no other ICHEIC claimant ha[d] received an award payment for an *Anker* policy (including Polish *Anker*, aka *Kotwica*) that *Swiss Re* did not recommend for an award…"[28]

In addition, the CRT recommended, with respect to a different claimant, that upon further review of the documentation, there was "evidence of two life insurance policies" rather than just one, warranting an additional payment of $11,284.38.[29]

Further, the CRT recommended and the Court approved an Award Denial for an insurance policy located by a claimant who previously had received awards for two other policies held at the company *Anker*. When the CRT submitted this third policy to Swiss Re for review, Swiss Re "stated that its previous recommendation regarding [the claim] had been in error, and that one of the policies previously recommended for payment, as well as the third policy just submitted, were not eligible for payment." The CRT requested clarification. It was advised by Swiss Re that "upon re-examination of the documents, it had concluded that *none* of the policies submitted by [the claimant] were eligible for payment," as these policies supposedly were "non-guaranteed 'Kotwica' policies" ineligible under the Guidelines.[30] Swiss Re further advised the CRT that a different claim was similarly affected by this determination. However, the CRT recommended that the Court leave intact the prior awards, "as the Claimants have already received payment in accordance with *Swiss Re's* earlier recommendation." On the other hand, the third (newly submitted) policy had to be denied, in light of Swiss Re's reconsideration of the earlier policies. [31]

Assets Litig., No. 96-4849 (E.D.N.Y. May 16, 2009); *see also* Letter from CRT to Hon. Edward R. Korman (May 15, 2009).

[28] Letter from CRT to Hon. Edward R. Korman (May 15, 2009).

[29] *Id.* at 3.

[30] *Id.* (emphasis in original).

[31] *Id.* at 4.

The sixth and final group of insurance decisions submitted to the Court included awards for policies issued by La Nationale Vie (Paris), a company that appeared in Exhibit 1 to Amendment No. 2 as an affiliate of Swiss Life. The policy documents in these cases were submitted by the claimants. ICHEIC forwarded these claims to the CRT with specific reference to La Nationale Vie's inclusion in Exhibit 1. However, Swiss Life asserted that La Nationale (Paris) was not a Swiss Life affiliate. Because Swiss Life previously had indicated that La Nationale (Paris) was an affiliated company, and also due to the impossibility of returning these claims to ICHEIC, the Court approved the awards.[32]

The sixth group of decisions also contained certain awards for policies issued by *Vita Kotwica* for which the awarded claimants already had received so-called "humanitarian payments" from ICHEIC.[33] The previous $1,000 ICHEIC payments were deducted from the CRT awards.

Additionally, the sixth group included claims matching to lists containing only the surnames (and occasionally the first initials) of policyholders who held policies guaranteed by Union Re, a Swiss Re affiliate in Germany. Swiss Re did not recommend that any of these be awarded, but indicated that they were "possible matches." Because of the lack of other identifying information in the policy documents, a number of these policies had "multiple plausible matches" ("MPM"s) to previously awarded claims filed by claimants who were unrelated to each other.[34] As with claims to Swiss bank accounts, the Court approved these MPM awards, determining that these additional claims were just as plausible as the previously

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[32] *See* Memorandum & Order Approving Insurance Set 6: 7 Awards, 5 Award Amendments, 1 Award Upon Request for Reconsideration; 1 Award Rescission; 14 No Match Decisions; and 2 Closing Letters Certified by the Claims Resolution Tribunal and Authorizing Payment from the Settlement Fund, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 29, 2011 ("April 29, 2011 Order").

[33] In its "8A2" Eastern European humanitarian payments process, ICHEIC reviewed certain named company claims for policies written by insurance companies in Eastern Europe that had been nationalized or liquidated since the Second World War and for which no present-day successor could be identified. In these cases, there was uncertainty as to which company or claims processing entities had responsibility for the portfolio in question. As a result, ICHEIC authorized eligible claimants to receive $1,000 as a "humanitarian" payment.

[34] As discussed more fully in the chapter entitled "The Deposited Assets Class Claims Process," the CRT determined that there was a "multiple plausible match" ("MPM") if the relatives of two or more unrelated claimants plausibly matched the account owner, based upon the usually limited information available in the bank records and other documentation. In such cases, the award was divided *pro rata* among all of the plausible claimants.

awarded claims. Further, because Union Re was a German market insurer, these cases would have been suitable for referral to the German Foundation.

Finally, the sixth group of decisions included a return of a payment, initiated at the instance of the claimant himself. Following notification that his award to an account published on the 2005 List had been approved, the claimant located additional archival information about the actual policyholder. This information led him to conclude that his relative and the policyholder were not, in fact, the same person. The claimant graciously advised the CRT that he did not consider it appropriate to accept payment. The CRT subsequently was able to locate the policyholder's actual relative (his granddaughter), who then received the award.[35]

* * *

In nearly all of the six groups of awards, the CRT recommended and the Court approved payment on policies closed after the date of Nazi occupation or control of the policyholder's country of residence — usually contrary to the recommendations of the PICs. In these cases, the CRT determined that, although there was reason to suspect that the surrender value may have been paid, the evidence also strongly suggested that the policies were looted. The policyholders, who were Jewish, lived in the Reich or in Nazi-occupied or allied countries. The policies were surrendered during this period of Nazi control, before the policyholders fled or were murdered, and thus the assets likely were turned over to Nazi authorities under duress. For the same reason, the CRT also recommended and the Court approved payment for claims for which the policy documentation included receipt of payment signed by either the policyholder or beneficiary, if that person resided at the time in the Reich or in a Nazi-occupied or allied country.

In awarding such policies, the Court applied the same principles that governed the bank account claims process. That the policy appeared to have been "paid" and closed out did not demonstrate that the rightful owner had been allowed to keep the proceeds. Rather, given that the "surrender" took place under Nazi occupation, and absent evidence to the contrary, the historical reality was that the policy likely was "surrendered" under duress – and the proceeds handed over to Nazi authorities – as the direct result of persecution.

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[35] *See* April 29, 2011 Order at 1-2.

E. Insurance Appeals Process and Decisions

Unlike the Court's rules governing the processing of Deposited Assets Class claims, the Insurance Guidelines did not provide for a mechanism for appeals, nor did the Guidelines establish criteria to guide the review process. Instead, the Guidelines provided for the Court, through the CRT, to establish an appeals mechanism: "the Claims Evaluator may elect to create an internal review process through which a party that receives an adverse decision may appeal."[36]

The CRT thus drew upon procedures established for bank account claims, including Article 30 of the CRT Rules relating to appeals ("Claimants … may appeal … to the Court through the Special Masters within ninety days of the date of the letter accompanying the decision"); summary denials ("Appeals submitted without either a plausible suggestion of error or relevant new evidence may be summarily denied"); and requests for reconsideration ("Claimants possessing documentary evidence that was not previously presented to the CRT … may request that the CRT reconsider its decision on the claim. A request for reconsideration shall be sent to the CRT within 90 days of the date of the letter accompanying the decision").[37]

The CRT received nine insurance appeals and one request for reconsideration. Most of the appeals challenged the amount of the award. As the decisions either had followed the mechanisms the settling parties had adopted under the Guidelines or, in the absence of specific direction, generally applied principles more favorable to claimants, most of the appeals were without merit, and thus were denied.

For example, in the case of *In re Gaston Weill*, the PIC that had identified the matching insurance policy initially found no evidence of a match in its policy number records. However, after the claimant submitted a 1941 letter from *La Suisse* insurance company addressed to his father, policyholder Gaston Weill, regarding an insurance policy numbered 88.798, the PIC

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[36] *See* Guidelines at 5 ("Step 6: Review of Denied or Granted Claims").

[37] CRT, *Rules Governing the Claims Resolution Process (As Amended)* art. 30, *available at* http://www.crt-ii.org/_pdf/governing_rules_en.pdf.

subsequently informed the CRT that "the additional documents ... allowed us to find evidence of a policy," and recommended payment. The *La Suisse* policy document provided by the claimant informed the policyholder that because previous letters had remained unanswered and the policyholder had failed to make payments, the policy amount had been reduced to 2,527.00 Swiss Francs, the "*capital réduit*" or reduced capital amount.

The claimant received an expedited payment in May 2005 in the amount of $7,328.89. This amount was derived from the "*capital réduit*" converted to U.S. dollars using the 1941 exchange rate of USD 1.00 = SF 4.31, or $586.31. The latter sum then was increased by a factor of 12.5, in conformity with the 12.5 multiplier then applied to Deposited Assets claims (as opposed to the lower multiplier of 10 provided under the 2001 Insurance Guidelines, an amount that the Guidelines, unlike the CRT Rules for bank account claims, did not adjust). Following the Court's order of October 27, 2006, the claimant received a second payment of $3,455.49, to bring the total award up to the average value calculated under "Tier 2" of the Guidelines. Although the Guidelines did not provide for such an increase where the "actual" value was lower than the "average" value, the Court applied the more liberal valuation mechanisms used for bank account claims. Accordingly, the payment to the Weill claimant was greater than that provided under the Guidelines.

The *Weill* claimant challenged his award on two grounds. First, he stated that the CRT should not have based the award on the reduced "*capital réduit*" of 2,527.00 Swiss Francs, because it would have been illegal for the policyholder to continue to pay premiums to a Swiss company during the Nazi era. The claimant contended that it was forbidden to transfer funds to Switzerland and to own insurance policies issued in other countries. The punishment for breaching these laws was deportation to the death camps. Second, the claimant contended that his father had owned a second insurance policy, which he said was not reflected in the 1941 document described above. Because the PIC did not locate the first (documented) policy until after the claimant came forward with independent evidence of its existence, the claimant believed that the company's lack of documentation for the second policy should be viewed with suspicion.

The appeal was denied. As to the first contention — that the "*capital réduit*" was too low, because the owner was prevented from making payments under Nazi policies — assuming that this was the case, there was no available evidence to show what the actual value of the policy would have been, even if the owner had been able to pay the premiums. For that reason, the Insurance Guidelines provided for application of "average values" where actual values could not be determined. However, under the Guidelines alone, the claimant would have been awarded the lower known value (the "*capital réduit*"), rather than the higher average value amount that the CRT had recommended to establish some level of parity with the bank account claims process. Thus, the "*capital réduit*" did not diminish the amount of the award. The claimant received the same sum he would have received had valuation data not been available.[38]

As to the second contention — that the award should have taken into account a second insurance policy — the Guidelines provided for payment only on the basis of documentation plausibly demonstrating the existence of a policy. Since documentation of a second policy was not available in the *Weill* case, the Guidelines did not allow payment, and the appeal was denied.[39]

In another case submitted for consideration on appeal, *In re Martin Berwin,* the claimant had received an award of $12,474.62. This amount was calculated based upon the known surrender values of the policy as of 1938 (RM 994.70 and SF 3,150.00), amounts then converted to U.S. dollars for a total of $1,000.03. That sum then was adjusted upward by the 12.5 multiplier. From the resulting total of $12,500.38, the amount of $25.76 was deducted from the award (resulting in the payment of $12,474.62), to reflect that nominal restitution on the policy had been paid under Germany's post-War restitution statute, the BEG.[40]

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[38] *See* Letter from Judah Gribetz and Shari C. Reig, Special Masters, to Hon. Edward R. Korman 5-6 (Jan. 15, 2008) (noting that the Court had requested the Special Masters to analyze appeals from certain insurance awards and providing assessments of several appeals) ("January 15, 2008 Letter"); *see also* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Jan. 17, 2008) (approving Special Masters' recommendations) ("January 17, 2008 Order").

[39] *See* January 15, 2008 Letter at 6.

[40] *Id.* at 7. In 1953, following negotiations with the Conference on Jewish Material Claims Against Germany, the Federal Republic of Germany enacted its first Holocaust compensation statutes, collectively known as the "BEG" (*Bundesentschädigungsgesetze*). The program, which was administered by German authorities, provided for compensation for wrongful death, disability, injury to health, incarceration, and damage to

The prior restitution was significant because under the Guidelines and Amendment No. 2 to the Settlement Agreement, policyholders who had previously received restitution for a claimed policy were not authorized to receive any payments for insurance claims from the Settlement Fund. Paragraph 17.1 of Amendment No. 2 (relating to Swiss insurance policies) specifically excluded payment where "prior recovery was obtained pursuant to" a "law or regulation enacted after World War II that did not discriminate against Victims or Targets of Nazi Persecution."[41] The BEG fell within the latter category. Therefore, even the minimal payment received from the German government for the *Berwin* policy would have barred compensation, under a strict reading of Amendment No. 2. However, at the CRT's recommendation, the Court determined in its October 27, 2006 Order that given the "gross discrepancy" between the value of the policy and the amount restituted, previous restitution would not preclude an award from the Settlement Fund.[42] Rather, the BEG payment was deducted from the award as an offset.

On appeal, the claimant requested that the CRT consider a claim to an additional policy not covered in the award. Specifically, the claimant asked whether the CRT "would look into the GERMAN NORDSTERN INSURANCE claim, which [was] filed at the same time and with the same documents of identification, payments of premiums, name of insurance agent and address of company. Although a token payment of less than 10% of the claimed loss (ca. RM 36 000) was paid out as part of the Restitution settlement (again, all data given for your files) it in no way represented a fraction of the loss suffered through the 1939 confiscation of Jewish policies."

Nordstern, however, was a German insurance company, not a Swiss PIC. Therefore, it was not included under the Insurance Guidelines, nor was it covered by the Settlement Agreement. Claims for Nordstern policies were to be filed with ICHEIC. The *Berwin* claimant

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professional and economic standing and, to a more limited extent, property loss. *See* Proposed Plan of Allocation and Distribution of Settlement Proceeds, Vol. II, Annex E ("Holocaust Compensation"), at E-16-40.

41 Amendment No. 2 to Settlement Agreement, Section 17.1.

42 October 27, 2006 Order; *see also* October 11, 2006 CRT Memorandum at 12 n.16 (noting the "gross" discrepancy between the value of the policies and the previous restitution amount).

had filed an ICHEIC claim, and had received a determination from ICHEIC. Accordingly, the Court did not have jurisdiction to analyze the Nordstern claim, and the appeal was denied.[43]

Finally, in *In re Rona Kohn*, the PIC located an insurance policy that contained only the last name of the policyholder, "Cohn," but did not contain information sufficient to reach a definite identity determination. The policy also contained no information as to its value. Taking into account spelling variations (including the fact that the claimant identified the name "Kohn," whereas the policy was held by someone named "Cohn"), the CRT determined that there was more than one plausible claim to this policy. In accordance with the procedures utilized in the Deposited Assets claims process for "multiple plausible matches" (MPMs), each claimant was informed that the "CRT has recommended and the Court has concluded that in cases in which the identity of the policyholder cannot be precisely determined due to the limited information contained in the policy records, and in which several unrelated claimants have established a plausible relationship to a person with the same name as the policyholder, the award will provide for a *pro rata* share of the full amount of the policy to each claimant." The policy was awarded at the "Tier 2a" average value of $11,284.38. That amount was divided equally between the two plausible claimants, so that each received $5,642.19.

The *Kohn* appellant objected to the division of the award, stating that she was the only heir to Ferenc Kohn (a.k.a. Ferenc Róna). She provided various inheritance documents that she had filed with her original claim. However, the insurance policy contained only the last name of the policyholder: "Cohn." The CRT did not conclude that "Ferenc Kohn" had another heir but, rather, that a second, unrelated, claimant also had plausibly identified a relative named "Kohn" or "Cohn" who owned a Swiss insurance policy located by one of the PICs. Since both claims were equally plausible, both had been properly paid on a *pro rata* basis, as the Court determined on appeal.[44]

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[43] *See* January 15, 2008 Letter at 8-9; January 17, 2008 Order.

[44] January 15, 2008 Letter at 9; January 17, 2008 Order. *See also, e.g.*, Memorandum & Order Approving Three Summary Denials of Appeals to Decisions Issued in the Insurance Claims Process, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 29, 2011) (approving additional decisions on appeal).

F. Amount Awarded for Insurance Claims

1. Recoupment from PICs

The total amounts recommended for payment by Swiss Re was $395,485.35, for 27 awards covering 30 policies (some awards concerned more than one policy). The CRT recommended payment on, and the Court approved, a considerably higher number of Swiss Re policies: $973,989.08 for 49 awards covering 54 policies. The larger amounts recommended by the CRT corresponded to the Tier 2b presumptive values applied to policies of unknown value. The practice also was in accordance with the decision, in the context of bank accounts, to increase to presumptive value those accounts that were of known value, but below presumptive value, based upon the fact that many of these assets had been looted.[45]

In the case of Swiss Life, for similar reasons, the total amount that the company recommended for payment was $6,363.11, for two awards, whereas the Court had approved total payments for these two cases in the amount of $22,068.75. Moreover, the CRT recommended and the Court approved an additional 21 awards for policies issued by Swiss Life or one of its affiliates, including awards to four policies issued by *La Nationale Vie Paris*, which Swiss Life had not approved because it considered that entity not to have been an affiliate. The total approved by the Court for Swiss Life awards was $447,788.94.

Ultimately, both Swiss Re and Swiss Life agreed to reimburse the Settlement Fund for 50% of the larger amounts respectively awarded; *i.e.*, each agreed to pay for one-half of the awards that the CRT had recommended and the Court had authorized, notwithstanding that each company initially had not recommended some of the awards in question. Thus, Swiss Re repaid $486,995 to the Settlement Fund, while Swiss Life repaid $223,894.47. These additional payments were made possible as a result of the Special Masters' ongoing discussions with and assistance from counsel for each of the respective companies. These payments were taken into consideration by the Court as indicative of the companies' good faith cooperation with

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[45] *See* chapter entitled "The Deposited Assets Class Claims Process" ("Adjustment of Low Value Accounts to Presumptive Value"); *see also* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. May 28, 2002).

administration of the Settlement.[46] The amounts were added to the funds distributed to needy survivors under the Court's *cy pres* remedy for the Looted Assets Class.

2. Amounts Authorized for Payment

The number of insurance claims filed with the CRT and authorized for payment was not substantial, despite the concerns that had been raised at the fairness hearing. Whereas the Court authorized over $726 million for Deposited Assets Class claims, of which nearly $720 million was paid, Insurance Class claims resulted in $1,434,786 in authorized awards, of which $1,400,251 was paid.[47]

Even so, the amount that the Court approved for insurance awards was in excess of the amount recommended for payment by the PICs. There are a variety of reasons for this higher amount, including the more liberal procedures adopted by the Court for valuing policies, the Court's decision to authorize awards for "Multiple Plausible Matches," and the Court's acceptance of German Foundation claims into the process, all with the intention of benefiting claimants even where the Guidelines and procedures negotiated by the parties and implemented by the insurance companies provided for a more restrictive approach.

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[46] *See In Re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 158 (E.D.N.Y. 2000) (discussing duty of good faith cooperation with settlement administration).

[47] Not all approved claims could be paid. In some instances, claimants (or heirs) could not be located despite numerous attempts to obtain contact information. Some did not accept payment, and/or they refused to complete required documentation. Authorized but unpaid funds were returned to the Settlement Fund for redistribution to other class members.

THE VICTIM LIST PROJECT

By Wesley A. Fisher, Executive Director
Victim List Project of the Swiss Banks Settlement
(Hon. Edward R. Korman, United States District Judge)

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A mass grave soon after camp liberation. Bergen-Belsen, Germany, May 1945. Photo courtesy of the U.S. Holocaust Memorial Museum and Arnold Bauer Barach

I. INTRODUCTION: THE VICTIM LIST PROJECT

In 2000, fifty-five years after the end of World War II, the vast majority of the millions of victims and targets of the Nazis and their allies, both those who perished and those who survived, were still unidentified. Even the approximately 40,000 inmates of Auschwitz whose identity pictures were taken by Wilhelm Brasse, an inmate of German-Polish descent with photographic training, were known only by their prisoner numbers.

Auschwitz, Poland, Prisoner no. 22207, subsequently identified as Fiszelur Sztyjn of Kutno, Poland. Photograph likely taken by Wilhelm Brasse. Photo courtesy of Yad Vashem.

But as of 2018, over two-thirds (more than 4.5 million) of the six million Jews who died in the Holocaust have been identified, and individual identity has been returned to millions more, Jews and non-Jews, who suffered.[1] To a great extent, this achievement was due to the Victim List Project of the Swiss Banks Settlement.

The Court's program, which has restored identity to millions, has been widely praised. Holocaust historian and former Deputy Director of the United States Holocaust Memorial Museum ("USHMM") in Washington, D.C., Michael Berenbaum, noted that "'[b]y collecting names one by one they humanize and re-identify the people who were supposed to be anonymous…. It essentially defies the wishes of the Nazis that these people die without names and without any identity.'"[2] Former national director of the Anti-Defamation League Abraham Foxman observed that "'[t]he more people we can identify, the more we set for history – for memory – that they existed and perished simply because they were Jews…This is a sacred duty for the victims."[3] Professor and novelist Thane Rosenbaum of the Fordham Law School has pointed out that "'so

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1 *See* https://yvng.yadvashem.org/ (last accessed Oct. 9, 2018).

2 Stewart Ain, *Swiss Fund to Hasten Fuller List of Victims*, JEWISH WEEK, May 1, 2013 (discussing the Court's allocation of $14.5 million to the Victim List Project, noting that it "was for the purpose of locating and identifying archival and testimonial sources that would contain the names of those murdered in the Holocaust and the survivors who suffered. In addition, it was used to improve access to archived material, digitize the names of those murdered and place them on the Internet").

3 *Id.*

many of those lives were until recently nameless. Knowing the names surely humanizes that loss.'"[4] World Jewish Congress General Counsel and law professor Menachem Rosensaft, the founding chairman of the International Network of Children of Jewish Survivors, and the author of many works on the Holocaust, has stated: "'We should talk about the fact that every single name that is recovered is an identity of a murdered victim who is not lost to history, and it is important for us to remember.'"

A. ORIGINS AND DEFINITION

The Victim List Project (described as the "Victim List Foundation" in the Plan of Allocation and Distribution of Settlement Proceeds approved by Judge Korman on November 22, 2000) was intended as a mechanism under the Court's direction to encourage and help organize the compilation and greater accessibility worldwide of the names of individuals whom the Settlement Agreement was intended to benefit – Jewish, Romani, Jehovah's Witness, homosexual, and disabled victims or targets of Nazi persecution, those who perished and those who survived.

The idea of creating a Victim List Foundation, as it was initially called, was recommended by the Special Masters in the Proposed Plan of Allocation and Distribution of Settlement Proceeds of September 11, 2000 (the "Distribution Plan").[5] The $1.25 billion Settlement Fund would not be enough to make payments to all Nazi victims, let alone their heirs. It was clear that among the millions of people affected by the actions of the Swiss banks during the Holocaust were many who would not be compensated by the Settlement, either because they had perished or since the end of World War II had passed away, or because of lack of documentation. The Victim List Foundation therefore was intended to benefit all class members, survivors and heirs alike, as defined by the

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4 *Id*.

5 *See* Proposed Plan of Allocation and Distribution of Settlement Proceeds, *In re Holocaust Victims Assets Litig.*, No. 96-4989 (E.D.N.Y. Sept. 11, 2000) ("Distribution Plan"), Vol. I, at 18, 27, 116, 157, *available at* http://www.swissbankclaims.com/Chronology.aspx (Chronology).

Settlement. The creation of the Victim List Foundation was a way of recognizing them and ameliorating, to some extent, what was of necessity "imperfect justice."

> In researching the number and identities of the members of the Looted Assets and other classes, the Special Master was struck by the lack of a comprehensive list of the names and backgrounds of the victims of the Nazis, living and dead. Partial lists of some Nazi victims exist, but they are scattered, not widely accessible, and only incompletely available to scholars. For many class members, particularly heirs (who, for reasons discussed elsewhere, are too numerous for each to be paid individually), knowledge of their forebears stops at a concentration camp's gates. It would honor the memory of these victims, tangibly benefit all of their heirs and serve as powerful testimony to the horrors of the Holocaust, for a small portion of the Settlement Fund to be set aside to create a comprehensive list, available to all, of all the "Victims or Targets of Nazi Persecution," and all of their murdered ancestors. For the benefit of the entire Looted Assets Class – indeed, for the benefit of all members of all five classes who may not receive a cash payment under this Proposal – the Special Master recommends that the Court authorize the creation of a Victims List Foundation to collect and make widely available the names of all "Victims or Targets of Nazi Persecution."[6]

Setting aside funds from Holocaust restitution settlements for projects to honor the dead has been a common feature of such programs.[7] What is especially noteworthy, however, is that by calling for the compiling and making accessible of the names of all Victims or Targets of Nazi Persecution, the Distribution Plan — as true also for all other aspects of the proposed distribution

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[6] Distribution Plan, Vol. I, at 115-116. The Distribution Plan further observed (at 116 n.343) that an "appropriate starting point in the work of the Victim List Foundation may be the approximately 562,000 Initial Questionnaires [received as of that date, now approximately 600,000], perhaps the largest survey of Nazi victims ever conducted. Permitting scholars to have access to the irreplaceable data contained in the Initial Questionnaires would contribute vital knowledge to the study of the survivor community, as well as their family members killed by the Nazis. Accordingly, the Special Master recommends that when the Notice Administrator has finished its analysis, the Court direct the conveyance of the Initial Questionnaires and the database already created from them, to the Victim List Foundation. The Court should provide an opportunity for those who filled out Initial Questionnaires to withhold them from the Victim List Foundation if they so choose." The Initial Questionnaires were conveyed to the USHMM by Order dated February 6, 2008, with terms of access established by order dated April 24, 2012.

[7] For a listing of funds for Holocaust education, research and remembrance that have resulted from collective claims negotiated with industry and government and from the recovery of heirless and unclaimed Jewish property in countries such as Austria, Belgium, Czech Republic, France, Germany, Macedonia, Netherlands, Norway, and Slovakia, as well as the International Commission on Holocaust Era Insurance Claims ("ICHEIC"), the Hungarian Gold Train Settlement, etc., *see* Wesley A. Fisher, Exec. Dir., Victim List Project, Providing Sustainable Funding for Holocaust Education, Remembrance, and Research, Paper Presented at the Holocaust Era Assets Conference-Prague, Czech (June 27-28, 2009) (available at http://www.holocausteraassets.eu/en/working-groups/holocaust-education--remembrance-and-research/).

process — intended to recognize *individually* each person who had suffered, even if the Settlement could not provide monetary compensation to each victim.

The "Victim List Foundation" was a way to benefit residual categories of claimants while preserving the names, one by one, of as many of the victims or targets as possible. As described in the Distribution Plan:

> [I]t is proposed that a separate allocation of $10 million be designated for the benefit of … the members of all five classes, including heirs, to fund a Victim List Foundation to compile and preserve the names of all of the "Victims or Targets of Nazi Persecution," those who survived and those who perished. In this way, perhaps some benefit of the settlement can be preserved not only for the victims and their families, but also for future generations.[8]

The Court, which noted that no listing of the Victims and Targets of Nazi persecution existed, approved the Distribution Plan on November 22, 2000, and the Court of Appeals upheld the Court's decision on July 26, 2001.[9] As a result, of the $1.25 billion Settlement Fund, a total of $10 million (0.8%) originally was set aside for the Victim List Project. All other funds were earmarked for individual payments to the Holocaust survivors (and certain heirs) who comprised the five classes designated under the Settlement Agreement: the Deposited Assets Class; the Looted Assets Class; Slave Labor Class I; Slave Labor Class II; and the Refugee Class. When the claims processes for all five classes were virtually complete and the Court determined that certain residual funds remained, the Court allocated most of these funds to programs assisting needy survivors under the "Looted Assets Class" mechanisms. The Court also increased Victim List Project funding by an additional $4.5 million, for a total of $14.5 million.[10] This 45% increase

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8 Distribution Plan, Vol. I, at 23.

9 *See In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660 (E.D.N.Y. Nov. 22, 2000), *aff'd.*, 14 F. App'x 132 (2d Cir. 2001), reissued as a published opinion, 413 F.3d 183 (2d Cir. 2005).

10 *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2013 WL 2153101 (E.D.N.Y. May 13, 2013) ("VLP Order of May 13, 2013").

was consistent with the 45% increases that the Court previously had authorized for the five settlement classes.[11]

The Victim List Project was to be directed toward locating and recording the names of those specifically defined under the Settlement Agreement as "Victims or Targets of Nazi Persecution": those who were or were believed to be Jewish, Roma, Jehovah's Witness, homosexual or disabled. Names have symbolic importance, and there is a general tendency to find hidden significance in the names of persons. Historically, names have played a major role in remembrance in Western culture:

> Lost names: we are told in Isaiah (56:5) that "I shall give them an everlasting name," and inscribed on Commonwealth military cemeteries are the words, "Their names liveth forevermore." Names do not always live on, though, and these statements are best read as a call to remember. Names can be forgotten, never remembered in the first place, or changed. In these ways they become one of memory's hollows. Why does this particular silence of memory matter so? Why does the passing of names into oblivion leave one of those concave impressions, as an imperfection in our experience of the world? Plainly, names individuate us by identifying our family lineage and by giving us individually an identity within that lineage. They are the markers that separate us out, that help to preserve us from a faceless, unindividuated existence. At the same time, they serve as placeholders for our biographies, for the wholeness of our lives...The annihilation of the physical person destroys one seat of his unity and wholeness; the forgetting of his name condemns him to a deathlike absence...
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> In ancient Greece, Hades was seen as a place for humans without names…[12]

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[11] *See In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002) (authorizing 45% increase in payments to members of Slave Labor Class I, the Refugee Class, and to programs serving the Looted Assets Class, because of unexpected additional income generated by a tax exemption on the Fund as well as interest income); Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 22, 2004) (authorizing 45% increase in payments to members of Slave Labor Class II, following resolution of litigation concerning the scope of the class); and *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010) (authorizing increase in awards to Deposited Assets Class members of 45%). Because of interest and tax benefits accruing to the $1.25 billion settlement fund, the Court was able to pay claimants more than that amount: a total of $1,284,604,443 was distributed to Holocaust victims and heirs. The $14.5 million allocated to the Victim List Project represented 1.1% of that sum.

[12] WILLIAM JAMES BOOTH, COMMUNITIES OF MEMORY: ON WITNESS, IDENTITY, AND JUSTICE 76-77 (Cornell Univ. Press 2006).

Names continue to play a major role in remembrance – recently, for example, in the 9/11 Memorial, which memorializes the names of all of the victims of that terror attack.[13]

In Judaism, to which remembrance is so central,[14] names have traditionally been of great importance and are thought to reveal the essence of one's being. Historically in Judaism, remembering the names of the dead was the responsibility of the family, not of the community. The dehumanization of their Victims and Targets by the Nazis and their Allies included the taking away of names,[15] and the enormity of the Holocaust was such that it altered Jewish patterns of remembrance towards communal remembering of the names of the dead. As described by Avner Shalev, the Chairman of the Directorate of Yad Vashem, the Holocaust Martyrs' and Heroes' Remembrance Authority of Israel:

> After the Holocaust, the ingrained Jewish tradition of remembrance faced an enormous challenge. Existing patterns of commemoration and mourning were called into question due to the unprecedented scale of the disaster, the depth of the trauma and the unique experience that had shattered relations between Jews and the rest of the world — an experience that undermined the fundamental values of human society. The futile nature of the mass murders gave rise to difficult questions with regard to human nature. The need to remember cried out to heaven.
>
> . . . .
>
> The Nazis sought to murder the Jews, and obliterate every memory of them. This not only changed the scale and scope of the murder, but also called for a new kind of remembrance. As such, from the very beginning of Holocaust commemoration, alongside the need to document the event itself, Yad Vashem recognized the importance of collecting

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[13] *See* Michael Kimmelman, *The New Ground Zero: Finding Comfort in the Safety of Names*, N.Y. TIMES, Aug. 31, 2003.

[14] *See*, among many other discussions, YOSEF HAYIM YERUSHALMI, ZAKHOR: JEWISH HISTORY AND JEWISH MEMORY (Univ. of Washington Press 1982).

[15] During the period of the Victim List Project, memorials in Germany, Poland, Austria, France, the Netherlands and elsewhere, along with the International Tracing Service and others, managed by 2009 to decode the number system used by the Nazis for prisoners so as to be able to match the majority of prisoner numbers with names. *See* Christian Römmer, *Digitalisierung der WVHA-Häftlingskartei: Ein Projektbericht*, Gedenkstättenrundbrief 150 S. 20-25, http://hamburgerlagebuecher.blogspot.com/2013/05/15-digitalisierung-der-wvha.html.

and recording the names of the victims — to perpetuate the memory of every single person who died.[16]

Established in 1953, Yad Vashem began in 1954 to fulfill its mandate to preserve the memory of Holocaust victims by collecting their names and biographical details, specifically by collecting Pages of Testimony. Submitted by survivors, relatives or friends, Pages of Testimony contain the names, biographical details and, when available, photographs, of the victims. From its beginning, the central task of Yad Vashem has been to create a memorial of names, and this is reflected in the institution's own name: *"And to them will I give in my house and within my walls a memorial ... an everlasting name [a 'yad vashem'], that shall not be cut off"* (Isaiah, chapter 56, verse 5). As described on the American Society for Yad Vashem's web site, "The Pages of Testimony in Yad Vashem in Jerusalem stand as symbolic 'mazevoth' for the martyred Jews. The victims deserve to be remembered not as cold, anonymous numbers but as individual human beings. These Pages of Testimony preserve the unique identity and personal dignity that the murderers tried so hard to obliterate."[17]

Yad Vashem's attempt to compile its Pages of Testimony and present the names of the Jewish victims of the Nazis and their allies was the largest of the Jewish memorial efforts, but it was not the only one. Nor were other compilation efforts limited to Jewish victims, or only to those who had perished. Yad Vashem's compilation was, however, the obvious place to turn when the Independent Committee of Eminent Persons (the Volcker Committee) needed to compare lists of Swiss bank accounts with the names of Holocaust victims.

In 1992, Yad Vashem began to computerize its Pages of Testimony. By 1997, it was envisioning the creation of an "integrative data-bank" that would include databases of names from different sources in addition to the Pages of Testimony, such as deportation lists, lists of prisoners from the camps, testimonies, and publication and other sources from within and outside Yad Vashem. The focus was exclusively on the names of those who had perished, and was seen as part

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[16] Avner Shalev, *As Holocaust Becomes Part of Past, Need to Personalize Memories Grows*, JEWISH TELEGRAPHIC AGENCY, Jan. 24, 2006, https://www.jta.org/2006/01/24/archive/as-holocaust-becomes-part-of-past-need-to-personalize-memories-grows.

[17] *Pages of Testimony*, AMERICAN SOCIETY FOR YAD VASHEM, http://www.yadvashemusa.org/pages-of-testimony/.

of Yad Vashem's moral and legal mandate as the official authority for commemoration and research on the Holocaust, and its consequent duty to commemorate the names. But such an "integrative data-bank" was far from being a reality.

On June 1-3, 1997, Yad Vashem hosted a first international workshop to discuss the gathering, documentation and computerization of the names of the victims – *i.e.*, those who perished – of the Holocaust.[18] In the course of 1997, Paul Volcker, head of the Independent Committee of Eminent Persons, as well as Swiss Ambassador Thomas Borer, head of the "Switzerland-World War II" Task Force, and others involved in the issue of the Swiss bank accounts, visited Yad Vashem.[19] In the various discussions of Holocaust-era assets in the late 1990s, it began to be clear that a listing or listings of Nazi victims would be useful for matching against various property lists. Thus, when in January 1998, Representative Eliot Engel introduced the Holocaust Victims Insurance Act (H.R. 3121) to the United States House of Representatives, it included a directive to the USHMM to produce a registry of Holocaust victims so that names could be checked against policies.[20] In a convergence of interests, in the beginning of 1999, the Swiss Bankers Association and the World Jewish Congress provided $8 million to Yad Vashem to computerize the Pages of Testimony and other documents to provide a list of Holocaust victims to the Volcker Committee, which was trying to track unclaimed Jewish assets in Swiss banks.[21]

With only three months to produce such a list, Yad Vashem engaged in mass hiring so as to create a team of some 1,200 data entry clerks, software technicians, Holocaust scholars and other specialists who worked in large temporary spaces in the Jerusalem suburb of Givat Shaul and in Beersheba. Some 50,000 of the Pages of Testimony were fed through two high-speed

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[18] *See* Alexander Avraham, *The Holocaust is One Victim, and Another, and Another, and Another…*, YAD VASHEM MAG., Summer 1997, at 6, 6-7, https://www.yadvashem.org/sites/default/files/yv_magazine06_0.pdf.

[19] Michal Morris Kamil, *Swiss Probe Aided by Yad Vashem*, YAD VASHEM MAG., Summer 1997, at 8, 9, https://www.yadvashem.org/sites/default/files/yv_magazine06_0.pdf.

[20] BARBARA A. SALAZAR, CONG. RESEARCH SERV., RL 30262, THE HOLOCAUST — RECOVERY OF ASSETS FROM WORLD WAR II: A CHRONOLOGY (MAY 1995 TO PRESENT) (Updated July 31, 2000), http://research.policyarchive.org/949.pdf.

[21] The Volcker Committee's work and the resulting claims process for the Deposited Assets Class under the authority of this Court are discussed more fully elsewhere in this Final Report.

scanners every day, while 14 groups of data entry clerks in Jerusalem and Beersheba keyboarded in details from the handwritten pages after their high-resolution scanned images appeared on the computer screens. The time pressure from the Volcker Committee encouraged Yaacov Lozowick, then Director of Archives at Yad Vashem, and his colleagues to think not only in terms of mass data entry, but also in terms of mechanization of the entire intellectual process. Thus, a system of checks was devised whereby whenever a surname or place name was entered for the first time, the record was electronically sent up a hierarchy of specialists, who checked it against master lists compiled in many languages. The time pressure also prompted Yad Vashem to first create an Excel list of documents beyond the Pages of Testimony that also contained lists of names that the institution had collected – an initial "list of lists." Yad Vashem also entered into cooperation with other repositories to acquire lists of names.[22]

The Volcker Committee also used lists of names from the U.S. Holocaust Memorial Museum (USHMM) and elsewhere, but it was this mass computerization of names by Yad Vashem that proved most valuable in matches with those lists of bank accounts that the Swiss banks permitted to be accessed. As a result, then-Deputy Secretary of the Treasury Stuart E. Eizenstat – who at the time was also the U.S. Special Envoy for Property Claims in Central and Eastern Europe, reporting to the President of the United States, the Secretary of the Treasury, and the Secretary of State – recommended to Kenneth Klothen, Executive Director of the Presidential Advisory Commission on Holocaust Assets in the United States, that the Yad Vashem database be used for matches with lists of American dormant accounts.[23]

By the year 2000, Yad Vashem had developed not only some experience with the mass digitization of names, but also a desire to make the results available to the general public over the internet. This was conceived, however, as primarily making the Pages of Testimony available, and as a database specifically reflecting the six million Jews who died in the Holocaust. Just as

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[22] *Focus on Issues: Yad Vashem Works Feverishly to Computerize Names of Victims*, JEWISH TELEGRAPHIC AGENCY, Mar. 10, 1999, http://www.jta.org/1999/03/10/archive/focus-on-issues-yad-vashem-works-feverishly-to-computerize-names-of-victims-2.

[23] *See* Email from Stuart E. Eizenstat, Deputy Sec'y, U.S. Dep't of the Treasury, to Kenneth Klothen, Exec. Dir., Presidential Advisory Comm'n on Holocaust Assets in the U.S. (June 24, 1999), http://clinton.presidentiallibraries.us/items/show/29098.

the work for the Volcker Committee was ending, on May 8, 1999, in cooperation with the President of the State of Israel, Ezer Weizman, Yad Vashem began a major campaign to collect additional Pages of Testimony, which was successful primarily in Israel.[24]

Thereafter, as part of the Swiss Banks Settlement distribution process, it was recognized that compilation of all the names of the Victims and Targets of the Nazi regime was a means of recognizing individually all who had suffered.

After establishing and overseeing the initial phases of the claims process for the five settlement classes, four of which directly engaged the Conference on Jewish Material Claims Against Germany (Claims Conference) as one of the Court-appointed administrative agents, the Special Masters sought the assistance of the Claims Conference to implement the "Victim List Foundation." The Claims Conference, which in the 1950s had founded Yad Vashem in cooperation with the Government of the State of Israel, by the 1990s had been the principal funder of Holocaust-related archives worldwide. The Claims Conference ensured that overall coordination of and cooperation among the various repositories would be established. Moreover, coordination and cooperation were specifically necessary for work on archival name lists relevant to documenting survivors as eligible to receive compensation under another compensation program negotiated and implemented at approximately the same time as the Swiss Banks Settlement: the German Foundation "Remembrance, Responsibility and Future" ("German Foundation").[25]

In mid-2003, the Claims Conference hired Wesley A. Fisher as Director of Research, with the understanding that in addition to handling archival and related issues for the Claims

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[24] *See Hall of Names*, YAD VASHEM, http://www.yadvashem.org/archive/hall-of-names.html.

[25] The Slave and Forced Laborers Program began in 2000, after German government and industry agreed to a DM 10 billion fund to compensate surviving former laborers under the Nazis. The payments were the culmination of years of effort to compel the governments and businesses of Germany, Austria, Switzerland and several other European nations to acknowledge their use of slave and forced labor during World War II, and the benefits they derived from the victims' labor. The German Foundation programs are discussed in greater detail elsewhere in this Final Report.

Conference, he would separately report to the Special Masters and to the Court for the organization and implementation of the "Victim List Foundation."[26]

To avoid any confusion and to make it clear that all activities regarding names were under Judge Korman's supervision, it was decided to substitute the word "Project" in place of "Foundation."

By the fall of 2004, the Victim List Project could be described as follows:

> *The Victim List Project of the Swiss Banks Settlement*
>
> Under the direction of Chief Judge Edward R. Korman of the United States District Court, the Victim List Project of the Swiss Banks Settlement encourages and helps organize the compilation and greater accessibility worldwide of the names of individuals whom the Swiss Banks Settlement Agreement is intended to benefit – Jewish, Romani, Jehovah's Witness, homosexual, and physically or mentally disabled or handicapped victims of Nazi persecution, those who perished and those who survived – for research and remembrance.
>
> $10 million of the $1.25 billion Settlement Fund has been reserved for the following types of activities under the Court's direction:
>
> - Location and identification of archival and testimonial sources of the names of those who perished and of survivors who suffered;
> - Improvement of access to archival repositories containing names;
> - Projects to digitize names, to place them on the internet, and to integrate them with further information about the individuals concerned and with other relevant information;
> - Broad-based cooperation among the leading relevant institutions towards these aims.
>
> The Court has appointed Dr. Wesley A. Fisher as Executive Director. In consultation with experts in the collection or digitization of the names of Victims

[26] Dr. Fisher, whom Judge Korman on June 1, 2004 formally appointed Executive Director of the Victim List Project, had previously been a member of the senior Founding Staff at the USHMM Museum (USHMM). His responsibilities included the archives and the international archival acquisition program of the USHMM, the Benjamin and Vladka Meed Registry of Holocaust Survivors, research activities – including the USHMM's work on the Swiss Banks issue - and international relations generally. He was deputy director of the 1998 Washington Conference on Holocaust-Era Assets and helped create the Task Force for International Cooperation on Holocaust Education, Remembrance and Research (renamed in 2013 the International Holocaust Remembrance Alliance). Prior to joining the staff of the USHMM, he had been Assistant Director and Director of Soviet Programs for the International Research & Exchanges Board (IREX) under the aegis of the American Council of Learned Societies (ACLS) and responsible for virtually all United States contacts with the Soviet Union in humanities and social sciences, and in this connection had opened archival cooperation between the two countries.

> or Targets of Nazi persecution, the Executive Director may recommend specific activities for funding to Special Master Judah Gribetz and Deputy Special Master Shari C. Reig, and consequently to Judge Korman. At the Court's request, the [Claims Conference] is providing technical and administrative support.
>
> At present priority concerns are the establishment of large-scale database containers that can accommodate the disparate types of lists of Jewish and non-Jewish Victims or Targets of Nazi persecution and the establishment of a comprehensive integrated catalog of all lists, not only historical-archival lists but also "testimonial" lists such as those resulting from the 600,000 questionnaires received in regard to the Swiss Banks Settlement itself. The Court understands that due to privacy and other considerations, it may not be possible to make all information public immediately.[27]

During the following decade, the Victim List Project fulfilled the Court's aims. In doing so, it was the catalyst for substantial changes in Holocaust studies and related fields.

II. AN ABUNDANCE OF ARCHIVES AND OF LISTS

The Nazis never created a central list of their victims. Prior to the Victim List Project, such fragmentary lists as existed had been only partially identified, and had not been brought together. Some lists were from documents from the period 1933-1945, while others dated from after World War II. While some lists were from historical-archival documents, others were registers of testimonies or surveys conducted for memorial functions, or in conjunction with reparations and restitution payments or social services or court procedures. A number of lists had been published prior to 2004, and there were numerous disparate projects to digitize lists of names.

The most prominent of the attempts to compile and present lists of victims of the Nazis and their allies for memorial purposes was the Hall of Names at Yad Vashem. Memorial lists were also to be found in the *Yizkor* (Memorial) Books published by former residents, or *landsmanshaften*, of communities in Central and Eastern Europe as a tribute to their former homes and the people who were murdered there during the Holocaust. The Yizkor Book Project of JewishGen, affiliated with the Museum of Jewish Heritage in New York City, had begun to translate and digitize information from these publications. In a number of instances, major archival

[27] *Digital Collections - The Victim List Project of the Swiss Banks Settlement*, YAD VASHEM, http://www.yadvashem.org/yv/en/resources/names/supporters.asp.

repositories in Europe had published and were digitizing memorial lists of names: *e.g.*, the German Bundesarchiv's "Gedenkbuch" that reported the results of research into the fate of every Jew from West German territory.[28]

In addition to memorial lists of those who perished, there were lists of survivors. In particular, the USHMM in Washington, DC was maintaining a digitized Survivors Registry based on the records of the American Gathering of Jewish Holocaust Survivors,[29] but which also went beyond those records to include any Jews and non-Jews who suffered from 1933 to 1945. The USHMM defined a survivor as "a person who was displaced, persecuted, and/or discriminated against by the racial, religious, ethnic, social, and/or political policies of the Nazis and their allies between 1933 and 1945. In addition to former inmates of concentration camps and ghettos, this includes refugees and people in hiding."[30]

Among other sources of lists of survivors, the restitution settlements beginning in the late 1990s had generated large numbers of documents that, in effect, were current surveys of survivors. Thus, applications in regard to the Swiss Bank Settlement, including the more than 600,000 Initial Questionnaires filed when the settlement was first announced, the slave labor settlement that resulted in the German Foundation, and other such settlements, also constituted lists of victims or targets of Nazi persecution.

The largest collection in the world of names of victims or targets of Nazi persecution was held by the International Tracing Service in Arolsen, Germany ("ITS"), which was administered by the International Committee of the Red Cross and governed by an International Commission of government representatives of eleven member-states.

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[28] Gedenkbuch: Opfer der Verfolgung der Juden unter der nationalsozialistischen Gewaltherrschaft in Deutschland 1933-1945 (Bundesarchiv 1986), 2 vols.

[29] The American Gathering of Jewish Holocaust Survivors and Their Descendants is the umbrella organization of survivor groups and *landsmanshaften* of North America, with a mission of remembrance, education and commemoration. *See* http://amgathering.org/.

[30] U.S. Holocaust Memorial Museum, *Who Is a Survivor?*, OFFICE OF SURVIVOR AFFAIRS, http://www.ushmm.org/remember/office-of-survivor-affairs.

Complicating matters further, historical-archival lists also were to be found in more than 1,000 repositories in over 40 countries around the globe.[31] As of the beginning of 2004, there were 34 institutions worldwide involved in projects to digitize names.[32]

There were a number of features of existing victim lists and of projects to collect, digitize and make them accessible that were noted at the time:

1. Many historical documents were not originally created with regard to a definition of victims or targets of Nazi persecution, nor did they always indicate the fate of victims.

2. For many cases of Nazi persecution, historical documentation was lacking, or had not to date been located.

3. Reports after the fact, such as testimonies and applications for reparations or restitution, were valuable resources, but were subject to error and to falsification.

4. It was not possible, as a result, to construct a definitive list of all victims. It was possible to make documentation available on the basis of which researchers would be able in time to determine, in accordance with given definitions, the identities of the victims of Nazi persecution.

5. Existing lists of victims, in particular memorial lists, tended to be of one ethnic or religious group only.

6. Lists of Jewish victims were more developed than lists of non-Jewish victims.

7. Privacy laws, particularly in Europe, restricted public access to the identity of victims and information about them.

8. Although it had been seventy years since the end of World War II, there were ethical concerns regarding public access to information regarding certain victims (*e.g.*, hidden Jewish children who were adopted by non-Jewish families).

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[31] As part of the general cooperation among Holocaust-related archives promoted by the Claims Conference in what became known as the International Shoah Archivists Forum, a listing of all relevant archives worldwide was compiled, primarily with the assistance of the USHMM and Yad Vashem. That listing has since formed the basis for the survey of Holocaust-related archives carried out by the European Holocaust Research Infrastructure (EHRI), resulting in a listing of 1,938 archival institutions in 51 countries. *See* https://portal.ehri-project.eu/ (last visited June 15, 2017).

[32] *See* Memorandum from Wesley Fisher, Exec. Dir., Victim List Project, to Judah Gribetz & Shari C. Reig, Special Masters (Oct. 7, 2003) (listing memorials and museums primarily in Austria, Belgium, Czech Republic, Germany, Israel, Italy, Netherlands, Poland, Switzerland, and the United States).

9. Many archival repositories took a proprietary view of the documentation in their possession and would not release it to the public.

10. Even if there were no other obstacles to the collection of all information in one place, the large number of lists would make it difficult for the digitizing of names to be done by a single institution. In any event, distribution of digitization projects with linguistic and other specific expertise was desirable to best ensure accurate capture of name records.

A universal list of all victims and targets of Nazi persecution therefore was not possible. What *was* possible was to construct a worldwide informational tool that would direct the researcher to where information about an individual could be found. In other words, it was possible to create a searchable central database of names on the internet that would permit the user to then connect to the variety of databases created around the world for memorial or other purposes, and to locate information on how to contact those repositories that were closed or not digitized. In this manner, countries and individual repositories would be able to filter what researchers could see, in accordance with privacy laws and other considerations.

Such a central database was not to be a remembrance list in and of itself, but rather an electronic "library" of information that would permit the eventual identification and recording of the name of each victim or target of Nazi persecution. It would make possible, for the first time, the study on the individual level of mass events that involved millions of people, as well as the accounting for each and every person.[33]

Four institutions had particularly large collections and/or had programs to copy archives, including name list documentation, from around the world:

- International Tracing Service in Bad Arolsen, Germany: Created by the Allies during World War II, the International Tracing Service in Bad Arolsen, Germany was the largest repository of relevant names, with over 200 million pages of documentation with a Central Name Card Index of over 50 million entries concerning over 17.5 million persons victimized by the Nazis and their allies. It was governed by an International Commission of 11 states and administered by the International Committee of the Red Cross. It was, however, at the start of the Victim List Project virtually a closed archive.

- Yad Vashem in Jerusalem, Israel.

[33] *Id.*

- The USHMM in Washington, D.C.: As an agency of the United States Government, the USHMM had successfully helped to open previously sealed government archives in some 40 countries.

- Mémorial de la Shoah/Centre de documentation juive contemporaine, in Paris, France: The CDJC had been collecting names from throughout the world since its founding in 1943.

Given the difficulties of access to the International Tracing Service, and the fact that the Mémorial de la Shoah was cooperating closely with the USHMM, it was determined to ask the two institutions that collect lists and archival documentation most broadly from other repositories all over the world to be the leading institutions for the Victim List Project: Yad Vashem and the USHMM. The possible creation of a central search engine or connecting point between these institutions was left for consideration at a later time. The two institutions signed a formal agreement to cooperate, and the USHMM agreed to be responsible for non-Jewish names in addition to working with Yad Vashem on Jewish names, with an emphasis on Jewish survivors.

A. "List of Lists"

To proceed in an orderly and comprehensive fashion, the creation of a worldwide catalog of all known archival and testimonial sources, regardless of where held, of the names of those who perished and of survivors who suffered – a list of lists – was a necessary prerequisite to fulfilling the goals of the Court. A goal was set to do this by the 65th anniversary of the end of World War II in 2010. Funding under the Victim List Project made possible the compilation and presentation of such a unified catalog of all relevant name lists. Yad Vashem and the USHMM reviewed their respective collections, shared information on their holdings, and created catalogs that as much as possible included lists known to be held by other institutions.

On July 31, 2006, Yad Vashem made images of some 11,650 archival lists, indexed from about 1 million pages of documentation, available to the public online as part of its *Shoah-Related Lists Database* (*see* http://www.yadvashem.org/yv/en/resources/lists/index.asp). The imaged lists at the time contained some 5 million names with a relatively small amount of overlap, so that the number of individual persons covered was fewer, but still close to 5 million. A total of 40,868

researchers visited the *Shoah-Related Lists Database* in the first 5 months that it was made available, over twice the number visiting the Yad Vashem archives in person. The database of the lists was made searchable by various parameters such as geography, chronology, identity of the listed individuals and provenance of the documents. The scanned lists were made viewable online. Essentially this was the beginning of making scans of Holocaust-related archives available over the internet.

Similarly, the USHMM developed a presentation entitled *Holocaust Name Lists Catalog Search* that has since been made part of what is now called the *Holocaust Survivors and Victims Database* (http://www.ushmm.org/remember/the-holocaust-survivors-and-victims-resource-center/holocaust-survivors-and-victims-database). This catalog of name lists contains entries not only of lists in archival documents, but also of lists published in books and of lists in digitized form. While copies of most lists are or are expected soon to be in the collections of Yad Vashem and/or the USHMM, entries in the catalog refer also to lists held by other institutions. As of March 2016, the USHMM had 34,415 lists in its database.[34]

Yad Vashem and the USHMM have worked to include in their joint catalog of the lists in their respective collections those lists known to be held by other institutions. This comes close to the goal of establishing a much-needed worldwide, unified, "list of lists" of all sources of all types of the names of the victims of the Nazis and their allies, both those who perished and those who survived.[35] The catalog, which now comprises tens of thousands of lists, is updated daily. The opening of the International Tracing Service (see below) also has greatly increased the number of lists, as does the ongoing acquisition of copies of new archival materials by the two institutions.

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[34] While many lists are mixed, there are lists that are specifically of victims of one particular type (Jews, 19,659; Jewish Survivors, 730; Roma, 344; Jehovah's Witnesses, 497; Homosexuals, 511; Disabled, 16). E-mail from Neal Guthrie, Dir., Holocaust Survivors & Victims Resource Ctr., USHMM, to Wesley Fisher (Mar. 11, 2016).

[35] Yad Vashem's Shoah-Related Lists Database may be found at the following location: http://www.yadvashem.org/yv/en/resources/lists/index.asp. The USHMM's List Search is now part of its Holocaust Survivors and Victims Database and may be seen at http://www.ushmm.org/remember/the-holocaust-survivors-and-victims-resource-center/holocaust-survivors-and-victims-database.

B. Acquisition of Specific Large-Scale Name Documentation

1. Background

Most of the name lists acquired by Yad Vashem and the USHMM come from the continuing process of acquisition of archival documentation from repositories around the world. These acquisition efforts are primarily funded by the Claims Conference and are largely focused on Eastern Europe and the former Soviet Union. Partly as a result of the Swiss Banks Settlement, there is now greater willingness and greater ability on the part of both institutions to acquire historical files documenting confiscation of property that also are sources of the names of victims. In addition to written documentation, lists are acquired from miscellaneous sources, such as photographs, testimonies, Righteous Among the Nations case files,[36] information on artifacts, various card files, synagogue plaques and the like.

However, for certain sources of large-scale name documentation, the Court's authority, whether through funding or otherwise, was an important factor in obtaining access. These materials included the following:

- Lists resulting from the Swiss Banks Settlement itself and deposited with the USHMM.
- Lists resulting from the opening of the International Tracing Service, Bad Arolsen, the largest repository of the names of victims of the Nazis and their allies. These lists consist of incarceration records; slave and forced labor records; and the records of the displaced persons camps and are primarily focused on Western Europe.
- Lists from the American Jewish Joint Distribution Committee copied by the USHMM.
- Lists of those who survived in the Soviet Evacuation.
- Information on lists resulting from other compensation and restitution programs.

[36] By law, Yad Vashem's obligations include conveying the gratitude of the State of Israel and the Jewish people to non-Jews who risked their lives to save Jews during the Holocaust. A public Commission headed by a Justice of the Supreme Court of the State of Israel examines each case and is responsible for granting the title of "Righteous Among the Nations." *See The Righteous Among the Nations*, YAD VASHEM, http://www.yadvashem.org/righteous.html.

2. Acquisition of large-scale name documentation: Swiss Banks Settlement records

It was recognized that much of the documentation resulting from the Swiss Banks Settlement itself was of historical interest and helpful to the compilation of names. In particular this is true of the approximately 600,000 Initial Questionnaires (IQs), but it is also true of some of the other records resulting from the Settlement.

In 2007, Judge Korman thus authorized the International Organization for Migration (IOM) to transfer to the USHMM the claim files and related documentation pertaining to the IOM's role as the court-appointed administrator of Slave Labor Class I, Slave Labor Class II and Refugee Class claims filed by Roma, Jehovah's Witness, homosexual and disabled class members. This included files of claims submitted by non-Jewish claimants directly to the Holocaust Victim Assets Program (Swiss Banks) ("HVAP") and utilizing claim forms designed specifically for the HVAP classes. This group of documents also consisted of claims submitted to the German Foundation's "German Forced Labor Compensation Program" ("GFLCP"), where the claimants had indicated that they intended those claims forms to serve as Swiss Banks (HVAP) applications as well. These materials were of historic importance and constituted in effect the largest survey of Roma and other non-Jewish survivors ever done.[37] Access to the GFLCP/HVAP overlap claim materials was established in accordance with German access standards and approved by the Court.[38]

In addition, in 2008 Judge Korman authorized transfer to the USHMM of the more than 600,000 Initial Questionnaires (IQs) that were filed in response to outreach efforts intended to effectuate worldwide notice of the settlement, and to solicit background information from potential class members. The IQs essentially constituted the largest survey of Holocaust survivors ever made.

Similarly, in 2011, Judge Korman authorized its administrative agent for the Deposited Assets Class claims process, the Claims Resolution Tribunal in Zurich (CRT), to transfer to the

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[37] Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. May 24, 2007); *see* Letter from Wesley Fisher, Exec. Dir.,Victim List Project, to Hon. Edward R. Korman (May 8, 2007).

[38] Cooperation Contract between the IOM and the USHMM with the approval of the Court dated April, 2007 (filed May 2, 2007). *See also* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 24, 2012).

USHMM the claims documentation and related materials held in Zurich.[39] "All three sets of materials were shipped to the USHMM under conditions establishing the USHMM as custodian of the documentation on behalf of the Court; protecting the security and confidentiality of the documents; and recognizing the need to establish rules to protect claimant privacy while ensuring the eventual accessibility of the documents to researchers and others as part of the Victim List Project's ongoing mission to collect victim names, and more broadly to contribute to the scholarship of the Holocaust, which after more than seventy years still remains incomplete."[40]

Special Master Judah Gribetz, Deputy Special Master Shari C. Reig, and Victim List Project Director Wesley Fisher consulted with representatives of the USHMM in order to formulate and recommend appropriate access rules to the Court. This resulted in Judge Korman's approval in 2012 of access rules for the IOM claim files, Initial Questionnaires and CRT claim documentation transferred to the USHMM.[41]

The rules, which were intended to be consistent with existing international and U.S. privacy protections, provide that through the year 2020, claimants and legal successors, upon written request to the USHMM, may receive copies of their claim forms and other documents related solely to their claims. In the event that a bona fide researcher requests access to such materials, the USHMM will assess the request; determine whether the requested materials are "indispensable" to the research project; provide a recommendation to the Court; and upon obtaining Court approval, will redact personal and confidential information before providing the requested documents to the researcher. Beginning in 2021, the USHMM may remove access restrictions on claim files of individuals whose death has been proven by acceptable documentation, subject to redaction of personal and confidential information. The USHMM may transmit such materials to interested parties including bona fide researchers, subject to possible limitations upon publication or other use of the materials. Beginning in 2041, all access restrictions may be removed by the USHMM; however, bona fide researchers will be required to agree not to

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[39] Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 13, 2011).

[40] Order at 2, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 24, 2012).

[41] *Id.*

use or disclose personal or confidential information. In 2081, all access restrictions to the materials may be removed. The Court retains sole discretion to interpret and/or modify the access rules.[42]

3. Acquisition of large-scale name documentation: International Tracing Service records

The Court helped make possible the opening of the International Tracing Service, the most extensive collection of Holocaust-related archival name lists in existence, and the provision of electronic copies of the vast holdings of the ITS to the USHMM, Yad Vashem, and other repositories.

The archive, located in Bad Arolsen, Germany, for decades was the largest closed Holocaust archive in the world, containing information on approximately 17.5 million victims of Nazism, both Jews and non-Jews. In 2004, the Executive Director of the Victim List Project began to work closely with the USHMM and the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research (later renamed the International Holocaust Remembrance Alliance or IHRA) to ensure that the 11 nations of the ITS governing board would ratify an agreement to open the collection. This effort succeeded in 2007. Dr. Fisher, on behalf of the Swiss Banks Settlement, participated in the working meetings regarding the digitization of the collections. Victim List Project funds provided by the Court to the USHMM became the contribution of the United States to the overall copying of the collections.[43]

To date, over 191 million digital images have been transferred by the ITS to recipient institutions in the nations on the ITS governing board. The primary recipients of this data are the USHMM, for the United States, and Yad Vashem, for Israel. Both institutions have been working with the ITS on cataloging and creating finding aids necessary for name extraction to proceed.

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[42] *Id.* at 3-10.

[43] Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Aug. 26, 2007). In the 1950s Yad Vashem had received copies from the ITS of some of the lists regarding Jews, and as a result Israel initially did not consider the newly-opened ITS collection to be of highest priority. This changed, however, when it became clear how vast the ITS collections were and how much material Yad Vashem did not have at the time.

Electronic copies also have been transferred to institutions in Poland, Luxembourg, Belgium, France, and the United Kingdom. The ITS itself has been transformed into a research institution and is no longer under the administration of the International Red Cross. To date, the transfers include copies of the entire "incarceration" section of the ITS archives; the entire "wartime/forced labor" section; over 3 million Displaced Persons ("DP") registration cards; the half-million DP case files in the "postwar" section of the ITS archive; and the entire Central Name Index ("CNI"), which consists of over 40 million cards. It is expected that eventually, over 200 million digital images will have been transferred by the ITS.[44]

4. Acquisition of large-scale name documentation: American Jewish Joint Distribution Committee (JDC) records

With the Court's support,[45] the USHMM worked with the JDC to copy and make accessible the thousands of name lists held by the JDC Archives Jerusalem, which constitute one of the few remaining large collections of historical-archival name lists from the period of the Holocaust as such. These lists also are being made available to Yad Vashem. "The JDC's rescue work during World War II and afterwards generated massive numbers of name lists, in particular of Holocaust survivors, not only in Western and Eastern Europe and the form[er] Soviet Union, but also in Africa, Asia, and the Middle East…. Through its regional offices in Europe and its network of engaged activists, the JDC was in a unique position to collect information from all over Nazi-occupied Europe, often by secret courier, with lists of names of those in dire need. After the war, the JDC continued its assistance program by helping to resettle stranded Jewish refugees and Holocaust survivors and rebuild Jewish communities. Here, too, lists of names played a vital role in the distribution of aid."[46]

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[44] For a recent research guide to the large digitized archives of the ITS, *see* SUZANNE BROWN-FLEMING, NAZI PERSECUTION AND POSTWAR REPERCUSSIONS: THE INTERNATIONAL TRACING SERVICE ARCHIVE AND HOLOCAUST RESEARCH (Rowman & Littlefield in ass'n with the U.S. Holocaust Memorial Museum 2016).

[45] *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. (Oct. 27, 2009).

[46] Letter from Wesley Fisher, Exec. Dir., Victim List Project, to Hon. Edward R. Korman at 2 (Oct. 8, 2009).

5. Acquisition of large-scale name documentation: Soviet Evacuation Records

The largest category of survivors whose names are not known are those Jews and others who fled east in the Soviet Union to the Urals, Siberia, Central Asia, and elsewhere. With the Court's support,[47] the USHMM and Yad Vashem have worked together to identify and copy hundreds of thousands of pages in the relevant archives so as to fill this gap in the historical record. The Executive Director of the Victim List Project has participated in extensive negotiations with the governmental archives of Russia, Kazakhstan, and Uzbekistan for the scanning and digitization of the principal card catalogs and lists for the Soviet evacuation. Pending establishment of appropriate access, the Victim List Project has supported Yad Vashem with its digitization of documentation concerning the Soviet evacuation.[48]

6. Acquisition of large-scale name documentation: Other collections

With the Court's support, the USHMM microfilmed and acquired historical-archival lists of names of victims or targets of Nazi persecution not readily accessible, including a name card index and judicial files documenting the persecution of homosexuals and other non-Jewish groups, documentation of the mentally disabled, and registration records for Jewish refugees in Central Asia.[49]

Under the guidance of the Executive Director of the Victim List Project, a draft catalog was produced of all of the known archives of compensation, restitution, and reparations organizations. Although the almost 200 sources listed hold materials that are not open due to privacy considerations, it was important for the sake of completeness that Yad Vashem and the USHMM possess such a catalog for future reference. While the holdings of such sources are

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[47] *See* Victim List Project Order of May 13, 2013.

[48] *See* Letter from Wesley Fisher, Exec. Dir., Victim List Project, to Hon. Edward R. Korman (Aug. 21, 2015) and Order of Aug. 25, 2015.

[49] *See* Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. July 15, 2005).

primarily valuable in regard to those who survived, it is likely that, as in the case of the Initial Questionnaires of the Swiss Banks Settlement, historical information on those who perished also may be found in these documents.[50]

III. A BROAD RANGE OF VICTIMS

The Swiss Banks settlement was premised in large part upon the value of claims to Swiss bank accounts, most of which were owned by Jewish Nazi victims. Therefore, to ensure that the Settlement Fund would not be unduly diminished by an overwhelming number of claims, the Settlement Agreement negotiated by the parties defined "Victims or Targets of Nazi Persecution" as Jewish, Roma, Jehovah's Witness, homosexual and disabled victims, necessarily omitting certain victim groups – notably Poles, Soviet Prisoners of War, and Slavs. For the Victim List Project, as a practical matter, victim categories were less significant, partly because of some parallel separate projects on those groups and partly because the historical-archival lists (*e.g.*, camp lists) rarely divide persons into different groups. Much more important was the fact that the Court's definition was inclusive of both Jews and non-Jews, and of those who survived as well as those who died.

Yad Vashem, as the official memorial of Israel, considered its mandate to be limited to compiling and making accessible the names of Jewish victims. Moreover, in view of its mission as a memorial, Yad Vashem emphasized research focused upon the names of those who perished. The Pages of Testimony were exclusively about Jews and were memorial in nature. During 2003-2004, Yad Vashem was primarily concerned with placing on the internet its mass digitization of the Pages of Testimony for the Volcker Committee. Yad Vashem recognized that the other victim groups in the Court's definition did not have comparable memorial institutions of their own. It was considered that investigating the names of the other, much smaller, victim groups was more the purview of the USHMM, which was researching the names of all victims, including those who

[50] The list of archives of compensation, restitution, and reparations organizations has been incorporated into the European Holocaust Research Infrastructure (EHRI) Portal. *See* https://portal.ehri-project.eu.

were not Jewish, as well as those who had survived the Nazis. This understanding had led to the creation in the USHMM of the Benjamin and Vladka Meed Registry of Holocaust Survivors.

The Court's desire to compile and make accessible as full a list as possible of the Victims and Targets of the Nazis and their allies, both those who perished and those who survived, meant that there had to be movement beyond the Pages of Testimony, to a full-scale examination of all extant historical-archival records. The decision was made to fund the hardware, software, and maintenance costs of putting Yad Vashem's Pages of Testimony on the internet, but not to cover the costs of collecting additional such testimonial evidence of names, which could be appropriately funded in other ways. The Victim List Project would concentrate on the historical-archival documentation, which was less likely to receive funding from elsewhere. It also seemed a particularly appropriate project under the Settlement Agreement, given that it was important to support activities that might be helpful to the distribution process, such as the identification of owners of Holocaust-era Swiss bank accounts.

It was clear that the Victim List Project required ongoing cooperation between Yad Vashem and the USHMM. In March 2004, the two institutions entered into an agreement whereby they would share their names data, giving credit to each other. It was understood that Yad Vashem would concentrate primarily on the names of Jews who had perished, and the USHMM would concentrate primarily on the names of non-Jews and of Jews who had survived, but the two institutions would work together.

There was contact with organizations representing the non-Jewish victim groups so as to ensure that the USHMM would be deemed the appropriate entity to handle the compilation, and to discuss where the sources were. Thus, after communication with the Jehovah's Witnesses' world headquarters in New York, a visit was made to *Wachtturm Bibel- und Traktatgesellschaft der Zeugen Jehovas e.V.* ("Watchtower Bible and Tract Society of the Jehovah's Witnesses") in Selters, Germany, where records of the experience under the Nazis had been carefully kept for years. The scanning of those records and the transfer of copies to the USHMM proved to be timely, as the German center had decided that the maintenance of the archive was not part of its religious mission and that the archive should be ended.

With respect to homosexual survivors, an organization had appeared before the Court to object to certain elements of the Looted Assets Class *cy pres* programs, believing that homosexual survivors were few in number and that therefore memorial and research projects, rather than programs serving the needy, should be funded; the District Court as well as the Court of Appeals denied these objections.[51] With respect to the Victim List Project, the organization had some concern that its own research would be subsumed, and also that the privacy of the homosexual victims would be impacted. However, it was explained that the focus would be on the compilation of names based on archival lists, with research on the specific fates of victims left to scholarly analysis by experts in the field. Privacy issues also were of concern in regard to the mentally and physically disabled and were similarly addressed.

As to Roma victims, discussions were held with Roma organizations as recommended by the IOM, and eventually with the European Roma Information Office in Brussels. There were sensitivities based on the experience of the misuse by the police of name lists against the Roma, but, nonetheless, there was also an understanding of the importance of the compilation of sources and names for research and remembrance.

Ultimately, there were no objections to the work of the Victim List Project and the USHMM, and in any event most of the relevant historical-archival documentation on these groups was to be found in the International Tracing Service and various government archives.

IV. DIGITALLY RECORDING THE INDIVIDUAL NAMES OF THE VICTIMS OF THE NAZIS AND THEIR ALLIES

With the Court's support, what is literally the *largest presentation in history* so far of the names of Holocaust victims began as Yad Vashem made its Central Database of Shoah Victims Names publicly available over the internet in November 2004 (in its present form, the Database may be seen at http://yvng.yadvashem.org/index.html?language=en). Given the centrality of Jewish victims, and the symbolic importance of Yad Vashem, it was appropriate that the first major

[51] For a more detailed description, *see* chapter of this Final Report entitled "The Looted Assets Class."

funding by the Court was of the technical means to make the Pages of Testimony visible to the world. In the first year after the public launch in November 2004, over 4 million individuals from over 200 countries visited the website. Many of them came repeatedly, for a total of 7 million sessions with an average viewing of 20 separate pages each.

From the beginning, there was an attempt to connect the names to biographical materials concerning individual persons. The Court was in agreement, but also emphasized the importance first of identifying, to the greatest extent possible, victim names. Recognition that the Central Database of Shoah Victims' Names was more than just a list came immediately, however. "The online Names Database creates a link not only with the dead but also among the living, within the Jewish people," said Nobel Laureate Elie Wiesel after filling out a Page of Testimony for his father, Shlomo, just after the launch.[52]

Similarly, with the Court's support, the USHMM in the fall of 2004 began to create the electronic means to present different sorts of lists and the individual names of both non-Jews and Jews in what it called the USHMM Name Search. Later renamed the Holocaust Survivors and Victims Database, it may be seen in its current form at http://www.ushmm.org/remember/the-holocaust-survivors-and-victims-resource-center/holocaust-survivors-and-victims-database.

The two institutions developed different working styles. Yad Vashem preferred to operate in a more centralized fashion. The Jerusalem institution trained a team of over 50 experts in names indexing, and it formulated an advanced methodology whereby the documents were scanned, the information was catalogued according to various fields, and names contained in the documents were recorded. The information was verified by experts and, following authorization, was edited and stored in the online database, where it was made publicly accessible in Hebrew, English, Russian, Spanish, and German. The USHMM worked in a more decentralized fashion and outsourced activities to genealogists and local memorials and other institutions. The Holocaust Survivors and Victims Database was made publicly accessible in English. More recently, both institutions began to experiment with crowdsourcing — the broadcasting over the internet of

[52] Quoted at *Hall of Names*, YAD VASHEM, http://www.yadvashem.org/archive/hall-of-names.html.

particular issues or concerns in the form of an open call for solutions — as they invite the public to identify photographs and assist in other ways.[53]

Both institutions welcomed the accessibility of databases of already digitized names from other institutions. Yad Vashem, in particular, sought such contributions from other institutions in conjunction with the international conferences that it held at periodic intervals on "Recording the Names." Three such conferences were held even before the uploading of the Central Database of Shoah Victims' Names to the internet in November 2004.

In addition to these conferences hosted by Yad Vashem, there were annually also the Digitization of National Socialist Victim Data Workshops of the German Gedenkstätte that brought together representatives of memorials in other countries, Yad Vashem, the USHMM, and the Victim List Project.

The Claims Conference had independently called for more coordination among Holocaust-related archives. In 2003, the Claims Conference organized what came to be called the International Shoah Archivists Working Forum, with a large conference of the primarily Jewish Holocaust-related archives held in New York in March 2004. It had become clear that with advancements in technology, cooperation among Holocaust-related archives could and should be increased greatly, with an eye eventually to the presentation on the internet of much of the documentation so as to assist education and research worldwide. The conference resulted in particular in three goals as follows:

a) Greater sharing of copies of Holocaust-related documentation among archives.
b) Creation of unified thesauri for such things as geographic place names and the names of organizations.
c) Mass digitization and uploading to the internet of Holocaust-related archival documentation.

As a practical matter, it turned out in regard to (a) that sharing of copies was primarily an issue in relation to the two main archives trying to copy Holocaust documentation worldwide,

[53] *See*, for example, the World Memory Project, a crowd sourcing partnership between the USHMM and Ancestry.com to index and make searchable documents containing over 1 million names. https://www.ushmm.org/online/world-memory-project/.

namely Yad Vashem and the USHMM. It turned out in regard to (b) that the creation of unified thesauri could mostly be handled by Yad Vashem's sharing of its standardized lists of geographic place names and other such finding aids. And it turned out in regard to (c) that Tuvia Friling, then the Archivist of the State of Israel, who participated in the conference, was calling for the digitization and uploading to the internet of all Israeli government archival documentation that was not classified. It therefore made sense for mass digitization and uploading of Holocaust-related archival documentation to the internet to be done as a pilot matter among the Holocaust institutions in Israel.[54]

As mass digitization of names progressed under the Victim List Project, these matters became more and more linked to the question of cooperation on the documentation of names, and principally to the question of cooperation between Yad Vashem and the USHMM. Yad Vashem suggested that the software platform that had been developed by the company that it was using be adopted by the USHMM, as well as by other institutions that might join the collaborative project. Testing of Yad Vashem's software platform was done in the spring and summer of 2005, but its use would have meant that the USHMM would have had to replace its entire system. Although Yad Vashem was ready to make its geographic and other finding aids available, it could do this only if the receiving institution or institutions were also using the same software as Yad Vashem. Whatever the technical issues, the USHMM and other institutions were not prepared to make such a large shift in how they operated. In the meantime, the USHMM had a professional geographer on its staff and had been developing its own geographic lists. Moreover, the USHMM was concentrating on technological means to handle the names of Roma and other non-Jewish victims. Eventually, the institutions did not consider a unified common software platform to be the best use of resources.

The need to cooperate as a result of the Victim List Project, however, led to closer working relations between the two institutions, and in 2006 there began to be greater sharing of archival documentation between Yad Vashem and the USHMM.

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[54] The Claims Conference had previously funded a digitization laboratory at Yad Vashem that in principle could assist the Ghetto Fighters' House, Moreshet, and other such repositories in Israel.

There was and continues to be a fair amount of cooperation with other institutions. At the onset of the program, a Victim List Forum – essentially a "listserv" with the capacity to handle large data sets that was run by the Yad Vashem IT department – was maintained to facilitate communication among professionals working on names projects, but in recent years technology advances have made this no longer necessary. The Forum was moderated by a coordinating group that represented the Swiss Banks Settlement, Yad Vashem, the USHMM, and the "Digitization of National Socialist Era Victim Data" Workshop. Yad Vashem had technical issues with sharing its geographic, organizational, and other finding aids to help standardize the field. However, it eventually did do so with the other Holocaust memorials in Israel, partly due to the encouragement of the Claims Conference, given that the Claims Conference was funding the digitization of all the relevant institutions in the country. Eventually, due to technological changes and the success of projects to bring Holocaust-related archives together – first and foremost the success of the names databases – the entire matter was absorbed into the European Holocaust Research Infrastructure, in which Yad Vashem is a partner organization (the USHMM became a partner organization as of May 2015, and the Executive Director of the Victim List Project is a member of the Advisory Board of EHRI). Essentially EHRI took over, on a larger scale, the initiative of the Claims Conference in creating the International Shoah Archivists Working Forum and the cooperation among institutions fostered by the Victim List Project.

By 2009, by which time the data from the most readily available lists already had been entered, data entry of necessity slowed somewhat, due to the fact that the remaining lists were more difficult to decipher. These lists required a higher degree of expertise to handle handwriting in various languages, and were generally more challenging and required greater research analysis than the simpler lists entered in previous years.

At the end of 2010, Yad Vashem announced that with the assistance of the Court, it had been able to document approximately 4 million of the approximately 6 million individual Jewish victims who certainly or most probably lost their lives during the Shoah. As of October 2015, Yad Vashem had in its database 6,983,132 name occurrences, representing approximately 4,500,000

individual Jewish victims who perished.[55] The total number of name occurrences, including not only those who perished but also those who survived, is considerably larger. Previously, the entire database could be seen only internally at Yad Vashem. However, aware of the greater difficulty of identifying the remaining names of those who died during the Holocaust, and recognizing that the entire enterprise was an enormous research project rather than simply a listing of names, Yad Vashem began to revise its database so as to make everything public, with an indication of which persons, in its professional opinion, are clearly among the six million who perished. A new version of the Central Database of Shoah Victims' Names was made public in 2016.[56]

Some 2.6 million of the name records came from Pages of Testimony, while over twice that number have been located primarily in historical-archival documentation. This is a noticeable difference from the situation at the time of the Volcker Committee project, when the available information was overwhelmingly drawn from the Pages of Testimony.

As to the USHMM, as of March 2016, there were 6,695,154 name occurrences in its Holocaust Survivors and Victims Database. The number of individual persons covered (Jews, Roma, Jehovah's Witnesses, Homosexuals, Disabled) is under review.[57]

It may one day be possible to estimate of the percentage of names identified, in comparison with the universe of the names of the individuals whom the Settlement Agreement is intended to benefit, both those who perished and those who survived. At present this cannot be done because of a lack of clear statistical data on the number of survivors both Jewish and non-Jewish, and because not all names of survivors are known due to privacy considerations (despite the fact that almost all the sources of such names have been identified due to the Victim List Project). However, Yad Vashem has made some estimates, by country, of the percentages of names

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[55] Alexander Avraham, Dir., Hall of Names-Yad Vashem, PowerPoint presentation at the International Conference: Holocaust Documentation in the Territories of the FSU: Current Issues of Mapping, Accessibility and Usage (Oct. 18-20, 2015).

[56] E-mail from Haim Gertner, Dir. of Archives, Yad Vashem, to Wesley Fisher, Exec. Dir., Victim List Project (Dec. 23, 2015).

[57] E-mail from Neal Guthrie, Dir., Holocaust Survivors & Victims Res. Ctr., USHMM, to Wesley Fisher, Exec. Dir., Victim List Project (Mar. 11, 2016).

identified to date of Jews who perished in the Holocaust, in comparison with the total numbers of Jews known to have died.

The countries for which the percentages of names identified to date are low are primarily, though not exclusively, those of the former Soviet Union. In that region, there was primarily a "Holocaust by bullets," in which masses of people were shot without the deportation and other lists associated with the ghettos and camps more frequently found in the West. Under the auspices of the European Holocaust Research Infrastructure, Yad Vashem brought together the main specialists on names projects from the former Soviet Union, Poland, and Hungary-Romania – the areas where the percentages of still unidentified victims are greatest – such as the state archivist of Belarus and the persons responsible for the database of Soviet soldiers killed or missing in action in World War II,[58] who are knowledgeable about previously classified information. In general, there is movement from simply using lists, to viewing the compilation of the names as a research project.

V. POSITIVE IMPACTS OF THE VICTIM LIST PROJECT

Beyond its success in compiling and making accessible the names of the Victims and Targets of the Nazis and their Allies as such, the Victim List Project has had a major impact in a number of other areas.

A. Advances in cataloging methods for Holocaust-related archival materials as a whole

As a result of the need to catalog names lists, which involved decisions on the classification of information generally (*e.g.*, geographic and organizational names), there have been advances in cataloging methods for Holocaust-related archival materials as a whole.

[58] It is likely that this database, begun in 2006, was inspired in part by the Central Database of Shoah Victims' Names after the president of the Russian Federation visited Yad Vashem in 2005. The database may be seen at http://www.obd-memorial.ru.

When Yad Vashem began to catalog its lists for the Victim List Project intensively in 2005, Yaacov Lozowick, then Archivist of Yad Vashem, recognized that the automated processes that had been developed in the course of computerizing the Pages of Testimony on a mass and intensive basis could be extended beyond the names lists, and used to catalog archival information on the Holocaust generally. This more automated division of labor for cataloging came to be described as the *Knowledgebase of the Shoah*. The core idea was that no matter how broad the subject of the Shoah, the components that make up the history are limited in scope. There are the geographic locations, the historical figures, organizations, and events - and these repeat themselves throughout the documentation. Thus, just as a standardized list of the geographic locations had been created with all the relevant variants (*e.g.*, Lvov, L'viv, Lemberg, etc.), standardized lists of the individuals and events in the history could be created. By creating an interlocking web of descriptions of all the relevant items of information, including a careful enumeration of the correlations between them, the user can be provided with a highly flexible guide through the history of the Shoah, accessible from any direction.

Constructing the record of the correlations in a systematic way allows users to devise new research paths that previously would have been too daunting to undertake. Thus, for example, if an observer wanted to know whether the "X Company" had anything to do with the Holocaust, the answer could not be found through ordinary cataloging processes. While it was possible that a reference archivist may have seen something about "X Company" somewhere in the holdings of his or her repository, relying on this methodology was not optimal. If, however, there had been standardized cataloging on the document level so as to create a list of organizations that appeared in the documentation (similar to the list of geographic sites), then the data entry staff need only check whether the organization (*e.g.*, "X Company") already appeared on the standardized list or, if not, add it to the standardized list.

The method of the Knowledgebase of the Shoah, which derives from the work on the names lists, has become the way in which Yad Vashem catalogs everything in its collections, not only archival documentation but also videos, photographs, and the like.

The USHMM has followed a somewhat different path, providing more standard cataloging of its archival collections, so as to be able to keep up with its large continuing acquisition of new

materials (the Knowledgebase of the Shoah method, even though automated, is slower). But in relation to its names database, the USHMM has refined such data as the geographic locations of the Holocaust, and it has had to focus upon additional and previously unexplored areas such as the names of Roma, and other matters not handled by Yad Vashem.

In both institutions, there has been a movement towards bringing all sorts of sources together, so as to be able to tell much more about individuals than their names. This is the challenge of the future. Indeed, an international workshop entitled "Names of Shoah Victims: From Scattered Sources to Individual Personal Stories" was hosted by the Memorial to the Murdered Jews of Europe – which presents Yad Vashem's Central Database of Shoah Victims' Names in the center of Berlin – and the European Holocaust Research Infrastructure in October 2014. The announcement of the workshop reads in part as follows:

> A vast amount of work was done in the last decades in order to document and commemorate the names of as many as possible of the Shoah victims. There is still much to be done in order to name each and all of the victims and we will have to stay the course on this mission for yet a long time. Nevertheless, there are already in existence many large and small projects and databases based on a huge array of sources. More and more pressingly now we are facing another kind of challenge: the need to make sense of the abundance of data, to organize it and cluster together, when available, the multiple pieces and bits of information referring to one and the same victim. This means rising up from the level of the flat separate data items to that of a relational system linking them in a virtual personal file, sometimes eventually resulting, as far as possible, in reconstructing a brief personal life story.[59]

Yad Vashem has already begun to use the Central Database of Shoah Victims' Names in educational projects. "The Stories Behind the Names: A Journey of Discovery" offers advice to educators on how students can piece together information about Holocaust victims. The project helps to complete stories of victims' lives, thus serving as portraits of Holocaust victims and enabling students to remember these victims as individuals, with faces and identities.[60]

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[59] *EHRI Workshop: Names of Shoah Victims: from Scattered Sources to Individual Personal Stories*, EUR. HOLOCAUST RESEARCH INFRASTRUCTURE, http://www.ehri-project.eu/names-shoah-victims-scattered-sources-individual-personal-stories.

[60] Dr. Naama Shik, *The Stories Behind the Names: A Journey of Discovery*, YAD VASHEM, http://www.yadvashem.org/articles/general/stories-behind-the-names.html.

B. The development of new types of research in fields such as historical demography and genealogy

The computerization of the names documentation has resulted in an ability to conduct certain types of research that previously would have been impossible, or at least extremely difficult to do. For example, it has been possible in a short period of time to compare the names on deportation lists at the point of departure with the names on lists at the point of arrival, and to compare the results to determine the mortality in that particular transport. There are many other sorts of research for which electronic access to specific lists and the digitized information on them is relevant.

It is expected that the compilation of the names of the persons who fled east in the Soviet Evacuation, along with comparisons to the pre-war Soviet census, will permit a better estimate of the numbers of Jews who perished in the Holocaust on Soviet territory. The precise number of persons shot in the mass killings in the Baltics, Belarus, Ukraine, and elsewhere is not known, although it is likely that it exceeds the number of persons killed through the concentration camp system in the West. At the same time, the Soviet government has not provided accurate estimates of the number of persons who were evacuated into the interior of the U.S.S.R. Comparison of the names of Jews who were in the Soviet Evacuation with the pre-war Soviet census is likely to change not only the knowledge of the numbers of Jews who died in the Shoah, but also the image held in the West of the Holocaust as a mechanized, organized affair carried out primarily in ghettos, concentration camps, and gas chambers.[61]

In addition, genealogical research has been greatly enhanced by the names databases, as family members are able to identify relatives who were affected by the Holocaust. There have been a number of proposals for use of the databases, including through contacting surviving relatives to determine, via DNA identification methods, the individuals buried in mass graves.

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[61] *See* Vadim Dubson, *Toward a Central Database of Evacuated Soviet Jews' Names, for the Study of the Holocaust in the Occupied Soviet Territories*, 26 HOLOCAUST & GENOCIDE STUD. 95 (2012).

C. The inspiration for similar names projects in other areas

Following the 2004 uploading to the internet of the Central Database of Shoah Victims' Names, there have been some mass names projects that to some extent have been inspired by the Victim List Project. Thus, in 2005, the President of the Russian Federation visited Yad Vashem, and in 2006 the Ministry of Defense of the Russian Federation began an extensive project to create a database of the names of all Soviet soldiers who were killed or missing in action in World War II. The director of that database has visited Yad Vashem, and the information in it on Jewish soldiers is being incorporated by Yad Vashem into the Central Database of Shoah Victims' Names.[62] In similar fashion, the Spanish government has also created a database of the names of Spanish prisoners of the Nazis.[63]

D. Assistance in the documentation of claimants for reparations and for restitution of plundered property

Although the Swiss Banks Settlement considered the Victim List Project as primarily for research and remembrance, as a practical matter, one side effect is that the databases created by it are used quite regularly to document claims for reparations and for restitution of property.

In the last few years, the Claims Conference has successfully negotiated with the German Ministry of Finance for compensation of Holocaust survivors to be expanded to provide payments to Nazi victims from North Africa, as well as to those currently living in all areas of Eastern Europe and the former Soviet Union. For applicants to receive payments under these programs, there has to be archival proof regarding how they survived. The databases created by the Victim List Project have therefore become quite important in helping to document the tens of thousands of these new claimants.

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62 *See* http://www.obd-memorial.ru.

63 *See* http://pares.mcu.es/Deportados/servlets/ServletController.

The databases created by the Victim List Project are also regularly consulted in the search for heirs for looted art and other cultural property, as well as other types of assets. Often these are searches for the fate of specific individuals.

On occasion, there are mass searches for thousands of names. In February 2016, partly as a result of the work of the World Jewish Restitution Organization (WJRO), the Serbian Parliament passed a law regarding Jewish heirless property. The Federation of Jewish Communities in Serbia (SAVEZ) compared the lists of properties in the country with the names databases at Yad Vashem and the USHMM to determine which properties belonged to Jews who perished. This project enabled claims for restitution or compensation to be filed. The proceeds have provided aid to Holocaust survivors in and from Serbia, and have assisted in the reconstruction of Jewish life in that nation.[64]

E. The reunion of family members

A number of families have been reunited through the names databases. Yad Vashem has a listing of some of these, along with photographs and in some cases videos, that includes even the reunion, so many decades later, of a brother and sister.[65] Very often a grandchild or other younger member of the family who is more comfortable with electronic technology is the person who finds the lost family member. In many cases, the identification of a family member is accomplished because the digitization of the Pages of Testimony includes information on the person who filled out the form. One of the negative consequences of privacy legislation is that the general public is unable to see the databases that have been created in their entirety. Once the public has full internet access to the information that has been amassed by the USHMM and Yad Vashem on those who

[64] *See* Stewart Ain, *Serbian Payout is 'Big Restitution Story'*, JEWISH WEEK, Mar. 1, 2016. http://www.thejewishweek.com/news/new-york/serbian-payout-big-restitution-story.

[65] *See Remembrance – The Shoah Victims' Names Recovery Project*, YAD VASHEM, http://www.yadvashem.org/remembrance/names-recovery-project.html?oldsite=true.

survived in addition to those who perished, it can be expected and hoped that many more such reunions will take place.

Below is a photograph taken from a video showing the reunion of sister and brother Hilda (Glasberg) Shlick and Simon Glasberg. In the video, Hilda's grandson explained how he found Simon through Yad Vashem's Central Database of Shoah Victims' Names.[66]

Emotional Reunion of Siblings Separated During the Holocaust **https://www.youtube.com/watch?time_continue=33&v=Ucu94QAi4dA.**

F. Improvements in cooperation among Holocaust-related organizations generally

Relations between Yad Vashem and the USHMM are now more extensive than they were at the start of the Victim List Project, and in many areas are highly productive. This is not due solely to the cooperation required to achieve the Court's objectives, but the participation of the two institutions in the Victim List Project certainly has played a role.

There is now greater networking generally among Holocaust-related institutions. While some of that is due to technological advances and other factors, it is quite clear in the meetings surrounding the various projects that the names databases that have been created by the Victim List Project and the international cooperation that has gone into it are prime examples for these other projects. This is perhaps most obvious as to the European Holocaust Research Infrastructure, financed by the European Union, in which Haim Gertner, the Archivist of Yad Vashem, plays a

[66] https://www.youtube.com/watch?v=Ucu94QAi4dA.

major role. In similar fashion, the International Research Portal for Records Related to Nazi-Era Cultural Property, administered by the National Archives and Records Administration of the United States,[67] is partially modeled on the experience of cooperation regarding names. So, too, there has been an influence on the Claims Conference's attempt to create a Holocaust Audio-Visual Testimonies Partnership to identify, preserve, and make accessible the approximately 100,000 audio-visual recordings of survivors that also contain much name information.

G. Refutation of Holocaust deniers

The identification by name of millions of the Victims and Targets of the Nazis and their allies on the basis of historical-archival sources helps to confront Holocaust denial and trivialization. One of the most frequent claims by Holocaust deniers is that the figure of approximately six million deaths is an exaggeration. Identifying the names of each and every individual victim, where possible, helps to disprove that falsehood.[68]

VI. ACHIEVEMENTS OF THE VICTIM LIST PROJECT

In summary, the Victim List Project of the Swiss Banks Settlement has resulted in the following developments:

- A unified, worldwide catalog of all relevant name lists (a "list of lists"), regardless of where held, has been created and made accessible over the internet.
- An electronic compilation of the names of individuals whom the Settlement Agreement is intended to benefit – Jewish, Romani, Jehovah's Witness, homosexual, and disabled

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[67] *International Research Portal for Records Related to Nazi-Era Cultural Property*, NAT'L ARCHIVES, http://www.archives.gov/research/holocaust/international-resources/.

[68] *See, e.g.,* U.S. Holocaust Memorial Museum, *Holocaust Deniers and Public Information*, HOLOCAUST ENCYCLOPEDIA, https://www.ushmm.org/wlc/en/article.php?ModuleId=10007272; Emma Green, *The World Is Full of Holocaust Deniers*, ATLANTIC, May 14, 2014, https://www.theatlantic.com/international/archive/2014/05/the-world-is-full-of-holocaust-deniers/370870/; *Holocaust Facts: Where Does the Figure of 6 Million Come From?*, HAARETZ, Aug. 11, 2013, https://www.haaretz.com/jewish/features/.premium-1.540880; among many others. *See also* the U.S. Holocaust Memorial Museum, *Documenting Numbers of Victims of the Holocaust and Nazi Persecution*, HOLOCAUST ENCYCLOPEDIA, https://www.ushmm.org/wlc/en/article.php?ModuleId=10008193.

victims or targets of Nazi persecution, those who perished and those who survived – has been made accessible worldwide (within the bounds of privacy laws).

- There have been improvements in cooperation among Holocaust-related organizations generally.
- There have been advances in cataloging methods for Holocaust-related archival materials as a whole.
- New types of research in fields such as historical demography and genealogy have been developing.
- Similar names projects in other areas have been inspired.
- Assistance in the documentation of claimants for reparations and for restitution of plundered property is being given.
- Family members have been and continue to be reunited.

Above all, in what ultimately may be one of the most lasting contributions of the distribution programs implemented under the Swiss Banks Settlement, the largest presentation of history on the individual level for research and remembrance has returned the identity to millions of people whose existence — including their very names — the Nazis attempted to obliterate.

Victim List Project Appendix:
A CHRONOLOGICAL LIST OF COURT ORDERS

Allocations in the chronological list below of Court orders were made for one or more of the following purposes:

- ***Identification of lists of names***
- ***Acquisition of large-scale name documentation***
- ***Mass digitization of the individual names of the victims of the Nazis and their allies***

As the following orders indicate, in total, $10,455,000 was allocated to Yad Vashem; $3,995,980 was allocated to the USHMM; and $28,000 was allocated to Swiss Federal Archives, for a total of $14,478,980. The remaining balance of $21,021 from the $14.5 million allocated will be distributed at a later date to a project in furtherance of the goals of the Victim List Project.

Court order July 30, 2004: Allocation of $760,000 to Yad Vashem in support of the opening to the internet of Yad Vashem's Central Database of Shoah Victims' Names.

Court order November 16, 2004: Allocation of $339,781 to the USHMM in support of the collection and dissemination of information about Jewish and non-Jewish victims of the Holocaust, both those who survived and those who perished, with special attention to the non-Jewish victim groups.

Court order March 15, 2005: Allocation of $1,000,000 to Yad Vashem for the Central Database of Shoah Victims' Names, specifically to maintain the Central Database, to serve its public, to conduct a preliminary survey of historical-archival documentation, and to begin the systematic digitization of historical-archival data.

Court order July 15, 2005: Allocation of $118,800 to the USHMM in support of the microfilming and acquisition of historical-archival lists of names of victims or targets of Nazi persecution not readily accessible, including a name card index and judicial files documenting the persecution of homosexuals and other non-Jewish groups, documentation of the mentally disabled, and registration records for Jewish refugees in Central Asia.

Court order March 23, 2006: Allocation of $681,272 to the USHMM in support of the completion of the cataloging of names lists in its possession, of research on lists of non-Jewish names worldwide, of the creation of technical interfaces with Yad Vashem for further cooperation, and the digitization of approximately 1 million records concerning non-Jewish victims.

Court order June 23, 2006: Allocation of $935,000 to Yad Vashem towards a combined Yad Vashem-USHMM list of lists, scanning of historical-archival name lists, digitization of names,

ongoing maintenance of the Central Database of Shoah Victims' Names, and service to the public using the Central Database.

Court order May 24, 2007: Allocation of $58,108 to the USHMM in support of the transfer of materials relating to the Holocaust Victims Assets Program (Swiss Banks) (HVAP) held by the International Organization for Migration (IOM) to the U.S. Holocaust Memorial Museum, for eventual cataloging and dissemination.

Court order June 5, 2007: Allocation of $1,210,000 to Yad Vashem towards mass data entry of names and vital data of Holocaust victims from historical documentation; as well as towards ongoing identification, scanning, and cataloging of lists; and maintenance, technology, and assistance to the public in regard to the Central Database of Shoah Victims' Names.

Court order August 26, 2007: Allocation of $250,000 to the USHMM towards the provision of copies of the records held by the International Tracing Service (ITS) in Bad Arolsen, Germany to major Holocaust research and archival repositories in the eleven member countries of the International Commission of the ITS.

Court order December 5, 2007: Allocation of $800,877 to the USHMM towards the collection and dissemination of the names of Jewish and non-Jewish victims of the Nazis and their allies, specifically large-scale name list cataloging, development of technological systems for holding and sharing name and list data, normalization of existing and new data, continuation of non-Jewish victim research, and digitization of individual names.

Court order February 6, 2008: Allocation of $179,825.36 to the USHMM to cover the costs of the transfer of the paper records of the Initial Questionnaires of the Swiss Banks Settlement and storage of the documents for a period of 25 years, for eventual cataloging and dissemination.

Court order September 17, 2008: Allocation of $1,000,000 to Yad Vashem towards the continuation of activities regarding names of Holocaust victims in records other than those in the collections of the International Tracing Service, including identification of lists, scanning, mass data entry of names, and development and maintenance of the online Central Database of Shoah Victims' Names.

Court order February 28, 2009: Allocation of $1,000,000 to Yad Vashem towards the continuation of activities regarding names of Holocaust victims in records other than those in the collections of the International Tracing Service, including identification of lists, scanning, mass data entry of names, and development and maintenance of the online Central Database of Shoah Victims' Names.

Court order October 27, 2009: Allocation of $242,363 to the USHMM towards the microfilming of historical-archival name collections held by the Joint Archives Jerusalem resulting from the activities of the American Jewish Joint Distribution Committee (JDC) throughout the world during the Holocaust and its aftermath.

Court order January 30, 2010: Allocation of $493,561 to the USHMM to bring to conclusion the effort to identify, catalogue and digitize name-based information about victims of the Nazis and their allies who were Roma, Jehovah's Witnesses, homosexuals, or mentally or physically disabled, as well as to continue the effort to identify and catalogue Jewish name list material within the Museum's archival holdings.

Court order May 13, 2010: Allocation of $700,000 to Yad Vashem towards the continuation of activities regarding names of Holocaust victims in records other than those in the collections of the International Tracing Service, including identification of lists, scanning, mass data entry of names, and development and maintenance of the online Central Database of Shoah Victims' Names.

Court order June 13, 2011: Allocation of $181,393 to the USHMM in support of the transfer of the CRT claims documentation held in Zurich, Switzerland to the USHMM and the storage of the CRT claims documentation, for eventual cataloging and dissemination.

Court order April 24, 2012: Establishment of access rules for the IOM claim files, Initial Questionnaires and CRT claim documentation that were transferred to the USHMM.

Court order May 13, 2013: Allocation of $3,600,000 to Yad Vashem for the completion of review of the archival sources to identify the name of the approximately six million Jewish men, women, and children who perished in the Holocaust. Allocation of $650,000 to the USHMM for work to be done in cooperation with Yad Vashem to identify, copy, and acquire name-based and related documentation concerning those who survived in the Soviet evacuation. Allocation of $250,000 to the Claims Conference to be used in cooperation with Yad Vashem and the USHMM toward the cost of scanning and digitizing of the card catalog of the Tracing and Information Center of the Russian Red Cross.

Court order January 14, 2014: Allocation of $28,000 to pay for the transfer of the paper (analog) CRT-II bank records to the Swiss Federal Archives in Bern and the preparation of the paper (analog) CRT-II bank records by the Swiss Federal Archives for longtime archiving, cataloging and dissemination.

Court order August 25, 2015: Due to issues relating to the Russian Red Cross' Tracing and Information Center, the scanning and digitization project anticipated in the May 13, 2013 order could not be effectuated; accordingly, the Court authorized the $250,000 allocated to that project instead to be transferred to Yad Vashem to support name indexing on the Soviet evacuation.

ADMINISTRATION OF THE SWISS BANKS SETTLEMENT FUND

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ADMINISTRATION OF THE SWISS BANKS SETTLEMENT FUND

This chapter reviews some of the key factors impacting the establishment and administration of the Swiss Banks Holocaust Settlement claims programs. The Swiss Banks Settlement Fund achieved historic results. By emphasizing the restitution of property and the compensation of individual Holocaust victims, nearly $1.285 billion – a sum greater than the $1.25 billion settlement amount – was returned to more than 458,400 survivors and heirs.

For some perspective, it is useful to compare the Swiss Banks Settlement with other large-scale compensation programs: the International Commission on Holocaust-Era Insurance Claims ("ICHEIC"); the September 11 Fund ("9/11"); and the Agent Orange Settlement Fund. The Swiss Banks Settlement program was subject to a variety of administrative complexities not attendant to the ICHEIC, 9/11 and Agent Orange programs. Nevertheless, administrative expenses for the Swiss Banks Settlement distribution process, which were issued upon review and pursuant to order of the Court, were on par with, and in some instances below, those of the other programs. The costs of administration of the Swiss Banks Settlement Fund as a percentage of the total fund were lower than those for ICHEIC and Agent Orange. In addition, the processing costs per Swiss Banks Settlement claim paid and claim received were significantly lower than those for the 9/11 Fund, lower than for ICHEIC, and not substantially higher than those for Agent Orange, a program that had operated many years before the Swiss Banks program.

I. OVERVIEW: THE CLAIMS PROCESSES ESTABLISHED UNDER THE SWISS BANKS SETTLEMENT FUND

The Settlement Agreement negotiated by settling plaintiffs and defendants created five classes of claimants: the "Deposited Assets Class," the "Looted Assets Class," "Slave Labor Class I," "Slave Labor Class II" and the "Refugee Class." The Settlement Agreement later was amended to include a separate program for claims arising from certain Swiss insurance policies.

With the exception of "Slave Labor Class II," a class member was required to be a "Victim or Target of Nazi Persecution," defined as "any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped."

The Special Master was charged with filing a Proposed Plan of Allocation and Distribution of Settlement Proceeds, and did so on September 11, 2000, a few weeks after the Court granted final approval of the Settlement Agreement. Following a public hearing, the Proposed Plan of Allocation and Distribution of Settlement Proceeds (the "Distribution Plan") was adopted in its entirety on November 22, 2000. To briefly recap the key elements of the Distribution Plan:

- **Deposited Assets Class:** The Distribution Plan allocated up to $800 million to repay the claims of those who owned bank accounts and other assets deposited in Swiss financial institutions. The allocation of two-thirds of the Settlement Fund to these claims was based upon the priority accorded to the bank accounts under the Settlement Agreement and under fundamental principles of U.S. law, which recognized the unpaid accounts as basic contractual obligations owed by the banks to their depositors. The allocation of up to $800 million also was premised upon the findings of an audit of Holocaust-era Swiss bank accounts, led by former U.S. Federal Reserve Board Chairman Paul A. Volcker ("Volcker Committee"). The Distribution Plan provided for Deposited Assets claims to be administered on the Court's behalf by the Claims Resolution Tribunal in Zurich ("CRT-II"), which already had been processing claims against Swiss bank accounts under a separate claims process pre-dating the Settlement, and which was required to be located in Switzerland due to banking secrecy laws prohibiting bank records from leaving Switzerland.
- **Slave Labor Class I:** The Distribution Plan provided for payments to surviving slave laborers, or to their heirs if the former slave laborer died on or after February 16, 1999. In the interest of efficiency and to minimize survivor confusion, the Distribution Plan provided for the same administrative agencies, processing mechanisms and deadlines utilized by the German Foundation "Remembrance, Responsibility and the Future" ("German Foundation"), a $5.2 billion foundation created on July 17, 2000, partly in response to class action slave labor claims filed against German companies in the United States. The German Foundation designated the Conference on Jewish Material Claims Against Germany, Inc. ("Claims Conference") and the International Organization for Migration ("IOM") as administrative agents to process the claims of, respectively, Jewish and non-Jewish

former slave laborers. The two organizations were appointed by the Court to perform the same functions on behalf of Slave Labor Class I of the Swiss Banks Settlement.

- **Slave Labor Class II:** The Distribution Plan provided for payments to former slave laborers for Swiss entities, or the heirs of those slave laborers who died on or after February 16, 1999. As noted above, under the terms of the Settlement Agreement, this class was not limited to the five "victim or target" groups specified in the settlement but was instead open to all Nazi victims. All Slave Labor Class II claims were processed by the IOM.

- **Refugee Class:** Surviving refugees, or the heirs of refugees who died on or after February 16, 1999, were eligible for compensation if they were denied entry into or expelled from Switzerland, or were admitted but mistreated. The Distribution Plan designated the Claims Conference to process the claims of Jewish claimants, and the IOM to process the claims of Roma, Jehovah's Witness, homosexual and disabled claimants.

- **Looted Assets Class:** The Looted Assets Class potentially included millions of people, since all Holocaust victims and their heirs had been looted. The vast size of the class, coupled with the impossibility of determining whether specific property was transacted through a Swiss entity, rendered an individualized claims process impractical. The Distribution Plan provided instead that the neediest class members were to benefit from a *cy pres* remedy — "the next best thing" — through humanitarian aid programs distributing food, medicine, shelter, emergency grants and similar assistance. The program augmented already-existing assistance programs for Jewish survivors overseen by the American Jewish Joint Distribution Committee ("JDC") and Claims Conference, while creating new programs for Roma and other non-Jewish class members to be implemented and monitored by the IOM.

- **Insurance Claims:** Separately from the Distribution Plan, plaintiffs and defendants established a claims resolution mechanism for certain Holocaust-era insurance policies, a program administered by CRT-II, but directed in considerable measure by specific Swiss insurance companies that agreed to participate in the Settlement.

- **Victim List Project**: On behalf of all class members, the Distribution Plan provided for the creation of a $14.5 million project to memorialize all Victims or Targets of Nazi Persecution, those who survived and those who perished. The project funded new research, primarily by Yad Vashem and the United States Holocaust Memorial Museum, to collect and digitize the names of millions of Holocaust victims whose identities had not previously been known.

II. UNIQUE ATTRIBUTES OF THE SWISS BANKS DISTRIBUTION PROCESS IMPACTING ADMINISTRATION

The Swiss Banks Settlement Fund was affected by a number of unique circumstances rendering the establishment and administration of the claims process complex: the legal requirements necessitated by the Settlement Agreement and U.S. class action law; the obligation to design and administer compensation programs for six different classes and five separate victim groups; and the constraints imposed by the need to operate the Deposited Assets Class program in Switzerland to access the bank records that still remained, coupled with the difficulties posed by the banks' destruction of millions of relevant documents.

A. Legal Parameters: Requirements Imposed by the Settlement Agreement and Class Action Law

1. Global Scope and Participation:

The Swiss Banks Settlement was global, impacting Holocaust victims and heirs (and interested third parties) all over the world. The Notice Plan was implemented immediately after the Settlement was announced, and some elements of it continued for several years after the claims processes were under way, as new information needed to be disseminated to class members.

No lists of class members were available for a simple direct mail notice program. Instead, the notice program required the coordination of several different components including direct mail, worldwide publication, public relations, the internet, and grass roots community outreach. Information about the Settlement was translated into 26 different languages; subsequently, the claims programs utilized five to seven languages.

Due to class action requirements as well as the decision of the Court and Special Masters to solicit the views of class members and other interested parties, Holocaust victims and their advocates, as well as other observers worldwide, were invited to provide their detailed opinions on the initial distribution, and the uses of possible residual funds. Hundreds of proposals were submitted and analyzed, impacting the Special Masters' recommendations and the Court's

decisions. In addition, more than 600,000 individuals returned "Initial Questionnaires" to the Court, detailing personal information about their lives before, during and after the Holocaust.

Assessing the scope of the notice program, the Court found that it had been "the most comprehensive, effective and successful in the history of class action litigation."[1]

2. Multiple Victim Groups:

The Swiss Banks Settlement Agreement specified five "victim or target" groups: Jewish, Roma, Jehovah's Witness, homosexual and disabled. Each victim group was represented by one or more advocates who monitored carefully the development and implementation of the Distribution Plan. Each group required unique methods of communication and claims processing programs.

With respect to Roma class members, this victim group posed unprecedented challenges. Early estimates indicated that about 15,000 Roma victims of the Nazis would participate in the Settlement Fund. However, as a result of extensive outreach efforts supported by the Court, over 71,000 Roma victims ultimately were eligible for and benefitted from the Settlement. The majority of Roma victims were illiterate, lived in remote towns unreachable except by personal visits through claims administrators, were deeply suspicious of non-Roma as well as Roma from other villages/regions, and were unfamiliar with Holocaust-related claims processes. Further, internal disputes among numerous Roma leaders in different communities required the claims administrators to invest in extensive on-site outreach and monitoring. Nevertheless, with considerable effort, the American judicial system was able to locate and assist a group of elderly and generally impoverished victims who for the most part had not been recognized under previous compensation programs.

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[1] *In re Holocaust Victim Assets Litig*., 2014 WL 2440612, at *4 (E.D.N.Y. 2014), citing Report of Notice Administrator Todd B. Hilsee ¶ 3, 96-cv-4849, ECF No. 355. The Court further observed that "even one of the unsuccessful objectors [to certain aspects of the distribution process] acknowledged that '[t]the notification process in this case was hailed as the most ambitious effort ever to notify beneficiaries of a legal settlement.' *In re Holocaust Victim Assets Litig*., 314 F. Supp. 2d 155, 158 (E.D.N.Y. 2004) (quotation marks omitted)." 2014 WL 2440612, at *5.

3. Multiple Classes Requiring Multiple Claims Programs:

The Swiss Banks Settlement Agreement required the Court to administer programs on behalf of five distinct classes: the Deposited Assets Class, Slave Labor Class I, Slave Labor Class II, the Refugee Class and the Looted Assets Class. An additional claims program for an Insurance Class was later added following negotiations between counsel for Settling Plaintiffs and counsel for Settling Defendants (UBS and Credit Suisse), resulting in six different types of claims.

Each class and victim group required separate analysis and design of a distinct claims program. The Court and its agents were required to study the legal and historical connection between victims and Switzerland (*see* the two-volume, 900-page Special Masters' Proposed Plan of Allocation and Distribution of Settlement Proceeds, adopted in its entirety by the Court); designate separate administrative agencies and create distinct claims processes; and train and supervise separate staffs for claims analysis and appellate review. Although efforts were made to conserve resources by using the same claims agencies for some of the different class programs, the varying types of wrongdoing and injuries contemplated under the different classes resulted in few synergies among the different programs. Moreover, there was little if any overlap among claim forms, measures of proof, historical documentation, and other elements of claims processing.[2]

Because of these differences between classes and class members, it was necessary for the Court to appoint four agencies to oversee the various claims programs: the Claims Resolution Tribunal (CRT-II), which under Swiss law was required to operate in Switzerland in order to access Holocaust-era Swiss bank records, as assisted with administrative responsibilities by the New York-based Swiss Deposited Assets Claims Program (SDAP); the American Jewish Joint Distribution Committee (JDC); the Conference on Jewish Material Claims Against Germany (Claims Conference); and the International Organization for Migration (IOM).

[2] Copies of the different claimant application materials are annexed as an Exhibit to this Final Report.

4. Judicial Review:

In contrast to most Holocaust-related compensation programs, the Swiss Banks claims process operated under the auspices of the United States court system and was subject to judicial review and appeal. Some 23 significant matters were litigated even after the Settlement Agreement was signed, in proceedings before the District Court, the Court of Appeals, and the United States Supreme Court. In addition, one or more challenges to the District Court's rulings were filed on behalf of nearly all of the "victim" groups (sometimes on several different occasions), focusing upon various elements of the settlement and/or distribution process. All of these proceedings (and others not reflected in reported decisions) arose after the lawsuits had settled. These included:

1. *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000) (the District Court issued a comprehensive opinion describing the Swiss banks litigation and upholding the fairness of the $1.25 billion settlement);

2. *In re Holocaust Victim Assets Litig.*, 2000 U.S. Dist. LEXIS 15644 (E.D.N.Y. Aug. 9, 2000) (the District Court approved amendments to the Settlement Agreement involving access to claims data and establishment of an insurance claims program);

3. *In re Holocaust Victim Assets Litig.*, 225 F.3d 191 (2d Cir. 2000) (the United States Court of Appeals for the Second Circuit upheld the definition of the plaintiff-class in the Settlement Agreement to exclude Polish and other non-Jewish forced laborers);

4. *In re Holocaust Victim Assets Litig.*, 2000 U.S.App.LEXIS 29529 (2d Cir. Nov. 20, 2000) (the Court of Appeals dismissed an appeal challenging the validity of class certification; the appeal was reinstated and eventually withdrawn with prejudice on June 15, 2001);

5. *In re Holocaust Victim Assets Litig.*, 2000 WL 33241660 (E.D.N.Y. Nov. 22, 2000) (the District Court approved the Special Masters' Proposed Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"));

6. *In re Holocaust Victim Assets Litig.*, 14 F. App'x. 132 (2d Cir. 2001), *redesignated as an opinion*, 413 F.3d 183 (2d Cir. 2005) (the Court of Appeals upheld the District Court's approval of the Distribution Plan);

7. *In re Holocaust Victim Assets Litig.*, 2001 WL 419967 (E.D.N.Y. Apr. 4, 2001), vacated in part by 282 F.3d 103 (2d Cir. 2002) (the Court of Appeals upheld the District Court's "self-identification" requirement directed at Swiss companies that used Holocaust-era slave labor, while vacating aspects of the definition of the Slave Labor II class, and remanding for determination of the parties' intentions; the proceeding was resolved following extensive negotiation by stipulation);

8. *In re Holocaust Victim Assets Litig.*, 256 F. Supp. 2d 150 (E.D.N.Y. 2003) (the District Court required the Swiss banks to pay $5 million in compound interest on escrow funds);

9. *In re Holocaust Victim Assets Litig.*, 2003 U.S. Dist. LEXIS 20686 (E.D.N.Y. Nov. 17, 2003) (the District Court adopted the Special Masters' Interim Report on Allocation and Distribution);

10. *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 59, *amended and superseded by* 319 F. Supp. 2d 301 (E.D.N.Y. 2004) (the District Court rejected the banks' opposition to the Special Masters' Interim Report and discussed at length the banks' misconduct during and after the Holocaust);

11. *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89 (E.D.N.Y. 2004) (the District Court rejected certain objections to the Special Masters' Interim Report challenging the *cy pres* allocation formula and reiterated that distributions to the elderly, impoverished Nazi victims under the mechanism established under the Looted Assets Class were to be based on survivors' needs, not their geography);

12. *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 407 (E.D.N.Y. 2004) (the District Court denied proposals from certain organizations seeking the allocation of funds for projects of remembrance and education regarding, respectively, homosexual and disabled Nazi victims);

13. *In re Holocaust Victim Assets Litig.*, 314 F. Supp. 2d 155 (E.D.N.Y. 2004) (the District Court denied a motion for reconsideration);

14. *In re Holocaust Victim Assets Litig.*, 314 F. Supp. 2d 169 (E.D.N.Y. 2004) (the District Court responded to an expert's report on survivor demographics filed on behalf of certain survivors);

15. *In re Holocaust Victim Assets Litig. (HSF-USA)*, 424 F.3d 132 (2d Cir. 2005), *cert. denied, Holocaust Survivors Foundation USA, Inc. v. Union Bank of Switzerland*, 547 U.S. 1206 (2006) (the Court of Appeals rejected challenges to the structure of the settlement, and to the *cy pres* allocation and distribution plan; the United States Supreme Court denied *certiorari*);

16. *In re Holocaust Victim Assets Litig. (Disability Rights Org.)*, 424 F.3d 158 (2d Cir. 2005) (the Court of Appeals rejected the challenge to the *cy pres* allocation and distribution plan brought by an organization seeking funding of programs of remembrance and education on behalf of disabled Nazi victims);

17. *In re Holocaust Victim Assets Litig. (Pink Triangle)*, 424 F.3d 169 (2d Cir. 2005) (the Court of Appeals rejected the challenge to the *cy pres* allocation and distribution plan brought by an organization seeking funding of programs of remembrance and education on behalf of homosexual Nazi victims).

18. *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010) (for certain types of bank accounts, the District Court increased presumptive values, used in place of actual values where the banks had destroyed valuation data; the Court also increased payments for awards based upon testimonial and other evidence where bank records had been destroyed ("Plausible Undocumented Awards"));

19. *In re Holocaust Victim Assets Litig.*, 2013 WL 2152667 (E.D.N.Y. May 13, 2013) (the District Court allocated $50 million in residual funds to needy victims using the same *cy pres* mechanisms set forth under the Distribution Plan);

20. *In re Holocaust Victim Assets Litig.*, 2013 WL 2153101 (E.D.N.Y. May 13, 2013) (the District Court allocated $4.5 million in remaining residual funds to the Victim List Project, paralleling prior 45% increases to other class members);

21. *In re Holocaust Victim Assets Litig.*, 2014 WL 2171144 (E.D.N.Y. May 23, 2014) (the District Court rejected certain objections to the JDC as the administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in the Former Soviet Union);

22. *In re Holocaust Victim Assets Litig.*, 2014 WL 2547582 (E.D.N.Y. May 30, 2014) (the District Court rejected certain objections to the Claims Conference as the administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in Israel, the United States and other parts of the world); and

23. *In re Holocaust Victim Assets Litig.*, 2014 WL 2440612 (E.D.N.Y. May 30, 2014) (the District Court rejected the motion by a California resident seeking to intervene).

B. Administrative Complexities Presented by Specific Settlement Classes

1. Deposited Assets Class

To equitably administer the Swiss Banks Settlement and to comply with U.S. legal principles — by accessing the bank records that were at the core of the claims — it was necessary to establish an administrative entity that, under Swiss law, was required to operate primarily in Switzerland, where costs were considerably higher than in the United States.[3] That entity, the Claims Resolution Tribunal (CRT-II), at its height employed nearly 100 attorneys and other staff members in Zurich, and over the years of its operation employed approximately 280 staff members in total. CRT-II was charged with analyzing more than 104,000 claims to over 415,000 potential account owners; matching these claims to over 37,000 documented account owners; analyzing the validity of over 1.5 million matches[4]; assessing issues of ownership, entitlement, and valuation for accounts of considerable value (with awards for accounts for which documentation existed averaging $184,130); writing detailed decisions to preserve the historical record; establishing and carrying out an appeals process; analyzing each of the 104,000 claims to determine if an award was warranted for a "Plausible Undocumented" claim where bank records for the account had been destroyed (with awards for such claims paid at $7,250 each); and communicating in multiple languages with, and where appropriate arranging payment to, tens of thousands of individuals around the world. This process was complex and time-consuming. As the widely-read Israeli newspaper *Haaretz* has noted in connection with a property restitution program arising from Holocaust-era assets held by Israeli institutions:

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[3] *See, e.g., Economist Intelligence Unit: World Cost of Living 2004*, FINFACTS IR. BUS. & FIN. PORTAL, http://finfacts.com/costofliving4.htm (last visited Nov. 7, 2014) (according to the "World Cost of Living 2004" survey, Zurich was the fourth most expensive place to live in the world in 2003, and the sixth most expensive in 2004, as compared to New York, which ranked as the 27th most expensive place to live during approximately the same period; the CRT had dozens of staff members working and living in Switzerland during that time frame); *Daily Chart: Zurich*, ECONOMIST, http://www.economist.com/blogs/graphicdetail/2012/02/daily-chart-7/print (last visited Nov. 11, 2014) (reporting on February 13, 2012 that "Zurich has become the world's most expensive city to live in" whereas "since 2001 … New York has fallen from 7th to joint 47th").

[4] "Matching" was the process of comparing computer databases of names of victims and/or claimants with names of bank account owners using algorithms to identify exact name matches, near-exact name matches, and name matches with confirming factors under procedures used in the Volcker Committee investigation and under the claims processing system used by the CRT. *See* http://www.swissbankclaims.com/Glossary.aspx ("Glossary").

"Locating assets owners lost 60 years ago and returning them to their heirs is difficult and complicated work that requires an appropriate budget."[5]

This task was made more "difficult and complicated"[6] because millions of account records had been deliberately destroyed by the banks. Countless other files were unavailable to the claims process, or available only with restricted access. Faced with a lack of documentation in many cases, or only a fragmentary record in others, as well as the passage of several decades, the CRT spent considerable effort tracking down information from wherever it was available: the defendant Swiss banks (when they agreed to cooperate); European archives; and claimants. In some instances, the resulting documentation was extensive, with thousands of pages requiring painstaking analysis.

The CRT's work could have been completed more quickly, and thus would have been somewhat less complex, if the process was limited to searching only for the person identified in a formal claim form as the possible account owner. However, after a 60-year hiatus and a determined effort on the part of Swiss banking authorities to restrict access to accounts, the Court concluded that claimants would be best served if the CRT reviewed not only the specific account(s) that the individual may have claimed, but other accounts potentially owned, even if not specifically claimed. This resulted in the analysis of some 415,000 potential account owner names. The Court also authorized approximately 63,000 "informal" claim forms — Initial Questionnaires ("IQs") — to be analyzed, in addition to the approximately 41,000 "formal" claim forms received, even though the information in the IQs was often incomplete and required more follow-up with potential claimants.

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5 *Symbolism isn't enough*, HAARETZ, Dec. 20, 2005, http://www.haaretz.com/print-edition/opinion/symbolism-isn-t-enough-1.177091.

6 *Id.*

Other difficulties presented by administration of this class have been well documented.[7] Because of the legal strength of the bank account claims, the notice requirements of class action law, the complexities posed by decades of obstruction by Swiss banks, and the improbability of future claims due to the class action settlement, the publication of account owner names, and access to all existing account records, was paramount. Nevertheless, the CRT and the Court were hindered by continuing access restrictions imposed by Swiss banks and banking authorities. Among these restrictions were:

- the failure of Swiss banking authorities to comply with the recommendation of the audit committee led by former U.S. Federal Reserve Board Chairman Paul Volcker to create a centralized database ("Total Accounts Database") of all 4.1 million Holocaust-era accounts for which records still existed (of approximately 6.8 million for which records once existed, but which Swiss banks subsequently destroyed);

- the publication of only 21,000 account owner names originally (in February 2001), augmented only after litigation by the publication of an additional approximately 3,000 names (in January 2005);

- the restrictions upon the ability of the Court and CRT to review auditor and banking records even for those 36,000 accounts to which the CRT was provided access (the "Account History Database"). Swiss banking authorities required the Settlement Fund to employ a "Data Librarian" who reviewed and redacted information from each bank record before it was provided to the CRT for analysis; and

- the failure, for several years, of one of the two defendant banks to cooperate with the CRT's requests for "voluntary" assistance (*i.e.* requests to produce bank records underlying the data provided by the Volcker Committee auditors at the outset of the claims process, an obligation set forth clearly by the Court as a condition to approval of the settlement).

The "voluntary assistance" issue provides an example of the difficulties posed by the lack of full and early access to important documentation. One of the defendant banks offered fairly regular assistance. The other ultimately provided some of the requested additional information,

[7] *See, e.g.*, Court's opinion of July 26, 2000 (analyzing fairness of the settlement); Special Masters' Interim Report of Oct. 2, 2003; Court's Feb. 19, 2004 opinion (discussing behavior of Swiss Banks during and after the Holocaust).

but relatively late in the claims process.[8] The supplemental information ended up being highly significant for several reasons. It enabled the CRT to identify a number of bank account owners more accurately, leading either to a conclusive positive identification resulting in an award, or a "match disconfirmation" resulting in a claim denial. The examination of these additional records also led to the discovery of more accounts that could be awarded; improved the assessment of the value of securities held in custody accounts; and, crucially, contributed materially to the reconsideration and upward adjustment of many of the awards that had been made at the "presumptive" (average) values that had been established by the Volcker Committee auditors before the claims process was under way — amounts that stood in for the missing bank records that would have shown actual values.[9] As a result, the Court was able to authorize additional awards and improve the valuation base for Deposited Assets Class payments.

Financial journalist John Authers, who followed the Swiss Banks Settlement closely, believed that the bank account claims process was the most important legacy of the Settlement (as had been intended) largely because it sought to address individual injustices:

> Rather than use the Swiss pay-out for a big charitable gesture, the US legal system had pulled the settlement towards a different version of justice. Banks could make good on their faults, and the often long-deceased owners of their accounts could receive the dignity they deserved, only if the court made every last attempt to make sure every surviving claimant received exactly their due. That meant more delays and more frustration, but it was the closest to "justice" that the Holocaust's victims were likely to get.[10]

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8 *See* Memorandum & Order Approving Set 168: 10 Award Amendments Certified by the Claims Resolution Tribunal Pursuant to Article 31(2) of the Rules Governing the Claims Resolution Process and Authorizing Payment from the Settlement Fund 1-3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. June 30, 2008) (footnote omitted).

9 *See In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010).

10 John Authers, *The Road to Restitution*, FIN. TIMES WEEKEND, Aug. 16/17, 2008, at 23, 28. Mr. Authers, a Senior Editor at Bloomberg, and formerly Chief Markets Commentator and Associate Editor for the Financial Times, is the co-author of a book detailing the Holocaust compensation movement of the late 1990s. *See* JOHN AUTHERS & RICHARD WOLFFE, THE VICTIM'S FORTUNE: INSIDE THE EPIC BATTLE OVER THE DEBTS OF THE HOLOCAUST (Harper Collins Publishers 2002).

In its effort to "make sure every surviving claimant received exactly their due," the Deposited Assets Class claims program was able to resolve claims, on a highly individualized basis, relating to over 415,000 potential account owners, returning nearly $720 million to Holocaust victims and their heirs.

2. Slave Labor Classes I and II; Refugee Class; Looted Assets Class

The other four settlement classes presented their own administrative complexities. Where possible, the Court sought to minimize the burden that would have been posed by creating a system of complicated individualized claims analysis to determine, for example, the type and duration of confinement (Slave Labor Classes I and II); the effect of expulsion from or mistreatment in Switzerland (Refugee Class); or the value of material losses sustained (Looted Assets Class). For purposes of Slave Labor Class I, moreover, the Court considered it most efficient to adhere to many of the same filing requirements and elements of proof as the German Foundation, which was established to compensate slave labor and other claims at approximately the same time as the Swiss Banks Settlement. The recommendations put forth in the Distribution Plan and adopted by the Court also enabled the Settlement Fund to take advantage of the administrative efficiencies available from utilizing agencies that had been selected by the German Foundation to handle some similar claims, the Claims Conference (for Jewish victims) and the IOM (for Roma, Jehovah's Witness, homosexual and disabled victims). As the United States Court of Appeals for the Second Circuit stated in this case: "The efficacy of having [the same] organization process the claims of individuals entitled to recover from both programs cannot be gainsaid."[11]

Nevertheless, the claims processing programs were complicated by a variety of issues, nearly all arising from the destruction wrought by the Holocaust and the fact that the events from which the claims arose had taken place many decades earlier. These issues included, for example, the lack of detailed information about Swiss refugee policies (Refugee Class) and the number of individuals impacted; the dearth of data about Swiss companies that made use of slave

[11] *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001).

labor (Slave Labor Class II); and the difficulty in many instances of obtaining historical evidence of incarceration in a slave labor camp (whether controlled by Switzerland or Germany), or status as a refugee. All of these difficulties were compounded by restrictions in access to crucial documents held by the International Tracing Service (ITS) administered by the International Committee of the Red Cross and later the German Federal Archives, German and Austrian archives, the Swiss Federal Archives, and other important archives across Europe, particularly those in Central and Eastern Europe.

Additionally, since the German Foundation focused upon claims of slave laborers for German entities, the Court had to establish stand-alone programs for claims unique to the Swiss Banks Settlement; namely, Slave Labor Class II (relating to slave labor for Swiss, rather than German, entities), and the Refugee Class.

* * *

These complex programs required considerable administrative resources. Nevertheless, the programs were managed in such a way as to conserve the negotiated settlement amount (and more) entirely for distributions to class members. The settlement amount was $1.25 billion. By the end of the process, the Settlement Fund totaled nearly $1.510 billion ($1,509,780,276). The additional funds were due primarily to interest income ($248,166,845) as well as a tax refund ($10,521,000), for a total of $258,687,845. The tax refund was the result of discussions among the Court, Special Masters, Settlement Fund accountant and plaintiffs' class counsel, who observed that interest on the $1.25 billion Settlement Fund was subject to taxation, and perhaps so, too, might be distributions to claimants. The matter was brought to the attention of members of the United States Congress, resulting in a provision of the 2001 Economic Growth and Tax Relief Reconciliation Act, Section 803, entitled: "No Federal Income Tax on Restitution Received by Victims of the Nazi Regime or their Heirs or Estates."[12] The law exempted from

[12] *See, e.g.*, Memorandum & Order, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Sept. 25, 2002); *see also In re Holocaust Victim Assets Litig.*, 270 F. Supp. 2d 313, 325 (E.D.N.Y. 2002) ("After Special Master Judah Gribetz called attention to the diminution of the Settlement Fund by taxes on earned interest as well as the taxation of benefits awarded to the members of the classes," a successful effort was made "to persuade Congress to adopt legislation exempting from taxation interest earned by the Settlement Fund and payments to its beneficiaries").

taxation the interest earned on the Swiss Banks Settlement Fund, the fund established under ICHEIC, and similar Holocaust compensation funds.

In addition to refunding the taxes that already had been paid on interest earned, Section 803 of the tax law — initiated largely by those involved with creating and overseeing the Swiss Banks Settlement Fund — resulted in overall savings to the Settlement Fund of approximately $25 million in taxes, the sum that would have been due had the exemption not been enacted.[13] These savings were passed along to class members as distributions from the fund. The law also exempted from taxation the individual distributions that were made from the Swiss Banks Settlement and other Holocaust compensation funds, benefiting many thousands of U.S. citizens by ensuring that such payments were not reportable as taxable income.

In addition to these tax benefits, the Settlement Fund also received additional income. This included $486,995 from Swiss Re and $223,874.47 from Swiss Life, for a total of $710,869, as their contributions toward payments under the Insurance Class process. Further, the Settlement Fund received $381,562 in unspent funds previously held in the Holocaust Victim Assets Litigation Settlement Account established on behalf of the Volcker Committee.

The complex program requiring the creation and administration of six different categories of claims (for Deposited Assets; Insurance; Slave Labor I; Slave Labor II; Looted Assets; and Refugees), and five different victim groups (Jewish, Roma, Jehovah's Witness, homosexual and disabled Nazi victims, and, for Slave Labor Class II, all Nazi victims), incurred administrative expenses of $171,212,554. All administrative expenses were reviewed, authorized and docketed by the Court, and were covered entirely by interest earned on the Settlement Fund. Accordingly, the Court was able to distribute nearly $1.285 million – more than the $1.25 billion principal – to over 458,436 Holocaust victims and heirs.[14]

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[13] *See, e.g., In re Holocaust Victim Assets Litig.*, 528 F. Supp. 2d 109, 112 (E.D.N.Y. 2007) (Block, J.) (noting that the "Congressional legislation making the settlement fund tax exempt" resulted in a "potential savings of 25 million dollars").

[14] A total of $1,284,928,006 was distributed to Holocaust victims and heirs. However, administrative expenses were incurred in connection with the processing of *all* claims, including claims that could not be approved. Administrative efforts also were expended for claims that were determined to be valid, but for which payments could not be distributed. The total value of claims approved was $1,298,643,604. Not all of these funds could reach the claimants for a variety of reasons, primarily because some approved claimants and/or heirs could not be located despite the best efforts to obtain contact information. In other instances, approved claimants refused

The process for returning Swiss bank accounts to the Holocaust victims and heirs from whom they had been taken 60 to 70 years earlier constituted the most significant component of these administrative expenses. Of the approximately $171.2 million required to administer the various claims programs under the Settlement Fund, approximately $147.6 million was attributable to the operating expenses for the Court's four administrative agencies (the CRT; JDC, Claims Conference and IOM). Of this $147.6 million, approximately $108.2 million – 73% – was related to the bank account claims process undertaken in Zurich by the CRT, assisted in New York by the Swiss Deposited Assets Program.

Administrative expenses also included professional fees, primarily for the services provided by the various legal and accounting firms at which the Court-appointed Special Masters (including the CRT Special Masters), and the Settlement Fund accountant, were employed. These various professional services were discounted at amounts at, or lower than, the sums specified under the Court's various orders of appointment, and in some instances were provided *pro bono*. The total professional fees approved by the Court, along with certain related expenses associated with oversight of the distribution process, constituted approximately $23.6 million of the $171.2 million cost of administration. These professional fees represented less than 1.6% of the total Settlement Fund of nearly $1.510 billion.[15]

The Settlement Fund also was required to expend $37.6 million in fees for notice to the class, as required by United States class action law. Because there was "no list of all the

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to complete the necessary paperwork required to transmit the award, or refused to accept payment. Thus, of the approximately 1.299 billion approved, approximately $1.285 billion was distributed. All sums approved but not paid were returned to the Settlement for reallocation to other class members.

[15] Included within these professional fees are those for law firms at which Special Master Judah Gribetz and Deputy Special Master Shari Reig were employed during and after Special Master Gribetz's March 31, 1999 appointment by the Court: Richards & O'Neil and Bingham McCutchen. Although the March 31, 1999 order of appointment specified that the Special Masters' fees were to be discounted by 20%, these law firms applied a significantly greater discount of nearly 62% for the Special Masters' services as well as those of other personnel at the law firm involved with this matter, at a blended hourly rate of $260. Furthermore, for the last several years, throughout the entirety of the period during which the Special Masters have been employed by a third law firm, Morgan Lewis & Bockius, LLP, during which time the preparation of the Final Report continued and the wind-down of the various distribution processes has proceeded, all work on this matter has been performed entirely on a pro bono basis. Over the nearly 20 years since the Special Masters' appointment, responsible for overseeing all facets of the distribution process, these services have constituted less than 1% (0.84%) of the total Settlement Fund of nearly $1.510 billion.

members of the settlement classes that would have permitted the notice administrators to send notice exclusively by direct mail to all settlement class members," the Court "directed settlement class counsel, through four notice administrators, to implement [a] multi-faceted notice plan, involving, in addition to direct mail utilizing existing lists covering segments of the settlement classes [ultimately providing some 1.4 million notice packages to people in 48 different countries], worldwide publication, public relations (*i.e.*, 'earned media'), internet and grass roots community outreach."[16] Notice expenses also included global outreach programs by the claims administrators; preparation of the Proposed Plan of Allocation and Distribution of Settlement; compilation of bank accounts for publication; and operation of call centers.

Finally, Plaintiffs' class counsel received $11,728,215, constituting less than 1% of both the $1.25 billion Settlement Fund that they had negotiated (0.94%) and the nearly $1.510 billion total fund (including interest and additional amounts, as described earlier) (0.78%). These legal fees were based primarily upon the attorneys' respective roles in litigating the claims and negotiating the settlement, activities which took place prior to the creation and distribution of the Settlement Fund. These amounts are substantially lower than those incurred in the typical class action. For example, in *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720 (JG) (JO) (E.D.N.Y.), law school professor and expert on attorneys' fees Charles Silver advised the District Court that in contingency cases, "sophisticated clients use the percentage approach" and "commonly pay 20 percent of recovered amounts or more." As to class action cases, in a table provided to the District Court for the Eastern District of New York, Professor Silver listed 66 class action cases "with recoveries of at least $100 million and fee awards equal to or greater than 20 percent." In the largest class action case in his chart, the recovery was $1.060 billion and the attorneys' fees awarded were 31.33 % of that sum; the next largest case ($956 million recovery) resulted in an attorneys' fee award of 20%, and the third largest case ($697 million) resulted in an attorneys' fee award of 25%. In one instance, attorney's fees of 40% of the recovery were awarded.[17]

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[16] *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 144 (E.D.N.Y. 2000).

[17] *See* April 10, 2013 Declaration of Professor Charles Silver Concerning the Reasonableness of Class Counsel's Request for an Award of Attorneys' Fees, at 18 and at 13-16. Similarly, the NYU Center for Law, Economics and Organization studied attorneys' fees in 458 class action settlements reported between 2009-2013. The

Had the typical sum been paid to class action attorneys in this case, that amount would have ranged from approximately $250 million (20%) to over $412 million (33%) of the $1.25 billion Settlement Fund negotiated by the parties. Here, however, plaintiffs' attorneys and the Court all agreed that payments should be limited, in recognition of the unique nature of this matter. Therefore, the *savings* in attorneys' fees, alone, covered all administrative expenses required to litigate, settle, provide notice of, create, and manage, this complex and historically unprecedented global agreement and all of the various claims processes for the several different classes.

Furthermore, as noted previously, the active involvement of the Court and its representatives resulted in the passage of tax legislation in the U.S. benefitting both the Settlement Fund itself (thus resulting in the ability to distribute some $25 million in additional payments to Holocaust victims, due to these tax savings), and thousands of individual recipients of distributions (who, as U.S. citizens, did not have to pay taxes on payments they received from the Settlement Fund).

III. SWISS BANKS SETTLEMENT FUND ADMINISTRATION: A COMPARISON WITH ICHEIC, THE SEPTEMBER 11TH FUND AND THE AGENT ORANGE SETTLEMENT

The September 11th Fund, Agent Orange and ICHEIC distribution processes all involved large-scale programs intended to compensate individuals from funds created in response to mass claims, and in that respect they bear some similarity to the Swiss Banks Settlement program.

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authors were updating their earlier analysis, in which they had determined that attorneys' fees in class action settlements during the period 1993-2008 had averaged 23% of the total recovery. Theodore Eisenberg, Geoffrey P. Miller, & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. REV. 937, 947 (Oct. 2017), http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-92-4-EisenbergMillerGermano.pdf). Since that period, the average attorneys' fees award has increased. The "average fee percentage" during the period 2009-2013 was "between 25% and 30% of the gross recovery." In cases with recoveries of more than $100 million, the recovery ranged from "a low of 16.6% in 2009 to a high of 25.5% in 2011." *Id.* In the Second Circuit, specifically, during the period 1993-2008, attorneys' fees were 28% (mean) or 30% (median) of the total recovery. *Id.*, at 950.

The September 11th Fund, established for victims or relatives of those killed or injured in the 9/11 terrorist attacks on the U.S., was created by an act of the United States Congress. The Agent Orange fund was established in settlement of class action claims brought in the U.S. by service members and their families who alleged that they had been harmed during the Vietnam War by exposure to the herbicide Agent Orange. The ICHEIC program created a claims process for unpaid Holocaust-era insurance policies, following a 1998 agreement among European insurance companies and U.S. insurance regulators, representatives of international Jewish and survivor organizations, and the State of Israel.

The Swiss Banks Settlement Fund, like the Agent Orange program, arose from class action claims in the U.S., but as discussed above, the Swiss Banks case was subject to a variety of administrative complexities not present either in Agent Orange or in the other two programs. Even with these additional legal and practical requirements, administrative expenses for the Swiss Banks Settlement program did not exceed, and in some instances were considerably below, the expenses incurred by the other programs. Thus, as more fully explained herein, the costs of administration of the Swiss Banks Settlement Fund as a percentage of the total fund (11.3%) were lower than those for ICHEIC (17.4%) and Agent Orange (12.1%).[18]

There has been some discussion about whether administrative expenses are the appropriate measure of performance in connection with charitable enterprises, an area somewhat comparable to these distribution programs. In connection with charitable giving, three major review organizations – Charity Navigator, Guidestar, and the BBB Wise Giving Alliance – issued a joint statement in 2013, "The Overhead Myth." The purpose of the statement was to address a "misperception about what matters when deciding which charity to support."[19] Charity Navigator, Guidestar and the BBB Wise Giving Alliance asked donors to consider factors such as "transparency, governance, leadership, and results;" by contrast, the "percent of charity expenses that go to administrative and fundraising costs – commonly referred to as 'overhead' – is a poor measure of a charity's performance."[20]

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[18] The 9/11 program did not have a cap on the fund.

[19] *See* http://overheadmyth.com/letter-to-the-donors-of-america/.

[20] *Id.*

On the other hand, CharityWatch, another organization in the field of charity evaluation, has pointed out that groups included on its "Top-Rated list generally spend 75% or more of their budgets on programs [*i.e.*, up to 25% on administrative expenses]."[21] *Forbes* evaluates charities based on three "efficiency ratios," including "Charitable Commitment," which "figures out how much of a charity's total expense went directly to the charitable purpose (also known as program support or program expense), as opposed to management, certain overhead expenses and fundraising. The average [in 2016] is 85% [*i.e.*, 15% for administrative expenses] ... Charity watchdogs like the Better Business Bureau Wise Giving Alliance say charitable commitment should be no lower than 65% [*i.e.*, no higher than 35% for administration]. No charity on our list is below 71% [*i.e.*, up to 29% for administration]."[22]

Germany's "leading watchdog for charities,"[23] the *Deutsches Zentralinstitut für soziale Fragen* (DZI) (German Institute for Social Questions), offers its "Seal-of-Approval" to organizations that are, among other things, "careful and responsible in spending donors' money."[24] The DZI notes that administrative expenses that are "too small" are just as problematic as those that are "too big," and categorizes administrative expenses of less than 10% as "low," 10% to under 20% as "appropriate," 20% to 30% as "acceptable," and over 30% as "not acceptable."[25]

Under all of these measures, administrative expenses for the Swiss Banks Settlement Fund program (11.3%) were at the lower end of what would be considered efficient and appropriate.

There is also another perspective by which to measure the efficiency of these programs: the processing costs per claim paid, and claim received. In the Swiss Banks case, it cost $373,

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[21] *See* https://www.charitywatch.org/top-rated-charities.

[22] *See* https://www.forbes.com/sites/williampbarrett/2016/12/14/how-to-evaluate-a-charity-2/#39a7d6e33371.

[23] Associated Press, *UNICEF Germany Loses A Seal of Approval*, Feb. 22, 2008, available at http://www.nbcnews.com/id/23256368/ns/us_news-giving/t/unicef-germany-loses-seal-approval/#.W1EEv9JKgdU.

[24] *See* https://www.dzi.de/spenderberatung/the-seal-of-approval/.

[25] *Werbe- und Verwaltungsausgaben Spenden sammelnder Organisationen*, DZI 1,5 (draft Jan. 2018), https://www.dzi.de/wp-content/uploads/2018/01/DZI-Verwaltungskosten-Entwurf-Januar2018.pdf.

on average, to analyze each of the more than 458,436 victim claims that were paid. In addition, every claim submitted, whether paid or not, had to be examined, and the average cost of reviewing each of the more than 1.1 million claims received was $154. These expenses were significantly lower than those incurred by the 9/11 Fund, which cost $15,629 per claim paid, and $11,738 per claim received. The Swiss Banks Settlement costs per claim also were lower than those for ICHEIC, which cost $1,979 per claim paid, and $1,043 per claim received. The costs per claim for the Swiss Banks Settlement were not substantially greater than those in the Agent Orange case – which averaged $137 per claim paid, and $116 per claim received – even though the Agent Orange program had operated, for the most part, several years earlier, under different global economic conditions, with a narrower scope of claims and claimants.

Each program is reviewed in further detail below.

1. Swiss Banks Settlement Fund

The Swiss Banks Settlement Fund totaled nearly $1.510 billion as a result of principal, interest, repayment under the insurance program, and tax refunds.

In all, 1,112,752 claims were received, and over 458,436 claims were approved. The claims received and approved consisted of the following:

- Deposited Assets Class (claimants provided the names of 415,453 individual Holocaust victims who potentially owned Swiss bank accounts, and each potential account owner required individualized research and analysis to determine if a documented account existed; ultimately 18,096 Holocaust victims or heirs were approved for payment);

- Looted Assets Class (at least 312,245 needy elderly individuals were known to claims administrators, each of whom required individualized research and analysis to determine if he or she was a Nazi victim eligible for programs authorized under the *cy pres* remedy established under the Distribution Plan; at least 237,464 survivors ultimately received Court-funded services);

- Slave Labor Class I (there were 360,150 applicants, of whom 198,023 survivors and certain heirs were compensated);

- Slave Labor Class II (there were 16,474 applicants, of whom 570 survivors and certain heirs were compensated);

- Refugee Class (there were 6,343 applicants, of whom 4,158 survivors and certain heirs were compensated);
- Insurance (there were 2,080 applicants, of whom 118 survivors and certain heirs were compensated); and
- Incentive Awards (payments were made to 7 class members in recognition of their efforts on behalf of the class).

In total, nearly $1.285 billion ($1,284,928,006) — more than the $1.25 billion Settlement Fund — was paid to some 458,436 Holocaust victims and certain heirs.

As discussed above, the distribution of the Settlement Fund incurred administrative expenses of $171,212,554. As a percentage of the total Settlement Fund (almost $1.510 billion), administrative expenses were 11.3%.[26] The cost per claim *approved for payment* was $373, calculated by dividing administrative expenses (approximately $171.2 million) by the number of claims approved for payment (458,436). The cost per claim *received* was $154, calculated by dividing administrative expenses ($171.2 million) by the number of claims received (1,112,752).[27]

The multiple classes and multiple categories of claimants created under the Swiss Banks Settlement Fund were not present in the case of the 9/11 Fund, the Agent Orange Settlement or the ICHEIC program. That fact alone simplified and streamlined the claims processes for the other three programs. In addition, a number of other factors rendered administration of the Swiss Banks Settlement particularly complex as compared with the other programs. These differences are discussed below.

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[26] The Settlement Fund incurred additional administrative costs, relating to its status as a class action, in an amount approved by the Court of $49.3 million, including for notice of the settlement and development and dissemination of distribution plan as required under U.S. class action law ($37,552,560) and also attorneys' fees ($11,728,215). If all class action costs in support of litigation, settlement, notice, attorneys' fees, and oversight of the fund distribution process are included, the cost of administration was 14.6%, well within the range of what charitable evaluation organizations consider appropriate.

[27] If the additional class action costs are included, the cost per claim paid was $481 and the cost per claim received was $198.

2. September 11th Fund (9/11 Fund)

The September 11th Fund ("9/11 Fund") was established by federal legislation in the immediate aftermath of the September 11th attacks on the United States. The purpose of the fund was to compensate victims or relatives of those killed or injured in the attacks.[28] The fund ultimately paid out approximately $7 billion.

The 9/11 Fund was created by congressional statute and was not subject to class action requirements, unlike the Swiss Banks Settlement Fund. While the 9/11 Fund administrators held hearings for individual families concerning their specific claims, the Fund administrators were not required to offer public hearings to solicit suggestions on broader policy determinations. Furthermore, the program was concentrated largely in the United States, where most of the victims had lived. By contrast, in the Swiss Banks Settlement, a complex worldwide, multi-language notice program was required.

In addition, the review process for claims under the 9/11 Fund differed significantly from the more complex analysis necessary under the Swiss Banks Settlement. Eligibility under the 9/11 Fund was rarely in question. The vast majority of claims were for those who had been employed at the World Trade Center, generally a fairly straightforward inquiry. This contrasts with determining whether someone – sixty or more years after the fact – had been a Holocaust-era slave laborer, refugee, or owner or heir to a Swiss bank account. The records at issue in the Swiss Banks Settlement, if they existed at all, were many decades old, incomplete, redacted, generally unavailable in English, often arcane, and usually accessible only on restricted terms. The relevant documents for the 9/11 Fund, by comparison, were of fairly recent genesis and readily available.

The key issue for the 9/11 Fund was valuation of victims' income, something that could be determined from routine documents such as pay stubs and employer statements, W2s, insurance policies, actuarial data, health records, and the like. This paperwork generally was already in the possession of claimants, families, and/or employers, and written in English. Determinations as to future earnings were made by 9/11 Fund claims administrators at the

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[28] *See* Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001, vol. I ("9/11 Fund Report"), at 3.

accounting firm PricewaterhouseCoopers, LLP, based upon average income for the period 1998-2001, information that most claimants had in their possession or could obtain at the start of the claims process.[29]

Other factors considered as part of the 9/11 Fund review process included the value of pensions, health insurance and other fringe benefits, stock options, projected remaining years in the work force, projected household expenditures, taxes, risk of unemployment, present value, and several other elements, most of which are well-known to accountants who calculate similar projections in typical wrongful death cases. Most of the data were available from records in the possession of claimants or the victims' employers. Additional payments based upon pain and suffering were of a pre-set amount ($250,000 for deceased victims and $100,000 for spouses and dependents), so that individual assessments were unnecessary. Collateral offsets including the value of life insurance, pension plans, tax benefits and other payments, all readily ascertainable by claimants or the claims administrators, also were taken into account.[30]

With respect to 9/11 Fund administrative expenses, Congress neither specified nor capped the amount that the 9/11 Fund could distribute. "The Act [Air Transportation Safety and System Stabilization Act of September 22, 2001] does not limit either the aggregate amount to be paid for all claims or the amount to be paid to any individual claimant." [31] Because the 9/11 Fund was unlimited, "principal" and "interest" are not relevant terms.

Some 2,968 death claims, and 4,435 personal injury claims, were filed under the 9/11 Fund, for a total of 7,403 claims submitted.[32] Payments were issued for 2,880 death claims, and 2,680 personal injury claims, for a total of 5,560 claims compensated under the 9/11 Fund.[33]

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[29] *See* 9/11 Fund Report, at 30, 31.

[30] *Id*., at 33, 40, 45-52.

[31] *Id*., at 4. As with the Swiss Banks Settlement Fund and ICHEIC, 9/11 Fund awards were not subject to Federal income tax, and most awards were exempt from Federal estate taxes as well. *See* 9/11 Fund Report, vol. II, Frequently Asked Questions No. 5.4 (updated Apr. 13, 2004).

[32] *See* 9/11 Fund Report, at 109.

[33] *See* 9/11 Fund Report, at 1; *see also id.*, at 105, 110.

The 9/11 Fund incurred administrative expenses of approximately $86.9 million. The cost per claim *paid* under the 9/11 Fund was $15,629, calculated by dividing administrative expenses (approximately ($86.9 million) by the number of claims compensated (5,560).The cost per claim *received* under the 9/11 Fund was $11,738, calculated by dividing administrative expenses by the number of claims received (7,403).[34]

3. Agent Orange Settlement

The Agent Orange Settlement arose from a class action lawsuit in the United States District Court for the Eastern District of New York. U.S. service members and their families alleged personal injuries due to the exposure of the service members to certain herbicides, including Agent Orange, during the Vietnam War. The parties settled their claims in 1984 and, after a period of litigation, ultimately established a Settlement Fund under the authority of District Judge Jack Weinstein.[35] The last payments were made in 1996 and the fund closed in 1997, some 13 years after the lawsuit settled.[36]

While the Agent Orange Settlement, like the Swiss Banks Settlement, was subject to principles of class action and U.S. law, the claimants in the Agent Orange case generally were not difficult to reach. They were U.S. service members, most living in the U.S. and able to communicate in English, with records available from the claimants or from authorities in the U.S. The global Swiss Banks Settlement, which focused upon compensating elderly individuals originally from European nations but living all over the world at the time of settlement, arising from events that took place in a variety of European nations decades earlier, with documents

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[34] As the 9/11 Fund was unlimited, there is no basis to calculate administrative expenses as a percentage of the total fund. As a percentage of the total amount paid out (over $7.049 billion), administrative expenses represented 1.2%. *See* 9/11 Fund Report, at 72.

[35] *See generally* Swiss Banks Settlement Fund Plan of Allocation and Distribution of Settlement Proceeds, Annex B ("Legal Principles Governing Distribution of Class Action Settlements"), for background information on the *Agent Orange* settlement and distribution plan.

[36] *See* http://www.benefits.va.gov/compensation/claims-postservice-agent_orange-settlement-settlementFund.asp.

deliberately destroyed or lost to war or the passage of decades, had levels of intricacy not present in the Agent Orange proceedings.

The Agent Orange program was comprised of two components: a Payment Program providing cash payments to "those veterans who were most injured or in need of assistance," and a Class Assistance Program providing for the "distribution of Settlement Fund assets through grants for the purpose of providing both direct and indirect services benefiting class members." The claims program in Agent Orange was limited to only one specific type of claimant: a totally disabled veteran (or his/her surviving spouse, or children) who had been exposed to Agent Orange. The claims administrators thus needed to analyze three main issues, all capable of assessment through documentation that could be readily located: whether a claimant was a Vietnam veteran or surviving spouse or child of a veteran (available from military, marital and birth records); whether that veteran had been exposed to Agent Orange (available from military records); and whether he or she was "totally disabled" (available from medical records). Significantly, the veteran was not required to demonstrate that Agent Orange had caused his or her disability.[37]

With respect to administrative expenses, the Agent Orange Settlement Fund principal was $180 million, to which another $150 million in interest eventually was added, for a total fund of $330 million. [38]

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[37] *See* Distribution Plan, Annex B, at B-8 (citing 611 F. Supp. at 1411-12). *See also* Agent Orange Final Report, at 10 ("Under the guidelines established by the Court, to be eligible for compensation from the Payment Program the class members were required to establish the following: first, that the veteran served in or near Vietnam between 1961 and 1972 as a member of the United States Armed Forces (as mandated by the class definition); second, that the class member applicant was either a totally-disabled Vietnam veteran or the survivor of a deceased Vietnam veteran who served in the United States Armed Forces in Vietnam during the requisite period; third, that based on the circumstances of the veteran's service (including location of service and particular experiences during service) the veteran met a test of probable exposure to herbicides; fourth, that the death or disability was not caused by a traumatic or accidental occurrence; and, fifth, that the death or disability occurred before December 31, 1994 (which was the Court-established closure date for the Payment Program"); id. at 11 (a "computerized evaluation system matched service locations (obtained from the claimant's exposure form and from the documented locations of military units) to herbicide spray locations," information "about troop locations and movements was obtained from a variety of sources, including military records and data correlated from claimants").

[38] *See* Final Report of the Special Master on the Distribution of the Agent Orange Settlement Fund, September 1997 ("Agent Orange Final Report"), at 2, 3. As with the Swiss Banks Settlement Fund and the ICHEIC program, pursuant to an IRS ruling, the Agent Orange Settlement Fund as well as distributions to class members

A total of 105,763 claims were submitted under the Agent Orange Payment Program. Another 239,110 individuals were served by the Class Assistance Program.[39] No statistics are available for the total number of applicants to the Class Assistance Program and thus the number assisted under that program also must stand in for the number of applicants. Accordingly, at least 344,873 claims were reviewed. A total of 52,216 claims were approved under the Agent Orange Payment Program (38,296 claims from disabled veterans, and 13,920 claims from survivors of deceased veterans). Payments averaged approximately $3,800 each.[40] Another 239,110 individuals were aided by the Class Assistance Program. Thus, a total of 291,326 claims were approved under the Agent Orange Settlement Fund.

Over the "nine-year distribution process, the Settlement Fund distributed a total of $267,901,842.66 (consisting of $196,595,084.66 distributed through the Agent Orange Veteran Payment Program and $71,306,758 distributed through the Agent Orange Class Assistance Program) to and for the benefit of some 291,000 class members in the United States in the form of either direct cash payments or provision of services."[41]

Administrative expenses for the Agent Orange Settlement Fund included the "set-up of the Payment Program, equipment and all claims-processing functions from July 7, 1988 through September 9, 1997;" the cost of "administering the Class Assistance Program – including [its] set-up ..., equipment and all grant management functions," for a total of "$19.1 million, or 5.8 percent of the total Settlement Fund assets distributed." Further, "[a]side from these direct administration expenses, the Settlement Fund incurred additional costs, including costs of investment services; accounting services; auditing services; legal and other services provided by the Special Master, the office of Special Master for Appeals and tax services; costs associated with the initial management of the settlement, including extensive notification to the class (*i.e.*,

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were exempt from federal tax liability. New York State and New York City issued similar determinations. *Id.* at 25.

[39] *Id.* at 10, 28, 41.

[40] *See* http://www.benefits.va.gov/compensation/claims-postservice-agent_orange-settlement-settlementFund.asp.

[41] *Id.* at 1. Additional sums were distributed to veterans in Australia (approximately $7 million (A)) and New Zealand (approximately $693,000 (NZ)). *Id.* The Australian and New Zealand programs were operated and accounted for separately, and their distribution data are not included in the statistics cited herein.

the initial notice of the settlement, the maintenance of records of preliminary claims and subsequent notices); and costs of evaluating, establishing and developing the distribution programs. These other costs totaled $20.9 million – or 6 percent of the total amount distributed."[42] Accordingly, $40 million in administrative expenses were incurred in total ($19.1 million plus $20.9 million).

The costs of administering the Agent Orange Settlement Fund were 12.1%, calculated by dividing the administrative expenses by the total amount of the fund ($330 million). The cost per claim *paid* was $137, calculated by dividing administrative expenses ($40 million) by claims compensated (291,326).The cost per claim *received* was $116, calculated by dividing administrative expenses by claims received (344,873).[43]

4. ICHEIC

The International Commission for Holocaust-Era Insurance Claims (ICHEIC) was established in 1998 following negotiations among European insurance companies and U.S. insurance regulators, as well as representatives of international Jewish and survivor organizations and the State of Israel. ICHEIC was charged with creating a process to collect and facilitate the signatory companies' processing of insurance claims from the Holocaust period.[44]

In contrast to the Swiss Banks Settlement, which was governed by U.S. class action principles requiring notice and class participation, ICHEIC was an agreement among various governmental and non-governmental interests. ICHEIC leadership was not required to obtain the

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[42] *See* Agent Orange Final Report, at 52-3. Class action notice expenses are included in this amount because the Agent Orange Final Report did not specify how much of the category labeled as "additional costs" (*i.e.* costs not considered "direct costs") were attributable to notice alone. The other "additional costs" described in the final report clearly relate to oversight and distribution of the fund. The Agent Orange Final Report further stated that attorneys' fees and expenses totaled 4% of the sum distributed ($268 million).

[43] The Agent Orange Final Report does not provide data on the total number of *applications* to the Class Assistance Program (as distinguished from the Payment Program), but only on the total number of individuals *served* (*i.e.* "claims paid"). The number of applicants presumably was higher than the number of persons actually assisted. The actual processing cost per claim received therefore would have been lower than $116, but without further data on applicants, that amount cannot be determined.

[44] *See* www.swissbankclaims.com/Glossary.

formal participation of victim groups and their advocates, nor was ICHEIC subject to the rigorous notice requirements under U.S. class action law.

As another point of difference, although the ICHEIC process was established for Holocaust victims, it does not appear that Roma victims were designated as participants in ICHEIC.[45] This is an important element distinguishing ICHEIC from the Swiss Banks Settlement programs, for, as discussed above, reaching and compensating Roma survivors and heirs posed unique complexities.

With respect to claims review, in contrast to the CRT, which undertook extensive and time-consuming inquiries on behalf of over 104,000 claimants to Swiss bank accounts, the individual insurance companies participating in the ICHEIC process were responsible for conducting their own research and analysis. It is unclear whether ICHEIC actively sought access to names of additional policyholders, including access for purposes of publication, as did the CRT under the authority of the Court. It is also unclear whether ICHEIC and/or its member companies actively researched policies potentially owned by Holocaust victims, although not specifically claimed. By contrast, the CRT proactively sought to include as many potential claims and account holders as possible, ultimately individually analyzing over 415,000 possible account owners.

With respect to the ICHEIC fund, the "[t]otal funds received by ICHEIC, including funds received from participating insurance companies and the German government, the Bermuda Trust, realized exchange gains, and interest earned amount to $550 million."[46] The publicly available ICHEIC data do not provide a breakdown of principal versus interest, or other categories of funding.

A total of 91,558 "claims/inquiries received [were] eligible under the ICHEIC claims process," of which 31,447 "name[d] a company" and 60,111 "d[id] not name a company."[47]

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[45] Likewise, it does not appear that the Agent Orange or September 11th programs were required to address the complex issues posed by locating and compensating a group of claimants as underserved and as difficult to reach as Roma.

[46] *See Concluding Meeting of the International Commission for Holocaust Era Insurance Claims* (Wash. D.C.), Mar. 20, 2007, at 1, 23, *available at* https://icheic.ushmm.org/pdf/Meeting%20Presentation%203-20-07.pdf (last visited Oct. 21, 2014) ("ICHEIC Concluding Meeting Report").

[47] *See* "ICHEIC Claims Process, 19-Mar-07."

ICHEIC also funded social welfare and educational programs, many of which served elderly Holocaust survivors. ICHEIC has not provided data on the number of individuals assisted by such programs.

ICHEIC has stated that it issued a total of 48,263 awards, consisting of 14,186 "[t]otal offers made using ICHEIC Valuation Guidelines," 31,284 offers "made to claimants through the ICHEIC 8a1 humanitarian claims process," and 2,874 offers "made to claimants through the ICHEIC 8a2 humanitarian claims process."[48] "The 8a1 humanitarian claims process evaluate[d] claims containing only anecdotal evidence referencing a Holocaust-era insurance policy, and for which no supporting documentation [was] found. Payments of $1,000 [were] made on a per-claimant basis on claims that qualif[ied] for an award under this category." The "8a2 Humanitarian claims process cover[ed] claims on companies that were liquidated or nationalized after World War II and for which no present-day successor company [was] identified. Awards in this humanitarian claims process [were] calculated on a per policy basis in accordance with the ICHEIC Valuation Guidelines."[49]

According to ICHEIC, a total of $306.25 million was offered on insurance policies, a figure that included $238.27 million offered to ICHEIC claimants from companies and partner entities, either through the ICHEIC process ($223.08 million) or on claims submitted directly to the companies ($15.19 million). The total of $306.25 million also included $31.28 million through ICHEIC's "8A1 humanitarian claims process," $30.54 million through its 8A2 process, and $6.16 million through appeals.

In addition, ICHEIC awarded or allocated another approximately $172.3 million for social welfare and educational programs. "Oversight and distribution of funds for the programs sponsored by ICHEIC were outsourced to the Claims Conference."[50] The programs consisted of the following: $146 million was paid or allocated for programs for "Social Welfare for Needy

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[48] *See* ICHEIC Claims Process, 19-Mar-07. When the three numbers are added, however, the total equals 48,344 and not 48,263. It is unclear why ICHEIC reported a slightly lower total of 48,263 offers. For purpose of this analysis, ICHEIC's own final number (48,263) will be used, as it is possible that ICHEIC reduced the number by 81 offers for undisclosed reasons.

[49] *Id.* at 3 ("Notes on the Claims Section").

[50] *See* ICHEIC Humanitarian Fund, *available at* https://icheic.ushmm.org/fund.html.

Holocaust Victims;" the ICHEIC Service Corps received or was allocated $1.8 million; the Initiative to Bring Jewish Cultural Literacy to Youth in the Former Soviet Union received or was allocated "over $12 million;" the ICHEIC Program for Holocaust Education in Europe ("created and carried out by Yad Vashem") received or was allocated "over $12 million;" and the March of the Living received a one-time grant of $500,000.

In total, then, ICHEIC reported distributions of $478.55 million: $306.25 million in individual payments, and $172.3 million in social welfare and educational programs.

ICHEIC has not specified the number of individuals assisted by its social welfare and educational programs. ICHEIC also has not specified how the balance of the funds, $71.45 million remaining from the $550 million total fund, was distributed or otherwise spent.

The "total lifetime budget amount[ed] to $95.5 million, or 17.4% of the total funds received" ($550 million) as part of the ICHEIC process. [51] It is unclear if the "lifetime budget" is equivalent to the expenses actually incurred in administering the ICHEIC programs; however, it is assumed that the $95.5 million "budgeted" refers to administrative expenses.[52]

Although ICHEIC distributed or allocated approximately $172.3 million for social welfare and educational programs, data concerning the number of claimants to those funds is unavailable. Likewise, the number of individuals assisted through such programs also is unavailable. Without precise information concerning the number of applicants to, and individual payments from, the social welfare and educational programs, ICHEIC's total processing costs per claim received and per claim paid cannot be fully determined. However, based upon what ICHEIC defined as "eligible" insurance claims, the processing cost per claim *paid* was $1,979, calculated by dividing ICHEIC's budgeted expenses of $95.5 million by the number of insurance claims ICHEIC stated that it had compensated (48,263). The processing cost per claim *received*

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[51] *See* ICHEIC Concluding Meeting Report, at 23.

[52] ICHEIC did not specify whether the $95.5 million "budgeted" was actually spent. If some portion of the $95.5 million budgeted for administrative expenses was not spent in support of distribution but rather was allocated for payments to claimants, ICHEIC's costs of administration would have been lower than the amount ICHEIC cited in its report, 17.4%. That information, however, is not available.

was $1,043, calculated by dividing ICHEIC's budgeted administrative expenses by the number of claims received (91,558).[53]

Another figure of note is the $172.3 million that ICHEIC distributed or allocated to social welfare and humanitarian programs. That sum constituted 36% of the total amount paid out by ICHEIC ($478.55 million). By way of comparison, the approximately $256.3 million *cy pres* Looted Assets Class program of the Swiss Banks Settlement, assisting the neediest survivors, along with the $14.5 million Victim List Project ($270.8 million) – together essentially equivalent to ICHEIC's social welfare and educational programs – constituted 21% of the almost $1.285 billion distributed through the Court's processes. These figures are significant because administrative expenses in connection with oversight of social welfare/educational programs generally are lower than those required to establish and oversee an individualized claims review process. In the Swiss Banks Settlement, 79% of the funds distributed were based upon individual claims analysis, whereas in the case of ICHEIC, 64% of the funds distributed were based upon individual claims analysis.

IV. CONCLUSION

The Swiss Banks Settlement program was subject to a variety of administrative complexities not attendant to the other three programs analyzed herein. Nevertheless, administrative expenses for the Swiss Banks Settlement distribution process, analyzed and authorized pursuant to court order, were on par with, and in some instances below, those of the other programs. The costs of administration of the Swiss Banks Settlement Fund as a percentage of the total fund (11.3%) were lower than those for ICHEIC (17.4%) and Agent Orange (12.1%). Moreover, the processing costs per claim paid and claim received ($373/$154) were significantly lower than for the contemporaneous 9/11 Fund ($15,629/$11,738), and also lower than for ICHEIC ($1,979/$1,043). Nor were these costs significantly higher than those in Agent Orange, a less complex program that had operated several years earlier under different national and

[53] The cost per claim received and per claim paid likely would be lower if data concerning applications to and payments from ICHEIC's social welfare and educational programs were available.

global economic conditions ($137/$116). While maintaining the focus on individual victims and recognizing and recording their history, the claims process also was able to preserve the $1.25 billion Settlement Fund, and ultimately to award more than that amount – nearly $1.285 billion – to over 458,436 Holocaust survivors and heirs worldwide.

TIMELINE: SELECTED EVENTS AFFECTING COMPENSATION FOR VICTIMS OF NAZI PERSECUTION

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
	1815: At the Congress of Vienna, Switzerland is restored as an independent confederation and is guaranteed "permanent neutrality."	
	1848: Switzerland evolves from a confederation of independent states into a new federal union culminating as a constitutional democracy. The Swiss population is composed of distinct language groups and different cultural orientations: Italian, French, German, and Romanche. Jewish Swiss nationals do not have rights equal to those of other Swiss nationals.	
	October 1863: Henry Dunant, a Swiss businessman, and four other Swiss leaders from Geneva found the International Committee for the Relief of the Wounded, to improve medical services on the battlefield. One year later, the Swiss government invites all European countries and the United States, Brazil and Mexico to a diplomatic conference which adopts the first Geneva Convention for the amelioration of the condition of the wounded of armies in the field. In 1876, it adopts the name "International Committee of the Red Cross."	
	1866: The Jews in Switzerland are politically emancipated.	
1871: The German state unifies as the "Second Reich." Its new penal code includes Paragraph 175, which makes illegal a wide range of physical behaviors between men and thus outlaws homosexuality. The law is not	**1871**: New nations exist along Switzerland's borders: the unified German Empire -- the "Second Reich" -- to the north, and unified Italy on the south. With distinct language groups and different cultural orientations, neutrality becomes	

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repealed until 1994.	an important component in the Swiss political system.	
	1874: Switzerland adopts a new Constitution; Article 49 declares full emancipation of Jews.	
	1904: The SIG (Swiss Federation of Jewish Communities) is founded to fight for Jewish rights and against antisemitism.	
	1914: At the beginning of World War I, Switzerland formally declares neutrality to avoid conflicts between the German and Swiss speaking cantons. Economic relations continue with all belligerents.	
November 1914: At the outbreak of World War I, responding to the pressing needs of the Jewish community of Ottoman-ruled Palestine, Henry Morgenthau, U.S. ambassador to the Ottoman Empire, cables New York philanthropist Jacob H. Schiff for emergency aid. In November 2014, confronted with additional appeals for help from Jews in war-torn Eastern Europe, two American Jewish relief organizations join forces to create the Joint Distribution Committee for the relief of Jewish War Suffering (later known as the American Jewish Joint Distibution Committee or "JDC").		
	1916: The Bergier Final Report[1] notes that "from 1916 onwards, files of candidates for naturalization [bear] handwritten	

[1] FINAL REPORT OF THE INDEPENDENT COMMISSION OF EXPERTS SWITZERLAND-SECOND WORLD WAR (Pendo Verlag GmbH 2002) (*available at* https://www.uek.ch/en/schlussbericht/synthesis/ueke.pdf) (hereinafter "BERGIER FINAL REPORT"). The

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	comments attesting the intention of making it difficult for Jews to gain Swiss citizenship."	
	1917: The Federal Police for Foreigners is established as a Swiss state institution to combat "over-foreignisation."	
November 2, 1917: The British Government issues the Balfour Declaration, which supports establishing a national homeland for the Jewish people in Palestine.		
	1919: The Bergier Final Report notes that "the Federal Administration used a stamp in the form of the Star of David. Swiss civil servants used this system of stamping documents from 1936 onwards and thus well before the introduction of the notorious stigmatisation [the 'J' stamp on German passports] in 1938."[2]	
	April 11, 1919: Geneva is chosen as the seat of the League of Nations.	
	June 28, 1919: The Treaty of Versailles ending World War I calls for the establishment of the League of Nations, imposes German territorial concessions, and recognizes the perpetual neutrality of Switzerland.	
January 16, 1920: The United States Senate votes against joining the League of Nations.		
March, 1920: At the San Remo Conference, the Allied Powers award the Mandate for Palestine to the		

Bergier Commission and its historians and economists were mandated in 1996 "to conduct a historical investigation into the contentious events and incriminating evidence" of Switzerland's conduct during and after the Second World War." *Id.*, at 5.

[2] *See* entry below for September 29, 1938, regarding stamping of passports held by Jewish individuals.

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United Kingdom.		
	March 8, 1920: Switzerland is admitted to the League of Nations.	
1926: The Bavarian government passes a stringent anti-Romani law, and founds a Central Office to collect information on the Roma; by 1936, the office holds nearly 20,000 files.		
	1930: Switzerland has 4.1 million inhabitants; approximately 0.5 percent of the population is Jewish.	
	March 26, 1931: Switzerland adopts the Law on Foreigner State and Settlement (Gesetz über Aufenthalt und Niederlassung der Ausländer - "ANAG"), essentially preventing most foreigners from settling in the country and becoming naturalized Swiss citizens. The law also regulates asylum, establishing Switzerland as a temporary rather than permanent stopping point for refugees. The law goes into effect on January 1, 1934.	
	October 27, 1931: The NYTimes reports on a Viennese newspaper article describing a large-scale espionage operation in Switzerland; the spies report to various governments the details of their nationals' Swiss bank deposits.	
January 1933: On the eve of Adolf Hitler's rise to power, approximately 503,000 Jews live in Germany. The Jewish population of Berlin was 160,564. Jewish nationals comprise less than 1% of the total German population of 65 million. About 99,000 (19.8%) of Germany's Jewish population are eastern European nationals. The rate of intermarriage	**January 1933**: From 1933 through 1938, according to noted Holocaust historian Michael Marrus, Switzerland admits "large numbers of refugees from Germany;" however, "the refugees were forbidden to exercise any lucrative activity. Deeply preoccupied with unemployment in the first half of the 1930s, Swiss officials scrutinized new arrivals rigorously to ensure they did not compete in commerce	

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
had reached 60% by 1932. **January 30, 1933**: German President Paul von Hindenburg appoints Adolf Hitler as Reich Chancellor. Hitler and the Nazis enter into a coalition government with the German Nationalist People's Party (DNVP). **February 1933:** The Nazis ban organized homosexual groups and purge homosexual, lesbian and bisexual clubs in Berlin. **February 27, 1933**: The Reichstag in Berlin is set on fire, and the Nazis arrest a Dutch communist, claiming a communist revolution is imminent. **February 28, 1933**: President von Hindenburg grants emergency powers to the Nazi/DNVP coalition government under Adolf Hitler. The decree suspends civil rights in Germany; allows for imprisonment without trial; and gives the central government authority to overrule state and local laws. **March 4, 1933:** Franklin D. Roosevelt assumes office as President of the United States, having been elected on November 8, 1932 by defeating President Herbert Hoover. **March 5, 1933**: The last elections take place in Nazi Germany. The Nazi Party receives less than half (43.9%) of the popular vote. As a result, the Nazi Party remains in coalition with the DNVP to achieve a majority in the German parliament. **March 9-11, 1933**: The Nazi/DNVP coalition government overthrows the German state governments (Länderregierungen) and installs provisional Reich commissars directly subordinate to the central	or the labor market."	

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
government. **March 22, 1933:** Outside the town of Dachau, Germany, the SS (Protection Squads) establish the first concentration camp. It remains in operation from 1933 until April 29, 1945, when it is liberated by the Americans. **March 23, 1933**: The German parliament passes the Law for Rectification of the Distress of Nation and Reich, commonly known as the Enabling Act. This law allows Hitler, as Chancellor, to initiate and sign legislation into law without obtaining parliamentary consent. The act effectively establishes a dictatorship in Germany. **March 27, 1933:** Japan gives notice of its withdrawal from the League of Nations.		
	March 31, 1933: The NYTimes reports by headline, "Bar Jews As Settlers." The report states, "Jews fleeing from Germany are to be admitted to Switzerland only as temporary refugees, according to instructions sent today by the Federal police to the canton authorities. Such refugees are not to be permitted to acquire land, engage in business or obtain employment. Criminal action will be taken against any refugee 'disturbing Switzerland's relations with any other State.'"	
April 1, 1933: The Nazis organize a nationwide one-day boycott of Jewish-owned businesses in Germany. **April 7, 1933**: The Law for the Reestablishment of the Professional Civil Service bans Jews and political opponents from the civil service. The law initially exempts World War I veterans and certain others. The Law Concerning	**April 7, 1933**: The Swiss Federal Council orders all foreigners claiming political asylum to register with the police within 48 hours of their arrival, otherwise they lose their chance of being recognized as political asylum-seekers.	

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
Admission to the Legal Profession mandates disbarment of non-"Aryan" lawyers by September 30, 1933. The law initially exempts World War I veterans and certain others. **April 8, 1933:** In a private audience with Adolf Hitler, James G. McDonald, Chairman of the Foreign Policy Association, raises Nazi Germany's treatment of the "Jewish Question." McDonald reports that Hitler states, "I will do the thing that the rest of the world would like to do. It doesn't know how to get rid of the Jews. I will show them." **April 13, 1933:** German Jewish leaders establish a Central Bureau for Relief and Reconstruction, to extend legal and economic assistance to Jews who have lost their jobs or are forced to leave their places of residence.	**April 20, 1933**: The Swiss Federal Department of Justice and Police issues regulations denying asylum in Switzerland to "undesirable" persons, specifically Communists without papers. Others are required to reside in designated places and to report periodically to the authorities.	
April 22, 1933: Aryans who consult Jewish doctors cannot have their medical bills paid, under the terms of the new Decree Regarding Physicians' Services with the National Health Service. **April 25, 1933:** Quotas are placed on Jewish students in institutions of higher education, under the Law against the Overcrowding of German Schools. **April 26, 1933**: Hermann Göring, Minister President and Minister of the Interior of Germany's largest state, Prussia, creates a new agency, the Gestapo (Secret State Police), from		

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the old Prussian state political police department. **May 10, 1933**: German student organizations supported by Nazi Party members organize public rallies across Germany. They burn books written by Jews, homosexuals, political opponents, and liberal intellectuals, and announce that they are "purifying" German libraries of "un-German" books.		
	May 18, 1933: The International Committee of the Red Cross meets to discuss the growing political violence in Germany.	
June 12, 1933: Germany enacts the Law on Treason Against the German Economy, requiring assets held outside of Germany (including in Switzerland) to be repatriated. **July 8, 1933:** Germany and the Vatican sign a concordat, in which Germany agrees to respect Catholic rights and institutions in Germany but will limit activity it considers political. The concordat's effect is to undercut efforts of anti-Nazi churchmen to retain basic freedoms in Germany. **July 14, 1933**: The Law against the Establishment of Parties declares the Nazi party to be the only legal political party in Germany. The German government enacts the Denaturalization Law, allowing the Reich to revoke the citizenship of anyone who settled in Germany after November 9, 1918; the law is used to deprive mostly Eastern European Jews and Romani of German citizenship. The German government passes the Law for the Prevention of Offspring with Hereditary Diseases, mandating involuntary sterilization of certain individuals with physical and		

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mental disabilities; Roma (Gypsies); "asocial elements;" and Afro-Germans. **August 25, 1933:** The Haavara Transfer Agreement is signed by German officials and Zionist representatives from Germany and Palestine. The agreement permits Jews emigrating to Palestine to take a small amount of their German assets with them. **September 6, 1933**: Frederick T. Birchall, a Pulitzer prize-winning NYTimes correspondent reporting on the Nazi Party Rally at Nuremberg, Germany, writes: "Especially will there be no relenting in the Nazi hostility toward supposed enemies, and particularly toward the Jews. Aryanism is now the keystone of Nazi policy, as all along it has been the principal tenet of Adolf Hitler's personal faith. It is also in Germany the most popular of the Nazi principles and of all the Nazi tendencies is the most warmly defended by the Germans. Its corollary is persecution even to extermination - the word is the Nazis' own - of the non-Aryans, if that can be accomplished without too great world disturbance." **September 17, 1933:** The Reichsvertretung der Deutschen Juden (Reich Representation of German Jews) is established under the leadership of Rabbi Leo Baeck. The Reichsvertretung calls on German Jews to demonstrate "unity and honor." It seeks to assist in all areas of Jewish life including education, occupational training, social welfare, and emigration assistance. **September 22, 1933**: In Germany, the newly founded Chambers of Literature, Press, Broadcasting, Theater, Film, Music, and Fine Arts		

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denies membership to Jews, effectively excluding Jews from employment in the cultural sector. **September 29, 1933**: The German government issues the Hereditary Farm Law stipulating that hereditary farms can only be inherited by German farmers who document that they have no Jewish or "colored" ancestors back to January 1, 1800. **October 4, 1933**: The Editor's Law forbids non-"Aryans" from working in journalism. **October 17, 1933:** Germany withdraws from the League of Nations. **November 12, 1933:** The Nazis, running as the only legal political party, win 92% of the Reichstag vote; 95% of voters also express approval of the regime. **November 24, 1933**: The German government passes the Law against Dangerous Habitual Criminals. The law allows indefinite imprisonment of "habitual criminals" if the courts deem the person dangerous to society. It also provides for the castration of sex offenders.	**January 1, 1934:** Switzerland's Federal Law on Residence and Settlement of Foreigners (ANAG) takes effect; *see* March 26, 1931.	
January 24, 1934: The German government bans Jews from membership in the German Labor Front (membership was mandatory for wage laborers and salaried employees). This decree effectively deprives Jews of the opportunity to find positions in the private sector and denies to those already employed the		

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benefits available to non-Jews. **January 26, 1934:** Germany and Poland enter into a 10-year nonaggression pact, which is broken five years later with Germany's 1939 invasion of Poland. **May 1934**: The Nazi newspaper, *Der Sturmer*, releases a special edition (printing and selling 130,000 copies) devoted to blood libel accusations against the Jews, including infamous medieval cartoons showing Jews using human blood in the observance of religious customs. **June 30, 1934**: Adolf Hitler orders the killing of Storm Trooper leader Ernst Roehm (1887-1934), a homosexual, together with many of his followers ("The Night of the Long Knives") whom he views as his enemies in the Nazi party; persecution of homosexual Germans increases. **July 20, 1934:** Hitler decrees the SS, under SS chief Heinrich Himmler, to be an independent formation of the Nazi Party, directly subordinate only to Hitler himself as Führer (leader). The SS was formerly subordinate to the SA. **July 25, 1934:** In a failed attempted coup, Austrian Nazis assassinate Austrian Chancellor Engelbert Dollfuss. **August 2, 1934**: Adolf Hitler becomes president of Germany as well as chancellor ("Führer and Reich Chancellor) upon the death of Paul von Hindenburg. **August 19, 1934**: 89.9% of German voters in a plebiscite approve of Hitler's new powers. **August 20, 1934:** Members of the armed forces and public officials are		

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required to swear an oath of loyalty to Hitler. **September 18, 1934**: The Soviet Union enters the League of Nations.		
	September 19, 1934: James G. McDonald, then-League of Nations High Commissioner for Refugees Coming from Germany (and later U.S. Ambassador to Israel) writes in his diary of a talk with Swiss Police Chief Heinrich Rothmund in which Rothmund excludes Jews from his definition of political refugees. Rothmund speaks of his belief that excessive Jewish presence and influence would arouse antisemitism among the Swiss.	
October 7, 1934: In standardized letters sent to the government, congregations of Jehovah's Witnesses all over Germany declare political neutrality, while rejecting government restrictions on the practice of their religion.		
November-December 1934: SS chief Himmler consolidates control over and de facto unifies the German state political police forces into the Gestapo office in Berlin under the authority of his deputy, Reinhard Heydrich.	**November 19, 1934**: The Swiss Federal Council enacts a law providing for banking secrecy, with violation subject to criminal penalties and fines. The law is intended to thwart foreign governments' investigations into their clients' investments abroad. It protects tax evaders from prosecution and gives Swiss banks competitive advantage. The law is not enacted for the purpose of protecting funds deposited in Swiss banks by Jewish victims of Nazi persecution.	
December 10, 1934: SS chief Himmler creates the Inspectorate of Concentration Camps under the leadership of SS General Theodor Eicke. This move formalizes the July 1934 SS takeover and centralization of the concentration camp system.		
January 13, 1935: A plebiscite held in the Saar region, under League of		

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Nations auspices, returns the province to the control of Nazi Germany. The Saar was separated from Germany under the Treaty of Versailles in 1919. Almost all the 5,000 Jews of the Saar choose French or Belgian citizenship and leave for France and Belgium; on March 1, 1935, Germany retakes the region.		
	February 24, 1935: Switzerland votes to extend the period of military training.	
March 16, 1935: Adolf Hitler repudiates the disarmament clauses of the Versailles treaty and announces the reintroduction of compulsory military service and an increase in the size of the German army.		
April 1, 1935: The German government bans Jehovah's Witness organizations. The ban is due to Jehovah's Witnesses' adherence to their religious principles by refusing to swear allegiance to the state or serve in its armed forces.		
	May 14, 1935: Ruling on a libel suit brought by Jewish leaders against the publishers of the anti-Semitic pamphlet, the *Protocols of the Elders of Zion* (allegedly revealing Jewish plans for world domination), the Swiss High Court declares the tract to be a forgery, fabricated in Czarist Russia.	
May 31, 1935: Germany bans Jews from the armed forces.		
June 25, 1935: The 1933 Law for the Prevention of Offspring with Hereditary Diseases is amended to permit abortions on the "eugenically unfit" as well as castration of homosexuals.		
June 28, 1935: The German Ministry of Justice revises Paragraphs 175 and 175a of the German criminal code		

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with the intent of 1) expanding the range of criminal offenses to encompass any contact between men, both physical and in form of word or gesture, that could be construed as sexual; and 2) strengthening penalties for all violations of the revised law. The revision facilitates the systematic persecution of homosexual men and provides police with broader means for prosecuting homosexual men. **August 31, 1935**: President Roosevelt signs the Neutrality Act, which prohibits the sale of arms and other materials to belligerent nations. The act is a victory for U.S. isolationists.		
	September 8, 1935: A popular referendum halts the attempt to introduce an authoritarian total reform of the Swiss federal constitution.	
September 15, 1935: At the Nazi party rally in Nuremberg, Germany adopts the "Law for the Protection of German Blood and Honor" (Nuremberg laws), which officially disenfranchises and classifies Jews as noncitizens. The population is divided into two classes - Reich citizens, of Aryan ancestry; and state subjects, Jews. Jews can no longer hold government jobs, serve in the army, vote, marry non-Jews, engage in extramarital sexual relations with Aryans, or hire female non-Jewish domestic workers. **October 3, 1935**: Italian forces invade Ethiopia.		
	October 19-27, 1935: Carl Burckhardt, a Swiss diplomat and historian, and delegate of the International Committee of the Red Cross based in Switzerland, visits the Dachau concentration camp and other camps.	
November 14, 1935: The first supplementary decree to the		

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Nuremberg laws is issued, defining a Jew as anyone with two Jewish grandparents who is married to a Jew or an adherent of Judaism, or anyone with at least three Jewish grandparents. Persons of "mixed blood" are characterized as "Mischling." German churches provide the government with records indicating who is a Christian and who is not. "Regulation to the Blood Protection Act" bans marriages between Jews and designated persons of "mixed blood." **November 26, 1935:** The Nazis apply the Nuremberg Laws to Roma and African-Germans. **December 31, 1935:** All Jews remaining in the German civil service are dismissed. **March 7, 1936**: Adolf Hitler sends German troops into the Rhineland province, in defiance of the Versailles treaty, which requires it to be demilitarized. **April 19, 1936:** The Arab Higher Committee is established in Palestine, and demands that British authorities put an end to all Jewish immigration, prohibit the sale of land to Jews, and establish an Arab "democratic government" that would impose the will of the Arab majority on the Jewish minority. There is an armed uprising and six-month general strike. **May 5, 1936**: Ethiopia falls to Italy. **June 6, 1936:** The Minister of the Interior for the Reich and Prussia issues a decree addressing "the Gypsy plague." The decree officially		

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recognizes many regulations and restrictions already in place at the local level on Roma (Gypsies) residing in Germany. Under its authority, state and local police forces round up Roma as well as other persons who they deem to be behaving in "a Gypsy-like manner."		
June 17, 1936: Hitler consolidates all German police agencies under the SS, and appoints Heinrich Himmler as Chief of the German Police and Reich Leader of the SS.	**June 17, 1936:** The Swiss Central Office for Refugee Relief (SZF) is created.	
	July 4, 1936: Under a Provisional Agreement of the League of Nations, ratified by Switzerland and other nations, refugees are to be turned back only after receiving prior notification, and only after they fail to take steps necessary to leave for another nation.	
July 12, 1936: The SS establishes the Sachsenhausen concentration camp near Oranienburg, located to the north of Berlin, Germany. By September, German authorities have imprisoned about 1,000 people in the camp.		
July 16, 1936: Civil war erupts in Spain. The Loyalists are anticlerical and antimonarchy leftists, and the nationalists are conservatives led by General Francisco Franco. Germany and Italy begin military assistance to the nationalists, while Russia supports the Loyalists. German authorities order the arrest and forcible relocation of all Roma (Gypsies) in the Greater Berlin area to a special camp in the Berlin suburb of Marzahn. Beginning in 1938 the authorities begin to deport Roma from Marzahn to other concentration camps.		
	August 1936: The World Jewish Congress is established in Geneva, with offices	

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	around the world. Its aims are to mobilize the Jewish people against the rise of Nazism, to secure equal political and economic rights worldwide, and to support the establishment of a national Jewish home in Palestine.	
August 1, 1936: The Summer Olympic Games open in Berlin. The Olympic Games are a Nazi propaganda success. German officials remove anti-Jewish signs from public display and restrain anti-Jewish activities. The U.S. Olympic Committee bars two Jewish runners from competing. Hitler refuses to present African-American sprinter Jesse Owen his four gold medals. The NYTimes notes at the end of the year that Hitler's investment in the Games was immensely popular among his countrymen. "Perfect in setting, brilliant in presentation and unparalleled in performance, the Olympic Games of 1936 stand apart in history as the greatest sports event of all time. With the fanatical support of the entire German nation backing it, with 5,000 athletes from fifty nations competing and with the almost incredible number of 4,500,000 spectators witnessing the show, the Berlin festival set a standard of such superlative excellence that it may never be matched again …. Money meant nothing. Adolf Hitler merely ordered that everything be gotten ready and everything was gotten ready." **August 28, 1936**: German authorities implement mass arrests of Jehovah's Witnesses in Germany. Most are sent to concentration camps. **September 1936:** At their world convention in Lucerne, the Jehovah's Witnesses pass a resolution strongly criticizing the German government and its policies against Jews, communists, the church and others,		

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and begin to distribute what the Nazis regard as seditious leaflets. **September 9, 1936:** At the Nuremberg Party rally, Hitler announces a Four-Year Plan for the German economy, intended within four years to ready for war the German economy and armed forces. **October 25, 1936**: Germany and Italy form an alliance (the Rome-Berlin Axis). **November 1936:** Dr. Dr. Robert Ritter begins to investigate "Gypsies and Gypsy Mischlinge" ("mixed blood") at the Reich Health Office, laying the groundwork for later persecution. **November 3, 1936**: Franklin D. Roosevelt is reelected the US President, defeating Republican Governor Alf Landon of Kansas. **November 19, 1936:** Germany enacts the Seventh Implementation Order to the Law of Foreign Exchange Control, which requires German owners of foreign securities to deposit their securities with a German bank. **November 25, 1936**: The Anti-Comintern Pact between Germany and Japan against the Soviet Union is signed.	**December 15, 1936:** Jewish medical student David Frankfurter is sentenced by a Swiss court to 18 years in prison for assassinating Nazi leader Wilhelm Gustloff at his Swiss home. Nazi party newspapers continue to call for another investigation and for the death penalty, which had been long abolished in the Swiss canton in which the shooting took place.	

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March 21, 1937: Pope Pius XI (1857-1939) issues the papal encyclical *Mit brennender Sorge* (With Deep Anxiety), condemning racism and Nazi persecution of the Catholic church. **May 28, 1937**: Neville Chamberlain succeeds Stanley Baldwin as prime minister of Great Britain. **June 12, 1937**: Heydrich issues a secret decree providing for "protective custody" for "race defilers."	**June 15, 1937:** Although the Swiss government participates in economic sanctions against Italy following the Italian invasion of Ethiopia, Switzerland decides to recognize the Italian conquest.	
July 7, 1937: The Peel Commission recommends termination of the Mandate and the partition of Palestine into a Jewish state and an Arab state, and a British enclave around Jerusalem, Bethlehem, Lydda, Ramleh, and Jaffa. The British government issues a White Paper approving the commission's recommendations. The Zionist leadership welcomes the plan and Arab nations reject it. Japan attacks China, triggering a full-scale war that lasts until 1945. **July 15, 1937**: The Inspectorate of Concentration Camps opens the Buchenwald concentration camp near the city of Weimar, Germany. **Fall, 1937:** A second wave of arrests of Jehovah's Witnesses begins. **October 20, 1937**: Anti-Jewish riots inspired by local Nazis break out in the free city of Danzig. Half of the city's Jews leave within one year. **November 8, 1937**: Der Ewige Jude (The Eternal Jew), a Nazi propaganda		

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
exhibition, opens in Munich. **December 14, 1937**: Himmler passes a decree on the Preventive Suppression of Crime by the Police, permitting the arrest of persons who have not committed crimes but are deemed "asocial," and applying the decree particularly to Roma. **January 9, 1938:** Nazi Gauleiter Portschy writes to Reichsminister Lammers to propose that Roma, who he describes as criminals and a threat to public health, should be sterilized and enslaved. **January 21, 1938**: Romania adopts a law abrogating the minority rights of Jews, resulting in the deprivation of citizenship to many Jews living in Romania since 1918. **March 11-13, 1938:** German troops invade Austria and incorporate Austria into the German Reich (the *Anschluss*). A wave of street violence against Jews and their property follows in Vienna and other cities throughout the so-called Greater German Reich during the spring, summer, and autumn of 1938, culminating in the *Kristallnacht* riots of November 9-10. **March 28, 1938**: Jewish community organizations lose recognition by Germany.	**March 13, 1938:** On the eve of the German Reich's incorporation of Austria, there are approximately 5,000 refugees in Switzerland, a number that had been stabilized since 1933. The small Swiss Jewish community (SIG) is required to provide financial support for these individuals. The JDC also provides substantial assistance. Switzerland reinforces its customs guards along the Austrian border, anticipating an influx of refugees. **March 23, 1938:** The U.S. proposes to hold an international conference on refugees in Switzerland; the Swiss government rejects the proposal and the conference instead eventually is held on July 6, 1938 in Evian, France. **March 28, 1938:** The Swiss Federal Council makes it compulsory for all holders of Austrian passports to have a visa.	

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	April, 1938: Switzerland holds discussions with Germany "to set up measures that would enable the border authorities to distinguish between Jewish and non-Jewish German citizens. When the [Swiss] Federal Council [is] weighing the idea of making it compulsory for all German citizens to obtain a visa, the German authorities fear[] that this [will] signal detrimental consequences for foreign affairs and that other countries would introduce similar measures." The negotiations are conducted in secret and not revealed until 1954. **April 7, 1938:** A Swiss court sentences as a spy, in absentia, a Swiss civilian who had played a role in the Nazis' effort to circulate the "Protocols of the Elders of Zion" in Switzerland.	
April 10, 1938: A referendum is held in Austria. It is manipulated to indicate that about 99 percent of the Austrian people want the union with Germany. Neither Jews nor Roma are allowed to vote. **April 22, 1938:** The "Ordinance against Support for the Camouflaging of Jewish Businesses" is issued. **April 26, 1938**: The "Decree Regarding Registration of Jewish Property" (1938 Census) requires all Jews in Germany and Austria to register all assets in excess of 5,000 Reichsmarks. Beginning in June, police stations and tax offices compile lists of wealthy Jews. **May 3, 1938:** SS authorities open the Flossenbürg concentration camp in northern Bavaria, Germany.	**May 14, 1938**: Switzerland withdraws from its international obligation to take part in any economic sanctions imposed by the League of Nations, returning to neutrality	

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
	status.	
May 29, 1938: Hungary adopts comprehensive anti-Jewish laws and measures, excluding Jews from many professions. **June 13-18, 1938:** German police round up 9,000 so-called asocials and convicted criminals in "Operation Work Shy," along with 1,000 Jews, who are sent to concentration camps. One thousand Roma also are arrested as part of "Gypsy Clean-up Week." **June 14, 1938:** Jewish-owned commercial enterprises are identified and registered under the "Third Regulation to the Reich Citizenship Law." **June 25, 1938:** German Jewish doctors, having lost their right to practice in government hospitals (March 3, 1936), now are forbidden from treating non-Jewish patients. **July 6-14, 1938**: Because the League of Nations is unable to deal with refugee conditions in Germany, President Roosevelt convenes a conference at Evian, France, attended by 32 nations. No nation except the Dominican Republic offers to accept refugees. The Bergier Final Report notes that "the majority of the 32 governments represented seemed to be more concerned about 'getting rid' of the refugees they had already taken in." In 1998, Seymour J. Rubin, one of the U.S. negotiators of the 1946 Washington Accords with Switzerland, notes that "Switzerland did admit many more refugees in proportion to its population than any other nation." **July 8, 1938**: Munich's main synagogue is demolished on Adolf Hitler's express orders.		

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August 8, 1938: SS authorities open the Mauthausen concentration camp near Linz, Austria. **August 17, 1938:** The Reich Minister of the Interior decrees that all Jewish men residing in Germany must adopt the middle name "Israel." Jewish women are required to take the middle name "Sarah."		
	August 18, 1938: The Swiss Federal Council decides to refuse entry to all refugees without a visa, thus effectively closing the Swiss borders. **August 19, 1938:** International Committee of the Red Cross delegate Colonel Guillaume Favre visits the Dachau concentration camp.	
August 26, 1938: Adolf Eichmann, working in the Nazi Security Service (SD) and a self-styled "expert" on Jews, opens the Central Office for Jewish Emigration in Vienna. **September 1-3, 1938:** Italy announces that foreign Jews no longer may reside in Italy or its possessions, while those already living in Italy must leave within six months. Jews nationalized after January 1, 1919 lose their Italian citizenship.		
	September 7, 1938: A circular is issued clarifying the August 19, 1938 instructions: refugees without visas are to be turned back, especially those "who are Jewish or probably Jewish," and their passports are to be marked "turned back."	
September 29-30, 1938: Germany, Italy, Great Britain, and France sign the Munich agreement, by which Czechoslovakia must surrender its border regions and defenses (the so-called Sudeten region) to Nazi Germany. German troops occupy		

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these regions between October 1 and 10, 1938. **September 30, 1938:** All licenses for Jewish doctors are revoked (except those treating Jewish patients are allowed to continue). **October 1, 1938:** The "Police Station for Gypsies" at Munich Police headquarters becomes part of the Reich Criminal Investigation Police Office.		
	October 4, 1938: Germany agrees to Switzerland's demand to stamp passports of Jews with a "J" ("*Jude*"). Switzerland thus becomes the only neutral country to initiate a German anti-Jewish decree. This Swiss demand is not made public until 1954.	
October 5, 1938: All German passports held by Jews are invalidated by the Reich Ministry of the Interior; Jews must surrender their old passports to be marked with a "J." **October 6, 1938:** Germany annexes the Sudetenland, while Slovakia becomes autonomous. **October 8, 1938:** In Slovakia, the right-wing, antisemitic Hlinka Guard is created. **October 28, 1938**: Nearly 17,000 stateless Jews, mostly from Poland, are expelled from Germany to Poland. **November 6, 1938**: Herschel Grynszpan, a Jewish student in Paris whose parents were deported on October 28, assassinates Ernst vom Rath, counsellor at the German embassy in Paris. **November 9-10, 1938**: Under the pretext of retaliation of the vom Rath assassination, *Kristallnacht* ("Night of		

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the Broken Glass") riots occur in Germany and Austria. The Nazis set fire to 191 synagogues. Ninety-one Jews are killed. More than 30,000, or more than 10%, of Germany's remaining Jews are arrested and sent to concentration camps. The Nazis break into and loot thousands of homes and shops. **November 12, 1938:** The German government issues the Decree on the Elimination of the Jews from Economic Life, barring Jews from operating retail stores, sales agencies, and from carrying on a trade. The law also forbids Jews from selling goods or services at an establishment of any kind. Cultural events for Jews (theater, film, exhibitions and the like) are banned. Additionally, a fine of 1 billion marks is imposed upon all German Jewry for the Kristallnacht damage (the "*Sühneleistung*" or "atonement fine"); Jews are banned from receiving insurance payments. In addition, the *Reichsfluchtsteuer* (emigration taxes), enacted in 1931 and levied on people likely to emigrate, are extended. To avoid the high penalties and meet the financial burden, many Jews and others who were persecuted have to withdraw their assets and securities, including deposits abroad such as in Switzerland. **November 15, 1938:** German authorities ban Jewish children from German public schools; Jewish children now can only attend segregated Jewish schools financed and managed by the Jewish communities.	**November 15, 1938**: In a speech before parliament, Heinrich Rothmund responds to criticism of his restrictive policies with an explicit denunciation of "Eastern Jews": "As you will see, we are not such horrible monsters after all! But that we do not let anyone walk all over us, and especially not Eastern Jews, who as is well known, try and try again to do just that, because they think a straight line is crooked, here our position is probably in complete agreement with	

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	our Swiss people."	
November 17, 1938: Italy announces new racial laws defining who is a Jew, barring intermarriage between Italians and Jews, and limiting Jewish economic activity. **November 30, 1938:** The licenses of all Jewish attorneys are revoked. **December 1938**: The remaining 6,000 Jews of the free city of Danzig develop an "orderly" plan with the Nazi government to leave Danzig by May 1939 (later extended until the fall of 1939). Under an agreement with Nazi officials to finance the emigration, they negotiate the sale of Jewish communal property, including the historic Danzig Great Synagogue, which is torn down in 1939, and the cemetery. The American Jewish Joint Distribution Committee (JDC) "purchases" the ritual collection, which is sent to the Jewish Theological Seminary of America. **December 3, 1938**: The German government issues the Decree on the Utilization of Jewish Property, making "aryanization" of all Jewish businesses compulsory. German authorities force Jews to sell immovable property, businesses, and stocks to non-Jews, usually at prices far below market value. Drivers' licenses for Jews are revoked, and Berlin institutes a "Jewish curfew." **December 8, 1938:** SS chief and Chief of German Police Heinrich Himmler issues the Decree for "Combating the Gypsy Plague." The decree centralizes Nazi Germany's official response to so-called "Gypsy Question;" defines Gypsies as an inferior race; tasks the German Criminal Police with		

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establishing a nationwide database, identifies all Gypsies residing on the territory of the so-called Greater German Reich; and proclaims Dr. Robert Ritter's Research Institute for Racial Hygiene and Population Biology as the "expert" authority to determine membership in the "Gypsy race." **December 1938-August 1939:** The United Kingdom admits between 9,000 and 10,000 primarily Jewish children as refugees from the Greater German Reich. Through the *Kindertransport*, British authorities agree to permit children under the age of 17 to enter Great Britain from Germany, Austria and the annexed Czech territories. Private citizens and organizations must guarantee payment of each child's care, education, and eventual emigration from Britain. **January 1, 1939:** Jewish businesses are forced to close under the Law Excluding Jews from Commercial Enterprises. **January 17, 1939:** The German government prohibits Jews from working as nurses, veterinarians, holistic practitioners, dentists and pharmacists.	**January 20, 1939:** The Swiss Federal Council orders visas to be required for all foreign emigrants.	
January 24, 1939: The Reich Central Office for Jewish Emigration opens in Berlin, centralizing in the hands of the SS all authority over Jewish emigration. **January 30, 1939:** In a Reichstag speech, Hitler threatens to exterminate the Jewish race in Europe		

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if world war should once again break out. He states: "If international-finance Jewry inside and outside Europe should succeed once more in plunging the nations into yet another world war, the consequence will not be the Bolshevization of the earth and thereby the victory of Jewry, but the annihilation of the Jewish race in Europe." **February 9, 1939:** Senator Robert Wagner of New York and Representative Edith Rogers of Massachusetts introduce a bill to permit the entry of 20,000 refugee children, ages 14 and under, from the Greater German Reich into the United States over the course of two years (1939 and 1940). The children would be granted entry without reference to the quota system. In contrast to the United Kingdom, which accepts several thousand Jewish refugee children as part of the "Kindertransport," the U.S. bill dies in committee in the summer of 1939.	**February 20, 1939**: Heinrich Rothmund, chief of the police division of the Swiss Ministry of Justice, announces that Switzerland at that time was harboring 10,000-12,000 refugees, 3,000 being penniless Jews for whom the Swiss Jewish community is required to contribute approximately 250,000 Swiss Francs monthly. Bregenz consular employee Ernst Prodolliet, who had been issuing entry visas to Austrians, is subjected to a disciplinary hearing for this activity and is told at the hearing that "'[o]ur consulate's job is not to ensure the well-being of Jews.'"	
March 2, 1939: Cardinal Pacelli (1876-1958) is elected Pope Pius XII.	**March 1939:** St. Gallen police chief Paul Grueninger, who had ignored official Swiss policy and falsified records to assist	

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	hundreds of Jewish refugees, is dismissed from his position, suffering severe financial and social consequences for decades. In 1971, he is recognized by Israel for his efforts; in 1995, the St. Gallen district court posthumously acquits him of all charges.	
March 14-16, 1939: German forces occupy Bohemia and Moravia and begin arresting Jews, Czech intellectuals and others. Hitler signs a decree establishing the Protectorate of Bohemia and Moravia, while Slovakia responds to German pressure by declaring independence from the Czecho-Slovak state. **March 22, 1939**: Germany annexes the autonomous region of Memel in Lithuania. **March 28, 1939**: The Spanish civil war ends as Madrid is formally surrendered to the nationalist leader, Francisco Franco.	**March 15, 1939:** The Swiss Federal Council approves the introduction of a visa requirement for holders of Czechoslovakian passports. **March 30, 1939:** The NYTimes reports that nearly 50% of Switzerland's gold reserves have been shipped from northern Swiss towns to New York, Paris and London, as well as to southern Swiss centers such as Geneva, in response to concerns about the German occupation of Czechoslovakia and German troop concentrations near northern Swiss cities.	
March 31, 1939: British Prime Minister Neville Chamberlain abandons his appeasement policy after the seizure of Czechoslovakia, and declares that Britain and France will defend Poland against aggression. **April 7, 1939:** Italy invades and annexes Albania. **April 30, 1939:** Under the "Law on Tenancy Relations with Jews,"		

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preparations are made to establish "Jews' houses" requiring Jewish families to live together. **May 15, 1939:** More than 900 German Jewish refugees arrive at Cuba aboard the German passenger ship SS St. Louis and are refused entry on the grounds that their entry permits are invalid. The U.S. also refuses entry, and the refugees return to Europe, where they are admitted to England, Belgium, Holland, and France. A concentration camp for women is opened north of Berlin, at Ravensbrück. **May 17, 1939:** British Colonial Secretary Malcolm MacDonald issues a White Paper proposing an independent Palestinian state within 10 years; permitting 75,000 Jews to enter Palestine within five years, with subsequent immigration subject to Arab consent; and immediately prohibiting the sale of land to Jews. In effect, the British government repudiates the Balfour Declaration. The White Paper is never endorsed by the League of Nations nor agreed to by the Zionists, the Palestinian Arabs, and the Arab states. **July 4, 1939:** German authorities establish the Reich Association of Jews in Germany, with leadership handpicked by the German Security Police, as the sole legal Jewish organization in Germany. The Association is charged with the administration of Jewish schools and financial support of poor Jews.	**July 30, 1939:** The NYTimes reports that, in anticipation of another European war, the Swiss Bank Corporation has leased property in New York previously occupied by the Federal Reserve Bank, including large underground vaults capable of	

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	holding gold and securities.	
August 2, 1939: At the urging of Leo Szilard (1998-1964), a Hungarian nuclear physicist who is alarmed that Nazi Germany might develop the atomic bomb, Albert Einstein writes to President Roosevelt advising of the military potential of atomic energy. His letter, delivered to President Roosevelt on October 11, leads to the Manhattan Project and the U.S. development of the atomic bomb.		
August 23, 1939: V.M. Molotov and Joachim von Ribbentrop, foreign ministers of the Soviet Union and Germany, sign a German-Russian nonaggression pact in Moscow. They secretly carve out spheres of influence in eastern and central Europe, with Russia gaining eastern Poland, Bessarabia, Finland, Estonia, Latvia, and Lithuania.		
	August 30, 1939: The Swiss Parliament grants the Federal Council broad legislative power and the power to make changes in the constitution.	
September 1, 1939: Germany invades Poland, marking the beginning of World War II. Adolf Hitler orders the first Nazi program of murder, a "euthanasia program" known as T4. German physicians are empowered to determine which mentally and physically ill persons are to be killed; ultimately some 70,000 Germans are euthanized between September 1939 and late summer 1941. Curfews restricting Jewish individuals from going out in public after 9 p.m. in summer and 8 p.m. in winter are imposed.	**September 1, 1939:** Switzerland proclaims its neutrality and successfully preserves it throughout World War II. [Langer, An Encyclopedia of World History] When the war begins, there are 7,000 to 8,000 refugees in Switzerland.	
September 3, 1939: Great Britain and France declare war on Germany.		

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[USHMM, Key Dates] The British government cancels all visas that had previously been issued to German Jews.		
	September 5, 1939: The Swiss Federal Council approves a general visa requirement.	
September 16, 1939: The NYTimes reports the Nazis' first execution of a conscientious objector, a Jehovah's Witness.		
September 17, 1939: The Soviets invade Poland from the east under the terms of the Nazi-Soviet Pact.		
September 21, 1939: Reinhard Heydrich expels Jews, Poles and Roma from the Polish lands to be incorporated into the Reich. In the rest of Nazi-occupied Poland, Jews living in the countryside are ordered into ghettos in the major cities.		
September 23, 1939: Jews in Germany are banned from owning radios.		
September 27, 1939: Warsaw falls to the Germans, and fighting in Poland ends as of October 6. A new Polish government is formed in exile; its air, land, and naval forces aid the Allies until the end of the war.		
October 1939: Hitler signs an authorization (later backdated to September 1, 1939) that shields German physicians participating in the so-called "euthanasia" program from future prosecution. "Euthanasia" policy is designed to systematically kill Germans whom the participating physicians deem "incurable" and thus "unworthy of life."		
October 12, 1939: The SS transforms the Grafeneck institution for crippled		

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children into a euthanasia center. The first deportations to occupied Poland from Austria and the former Czechoslovakia begin.		
October 17, 1939: The Reich Security Main Offices issues its "Freezing-of-Movement Directive," barring Roma from leaving their towns of residence or other current places of residence.	**October 17, 1939:** The Resolution on Changes in Police Regulations for Foreigners, passed by the Swiss Council of Ministers, calls on the cantons to deport illegal refugees (*i.e.* all but deserters and "political" refugees), while also calling for those remaining in the country to be placed in long-term internment, to provide work beneficial for Switzerland, and to contribute to their room and board.	
October 20-26, 1939: Adolf Eichmann oversees the deportation of approximately 3,800 Austrian, Czech, and Polish Jews from Vienna, Moravská Ostrava, and Katowice to an area south of Lublin called Nisko. **October 26, 1939:** Germany annexes the former Polish regions of Upper Silesia, West Prussia, Pomerania, Poznan, Ciechanow (Zichenau), part of Lodz, and the Free City of Danzig (Gdansk). From these newly annexed regions, the German government creates two new administrative districts: Danzig-West Prussia and Posen. German authorities place those areas of occupied Poland not annexed directly by Germany or by the Soviet Union under a German civilian administration, the Generalgouvernement. Governor General Hans Frank imposes compulsory labor on Jews in the Generalgouvernment.		
	November 20, 1939: Following Nazi occupation of Poland, Polish bank Lodzer Industrieller GmbH asks Credit Suisse to transfer assets deposited with it to an account at the German Reichsbank in Berlin; the Swiss bank's legal department recommends not complying with the	

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	request since the customer's signature most likely had been obtained under duress. After discussions with SBC and the Reichsbank, which agree that Swiss banks are not obliged to comply with requests from German administrators, Credit Suisse completes the transfer in the interests of avoiding friction with German interests.	
November 23, 1939: German authorities require that all Jews residing in the Generalgouvernement over the age of ten wear white armbands with a Star of David. All Polish Jews soon are required to mark themselves by wearing a badge. **November 28, 1939**: Jewish councils (Jüdenrate) are established in the Generalgouvernment under Nazi decree. **November 30, 1939:** The Soviet Union bombs Helsinki and invades Finland. **December 5-6, 1939:** All Jewish-owned property in Poland is confiscated by the Nazis.		
January 1940: The Finns resist invasion, resulting in huge losses by the Red Army.	**1940:** The Wauwilermoos prison camp is established in Lucerne; in addition to convicted Swiss killers, rapists and robbers, it is also later used to incarcerate 160 U.S. service members caught escaping from Swiss internment camps. Its commanding officer, Capt. Andre Béguin, is a known Nazi sympathizer. In 2014, eight surviving service members are awarded the Congressional Prisoner of War medal.	
January 30, 1940: At a Berlin conference, the Nazis decide to expel 30,000 Roma from Germany to Poland, along with Jews and Poles.	**January 1940:** Marcel Edouard Pilet-Golaz becomes Switzerland's foreign minister and president, a position he holds until November 1944. He pursues policies, including economic collaboration, intended to align Switzerland more closely with the German "New Order."	

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February 8, 1940: The Nazis create the Lodz ghetto. Deportations begin on February 12, 1940, with the Jews of Stettin incarcerated in Lodz.		
March 12, 1940: Finland signs the Treaty of Moscow, ending the Soviet-Finnish war.	**March 12, 1940:** The Swiss Federal Council orders the construction of labor camps. Their management is entrusted to the Central Office for Volunteer Labor Service, but all instructions are issued through the Police Section under the direction of Heinrich Rothmund.	
March 23, 1940: The Nazis abandon the "Nisko Plan," which had been intended to deport Jews to a "reservation" in the east of Poland. Nearly 100,000 Jews who had been deported under this program are now imprisoned in ghettos.		
April 1, 1940: Japanese-controlled Shanghai begins to accept Jewish refugees.		
April 9, 1940: Germany invades Norway and Denmark. Denmark surrenders on April 10, 1940.		
	April 12, 1940: The Swiss Federal Council officially notifies the cantons that refugee labor camps are to be established, and sets forth the living arrangements and rules for camp inmates.	
	April 18, 1940: The Swiss Federal Council and General Guisan issue joint orders for total resistance against Germany.	
April 20, 1940: Persons of "mixed race" and men married to Jewish women are discharged under a secret decree of the Armed Forces High Command.		
	April 26, 1940: Switzerland freezes assets in its territory owned by nationals of Denmark.	

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April 30, 1940: The Nazis close off the Lodz ghetto from the rest of the city.		
	May 1940: Swiss citizens, both men and women, are required to perform labor service.	
	May 3, 1940: The Swiss Federal Justice and Police Department orders a census of refugees living in Switzerland.	
	May 5, 1940: The NYTimes reports that Switzerland has taken precautions against Nazi invasion; "most of the movable wealth ha[s] left the country" and "[m]uch of it has already come to Wall Street for safekeeping or investment," including "[m]uch of the gold reserve of the Swiss central bank."	
May 10, 1940: Germany invades the Netherlands, Belgium, Luxembourg, and France. By June 22, Germany occupies all of these regions except for southern (Vichy) France. Neville Chamberlain resigns and Winston Churchill becomes prime minister of Great Britain.		
May 18, 1940: In the General gouvernment, 2,800 Roma are deported from Germany to Lublin.		
May 20, 1940: SS authorities establish the Auschwitz concentration camp (Auschwitz I) outside the Polish city of Oswiecim, located in German-annexed Upper Silesia.		
	May 21, 1940: Switzerland freezes assets in its territory owned by nationals of Norway, Belgium, Luxembourg and the Netherlands.	
May 26, 1940: The evacuation of Allied troops from Dunkirk, France begins. In one week, a hastily assembled fleet of 861 ships and boats evacuates 225,000 British and 113,000		

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French and Belgian troops to England. **June 10, 1940:** Italy enters the war as an ally of Germany. All foreign Jews in Italy are imprisoned in camps. **June 14, 1940:** Auschwitz receives its first prisoners, some 700 Poles.	**June 18, 1940:** A circular letter from the Swiss Federal Justice and Police Department establishes the Swiss Commission for Internment and Housing (EKIH), instructing the cantonal police departments that military personnel are to be disarmed and interned by the army. Civilian fugitives - with the exception of women, children up to age 16, men over age 60, and invalids - are to be turned back. **June 19-20, 1940**: After military defeat, 28,000 soldiers of the 45th French Army Corps, including a Polish division, cross the Swiss border and are interned; within days, more than 40,000 members of the military and about 7,500 French civilians are taken in temporarily. **June 20, 1940:** Swiss and German authorities sign an agreement forbidding the Swiss Air Force from engaging in combat with German warplanes over Switzerland.	
June 22, 1940: France and Germany sign an armistice. Germans occupy northern France and Atlantic coast; Marshal Philippe Pétain establishes a collaborationist regime (known as "Vichy," after its capital) with authority over unoccupied southern zone, North Africa, and other French colonies overseas. **June 28, 1940:** With German encouragement, the Soviet Union annexes the eastern provinces of Romania, Northern Bukovina and Bessarabia (today Moldova).		

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June 29, 1940: The U.S. enacts the Alien Registration ("Smith") Act, requiring all adult non-citizens to register with the government and prohibiting advocacy of the overthrow of the U.S. government.		
	July, 1940: Paul Rossy, Chief Executive Officer of the Swiss National Bank, states at an economic forum: "[O]ur country will have to consciously seek its place in this new world and endeavor to play an active role in it. In no case should we limit ourselves to passive adaptation alone."	
July 3, 1940: The German Foreign Ministry suggests that, as part of a peace settlement, all Jews leave Europe for Madagascar.		
	July 6, 1940: Switzerland freezes assets in its territory owned by nationals of France.	
July 9, 1940: The Battle of Britain begins over the skies of southern England.		
July 10, 1940: Marshall Philippe Pétain becomes head of the Vichy regime in France.		
	July 12, 1940: The Swiss Federal Justice and Police Department issues orders for the complete surveillance of all refugees and emigrants in Switzerland.	
	August 9, 1940: Switzerland and Germany sign a mutual economic cooperation agreement, exchanging Swiss food, machines and armaments for German coal and steel.	
September 2, 1940: The US and Great Britain agree to the transfer of 50 old US destroyers to Britain in exchange for rights to British air and naval bases in Newfoundland, Bermuda, the Caribbean, and British Guiana.		

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September 12, 1940: Vichy French authorities establish or convert refugee camps in the south of France to detention camps for Jews and political prisoners. Among the best known of these camps are Gurs and Rivesaltes. **September 15, 1940:** The British Royal Air Force gains the upper hand in the Battle of Britain. **September 16, 1940**: President Roosevelt signs an act establishing the first peacetime draft in American history; the law requires draftees to serve for one year. **September 23, 1940:** Himmler creates a special Reichsbank account for looted Jewish assets (currency, jewelry, gold and silver). **September 27, 1940:** Germany, Italy and Japan sign a mutual assistance agreement, the Tripartite Pact. Each country vows to come to the others' aid if attacked by another nation, an agreement intended to demonstrate to the West the threat posed by these regimes. **October 3, 1940:** Vichy France promulgates anti-Jewish laws for unoccupied France modeled on the Nuremberg Laws. Foreign Jews are interned in special camps and Algerian Jews lose their French citizenship. **October 12, 1940:** The Warsaw ghetto is established. **October 18, 1940**: Registration of Jewish property and businesses begins in occupied France. **October 22, 1940**: Registration of Jewish businesses begins in the occupied Netherlands. Jews of Saarland, the Palatinate, and Baden		

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are deported to the Gurs transit camp in Vichy, France. **October 28, 1940:** Italy invades Greece, facing fierce resistance. By November Italian forces are pushed back into Albania. **November 5, 1940**: President Roosevelt is reelected for an unprecedented third term. **November 15, 1940:** German authorities order the Warsaw ghetto in the Generalgouvernement to be sealed. It is the largest ghetto in both area and population, confining more than 350,000 Jews (about 30 percent of the city's population) in an area of about 1.3 square miles, or 2.4 percent of the city's total area. At times, before the deportations of July 1942 begin, the actual population in Warsaw ghetto approaches 500,000.	**November 19, 1940**: The Swiss government dissolves the Swiss Nazi Party, finding that the party's activities are "of a nature to endanger public order and create conflict."	
November 20-24, 1940: Hungary (November 20), Romania (November 23), and Slovakia (November 24) sign the Tripartite Pact and become Axis partners. Bulgaria follows suit on March 1, 1941; the so-called Independent State of Croatia joins on June 15, 1941. **November 29, 1940**: A Nazi anti-Semitic propaganda film, *The Eternal Jew*, begins playing throughout Germany and occupied Europe. Jews are compared to rats: carriers of disease and corrupters of the world. **December 1940:** The Vatican condemns the "mercy killings" of unfit		

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Aryans.		
	December 13, 1940: The Swiss Federal Council approves the partial closing of the border.	
December 18, 1940: Hitler signs the first operational order for the planned German invasion of the Soviet Union, "Operation Barbarossa."		
	End of 1940: The Swiss consul in Cologne, Germany, Franz Rudolph von Weiss, sends a report to the Swiss Confederal Political Department about the Reich's euthanasia program. Later, in 1941, von Weiss sends further intelligence and collects evidence concerning the deportation of the Jewish population of Cologne to the East. Consul Weiss is denigrated by his superiors in the Berlin embassy as a "defeatist" for his public criticism of the German government.	
	1941: Switzerland freezes assets in its territory owned by nationals of Yugoslavia, Greece and the USSR.	
	1941: The number of foreigners in Switzerland is 5.2% of the population.	
January 10, 1941: Dutch Jews are required to register.		
	January 1941: French soldiers interned in Switzerland are sent home.	
January 19, 1941: An Executive Order is drawn up freezing all foreign assets in the U.S.		
January 22, 1941: Bulgaria enacts a law excluding Jews from public service, dismissing professionals, and taxing businesses.		

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January 30, 1941: Hitler repeats his 1939 statement that he will annihilate the Jews of Europe. **February 15, 1941:** Deportations of Viennese Jews to Nazi ghettos in Poland begin. **February 25, 1941:** Dutch citizens strike in protest against deportations of Jews from the Netherlands. **March 1, 1941:** Heinrich Himmler orders the construction of a large camp to house 100,000 prisoners of war outside the village of Birkenau (Brzezinka), approximately one mile from the Auschwitz concentration camp. Bulgaria becomes a German ally and German troops enter Bulgaria on March 2. **March 3-20, 1941:** German authorities announce, establish and seal a ghetto in Krakow, Poland. **March 11, 1941**: President Roosevelt signs into law the Lend-Lease act, allowing the US to lend Great Britain food, weapons, and other goods.		
	March 18, 1941: The Swiss Federal Council decrees that refugees with assets abroad are to be subjected to a "solidarity contribution" to assist fellow victims; the tax is collected and distributed to Swiss relief agencies.	
April 1941: The German chemical conglomerate I.G. Farben begins construction of the Buna factory using concentration camp forced laborers from Auschwitz. It is located near the Polish city of Monowitz, a few miles from the Auschwitz concentration camp.	**April 1941:** The New York-based office of the World Jewish Congress (WJC) halts all aid shipments to Jews in occupied nations (then-distributed through the Geneva office), complying with the Allied economic boycott of Germany and its allies. Alfred Silberschein, a WJC employee based in Geneva, ignores these instructions. Through the Committee for the Relief of the War-Stricken Jewish Population (RELICO), during January - June 1942,	

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	Silberschein sends over 100,000 food packages to Jews in occupied nations. In June 1942 the WJC begins negotiations with the embargo authorities seeking an exception to allow food to be sent to camps and ghettos.	
April 6, 1941: German and other Axis forces occupy Yugoslavia and Greece. **April 10, 1941:** Germany and Italy create an independent Croatia. **May 1941:** In occupied France, German authorities open the internment camp Pithiviers to incarcerate both French Jews and foreign Jews residing in France. The German authorities intern Jews in Pithiviers and other detention camps before transferring them to Drancy, from where the SS later deports them to Auschwitz and Sobibor. **May 1941:** In Croatia, Jews are arrested, interned and murdered. **May 15, 1941:** The Vichy French sign a protocol with Germany over the use of French possessions. Germany is allowed to use Syrian and Lebanese air and naval bases, munitions stored in Syria are transferred to Iraq for German use and a submarine base in Dakar, on the west coast of Africa, is made available for German use. Jews in Romania are drafted for forced labor. **May 20, 1941**: All German consulates are informed that Nazi leader Hermann Goering bans the emigration of Jews from all occupied territories, including France, in view of the "doubtless imminent final solution." This is the first mention of a "final solution."		
	May 23, 1941: Swiss police chief Rothmund orders the exclusion of Jewish	

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	children from Swiss Red Cross - Relief for Children humanitarian convoys bringing children to Switzerland for three-month stays to recuperate from the war. Following protests, 200 French (but not foreign or stateless) Jewish children are permitted entry with every convoy.	
June 1941: The US State Department issues a ruling barring immigration by all persons with close relatives in Nazi-occupied Europe. The ruling is issued after May hearings by the House Un-American Activities Committee, at which it is claimed that persons pledging to serve the Gestapo have been released from concentration camps.		
June 14, 1941: President Roosevelt issues an executive order freezing German and other European assets held in the U.S.		
June 17, 1941: The Einsatzgruppen (German mobile units of Security Police and SD officials) receives orders to exterminate Jews during the invasion of the USSR.		
	June 20, 1941: The U.S. grants a license which allows the transfer of capital to Switzerland via the Swiss National Bank.	
June 22, 1941: Nazi Germany invades the Soviet Union in "Operation Barbarossa." In accordance with previous agreements, between SS and police and Wehrmacht representatives, Einsatzgruppen units follow the frontline troops into the Soviet Union. RSHA chief Heydrich tasks the Einsatzgruppen with identifying, concentrating, and killing Jews, Soviet officials and other persons deemed potentially hostile to German rule in the east. Einsatzgruppen squads begin to carry out mass shootings during the last		

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week of June 1941. Hitler also orders the mass murder of Roma and Sinti (Gypsies), which results in at least 250,000 deaths by 1945. **June 26-30, 1941:** Romanian military and police officials conduct a pogrom in the city of Iasia, killing at least 4,000 Jews. **June 27, 1941:** Hungary declares war on the Soviet Union. **July 1941**: The Germans begin executing Jews at the empty fuel pits at Ponary, outside Vilna, beyond the view of witnesses. **July 6, 1941:** In a pastoral letter read from the pulpits of Catholic churches throughout Germany, the Fulda Conference of Catholic Bishops, reacting to the Nazis' extermination of the disabled, condemns the killing of innocent human beings. **July 21, 1941:** Romanian forces join the Einsatzgruppen and German army units in a massacre that by the end of August has killed over 150,000 Jews. **July 31, 1941:** Reich Marshall Hermann Göring charges Reinhard Heydrich, head of the RSHA, to take measures for the implementation of the "final solution of the Jewish question." **August 1941:** The US House of Representatives votes 203-202 to extend required service of draftees beyond one year; the vote allows the continued expansion of the armed forces. **August 7, 1941:** Himmler issues a "Circular Decree" characterizing "Gypsies" on the basis of their racial		

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purity. **August 14, 1941:** Roosevelt and Churchill sign the Atlantic Charter, a document joined in 1942 by 26 allied nations, setting forth their vision for the post-War world. **August 15, 1941:** German authorities seal off the Kovno ghetto, established on July 11. **August 20, 1941:** In Drancy, France, German authorities open an internment and transit camp for Jews. The SS eventually deports Jews from Drancy to Auschwitz and Sobibor. **August 23, 1941:** Himmler issues a directive to halt all Jewish emigration. **August 24, 1941:** Responding in part to an August 3 public protest by the Catholic Archbishop of Münster, Clemens von Galen, Adolf Hitler orders the cessation of centrally coordinated "euthanasia" killings. The killings continue, however; among the methods used are starvation, lethal injection, and deliberate failure to treat serious disease.		
August 27-29, 1941: SS and police units, supported by locally recruited auxiliaries and German military personnel, kill 23,600 Hungarian Jews in forced labor in Kamenets-Podolsk (Kamenets-Podol'skiy), Ukraine. **September 1, 1941:** The Reich Minister of the Interior decrees that Jews over the age of six in the Greater German Reich must wear a yellow Star of David on their outer clothing in public at all times. **September 3, 1941:** At Auschwitz, SS functionaries perform their first gassing experiments using Zyklon B.	**August 27, 1941:** The Relief Action Committee Under the Patronage of the Red Cross is formed in Zurich.	

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The victims are Soviet prisoners of war. **September 4, 1941**: Following a U-boat attack on a US destroyer, President Roosevelt orders the navy to escort convoys between US and Iceland and to destroy Axis naval vessels operating in the zone. **September 8, 1941**: The Germans begin the siege of Leningrad, which does not end until January 1944. **September 15, 1941:** German authorities confiscate most Jewish assets in Holland, and ban Jews from appearing in public places. **September 18, 1941:** Germany captures Kiev, and takes over 600,000 Soviet troops as prisoner. Himmler informs officials in Warthegau that Hitler intends by the end of the year to deport to the east all remaining Jews in Greater Germany. **September 29-30, 1941**: German posters throughout Kiev order the assembly of Jews for resettlement. The Jews are brought to the Babi Yar ravine, outside the city, and 34,000 are machine-gunned to death by the SS. The SS reports that "the Jews still believed to the very last moment before being executed that indeed all that was happening was that they were being resettled." **October 12, 1941**: As German troops advance to within 60 miles of Moscow, a state of siege is proclaimed in the city. **October 23, 1941:** All Jewish emigration from Germany is prohibited. In Odessa, 19,000 Jews are killed.		

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November 1941: On SS General Globocnik's orders, engineers, construction workers, and guards are deployed to Belzec, Sobibor, and Treblinka to construct the proposed Operation Reinhard killing centers. **November 24, 1941:** The "model" ghetto of Theresienstadt is established; its first prisoners are Jews from the Protectorate of Bohemia and Moravia. **November 25, 1941:** The Eleventh Decree to the Reich Citizenship Law provides for loss of citizenship and property confiscation for all German Jews living outside the Reich's borders (including those deported). **November 29-December 8, 1941:** German SS and police units and their Latvian police auxiliaries kill approximately 26,000 Latvian Jews from the Riga ghetto in the nearby Rumbuli and Biekernieki Forests. **December 7, 1941:** Japan attacks the United States, bombing Pearl Harbor. **December 8, 1941:** The United States (along with Great Britain, Australia and New Zealand) declares war on Japan. [USHMM, Key Dates] With its entry into the war, the U.S. cancels visas previously issued to German Jews. Killing operations begin at the Chelmno killing center, located about 30 miles northwest of Lodz. The killing center operates from December 1941 until March 1943 and then briefly in June and early July 1944. **December 11, 1941:** Germany declares war on the U.S.; hours later, the U.S. declares war on Germany and	**December 1941**: The Bergier Commission Final Report notes: "As early as the end of the 1941, Swiss diplomats-in particular in Cologne, Rome and Bucharest-were sending reports about the deportation of Jews from Germany and occupied territories under terrible conditions and sent quite detailed information concerning the mass killings."	

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Italy. **December 16, 1941:** Himmler orders all remaining Roma in Europe to be deported and exterminated.		
	January 1942: Rudolf Bucher, a physician and member of the Swiss Medical Mission, which treats the Germans on the Russian front, publicly reports the atrocities he has seen and heard. Specifically, Jews in Smolensk are being killed by mass shootings, gassing in gas chambers, and burning of masses of corpses in giant crematoria. Bucher also reports a deportation train of Warsaw Jews of all ages crammed into third-class coaches. Bucher is told by an SS officer that those Jews are headed to their death. On March 14, 1944, Swiss authorities dishonorably discharge Bucher from the military.	
January 7, 1942: Nazi authorities begin deporting Roma (Gypsies) from the Lodz ghetto to Chelmno, and gas 5,000 Roma.	**January 7, 1942:** The NYTimes reports that Soviet Foreign Commissar Molotoff, in a "note to all nations diplomatically represented in Moscow," described the Nazis' massacre of 52,000 men, women and children at the Jewish cemetery in Kiev; the use of civilians as hostages as the German troops advanced; and other atrocities; Molotoff states that Russia is "keeping a complete record of all the crimes."	
January 20, 1942: Nazi officials, including SS General Reinhard Heydrich as well as Adolf Eichmann, hold a conference at Wansee, a suburb of Berlin, at which they discuss the intended murder of Europe's 11 million Jews.		
	January 28-April 19, 1942: Franz Blättler, a driver attached to the Swiss Medical Mission, produces a report of his experiences that is only published after the war. Blättler manages to enter the Warsaw ghetto and photographs corpses of people	

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	who have died of disease and hunger. Upon return to Switzerland, Blättler gives public lectures, but is quickly stopped by the Swiss authorities.	
January 30, 1942: In a Berlin speech marking the ninth anniversary of Nazi rule in Germany, Adolf Hitler speaks of the Jews: "I took great care to make no inconsiderate prophecies, but this war will never end in the fashion in which the Jews so confidently hope. It is not the Aryan peoples which will be ejected from the Continent of Europe. For the first time in centuries the Mosaic law of an eye for an eye and tooth for a tooth will be applied increasingly as our struggles spread and the hour will come when the most insidious enemy of all times will cease having a role to play and the destruction of Judaism will be accomplished." These words are reported the next day in the NYTimes.		
	February 1942: The Bergier Commission Final Report notes that at this time: "The Swiss Intelligence Service obtained detailed reports and sketches of mass shootings, through interrogation of German deserters interned in Switzerland."	
February 15, 1942: The first mass gassing of Jews starts at Auschwitz.		
February 19, 1942: President Roosevelt signs an executive order that results in the movement of persons of Japanese ancestry, including U.S. citizens, from the Pacific Coast into internment camps in the interior.		
February 23, 1942: The S.S. Struma is refused entry into Palestine and sinks off the coast of Turkey, killing 767 refugees; only 1 passenger survives.		
March-May 1942: Construction of an extermination camp near the village of		

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Sobibor begins. Experimental killings of about 250 Jews takes place in the middle of April. **March 1, 1942:** Nazi authorities open a second camp at Auschwitz, called Auschwitz-Birkenau or Auschwitz II. Although it serves as a concentration camp, it also functions as a killing center from March 1942 until November 1944. **March 13, 1942:** The Reich Ministry of Labor decrees that the same "social law" regulations for Jews also apply to "Gypsies." **March 24, 1942:** The first deportations of Western European Jews begin, from the ghettos in Lublin and Lvov, to the Belzec killing center. **March 26, 1942:** Slovak authorities begin deportations of Jews from Slovakia to Auschwitz. Identification of Jewish homes in the Reich begins. **March 27, 1942:** German authorities begin systematic deportations of Jews from France. The first train contains approximately 1,000 Jews from the Compiègne and Drancy detention camps; German authorities send it to Auschwitz. By the end of August 1944, the Germans deport more than 75,000 Jews from France to camps in the east, mostly to Auschwitz. Fewer than 3,000 survive. **April, 1942:** Following liquidation of the Lublin ghetto, Nathan Eck writes to former World Jewish Congress employee Alfred Silberschein in Geneva, suggesting in a coded postcard that food parcels have stopped and that "tens of thousands" of Jews are being annihilated. Silberschein's RELICO program		

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continues to send aid in contravention of the Allied boycott. **April 18, 1942:** In a raid designed to raise American morale, 16 B-25 bombers commanded by Lt. Colonel James Doolittle fly from the aircraft carrier Hornet and bomb Tokyo and four other cities; most of the crew members safely survive the mission. **April 24, 1942:** Jews are banned from the use of public transportation. **April 29, 1942:** Jews of the Netherlands are required to wear the yellow star. **May 6-11, 1942:** At a New York conference, the Zionist movement condemns Nazi atrocities against Jews. The Zionists demand establishment of a Jewish state in Palestine after the war. David Ben-Gurion, chairman of the Jewish Agency Executive, argues that the Jews can no longer depend on Great Britain to facilitate a Jewish national home in Palestine. The conference adopts the Biltmore Program, calling for mass immigration to Palestine and	**May 1942:** The Bergier Commission Final Report notes that Franz-Rudolph von Weiss, the Swiss Consul in Cologne, sends photographs to Colonel Roger Masson, the head of the Military Information Service, showing the bodies of suffocated Jews being unloaded from German wagons. **May 1942:** The first Swiss "home" for refugees, primarily for women, children, and men unable to work, is established. **May 1942:** The Swiss National Bank prohibits the JDC from making financial transfers to Switzerland, thus limiting the group's ability to help support refugees; transfers are not permitted to resume until the end of 1943.	

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the establishment of a Jewish commonwealth there. **May 7, 1942:** The Sobibor extermination camp begins operation. It functions until October 1943. Jews, mainly from eastern Poland and occupied areas of the Soviet Union, but also from Holland, Austria, Belgium, France, and Czechoslovakia, are gassed there. Like Belzec, Sobibor is solely a place of murder. **May 26, 1942:** Rommel's Afrika corps begins an offensive against Allied forces in North Africa's Western Desert. **May 27, 1942:** In occupied Belgium, German authorities issue a decree requiring all Jews to wear the yellow star. Reinhard Heydrich, the SS general, is fatally wounded in Prague by members of the Czech underground. He dies of his wounds on June 4, 1942. **May 29, 1942:** German authorities require all Jews residing in France to wear the yellow Star of David on their outer clothing, effective June 7. **May 30, 1942**: British Royal Air Force bombers raid Cologne, in the first 1,000-bomber raid of the war. **End of May, 1942**: World Zionist leaders meet at New York's Biltmore Hotel and hold an extraordinary Zionist conference.	**June 1942:** By the middle of 1942, it is clear that the Swiss Jewish community (SIG) cannot pay for all of the Jewish refugees in the country (as required under Swiss refugee policy); the government thus begins to tax wealthier refugees and also seeks voluntary contributions. Assistance from outside Switzerland, mainly through	

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	the JDC, increases significantly between 1943 and 1945.	
June 3-6, 1942: U.S. naval forces defeat the Japanese in the Battle of Midway, marking a turning point in the war against Japan.		
June 10, 1942: In reprisal for the death of Reinhard Heydrich, Nazis destroy the Czech village of Lidice, massacring its adult male residents and sending women and children to concentration camps.		
June 11, 1942: In accordance with Adolf Eichmann's directive, Jews from France, Holland and Belgium are to be transported to the east beginning in mid-July; the Vichy government agrees to deport foreign Jews only.		
June 17, 1942: President Roosevelt authorizes a full-scale U.S. effort to build atomic weapons.		
June 25, 1942: The London Daily Telegraph and Morning Post reports by headline on page 5, "Germans Murder 700,000 Jews in Poland: Travelling Gas Chambers." The reporter states in the lede, "More than 700,000 Polish Jews have been slaughtered by the Germans in the greatest massacre in the world's history. In addition, a system of starvation is being carried out in which the number of deaths, on the admission of the Germans themselves, bids fair to be almost as large."		
June 30, 1942: Jewish schools in the Reich are closed.		
July 1942: The French and German authorities agree to deport all non-French Jews (Dannecker-Bousquet Agreement); thousands are rounded-up in mid-July at the Vel d'Hiv stadium	**July 1942**: The Bergier Commission Final Report notes that "as early as July 1942, Swiss newspapers reported that the Nazis had killed around one million Jews."	

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in Paris, from which they are deported to Auschwitz. **July 2, 1942:** A report on page 6 of the NYTimes, received in London by Szmul Zygelbojm, a Jewish socialist leader and member of the Polish National Council, headlines "Allies Are Urged to Execute Nazis: Report on Slaughter of Jews in Poland Asks Like Treatment for Germans." The report describes the slaughter of 700,000 Jews in German-occupied territories including by using gas chambers to "methodically" proceed with "their campaign to exterminate all Jews." The report is supported by information received by "…the Polish government." **July 15, 1942:** German authorities begin deporting over 100,000 Dutch Jews from the Westerbork, Amersfoort, and Vught camps in the Netherlands to Nazi killing centers in Poland. The majority are murdered at Auschwitz and Sobibor. **July 17-18, 1942:** During a visit to Auschwitz, Himmler orders Jews and Roma unfit for work to be exterminated, and further orders the Birkenau camp to be expanded. **July 19, 1942:** Heinrich Himmler, noting that a "total cleansing is necessary," sends a secret directive to the head of the general government in Poland ordering the "resettlement" (a euphemism for deportation and murder) of "the entire Jewish population of the General Government be carried out and completed by December 31." **July 21, 1942**: Twenty thousand people attend a rally at New York's Madison Square Garden to protest Nazi atrocities. For the first time, President Roosevelt in his message to the attendees makes specific mention		

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of atrocities against Jews and declares that the American people "will hold the perpetrators of these crimes to strict accountability in a day of reckoning which will surely come." **July 22, 1942:** The Germans begin deporting the Jews of Warsaw for "resettlement in the East." In a few months, 265,000 are sent by train from the Warsaw ghetto for extermination in the gas chambers at Treblinka. **July 23, 1942:** Chairman of the Warsaw Jewish Council Adam Czerniakow, upon being ordered to "kill the children with my own hand" (as he recorded in his diary) commits suicide.		
	July 30, 1942: R. Jezler, H. Rothmund's deputy, reports to the Federal Council on developments regarding refugees, including the increase in their number living in Switzerland, and recommends a harsher expulsion practice despite noting that Jews are in extreme danger.	
August 4, 1942: The first deportations of Belgian Jews begin, to Auschwitz.		
	August 8, 1942: The Bergier Commission Final Report notes that Gerhart M. Riegner, World Jewish Congress representative in Geneva, learns of German plans for the total extermination of the Jewish race, from Benjamin Sagalowitz, the Swiss Federation of Jewish Communities press officer.	
August 13, 1942: Croatian authorities begin deporting Jews in Croatia into German custody; they are sent to Auschwitz.	**August 13, 1942**: Heinrich Rothmund, head of the Swiss Federal Police Department (EJPD), arranges for the Swiss borders to be closed to Jewish refugees. "Refugees on racial grounds only, for example Jews," do not qualify as political refugees and are refused entry.	

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August 15-29, 1942: Gerhart Riegner, representative of the World Jewish Congress (WJC) in Switzerland, sends a cable through the British Embassy to Rabbi Stephen Wise, the President of the WJC. Riegner explicitly informs Wise of the German implementation of their plan to physically annihilate the Jews of Europe. Wise informs the U.S. State Department (which previously had received the cable through secret channels); the State Department asks Wise not to discuss the information until it is verified.	**August 17, 1942:** The Sonabend family is expelled after crossing into Switzerland; they are immediately captured by the Nazis and the parents are killed in Auschwitz on August 24, 1942. The children eventually bring suit against Switzerland in the late 1990s and settle their claims in 2000.	
August 25, 1942: George Mandel-Mantello, a Hungarian Jewish businessman who became first secretary of the El Salvador Consulate in Geneva, with the approval of Salvadoran Consul General Castellanos, begins to issue documents identifying thousands of European Jews as Salvadoran citizens to protect them from the Nazis.	**August 24-25, 1942**: The Swiss Central Office for Refugee Assistance meets in Zurich under the chairmanship of Privy Councilor Dr. Robert Briner. Heinrich Rothmund is bitterly attacked. By telephone Federal Councilor von Steiger orders a relaxation of the restrictive directive of August 13.	
August 26, 1942: Jews in unoccupied France are rounded up.		
August 29, 1942: With the "Jewish Question" and "Gypsy Question" in Serbia "solved," the mobile gas chamber used in that region may be returned to Berlin, according to a memorandum to the German military administration in Serbia.		
	August 30, 1942: Justice Minister Eduard von Steiger, in a speech before a Zurich church, states that Swiss policy on refugees is restrictive because "the lifeboat is full."	
September 4-12, 1942: Lodz Jewish Council Chairman Chaim Rumkowski agrees to supervise the deportation of 15,000 children and the elderly, on the ground that other Jews might be saved by this action.	**September 1942:** Beginning in September 1942, and continuing through the spring of 1943, Germany issues ultimatums to ten neutral nations, including Switzerland. The ultimatums (*Heimschaffungsaktion*) demand that these nations repatriate their Jewish citizens living under German control; otherwise, they would be	

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	"included in the general measures regarding Jews." By the end of the deadlines for repatriation requests (generally mid-1943) this was known to mean deportation and extermination. Switzerland and Sweden were generally willing to repatriate their Jewish citizens; others were not.	
September 12, 1942: German forces reach the outskirts of Stalingrad and the battle for that city begins.		
	September 15, 1942: Swiss Federal Councillor Pilet-Golaz rejects a request by the children's aid section of the Swiss Red Cross to host 500 Jewish refugee children in Switzerland or to allow several thousand to transit through the country to the U.S. Subsequently, many refugee children are brought into the country through illegal means.	
September 18, 1942: "Asocial elements" (Jews, Roma, Russians and others) are to be transferred from the penal system to the SS, for "extermination through labor," per agreement between Himmler and the Reich Minister of Justice.		
	October 1942: The Police Division and church officials agree to periodically create a list of persons who are not to be expelled.	
	October 6, 1942: The NYTimes reports that the Swiss Federal Police Department has appointed a Commissioner for Refugees, who will coordinate all refugee activities and consider measures to stem the influx of the mostly Jewish refugees.	
	October 14, 1942: At a plenary meeting, the International Committee of the Red Cross (ICRC) based in Switzerland, fearing German reprisals against the Swiss, decides against publicly protesting Nazi genocide.	
	October 21, 1942: Heinrich Rothmund visits the Sachsenhausen concentration	

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	camp (in Oranienburg) during his October 12-November 6, 1942 stay in Berlin.	
October 26, 1942: With the assistance of collaborationist Norwegian officials, the Germans began rounding up Jews in Norway. The Germans eventually deport approximately 770 Norwegian Jews to killing centers and concentration camps.		
	October 28, 1942: Josef Schmidt, the Austro-Hungarian and Romanian cantor who achieved international acclaim as a singer and film star, dies of a heart attack while interned as a refugee within the Swiss camp system.	
November 4, 1942: The British offensive at El Alamein defeats the Afrika corps, which begins its retreat along North Africa from Egypt to Tunisia.		
November 8, 1942: British and American forces invade North Africa, landing in French Morocco and Algeria.		
November 11, 1942: Responding to the Allied invasion of Northern Africa, German and Italian forces occupy Vichy France.		
November 19, 1942: After a final German offensive launched on November 11 fails, the Soviet counter-offensive outside Stalingrad begins and on November 23, Soviet forces complete the encirclement of 250,000 German troops. Hitler forbids trapped German forces from attempting to break out of encirclement.		
November 24, 1942: After receiving confirmation of the report on the German plan to annihilate the Jews of Europe from the U.S. Department of State, Rabbi Stephen Wise, President of the World Jewish Congress,		

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publicizes the contents of the Riegner telegram, exposing German implementation of the "Final Solution." However, the U.S. State Department does not confirm this report. **November 26, 1942:** Norway begins deportations of its Jewish residents.		
	December 2, 1942: In a protocol -- created during a meeting among a Swiss prosecutor, a bank representative, policemen, and a Swiss bank employee, August Dörflinger -- Dörflinger admits serving as a spy for the Nazis and violating Swiss bank secrecy laws by reporting at least 74 account holders to the Nazis.	
December 16, 1942: Himmler issues his "Auschwitz Directive" ordering deportation of Roma to the "Gypsy camp" at Auschwitz-Birkenau.		
December 17, 1942: The Allied nations, including the governments of the United Kingdom and the United States, issue a declaration stating explicitly that the German authorities are engaging in mass murder of the European Jews, and that those responsible for this "bestial policy of cold-blooded extermination" will "not escape retribution." In a regularly-scheduled press conference the next day, President Roosevelt does not mention the report, nor is he asked about it by the journalists present.		
	December 29, 1942: The Swiss Police issue supplemental directives requiring expulsion of refugees and stressing that their contact with relatives, aid agencies or attorneys should be prevented.	

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January 14-24, 1943: President Roosevelt and Prime Minister Churchill meet at Casablanca to plan future Allied strategy. Roosevelt announces and Churchill endorses a demand for the "unconditional surrender" of Germany, Italy and Japan. **January 18, 1943:** The Nazis seek to liquidate the Warsaw ghetto and are met with armed resistance; 5,000 Jews are killed in the uprising. **January 27, 1943:** American bombers based in England attack Germany for the first time. American air strategy calls for daylight precision bombing of key industrial targets. **February 2, 1943**: German resistance ends at Stalingrad. The German Sixth Army led by Field Marshal Friedrich Paulus, who surrenders, is destroyed and 90,000 German soldiers are taken prisoner. **February 6-15, 1943:** In Greece, German authorities order Greek Jews in Salonika to move into a ghetto, also requiring them to wear the yellow star and adhere to a curfew. **February 8, 1943:** After the destruction of the German Sixth Army at Stalingrad, the Soviets attack and take back the city of Kursk, three hundred miles southwest of Moscow; the Soviets retake Kharkov (east of Ukraine) one week later. **February 10, 1943:** The State Department cables all legations to avoid using government lines for private transmissions, implying that information about the situation of the European Jews (as reflected in the earlier Stephen Wise cable of August, 1942) is not to be disseminated.		

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February 18, 1943: Police in Munich destroy the White Rose student resistance movement, arresting its leaders. **February 26, 1943:** The first large transport of Roma (Gypsies) deported from the so-called Greater German Reich arrives at Auschwitz. German authorities open the Gypsy family camp BIIe at Auschwitz-Birkenau. **February 27, 1943:** The "Factory Action," or deportation of German Jews working in the armanents industry in Berlin, begins. **March 1943:** The World Jewish Congress and the Ecumenical Council of Churches send a report to the High Commissioner for Refugees at the League of Nations, copying the British and American governments, warning that "the deliberate extermination campaign of the Jews" is "at its height" and requesting guarantees for neutral nations regarding re-emigration of refugees after the war. **March 1943:** Trude Neumann, the daughter of Zionist leader Theodor Herzl, dies of starvation at the Theresienstadt ghetto. **March 1, 1943:** The American Jewish Congress sponsors a rally at New York's Madison Square Garden to "Stop Hitler Now." Attended by 75,000 people in the Garden and surrounding streets, rally leaders present a rescue plan to President Roosevelt. **March 3-22, 1943**: Bulgarian occupation authorities deport 11,343 Jews from Bulgarian-occupied Thrace, Macedonia, and Pirot to German custody. After taking custody of the Jews, the German authorities deport them to Treblinka. On March 10,		

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however, Bulgaria accedes to internal pressure from its own citizens and refuses to deport Bulgarian Jews.		
	March 12, 1943: By decree, the Swiss Federal Council "place[s] all refugee assets under the control of the Confederation. Currency and valuables [are] to be taken from refugees and placed under the trusteeship administration. This decree retroactively creates a legal basis for a practice that had long been adopted in the reception camps." Thus, refugees can no longer manage their own assets without approval by police authorities. In May, the "trusteeship" for these assets is assumed by the Swiss Volksbank, which the Bergier Commission notes "ma[kes] every effort to maintain the account correctly."	
March 15, 1943: German units begin deporting Jews from Salonika, Greece, to Auschwitz.		
April 7, 1943: The SS shuts down the Chelmno killing center, eliminates the evidence of the killings there and abandons the site.		
April 12, 1943: According to German propagandists, the bodies of thousands of Polish officers massacred by the USSR are discovered in mass graves at Katyn near Smolensk.		
April 19-30, 1943: On the day of the Warsaw ghetto uprising, the Allies convene an international conference in Bermuda to study the refugee question. No government expresses a willingness to accept Jewish victims of Nazism. Palestine is excluded from consideration.		
April 19-May 16, 1943: German forces, led by SS General Juergen Stroop, renew deportations and began to destroy the Warsaw ghetto, triggering an armed uprising within		

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the ghetto. Jewish fighters battle the Germans in the streets and from hidden bunkers. German forces begin burning the ghetto, building by building. The Warsaw ghetto uprising continues for weeks, ending on May 16. **April 27, 1943:** The U.S. Board of Economic Warfare ("BEW") estimates that the Nazis have looted $36 billion as of the end of 1941 and continue to pillage at the rate of tens of billions of dollars a year. The BEW reports that "'for magnitude and ruthlessness the German looting of occupied Europe surpasses all previous conquests in history.'" A NYTimes editorial observes that the Nazis have "stolen and shipped to Germany industrial machinery, raw materials, scientific equipment, horses, cattle, sheep and pigs; they have stripped public and private art collections of their treasures to adorn their palaces; they have filched office furniture, park benches and garden tools, food, soap, clothing and shoes; they have even pilfered the hinges from doors and windows." As to property that could not be moved, the Nazis "simply [took] over title." Further, "300,000,000 Europeans are today the slaves of their Nazi masters, forced to work for them or starve." **April 30, 1943:** Jews holding foreign passports in the Bergen-Belsen ghetto (later a concentration camp) are to be exchanged for German nationals held by the Allies. **May 8, 1943:** The Jewish resistance headquarters in the Warsaw Ghetto, Mila 18, is overrun by German troops and resistance leaders commit suicide or are killed.	**May 9, 1943**: The Synod of the Evangelical-Reformed Churches of the City of Basel	

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	adopts a resolution condemning the current exclusion of refugees and urges the church authorities to make representations on the matter to the Federal Council.	
May 13, 1943: The North African campaign ends with the capture of 125,000 German and 115,000 Italian troops.		
June 23, 1943: Himmler orders the liquidation of all still existing ghettos in eastern Europe and the removal of Jews able to work to forced labor camps; those incapable of work are sent to killing centers.		
July 1, 1943: Jews in the Reich are placed under police law, under the "Regulation to the Reich Citizenship Law."		
July 5, 1943: The Germans launch a major offensive at the Kursk region of the Russian central front. Germany is repulsed by the Soviet army in a major turning point of the war.		
July 10, 1943: The Allies invade Sicily.		
July 25, 1943: Mussolini resigns and is arrested. Pietro Badoglio forms a new Italian government.		
	July 26, 1943: The Swiss Police Division eases conditions for refugees entering Switzerland.	
July 27, 1943: The Royal Air Force (RAF) bombs Hamburg, causing a firestorm that kills 40,000 civilians.	**July 27, 1943:** A Swiss Police Division directive orders all illegal refugees along the southern border to be expelled to Italy.	
July 28, 1943: Polish Catholic courier Jan Karski arrives in the U.S. to inform officials about the plight of the Jews.		
August 2, 1943: Several hundred Jewish partisans revolt at Treblinka. Some 200 escape but many are recaptured and killed. In September		

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the camp is dismantled and all traces of its existence are removed.		
	August 13, 1943: An American B-24 combat plane crashes in Switzerland; members of its crew are interned and in some cases imprisoned in Switzerland for the duration of the war. Although Switzerland repatriates German military personnel who are found on Swiss territory, Switzerland interns American military personnel, often under poor conditions. Switzerland also shoots down a number of the Allied planes flying over Swiss air space.	
	August 22, 1943: The British Parliamentary Secretary to the Ministry of Economic Warfare delivers a letter to the Swiss legation in London, which is shared with the U.S. Secretary of State. The letter expresses "astonishment" that Swiss exports to Germany, including important military equipment, have increased substantially from the first to the second quarter of the year. The letter observes that the Swiss had promised to impose an export quota on these items as of August 1; however, the "benefit which we expected to obtain from this concession is largely nullified by the very substantial exports in July." Thus, "at a time when our armies are commencing the invasion of Axis Europe, we are faced with a sudden marked increase in Swiss assistance to Germany and her satellites," which is "hardly … evidence of a desire on the part of your Government to contribute to the liberation of Europe."	
September 8, 1943: Italy, Germany's Axis partner, surrenders unconditionally to the Allies. German military and police units quickly occupy northern Italy.		
September 9, 1943: Allied troops land at Salerno, south of Naples, on the Italian mainland. German forces occupy most of Italy and disarm Italian	**September-December, 1943:** Switzerland accepts 7,800 civilians and 20,000 members of the military from Italy.	

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forces in the north.		
	September 14-22, 1943: In a series of directives, Switzerland begins to liberalize its refugee policy in the south (Ticino), responding to the massive numbers of refugees fleeing Italy. Switzerland recognizes mortal danger as a basis for asylum; authorizes acceptance of women and children; and forbids the army from expelling refugees without consulting civilian authorities. On September 22, Rothmund orders acceptance of greater numbers of Jewish refugees in the Ticino area, finding that they are in "exceptional danger." Expulsions continue in other parts of the country.	
September 20 - October, 1943: Approximately 7,200 Danish Jews escape to Sweden, many by boat, with the help of the Danish resistance movement and many individual Danish citizens.		
	October 1, 1943: Switzerland freezes assets in its territory owned by nationals of Italy.	
October 4, 1943: In his talk to SS leaders, Himmler speaks openly about the extermination of the Jews, calling it "a page of glory in our history" that "has never been written and is never to be written."	**October 4, 1943:** The U.S. Joint Chiefs of Staff, Adm. William Leahy, writes to U.S. Secretary of State Cordell Hull to recommend a total economic blockade of Switzerland because of its military aid to Germany. He states that "Switzerland should not be permitted to receive any imports whatsoever which we can control so long as she continues to lend material aid to the German war effort." The letter notes: "It is particularly significant that at the very time that the British and American combined bomber offensive is beginning to substantially affect German production of munitions, Swiss exports of munitions to Germany have been considerably increased, thus materially decreasing the military effectiveness of our air attacks on the Axis."	

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October 13, 1943: Italy declares war on Germany. **October 14, 1943:** Jewish prisoners at Sobibor begin an armed revolt. About 300 escape. About 100 are recaptured and killed. After the revolt, SS Special Detachment Sobibor supervises the dismantling of the camp. **October 16, 1943:** More than 8,300 Italian Jews are sent to Auschwitz. Although an ally of Hitler, Mussolini's government does not cooperate in the deportation and murder of Italian Jews, and the Vatican and monasteries together shelter nearly 5,000 Jews. In the wake of Mussolini's deposal, however, the Nazis begin deportations.	**November 9, 1943:** The United Nations Relief and Rehabilitation Administration (UNRRA) is created in Washington D.C.; its purpose is to deliver emergency aid to displaced persons. Switzerland, citing neutrality, does not join the organization.	
November 17, 1943: In October, the Nazis begin to dismantle the Treblinka camp, and in November complete the process, plowing the camp into the ground and planting trees to remove all traces of the killing facility. **November 28, 1943:** Churchill, Roosevelt and Stalin meet for the first time at talks in Tehran (the Tehran Conference). **December 2, 1943:** The Inspectorate of Concentration Camps redesignates the Buna subcamp of Auschwitz I as Concentration Camp Auschwitz III, or Monowitz.	**End of 1943**: The Swiss military attaché in Helsinki, Finland, Major Lüthi, sends Bern, Switzerland a report by a Baltic national who on his own admission had been	

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	involved in the murder of about 16,000 people. The man describes systematic mass shootings and murder by asphyxiation with carbon monoxide gas from engine exhaust. In the report, Lüthi mentions a high-ranking German officer who confirms the mass execution, and puts the number of victims in Lodz at 450,000 and in Warsaw at 380,000.	
	1944: The Swiss Vice-Consul in Budapest, Carl Lutz, saves tens of thousands of Hungarian Jews from deportation and death in Auschwitz by creating and issuing an official-looking but false protective document, the Schutzpass. He is demoted after the war to an insignificant post.	
January 13 - 16, 1944: Upon receiving a U.S. Treasury Department report on the "Acquiescence of this Government to the Murder of European Jews," Treasury Secretary Henry Morgenthau, Jr. meets with President Roosevelt. Shortly after, on January 22, 1944, Roosevelt issues Executive Order 9417, creating the War Refugee Board. Roosevelt instructs the War Refugee Board to take measures to rescue victims of enemy oppression in imminent danger of death. The Board's activity contributes to saving tens of thousands of Jews from deportation and death, possibly up to 200,000.		
January 27, 1944: The Nazis' siege of Leningrad, lasting 900 days and resulting in more than one million Soviet civilian deaths, is ended by Soviet forces.		
	February 1944: The Allies announce their "Gold Declaration," opposing the sale of gold by Germany to other nations, including Switzerland.	

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	February 1944: Deputy High Commissioner for Refugees George Kullman asks International Committee of the Red Cross (ICRC) Vice President Carl J. Burckhardt if it is true that of 3 million Polish Jews, only 140,000 remain alive; Burckhardt does not disagree and advises that he has received confidential reports on the subject.	
March 19, 1944: German troops occupy Hungary, and anti-Jewish laws are promptly implemented.		
Early Spring, 1944: German authorities begin to evacuate Lublin/Majdanek and deport the remaining inmates to Auschwitz, Natzweiler-Struthof, Ravensbrück, Plaszow, and Gross-Rosen.		
	April 2, 1944: The NYTimes reports on its front page that "[a]t least fifty persons were killed and more than 150 seriously wounded" on April 1, 1944 after 30 American military planes, likely due to weather conditions, bombed Schaffhausen, Switzerland rather than the presumed target, Singen, Germany. The U.S. pays $4 million in reparations.	
April 4, 1944: The U.S. obtains photographs of Auschwitz via air reconnaissance.		
April 5, 1944: Hungarian authorities require all Jews to wear the yellow star.		
	May 13, 1944: Heinrich Rothmund states to members of the American Legation in Bern that he is "convinced that the news of Jewish extermination by the Gestapo [is] consistent with reality."	
May 15-July 9, 1944: Hungarian gendarmerie officials, under the direction of the German SS, deport around 440,000 Jews from Hungary. Most are deported to Auschwitz,		

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where, upon arrival and after selection, the SS kills the majority in gas chambers. **June 2, 1944:** Jewish Agency Rescue Committee chairman Yitzhak Gruenbaum requests the bombing of rail lines to Auschwitz, a proposal dismissed by U.S. Military Air Operations on June 24 as "impracticable," as it would divert air resources needed elsewhere. **June 5, 1944:** The United States army liberates Rome. **June 6, 1944: "**D-Day": British and American troops launch an invasion of France, landing on the beaches of Normandy. **June 13, 1944:** The first V1 rocket attacks on London begin. Some 13,000 attacks continue through March 1945. **June 22-August 1, 1944:** Soviet troops destroy a German Army Group Center in eastern Belorussia and sweep forward to the east bank of the Vistula River across from the center of Warsaw, Poland. **June 23-July 14, 1944:** The SS resumes deportations from the Lodz ghetto to the Chelmno killing center. **July 1944:** At the Bretton Woods conference, the Allies announce their intention to supervise disposition of German assets in neutral countries. **July 7, 1944:** Churchill advises his foreign minister to "'invoke my name, if necessary'" in support of bombing Auschwitz. **July 9, 1944:** Raoul Wallenberg arrives in Budapest as first secretary to the Swedish legation in Hungary and with		

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financing from the US War Refugee Board. Along with numerous other legations, including the Swiss, Turkish, Italian, and several Latin American legations, the Swedish delegation protects tens of thousands of Budapest Jews endangered by German and Hungarian deportation plans.		
	July 12, 1944: Switzerland rescinds its restrictive 1942 orders concerning refugees and adopts regulations requiring acceptance of all in mortal danger, specifically mentioning Jews. The new directive also is intended to bar entry of potential war criminals.	
July 15-September 15, 1944: Allied forces break out of the Normandy beachhead, routing the German defenders. On August 25, Free French troops liberate Paris; by September 15, US troops reach the German border.		
July 23-24, 1944: Soviet troops liberate the Lublin/Majdanek concentration camp. Although they had evacuated most of the remaining prisoners westward to evade the advancing Soviet army, the SS camp authorities are surprised by the rapid Soviet advance and fail to destroy the camp and the evidence of mass murder.	**July 23, 1944:** An ICRC delegation visits Theresienstadt.	
July 24, 1944: The Jews on the Greek island of Rhodes are deported to Auschwitz.		
August 1-October, 1944: The underground Polish Home Army rises against the Germans in an effort to play a role in the liberation of Warsaw.		
August 2, 1944: The SS liquidates the Gypsy family camp BIIe at Auschwitz-Birkenau, gassing nearly 3,000.	**August 2, 1944:** The New York Times reports that the Swiss Federal Council has revised the right to asylum to forbid entry to those deemed "unworthy of asylum;"	

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	the restriction is said to be aimed at Nazi authorities.	
August 9-28, 1944: German units liquidate the Lodz ghetto and deport more than 60,000 Jews and an undetermined number of Roma (Gypsies) to Auschwitz-Birkenau. **August 15, 1944:** Allied forces land in the south of France; two days later, they liberate the Drancy transit camp. **August 23, 1944:** With the overthrow of Antonescu, Romania joins the Allies. **August 25, 1944:** German forces surrender in Paris.		
	August 29, 1944: U.S. Brigadier General Barnwell R. Legge, military attaché at the U.S. legation in Bern, issues a memo to all U.S. air force internees in Switzerland restating their "standing orders against attempting to escape without my instructions."	
September 3, 1944: The Allies liberate Brussels. Anne Frank is deported from Westbork to Auschwitz. **September 8, 1944:** Bulgaria surrenders and declares war on Germany. The first V2 rocket, built by slave laborers, lands in Britain; by the end of March 1945, more than 2,000 V2 rockets kill some 5,000 Britons.	**September - November 1944:** Switzerland accepts approximately 17,000 children and mothers from France and Italy.	
	October 1, 1944: Following several years of negotiations with the Allies, Switzerland agrees to prohibit the export of arms, munitions and military supplies to Germany, and begins to close some transit routes. Former U.S. Secretary of State Dean Acheson in his 1969 Pulitzer Prize-winning memoir, "Present at the Creation," comparing negotiations with Switzerland	

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	to those with Sweden (undertaken while he was Assistant Secretary of State) observes: "If the Swedes were stubborn, the Swiss were the cube of stubbornness."	
October 7, 1944: At Auschwitz-Birkenau, the Sonderkommando (special detachment of Jewish prisoners deployed to remove corpses from the gas chambers and burn them) blows up Crematorium IV and kills the guards. About 250 participants of the revolt die in battle with the SS and police units. The SS and police units shoot 200 more Sonderkommando members after the battle ends.		
October 23, 1944: The largest sea battle of the war begins: the Battle of the Leyte Gulf in the Philippines.		
	October 24, 1944: U.S. Army Corps physician Dr. Jack Torin issues a report on the conditions of American military personnel interned in Switzerland; he praises their living and sleeping conditions but reports that medical and dental care is "poor" or "indifferent," and the "Swiss Internment Commission for Americans allows a barely subsistence diet even by continental standards."	
October 30, 1944: The last transport of Jews from the camp-ghetto Theresienstadt arrives at Auschwitz; camp officials murder most in the Birkenau gas chambers.		
	November 3, 1944: Switzerland intervenes in Berlin against deportations and declares itself ready to accept Jewish escapees.	
November 5, 1944: With railway lines severed, Eichmann orders the evacuation of Jews from Budapest, marching them on foot toward the interior of the German Reich. These forced evacuations come to be called		

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"death marches." **November 23, 1944:** US troops liberate the Natzweiler-Struthof concentration camp. **November 25, 1944:** At Heinrich Himmler's order, the gas chambers and crematoria at Auschwitz-Birkenau are demolished. **November 26-30, 1944:** The World Jewish Congress holds a "War Emergency Conference" to discuss recommendations for post-War restitution, including the return of individual assets as well as collective reparations to the Jewish people. Looted assets in non-Soviet occupied territory was then estimated at $8 billion. **December 1944:** The U.S. establishes the "Safehaven" program, intended to prevent Germany from retrieving assets deposited in neutral countries. **December 11, 1944:** At Hartheim, German authorities carry out the last gassing of inmates. Under SS guard, Mauthausen prisoners dismantle the killing facility. **December 16, 1944:** The Battle of the Bulge, the last major German offensive of the war, begins in the Ardennes forest.	**December 1944:** Hungarian Jews liberated from Bergen-Belsen arrive in Switzerland and later emigrate to Palestine. They are part of the so-called "Kasztner transport," a trainload of approximately 1,684 Jews whose freedom was negotiated by Rudolf Kazstner in return for a ransom of cash, jewels, gold and shares of stock. Despite the agreement that the train would go directly to a neutral country, it is instead sent to Bergen-Belsen; later, several hundred of the prisoners are sent on to Switzerland. **December 20, 1944:** Switzerland freezes assets in its territory owned by nationals of	

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	Croatia, Slovakia and Hungary. **December 29, 1944:** The NYTimes reports on a "death march" in November from Budapest to Austria, in which tens of thousands of Jews perish; the report also describes the deportation, since March, of over 600,000 Hungarian Jews, mostly to the "Oswiecim" [Auschwitz] extermination camp. The report is based upon the eyewitness account of a survivor who escapes to Switzerland and describes his experiences in an article published by the Swiss press.	
January 18, 1945: As Soviet troops approach, SS units begin the final evacuation of prisoners on death marches from the Auschwitz camp complex; thousands of victims die.		
	January 25, 1945: The NYTimes reports that a U.S. delegation will leave shortly for Switzerland to attempt to negotiate "the curtailment of exports from that country to Germany to shorten the war."	
January 27, 1945: Soviet troops liberate Auschwitz, finding approximately 7,000 prisoners left behind in the main camp and its subcamps. **February 4, 1945:** Churchill, Roosevelt and Stalin meet together for the last time, at Yalta, where they negotiate the postwar division of Europe.		
	February 6, 1945: Former Federal Councillor Jean-Marie Musy intervenes on behalf of 1,200 Jewish prisoners of the Theresienstadt concentration camp. The mission, Aktion Musy, releases these prisoners and brings them to Switzerland for a ransom arranged with head of the SS Foreign Communications Service Walter Schellenberg.	

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	February 9, 1945: Swiss diplomat Walter Stucki states at a meeting of Switzerland's top economic policy advisors that the country is "an object of hatred the world over" and that he wishes to improve Switzerland's image	
February 13, 1945: The 70th tank brigade of the Soviet Army liberates the Gross-Rosen concentration camp. Allied forces bomb Dresden.		
	February 16, 1945: With Allied victory seeming inevitable, the Swiss Federal Council blocks all German holdings in Switzerland to avoid giving safe haven to assets stolen by Germans; on May 29, 1945, Swiss asset managers are required to register frozen German assets. The first repatriations of U.S. service members interned in Switzerland begin. **February 25 - March 1, 1945:** A conference is held in Montreux; refugees, relief organizations and governmental officials (including Heinrich Rothmund) discuss postwar concerns, including plans for refugee departures from Switzerland. **March 4, 1945:** U.S. military planes bomb Basel and Zurich, for reasons attributed "variously to inclement weather, faulty equipment, incompetence, or overzealous pilots." The U.S. launches a formal investigation on March 8, 1945, and the pilots are charged with negligence; they are cleared after court martial proceedings headed by the U.S. actor, Col. James (Jimmy) Stewart, combat pilot and chief of staff of the 2d Combat Wing.	
March 7, 1945: US troops cross the Rhine River at Remagen, Germany and advance into central Germany.		
	March 8, 1945: Following negotiations with delegations from France, Great Britain and the U.S. (the latter led by Laughin	

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	Currie), Switzerland expresses its commitment to preventing stolen assets or those taken by force from being concealed in Switzerland or Liechtenstein, and states that it will inventory and/or freeze any such assets already within its territory. **March 19, 1945:** The U.S. mission to Switzerland reports success in negotiations intended to scale down Swiss trade with Germany and encourage a Swiss freeze of German assets. **March 29, 1945:** The Swiss Police Division issues a circular order to prevent an influx of German refugees.	
April 1, 1945: American forces land on Okinawa, Japan, the largest amphibious operation in the war in the Pacific. **April 4, 1945:** U.S. Army troops liberate Ohrdruf, a subcamp of Buchenwald. After visiting Ohrdruf a week later, General Dwight D. Eisenhower orders careful documentation, so that no one in the future can deny that the Nazis had committed these atrocities. **April 11, 1945:** Troops of the US 3rd Armored Division and 104th Infantry Division liberate the Mittelbau-Dora concentration camp in Nordhausen, Germany. The US 4th Armored Division and the 80th Infantry Division liberate more than 21,000 prisoners at Buchenwald. **April 12, 1945:** President Roosevelt dies of a cerebral hemorraghe. Vice President Harry S. Truman takes the oath of office on the same day, becoming President of the United States.	**April 13, 1945:** The Swiss Federal Council	

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	approves the partial closing of the border.	
April 15, 1945: U.S. troops liberate the Bergen-Belsen concentration camp. **April 21, 1945:** Soviet troops encircle Berlin. One day earlier, Adolf Hitler had announced to his top leaders that he would remain in Berlin. **April 29, 1945:** U.S. troops liberate the Dachau concentration camp. **April 30, 1945:** Hitler commits suicide in his bunker in Berlin. Soviet troops liberate the Ravensbrück concentration camp. **Late April-Early May, 1945:** The partisan resistance movement, under Communist leader Josip Tito, liberates the Jasenovac concentration camp in Croatia. **May 4, 1945:** British forces liberate the Neuengamme concentration camp. **May 5, 1945:** U.S. troops liberate the Mauthausen and Gusen concentration camps. **May 7-9, 1945:** German armed forces surrender unconditionally in the West on May 7 and in the East on May 9. Allied forces proclaim May 8, 1945, to be Victory in Europe Day (V-E Day). Soviet forces proclaim May 9, 1945, as the day the war ended. **May 9, 1945:** Soviet forces enter and liberate the camp-ghetto Theresienstadt. Soviet forces liberate Stutthof concentration camp, near Danzig.	**May 8, 1945:** On the day that Germany unconditionally surrenders and the war in Europe is over, refugees in Switzerland number 115,000; 51,100 are civilian refugees who were admitted during the war.	

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	May 22, 1945: The Swiss Police Division prohibits crossing at the border without a visa.	
June 26, 1945: The United Nations Charter is signed in San Francisco.		
	July 3, 1945: Switzerland freezes assets in its territory owned by nationals of Poland.	
	July 13, 1945: The Swiss Federal Council freezes assets of individuals expelled from Switzerland.	
July 17 - August 2, 1945: In Potsdam, Germany, Truman, Churchill (and Clement Atlee after July 28) and Stalin meet to discuss the postwar settlement for Germany, including the intention of Allied control over all German assets abroad.		
August 3, 1945: Earl G. Harrison, Truman's representative investigating the conditions of European Jewish refugees, criticizes conditions in camps housing them, confirms the refugees' desire to emigrate to Palestine, and recommends the immediate admission to Palestine of 100,000. Truman adopts the suggestion.		
August 6, 1945: A U.S. B-29 aircraft drops an atomic bomb over Hiroshima, killing at least 80,000 people.		
August 8, 1945: A U.S. B-29 aircraft drops an atomic bomb over Nagasaki, killing at least 35,000 people.		
The U.S., Great Britain, France and the Soviet Union sign the London Agreement, providing for the trial of		

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Nazi war criminals. **August 11, 1945:** The first of several anti-Jewish riots begins in Poland (Cracow); other riots take place in Sosnowiec (October 25) and Lublin (November 19). **August 14, 1945:** Japan accepts the Allied terms for surrender. **September 2, 1945:** Japan surrenders and World War II officially ends.	**September 14, 1945:** The Swiss Police Division relaxes restrictions upon refugees' freedom of movement.	
October, 1945: The post-War military government assumes control over all German assets abroad. **November 13, 1945:** The Anglo-American Committee of Inquiry, charged with reviewing political, economic and social conditions in Palestine in connection with possible Jewish immigration, is established. In its April 20, 1946 report, it accepts the Harrison Report recommendation that 100,000 Jewish DPs immigrate to Palestine. The U.S. proposes that a share of the assets looted by Germany be allocated for relief and rehabilitation of needy Jewish Nazi victims. **November 20, 1945:** The International Military Tribunal (IMT), made up of US, British, French, and Soviet judges, begins a trial of 22 major Nazi leaders at Nuremberg, Germany. **December 20, 1945:** The military governors of the four German occupation zones adopt a law authorizing each zone to establish		

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courts to try Nazi war criminals.		
December 22, 1945: Under the "Truman Directive," displaced persons, particularly children, are allowed entry into the United States.		
	1946: SIG (the Swiss Federation of Jewish Communities) and the World Jewish Congress initiate discussions with Swiss government representatives concerning unclaimed Holocaust victims' funds.	
January 14, 1946: 18 countries enter into the Paris Reparations Agreement, providing for restitution of monetary gold looted by Nazi Germany; allocation of nonmonetary gold located in Germany; and $25 million of such assets found in neutral countries, for the relief and resettlement of surviving Nazi persecutees. Switzerland does not join this agreement but in May 1946 agrees to the Washington Accords (see below).		
	March 1946: Swiss refugee camps begin to close.	
May 1, 1946: Britain rejects the recommendation of the Anglo-American Commission to admit 100,000 Jews into Palestine.		
	May 25, 1946: By an exchange of letters, the Washington Accords are confirmed by the United States, United Kingdom, and France in agreement with Switzerland. The aim of the Accords is to return hundreds of millions of dollars in assets that Nazi Germany looted from European banks and Holocaust victims. Switzerland agrees to transfer approximately $58 million in gold and 50% of liquidated German assets located in that country to the Allies, who would then use such funds to reconstruct devastated areas of Europe and to assist stateless Nazi victims. Switzerland also	

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	agrees, via a side letter, to "examine sympathetically" the means by which to place the assets of heirless Nazi victims found in Switzerland at the disposal of the Allies for purposes of refugee relief and rehabilitation.	
July 4, 1946: Polish civilians carry out a pogrom against Jewish survivors in Kielce, Poland. Following a ritual murder accusation, a mob of civilians kills more than 40 Jews and wounds dozens of others. This attack sparks a second mass migration of Jews from Poland and Eastern Europe to displaced persons camps in Germany, Austria, and Italy.		
October 1, 1946: The International Military Tribunal hands down its rulings on major Nazi war criminals on trial in Nuremberg, Germany. Eighteen are convicted, of whom eleven are sentenced to death, and three are acquitted. Trials of Nazi diplomats, judges, doctors, industrialists and others continue throughout 1947.		
	October 10, 1946: A New York court, hearing the claims of a Holocaust victim whose Swiss bank account was turned over to the Nazis, rules in his favor, holding that the defendant Swiss bank should not have complied with transfer orders the banks knew or should have known were made under duress (*Albers v. Credit Suisse*).	
October 16, 1946: Ten of the Nuremberg defendants are executed by hanging. One defendant, Hermann Göring, commits suicide in his cell.		
	1947: The SIG issues a report listing some unclaimed funds of Holocaust victims, describing the list as "just the tip of the iceberg."	

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	1947: Switzerland begins to accept refugees from Communist nations in Eastern Europe.	
March 1947: Britain refers the issue of Palestine to the UN.		
	March 7, 1947: The Swiss Federal Council allows for permanent asylum for refugees who cannot leave the country. It also rescinds the 1943 decree requiring the mandatory deposit and management of refugee property; 1,000 dormant and/or heirless accounts are liquidated and deposited with the Swiss Treasury. Accounts owned by refugees still in Switzerland are returned to them after their internment costs are deducted.	
	August 21, 1947: The Swiss Bankers Association ("SBA") requests that all member banks provide details of assets they managed for people who the banks knew or suspected were victims of Nazi persecution.	
	October 7, 1947: The SBA reports the assets located pursuant to the August 21, 1947 directive. The Volcker report states: "The 1947 Survey did not produce a great deal of information. It was a relatively informal survey ignored by some banks and not taken seriously enough by others. The survey reported assets with a total of only 482,000 Swiss Francs."	
November 10, 1947: Military Government Law 59 takes effect, providing for the possibility of restitution to Nazi victims whose property was taken under duress between January 30, 1933 and May 8, 1945, if such property was located in the U.S. zone in Germany.		
November 29, 1947: The UN General Assembly endorses Resolution 181, providing for the partition of Palestine and the establishment of Jewish and		

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Arab states. **May 14, 1948:** The State of Israel is proclaimed as the British Mandate over Palestine ends; the United States and the Soviet Union recognize the new state. **June 23, 1948:** Regulation 3 to Military Law 59 is issued, recognizing the Jewish Restitution Successor Organization (JRSO) as the successor to heirless Nazi victims' property; a multi-year restitution program commences and continues through 1958, whereby the JRSO uses the proceeds of restitution to assist needy survivors, and for Holocaust remembrance and education. **June 25, 1948:** The United States Congress passes the Displaced Persons Act, under which approximately 400,000 displaced persons can immigrate to the United States over and above quota restrictions. US officials issue around 80,000 of the DP visas to Jewish displaced persons.	**December 8, 1947:** The Swiss Association of Jewish Communities puts forward a formal recommendation that the Swiss are obligated to report unclaimed assets, seek heirs, and transfer unclaimed assets to victims' organizations. **July 18, 1948:** The NYTimes reports that Switzerland refuses to reopen the issue of looted gold, considering all Swiss obligations fulfilled under the Washington Agreement of 1946. **September 27, 1948:** Switzerland enters into a compensation agreement with Yugoslavia, the details of which are similar to the more widely-known agreement that Switzerland later entered into with Poland	

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	in 1949 (see below).	
May 23, 1949: The Federal Republic of Germany (West Germany) is established. **October 7, 1949:** The Democratic Republic of Germany (East Germany) is established.	**October 21, 1949:** The U.S. and Switzerland agree to a $14.4 million payment from the U.S., representing the balance due on reparations for the mistaken bombing of Schaffhausen, Basel and Zurich, as well as compensation for the care of U.S. service members shot down or found in Switzerland and interned there during the duration of the war. **December 7, 1949**: The NYTimes reports: "The Swiss Government has agreed to turn over to the Polish Government funds placed in Swiss banks and other institutions by Polish Jews who died heirless during World War II … In objecting to the Swiss decision to give the heirless property of Polish victims of Nazi concentration camps to the Polish Government, Jewish organizations cite the Allied declaration of June, 1946, that such property should go to an international body (the International Refugee Organization, which was then in the planning stage) for use in resettling refugees belonging to groups to which dead owners had belonged." The accord had been signed on June 25, 1949 and released for publication on November 8, 1949. **December 20-22, 1949:** The American, British and French diplomatic missions seek further information about the Swiss-Polish agreement, which was considered to be inconsistent with Switzerland's 1946 commitments as part of the 1946	

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	Washington Accords.	
	December 22, 1949: Switzerland enters into a compensation arrangement with Czechoslovakia, similar to that with Poland in 1949.	
	April 25, 1950: The U.S., British and French diplomatic missions again criticize the Swiss-Polish agreement as contrary to Switzerland's commitment as part of the 1946 Washington Accords.	
	July 19, 1950: Switzerland enters into a compensation arrangement with Hungary, similar to that entered with Poland in 1949.	
1951: The International Organization for Migration (IOM) is established by member states (now 157); it works closely with governmental, intergovernmental and non-governmental partners in the field of migration and other human rights areas.		
	August 3, 1951: Switzerland enters into a compensation arrangement with Romania, similar to that with Poland in 1949.	
September 27, 1951: Chancellor of the Federal Republic of Germany Konrad Adenauer states before a special session of the Bundestag that "[u]nspeakable crimes were perpetrated in the name of the German people which impose upon them the obligation to make moral and material amends" to the Jewish people, for individual damage, and for		

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heirless property. **October, 1951:** 23 major Jewish organizations join together to establish a central body to represent Holocaust survivors in seeking compensation from Germany: the Conference on Jewish Material Claims Against Germany ("Claims Conference"). The organization is chaired by Nahum Goldmann of the World Jewish Congress; staff members include Benjamin Ferencz (who prosecuted the Einsatzgruppen at Nuremberg) and Saul Kagan.	**January 22, 1952:** The Swiss government instructs the Federal Department of Justice and Police to prepare legislation addressing unclaimed assets in Switzerland. **August 28, 1952:** The NYTimes reports that the Allies and Switzerland reached a compromise of the terms of the Washington Accords, with Switzerland to pay $28 million "in a lump sum to settle in full all Allied claims respecting property of 'Germans in Germany' blocked in Switzerland since 1945." Switzerland originally intended to use this sum "partly to indemnify Swiss nationals domiciled in Germany for their losses" during the war. The Swiss government asserts in confidential side letters to the U.S., UK and France that Switzerland holds no unclaimed assets of Nazi victims.	
September 10, 1952: West German Chancellor Konrad Adenauer and Israeli Foreign Minister Moshe Sharett sign an agreement providing for compensation to the State of Israel in support of resettlement of Jewish refugees. Adenauer and Claims Conference president Nahum Goldmann sign an agreement providing for direct compensation of		

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Jewish Nazi victims based upon personal and property injuries (the "BEG"), including lump-sum payments and pensions. The programs, collectively known as the "Luxembourg Agreements," begin in 1953 and are renegotiated and extended several times thereafter.		
	March 27, 1953: The NYTimes reports that following final liquidation of blocked German assets in Switzerland, 10% of that sum ($700,000) is to be allocated to surviving German Nazi victims; the remainder will reimburse private relief agencies for aid to refugees.	
June 10, 1953: The Frankfurt District Court holds I.G. Farben liable on slave labor claims brought by Auschwitz survivor Norbert Wollheim, in a proceeding supported by the Claims Conference.		
August, 1953: Yad Vashem, the Holocaust Martyrs' and Heroes' Remembrance Authority of Israel, is established. In 1954, it begins to collect Pages of Testimony, documents submitted by survivors, relatives or friends containing the names, biographical details and photographs of victims.		
1954: The Israeli law for "Disabled Veterans of the War Against the Nazis," a pension program funded by West Germany for Israeli veterans at least 10% disabled, takes effect. **1954:** The United Restitution Organization begins to assist needy survivors in their claims under German	**1954:** The negotiations that led to Germany's 1938 adoption of the "J-stamp," at the insistence of Switzerland, to mark the passports of Jewish Germans, become public for the first time, when the U.S. publishes German foreign ministry documents. Responding to criticism of these revelations, the Swiss Federal Council commissions a report by legal expert Carl	

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compensation laws.	Ludwig to study Swiss refugee policies. **May 1954:** As described by Judge Korman in a 2004 opinion, citing the conclusion of Switzerland's Bergier Commission (which investigated Switzerland's Holocaust-era activities): "In May 1954, the legal representatives of the big banks co-ordinated their response to heirs so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry. They agreed not to provide further information on transactions dating back more than ten years under any circumstances, and to refer to the statutory obligation to keep files for only ten years, even if their records would have allowed them to provide the information." **November 26, 1954:** Switzerland enters into a compensation agreement with Bulgaria similar to that with Poland in 1949.	
May 15, 1955: Austria is reestablished as an independent and democratic nation, and is obligated under its treaty of creation to provide compensation for losses during the Nazi era.	**October 13, 1955, December 13, 1956:** Swiss banks report unclaimed assets belonging to missing Polish persons in the amount of SF 22,300. **1956**: The SBA surveys its members to establish whether the banks hold dormant accounts of victims of Nazi persecution in Germany. The survey reports 86 accounts with a total value of 862,410 Swiss Francs.	

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June 29, 1956: Germany enacts the BEG, intended to compensate Nazi persecutees for injuries, financial losses and other personal damage. The program is limited to those who were German citizens or had German linguistic roots. It excludes, among others, homosexuals imprisoned under Paragraph 175.		
1957: Austria enacts a property compensation program, selling unclaimed Holocaust-era property and paying the proceeds to Nazi victims.	**1957**: The Swiss Federal Council publishes a report by legal expert Carl Ludwig, which states that Switzerland denied entry to around 10,000 refugees. The report also states that thousands of refugees, particularly Jews, were not admitted between 1933 and the end of World War II because of over-rigid rules of asylum. The report names Federal Councillor Edouard von Steiger and head of the Swiss Department of Justice and Police Heinrich Rothmund as primarily responsible. Restrictive refugee policies were said to have been enforced because of the "inundation by foreigners" and the "strained job market." The Swiss Parliament recognizes Carl Lutz, the Swiss diplomat who saves tens of thousands of Hungarian Jews from deportation and death in Auschwitz by creating and issuing an official-looking but false protective document, the Schutzpass.	
February 5, 1957: Following litigation in Germany and negotiations with the Claims Conference, in the first settlement of slave labor claims, IG Farben establishes a $7 million fund to compensate its former slave laborers. **April 1, 1957:** Under the Disabled Victims of Nazi Persecution Law, Nazi victims who emigrated to Israel before October 1, 1953 and who were Israeli citizens as of April 1, 1957 become eligible for need-based pensions from Israel through a program funded by		

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West Germany.		
	April 15, 1957: Swiss authorities suggest in internal communications that possible unclaimed assets owned by Nazi victims total approximately SF 900,000.	
July 19, 1957: Germany enacts a property restitution program, the "BRUEG," with complex territorial and proof requirements. The original filing deadline is April 1959; under revised statutes, the deadline is extended through 1966.		
	May 22, 1959: The Swiss Department of Justice states in an internal memo that Swiss banks hold unclaimed assets from France in the amount of several hundred million Swiss francs.	
December, 1959: The Friedrich Krupp company, following negotiations with the Claims Conference, creates a fund of approximately $2.4 million to compensate its former slave laborers.		
1959-1964: Pursuant to a series of bilateral treaties, Germany makes the following payments to European nations in connection with Holocaust reparations. In the 1990s, some of these same nations later establish other compensation programs.[3] • **Denmark** receives DM 16 million (1959) which it uses to compensate Nazi victims, including those who fled to Sweden. • **Norway** receives DM 60 million (1959), which it uses for one-time payments to Norwegian citizens who were imprisoned and suffered		

[3] For a detailed discussion of these and other Holocaust compensation programs, including Germany's, *see* Special Master's Proposed Plan of Allocation and Distribution of Settlement Proceeds, September 11, 2000, Annex E ("Holocaust Compensation").

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disability due to the Nazis. • **Luxembourg** receives DM 18 million (1959), which is distributed to Nazi victims living in that nation. • **France** receives DM 400 million (1960), and distributes payments to former deportees and prisoners living in France. • **Greece** receives DM 115 million (1960); it does not disclose its distribution process. • **Belgium** receives 80 million (1960); it compensates then-current Belgian citizens who were Nazi victims. • **The Netherlands** receives DM 125 million (1960), using the payment to compensate Jewish victims for material damage, and Jewish and non-Jewish victims for personal injury. • **Austria** receives DM 101 million (1961) for compensation provided mainly to Austrian nationals. • **Italy** receives DM 40 million (1961), and distributes payments to, among others, Italians who were imprisoned in German camps. • **Switzerland** receives DM 10 million (1961); it does not disclose its distribution process. • **Great Britain** receives DM 11 million (1964), which it uses to make one-time payments to current citizens imprisoned or disabled by the Nazis. • **Sweden** receives DM 1 million (1964), which it distributes to citizens who		

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were Nazi victims. **August 1960:** The AEG-Telefunken company, following negotiations with the Claims Conference, creates a fund of approximately $1 million to compensate its former slave laborers.	**June 21, 1961:** The NYTimes reports that the "Israeli government has taken renewed hope that it many soon become heir to unclaimed millions of dollars in foreign currencies and valuables that were deposited in Swiss banks by European Jews who died in Nazi death camps," as the "Swiss Ministry of Justice and Police has started drafting legislation that would compel organizations and individuals in Switzerland to report any deposits they controlled that have been unclaimed for a long period." The article notes that "there is some question about how fast the Swiss bankers will want to comply with a law that counters all their tradition."	
November 27, 1961: The Bad Kreuznach treaty settles financial issues between West Germany and Austria, and includes provisions to indemnify victims of Nazi persecution as well as displaced persons. **December 15, 1961:** Adolf Eichmann, captured in Argentina on May 11, 1960 and brought to Israel to stand trial for his war crimes, is sentenced to death in a Jerusalem court.		

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May, 1962: The Siemens-Halske company, following negotiations with the Claims Conference, creates a fund of approximately $1.75 million to compensate its former slave laborers.		
	July 6, 1962: The Swiss Federal Council "commission[s] the historian Edgar Bonjour to independently conduct a major study of Swiss neutrality."	
	December 20, 1962: The Swiss Federal Council passes a decree requiring all individuals, legal entities, and associations to report any Swiss-based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since May 9, 1945, and who were known or presumed to have been victims of racial, religious, or political persecution. Such assets are to be transferred to an "Unclaimed Assets Fund." The survey reports 739 accounts containing a total of 6,219,000 Swiss Francs.	
	March 13, 1964: The NYTimes reports that the "Swiss Government announced today that a six-month search had uncovered the equivalent of just in excess of $2 million in unclaimed assets [held by 961 foreigners or stateless persons] hidden in Switzerland by Jews who later became victims of Nazi Germany." The article reports that a "Jewish welfare official described the sum announced by the [Swiss] government as 'disappointingly low'" based upon the "millions of Jews who were exterminated" and the "flight of capital" during the Nazi era.	
May 1964: The Dynamit Nobel company, owned by Friedrich Flick, agrees to establish a DM 5 million fund to compensate its former slave laborers, to be administered by the Claims Conference. However, not		

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until Flick's death and the company's purchase by Deutsche Bank in the early 1980s is the agreement implemented.		
	August 20, 1965: The Swiss Federal Council recognizes the Swiss-Polish agreement but limits its application by deciding not to give the Polish government information concerning unclaimed assets; assets deemed heirless are transferred not to the Unclaimed Assets Fund, but instead are credited directly to the Swiss National Bank for the benefit of the Polish National Bank. **August 27, 1965:** The Swiss Federal Council does not recognize the Swiss-Hungarian agreement and does not provide Hungary with lists of assets in Switzerland owned by Hungarians. The Council does accept the Hungarian government's demand for any such assets already incorporated into the Unclaimed Assets Fund.	
April 7, 1966: The United States District Court, in *Kelberine v. Societe Internationale*, dismisses claims by U.S. citizens against IG Farben based on the company's use of Holocaust-era slave labor. The court holds that the "adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in a European area by a government then in power – is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed." Decades later, one of the *Kelberine* plaintiffs is compensated for bank account and slave labor claims under Judge Korman's Swiss Banks Settlement		

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distribution process.		
May, 1966: The Rheinmetall company, following negotiations with the Claims Conference, creates a fund of approximately $625,000 to compensate its former slave laborers.		
	1969: Alfred A. Häsler writes the book, THE LIFEBOAT IS FULL: SWITZERLAND AND THE REFUGEES, 1933-1945, a seminal work explaining Swiss behavior toward refugees during World War II.	
September 1, 1969: The German penal code eliminates paragraph 175, the basis for Nazi persecution of homosexuals.		
1970: West Germany pays DM 97 million to Hungary, which establishes a program to pay Nazi victims in that country.		
1972: West Germany pays DM 100 million to an International Red Cross program designed to compensate primarily non-Jewish Polish nationals who were victims of Nazi medical experiments.		
	February 28, 1972: The Swiss Federal Council, by presidential decree, without a declaration of presumption of death and call for heirs, incorporates directly into the Unclaimed Assets Fund, assets owned by nationals of unclaimed funds from owners who had resided in the former Soviet Union and Eastern European nations.	
1973: The Netherlands enacts a law to compensate present and former		

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Dutch citizens persecuted during the Nazi era, generally limited to those who demonstrate disability and loss of income due to injuries.	**March 26, 1973:** Switzerland gives assurances, in a confidential side protocol, that it will compensate Hungary in the amount of SF 325,000, based on the transfer to the Unclaimed Assets Fund of unclaimed assets belonging to Hungarian nationals presumed to be deceased. Hungarian counterclaims amounting to SF 400,000 are offset directly against this sum compensating dispossessed Swiss property owners, which amounts to SF 1.8 million. **February 19, 1975:** Switzerland transfers SF 325,000 to Hungary pursuant to the March 26, 1973 protocol. **March 3, 1975:** The Swiss Federal Assembly decides to turn over the sums in the Unclaimed Assets Fund to the Swiss Central Office for Refugee Aid (approximately SF 1 million) and the Swiss Association of Jewish Communities (approximately SF 2 million); on August 20, 1980, the Unclaimed Assets Fund account is closed. **August 15, 1975:** Switzerland transfers SF 463,955 from the Unclaimed Assets Fund to the Polish National Bank's account at the Swiss National Bank.	
April 16-19, 1978: The television mini-series "Holocaust" is broadcast in the U.S., contributing to a renewed		

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interest in the Nazi era.		
	August 20, 1980: Switzerland closes the Unclaimed Assets Fund.	
October 14, 1980: Following several years of negotiations with the Claims Conference, West Germany establishes the Hardship Fund, paying one-time grants to survivors who had been ineligible for prior German compensation, mostly for those in the West who had previously lived behind the Iron Curtain. Those still living in communist nations remain ineligible. In contrast to earlier compensation programs, which were administered by West Germany, the Hardship Fund and subsequent compensation programs are to be administered by the Claims Conference.		
December 1980: West Germany approves a one-time payment of DM 5,000 to victims of forced sterilization, a provision available to many non-Jewish victims who had not been eligible under the BEG and other restitution laws (such as Roma and disabled individuals), but limited to those who had not claimed under the BEG.		
December 1986: Holocaust survivor, author Elie Wiesel, wins the Nobel Peace Prize.		
March 23, 1988: In recognition of the 50th anniversary of the *Anschluss*, following negotiations with the Committee for Jewish Claims on Austria, Austria establishes a		

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Holocaust compensation program issuing one-time payments to Jewish Nazi victims. **June 1988:** Daimler-Benz issues a DM 10 million grant for the Claims Conference to fund programs for aged and needy survivors. **1989:** The Czech Republic establishes a program restituting privately owned property, initially imposing a citizenship requirement but removing that restriction in 1994. Also in 1994, the Czech Republic adopts a financial assistance program for Nazi victims. **November 9, 1989:** The Berlin Wall falls. **1990:** Following multi-year negotiations with the Claims Conference, and after German reunification, Germany establishes a restitution program for property that had been located within the boundaries of the former East Germany. The filing deadline is December 31, 1992, and the Claims Conference is designated as the successor organization for heirless property. **August 1990:** The unification treaty between West Germany and East Germany is signed in Berlin.		

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1991-1993: Germany creates several "reconciliation funds" in the former Soviet Union and Poland: • The **Polish** Reconciliation Foundation (DM 500 million) (October 1991), which creates a compensation program for Polish Nazi victims; most Jewish victims are ineligible as they no longer live in Poland. • The **Belarus** Mutual Understanding and Reconciliation Fund (DM 200 million) (1993), which compensates mostly non-Jewish victims. • The **Russian** National Fund for Mutual Understanding and Reconciliation (DM 400 million) (1993), which compensates Jewish and non-Jewish victims with one-time payments. • The **Ukrainian** Mutual Understanding and Reconciliation Fund (DM 400 million) (1993), which compensates Jewish and non-Jewish victims with one-time payments.		
1992: The JDC creates the "*Hesed*" program in the former Soviet Union to assist destitute elderly Jews still living in that region; in 1995, the Claims Conference begins to substantially supplement the program.	**1992:** Jacques Picard, a Swiss historian, publishes a report, "Switzerland and the Assets of the Missing Victims of the Nazis," which raises numerous questions about Switzerland's treatment of assets belonging to victims of racial, religious, and political persecution following World War II.	
February 1992: Volkswagen makes a grant of 2.75 DM for survivor		

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programs in Israel. **June 1992:** The World Jewish Restitution Organization (WJRO) is established to pursue Jewish property claims in Central and Eastern Europe. **1993:** The Foundation for the Benefit of Holocaust Victims in Israel is created. **January 1, 1993:** West Germany establishes the Article 2 program following ongoing negotiations with the Claims Conference; the program provides pensions to Nazi victims who have not previously received compensation, do not exceed income limitations, and were confined to a concentration camp for at least 6 months or a ghetto for at least 18 months. **April 19, 1993:** The United States Holocaust Memorial Museum, first envisioned when the U.S. Holocaust Memorial Council was created in 1980, opens in Washington, D.C. **October 1993:** The Academy Award-winning film "Schindler's List" by Steven Spielberg is seen by millions, contributing to renewed interested in the Holocaust. In 1994, Spielberg establishes the Survivors of the Shoah Visual History Foundation, which records survivors' testimonies. **June 11, 1994:** Germany abolishes the law used to persecute homosexual Nazi victims, Paragraph 175.		

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July 1994: The Claims Conference establishes a "Goodwill Fund," available to heirs to property in the former East Germany who failed to file claims before the 1992 deadline and who therefore were ineligible for compensation under the German law. From the proceeds of successful property claims under the German program, the Claims Conference issues payments to eligible heirs and utilizes the remaining funds for programs serving needy survivors around the world.		
	May 7, 1995: On the 50th anniversary of the end of World War II, Swiss President Kaspar Villiger officially apologizes for its refugee policy. U.S. Ambassador Stuart Eizenstat[4] notes that President Villiger "did so without external pressure."	
June 1, 1995: Austria establishes the Austrian National Fund, providing one-time payments to 29,500 Austrian Nazi victims worldwide.		
	June 21, 1995: Wall Street Journal reporter Peter Gumbel writes on the newspaper's front page that "[f]or 50 years, since the end of the war, [Swiss] banks … have cast a dismissive blanket of silence over the question of what they did with accounts opened by Jews and others who were then persecuted, and often murdered, by the Nazis."	

[4] Ambassador Stuart E. Eizenstat has served in many governmental roles, including Deputy Secretary of the Treasury, Under Secretary of State for Economic, Business & Agricultural Affairs, Under Secretary of Commerce, and Special Representative of the President and Secretary of State for Holocaust-Era Issues under President Clinton. He remains actively involved with Holocaust compensation issues. He described his experiences in leading the negotiations resulting in the settlement of claims arising from accounts held in Swiss bank accounts, slave labor performed on behalf of German and Austrian corporate and governmental entities, and other Holocaust-era injuries, in his book IMPERFECT JUSTICE: LOOTED ASSETS, SLAVE LABOR, AND THE UNFINISHED BUSINESS OF WORLD WAR II (PublicAffairs 2003).

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	September 1995: The SBA surveys its member banks in Switzerland and Liechtenstein to determine the number and value of bank accounts belonging to foreigners. A preliminary survey identifies 893 dormant accounts with a value of SFr. 40.9 million belonging to foreign depositors who had not been heard from since May 9, 1945.	
September 9, 1995: By letter to Edgar Bronfman, U.S. President William J. Clinton states: "I ... support the efforts of the World Jewish Restitution Organization and the World Jewish Congress to help resolve the question of Jewish properties during and after the Second World War," noting that "Ambassador Stuart Eizen[stat] has been given a special mission to assist in this task." **September 10, 1995**: By letter to Edgar Bronfman, Israeli Prime Minister Yitzhak Rabin states that as President of the WJRO, Bronfman "represents the Jewish people and the State of Israel" with respect to issues "of restitution of Jewish assets deposited in Switzerland, along with the issues of restitution of Jewish property…in countries of Central and Eastern Europe." **September 19, 1995:** The U.S.-German "Princz Agreement" establishes a compensation program of $18.5 million to be paid to 235 U.S. citizens who survived concentration camps, including Hugo Princz.		
	February 7, 1996: The SBA announces that $32 million was found in 775 additional dormant accounts opened prior to 1945 that could have belonged to Jews who perished in the Holocaust. A NYTimes article reporting on the announcement states that the SBA "acknowledged it would	

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	be difficult for descendants of Nazi victims to present documents needed for proof of legitimacy, and said it might accept substitute documents with explanations. But it said many claims were based on hope, not facts. 'The reasons for assuming that assets may be in Switzerland are often only vaguely substantiated…'" **April 23, 1996**: The U.S. Senate Banking Committee, headed by Senator Alfonse D'Amato of New York, holds the first hearing on the status of Holocaust-era assets deposited in Swiss banks. Swiss financial institutions come under sharp criticism for their accounting methodology as well as for their treatment of Holocaust survivors/heirs, who had previously requested information about lost accounts but were rebuffed by Swiss bank officials.	
May 2, 1996: In a letter to Edgar Bronfman, President of the World Jewish Restitution Organization and the World Jewish Congress, U.S. President William J. Clinton states, "I would like to express my continuing support in the area of restitution of Jewish property… the return of Jewish assets in Swiss banks enjoys the support of this Administration…It is a moral issue...."	**May 2, 1996**: The World Jewish Congress (WJC), the World Jewish Restitution Organization, the Jewish Agency in Jerusalem, and the SBA sign an agreement to relax Swiss banking secrecy laws to allow a joint independent commission to reexamine dormant Swiss accounts. An Independent Committee of Eminent Persons ("ICEP") led by Paul Volcker, former chairman of the U.S. Federal Reserve System, is chosen to audit an earlier study by the Swiss bankers' ombudsman. The other six panel members are Professor Curt Gasteyger, a Swiss historian; Dr. Alain Hirsch, an expert on security and accounting; Prof. Dr. Klaus Jakobi, a former Swiss ambassador to the U.S.; Avraham Burg, chairman of the Jewish Agency in Israel; Reuben Beraja, chairman of the Latin American Jewish Congress; and Ronald Lauder, an American representing Jewish interests. A NYTimes article reporting on the agreement states: "An official close to the Swiss Bankers Association, which is participating in the plan, said that an industry agreement to open up such a large number of files to outside inspection would be	

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	unprecedented." **August 15, 1996**: ICEP issues a press release reporting that it has held its first meeting, chaired by Paul A. Volcker. "The group focused on the role of the Committee in identifying any dormant accounts, financial instruments or other assets that were deposited or otherwise conveyed to the custody of the Swiss banks before, during, or immediately after the Second World War. The Committee approved the process for selecting auditors to examine the methodology of the individual Swiss banks in maintaining and identifying dormant accounts and other assets and to conduct a thorough investigation of these matters."	
September 10, 1996: The British Foreign and Commonwealth Office releases a document, *Nazi Gold: Information from the British Archives,* which alleges that the Allies knew of the large amounts of Nazi gold exported to Switzerland, but were afraid of losing Swiss support on the postwar economic recovery plan. The report also alleges that the Swiss could be holding more than $550 million worth of gold looted by Nazi Germany, valued at $7 billion. A Washington Post article notes that the report stated that in 1946, "…Allied negotiators agreed to accept from the Swiss a payment of $60 million to settle all claims connected with the gold, a sum the report noted was less than one-tenth the value of the Nazi gold in Swiss vaults at the time. It is not clear if any of this money ever reached Holocaust survivors."	**September 16, 1996:** The Swiss Parliament agrees to a full investigation into assets stolen by the Nazis. An independent commission of historians and banking and legal experts is recommended to investigate Switzerland's role as financial center for looted assets.	

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	September 21, 1996: A NYTimes article concerning the British Foreign and Commonwealth Office's report on Nazi Gold references Robert Vogler, a historian who wrote a 1985 study of the wartime gold transactions and who now is a spokesman for Union Bank of Switzerland. Vogler "argues the gold is merely covering old ground and will not turn up hidden hordes. 'The only profit was that the country was not brought into the war …If it is the aim of politicians to protect the people, the gold fulfilled that aim well. People have no idea how history was. They don't realize that Switzerland was encircled. We had to give the Germans something, to survive.'" **September 25, 1996:** A NYTimes editorial states: "For decades the Swiss banking industry arrogantly thwarted inquiries about its role in the Nazi period, and effectively discouraged the relatives of Holocaust victims searching for long-dormant accounts. The Swiss stonewall has now broken down under intense pressure from Jewish organizations and the unearthing of documentary records that show the shameful extent of Swiss cooperation with the Nazis. Faced with a mounting wave of negative publicity and the prospect of lost business, Swiss bankers are opening their archives and vaults to outside investigation … The search will not be easy and the amount of gold and other assets may prove smaller than imagined. But in a manner of historical accountability like this, monetary value is less important than honesty and openness. This is a reckoning long overdue."	**October 3, 1996**: Gizella Weisshaus, a Holocaust survivor living in Brooklyn, files the first class action suit in U.S. federal court, *Weisshaus v. Union Bank of Switzerland*, No. 96 CV 4849 (Eastern District of New York), against various Swiss Banks, asserting that the banks refused to return assets deposited before and

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		during the war. The defendants include the Swiss Bank Corporation (also known as the Swiss National Bank), the Union Bank of Switzerland (UBS), and other banking institutions. More than 4,000 plaintiffs, Jews and non-Jews worldwide, are said to be represented by the class action lawsuit.
	October 16, 1996: Chairman of the Senate Banking Committee Senator D'Amato holds a hearing in New York City, during which Holocaust survivors unable to reclaim assets deposited in Swiss banks testify. D'Amato states that "the committee has found evidence to suggest that Swiss banking authorities, with official American acquiescence, turned over only a fraction of the deposits after World War II." Senator D'Amato accuses the banks of stalling in the hope that the last remaining survivor will die.	
October 1996: An auction of unclaimed Jewish art in Austria, the "Mauerbach Auction," yields $13.5 million; 88% of the fund is allocated to assist Jewish victims in Austria, and the remaining 12% is allocated for non-Jewish victims.		
		October 21, 1996: A second class action complaint relating to Switzerland's activities during and after the Holocaust era, *Friedman v. Union Bank of Switzerland*, No.96 CV 5161 (EDNY), is filed in the United States District Court for the Eastern District of New York.
	October 24, 1996: Flavio Cotti, the Swiss foreign minister, creates a special task force to coordinate a Swiss diplomatic response to international criticism of Switzerland and its financial institutions. This special task force is directed by Special Ambassador Thomas Borer.	

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October 30, 1996: President Clinton writes to World Jewish Congress President Bronfman and asks him to expand the probe into Nazi assets, stating that his Administration "would make it a priority to classify and make available to the public all the relevant documents." President Clinton asks Stuart Eizenstat, then Undersecretary of Commerce, to coordinate efforts by the U.S. government.	**October 31, 1996**: Swiss Ambassador to the U.S. Carlo Jagmetti announces at a news conference at the Swiss Embassy in Washington, DC that the Swiss banks have made mistakes, but proclaims "the total commitment of the Swiss authorities to establish the truth and nothing but the truth, insofar as witnesses, records and documents will permit. **November 13, 1996**: The Swiss bankers' ombudsman announces that only SF 11,000 ($8,750) from 1.6 million francs ($1.26 million) in unclaimed dormant accounts are linked directly to Holocaust victims. These initial findings are sharply criticized by the World Jewish Congress as "unilateral and unacceptable." **November 19, 1996**: In response to criticism of the findings by the Swiss bankers' ombudsman, Paul Volcker, chairman of ICEP, announces that three American accounting firms (Arthur Andersen, KPMG Peat Marwick, and Price Waterhouse) have been hired to investigate dormant Swiss accounts during the World War II era. **December 9, 1996:** Both houses of the Swiss Parliament pass final legislation that waives the 3-month waiting period for laws to take force, thus allowing an independent panel to begin studying how much wealth was deposited into Swiss banks prior to and during World War II, and the Swiss response after the war.	

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	December 11, 1996: Dr. George Krayer, chairman of the SBA, at hearings held before the U.S. House Committee on Banking and Financial Services, states: "First, the SBA, its members and the Swiss bank supervisors are committed to providing their full support and cooperation to the [ICEP] audit and abiding by its results…. Second, the auditors will have full access to all relevant information. Third, because of this access, the audit findings will represent the best attainable results and therefore must be accepted as conclusive by all responsible parties." The U.S. House Banking Committee holds a hearing on Swiss banks and Jewish assets during World War II. Among the witnesses before the committee are Special Ambassador Thomas Borer, chief of the Swiss Foreign Ministry Task Force on the Swiss bank question; Edgar Bronfman, president of the World Jewish Congress; Paul Volcker, chairman of the Committee of Eminent Persons; Senator D'Amato, chairman of the U.S. Senate Banking Committee; and various Holocaust survivors/heirs. Mr. Krayer states that he has "'no knowledge' of large accounts that still contained considerable assets originally deposited by either Jews or the Nazi leadership. While estimates vary widely, some experts believe those accounts may have held upward of half a billion dollars in 1946." **December 13, 1996:** The Swiss Parliament establishes the Bergier Commission to examine the period prior to, during and immediately after the Second World War.[5] The decree includes the passage of a law banning the destruction of relevant	

[5] Jean-François Bergier (a Swiss historian) was appointed Chairman. The other members of the Bergier Commission were: Wladyslaw Bartoszewski (Poland), Linus von Castelmur (Switzerland), Saul Friedländer (Israel), Harold James (United States), Georg Kreis (Switzerland), Sybil Milton (United States), Jacques Picard (Switzerland), Jakob Tanner (Switzerland) and Joseph Voyame (Switzerland). Sybil Milton passed away during her tenure, as did Joseph Voyame. Voyame was replaced by Daniel Thürer, and Milton was replaced by Dr. Helen Junz. Judge Korman subsequently appointed Dr. Junz to serve as a CRT Special Master.

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	documents. **December 19, 1996**: Peter Hug and Marc Perrenoud, two independent historians commissioned by the Swiss government, release a report on Swiss post-war Nazi gold transactions. Authorized in October 1996, the report investigates claims that assets from victims of the Holocaust were used by the Swiss to compensate its citizens whose property was seized by countries in Eastern Europe. The report rejects the charge that such funds were paid directly to Swiss citizens, but states instead that under post-war compensation agreements, Switzerland made payments to Poland and Hungary. **December 31, 1996:** The NYTimes reports that Swiss president Jean-Pascal Delamuraz has characterized as "blackmail" a call to establish a compensation fund for Jewish Nazi victims with claims to Swiss bank deposits, adding that he sometimes wonders "if Auschwitz was in Switzerland." On January 2, 1997, he characterizes his statement as having been "misunderstood' and expresses regret for any offense caused.	
Late 1996: President Clinton commissions an interagency task force, supervised by Ambassador Stuart E. Eizenstat, to investigate and report on Allied efforts to recover and restore Nazi-looted gold and other assets after World War II. **1997:** Germany establishes a "Czech-German Fund for the Future," providing for payments to Czech Nazi victims. **1997:** Hungary establishes a pension program for Jewish Nazi victims, pursuant to its obligations under the 1947 Paris Peace Treaty.		

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1997: Yad Vashem initiates an "integrative data-bank" to include databases of victim names from Pages of Testimony, deportation lists, lists of prisoners from the camps, testimonies, and other sources.	**January 7, 1997**: The Swiss cabinet offers to create a compensation fund with the $32 million found by the Swiss bankers' ombudsman in November 1996. Their offer is rejected by the World Jewish Congress. **January 15, 1997:** The NYTimes reports that on January 8, 1997, "[j]ust weeks after the Swiss government ordered its banks to preserve any remaining records of their dealings with Nazi Germany, a suspicious security guard at the Union Bank of Switzerland [Christopher Meili] halted the destruction of documents from the World War II era, including some that appeared to deal with the 'forced auctions' of property in Berlin in the 1930s." UBS states that it "regrets the incident" but the shredded documents did not contain information about specific bank customers. Meili himself becomes the target of a criminal investigation as to whether he violated banking secrecy. In May 1997, Meili and his family leave Switzerland with the assistance of Jewish leaders. **January 22, 1997**: The Swiss Federal Banking Commission (the "SFBC") declares the ICEP audits as "official special audits" under the Swiss Banking Act of 1934 and the Swiss Banking Ordinance of 1972. This declaration empowers the SFBC to compel the banks' cooperation with the ICEP investigation, and ensures that the ICEP auditors will have "full and unfettered access" to relevant bank files, including customer files protected by bank secrecy legislation." **January 23, 1997**: The Swiss government endorses a plan for a memorial fund of $70 million to compensate victim/heirs who	

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	claimed dormant assets in Swiss banks. With respect to who will contribute to the fund, the Swiss government states that "a decision on the appropriate participation of the Government in the financing of a fund will be made when the hard, historical facts are presented." **January 27, 1997:** The Swiss Ambassador to the U.S., Carlo Jagmetti, resigns after publication of his diplomatic cable in which he warns with respect to the Holocaust victim deposits issue that "this is a war which Switzerland must conduct on the foreign and domestic front, and must win," adding that the groups representing victims are "opponents" who "cannot be trusted."	
		January 29, 1997: *World Council of Orthodox Communities v. Union Bank of Switzerland*, No.97 CV 0461 (EDNY), is filed in United States District Court.
	January 31, 1997: ICEP Chairman Paul Volcker announces that only 26 of Switzerland's then-500 banks searched for Holocaust victims' assets as part of the 1962 survey, which "raises questions of how assiduous everybody was in responding and how much follow-up there was." **February 24, 1997:** Time magazine's cover features a swastika of gold bars superimposed over a photo of Nazi victims: "Echoes of the Holocaust: The fight over Nazi gold reminds us why we must never forget." A feature story by Thomas Sancton (Zurich correspondent), entitled "A Painful History," focuses upon the Swiss bank account issue, stating that "one standing order has been to stall and stonewall when Holocaust survivors ask about their dead relatives' accounts," but the "orders are changing" with "two high-level commissions named by the Swiss government" now examining the nation's Holocaust-era activities. The article notes	

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	that other countries are similarly "examining their conscience -- and account books." **February 26, 1997**: The SBA announces formation of the Swiss Fund for Needy Victims of the Holocaust (Swiss Humanitarian Fund) endowed by UBS, Credit Suisse and the SBC. The Fund raises $173 million and allocates 88% to benefit needy Jewish victims and 12% to needy non-Jewish victims including Roma, Jehovah Witnesses, disabled and homosexuals. The Fund ultimately distributes SF 295 million to 312,000 victims worldwide. Holocaust survivors play a prominent role in its administration. **March 5, 1997**: Swiss President Arnold Koller, in a special address to Parliament, proposes the creation of the Swiss Foundation for Solidarity, a humanitarian fund of 7 billion Swiss francs ($4.7 billion). The foundation would donate up to SF 300 million a year to needy recipients in Switzerland and abroad from profits revaluing SF 5 million in gold reserves from the Swiss Central Bank. According to President Koller, the beneficiaries would include "victims of poverty and catastrophes, of genocide, and other serious human rights abuses, and for victims of the Holocaust." Though approved by parliament, the referendum is narrowly defeated at the polls on September 22, 2002.	**March 7, 1997**: Hon. Edward R. Korman, United States District Judge, Eastern District of New York, who is hearing the claims against Swiss banks and other Swiss entities, consolidates the Weisshaus, Friedman, and World Council lawsuits for pre-trial purposes under the caption *In re Holocaust Victim Assets Litigation*.

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March 25, 1997: The French Prime Minister's Office Study Mission into the Looting of Jewish Assets in France, the "Matteoli Commission," is created. **March 31, 1997:** A class action lawsuit is filed in New York District Court against European insurers seeking recovery of Holocaust-era insurance policies.		**April 30, 1997:** Attorneys for Switzerland's three biggest banks petition Judge Korman to dismiss or delay lawsuits charging them with failing to return deposits of Holocaust victims.
	May 7, 1997: The Eizenstat Task Force releases a report detailing Switzerland's relationship with Nazi Germany and highlights Switzerland's handling of looted gold and other assets. Switzerland rejects the report as one-sided. The report estimates that as much as $400 million in German-looted gold remained in the Swiss National Bank at the end of the war, but no more than $58 million was returned.	
	May 15, 1997: The U.S. Senate Committee on Banking, Housing and Urban Affairs, led by U.S. Senator D'Amato, holds a hearing on Holocaust-era Swiss assets.	**May 15, 1997**: Swiss bank defendants respond to plaintiffs' complaints by filing several motions to dismiss or, in the alternative, to stay the lawsuits.
	June, 1997: Upon recommendation of the Volcker Committee, the Swiss Federal Banking Commission ("SFBC") requires Swiss banks to report to ATAG Ernst & Young all foreign accounts, Swiss accounts and accounts of persons of unknown or uncertain domicile that were opened before May 9, 1945, and dormant since at least that time. The SFBC and the SBA agree with ICEP in June 1997 to establish the Claims Resolution Tribunal (a process known as "CRT-I") with the mandate of analyzing claims to certain dormant accounts in Swiss	

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	banks dating from the pre-war era. CRT-I is intended to serve as an independent international claims resolution panel operating under liberal rules of evidence, with its decisions to be issued in the form of written opinions.	
		June 3, 1997: Alfred Defago, the Swiss Ambassador to the U.S., urges Judge Korman to dismiss the lawsuits accusing Swiss banks of retaining Holocaust victims' assets. Ambassador Defago writes: "The Government of Switzerland believes that the conduct of this litigation in the United States will interfere with the extensive ongoing and proposed efforts in Switzerland … The most effective and just means for dealing with these matters are in Switzerland, not in a United States court."
		June 16, 1997: Plaintiffs' counsel, including Professor Burt Neuborne of the New York University School of Law, file a Memorandum of Law/Declaration summarizing plaintiffs' legal theories in the class action lawsuits.
	June 25, 1997: The U.S. House of Representatives Committee on Banking and Financial Services holds hearings on Holocaust-era Swiss accounts; among others, Paul Volcker and historian Gerhard Weinberg testify. In a joint press release, Kurt Hauri (SBA) and Paul Volcker announce that the Claims Resolution Process has several major elements, including: "An SFBC circular letter to Swiss banks requiring them to report the accounts of residents and non-residents of Switzerland that have been dormant since 1945; Publication of the names and other information on these accounts … Further there is to be publication of additional dormant accounts to be made promptly as the information	

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	becomes available to Swiss banks or to ICEP." **July 23, 1997:** Major Swiss banks publish a list of 2,000 dormant World War II-era accounts opened by non-Swiss depositors. The list names more than twice the number of such accounts the banks said they had identified just one year ago. The SBA says that claims will be processed by Ernst & Young and judged by an international panel of independent arbitrators who will employ relaxed standards of proof.	**July 24, 1997:** In response to the possibility that the Court will issue discovery orders concerning the ICEP investigation, Paul Volcker files papers describing the "background of the formation of the [Volcker] Committee, its work program, the Investigative Audit completion target, and the potential effects of discovery directed to its papers and personnel." Volcker observes that the litigation, "to the extent that it deals with dormant accounts and impacts the Committee and its documents and records, could have an important and potentially crippling effect on the Committee's ability to do its job." Volcker states that "we have an obligation to keep you well informed of our work as it proceeds and I plan to provide the Court with the Committee's interim and final reports."
July 27, 1997 The NYTimes reports (in an article by Serge Schmemann) that Israeli Minister of Industry and Trade Natan Sharansky states: "Frankly speaking, not only Israel as a whole, but me personally, I find myself much less involved in this [Holocaust compensation] than many American friends."		**July 30, 1997**: Amended complaints are filed in the Weisshaus, Friedman,

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		and World Council lawsuits in an effort to group all plaintiffs seeking relief under the same jurisdictional theory in a single complaint. **August 1, 1997**: The Court hears oral argument on the Swiss Bank defendants' motions to dismiss or stay and reserves decision. Settlement negotiations commence.
	August 14, 1997: The U.S. House Committee on Banking and Financial Services holds a hearing on Holocaust-era Swiss assets. Among others, Neil Levin, Chairman of the New York State Commission on the Recovery of Holocaust Victims' Assets, testifies. Levin, who later serves as Executive Director of the Port Authority of New York and New Jersey, is killed in the World Trade Center attacks on September 11, 2001.	
September 4, 1997: The Jerusalem Report publishes an article entitled: "Shamed into Action - For 50 years, Israel has concealed lists of property and bank accounts that belonged to Holocaust victims and other Jews. After the Swiss came clean, it's Israel's turn." **September 15, 1997:** New York Governor George E. Pataki opens the Holocaust Claims Processing Office (HCPO) to assist Holocaust survivors and their heirs (residing anywhere) to recover Holocaust-era assets, including Swiss bank accounts and insurance policies.		
	October 10, 1997: The NYTimes reports that "New York City quietly administered a major sanction against [UBS] last week by barring it from participating in a billion-dollar bond offering, a move meant to underline disapproval of the way the bank has responded to the investigations into dealings with Nazi Germany." The sanctions are criticized by Stuart Eizenstat	

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	on behalf of the U.S. State Department. **October 29, 1997:** The Swiss Bankers Association supplements its publication of July 23, 1997 with an additional list of dormant accounts, for a total of 5,570 accounts published under the pre-Settlement "CRT-I" (Claims Resolution Tribunal I) process. The value of these accounts is 74.3 million Swiss Francs. These accounts are unrelated to the accounts subsequently located and published through the ICEP process. **November 18, 1997:** The first payments are made from the Swiss Humanitarian Fund, to 80 Jewish survivors in Riga, Latvia.	
December 1, 1997: In anticipation of a 41-nation conference on Nazi gold in London, the NYTimes reports that a new report shows that "[s]even years after World War II ended, the United States melted down gold plates, buttons, coins and smoking-pipe ornaments that were apparently looted from Hitler's victims, and turned the gold over to European central banks." The U.S. and Great Britain pledge to contribute to a new fund to benefit Holocaust survivors.	**December 8, 1997:** The NYTimes reports that UBS and SBC (Swiss Bank Corporation) are planning to merge, which will create the world's second largest bank. **December 18, 1997:** The first payments to non-Jewish Nazi victims are made from the Swiss Humanitarian Fund, to political persecutees in Albania.	
January 1998: Following negotiations with the Claims Conference, Germany		

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establishes the Central and Eastern European Fund (CEEF), providing monthly payments to previously uncompensated survivors; eligibility requirements are similar to those for the Article 2 program.		
	January 6, 1998: The JTA Daily News Bulletin reports that Switzerland's new president, Flavio Cotti, is quoted in a Swiss newspaper as stating that "critics of Switzerland's wartime role - and handling of bank accounts belonging to Holocaust victims - are limited to certain geographical regions of the United States, especially New York."	
	January 15, 1998: A report prepared for the Simon Wiesenthal Center, "The Unwanted Guests: Swiss Forced Labor Camps 1940-1944," details what the NYTimes describes as the "little-known story of Swiss labor camps, where thousands of Jews and others who were given refuge in World War II were forced to work…."	
	February 6, 1998: JTA reports that NY Senator D'Amato "is urging Federal Reserve Chairman Alan Greenspan to block the proposed merger" of SBC and UBS unless the banks address the claims of Holocaust victims.	
February 9, 1998: JTA reports that the insurance company Assicurazioni Generali has been subpoenaed by California and also sued by a private party for $135 million "for allegedly stonewalling demands to pay out on policies taken out by Holocaust victims and survivors."		
	February 12, 1998: The Swiss Humanitarian Fund begins payments to approximately 20,000 Jewish survivors in Hungary.	
	February 20, 1998: The NYTimes reports that the Swiss Federal Council rejects a claim filed by Charles Sonabend, who seeks	

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	damages for Switzerland's wrongful deportation of his parents. The family had fled Belgium and were expelled from Switzerland; the parents later were murdered at Auschwitz**.** The Council states that his claims "were forfeited due to the lapse of time and unjustified by substantive law … in contrast to the Nazi regime, Swiss Federal officials committed no war crimes."	
March 8, 1998: The first class action lawsuit against a German company, Ford Motor Company, for its Holocaust-era use of slave labor, is filed.		
	March 18, 1998: The Swiss Humanitarian Fund begins payments to Roma, Sinti and Yenish Nazi victims in Singen, Germany.	
	March 25, 1998: The NYTimes reports that the New York State Banking Department has urged the Federal Reserve Board to oppose the merger of SBC and UBS because of the banks' "inattentive regard for the depositors who fell victim to the Holocaust."	
		March 27, 1998: The NYTimes reports that in a "sharp shift in position," Switzerland's "three major banks … agreed to negotiate a global settlement with Holocaust victims" to be supervised by the Brooklyn federal court.
		May 5, 1998: Credit Suisse reaches a settlement with Holocaust survivor Estelle Sapir based upon her father's unreturned bank accounts; the settlement amount is undisclosed but media reports place it at $500,000, and Ms. Sapir withdraws as a plaintiff from the class action lawsuits.
	May 25, 1998: The Bergier Commission publishes an interim report, "Switzerland and Gold Transactions in the Second World War," which concludes that Swiss National	

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	Bank officials knew that some gold sent to Switzerland during the Holocaust had been looted from occupied areas; the gold included property taken from Holocaust victims.	
		June 5, 1998: The NYTimes reports that Swiss banks have offered to settle the class action lawsuits for an amount that could reach $1.6 billion, with $1 billion reserved for bank deposit claims and the remaining $600 million for needy survivors.
	June 9, 1998: The Federal Reserve Board approves the merger of SBC and UBS, creating the second largest bank in the world.	
		June 19, 1998: Swiss banks publicly announce in a press conference that they are ready to settle the claims for $600 million, and will also pay any amounts that the Volcker Committee determines remain in dormant bank accounts; the banks indicate that it is their final offer. Jewish groups reject the offer as "'humiliating'" and announce that negotiations have broken down.
June 20, 1998: The Eizenstat Task Force releases a second report entitled, "U.S. and Allied Wartime and Postwar Relations and Negotiations With Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury."		
	June 23, 1998: The Swiss cabinet narrowly rejects a claim brought by Joseph Spring, who in 1943 had sought refuge in Switzerland but was instead handed over to the Nazis; Spring survived Auschwitz.	
	June 28, 1998: UBS and SBC merge.	

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	July 2, 1998: New York City and State officials (New York State Controller H. Carl McCall and New York City Controller Alan Hevesi) announce their intention to impose sanctions on Swiss banks beginning September 1, 1998, and continuing with additional sanctions on November 15 and then through 1999, in the event that the banks do not settle Holocaust victims' claims; the State of California also announces its intention to impose sanctions.	
August 7, 1998: The first lawsuit based on Nazi-looted art -- G*oodman v. Saserale*, filed in 1996 over a disputed Degas, *Landscape with Smokestacs* -- is settled; the parties agree to share ownership and the painting will be on display in the Art Institute of Chicago.		
		August 12, 1998: An informal agreement in principle to settle the "Swiss Banks" class action lawsuits for U.S. $1.25 billion is reached in Judge Korman's chambers; attorneys for plaintiffs and defendants UBS and Credit Suisse begin negotiating the settlement terms.
		August 14, 1998: Ambassador Eizenstat, who for months had assisted in mediating the settlement talks, states in a Jerusalem Post interview that the settlement "is the most significant action in terms of compensation since the German reparations agreement in the early 1950s, and it is important that it be distributed in the widest possible way … What leads me to believe that this will be done in an orderly, seemly and dignified way is because it will be done under judicial scrutiny."
	August 17, 1998: The Swiss Humanitarian Fund announces the start of the	

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	distribution program for needy Jewish survivors in the U.S.	
August 19, 1998: Generali agrees to pay $100 million to settle Holocaust-era insurance claims.		
August 21, 1998: A class action lawsuit is filed in New Jersey District Court against Degussa, alleging that the company profited from manufacturing the poison used in the death camps, and from smelting victims' gold.		**August 21, 1998:** The Swiss Central Bank announces that it will not contribute to the $1.25 billion settlement reached by UBS and Credit Suisse.
August 25, 1998: The International Commission on Holocaust Era Insurance Claims (ICHEIC), intended to address and resolve unpaid Holocaust-era insurance policies, is established by a Memorandum of Understanding (MOU) among the National Association of Insurance Commissioners in the United States, several European insurance companies, insurance regulators, representatives of several Jewish organizations, and the State of Israel.		
August 30, 1998: A class action lawsuit is filed in Brooklyn Federal Court against Germany's largest industrial companies including BMW, Siemens, Krupp and Volkswagen, following earlier suits against the German banks Deutsche Bank and Dresdner Bank, Ford and Degussa, on the basis of profits the companies received from Holocaust-era slave labor; soon after, another class action suit is filed in Newark District Court against Krupp.		
September 11, 1998: Volkswagen announces that it is establishing a DM 20 million "humanitarian relief" fund because of its moral, although not legal, obligation to compensate its former slave laborers.		

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September 23, 1998: Siemens announces that it is establishing an $11.9 million humanitarian fund for its former slave laborers. **October 1998**: Shortly before taking office, German Chancellor-elect Gerhard Schroeder convenes executives of Germany's top companies to discuss compensation for Holocaust-era slave labor. During a visit to Washington in the middle of the election campaign, Mr. Schroeder meets with the Claims Conference to discuss outstanding Jewish claims.	**October 9, 1998:** The Swiss government announces that it will publish the names of 51,000 refugees admitted to the country during World War II, drawing from files in the Swiss Federal Archive (and previously conveyed to Yad Vashem and the United States Holocaust Memorial Museum).	
October 20, 1998: German Chancellor-elect Gerhard Schroeder announces his intention that Germany will establish a fund to compensate Holocaust-era slave laborers, reversing the prior government's stance on the issue.	**October 29, 1998**: The Swiss Humanitarian Fund begins payments to Jewish victims in Belarus and to former prisoners of Nazi concentration camps who were persecuted for political reasons. **November 5, 1998:** A year-long study by a Swiss governmental commission is released, showing that anti-Semitism in Switzerland has increased, largely due to recent scrutiny of the nation's wartime behavior.	
November 11, 1998: In connection with the ICHEIC agreement, six European insurers agree to deposit $90 million in escrow, toward repayment of Holocaust-era insurance		

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policies. **November 30, 1998:** The U.S. convenes the 44-nation Washington Conference on Holocaust-Era Assets, to address open issues concerning art, land and insurance looted during the Holocaust. On December 3, 1998, the participants endorse the Washington Conference Principles on Nazi-Confiscated Art ("Washington Principles") to develop a consensus on non-binding guidelines to assist in resolving issues relating to Nazi-confiscated art. **December 4, 1998**: In the wake of the Swiss banks settlement and the endorsement of the Washington Principles, the Anti-Defamation League's National Director, Abraham Foxman, writes in the Wall Street Journal: "Seeking restitution is important, but at what price? Look at what happened in Switzerland. Yes, we got a check, but what about morality, reconciliation, and confronting the past? The Swiss have yet to come to grips with the realities that their history, not the Jews, is their enemy, and that the settlement was not blackmail but a moral debt they should have paid voluntarily … Full justice could never be obtained from the Swiss, because we cannot put a price on the life of a child whom the Swiss turned back at the border when they saw a 'J' in his documents. We can only hope for a measure of justice, a symbolic justice that demonstrates an accounting and accountability."	**November 17, 1998:** The Wall Street Journal reports that due to the costs of the investigation and the "prospect that the probe will be extended," the Volcker Committee review "is taking longer than expected and a final report will be delayed by about six months."	

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		December 15, 1998: The Plaintiffs' Executive Committee unanimously endorses the Court's proposal to appoint Judah Gribetz as Special Master to develop a Proposed Plan of Allocation and Distribution of Settlement Proceeds.
December 23, 1998: The first lawsuits against U.S. banks arising from Holocaust-era activities are brought against Chase Manhattan Corp. and J.P. Morgan & Co. The complaints, filed in Brooklyn Federal Court, allege that the banks' Paris branches aided in the Nazis' seizure of these assets. The first class action lawsuit arising from Holocaust-era activities in France is brought; survivors allege in *Bodner v. Banque Paribas* that French banks took their assets following German occupation in 1940.		
	1999: At the beginning of the year, the Swiss Bankers Association and the World Jewish Congress provide $8 million to Yad Vashem to computerize Pages of Testimony and other documents to provide a list of Holocaust victims to the Volcker Committee.	
		January 26, 1999: Following over five months of negotiations, the parties sign a Settlement Agreement. The agreement creates five settlement classes: Deposited Assets (bank accounts and other assets deposited in Swiss financial institutions), Slave Labor Class I (individuals who performed slave labor for German and other companies which transacted their profits through Swiss entities), Slave Labor Class II (individuals who performed slave labor for Swiss entities), Refugees (individuals denied entry into or expelled from Switzerland, or admitted into

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		Switzerland but abused or mistreated), and Looted Assets (individuals whose assets were looted and transacted through Switzerland or Swiss entities during the Nazi era). The Settlement Agreement also creates five categories of individuals eligible under four of the five settlement classes, designated "Victims or Targets of Nazi Persecution": persons who were persecuted or targeted for persecution because they were or were believed to be Jewish; Romani (Gypsy); Jehovah's Witnesses; disabled; or homosexual; and their heirs. Slave Labor Class II is not limited to the five "Victim or Target" groups. The Settlement Agreement provides for a Special Master to be appointed to recommend the allocation and distribution of the Settlement Fund among the different classes and victim groups. The "releasees" are the defendant banks, UBS and Credit Suisse, as well as virtually all other Swiss governmental and business entities, including the Swiss Federation.
February 16, 1999: With the intention of averting a Swiss Banks-style class action while obtaining "'global'" protection from future litigation, the German government announces that it will create a $1.7 billion fund for victims of Nazi slave labor policies, to be funded by German industry and banks. The amount is called "substantial but inadequate" by an attorney for the claimants. **March 11, 1999**: Suits against German banks are consolidated in the Southern District of New York as *In re Austrian and German Bank Holocaust Litigation* before Judge Shirley Wohl Kram; the Court approves the $40 million settlement on January 6, 2000		

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and a claims program is established.		**March 30, 1999:** The Court preliminarily approves the Settlement Agreement and provisionally certifies the five Settlement Classes, pending notice and a formal hearing on the fairness of the settlement. "Organizational endorsements" required by the defendant banks as a condition to the Settlement Agreement are signed by seventeen major worldwide Jewish organizations. **March 31, 1999:** The Court issues an order appointing Judah Gribetz as Special Master, setting forth terms of appointment including responsibilities, deadlines and compensation. **April 19, 1999**: The Court appoints members of the Plaintiffs' Executive Committee to serve as settlement counsel. Professor Burt Neuborne is named Lead Settlement Counsel. **May 10, 1999**: In accordance with class action settlement requirements under the Federal Rules of Civil Procedure, the Court appoints Notice Administrators, approves plaintiffs' notice plan, schedules exclusion request ("opt-out") and objection deadlines of October 22, 1999, and schedules a final "fairness hearing" on the Settlement Agreement on November 29, 1999. **June 4, 1999**: To enable the Special Master to take into account any comments raised at the fairness hearing scheduled for November 29, 1999, the Court directs the Special Master to publish his draft proposed plan for comment on December 28, 1999 and to file his final proposed

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		with the Court on April 28, 2000. **June 11, 1999**: Worldwide notice of the proposed settlement commences, including informational documents in 27 languages; ultimately approximately 600,000 class member surveys ("Initial Questionnaires") are submitted; the internet site www.swissbankclaims.com is established.
September 12, 1999: *U.S. v. Portrait of Wally*, a lawsuit over disputed paintings by Egon Schiele, is filed in New York. **September 14, 1999**: The U.S. House of Representatives Banking Committee, chaired by Congressman Jim Leach, holds hearings on French financial institutions' past misappropriations of Holocaust victims' assets in wartime France. **September 19, 1999**: Two New Jersey district judges dismiss five German slave labor class action lawsuits, finding the suits non-justiciable and time-barred. **October 14, 1999:** A preliminary report by U.S. investigators -- the U. S Presidential Advisory Commission on Holocaust Assets (PCHA) -- indicates that U.S. forces who were charged with safeguarding assets of Hungarian Jews looted by the Nazis, which had been loaded onto a forty-two wagon freight train (the so-called "Gold Train"), "were neither careful nor selfless custodians" but rather had taken loot for themselves.		**October 22, 1999**: "Swiss Banks" litigation class members who do not wish to be part of the settlement are required to file exclusion requests ("opt-outs").

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	October 27, 1999: The far-right Swiss People's Party, led by Christoph Blocher, wins the second-largest parliamentary block in Swiss elections. News reports attribute the electoral surge to anti-immigrant sentiment as well as rejection of criticism of Switzerland's Holocaust-era activities.	
		November 29, 1999: The Court conducts a "fairness hearing" in Brooklyn, New York. The hearing allows public comment on the proposed Settlement Agreement, pursuant to the Court's obligation under U.S. class action law to determine whether the settlement is fair.
	December 6, 1999: The Volcker Committee releases its final report on its three-year investigation of Holocaust-era Swiss bank accounts. The Volcker Committee determines that 6.8 million accounts had been opened or open in Swiss banks between 1933-1945. No records remain for 2.7 million accounts. Of the remaining 4.1 million accounts, 54,000 (subsequently reduced to approximately 36,000) are deemed to have a "probable" or "possible" relationship to victims of Nazi persecution. The Volcker Committee recommends that these accounts be made available to the claims process in an "Accounts History Database" (AHD). The Volcker Committee further recommends that approximately 25,000 (subsequently reduced to 21,000) of these AHD accounts should be published. The Volcker Committee concludes that the value of the accounts in the AHD is approximately $643 million to $1.36 billion, including interest. The Volcker Committee recommends that all of the 4.1 million Holocaust-era accounts for which records continue to exist should be consolidated into a "Total Accounts Database" (TAD) for use in a claims process. The investigation costs approximately SF	

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	300 million. The Volcker Report states: "Unfortunately, the banks … lobbied against legislation that would have required publication of the names of such 'so-called heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." The SFBC announces that it is "solely responsible for decisions on publishing further lists of accounts;" it "will analyze the ICEP recommendations on archiving data, further publication of unclaimed assets, and handling of claims;" and it will reach a decision on these recommendations in the first quarter of 2000. **December 10, 1999**: The Bergier Commission releases a report (Switzerland and Refugees in the Nazi Era) that addresses Switzerland's refugee policy in the period before, during, and after WWII. The Commission condemns Swiss decisions to encourage the marking of passports of Jewish persons with a "J" stamp in 1938, and the sealing of the Swiss borders to bar "racially" persecuted refugees in 1942.	
December 14, 1999: German government and industry, together with Holocaust survivor representatives and plaintiffs' class action attorneys, announce an agreement in principle for a $5 billion program to compensate former slave and forced laborers for German enterprises, those injured due to medical experimentation, and certain property losses.		**December 14, 1999**: A fairness hearing on the Settlement Agreement is held in Israel, with telephonic connection to the Court in New York. **December 23, 1999**: The Court modifies its June 4, 1999 Order to Special Master Gribetz by directing that the proposed plan be filed by March 15, 2000, and that a hearing on the proposed plan be held on June 15, 2000, to enable the Special

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		Master to take into account recent information: the Volcker Report of December 6, 1999, the Bergier Commission Report on Refugees of December 10, 1999, data contained in over 500,000 Initial Questionnaires then-received, and the terms of a December 14, 1999 agreement creating a $5 billion German fund (the German Foundation "Remembrance, Responsibility and Future") to compensate former slave and forced laborers.
February 2000: A Parliamentary committee led by Israeli Knesset member Colette Avital is established to inquire into the fate of possibly unreturned land, bank accounts and other assets held in Israel by Holocaust victims.		
	February 9, 2000: ICEP Chairman Paul Volcker testifies at a hearing before the House Committee on Banking and Financial Services, reiterating the publication and data access recommendations of the Volcker Report.	
February 15, 2000: The International Commission on Holocaust-Era Claims (ICHEIC) launches its claims process for unpaid insurance policies.		
		March 14, 2000: The Court states that it cannot approve the Settlement Agreement until Swiss authorities agree to implement the central recommendations of the Volcker Report. Accordingly, the Special Master is to file his proposed plan within thirty days following the Court's approval of the Settlement Agreement, if approval is given.
	March 30, 2000: The SFBC announces that it has "authorized" the Swiss banks to	

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	publish 25,000 accounts (later reduced to 21,000) described in the Volcker Report as "probably" belonging to Holocaust victims, and to create a centralized database of 46,000 accounts (later reduced to 36,000) that the Volcker Report describes as "probably or possibly related to Holocaust victims." The SFBC declines to adopt the recommendation to create a centralized Total Accounts Database (TAD) of all 4.1 million Holocaust-era Swiss bank accounts, stating that the database is "neither necessary nor meaningful" because "ICEP itself had, after a very thorough investigation, no reason to believe that these accounts were in any way related to victims of the Holocaust." **April 2000:** The Swiss Humanitarian Fund begins issuing payments to survivors in Israel. **April 12, 2000**: Paul Volcker advises SFBC Chairman Hauri by letter that "the exclusion of millions of small savings accounts and Swiss address accounts from the ICEP analysis in the interest of speedy and manageable results does not, and cannot, mean that none of those accounts were Holocaust related," thus reiterating the Volcker Committee's recommendation that Swiss authorities permit the claims process to access the Total Accounts Database (TAD). **May 26, 2000**: Charles and Sabine Sonabend, whose father was a well-known importer of Swiss watches and who, with his wife, was killed in Auschwitz after Switzerland expelled the family in August 1942, are paid $118,000 in a settlement by Switzerland. The NYTimes reports that Switzerland has never before voluntarily agreed to payments based upon its deportation of thousands of Jews. **May 30, 2000**: The Swiss Humanitarian Fund makes its first payments to the "Righteous of the Nations," individuals who	

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	rescued or otherwise assisted Nazi victims.	
July 17, 2000: Germany enacts legislation establishing the $5 billion German Foundation "Remembrance, Responsibility and the Future," intended primarily to pay former slave and forced laborers as well as certain personal injury and property claims.		**July 26, 2000: Fairness Opinion:** The Court approves the Settlement Agreement. *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139 (E.D.N.Y. 2000). The Court finds the Settlement Agreement to be fair under the circumstances, taking into account the "legal and practical impediments to the successful litigation of this case by the vast majority of individuals to whom money is justly due" because of the "successful campaign that the Swiss banks waged to prevent disclosure before records were destroyed," as described in the Volcker Report. Defendant banks are ordered to advise the Court within seven days whether they will execute certain amendments to the Settlement Agreement relating to implementation of the Volcker Report recommendations concerning publication of account names and access to bank records, as well as other amendments related to looted art and insurance, and further conditions requiring companies seeking releases under Slave Labor Class II to self-identify in view of the dearth of information about this class. If the banks do not execute the Settlement Agreement amendments, the Court will approve the original Settlement Agreement. In either case, the Court states that it will hold defendant banks and other releasees to a good faith duty to cooperate in implementing the

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		Settlement Agreement. **August 2, 2000:** The parties execute "Amendment No. 2 to the Settlement Agreement" and the "Memorandum to the File," providing for the defendant banks' compliance with the Volcker Report's recommendations, and establishing procedures concerning looted art and insurance claims. **August 9, 2000**: The Court enters an order granting final approval to the Settlement Agreement, as amended by Amendment No. 2 to the Settlement Agreement and by the Memorandum to the File. **August 11, 2000**: The Court directs the Special Master to file his proposed plan on or before September 11, 2000.
September 5, 2000: *Abrams v. Societe Nationale des Chemins de Fer Francais* is filed against the French national railroad for its role in transporting Jews in cattle-cars to death camps in Germany and Eastern Europe.		**September 7, 2000**: One individual files a Notice of Appeal from the District Court's August 9, 2000 Final Order and Judgment approving the Settlement Agreement. Under the Settlement Agreement, no distributions from the Settlement Fund can be made until the "Settlement Date;" *i.e.*, until all appeals from the Final Order and Judgment have been resolved. **September 11, 2000**: The Special Master files the Proposed Plan of Allocation and Distribution of Settlement Proceeds, a two-volume document approximately 900 pages in length, including annexes and

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		appendices; summaries are mailed to all 580,000 persons who had returned Initial Questionnaires by that date. The proposed plan recommends that up to $800 million of the $1.25 billion Settlement Fund should be allocated to the Deposited Assets Class in recognition of the estimates of the number and value of identifiable Holocaust victim accounts provided in the Volcker Report, the priority placed upon the bank accounts under the Settlement Agreement, and the legal and historical strength of the bank account claims; the Deposited Assets claims process is to be administered by the already-existing Claims Resolution Tribunal ("CRT") in Zurich, Switzerland. The remaining $425 million is to be distributed among approximately 200,000 surviving former slave laborers in payments of $1,000 each (subsequently increased to $1,450); surviving refugees ($2,500 each, subsequently increased to $3,625), for those who were denied entry into or expelled from Switzerland, and $500, subsequently increased to $725, for those admitted but mistreated in Switzerland). The sum of $100 million (subsequently increased to $256 million) is designated for humanitarian assistance programs for the neediest survivors as members of the Looted Assets Class. An additional $10 million (later increased to $14.5 million) is recommended for the Victim List Fund on behalf of all class members to memorialize all victims of Nazi persecution, those who survived and those who perished. Along with the CRT, the distribution process is to be administered for the Court by the Conference on Jewish Material

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		Claims Against Germany, Inc. ("Claims Conference"), the International Organization for Migration ("IOM") and the JDC.
October 24, 2000: As a corollary program to the German Foundation Remembrance, Responsibility and Future, the Austrian Fund for Reconciliation, Peace and Cooperation is established to compensate former slave and forced laborers from Austria.]		
		November 20, 2000: The Court holds a hearing in New York on the proposed plan of allocation and distribution of settlement proceeds. **November 22, 2000**: The Court adopts in its entirety the proposed plan of allocation (Distribution Plan). *In re Holocaust Victim Assets Lit.*, 2000 WL 33241660 (E.D.N.Y. November 22, 2000).
	December 1, 2000: The Bergier Commission releases an interim report concluding that Swiss officials systematically expelled or turned away at the border Roma refugees fleeing the Nazis. The Swiss policies were carried out "'without considering the persecution likely to face those under the threat, and the danger to the lives of people expelled to Nazi Germany,'" and with "'good information about transportation of German Gypsies [Roma] eastward to Poland, and about mass killings beginning in 1941.'"	
		December 8, 2000: The Court issues the first of hundreds of orders implementing the terms of the Distribution Plan, by appointing Paul Volcker and Michael Bradfield (counsel to the Volcker Committee) to serve as CRT Special Masters; extending the term of Judah Gribetz's appointment to oversee

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		implementation of the distribution process; and establishing deadlines in connection with the various claims processes. **December 21, 2000:** Six Notices of Appeal from the Distribution Plan are filed with the Second Circuit.
January 16, 2001: The Presidential Advisory Commission on Holocaust Assets in the U.S. reports that 2,200 books and other objects looted from Nazi victims were brought back by U.S. forces and are now in the Library of Congress, university collections and museums. **January 17, 2001**: Austria and the U.S. Government sign an agreement by which Austria creates a general settlement fund of $360 million to partially compensate Holocaust survivors for property and assets that were "aryanized" and stolen during WWII, and grants social welfare benefits including certain payments for nursing care and government pensions. **January 18, 2001**: An agreement is signed between the U.S. and France, in which French banks agree to pay $172.5 million to 64,000 known account holders during the Nazi era, and other undocumented claimants. The payments to the victims are to be made through the French government's Drai Commission.		**January 19, 2001**: Special Masters Volcker and Bradfield hold a hearing regarding the proposed CRT Rules, which establish certain access obligations on the part of the Swiss banks. The Swiss Federal Department of Justice and Police

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		(SFDJP) grants permission for the Court to operate a claims program in Switzerland. **February 5, 2001**: A list of 21,000 Holocaust-era Swiss bank accounts is published on the internet; the Court approves the CRT Rules. The deadline for filing claims to Deposited Assets is August 11, 2001. The deadline subsequently is extended to August 31, 2001 and, for claims which would not be prejudicial to timely filed claims, extended again to December 31, 2003 and then to December 31, 2004.
March 7, 2001: U.S. District Judge Shirley Wohl Kram declines to dismiss class action litigation against German banks, casting uncertainty over the finality of the German slave labor agreement, as "legal peace" for the defendants is one the conditions of the settlement. Judge Kram ultimately dismisses the cases on May 11, 2001, subject to certain requirements to be imposed under German law. The United States Court of Appeals reverses Judge Kram's imposition of these additional requirements on the ground that a U.S. court has no legal authority over the German Parliament, thus resolving the dispute and enabling payments to commence.		**April 4, 2001**: The Court issues an order setting forth the Slave Labor Class II List, consisting of companies that timely self-identified and provided information to the Special Master concerning their use of slave labor. **April 13, 2001**: The Court issues an order approving the Slave Labor Class I, Slave Labor Class II, and Refugee Class claims procedures proposed by the Claims Conference,

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		IOM and JDC, and approves the humanitarian assistance proposals on behalf of the Looted Assets Class filed by these administrative agencies.
May 2001: The Hungarian Gold Train litigation begins with the filing by Hungarian Holocaust survivors of a class action suit against the U.S. in the Southern District of Florida, *Rosner v. U.S.*		
		May 16, 2001: Lead Settlement Counsel notifies the Court that the "Settlement Date" has been reached due to the withdrawal of the one appeal against the approval of the settlement, thus enabling distributions to class members to begin; on May 30, 2001, the Second Circuit formally grants the appellant's motion to withdraw.
May 22, 2001: The Knesset Finance Committee considers a proposed law that would establish a "Fund for the Jewish People" which, according to its sponsors, would be financed with the proceeds of Holocaust-era claims, and would recognize the State of Israel as the legal heir of all heirless Jewish assets.		
		June 12, 2001: Counsel for defendants and plaintiffs' class counsel agree to the Claims Process Guidelines (the "Guidelines"), establishing procedures for implementing an insurance claims process for policies originating with either Swiss Re or Swiss Life. The parties recommend and the Court approves the CRT as administrator of the insurance process. On June 28, 2001, the Court issues an order adopting the Claims Process Guidelines for Insurance Claims. Eligible insurance claims are to be reviewed by the participating Swiss

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		insurers, and payments are to be made from the Settlement Fund and from the participating insurers (50% each), up to a cap of $25 million on the insurers' total payments. **June 28, 2001**: The Court authorizes the first distributions to class members: $35 million to Holocaust survivors who were slave laborers (under Slave Labor Class I); and over $8.5 million to programs serving the neediest Jewish Nazi victims as members of the Looted Assets Class. **July 26, 2001**: The Second Circuit rejects the one remaining appeal from the Court's order adopting the Distribution Plan (the four remaining appeals had been previously withdrawn). The Second Circuit affirms that it was appropriate to appoint the Claims Conference to assist in the distribution process because of its experience with similar programs and its designation to assist with the German Foundation slave labor program. The Second Circuit also affirms the validity of allocating up to $800 million to the Deposited Assets Class because the "existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting" and "these claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation;" "[b]y contrast, the claims of the other four classes are based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately valuate." In re Holocaust Victim Assets Lit., 2001 WL 868507 (2d Cir. July 26, 2001), reissues as a published opinion on July 1, 2005, 413 F.3d 183

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		(2d Cir. 2005). **July 30, 2001**: The Court orders that Initial Questionnaires related to Deposited Assets may be treated as Deposited Assets claims, to help minimize claimant confusion over the necessity of filing a formal bank account claim. **August 15, 2001**: Upon request of CRT Special Masters Volcker and Bradfield, the Court issues an order postponing the Deposited Assets claims deadline from August 11, 2001 to August 31, 2001. To maintain conformity in the claims procedures under the Swiss and German slave labor compensation programs, and to minimize survivor confusion concerning conflicting claims deadlines, the Court extends the application deadlines for Slave Labor Class I, Slave Labor Class II and the Refugee Class until December 31, 2001, the same date established under the German legislation. Moreover, as a result of the Settlement Date having been reached, settlement payments deposited by the settling defendants into the Escrow Fund now are to be transferred to two accounts constituting the Settlement Fund. **September 24, 2001**: The Court approves the IOM's Pilot Project Proposal for humanitarian assistance to Roma, Jehovah's Witness, homosexual and disabled survivors, and orders the transfer of $1 million in implementation of these initial projects. The humanitarian and social programs (HSP) are administered by the IOM on the Court's behalf serving needy Roma, Jehovah's Witness, disabled and homosexual survivors of Nazi persecution in the form of monthly food packages, clothing, winter

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		relief, medical assistance and other non-material assistance in Austria, Belarus, Croatia, Czech Republic, France, Germany, Hungary, Latvia, Lithuania, the former Yugoslav Republic of Moldova, Poland, Romania, Russian Federation, Serbia and Montenegro, Slovakia and Ukraine.
	October 12, 2001: Newspapers report that Swiss Banks had found only "$10 million" in Holocaust-era accounts, describing the final reports of the first phase of the Claims Resolution Tribunal in Zurich ("CRT-I"). The press coverage about CRT-I does not distinguish between CRT-I, which is ending, and CRT-II, which is just beginning under Judge Korman's authority. The articles do not explain that CRT-I was created to analyze different accounts, was open to different claimants, had different operating procedures, and was managed largely by different staff. The CRT-II process supervised by the Court ultimately awards over $726 million to Holocaust victims and heirs.	
		October 19, 2001: The Court issues orders authorizing payment of $23,877,000 to 23,877 Jewish Slave Labor Class I members; and authorizing payment of $1,000,000 for humanitarian and social programs to benefit needy Roma, Jehovah's Witness, homosexual and disabled members of the Looted Assets class. **November 6, 2001**: The Court approves the first set of recommendations for payment of Deposited Assets Class claims and issues an order authorizing payment of $3,476,289 for 24 awards to Deposited Assets class members.
	December 1, 2001: An interim report by the Bergier Commission concludes that Switzerland provided important economic	

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	support to Nazi Germany.	
		December 11, 2001: The Claims Conference files with the Court its report on the first group of refugee claims to be paid, for a total of 95 Holocaust-era Jewish refugees.
		December 17, 2001: The Court issues an order authorizing payment of $12,278,000 to 12,278 Jewish Slave Labor Class I members.
	December 31, 2001: The Swiss Humanitarian Fund for Needy Survivors winds down, having paid over $284 million to over 312,000 beneficiaries worldwide.	**December 31, 2001**: The Court issues an order extending the application deadlines for Slave Labor Class I, Slave Labor Class II and the Refugee Class until December 31, 2001.
		January 28, 2002: The Court issues an order authorizing payment of $6,446,234.99 for 35 awards to Deposited Assets class members.
		February 8, 2002: The Court issues an order authorizing payment of $9,753,000 to 9,753 Jewish Slave Labor Class I members.
		February 15, 2002: The Second Circuit affirms the District Court's April 4, 2001 order on Slave Labor Class II issues, rejecting as untimely defendants' objections to the self-identification requirement. The Court remands for further proceedings the issue of whether slave labor-using companies acquired by Swiss companies after the Holocaust are entitled to releases under the terms of the Settlement and the Court's orders. *In re Holocaust Victim Assets Lit.*, 282 F.3d 103 (2d Cir. 2002). The dispute subsequently is resolved by stipulation and order.

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March 2002: The Claims Conference negotiates expansions to the eligibility criteria for Article 2 and CEEF to include survivors of certain camps not previously acknowledged by the German government, including labor camps and work battalions in Romania, Slovakia, the former Yugoslavia, Libya, and Somovit in Bulgaria. Additionally, the income eligibility ceiling increases.	**March 4, 2002:** Switzerland votes to join the United Nations as a "neutral country."	**March 7, 2002:** The Court issues an order authorizing payment of $1,581,417.77 for 16 awards to Deposited Assets class members. **March 13, 2002**: The Court issues an order authorizing payment of $5,197,000 to 6,317 Jewish Slave Labor Class I members. **March 15, 2002**: The Court issues an order authorizing payment of $775,000 to Christopher Meili as a special disbursement to compensate him for releasing his claims against the defendant banks, arising from his role in bringing to public attention the shredding of documents at one of the banks in 1997. This payment is made pursuant to a 1998 agreement between Mr. Meili and the plaintiff class. **March 18, 2002**: The Court issues an order authorizing payment of $130,000 to 144 Jewish refugees.
	March 22, 2002: The Bergier Commission releases its final report, including detailed studies condemning aspects of the behavior of the Swiss banks during the Holocaust period, concluding that Swiss actions aided the Nazis, and also expanding upon its interim report on Refugees. The Bergier Report also discusses Swiss	

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	companies' use of slave labor; Swiss economic cooperation with Germany; and many other subjects.	**March 29, 2002**: The Court issues an order authorizing payment of $2,981,293.07 for 23 awards to Deposited Assets class members. **April 18, 2002**: The Court issues an order authorizing payment of $275,000 to 275 non-Jewish Slave Labor Class I members. **May 7, 2002**: The Court issues an order authorizing payment of $47,500 to 79 Jewish refugees. **May 13, 2002**: The Court issues an order authorizing payment of $7,166,000 to 7,173 Jewish Slave Labor Class I members. **May 14, 2002**: The Court issues an order authorizing payment of $2,469,418.79 for 37 awards to Deposited Assets class members. **May 31, 2002**: The Court authorizes an increase in Deposited Assets Class awards to provide for payment of "presumptive" (average) values for accounts for which existing bank records show values of lower than presumptive values, in recognition of banking fees and other charges imposed by Swiss banks upon the accounts. **June 24, 2002**: The Court issues an order approving the IOM's Supplemental Proposal, allowing the IOM to apply the $1 million originally allocated to the IOM Pilot Project Proposal to the humanitarian assistance programs described in the Supplemental Proposal. **July 1, 2002**: The Court issues an order authorizing payment of

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		$2,197,711.60 for 33 awards to Deposited Assets class members. **July 16, 2002**: The Court issues an order authorizing payment of $141,000 to 210 Jewish refugees. **July 22, 2002**: The Court issues orders authorizing payment of $12,907,000 to 12,912 Jewish Slave Labor Class I members; and authorizing payment of $2,753,500 for emergency assistance programs to benefit needy Jewish members of the Looted Assets class.
August 2002: Federal District Judge Patricia Seitz rejects the U.S. government's motion to dismiss the Hungarian Gold Train litigation.		**August 12, 2002**: The Court issues an order authorizing payment of $1,784,352.50 for 19 awards to Deposited Assets class members. **August 20, 2002**: The Swiss Deposited Assets Program (SDAP) administered on the Court's behalf by the Claims Conference, established to assist the CRT with certain administrative and other functions, commences operations in New York. **August 21, 2002:** The Court issues an order authorizing payment of $136,000 to 136 Roma, Jehovah's Witness, homosexual and/or disabled Slave Labor Class I members (referred to herein, for ease of reference, as "non-Jewish class members"). **August 23, 2002**: The Court issues an order authorizing payment of $8,212,000 to 8,213 Jewish Slave Labor Class I members.

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		August 28, 2002: The Court issues orders authorizing payment of $4,635,778.04 for 62 awards to Deposited Assets class members; and authorizing payment of $1,698,765.10 for 26 awards to Deposited Assets class members. **September 18, 2002**: Greta Beer, one of the most prominent class members, who testified before Congress to call attention to the problem of Holocaust-era deposits never returned to their owners, receives an "incentive award" from the Court in recognition of her efforts on behalf of the class. Six other class members receive similar awards by order of December 4, 2002.
	September 22, 2002: A public referendum defeats a proposal originally announced in February 1997 and approved by the Swiss parliament that would have created a $4.7 billion Swiss Foundation for Solidarity to aid victims of the Holocaust and other genocides.	
		September 25, 2002: Because of unexpected additional income generated by a tax exemption on the Fund as well as interest income, additional settlement funds are available enabling the Court to authorize a 45% increase in payments to members of Slave Labor Class I, the Refugee Class, and the Looted Assets Class. Upon resolution of ongoing litigation, the Court authorizes a 45% increase for Slave Labor Class II payments (June 22, 2004), and on June 16, 2010, authorizes similar increases of approximately 45% for the Deposited Assets Class. **October 3, 2002**: The Court issues an order authorizing payment of $3,652,370.27 for 34 awards to

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		Deposited Assets class members. The Court issues an order appointing attorney Shari C. Reig as Deputy Special Master. Ms. Reig formulated the Distribution Plan with Special Master Gribetz and, with the Court's oversight, they oversee implementation of the Plan and distribution of the Settlement Fund. **October 24, 2002**: The Court issues orders authorizing payment of $226,925 to 199 Jewish refugees; and $11,175,510.24 for 60 awards to Deposited Assets class members. **November 1, 2002**: The Court issues an order approving the IOM's Humanitarian and Social Programmes Quarterly Report for the Period July-September 2002. **November 25, 2002**: The Court issues an order authorizing payment of $179,800 to 124 non-Jewish Slave Labor Class I members. **November 26, 2002**: The Court issues orders authorizing payment of $3,626,748.24 for 33 awards to Deposited Assets class members; and $4,628,601.37 for 36 awards to Deposited Assets class members. **December 4, 2002**: The Court issues an order authorizing payment of $400,000 for five incentive awards in recognition of the services these five Holocaust survivors have provided to other members of the class. **December 10, 2002**: The Court issues an order authorizing payment of $8,916,050 to 6,151 Jewish Slave Labor Class I members. **December 27, 2002**: The Court issues orders authorizing payment of $1,855,886.82 for 19 awards to

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		Deposited Assets class members; $5,547,217.92 for 29 awards to Deposited Assets class members; and $1,050,377.62 for 19 awards to Deposited Assets class members. **December 31, 2002**: The Court issues orders authorizing payment of $4,337,061.32 for 40 awards to Deposited Assets class members; and $945,893.53 for 12 awards to Deposited Assets class members. **January 23, 2003**: The Court issues orders authorizing payment of $203,696 for humanitarian and social programs to benefit needy non-Jewish members of the Looted Assets class; and $2,734,555.65 for 19 awards to Deposited Assets class members. **January 27, 2003**: The Court issues an order authorizing payment of $2,584,348.53 for 22 awards to Deposited Assets class members. **January 29, 2003**: The Court issues an order authorizing payment of $554,625 to 230 Jewish refugees.
February 2003: *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II,* a book by Ambassador Stuart E. Eizenstat, describes his experiences in helping to negotiate the significant Holocaust compensation programs of the late 1990s and early 2000s. **February 2003**: The Claims Conference successfully negotiates the inclusion of a limited number of "Western Persecutees"—survivors from Western European countries with which Germany had arranged compensation agreements—in the Article 2 Fund. The Article 2 and CEEF		

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monthly payments increase. The German government also agrees that income will not be a criterion for Hardship Fund eligibility.		**February 26, 2003**: The Court orders all Deposited Assets Class awards to be paid in full, based upon experience gained during the claims process (previously, awards for accounts of unknown value had received an initial payment of 35%, later raised to 65%; claimants aged 75 and over had been paid in full). **March 4, 2003**: The Court issues an order authorizing payment of $75,000 for one incentive award in recognition of that survivor's services to the Settlement class members. **March 6, 2003**: The Court issues an order authorizing payment of $2,935,137.31 for 33 awards to Deposited Assets class members. **March 10, 2003**: The Court issues an order authorizing payment of $5,271,660.90 for 31 awards to Deposited Assets class members, and also providing for three previous recipients to receive the balance of their payments (35%), for a total of $5,307,732.37. **March 12, 2003**: The Court issues an order authorizing payment of $8,855,150 to 6,107 Jewish Slave Labor Class I members. **March 17, 2003**: The Court issues an order authorizing payment of $1,267,193.21 for 19 awards to Deposited Assets class members. **March 18, 2003**: The Court issues an order authorizing payment of $10,377,528.78 for payment of the remaining 35% of the Deposited

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		Assets class awards for which 65% of the award amount had been paid as of the Court's order of February 26, 2003. **March 31, 2003**: The Court issues an order authorizing payment of $2,751,372.46 for 18 awards to Deposited Assets class members. **April 7, 2003**: The Court issues an order authorizing payment of $2,633,418.43 for 24 awards to Deposited Assets class members. **April 8, 2003**: The Court issues an order authorizing payment of $157,325 to 55 Jewish refugees. **April 14, 2003**: The Court issues an order authorizing payment of $181,250 to 55 Jewish refugees. **April 22, 2003**: The Court issues an order authorizing payment of $3,697,500 for emergency assistance programs to benefit needy Jewish members of the Looted Assets class. **April 24, 2003**: The Court issues an order authorizing payment of $2,803,901.90 for 31 awards to Deposited Assets class members. **April 25, 2003**: The Court adopts "Appendix C" to the CRT Rules, authorizing the CRT to presume in the absence of evidence to the contrary that accounts belonging to German owners closed on or after January 30, 1933 were closed improperly, based on the application of the "adverse inference" available under United States legal principles concerning destruction of evidence ("spoliation"). **April 30, 2003**: The Court issues an order authorizing payment of

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		$188,500 to 55 Jewish refugees.
May 2003: The Claims Conference initiates the Austrian Holocaust Survivor Emergency Assistance Program, allocating $3.6 million for the first year. The funds derive from a 2000 agreement between the Claims Conference and Bank Austria, and the remaining funds from a 1990 agreement with the Austrian government to assist survivors.		**May 14, 2003**: The Court issues an order authorizing payment of $8,404,773.71 for 23 awards to Deposited Assets class members. **May 15, 2003**: The Court issues an order authorizing payment of $2,487,235.05 for 21 awards to Deposited Assets class members. **May 20, 2003**: The Court issues an order authorizing payment of $200,825 to 58 Jewish refugees. **May 27, 2003**: The Court issues an order authorizing payment of $1,260,550 to 700 non-Jewish Slave Labor Class I members, 15 non-Jewish Slave Labor Class II members, and to 65 non-Jewish refugees. **June 3, 2003**: The Court issues an order authorizing payment of $8,626,704.65 for 48 awards to Deposited Assets class members. **June 9, 2003**: The Court issues orders authorizing payment of $176,900 to 55 Jewish refugees; and $206,625 to 57 Jewish refugees. **June 13, 2003**: The Court issues an order authorizing payment of $6,567,050 to 4,529 Jewish Slave Labor Class I members.

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		June 20, 2003: The Court issues an order authorizing payment of $2,055,661 for humanitarian and social programs to benefit needy non-Jewish members of the Looted Assets class.
June 23, 2003: The U.S. Supreme Court, in *American Insurance Association v. Garamendi*, finds unconstitutional a California Holocaust restitution law. The law had required European insurance companies doing business in the state to disclose their prewar and wartime insurance records.		**June 23, 2003**: The Court issues an order authorizing payment of $2,321,010.69 for 22 awards to Deposited Assets class members.
		July 10, 2003: The Court issues an order authorizing payment of $381,350 to 112 Jewish refugees.
		July 15, 2003: The Court issues an order authorizing payment of $2,472,840.07 for 31 awards to Deposited Assets class members.
		July 28, 2003: The Court issues an order authorizing payment of $6,849,800 to 4,724 Jewish Slave Labor Class I members.
		July 30, 2003: The Court issues an order authorizing payment of $2,241,354 for humanitarian and social programs to benefit needy non-Jewish members of the Looted Assets class.
		July 31, 2003: The Court issues an order authorizing payment of $390,775 to 115 Jewish refugees.
		August 7, 2003: The Court issues an order authorizing payment of $811,444.44 for 10 awards to Deposited Assets class members.
		August 11, 2003: Pursuant to court order following litigation between the class action plaintiffs and the

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		defendant Swiss banks concerning the accrual of interest on the Escrow Fund, the banks transfer an additional payment of $5.2 million to the Settlement Fund. **August 20, 2003**: The Court issues an order authorizing payment of $1,140,073.53 for 16 awards to Deposited Assets class members. **August 31, 2003**: The Court issues an order authorizing payment of $386,425 to 114 Jewish refugees.
September 7, 2003: To assist in recovering looted Nazi art that might be held by museums, the American Association of Museums initiates a central registry listing information on "nearly 6,000 artworks in 66 of the largest American art museums," as reported by the NYTimes.		**September 9, 2003**: The Court issues an order authorizing payment of $384,250 to 112 Jewish refugees. **September 12, 2003**: The Court issues an order authorizing payment of $1,589,622.30 for 22 awards to Deposited Assets class members.
September 20, 2003: The Claims Conference publishes the names of former owners of Jewish assets in the former East Germany; the Claims Conference either had recovered the assets or had obtained compensation for them. Advertisements for eligibility under this "Goodwill Fund" are placed in more than 100 newspapers worldwide. The final filing deadline, after extensions, is March 31, 2004.		**September 23, 2003:** The Court issues orders authorizing payment of $3,433,600 to 2,368 Jewish Slave Labor Class I members; and

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		$16,984,250 for programs to benefit needy Jewish members of the Looted Assets class. **September 26, 2003**: The Court issues an order authorizing payment of $382,800 to 120 Jewish refugees. **September 30, 2003**: The Court issues an order authorizing payment of $2,718,970.21 for 31 awards to Deposited Assets class members. **October 2, 2003**: Special Master Gribetz and Deputy Special Master Reig file an "Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds." The report provides an update on the CRT's investigation of the value of accounts made available to the claims process: "The CRT estimate[s] the value of these … accounts to be approximately $1.63 billion," or more than the $1.25 bilion settlement. The report recommends that $60 million in excess interest funds be allocated to the neediest Nazi victims (the Looted Assets Class) in accordance with the mechanisms established under the Distribution Plan. In the event that unclaimed residual funds, if any, remain from the up to $800 million allocated to the Deposited Assets Class, it is recommended that such funds also be earmarked solely for humanitarian aid programs serving the neediest survivors. The Special Masters recommend that the Court solicit proposals from interested individuals and organizations as to how best to identify and serve these survivors. **October 22, 2003**: The Court issues orders authorizing payment of $527,800 to 152 Jewish refugees;

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		$1,675,750 to 996 non-Jewish Slave Labor Class I members, 30 non-Jewish Slave Labor Class II members, and to 60 non-Jewish refugees; and $2,814,937 for humanitarian and social programs to benefit needy non-Jewish members of the Looted Assets class. **November 17, 2003**: The Court issues an order adopting the recommendation of the Interim Report to allocate an additional $60 million to the Looted Assets class in accordance with the provisions of the Distribution Plan. The Court further orders interested parties to file by a date certain their proposals concerning the distribution of possible residual funds. **November 19, 2003**: The Court issues orders authorizing payment of $501,700 to 160 Jewish refugees; and $4,382,528.45 for 42 awards to Deposited Assets class members. **December 3, 2003**: The Court issues an order authorizing payment of $380,625 to 121 Jewish refugees. **December 22, 2003**: The Court issues an order authorizing payment of $1,028,731.06 for 12 awards to Deposited Assets class members. **December 31, 2003**: The Court issues an order authorizing payment of $8,267,552.80 for 74 awards to Deposited Assets class members.
2004: In autumn 2004, the United States Holocaust Memorial Museum creates an online Holocaust Survivors and Victims Database; the project, which receives funds from the Court under the Swiss Banks Settlement, presents lists as well as individual	**January 1, 2004:** A new Swiss law pardons Swiss citizens who were jailed or otherwise penalized for assisting Jewish refugees during the Nazi era; historians estimate that several hundred Swiss individuals were so sanctioned.	

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names of both non-Jews and Jews.		**January 7, 2004:** The Court issues an order authorizing payment of $542,300 to 178 Jewish refugees. **January 14, 2004:** The Court issues an order authorizing payment of $1,061,400 to 732 Jewish Slave Labor Class I members. **January 21, 2004:** The Court issues an order authorizing payment of $542,300 to 170 Jewish refugees. **February 6, 2004:** The Court issues an order authorizing payment of $5,454,845.90 for 40 awards to Deposited Assets class members. **February 11, 2004:** The Court issues an order authorizing payment of $2,353,706 for humanitarian and social programmes to benefit needy non-Jewish members of the Looted Assets class. **February 19, 2004:** The Court issues an opinion summarizing the entire history of the Swiss banks' activities in connection with Holocaust-era accounts, and the obstacles that the banks and Swiss banking authorities had placed in the way of finding and returning the accounts of Holocaust victims. The opinion is issued partly in response to objections the banks continue to raise concerning the distribution process. *In re Holocaust Victim Assets Lit.*, 302 F.Supp.2d 59, amended and superseded on June 1, 2004, 319 F. Supp.2d 301 (E.D.N.Y. 2004). The Court issues orders authorizing payment of $532,875 to 153 Jewish refugees, and $3,533,650 to 2,437 Jewish Slave Labor Class I members.

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		March 9, 2004: The Court rejects objections to the Looted Assets Class allocation filed by certain United States survivors. The Court observes that the allocation already has been upheld by the Court of Appeals, and that the available demographic, economic and historical evidence continues to show that the most desperately needy Holocaust survivors reside in the former Soviet Union. *See In re Holocaust Victim Assets Lit.*, 302 F.Supp.2d 89 (E.D.N.Y. 2004). The decision is appealed. **March 20, 2004:** The Court issues an order authorizing payment of $277,675 to 102 Jewish refugees. **March 31, 2004:** The Court issues an order authorizing payment of $9,853,450 to 6,692 non-Jewish Slave Labor Class I members, 50 non-Jewish Slave Labor Class II members, and to 28 non-Jewish refugees. On the same date, the Court rejects a request by an attorney seeking fees based upon arguments asserted relating to insurance matters. *See In re Holocaust Victim Assets Lit.*, 311 F. Supp.2d 363 (E.D.N.Y. 2004). The decision was appealed. **April 2, 2004:** The Court rejects objections by two organizations representing homosexual and disabled class members, respectively, which seek funding for programs of remembrance and research. *In re Holocaust Victim Assets Lit.,* 311 F. Supp.2d 407 (E.D.N.Y. 2004). The organizations appeal the decision.
April 2004: Following negotiations with the Claims Conference, Germany agrees to recognize and compensate survivors who labored after March		

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1944 for certain Hungarian slave labor battalions. In July 2004, Germany agrees to compensate slave laborers forced to work in labor camps in Bulgaria, and in May 2005, extends compensation to former slave laborers from camps in Tunisia, Morocco, Algeria and certain areas of Hungary.		**April 8, 2004**: The Court issues an order authorizing payment of $3,884,820.26 for 35 awards to Deposited Assets class members. **April 13, 2004:** The Court issues an order appointing international economist Dr. Helen B. Junz, formerly a member of the Bergier Commission, as a CRT Special Master. As a result of other responsibilities, including his leadership of a United Nations investigation, Mr. Volcker is no longer serving as CRT Special Master. The Court requests that CRT Special Master Bradfield assume primary responsibility for CRT appeals. **April 16, 2004:** Special Master Gribetz and Deputy Special Master Reig file the "Special Master's Recommendations for Allocation of Possible Unclaimed Residual Funds," which analyzes more than 100 proposals filed in response to the Court's November 17, 2003 request, as well as numerous demographic studies and other materials. The report notes the Court's observation in its March 9, 2004 opinion that due to "ongoing concerns" regarding access to bank account information, the "time is simply not ripe for [an] 'immediate distribution' of residual funds to members of the Looted Assets Class," nor is it yet appropriate to determine a mechanism for distribution of residual funds, if any. If residual

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		funds do remain, the report recommends that the Court distribute such funds first, to food and winter relief programs for the neediest survivors, most of whom reside in the former Soviet Union; second, for home health care, medicines and medical equipment for those whose needs for such services are unmet by governmental or other assistance programs; and third, for case management, mental health care and other support services. **April 27, 2004:** Lead Settlement Counsel submits a Notice of Motion to the District Court for improved access to the 4.1 million account "Total Accounts Database;" the inclusion of additional names to the 36,000-account "Account History Database" available to the CRT for claims processing; publication of some 3,000 additional names, including names previously published in Switzerland pursuant to bank surveys of possible Holocaust victim accounts in the 1950s and 1960s; and the expansion of access to bank files for claims processing activities by the SDAP office of the CRT in New York. **April 28, 2004:** The Court issues an order authorizing payment of $2,625,763.15 for humanitarian and social programs to benefit needy non-Jewish members of the Looted Assets class. **April 29, 2004:** The Court holds a hearing on the Recommendations for Allocation of Possible Unclaimed Residual Funds. **May 10, 2004:** The Court issues an order denying 950 claims from Jewish members of the Refugee

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		class. **May 18, 2004:** The Court issues an order authorizing payment of $5,491,150 to 3,787 Jewish Slave Labor Class I members. **May 20, 2004:** The Court issues an order authorizing payment of $2,705,392.66 for 31 awards to Deposited Assets class members. The Court issues a separate order elaborating on the April 2, 2004 opinion and stating that residual funds, if any, will be directed to needy survivors and not to proposed programs for research, education and advocacy. **May 28, 2004:** The Court issues an order authorizing payment of $2,906,227.45 for 32 awards and two denials to Deposited Assets class members. **June 1, 2004:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $105,058.86 for revisions to six awards to Deposited Assets class members. **June 8, 2004:** The Court issues an order authorizing payment of $1,424,385.08 for 18 awards and three denials to Deposited Assets class members. **June 9, 2004:** The Court issues an order authorizing payment of $324,075 to 96 Jewish refugees. **June 10, 2004:** The parties agree to the terms of "Memorandum to the Files No. 2," permitting the New York SDAP facility to be linked to the Zurich-based CRT by computer; providing for the publication of approximately 3,000 additional bank accounts; and providing for

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		improved access to the Total Accounts Database. The Swiss Federal Banking Commission approves the agreement on July 26, 2004. **June 17, 2004:** The Court issues an opinion addressing certain testimony at the April 29, 2004 hearing on Recommendations for Allocation of Possible Unclaimed Residual Funds. **June 18, 2004:** Judge Korman writes a letter to *Commentary* describing the inaccuracies of its 2000 article, "Holocaust Reparations - A Growing Scandal." **June 22, 2004:** Upon finalization of open issues arising from continuing litigation concerning the scope of releases and class membership under Slave Labor Class II, Judge Korman approves a 45% increase in payments to members of Slave Labor Class II. **June 29, 2004:** The Court issues orders denying 76 claims from non-Jewish members of Slave Labor Class I and 273 claims from non-Jewish members of the Refugee class; and authorizing payment of $1,601,612.10 for 18 awards and eight denials to Deposited Assets class members. **June 30, 2004:** The Court issues an order authorizing payment of $5,137,350 to 3,543 non-Jewish Slave Labor Class I members. **July 13, 2004:** The Court issues an order authorizing payment of $2,350,496.90 for 19 awards and eight denials to Deposited Assets class members.

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		July 29, 2004: The Court issues an order authorizing payment of $2,869,158.33 for 18 awards and seven denials to Deposited Assets class members. **July 30, 2004**: The Court issues orders authorizing payment of $5,580,163 for emergency assistance programs to benefit needy Jewish members of the Looted Assets class; and $2,305,063.64 for humanitarian and social programs to benefit needy non-Jewish members of the Looted Assets class. The first funds are distributed in support of the Victim List Project, with the Court issuing an order authorizing payment of $760,000 to Yad Vashem - The Holocaust Martyrs' and Heroes' Remembrance Authority- in support of the Central Database of Shoah Victims' Names to be made available on the internet. **August 8, 2004:** The Court issues orders authorizing payment of $366,125 to 109 Jewish refugees; and $1,890,860.94 for 16 awards and four denials to Deposited Assets class members. **August 18, 2004:** The Court issues orders authorizing payment of $1,517,157.42 for 15 awards and 18 denials to Deposited Assets class members; and authorizing payment of $998,115.08 for 10 awards and 17 denials to Deposited Assets Class members. **August 25, 2004:** The Court issues orders authorizing payment of $103,675 to 40 Jewish refugees; and $3,187,100 to 2,198 Jewish Slave Labor Class I members. **August 31, 2004:** The Court issues an order authorizing payment of $3,314,818.40 for 11 awards and 11

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		denials to Deposited Assets class members. **September 10, 2004:** The Court issues an order authorizing payment of $3,308,672.62 for 12 awards and 10 denials to Deposited Assets class members. **September 20, 2004:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $19,704.34 to apply the current exchange rate for 10 Deposited Assets class claimant payments which the Court previously had approved. **September 28, 2004:** The Court issues an order authorizing payment of $1,351,930.36 for 16 awards and 12 denials to Deposited Assets class members. **September 30, 2004:** The Court issues an order authorizing the approval of 93 denials to Deposited Assets class members. **October 12, 2004:** The Court adopts the presumption that those who reported their Swiss accounts in the 1938 Nazi census had an incentive to underreport the actual values of these accounts; accordingly, for all accounts reported in these census forms with values below the presumptive values currently in use by the CRT, awards are authorized at the higher presumptive values. On January 7, 2005, the same presumption favoring claimants also is adopted for accounts reported by the banks at values lower than the CRT's presumptive values. **October 13, 2004:** The Court issues orders authorizing payment of $281,300 to 99 Jewish refugees; and $4,489,250.00 for 14 awards and 49

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		denials to Deposited Assets class members. **October 16, 2004:** The Court issues an order denying 2,014 claims from non-Jewish members of Slave Labor Class II. **October 19, 2004:** The Court issues an order authorizing payment of $374,100 to 115 Jewish refugees. **October 21, 2004:** The Court issues an order authorizing payment of $694,298.40 for 15 award amendments to Deposited Assets class members. **October 22, 2004:** The Court issues an order authorizing payment of $1,972,352.72 for humanitarian and social programmes to benefit needy non-Jewish members of the Looted Assets class. **October 25, 2004:** The Court issues an order authorizing payment of $6,259,633.75 for 14 awards to Deposited Assets class members. **October 26, 2004:** The Court issues an order authorizing payment of $16,619,481 for programs to benefit needy Jewish members of the Looted Assets class.
November 2004: Yad Vashem makes its Central Database of Shoah Victims Names publicly available over the internet; the project, which receives funds from the Court under the Swiss Banks Settlement, is the largest presentation in history of the names of Holocaust victims.		**November 16, 2004:** The Court issues an order authorizing payment of $339,781 to the United States Holocaust Memorial Museum (USHMM) under the Victim List

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		Project in support of the collection and dissemination of information about Jewish and non-Jewish victims of the Holocaust, both those survived and those who perished, with special attention to the non-Jewish victim groups. The USHMM will create a computerized inventory capable of containing all lists of names and will research and design a database that will store, and provide access to, names of Holocaust victims, particularly non-Jewish victims. **November 18, 2004:** The Court issues four separate orders authorizing payment to Deposited Assets class members: (1) $2,632,499.80 for 23 awards; (2) $1,820,729.17 for 13 awards; (3) $1,195,771.08 for 15 awards and six denials; and (4) $4,237,118.64 for 18 awards. **November 19, 2004:** The Court issues an order authorizing approval of 62 denials to Deposited Assets class members. **November 30, 2004:** The Court issues orders authorizing payment of $434,275 to 149 Jewish refugees; and $7,119,500 to 4,910 Jewish Slave Labor Class I members. **December 2, 2004:** The Court issues an order on behalf of needy Jewish Looted Assets Class members, approving proposed income eligibility level adjustments in four Eastern European nations to reflect the rising cost of living and currency exchange rates. **December 10, 2004:** The Court issues orders: (1) approving the IOM's request dated December 3, 2004 for an extension of the HSP (Looted Assets Class programs)

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		through November 2005; (2) authorizing payment of $4,113,074.52 for 29 awards and 13 denials to Deposited Assets class members; and (3) authorizing payment of $1,057,573.25 for 11 awards and eight denials to Deposited Assets class members. **December 21, 2004:** The Court issues an order authorizing payment of $355,250 to 125 Jewish refugees. **December 24, 2004:** The Court issues orders authorizing payment to Deposited Assets Class members: $992,447.29 for 13 awards and three denials; and $1,494,095.87 for 16 awards and four denials. **December 30, 2004:** The Court issues orders authorizing payment to Deposited Assets Class members: (1) $4,589,552.23 for 25 awards and eight denials; (2) $1,169,911.50 for 13 awards; and (3) $1,724,424.74 for 41 award amendments. In the latter case, the Court adopts Special Master Junz' recommendation to increase the sums awarded to claimants associated with 39 previously approved awards by authorizing the CRT to calculate payments to claimants based upon presumptive values, where the account values reported in the bank records are lower than the presumptive values used by the CRT, because the evidence indicates that account owners underreported their accounts or the banks imposed fees and other charges against the accounts. The Court issues another order approving the CRT's request to treat as timely any claims on behalf of "victims or targets of Nazi persecution" filed with entities authorized to treat these claims prior to the Settlement Agreement: ICEP,

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		Ernst & Young, and CRT-I (the CRT's predecessor). The Court issues a separate order waiving the deadline for all late insurance policy or deposited assets claims filed between August 31, 2001 and December 31, 2004 provided that the claimed account had not yet been awarded in cases where: (1) the late claimant is the account owner, the account owner's spouse or the account owner's child; (2) the late claimant provides an unusually compelling reason for failing to comply with the filing deadlines; and (3) the late claimant demonstrates by clear and convincing evidence that the claimed account was awarded erroneously. **December 31, 2004:** The Court issues an order authorizing payment of $7,697,596 for programs to benefit needy Jewish members of the Looted Assets class. **January 6, 2005:** The Court issues orders authorizing payment of $350,175 to 128 Jewish refugees; and denying 404 claims from Jewish members of the Refugee class. **January 7, 2005:** The Court issues an order adopting Special Master Junz' recommendation to increase the sums awarded to many claimants by authorizing the CRT to calculate payments based upon presumptive values, where the account values reported in the bank records were lower than the presumptive values used by the CRT. **January 12, 2005:** The Court issues orders authorizing payment of $407,450 to 122 Jewish refugees; $1,296,300 to 894 Jewish Slave Labor Class I members; and $1,756,514.83

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		for 15 awards and three denials to Deposited Assets class members. **January 13, 2005:** The 2005 List of approximately 3,000 additional Swiss bank Holocaust-era accounts is published, including accounts that were located by Swiss banks during surveys of possible victim accounts in the 1950s and 1960s, as well as accounts that belonged to certain Eastern European Nazi victims that were turned over to the communist governments of the victims' respective countries. The deadline for filing claims is July 13, 2005. **January 31, 2005:** The Court issues an order authorizing payment of $342,663.52 for programs to benefit needy non-Jewish members of the Looted Assets class. **February 18, 2005:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $181,809.52 for one award upon appeal to a Deposited Assets class beneficiary. **March 9, 2005:** The Court issues orders authorizing payment of (1)$8,323,725 to 5,455 non-Jewish Slave Labor Class I members, 202 non-Jewish Slave Labor Class II members, and to 35 non-Jewish refugees; (2) $1,145,797.41 for 13 awards and three denials to Deposited Assets class members; and (3) $1,387,823.28 for 17 awards and six denials to Deposited Assets class members. **March 15, 2005:** The Court issues an order authorizing payment of $1,000,000 to Yad Vashem under the Victim List Project in support of maintaining the Central Database of Holocaust Victims' Names, to conduct a preliminary survey of

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		historical-archival documentation, and to begin the systematic digitization of historical-archival data. **March 18, 2005:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $2,711.05 for one award amendment to Deposited Assets class members. **March 31, 2005:** The Court issues four orders authorizing payment to Deposited Assets Class members: (1) $1,467,826.09 for 16 awards and six denials; (2) $2,256,328.65 for 16 awards and nine denials; (3) $1,872,819.17 for 11 awards and 11 denials; and (4) $5,333,347.40 for 16 awards and six denials. **April 11, 2005:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $1,690,343.01 for one award upon appeal to Deposited Assets class members. **April 12, 2005:** The Court issues an order denying 1,712 claims from non-Jewish members of Slave Labor Class I, 1,549 claims from non-Jewish members of Slave Labor Class II, and 472 claims from non-Jewish members of the Refugee class. **April 13, 2005:** The Court approves a CRT award in the amount of almost $22 million, the largest award in the claims process. The award is made to the Bloch-Bauer family as heirs to the owners of the ÖZAG sugar refinery in Austria, who held Swiss assets turned over by Swiss banks to Nazi authorities in violation of contractual obligations. The family includes Maria Altmann, who later prevails against the Austrian government based on her claim to

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
		looted art. Following several years of litigation including proceedings before the United States Supreme Court (which ruled on June 7, 2004), Ms. Altmann in 2006 finally is able to reclaim her family's paintings, including the celebrated "Portrait of Adele Bloch-Bauer" by Gustav Klimt (the lawsuit is the subject of the movie "Woman in Gold"). The Court issues an order authorizing payment of $16,537.50 for one insurance policy award to a settlement class beneficiary. **May 4, 2005:** The Court issues orders authorizing payment of $2,066,250 to 1,425 Jewish Slave Labor Class I members; and $2,134,802.97 for programs to benefit needy non-Jewish members of the Looted Assets class. **May 12, 2005:** The Court issues an order authorizing payment of $4,835,264.15 for 24 awards to Deposited Assets class members. **May 13, 2005:** The Court issues an order authorizing payment of $1,000,000.00 for 18 awards to Deposited Assets class members. **May 31, 2005:** The Court issues an order authorizing payment of $257,079 for 14 Awards to 23 claimants to unpaid Holocaust-era Swiss insurance claims. **July 15, 2005:** The Court issues several orders authorizing payment: (1) $2,321,450 to 302 Jewish Slave Labor Class I members as well as 1,299 heir claims on behalf of Jewish survivors who performed slave labor and died on or after February 15, 1999; (2) $1,177,906.98 for 23 awards and 24 denials to Deposited Assets class members; and (3)

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		$7,784,342.16 for 17 awards and 28 denials to Deposited Assets class members. In a separate order, the Court authorizes payment of $118,000 to the USHMM under the Victim List Project in support of the microfilming and acquisition of historical-archival lists of names of victims or targets of Nazi persecution not readily accessible, including a name card index and judicial files documenting the persecution of homosexuals and the mentally handicapped, as well as registration records for Jewish refugees in Central Asia. **August 10, 2005:** The Court issues an order authorizing payment of $5,033,363.86 for 19 awards and 9 denials to Deposited Assets class members. **August 31, 2005:** The Court issues orders authorizing payment of $8,086,499 for programs to benefit needy Jewish members of the Looted Assets class; and $2,857,605.95 for 20 awards and one denial to Deposited Assets class members. **September 9, 2005:** The Court of Appeals affirms the Court's decisions of March and April, 2004 (1) adopting a *cy pres* remedy targeting the neediest Nazi victims; (2) denying a request to fund memorialization and educational projects in view of pressing survivor needs; and (3) denying attorney's fees. **September 21, 2005:** The Court issues orders authorizing payment to Deposited Assets Class members: (1) $3,425,558.48 for 27 awards and 20 denials; (2) $1,192,728.38 for 17 awards and 19 denials; and (3) $1,907,957.58 for 11 awards and 64

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		denials. **September 29, 2005:** The Court issues an order authorizing payment of $2,644,682.20 for programs to benefit needy Jewish members of the Looted Assets class.
September 30, 2005: District Judge Seitz approves a $25.5 million settlement of the Hungarian Gold Train claims against the U.S. government, with approximately $21 million to be distributed to social service programs serving needy Hungarian Nazi victims worldwide.		**September 30, 2005:** The Court issues an order authorizing approval of 60 denials to Deposited Assets class members. **October 31, 2005:** The Court issues an order authorizing approval of 1,252 inadmissibility decisions to Deposited Assets Class members; *i.e.*, decisions based mainly on the fact that the claimed account owners were not "Victims or Targets of Nazi Persecution" as defined under the Settlement Fund: those who were, or were perceived to be, Jewish, Romani, Jehovah's Witness, disabled, or homosexual. **November 2, 2005:** The Court issues an order authorizing 44 denials of claims by Deposited Assets class members. **November 30, 2005:** The Court issues orders authorizing payment of Deposited Assets Class awards: $390,530.30 for nine awards and 10 denials; and $617,648.86 for 13 awards and 18 denials. **December 5, 2005:** The Court issues an order adopting the IOM's recommendation to deny certain claims filed by Roma, Jehovah's Witness, homosexual and/or disabled class members: 1,381 claims under Slave Labor Class I, 2,908 claims under Slave Labor Class

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
		II, and 13 claims under the Refugee class. **December 14, 2005:** The Court issues an order authorizing payment of $2,917,471.38 for 23 awards and 22 denials to Deposited Assets class members. **December 15, 2005:** The NYTimes reports that the estate of Sigmund Freud's grandson will receive about $168,000 from the Swiss Banks settlement. **December 20, 2005:** The Court issues an order denying claims of certain non-Jewish class members: 6,056 claims under Slave Labor Class I, and 4,130 claims under Slave Labor Class II. **December 29, 2005:** The Court issues an order authorizing payment of $1,287,016.23 for 13 awards and 17 denials to Deposited Assets class members. **December 31, 2005:** The Court issues an order authorizing payment of $7,284,781.50 for 24 awards and four denials to Deposited Assets class members.
January 3, 2006: The Knesset establishes the Israeli Organization for the Restitution of Assets for Holocaust Victims, also known as "The Company" or "Hashava." The Company, which is given a 15-year mandate, is charged with establishing a claims process for the return of Holocaust-era bank accounts, land and other assets held in Israel.		**January 23, 2006:** The Court issues an order authorizing payment of $517,650 to non-Jewish class

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		members: 228 Slave Labor Class I members, 93 Slave Labor Class II members, and to 16 refugees. The Court issues an order authorizing approval of 38 denials to Deposited Assets class members. **January 30, 2006:** The Court issues an order authorizing payment of $2,157,600 to Jewish class members under Slave Labor Class I: 428 survivors, as well as 1,060 heir claims on behalf of survivors who performed slave labor and died on or after February 15, 1999. **February 2, 2006:** The Court issues an order authorizing payment of $5,800 to four non-Jewish Slave Labor Class I appellants, and denying 10 appeals from members of Slave Labor Class I. The Court issues an order authorizing approval of 28 inadmissibility decisions to Deposited Assets Class members. **February 17, 2006:** The Court adopts the proposal submitted by Special Master Gribetz and Deputy Special Master Reig recommending that Deposited Assets Class payments be made to claimants who have demonstrated plausible but undocumented claims to Holocaust-era Swiss bank accounts, in recognition that it is unfair to penalize claimants for lack of documentation when it was the banks' obligation to preserve such records. Each award is in the amount of $5,000 (later increased to $7,250). By the end of the program, 12,301 Plausible Undocumented Awards have been authorized for a total of over $89 million. **February 22, 2006:** The Court issues an order denying claims by non-Jewish individuals: 5,256 under Slave

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		Labor Class I, 4,386 under Slave Labor Class II, and 11 under the Refugee class. **February 23, 2006:** The Court issues an order authorizing payment of $1,848,473.28 for 15 awards and 22 denials to Deposited Assets class members. The Court issues an order approving the first 2,052 of so-called "No Match Letters" (NMLs) to Deposited Assets class members. "No Match Letters" are the CRT's determination, following application of advanced name matching systems and computer programs, that the name of the relative claimed to have owned Holocaust-era Swiss bank accounts, and the name of an account owner made available to the CRT by the Swiss banks or located via other sources, do not match. As a result of matching over 415,000 possible account owner names against the 37,954 accounts that the banks made available to the CRT or were located by CRT research, over 1.5 million matches are generated during the claims process. **March 1, 2006:** The Court issues an order approving 12,125 NMLs to Deposited Assets class members. **March 3, 2006:** The Court issues an order authorizing payment of $1,543,715.46 for 11 awards, five award amendments and 26 denials to Deposited Assets class members. **March 13, 2006:** The Court issues an order authorizing approval of 162 inadmissibility decisions to Deposited Assets Class members. **March 21, 2006:** CRT Special Master Helen Junz submits a proposal to the Court recommending an upward adjustment of the presumptive

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		values set forth under current CRT Rules. The recommendation is based upon extensive study of the presumptive values determined by the ICEP auditors at the inception of the claims process in 2000, as compared with the average values of known-value accounts awarded to date. CRT Special Master Junz advises that adoption of the recommendation would result in additional payments of approximately $179 million to $285 million; the total amount of Deposited Assets Class payments could be $803 million (although the Distribution Plan allocated up to $800 million for such claims). **March 23, 2006:** The Court issues an order authorizing payment of $681,272 to the USHMM under the Victim List Project in support of the completion of the cataloging of names lists, research on lists of non-Jewish names worldwide, the creation of technical interfaces with Yad Vashem for further cooperation, and the digitization of approximately 1 million records concerning non-Jewish victims. **March 27, 2006:** The Court issues an order authorizing payment of $5,652,100 to Jewish members of Slave Labor Class I: 417 survivors and 3,481 heir claims on behalf of Jewish survivors who performed slave labor and died on or after February 15, 1999. **March 29, 2006:** The Court issues an order authorizing payment of $1,271,170.52 for 11 awards, five award amendments and five denials to Deposited Assets class members. The Court issues an order authorizing payment of $10,000,000 for 2,000 PUAs to Deposited Assets

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		class members. **April 4, 2006:** The IOM concludes its programs under the Looted Assets Class, which had provided $25.4 million in food, medicine, coal, and other services to approximately 73,000 of the neediest Roma, Jehovah's Witness, homosexual and disabled victims in Central and Eastern Europe, most of whom had never previously received compensation. **April 18, 2006:** The Court authorizes payment of $5,578,150 to non-Jewish class members: 3,739 Slave Labor Class I members, 85 Slave Labor Class II members, and to nine refugees. The Court issues an order authorizing payment of $1,276,285.23 for 12 awards, five award amendments and 16 denials to Deposited Assets class members. **May 6, 2006:** The Court issues an order authorizing payment of $4,208,918.55 for 18 awards, four award amendments and 22 denials to Deposited Assets class members. **May 10, 2006:** The Court issues orders (1) authorizing IOM to distribute $337,000 held in escrow to 351 heirs of 226 Slave Labor Class I members deceased after their claims were approved; (2) authorizing payment of $7,697,596 for programs to benefit needy Jewish members of the Looted Assets class; (3) approving 52 NMLs to Deposited Assets class members; and (4) approving Special Master Bradfield's recommendation to apply the current exchange rate for an award of $18,797.87 to a Deposited Assets class beneficiary who had not yet received payment on a previously-

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
		approved award. **May 12, 2006:** The Court issues an order authorizing payment of $1,605,985.77 for 18 awards, four award amendments, 23 denials and one award denial amendment to Deposited Assets class members. **May 16, 2006:** The Court issues an order denying certain applications of non-Jewish claimants: 190 claims under Slave Labor Class I and 115 claims under Slave Labor Class II. **June 2, 2006:** The Court issues an order authorizing approval of 28 denials to Deposited Assets class members. **June 6, 2006:** The Court issues an order authorizing payment of $2,981,200 to 99 survivors, and 1,957 heir claims, under Slave Labor Class I. **June 7, 2006:** The Court issues orders authorizing payment to Deposited Assets Class members: $1,280,482.07 for 14 awards, one award amendment and 21 denials to Deposited Assets class members; and $1,596,339.34 for 11 awards and 10 denials. **June 13, 2006:** The Court approves 32 inadmissibility decisions for Deposited Assets Class claims. **June 14, 2006:** The Court issues an order authorizing payment of non-Jewish class members: $181,250 to 76 Slave Labor Class I members and 49 Slave Labor Class II members. The Court also issues an order approving 149 NMLs to Deposited Assets class members. **June 19, 2006:** The United States Supreme Court denies a petition and

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		cross-petition for certiorari filed, respectively, by certain U.S. survivors, and one of plaintiffs' attorneys. The petition for certiorari sought to appeal the September 9, 2005 decision of the United States Court of Appeals for the Second Circuit upholding the Court's determination to support humanitarian programs for the neediest members of the Looted Assets class, most of whom live in the former Soviet Union. The Court issues an order authorizing payment of $10,000,000 for 2,000 PUAs to Deposited Assets class members. **June 20, 2006:** Judge Korman issues an order approving Special Master Bradfield's recommendation of a payment of $39,818.55 for one award upon appeal to a Deposited Assets class beneficiary. **June 21, 2006:** The Court issues an order authorizing payment of $6,079,223.50 for eight awards to Deposited Assets class members. **June 23, 2006:** The Court issues orders (1) authorizing payment of $935,000 to Yad Vashem under the Victim List Project towards a combined Yad Vashem-USHMM list of lists, scanning of historical-archival name lists, digitization of names, ongoing maintenance of the Central Database of Shoah Victims' Names, and service to the public using the Central Database; (2) authorizing payment of $5,011,289.42 for 29 awards and one denial to Deposited Assets class members; and (3) approving Special Master Bradfield's recommendation to authorize payment of $614,036.09 for one award upon appeal to a Deposited Assets class

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		beneficiary. **June 26, 2006:** The Court issues orders of denial for Deposited Assets Class members: (1) 89 NMLs, and (2) 10 inadmissibility decisions. **June 28, 2006:** The Court issues orders authorizing payment to Deposited Assets Class members: $7,661,783.21 for 30 awards and one denial; and $10,000,000 for 2,000 PUAs. **July 12, 2006:** The Court issues orders authorizing payment of $132,675 to 39 Jewish refugees; and $119,347 to 39 Jewish refugee appellants, and denying 129 appeals from Jewish members of the refugee class. **July 17, 2006:** The Court issues an order authorizing IOM to distribute previously disbursed funds held in escrow, in the amount of $115,275 to 121 heirs of 77 Slave Labor Class I members and to two heirs of one refugee, deceased after their claims were approved.
July 31, 2006: Drawing upon funding from the Victim List Project of the Swiss Banks Settlement, Yad Vashem posts online some 11,650 archival lists, indexed from about 1 million pages of documentation, containing nearly 5 million victim names.		**August 7, 2006:** The Court issues orders authorizing payment of (1) $1,191,900 to 1,111 heirs of 822 non-Jewish Slave Labor Class I members deceased on or after February 16, 1999; and (2) $10,000,000 for 2,000 PUAs to Deposited Assets class members. **August 8, 2006:** The Court issues orders authorizing decisions for

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		Deposited Assets Class members (1) one award amendment and 100 denials; (2) 184 NMLs; and (3) 21 inadmissibility decisions. **August 29, 2006:** The Court issues an order authorizing payment of $3,967,023.40 for programs to benefit needy Jewish members of the Looted Assets class. **August 30, 2006:** The Court issues an order approving 200 NMLs to Deposited Assets class members. **August 31, 2006:** The Court issues an order authorizing payment of $3,500,000 for 700 PUAs to Deposited Assets class members. **September 1, 2006:** The Court issues an order authorizing payment of $682,950 to 519 heirs of 471 non-Jewish Slave Labor Class I members deceased on or after February 16, 1999, and also authorizing IOM to distribute $859,850 held in escrow to 626 heirs of 593 Slave Labor Class I members deceased after their claims were approved. **September 18, 2006:** The Court issues an order authorizing payment of $5,245,000 for 1,049 PUAs to Deposited Assets class members. **September 25, 2006:** The Court issues orders (1) denying 502 appeals under Slave Labor Class II; (2) authorizing payment of $8,082,699 for programs to benefit needy Jewish members of the Looted Assets class; and (3) authorizing payment of $841,000.00 for 9 awards and one award amendment to Deposited Assets class members. **September 26, 2006:** The Court issues an order approving 250 NMLs

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		to Deposited Assets class members. **September 28, 2006:** The Court issues an order authorizing payment of $10,150 to seven non-Jewish Slave Labor Class I appellants, and rejecting 263 appeals under Slave Labor Class I. **October 20, 2006:** The Court issues an order authorizing payment of $2,044,021.48 for 17 awards, one award amendment and 18 denials to Deposited Assets class members. **October 26, 2006:** The Court issues orders (1) authorizing payment of $3,867,150 to 308 Jewish Slave Labor Class I members and to 2,359 heir claims on behalf of Jewish survivors who performed slave labor and died on or after February 16, 1999; and (2) approving 2,521 NMLs to Deposited Assets class members. **October 27, 2006:** The Court issues an order authorizing payment of $750,862.89 for 54 awards, and issuing 13 denials and 391 NMLs for insurance claims. **October 31, 2006:** The Court authorizes approval of one inadmissibility decision to Deposited Assets Class members. **November 15, 2006:** The Court issues orders (1) authorizing payment of $1,412,978.22 for 22 awards, two award amendments and 47 denials to Deposited Assets class members; and (2) approving 2,000 NMLs to Deposited Assets class members. **November 16, 2006:** The Court issues an order authorizing payment of $2,125,000 for 425 PUAs to Deposited Assets class members.

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		November 17, 2006: The Court issues orders authorizing decisions for Deposited Assets Class members: (1) payment of $2,971,457.55 for 24 awards and 29 denials; and (2) approval of one inadmissibility decision. **November 29, 2006:** The Court issues an order adopting Special Master Junz's recommendation to amend the CRT Rules to formalize the CRT's long-standing practice to assume in the absence of evidence to the contrary that owners did not receive the proceeds of their Swiss bank accounts where those accounts were closed on or after the date that the Reich gained control over the account owner's country of residence, whether by incorporation into the Reich, occupation or formal alliance. **November 30, 2006:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $118,245.96 for two awards upon appeal to Deposited Assets class members. **December 1, 2006:** The Court issues an order approving Special Master Bradfield's recommendation to reverse a denial and authorize payment of $21,572.58 for one award upon appeal to a Deposited Assets class beneficiary. **December 4, 2006:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **December 8, 2006:** The Court issues an order amending its May 10, 2006 order, authorizing the IOM to distribute $327,700 (to 351 heirs of 226 Slave Labor Class I members who died after their claims were

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		approved). **December 18, 2006:** The Court issues an order authorizing payment of $240,700 to 169 heirs of 134 non-Jewish Slave Labor Class I members, 11 heirs of 11 Slave Labor Class II members, and 11 heirs of nine non-Jewish refugees deceased on or after February 16, 1999, and authorizing IOM to distribute previously disbursed funds held in escrow, in the amount of $353,075. **December 19, 2006:** The Court issues an order authorizing payment of $356,700 to 124 Jewish Slave Labor Class I members and to 122 heir claims on behalf of survivors who performed slave labor and died on or after February 16, 1999. **December 28, 2006:** The Court issues an order approving Special Master Bradfield's recommendation to reverse one denial and authorize payment of $182,804.43 for four awards upon appeal to Deposited Assets class members. **December 29, 2006:** The Court issues an order authorizing payment of $25,299,379.00 for two awards to Deposited Assets class members. **January 11, 2007:** The Court issues an order approving Special Master Bradfield's recommendation to issue 30 denials upon appeal to Deposited Assets Class members.
January 12, 2007: In view of the anticipated opening of the International Tracing Service (ITS) archives in Arolsen, Germany, certain Holocaust survivors file a motion with United States District Judge George B. Daniels, requesting adjournment of a		

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January 15, 2007 settlement deadline set by insurance company Assicurazioni Generali; the survivors advise the court that the extension is needed so that they can search the archives for further evidence of unreturned insurance policies.		**January 19, 2007:** The Court issues an order authorizing payment of $18,850 to 13 Slave Labor Class II appellants, and denying 956 appeals under Slave Labor Class II. **January 22, 2007:** The Court issues an order authorizing payment of $14,500 to four non-Jewish refugee appellants, and denying 87 appeals under the Refugee class. **January 31, 2007:** The Court issues orders (1) authorizing payment of $7,697,596 for programs to benefit needy Jewish members of the Looted Assets class; (2) approving 50 denials to Deposited Assets class members; and (3) approving 2,000 NMLs to Deposited Assets class members. **February 4, 2007:** The Court issues an order authorizing payment of $179,800 to 124 non-Jewish Slave Labor Class I appellants, and denying 853 appeals under Slave Labor Class I. **February 6, 2007:** The Court issues an order authorizing payment of $26,100 to 26 heirs of 18 non-Jewish Slave Labor Class I appellants deceased on or after February 16, 1999, and authorizing IOM to distribute previously disbursed funds held in escrow. **February 8, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members.

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		February 22, 2007: The Court issues an order approving Special Master Bradfield's January 19, 2007 Status of Appeals Process Memorandum relating to the Deposited Assets class. Of the 889 appeals filed as of January 19, 2007, Special Master Bradfield advises that 679 "have now been definitively addressed." **February 27, 2007:** The Court issues orders authorizing (1) payment of $80,475 to 46 non-Jewish Slave Labor Class I members, 12 Slave Labor Class II members, and one one-Jewish refugee; (2) payment of $60,175 to 47 heirs of 39 non-Jewish Slave Labor Class I members and one heir of one non-Jewish refugee deceased on or after February 16, 1999 and authorizing IOM to distribute previously disbursed funds held in escrow; (3) payment of $2,668,500 for programs to benefit needy Jewish members of the Looted Assets class; (4) payment of $1,638,200.31 for 25 awards to Deposited Assets class members; (5) approval of 63 denials to Deposited Assets class members; (6) payment of $3,158,348.09 for 21 awards to Deposited Assets class members; (7) approval of 41 denials to Deposited Assets class members; (8) payment of $1,129,593.50 for 19 awards and two award amendments to Deposited Assets class members; and (9) payment of $1,140,000 for 228 PUAs to Deposited Assets class members. **March 8, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **March 13, 2007:** The Court authorizes payment of $571,300 to 476 heirs of 373 non-Jewish Slave Labor Class I members, 11 heirs of six

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		Slave Labor Class II members, and 12 heirs of six non-Jewish refugees deceased on or after February 16, 1999, and authorizing IOM to distribute previously disbursed funds held in escrow. **March 19, 2007:** The Court issues an order authorizing approval of 60 denials to Deposited Assets class members. **March 23, 2007:** The Court issues orders approving decisions for Deposited Assets Class members (1) authorizing payment of $873,533.17 for 17 awards; (2) approving 50 denials; and (3) approving 2,000 NMLs. **March 25, 2007:** The Court issues an order authorizing IOM to distribute previously disbursed funds held in escrow under Slave Labor Class I. **March 27, 2007:** The Court issues orders authorizing payment of (1) $1,983,600 to 1,342 Jewish Slave Labor Class I members, as well as to pay 26 heir claims on behalf of survivors who performed slave labor and died on or after February 16, 1999; and (2) $2,668,500 for programs to benefit needy Jewish members of the Looted Assets class. **March 30, 2007:** The Court issues orders (1) authorizing IOM to distribute previously disbursed funds held in escrow; and (2) authorizing approval of 60 denials to Deposited Assets class members. **March 31, 2007:** The Court issues an order authorizing approval of 60 denials to Deposited Assets class members. **April 2, 2007:** The Court issues an order approving 1,000 NMLs to

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		Deposited Assets class members. **April 5, 2007:** The Court issues orders (1) authorizing approval of 60 denials to Deposited Assets class members; and (2) approving Special Master Bradfield's recommendation to authorize payment of $666,183.63 for nine awards upon appeal to Deposited Assets class members. **April 12, 2007:** The Court issues an order authorizing approval of 60 denials to Deposited Assets class members. **April 23, 2007:** The Court issues an order authorizing payment of $2,097,268.50 for 26 awards and two denials to Deposited Assets class members. Upon approval by the Court and the German Foundation, the IOM and the USHMM execute a Cooperation Contract providing for the transfer to the museum of historically significant data made available to the IOM in connection with its administration of the Swiss Banks and German Foundation programs on behalf of Roma, Jehovah's Witness, homosexual and disabled claimants. **April 24, 2007:** The Court issues two orders authorizing 160 denials to Deposited Assets class members. **April 25, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **May 1, 2007:** The Court issues an order authorizing payment of $15,950 to 11 non-Jewish Slave Labor Class I members. **May 8, 2007:** The Court issues an order authorizing payment of

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		$97,875 to 67 heirs of 61 non-Jewish Slave Labor Class I members, four heirs of four Slave Labor Class II members, and eight heirs of one Jewish refugee, and authorizing IOM to distribute previously disbursed funds held in escrow. **May 11, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **May 14, 2007:** Based upon additional data obtained as a result of the claims review process, CRT Special Master Junz files a supplemental report recommending adjustment of presumptive values. The report observes: "With the further experience gained over the year since I wrote, I have become yet more firmly convinced that the presumptive values established by the ICEP auditors, even taking into account some of the questions raised by outside observers, indeed, are not fully representative of the CRT data, and that, therefore, a considered revision is appropriate." **May 22, 2007:** The Court issues an order denying 178 claims from non-Jewish members of Slave Labor Class I, 77 claims from non-Jewish members of Slave Labor Class II, and eight claims from non-Jewish members of the Refugee class. **May 24, 2007:** The Court issues an order authorizing payment of $58,108 to the USHMM under the Victim List Project in support of the transfer of IOM materials to the USHMM. **May 29, 2007:** The Court issues orders authorizing decisions for Deposited Assets Class members: (1) payment of $1,418,406.20 for 18 awards; (2) two orders authorizing

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		200 denials; and (3) 2,000 NMLs. **May 30, 2007:** The Court issues orders authorizing decisions to class members: (1) payment of $4,350 to three non-Jewish Slave Labor Class I members; (2) payment of $2,900 to two non-Jewish Slave Labor Class I appellants and denying 25 appeals from non-Jewish members of Slave Labor Class I, nine appeals from members of Slave Labor Class II, and one appeal from a non-Jewish member of the Refugee class; (3) payment of $1,339,213.63 for 20 awards and one award amendment to Deposited Assets class members; (4) 17 denials to Deposited Assets class members; (5) 100 denials to Deposited Assets class members; and (6) 2,000 NMLs to Deposited Assets class members. **June 4, 2007:** The Court issues an order authorizing approval of 100 denials to Deposited Assets class members. **June 5, 2007:** The Court issues an order authorizing payment of $1,210,000 to Yad Vashem under the Victim List Project towards mass data entry of names and vital data of Holocaust victims from historical documentation, as well as towards ongoing identification, scanning, and cataloging of lists; and maintenance, technology, and assistance to the public in regard to the Central Database of Shoah Victims' Names. **June 11, 2007:** The Court issues an order authorizing approval of 100 denials to Deposited Assets class members. **June 13, 2007:** The Court issues an order authorizing payment of $14,500 to 12 heirs of 10 non-Jewish Slave Labor Class I members and

WORLD EVENTS	SWISS EVENTS	HON. EDWARD R. KORMAN SWISS BANKS CLASS ACTION SETTLEMENT
		three heirs of two non-Jewish Slave Labor Class II members deceased on or after February 16, 1999 and authorizing IOM to distribute previously disbursed funds held in escrow. **June 18, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members.
June 20, 2007: The Company (Hashava) in Israel publishes an initial list of 3,500 bank accounts and real estate properties belonging to Holocaust victims and located in Israel, with an estimated value of $25 million. A claims process commences for these assets as well as for other unpublished assets. The Company publishes a second list of another 3,500 assets on July 18, 2007. Over 66,000 names of asset owners are published as of May 2008.		**June 22, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **June 26, 2007:** The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $78,202.48 for one award to Deposited Assets class members. **June 29, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members.
July 10, 2007: The Company (Hashava) issues its first payment to the heirs of a Holocaust survivor based upon an account deposited in the 1930s in the Anglo-Palestinian Bank.		**July 11, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members.

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		July 12, 2007: The Court issues an order authorizing payment of $580,000 for 116 PUAs to Deposited Assets class members. **July 15, 2007:** CRT Special Master Junz submits an updated report on her recommendations for adjustment of presumptive values and "confirm[s] [her] recommendation that the current presumptive values be amended as proposed in May ...." **July 19, 2007:** The Court issues orders (1) denying three appeals from non-Jewish members of Slave Labor Class I; (2) authorizing payment of $4,635,618.45 for 22 awards and one denial to Deposited Assets class members; (3) authorizing 200 denials to Deposited Assets class members. **July 23, 2007:** The Court issues two orders approving 2,049 NMLs to Deposited Assets class members. **July 31, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **August 6, 2007:** The Court issues two orders approving 200 denials to Deposited Assets class members. **August 8, 2007:** The Court issues two orders approving 200 denials to Deposited Assets class members. **August 26, 2007:** The Court issues an order authorizing payment of $250,000 to the USHMM under the Victim List Project toward the provision of copies of records held by the International Tracing Service (ITS) in Bad Arolsen, Germany to major Holocaust research and archival repositories in the eleven member countries of the

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		International Commission of the ITS; over 138 million digital images are transferred by 2015 to institutions such as the USHMM and Yad Vashem. **August 27, 2007:** The Court issues orders (1) authorizing the Claims Conference to distribute previously disbursed funds held in escrow, in the amount of $1,228,150, to 471 Jewish Slave Labor Class I members and to 417 heir claims on behalf of Jewish survivors who performed slave labor and died after their claims were approved; (2) two orders approving 4,000 NMLs to Deposited Assets class members; and (3) authorizing payment of 75,000 to the heir of one deceased incentive award recipient, who was recognized for services to the Settlement class members. **August 31, 2007:** The Court issues orders (1) authorizing payment of $999,968.75 for 19 awards and one denial to Deposited Assets class members; and (2) approving 2,000 NMLs to Deposited Assets class members. **September 14, 2007:** The Court issues four orders authorizing approval of 400 denials to Deposited Assets class members. **September 17, 2007:** The Court issues an order approving proposed income eligibility level adjustments to reflect the rising cost of living and currency exchange rates in three countries where emergency assistance programs exist to benefit needy Jewish members of the Looted Assets class. The Court also issues an order approving 2,000 NMLs to Deposited Assets class members.

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		September 26, 2007: The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **October 10, 2007:** The Court issues an order authorizing the Claims Conference to distribute previously disbursed funds held in escrow, in the amount of $205,900, to 13 Jewish Slave Labor Class I members and to 129 heir claims on behalf of Jewish survivors who performed slave labor and died after their claims were approved. **October 12, 2007:** The Court issues orders (1) authorizing payment of $8,087,889 for programs to benefit needy Jewish members of the Looted Assets class; (2) $1,755,313.03 for 30 awards and four denials to Deposited Assets class members; and (3) $2,214,079.45 for 25 awards, one award amendment and one denial to Deposited Assets class members. **October 14, 2007:** The Court issues an order authorizing approval of 47 inadmissibility decisions to Deposited Assets Class members. **October 28, 2007:** The Court issues two orders approving 2,051 NMLs to Deposited Assets class members. **October 30, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members.
November 4, 2007: The State of Israel approves new funding programs for Holocaust survivors. Payments are to begin in January 2008 and benefits are dependent upon whether the survivor is in the "first circle" (survivors of camps and ghettos; such victims are to receive one-time grants, as well as monthly pensions and yearly grants),		

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or the "second circle" (those who lived in hiding or fled; such victims, primarily from the FSU, are to receive a yearly grant).		**November 10, 2007:** The Court issues orders (1) authorizing payment of $1,197,345.13 for nine awards to Deposited Assets class members; and (2) approving 2,000 NMLs to Deposited Assets class members. **November 15, 2007:** The Court issues orders authorizing Deposited Assets Class decisions: (1) payment of $845,199.12 for 18 awards; (2) payment of $2,102,682.59 for 18 awards and one denial; and (3) 31 inadmissibility decisions. **November 21, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **November 30, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **December 5, 2007:** The Court issues an order authorizing payment of $800,877 to the USHMM under the Victim List Project towards the collection and dissemination of the names of Jewish and non-Jewish victims of the Nazis and their allies, specifically large-scale name list cataloging, development of technological systems for holding and sharing name and list data, normalization of existing and new data, continuation of non-Jewish victim research, and digitization of individual names. **December 17, 2007:** The Court issues an order approving 2,000 NMLs to Deposited Assets class

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		members. **December 18, 2007:** The Court issues orders authorizing payment to members of the Deposited Assets Class: $1,163,967.08 for 14 awards and two denials; and $952,821.75 for 22 awards. **December 19, 2007:** The Court issues orders (1) authorizing approval of 100 denials to Deposited Assets class members; and (2) authorizing payment of $1,825,559.03 for 24 awards to Deposited Assets class members. **December 20, 2007:** The Court issues orders authorizing payment to members of the Deposited Assets Class: (1) $184,339.68 for five awards and seven denials; and (2) $454,094.83 for 10 awards and one denial. **December 21, 2007:** The Court issues orders authorizing (1) approval of 100 denials to Deposited Assets class members; and (2) payment of $2,859,348.72 for 19 awards to Deposited Assets class members. **December 26, 2007:** The Court issues orders (1) authorizing the Claims Conference to distribute previously disbursed funds held in escrow, in the amount of $33,350, to 15 heir claims on behalf of Jewish survivors who performed slave labor and died after their claims were approved; (2) authorizing payment of $2,390,000 for 478 PUAs to Deposited Assets class members; (3) authorizing payment of $5,030,000 for 1,006 PUAs to Deposited Assets class members; and (4) approving 2,000 NMLs to Deposited Assets

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		class members. **January 15, 2008:** The Court issues orders (1) approving 2,000 NMLs to Deposited Assets class members; and (2) denying four appeals under the Insurance claims program. **January 31, 2008:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members.
February 3, 2008: The Company (Hashava) intends to distribute NIS 100 million to needy survivors, including one-time payments of NIS 6,000 ($1,500) to be made in April 2008 to 12,000 survivors; the payments ultimately are issued in July 2009.		**February 4, 2008:** The Court issues an order authorizing payment of $363,425.81 for seven awards and three denials to Deposited Assets class members. **February 6, 2008:** The Court issues an order authorizing payment of $179,825.36 to the USHMM under the Victim List Project to cover the costs of the transfer and storage of the Initial Questionnaires, which will be archived and eventually made publicly available while protecting cliamant confidentiality. **February 11, 2008:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **February 29, 2008:** The Court issues orders (1) approving 2,000 NMLs to Deposited Assets class members; and (2) approving Special Master Junz's recommendations to dismiss 20 Deposited Assets Class appeals and to remand one appeal to the CRT

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		for reconsideration. **March 7, 2008:** The Court issues an order authorizing payment of $430,000 for 86 PUAs to Deposited Assets class members. **March 10, 2008:** The Court issues orders (1) authorizing payment of $835,000 for 167 PUAs to Deposited Assets class members; (2) approving Special Master Junz's recommendations to dismiss 18 Deposited Assets Class appeals and to reverse and remand one appeal to the CRT. **March 11, 2008:** The Court issues an order approving 49 NMLs to Deposited Assets class members. **March 13, 2008:** Pursuant to the terms of the Insurance Guidelines adopted on June 28, 2001, one of the two Participating Insurance Companies, Swiss Re, reimburses the Settlement Fund for one-half of the value of the Swiss Re insurance policies compensated to date under the CRT process for insurance claims. **March 17, 2008:** The Court issues orders authorizing Deposited Assets Class decisions: (1) payment of $2,723,707.59 for 11 awards, one award upon appeal and eight denials; (2) 100 denials; and (3) 1,000 NMLs. **March 18, 2008:** The Court issues an order authorizing approval of 100 denials to Deposited Assets class members. **April 7, 2008:** The Court issues an order authorizing approval of Special Master Junz's recommendations to dismiss 19 Deposited Assets Class appeals.

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		April 10, 2008: The Court issues orders (1) authorizing the Claims Conference to distribute previously disbursed funds held in escrow; and (2) authorizing payment of $7,269,949 for programs to benefit needy Jewish members of the Looted Assets class. **April 14, 2008:** The Court issues an order approving 2,000 NMLs to Deposited Assets class members. **April 25, 2008:** The Court issues orders (1) approving the CRT's recommendation to authorize payment of $253,711.97 for 14 insurance policy awards and to issue three denials, 11 inadmissibility decisions and 29 NMLs to settlement class members; and (2) denying an appeal under the Insurance claims process. **May 29, 2008:** The Court issues an order approving 1,000 NMLs to Deposited Assets class members. **May 30, 2008:** The Court issues an order authorizing payment of $1,132,827.16 for 18 awards to Deposited Assets class members.
June 2008: Following negotiations with the Claims Conference, Germany agrees to one-time payments of $4,000 each to survivors of the Leningrad siege.		**June 13, 2008:** The Court issues an order authorizing the cancellation of grants and reallocation of $1,559,626.81 and an additional $384,646 in accrued interest for emergency assistance programs to benefit needy Jewish members of the Looted Assets class. **June 23, 2008:** The Court authorizes Deposited Assets Class decisions: (1)

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		payment of $605,411.06 for 16 awards; and (2) approving 1,000 denials. **June 30, 2008:** The Court issues an order authorizing payment of $18,884,785.03 for 10 award amendments to Deposited Assets class members. The amendments are derived from valuation information provided by defendant bank Credit Suisse following several years of CRT effort to obtain documentation concerning Holocaust-era Swiss bank accounts beyond the data made available by Swiss banking authorities. **July 10, 2008:** The Court issues an order authorizing payment of previously allocated funds in the amount of $3,967,023.40 for programs to benefit needy Jewish members of the Looted Assets class. **August 4, 2008:** The Court issues an order authorizing approval of 500 denials to Deposited Assets class members.
August 11, 2008: In response to the recommendations of the "Dorner Commission," led by former Israeli Supreme Court Justice Dalia Dorner, Israel agrees to increase stipends to needy Holocaust survivors.		**August 11, 2008:** The Court issues an order authorizing payment of $7,647,452.20 for 13 award amendments to Deposited Assets class members. **August 16/17, 2008:** John Authers, investment editor for the *Financial Times,* in an article in the journal reviews the history and status of the lawsuit and settlement.
August 20, 2008: Using Victim List Project funding from the Swiss Banks Settlement, Yad Vashem receives over 12 million scanned documents from the ITS archives, mostly relating to concentration camp prisoners; other records are shipped over the next two		

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years.		**August 22, 2008:** The Court issues two orders approving 551 NMLs to Deposited Assets class members. **September 9, 2008:** The Court issues an order approving Special Master Junz's recommendations to dismiss 19 Deposited Assets Class appeals and to remand one appeal to the CRT for reconsideration. **September 17, 2008:** The Court issues an order authorizing payment of $1 million to Yad Vashem under the Victim List Project toward the identification of lists, scanning, mass data entry of names, and development and maintenance of the online Central Database of Shoah Victims' Names. **September 24, 2008:** The Court issues an order authorizing payment of $3,523,603.37 for 15 awards to Deposited Assets class members. **September 25, 2008:** The Court issues an order authorizing payment of $4,399,663.09 for 14 award amendments to Deposited Assets class members. **September 29, 2008:** The Court issues orders (1) authorizing payment of $3,188,973.30 for 15 award amendments to Deposited Assets class members; and (2) approving 450 denials to Deposited Assets class members. **September 30, 2008:** The Court issues an order authorizing payment of $3,179,821.68 for 13 awards to Deposited Assets class members. **October 8, 2008:** The Court issues an order authorizing payment of $1,321,613.38 for 14 awards to

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		Deposited Assets class members. **October 10, 2008:** Special Master Helen Junz files her final report analyzing the presumptive values currently in use in the Deposited Assets class claims process. **October 16, 2008:** The Court issues orders (1) authorizing payment of $7,645,277 for programs to benefit needy Jewish members of the Looted Assets class; and (2) authorizing payment of $6,230,025.12 for 13 awards to Deposited Assets class members. **October 24, 2008:** The Court issues orders (1) authorizing payment of $5,233,306.62 for 26 awards and one denial to Deposited Assets class members; and (2) approving 600 NMLs. **October 28, 2008:** The Court issues an order authorizing payment of $2,183,861.97 for five award amendments to Deposited Assets class members, based upon additional information the bank recently made available to the CRT regarding these accounts, including detailed documentation on the portfolios held in the accounts. The Court also issues orders (1) authorizing approval of 50 denials to Deposited Assets class members; and (2) approving Special Master Junz's recommendations to dismiss 20 Deposited Assets Class appeals.
November 2008: Ambassador Stuart Eizenstat is named Special Negotiator of the Claims Conference.		**November 3, 2008:** The Court issues two orders approving 627 inadmissibility decisions to Deposited Assets Class members. **November 25, 2008:** The Court issues Deposited Assets Class orders authorizing (1) payment of $1,666,813.54 for 20 awards and one

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		award amendment; (2) $180,000 for 36 PUAs; and (3) 744 NMLs. **November 26, 2008:** The Court issues orders (1) authorizing payment of $7,227,777.01 for 30 awards to Deposited Assets class members; and (2) approving the CRT's recommendation to issue three denials upon request for reconsideration and 21 summary denials upon appeal. **December 1, 2008:** The auditor who led the investigation of Holocaust-era Swiss accounts on behalf of the Volcker Committee, completed in 1999, files a letter with the Court in support of Special Master Junz' recommendation to adjust the presumptive values that were originally established by the auditors. **December 2, 2008:** The Court issues an order approving Special Master Bradfield's recommendation to reverse a NML and authorize payment of $2,344,791.67 for one award upon appeal to Deposited Assets class members. **December 10, 2008:** The Court issues an order approving Special Master Junz's recommendation to dismiss 20 Deposited Assets Class appeals. **December 18, 2008:** The Court issues an order authorizing payment of $9,495,165.21 for 30 awards, three award amendments and one denial to Deposited Assets class members. **December 19, 2008:** Special Master Gribetz and Deputy Special Master Reig file a report analyzing CRT Special Master Junz's proposal for adjustment of Deposited Assets

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		Class presumptive values, placing her proposal in the context of the Settlement Agreement and the Distribution Plan. **December 23, 2008:** The Court issues an order approving the CRT's recommendation to issue three denials upon request for reconsideration and 27 summary denials upon appeal. **January 15, 2009**: The Court issues an order approving 436 NMLs to Deposited Assets class members. **January 27, 2009**: The Court issues an order approving Special Master Junz's recommendations to dismiss 19 Deposited Assets Class appeals and to remand one appeal to the CRT for reconsideration. **January 29, 2009**: The Court issues an order authorizing the Claims Conference to distribute previously disbursed funds held in escrow. **February 3, 2009**: The Court issues orders approving (1) 17 inadmissibility decisions to Deposited Assets Class members; (2) four denials upon requests for reconsideration; and (3) 28 summary denials to 28 appeals. **February 11, 2009**: The Court issues an order approving the CRT's recommendation to issue 39 summary denials to appeals to Deposited Assets Class members. **February 13, 2009**: The Court issues an order authorizing payment of $2,433,302.80 for 20 awards and nine denials to Deposited Assets class members.

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		February 17, 2009: The Court issues an order authorizing payment of $6,842,308 for programs to benefit needy Jewish members of the Looted Assets class.
		February 27, 2009: The Court issues orders approving approving 258 NMLs and 13 inadmissibility decisions for to Deposited Assets Class members.
		February 28, 2009: The Court issues an order authorizing payment of $1 million to Yad Vashem under the Victim List Project toward the identification of lists, scanning, mass data entry of names, and development and maintenance of the online Central Database of Shoah Victims' Names.
March 2009: The German government agrees to accept second applications to the Hardship Fund from rejected applicants whose changed circumstances might make them now eligible for payment. Additionally, CEEF monthly payments are increased for all recipients regardless of whether their country of residence is part of the European Union.		
		March 11, 2009: The Court issues an order approving 100 denials to Deposited Assets class members.
April 2009: The Claims Conference amends the Goodwill Fund guidelines to review certain applications, including those from original owners or certain heirs who can prove that they were unable to file a claim prior to March 31, 2004, due to medical reasons.		
		April 9, 2009: The Court issues an order authorizing payment of $11,631,927 for programs to benefit

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		needy Jewish members of the Looted Assets class through June 30, 2011. CRT Special Master Helen Junz responds to objections to her recommendation concerning the presumptive values currently in use in the Deposited Assets Class claims process. Other filings in support of her proposal include an April 3, 2009 letter to the Court from CRT Special Master Michael Bradfield (former Volcker Committee counsel) agreeing with Dr. Junz' recommendations; an April 8, 2009 letter to the Court from CRT Secretaries General Mary Carter and Dov Rubinstein; and a supplemental contextual analysis prepared by Special Master Judah Gribetz and Deputy Special Master Shari C. Reig. **April 21, 2009**: CRT Special Master Helen Junz recommends that the exchange rate be fixed at 1.21 Swiss Francs per 1.00 U.S. dollar for payment of presumptive value adjustments. **April 24, 2009**: The Court issues orders (1) approving 156 NMLs to Deposited Assets class members; and (2) approving the CRT's recommendation of four denials upon request for reconsideration and 25 summary denials to appeals. **April 30, 2009**: The Court issues orders approving the CRT's recommendations of (1) three denials upon request for reconsideration, and summary denial of 24 appeals to Deposited Assets Class members; and (2) 17 summary denials of appeals. **May 5, 2009**: The Court issues an order approving Special Master Junz's recommendation to dismiss

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		20 Deposited Assets Class appeals. **May 8, 2009**: The Court issues an order approving Special Master Junz's recommendation to dismiss 20 Deposited Assets Class appeals. **May 12, 2009**: The Court issues an order authorizing payment of $1,973,863.64 for 22 awards and two denials to Deposited Assets class members. **May 16, 2009**: The Court issues an order authorizing $11,284.38 for one award amendment, one denial, and one rescission, under the Insurance program claims process. **May 24, 2009**: The Court issues an order authorizing approval of 15 denials to Deposited Assets class members. **May 27, 2009**: The Court issues an order approving Special Master Junz's recommendation to dismiss 20 Deposited Assets Class appeals.
June 2009: Germany agrees to re-examine 56,000 denied survivor claims for German Social Security payments for work in ghettos following a court ruling clarifying certain eligibility criteria.		**June 3, 2009**: The Court issues an order authorizing payment of $471,215.60 for 11 awards, one award amendment and 17 denials to Deposited Assets class members. **June 5, 2009**: The Court issues an order approving 128 NMLs to Deposited Assets class members. **June 14, 2009**: The Court issues an order approving 20 summary denials of Deposited Assets Class appeals.

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June 25, 2009: The Company (Hashava) files a $75 million claim against Bank Leumi in Israeli court, contending that the bank has failed to cooperate with The Company concerning unclaimed accounts owned by Holocaust victims. In August 2009, the parties agree to arbitrate the claims. **June 26-29, 2009:** A conference is held in Prague, attended by representatives of 49 countries and over 20 non-governmental organizations. The Prague Conference focuses on focuses on looted real estate, art and Judaica; Holocaust education and remembrance; archival access; and survivors' social welfare needs, and issues the "Terezin Declaration" setting forth goals concerning restitution. **July 2009**: The Austrian government extends pension rights to former Austrians who were born between the *Anschluss* (March 12, 1938) and the end of World War II in Europe (May 8, 1945).		**July 9, 2009**: The Court issues an order approving 10 summary denials of Deposited Assets Class appeals. **July 29, 2009**: The Court issues Deposited Assets Class decisions: (1) authorizing payment of $185,000 for 37 PUAs; (2) two orders approving 95 NMLs; and (3) approving Special Master Bradfield's recommendation to reverse a denial and authorize payment of $191,355.14 for one award upon appeal. **July 30, 2009**: The Court issues an order authorizing approval of 14 inadmissibility decisions to Deposited Assets Class members.

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		August 12, 2009: The Court issues an order authorizing approval of five inadmissibility decisions to Deposited Assets Class members. **August 24, 2009**: The Court issues orders (1) approving 473 Deposited Assets Class summary denials upon appeal; and (2) two denials upon requests for reconsideration and 19 summary denials upon appeal. **September 2, 2009**: In connection with the completion of the Slave Labor Class I and Refugee Class programs administered by the Claims Conference on behalf of the Court, Audit Wirtschafts-Treuhand AG ("AWT") submits compliance audit reports for the period June 2001-July 2009. **September 29, 2009**: The Court issues orders (1) authorizing payment of $7,195,199 for programs to benefit needy Jewish members of the Looted Assets class; (2) authorizing payment of $2,449,754.90 for 24 awards, one award amendment, two awards upon requests for reconsideration, and one denial on remand to Deposited Assets class members; (3) approving 43 NMLs; and (4) approving 145 summary denials upon appeal for Deposited Assets Class claims. **October 2, 2009**: The Court issues orders (1) authorizing approval of 18 Deposited Assets Class inadmissibility decisions; and (2) approving Special Master Junz's recommendations to dismiss 9 appeals and to reverse and remand to the CRT one appeal for reconsideration. **October 27, 2009**: The Court issues an order authorizing payment of

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		$242,363 to the USHMM under the Victim List Project toward the microfilming of historical-archival name collections held by the Joint Archives Jerusalem resulting from the activities of the JDC throughout the world during the Holocaust and its aftermath. The United States government files a statement of interest in connection with Special Master Junz' Proposal for Adjustment of Deposited Assets Class Presumptive Values, in which it is "submit[ted] that the foreign policy interests of the United States, which favor providing crucial resources to the neediest Holocaust survivors both here and around the world, may be considered by the Court as it determines how best to allocate the remaining Settlement funds." **November 12, 2009**: The Court issues an order authorizing approval of one denial upon remand to Deposited Assets class members and authorizing reassessment of certain "matched" claims in accordance with the criteria applicable to plausible undocumented awards. **November 18, 2009**: The Court issues orders approving (1) 361 denials to Deposited Assets class members and referring the denials to the plausible undocumented award review process; and (2) Special Master Bradfield's recommendation of payment of $164,985.31 for two previously approved but not paid awards. **November 23, 2009**: The Court issues an order approving the CRT's recommendation to issue 40 summary denials upon appeal under the Deposited Assets Class.

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		December 2, 2009: The Court issues an order authorizing payment of $670,000 for 134 PUAs to Deposited Assets class members. **December 13, 2009**: The Court issues three Deposited Assets Class decisions: (1) two orders approving 54 NMLs; and (2) an order adopting Special Master Bradfield's 1,039 appellate recommendations. **December 17, 2009**: The Court issues an order approving the CRT's recommendation of 34 Deposited Assets Class summary denials upon appeal. **December 21, 2009**: The Court issues an order authorizing payment of $15,891,427.14 for 11 awards, four award amendments and one corrected award to Deposited Assets class members. **January 19, 2010**: The Court issues an order authorizing payment of $2,141,613.16 for 52 award amendments to Deposited Assets class members. **January 22, 2010**: The Court issues an order approving 15 NMLs to Deposited Assets class members. **January 30, 2010**: The Court issues an order authorizing payment of $493,561 to the USHMM under the Victim List Project to bring to conclusion the effort to identify, catalogue and digitize name-based information about victims of the Nazis and their allies who were Roma, Jehovah's Witnesses, homosexuals, or mentally or physically handicapped, as well as to continue the effort to identify and catalogue Jewish name list material

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		within the museum's archival holdings over the next two years. **February 8, 2010**: The Court issues an order authorizing payment of $6,732,614 for programs to benefit needy Jewish members of the Looted Assets class. **February 12, 2010**: The Court issues an order approving 216 denials to Deposited Assets class members.
March 2010: Negotiations with the Claims Conference result in €55 million from the German government for homecare and social services in 2010; pension applications from concentration camp survivors imprisoned for under six months and not receiving other Holocaust pensions are to be individually reviewed for eligibility; and Germany agrees to provide pensions to approximately 1,300 additional "Western Persecutees."		**April 16, 2010**: The Court issues an order authorizing payment of $1,853,656.10 for six awards, 18 award amendments, nine administrative revisions of awards and award amendments, and 13 letters closing claims to Deposited Assets class members. **May 13, 2010**: The Court issues an order authorizing payment of $700,000 to Yad Vashem under the Victim List Project toward the identification of lists, scanning, mass data entry of names, and development and maintenance of the online Central Database of Shoah Victims' Names. **May 28, 2010**: The Court issues an order authorizing payment of $3,252,124.47 for eight awards, 10 award amendments, 31 denials, 46

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		decisions on appeal, remand or request for reconsideration, and four inadmissibility decisions to Deposited Assets class members. **May 31, 2010**: The Court issues an order approving Special Master Bradfield's recommendation to reverse two denials and to pay $157,361.49 for two awards upon appeal to Deposited Assets class members. **June 16, 2010**: The Court, rejecting two separate objections, issues an order approving Special Master Junz's recommendation of the upward adjustment of Deposited Assets Class presumptive values, and also authorizing additional payments for Deposited Assets Class PUAs. The Court's order provides for presumptive value payments to be issued in an amount up to $100 million, and also authorizes up to $27 million to increase PUAs (thereby raising each PUA payment to $7,250, increasing by $2,250 the original award of $5,000). **June 25, 2010**: The Court approves Special Master Bradfield's recommendation to authorize payment of $41,511.87 for three previously approved but not paid awards to Deposited Assets class members. **July 8, 2010**: The Court issues an order approving the CRT's recommendation to issue 104 Deposited Assets Class summary denials upon appeal. **July 23, 2010**: The Court issues orders authorizing payment of Deposited Assets Class presumptive value adjustments: (1) $6,746,529.66 for 152 adjustments; (2) $6,832,861.73 for 150

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		adjustments; (3) $7,829,783.80 for 149 adjustments; and (4) $7,700,971.01 for 150 adjustments. **July 31, 2010**: The Court issues orders (1) approving the CRT's recommendation to issue 37 Deposited Assets Class summary denials on appeal; and (2) adopting Special Master Bradfield's 47 appellate recommendations, following his consideration of a total of 1,815 appeals. **August 9, 2010**: The Court issues an order authorizing payment of $6,594,001.46 for 149 Deposited Assets Class presumptive value adjustments. **August 19, 2010**: The Court issues an order authorizing payment of $5,051,006.18 for 148 Deposited Assets Class presumptive value adjustments. **August 30, 2010**: The Court issues an order authorizing approval of 53 denials and 17 denials on request for reconsideration to Deposited Assets class members. **September 7, 2010**: The Court issues an order authorizing payment of $7,468,751.40 for 145 Deposited Assets Class presumptive value adjustments. **September 14, 2010**: The Court issues orders (1) authorizing payment of $7,298,453 for programs to benefit needy Jewish members of the Looted Assets class; and (2) approving Special Master Junz's recommendation to dismiss 19 Deposited Assets Class appeals. **September 17, 2010**: The Court issues an order authorizing payment of $871,821.45 for two awards, two

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		awards upon request for reconsideration, 17 denials, and 11 denials upon request for reconsideration to Deposited Assets class members.
October 2010: The Claims Conference publishes a searchable database of more than 20,000 art objects looted from French and Belgian Jews, which shows that more than half of these items have not been restituted to original owners. "Cultural Plunder by the Einsatzstab Reichsleiter Rosenberg: Database of Art Objects at the Jeu de Paume" is based on the Claims Conference digitization of Nazi looting records.		**October 13, 2010**: The Court issues an order authorizing payment of $7,244,343.78 for 148 Deposited Assets Class presumptive value adjustments. **October 19, 2010**: The Court issues an order authorizing payment of $9,856,981.20 for 147 Deposited Assets Class presumptive value adjustments.
November 2010: The Claims Conference amends the Goodwill Fund guidelines to review claims from certain direct descendants of the certain heirs included in the April 2009 amendment, and announces that applications must be submitted by no later than December 31, 2011. The German government agrees to provide €110 million for homecare for Nazi victims for 2011, doubling the amount negotiated for 2010.		
November 10, 2010: The United States Attorney for the Southern District of New York announces an indictment against 11 Claims Conference employees and several		**November 10, 2010**: The Court issues an order approving 75 Deposited Assets Class summary denials on appeal.

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other individuals for fraud and embezzlement of over $42 million, an amount later reported at $57 million. The Claims Conference management alerted the Federal Bureau of Investigation when the fraud was discovered in 2009. The alleged conspirators are said to have placed ads in Russian-language newspapers seeking applicants who were of a plausible age to have lived through World War II, and coached them using their detailed Holocaust knowledge to make false claims in exchange for kickbacks.		
		November 12, 2010: The Court issues an order authorizing payment of $5,057,529.32 for 87 Deposited Assets Class presumptive value adjustments.
November 13, 2010: Following several years of litigation in U.S. courts as well as the threat of sanctions in Florida and California, the French national railway (S.N.C.F.) issues its first public apology for its role in the deportation of tens of thousands of Jews during the Holocaust.		
		November 16, 2010: The Court issues an order authorizing payment of $5,061,755.83 for 92 Deposited Assets Class presumptive value adjustments.
		December 14, 2010: The Court issues orders (1) authorizing payment of $1,623,078.48 for 46 Deposited Assets Class presumptive value adjustments; and (2) approving Special Master Junz's recommendations to dismiss 9 appeals, and to reverse and remand one appeal to the CRT for an award.
		December 17, 2010: The Court issues orders (1) authorizing payment of $2,228,466.16 for five

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		awards, five awards upon request for reconsideration, 18 denials, four denials upon request for reconsideration, one administrative revision of a denial, and one letter closing a claim to Deposited Assets class members; and (2) approving 17 summary denials upon appeal. **December 23, 2010**: The Court issues orders authorizing several groups of Deposited Assets Class presumptive value adjustments: (1) $3,414,138.88 for 55 adjustments; (2) $1,585,598.35 for 25 adjustments; and (3) $2,282,598.15 for 24 adjustments. In addition, the Court approves the CRT's analysis of 27 potential adjustments that ultimately are not issued because post-award information provided by the banks to the CRT demonstrated that the original award should not have been made. **January 12, 2011**: The Court issues an order authorizing payment of $2,069,886.36 for 26 Deposited Assets Class presumptive value adjustments. **January 31, 2011**: The Court issues an order approving Special Master Junz's recommendation to dismiss eight Deposited Assets appeals and to remand one appeal to the CRT for reconsideration. **February 2, 2011**: The Court issues an order authorizing payment of $6,400,857.40 for 100 Deposited Assets Class presumptive value adjustments. **February 8, 2011**: The Court issues an order authorizing payment of $849,733.90 for 31 Deposited Assets

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		Class presumptive value adjustments. **February 25, 2011**: The Court issues an order authorizing payment of $288,109.55 for 29 Deposited Assets Class presumptive value adjustments.
March 1, 2011: "Project Heart" (Holocaust Era Restitution Task Force), intended to document and receive compensation for looted assets, is launched by the State of Israel and the Jewish Agency for Israel.		
		March 22, 2011: The Court issues an order authorizing payment of $6,842,308 for programs to benefit needy Jewish members of the Looted Assets class. **March 24, 2011**: The Court issues orders (1) authorizing payment of $3,763,133.62 for eight Deposited Assets Class awards, six awards upon request for reconsideration or remand, six denials, three denials upon request for reconsideration, and six award withdrawals; and (2) approving nine summary denials upon appeal. **March 26, 2011**: The Court issues an order authorizing payment of $971,411.16 for nine Deposited Assets Class presumptive value adjustments.
April 2011: An agreement is reached following Claims Conference negotiations with Germany providing for €400 million in home health care funding, through 2014. Germany also agrees to make Hardship Fund payments to victims who suffered restriction of movement such as curfew and were oliged to register with restriction of residence. Germany further agrees to issue		

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Article 2 pensions to survivors previously ineligible because they had received more than DM 35,000 in one-time German government compensation payments from programs established in the 1950s.		**April 29, 2011**: The Court issues orders (1) approving four Deposited Assets Class summary denials upon appeal; (2) authorizing payment of $160,750.48 for seven insurance awards, five award amendments, one award upon request for reconsideration, 14 NMLs and two closing letters, and to rescind one award; and (3) denying three appeals of insurance claims. **April 30, 2011**: The Court issues orders authorizing payment of (1) $186,781.61 for one award to Deposited Assets class members; and (2) $188,500 for 26 PUAs and PUA increases to Deposited Assets class members. **May 17, 2011**: The Court issues an order authorizing payment of $80,888.42 for one Deposited Assets Class presumptive value adjustment. **May 20, 2011:** The Court issues an order authorizing payment of $166,952.49 for three Deposited Assets Class presumptive value adjustments. **May 27, 2011**: The Court issues an order authorizing payment of $43,842.99 for four Deposited Assets Class presumptive value adjustments. **June 6, 2011**: The Court issues an order authorizing the redirection of $24,665 in unused funds paid to the USHMM under the Victim List Project on March 15, 2005 toward the microfilming of the records of

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		the State Archive of the Russian Federation of the Main Administration for Resettlement. The Court also issues an order authorizing payment of $661,800.60 for two awards, one award amendment, one award amendment upon request for reconsideration, one denial, one denial upon appeal and request for reconsideration, and one letter closing a claim to Deposited Assets class members. **June 13, 2011**: The Court issues an order authorizing payment of $181,393 to the USHMM under the Victim List Project for the transfer and storage of CRT claims documentation held in Zurich, Switzerland to the USHMM. **June 15, 2011**: The Court issues orders (1) authorizing payment of $1,621.90 for one Deposited Assets Class presumptive value adjustment; and (2) approving one summary denial upon appeal. **June 22, 2011**: The Court issues an order authorizing payment of $80,888.42 for one Deposited Assets Class presumptive value adjustment.
July 2011: The Holocaust Victim Compensation Fund (HVCF) is established, issuing one-time payments of €1,900 to certain Jewish victims of Nazism living in the 10 countries of the former Soviet bloc that are now EU members.		**July 20, 2011**: The Court amends Article 45 of the CRT Rules, setting forth general guidelines for the archiving of CRT files. **July 25, 2011**: The Court issues an order approving three Deposited Assets Class summary denials upon

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		appeal. **July 27, 2011**: The Court amends Article 30 of the CRT Rules, clarifying the appeals process for the few unresolved CRT claims. **July 28, 2011**: The Court approves one Deposited Assets class denial.
August 3, 2011: Rudolf Brazda, the last homosexual survivor known to have been imprisoned in a Nazi concentration camp (Buchenwald), dies at age 98.		
		August 17, 2011: The Court issues an order requiring class members who have been approved for bank account awards and who have not yet accepted their payments to be notified that if they do not accept their payments within 30 days of such notification (60 days for those outside the U.S.), the funds will revert to the Settlement Fund for distribution to other class members. **August 18, 2011**: The Court issues an order approving one Deposited Assets class denial. **September 26, 2011**: The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $22,467.29 for two previously awarded but not paid awards to Deposited Assets class members. **September 27, 2011**: The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $1,682,138.42 for 12 presumptive value adjustments, and three decisions not to issue adjustments. **September 28, 2011**: The Court issues an order adopting the joint

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		recommendation of CRT Special Masters Michael Bradfield and Helen Junz to set the exchange rate at 1.21 for any further Swiss franc-based Deposited Assets Class payments. **October 11, 2011**: The Court issues an order approving two Deposited Assets Class summary denials upon appeal. **October 17, 2011**: The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $1,222,368.23 for seven combined awards upon appeal and presumptive value adjustments to Deposited Assets class members. **October 19, 2011**: The Court issues an order approving one Deposited Assets Class summary denial upon appeal. **October 24, 2011**: The Court issues an order approving one Deposited Assets Class summary denial upon appeal. **October 27, 2011**: The Court issues an order authorizing payment of $1,222,368.23 for seven Deposited Assets Class awards upon appeal and four presumptive value adjustments. **November 9, 2011**: The Court issues an order approving Special Master Bradfield's recommendation to issue one denial upon appeal to Deposited Assets Class members.
November 16, 2011: The Foreign Affairs Committee of the U.S. House of Representatives hears testimony on a bill introduced by Florida Representative Ileana Ros-Lehtinen that would allow survivors to bring suit in U.S. courts based on Holocaust-era insurance claims. The bill, which		**November 16, 2011**: The Court issues orders (1) authorizing approval of one Deposited Assets class denial; and (2) approving Special Master Junz's recommendation to authorize payment of $3,276.02 for one

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has been introduced several times since 2006, is opposed by the U.S. State Department and several major Jewish organizations on the grounds that new proceedings are precluded by the ICHEIC agreement, and would jeopardize future negotiations for Holocaust compensation. **November - December 2011**: Following negotiations with the Claims Conference, Germany agrees to (1) reduce from 18 months to 12 months the minimum time period for survivors of ghettos and life in hiding or under false identity; (2) grant special pensions to survivors age 75 and older who were in a ghetto for at least 3 months; (3) make one-time payments to those who fled ahead of the Nazis in some areas of the Soviet Union that ultimately were not occupied; (4) grant monthly pensions to survivors aged 75 or older who were imprisoned for at least 3 months in the Budapest Ghetto; (5) remove the December 2011 application deadline for the Ghetto Work Fund, and (6) allow eligible Jewish survivors of ghettos who worked "without force" to receive both German Social Security payments and the Ghetto Fund onetime payment of €2,000.		appeal. **December 1, 2011**: The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $1,143,836.95 for an amended Deposited Assets Class award upon appeal. **December 27, 2011**: The Court issues an order authorizing approval of one Deposited Assets class denial. **December 28, 2011**: The Court issues an order authorizing payment of $212,816 for programs to benefit needy Jewish members of the Looted

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		Assets class.
February 2012: Germany's highest Social Court rules that payments for German Social Security for work in ghettos will be made retroactively for four years, with a maximum dating back to 2005. **February 2012:** Investigating suspected tax fraud by Cornelius Gurlitt, German authorities discover a trove of over 1,400 paintings, many of which are believed to have been looted from Holocaust victims. The discovery is not announced until November 2013. Gurlitt, who dies in 2014, bequeaths much of the collection to the Museum of Fine Arts in Bern. Holocaust victim advocates call for continuing analysis of the provenance of the paintings and return of any looted art to Nazi victims and their heirs. **March 3, 2012:** The JDC Archive, with a searchable index, photos and record cards, is posted online.		**April 24, 2012**: The Court issues an order establishing guidelines for access to the IOM Swiss Banks Holocaust settlement claim files, Initial Questionnaires, and CRT claims documentation transferred to the USHMM as per respective court orders of May 24, 2007, February 6, 2008 and June 13, 2011. These guidelines take into consideration the security and confidentiality of claimants' documents while eventually making them available for research and scholarship of the Holocaust. **April 26, 2012**: The Court issues an order authorizing payment of $80,888.43 for one amendment of a

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		Deposited Assets Class presumptive value adjustment.
May 2012: The United States Holocaust Memorial Museum announces the publication of two new volumes of its *Encyclopedia of Camps and Ghettos, 1933-1945*. The museum's research shows that the number of camps and ghettos (approximately 42,500), and the number of places where slave labor was performed, is considerably greater than had been previously known. **July 2012**: The Claims Conference establishes a Late Applicants Fund ("LAF") of €50 million for heirs who did not file under the German government deadline of 1992 or the subsequent deadlines of the Goodwill Fund, which had a final deadline of March 2004. The LAF opens for applications on January 1, 2013 for a two-year period. **July 2012:** Following negotiations with the Claims Conference, Germany (1) expands the Hardship Fund to 80,000 Nazi victims in the former Soviet Union who had never received Holocaust compensation; (2) increases HVCF payments to €2,556; (3)increases CEEF monthly payments to €300, the same as Article 2; (4) makes available to all eligible survivors the special pensions formerly limited to those 75 and older who were in ghettos for 3 to 12 months, and increases such payments to €300 per month; (5) expands payments to those who fled or lived in hiding by reducing the number of months under such conditions from 12 to 6.		**July 13, 2012**: The Court issues an order approving one Deposited Assets Class summary denial upon

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		appeal. **August 20, 2012**: The Court issues an order terminating an appeal and approving payment of $6,063,918.88 for one Deposited Assets class award upon settlement. **August 22, 2012**: The Court issues an order authorizing approval of one Deposited Assets class denial. **September 14, 2012**: The Court issues an order authorizing payment of $1,152,875.35 for one Deposited Assets class award. **November 9, 2012**: The Court issues an order directing the CRT to commence liquidation, given that the CRT has resolved all claims in their initial stage. **November 28, 2012**: The Court issues an order authorizing payment of $21,750 for 3 PUAs and PUA increases. **November 29, 2012**: The Court issues an order approving Special Master Bradfield's recommendation to issue 50 Deposited Assets class denials upon appeal. **December 10, 2012**: The Court issues an order authorizing the reallocation of $337,261.72 and ILS 4,066,609.34 in cancelled funds and an additional $237,855.87 and ILS 69,391.45 in interest accrued through July 31, 2012, from programs benefitting needy Jewish members of the Looted Assets class. **December 13, 2012**: The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $768,515.46 for a Deposited Assets

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		class award upon appeal. **February 14, 2013**: The Court issues an order terminating an appeal and approving payment of $4,600,000 for one Deposited Assets class award upon settlement. **May 3, 2013**: The Court issues an order adopting Magistrate Judge Orenstein's report and recommendations relating to an award amendment to certain Deposited Assets class members in connection with their claim.
May 8, 2013: Three former Claims Conference employees are convicted of fraud "for their participation in a scheme to defraud programs administered by" the Claims Conference. Another 28 other defendants previously had pled guilty. Preet Bharara, the U.S. Attorney for the Southern District of New York, who prosecuted the defendants, "thank[s] the Claims Conference for bringing this matter to the FBI's attention and for its extraordinary continued cooperation in this investigation."		**May 13, 2013**: The Court issues orders allocating residual funds remaining in the Settlement Fund following completion of all claims programs. The residual funds orders authorize the following payments: (1) $33,750,000 over a five year period for humanitarian aid programs to benefit needy Jewish Nazi victims in the former Soviet Union and Central and Eastern Europe; (2) $11,250,000 over a five year period for humanitarian aid programs to benefit needy Jewish Nazi victims in Israel, the United States, Western Europe, and the rest

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		of the world; and (3) $5,000,000 over an 18-month program for humanitarian aid programs to benefit needy Roma. The Court also issues an order authorizing payment of $4,500,000 of the residual funds to Yad Vashem and the USHMM under the Victim List Project toward continued archival research and data collection; this amount represents a 45% increase of the $10 million allocation under the Distribution Plan, thus creating parity between the Victim List Projects and the Court's other programs, all of which previously had been increased by 45%.
May 27, 2013: Following negotiations with the Claims Conference, Germany agrees to provide $1 billion over 4 years for survivor home health care services, affecting 56,000 survivors; Germany also increases income eligibility levels for Article 2 pensions and expands pensions to survivors confined to open ghettos, such as in Romania and Bulgaria.		**June 4, 2013**: The Court issues an order approving Special Master Bradfield's recommendation to authorize payment of $4,795.95 for a previously approved Deposited Assets class award. **June 18, 2013**: The Court issues an order authorizing payment of $163,142.81 for a previously approved Deposited Assets Class award amendment.
December 13, 2013: On the occasion of the JDC's 100th anniversary, the U.S. Senate issues a resolution of congratulations, and "commend[s]" the organization's "significant contribution to empower and revitalize developing communities		

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around the world."		
		December 27, 2013: The Court issues an order withdrawing and returning to the Settlement Fund (for redistribution to other class members) a total of 1,204 unpaid Deposited Assets Class awards. Their value is $5,272,968.93.
January 2014: The Yad Vashem Central Database of Shoah Victims' Names, created and funded through assistance from the Swiss Banks Settlement Victim List Project, now contains some 5,102,494 name occurrences representing about 4,300,000 individual Jewish victims.		
		January 14, 2014: The Court authorizes payment of $28,000 under the Victim List Project for the transfer of CRT-II bank records from Zurich to the Swiss Federal Archives in Bern and the preparation of the bank records by the Swiss Federal Archives for archiving.
	April 30, 2014: Eight surviving U.S. pilots who were imprisoned in the brutal Swiss Wauwilermoos prison camp following their attempts to escape internment in Switzerland, are awarded the U.S. Congressional Prisoner of War Medal.	
		May 23, 2014: The Court denies certain objections to the JDC as the administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in the Former Soviet Union.
		May 27, 2014: The Court authorizes payment of $6,000,000 for programs in 2014 to benefit needy Jewish members of the Looted Assets class

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		living in the FSU. **May 30, 2014**: The Court rejects the motion by a California resident seeking to intervene. **May 30, 2014**: The Court rejects certain objections to the Claims Conference as the administrator of residual funds on behalf of the neediest members of the Looted Assets Class residing in Israel, the United States and other parts of the world. **May 30, 2014:** The Court authorizes payment of $2,250,000 for emergency assistance programs in 2014 to benefit needy Jewish members of the Looted Assets class living in the U.S., Israel and other countries (with the exception of the FSU).
June 2014: Following negotiations with the Claims Conference, Germany grants payments retroactive to 1997 under its Social Security program for those who were confined to ghettos.		
		July 18, 2014: In recognition of the completion of all CRT claims processing and administrative functions, and following "appropriate arrangements [made] with respect to the relevant data … under Swiss and United States law," the Court orders the CRT servers to be disassembled.
December 22, 2014: Following negotiations with the Claims Conference, Germany establishes a Child Survivor Fund, providing for one-time payments to certain survivors.		

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March 2015: The European Holocaust Research Infrastructure (EHRI) Portal launches, containing a listing of 1,835 archival institutions in 50 countries. **February 9, 2015:** "Woman in Gold," a film recounting Maria Altmann's ultimately successful struggle to reclaim her family's stolen art, including by Gustav Klimt, is released and attracts renewed attention about Nazi looting. In 2005, Mrs. Altmann and her family had been the recipients of the largest bank account repayment (approximately $21 million) under the Swiss Banks Holocaust Settlement claims process. **April 28, 2015:** In a speech by its president, Peter Maurer, the International Committee of the Red Cross acknowledges that during the Holocaust the organization "failed to protect civilians and most notably the Jews persecuted and murdered by the Nazi regime;" "failed to understand the uniqueness of the inhumanity by responding to the outrageous with standard procedures;" and "failed as a humanitarian organization because it had lost its moral compass." **June 24, 2015:** The French National Assembly approves a $60 million fund that will compensate Holocaust survivors transported by the railroad SNCF; the agreement follows litigation in the U.S., and will be administered by the U.S. State Department.		**August 13, 2015:** The Court approves an agreement with the Swiss Federal Archives (SFA) and Swiss Financial Market Supervisory Authority (FINMA) providing for the archiving at the SFA of Swiss bank records made available to the CRT during the claims process.

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		August 25, 2015: Due to opposition by the Russian Red Cross' Tracing and Information Center, the scanning and digitization project anticipated in the May 13, 2013 residual funds order cannot be effectuated; the Court authorizes the $250,000 allocated to that project to be transferred to Yad Vashem to support name indexing on the Soviet evacuation. **September 4, 2015:** The Court authorizes payment of $3,093,750 for emergency assistance programs in 2015 to benefit needy Jewish members of the Looted Assets class in the U.S., Israel and other parts of the world outside the FSU. **September 28, 2015:** The Court authorizes payment of $7,121,958 for programs in 2015 to benefit needy Jewish members of the Looted Assets class in the FSU.
October 1, 2015: The U.S. government earmarks $12 million over 5 years for Holocaust survivor assistance.		
		May 11, 2016: The Court authorizes payment of $4,125,000 for programs benefitting needy Roma members of the Looted Assets class, representing the balance of residual funds allocated in 2013 for programs administered by the IOM.
July 5, 2016: Germany agrees to provide $500 million in additional homecare funding in 2017 and 2018, an increase of 46% over current funding programs, following Claims		

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Conference negotiations.		**July 8, 2016:** The Court authorizes payment of $4,848,750 for programs in 2016-2017 to benefit needy Jewish members of the Looted Assets class in the U.S., Israel and other parts of the world outside the FSU. **August 15, 2016:** The Court authorizes payment of $7,892,505 for programs in 2016 to benefit needy Jewish members of the Looted Assets class in the FSU. **October 1, 2016:** Having completed all of its claims processing activities, the CRT's Zurich office is liquidated in accordance with Swiss legal requirements. **February 8, 2017:** Pursuant to the terms of the Insurance Guidelines adopted on June 28, 2001, one of the two Participating Insurance Companies, Swiss Life, agrees to reimburse the Settlement Fund for one-half of the value of the Swiss Life insurance policies compensated to date under the CRT process for insurance claims. **April 19, 2017:** Both Participating Insurance Companies, Swiss Life and Swiss Re, have now reimbursed the Settlement Fund for one-half the value of the awards relating to insurance policies recommended by the CRT and authorized for payment

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		by the Court. The total reimbursement to the Settlement Fund, $710,889, represents additional residual funds. In accordance with the Court's May 13, 2013 order, these funds will be distributed to benefit needy members of the Looted Assets. **August 3, 2017:** The Court authorizes payment of $8,566,000 for programs in 2017 to benefit needy Jewish members of the Looted Assets class in the FSU. **September 13, 2017:** The Court issues an order authorizing the Claims Conference to maintain the CRT-II website.
February 5, 2018: Following negotiations with the Claims Conference, Germany agrees to compensate, for the first time, Algerian Jews persecuted during the Holocaust. Approximately 25,000 victims are expected to receive one-time payments of approximately 2,500 Euros each. **April 12, 2018:** A survey commissioned by the Claims Conference concerning knowledge of the Holocaust in the U.S. finds that approximately 45% of adults and 49% of millennials cannot name a single concentration camp. Furthermore, 41% of adults and 66% of millennials do not know what Auschwitz was, and 31% of adults believe the number of Jews killed in the Holocaust was 2 million or fewer. 93% of adults believe		

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Holocaust education in schools should be mandatory.		**April 23, 2018:** The Court issues an order authorizing the Swiss Bankers Association ("SBA"), a Releasee acting on behalf of the Swiss banks, to receive the Deposited Assets Class related Acknowledgment Forms and Database of Payments for Awarded Accounts, subject to the SBA's execution of the Confidentiality Commitment. The Acknowledgment Forms and Database of Payments for Awarded Accounts will be used by the Swiss banks to resolve accounts for which a payment was made and in the event a dispute arises with plaintiffs or third parties relating to a claim. Pursuant to the Confidentiality Commitment, the SBA and the Swiss banks must maintain the confidentiality of the information contained in the Acknowledgment Forms and Database of Payments for Awarded Accounts in accordance with, and as required by, the laws of Switzerland and the US. **June 5, 2018:** Having received the fully executed Confidentiality Commitment, the Special Master transmits the Deposited Assets Class related Acknowledgment Forms and Database of Payments for Awarded Accounts to the SBA.
July 10, 2018: Following negotiations with the Claims Conference, Germany agrees to an $87.75 million increase in funding for social welfare services for Holocaust survivors, bringing total global allocations for 2019 to $564		

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million. **October 27, 2018:** A suspected white supremacist attacks the Tree of Life synagogue in Pittsburgh, Pennsylvania; some of its congregants are Holocaust survivors. Eleven congregants are murdered in the deadliest anti-Semitic attack in U.S. history. **November 27, 2018:** A survey of European adults conducted by CNN/ComRes finds that that more than one-fourth of Europeans believe Jews have too much influence in business and finance; 20% believe Jews have too much influence in the media and in politics; and one-third state that they know just a little or nothing at all about the Holocaust. One-third believe that Jews use the Holocaust to advance their own positions. Two-thirds believe that commemorating the Holocaust helps to ensure that such atrocities will not happen again; half believe commemoration helps fight anti-Semitism. **January 1, 2019:** Following negotiations between the Claims Conference and Germany, a fund to compensate child survivors who were part of the Kindertransport begins accepting applications. One-time payments of 2,500 Euros each are to be made under the fund, first announced on the 80th anniversary of the Kindertransport (December 17, 2018).		

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January 23, 2019: The Claims Conference and the Azrieli Foundation announce that a survey of Canadians has revealed that 54% of adults and 62% of millennials do not know that 6 million Jews were killed in the Holocaust; 52% of millennials cannot name even one concentration camp or ghetto; and 22% of millennials have not heard of or are not sure that they have heard of the Holocaust. 82% of those surveyed believe all students should learn about the Holocaust in school.		

The entries in this Chronology were drawn from the following sources:

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Holocaust Victim Assets Litigation
Case No. CV 96-4849

Swiss Banks Settlement Fund Distribution Statistics as of December 31, 2018 (Amounts Approved and Paid by the Court)

	Funds Authorized*	Funds Paid	Approved Claimants
Deposited Assets Class	$726,272,177	$719,745,337	≅ 18,096
Looted Assets Class	$256,271,791	$256,271,791	≅ 237,464
Slave Labor Class I	$287,133,350	$280,212,703	198,023
Slave Labor Class II	$826,500	$696,448	570
Refugee Class	$11,600,000	$11,526,476	4,158
Insurance Awards	$1,464,786	$1,400,251	118
Incentive Awards[1]	$575,000	$575,000	7
Victim List Project[2]	$14,500,000	$14,500,000	n/a
GRAND TOTAL:	**$1,298,643,604**	**$1,284,928,006**	**≅ 458,436 claimants**

* In connection with the reconciliation of the $1.25 billion Settlement Fund (and preparation of a final report), these statistics have been updated to set forth two categories of information: (1) "Funds Authorized": amounts authorized by court order upon the Court's review and approval of materials analyzed, prepared and submitted by the administrative agencies in consultation with the Special Masters; and (2) "Funds Paid": amounts paid to individual claimants after their claims were approved by the Court. "Funds authorized" exceeded "funds paid" for the following reasons: (1) approved claimants could not be located despite numerous efforts to obtain contact information; (2) approved claimants passed away and no eligible heirs could be located; (3) approved claimants refused to accept payment and/or refused to complete documentation required to effectuate payment; and/or (4) in a limited number of cases, certain approved Deposited Assets Class awards were withdrawn by Court order as a result of information which came to the attention of the CRT subsequent to the authorization of such awards. In all instances, any funds authorized but unpaid were either applied to authorized but unfunded awards of the same class, or returned to the Settlement Fund for reauthorization and distribution to other class members. Accordingly, certain funds that were authorized but unpaid for one class (e.g., Deposited Assets) were reauthorized and distributed to another class (e.g., Looted Assets), and thus would be reflected twice under the "Funds Authorized" category, but once under the "Funds Paid" category.

1. Deposited Assets

Funds Authorized:	**$726,272,177**	**Funds Paid:**	**$719,745,337**	**awarded for 18,096 Holocaust victims or heirs[3]**
CRT-II[4] *Documented Awards*		**CRT-II** *Documented Awards*		
Total Amount:	**$618,842,302**	Total Amount:	**$615,507,462**	**awarded for 5,248 Holocaust victims or heirs**
Total Awards:	2,950	Total Awards:	2,950	
Total Accounts Awarded:	4,716	Total Accounts Awarded:	4,716	
Average Award:	$185,263[5]	Average Award:	$184,130	
Average Account:	$116,602	Average Account:	$115,889	
Plausible Undocumented Awards		***Plausible Undocumented Awards***		**awarded for 12,301 Holocaust victims or heirs**
Total Amount:	**$89,245,382**	Total Amount:	**$86,053,382**	
Total Awards:	12,301	Total Awards:	12,301	
Award Amount:	$7,250	Award Amount:	$7,250	
CRT-I		**CRT-I**		
Total Amount:	**$18,184,493**	Total Amount:	**$18,184,493**	**awarded for 547 Holocaust victims or heirs**

2. Looted Assets (JDC, Claims Conference and IOM):	**$256,271,791**			**allocated to programs serving 237,464 needy Holocaust victims[6]**
		Jewish:	$230,448,228[7]	**162,288 Jewish Holocaust victims assisted**
		Non-Jewish (10%):	$25,823,563	**75,176 non- Jewish Holocaust victims assisted**
		Of Jewish Allocation:		
		Former Soviet Union (75%):	$172,432,657	
		Rest of World (25%):	$58,015,571	
			Israel (49.5%)	$28,723,557
			Rest (50.5%)	$29,292,014

3. Slave Labor I ($1,450 each)				
Funds Authorized:	**$287,133,350**	**Funds Paid:**	**$280,212,703**	**awarded for 198,023 Holocaust victim claims approved**
Claims Conference:	$252,175,300	Claims Conference:	$249,484,114	for 173,914 Jewish Holocaust victim claims approved
IOM:	$34,958,050	IOM:	$30,728,589	for 24,109 Roma, Jehovah's Witness, Homosexual and Disabled Holocaust victim claims approved
4. Slave Labor II ($1,450 each) (IOM only)				
Funds Authorized:	**$826,500**	**Funds Paid:**	**$696,448**	**awarded for 570 Holocaust victim claims approved**
5. Refugees ($3,625 or $725 each)				
Funds Authorized:	**$11,600,000**	**Funds Paid:**	**$11,526,476**	**awarded for 4,158 Holocaust victim claims approved**
Claims Conference:	$10,783,650	Claims Conference:	$10,743,425	for 3,923 Jewish Holocaust victim claims approved
IOM:	$816,350	IOM:	$783,051	for 235 Roma, Jehovah's Witness, Homosexual and Disabled Holocaust victim claims approved
6. Insurance Awards (CRT)[8]				
Funds Authorized:	**$1,464,786**	**Funds Paid:**	**$1,400,251**	**awarded for 118 Holocaust victim claims approved**

[1] $575,000 in payments were authorized to seven class members whom the Court determined provided "efforts [which] materially aided the plaintiff class." *See, e.g.*, Memorandum & Order, December 4, 2002.

[2] The Court has allocated $14.5 million to the Victim List Project (approximately 1% of the $1.284 billion that has been paid out; the latter amount exceeds the $1.25 billion Settlement Fund).

[3] The total number of approved claimants, 18,096, includes 5,248 claimants and represented parties (i.e., individuals who provided the CRT with Power of Attorney forms authorizing claimants to represent them) approved for awards based upon documentary evidence obtained from Swiss banks and other sources, under the process administered in Zurich by the CRT-II.

Additionally, the total number of approved claimants of Deposited Assets Class payments includes 12,596 claimants approved to receive Deposited Assets Class awards based upon their plausible undocumented claims ("Plausible Undocumented Awards" or "PUAs"), under the CRT-II process administered in New York under the Court's authority. Through continuing analysis of the bank files, documented awards subsequently were located for 295 individuals who had received PUA payments. For these 295 individuals, the PUAs were deducted from the amount of the documented award. Accordingly, the total number of claimants receiving plausible undocumented awards is reflected in these statistics as 12,301 rather than 12,596 because the additional 295 claimants already are included among the 5,248 individuals who received awards based upon bank records or other documentary evidence.

Finally, the total number of approved claimants of Deposited Assets Class payments includes 547 claimants approved under the CRT-I process who were paid by the Settlement Fund pursuant to the terms of the Settlement Agreement.

[4] In addition to awards, at the recommendation of CRT-II, the Court issued an additional 98,819 decisions rejecting claims, consisting of (1) 6,673 denials, (2) 2,288 determinations of inadmissibility, and (3) 89,858 "No Match" Decisions.

(1) Denials were claims that the CRT determined to be ineligible for awards. There were a variety of bases for such determinations: (a) the claimant's relative and the account owner were not the same individual, based upon information in the bank records and/or other sources ("identity" denials); (b) the available evidence indicated that the account was closed properly and the account owner received the proceeds ("disposition denials"); (c) the claimant was not entitled to the claimed account, whether due to the absence of a family relationship to the account owner or for other reasons ("entitlement" denials); and (d) the name(s) of the relative(s) claimed to have owned Holocaust-era Swiss bank accounts, and the names of account owners made available to the CRT by the Swiss banks or located via other sources, did not match ("no match" denials).

(2) Inadmissibility decisions were claims that the CRT determined to be ineligible to participate in the Deposited Assets Class process. Under the terms of the Settlement Agreement, only the accounts of "Victims or Targets of Nazi Persecution" were payable from the Settlement Fund (with the exception of Slave Labor Class II, which was open to all Nazi victims). The Settlement Agreement defines "Victims or Targets of Nazi Persecution" as those who were, or were perceived to be, Jewish, Romani, Jehovah's Witness, disabled, or homosexual. Neither the CRT nor the Court had the authority to address Deposited Assets Class claims asserted on behalf of account owners who were not "victims or targets" as defined under the Settlement Agreement.

(3) "No Match" Decisions were issued when the CRT determined that there were no accounts in the Account History Database (AHD) matching to names of account owners that were provided to the CRT by the claimant. The AHD consisted of 36,138 accounts identified during the investigation of Swiss banks by the Independent Committee of Eminent Persons (ICEP or the Volcker Committee) as probably or possibly belonging to victims of Nazi persecution, augmented to 37,954 accounts through information obtained by the CRT from other sources such as archival records. The CRT used advanced name matching systems and computer programs in conducting its matching analysis. The CRT matched not only the names of persons specifically claimed to have owned a Swiss bank account, but the names of other family members identified by the claimant. More than 415,000 such names were provided by claimants and matched to the AHD.

[5] In calculating the average values of documented CRT awards, four awards were excluded (three involving the same account owners) because their size would have skewed the results. These awards related to the three decisions issued in connection with *In re Österreichische Zuckerindustrie AG Syndicate* ("ÖZAG," also known as "Bloch-Bauer") (one decision issued on April 13, 2005 in the amount of $21,860,325.09, and two decisions issued on December 29,

2006, in the amounts of $15,688,718.34 and $9,610,660.66, respectively); and the decision issued in *In re Löw* ($12,030,605.95). The average values further exclude payments issued pursuant to three agreements approved by the Court: *In re Alfons and Maria Thorsch* ($3,757,657.19); *In re Accounts of Paul Wittgenstein et al.* ($6,063,918.88); and *In re the Assets of Siegfried Budge* ($4,600,000).

[6] Approximately 237,464 surviving Nazi victims have been compensated thus far from the Settlement Fund through programs serving *the* neediest members of the Looted Assets Class. Under the Court's order of May 13, 2013 allocating residual funds, these programs will continue through 2018 and updated information will be provided at a later date. The number of victims compensated through Looted Assets Class programs to date is derived from the following three sources:

(1) An estimated 27,599 Jewish victims were served by programs administered on the Court's behalf by the Conference on Jewish Material Claims Against Germany, Inc. (Claims Conference). *See* May 11, 2012 Letter of Greg Schneider, Claims Conference Executive Vice President. According to the Letter, "…As opposed to other classes under the Settlement such as Slave Labor Class I and Refugee Class in which a class member is entitled to one payment per lifetime, social services and emergency grants provided under Looted Assets Class may be given multiple times to the same Nazi victim during the [course] of the 10 year funding period. Indeed, many Nazi victims receiving an emergency grant under Looted Assets Class in one year will, in fact, require a second or third grant in the subsequent year(s). Concomitantly, not every Nazi victim will require multiple grants and further new clients are added. The result is that we do not have a cumulative list of the number of Nazi victims who benefited under Looted Assets; rather, annual totals of the number of Nazi victims served. By definition, the total cumulative number served over the ten year period to date must exceed any particular annual number served because, although many of the same Nazi victims are again served in a second year, many new clients are also added. The total number served cannot be lower than the total number of people served in years past; that service, once received, is counted toward the grand total of all people assisted even if they do not receive the same aid in later years. Therefore, surely, the number of Nazi victims aided under Looted Assets via the Claims Conference for the period July 1, 2001-December 31, 2011 exceeds the number of survivors served in a one-year period, namely 27,599."

(2) The Court's programs on behalf of Jewish Nazi victims in the Former Soviet Union were administered by the American Jewish Joint Distribution Committee (JDC) through its *Hesed* program. Since 2001, an estimated total of at least 134,689 Jewish Nazi victims have been served by the Looted Assets Class program in the FSU. *See* May 8, 2012 Letter of Herbert Block, Assistant Executive Vice President of the JDC. The total number of Jewish Nazi Victims served by the Looted Assets Class program in the FSU was calculated based on the average number of JDC clients who received services funded by the Swiss Banks Settlement Fund from the period of 2003 through 2005. As the May 8, 2012 Letter explains:

> "From the period of July 2001 through December 2011, a total of 209,470 Jewish victims of Nazi persecution received welfare services as clients of the network of Hesed welfare centers in the Former Soviet Union (FSU), administered by the JDC. Some of these clients received services which were funded under the Looted Assets Class of the Swiss Banks Settlement…[F]or each year during the period 2003-2005, on average 64.3% of Jewish Nazi victims in the FSU received services funded by the Looted Assets Class of the Swiss Banks Settlement. As JDC does not track funding of services for individual clients by funding source across years, based on this average we estimate that the approximate total number of individual clients in the FSU who have been assisted to-date with Court funds to be at least 134,689[1]. However, it is likely that, in fact, the number of clients served by Settlement funds is actually somewhat higher than calculated by this statistical averaging method. This is due to the fact that every year that Looted Assets Class services are provided, some number of individuals will be receiving services for the first time, even if the total number of persons served by the program in that year may have decreased. Thus, the cumulative number of persons served will be higher than the number derived by determining the average number of persons served in any given year or period of years. The cumulative number, however, is unavailable for the reasons described above.
>
> [1] Each year food packages have been the service provided to the great[est] number of clients and therefore the percentage of clients who received this service was used to calculate the total clients served by Settlement funds. However, as the percentage of clients who received food packages funded by the Settlement decreased in 2006-2011 (as Settlement funds were used more for homecare services), if the 2006-2011 percentages were included in the calculation it would artificially and inaccurately decrease the total number of clients served."

(3) 75,176 non-Jewish victims (Roma, Jehovah's Witness, disabled and homosexual) were served by programs administered on the Court's behalf by the International Organization for Migration (IOM). *See* "Final Report on Assistance to Needy, Elderly Survivors of Nazi Persecution Humanitarian and Social Programmes", IOM-HSP

2006. In addition to the number of survivors described in the IOM's Final Report, new beneficiaries were assisted as a result of the Court's distribution of residual funds beginning in 2013.

[7] The Court authorized the allocation of interest income that had accrued on funds transferred to the JDC and the Claims Conference, thereby increasing the amount allocated to Jewish class members by $948,235. Accordingly, when adding this accrued interest to the principal, the amounts ultimately authorized for and distributed through programs administered by the JDC and the Claims Conference slightly exceeded the sum originally calculated utilizing the 90%/10% allocation between Jewish and non-Jewish class members. It is anticipated that the Court similarly will authorize the IOM to allocate accrued interest to needy survivors in connection with the IOM's disbursement of remaining residual funds.

[8] The Swiss Banks Settlement Insurance Claims Process provided Nazi Victims and their heirs the opportunity to submit claims concerning policies purchased from certain insurance companies (the "Participating Companies") between 1920 and 1945 for review by the Claims Resolution Tribunal operated under the authority of the United States District Court for the Eastern District of New York ("CRT-II"). Under the terms of the Insurance Claims Process, the Settlement Agreement compensated claimants who demonstrated that they were the legitimate owners of or heirs to unpaid insurance policies issued prior to or during the Second World War by the Participating Companies. Claimants also were required to demonstrate that policyholders or policyholders' heirs were Victims or Targets of Nazi Persecution.

SWISS BANKS SETTLEMENT FUNDS
DISTRIBUTED OR ALLOCATED TO JEWISH NAZI VICTIMS ONLY AS OF DECEMBER 31, 2018[1,2]

Programs	Totals	Israel	U.S.	FSU	Other
Slave Labor Class I[3]	$252,197,050	$118,976,850	$56,783,450	$6,504,700	$69,932,050
# of beneficiaries	173,929	82,053	39,161	4,486	48,229
% of funds		47.2%	22.5%	2.6%	27.7%
% of beneficiaries		47.2%	22.5%	2.6%	27.7%
Refugee Class	$10,783,650	$2,536,050	$4,434,825	$11,600	$3,801,175
# of beneficiaries	3,923	1,079	1,430	3	1,411
% of funds		23.5%	41.1%	.1%	35.2%
% of beneficiaries		27.5%	36.4%	.1%	36%
CRT-II (bank deposits)[4]	$708,087,685	$80,247,838	$327,369,822	$826,356	$299,643,669
# of beneficiaries	17,549	3,741	7,548	72	6,188
% of funds		11.3%	46.2%	.1%	42.3%
% of beneficiaries		21.3%	43%	.4%	35.3%
Looted Assets (allocated)[5]	$230,448,228	$28,723,557	$9,234,335	$172,432,657	$20,057,679
# of beneficiaries	162,288	19,028	1,653	134,689	6,918
% of funds		12.5%	4%	74.8%	8.7%
% of beneficiaries		11.7%	1%	83%	4.3%
Totals by Region	$1,201,516,613	$230,484,295	$397,822,432	$179,775,313	$393,434,573
# of beneficiaries	357,689	105,901	49,792	139,250	62,746
% of total funds		19.2%	33.1%	15%	32.7%
% of total beneficiaries		29.6%	13.9%	39%	17.5%

[1] This chart provides data concerning distributions or allocations to Jewish Nazi victims through December 31, 2018. For data concerning distributions or allocations to all class members -- Jewish, Roma, Jehovah's Witness, homosexual and disabled -- *see* chart entitled "Swiss Banks Settlement Fund Distribution Statistics as of December 31, 2018 ($1,298,643,604 authorized and $1,284,928,006 paid to all 458,436 class members)." In addition to the 357,689 beneficiaries reflected in the chart herein, the Court approved funding to an additional 100,762 claimants (*see* chart entitled "Swiss Banks Settlement Fund Distribution Statistics as of December 31, 2017), for a total of 458,451. The 100,762 is comprised of: (1) 547 Holocaust victims or heirs awarded under CRT-I; (2) a total of 100,090 non-Jewish Roma, Jehovah's Witness, homosexual and disabled class members were assisted under the Court's supervision via programs administered by the IOM as follows: 75,176 Looted Assets Class members, 24,109 Slave Labor Class I victim claims, 570 Slave Labor Class II victim claims, and 235 Refugee victim claims; (3) 118 Holocaust victim claims approved under the Swiss Banks Settlement Insurance Claims process; and (4) 7 class members whom the Court determined provided "efforts [which] materially aided the plaintiff class." *See e.g.*, Memorandum & Order, December 4, 2002.

[2] This geographic distribution chart provides data concerning funds authorized. In connection with the reconciliation of the $1.25 billion Settlement Fund (and preparation of a final report), the statistics in the chart, "Swiss Banks Settlement Fund Distribution Statistics as of December 31, 2018" were updated to set forth two categories of information: (1) "Funds Authorized": amounts authorized by court order upon the Court's review and approval of materials analyzed, prepared and submitted by the administrative agencies in consultation with the Special Masters; and (2) "Funds Paid": amounts paid to individual claimants after their claims were approved by the Court. "Funds authorized" exceeded "funds paid" for the following reasons: (1) approved claimants could not be located despite numerous efforts to obtain contact information; (2) approved claimants passed away and no eligible heirs could be located; (3) approved claimants refused to accept payment and/or refused to complete documentation required to effectuate payment; and/or (4) in a limited number of cases, certain approved Deposited Assets Class awards were withdrawn by Court order as a result of information which came to the attention of the CRT subsequent to the authorization of such awards. In all instances, any funds authorized but unpaid were either applied to authorized but unfunded awards of the same class, or returned to the Settlement Fund for reauthorization and distribution to other class members. Accordingly, certain funds that were authorized but unpaid for one class (e.g., Deposited Assets) were reauthorized and distributed to another class (e.g., Looted Assets), and thus would be reflected twice under the "Funds Authorized" category, but once under the "Funds Paid" category.

[3] As reflected in the chart, "Swiss Banks Settlement Fund Distribution Statistics as of December 31, 2018", a total of 173,914 Jewish Nazi victims were paid $252,175,300 under Slave Labor Class I. This geographic distribution chart reflects a total of 173,929 Jewish Nazi victims; i.e. 15 more than the final number as reconciled, a statistical discrepancy of zero. Likewise, this geographic distribution chart reflects total payments of $252,197,050; i.e. $21,750 more than the final number as reconciled, also a statistical discrepancy of zero.

[4] This chart does not reflect CRT-I awards of $18,184,493. Total authorized CRT-I and CRT-II awards were $726,272,177.

[5] The Looted Assets Class data consists of funds distributed through 2017 as well as estimations of funds to be allocated through the end of the program in 2018.

ABBREVIATIONS GUIDE

AA: Arthur Andersen (accounting firm)

ADL: Activities of daily living (social services assessment system)

AG: *Aktiengesellschaft* (German company)

AHD: Accounts History Database (approximately 37,000 Swiss bank accounts available to the CRT claims process, of 4.1 million Holocaust-era accounts. *See also* "TAD" below)

ALDA: Additional Labor Distribution Amount (slave labor compensation fund administered by the Claims Conference as part of the Austrian Reconciliation Foundation established in 2000)

ANAG: Swiss Federal Law on Residence and Settlement of Foreigners (enacted March 1931)

AO: Account Owner (Swiss bank account owner as reflected in the bank records)

ASA: Austrian State Archive (custodian of the records of the 1938 Austrian census, which required registration of assets owned by Jewish persons)

ATAG: *Allgemeine Treuhand AG* (Swiss-based branch of Ernst & Young accounting firm)

ATCA: Alien Tort Claims Act (United States statute providing for jurisdiction over certain foreign nationals)

BEG: *Bundesentschädigungsgesetze* (first post-War West German Holocaust compensation program)

BIS: Bank for International Settlements (international bank for national central banks)

CAS: Claims Adjudication System (original database used by CRT)

CAO: Claimed Account Owner (Swiss bank account owner as described in a claim form reviewed by the CRT)

CEEF: Central and Eastern European Fund (German-funded compensation program)

CPS: Claims Processing System (updated database used by the CRT)

CRT: Claims Resolution Tribunal (Court-appointed agency in Zurich; assessed claims to Swiss bank accounts).

CSG: Credit Suisse Group (one of the settling defendants)

CZA: Central Zionist Archives (archives of the history of the Zionist movement within Israel/Palestine and internationally)

DI: Data Integrity (preliminary review of CRT claims)

DM: *Deutschmarks* (German currency pre-dating Euro)

DP: Displaced Person (post-War stateless individual)

EAP: Emergency Assistance Program (Claims Conference-funded emergency grants for needy survivors)

EDNY: United States District Court for the Eastern District of New York (U.S. court in which Holocaust-related claims against Swiss banks were brought and settled; oversaw distribution of $1.25 billion settlement fund)

EHRI: European Holocaust Research Infrastructure (online access portal to Holocaust-related sources)

EJPD (also **SFDJP**): Swiss Federal Department of Justice and Police

EKIH: Swiss Commission for Internment and Housing (established June 1940)

EPCAP: Enemy Property Claims Assessment Panel (United Kingdom compensation program)

ETH: Archives for Contemporary History of the Federal Institute of Technology Zurich

EU: European Union

EVZ: *Stiftung Erinnerung, Verantwortung und Zukunft*, German Foundation Remembrance, Responsibility and Future (created in 2000 to resolve slave labor and other claims)

FINMA: Swiss Financial Market Supervisory Authority

FRA: Forensic Risk Alliance (consulting firm engaged to update CRT database)

FRCP: Federal Rules of Civil Procedure (United States statutes governing judicial proceedings)

FSU: Former Soviet Union (the 15 independent states created after the December 1991 dissolution of the Union of Soviet Socialist Republics)

GDV: *Gesamtverband der Deutschen Versicherungswirtschaft*, German Insurers Association

GFLCP: German Forced Labour Compensation Programme (International Organization for Migration's program under the Swiss Banks Settlement and German Foundation EVZ)

GSF: Austrian General Settlement Fund for Victims of National Socialism (Austrian Holocaust compensation program)

HCPO: Holocaust Claims Processing Office of the New York State Department of Financial Services (assists Holocaust survivors and heirs with claims to assets)

HSP: Holocaust Survivor Programme (International Organization for Migration's program for needy survivors under the Swiss Banks Settlement and German Foundation EVZ)

HVAP: Holocaust Victim Assets Programme - Swiss Banks (International Organization for Migration's claims program for non-Jewish Swiss Banks Settlement class members, overseen by the Special Masters and the Court)

IADL: Instrumental activities of daily living (social services assessment system)

ICE: Independent Commission of Experts Switzerland - Second World War, also known as the Bergier Commission (Swiss commission of historical experts who studied Swiss behavior during and after the Holocaust)

ICEP: Independent Committee of Eminent Persons, also known as the Volcker Committee (oversaw audit of Swiss banks)

ICHEIC: International Commission on Holocaust Era Insurance Claims (established by multilateral agreement to analyze Holocaust-era insurance claims)

ICRC: International Committee of the Red Cross (humanitarian institution based in Geneva, Switzerland)

IMI: Italian Military Internee (Italian soldiers sent by Germany to concentration camps)

IOM: International Organization for Migration (non-governmental organization appointed by Court to assist with claims programs for non-Jewish class members)

IQ: Initial Questionnaire (preliminary inquiry filled out by over 600,000 potential Swiss Banks settlement class members)

IRC: International Rescue Committee (founded in 1933 at the suggestion of Albert Einstein to assist Germans suffering under the Nazi regime)

IRO: Independent Review Officer (originally intended to review Slave Labor Class II appeals; such appeals ultimately were reviewed by the IOM and then the Court)

ITS: International Tracing Service, Bad Arolsen, Germany (major post-War archives, including names and other information concerning Nazi victims)

JCC: Jewish Claims Conference, Conference on Jewish Material Claims Against Germany, Inc. (Holocaust restitution organization appointed by Court to assist with programs for Jewish class members)

JDC: American Jewish Joint Distribution Committee (non-governmental organization appointed by Court to assist with programs for needy class members)

JFS: Jewish Family Services (social service agency)

JTA: Jewish Telegraphic Agency (news organization)

JWHESF: Jehovah's Witness Holocaust Era Survivors' Fund (organization representing certain Jehovah's Witness survivors)

KPMG: *Klynveld Peat Marwick Goerdeler* (accounting firm)

KZ: *Konzentrationslager* (concentration camps)

MPM: Multiple Plausible Match (more than one plausible claim to Swiss bank account)

NGO: Non-governmental organization

NJPS: National Jewish Population Survey (representative survey of the Jewish population in the United States sponsored by United Jewish Communities and the Jewish Federation system)

NML: No-match letter (notification to claimant that no Swiss account was found under the name provided)

NV: Nazi victim

N.V.: *Naamloze vennootschap* (public company in the Netherlands or Belgium)

NZZ: Neue Zürcher Zeitung (Swiss news organization)

OFP: *Oberfinanzprasident* (Office of the Chief Regional Finance Officer for the German Reich)

OSE: *Oeuvre de Secours aux Enfants* (Children's Relief Committee; Jewish French child care organization - hid thousands of children of deportees in non-Jewish homes)

ÖZAG: *Österreichische Zuckerindustrie AG*, Austrian sugar refinery (subject of the largest CRT award authorized by the Court - approximately $22 million was returned to Bloch-Bauer family for Holocaust-era accounts turned over to the Nazis by Swiss banks)

PIC: Participating Insurance Carrier (Swiss Re and Swiss Life, participants in the insurance claims process established under the Swiss Banks settlement)

POA: Power of Attorney Holder; referring in this context to bank account ownership

PUA: Plausible Undocumented Award (Court-approved award for bank account claim supported by evidence for which no Swiss bank records remain)

PWC: Price Waterhouse Coopers (accounting firm)

RM: *Reichsmarks* (Holocaust-era German currency)

SBA: Swiss Bankers Association (organization of Swiss financial institutions; its Ombudsman reviews dormant account claims)

SBC: *Schweizerischer Bankverein*, Swiss Banking Corporation (merged with UBS, one of the settling defendants)

SDAP: Swiss Deposited Assets Program (administrative agency based in New York providing assistance to the CRT)

SF: Swiss francs (Swiss currency)

SFA: Swiss Federal Archive (Swiss archival institution)

SFBC: Swiss Federal Banking Commission (supervises Swiss banking sector)

SFDJP (also **EJPD**): Swiss Federal Department of Justice and Police (Swiss governmental agency)

SFJC: Swiss Federation of Jewish Communities (umbrella organization for Jewish communities in Switzerland)

SHEK: Swiss Committee for Aid to Children of Emigres (Holocaust-era childrens' aid society; arranged short-term stays in Switzerland)

SKA: *Schweizerische Kreditanstalt* (predecessor bank to Credit Suisse, one of the settling defendants)

SLI or **SLCI**: Slave Labor Class I (Swiss Banks Settlement Agreement class)

SLII or **SLCII**: Slave Labor Class II (Swiss Banks Settlement Agreement class)

SMO: Special Master's Office (Office of CRT Special Master Michael Bradfield)

SNB: Swiss National Bank (Swiss central bank)

SOS: Claims Conference-funded emergency grants for needy survivors

SZF: Swiss Central Office for Refugee Relief

TAD: Total Accounts Database (4.1 million Swiss bank accounts remaining from the original 6.8 million Holocaust-era accounts; TAD accounts were not published and not generally available to the CRT claims process; *see also* "AHD" above)

TGC: Tripartite Gold Commission (post-War panel established to recover and return, primarily to central banks, gold stolen by Nazi Germany)

UBS: *Schweizerische Bankgesellschaft,* Union Bank of Switzerland (one of the settling defendants)

UJA: United Jewish Appeal (Jewish philanthropic umbrella organization)

UNRRA: United Nations Relief and Rehabilitation Administration

USHMM: United States Holocaust Memorial Museum (Washington D.C.-based research institute and museum)

VA: Voluntary assistance (case-by-case assistance from settling defendant Swiss banks in connection with CRT analysis of claim; generally involving provision of supplemental documents)

VLP: Victim List Project (Court-authorized program established to collect and memorialize the names of Holocaust victims)

VSJF: *Verband Schweizerischer Jüdischer Fürsorgen,* Swiss Jewish Association for Refugee Relief (aid organization assisting Swiss Jewish refugees)

VVSt.: *Vermögensverkehrsstelle* (Austrian Ministry for Economics and Labor charged with registering and administering Jewish-owned property)

WJC: World Jewish Congress (international advocacy organization representing Jewish communities and organizations worldwide)

WJRO: World Jewish Restitution Organization (pursues claims for Jewish properties in Europe, excluding Germany and Austria)

YIVO: *Yidisher Visnshaftlekher Institut*, Yiddish Scientific Institute (research organization)

YV: Yad Vashem (Jerusalem-based Holocaust research institute and museum)

ZL: *Zentralleitung der Arbeitslager für Emigranten*, Swiss Central Direction for Emigrant Labor Camps (oversaw Swiss refugee camps)

ORGANIZATIONAL ENDORSEMENTS OF SETTLEMENT AGREEMENT

The Settlement Agreement became operative as of March 30, 1999 following execution of written "Organizational Endorsements" of the agreement by 17 major worldwide Jewish organizations. The "Endorsement" provided that each entity "endorse[d] the Settlement Agreement …. as a fair, adequate and reasonable settlement"; "affirm[ed] that the Settlement Agreement [brought] about complete closure and an end to confrontation with respect to the issues dealt with in the settlement"; "agree[d] not to make any public statement or take any action that would violate or be inconsistent with this endorsement, including requesting or approving sanctions or opposing business transactions involving Swiss entities released by the Settlement Agreement based on conduct covered by the settlement"; "covenant[ed] not to sue, call for suits against, or support suits against any Swiss entity released by the Settlement Agreement based on conduct covered by the settlement"; and "waive[d] any and all claims it may have against the Swiss entities released by the Settlement Agreement based on conduct covered by the settlement." The 17 organizations that signed the agreement are as follows:

- Agudath Israel World Organization
- Alliance Israelite Universelle
- American Gathering/Federation of Jewish Holocaust Survivors
- American Jewish Committee
- American Jewish Congress
- American Jewish Joint Distribution Committee
- Anti-Defamation League
- B'nai B'rith International
- Centre of Organizations of Holocaust Survivors in Israel
- Conference [on] Jewish Material Claims Against Germany
- Council of Jews from Germany
- European Council of Jewish Communities
- Holocaust-Educational Trust
- Jewish Agency for Israel
- Simon W[ie]senthal Center
- World Jewish Congress
- World Zionist Organization

Proposals on Allocation and Distribution of the Settlement Fund (2000) and Possible Residual Funds (2004)

All proposals and supporting documentation are available on the internet at www.swissbankclaims.com (Archives)

Proposals filed in 2000

- Ms. Agnes
- Agudas Chasidei Chabad
- Agudath Israel World Organization
- Amicale des Deportes d' Auschwitz
- American Friends of Beth Hatefutsoth
- American Gathering of Jewish Holocaust Survivors
- Asociacion Filantropica Israelita
- Association of Holocaust Survivors from the Former Soviet Union
- Association de Sauvegarde de l' Adolescence du Morbihan
- Auschwitz Jewish Center Foundation
- The Campaign Against Genocide
- Central Council of Sinti and Roma of Germany
- Central Union of Jewish Religious Communities in the Slovak Republic
- Central Union of Jewish Religious Communities in the Slovak Republic
- Committee for the Preservation of the Jewish Cemeteries of Ternopal and Mickulitsy, Ukraine
- Conference of European Rabbis
- European Council of Jewish Communities
- European Jewish Congress
- The Federation of Swiss Jewish Communities
- Florida Department of Insurance
- Gerhard E
- Holocaust Survivors, Inc. – Queens Chapter
- Ida W
- The European Region of the International Lesbian and Gay Association
- International Romani Union
- International Society for Jewish Art Inc.
- Irgun Olej Merkas Europa
- Jewish Communities Association in the Ukraine
- Jewish Confederation of the Ukraine
- The Jewish Museum
- Kiryat Hidushe Harim
- Kolel Chibas Jerusalem Reb Meyer Ball Haness
- Mr. Lev

- Memorial Foundation for Jewish Culture
- Menachem Z.
- Morris A. Ratner, Esq.
- Ms. Edyta (Redacted)
- The National Association of Jewish Child Holocaust Survivors, Inc.
- Naum Z
- Pesha Elias Bikur Cholim D'Bobov
- Proposal for the Distribution of Funds to the Romani People
- Rita M
- Roma Association Zagreb and Zagreb County
- Roma National Congress
- Roma National Union
- The Russian Jewish Congress
- Salzburg Seminar
- Simon Wiesenthal Center
- Ukrainian Association of Jews ghetto and concentration camp survivors
- Vaad Hanochos Hatmimim, Inc. (The Foundation for the Preservation of Yiddish and Yiddishkeit)
- Mr. Walter
- Watch Tower Bible and Tract Society of Pennsylvania
- World Jewish Restitution Organization
- World Council of Orthodox Jewish Communities
- World Union for Progressive Judaism
- Yelizaveta V
- Yeshiva Chofetz Chaim of Radin
- Yivo Institute for Jewish Research
- Association of New Immigrants for the State of Israel and Social Justice
- Projects Inc
- The World Association of Belarusan Jewry Justice

Proposals filed in 2004

- American Gathering of Jewish Holocaust Survivors
- Agudath Israel World Organization
- All Ukrainian Association of Jews - Former Prisoners of Ghetto and Nazi Concentration Camps
- American Jewish Joint Distribution Commitee (Former Soviet Union)
- American Jewish Joint Distribution Committee (Central and Eastern Europe)
- Amigour
- Anonymous
- Association of Jewish Holocaust Survivors (Abraham Friedman)
- Association of Holocaust Survivors from the Former Soviet Union
- Beit Lohamei Haghetaot - Ghetto Fighter's House Museum
- Bnei Brak Hospital
- Centre of Organizations of Holocaust Survivors in Israel
- Christian Center of the Roma
- Clark, Ramsey
- Computer Sciences for the Blind
- Disability Rights Advocates
- Eizenstat, Stuart
- Elah
- Executive Council of Australian Jewry
- Ezrat Ahim Brit Yosef Yitzchak Organization
- Foundation for the Benefit of Holocaust Victims in Israel
- Goldstein, Sybilla
- Guardians of the Sick
- Hebrew Home for the Aged at Riverdale
- Holocaust Survivor Foundation
- International Organization for Migration
- International Romani Union
- Irgun Olej Merkas Europa and Solidaritaets Werk des Irgun Olej Merkas Europa
- Israel Gerontological Society
- Jehovah's Witness Holocaust Era
- Jewish Federation of Metro Chicago
- Jewish Foundation for the Righteous
- Jewish Heritage of Hungary Public Endowment
- Kiryat Yeshivath Chisudei Harim
- Lubavitch World Headquarters
- Proposal for the Federation of Jewish Communities in the former Soviet Union
- Proposal for the Rescue and Preservation of Chabad Chasidic Treasures
- Proposal for Chabad-Lubavitch of Argentina
- Proposal for Chabad of Athens
- Proposal for the Jewish Community of Bratislava and Chabad of Slovakia
- Proposal for Chabad-Lubavitch of Peru
- Proposal for Ohel Yakov/Organizzazione Profughi Ebrei in Italia

- Proposal for United Soup Kitchens of Colel Chabad
- March of the Living
- Massuah
- Mazsihisz Charity Jewish Hospital of Hungary
- Meir Panim Soup Kitchens in Israel
- Melabev Community Clubs for Elderly
- Moreshet
- Ms D
- Merkaz Vurke
- Nachas Health & Family Network
- New York Legal Assistance Group
- One Thousand Children
- Partidul Relansari Dociale Din Romania
- Pesach Tikvah Hope Development
- Pesha Elias Bikur C Cholim D'Bobov
- Pezold, Elizabeth and Ruediger
- Pick, George
- Addition to Proposal
- Pink Triangle Coalition [Lambda]
- Projects Inc
- Rodeph Chesed
- Roma National Union of Sweden
- Rosen, Robert Eli
- Schoenberg, E. Randol
- Sheftel Beckerman Simhony
- Stockholms Zigenarfoerening
- Schwartz, Tim
- Swift, Robert A.
- Syms School of Business - William Schwarz
- The Blue Card
- Torah Umesorah - National Society for Hebrew Day School
- Udruga Roma Grada Zagreba Izagrebacke Zupanje
- UJA Federation
- Umbrella Group of Holocaust Survivor and Refugee Organizations in the UK
- United Jewish Communities
- United Jewish Organization of Williamsburgh
- Metropolitan Council On Jewish Poverty
- University of Miami School of Law
- Verband Schweizerischer Juedischer Fuersorgen Union Suisse des Comites dEntrade Juive
- Wiktor Famulson of International Romani Union

- WJRO/State of Israel:

  - Proposal of World Jewish Restitution Organization & State of Israel, Ministry of Health
  - Proposal of World Jewish Restitution Organization & State of Israel, Ministry of Social Affairs
  - Proposal of Foundation for the Benefit of Holocaust Victims
  - Proposal of Amcha
  - Proposal of Amigour
  - Proposal of Yad Vashem
  - Proposal of Center of Organizations of Holocaust Survivors in Israel
  - Proposal of Jewish Agency for Israel, Department of Education

- World Association of Wolynian Jews
- World Council of Orthodox Jewish Communities
- Yad Laad
- Yad Mordechai
- Yad Sarah
- Yivo Institute for Jewish Research
- Zidovska Obec Brno
- Zidovska Obec Olomouc
- Zidovska Obec y Praze

Comments on Proposals filed in (2004)

- All Ukrainian Association of Jews-Former Prisoners of Ghetto and Nazi Concentration Camps
- Amnesty International
- Anonymous advocate from Israel
- Disability Rights Advocate
- Galperin, Simon
- Herrmann, Anselm
- Holocaust Survivor Foundation USA
- ICP - International Committee for the Preservation of Jewish Memorial Sites
- Jewish Community of Bratislava
- Jewish Community of Estonia
- Jewish Council for Public Affairs
- Lantos, Tom
- Leibovitch, Ilan
- Lessing, Hannah-Nationalfonds der Republik Osterreich
- Mazsihisz - Federation of Jewish Communities in Hungary
- Paritzky, Joseph
- Rosen, Robert Eli
- Union of Jewish Communities in Poland
- Wiesenthal, Simon
- Swift, Robert A.

- von Pezold, Rudiger
- Washington State Legislature
- Simon Wiesenthal Centre-France

GLOSSARY: IN RE HOLOCAUST VICTIM ASSETS LITIGATION

1945 Freeze: Pursuant to a decree of the Swiss Federal Council, all assets in Switzerland belonging to citizens of Germany and the territories incorporated into the Third Reich were frozen on February 16, 1945. A Swiss government ruling of May 29, 1945 required that all German assets in Switzerland had to be reported to the Swiss Compensation Office. The freeze was lifted pursuant to the agreements concluded between Switzerland and Western Germany and between Switzerland, USA, France and the United Kingdom in August 1952. These agreements entered into force on 19 March 1953.

1962 Survey: By Federal Decree of December 20, 1962, the Swiss Federal Council obliged all individuals, legal entities, and associations to report any Swiss-based assets whose last-known owners were foreign nationals or stateless persons of whom nothing had been heard since May 9, 1945 and who were known or presumed to have been victims of racial, religious, or political persecution.

2001 List: On February 5, 2001, a list was published with the endorsement of the Swiss Federal Banking Commission ("SFBC") that contained names of owners of approximately 21,000 accounts that were determined by the auditors for the Independent Committee of Eminent Persons (ICEP) to have probably or possibly belonged to victims of Nazi persecutions. In addition to the 21,000 published accounts, another 15,000 accounts also were determined to have probably or possibly belonged to victims of Nazi persecution but were not authorized for publication by the SFBC. All 36,000 accounts were made available to the claims process established under the Settlement Agreement as part of the "Account History Database" (AHD) (see below).

2005 List: On January 13, 2005, the Claims Resolution Tribunal (the "CRT") published an additional list of names of approximately 2,700 Account Owners and 400 Power of Attorney holders of Swiss bank accounts whose owners were probably or possibly Victims of Nazi persecution. The purpose of the 2005 List was to enable eligible claimants to identify the owners of Swiss bank accounts that were open or opened between 1933 and 1945 and to make claims to those accounts to which they may have been entitled. The list included names previously identified during the ICEP investigation of Swiss banks as possibly belonging to Holocaust victims. These names were not included in the list of names previously published with the endorsement of the SFBC in 2001. In addition, the 2005 List contained names of Account Owners and Power of Attorney Holders previously identified in a survey of dormant bank accounts conducted pursuant to the 1962 Survey (see *1962 Survey supra*). Additional names of Account Owners were identified in records available to the CRT from archival sources.

Account History Database (AHD): On December 6, 1999, the Volcker Committee (*see infra*) released its final report. Its research showed that some 6.8 million Swiss bank accounts were open or opened during the relevant period of 1933-1945. Of these, the banks had destroyed documents relating to approximately 2.7 million accounts. Despite this massive document destruction, records still remained for approximately 4.1 million

Holocaust-era Swiss accounts. The auditors conducted research on approximately 300,000 of these 4.1 million accounts. The Volcker Committee determined that of the 300,000 accounts investigated, a total of approximately 54,000 (specifically 53,886) had a "probable" or "possible" relationship to victims of Nazi persecution. These 53,886 accounts -- subsequently reduced to 36,000 by a so-called "scrubbing" process -- were to constitute the Accounts History Database ("AHD"); *i.e.*, the database of accounts that would be made available to the CRT for use in the claims process. The Volcker Committee further recommended that approximately 21,000 of the 36,000 AHD accounts should be published. The remaining approximately 15,000 accounts were not to be published, but were to be available to the CRT for review in the event that a Holocaust victim or heir submitted a claim that appeared to match to the unpublished account. As to the bulk of the 4.1 million Holocaust-era accounts for which records continued to exist, but which were not included as part of the AHD, the Volcker Committee recommended that those remaining accounts should be consolidated into a "Total Accounts Database" (TAD) that also would be available for use in a claims process. The SFBC declined to adopt the Volcker Committee's recommendation to create a Total Accounts Database for all of the 4.1 million accounts that existed in Swiss Banks in the relevant 1933-1945 period. The 36,000-account AHD was augmented to 38,624 accounts by information obtained by the CRT from archival records, claimant data and other sources.

Account Owner: The person named in the bank records as the owner or beneficiary of the account.

Adverse Inference: In the absence of evidence to the contrary, based upon the legal principle of spoliation, there were a variety of circumstances in which the Claims Resolution Tribunal presumed that neither the Account Owner, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account. Please see Appendix A of the Rules Governing the Claims Resolution Process (As Amended) for specific circumstances**.**

Amendment 2: An amendment modifying the original Settlement Agreement, relating to looted art and insurance claims. Additional modifications included the defendant banks' agreement to cooperate with the recommendations of the Volcker Committee; provisions regarding the payment of Deposited Assets claims; and provisions regarding the continued operation and funding of the CRT.

American Jewish Joint Distribution Committee (JDC): In existence since 1914, the JDC is a humanitarian agency which has been involved in relief efforts on behalf of Jewish and non-Jewish individuals worldwide. The Court appointed the JDC to implement distribution of humanitarian assistance to the neediest Jewish members of the Looted Assets Class residing in Central and Eastern Europe and the former Soviet Union.

Appendix C: A provision adopted by the Court as part of the CRT Rules (defined below), which presumed as follows: "where accounts of German owners were closed on or after January 30, 1933, the date of Hitler's accession as Chancellor, absent evidence to the contrary such as bank records, the CRT will presume that the account owners and their heirs did not receive the benefit of their assets."

Article 2 Fund: Program established by Article 2 of the Implementation Agreement to the German Unification Treaty of October 3, 1990 and administered by the Claims Conference to compensate survivors of the Holocaust who had previously received little or no indemnification from the German government. Eligibility is restricted to survivors who meet certain defined criteria, including income limitations and minimum incarceration periods.

Austrian Census: By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level, to register all assets as of 27 April 1938. The records of the 1938 Austrian census are housed in the Austrian State Archive (Archive of the Republic, Finance).

Average Value: *See* "Presumptive Value" *infra*.

Award: A final decision of the CRT that the claimant was the rightful owner of a specified amount of money to be paid with the approval of the Court.

Bank Account Categories: Any type of bank account including custody, demand deposit (also known as current), passbook/savings, safety deposit boxes, "other" and unknown type. *See also* "Custody Account," "Demand Deposit Account," "Passbook/Savings Account," "Safe Deposit Box Account," "Other Account," and "Unknown Type of Account."

Bergier Commission: *See* "Independent Commission of Experts" (ICE) *infra.*

Bergier Report: *See* "Independent Commission of Experts (ICE)" *infra.*

Bloch-Bauer: *See* "OZAG" *infra.*

Bundesentschädigungsgesetz (BEG): In 1953, in accordance with its commitment to the Claims Conference set forth in Protocol 1 of the Luxembourg Agreement, the Federal Republic of Germany enacted its first Holocaust Indemnification statutes. The law was revised in 1956 and again in 1965. The statutes, collectively known as the "BEG," provided for compensation for wrongful death, disability, injury to health, incarceration, and damage to professional and economic standing, and, to a limited extent, property loss. The BEG was administered entirely by and within Germany.

Category 1: The Volcker Committee classified the AHD accounts into four different categories. "Category 1" was comprised of 3,191 accounts. These were accounts that remained open and dormant, were placed in suspense accounts, or closed after some period of dormancy, and matched exactly or almost exactly with names of known Holocaust victims or claimants.

Category 2: The second of the four categories of accounts with a "probable or possible relationship to victims of Nazi persecution" identified by the Volcker Committee. "Category 2" consisted of 7,280 accounts that did not meet the exact or near-exact name matching test, but nonetheless had other characteristics that suggested a probable or possible relationship

between the account holders and victims of Nazi persecution -- Relevant Period (*see infra*) accounts of people who were resident in an Axis or Axis-occupied country during that Period, that were either inactive for at least 10 years after 1945 or, in some cases, identified by the bank as the account of a victim, or met other criteria.

Category 3: The third of the four categories of accounts with a "probable or possible relationship to victims of Nazi persecution" identified by the Volcker Committee. Category 3 consisted of a much larger number of closed accounts -- 30,692 -- open in the Relevant Period by residents of Axis or Axis-occupied countries, matched exactly or almost exactly to names of victims, which were closed (except for Germany) during or subsequent to the year of Axis occupation of the country of residence of the account holder or after the war. These characteristics were indicators of a probable or possible relationship of these accounts to victims. The Volcker Report noted that these accounts had no direct evidence of an extended period of dormancy, or of unauthorized closure, important elements of the presumption that there was a relationship to a victim. However, the Volcker Report also pointed out that 14,716 of these accounts had unique name matches or had confirming factors, and a total of 15,980 had unique or almost unique matches. These name matches therefore indicated a significantly higher probability that the relationship of these accounts to victims was not simply a coincidence of common names but were genuine matches between account holders and victims of Nazi persecution.

Category 4: The fourth of the four categories of accounts with a "probable or possible relationship to victims of Nazi persecution" identified by the Volcker Committee. Category 4 consisted of 12,723 nominally foreign accounts open in the Relevant Period that could not be matched to victim names and lacked evidence of a residence by an account holder in an Axis or Axis-occupied country during the Relevant Period. Some 8,400 suspended, unknown and savings type accounts in this Category came from Swiss Volksbank (now a part of Credit Suisse Group) and Banque Cantonale Neuchâteloise. Although these banks had a predominantly domestic retail business during the Relevant Period, they also had many contacts with foreigners. All of the accounts in this Category were considered as having a sufficiently possible relationship to Holocaust victims to warrant their inclusion in Category 4.

Central and Eastern European Fund (CEEF): In January 1998, after negotiations with the German government, the Claims Conference reached an agreement providing compensation for the first time to Jewish victims of Nazi persecution in Central and Eastern Europe and the former Soviet Union. Eligibility is restricted to survivors who meet certain defined criteria, including income limitations and minimum incarceration periods.

Claimed Account Owner: The person asserted by the Claimant to have owned a Holocaust-era Swiss bank account. In addition to researching accounts possibly owned by the Claimed Account Owner, the CRT also conducted other research to determine whether accounts may have been owned by other family members identified by claimants in their claim forms, Initial Questionnaires, and other communications to the CRT, even if those other family members were not specifically identified by Claimants as "Claimed Account Owners."

Claims or Settled Claims: As defined under the Settlement Agreement: "Any and all actions, causes of action, claims, Unknown Claims, obligations, damages, costs, expenses, losses, rights, promises, and agreements of any nature and demands whatsoever, from the beginning of the world to now and any time in the future, arising from or in connection with actual or alleged facts occurring on or before the date of this Settlement Agreement, whether in law, admiralty, or equity, whether class or individual, under any international, national, state, provincial, or municipal law, whether now accrued or asserted or hereafter arising or discovered, that may be, may have been, could have been, or could be brought in any jurisdiction before any court, arbitral tribunal, or similar body against any Releasee directly or indirectly, for, upon, by reason of, or in connection with any act or omission in any way relating to the Holocaust, World War II and its prelude and aftermath, Victims or Targets of Nazi Persecution, transactions with or actions of the Nazi Regime, treatment of refugees fleeing Nazi persecution by the Swiss Confederation or other Releasees, or any related cause or thing whatever, including, without limitation, all claims in the Filed Actions and all other claims relating to Deposited Assets, Looted Assets, Cloaked Assets, and/or Slave Labor, or any prior or future efforts to recover on such claims directly or indirectly from any Releasee."

Claims Processing System (CPS): A computer system utilized by the CRT beginning in the fall of 2003 to register and track claims, record communication with claimants and document decisions regarding each claim. The CRT switched from the Claims Adjudication System (**"**CAS**"**) to CPS because: (1) the CPS matching program was superior, (2) CPS had the technical capacity to deal with the approximately 70,000 additional claims contained in Initial Questionnaires which, by Court order, were authorized to be processed as claim forms; and (3) CPS could be used by staff in Zurich and New York, allowed for sharing of claimant information and provided a variety of security measures.

Claims Resolution Tribunal (CRT): The administrative agency responsible for processing claims relating to assets deposited in Swiss banks by Victims or Targets of Nazi persecution prior to and during the Second World War. The CRT operated in Zurich and, for certain functions, in New York, under the direct supervision of the Court and the Court-appointed Special Masters**.**

Closed Account: To make an Award for claims to Accounts that were categorized by ICEP as "closed unknown by whom," the CRT had to determine whether the Account Owners or their heirs received the proceeds of the Account prior to the time when the claim was submitted to the CRT. For presumptions relating to claims to certain closed accounts, *see* CRT Rules, Article 28**.**

Conference on Jewish Material Claims Against Germany (Claims Conference): The Conference on Jewish Material Claims Against Germany since 1951 has secured compensation and restitution for survivors of the Holocaust and heirs of victims. The organization has negotiated for and distributed payments from Germany, Austria, other governments, and certain industry; recovered unclaimed German Jewish property; and funded programs to assist the neediest Jewish victims of Nazism. Under the supervision of the Court and Special Masters, the Claims Conference administered the Court's programs for

Jewish members of Slave Labor Class I, the Refugee Class and the Looted Assets Class. Through the Swiss Deposited Assets Program (SDAP) (*see infra*), the Claims Conference also provided technical and other assistance to the CRT.

Confirmed Match: The CRT's determination that the Claimed Account Owner identified by the Claimant(s) was definitely or plausibly the Account Owner identified in the bank records.

Court: The US. District Court for the Eastern District of New York, U.S.A., Judge Edward R. Korman presiding in the *Holocaust Victim Assets Litigation.*

Custody Account: An interest-bearing account, also known as a "depot" or securities account. The bank held the account owner's property, usually consisting of securities (i.e., stocks or bonds).

CRT-I: The Claims Resolution Tribunal (CRT) was established in 1997 and its original mission was to arbitrate claims to 5,570 dormant accounts in Swiss banks that were published in 1997, prior to the completion of the ICEP investigation in 1999. That arbitration process is now referred to as CRT-I. The accounts adjudicated by CRT-I dated from 1933 to 1945 and remained open and dormant. Those accounts were owned both by Victims of Nazi persecution, and by non-Nazi victims. Ultimately, CRT-I adjudicated over 9,000 claims to accounts published in 1997. The work of CRT-I involving these accounts was completed in the spring of 2001.

CRT-II: The CRT began a new phase of its existence when it was charged with the processing of Deposited Assets claims as part of the Settlement Agreement and is now known as CRT-II. On February 5, 2001, CRT-II was established to provide Nazi victims or their heirs with an opportunity to make claims to assets deposited in Swiss Banks in the period before and during World War II. The claims process was part of the settlement of the *Holocaust Victim Assets Litigation* in the United States District Court for the Eastern District of New York, Judge Edward R. Korman presiding. CRT-II operated in Zurich under the supervision of the Court and the Special Masters.

CRT Rules: The rules governing the Claims Resolution Process established to provide the framework for the CRT to adjudicate the claims of victims or targets of Nazi persecution or their heirs to deposited assets in Swiss banks arising from the settlement of the *Holocaust Victims Assets Litigation*.

***Cy Pres*:** A remedy for relief through a class-wide benefit program where it is difficult or impractical to provide direct monetary compensation to individual class members; also referred to as the "next best thing."

Data Integrity: Data Integrity ("DI") was the manual process of controlling the quality of the data that was entered into the CRT's database. During DI, claim forms and Initial Questionnaires ("IQs") (*see infra*) authorized for treatment as claim forms were reviewed to ensure that the name of every relevant family member for each claimant was included for

matching to names of account owners appearing in the Swiss bank records and other documentation to which the CRT has had access.

Data Librarian: An accountant employed by the Court, as required by the Swiss banking authorities, to review and often redact information from each bank record before it was provided to the CRT for analysis.

Defendant Banks (also known as "Settling Defendants"): As defined under the Settlement Agreement: "Credit Suisse and UBS AG (as successor to Union Bank of Switzerland and Swiss Bank Corporation) and each of their former and current corporate parents, subsidiaries, affiliates and branches (including, without limitation, Credit Suisse Group, Credit Suisse, Credit Suisse First Boston, Credit Suisse Financial Products, Credit Suisse First Boston (Europe) Ltd., Credit Suisse First Boston Canada, Inc. and CSFB Aktiengesellschaft), predecessors, successors, assigns, officers, directors, employees, agents, attorneys, heirs, executors, administrators, and personal administrators, wherever they were, are, or may be located, incorporated, or conducting business, except for Winterthur Lebensversicherungs Gesellschaft and its subsidiaries in the insurance business, but only to the extent of insurance claims of the type asserted in *Cornell et al vs. Assicurazioni Generali S.p.A. et al.*"

Demand Deposit Account: Also known as a "current account." A cash account providing instant access to funds (similar to a checking account in the present day). Demand deposit accounts were held for liquidity, rather than for investment, and collected minimal or no interest.

Denial: The CRT's determination that the claim was ineligible for an award. There were a variety of bases for such determinations: (a) the claimant's relative and the account owner were not the same individual, based upon information in the bank records and/or other sources ("identity" denials); (b) the available evidence indicated that the account was closed properly and the account owner received the proceeds ("disposition denials"); (c) the claimant was not entitled to the claimed account, whether due to the absence of a family relationship to the account owner or for other reasons ("entitlement" denials); and (d) the name(s) of the relative(s) claimed to have owned Holocaust-era Swiss bank accounts, and the names of account owners made available to the CRT by the Swiss banks or located via other sources, did not match ("no match" denials).

Deposited Assets: As defined under the Settlement Agreement: "(1) Any and all Assets actually or allegedly deposited by the beneficial owner, fiduciary, or other individual or organization with any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered or based in Switzerland at any time (including, without limitation, the affiliates, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account (including, without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution, including, without limitation, any Assets

that Settling Defendants or Other Swiss Banks determine should be paid to a particular claimant because the Assets definitely or possibly belonged to a Victim or Target of Nazi Persecution; and/or (2) any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity (including, without limitation, their respective heirs, successors, affiliates, and assigns) actually persecuted by the Nazi Regime for any reason. A determination by the ICEP or the Claims Resolution Tribunal to award a special adjustment to interest or fees to a particular claimant pursuant to the guidelines of the Panel of Experts on Interest and Fees and Other Charges shall be deemed to establish that the claimant was persecuted or targeted for persecution within the meaning of subsection (2) of this definition."

Deposited Assets Class: As defined under the Settlement Agreement: "Victims and Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Deposited Assets or any effort to recover Deposited Assets."

Disconfirmed Match: The CRT's determination that the Claimed Account Owner identified by the Claimant(s) was not the same person as the Account Owner identified in the bank records.

Disposition Denial: The CRT's determination that the available evidence indicated that the account was closed properly and the account owner received the proceeds.

Distribution Plan: The Plan of Allocation and Distribution of Settlement Proceeds. Special Master Gribetz submitted a Proposed Plan of Allocation and Distribution of Settlement Proceeds on September 11, 2000 ("Special Master's Proposal"), in accordance with the terms of the Settlement Agreement and the Court's March 31, 2999 Referral to Special Master for Development of Plan to Allocate and Distribute Settlement Proceeds, and subsequent amendments. On November 22, 2000, following public hearing on November 20, 2000, the Court adopted the Special Master's Proposal in its entirety. *In re Holocaust Victim Assets Litig.*, 2000 WL 33241660 (E.D.N.Y. November 22, 2000). On July 26, 2001, the United States Court of Appeals for the Second Circuit affirmed the Court's November 22, 2000 decision. *In re Holocaust Victim Assets Litig.*, 2001 WL 868507 (2d Cir. July 26, 2001), *reissued as a published opinion* on July 1, 2005, 413 F.3d 183 (2d Cir. 2005).

Dormant Account: As defined by the Volcker Report: "Those accounts with respect to which there have been no withdrawals or additions by, and no correspondence or other contacts with the account holders or their representatives or with beneficiaries since at least the end of 1945 as well as accounts that should have been dormant as described above but for the fact that the funds in the account are unavailable for reasons other than their return to the original depositors or their legal representatives."

Eizenstat Report: A report prepared in connection with the late 1990s inquiry into Holocaust-era Swiss assets, officially entitled U.S. and Allied Efforts to Recover Gold and Other Assets Stolen or Hidden by Germany During World War II - Preliminary Study (May 1997). The Eizenstat Report was coordinated by then-Under Secretary of Commerce for International Trade Stuart E. Eizenstat and prepared by William Z. Slany, Department of State Historian.

Entitlement Denial: The CRT's determination that the claimant was not entitled to the claimed account, whether due to the absence of a family relationship to the account owner or for other reasons.

Fairness Hearing: The hearings held in Brooklyn, New York on November 29, 1999 and, by telephonic connection, in Israel on December 14, 1999, by Judge Edward R. Korman, United States District Court for the Eastern District of New York, to hear public comment on the proposed Settlement Agreement pursuant to the Court's obligation under United States class action law to determine whether the settlement was fair.

Fairness Opinion: The Court's decision of July 26, 2000 approving the Settlement Agreement as fair as required under United States class action law. *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139 (E.D.N.Y. 2000).

Final Order and Judgment: The Court's order of August 9, 2000, in which the Court granted final approval and rendered final judgment approving the Settlement Agreement, as amended.

Flight Tax: A substantial tax levied by the Nazis upon those able to flee. As described in the Bergier Final Report, beginning in 1938, "many special taxes and levies were introduced such as the so-called '*Sühneleistung*' (atonement fine) instituted after the pogrom in November 1938 [*Kristallnacht*] and the *Reichsfluchtsteuer* (emigration tax), which were extended and already levied on people who were likely to emigrate. To avoid the high penalties and meet the financial burden, many Jews and others who were persecuted had to withdraw their assets and securities from Switzerland."

German Foundation "Remembrance, Responsibility, and the Future": The Foundation established by the German government to make financial compensation available through partner organizations to former forced laborers and to those affected by other injustices from the National Socialist period. A "Remembrance and Future" fund was established within the Foundation to foster projects promoting social justice, the interests of survivors, and international cooperation in humanitarian endeavors. A significant part of the German Foundation fund is for non-Jewish slave and forced laborers.

Hardship Fund: The Fund established by the German government and administered by the Claims Conference to compensate Holocaust survivors who were refugees from Soviet bloc countries and who had not previously received indemnification.

***Hesed*:** A network of social service programs created by the JDC in 1992 to assist destitute, elderly Jewish victims of Nazi persecution still living in the former Soviet Union. Major *Hesed* services include food, medical relief, home care and winter assistance, in the home, at local community sites, and at multi-service centers in larger cities.

Holocaust Claims Processing Office of the New York State Banking Department (HCPO): To provide institutional assistance to individuals seeking to recover Holocaust-looted assets, on June 25, 1997, Governor Pataki created the Holocaust Claims Processing Office of the New York State Banking Department. The mission of the HCPO is to recover assets deposited in European banks; recover monies never paid in connection with insurance policies issued by European insurers; and recover lost or looted art.

Holocaust Victim Assets Litigation (HVAL): The lawsuit against and settlement with Swiss governmental and private entities in connection with claims to Holocaust-era assets. In late 1996 and early 1997, several class action lawsuits were filed in the United States District Court for the Eastern District of New York against certain Swiss banks, alleging that the Swiss banks knowingly retained and concealed assets of Holocaust victims and collaborated with and aided the Nazi Regime by accepting and laundering illegally obtained Nazi loot and profits of slave labor. The defendant banks included two of Switzerland's largest banks, Credit Suisse and United Bank of Switzerland ("UBS"). The lawsuit was brought before, and the settlement was supervised by, Judge Edward R. Korman of the United States District Court for the Eastern District of New York.

Holocaust Victim Assets Programme (HVAP): The program operated by the International Organization for Migration (IOM) (*see infra*) under the Court's supervision, on behalf of Roma, Jehovah's Witness, homosexual and disabled members of Slave Labor Class I and the Refugee Class. The IOM also administered all Slave Labor Class II claims. In addition, in a separate "Humanitarian and Social Programme" (see below), the IOM administered the Court's Looted Assets Class programs on behalf of needy Roma, Jehovah's Witness, homosexual and disabled Nazi victims.

Humanitarian and Social Programmes (HSP): The program administered on behalf of the Court by the International Organization for Migration (IOM) as part of the services provided to the neediest Nazi victims, all of whom were members of the Looted Assets Class. The IOM was responsible for operating programs on behalf of Roma, Jehovah's Witness, disabled and homosexual victims or targets of Nazi persecution. The program, which was supervised by the Court and the Special Master and is now complete, provided food, medical aid, coal, and other basic necessities of life to more than 73,000 needy Nazi victims, most of whom had not previously received Holocaust compensation.

Identity Denial: The CRT's determination that the Claimed Account Owner (as identified by the Claimant) and the Account Owner (as identified in the bank records or other documentation) were not the same individual.

Inadmissibility Decision: The CRT's determination that a claim was ineligible under the Deposited Assets Class process. Under the terms of the Settlement Agreement, only the accounts of "Victims or Targets of Nazi Persecution" could be paid from the Settlement Fund. The Settlement Agreement defined "Victims or Targets of Nazi Persecution" as those who were, or were perceived to be, Jewish, Romani, Jehovah's Witness, disabled, or homosexual. Other grounds for issuance of an Inadmissibility Decision were as follows: the claim was based essentially on a statement that the Claimant or his or her relative and the Account Owner had the same or similar last name; the Claimant provided no relevant information and/or documentation regarding his or her relationship to the Account Owner; the Claimant did not assert a relationship to the Account Owner that would justify an Award to the Account; or, it was apparent that the person the Claimant believed to be the Account Owner and the actual Account Owner were not the same person.

Incentive Award: $575,000 in payments were made to seven class members whom the Court determined provided efforts which materially aided the plaintiff class.

Independent Claims Resolution Foundation (ICRF): Foundation chaired by Paul A. Volcker which was established to oversee an objective, impartial, streamlined process for resolving claims to dormant accounts listed in notification published worldwide by the Swiss Bankers Association.

Independent Commission of Experts (ICE); Bergier Commission: An independent group of internationally recognized historians chaired by Jean Françoise Bergier, which the Swiss Confederation established in 1996 to examine Switzerland's relationship with Nazi Germany. The Commission was established in December 1996 by a unanimously approved resolution of the Swiss federal assembly (parliament). Its mandate was to investigate the volume and fate of assets moved to Switzerland before, during and immediately after the Second World War from a historical and legal point of view, and to present a final report. *See also* Bergier Report.

Independent Committee of Eminent Persons (ICEP): Committee, chaired by Paul A. Volcker, former Chairman of the United States Board of Governors of the Federal Reserve System. ICEP was established in 1996 by the Swiss Bankers Association, the World Jewish Congress and other Jewish organizations to conduct an independent audit of Swiss banks to identify accounts from the World War II era that could possibly belong to victims of Nazi persecution.

Initial Questionnaire (IQ): In connection with notice to the class of the proposed settlement, a six-page Initial Questionnaire was circulated to all potential class members to obtain information on the nature and scope of their claims. Over 600,000 Initial Questionnaires were received from Holocaust victims and heirs residing in more than 100 nations.

Insurance Claim: The Settlement Agreement permitted claims to be filed by those who could demonstrate that they were the legitimate owners of or heirs to unpaid insurance

policies issued prior to or during the Second World War by the Participating Companies. Claimants were also required to demonstrate that policyholders or policyholders' heirs were Victims or Targets of Nazi persecution.

International Commission for Holocaust Era Insurance Claims (ICHEIC): Commission established in 1998 following negotiations among European insurance companies and U.S. insurance regulators, as well as representatives of international Jewish and survivor organizations and the State of Israel, charged with establishing a just process to collect and facilitate the signatory companies' processing of insurance claims from the Holocaust period.

International Organization for Migration (IOM): One of the four Court-appointed agencies designated to process claims under the Settlement Agreement, the IOM is a non-governmental organization which was established in 1951, and as reported at www.iom.int, remains the leading inter-governmental organization in the field of migration. The IOM has 127 member states, another 17 states holding observer status, and has offices in over 100 nations. The IOM administered the settlement on behalf of Roma, Jehovah's Witness, homosexual and disabled members of Slave Labor Class I, the Refugee Class and the Looted Assets Class, as well as all members of Slave Labor Class II.

"J" Stamp: A mark on the passports of Jews from the Reich. The "J"-stamp commenced with an August 22, 1938 communication from the Swiss Legation in Bern to the German Foreign Office proposing that there be some delineation on German passports as to whether the person was Aryan or non-Aryan**.**

Independent Commission of Experts (ICE); Bergier Commission: An independent group of internationally recognized historians chaired by Jean Françoise Bergier, which the Swiss Confederation established in 1996 to examine Switzerland's relationship with Nazi Germany. The Commission was established in December 1996 by a unanimously approved resolution of the Swiss federal assembly (parliament). Its mandate was to investigate the volume and fate of assets moved to Switzerland before, during and immediately after the Second World War from a historical and legal point of view, and to present a final report. *See also* Bergier Report.

Kapo: A prisoner given a supervisory position by the Germans over slave laborers.

Kaufman Factor: At its September 4, 1997 meeting, ICEP decided to establish a panel of experts to provide advice on the adjustment factor to be applied to the 1945 balance of an account in order to calculate its present value. Financial economist Henry Kaufman chaired the panel and on September 8, 1998, the Kaufman Panel submitted its final report to members of ICEP. After considering the Kaufman Panel Report, the ICEP Board agreed that the applicable rate of return would be an adjustment factor of 10 from the 1945 value. As a result of Court-authorized amendments recommended by Mr. Volcker, the Kaufman factor ultimately was increased to 12.5.

Late Claim: Claims filed after the Court-ordered deadline. Under Rule 6(b)(2) of the Federal Rules of Civil Procedure, the court has the authority to extend the time for complying with a court-ordered deadline upon motion by a party and a finding that the failure to act was the result of excusable neglect. The Court extended the filing deadlines several times for the various classes. The last extended deadline, that for the Deposited Assets Class, expired on December 31, 2004.

Lead Settlement Counsel: The Court appointed Members of the Plaintiffs' Executive Committee to serve as Settlement Class Counsel with regard to the Settlement Agreement. Burt Neuborne, the Norman Dorsen Professor of Civil Liberties at New York University Law School, was designated Lead Settlement Counsel.

Looted Assets: As defined by the Settlement Agreement: "Assets actually or allegedly belonging in whole or in part to Victims or Targets of Nazi Persecution that were actually or allegedly stolen, expropriated, Aryanized, confiscated, or that were otherwise wrongfully taken by, at the request of, or under the auspices of the Nazi Regime."

Looted Assets Class: As defined by the Settlement Agreement: the Class consisting of "Victims and Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Looted Assets or Cloaked Assets or any effort to recover Looted Assets or Cloaked Assets."

Match: The CRT's determination that there was information about the account owner in the bank records made available to the CRT which corresponded to the information about the claimed account owner (CAO) (*see infra*) provided in the claim form.

Matching: The process of comparing computer databases of names of Victims and/or Claimants with names of Account Owners using algorithms to identify exact name matches, near-exact name matches, and name matches with confirming factors under procedures used in the ICEP investigation and under the CAS system. For definitions of "ICEP" and "CAS," *see supra.*

Multiple Plausible Match (MPM): The CRT's determination that the relatives of two or more unrelated claimants plausibly matched the account owner; in such instances, if it was determined that an award of the account(s) is appropriate, the payment was divided *pro rata* among the claimants.

Nazi Regime: As defined by the Settlement Agreement: "The National Socialist government of Germany from 1933 through 1945 and its instrumentalities, agents, and allies (including, without limitation, all other Axis countries), all occupied countries, and all other individuals or entities in any way affiliated or associated with, or acting for or on behalf or under the control or influence of, the Nazi Regime, including, without limitation, the Accused Organizations and Individuals in the Nurnberg Trial, 6 F.R.D. 69 (1946)."

No Match Decision: The CRT's determination that the name of the relative claimed to have owned Holocaust-era Swiss bank accounts, and the names of account owners made available to the CRT by the Swiss banks or located via other sources, did not match. The CRT used advanced name matching systems and computer programs in conducting its matching analysis. Further, the CRT matched not only the names of persons specifically claimed to have owned a Swiss bank account, but the names of other family members identified by the claimant.

Occupation and Alliance Dates: For purposes of the Deposited Assets Class claims process, the date upon which the Third Reich gained control over the account owner's country of residence, whether by incorporation into the Reich, occupation or formal alliance; this is the date upon which it was presumed that the Account Owner lost control over his/her Swiss bank account.

Organizational Endorsements: The Settlement Agreement became operative as of March 30, 1999 following execution of written "Organizational Endorsements" of the agreement by the following 17 major worldwide Jewish organizations: Agudath Israel World Organization, Alliance Israelite Universelle, the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, the American Jewish Joint Distribution Committee, the Anti-Defamation League, B'nai B'rith International, the Centre of Organizations of Holocaust Survivors in Israel, the Conference [on] Jewish Material Claims Against Germany, the Council of Jews from Germany, the European Council of Jewish Communities, the Holocaust Educational Trust, the Jewish Agency for Israel, the Simon W[ie]senthal Center, the World Jewish Congress, and the World Zionist Organization. *See also* "Related Agreement."

Österreischische Zuckerindustrie AG (OZAG): A Deposited Assets Class Award compensating the heirs of Ferdinand Bloch-Bauer and Otto Pick, two of the major shareholders of ÖZAG, Austria's most important pre-War refiner of sugar, for the major losses that they suffered as a result of the Bank's active participation in the confiscation of their shareholdings in ÖZAG by Nazi authorities. This Award, SF 26,450,993.36 (approximately $21 million) was the largest approved by the Court. The amount of the Award reflected the value of the stock in question on the date the Bank violated the terms of the Syndicate Agreement by unlawfully transferring ownership to a designated Nazi "purchaser" at a fraction of the shares' value, less any sums received by the Claimant and represented parties (i.e. prior restitution). The Award included the standard interest equivalent multiplier of 12.5 to bring the Award up to current value. While this Award was unique in its size, it was representative of several general findings by the CRT.

"Other" Account: These were Holocaust-era Swiss accounts which the ICEP auditors determined also were known as *Bürge*, *Festgeldkonto*, *Pfandbestellung* or *Depositenkonto.*

Participating Insurance Carriers: Swiss Re, Swiss Life, and their member companies.

Passbook/Savings Account: A savings account in which a passbook had to be presented upon withdrawal of assets. Savings accounts with values under 250 Swiss Francs or unknown values were excluded by ICEP. The terms "passbook account" and "savings account" were used interchangeably.

Plausible Undocumented Award: An award for a claim plausibly indicating entitlement to a Swiss bank account, but for which bank documentation had not been provided or was no longer available due to the banks' destruction of records relating to millions of Holocaust-era accounts. Among the criteria considered in determining such claims were the account owner's relationship to Switzerland; efforts made by the claimant or other family members to retrieve Swiss bank accounts prior to the finalization of the Settlement Agreement; the relationship between the claimant and the account owner; and other factors.

Presumptive Value: "Presumptive values," or average values, were utilized by the CRT to determine the amount of an award for a particular Holocaust-era Swiss bank account where bank records containing the actual valuation data no longer existed. When the amount in a bank account was unavailable from bank records or the amount was less than the amount determined by the CRT Special Masters at the beginning of the Claims Resolution Process, the amount in the account was to be determined by a schedule of value presumptions, in the absence of plausible evidence to the contrary.

Probable or Possible Accounts: All accounts identified at each bank investigated by the ICEP Audit Firms and reported to ICEP as being in Categories 1 to 4 for its Report of December 6, 1999 and designated by ICEP as probably or possibly related to Victims, as adjusted as a result of a review of such Accounts for the purpose of identifying duplicate Accounts, missing Accounts, and other similar factors. Approximately 36,000 Swiss bank accounts were identified by the ICEP auditors as "probably" or "possibly" belonging to victims of the Holocaust. *See also* "Accounts History Database."

Proposals on Allocation of Residual Funds: Proposals solicited by the Court from all interested individuals and organization for the allocation of unclaimed residual funds (if any) that might remain from the up to $800 million allocated to the Deposited Assets Class.

Refugee Class: As defined by the Settlement Agreement: the Class consisting of "Victims and Targets of Nazi Persecution who sought entry into Switzerland in whole or in part to avoid Nazi persecution and who actually or allegedly either were denied entry into Switzerland or, after gaining entry, were deported, detained, abused, or otherwise mistreated, and the individuals' heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from such actual or alleged denial of entry, deportation, detention, abuse, or other mistreatment."

Related Agreement: In a so-called "Related Agreement" executed in connection with the Settlement Agreement, each "Organizational Endorser" (defined *supra*) "endorse[d] the Settlement Agreement …. as a fair, adequate and reasonable settlement"; "affirm[ed] that the

Settlement Agreement brings about complete closure and an end to confrontation with respect to the issues dealt with in the settlement"; "agree[d] not to make any public statement or take any action that would violate or be inconsistent with this endorsement, including requesting or approving sanctions or opposing business transactions involving Swiss entities released by the Settlement Agreement based on conduct covered by the settlement"; "covenant[ed] not to sue, call for suits against, or support suits against any Swiss entity released by the Settlement Agreement based on conduct covered by the settlement"; and "waive[ed] any and all claims it may have against the Swiss entities released by the Settlement Agreement based on conduct covered by the settlement."

Relevant Period: As defined by the Volcker Report, the period from January 1, 1933 to December 31, 1945.

Safe Deposit Box Account: Customers rented boxes for a fee, with two keys associated with the box, one for the customer and one for the bank.

Second Memorandum to Files: On June 10, 2004, the parties entered into an agreement approved by the District Court on June 17, 2004, the "Second Memorandum to the File." The agreement permitted the New York SDAP facility to be linked by computer to the Zurich-based CRT; provided for the publication of approximately 3,000 additional bank accounts; and established access conditions for the Total Accounts Database. The Swiss Federal Banking Commission approved the agreement on July 26, 2004.

Self-Identification Requirement: As a condition to approval of the Settlement Agreement, the Court required Swiss entities who used slave labor and who sought releases under Slave Labor Class II to self-identify. The Court explained that "those who were forced to perform slave labor for a Swiss company in German or elsewhere" had "no reason to know at the time that the company was Swiss" and "may not be aware that they are in the class" even with notice of the settlement. *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139 (E.D.N.Y. 2000).

Settlement Agreement: The agreement between the plaintiff class members and the two defendant Swiss banks, governed by basic contract law but also subject to the due process requirements of a class action lawsuit, settling Holocaust-era claims against Swiss entities in the amount of $1.25 billion.

Settlement Class or Settlement Classes: The plaintiff classes designated under the terms of the Settlement Agreement: the Deposited Assets Class, Looted Assets Class, Slave Labor Class I, Slave Labor Class II, and the Refugee Class; a separate Insurance Class later was added upon further negotiation by the parties.

Settlement Date: Under the Settlement Agreement, distributions from the Settlement Fund could not commence until the "Settlement Date"; i.e., until all appeals from the Final Order and Judgment were resolved. Lead Settlement Counsel advised on May 16, 2001 that the Settlement Date had been reach upon the withdrawal of the one appeal that had been filed against the Court's order approving the Settlement Agreement.

Settlement Fund: The $1.25 billion amount paid by the defendant banks in settlement of Holocaust-era claims against Swiss entities.

Settling Defendants: *See* "Defendant Banks" *supra.*

Settling Plaintiffs: As defined by the Settlement Agreement: "(a) the named plaintiffs in the Filed Actions, and their heirs, successors, affiliates, and assigns, and (b) all members of the classes of plaintiffs for which Settling Plaintiffs and Settling Defendants shall seek conditional certification pursuant to Fed. R. Civ. P. 23, except those who, in accordance with the terms of the Settlement Agreement and the Court's order certifying the classes, submit a timely request for exclusion from the classes."

Slave Labor: As defined by the Settlement Agreement: Work for little or no remuneration actually or allegedly performed by individuals involuntarily at the insistence, direction, or under the auspices of the Nazi Regime."

Slave Labor Class I: As defined by the Settlement Agreement: the Class "consisting of Victims and Targets of Nazi Persecution who actually or allegedly performed Slave Labor for companies or entities that actually or allegedly deposited the revenues or proceeds of that labor with, or transacted such revenues or proceeds through, Releasees, and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from the deposit of such revenues or proceeds or Cloaked Assets or any effort to obtain redress in connection with the revenues or proceeds of Slave Labor or Cloaked Assets."

Slave Labor Class II: As defined by the Settlement Agreement: the Class "consisting of Victims and Targets of Nazi Persecution who actually or allegedly performed Slave Labor at any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or other business concern headquartered, organized, or based in Switzerland or any affiliate thereof, and the individuals' heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or in the future may seek to assert Claims against any Releasee other than Settling Defendants, the Swiss National Bank, and Other Swiss Banks for relief of any kind whatsoever relating to or arising in any way from such Slave Labor or Cloaked Assets or any effort to obtain redress in connection with Slave Labor or Cloaked Assets."

Special Master: Under the terms of the Settlement Agreement and the Court's order of referral of March 31, 1999 and subsequent orders, and pursuant to Federal Rule of Civil Procedure 53, Judah Gribetz served as Special Master, with responsibility for proposing to the Court a plan to allocate and distribute the $1.25 billion settlement (adopted as the Distribution Plan; *see above]*, and thereafter, overseeing implementation of the Distribution Plan. By order of the Court, Shari C. Reig served as Deputy Special Master. In addition, by Court order, Michael Bradfield (previously with Paul Volcker) and Helen B. Junz served as

Special Masters with responsibility for assisting the Court in administering the Deposited Assets Class claims process.

Swiss Deposited Assets Program (SDAP): The program operated in New York by the Claims Conference to provide administrative, technical and other assistance to the Court and CRT-II in Zurich in connection with the Deposited Assets Class.

Swiss Humanitarian Fund: On February 26, 1997, the Swiss Fund for Needy Victims of the Holocaust/Shoa was established "to support persons in need who were persecuted for reasons of their race, religion or political views or for other reasons, or otherwise were victims of the Holocaust/Shoa."

Total Accounts Database (TAD): On December 6, 1999, the Volcker Committee released its final report. Its research showed that some 6.8 million Swiss bank accounts were open or opened during the relevant period of 1933-1945. Of these, the banks had destroyed documents relating to approximately 2.7 million accounts. Despite this massive document destruction, records still remained for approximately 4.1 million Holocaust-era Swiss accounts. The auditors conducted research on approximately 300,000 of these 4.1 million accounts. The Volcker Committee determined that of the 300,000 accounts investigated, a total of approximately 54,000 (specifically 53,886) had a "probable" or "possible" relationship to victims of Nazi persecution. These 53,886 accounts -- subsequently reduced to 36,000 by a so-called "scrubbing" process -- were to constitute the Accounts History Database ("AHD"); *i.e.*, the database of accounts that would be made available to the CRT for use in the claims process. The Volcker Committee further recommended that approximately 21,000 of the 36,000 AHD accounts should be published. The remaining approximately 15,000 accounts were not to be published, but were to be available to the CRT for review in the event that a Holocaust victim or heir submitted a claim that appeared to match to the unpublished account. As to the bulk of the 4.1 million Holocaust-era accounts for which records continued to exist, but which were not included as part of the AHD, the Volcker Committee recommended that those remaining accounts should be consolidated into a "Total Accounts Database" (TAD) that also would be available for use in a claims process. The SFBC declined to adopt the Volcker Committee's recommendation to create a Total Accounts Database for all of the 4.1 million accounts that existed in Swiss Banks in the relevant 1933-1945 period.

United States Holocaust Memorial Museum (USHMM): The United States Holocaust Memorial Museum is America's national institution for the documentation, study, and interpretation of Holocaust history, and serves as America's memorial to the millions of people murdered during the Holocaust.

Unknown Type of Account: This category was used by the ICEP auditors if they were unable to definitively determine the type of account at issue. However, the CRT often was able to discern the account type upon thorough analysis of the account records.

Voluntary Assistance: The voluntary production of additional records, including bank records, which were intended to allow the CRT to assess all existing documents as part of the review of each claim. This mechanism was required by the Court as part of its July 26, 2000 decision approving the Settlement Agreement.

Victim List Project: The Court-approved Distribution Plan allocated $14.5 million to the Victim List Program. The intent of the Program was to collect and make widely available the names of all victims or targets of Nazi persecution, those who perished as well as those who survived. The program transferred funds to the Yad Vashem Holocaust Martyrs' and Heroes' Remembrance Authority in Israel and the United States Holocaust Memorial Museum in implementation of these goals. The Claims Conference served as the Court's agent for purposes of administration of the Victim List Project.

Victim or Target of Nazi Persecution: As defined by the Settlement Agreement: "Any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, homosexual, or physically or mentally disabled or handicapped."

Volcker Report: *See* Independent Committee of Eminent Persons (ICEP) *supra.*

Yad Vashem (The Holocaust Martyrs' and Heroes' Remembrance Authority): Yad Vashem was established in 1953 by an act of the Israeli Knesset. As described at www.yadvashem.org: "Since its inception, Yad Vashem has been entrusted with documenting the history of the Jewish people during the Holocaust period, preserving the memory and story of each of the six million victims, and imparting the legacy of the Holocaust for generations to come through its archives, library, school, museums and recognition of the Righteous Among the Nations."

CLAIMANT APPLICATION MATERIALS

Settlement Agreement, Initial Questionnaire and Related Preliminary Materials

1. Settlement Agreement and related documents

2. Holocaust Victim Assets Litigation Initial Questionnaire

3. Notice of Pendency of Class Action and Proposed Settlement and Hearing; Initial Questionnaire

Claims Resolution Tribunal (CRT) Claim Forms: Deposited Assets Class

4. 2001 Publication Instructions and Claim Form

5. 2005 Publication Claim Form with Instruction Sheet

Conference on Jewish Material Claims Against Germany (Claims Conference) Claim Forms: Jewish members of Slave Labor Class I and the Refugee Class

6. Program for Former Slave and Forced Laborers Application Form Guidelines (also used for applicants to the German Foundation "Remembrance, Responsibility and Future" slave labor program)

7. Swiss Refugee Program Application

International Organization for Migration (IOM) Claims Forms: Roma, Jehovah's Witness, Homosexual and Disabled members of Slave Labor Class I, Slave Labor Class II and the Refugee Class

8. Claim Form for Slave Labour, Forced Labour, Personal Injury or Death of a Child (also used for applicants to the German Foundation "Remembrance, Responsibility and Future" slave labor program)

9. Claim Form for Swiss Banks Settlement Slave Labour Class I

10. Claim Form for Swiss Banks Settlement Slave Labour Class II

11. Claim Form for Swiss Banks Settlement Refugee Class

12. Holocaust Victim Assets Programme (Swiss Banks) Languages Chart

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Class Action Settlement Agreement

This Settlement Agreement ("Settlement Agreement") is made and entered into as of this 26th day of January 1999, by and between Settling Defendants and Settling Plaintiffs.

WHEREAS concerns have been raised about actions and omissions of Settling Defendants and other Releasees before, during, and after the Nazi Regime's rule in Germany relating principally to financial transactions with or affecting Victims or Targets of Nazi Persecution as defined herein;

WHEREAS Plaintiffs commenced the Filed Actions, and specifically alleged, *inter alia*, that Settling Defendants (1) collaborated with the Nazi Regime and participated in a scheme to (a) unlawfully retain class members' accounts deposited prior to and during the Second World War; (b) obtain for deposit, transfer, or exchange, assets looted by the Nazi Regime and its agents; and (c) profit from the use of slave labor, the fruits of which were deposited with Settling Defendants; and (2) concealed the true nature and scope of their conduct during and following the Holocaust all allegations that Settling Defendants dispute;

WHEREAS Settling Defendants believe that they could assert, have asserted, and would prevail in court on, defenses to the claims asserted against them; and Settling Plaintiffs believe to the contrary;

WHEREAS Settling Defendants and other Releasees, in recognition of the legal, moral and material aspects of the concerns referred to above, have initiated and pursued certain ameliorative measures outside the context of any litigation, such as establishing and supporting: (1) the Special Fund for Needy Victims of the Holocaust/Shoah ("Humanitarian Fund"), initiated by Settling Defendants in February 1997 with a voluntary contribution of approximately $70 million to provide humanitarian aid to needy Holocaust survivors; (2) the Independent Committee of Eminent Persons ("ICEP"), chaired by Paul A. Volcker, which was established in 1996 by the Swiss Bankers Association, the World Jewish Congress, and other Jewish organizations to conduct an independent audit of Swiss banks to identify accounts from the World War II era that could possibly belong to victims of Nazi persecution; (3) the Independent Claims Resolution Foundation ("ICRF"), also chaired by Paul A. Volcker, which was established to oversee an objective, impartial, streamlined process for resolving claims to dormant accounts listed in notifications published worldwide by the Swiss Bankers Association; and (4) the Independent Commission of Experts, an independent group of internationally recognized historians chaired by Professor Jean François Bergier, which the Swiss Confederation established in 1996 to examine Switzerland's relationship with Nazi Germany;

WHEREAS Settling Plaintiffs and Settling Defendants commit to support and urge the conclusion of the mandates of the Volcker Committee and the Bergier Commission;

WHEREAS Settling Defendants and Settling Plaintiffs wish to bring about prompt and complete closure with respect to the concerns and allegations referred to in the paragraphs above;

WHEREAS Settling Defendants and Settling Plaintiffs believe and affirm that this Settlement Agreement, in conjunction with the steps initiated by Settling Defendants and other Releasees described above, does and should bring about complete closure with respect to the concerns and allegations described in the paragraphs above, and thereby brings to an end all confrontation between Settling Plaintiffs and Organizational Endorsers on the one hand and Releasees on the other hand;

WHEREAS counsel for Settling Plaintiffs have conducted as thorough an investigation as possible relating to the claims and the underlying events and transactions alleged in Settling Plaintiffs' complaints, having (1) analyzed available information adduced through informal discovery, (2) reviewed relevant public information at the U.S. Archives and other sources, (3) researched the applicable law with respect to the claims of Settling Plaintiffs and defenses of Settling Defendants and other Releasees, and (4) consulted with experts;

WHEREAS Settling Plaintiffs, by their counsel, have conducted arms-length negotiations with Settling Defendants with respect to a compromise and settlement of the Filed Actions and other Claims against Releasees with a view to settling and finally resolving the Settled Claims, and to achieving the best possible relief consistent with the interests of the Settlement Classes;

WHEREAS solely for purposes of the settlement set forth in this Settlement Agreement, Settling Defendants have consented to conditional certification of Settlement Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Fed. R. Civ. P. 23");

WHEREAS based on the investigation, discovery, review of public information, and research described above, Settling Plaintiffs have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate to Settling Plaintiffs and in their best interests;

WHEREAS Settling Plaintiffs, through their counsel, have agreed to settle the claims raised in the Filed Actions and to resolve any additional Claims that they have or could bring against any Releasee, after considering (1) the substantial benefits that Settling Plaintiffs will receive from the settlement, (2) the attendant risks of litigation, and (3) the desirability of an immediate resolution;

WHEREAS this Settlement Agreement is fully supported by the Organizational Endorsers that have endorsed it; and

WHEREAS nothing in this Settlement Agreement shall be construed as or deemed to be an admission of any kind by any party or Releasee.

NOW THEREFORE, it is agreed by and among the parties to this Settlement Agreement, through their respective attorneys, subject to approval of the Court pursuant to Fed. R. Civ. P. 23, in consideration of the covenants herein and the benefits flowing to the parties, the Settlement Classes, and the Releasees under this Settlement Agreement, that all Claims against the Releasees shall be settled and released, and that the Filed Actions shall be dismissed with prejudice, upon and subject to the following terms and conditions, and in exchange for the substantial benefits this Settlement Agreement confers upon the Settlement Classes.

1. DEFINITIONS

As used in this Settlement Agreement and in addition to any definitions elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

Assets means any and all objects of value including but not limited to personal, commercial, real, tangible, and intangible property, including, without limitation, cash, securities, gems, gold and other precious metals, jewelry, documents, artworks, equipment, and intellectual property.

Claims or Settled Claims means any and all actions, causes of action, claims, Unknown Claims, obligations, damages, costs, expenses, losses, rights, promises, and agreements of any nature and demands whatsoever, from the beginning of the world to now and any time in the future, arising from or in connection with actual or alleged facts occurring on or before the date of this Settlement Agreement, whether in law, admiralty, or equity, whether class or individual, under any international, national, state, provincial, or municipal law, whether now accrued or asserted or hereafter arising or discovered, that may be, may have been, could have been, or could, be brought in any jurisdiction before any court, arbitral tribunal, or similar body against any Releasee directly or indirectly, for, upon, by reason of, or in connection with any act or omission in any way relating to the Holocaust, World War II and its prelude and aftermath, Victims or Targets of Nazi Persecution, transactions with or actions of the Nazi Regime, treatment of refugees fleeing Nazi persecution by the Swiss Confederation or other Releasees, or any related cause or thing whatever, including, without limitation, all claims in the Filed Actions and all other claims relating to Deposited Assets, Looted Assets, Cloaked Assets, and/or Slave Labor, or any prior or future effort to recover on such claims directly or indirectly from any Releasee.

Claims Resolution Tribunal means the group of arbitrators acting under the auspices of the ICRF.

Class Notice has the meaning set forth in Section 9.2 hereof

Cloaked Assets means Assets wholly or partly owned, controlled by, obtained from, or held for the benefit of, any company incorporated, headquartered, or based in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946 or any other entity or individual associated with the Nazi Regime (regardless of where such entity or individual was or is located, incorporated, headquartered, or conducting business), the identity, value, or ownership of which was in fact or allegedly disguised by, through, or as the result of any intentional or unintentional act or omission of or otherwise involving any Releasee, including, without limitation, Internationale Industrie und Handelsbeteiligungen A.G. (a.k.a. "Interhandel"), and its predecessors, successors, or affiliates.

Court means the United States District Court for the Eastern District of New York.

Deposited Assets means (1) any and all Assets actually or allegedly deposited by the beneficial owner, fiduciary, or other individual or organization with any custodian, including, without limitation, a bank, branch or agency of a bank, other banking organization or custodial institution or investment fund established or operated by a bank incorporated, headquartered, or based in Switzerland at any time (including, without limitation, the affiliates, subsidiaries, branches, agencies, or offices of such banks, branches, agencies, custodial institutions, and investment funds that are or were located either inside or outside Switzerland at any time) in any kind of account (including, without limitation, a safe deposit box or securities account) prior to May 9, 1945, that belonged to a Victim or Target of Nazi Persecution, including, without limitation, any Assets that Settling Defendants or Other Swiss Banks determine should be paid to a particular claimant because the Assets definitely or possibly belonged to a Victim or Target of Nazi Persecution; and/or (2) any and all Assets that the ICEP or the Claims Resolution Tribunal determines should be paid to a particular claimant or to the Settlement Fund because the Asset definitely or possibly belonged to an

individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity (including, without limitation, their respective heirs, successors, affiliates, and assigns) actually persecuted by the Nazi Regime or targeted for persecution by the Nazi Regime for any reason. A determination by the ICEP or the Claims Resolution Tribunal to award a special adjustment for interest or fees to a particular claimant pursuant to the guidelines of the Panel of Experts on Interest and Fees and Other Charges shall be deemed to establish that the claimant was persecuted or targeted for persecution within the meaning of subsection (2) of this definition.

Escrow Agreement means the agreement dated November 19, 1998, attached hereto as Exhibit A.

Escrow Fund means the fund referenced in Section 5.1 herein and established pursuant to the Escrow Agreement.

Fairness Hearing means the hearing conducted by the Court in connection with the determination of fairness, adequacy, and reasonableness of this Settlement Agreement under Fed. R. Civ. P. 23.

Filed Actions means **Weisshaus, et al, v. Union Bank of Switzerland. et al.**, CV-96-4849, **Friedman, et al. v. Union Bank of Switzerland. et al.**, CV-96-5161, **Trilling-Grotch. et al., v. Union Bank of Switzerland, et al.**, CV-96-5161, **Sonabend, et al. v. Union Bank of Switzerland, et at.**, CV-96-5161, and **World Council of Orthodox Jewish Communities v. Union Bank of Switzerland. et al.**, CV-97-0461, which are being considered together for pretrial purposes under the caption **In re Holocaust Victim Assets**, Master Docket CV-96-4849, pending in the United States District Court for the Eastern District of New York; **Markovicova et al. v. Swiss Bank Corporation, et al.**, CV-98-2934, pending in the United States District Court for the Northern District of California; and **Rosenberg v. Swiss National Bank**, No. CV-98-1647, pending in the United States District Court for the District of Columbia.

Final Order and Judgment means the order to be entered by the Court, in a form to be mutually agreed upon by the parties, approving this Settlement Agreement without material alterations, as fair, adequate, and reasonable under Fed. R. Civ. P. 23, confirming the certification of the Settlement Classes under Fed. R. Civ. P. 23, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement Agreement. For purposes of this Settlement Agreement, such order shall not become the Final Order and Judgment unless and until the Settlement Date occurs.

Humanitarian Fund means the Fund for Needy Victims of the Holocaust/Shoah referenced in the Decree of the Swiss Federal Council dated February 26, 1997, and described in the fifth paragraph of this Settlement Agreement.

ICEP means the Independent Committee of Eminent Persons described in the fifth paragraph of this Settlement Agreement.

ICRF means the Independent Claims Resolution Foundation described in the fifth paragraph of this Settlement Agreement.

Looted Assets means Assets actually or allegedly belonging in whole or in part to Victims or Targets of Nazi Persecution that were actually or allegedly stolen, expropriated, Aryanized, confiscated, or that were otherwise wrongfully taken by, at the request of, or under the auspices of, the Nazi Regime.

Matched Assets means Deposited Assets that the ICEP or the Claims Resolution Tribunal determines belong, and should be paid to, particular claimants.

Nazi Regime means the National Socialist government of Germany from 1933 through 1945 and its instrumentalities, agents, and allies (including, without limitation, all other Axis countries), all occupied countries, and all other individuals or entities in any way affiliated or associated with, or acting for or on behalf or under the control or influence of, the Nazi Regime, including, without limitation, the Accused Organizations and Individuals in the Nurnberg Trial, 6 F.R.D. 69 (1946).

Organizational Endorsers means the organizations signing written endorsements of this Settlement Agreement.

Other Swiss Banks means banks listed on Exhibit B hereto.

Preliminary Approval means the Court's issuance of an order conditionally certifying the Settlement Classes, preliminarily approving this Settlement Agreement, and approving the plan for Class Notice to the Settlement Classes.

Releasees means the Settling Defendants; the Swiss National Bank; Other Swiss Banks; the Swiss Bankers Association; the Swiss Confederation (including, without limitation, the Cantons and all other political subdivisions and governmental instrumentalities in Switzerland); all business concerns (whether organized as corporations or otherwise) headquartered, organized, or incorporated in Switzerland as of October 3, 1996, including, without limitation, corporations incorporated in Switzerland that are owned, operated, or controlled directly or indirectly by corporations located outside Switzerland ("the Swiss-based Concerns") and their branches and offices, wherever located; and all affiliates of any Swiss-based Concern (whether organized as corporations, partnerships, sole proprietorships or otherwise) wherever headquartered, organized, or incorporated in which the Swiss-based Concern owns or controls directly or indirectly at least 25 percent of any class of voting securities or controls in any manner the election or appointment of a majority of the board of directors, trustees or similar body ("Owned or Controlled Affiliates"). As to each of the foregoing Releasees, the term Releasees also includes, without limitation, each of its predecessors, successors, assigns, officers, directors, employees, agents, attorneys, heirs, executors, administrators, and personal representatives wherever located. The term Releasees excludes Basler Lebens-Versicherungs-Gesellschaft, Zürich Lebensversicherungs-Gesellschaft, and Winterthur Lebensversicherungs Gesellschaft and their

subsidiaries in the insurance business, but only to the extent of insurance claims of the type asserted in **Cornell, et al. v. Assicurazioni Generali S.p.A., et al.**, 97 Civ. 2262 (S.D.N.Y.). The term Releasees also excludes parent companies and other affiliates of Swiss-based Concerns that (1) before 1945 were headquartered, based, or incorporated in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, (2) were not Owned or Controlled Affiliates as defined herein, and (3) disguised the identity, value, or ownership of Cloaked Assets or used Slave Labor. A company shall not be deemed a Releasee by virtue of being an Owned or Controlled Affiliate if (1) the company was headquartered, based, or incorporated in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, and (2) the company's parent was a Swiss-based Concern established for the sole purpose of disguising the identity, value, or ownership of Cloaked Assets.

Settlement Agreement means this agreement.

Settlement Amount has the meaning set forth in Section 5.1 hereof.

Settlement Class or Settlement Classes means the plaintiff classes described in Section 8.2 hereof for which Settling Plaintiffs and Settling Defendants shall seek certification pursuant to Fed. R. Civ. P. 23, except those persons who, in accordance with the terms of this Settlement Agreement and the Court's order certifying the Settlement Classes, submit a timely request for exclusion from the classes. For the sole purpose of permitting the WJRO to act as a representative of the Settlement Class or Settlement Classes, the WJRO is hereby included as a member of the Settlement Class or Settlement Classes as defined above and as used in this Settlement Agreement.

Settlement Date means the date on which all of the following have occurred: (1) the entry of the Final Order and Judgment without material modification; (2) the achievement of finality for the Final Order and Judgment by virtue of that Order having become final and non-appealable through (a) the expiration of all appropriate appeal periods without an appeal having been filed (not including any provision for challenging the Final Order and Judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure), (b) final affirmance of the Final Order and Judgment on appeal or final dismissal or denial of all such appeals, including petitions for review, rehearing, or certiorari; or (c) final disposition of any proceedings, including any appeals, resulting from any appeal from the entry of the Final Order and Judgment, and (3) the expiration of any right of withdrawal or termination under Section 15 of this Settlement Agreement.

Settlement Fund means the fund established pursuant to Section 5.1 of this Settlement Agreement.

Settling Defendants means Credit Suisse and UBS AG (as successor to Union Bank of Switzerland and Swiss Bank Corporation) and each of their former and current corporate parents, subsidiaries, affiliates, and branches (including, without limitation, Credit Suisse Group, Credit Suisse, Credit Suisse First Boston, Credit Suisse First Boston Corporation, Credit Suisse Financial Products, Credit Suisse First Boston (Europe) Ltd., Credit Suisse First Boston Canada, Inc., and CSFB Aktiengesellschaft), predecessors, successors, assigns, officers, directors, employees, agents, attorneys, heirs, executors, administrators, and personal representatives, wherever they were, are, or may be located, incorporated, or conducting business, except for Winterthur Lebensversicherungs Gesellschaft and its subsidiaries in the insurance business, but only to the extent of insurance claims of the type asserted in **Cornell, et al. v. Assicurazioni Generali S.p.A., et al.**, 97 Civ. 2262 (S.D.N.Y.).

Settling Plaintiffs means (1) the named plaintiffs in the Filed Actions, and their heirs, successors, affiliates, and assigns, and (2) all members of the Settlement Classes, except those who, in accordance with the terms of this Settlement Agreement and the Court's order certifying the Settlement Classes, submit a timely request for exclusion from the classes.

Slave Labor means work for little or no remuneration actually or allegedly performed by individuals involuntarily at the insistence, direction, or under the auspices of the Nazi Regime.

Supplemental Agreement means the agreement to be filed under seal with the Court permitting Settling Defendants to terminate this Settlement Agreement based on the number of exclusion requests filed in accordance with Section 10.1 herein.

Unknown Claims means Claims that a claimant does not know or suspect to exist in his/her favor as of the date of this Settlement Agreement.

Unmatched Assets means Deposited Assets identified by ICEP that are not awarded or paid to particular claimants, other than Matched Assets.

Victim or Target of Nazi Persecution means any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped.

WJRO means the World Jewish Restitution Organization and all of its constituent bodies. For purposes of this Settlement Agreement, the WJRO shall intervene as a party to this litigation and shall be, along with others, a representative of the Settlement Classes.

2. SETTLEMENT PURPOSES ONLY

2.1. This Settlement Agreement is for settlement purposes only, and, notwithstanding anything else in this Settlement Agreement, neither the fact of, nor any provision contained in, this Settlement Agreement nor any action taken hereunder shall constitute, be construed as, or be offered or received in evidence as an admission of any Claim or any

fact by any party or any Releasee.

2.2. Any certification of a Settlement Class pursuant to the terms of this Settlement Agreement shall not constitute and shall not be construed as an admission on the part of any Releasee that this action, or any other proposed or certified class action, is appropriate for trial class treatment pursuant to Fed. R. Civ. P. 23 or any similar class action statute or rule. This Settlement Agreement is without prejudice to the rights of any Releasee (1) to oppose any request for certification in the Filed Actions should the Settlement Agreement not be approved or implemented for any reason, or (2) to oppose any request for certification or certification in any other proposed or certified class action.

2.3. If this Settlement Agreement is not approved, is terminated, or fails to be implemented for any reason, any certification, either preliminary or final, of the Settlement Classes or any other alleged class shall be deemed null and void *ab initio*.

3. SUBMISSION FOR PRELIMINARY APPROVAL

Promptly after execution of this Settlement Agreement, Settling Defendants and Settling Plaintiffs shall submit this Settlement Agreement, through their respective attorneys, to the Court for Preliminary Approval.

4. ICEP INVESTIGATION AND CLAIMS RESOLUTION

4.1. Although the parties anticipate that the ICEP and the Claims Resolution Tribunal will continue, at certain Releasees' expense, in a manner that is appropriate in light of this Settlement Agreement, Releasees shall have no additional financial exposure or additional liability of any kind whatsoever beyond the Settlement Amount on account of the activities or findings of the ICEP, the ICRF, or the Claims Resolution Tribunal, or on account of any cessation of or change in the activities of the ICEP, the ICRF, or the Claims Resolution Tribunal, excluding costs associated with the functioning of those entities.

4.2. Settling Defendants shall pay Matched Assets, together with interest and fees as determined pursuant to guidelines established by the ICRF, to rightful claimants as and when determined by the ICEP or the Claims Resolution Tribunal. Such payments of Matched Assets shall be deemed to be included in, and part of, the Settlement Amount and shall in no event cause the Settlement Amount to be increased. As provided in Section 5.3, Matched Assets paid to claimants after Settling Defendants have paid the final installment of the Settlement Amount shall be refunded to Settling Defendants from the Settlement Fund if and to the extent the balance remaining in the Settlement Fund is sufficient to pay the refund.

4.3. Persons receiving payments as determined by the ICEP or the Claims Resolution Tribunal shall not be precluded on account of those payments from receiving a distribution from the Settlement Fund.

5. SETTLEMENT PAYMENTS

5.1. Settling Defendants together shall pay to the funds identified in this Section 5.1 a total of $1.25 billion ("Settlement Amount"), including the payments referred to in Section 4.2 hereof, which are deemed credits as provided for in Sections 5.2 and 5.3 hereof. The Settlement Amount constitutes the maximum principal amount that Settling Defendants shall have to pay for any reason with respect to Claims. Payment of the Settlement Amount shall fully satisfy and discharge Settling Defendants' and Other Swiss Banks' obligations with respect to Unmatched Assets. Except as provided in Sections 5.2 and 5.3, Settling Defendants shall pay the Settlement Amount in four installments: (1) $250 million ("Installment 1") on November 23, 1998; (2) $333 million ("Installment 2") on November 23, 1999; (3) $333 million ("Installment 3") on November 23, 2000; and (4) $334 million ("Installment 4") on November 23, 2001.

Settling Defendants have paid Installment 1 into an escrow account established in accordance with the Escrow Agreement attached hereto as Exhibit A ("Escrow Fund"). Settling Defendants shall pay Installments 2, 3, and 4 to a separate fund ("Settlement Fund") that Settling Plaintiffs shall establish following the Court's issuance of Preliminary Approval. Within thirty (30) days after the Settlement Date, the Escrow Agents shall authorize the transfer of the then existing balance of the Escrow Fund (including interest earned thereon), less a reserve for taxes payable by the Escrow Fund, to the Settlement Fund.

Settling Defendants will accelerate payment of a portion of Installments 2, 3, or 4 to benefit needy members of the Settlement Class in the event that Settling Plaintiffs make a written request to Settling Defendants showing that (1) the Humanitarian Fund has been exhausted, (2) preceding installments of the Settlement Amount have been fully disbursed in accordance with a Court-approved distribution plan, and (3) there is an immediate and specific need to provide relief to identified Settlement Class members prior to the next scheduled installment. Any dispute as to whether Settling Defendants must make an accelerated payment, or any dispute as to the amount of any such accelerated payment, will be submitted to the Court for resolution.

5.2. All amounts (including, without limitation, interest and fees) that Settling Defendants and Other Swiss Banks have paid since October 3, 1996, or may pay in the future to Deposited Asset claimants as a result of determinations made by the ICEP or the Claims Resolution Tribunal shall reduce the Settlement Amount and may be credited in full against the installment next due (e.g., payments made before November 23, 1999, may be credited against Installment 2) or against any subsequent installment. Any payments made to such

claimants on account of claims relating to Looted Assets shall be credited in an amount commensurate with the amount such claimants would have received from the Settlement Fund as members of the Looted Assets Class. Within thirty (30) days after the Court grants Preliminary Approval, Settling Defendants shall submit to the Court a schedule of payments made as of that date that are to be credited against the Settlement Amount pursuant to this Section 5.2. Settling Defendants shall thereafter provide the Court a schedule showing subsequent payments on a quarterly basis until Settling Defendants have paid the final installment of the Settlement Amount.

Payments to claimants on account of determinations by the ICEP or the Claims Resolution Tribunal made after Settling Defendants have paid the final installment of the Settlement Amount shall be refunded to Settling Defendants from the Settlement Fund if and to the extent the balance remaining in the Settlement Fund is sufficient to pay the refund. Beginning thirty (30) days after Settling Defendants pay the final installment of the Settlement Amount, Settling Defendants shall provide the Court a schedule every thirty (30) days reflecting such payments. The Settlement Fund shall pay the scheduled amount to Settling Defendants within fifteen (15) business days after the schedule is submitted.

5.3. All amounts that Settling Defendants and Other Swiss Banks have paid since October 3, 1996, or may pay in the future to individuals or entities (including, without limitation, individuals or entities falling within the class definitions for the Settlement Classes) to discharge Claims (including, without limitation, claims for contribution or common law indemnity) brought against Settling Defendants or Other Swiss Banks directly by claimants or through private or governmental organizations such as, without limitation, the New York Holocaust Claims Processing Office shall reduce the Settlement Amount and may be credited against the installment next due (e.g., payments made before November 23, 1999, may be credited against Installment 2) or against any subsequent installment. Payments made to claimants on account of claims relating to Looted Assets shall be credited in an amount commensurate with the amount such claimants would have received from the Settlement Fund as members of the Looted Assets Class. Within thirty (30) days after the Court grants Preliminary Approval, Settling Defendants shall submit to Settling Plaintiffs a schedule of payments made as of that date that are to be credited against the Settlement Amount pursuant to this Section 5.3. Within fifteen (15) business days thereafter, Settling Plaintiffs shall notify Settling Defendants of any objections to the scheduled amounts. If objections are raised, the parties shall promptly meet and confer to resolve them. If there are remaining disagreements, the parties shall notify the Court at least fifteen (15) business days before Settling Defendants are due to pay the next installment of the Settlement Amount. The Court shall decide, before the next installment of the Settlement Amount is due, which payments or portions thereof may be credited against any installment.

For subsequent payments to be credited against the Settlement Amount pursuant to this Section 5.3, Settling Defendants shall submit a quarterly schedule of such payments to Settling Plaintiffs. Within fifteen (15) business days after receiving a schedule, Settling Plaintiffs shall notify Settling Defendants of any objections to the schedule. If objections are raised, the parties shall promptly meet and confer to resolve them. If there are remaining disagreements, the parties shall notify the Court at least fifteen (15) business days before Settling Defendants are due to pay the next installment of the Settlement Amount. The Court shall decide, before the next installment of the Settlement Amount is due, which payments or portions thereof may be credited against the installment.

If Settling Defendants or Other Swiss Banks make payments that Settling Defendants are entitled to credit against the Settlement Amount under this Section 5.3 after Settling Defendants have paid the last installment of the Settlement Amount, Settling Defendants shall be entitled to a refund from the Settlement Fund for such payments if and to the extent the balance remaining in the Settlement Fund is sufficient to pay the refund. Beginning thirty (30) days after Settling Defendants pay the final installment of the Settlement Amount, Settling Defendants shall provide Settling Plaintiffs a schedule showing such payments every thirty (30) days. Settling Plaintiffs must notify Settling Defendants of any objection to the schedule within fifteen (15) business days of receiving the schedule. If Settling Plaintiffs raise no objection, the Settlement Fund shall pay the scheduled amount to Settling Defendants within fifteen (15) business days of receiving the schedule. If Settling Plaintiffs object to refunding all or part of the scheduled amount, the Court shall decide whether a refund is to be given and the amount of the refund.

To protect the privacy of claimants, schedules submitted to Settling Plaintiffs or the Court pursuant to Section 5.2 or Section 5.3 may, in lieu of listing the names of those receiving payments, describe the nature of the Claims for which payments were made and include a certification by Settling Defendants that the descriptions are accurate. Settling Defendants shall request that the ICEP and the Claims Resolution Tribunal cooperate with Settling Plaintiffs in providing information necessary to determine whether a particular claimant seeking compensation from the Settlement Fund has received compensation from Settling Defendants or Other Swiss Banks on account of a determination by the ICEP or the Claims Resolution Tribunal. Failure by the ICEP or the Claims Resolution Tribunal to provide the requested information shall in no way affect the credits and refunds to which Settling Defendants are entitled pursuant to Section 5.2 and Section 5.3.

5.4. Settling Defendants' obligation to pay the Settlement Amount may be terminated or reduced if (1) Settling Plaintiffs commit a material breach of this Settlement Agreement including without limitation, a breach of any of the provisions, of Section 11, or (2) any Organizational Endorser

commits a material breach of its written endorsement of this Settlement Agreement. For purposes of this Section 5.4, the act or omission of any officer, director, leader, or spokesperson of or for an Organizational Endorser shall be deemed the act or omission of the Organizational Endorser. If Settling Defendants determine that one or more Settling Plaintiffs or Organizational Endorsers have committed a material breach, Settling Defendants shall so notify the Court and Settling Plaintiffs within thirty (30) business days of detecting the breach. The Court shall determine whether the claimed breach has occurred and, if so, whether it constitutes a material breach warranting the termination of Settling Defendants' obligations to make further payment of the Settlement Amount. In lieu of ordering termination, the Court may order an equitable reduction in the Settlement Amount to compensate for losses suffered by Settling Defendants and other Releasees on account of the breach and to deter future breaches.

5.5. Commencing on January 23, 2001, interest at a rate of 3.78% per annum shall be payable on any unpaid installments of the Settlement Amount (after deducting any uncredited payments that are entitled to be credited against future installments as set forth in this Section 5). Interest shall be paid on each installment at the time the installment payment is made.

5.6. The Escrow Fund and the Settlement Fund shall be used to pay the expenses and fees authorized under Section 7; Settling Defendants and Releasees shall have no other responsibility or liability for fees and expenses in connection with this settlement. The balance of the Escrow Fund and Settlement Fund shall be distributed in accordance with the distribution plan developed by the Special Master and finally approved by the Court in accordance with Section 7 of this Settlement Agreement.

5.7. All funds held in the Escrow Fund and Settlement Fund pursuant to this Settlement Agreement shall be deemed to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed pursuant to this Settlement Agreement or this Settlement Agreement terminates in accordance with Section 15 hereof. Funds held in the Settlement Fund shall be invested in United States Government obligations with a maturity of 180 days or less and shall collect and reinvest the interest accrued thereon. At such time that the balance of the Settlement Fund shall total less than $100,000, such balance may be held in an interest-bearing bank account insured by the FDIC.

5.8. If this Settlement Agreement is not approved or is terminated, canceled, or fails to become effective for any reason, the Escrow Fund and the Settlement Fund, together with interest earned but less expenses for fund administration and class notice actually incurred or due and owing and approved by the Court in connection with this Settlement Agreement, shall be refunded to Settling Defendants within ten (10) business days.

6. TAX STATUS OF FUNDS

At Settling Defendants' option, the Escrow Fund and/or the Settlement Fund may be established as, or converted to, Qualified Settlement Funds in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. The parties agree to negotiate in good faith and to cooperate in order to obtain an appropriate order, or the approval of the Court, and to fulfill any other legal necessity for this purpose.

7. FUND ADMINISTRATION AND DISTRIBUTION

7.1. Settling Plaintiffs shall apply to the Court for appointment of a Special Master within thirty (30) days after Preliminary Approval. The Special Master shall develop a proposed plan of allocation and distribution of the Settlement Fund, employing open and equitable procedures to ensure fair consideration of all proposals for allocation and distribution. The proposed allocation and distribution plan must be approved by the Court before the Settlement Fund may be distributed. Settling Plaintiffs shall implement the Court-approved plan under the Court's supervision. Settling Plaintiffs shall provide the Court and Settling Defendants a quarterly report accounting for expenses paid from the Settlement Fund and itemizing the amounts distributed to claimants against the Settlement Fund and other recipients of payments from the Settlement Fund.

7.2. Any attorney of record in the Filed Actions may apply to the Court for an award of attorneys' fees and expenses from the Escrow Fund or Settlement Fund. However, no attorneys' fees or expenses may be paid from the Escrow Fund or Settlement Fund until the Settlement Date. Settling Defendants and other Releasees shall have no liability for attorneys' fees or expenses beyond the Settlement Amount.

7.3. Pending issuance of the Final Order and Judgment, and subject to the requirements of the Escrow Agreement, the escrow agent(s) for the Escrow Fund may authorize disbursements of up to $10 million in the aggregate for payment of bona fide costs normally, reasonably, and necessarily incurred for purposes of providing Class Notice or otherwise effectuating this Settlement Agreement, provided, however, no disbursements may be made for purposes of paying Settling Plaintiffs' attorneys' fees or expenses (other than expenses incurred for class notice or fund administration).

7.4. Additional amounts may be allocated to pay for notice costs with the approval of the Court.

7.5. Commencing on the Settlement Date, and pursuant to the Court's supervision, Settling Plaintiffs may distribute the Settlement Fund in accordance with the plan of allocation and distribution finally approved by the Court. Subject to Court approval, the reasonable fees and expenses of administering the Settlement Fund may be paid from the

Settlement Fund. Subject to Court approval, unpaid administrative debts of the Escrow Fund shall be assumed and paid by the Settlement Fund. Settling Defendants and other Releasees shall have no liability for such administrative fees and expenses beyond the Settlement Amount.

7.6. Each person or entity receiving a distribution from the Settlement Fund shall be required to submit to Settling Plaintiffs an executed Proof of Claim in a form to be designated in the administration and distribution plan. The required Proof of Claim shall include an acknowledgment of the release of all Claims. The releases and covenants not to sue granted in Section 12 are absolute, and shall not be affected in any way by the failure of any recipient of a payment from the Settlement Fund to submit the Proof of Claim or by any deficiencies in any Proof of Claim. On or before the tenth day of each month, Settling Plaintiffs shall provide Settling Defendants copies of all Proof of Claim forms filed within the preceding month.

7.7. The plan of allocation and distribution shall permit payments to any member of the Settlement Classes, regardless of whether the member received funds in connection with the ICEP's or the Claims Resolution Tribunal's determinations. Such payments shall not imply reappraisal or criticism of the findings and determinations of the ICEP, the ICRF, the Claims Resolution Tribunal, or related bodies or individuals.

7.8. Settling Defendants shall have no responsibility for preparing or implementing the plan for administration and distribution of the Settlement Fund, and shall have no liability to the Settlement Classes or any other person or entity in connection with the administration, allocation, and distribution of the Settlement Fund.

8. CLASS CERTIFICATION

8.1. Settling Plaintiffs shall submit to the Court a motion seeking, pursuant to Fed. R. Civ. P. 23, solely for purposes of settlement, certification of the classes of plaintiffs that are described in Section 8.2 hereof ("Settlement Classes"). The motion will state that Settling Defendants' consent to class certification is for settlement purposes only and is conditioned on the Court's entering the Final Order and Judgment and such order becoming fully effective on the Settlement Date. If the Court declines to confirm certification of the Settlement Classes as defined in Section 8.2, Settling Defendants may withdraw their consent to class certification and terminate this Settlement Agreement in accordance with Section 15. Following issuance of the Class Notice and the Fairness Hearing, Settling Plaintiffs shall seek an order from the Court confirming the certification of the Settlement Classes.

8.2. The motion for conditional class certification shall seek certification of the following Settlement Classes:

(a) Deposited Assets Class: The Deposited Assets Class consists of Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Deposited Assets or any effort to recover Deposited Assets.

(b) Looted Assets Class: The Looted Assets Class consists of Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Looted Assets or Cloaked Assets or any effort to recover Looted Assets or Cloaked Assets.

(c) Slave Labor Class I: Slave Labor Class I consists of Victims or Targets of Nazi Persecution who actually or allegedly performed Slave Labor for companies or entities that actually or allegedly deposited the revenues or proceeds of that labor with, or transacted such revenues or proceeds through, Releasees, and their heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from the deposit of such revenues or proceeds or Cloaked Assets or any effort to obtain redress in connection with the revenues or proceeds of Slave Labor or Cloaked Assets.

(d) Slave Labor Class II: Slave Labor Class II consists of individuals who actually or allegedly performed Slave Labor at any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or other business concern headquartered, organized, or based in Switzerland or any affiliate thereof, and the individuals' heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee other than Settling Defendants, the Swiss National Bank, and Other Swiss Banks for relief of any kind whatsoever relating to or arising in any way from such Slave Labor or Cloaked Assets or any effort to obtain redress in connection with Slave Labor or Cloaked Assets.

(e) Refugee Class: The Refugee Class consists of Victims or Targets of Nazi Persecution who sought entry into Switzerland in whole or in part to avoid Nazi persecution and who actually or allegedly either were denied entry into Switzerland or, after gaining entry, were deported, detained, abused, or otherwise mistreated, and the individuals' heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from such actual or alleged denial of entry, deportation, detention, abuse, or other mistreatment.

9. NOTICE TO THE SETTLEMENT CLASSES

9.1. Settling Plaintiffs shall develop and submit to the Court for Preliminary Approval a plan for providing, in accordance with Fed. R. Civ. P. 23, notice to the Settlement Classes of the proposed class certification and settlement. Before submitting the plan to the Court, Settling Plaintiffs shall provide the plan to Settling Defendants and shall consider including such revisions to the plan that Settling Defendants may recommend. Any disagreements over the form, content, or method of class notification shall be resolved by the Court.

9.2. Upon Preliminary Approval and as the Court may direct, Settling Plaintiffs or their designee shall cause notice ("Class Notice") of the pendency of the actions consolidated for pre-trial purposes in **In re Holocaust Victims Assets**, Master Docket CV-96-4849, the settlement embodied herein, the conditional certification of the Settlement Classes, class members' exclusion and objection rights, and the Fairness Hearing to be provided to the members of the Settlement Classes in accordance with the Court-approved notice plan. The Class Notice shall include a reasonably detailed description of the process for developing the allocation and distribution plan under the Special Master's direction.

10. SETTLEMENT CLASS MEMBERS' RIGHT OF EXCLUSION

10.1. Any Settlement Class Member who wishes to be excluded from the settlement must submit a written request for exclusion to class counsel or an approved or appointed designee by the date specified in the Class Notice. The Court may, in its discretion, request such persons to describe the nature and amount of any Claims that the requestor may in the future wish to assert. The class counsel or the approved or appointed designee shall provide copies of any exclusion request to the Court, Settling Plaintiffs, and Settling Defendants within five (5) business days of receiving the request.

10.2. Any Settlement Class Member who does not submit an exclusion request meeting the requirements set forth in Section 10.1 by the date specified in the Class Notice will be a Settlement Class Member for all purposes under this Settlement Agreement. Any Settlement Class Member who elects to be excluded from the Settlement Class pursuant to Section 10.1 shall not be entitled to relief under or be affected in any way by this Settlement Agreement.

11. SETTLING PLAINTIFFS' OBLIGATIONS

11.1. Settling Plaintiffs endorse this Settlement Agreement as a fair, adequate, and reasonable settlement, and affirm that the Settlement Agreement brings about complete closure and an end to confrontation with respect to the subject matter it covers.

11.2. Settling Plaintiffs shall not make any public statement or take any action that would violate or be inconsistent with this Settlement Agreement, including seeking or approving economic or other sanctions against, or opposing business transactions involving, any Releasee based on Releasees' alleged conduct covered by the Settlement Agreement.

11.3. Settling Plaintiffs shall not call for or support suits or other proceedings asserting Claims against any Releasee.

11.4. Settling Plaintiffs shall instruct their counsel to comply with this Section 11, and any failure by counsel to comply shall be deemed the failure of Settling Plaintiffs to comply.

11.5. In accordance with and subject to Section 5.4, Settling Defendants may seek a Court order terminating or equitably reducing payment of the Settlement Amount if Settling Plaintiffs commit a material breach of this Settlement Agreement, including, without limitation, a breach of any of the provisions of this Section 11.

11.6. Settling Defendants shall not make any public statement or take any action that would violate or be inconsistent with this Settlement Agreement. Settling Defendants shall instruct their counsel to comply with this Section 11.6, and any failure by counsel to do so shall be deemed the failure of Settling Defendants to comply.

12. RELEASES AND COVENANT NOT TO SUE

12.1. As of the Settlement Date, Settling Plaintiffs irrevocably and unconditionally release, acquit, and forever discharge Releasees from any and all Claims. This release applies irrespective of whether any Settling Plaintiff receives a distribution from the Settlement Fund. Settling Plaintiffs covenant not to sue Releasees or initiate any form of proceeding seeking redress of any kind for any Claim covered by this Settlement Agreement in any judicial, administrative, or other proceeding anywhere in the world at any time, other than to enforce this Settlement Agreement, and consent to immediate dismissal with prejudice of any proceeding brought in violation of this provision. This release does not apply to Basler Lebens-Versicherungs-Gesellschaft, Zürich Lebensversicherungs-Gesellschaft, or Winterthur Lebensversicherungs Gesellschaft or their subsidiaries in the insurance business, but only to the extent of insurance claims of the type asserted in **Cornell, et al. v. Assicurazioni Generali S.p.A., et al.**, 97 Civ. 2262 (S.D.N.Y.).

12.2. Settling Plaintiffs, in releasing all Unknown Claims, shall waive any and all provisions, rights, and benefits conferred by Section 1542 of the Civil Code of the State of California, or any similar statute, regulation, rule, or principle of law or equity of any other state or applicable jurisdiction, and do so understanding and acknowledging the significance of such waiver. Section 1542 of the Civil Code of the State of California provides that:

A general release does not extend to claims which the credi-

tor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

12.3. Settling Plaintiffs also irrevocably and unconditionally release, acquit, and forever discharge the ICEP, the ICRF, the Claims Resolution Tribunal, and the Secretariat of the Claims Resolution Tribunal, as well as their respective officers, directors, employees, agents, attorneys, and contractors (including, without limitation, the individual arbitrators for the Claims Resolution Tribunal and the audit firms retained by the ICEP, including the audit firms' officers, directors, partners, employees, and agents) (collectively, "ICEP Entities"), including without limitation the ICEP Entities listed on Exhibit C, from any and all liability, claims, causes of action, obligations, damages, costs, and expenses arising out of or in any way associated with the ICEP Entities' activities relating to the investigation of Claims. Settling Plaintiffs covenant not to sue the ICEP Entities or initiate any form of proceeding seeking redress of any kind regarding ICEP activities in any judicial, administrative, or other proceeding anywhere in the world at any time, and consent to immediate dismissal with prejudice of any proceeding brought in violation of this provision.

12.4. At the request of any Releasee, Settling Plaintiffs shall provide a written release to the individual Releasee in the form of Exhibit D hereto. Settling Plaintiffs hereby grant power of attorney to Robert A. Swift to execute the requested release(s) on their behalf and instruct Robert A. Swift to execute each requested release within fifteen (15) business days of receiving the request for the release. Settling Plaintiffs shall appoint a replacement for Robert A. Swift in the event he is unavailable for any reason to carry out the requirements of this Section 12.4, and shall notify Settling Defendants of the replacement within ten (10) business days of appointing the replacement.

12.5. All Releasees themselves hereby irrevocably and unconditionally release, acquit, and forever discharge all persons from any and all claims relating to public statements or writings made before August 12, 1998, critical of the Releasees' conduct with respect to the Claims and/or issues raised in the Filed Actions.

13. DISMISSAL OF RELATED CASES

Within five (5) business days of executing this Settlement Agreement, Settling Plaintiffs shall seek to stay without prejudice **Markovicova. et al. v. Swiss Bank Corporation. et al.**, CV-98-2934 (N.D. Cal.) and No. 996160 (Cal. Super. Ct.) ("**Markovicova**") and **Rosenberg, et al. v. Swiss National Bank**, No. CV-98-1647 (D.D.C.) ("**Rosenberg**") (unless Settling Plaintiffs have previously stayed the cases). If the court denies Settling Plaintiffs' request for a stay, or if the court terminates any stay before the Settlement Date, Settling Plaintiffs shall move to dismiss without prejudice **Markovicova** and **Rosenberg** within five days of such denial or termination, subject to Settling Defendants' agreement (without waiving any defenses then available, including defenses based on the passage of time) to toll any applicable statutes of limitations from the date of dismissal without prejudice to such date as this Settlement Agreement may terminate. Any statutes of limitations tolled under this Section shall resume running on such date as Settling Plaintiffs become entitled to refile **Markovicova** and **Rosenberg** under the terms of this Section. Within fifteen (15) business days after the Settlement Date, Settling Plaintiffs shall file notices dismissing Markovicova and Rosenberg with prejudice.

14. COURT'S FINAL ORDER AND DISMISSAL

This Settlement Agreement is subject to and conditioned upon (1) the issuance by the Court following the Fairness Hearing of a Final Order and Judgment granting final approval of this Settlement Agreement in accordance with Fed. R. Civ. P. 23 and dismissing with prejudice the cases consolidated for pre-trial purposes under the caption **In re Holocaust Victims Assets**, Master Docket CV-96-4849, as well as any other suits pending before the Court asserting Claims that are released pursuant to Section 12 of this Settlement Agreement, and (2) the Final Order and Judgment becoming fully effective on the Settlement Date. As part of the Final Order and Judgment, the Court shall retain jurisdiction for the purpose of overseeing the administration and distribution of the Escrow Fund and the Settlement Fund and for the purpose of enforcing this Settlement Agreement.

15. TERMINATION OF THE AGREEMENT

15.1. Settling Plaintiffs and Settling Defendants shall separately have the right to terminate this Settlement Agreement by providing written notice of an intent to do so to counsel for the non-terminating party within twenty (20) days of (1) the Court's declining to grant Preliminary Approval in any material respect and/or declining to enter a preliminary order in a form to be mutually agreed upon by the parties; (2) the Court's refusal to approve this Settlement Agreement or any material part of it; (3) the Court's declining to certify the Settlement Classes as defined in this Settlement Agreement; (4) the Court's declining to enter a Final Order and Judgment in a form to be mutually agreed upon by the parties; or (5) any court modifying or reversing in any material respect the Final Order and Judgment as entered by this Court.

15.2. Prior to entry of the Final Order and Judgment, Settling Defendants shall have the right to terminate this Settlement Agreement if (1) economic sanctions are imposed or threatened against Releasees based on alleged acts or omissions covered by the Settlement Agreement; (2) any Settling Plaintiff named in the Filed Actions disavows this Settlement Agreement or acts in a manner contrary to Section 11 of this Settlement Agreement; (3) any Organizational Endorser

or officer, director, leader, or spokesperson of or for any Organizational Endorser disavows this Settlement Agreement or acts in a manner contrary to the Organizational Endorser's endorsement of this Settlement Agreement; or (4) a sufficient number of exclusion requests are filed in accordance with Section 10.1 of this Settlement Agreement that Settling Defendants' termination rights are triggered pursuant to the Supplemental Agreement.

15.3. If this Settlement Agreement is terminated for any reason under this Section or otherwise or it fails to become effective or implemented for any reason, the Settlement Agreement will have no force or effect whatsoever and will be rendered null and void ab initio and not admissible as evidence for any purpose in any pending or future litigation in any jurisdiction involving any of the parties hereto. In such an instance, the parties will be deemed to have reverted to their respective status as of the date immediately before the execution of this Settlement Agreement except for costs which have been expended in connection with class notice or administration of the Escrow Fund.

16. MISCELLANEOUS PROVISIONS

16.1. Upon the Settlement Date, all prior stipulations and orders entered by the Court shall terminate. Nothing in this Section 16.1 shall be construed to prevent Settling Defendants or Settling Plaintiffs from applying to the Court for relief from any such stipulation or order before issuance of the Final Order and Judgment.

16.2. This Settlement Agreement, including the Supplemental Agreement, the Escrow Agreement, and all other Exhibits attached hereto and hereby incorporated by reference herein, shall supersede any previous agreements and understandings between the parties with respect to the subject matter of this Settlement Agreement. This Settlement Agreement may not be changed, modified, or amended except in writing signed by all parties, subject to Court approval.

16.3. This Settlement Agreement shall be construed under and governed by the laws of the State of New York, applied without regard to its laws applicable to choice of law.

16.4. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16.5. This Settlement Agreement shall be binding upon and inure to the benefit of the parties, the Settlement Classes, and their representatives, heirs, successors, and assigns.

16.6. Representatives of the Settlement Classes under this Settlement Agreement shall have only that status and rights as conferred under Fed. R. Civ. P. 23.

16.7. The headings of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction. The decimal numbering of provisions herein is intended to designate subsections where applicable.

16.8. No party to this Settlement Agreement shall be considered to be the drafter of this Settlement Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

16.9. The waiver by one party of any breach of this Settlement Agreement by any other party shall not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

16.10. All counsel and other persons or entities executing this Settlement Agreement or any related settlement documents warrant and represent that they have the full authority to do so and that they have the authority to take the appropriate action required or permitted to be taken pursuant to the Settlement Agreement in order to effectuate its terms.

16.11. No portion of the Settlement Fund shall be deemed subject to the escheat or forfeiture laws of any government.

16.12. Any notice, request, instruction, application for Court approval or application for court orders sought in connection with the Settlement Agreement or other document to be given by any party to the other party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, with copies by facsimile to the attention of Settling Defendants' representative, if to Settling Defendants, and to Settling Plaintiffs' representative, if to Settling Plaintiffs, or to other recipients as the Court may specify. As of the date of this Settlement Agreement, the respective representatives are as follows:

For Settling Defendants

Roger M. Witten, Esq.
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000
(202) 663-6363 (fax)

For Settling Plaintiffs

Michael D. Hansfeld, Esq.
COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
(202) 408-4600
(202) 408-4699 (fax)

Robert A. Swift, Esq.
KOHN, SWIFT & GRAF, P.C.
1101 Market Street, Suite 2400
Philadelphia, PA 19107
(215) 238-1700
(215) 238-1968 (fax)

Melvyn I. Weiss, Esq.
MILBERG WEISS BERSHAD HYNES
& LERACH LLP
One Pennsylvania Plaza
New York, NY 10119
(212) 594-5300
(212) 868-1229 (fax)

The above designated representatives may be changed from time to time by any party upon giving notice to all other parties in conformance with this Section 16.

IN WITNESS WHEREOF Settling Plaintiffs and Settling Defendants have executed this Settlement Agreement as of the date first written above.

Settling Defendants:

CREDIT SUISSE GROUP

(for itself and on behalf of all other Credit Suisse Group entities included as Settling Defendants)

By _____
Joseph T. McLaughlin
Managing Director
and General Counsel—Americas

UBS AG
(for itself and on behalf of all other UBS entities included as Settling Defendants)

By _____
Robert C. Dinerstein
Managing Director
and General Counsel—Americas

Settling Plaintiffs:

PLAINTIFFS' EXECUTIVE COMMITTEE

By _____
Michael D. Hausfeld
Co-Chairperson
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
(202) 408-4600

By _____
Robert A. Swift
Co-Chairperson
KOHN, SWIFT & GRAF, P.C.
1101 Market Street, Suite 2400
Philadelphia, PA 19107
(215) 238-1700

By _____
Melvyn I. Weiss
Liaison Counsel
MILBERG WEISS BERSHAD HYNES & LERACH LLP
One Pennsylvania Plaza
New York, .N.Y. 10119
(212) 594-5300

WORLD JEWISH RESTITUTION ORGANIZATION

By _____
Israel Singer
Co-Chairman Executive

By _____
Avraham Burg
Co-Chairman Executive

RELATED AGREEMENT

This Related Agreement ("Related Agreement") is made and entered into as of this ____ day of _____, 1999, by and between Settling Defendants and Settling Plaintiffs in conjunction with the Settlement Agreement that the parties have executed or will execute in settling the consolidated actions known as In re Holocaust Victim Assets, Master Docket CV-96-4849 (E.D.N.Y.) ("Settlement Agreement").

1. Capitalized terms in this Related Agreement shall have the meanings assigned to them in the Settlement Agreement.

2. Settling Plaintiffs shall use their best efforts to obtain the written endorsements of the Agudath Israel World Organization, Alliance Israelite Universelle, the American Gathering/Federation of Jewish Holocaust Survivors, the American Jewish Committee, the American Jewish Congress, the American Jewish Joint Distribution Committee, the Anti-Defamation League, B'nai B'rith International, the Centre of Organizations of Holocaust Survivors in Israel, the Conference of Jewish Material Claims Against Germany, the Council of Jews from Germany, the European Council of Jewish Communities, the Holocaust Educational Trust, the Jewish Agency for Israel, the Simon Weisenthal Center, the World Jewish Congress, and the World Zionist Organization in the form of Exhibit 1 hereto within twenty (20) days after the parties execute the Settlement Agreement.

3. If Settling Plaintiffs obtain the endorsements of all of the organizations listed in paragraph 2 above within the twenty-day period specified, the Settlement Agreement will become effective immediately upon Settling Plaintiffs' written notification to Settling Defendants of this fact. If Settling Plaintiffs fail to obtain the endorsements of all of the organizations listed in paragraph 2 above within the applicable twenty-day period: (a) Settling Defendants at their sole discretion may declare that the Settlement Agreement shall not become effective; and (b) Settling Plaintiffs and Settling Defendants will resume their negotiations in a good-faith effort to resolve the issue.

IN WITNESS WHEREOF the parties have executed this Related Agreement as of the date first written above.

EXHIBIT 1

ENDORSEMENT

[signature] hereby:

1. endorses the Settlement Agreement entered to resolve the consolidated actions known as In re Holocaust Victim Assets, Master Docket CV-96-4849 (E.D.N.Y.) ("Settlement Agreement"), as a fair, adequate, and reasonable settlement;

2. affirms that the Settlement Agreement brings about complete closure and an end to confrontation with respect to the issues dealt with in the settlement;

3. agrees not to make any public statement or take any action that would violate or be inconsistent with this endorsement, including requesting or approving sanctions or opposing business transactions involving Swiss entities released by the Settlement Agreement based on conduct covered by the settlement;

4. covenants not to sue, call for suits against, or support suits against any Swiss entity released by the Settlement Agreement based on conduct covered by the settlement;

5. waives any and all claims it may have against the Swiss entities released by the Settlement Agreement based on conduct covered by the settlement; and

6. agrees to be bound by Sections 11 and 12 of the Settlement Agreement as if it had executed the Settlement Agreement as a Settling Plaintiff.

SIMON WIESENTHAL CENTER

By [signature]

Its DEAN & FOUNDER

Example of executed Organizational Endorsement. See previous page ("Related Agreement") for complete list of entities executing the Organizational Endorsement.

Settling Defendants:

CREDIT SUISSE GROUP
(for itself and on behalf of all other Credit Suisse Group entities included as Settling Defendants)

By _____
Joseph T. McLaughlin
Managing Director
and General Counsel–Americas

UBS AG
(for itself and on behalf of all other UBS entities included as Settling Defendants)

By _____
Robert C. Dinerstein
Managing Director
and General Counsel–Americas

Settling Plaintiffs:

PLAINTIFFS' EXECUTIVE COMMITTEE

By _____
Michael D. Hausfeld
Co-Chairperson

COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
(202) 408-4600

By _____
Robert A. Swift
Co-Chairperson

KOHN, SWIFT & GRAF, P.C.
1101 Market Street, Suite 2400
Philadelphia, PA 19107
(215) 238-1700

By _____
Melvyn I. Weiss
Liaison Counsel

MILBERG WEISS BERSHAD HYNES
& LERACH LLP
One Pennsylvania Plaza
New York, N.Y. 10119
(212) 594-5300

EXHIBIT B

The term "Other Swiss Banks" means all banks and bank branches, agencies, and other banking organizations incorporated, headquartered, or based in Switzerland (including, without limitation, the subsidiaries, affiliates, branches, agencies, or offices of such banks and bank branches, agencies, and other banking organizations that are or were located outside Switzerland) other than Settling Defendants and the Swiss National Bank, including, without limitation, the following banks:

Swiss-based banks

A & A Actienbank	Zürich
Aargauische Kantonalbank	Aarau
ABB Export Bank	Zürich
Adler & Co. Aktiengesellschaft	Zürich
Alternative Bank ABS	Olten
Amtssparniskasse Oberhasli	Meiringen
Amtssparniskasse Schwarzenburg	Schwarzenburg
Amtssparniskasse Thun	Thun
Anker Bank	Zürich
Appenzell-Innerrhodische Kantonalbank	Appenzell
Arzi Bank AG	Zürich
Banca Arner SA	Lugano
Banca Commerciale Lugano	Lugano
Banca del Ceresio S.A.	Lugano
Banca del Sempione	Lugano
Banca dello Stato del Cantone Ticino	Bellinzona
Banca Privata Solari & Blum SA (Groupe Benjamin et Edmond de Rothschild)	Lugano
Bank am Bellevue	Zürich
Bank August Roth AG	Amriswil
Bank Bütschwil	Bütschwil
Bank EEK	Bern
Bank Eschenbach	Eschenbach
Bank Hugo Kahn & Co. AG	Zürich
Bank im Thal	Balsthal
Bank in Gossau	Gossau SG
Bank in Huttwil	Huttwil
Bank in Langnau	Langnau
Bank in Menziken	Menziken
Bank in Zuzwil	Zuzwil
Bank J. Vontobel & Co. Ag	Zürich
Bank Julius Bär & Co. AG	Zürich
Bank Leerau	Kirchleerau
Bank Linth	Uznach

Bank Lips AG	Zürich
Bank of New York Inter Maritime Bank	Genève
Bank Sarasin & Cie.	Basel
Bank Sparhafen Zürich	Zürich
Bank Suhrental	Schöftland
Bank Thorbecke AG	St. Gallen
Bank Wartau-Sevelen	Azmoos
Banque Bonhôte & cie Sa	Neuchâtel
Banque Cantonale de Fribourg	Fribourg
Banque Cantonale de Genève	Genève
Banque Cantonale de Jura	Porrentruy
Banque Cantonale du Valais	Sion
Banque Cantonale Neuchâteloise	Neuchâtel
Banque Cantonale Vaudoise	Lausanne
Banque de Patrimoines Privées Genève BPG SA	Genève
Banque Edouard Constant SA	Genève
Banque Galland & cie SA	Lausanne
Banque Jenni & Cie SA	Basel
Banque Jurassienne d'Epargne et de Credit	Bassecourt
Banque Kanz SA	Genève
Banque Piguet & Cie SA	Yverdon
Banque Privée Edmond de Rothschild SA	Genève
Banque SCS Alliance SA	Genève
Banque Syz & Co. SA	Genève
Banque Trady de Wattville et Cie, Banque	Genève
Basellandschaftliche Kantonalbank	Liestal
Basler Kantonalbank	Basel
Baumann & Cie.	Basel
BB Bank Belp	Belp
Berner Kantonalbank	Bern
Bezirkskasse Laufen	Laufen
Bezirkssparkasse Dielsdorf	Dielsdorl
Bezirkssparkasse Uster	Uster
BGG Banque Genevoise de Gestion	Genève
Biene-Bank im Rheintal	Altstätten
Bordier & Cie	Genève
Bürgergemeinde Bern, DC Bank, Deposito-Cassa der Stadt Bern	Bern
Bürgerliche Ersparniskasse Bern	Bern
BWO Bank für Wertschriften und Optionen	Zürich
BZ Bank Aktiengesellschaft	Freienbach
Caisse d'Epargne d'Aubonne	Aubonne
Caisse d'Epargne de la Ville die Fribourg	Fribourg

Caisse d'Epargne de le Crét	Le Crêt
Caisse d'Epargne de Nyon	Nyon
Caisse d'Epargne de Prez, Corserey et Noréaz	Prez-vers-Noréaz
Caisse d'Epargne de Siviriez	Siviriez
Caisse d'Epargne de Vuisternens-devant-Romont	Vuisternens-devant Romont
Caisse d'Epargne du distict de Vevey	Vevey
Caisse d'Epargne du district de Courtelary	Courtelary
Caisse d'Epargne et de Prévoyance de Lausanne	Lausanne
Caisse d'Epargne et de Prévoyance d'Yverdon	Yverdon
Canto Consulting	Baar
Cantrade Banca Privata Lugano S.A.	Lugano
CBG Compagnie Bancaire Genève	Genève
Coop Bank, Banque Coop, Banca Coop, Banco Coop	Basel
Corner Banca S.A.	Lugano
Crédit mutuel de la Vallée S.A.	Le Sentier
Darier, Hentsch & Cie	Genève
Dreyfus Söhne & Cie. Aktiengesellschaft, Banquiers	Basel
E. Gutzwiller & Cie Banquiers	Basel
EB Entlebucher Bank	Schüpfheim
EFG Bank European Financial Group	Genève
EFG Privat Bank SA	Zürich
Ersparnisanstalt der Stadt St. Gallen	St. Gallen
Ersparnisanstalt Oberuzwil	Oberuzwil
Ersparnisantstalt Unterwasser	Unterwasser
Ersparnisgesellschaft Küttigen	Küttigen
Ersparniskasse Affoltern	Affoltern i. E.
Ersparniskasse Brienz	Brienz
Ersparniskasse der politischen Gemeinde Hemberg	Hemberg
Ersparniskasse des Amtsbezirks Interlaken	Interlaken
Ersparniskasse Dürrenroth	Dürrenroth
Ersparniskasse Erlinsbach	Obererlinsbach
Ersparniskasse Murten	Murten
Ersparniskasse Rüeggisberg	Rüeggisberg
Ersparniskasse Schaffhausen	Schaffhausen
Ersparniskasse Speicher	Speicher
Ersparniskasse Wyssachen-Eriswil	Wyssachen
Freie Gemeinschaftsbank BCL	Dornach
Gewerbebank Männedorf	Männedorf
Gewerbebank Zürich	Zürich
Gewerbekasse in Bern	Bern
Glarner Kantonalbank	Glarus
Gonet & Cie	Genève

Graubündner Kantonalbank	Chur
GRB Glarner Regionalbank	Schwanden
Habib Bank AG Zürich	Zürich
Hentsch, Chollet & Cie	Lausanne
Hottinger & Compagnie	Zürich
Hypotherkarbank Lenzburg	Lenzburg
IHAG Handelsbank Zürich	Zurich
KGS Sensebank	Heitenried
La Roche & Co.	Basel
Landolt & Cie	Lausanne
Leihkasse Stammheim	Oberstammheim
Lombard, Odier & Cie	Genève
Luzerner Kantonalbank	Luzern
Maerki, Baumann & Co. AG	Zürich
Marcuard Cook & Cie	Genève
MediBank	Zug
Migrosbank	Zürich
Mirabaud & Cie	Genève
Morval & Cie SA, Banque	Genève
Mourgue d'Algue & Cie	Genève
Nidwaldner Kantonalbank	Stans
Nordfinanz Bank Zürich	Zürich
Obersimmentalische Volksbank	Zweisimmen
Obwaldner Kantonalbank	Sarnen
OZ Bankers AG	Freienbach
Pictet & Cie	Genève
Privatbank Vermag AG	Chur
Rahn & Bodmer	Zürich
Regiobank Solothurn	Solothurn
Rüd, Blass & Cie AG, Bankgeschäft	Zürich
SB Saanen Bank	Saanen
Schaffhauser Kantonalbank	Schaffhausen
Schwyzer Kantonalbank	Schwyz
Scobag AG	Basel
Societa Bankcaria Ticinese	Bellinzona
Spar- und Leihkasse Balgach	Balgach
Spar- und Leihkasse Beringen	Beringen
Spar- und Leihkasse Bucheggberg	Lüterswil
Spar- und Leihkasse des Bezirks Schleitheim	Schleitheim
Spar- und Leihkasse Ebnat-Kappel	Ebnalt-Kappel
Spar- und Leihkasse Frutigen	Frutigen
Spar- und Leihkasse Gürbetal	Mühlethurnen
Spar- und Leihkasse Kirchberg	Kirchberg SG

Spar- und Leihkasse Leuk und Umgebung	Leuk-Stadt
Spar- und Leihkasse Löhningen	Löhningen
Spar- und Leihkasse Madiswil	Madiswil
Spar- und Leihkasse Melchnau	Melchnau
Spar- und Leihkasse Münsingen	Münsingen
Spar- und Leihkasse Neunkirch	Neunkirch
Spar- und Leihkasse Plaffeien	Plaffeien
Spar- und Leihkasse Riggisberg	Riggisberg
Spar- und Leihkasse Sumiswald	Sumiswald
Spar- und Leihkasse Thayngen	Thayngen
Spar- und Leihkasse Wilchingen	Wilchingen
Spar- und Leihkasse Wynigen	Wynigen
Spar + Leihkasse in Bern, Bern	Bern
Sparcassa 1816	Wäddenswil
Spargenossenschaft Mosnang	Mosnang
Sparkassa Berneck	Berneck
Sparkasse der Ascoop	Bern
Sparkasse des Sensebezirks	Tafers
Sparkasse Engelberg	Engelberg
Sparkasse Horgen	Horgen
Sparkasse Küsnacht	Küsnacht ZH
Sparkasse Mättenwil	Brittnau
Sparkasse Oberriet	Oberriet SG
Sparkasse Oftringen	Oftringen
Sparkasse Schwyz	Schwyz
Sparkasse Thalwil	Thalwil
Sparkasse Trogen	Trogen
Sparkasse Wiesendangen	Wiesendangen
Sparkasse Wolfhalden-Reute	Wolfhalden
Sparkasse Zürcher Oberland	Wetzikon
St. Gallische Creditanstalt	St. Gallen
St. Gallische Kantonalbank	St. Gallen
Tempus Privatbank AG	Zürich
Thurgauer Kantonalbank	Weinfelden
Trafina Privatbank AG	Basel
Tribe Partner Bank	Triengen
Union Bancaire Privée, CBI-TBD	Genève
Urner Kantonalbank	Altdorf
Valiant Bank	Bern
Volksbank Ruswil AG	Ruswil
Von Graffenried AG	Bern
VP Bank (Schweiz) AG	Zürich
Wegelin & Co. Gesellschafter Bruderer, Hummler & Co.	St. Gallen

Privatbankiers	
WIR Bank	Basel
ZLB Zürcher Landbank	Elgg
Zuger Kantonalbank	Zug
Zürcher Kantonalbank	Zürich
Swiss subsidiaries of non-Swiss-based banks	
American Express Bank (Switzerland) SA	Genève
Anlage- und Kreditbank AKB	Zürich
Arab Bank (Switzerland)	Zürich
Asahi Bank (Schweiz) AG	Zürich
Banca Commerciale Italiana (Suisse)	Zürich
Banca del Gottardo	Lugano
Banca di Credito e Commercio SA	Lugano-Paradiso
Banca Monte Paschi (Suisse) SA	Genève
Banca Popolare die Sondrio (Suisse) SA	Lugano
Banca Unione di Credito (BUC)	Lugano
Banco Exterior (Suiza) SA	Zürich
Banco Santander (Suisse) SA	Genève
Bank Adamas	Zürich
Bank Aufina	Brugg
Bank Austria (Schweiz) AG	Zürich
Bank CIAL (Schweiz)	Basel
Bank Globo	Pfäffikon
Bank Guinness Mahon Flight AG	Zürich
Bank Hapoalim (Switzerland) Ltd	Zürich
Bank Leumi le-Israel (Schweiz) AG	Zürich
Bank Morgen Stanley AG	Zürich
Bank of Tokyo-Mitsubishi (Schweiz) AG	Zürich
Bank Sal. Oppenheim jr. & Cie (Schweiz) AG	Zürich
Bank von Ernst & Cie AG	Bern
Bankers Trust AG	Zürich
Banque Algérienne du commerce Extérieur SA	Zürich
Banque Amas (Suisse) SA	Genève
Banque Audi (Suisse) SA	Genève
Banque Banorient (Suisse)	Genève
Banque Baring Brothers (Suisse) SA	Genève
Banque Bruxelles Lambert (Suisse) S.A.	Genève
Banque de Camondo (Suisse) SA	Genève
Banque de Commerce et de Placement SA	Genève
Banque de Dépots et de Gestion	Lausanne
Banque de Gestion Financiére BAGEFI	Zürich

Banque Diamantaire Anversoise (Suisse) SA	Genève
Banque du Crédit Agricole (Suisse) SA	Genève
Banque Française de L'Orient (Suisse) SA	Genève
Banque Franck SA	Genève
Banque Générale du Luxembourg (Suisse) AG	Zürich
Banque Kankaku (Suisse) SA	Cologny
Banque Multi Commerciale	Genève
Banque Nationale de Paris (Suisse) SA	Basel
Banque Paribas (Suisse) SA	Genève
Banque Pasche SA	Genève
Banque Procrédit SA	Fribourg
Banque Unexim (Suisse) SA	Genève
Barclays Banks (Suisse) SA	Genève
Bayerische Landesbank (Schweiz) AG	Zürch
BBV Privanza Bank (Switzerland) Ltd.	Zürich
BFC Banque Financière de la Cité	Genève
BFI Banque de Financement et d'Investissement	Genève
BHF-Bank (Schweiz) AG	Zürich
BLP Banque de Portfeuilles	Lausanne
BSI Banca della Svizzera Italiana	Lugano
C.I.M. Banque	Genève
Canadian Imperial Bank of Commerce (Suisse) SA	Genève
Cera Bank (Suisse) SA	Genève
Citibank (Switzerland) AG	Zürich
Commerzbank (Schweiz) AG	Zürich
Compagnie de Gestion et de Banque Gonet SA	Nyon
Coutts Bank (Schweiz) AG	Zürich
Credit Commercial de France (Suisse) SA	Genève
Crédit Lyonnais (Suisse) SA	Genève
Dai-Ichi Kangyo Bank (Schweiz) AG	Zürich
Daiwa Cosmo Bank (Schweiz) AG	Zürich
Daiwa Securities Bank (Switzerland)	Zürich
Deka Bank (Schweiz) AG	Zürich
Deutsche Bank (Suisse) SA	Genève
DG Bank (Schweiz) AG	Zürich
Discount Bank and Trust Company	Genève
Dominick Company AG	Zürich
Dresdner Bank (Schweiz) AG	Zürich
Eurasco Bank AG	Zürich
Experta-BIL	Zürich
F. van Lanschot Bankiers (Schweiz) AG	Zürich
FIBI Bank (Schweiz) AG	Zürich
Finansbank (Suisse) SA	Genève

Finter Bank Zürich	Zürich
FTI - Banque Fiduciary Trust	Genève
Fuji Bank (Schweiz) AG	Zürich
Goldman Sachs Co. Bank	Zürich
Guyerzeller Bank AG	Zürich
GZB-Bank (Schweiz) AG	Zürich
Handels-Finanz CCF Bank	Genève
Helaba (Schweiz) Landesbank Hessen-Thüringen AG	Zürich
Hyop-Bank (Suisse) SA	Freienbach
IBI Bank AG	Zürich
IBZ Investment Bank	Zürich
ING Bank (Schweiz)	Zürich
Instinet (Schweiz) AG	Zürich
J. Henry Schroder Bank AG	Zürich
J.P. Morgan (Suisse) SA	Genève
Jyske Bank (Schweiz)	Zürich
Kredietbank (Suisse) SA	Genève
Kokusai Bank (Schweiz) AG	Zürich
Kredietbank (Suisse) Lugano SA	Lugano
Lavoro Bank AG	Zürich
Liechtensteinische Landesbank (Schweiz) AG	Zürich
M.M. Warburg Bank (Schweiz)	Zürich
Mees Pierson (Schweiz) AG	Zug
Merrill Lynch Bank (Suisse) SA	Genève
Merrill Lynch Capital Markets AG	Zürich
MFC Merchant Bank SA	Genève
Mitsubishi Trust & Banking Corporation (Schweiz) AG	Zürich
Nikko Bank (Schweiz) AG	Zürich
Nomura Bank (Schweiz) AG	Zürich
Norinchukin Bank (Schweiz) AG	Zürich
PKB Privatbank AG	Zürich
RNB Republic National Bank of New York (Suisse) SA	Genève
Robabank (Schweiz) AG	Zürich
Robeco Bank (Suisse) Sa	Genève
Robert Fleming (Schweiz) AG	Zürich
Rothschild Bank AG	Zürich
Royal Bank of Canada (Suisse) S.A.	Genève
Rüegg Bank AG	Zürich
Sakura Bank (Schweiz) AG	Zürich
Sanwa Bank (Schweiz) AG	Zürich
SchmidtBank (Schweiz) AG	Zürich
Sumitomo Bank (Schweiz) AG	Zürich
The Chase Manhattan Private Bank (Switzerland)	Genève

The Industrial Bank of Japan (Schweiz) AG	Zürich
Tokai Bank (Schweiz) AG	Zürich
Toyo Trust & Banking (Schweiz) AG	Zürich
Ueberseebank AG	Zürich
United Bank AG (Zürich)	Zürich
United European Bank	Genève
United Mizrahi Bank (Schweiz) AG	Zürich
Uto Bank	Zürich
Volksbank Bodensee AG	Rankweil
Wako Bank (Schweiz) AG	Zürich
Westdeutsche Landesbank (Schweiz) AG	Zürich

Swiss branches of non-Swiss-based banks

ABN AMRO Bank N:V:	Amsterdam
ANZ Grindlays Bank Ltd	Melbourne
Banco Espirito Santo e Comercial de Lisboa SA	Lisbonne
Bank of America National Trust and Savings Association	San Francisco
Banque Degroof Luxembourg SA	Luxembourg
Banque Internationale de Commerce - BRED	Paris
Banque Ippa & Associés, Luxembourg	Luxembourg
Caisse Nationale de Crédit Agricole	Paris
Citibank N.A.	New York
Crédit Agricole Indosuez	Paris
First National Bank of Southern Africa Ltd.	Johannesburg
Ford Credit Europe plc.	Brentwood
Habibsons Bank Limited, London	London
HSBC Investment Bank plc	London
LGT Bank in Liechtenstein Aktiengesellschaft, Niederlassung Zürich	Vaduz
Lloyds Bank p.l.c.	London
Morgan Guaranty Trust Company of New York	New York
Reisebank AG	Frankfurt a.M.
Société Générale Bank & Trust	Luxembourg
The British Bank of the Middle East	London
The Chase Manhattan Bank	New York
The Industrial Bank of Japan, Limited, Tokyo	Tokyo
Vorarlberger Landes- Hypothekenbank Aktiengesellschaft	Bregenz

EXHIBIT C

Independent Committee of Eminent Persons
Independent Association of Eminent Persons
Members of the Independent Committee of Eminent Persons:
Paul A. Volcker, Chairman
Michael Bradfield, Counsel
Hans J. Baer
Zvi Barak
Ruben Beraja
Avraham Burg
Curt Gasteyger
Alain Hirsch
Klaus Jacobi
Ronald S. Lauder
Peider Mengiardi
René Rhinow
Israel Singer
Independent Claims Resolution Foundation
Board of Trustees of the Independent Claims Resolution Foundation:
Paul A. Volcker
René Rhinow
Israel Singer
Andersen Worldwide S.C.
Arthur Andersen/London, England
Arthur Andersen AG/Zurich, Switzerland
Coopers & Lybrand/London, England (a legacy firm of PricewaterhouseCoopers)
Coopers & Lybrand AG/Zurich, Switzerland (a legacy firm of PricewaterhouseCoopers)
Coopers & Lybrand International (a legacy firm of PricewaterhouseCoopers)
Deloitte & Touche/London, England
Deloitte & Touche Experta/Zurich, Switzerland
KPMG/London, England
KPMG Fides Peat AG/Zurich, Switzerland
KPMG International
Price Waterhouse
Price Waterhouse/London, England (a legacy firm of PricewaterhouseCoopers)
Price Waterhouse AG/Zurich, Switzerland (a legacy firm of PricewaterhouseCoopers)
PricewaterhouseCoopers (worldwide) (a legacy firm of PricewaterhouseCoopers)
PricewaterhouseCoopers/London, England
PricewaterhouseCoopers AG/Zurich, Switzerland
Claims Resolution Tribunal for Dormant Accounts in Switzerland
Arbitrators of the Claims Resolution Tribunal for Dormant Accounts in Switzerland:
Hans Michael Riemer, Chairman
Hadassa Ben-Itto
Robert Briner

Thomas Buergenthal
L. Yves Fortier
David Friedmann
The Right Hon. Lord Terence Higgins
Howard Holtzmann
Andrew J. Jacovides
Franz Kellerhals
Hans Nater
Roberts B. Owen
William W. Park
Doron Shorrer
Zvi Tal
Jean-Luc Thevenoz
Staff of the Claims Resolution Tribunal for Dormant Accounts in Switzerland
Panel of Experts on Interest and Fees and Other Charges
Members of the Panel of Experts on Interest and Fees and Other Charges:
Henry Kaufman
Walter Ryser
Elhanan Helpman

EXHIBIT D

RELEASE AND COVENANT NOT TO SUE

Settling Plaintiffs irrevocably and unconditionally release, acquit, and forever discharge _____, including, without limitation, each of its predecessors, successors, assigns, officers, directors, employees, agents, attorneys, heirs, executors, administrators, and personal representatives wherever located, from any and all claims covered by the Settlement Agreement made and entered into on _____ __, 1999, by and between Settling Defendants and Settling Plaintiffs in settling the consolidated actions known as In re Holocaust Victim Assets, Master Docket CV-96-4849 (E.D.N.Y.), and further covenant not to sue [Releasee], its predecessors, successors, assigns, officers, directors, employees, agents, attorneys, heirs, executors, administrators, or personal representatives, wherever located, or initiate any form of proceeding seeking redress of any kind for any claim covered by the Settlement Agreement in any judicial, administrative, or other proceeding anywhere in the world at any time, other than to enforce the Settlement Agreement, and consent to immediate dismissal with prejudice of any proceeding brought in violation of this provision.

IN WITNESS WHEREOF this Release has been executed as of the date set forth above.

_____

_____

For and on behalf
of Settling Plaintiffs

ESCROW AGREEMENT

This Escrow Agreement is made and entered into this 24th day of November, 1998, by and between Settling Defendants and Settling Plaintiffs.

WHEREAS, the parties have entered into an agreement in principle to settle all claims against Settling Defendants as set forth in the Court transcripts dated August 12, 1998 (the "August 12 Agreement");

WHEREAS, Settling Defendants have agreed to deposit in escrow $250,000,000 on November 23, 1998; and

WHEREAS, the parties have agreed that, if the Court issues a Final Order and Judgment approving the settlement, the balance of the Escrow Fund then existing, less a reserve for taxes payable, will be transferred to the Settlement Fund on or after the Settlement Date;

NOW, THEREFORE, it is agreed by and among the parties to this Escrow Agreement, through their respective attorneys, in consideration of the benefits flowing under the August 12 Agreement and the Escrow Agreement to Settling Plaintiffs and Settling Defendants, and other good and valuable consideration, receipt of which is hereby acknowledged, that:

1. DEFINITIONS

The following terms used in this Escrow Agreement shall have the meanings given below, provided, however, that any defined term given a different meaning in the Settlement Agreement shall be deemed to have the meaning set forth in the Settlement Agreement:

August 12 Agreement means the agreement in principle referenced in the second

EXHIBIT A

paragraph of this Escrow Agreement and set forth in the Court transcripts dated August 12, 1998.

Bank means the bank into which the Escrow Fund is deposited pursuant to Section 2.1 hereof.

Court means the United States District Court for the Eastern District of New York.

Escrow Agents shall have the meaning set forth in Section 3 hereof.

Escrow Agreement means this agreement.

Escrow Fund shall have the meaning set forth in Section 2.1 hereof.

Filed Actions means Weisshaus, et al. v. Union Bank of Switzerland, et al., CV-96-4849, Friedman, et al. v. Union Bank of Switzerland, et al., CV-96-5161, Trilling-Grotch, et al. v. Union Bank of Switzerland et al., CV-96-5161, Sonabend, et al. v. Union Bank of Switzerland, et al., CV-96-5161, and World Council of Orthodox Jewish Communities v. Union Bank of Switzerland, et al., CV-97-0461, which are being considered together for pretrial purposes under the caption In re Holocaust Victim Assets, Master Docket CV-96-4849, pending in the United States District Court for the Eastern District of New York; Markovicova, et al. v. Swiss Bank Corporation, et al., C98-2934, pending in the United States District Court for the Northern District of California; and Rosenberg v. Swiss National Bank, No. CV-98-1647, pending in the United States District Court for the District of Columbia.

Final Order and Judgment means the order to be entered by the Court, in a form to be mutually agreed upon by the parties, approving the Settlement Agreement without material alterations, as fair, adequate, and reasonable under Fed. R. Civ. P. 23, confirming the certification of the Settlement Classes under Fed. R. Civ. P. 23, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of the

Settlement Agreement. For purposes of this Escrow Agreement, such order shall not become the Final Order and Judgment unless and until the Settlement Date occurs.

Settlement Agreement means the written settlement agreement to be executed by Settling Plaintiffs, Settling Defendants, and any other parties for purposes of giving effect to the August 12 Agreement.

Settlement Date means the date on which all of the following have occurred: (a) the entry of the Final Order and Judgment without material modification; (b) the achievement of finality for the Final Order and Judgment by virtue of that Order having become final and non-appealable through (i) the expiration of all appropriate appeal periods without an appeal having been filed (not including any provision for challenging the Final Order and Judgment pursuant to Fed. R. Civ. P. 60); (ii) final affirmance of the Final Order and Judgment on appeal or final dismissal or denial of all such appeals, including petitions for review, rehearing, or certiorari; or (iii) final disposition of any proceedings, including any appeals, resulting from any appeal from the entry of the Final Order and Judgment; and (c) the expiration of any right of withdrawal or termination under the Settlement Agreement.

Settlement Fund means the fund to be established pursuant to the Settlement Agreement.

Settling Defendants means Credit Suisse and UBS AG (as successor to Union Bank of Switzerland and Swiss Bank Corporation) and each of their former and current corporate parents, subsidiaries, affiliates, and branches (including, without limitation, Credit Suisse Group, Credit Suisse, Credit Suisse First Boston, Credit Suisse First Boston Corporation, Credit Suisse Financial Products, Credit Suisse First Boston (Europe) Ltd., Credit Suisse First Boston Canada, Inc., and CSFB Aktiengesellschaft), predecessors, successors, assigns, officers, directors,

employees, agents, attorneys, heirs, executors, administrators, and personal representatives, wherever they were, are, or may be located, incorporated, or conducting business, except for Winterthur Lebensversicherungs Gesellschaft and its subsidiaries in the insurance business, but only to the extent of insurance claims of the type asserted in Cornell et al. v. Assicurazioni Generali S.p.A. et al., 97 Civ. 2262 (S.D.N.Y.).

Settling Plaintiffs means (a) the named plaintiffs in the Filed Actions, and their heirs, successors, affiliates, and assigns, and (b) all members of the classes of plaintiffs for which Settling Plaintiffs and Settling Defendants shall seek conditional certification pursuant to Fed. R. Civ. P. 23, except those who, in accordance with the terms of the Settlement Agreement and the Court's order certifying the classes, submit a timely request for exclusion from the classes.

2. ESTABLISHMENT OF ESCROW FUND

2.1. On November 23, 1998, Settling Defendants shall deposit $250,000,000 in cash into an account with, at the discretion of Settling Defendants, Credit Suisse First Boston or UBS AG ("Bank") in New York City ("Escrow Fund"). The Escrow Fund shall be operated under the terms of the Settlement Agreement and this Escrow Agreement.

2.2. Except as provided in Section 4.1, the Bank shall pay interest on the Escrow Fund at the six (6)-month London Inter-Bank Offered Rate ("LIBOR"). Interest shall be calculated on the principal of the Escrow Fund for each day that the Escrow Fund is on deposit at the Bank until the Settlement Date based on the six (6)-month LIBOR rate in effect for that day. Interest shall be due, and shall be paid into and become part of the Escrow Fund, on the Settlement Date.

2.3. The Bank shall waive all fees for the establishment, maintenance, or dissolution

of the Escrow Fund.

2.4. All funds held in the Escrow Fund shall be deemed to be in custodia legis of the Court and shall remain subject to the jurisdiction of the Court until the Escrow Fund terminates pursuant to Section 6 hereof. Except for payments or distributions authorized by this Escrow Agreement, neither Settling Plaintiffs nor Settling Defendants shall have the authority to, or shall, assign, transfer, encumber, or grant a security interest in the Escrow Fund.

3. APPOINTMENT OF ESCROW AGENTS AND THEIR GENERAL AUTHORITY

3.1. The parties hereby appoint and acknowledge Roger M. Witten and Melvyn I. Weiss as co-escrow agents ("Escrow Agents") of the Escrow Fund.

3.2. The Escrow Agents are hereby authorized, by joint signature only, to make withdrawals, payments, and distributions from the Escrow Fund, in accordance with Section 4 of this Escrow Agreement, by check, wire, electronic, or internal process. No withdrawal, payment, or distribution from the Escrow Fund, in accordance with Section 4, shall be made without signatures of both Escrow Agents.

3.3. The Escrow Agents shall not be entitled to compensation for their services from the Escrow Fund; however, their reasonable expenses incurred for administering the Escrow Fund (including, without limitation, expenses to hire an accounting firm as authorized under Section 3 4 hereof) shall be reimbursed from the Escrow Fund in accordance with Section 4.

3.4. The Escrow Agents shall have the authority to hire an accounting firm as reasonably necessary to assist them in the performance of their duties as Escrow Agents.

3.5. An Escrow Agent may resign by delivery of his resignation in writing to the Court at any time. Settling Defendants may replace Roger M. Witten with a substitute and Settling

Plaintiffs may replace Melvyn I. Weiss with a substitute by delivery of notice in writing to the Court at any time. The foregoing notwithstanding, any such resignation or replacement shall not be effective until a successor (reasonably acceptable to the other party) has been appointed and the successor accepts the appointment. If an Escrow Agent tenders his resignation and a successor has not been appointed within thirty (30) days of the resignation, Settling Defendants or Settling Plaintiffs may petition the Court to nominate a successor.

4. DISBURSEMENTS FROM THE ESCROW FUND

4.1. Except as provided in Section 4.2, the Escrow Fund shall be disbursed only in the following circumstances: If the Court issues a Final Order and Judgment, the Escrow Agents shall, within thirty (30) days after the Settlement Date, authorize the transfer of the then-existing balance of the Escrow Fund (including interest earned thereon), less a reserve for taxes payable by the Escrow Fund, to the Settlement Fund. As soon as practicable after all tax returns have been filed and taxes paid in accordance with such returns, any excess reserve shall be paid to the Settlement Fund. If the Settlement Fund has not been established within thirty (30) days after the Settlement Date, the funds shall remain in the Escrow Fund until the Settlement Fund has been established, at which time the balance of the Escrow Fund shall be transferred to the Settlement Fund as soon as practicable. The Bank shall not be obligated to pay interest at the 6-month LIBOR rate as of the Settlement Date, but may instead negotiate the rate to be paid on any funds to remain on deposit at the Bank after that date.

4.2. In addition to disbursements authorized under Section 4.1, the Escrow Agents may authorize disbursements from the Escrow Fund of up to $10,000,000 in the aggregate for payment of bona fide costs normally, reasonably, and necessarily incurred in the settlement

process, such as for class notice and administration of the Escrow Fund (including costs to retain an accounting firm as provided for in Section 3.4); provided, however, the Escrow Fund shall not be used to pay Settling Plaintiffs' attorneys' fees until after the Settlement Date, and only upon approval by the Court.

4.3. Any dispute as to whether an expense qualifies as an authorized payment or as to the amount to be disbursed that cannot be resolved by agreement of the Escrow Agents shall be submitted to the Court for final resolution without any right of appeal.

5. TAX STATUS OF ESCROW FUND

5.1. The parties agree that the Escrow Fund is intended to be treated as a Qualified Settlement Fund ("QSF") for the purposes of the Internal Revenue Code and the regulations promulgated thereunder, including, but not limited to, the regulations set forth under 26 C.F.R. §§ 1.468B-1 through 1.468B-5. To that end, the parties shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment.

5.2. If for any reason the Escrow Fund is not a QSF as of the date it is established, at the request of Settling Defendants, a "relation-back election" as described in 26 C.F.R. § 1.468B-1(j) shall be made to cause the Escrow Fund to be deemed a QSF at the earliest allowable date and the Escrow Agents shall take such actions as may be necessary or appropriate in connection therewith.

5.3. The Escrow Agents jointly shall be the administrator of the QSF and, with the assistance of an accounting firm retained pursuant to Section 3.4 hereof, shall undertake the following actions in administering the Escrow Fund as a QSF: (a) apply for a taxpayer

identification number for the Escrow Fund; (b) file, or cause to be filed, all tax and information returns that the Escrow Fund is required to file under foreign, federal, state, and local laws and regulations; (c) pay from the Escrow Fund all taxes that are imposed on the Escrow Fund under foreign, federal, state, and local laws and regulations; (d) file, or cause to be filed, tax elections available to the Escrow Fund, including without limitation a "relation-back election" in accordance with Section 5.2; and (e) file a request for a prompt assessment under § 6501(d) of the Internal Revenue Code if Settling Defendants instruct them to do so.

5.4. If, upon audit by the Internal Revenue Service, the Escrow Fund is found not to be a QSF for any period of time, the Escrow Agents shall apply for a refund of any taxes paid by the Escrow Fund and shall pay the refund into the Escrow Fund (or into the Settlement Fund if the refund is received after the Escrow Fund is transferred into the Settlement Fund). The Escrow Fund (or the Settlement Fund if the Escrow Fund has been transferred into the Settlement Fund) shall promptly reimburse Settling Defendants for any tax liability (including interest and penalties, if any) that Settling Defendants incur with respect to earnings of the Escrow Fund as a result of any determination that the Escrow Fund does not constitute a QSF.

6. TERMINATION OF ESCROW FUND

The Escrow Fund shall terminate upon: (a) transfer of the balance of the Escrow Fund to the Settlement Fund pursuant to Section 4.1 of this Escrow Agreement; (b) termination of the August 12 Agreement; or (c) termination of the Settlement Agreement. If termination of the Escrow Fund occurs pursuant to subsection (a), the Settlement Fund shall assume any unpaid administrative debts of the Escrow Fund and any tax liability that is asserted on audit of the Escrow Fund after its termination that is not otherwise covered by the reserve established

pursuant to Section 4.1 If termination of the Escrow Fund occurs pursuant to subsection (b) or (c), the then-existing balance of the Escrow Fund (including interest earned thereon) less a reserve for taxes shall revert to Settling Defendants, who shall pay any unpaid costs authorized by the Escrow Agents or the Court pursuant to Sections 4.2 or 4.3.

7. IMMUNITY OF ESCROW AGENTS

The Escrow Agents shall not incur personal liability of any nature in connection with any act or omission in the administration of the Escrow Fund, unless the act or omission constitutes gross negligence or willful misconduct.

8. MISCELLANEOUS

8.1. This document, once executed by properly authorized signatures on behalf of the parties, represents agreement by the parties to all the terms and conditions set forth herein. The signatories to this Escrow Agreement warrant and represent that they have full and complete authority to enter into this Escrow Agreement and to sign said Escrow Agreement on behalf of themselves and/or the entity or persons they represent.

8.2. The parties hereby irrevocably consent to the jurisdiction of the Court in connection with any action or proceeding arising out of or relating to this Escrow Agreement; any document or instrument delivered pursuant to, in connection with, or simultaneously with this Escrow Agreement; a breach of this Escrow Agreement or of any such document or instrument; or the Escrow Fund. Any disputes between or among the parties concerning the matters contained in this Escrow Agreement shall, if they cannot be resolved by agreement, be submitted to the Court for final resolution without any right of appeal. The Court shall retain jurisdiction over the implementation and enforcement of this Escrow Agreement.

8.3. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York, applied without regard to its law applicable to choice of law.

8.4. This Escrow Agreement shall constitute the entire agreement among the parties with regard to the subject of this Escrow Agreement and shall supersede any previous agreements and understandings between the parties with respect to the subject matter of this Escrow Agreement. This Escrow Agreement may not be changed, modified, or amended except in writing signed by all parties, subject to Court approval.

8.5. The headings of this Escrow Agreement are included for convenience only and shall be not be deemed to constitute part of this Escrow Agreement or to affect its construction. The decimal numbering of provisions herein is intended to designate subsections where applicable.

8.6. This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their representatives, heirs, successors, and assigns.

8.7. No party to this Escrow Agreement shall be considered to be the drafter of this Escrow Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Escrow Agreement.

8.8. The invalidity or unenforceability of any provision of this Escrow Agreement shall not affect any other provision hereof, and the remainder of the Escrow Agreement shall be construed and enforced as if such invalid or unenforceable provision were omitted.

8.9. The waiver by one party of any breach of this Escrow Agreement by any other party shall not be deemed a waiver of any prior or subsequent breach of this Escrow Agreement.

8.10. This Escrow Agreement may be executed in one or more counterparts, each of

which shall be deemed an original but all of which together shall constitute one and the same instrument.

8.11. Any notice, request, instruction, application for Court approval or application for Court orders sought in connection with this Escrow Agreement or other document to be given by any party to the other party shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, with copies by facsimile to the attention of Settling Defendants' representative, if to Settling Defendants, and to Settling Plaintiffs' representative, if to Settling Plaintiffs, or to other recipients as the Court may specify. As of the date of this Escrow Agreement, the respective representatives are as follows:

For Settling Defendants:

Roger M. Witten
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420
(202) 663-6000
(202) 663-6363 (fax)

For Settling Plaintiffs:

Michael D. Hausfeld
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
(202) 408-4600
(202) 408-4699 (fax)

Robert A. Swift
KOHN, SWIFT & GRAF, P.C.
1101 Market Street, Suite 2400
Philadelphia, PA 19107
(215) 238-1700

The above designated representatives may be changed from time to time by any party upon giving notice to all other parties in conformance with this Section 8.11.

IN WITNESS WHEREOF the parties have executed this Escrow Agreement as of the date first written above.

Settling Defendants:

CREDIT SUISSE GROUP
(for itself and on behalf of Credit Suisse, Credit Suisse First Boston, Credit Suisse First Boston Corporation, Credit Suisse Financial Products, Credit Suisse First Boston (Europe) Ltd., Credit Suisse First Boston Canada, Inc., CSFB Aktiengesellschaft, and other Credit Suisse entities included as Settling Defendants)

By Joseph T. McLaughlin
Joseph T. McLaughlin
Managing Director
and General Counsel-Americas

UBS AG
(for itself and on behalf of all other UBS entities included as Settling Defendants)

By _____
Robert C. Dinerstein
Managing Director and General Counsel
Legal and External Affairs

Settling Plaintiffs:

PLAINTIFFS' EXECUTIVE COMMITTEE

By _____
Michael D. Hausfeld
Co-Chairperson

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
(202) 408-4600

By _____
Robert A. Swift
Co-Chairperson

KOHN, SWIFT & GRAF, P.C.
1101 Market Street, Suite 2400
Philadelphia, PA 19107
(215) 238-1700

By _____
Melvyn I. Weiss
Liaison Counsel

MILBERG WEISS BERSHAD HYNES & LERACH LLP
One Pennsylvania Plaza
New York, N.Y. 10119
(212) 594-5300

Settling Defendants:

CREDIT SUISSE GROUP
(for itself and on behalf of Credit Suisse, Credit Suisse First Boston, Credit Suisse First Boston Corporation, Credit Suisse Financial Products, Credit Suisse First Boston (Europe) Ltd., Credit Suisse First Boston Canada, Inc., CSFB Aktiengesellschaft, and other Credit Suisse entities included as Settling Defendants)

By _____
Joseph T. McLaughlin
Managing Director
and General Counsel-Americas

UBS AG
(for itself and on behalf of all other UBS entities included as Settling Defendants)

By _____
Robert C. Dinerstein
Managing Director and General Counsel
Legal and External Affairs

Settling Plaintiffs:

PLAINTIFFS' EXECUTIVE COMMITTEE

By _____
Michael D. Hausfeld
Co-Chairperson

COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
(202) 408-4600

By _____
Robert A. Swift
Co-Chairperson

KOHN, SWIFT & GRAF, P.C.
1101 Market Street, Suite 2400
Philadelphia, PA 19107
(215) 238-1700

By _____
Melvyn I. Weiss
Liaison Counsel

MILBERG WEISS BERSHAD HYNES & LERACH LLP
One Pennsylvania Plaza
New York, N.Y. 10119
(212) 594-5300

Amendment No. 2 to Settlement Agreement

This Amendment No. 2 to Settlement Agreement is made and entered into this 9th day of August, 2000, by and between Settling Plaintiffs and Settling Defendants.

WHEREAS, the parties entered into a settlement agreement dated January 26, 1999, and amended it on November 16, 1999 (the "Settlement Agreement");

WHEREAS, Settling Plaintiffs and Settling Defendants wish further to amend the Settlement Agreement in view of comments made at the Fairness Hearings and in view of other developments bearing on the Settlement Agreement; and

WHEREAS, these further amendments relate to and fully resolve questions regarding the applicability of the Settlement Agreement to looted Artworks (a term defined below) and to claims involving Participating Insurance Carriers (a term defined below), as well as issues relating to the manner in which the Settlement Fund will be distributed and the payment of distribution costs;

NOW, THEREFORE, it is agreed by and among the parties to the Settlement Agreement, through their respective attorneys, that:

1. DEFINITIONS

1.1. The capitalized terms used in this Amendment No. 2 to Settlement Agreement shall have the meanings assigned to them in the Settlement Agreement, unless otherwise modified by this Amendment No. 2.

1.2. The definition of the term Assets in Section 1 of the Settlement Agreement is hereby amended by adding the phrase "insurance policies" after the word "equipment." The definition of Assets in Section 1 of the Settlement Agreement is further amended by capitalizing the word "artworks."

1.3. Section 1 of the Settlement Agreement is hereby amended by adding the following definitions:

> "Artworks means any specifically identified objects of artistic value, including, but not limited to, Judaica, rare books, paintings, drawings, and sculpture, actually or allegedly belonging in whole or in part to Settling Plaintiffs that are currently in the possession, custody, or control of any Releasee and that were actually or allegedly stolen, expropriated, Aryanized, confiscated, or were otherwise wrongfully taken by, at the request of, or under the auspices of, the Nazi Regime."

"Claims Resolution Tribunal – SD ('CRT-SD') means the Claims Resolution Tribunal as it may be reconstituted to perform functions relating to the distribution of the Settlement Fund."

"Policy Claims means all Claims or Settled Claims relating to direct insurance policies issued by Participating Insurance Carriers to Victims or Targets of Nazi Persecution that (1) do not otherwise qualify as claims relating to Looted Assets, and (2) have not been paid by the issuing Participating Insurance Carrier, its affiliate, successor, or subsidiary, provided that, for the purposes of this clause, a policy will not be considered "paid" if documentary evidence demonstrates that the policy was paid in contravention of applicable law."

"Participating Insurance Carriers means all Releasees listed on Exhibit 1 hereto, as it may be amended pursuant to the terms of this Amendment No. 2 to Settlement Agreement."

2. ARTWORKS

2.1. The Settlement Agreement is hereby amended by adding a new Section 12.6 as follows:

"12.6. Notwithstanding any other provisions of this Settlement Agreement including this Section 12 hereof, Settling Plaintiffs' discharge of Releasees from any and all Claims shall not bar any Settling Plaintiff from bringing a lawsuit to recover specifically identified Artworks that qualify as Looted Assets where the suit seeks relief in the nature of a replevin action for return of such specifically identified Artworks against a Releasee who allegedly is currently in actual possession of such specifically identified Artworks; provided, however, that any such Settling Plaintiff may not seek to recover any damages, fees, or costs of any kind or seek any relief whatsoever beyond return of the specifically identified Artworks except such payment of court costs as are routinely awarded to prevailing parties in the courts of the country in which the lawsuit was brought; provided further, that any such suit may only be brought in the courts of the country where the Artworks allegedly are located at the time the suit is begun, or the courts of the country from which the Artworks were looted; and provided further that, before any such suit may be brought, the Settling Plaintiff must first take reasonable steps to secure the return of the Artworks from the Releasee through means other than litigation."

3. DISTRIBUTION OF SETTLEMENT FUNDS

3.1. Section 4.1 of the Settlement Agreement is hereby amended by striking it in its entirety, and substituting the following:

> "4.1. Notwithstanding any further activities, findings, recommendations, or conclusions of, or costs incurred by, the ICEP, ICRF, CRT, or any CRT-SD, and notwithstanding any other provisions of this Settlement Agreement, Releasees shall have no financial exposure or additional liability of any kind whatsoever beyond the Settlement Amount for any cost incurred by the ICEP and the Independent Association of Eminent Persons and their agents, counsel, and auditors, after ICEP's final meeting of February 23, 2000; the ICRF; the CRT after the date of this Amendment No. 2, except to the extent the CRT establishes that any cost incurred was for the purpose of processing claims to the account lists published by the Swiss Bankers Association in 1997; any CRT-SD, including all costs incurred for establishing the CRT-SD; or by any other person that is in any way connected to or arises out of the distribution of the Settlement Fund; including, without limitation, all costs and expenses incurred in connection with the publication of additional accounts, centralizing of account databases, and preparation of bank files for the use of the CRT-SD or any other claims facility established by the Court for resolving claims of the Deposited Assets Class or other Settling Plaintiffs; all such costs shall be paid in their entirety by the Settlement Fund."

3.2. The Settlement Agreement is hereby amended by adding a new Section 4.4 as follows:

> "4.4. Settling parties agree to support the Swiss Federal Banking Commission's decision of March 30, 2000 to authorize expeditious publication, on the Internet, of identifying information relating to approximately 26,000 open, suspended, and closed accounts dating from the relevant era that, in the opinion of ICEP, probably or possibly belong to Victims of Nazi Persecution; provided, however, that the accounts authorized for publication shall first be reviewed at the bank's expense for the purpose of removing account names that do not meet the publication criteria. The review process shall not unreasonably delay the expeditious publication of the account information. Publication will occur as soon as feasible after the Court issues an order approving a plan of allocation and distribution hereunder, which the parties anticipate will occur in September, 2000. Once publication has been completed, Settling Plaintiffs shall be required to submit claims to Deposited Assets within a reasonable period of time to be set by the Court."

3.3. The Settlement Agreement is hereby amended by adding a new Section 4.5 as follows:

> "4.5 Settling parties agree to support the Swiss Federal Banking Commission's decision of March 30, 2000 to authorize expeditious centralization, as soon as feasible after the Court issues an order approving a plan of allocation and distribution, of the database of all account holders that, according to the final conclusions of ICEP, probably or possibly belong to Victims of Nazi Persecution. The centralized database shall be used, subject to the directives of the Swiss Federal Banking Commission, for the matching and research of claims submitted by Settling Plaintiffs through the settlement procedures. All costs incurred for establishing and operating the centralized database shall be paid in their entirety by the Settlement Fund."

3.4. Section 5.1 of the Settlement Agreement is hereby amended by striking the last sentence of the first paragraph of that section and substituting the following: "Except as provided in Sections 5.2 and 5.3, Settling Defendants shall pay into the Escrow Fund the Settlement Amount in four installments: (1) $250 million ("Installment 1") on November 23, 1998; (2) $333 million ("Installment 2") on November 23, 1999; (3) $333 million ("Installment 3") on November 23, 2000; and (4) $334 million ("Installment 4") also on November 23, 2000."

3.5. Section 5.1 is further amended by striking the last sentence of the second paragraph of that section and substituting the following: "Unless Settling Plaintiffs direct otherwise, within thirty (30) days after the Settlement Date, the Escrow Agents shall authorize the transfer of the then-existing balance of the Escrow Fund (including interest earned thereon), less a reserve for taxes payable by the Escrow Fund, to the Settlement Fund."

3.6. Section 5.1 is further amended by striking the third paragraph of that section.

3.7. Section 5.2 of the Settlement Agreement is hereby amended by adding between the first and second sentences of this Section the following: "Provided, however, that the Settlement Fund shall directly pay to claimants all special adjustments for interest and fees awarded by the Claims Resolution Tribunal pursuant to guidelines established by the ICRF."

3.8. Section 5.3 of the Settlement Agreement is hereby amended by adding to the first paragraph between the first and second sentences of that paragraph the following: "All payments made to claimants of or through the New York State Banking Department (including but not limited to its Holocaust Claims Processing Office) will be credited against the Settlement Amount for the full amount of these payments."

3.9. Section 5.5 of the Settlement Agreement is hereby amended by striking it in its entirety and substituting the following:

> "5.5. Within ten (10) business days after the later of court approval of this Settlement Agreement as amended or execution of

> Amendment No. 2 by the parties, Settling Defendants shall pay into the Escrow Fund $10,521,000, which is the amount of interest that would have been due and payable on November 23, 2001 under Section 5.5 of this Settlement Agreement prior to this amendment thereto."

3.10. Section 7.3 of the Settlement Agreement is hereby amended by striking it in its entirety and substituting the following:

> "7.3 Pending issuance of the Final Order and Judgment, and subject to the requirements of the Escrow Agreement, the Escrow Agent(s) for the Escrow Fund may authorize disbursements of up to $20 million in the aggregate for payment of bona fide costs normally, reasonably, and necessarily incurred for purposes of providing Class Notice or otherwise effectuating this Settlement Agreement, including costs associated with establishing a deposited assets claims process, provided, however, no disbursements may be made for purposes of paying Settling Plaintiffs' attorneys' fees or expenses (other than expenses incurred for class notice or fund administration)."

3.11. Section 7.4 of the Settlement Agreement, as set forth in Amendment No. 1 to the Settlement Agreement, is hereby amended by striking it in its entirety and substituting the following:

> "7.4 Upon approval of the Court, the Escrow Agents may authorize disbursements of additional amounts from the Escrow Fund to pay bona fide costs normally, reasonably, and necessarily incurred in the settlement process, such as for class notice or for establishing a deposited assets claims process."

3.12. Section 7.5 of the Settlement Agreement is hereby amended by striking the second sentence in its entirety and substituting the following: "All fees and expenses of administering the Settlement Fund shall, subject to Court approval, be paid from the Settlement Fund."

3.13. Section 7.5 of the Settlement Agreement is hereby further amended by striking the last sentence of that section and substituting the following: "Settling Defendants and other Releasees shall have no liability for such administrative fees and expenses beyond the Settlement Amount, including any fees or expenses incurred by the CRT-SD or any other person or entity."

3.14. Section 7.8 of the Settlement Agreement is hereby amended by striking the entire section and substituting the following: "Settling Defendants shall have no responsibility for preparing, implementing, or funding the plan for administration and distribution of the Settlement Fund, and shall have no liability to the Settlement Classes or any

other person or entity in connection with the administration, allocation, and distribution of the Settlement Fund, including, but not limited to, with respect to the CRT-SD."

3.15. The Settlement Agreement is hereby amended by adding Section 7.9, which reads as follows:

> "7.9. Any plan for administering this settlement, including any claims resolution process, shall be carried out under the supervision and control of the Court. Among other things, the Court will maintain judicial control over the procedural and substantive rules, all amendments thereto, and the appointment of personnel and staff in connection with any claims resolution process. Subject to the Swiss Federal Banking Commission's directives, the CRT-SD or other Swiss-based contact office for the claims resolution process will have access to the existing files prepared by the ICEP auditors in the course of their investigation on specific accounts that in the opinion of the ICEP probably or possibly belong to Holocaust victims where required for resolving specific claims by Settling Plaintiffs. No information on specific bank accounts may be disclosed, directly or indirectly, by the CRT-SD or other Swiss-based contact office for the claims resolution process to the Court or the Settling Plaintiffs unless (i) the files are required for resolving specific claims by Settling Plaintiffs, (ii) the claimant has provided plausible evidence that an account holder is his or her relative and a Victim or Target of Nazi Persecution; and (iii) the claimant who is deemed entitled to an account agrees to, or the competent Swiss authority permits, the transfer of such information. No claims resolution process established hereunder shall be empowered to act, or to provide information concerning any account, in connection with any claim by a person who is not a Victim or Target of Nazi Persecution, other than to reject the claim on such grounds. All payments approved by any claims resolution process established hereunder shall be made directly from the Settlement Fund. No Releasee shall have any liability for claims of any kind submitted by Settling Plaintiffs apart from the Settlement Amount, whether or not such claims are resolved by any claims resolution process established hereunder."

3.16 The Settlement Agreement is hereby amended by adding a new Section 7.10 as follows:

> "7.10. Pending issuance of the Final Order and Judgment, the Escrow Agents for the Escrow Fund may authorize, subject to the requirements of the Escrow Agreement, disbursements from the Escrow Fund for payment to Settling Plaintiffs of well-documented Claims."

3.17. Nothing herein shall be deemed to abrogate whatever power the Court may have under Rule 23(d)(2) of the Federal Rules of Civil Procedure to make appropriate orders required for the fair conduct of any claims process; provided, however, that no such order may be inconsistent with the terms of this Settlement Agreement. The Settlement Fund shall pay all costs incurred by the Settling Defendants in complying with such orders, including, but not limited to, the expenditure of time by the Settling Defendants' own employees.

4. INSURANCE

4.1. The Settlement Agreement is hereby amended by adding a new Section 9.3 as follows:

> "9.3. The Court shall cause notice to be provided to Settlement Class members of the allocation and distribution plan for the Settlement Fund. That notice shall, inter alia, include a reasonably detailed description of the procedures set forth in this Amendment No. 2 to Settlement Agreement for making Looted Asset Claims and for making Policy Claims involving Participating Insurance Carriers, and shall provide for a reasonable period of time to opt out solely from the aspects of the Settlement relating to the releases of the Participating Insurance Carriers. Such notice shall also include a list of the Participating Insurance Carriers who will be subject to Section 17 of the Settlement Agreement. Nothing in this Section or in the notice to be provided under this Section shall be construed to mean that the prior class action notice was insufficient in any respect."

4.2. The Settlement Agreement is hereby amended by adding the following Section 17, entitled "Policy Claims":

> "17.1. Victims or Targets of Nazi Persecution may make Policy Claims to the Court or its designee (subject to the Court's review) within a reasonable period to be specified in the allocation and distribution plan. The Court or its designee will determine whether Policy Claims are valid pursuant to criteria to be established within sixty days from the date of court approval of the settlement by agreement acceptable to the parties and the Participating Insurance Carriers. The conclusion of such agreement is a condition precedent of any undertaking concerning insurance in this Amendment No. 2, including, without limitation, any undertaking of the Participating Insurance Carriers in Section 17.3, and any Participating Insurance Carrier that does not subscribe to such agreement shall be removed from Exhibit 1 hereto and thereafter shall not be a Participating Insurance Carrier. In principle, Policy Claims will be deemed valid where (1) the claimant is a Victim or Target of Nazi Persecution; (2) there is documentary evidence that the claimant is making a claim on a

direct insurance policy issued by a Participating Insurance Carrier; (3) the claimant is entitled to the proceeds of the policy because the claimant is the policyholder, the beneficiary of the policy, or a rightful heir of such persons; and (4) there is documentary evidence that the net cash surrender value of the policy (as defined in Section 17.3) has not already been paid to the policyholder, the beneficiary, another beneficiary, or a rightful heir, provided, however, that prior recovery of less than the net cash surrender value will not preclude a claimant from recovering the difference between the prior recovery and the net cash surrender value under this Settlement, unless the prior recovery was obtained pursuant to (a) a law or regulation enacted after World War II that did not discriminate against Victims or Targets of Nazi Persecution, or (b) an accord and satisfaction.

"17.2. The Participating Insurance Carriers will make available at their expense all information or documentation in their possession (or in the possession of any current affiliate or subsidiary listed on Exhibit 1 hereto (as amended) that would reasonably be expected to have information or documentation relating to the policy at issue) relating to submitted Policy Claims, but only after the Court or the designee has determined that the submitted Policy Claim is not frivolous. Any Policy Claim submitted to a Participating Insurance Carrier shall be accompanied by the claimant's authorization of such Participating Insurance Carrier to procure information relating to the Policy Claim from archives of governmental restitution offices. Where a Policy Claim is not directed at a particular Participating Insurance Carrier because the claimant does not know which Carrier issued his or her policy, all of the Participating Insurance Carriers will search their records or the records of their current affiliates or subsidiaries listed on Exhibit 1 hereto (as amended) that are reasonably expected to have information or documentation relating to the policy at issue, but only if there is a reasonable basis, as determined by the Court or its designee, to believe that one of the Participating Insurance Carriers may have issued the policy in question. The Participating Insurance Carriers will enter into arrangements with the Swiss insurance supervisory authority, who will have authority to monitor the Participating Insurance Carriers' obligations under this Section 17.2 by: (a) reviewing written search protocols that each Participating Insurance Carrier will use to perform the searches required by this Section 17.2 to make sure those protocols are fully adequate; (b) taking steps it deems reasonable to confirm that the Participating Insurance Carrier is following the approved protocol in conducting its searches, and (c) preparing periodic reports generally describing the actions it has taken pursuant to this Section 17.2. The foregoing actions of the

Swiss insurance supervisory authority will be the exclusive measures taken to confirm the Participating Insurance Carriers' compliance with their undertakings under the Settlement Agreement.

"17.3. Policy Claims found to be valid by the Court or its designee (subject to the Court's review) will be paid at the net cash surrender value – the policy value adjusted to reflect the amount for which the policy could be redeemed at the relevant time – multiplied by a reasonable gross-up factor. Solely for the purposes of determining a reasonable gross-up factor, the parties agree to follow the guidelines specifically related to the computation of such a factor, as promulgated by the International Commission on Holocaust-era Insurance Claims. The Settlement Fund and the Participating Insurance Carriers will each be responsible for one half of the amount awarded on valid Policy Claims for the first $100 million (up to a cap of $50 million for the Settlement Fund, on the one hand, and up to a cap of $50 million for the Participating Insurance Carriers, collectively, on the other hand) to be paid according to Section 17.4 hereof. If valid Policy Claims exceed $100 million, either the Settlement Fund will pay any amounts in excess of the first $100 million or valid Policy Claims will be paid pro rata within the combined cap of $100 million. Under no circumstances will the Participating Insurance Carriers collectively be responsible for more than $50 million, and , subject to the provisions of Section 17.4, all Releasees other than the Participating Insurance Carriers will have no liability for Policy Claims. All Looted Asset Claims including those relating to insurance policies will be paid exclusively from the Settlement Fund.

"17.4. Commencing thirty days after the last time period set forth in this Amendment No. 2 for any Participating Insurance Carrier to withdraw, the Court or its designee (subject to the Court's review) will issue a certificate of validity to each claimant whom it finds has a valid Policy Claim relating to a Participating Insurance Carrier that has not withdrawn. Within six months following the date of issuance, a claimant may present the certificate of validity to Settling Plaintiffs to receive the amount awarded pursuant to procedures to be included in the Court's plan of allocation and distribution of the Settlement Fund. All awards relating to Policy Claims shall be paid jointly by the Settlement Fund and the Settling Defendants. Counsel for Settling Plaintiffs shall promptly provide Settling Defendants with copies of all certificates of validity presented to them for payment. Settling Defendants shall pay 50% of the amount designated in such

certificate up to the $50 million cap on the Participating Insurance Carriers' responsibility, within 15 business days of presentation."

"17.5. All of the parties to this Settlement Agreement agree, and as a condition to submitting any claim under the Settlement Agreement any claimant must acknowledge, that (i) neither the direct nor indirect participation by any Participating Insurance Carrier or its attorneys or agents in the negotiation or implementation of the Settlement Agreement, including but not limited to reviewing or providing information related to Looted Assets Claims or Policy Claims, providing information concerning publishing notice or actually publishing notice of the names of holders of policies subject to Looted Assets Claims or Policy Claims or contributing funds toward the payment of Policy Claims, shall subject any Participating Insurance Carrier to the jurisdiction of the United States District Court for the Eastern District of New York or any other state or federal court in the United States, (ii) the Court's retention of jurisdiction to enforce the Settlement Agreement shall not supply jurisdiction over any Participating Insurance Carrier, and (iii) the parties to this Settlement Agreement shall not argue that any Participating Insurance Carrier is subject to such jurisdiction either in this pending action or any other action in the United States based, in whole or in part, on any or all of the aforementioned factors."

"17.6. The voluntary dismissal, with prejudice, of the Releasees listed in Exhibit 2 (provided, however, they have not previously withdrawn) from the actions entitled Cornell, et al. v. Assicurazioni Generali S.p.A., et al., 97 Civ. 2262 (S.D.N.Y.), and Winters, et al. v. Assicurazioni Generali S.p.A., et al., 98 Civ. 9186 (S.D.N.Y.), and of all claims, whether known or unknown, that have been or could have been asserted therein against any Participating Insurance Carrier pursuant to order and judgment of the United States District Court of the Southern District of New York shall occur within thirty days of the earlier of (a) the Settlement Date or (b) the last time period set forth in this Amendment No. 2 for any Participating Insurance Carrier to withdraw and is a condition precedent of the undertakings of such Participating Insurance Carrier in Section 17.3 and the Settling Defendants in Section 17.4.

"17.7.

a) If the Court, after due consultation with the interested parties, determines that, in its opinion, this Section 17 cannot reasonably be implemented without public disclosure of the names of holders of

policies subject to Looted Asset Claims or Policy Claims, the Court, no later than halfway through the period for filing Looted Asset Claims and Policy Claims provided in the distribution plan, may recommend such disclosure, recognizing that the Court lacks jurisdiction over the Participating Insurance Carriers. The Court shall only recommend such disclosure if (1) based on the experience with claims that are being submitted, it appears that there is a strong likelihood that significantly more valid Looted Asset Claims and Policy Claims would be submitted if the names of holders of policies subject to Looted Asset Claims and Policy Claims were to be publicly disclosed, (2) it would be reasonably feasible for any or all of the Participating Insurance Carriers to identify the names of such policyholders, and (3) that recommendation, if implemented, would not cause a significant extension of the period for making such Claims. In determining whether disclosure of policyholder names is reasonably feasible pursuant to clause (2) of the preceding sentence, the Court shall consider a Participating Insurance Carrier's ability to identify relevant policyholder names, the amount of effort that would be required to develop reasonably comprehensive and reasonably accurate information, the cost of doing so, and the time it would take to do so; and the Court shall not recommend such disclosure if the likely costs and burdens are disproportionate to the likely benefits.

b) If the Court makes a recommendation pursuant to subsection (a) with respect to disclosure of policyholder names, then the Settling Defendants shall, within five (5) days thereafter inform the Participating Insurance Carriers of the Court's recommendation and the Participating Insurance Carriers shall then have thirty (30) days within which to inform the Settling Defendants whether they intend to make the disclosure recommended by the Court and the Settling Defendants shall so inform the Court within five (5) days of being advised of the Participating Insurance Carriers' intentions. If a Participating Insurance Carrier fails to respond timely to an inquiry of a Settling Defendant, the Participating Insurance Carrier shall be deemed to have responded negatively.

(1) If the Participating Insurance Carrier responds positively, any efforts to identify names to be disclosed shall be made by the Participating Insurance Carrier subject to review by the Swiss Insurance Supervisor, as provided in Section 17.2, and the reasonable costs incurred by the Participating Insurance Carrier in connection therewith and all other costs connected to the disclosure shall be paid by the Settlement Fund as a cost of distribution.

(2) If the Participating Insurance Carrier responds negatively, then any and all provisions with respect to insurance in this Agreement shall become null and void with respect to that Participating Insurance Carrier, including (without limitation) the provisions found in Section 17.3 hereof.

c) In no event, and notwithstanding Section 17.4 hereof or any other provision of this Agreement, will any Settling Defendant have any liability to pay Policy Claims or make payments of any kind in respect of a Participating Insurance Carrier that has withdrawn pursuant to Section 17.7(b)(2) hereof."

"17.8 Any of the four groups of Participating Insurance Carriers (as reflected in Exhibit 1) may withdraw from this Settlement Agreement and this Amendment No. 2 (a) if no agreement is reached concerning payment criteria within the time period prescribed in Section 17.1; or (b) if pursuant to Section 17.7(b), it declines to follow a recommendation of the Court regarding publication. In the event any of the four groups of Participating Insurance Carriers withdraws, the amount of the $50 million "cap" applicable to the Participating Insurance Carriers as a whole shall be reduced pro rata, per number of groups of Participating Insurance Carriers that withdraws. (For example, should one group of Participating Insurance Carriers withdraw, the amount of the cap shall be reduced to $37.5 million.)"

5. MISCELLANEOUS PROVISIONS

5.1. The Settlement Agreement is hereby amended by adding a new Section 16.13 as follows:

"16.13 The parties agree that the provisions of section 16.2 of the Settlement Agreement (merger clause) will not apply to the

understandings reached in the Memorandum to File dated August 9, 2000, and its two accompanying attachments."

6. EXECUTION

6.1. This Amendment No. 2 to Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Amendment No. 2 to Settlement Agreement as of the date first written above.

Settling Defendants:

CREDIT SUISSE GROUP
(for itself and on behalf of all other Credit Suisse Group entities included as Settling Defendants)

By _____
Joseph T. McLaughlin
Executive Vice President
Legal and Regulatory Affairs

UBS AG
(for itself and on behalf of all other UBS entities included as Settling Defendants)

By _____
Robert C. Dinerstein
Managing Director
and General Counsel – Americas

Settling Plaintiffs:

SETTLEMENT CLASS COUNSEL

By _____
Professor Burt Neuborne

August 9, 2000

Memorandum to the File

A. In connection with Amendment No. 2 to the Settlement Agreement, the defendant banks will offer their good faith cooperation with the implementation of the settlement. Judge Korman may refer to the continued pledge of good faith cooperation in his opinion approving the Settlement Agreement.

B. Discussions between and among counsel about the issues likely to arise during the implementation phase of the settlement have resulted in general agreement that good faith cooperation in the implementation of the settlement means:

1. The defendant banks will continue to cooperate with respect to publication of their share of the approximately 26,000 names referred to in the ICEP report, subject to the checking process described in C. The defendant banks will bear their own internal expenses; other expenses will be borne by the settlement.

2. The defendant banks will continue to cooperate with respect to establishment of a consolidated electronic database concerning the approximately 46,000 accounts referred to in the ICEP report, subject to the checking process described in paragraph C. The defendant banks will bear their own internal expenses; other expenses will be borne by the settlement. The defendant banks will provide reasonable access by claims personnel to the consolidated database and to ICEP audit files prepared in connection with such accounts.

3. If a Class Member who does not appear on the list of approximately 46,000 or on other previously published lists makes a deposited asset claim, and if claims personnel find that the Class Member has provided a reasoned and satisfactory basis for a conclusion that his or her account may be under the name of a person with a Swiss address, then

the ICEP auditors' database for the relevant bank will be searched (beyond the bank's share of the approximately 46,000) for potential matches for these persons. The bank may opt to conduct the database search itself under the supervision of the ICEP auditors or to have the ICEP auditors conduct the search; under either option, the Settlement Fund shall pay for the auditors' activities. The judgment whether a Class Member has provided a reasoned and satisfactory basis for this conclusion shall be guided by the attached hypotheticals (Attachment #1), and with respect to accounts opened in the name of an intermediary, by the attached statement of Swiss law secrecy constraints (Attachment #2), and decisions of claims personnel with regard to whether a Class Member has satisfied this standard may be reviewed at the request of a defendant bank by the Court on a de novo basis. If there are name matches, then the existing ICEP electronic and hard-copy files will be searched for further information, e.g., to confirm the match, to ascertain the amount that may have been in the account, etc. The bank may opt to conduct the search itself under the supervision of the ICEP auditors or to have the ICEP auditors conduct the search; under either option, the Settlement Fund shall pay for the auditors' activities. The defendant banks will not be obligated to search beyond these existing ICEP files, but they will consider in a spirit of cooperation requests for further assistance in any particular cases where there is a reasonably strong likelihood that further assistance would provide probative information and where the costs of such further assistance do not outweigh the potential benefits. Allocation of the costs of any such further research as between the Settlement Fund and the banks will be decided on an ad hoc consensual basis at the time.

C. It is understood that the lists of approximately 26,000 and 46,000 names are being checked to eliminate errors, e.g., duplicative accounts. The ICEP auditors control this process

and make the final decision whether to eliminate an account or name from the lists. The ICEP auditors are using the previously agreed ICEP criteria with two exceptions. First, the auditors are eliminating accounts for persons domiciled in countries that were later occupied by the Nazis where the account was unquestionably closed before the actual date the country was occupied. Second, the auditors are eliminating accounts that were opened after May 9, 1945, when the War in Europe ended. The banks are paying the costs of this project.

D. It is the intent and agreement of the parties that all payments that the CRT and the CRT-SD have determined or will determine should be paid shall continue to be distributed promptly, without regard to any provisions in the Settlement Agreement or in Amendment No. 2 to the Settlement Agreement referring or relating to the "Settlement Date" or the "Final Judgment and Order." The banks do not object to the continuation of the activities of the CRT and understand that the Court may appoint the CRT-SD to play a role in determining deposited assets claims, including interest and fees. Any awards to deposited assets claimants as a result of such determinations by the CRT or the CRT-SD shall be paid directly from the Settlement Fund or the Escrow Fund, upon Court approval. Payments in connection with the publication of the names of account holders or in connection with the creation of centralized databases needed to implement the settlement shall be made from the Settlement Fund, or the Escrow Fund, with Court approval. Administrative expenses of the CRT-SD shall also be paid from the Settlement Fund or the Escrow Fund, with Court approval. The payments, awards, and/or expenses of the CRT and CRT-SD shall include, but not be limited to: (1) the expenses contemplated by Section 4.1 of the Settlement Agreement as amended by Amendment No. 2 to the Settlement Agreement; (2) the sums contemplated by Section 5.2 of the Settlement Agreement as amended by

Amendment No. 2 to the Settlement Agreement; and (3) the payments contemplated by Section 7.9 of the Settlement Agreement as amended by Amendment No. 2 to the Settlement Agreement. The escrow agents are authorized to make payments without Court approval of up to $3 million for the purposes of funding CRT or CRT-SD functions under the settlement; additional amounts may be disbursed by the escrow agents to fund CRT or CRT-SD functions upon application to the Court, and within the Court's discretion, after hearing objections, if any, from any party.

It is also the intent and agreement of the parties that payments made or contemplated to be made pursuant to Section 5.3 of the Settlement Agreement as well as payments of deposited assets claims deemed sufficiently well documented shall be made promptly from the Settlement Fund or the Escrow Fund, upon Court approval, without regard to any provisions in the Settlement Agreement or in Amendment No. 2 referring or relating to the "Settlement Date" or the "Final Judgment and Order."

E. Having reviewed this memorandum, pursuant to which the defendant banks are acting in accordance with the substance of the ICEP's recommendations, Judge Korman has advised the parties that he will approve this aspect of the settlement.

Attachments

2

In Re Holocaust Victim Assets Litigation (CV-96-4849)

United States District Court for the Eastern District of New York

INITIAL QUESTIONNAIRE

INSTRUCTIONS

THIS QUESTIONNAIRE IS FOR INFORMATION PURPOSES ONLY. COMPLETION OF THIS QUESTIONNAIRE DOES NOT AUTOMATICALLY ENTITLE YOU TO RECEIVE PAYMENTS FROM THE SETTLEMENT FUND.

This Initial Questionnaire is for information purposes only, to let us know the address at which we can mail you future notices regarding any claims process, and to give us information about your particular circumstances. Completion of this questionnaire does not entitle you to any Settlement funds.

Because no Plan of Allocation has yet been adopted, there is not yet a claims process relating to this Settlement. We expect a claims process to commence next year (2000). **This is not a claim form,** although the information you provide may affect the amount of money you may receive from the Settlement Fund, if any.

It is important that you provide answers that are as complete and accurate as possible, though you need not worry if you cannot answer every question. We recognize that this information is over 50 years old, and that you may not know or may have forgotten some names and dates. You may complete this Questionnaire, even if you are the heir of a Holocaust victim, or if you no longer have documents.

You should complete and return this Initial Questionnaire if you think you are or may be a member of one of the Settlement Classes. Where copies of documents are requested in the Initial Questionnaire, you should send photocopies of the documents. Do NOT send the original documents.

IN ORDER TO BE CERTAIN OF BEING CONSIDERED FOR A SHARE IN THE SETTLEMENT FUND, YOU MUST, BY NO LATER THAN OCTOBER 22, 1999, EITHER RETURN THE INITIAL QUESTIONNAIRE OR SEND A LETTER TO THE FOLLOWING ADDRESS ASKING FOR FURTHER NOTICE OF THE PLAN OF ALLOCATION.

"Questionnaires"
In re: Holocaust Victim Assets Litigation
PO Box 8289
San Francisco, CA 94128-8289
USA

If you have any questions about how to fill out the Initial Questionnaire, you should contact a local community organization. They will be able to direct you to a person in your locality who will be able to help you.

When you return the Initial Questionnaire, we will send you a postcard within one month to let you know that we have received it. If we have questions, or need additional information, we will contact you by letter. Consequently, if you change your address, please let the Notice Administrator know by sending a signed letter to the same address that you sent the Initial Questionnaire. If you do not keep the Notice Administrator apprised of your new address, you may not receive further notices or communications.

The information you provide in response to this questionnaire will be kept confidential.

In Re Holocaust Victim Assets Litigation (CV-96-4849)
United States District Court for the Eastern District of New York

Initial Questionnaire
PLEASE PRINT CLEARLY

If you are a member of one or more of the Settlement Classes defined in the Notice, please complete only ONE form per Holocaust victim or survivor. If you are one of several heirs of a Holocaust victim, you should coordinate with other known heirs to submit a single questionnaire. This is NOT a claim form.

A. CLAIMANT INFORMATION: For purposes of this form, you are considered the Claimant. Please supply the following information regarding yourself.

Name:_____
Address:_____
_____
Date of Birth: _____ Social Security Number: ____ - ____ - _____*(U.S. only)*

B. SUBJECT INFORMATION: You may file a claim for yourself, for relatives who are deceased and for any business, organization, congregation, community, or other entity for which you or your deceased relative was the owner or successor. The person, business, organization, congregation, community or other entity who is a member of the Class as defined in the Notice and on whose behalf the claim is being made is called the Subject. If there is more than one Subject, you must fill out a separate Initial Questionnaire for each Subject.

1. If you are also the Subject, ✔ check here ☐ and provide the address prior to Nazi occupation:

_____

2. If the Subject is an individual other than yourself, please supply the following information regarding the Subject:
Name: _____
Date of birth *(approximately)*: _____
Address prior to Nazi occupation: _____
_____
Date of death: _____
Place of death: _____
Last permanent address prior to death: _____
_____
Social Security Number of Subject: *(U.S. only)* _____ - ____ - _____
Relationship between you and Subject: _____

3. If the Subject is a business, organization, congregation, community or other entity, please supply the following information:

Name: _____
Current Address: _____
_____
Address prior to Nazi occupation: _____
_____
Describe its nature in as much detail as possible: _____
_____
_____
Relationship between you and Subject: _____

C. TYPE OF CLASS MEMBER: If the Subject was/is (for a company, organization, congregation, community or other entity, please respond with regard to its owners or members)

☐ Jewish ☐ Romani ☐ Jehovah's Witness ☐ Homosexual
☐ Physically disabled at or prior to Nazi occupation ☐ Mentally disabled prior to Nazi occupation
☐ None of the above

D. NARRATIVE: Please describe, in as much detail as you can, where the Subject was during the years 1934 through 1945:

_____
_____
_____
_____
_____
_____
_____

E. DEPOSITED ASSETS CLAIM: Deposited Assets means any bank account, safe deposit box, cash, securities, jewelry, or valuables of any kind whatsoever deposited at or stored with a Swiss Bank, investment fund or other custodian, prior to the end of World War II which has not been returned. If you believe that the Subject had Deposited Assets in a Swiss Bank, please provide the following information.

1. Name of depositor (if different from Subject): _____
2. Address of depositor (if different from Subject): _____
   _____
3. Name of bank or custodian: _____
   ☐ *I do not know the name of the bank or custodian.*
4. Location of bank or custodian: _____
   _____
   ☐ *I do not know the location of the bank or other custodian.*
5. The amount of money on deposit was: _____Currency: _____
   ☐ *I do not know the amount of money on deposit.*
6. The assets other than money deposited were:

Other Deposited Assets	Value	Currency

   ☐ *I do not know what assets other than money were deposited in the bank or other custodian.*
   Please attach any copies of documents, which support your Claim regarding Deposited Assets.
   ☐ *I do not have any documents which support the existence of my Claim regarding Deposited Assets.*
7. Have you or the Subject been paid any money based on claims of Deposited Assets?
   ☐ Yes ☐ No
8. If your answer to Item 7, above, was "Yes," please state the following:
   The amount received:_____Currency: _____
   When this amount was paid: _____
   The government or organization which paid this amount: _____

9. Describe in as much detail as possible all facts that support your Claim regarding Deposited Assets.

_____

_____

_____

10. Provide the names and addresses of any persons who may have information that would support your Claim regarding Deposited Assets.

_____

_____

_____

F. LOOTED ASSETS CLAIM AGAINST SWISS PERSONS OR ENTITIES: Looted Assets means any real or personal property of any kind that was stolen, confiscated, Aryanized, or otherwise wrongfully taken by any person or group affiliated with the Nazis. If you believe that the Subject had Looted Assets, please provide the following information:

1. Describe the Looted Assets in as much detail as possible, including their value:

Looted Assets	Value	Currency

☐ *I do not have any specific information regarding the Looted Assets.*

☐ *I am unable to value the Looted Assets.*

2. Where were the Looted Assets located? _____

_____

☐ *I do not know where the Looted Assets were located.*

3. Who took the Looted Assets (e.g., German troops, local civilians, etc.)? _____

_____

☐ *I do not know who took the Looted Assets.*

4. When were the Looted Assets taken (month and year)? _____

_____

☐ *I do not know when the Looted Assets were taken.*

5. Please attach any copies of documents that support your Claim regarding Looted Assets (e.g., jewelry and precious metals claim, filing with a Jewish or German agency, etc.).

☐ *I do not have any documents which support my Claim regarding Looted Assets.*

6. Provide the names and addresses of any persons who may have information that would support your Claim for Looted Assets: _____

_____

7. Have you or the Subject been paid any money based on claims of Looted Assets?

☐ Yes ☐ No

H. REFUGEE CLAIMS: Please check any of the following statements that apply to the period 1934-1945. The Subject:

- ☐ *Tried to go to Switzerland to avoid Nazi persecution, but was denied entry into Switzerland by Swiss officials.*
- ☐ *Entered Switzerland to avoid Nazi persecution and was then deported.*
- ☐ *Entered Switzerland to avoid Nazi persecution and was jailed while in Switzerland for having entered the country.*
- ☐ *Entered Switzerland to avoid Nazi persecution and was abused or otherwise mistreated by Swiss officials.*

If you have checked any of the boxes in Category H above, please describe these events in as much detail as you can:

_____
_____
_____
_____
_____
_____

I. CERTIFICATION

I certify under penalty of perjury that to the best of my knowledge, information and belief, the information on this Initial Questionnaire (and additional sheets and attachments) is true and correct. I agree to keep the Administrator timely advised of any changes in status, such as mailing address change.

_____ _____
Signature Date

3

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

IN RE **HOLOCAUST VICTIM ASSETS LITIGATION**	**Master Docket No. CV-96-4849 (ERK) (MDG)** **(Consolidated with CV-96-5161 and CV-97-461)**

NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT AND HEARING; INITIAL QUESTIONNAIRE

To: All persons or entities (and their heirs or successors) who were persecuted or targeted for persecution by the Nazi Regime during World War II because they were or were believed to be Jewish, Romani, Jehovah's Witness, Homosexual, or Physically or Mentally Disabled or Handicapped, AND who:

1. Had assets (including such things as bank accounts, securities and safe deposit box contents), on deposit with any Swiss bank, investment fund, or other custodian, prior to May 9, 1945, (Deposited Assets Class), or

2. May have claims against Swiss entities relating to assets that were looted or taken by the Nazi Regime, or relating to "Cloaked Assets," which are assets disguised by a Swiss entity for the benefit of an Axis company or entity or person associated with the Nazi Regime, between 1933 and 1946 (Looted Assets Class), or

3. Performed Slave Labor for entities that may have deposited the revenues or proceeds of that labor with or transacted that profit through Swiss entities (Slave Labor Class I), or

4. Unsuccessfully sought entry into Switzerland to avoid Nazi persecution, or after gaining entry, were deported or mistreated, and may have related claims against any Swiss entity (Refugee Class).

And To: All persons (and their heirs), whether or not a Victim or Target of Nazi Persecution, who performed Slave Labor in any facility or work site, wherever located, owned, controlled or operated by any Swiss entity (Slave Labor Class II).

This notice contains important information about rights you may have under a proposed $1.25 billion (U.S. dollars) Settlement of a class action lawsuit against private Swiss banks and other Swiss entities for their alleged conduct related to World War II and the Holocaust. This Notice provides information regarding the class action lawsuit, the proposed Settlement, how to determine if you are a member of the Settlement Classes, steps that will be taken to distribute the $1.25 billion Settlement Fund, and what you can do if you wish to comment on, exclude yourself from, or participate in the Settlement. An Initial Questionnaire is also attached, although the claims program will not begin unless and until the Settlement is finally approved, and until after the Court has adopted a Plan of Allocation, as described below.

Even if you are not sure whether you are a member of one or more of the Settlement Classes, you should still read this Notice, and follow procedures described below for preserving your rights, commenting on the Settlement, and getting claims information. For example, you may have performed Slave Labor, but you may not know whether profits from that labor were deposited in or transacted through a Swiss entity. You should still consider yourself to be a member of the Settlement Classes.

If, after reading this Notice, you want more information, see Question 22, below.

THIS NOTICE ANSWERS THE FOLLOWING QUESTIONS:

1. What is this litigation about?

2. Did the Court decide any of Plaintiffs' claims?

3. Am I a member of one or more of the Settlement Classes?

4. What is a "class action" lawsuit?

5. What is a "settlement"?

6. Who are the Class Representatives and Class Counsel in this "class action"?

7. What are the basic monetary terms of the proposed Settlement?

8. How will the Settlement money be distributed?

9. Are any other defendants involved in this Settlement besides Swiss banks?

10. What Claims are released under the Settlement?

11. Does this Settlement affect other World War II-era claims, such as claims against companies that employed Slave Labor, insurance companies, and other banks?

12. How did the lawyers and class representatives determine the Settlement Amount?

13. What do I have to do now if I want to participate in the Settlement?

14. How much will I recover if I participate in the Settlement? When will I receive payment from the Settlement Fund?

15. When will I get a claim form? What proofs will I need when I file my claim form?

16. Will my claim information be kept confidential?

17. Will I have to pay attorneys' fees and costs?

18. What do I do if I want to exclude myself from the Settlement Classes?

19. What happens next?

20. When will the funds be paid?

21. How does the $1.25 billion Settlement fund relate to other Holocaust compensation programs?

22. How can I get more information? — What if I have questions? — Where do I send my Initial Questionnaire?— Where do I mail other types of documents?

For purposes of this Notice, certain terms have been given special meanings, which are precisely defined in the Settlement Agreement that is summarized in this Notice. You may obtain a copy of the Settlement Agreement by writing to the Notice Administrator at the address listed in response to Question 22, below. A glossary defining these terms is attached to this Notice.

The "Settling Defendants" include Credit Suisse and UBS AG (as successor to Union Bank of Switzerland and Swiss Bank Corporation) and each of their former and current corporate parents, subsidiaries, affiliates, and branches, predecessors, successors, officers, directors, employees, agents, attorneys, heirs, and personal representatives. These Settling Defendants have agreed to pay $1.25 billion to resolve claims against them, against all other Swiss banks, and against all other Swiss entities ("Releasees," defined below) under the terms described in this Notice and in the Settlement Agreement. In this Notice, the Settling Defendants are sometimes referred to as the "Defendants" or "Swiss Banks."

1. What Is This Litigation About?

In the Fall of 1996, Plaintiffs initiated lawsuits in the United States District Court for the Eastern District of New York, which were assigned to the Hon. Edward R. Korman (the "Court"), and which were consolidated into a single proceeding titled In re Holocaust Victim Assets Litigation, Master Docket No. CV-96-4849. The suits named Credit Suisse, the Union Bank of Switzerland and Swiss Bank Corporation as defendants. The Plaintiffs alleged that the Swiss Banks (1) collaborated with the National Socialist government of Germany from 1933 through 1945, and its instrumentalities, agents and allies (the "Nazi Regime") and participated in a scheme to (a) unlawfully retain Class members' accounts deposited prior to and during the Second World War; (b) accept for deposit, transfer, or exchange, assets looted by the Nazi Regime; and (c) engage in transactions involving the profits of companies that used Slave Labor; and (2) concealed the true nature and scope of their conduct. More specifically, the Plaintiffs claimed that, from 1933 to 1945:

- the Defendants accepted deposits of assets ("Deposited Assets") from Class members, did not return these assets to their rightful owners at the close of the War, and then denied the assets existed;

- the Defendants accepted personal, commercial, real, and/or intangible property, including cash, securities, gold, jewelry, businesses, art, and other items that had been looted, confiscated or stolen from Class members ("Looted Assets");

- the Defendants assisted German companies during the war by disguising or "cloaking" their assets ("Cloaked Assets" include assets wholly or partly owned by, controlled by, obtained from, or held for the benefit of, any company incorporated, headquartered, or based in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, or any other entity or individual associated with the Nazi Regime, the identity, value, or ownership of which was disguised by any Releasee);

- the Defendants engaged in various transactions with the Nazi Regime and companies using Slave Labor; and

- the Defendants aided and abetted the Nazi Regime's war effort by providing valuable foreign exchange to the Nazi Regime in exchange for Deposited Assets, Looted Assets, and slave labor goods.

On behalf of themselves and all other Class members, the Plaintiffs asserted legal claims for breach of contract, breach of fiduciary duty, an accounting, unjust enrichment, conversion, and violation of international human rights law. The Plaintiffs sought compensatory damages, equitable and injunctive relief, and punitive damages.

The Defendants filed motions to dismiss the Plaintiffs' complaints based on numerous grounds. Plaintiffs opposed these motions. The Court never ruled on the motions.

The parties have reached a Settlement, under which the Swiss Banks are to pay $1.25 billion, in exchange for which Class Members release their legal claims against the Swiss Banks, as well as all other Swiss business entities, the Swiss National Bank, the Swiss Bankers Association, the Swiss Confederation, and all other Releasees, other than certain claims against certain Swiss insurance companies that are defendants in separate litigation, described below.

2. Did the Court Decide Any of Plaintiffs' Claims?

The Court has not ruled on the merits of any of Plaintiffs' claims.

3. Am I a Member of One or More of the Settlement Classes?

Not all Holocaust victims, survivors, or their heirs are affected by this Settlement. If you are a member of any one (or more) of the five groups described in the paragraphs below, you are a member of the Settlement Classes and therefore affected by the Settlement. As used in this Notice, the term "Victim or Target of Nazi Persecution" means any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped. Also, as used in this Notice, the term "Releasees" includes Swiss entities, such as the Swiss Banks, other Swiss banks, Swiss commercial entities, the Swiss government, and other entities listed in the definition of Releasees described in the answer to Question 9, below.

There are five Settlement Classes. Four of the Classes include Victims or Targets of Nazi Persecution who:

1. Had assets (including such things as bank accounts, securities and safe deposit box contents), on deposit in any Swiss bank, investment fund, or other custodian prior to May 9, 1945 (Deposited Assets Class), or

2. May have claims against Swiss entities relating to assets that were looted or taken by the Nazi Regime, or relating to "Cloaked Assets," which are assets disguised by a Swiss entity for the benefit of an Axis company, entity or person associated with the Nazi Regime, between 1933 and 1946 (Looted Assets Class), or

3. Performed slave labor for companies or other entities that may have deposited the revenues or proceeds of that labor with or transacted such revenues or proceeds through Swiss entities (Slave Labor Class I), or

4. Unsuccessfully sought entry into Switzerland to avoid Nazi persecution, or after gaining entry, were deported or mistreated, and may have related claims against any Swiss entity (Refugee Class).

The fifth Settlement Class consists of all persons, whether or not a Victim or Target of Nazi Persecution as previously defined, who were forced to perform slave labor in any facility or work site, wherever located, that was owned, controlled or operated by any Swiss company or other entity (Slave Labor Class II).

All five of these Settlement Classes include heirs, successors, administrators, executors, affiliates and assigns of the persons or entities who are described in the paragraphs above. It is important to know that at this time the methods for establishing proof of class membership have not yet been established. If you are in doubt about proof, yet wish to participate, you should proceed.

If you receive this Notice but you are not a member of one of the Settlement Classes described above, then you need do nothing.

4. What is a "Class Action" Lawsuit?

A "Class Action" is a type of lawsuit where a large group of individuals with common interests and issues (the "Class") join together to enforce their rights in court. The people who file the lawsuit are called the "Plaintiffs." The persons or entities against which the lawsuit is filed are called "Defendants."

This Settlement resolves four different class action lawsuits, all of which were filed in the United States District Court for the Eastern District of New York against Settling Defendants, and consolidated into a single proceeding, In re Holocaust Victim Assets Litigation, Master Docket No. CV-96-4849 (ERK). The Settlement provides for the dismissal of two related class action lawsuits: one in the United States District Court for the Northern District of California (Markovicova, et al. v. Swiss Bank Corporation, et al., Case No. C98-02924 MMC); and the second in the United States District Court for the District of Columbia against the Swiss National Bank (Rosenberg, et al. v. Swiss National Bank, Civil Action No. 1:98 CV 01647).

5. What is a "Settlement"?

A "Settlement" is an agreement by which parties in a legal dispute agree to a compromise to resolve and end their legal differences, and to forever end the litigation. Here, a Settlement has been reached in the Class Action Litigation. The Settlement was set forth in a document called the "Settlement Agreement." A copy of the Settlement Agreement may be obtained by writing to the address listed in the answer to Question 22, below.

6. Who Are the Class Representatives and Class Counsel in this "Class Action"?

The following "Class Representatives" have been appointed by the Court to represent the interests of the members of the Settlement Classes: Elizabeth Trilling-Grotch, Lillie Ryba, Jacob Friedman, Charles Sonabend, David Boruchowicz, Joshua Lustmann, Miriam Stern, the World Council of Orthodox Jewish Communities, Inc., and the World Jewish Restitution Organization. These Class Representatives represent each of the five Settlement Classes.

The Court has appointed the following attorneys and firms to represent the Class as Settlement Class Counsel: Michael Hausfeld of Cohen, Milstein, Hausfeld & Toll PLLC; Melvyn Weiss of Milberg, Weiss, Bershad, Hynes & Lerach LLP; Robert Lieff of Lieff, Cabraser, Heimann & Bernstein LLP; Irwin Levin of Cohen & Malad, PC; Robert Swift of Kohn, Swift & Graf, PC; Professor Burt Neuborne of New York University Law School; Edward Fagan of Fagan & D'Avino; Stephen Whinston of Berger & Montague, PC; Mel Urbach of the Law Offices of Mel Urbach; Arnold Levin of Levin, Fishbein, Sedran & Berman; Martin Mendelsohn of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered; and Stanley Chesley of Waite, Schneider, Bayless & Chesley Co., LPA.

Depending upon the nature of your correspondence, you may contact Settlement Class Counsel by writing to one of the P.O. boxes, or by accessing the Internet site listed in the answer to Question 22, below.

7. What are the Basic Monetary Terms of the Proposed Settlement?

The proposed Settlement creates a fund in the principal amount of $1.25 billion (U.S.), plus any interest that accrues on the fund prior to distribution. The Settling Defendants must pay the Settlement amount of $1.25 billion (U.S.) in four installments:

- On November 23, 1998, Settling Defendants paid $250 million into an Escrow Fund;
- Settling Defendants must pay an additional $333 million on November 23, 1999;
- Settling Defendants must pay an additional $333 million on November 23, 2000; and
- Settling Defendants must pay an additional $334 million on November 23, 2001.

Under certain limited circumstances, the Settling Defendants may be required to accelerate payments of portions of the amounts due.

All amounts paid to certain persons and entities as a result of determinations made by the Independent Committee of Eminent Persons (also known as the "ICEP" and commonly referred to as the "Volcker Commission"), the Independent Claims Resolution Foundation, and the Claims Resolution Tribunal, or otherwise to discharge Claims, are to be credited against the scheduled installments.

8. How Will the Settlement Money be Distributed?

No claims process or Plan of Allocation has yet been established. In March 1999, the Court appointed Judah Gribetz to serve as a Special Master. The Special Master will develop a proposed Plan of Allocation and Distribution of the Settlement Fund, employing open and equitable procedures to ensure fair consideration of all proposals for allocation and distribution. Settlement Class Members will have an opportunity to comment on the Plan, and may now offer suggestions to the Special Master. The proposed Plan of Allocation must be approved by the Court before the Settlement Fund may be distributed. The Court-approved Plan will then be implemented under the Court's supervision. The Special Master will also be charged with recommending to the Court where residual funds, if any, remaining after the distribution to all eligible members of the Class and payment of all costs and fees approved by the Court, should be distributed.

You may submit your suggestions to the Special Master by writing to the address listed in the answer to Question 22, below.

If you wish to make a claim in this Settlement, then to ensure you receive notice of the Plan of Allocation and claims-filing process, you must either (a) complete and return the attached Initial Questionnaire, or (b) write to the address listed in the answer to Question 22, below, and specifically indicate that you wish to receive notice of the terms of the Plan of Allocation. If you do not either submit an Initial Questionnaire or request further notice of the Plan of Allocation, you will not be mailed notice of the terms of the Plan of Allocation, and may not be able to file a claim.

9. Are Any Other Defendants Involved in this Settlement Besides the Defendant Banks?

In addition to resolving claims against the Settling Defendants, all Settlement Class members agree to release their Claims against the following "Releasees": the Settling Defendants; the Swiss National Bank; all Other Swiss Banks; the Swiss Bankers Association; the Swiss Confederation (including, without limitation, the Cantons, and all other political subdivisions and governmental instrumentalities in Switzerland); all business concerns (whether organized as corporations or otherwise) headquartered, organized, or incorporated in Switzerland as of October 3, 1996, including, without

limitation, corporations incorporated in Switzerland that are owned, operated, or controlled directly or indirectly by corporations located outside Switzerland ("the Swiss-based Concerns") and their branches and offices, wherever located; and all affiliates of any Swiss-based Concern (whether organized as corporations, partnerships, sole proprietorships or otherwise) wherever headquartered, organized or incorporated in which the Swiss-based Concern owns or controls directly or indirectly at least twenty-five percent of any class of voting securities or controls in any manner the election or appointment of a majority of the board of directors, trustees, or similar body ("Owned or Controlled Affiliates").

As to each of the foregoing Releasees, the term "Releasees" also includes, without limitation, each of its predecessors, successors, assigns, officers, directors, employees, agents, attorneys, heirs, executors, administrators, and personal representatives wherever located. The term "Releasees" excludes Basler Lebensversicherungs- Gesellschaft, Zürich Lebensversicherungs-Gesellschaft, and Winterthur Lebensversicherungs-Gesellschaft, and their subsidiaries in the insurance business, but only to the extent of insurance claims of the type asserted in Cornell, et al. v. Assicurazioni Generali, S.d.A., et al., 97 Civ. 2262 (S.D.N.Y.). The term "Releasees" also excludes parent companies and other affiliates of Swiss-based Concerns that (1) before 1945 were headquartered, based, or incorporated in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, (2) were not Owned or Controlled Affiliates, as defined above, and (3) disguised the identity, value, or ownership of Cloaked Assets or used Slave Labor. A company shall not be deemed a Releasee by virtue of being an Owned or Controlled Affiliate if (1) the company was headquartered, based, or incorporated in Germany or any other Axis country or other country occupied by an Axis country between 1933 and 1946, and (2) the company's parent was a Swiss-based Concern established for the sole purpose of disguising the identity, value, or ownership of Cloaked Assets.

10. What Claims Are Released Under The Settlement?

By participating in this Settlement and remaining members of the Settlement Classes, Settlement Class Members agree to waive all legal rights with respect to Releasees in exchange for the $1.25 billion settlement amount, with respect to all "Claims," which includes all actions, claims, obligations, losses, expenses, damages, and agreements of any nature and demands whatsoever from the beginning of time to now and any time in the future relating to facts occurring on or before the date of the Settlement Agreement (January 26, 1999), whether class or individual, under any international, national, state, provincial, or municipal law, whether now accrued or asserted or hereafter arising or discovered, that may be, may have been, could have been or could be brought in any jurisdiction before any court, arbitral tribunal, or similar body against any Releasee, in connection with any act or omission in any way relating to the Holocaust, World War II, and its prelude and aftermath, Victims or Targets of Nazi Persecution, transactions with or actions of the Nazi regime, treatment of refuges fleeing Nazi persecution by the Swiss Confederation or other Releasees, or any related cause or thing whatever, including without limitation all claims relating to Deposited Assets, Looted Assets, Cloaked Assets, and/or Slave Labor, or any prior or future effort to recover on such claims directly or indirectly from any Releasee.

The Settlement Class Members also irrevocably and unconditionally release and discharge the ICEP, the ICRF, the Claims Resolution Tribunal and the Secretariat of the Claims Resolution Tribunal, as well as their respective officers, directors, employees, agents, attorneys, and contractors (including, without limitation, arbitrators and audit firms), from any and all liability, claims, causes of action, arising out of or in any way associated with these entities' and individuals' activities relating to the investigation of Claims.

The foregoing releases apply irrespective of whether any Settlement Class member receives a distribution from the Settlement Fund. Settling Class members covenant not to sue Releasees or initiate any form of proceeding seeking redress of any kind for any Claim covered by this Settlement Agreement in any judicial, administrative, or other proceeding anywhere in the world at any time, other than to enforce the Settlement Agreement, and consent to immediate dismissal with prejudice of any proceeding brought in violation of this provision.

11. Does This Class Action Settlement Affect Other World War II-era Claims, such as Claims Against Companies That Employed Slave Labor, Insurance Companies, and Other Banks?

This Class Action Settlement releases all Settlement Class Member Claims but only insofar as those Claims concern the Releasees. This Class Action Settlement does not address any other Holocaust or World War II-related claims relating to non-Swiss and/or non-Swiss-affiliated banks or other companies, including claims against non-Swiss and non-Swiss-affiliated banks, insurance companies, and manufacturers that employed Slave Labor or otherwise assisted in the Nazi Regime's war effort. The Settlement Agreement precisely defines the scope of the release.

12. How Did the Lawyers and Class Representatives Determine the Settlement Amount?

After World War II, Jewish organizations began working to secure restitution of, and compensation for, Jewish property throughout Europe and in Switzerland. In 1995, when the specific issue of dormant Swiss bank accounts containing unclaimed assets of Holocaust victims came under public scrutiny, the WJRO reinitiated formal discussion with the Swiss regarding restitution issues. Such negotiations led to, among other things, the creation of the Independent Committee of Eminent Persons ("ICEP") and the Independent Commission of Experts ("ICE"). The ICEP, chaired by Paul A. Volcker, was established in May, 1996 by the Swiss Bankers' Association, the World Jewish Congress, and other Jewish organizations to conduct an independent audit of Settling Defendants and Other Swiss Banks to identify accounts from the World War II era that could possibly belong to Victims of Nazi Persecution. The ICE, in turn, is an independent group of internationally recognized historians, chaired by Jean Francois Bergier, which the Swiss Confederation established in 1996 to examine Switzerland's relationship with Nazi Germany.

The litigation was commenced by plaintiffs in 1996. Settlement Class Counsel, the WJRO, and others, including the World Council of Orthodox Jewish Communities, investigated the claims and the underlying events and transactions alleged in the Complaints, including: (1) reviewing thousands of pages of documents obtained from public information sources and through other, informal means; (2) interviewing hundreds of Class Members; (3) consulting with experts; (4) researching and analyzing applicable law with respect to the Class claims and the Defendants' defenses; (5) reviewing and analyzing the report produced by ICE; and (6) reviewing and analyzing the reports prepared under the auspices of Stuart Eizenstat, United States Undersecretary of Commerce for International Trade, and by William Z. Slany, an historian for the United States Department of State, with the participation of various federal government agencies and the United States Holocaust Museum. Settlement Class Counsel, the WJRO, and the World Council of Orthodox Jewish Communities conferred with survivors and survivor representatives, and participated in Court-supervised settlement discussions, mediated in part by United States Under Secretary of State Stuart Eizenstat. The Settlement is the result of more than a year of arms-length negotiations.

You should evaluate the terms of the Settlement, and the risks and costs of continued litigation, and decide for yourself whether you think the Settlement is fair and reasonable, and whether you wish to remain a member of the Settlement Class.

13. What Do I Have to Do Now If I Want to Participate in the Settlement?

If you are a member of one or more of the Settlement Classes, and you wish to participate in the Settlement, then to ensure you receive notice of the Plan of Allocation and claims filing process, you must either (a) mail a written request to receive such notice to the address listed in response to Question 22 below, or (b) complete and return the attached Initial Questionnaire. The Initial Questionnaire will not be utilized for purposes of determining distribution amounts until after a Plan of Allocation is adopted by the Court. By filling out the Initial Questionnaire, accordingly, you are not necessarily entitled to any funds, unless and until such an entitlement is established by the Plan of Allocation adopted by the Court. You will automatically receive written notice of the terms of the Plan of Allocation if you submit an Initial Questionnaire that includes your correct address for mailing.

Please notify the Notice Administrator at the address listed in response to Question 22 below, of any change of address.

As long as you do not submit a written request for exclusion, you will remain a member of the Settlement Classes, and will be bound by the Settlement regardless of whether you request further notice of the Plan of Allocation, and regardless of whether you make a claim, or receive a distribution from the Settlement Fund.

14. How Much Will I Recover If I Participate in the Settlement? When Will I Receive Payment From the Settlement Fund?

Each individual award will be based on factors to be recommended by the Special Master and approved by the Court after the Settlement is finally approved by the Court. At this time, the threshold issue that must be decided by the Court is whether the $1.25 billion-settlement amount is fair and reasonable.

No Plan of Allocation will be developed or available for your review prior to the date on which you must decide whether to exclude yourself from or comment upon the Settlement. Not all Settlement Class Members will necessarily receive an allocation from the Settlement Fund; it is not possible at this time to estimate what, if anything, you will receive because the Plan of Allocation does not exist yet. A Plan of Allocation will not be submitted for public comment unless and until the Court finally approves the $1.25 billion Settlement Amount.

It is expected that, if the Settlement is granted final approval, the Special Master will quickly present a recommended Plan of Allocation. The Court will then adopt a final Plan of Allocation, pursuant to which the Settlement Amount will be swiftly disbursed.

15. When Will I Get a Claim Form? What Proofs Will I Need When I File My Claim Form?

An Initial Questionnaire is attached to this Notice. If you wish to make a claim in this Settlement, then to ensure you receive notice of the Plan of Allocation and claims-filing process, you must either (a) complete and return the attached Initial Questionnaire, or (b) write to the address listed in the answer to Question 22, below, and specifically indicate that you wish to receive notice of the terms of the Plan of Allocation. If you do not either submit an Initial Questionnaire or request further notice of the Plan of Allocation, you will not be mailed notice of the terms of the Plan of Allocation, and may not be able to file a claim.

Because no Plan of Allocation has yet been established, we do not yet know what, if any, proof will be required to support claims by members of the Settlement Classes for a portion of the Settlement Fund. The Plan of Allocation will not be presented to the Court unless and until the $1.25 (U.S.) billion Settlement Amount is granted final approval, on or after November 29, 1999; accordingly, no final determination on the claims process will be made until after that date.

16. Will My Claim Information Be Kept Confidential?

The confidentiality of information you submit in support of your claim will be maintained, though Defendants will be provided copies of Proof of Claim forms.

17. Will I Have to Pay Attorneys' Fees and Costs?

Class members are not personally liable for Court-appointed plaintiffs' attorneys' fees and costs. Although you may retain your own lawyer at your own expense, you do not need to use the services of a lawyer to participate in or exclude yourself from this Settlement. You need only follow the procedures described in this Notice.

"Plaintiffs' Counsel" includes all plaintiffs' counsel of record in In re Holocaust Victims Assets Litigation, Master Docket No. CV-96-4849 (E.D.N.Y.); Markovicova, et al. v. Swiss Bank Corporation, et al., Case No. C98-02924 (N.D. Cal.); and Rosenberg, et al. v. Swiss National Bank, Civil Action No. 1:98 CV 01647 (District of Columbia), except counsel for the WJRO.

At the "Fairness Hearing" (described below), all of the Court-appointed Plaintiffs' Counsel will apply to the Court to be reimbursed for their costs, in an amount not to exceed approximately 0.2% of the Settlement Fund, or $2.5 (U.S.) million. The majority of Plaintiffs' Counsel will not apply for an award of fees. Certain Plaintiffs' Counsel will apply to the Court for an award of fees up to a total amount of 1.8% of the Settlement Fund, or $22.5 (U.S.) million. The Court has the discretion to award a lower amount, after considering the fee applications made by those Plaintiffs' Counsel who will apply for fees.

Counsel for the WJRO, who are working *pro bono*, will not seek reimbursement for its costs, and will not apply for an award of fees.

18. What Do I Do If I Want to Exclude Myself From the Settlement Classes?

If you do not wish to be included in the Class and you do not wish to participate in the proposed Settlement, you must individually and personally request to be excluded in writing by October 22, 1999. To request exclusion you must write a letter that states (1) the name of this Litigation (Swiss Banks); (2) your name; (3) your address; (4) and that you do not want to participate in the Settlement. The exclusion request must be personally signed by you and mailed to the address listed in Section 22, below.

No request for exclusion will be considered valid unless all the information described above is included and the request is postmarked by October 22, 1999.

If you validly request exclusion from the Class: (a) you will be excluded from the Class; (b) YOU WILL NOT BE ELIGIBLE TO SHARE IN THE PROCEEDS OF THE SETTLEMENT; (c) you will not be bound by any judgment entered in the Litigation; and (d) you will not be precluded from otherwise prosecuting an individual claim, if timely, against the Settling Defendants based on the matters complained of in the Litigation.

19. What Happens Next?

A Fairness Hearing will be held on November 29, 1999 at 10:00 A.M. EST before the Hon. Edward R. Korman at the United States District Courthouse, United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201 (the "Fairness Hearing"). At that time, the Court will determine (1) whether the proposed Settlement consisting of a principal sum of $1.25 billion, plus accrued interest, is fair, reasonable, adequate, and in the best interest of the Class; (2) whether Class Counsel's request for attorneys' fees, expenses and costs of notice and administration should be approved; and (3) whether the Litigation should be dismissed with prejudice. The Court may adjourn or continue the Fairness Hearing without further notice to the Class. You do not need to attend the hearing in order to participate in or comment upon the Settlement, or to exclude yourself from the Settlement Class.

Any Class member who has not requested exclusion may (but need not) appear at the Fairness Hearing in person or through Counsel to address why the proposed Settlement should or should not be approved, and to comment on or object to the application of Class Counsel for attorneys' fees, costs, and expenses; provided, however, that no such person shall be heard unless his or her objection or opposition is made in writing and is filed, together with copies of all other papers and briefs to be presented by him or her to the Court at the Fairness Hearing, no later than October 22, 1999, and mailed to the address listed in response to Question 22 below.

Unless otherwise ordered by the Court, any member of the Settlement Class who does not make his or her objection or opposition in the manner provided shall be deemed to have waived all such objections.

20. When Will the Funds Be Paid?

The Settlement is conditioned on the occurrence of certain events. Those events include the Court's approval of the Settlement at the Fairness Hearing, and entry of Final Order and Judgment by the Court, as provided in the Settlement Agreement. If, for any reason, any one of the conditions described in the Settlement Agreement is not met, the Settlement Agreement might be terminated, and if terminated, will become null and void.

If the Settlement Agreement is granted final approval, then the Special Master will recommend a Plan of Allocation for the Settlement Fund. Persons who complete an Initial Questionnaire or write to request such notice will be mailed a notice of the Plan of Allocation proposed by the Special Master. The Court will then hold a hearing on whether to approve the proposed Plan of Allocation or a variation of it. After a Plan of Allocation is adopted by the Court, the claims and distribution procedures set forth in the plan will be swiftly implemented. We hope that distribution of funds will commence as early as the first part of the year 2000.

21. How Does the $1.25 Billion Settlement Fund Relate to Other Holocaust Compensation Programs?

This Settlement is different from and unrelated to the Swiss Humanitarian Fund, or other restitution or compensation programs in Germany or elsewhere.

22. How Can I Get More Information? — What If I Have Questions? — Where do I Send My Initial Claim Form? — Where Do I Mail Other Types of Documents?

This notice contains only a summary of the terms of the proposed Settlement. For more detailed information regarding this Litigation, members of the Class may inspect the Settlement Agreement, and all other papers filed in this action, at the Office of the Clerk, United States District Court for the Eastern District of New York.

The addresses for each type of correspondence are listed below. It is important that you send your correspondence to the proper address, with the envelope containing the complete address.

- **Requests for Information** should be sent to the following address:

"INFORMATION"
In re Holocaust Victim Assets Litigation
Notice Administrator
P.O. Box 8300
San Francisco, CA 94128-8300
USA

You may also obtain additional information by accessing the Internet site at:
http:// www.swissbankclaims.com/

In the United States and Canada, you may call **1-888-635-5483**
or in Australia, call **800-554-370**
or in South Africa, call **0-800-992765**
or in the United Kingdom, call **0-800-917-4424**

- **Initial Questionnaires and Requests for Notice of the Plan of Allocation and Claims Process** should be sent to the following address:

  "QUESTIONNAIRES"
  In re Holocaust Victim Assets Litigation
  Notice Administrator
  P.O. Box 8289
  San Francisco, CA 94128-8289
  USA

- **Comments regarding the Settlement, including objections**, should be mailed to the following address, and addressed on the envelope as follows:

  "COMMENTS/OBJECTIONS"
  In re Holocaust Victim Assets Litigation
  Notice Administrator
  P.O. Box 8259
  San Francisco, CA 94128-8259
  USA

- **Exclusion requests** should be sent to the following address, and listed on the envelope as follows:

  "EXCLUSION REQUESTS"
  In re Holocaust Victim Assets Litigation
  Notice Administrator
  P.O. Box 8149
  San Francisco, CA 94128-8149
  USA

- **Suggestions regarding the Plan of Allocation** should be sent to the address as listed below:

  "SPECIAL MASTER/DISTRIBUTION"
  In re Holocaust Victim Assets Litigation
  Notice Administrator
  P.O. Box 8039
  San Francisco, CA 94128-8039
  USA

It is important that different types of correspondence (for example, comments on the Settlement, Initial Questionnaires, etc.) be separately mailed to the Notice Administrator at the different addresses listed above, to allow for prompt and timely sorting of different types of communications from you. It is likely that thousands of class members will write to the Notice Administrator in multiple languages. We can provide a prompt response to communications only if class members follow the instructions set forth above.

Please do not write to the Court or the Clerk of the Court, as neither can answer any questions or provide legal advice regarding the Settlement or your rights thereunder.

Dated: May 10, 1999

BY ORDER OF THE COURT
THE HONORABLE EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE

4

Instruction Sheet

In completing the Claim Form, please either type or print clearly in capital letters, using either blue or black ball point pen. Your Claim Form must be sent to the:

Claims Registration Office
Claims Resolution Tribunal
P.O. Box 2666
JAF Station
New York, NY 10116-2666
U.S.A.

within 6 months of the date of publication of the 2001 List.

PART 1: CLAIMANT INFORMATION

1. Personal Information

Please fill out this section completely and accurately; otherwise the Tribunal may not be able to contact you about your claim.

Please note that the Tribunal does not generally communicate via e-mail, but would like to have an e-mail address on file in case we are unable to reach you at the postal address you have provided.

2. Alternate Contact Information

In the event that the Tribunal is unable to reach you, please provide details regarding someone else we could contact. The Tribunal will not consider this person as your legal or other representative and will not provide this person with any documentation relating to your claim. However, if this contact person is your legal or other representative, you do not need to complete this section and you should instead fill out Question 29 of this Claim Form.

3. Family Member Information

If you are representing any other family members, please provide the requested details about each family member you are representing. Please note that if you are representing other family members, these relatives will be considered Claimants to the Account and their entitlement to a portion of the assets will be considered. However, the Tribunal will only correspond with you on matters regarding the claims.

Please indicate how you are related to the family member(s) you are representing. If you are the niece of this person, please state "I am the niece" or "This family member is my aunt".

Please note that each family member you are representing must sign and submit a completed Power of Attorney authorizing you to represent them and to act on their behalf. Please use the standard form Power of Attorney provided with this Claim Form and make additional copies, if necessary.

4. Previous Claims You or Your Family Members Have Made to Dormant Assets in Swiss Bank Accounts

a. Please state whether you have submitted an Initial Questionnaire with respect to the Holocaust Victim Assets Litigation in the U.S. District Court for the Eastern District of New York in 1999. If this is the case, you should already have received a claims packet.

b. Please identify any previous claims to dormant assets in Swiss bank accounts that you or your family members have made to any bank, organization or government body, including the Claims Resolution Tribunal, ATAG Ernst & Young, the Independent Committee of Eminent Persons, the Swiss Banking Ombudsman or the New York Holocaust Claims Processing Office. Please note that ATAG Ernst & Young or the Swiss Bankers Association may have acted as the contact office for your claim.

You do not need to submit this Claim Form for Account Owners whose assets you have previously claimed with the New York Holocaust Claims Processing Office.

5. Other Family Members Submitting Separate Claims to this Account

Please list the names of other family members who have submitted separate claims to the Account of the Account Owner and explain how you are related to that family member. Please note that this question refers to family members who have filed a separate claim and are **not** represented by you.

PART 2: ACCOUNT OWNER INFORMATION

6. Account You are Claiming

If you wish to submit a claim to more than one Account, you must complete a separate Claim Form for every person whose assets you are claiming and send all the Claim Forms in one envelope. Please submit copies of the relevant supporting documents with each claim.

Published Account Owners

Please identify the Account to which you believe you are entitled by providing the Account Owner's name, city and country as they appear on the list published on **February 5, 2001.** Simply provide the Account Owner's name if the name of the city and country is not on the published list.

Please note that if the Account Owner's name has been published in different forms, such as A. Smith as well as Ann Smith, you need only submit one Claim Form. Furthermore, if the Account Owner has been published under both her maiden name and married name, you need only submit one Claim Form.

Power of Attorney Holders

If you believe that a person who was published as a Power of Attorney Holder **was the rightful owner of an Account,** please provide this person's name. You will be asked in Question 10 to state reasons for your belief. For the following questions about the Account Owner, please consider the Power of Attorney Holder as the Account Owner.

Non-published Account Owners

If you believe that you or a relative had a Swiss bank account to which you are entitled, but the Account Owner's name does not appear on the published list, please provide the name of the Account Owner and his or her country of residence. Please also state why you believe that the Account Owner had an Account in Switzerland.

7. Name of the Account Owner or Power of Attorney Holder

Please indicate the full name of the Account Owner and any other names he or she may have used, such as nicknames or Hebrew names. If you believe that the Account Owner was known by any other names or officially changed his or her name, please provide any available information or documents demonstrating the Account Owner's use of those other names.

8. Company Account Owner

If the Account Owner was a company, partnership, trust or other legal entity, please complete this section. With respect to all the following questions about the Account Owner, please treat the person on whose ownership you base your claim as the Account Owner.

If you believe that you are entitled to such an Account, please give the reasons for your belief.

9. Actual or Beneficial Ownership

In some cases, the actual or beneficial owner of the assets in the Account may not have held the assets in his or her name, but may have deposited the assets through another individual, for example a family member, a friend or a lawyer. In such a case, the person published as the Account Owner was not the actual or beneficial owner of the Account.

If you believe that a person published as an Account Owner was not the actual or beneficial owner of the Account, please provide the name of the actual or beneficial owner and his or her place or country of residence and the reasons for your belief. Please see Question 10 if you believe that the Power of Attorney Holder was the actual or beneficial owner of the Account.

With respect to all the following questions about the Account Owner, please treat the person identified as the actual or beneficial owner in this section as the Account Owner.

10. Information regarding the Power of Attorney Holder

Complete this section only if you believe that the Power of Attorney Holder was the actual owner of the Account.

Please indicate the exact relationship between the person published as the Account Owner and the Power of Attorney Holder (e.g. married, siblings, parent and child, business partners).

Please explain why you believe that the Power of Attorney Holder and not the Account Owner was the rightful owner of the Account.

With respect to all the following questions about the Account Owner, please treat the person identified as the Power of Attorney Holder in this section as the Account Owner.

11. General Information about the Account Owner

The Tribunal will need as much information as you can provide about the person you believe is the Account Owner in order to compare your information with the unpublished information about the Account Owner contained in the bank records and with the details provided by other claimants.

If possible, please provide **copies** of any documents that you may have relating to the Account Owner, for example, correspondence with the Account Owner, samples of the Account Owner's signature, birth, marriage or death certificates, or any other form of identification of the Account Owner. Please do not send originals.

Please provide any information you have about the Account Owner's citizenship and/or nationality. If the Account Owner held more than one citizenship, lost his or her citizenship, or was a national of more than one country, please list each citizenship and/or nationality.

Please indicate the Account Owner's gender. In addition, please provide the dates and places of the Account Owner's marriage. If the Account Owner was married more than once, please also provide this information.

Please indicate the date and place of the Account Owner's birth and death as accurately as possible.

Please provide any information you have about the Account Owner's occupation or profession, including the name or names of any businesses that were owned in whole or in part by the Account Owner. In addition, please provide a description of any such business.

12. Account Owner's Address Information

Please provide any information you have about the cities and/or countries in which you believe the Account Owner lived or worked. Please provide the Tribunal with specific addresses and corresponding dates wherever possible.

Please also state what cities and/or countries you believe the Account Owner emigrated from and immigrated to.

13. Account Owner's Permanent or Temporary Residence in Switzerland

Please state whether the Account Owner gave the bank an address in Switzerland and explain why he or she gave such an address.

14. Account Owner's Connections to Switzerland

Please provide any information you have regarding any other connection that the Account Owner may have had to Switzerland, such as where he or she may have had family, or where he or she may have traveled frequently for business or other reasons.

15. The Tribunal's Jurisdiction

The Tribunal has the authority to resolve claims to Accounts only where it appears that the Account Owner was a Victim or Target of Nazi persecution during the years 1933—1945. A Victim or Target of Nazi persecution is defined as an individual who was persecuted or targeted for persecution because he or she was or was believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped. Thus, it is necessary for you to state whether and why you believe that the Account Owner was a Victim or Target of Nazi persecution. In addition, it is important that you identify the group to which you believe the Account Owner belonged.

16. Account Owner's Circumstances and Fate

Please provide as much detailed information and any documents you may have relating to the Account Owner's circumstances and fate during the years 1933-1945. If the Account Owner was a company, partnership, trust or other legal entity, please provide information both about the person you believe owned or partly owned this entity, and about the fate of the entity itself.

17. Information Regarding the Account Owner's Representative

If the Account Owner had a lawyer, agent and/or representative who lived in Switzerland or who traveled to Switzerland on the Account Owner's behalf to open the Account, please provide the name of this individual or individuals and any relevant addresses.

18. Your Relationship to the Account Owner

Please indicate your precise relationship to the individual who you believe to be the Account Owner. **A claim solely based on the fact that you or your relatives have the same last name as the Account Owner is not sufficient.**

19. Spouse of the Account Owner

Please provide information about the Account Owner's spouse, including maiden name, if applicable. If the Account Owner was married more than once, please provide such information about each spouse. Please also provide the address of the Account Owner's spouse if it was different from the Account Owner's.

20. Father of the Account Owner

Please provide the full name of the Account Owner's father.

21. Mother of the Account Owner

Please provide the full name of the Account Owner's mother.

22. Children of the Account Owner

This section seeks information about biological and lawfully adopted children of the Account Owner. If you are a child of the Account Owner, you do not need to provide information about yourself here as such information has already been provided in Question 1.1. However, please provide information about any other children of the Account Owner.

23. Family Tree

To assist the Tribunal in understanding your family structure, please complete the attached Family Tree form or, if you prefer, prepare your own on a separate sheet of paper.

24. Claims Not Based on Familial Relationships

If your claim is not based on your familial relationship to the Account Owner, please indicate whether:

- you were named as a beneficiary in the Account Owner's will, or
- you inherited from someone who was one of the Account Owner's heirs.

25. Testamentary Documents

It would assist the Tribunal if you are able to provide inheritance documents that demonstrate a chain of inheritance from the Account Owner to you. For example, if you were your mother's heir and your mother inherited from the Account Owner, then it would be helpful if you are able to provide inheritance documents with respect to your mother and the Account Owner, and inheritance documents with respect to you and your mother. The Tribunal understands that such documents may not be available in light of the circumstances surrounding the Second World War. However, documents from more recent years may be available.

Please do not provide original documents.

26. Other Supporting Relevant Information

Please provide any other relevant information about the Account Owner that you believe supports your claim of entitlement to the Account Owner's Account.

PART 3: FINAL DETAILS BEFORE SUBMITTING THE CLAIM FORM

27. Language of Proceedings

The Tribunal can communicate with you in English, French, German, Hebrew, and Spanish. Please indicate if you are able to understand correspondence in more than one of the five languages listed above, as this may allow the Tribunal to treat your claim more quickly and efficiently.

Please note that the Tribunal can only accept claims that are submitted in one of the five languages listed above. However, you may include supporting documents (e.g. birth and death certificates, testaments) in their original language. If you have translations readily available, please submit them.

28. List of Supporting Documents Attached to the Claim

Please list and number the documents that you are providing as supporting documentation.

29. Claimant's Representative

If you are being represented by a legal or other representative, please remember that the Power of Attorney form that is attached to the Claim Form must be completed, signed by you, and submitted to the Tribunal with the Claim Form.

30. Agreement to Submit Claim to the Claims Resolution Tribunal

The decisions of the Tribunal may be made public. However, if you request confidential treatment, your decision will be published without disclosing your identity. Please note that some of the information you provide in this Claim Form may be shared with other claimants in the course of the proceedings. Additionally, a copy of the final decision relating to the Account will be provided to the bank which held the Account.

Please remember that you must sign the Claim Form. If you are being represented by a legal or other representative, your representative may sign for you. If the Tribunal receives an unsigned Claim Form, it will not be able to treat your claim.

31. Review and Checklist

This section is a checklist for you to verify that you have fully completed the Claim Form and submitted all the documents that you wish the Tribunal to review.

Claim Form

On 5 February 2001, a list was published giving the name and the city and country of residence, where known, of persons who opened or owned bank accounts in Switzerland in the period 1933—45 and who may have been Victims or Targets of Nazi/Axis persecution. This Claim Form provides you with an opportunity to file a claim where you believe that you should be considered the rightful owner of all or part of a listed account and where you believe that the Account Owner was a Victim or Target of Nazi/Axis persecution.

If you believe that you are entitled to a Swiss account that was opened or owned in the period 1933—45 and it does not appear on the list, but you believe it belonged to a Victim or Target of Nazi/Axis Persecution, you may also submit this Claim Form.

The Claim Form has been designed to assist you in providing the information needed by the Tribunal to ensure that your claim is decided fairly and expeditiously. Please review the attached instruction sheet as it will help you to fill out this Claim Form correctly. Before completing this Claim Form, please note the following:

▶ **The Tribunal may consider your claim only if you are claiming that the Account Owner was a Victim or Target of Nazi Persecution because he or she was or was believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped.**

▶ You cannot claim an Account on the basis of a relationship to a person who only held a Power of Attorney from the Account Owner, because, under Swiss Law, the Power of Attorney Holder is not considered to be the actual or beneficial owner of the Account.

▶ The mere fact that your family and an Account Owner named in the list of Accounts share the same last name is not enough to support a claim to an Account.

▶ You do not need to complete and submit this Claim Form for Account Owners for whose assets you have previously filed a claim with the New York State Holocaust Claims Processing Office (HCPO).

▶ You must fill out this Claim Form as completely as possible.

▶ You should complete this Claim Form by typing or printing clearly in block capital letters.

▶ Please submit this Claim Form to the Claims Registration Office, Claims Resolution Tribunal, P.O. Box 2666, JAF Station, New York, NY 10116-2666, U.S.A.

▶ Claims must be submitted via mail only. The Tribunal will not consider claims submitted via e-mail or fax.

▶ The deadline for submitting a claim is 6 months from the date of publication of the 2001 List.

▶ You must sign your Claim Form. An unsigned Claim Form will be returned to you.

PART 1 : CLAIMANT INFORMATION

PLEASE COMPLETE THIS CLAIM FORM BY TYPING OR PRINTING IN CAPITAL LETTERS

1. Personal Information

Title | Last Name | Maiden Name

First Name | Middle Name(s)

Current Mailing Address

Street Number | Street Address

City | State/Province/Canton/County

Country | Postal/Zip Code

Telephone | Mobile Telephone | Telefax

E-mail (optional)

For verification purposes, please attach a copy of the identification pages of your passport, driver licence or other form of photo-identification. Please do not send originals.

Date of Birth (day/month/year) | Place of Birth

Father's Name

Last Name

First Name | Middle Name(s)

Mother's Name

Last Name | Maiden Name

First Name | Middle Name(s)

2. Alternate Contact Information

Please provide the name and address of a contact person in the event that the Tribunal cannot reach you:

Last Name | First Name

Current Mailing Address

Street Number | Street Address

City | State/Province/Canton/County

Country | Postal/Zip Code

Telephone | Mobile Telephone | Telefax

E-mail (optional)

3. Family Member Information

Are you representing any other members of your family in making this claim?

☐ **YES** ☐ **NO**

*NOTE: If you seek to represent other family members in making this claim, please have **them** complete, sign, and submit the attached Power of Attorney form, authorizing your representation.*

Please complete the following information for each family member you are representing:

Relative #1

Last Name | Maiden Name

First Name | Middle Name(s)

Date of Birth (day/month/year) | Place of Birth

Father's Name

Last Name

First Name | Middle Name(s)

Mother's Name

Last Name | Maiden Name

First Name | Middle Name(s)

Please explain how you are related to this family member: _____

_____

Relative #2

Last Name | Maiden Name

First Name | Middle Name(s)

Date of Birth (day/month/year) | Place of Birth

Father's Name

Last Name

First Name | Middle Name(s)

Mother's Name

Last Name | Maiden Name

First Name | Middle Name(s)

Please explain how you are related to this family member: _____

_____

NOTE: If there are additional family members that you are representing, please include all relevant information on separate sheets of paper.

4.a Have you submitted an Initial Questionnaire with respect to the Holocaust Victim Assets Litigation?

☐ **YES** (Please note that you are still required to complete and submit this claim form in order to claim a specific Account.)

☐ **NO**

4.b Previous Claims You or Your Family Members Have Made to Dormant Assets in Swiss Bank Accounts

Have you or any of the family members you are representing made any previous claims to any bank, organization or government body to assets in Swiss bank accounts, such as the Claims Resolution Tribunal, ATAG Ernst&Young, the Independent Committee of Eminent Persons, the Swiss Banking Ombudsman, or the New York Holocaust Claims Processing Office?

☐ **YES** (please check all that apply)

☐ **Claims Resolution Tribunal** (for accounts on the lists published in July and October 1997)

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **ATAG Ernst & Young** (for accounts that were not published on the lists of July and October 1997)

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **Independent Committee of Eminent Persons (ICEP)**

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **Swiss Banking Ombudsman**

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **New York Holocaust Claims Processing Office (NY HCPO)**

Name of Owner of Account Claimed _____

Claim or Docket Number _____

NOTE: If you have previously made a claim to this name to the New York Holocaust Claims Processing Office, you do not have to file a new claim with the Claims Resolution Tribunal.

☐ **Other**
If you have previously submitted a claim to dormant assets in Swiss bank accounts to another entity, please list name(s) of entities, name(s) of owner of the Account claimed, and claim or docket number(s).

_____

_____

☐ **NO,** I have not previously submitted a claim to dormant assets in Swiss bank accounts.

5. Other Family Members Submitting Separate Claims to this Account

To your knowledge, are other members of your family submitting separate claim forms to this Account?

☐ **YES** ☐ **NO**

If yes, please list the names of such family members:

Family Member #1

Last Name _____ Maiden Name _____

First Name _____ Middle Name(s) _____

Please explain how you are related to this family member: _____

Family Member #2

Last Name _____ Maiden Name _____

First Name _____ Middle Name(s) _____

Please explain how you are related to this family member: _____

NOTE: If there are additional family members, please include all relevant information on separate sheets of paper.

PART 2 : ACCOUNT OWNER INFORMATION

6. Are you claiming an Account that is published on the 2001 List?

Please check only one box.

☐ **YES,** the name appears as an Account Owner

Name of Account Owner (copy exactly as published) _____

City and Country (copy exactly as published) _____

☐ YES, the name appears as a Power of Attorney Holder* (If so, please also complete Question 10.)

Name of Power of Attorney Holder (copy exactly as published)

City and Country (copy exactly as published)

* Power of Attorney Holders are published in italics on the 2001 List.

☐ NO

If the person's name whose assets you are claiming does not appear on the 2001 List, you are still required to answer the following questions.

7. Please indicate the full name of the Account Owner or Power of Attorney Holder.

If you are claiming an Account owned by a company, partnership, trust or other legal entity, please proceed to Question 8.

Title | Last Name | Maiden Name

First Name | Middle Name(s)

If the Account Owner was known by any other name (i.e., nickname, spelling change, or name change) please provide details:

Please list variations of Last Name.

Please list variations of First Name.

8. If the Account Owner is a company, partnership, trust or other legal entity, please answer the following:

Name of person you believe owned or partly owned this entity prior to or during the Second World War:

Title | Last Name | Maiden Name

First Name | Middle Name(s)

If this person was known by any other name (i.e., nickname, spelling change, or name change) please provide details:

Please list variations of Last Name.

Please list variations of First Name.

Please state why you believe that this person was the beneficial owner of the company, partnership, trust or other legal entity:

NOTE: With respect to all the following questions about the Account Owner, please consider the person identified in question 8 as the Account Owner.

9. Do you have reason to believe that the person published as the Account Owner was NOT the actual or beneficial owner of the Account, but rather opened the Account on behalf of someone related to you?

☐ YES ☐ NO

Actual or Beneficial Owner Details

Title | Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Please explain why you believe this person was the actual or beneficial owner of the Account:

NOTE: With respect to all the following questions about the Account Owner, please consider the person identified in Question 9 as the Account Owner.

10. If the person who you think was the rightful owner of an Account is listed as a Power of Attorney Holder on the 2001 List, please answer the following questions:

NOTE: Power of Attorney Holders are listed in italics on the 2001 List.

Please note that under Swiss law, the Power of Attorney Holder is not considered to be the owner of the Account. The Power of Attorney Holder may have had the right to access and use the funds in the Account during his or her lifetime. However, once the Power of Attorney Holder dies, his or her rights no longer exist and they do not pass to his or her heirs.
Therefore, you cannot claim an Account solely on the basis of a relationship to a Power of Attorney Holder. If you are claiming an Account on the basis of a relationship to the Power of Attorney Holder, you have to provide additional information as to why, in this particular case, the Power of Attorney Holder himself or herself was entitled to the assets in the Account.

Please state precisely how the Power of Attorney Holder is related to the Account Owner on the 2001 List:

If you believe that the Power of Attorney Holder rather than the published Account Owner was the rightful owner of the Account, please provide detailed information:

_____

_____

_____

NOTE: With respect to all the following questions about the Account Owner, please consider the person identified in Question 10 as the Account Owner.

11. General Information about the Account Owner

Gender: ☐ Male ☐ Female

Date of Birth (day/month/year) _____ Place of Birth _____

Date of Death (day/month/year) _____ Place of Death _____

Date of Marriage (day/month/year) _____ Place of Marriage _____

NOTE: If the Account Owner was married more than once, please list the date and place for each marriage on a separate sheet of paper.

Date of Divorce (day/month/year) _____

Profession/Occupation (including type or name and address of any business owned by the Account Owner):

_____

_____

_____

Citizenship/Nationality _____

Additional citizenships held _____

12. Account Owner's Address Information

Please list all known addresses or places where the Account Owner resided and/or worked from the time you believe the Account Owner opened the Account until the time of his or her death. If possible, please provide corresponding years for each address.

Year(s)	Street Address	City	Country	Type of Address (home, work, etc.)

13. Account Owner's Use of a Swiss Address

Do you know or have reason to believe that the Account Owner gave the bank a Swiss address?

☐ YES

If so, please state why you believe the Account Owner gave the bank a Swiss address and provide all available documents supporting this:

_____

_____

_____

14. Please state whether the Account Owner had any connections to Switzerland (examples may include places where the Account Owner may have had family, or where he or she may have traveled for business or other reasons):

_____

_____

_____

15. Was the Account you are claiming owned by a Victim or Target of Nazi Persecution?

Because the Tribunal can only decide claims to Accounts that belonged to Victims or Targets of Nazi Persecution, as defined in the Rules of Procedure and reproduced in the attached Instruction Sheet, it is important that the following sections are completed as thoroughly as possible:

☐ YES

To which of the following targeted or persecuted groups did the Account Owner belong?

☐ Jewish

☐ Romani

☐ Jehovah's Witness

☐ Homosexual

☐ Physically or mentally handicapped

☐ Other, please specify: _____

☐ NO

16. Please provide any other relevant information related to the Account Owner's circumstances and fate during the years 1933—1945:

_____

_____

_____

_____

17. Information Regarding the Account Owner's Representative

Did the Account Owner have a lawyer, agent, and/or representative in Switzerland or who traveled to Switzerland on behalf of the Account Owner to open the Account?

☐ YES

If so, please provide details such as names of representatives and cities or regions visited and why you believe the Account Owner used a representative to open the Account:

_____

_____

_____

18. Your Relationship to the Account Owner

Please state precisely how you are related to the Account Owner:

_____

_____

_____

19. Spouse of the Account Owner

Title | Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Address(es), If different from the Account Owner's

Date of Birth (day/month/year) | Date of Death (day/month/year) | Place of Death

NOTE: If the Account Owner was married more than once, please attach another sheet containing the information for the other spouse(s).

20. Father of the Account Owner

Last Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

21. Mother of the Account Owner

Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

22. Children of the Account Owner

Child #1: ☐ Biological ☐ Adopted Citizenship

Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

Mother's maiden name

Child #2: ☐ Biological ☐ Adopted Citizenship

Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

Mother's maiden name

NOTE: If there were or are additional children, please include all relevant information on separate sheets of paper.

23. Family Tree

To explain the family relationships, please sketch a family tree on the family tree form, which is attached to the Claim Form, or on a separate sheet of paper.

In addition, please provide information and/or copies of any documents that would show that you are related to the Account Owner, such as a passport or other identifying documents; birth certificates; death certificates; marriage certificates; correspondence with identifying details. While the Tribunal understands that there are many reasons why information and documentation are not available, you are urged to provide as much as you have.

24. Claims Not Based on Familial Relationships

If your claim is not based on a familial relationship to the Account Owner, please explain why you believe that you are entitled to the Account:

_____

_____

_____

_____

25. Testamentary Documents

If possible, please provide information and copies of any testamentary documents that might show that you are entitled to the Account, such as:

☐ Wills – *Testamente und letztwillige Verfügungen – Testaments et dispositions de dernières volontés*

☐ Testamentary or probate documents – *Entscheidungen von Nachlassgerichten – Décisions judiciaires*

☐ Certificates of inheritance – *Erbscheine – Certificats d'hérédité et actes de notoriété*

☐ Other (please specify)

_____

_____

_____

_____

26. Other Supporting Information Regarding Your Entitlement to the Account Owner's Account

Please provide any other relevant information you have which may support your entitlement to the Account Owner's Account:

_____

_____

_____

_____

PART 3 : FINAL DETAILS BEFORE SUBMITTING THE CLAIM FORM

27. Language of the Proceedings

Please indicate in which of the following languages you are able to receive correspondence:

- ☐ English
- ☐ French
- ☐ German
- ☐ Hebrew
- ☐ Spanish

28. List of Supporting Documents Attached to the Claim Form

Please list the documents that you are providing in support of your claim and number the documents accordingly:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

29. Name of Legal/Other Representative Filing the Claim on behalf of the Claimant

If you are being represented by a legal or other representative, please provide contact details for the representative below:

Title | Last Name

First Name | Middle Name(s)

Firm Name (if applicable)

Street Number | Street Address

City | State/Province/Canton/County

Country | Postal/Zip Code

Telephone | Mobile Telephone | Telefax

E-mail (optional)

NOTE: If you seek to be represented in making this claim, please complete, sign and submit the attached Power of Attorney form, authorizing such representation.

30. Agreement to Submit your Claim to the Claims Resolution Tribunal

By signing this Claim Form, I hereby agree that my claim to the Account referenced in my Claim Form shall be adjudicated by the Claims Resolution Tribunal according to its Rules of Procedure. Additionally, I confirm that all of my statements contained in this form are true to the best of my knowledge.

I understand that any decision by the Claims Resolution Tribunal will be made public unless I request confidential treatment of the decision. If confidential treatment of the decision is requested, the Tribunal's decision will be published without identification of the persons or institutions involved.

I REQUEST CONFIDENTIAL TREATMENT OF THE DECISION.

☐ **YES** ☐ **NO**

Signature: _____

Date (day/month/year) | Place

31. Review and Checklist

☐ Provided copies of documents establishing your identity (e.g., passport, driver license, identification card)*

☐ Provided copies of any available documents about the Account Owner and about your relationship to the Account Owner *

☐ Provided Family Tree

☐ Provided Power of Attorney signed by family members you represent

☐ Provided Power of Attorney signed by you authorizing that you be represented

☐ Signed the Claim Form

* PLEASE DO NOT SEND ORIGINAL DOCUMENTS

32. Next Steps and Sending Additional Documents to Support Your Claim

Once the Tribunal receives your claim, you will receive a Claim Acknowledgement Card indicating that the form has been received. This Claim Acknowledgement Card will provide you with a reference number that you should use when communicating with the Tribunal. If you send additional information to the Tribunal, please use this reference number to ensure that your claim file is properly updated.

POWER OF ATTORNEY

I _____ ,
Name of Person authorizing representation

residing at _____

_____ ,

do hereby appoint _____ ,
Name of Representative

residing at _____

_____ ,

to be my true and lawful attorney-in-fact and agent to act in my name and on my behalf, in connection with any rights I may have to the claimed account of

_____ .
Name of Account Owner claimed

I hereby grant _____
Name of Representative

full power and authority to represent me, during my life time and after my death, before the Claims Resolution Tribunal, to sign the Claim Form on my behalf, to receive and accept orders and awards from the Claims Resolution Tribunal, and to receive money on my behalf in connection with the above-referenced account.

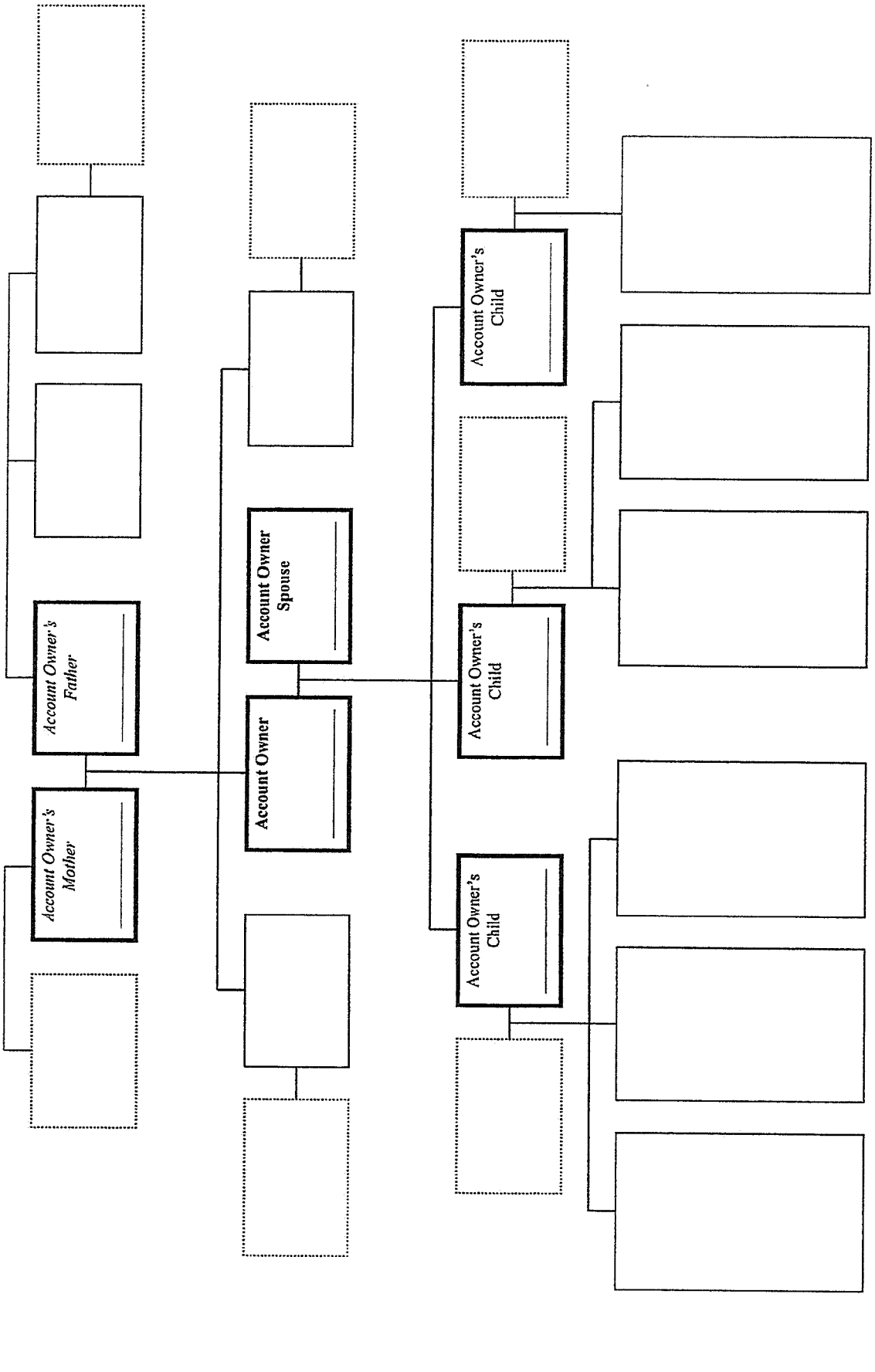
This Power of Attorney is subject to Swiss law.

_____
Signature

_____
Place

_____
Date

Family Tree


Account Owner's Father
Account Owner's Mother
Account Owner Spouse
Account Owner
Account Owner's Child
Account Owner's Child
Account Owner's Child

5

Instruction Sheet

In completing the Claim Form, please either type or print clearly in capital letters, using either blue or black ball point pen. Your Claim Form must be sent to the:

Claims Registration Office
Claims Resolution Tribunal
P.O. Box 1279 Old Chelsea Station
New York, NY 10113
U.S.A.

Claims may only be submitted for the accounts whose owners' names appear on the list of names published on January 13, 2005 (the "2005 List"), which is on the websites of the Claims Resolution Tribunal ("CRT"), www.crt-ii.org, and the Holocaust Victim Assets Litigation (Swiss Banks Settlement), www.swissbankclaims.com. If you are unable to view the 2005 List on those websites, please call the appropriate toll-free number listed in Appendix A of the Information Booklet and at www.crt-ii.org. There is no fee or other charge for filing and processing claims. If you need assistance with the Claim Form, organizations that have volunteered to help claimants are listed in Appendix C of the Information Booklet and at www.crt-ii.org. You must submit your Claim Form within 6 months of the date of publication of the 2005 List. That is, you must submit your Claim Form - **which must be postmarked** - by the filing deadline of **July 13, 2005**. You may submit additional documents in support of your claim at a later date, if necessary.

Please check the website of the CRT, www.crt-ii.org, periodically for updates regarding the Swiss Banks Settlement.

PART 1: CLAIMANT INFORMATION

1. Personal Information

Please fill out this section completely and accurately; otherwise the CRT may not be able to contact you about your claim.

Please note that the CRT does not generally communicate via e-mail, but would like to have an e-mail address on file in case we are unable to reach you at the postal address you have provided.

2. Alternate Contact Information

In the event that the CRT is unable to reach you, please provide details regarding someone else we could contact. The CRT will not consider this person as your legal or other representative and will not provide this person with any documentation relating to your claim, unless you identify this contact person as your legal or other representative in Question 29 of this Claim Form.

3. Family Member(s) Information

If you are representing any other family members, please provide the requested details about each family member you are representing. Please note that if you are representing other family members, these relatives will be considered Claimants to the Account and their entitlement to a portion of the assets will be considered. However, the CRT will only correspond with you on matters regarding the claims.

Please indicate how you are related to the family member(s) you are representing. If you are the niece of this person, please state "I am the niece" or "This family member is my aunt."

Please note that each family member you are representing must sign and submit a completed Power of Attorney authorizing you to represent them and to act on their behalf.

Please use the standard Power of Attorney form provided with this Claim Form and make additional copies, if necessary.

4. Previous Claims You or Your Family Members Have Made to Dormant Assets in Swiss Bank Accounts

a. Please state whether you have submitted an Initial Questionnaire with respect to the Holocaust Victim Assets Litigation in the U.S. District Court for the Eastern District of New York in 1999.

b. Please identify any previous claims to dormant assets in Swiss bank accounts that you or your family members have made to any bank, organization or government body, including the Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I), ATAG Ernst & Young, the Independent Committee of Eminent Persons, the Swiss Banking Ombudsman, 1962 Swiss Federal Survey, the New York Holocaust Claims Processing Office, or previous claims to CRT-II, subsequent to the publication of names of February 1, 2001. Please note that ATAG Ernst & Young or the Swiss Bankers Association may

have acted as the contact office for your claim.

You do not need to submit this Claim Form for Account Owners whose assets you have previously claimed with the New York Holocaust Claims Processing Office or with the CRT, subsequent to the publication of names of February 1, 2001.

5. Other Family Members Submitting Separate Claims to this Account

Please list the names of other family members who have submitted separate claims to the Account of the Account Owner and explain how you are related to that family member. Please note that this question refers to family members who have filed a separate claim and are **not** represented by you.

6. Payments Previously Received

Please provide information about any payment you or any members of your family have received for assets held in Switzerland between the years 1933 and 1945.

PART 2: ACCOUNT OWNER INFORMATION

7. Account You are Claiming

If you wish to submit a claim to more than one Account, you must complete a separate Claim Form for every person whose assets you are claiming and send all the Claim Forms in one envelope. Please submit copies of the relevant supporting documents with each claim.

You may only claim an Account whose owner's name was published on the 2005 List.

Please identify the Account to which you believe you are entitled by providing the Account Owner's name as it appears on the list published on **January 13, 2005**. Please provide the name as it appears, and other details regarding the name (*e.g.*, title, maiden name, nicknames, variations of name, Hebrew names), **in Latin characters**.

If you believe that the Account Owner was known by any other names or officially changed his or her name, please provide any available information or documents demonstrating the Account Owner's use of those other names.

Power of Attorney Holders

If you believe that a person who was published as a Power of Attorney Holder **was the rightful owner of an Account**, please provide this person's name. You will be asked in Question 10 to state reasons for your belief. For the following questions about the Account Owner, please consider the Power of Attorney Holder as the Account Owner.

Please note that, under Swiss law, a Power of Attorney Holder is not considered to be the owner of an Account. After a Power of Attorney Holder dies, his or her powers in an Account no longer exist, and they do not pass to his or her heirs. Accordingly, claimants who plausibly identify a Power of Attorney Holder as their relative are not entitled to receive the proceeds of the claimed Account, unless the bank's records indicate that the Power of Attorney Holder and the Account Owner were related.

Non-published Account Owners

If you believe that you or a relative had a Swiss bank account to which you are entitled, but the Account Owner's name does not appear on the published list, you may no longer make a claim.

8. Company Account Owner

If the Account Owner was a company, partnership, trust or other legal entity, please complete this section. With respect to all the following questions about the Account Owner, please treat the person on whose ownership you base your claim as the Account Owner. Please provide the name **in Latin characters** as it appears on the 2005 List.

If you believe that you are entitled to such an Account, please give the reasons for your belief and submit any available documents that support your claim that your relative owned the company and/or is entitled to its Account.

9. Actual or Beneficial Ownership

In some cases, the actual or beneficial owner of the assets in the Account may not have held the assets in his or her name, but may have deposited the assets through another individual, for example a family member, a friend or a lawyer. In such a case, the person published as the Account Owner was not the actual or beneficial owner of the Account.

If you believe that a person published as an Account Owner was not the actual or beneficial owner of the Account, please provide the name of the actual or beneficial owner and his or her place or country of residence and the reasons for your belief.

Please see Question 10 if you believe that the Power of Attorney Holder was the actual or beneficial owner of the Account.

With respect to all the following questions about the Account Owner, please treat the person identified as the actual or beneficial owner in this section as the Account Owner.

10. Information regarding the Power of Attorney Holder

Complete this section only if you believe that the Power of Attorney Holder was the actual owner of the Account.

Please indicate the exact relationship between the person published as the Account Owner and the Power of Attorney Holder (*e.g.,* married, siblings, parent and child, business partners).

Please explain why you believe that the Power of Attorney Holder and not the Account Owner was the rightful owner of the Account. If you are claiming an Account on the basis of a relationship to the Power of Attorney Holder, you must provide additional information as to why, in this particular case, the Power of Attorney Holder was entitled to the assets in the Account. You should also state precisely how the Power of

Attorney Holder is related to the Account Holder.

With respect to all the following questions about the Account Owner, please treat the person identified as the Power of Attorney Holder in this section as the Account Owner.

11. General Information about the Account Owner

The CRT will need as much information as you can provide about the person you believe is the Account Owner in order to compare your information with the unpublished information about the Account Owner contained in the bank records and with the details provided by other claimants.

If possible, please provide **copies** of any documents that you may have relating to the Account Owner, for example, correspondence with the Account Owner, samples of the Account Owner's signature, birth, marriage or death certificates, or any other form of identification of the Account Owner. Specifically, please submit any documents that can demonstrate a link between you (the Claimant) and the name of the Account Owner. **Please do not send originals**.

Please provide any information you have about the Account Owner's citizenship and/or nationality. If the Account Owner held more than one citizenship, lost his or her citizenship, or was a national of more than one country, please list each citizenship and/or nationality.

Please indicate the Account Owner's gender. In addition, please provide the dates and places of the Account Owner's marriage. If the Account Owner was married more than once, please also provide this information.

Please indicate the date and place of the Account Owner's birth and death as accurately as possible.

Please provide any information you have about the Account Owner's occupation or profession, including the name or names of any businesses that were owned in whole or in part by the Account Owner. In addition, please provide a description of any such business.

12. Account Owner's Address Information

Please provide any information you have about the cities and/or countries in which you believe the Account Owner lived or worked. Please provide the CRT with specific addresses and corresponding dates wherever possible.

Please also state what cities and/or countries you believe the Account Owner emigrated from and immigrated to.

13. Account Owner's Permanent or Temporary Residence in Switzerland

Please state whether the Account Owner may have given the bank an address in Switzerland and explain why he or she gave such an address.

14. Account Owner's Connections to Switzerland

Please provide any information you have regarding any other connection that the Account Owner may have had to Switzerland, such as where he or she may have had family, or where he or she may have traveled frequently for business or other reasons.

15. The CRT's Jurisdiction

The CRT can only decide claims to Accounts that belonged to Victims or Targets of Nazi persecution, as defined in the Rules Governing the Claims Resolution Process, as amended, and that were open or opened during the years 1933—1945. A Victim or Target of Nazi persecution is defined by the Settlement Agreement as an individual who was persecuted or targeted for persecution because he or she was or was believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped. Thus, it is necessary for you to state whether and why you believe that the Account Owner was a Victim or Target of Nazi persecution. In addition, it is important that you identify the group to which you believe the Account Owner belonged.

16. Account Owner's Circumstances and Fate

Please provide as much detailed information and any documents you may have relating to the Account Owner's circumstances and fate during the years 1933-1945. If the Account Owner was a company, partnership, trust or other legal entity, please provide information both about the person you believe owned or partly owned this entity, and about the fate of the entity itself.

17. Information Regarding the Account Owner's Representative

If the Account Owner had a lawyer, agent and/or representative who lived in Switzerland or who traveled to Switzerland on the Account Owner's behalf to open the Account, please provide the name of this individual or individuals and any relevant addresses.

18. Your Relationship to the Account Owner

Please indicate your precise relationship to the individual who you believe to be the Account Owner. **A claim solely based on the fact that you or your relatives have the same last name as the Account Owner is not sufficient.**

19. Spouse of the Account Owner

Please provide information about the Account Owner's spouse, including maiden name, if applicable. If the Account Owner was married more than once, please provide such information about each spouse. Please also provide the address of the Account Owner's spouse if it was different from that of the Account Owner's.

20. Father of the Account Owner

Please provide the full name of the Account Owner's father.

21. Mother of the Account Owner

Please provide the full name of the Account Owner's mother.

22. Children of the Account Owner

This section seeks information about biological and lawfully adopted children of the Account Owner. If you are a child of the Account Owner, you do not need to provide information about yourself here as such information has already been provided in Question 1. However, please provide information about any other children of the Account Owner.

23. Family Tree

To assist the CRT in understanding your family relationships, please complete the attached Family Tree form or, if you prefer, prepare your own on a separate sheet of paper.

24. Claims Not Based on Familial Relationships

If your claim is not based on your familial relationship to the Account Owner, please indicate whether:

– you were named as a beneficiary in the Account Owner's will, or

– you inherited from someone who was one of the Account Owner's heirs.

If you are relying **only** on a will or other testamentary documents as the basis for your entitlement to an Account, you should include a copy of such documents with your Claim Form.

25. Testamentary Documents

It would assist the CRT if you are able to provide inheritance documents that demonstrate a chain of inheritance from the Account Owner to you. For example, if you were your mother's heir and your mother inherited from the Account Owner, then it would be helpful if you are able to provide inheritance documents with respect to your mother and the Account Owner, and inheritance documents with respect to you and your mother. The CRT understands that such documents may not be available in light of the circumstances surrounding the Second World War. However, documents from more recent years may be available.

Please do not provide original documents.

26. Other Supporting Relevant Information

Please provide any other relevant information about the Account Owner that you believe supports your claim of entitlement to the Account Owner's Account.

PART 3: FINAL DETAILS BEFORE SUBMITTING THE CLAIM FORM

27. Language of Proceedings

The CRT can communicate with you in English, French, German, Hebrew, and Spanish. Please indicate if you are able to understand correspondence in more than one of the five languages listed above, as this may allow the CRT to treat your claim more quickly and efficiently.

Please note that the CRT can only accept claims that are submitted in one of the five languages listed above. However, you may include supporting documents (*e.g.*, birth and death certificates, testaments) in their original language. If you have translations readily available, please submit them.

28. List of Supporting Documents Attached to the Claim

Please list and number the documents that you are providing as supporting documentation. Please note that you must submit your claim form - **which must be postmarked** - by the filing deadline of **July 13, 2005**. You may submit additional documents in support of your claim at a later date, if necessary.

29. Claimant's Representative

If you are being represented by a legal or other representative, please remember that the Power of Attorney form that is attached to the Claim Form must be completed, signed by you, and submitted to the CRT with the Claim Form.

30. Agreement to Submit Claim to the Claims Resolution Tribunal

The decisions of the CRT may be made public. However, if you request confidential treatment, your decision will be published without disclosing your identity. Please note that some of the information you provide in this Claim Form may be shared with other claimants in the course of the proceedings.

Additionally, a copy of the final decision relating to the Account will be provided to the bank which held the Account.

Please remember that you must sign the Claim Form. If you are being represented by a legal or other representative, your representative may sign for you. If the CRT receives an unsigned Claim Form, it will not be able to treat your claim.

31. Review and Checklist

This section is a checklist for you to verify that you have fully completed the Claim Form and submitted all the documents that you wish the CRT to review.

YOU MUST SUBMIT YOUR CLAIM FORM – WHICH MUST BE POSTMARKED – BY THE FILING DEADLINE OF JULY 13, 2005. PLEASE BE SURE TO SUBMIT, ALONG WITH YOUR COMPLETED CLAIM FORM, THE ACKNOWLEDGEMENT POSTCARD ON WHICH YOU HAVE WRITTEN YOUR CURRENT ADDRESS.

Claim Form

On January 13, 2005, the Claims Resolution Tribunal (the "CRT") published a list of names of owners and Power of Attorney Holders of Swiss bank accounts that were open or opened between 1933 and 1945 and whose owners were probably or possibly Victims of Nazi persecution (the "2005 List"). The 2005 List is located on the websites of the CRT, www.crt-ii.org, and of the Holocaust Victim Assets Litigation (Swiss Banks Settlement), www.swissbankclaims.com. If you are unable to view the 2005 List on those websites, please call the appropriate toll-free number listed in Appendix A of the Information Booklet and at www.crt-ii.org. This Claim Form provides you with an opportunity to file a claim to accounts on the 2005 List to which you may be entitled. **Please note that you may only claim an account whose owner's name was included on the 2005 List. Claims to other accounts will not be accepted. If you have previously filed a claim with the CRT and you now want to claim to an account on the 2005 List, you must submit a new claim. There is no fee or other charge for filing and processing claims.**

The Claim Form has been designed to assist you in providing the information needed by the CRT to ensure that your claim is decided fairly. Please review the attached Instruction Sheet as it will help you to fill out this Claim Form correctly. Before completing this Claim Form, please note the following:

▶ **The CRT may consider your claim only if the Account Owner was a Victim or Target of Nazi Persecution because he or she was or was believed to be Jewish, Romani, Jehovah's Witness, homosexual, or physically or mentally disabled or handicapped.**

▶ You cannot claim an Account on the basis of a relationship to a person who only held a Power of Attorney from the Account Owner, because, under Swiss Law, the Power of Attorney Holder is not considered to be the actual or beneficial owner of the Account.

▶ The mere fact that your family and an Account Owner named in the list of Accounts share the same last name is not enough to support a claim to an Account.

▶ You must fill out this Claim Form as completely as possible. Organizations that will assist individuals with the Claim Forms are listed in Appendix C of the Information Booklet and at www.crt-ii.org.

▶ You should complete this Claim Form by typing or printing clearly in block capital letters.

▶ Please submit your completed Claim Form, along with the **Acknowledgment Postcard** on which you have provided your current address, to the Claims Registration Office, Claims Resolution Tribunal, P.O. Box 1279 Old Chelsea Station, New York, NY 10113, U.S.A.

▶ Claims must be submitted via mail only. The CRT will not consider claims submitted via e-mail or fax.

▶ The deadline for submitting a claim is 6 months from January 13, 2005, the date of publication of the 2005 List. **You must submit your Claim Form by the filing deadline of July 13, 2005**, even if you do not have all supporting documents available. Such documents may be submitted to the CRT at a later date, but the Claim Form must be postmarked by July 13, 2005.

▶ You must sign your Claim Form. An unsigned Claim Form will be returned to you.

▶ Please check the website of the CRT, www.crt-ii.org, periodically for updates regarding the Swiss Banks Settlement.

PART 1: CLAIMANT INFORMATION

PLEASE COMPLETE THIS CLAIM FORM BY TYPING OR PRINTING IN CAPITAL LETTERS.

1. Personal Information

Title | Last Name | Maiden Name

First Name | Middle Name(s)

Current Mailing Address

Street Number | Street Address

City | State/Province/Canton/County

Country | Postal/Zip Code

Telephone | Mobile Telephone | Telefax

E-mail (optional)

For verification purposes, please attach a **copy** of the identification pages of your passport, driver's license or other form of photo-identification. **Please do not send originals**.

Date of Birth (day/month/year) | Place of Birth

Father's Name

Last Name

First Name | Middle Name(s)

Mother's Name

Last Name | Maiden Name

First Name | Middle Name(s)

2. Alternate Contact Information

Please provide the name and address of a contact person in the event that the CRT cannot reach you:

Last Name | First Name

Current Mailing Address

Street Number | Street Address

City

State/Province/Canton/County

Country

Postal/Zip Code

Telephone

Mobile Telephone

Telefax

E-mail (optional)

3. Family Member Information

Are you representing any other members of your family in making this claim?

☐ **YES** ☐ **NO**

NOTE: If you seek to represent other family members in making this claim, each represented party must complete and sign the attached Power of Attorney form authorizing your representation.

Please complete the following information for each family member you are representing:

Relative #1

Last Name

Maiden Name

First Name

Middle Name(s)

Date of Birth (day/month/year)

Place of Birth

Father's Name

Last Name

First Name

Middle Name(s)

Mother's Name

Last Name

Maiden Name

First Name

Middle Name(s)

Please explain how you are related to this family member: _____

_____

Relative #2

Last Name

Maiden Name

First Name

Middle Name(s)

Date of Birth (day/month/year)

Place of Birth

Father's Name

Last Name

First Name | Middle Name(s)

Mother's Name

Last Name | Maiden Name

First Name | Middle Name(s)

Please explain how you are related to this family member: _____

_____

NOTE: If there are additional family members that you are representing, please include all relevant information on separate sheets of paper. Each represented party must complete and sign the attached Power of Attorney form.

4a. Have you submitted an Initial Questionnaire with respect to the Holocaust Victim Assets Litigation?

☐ **YES** (Please note that you are still required to complete and submit this Claim Form in order to claim a specific Account.)

☐ **NO**

4b. Previous Claims You or Your Family Members Have Made to Dormant Assets in Swiss Bank Accounts

Have you or any of the family members you are representing made any previous claims to any bank, organization or governmental body to assets in Swiss bank accounts, such as the Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I), ATAG Ernst & Young, the Independent Committee of Eminent Persons, the Swiss Banking Ombudsman, the 1962 Swiss Federal Survey or the New York Holocaust Claims Processing Office, or have you previously filed a claim with the CRT with respect to the publication of account owner names in 2001?

☐ **YES** (please check all that apply)

☐ **Claims Resolution Tribunal for Dormant Accounts in Switzerland (CRT-I)** (for accounts on the lists published in July and October 1997)

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **ATAG Ernst & Young** (for accounts that were not published on the lists of July and October 1997)

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **Independent Committee of Eminent Persons (ICEP)**

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **Swiss Banking Ombudsman**

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **1962 Swiss Federal Survey** (for accounts published on the January 1999 list)

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **New York Holocaust Claims Processing Office** (NY HCPO)

Name of Owner of Account Claimed _____

Claim or Docket Number _____

☐ **Claims Resolution Tribunal (CRT-II)** (subsequent to the publication of 1 February 2001)

Name of Owner of Account Claimed _____

Claim Number _____

☐ **Other**
If you have previously submitted a claim to dormant assets in Swiss bank accounts to another entity, please list name(s) of entities, name(s) of owner of the Account claimed, and claim or docket number(s).

_____

_____

☐ **NO**, I have not previously submitted a claim to dormant assets in Swiss bank accounts.

5. Other Family Members Submitting Separate Claims to this Account

To your knowledge, are other members of your family submitting separate claim forms to this Account?

☐ **YES** ☐ **NO**

If yes, please list the names of such family members:

Family Member #1

Last Name _____ Maiden Name _____

First Name _____ Middle Name(s) _____

Please explain how you are related to this family member: _____

_____

Family Member #2

Last Name _____ Maiden Name _____

First Name _____ Middle Name(s) _____

Please explain how you are related to this family member: _____

_____

NOTE: If there are additional family members, please include all relevant information on separate sheets of paper.

6. Payments Previously Received

To your knowledge, have you or other members of your family previously received payment of all or any portion of assets held in Switzerland between the years 1933 and 1945?

☐ **YES** ☐ **NO**

If yes, please list the person who received payment, the date such payment was made, the amount of the payment, and the source of that payment (e.g., CRT-I, 1962 Swiss Federal Survey, etc.).

Last Name of Account Owner

First Name of Account Owner

Last Name of Payment Recipient

First Name of Payment Recipient

Payment Date (day/month/year)

Payment Amount

Currency

Source of that payment (*e.g.*, CRT-I, 1962 Swiss Federal Survey, etc.).

PART 2: ACCOUNT OWNER INFORMATION

Please note that you may only claim an account whose owner's name or whose Power of Attorney Holder's name appears on the 2005 List.

7. Please indicate the full name of the Account Owner or Power of Attorney Holder as it appears on the 2005 List.

*Please provide the name **in Latin characters**. If you are claiming an Account owned by a company, partnership, trust or other legal entity, please proceed to Question 8.*

☐ Does the name appear as an Account Owner? If yes,

Name of Account Owner (copy exactly as published)

☐ Does the name appear as a Power of Attorney Holder?* (If so, please also complete Question 10.)

Name of Power of Attorney Holder (copy exactly as published)

* Power of Attorney Holders are published in italics on the 2005 List.

*For each published name that you claim, please provide other details **in Latin characters**, including:*

Title

Last Name

Maiden Name

First Name

Middle Name(s)

If the Account Owner was known by any other name (*i.e.*, nickname, spelling change, or name change) please provide details **in Latin characters**:

Please list variations of Last Name.

Please list variations of First Name.

8. If the Account Owner is a company, partnership, trust or other legal entity, please answer the following:

Name of person you believe owned or partly owned this entity prior to or during the Second World War (please provide all names <u>in Latin characters</u>):

Title | Last Name | Maiden Name

First Name | Middle Name(s)

If this person was known by any other name (i.e., nickname, spelling change, or name change) please provide details:

Please list variations of Last Name.

Please list variations of First Name.

Please state why you believe that this person was the beneficial owner of the company, partnership, trust or other legal entity:

NOTE: With respect to all the following questions about the Account Owner, please consider the person identified in question 8 as the Account Owner. Please also attach any documentation you may have that demonstrates that this person owned this entity.

9. Do you have reason to believe that the person published as the Account Owner was NOT the actual or beneficial owner of the Account, but rather opened the Account on behalf of someone related to you?

☐ **YES** ☐ **NO**

Actual or Beneficial Owner Details

Title | Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Please explain why you believe this person was the actual or beneficial owner of the Account:

NOTE: With respect to all the following questions about the Account Owner, please consider the person identified in Question 9 as the Account Owner.

10. If the person who you think was the rightful owner of an Account is listed as a Power of Attorney Holder on the 2005 List, please answer the following questions:

NOTE: Power of Attorney Holders are listed in italics on the 2005 List.

Please note that under Swiss law, the Power of Attorney Holder is not considered to be the owner of the Account. The Power of Attorney Holder may have had the right to access to and use of the funds in the Account during his or her lifetime. However, once the Power of Attorney Holder dies, his or her rights no longer exist and they do not pass to his or her heirs. Therefore, you cannot claim an Account solely on the basis of a relationship to a Power of Attorney Holder. If you are claiming an Account on the basis of a relationship to the Power of Attorney Holder, you must provide additional information as to why, in this particular case, the Power of Attorney Holder himself or herself was entitled to the assets in the Account.

Please state precisely how the Power of Attorney Holder is related to the Account Owner on the 2005 List:

If you believe that the Power of Attorney Holder rather than the published Account Owner was the rightful owner of the Account, please provide detailed information:

NOTE: With respect to all the following questions about the Account Owner, please consider the person identified in Question 10 as the Account Owner.

11. General Information about the Account Owner

Gender: ☐ Male ☐ Female

Date of Birth (day/month/year) Place of Birth

Date of Death (day/month/year) Place of Death

Date of Marriage (day/month/year) Place of Marriage

NOTE: If the Account Owner was married more than once, please list the date and place for each marriage on a separate sheet of paper.

Date of Divorce (day/month/year)

Profession/Occupation (including type or name and address of any business owned by the Account Owner):

Citizenship/Nationality

Additional citizenships held

12. Account Owner's Address Information

Please list all known addresses or places where the Account Owner resided and/or worked from the time you believe the Account Owner opened the Account until the time of his or her death. If possible, please provide corresponding years for each address.

Year(s)	Street Address	City	Country	Type of Address (home, work, etc.)
From 19___ to 19___				
From 19___ to 19___				
From 19___ to 19___				
From 19___ to 19___				
From 19___ to 19___				

13. Account Owner's Use of a Swiss Address

Do you know or have reason to believe that the Account Owner gave the bank a Swiss address?

☐ **YES**

If so, please state why you believe the Account Owner gave the bank a Swiss address and provide all available documents supporting this:

14. Please state whether the Account Owner had any connections to Switzerland (examples may include places where the Account Owner may have had family, or where he or she may have traveled for business or other reasons):

15. Was the Account you are claiming owned by a Victim or Target of Nazi Persecution?

Because the CRT can only decide claims to Accounts that belonged to Victims or Targets of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended, and reproduced in the attached Instruction Sheet, it is important that the following sections are completed as thoroughly as possible.

☐ **YES**

To which of the following targeted or persecuted groups did the Account Owner belong?

☐ Jewish

☐ Romani

☐ Jehovah's Witness

☐ Homosexual

☐ Physically or mentally handicapped

☐ Other, please specify: _____

☐ **NO**

16. Please provide any other relevant information related to the Account Owner's circumstances and fate during the years 1933—1945:

17. Information Regarding the Account Owner's Representative

Did the Account Owner have a lawyer, agent, and/or representative in Switzerland or who traveled to Switzerland on behalf of the Account Owner to open and/or manage the Account?

☐ **YES**

If so, please provide details such as names of representatives and cities or regions visited and why you believe the Account Owner used a representative to open and/or manage the Account:

18. Your Relationship to the Account Owner

Please state precisely how you are related to the Account Owner:

19. Spouse of the Account Owner

Title | Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Address(es), if different from the Account Owner's

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

NOTE: If the Account Owner was married more than once, please attach another sheet containing the information for the other spouse(s).

20. Father of the Account Owner

Last Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Address(es)

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

21. Mother of the Account Owner

Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Address(es)

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

22. Children of the Account Owner

Child #1: ☐ Biological ☐ Adopted Citizenship:

Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

Mother's maiden name

Child #2: ☐ Biological ☐ Adopted Citizenship:

Last Name | Maiden Name

First Name | Middle Name(s)

Please list variations of Last Name.

Please list variations of First Name.

Date of Birth (day/month/year) | Place of Birth

Date of Death (day/month/year) | Place of Death

Mother's maiden name

NOTE: If there were or are additional children, please include all relevant information on separate sheets of paper.

23. Family Tree

To explain the family relationships, please sketch a family tree on the family tree form, which is attached to the Claim Form, or on a separate sheet of paper.

In addition, please provide information and/or copies of any documents that would show that you are related to the Account Owner, such as a passport or other identifying documents; birth certificates; death certificates; marriage certificates; correspondence with identifying details. While the CRT understands that there are many reasons why information and documentation are not available, you are urged to provide as much as you have.

24. Claims Not Based on Familial Relationships

If your claim is not based on a familial relationship to the Account Owner, please explain why you believe that you are entitled to the Account:

25. Testamentary Documents

If possible, please provide information and copies of any testamentary documents that might show that you are entitled to the Account, such as:

☐ Wills – *Testamente und letztwillige Verfügungen – Testaments et dispositions de dernières volontés*

☐ Testamentary or probate documents – *Entscheidungen von Nachlassgerichten – Décisions judiciaires*

☐ Certificates of inheritance – *Erbscheine – Certificats d'hérédité et actes de notoriété*

☐ Other (please specify)

26. Other Supporting Information Regarding Your Entitlement to the Account Owner's Account

Please provide any other relevant information you have which may support your entitlement to the Account Owner's Account:

PART 3: FINAL DETAILS BEFORE SUBMITTING THE CLAIM FORM

27. Language of the Proceedings

Please indicate in which of the following languages you are able to receive correspondence:

☐ English

☐ French

☐ German

☐ Hebrew

☐ Spanish

28. List of Supporting Documents Attached to the Claim Form

Please list the documents that you are providing in support of your claim and number the documents accordingly. **Please note that your Claim Form must be postmarked no later than July 13, 2005**, the filing deadline. You may submit additional documents in support of your claim at a later date, if necessary.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

29. Name of Legal/Other Representative Filing the Claim on behalf of the Claimant

If you are being represented by a legal or other representative, please provide contact details for the representative below:

Title | Last Name

First Name | Middle Name(s)

Firm Name (if applicable)

Street Number | Street Address

City | State/Province/Canton/County

Country | Postal/Zip Code

Telephone | Mobile Telephone | Telefax

E-mail (optional)

NOTE: If you seek to be represented in making this claim, please complete, sign and submit the attached Power of Attorney form, authorizing such representation.

30. Agreement to Submit your Claim to the Claims Resolution Tribunal

By signing this Claim Form, I hereby agree that my claim to the Account referenced in my Claim Form shall be adjudicated by the Claims Resolution Tribunal according to its Rules of Procedure. Additionally, I confirm that all my statements contained in this form are true to the best of my knowledge.

I understand that any decision by the Claims Resolution Tribunal will be made public unless I request confidential treatment of the decision. If confidential treatment of the decision is requested, the CRT's decision will be published without identification of the persons or institutions involved.

I REQUEST CONFIDENTIAL TREATMENT OF THE DECISION:

☐ **YES** ☐ **NO**

Signature: _____

Date (day/month/year) _____ Place: _____

31. Review and Checklist

☐ Provided copies of documents establishing your identity (e.g., passport, driver's license, identification card)*

☐ Provided copies of any available documents about the Account Owner and about your relationship to the Account Owner *

☐ Provided Family Tree

☐ Provided Power of Attorney signed by family members you represent

☐ Provided Power of Attorney signed by you authorizing that you be represented

☐ Signed the Claim Form

☐ Enclosed the Acknowledgement Postcard which you have self-addressed

* PLEASE DO NOT SEND ORIGINAL DOCUMENTS.

YOUR CLAIM FORM MUST BE POSTMARKED NO LATER THAN JULY 13, 2005, THE FILING DEADLINE. You may submit additional documents in support of your claim at a later date, if necessary.

32. Next Steps and Sending Additional Documents to Support Your Claim

Once the CRT receives your claim, you will receive the Acknowledgement Postcard via return mail indicating that the form has been received. This Acknowledgement Postcard will provide you with a reference number that you should use when communicating with the CRT. If you send additional information to the CRT, please use this reference number to ensure that your claim file is properly updated.

POWER OF ATTORNEY

I , _____ ,
Name of Person authorizing representation

residing at _____

_____ ,

do hereby appoint _____ ,
Name of Representative

residing at _____

_____ ,

to be my true and lawful attorney-in-fact and agent to act in my name and on my behalf, in connection with any rights I may have to the claimed account of:

_____ .
Name of Account Owner claimed

I hereby grant _____ .
Name of Representative

full power and authority to represent me, during my life time and after my death, before the Claims Resolution Tribunal, to sign the Claim Form on my behalf, to receive and accept orders and awards from the Claims Resolution Tribunal, and to receive money on my behalf in connection with the above-referenced account.

This Power of Attorney is subject to Swiss law.

_____
Signature

_____
Place

_____
Date


Family Tree
Account Owner's Father
Account Owner's Mother
Account Owner
Account Owner Spouse
Account Owner's Child
Account Owner's Child
Account Owner's Child

6

Foundation "Remembrance, Responsibility and the Future"

CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, INC

PROGRAM FOR FORMER SLAVE AND FORCED LABORERS

www.claimscon.org

Application Form Guidelines

Please read these guidelines carefully before completing the application.

The Conference on Jewish Material Claims against Germany (Claims Conference) is responsible for implementing the program for certain Jewish former slave and forced laborers in accordance with criteria in the German Law on the creation of the Foundation "Remembrance, Responsibility and the Future" (referred to herein as the "Foundation") and decisions of the Board of Trustees of the Foundation.

PLEASE NOTE: All applications must be received by the Claims Conference by AUGUST 11, 2001.

There is no fee to obtain or submit this application.

We understand that filling out this form is difficult for those who have suffered so much. The information is required to process the application. We will endeavor to do so as quickly and sensitively as possible.

WHO IS ELIGIBLE

Individuals who performed slave or forced labor under the National Socialist regime may be eligible for payment from the Foundation.

In accordance with the German legislation, eligibility for "slave labor" and "forced labor" are as follows:

- **Slave Labor** - work performed by force in a concentration camp (as defined in the German Indemnification Law) or a ghetto or another place of confinement under comparable conditions of hardship.
- **Forced Labor** - work performed by force (other than "Slave Labor") in the territory of the German Reich or in a German-occupied area, and outside the territory of Austria, under conditions resembling imprisonment or extremely harsh living conditions; or work performed by force under a program implementing the National Socialist policy of "extermination through work" (Vernichtung durch Arbeit) outside the territory of Austria.

Individuals who performed slave or forced labor exclusively while prisoners of war are not eligible.

WHO MAY COMPLETE THIS APPLICATION

Jewish Former Slave and Forced Laborers

This application is for persons who were Jewish at the time they performed slave or forced labor and who do not currently reside in one of the countries listed in the following paragraph.

Please Note:

All current residents, Jewish and non-Jewish, of the Czech Republic, Poland or countries which were republics of the former Soviet Union are required under the German legislation to apply to the Reconciliation Foundation for their country.

All other persons who are not Jewish, or who were not Jewish at the time they performed slave or forced labor, and who would like to apply for compensation for slave or forced labor should request the appropriate application from: International Organization for Migration (IOM), German Forced Labour Compensation Programme,17 route des Morillons, P.O.B. 71, CH-1211, Geneva 19, Switzerland. Tel. 41-22-717-9235 www.compensation-for-forced-labour.org

Heirs

In accordance with the German legislation, if the persecutee died on or after February 16, 1999, the heir may apply to this Fund. Heirs may be eligible only if they are the spouse, child, grandchild, sibling, or testamentary heir of the persecutee. Under the German Law, heirs of a persecutee who died before February 16, 1999 are not entitled to payment.

Application Form Guidelines

Continuation

PAYMENT INFORMATION

As required by the German legislation, applicants whose claims are approved will receive an initial payment. The remainder will be paid when all the claims have been processed.

The total amount of money available for all claims is fixed. Therefore, the amount of the final payment will depend on how many applications are approved. The maximum amount allowed under the German legislation is up to DM 15,000 for former slave laborers and up to DM 5,000 for former forced laborers.

Persons who received payments for slave and/or forced labor from a private industry fund, either recently or in the past, will have such payments deducted from the payment to be received under this initiative.

Please Note: The German legislation does not allow for any payments to be made to former slave and forced laborers until all the lawsuits brought in the United States federal courts on behalf of former slave and forced laborers are dismissed.

ADDITIONAL IMPORTANT INFORMATION

- This application may also qualify you for an additional payment from the separate and unrelated settlement of the class action lawsuit against Swiss banks.
- Persons who performed labor in Austria may be subject to different arrangements which are still to be determined. If appropriate, the application will be forwarded to the Austrian Foundation.
- The determination of whether a place of confinement was under comparable conditions of hardship is made by the Board of Trustees of the Foundation.
- Individuals who receive assistance in completing this application must nevertheless sign the application themselves, unless they are unable to do so and have granted a power of attorney to another individual to sign on their behalf. In either case, the signature must be notarized or confirmed by a notary public, bank, German consulate or a Jewish social service agency possessing a seal.
- **Individuals who received and returned the Declaration Form from the German Compensation Offices (Wiedergutmachungsämter) or from the Claims Conference should not complete this application.**
- Applicants not found eligible under this program will have the right of appeal.
- The German Law establishing the Foundation provides for certain limited claims for property loss as a result of the direct involvement of German business during the National Socialist Era. If you would like further information, please contact International Organization for Migration (IOM), German Forced Labour Compensation Programme – Property Claims, P.O.B. 71, CH-1211, Geneva 19, Switzerland. Tel. 41-22-717-9235 www.compensation-for-forced-labour.org
- The German Law establishing the Foundation provides for certain limited claims from those persons who suffered severe personal injury such as medical experimentation and other limited instances of severe personal injury based upon criteria to be determined by the Board of Trustees of the Foundation. If you would like further information, please contact Fund for Victims of Medical Experiments and Other Injuries, P.O. Box 1570, New York, NY 10159-1570, United States.

WHERE TO SEND THIS APPLICATION

This application form should be returned to either:

Claims Conference	Or	Claims Conference
44 Sophienstr.		PO Box 90132
D- 60487 Frankfurt am Main		Fredericksburg, VA 22404-0009
Germany		United States

If you are a resident of Israel, please do not submit this application form. You must retrieve a form from, and return it to, any Post Office in Israel.

Foundation "Remembrance, Responsibility and the Future"

CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY, INC

PROGRAM FOR FORMER SLAVE AND FORCED LABORERS

Application Form

Please type or neatly print in black or blue ink all requested information.
This application must be completed **in Roman characters**.
Please include photocopies, not originals, of any requested documents.

Part A- Applicant Details

1. Name

Present Name	First Name
	Last Name
Maiden Name (attach a copy of the marriage certificate)	First Name
	Last Name
Former Name(s) (different spellings, aliases, etc). Please include all names used before or during the time of slave or forced labor.	First Name
	Last Name
	First Name
	Last Name

2. Address Please notify the Claims Conference in writing of any change of address.

Applicant's Permanent Residence	Street name and No.	
		Apartment No.
	City, Town or Village	
	State or Region	
	Postal Code or Zip Code	Country
Applicant's Mailing Address (if different from permanent residence)	Street name and No.	
		Apartment No.
	City, Town or Village	
	State or Region	
	Postal Code or Zip Code	Country
Telephone No.		Ext.
Fax No. (if any)		Ext.
E-mail (if any)		
Was your country of residence different on February 16, 1999? If so, please indicate country of residence at that time		

3. Applicant Identification Please attach a photocopy of the form of identification you check below.

Identification Type:	Israeli ID card A ◯	U.S. Social Security number B ◯	Passport C ◯	Other _____ D ◯	Check if using spouse's ID E ☐
Identification No.		Country			
Gender Female F ◯ Male G ◯	Birth Date(s), Enter any birth date ever used:	Year	Month	Day	Year Month Day
Birth City or Town (as known at that time)					
Birth Country (as known at that time)					

Part B - Information about Persons other than the Persecutee

1. If you are the persecutee, leave this section blank and skip to part C

Those completing this application on behalf of the persecutee should provide their contact information here.

First Name					
Last Name					
Street name and No.					
				Apartment No.	
City, Town or Village					
State or Region					
Postal Code or Zip Code		Country			
Telephone No.				Ext.	
Fax No. (if any)				Ext.	
E-mail (if any)					
Relationship to the persecutee (please attach a copy of the appropriate documentation proving this relationship):	Attorney H ◯	Other _____ I ◯	Who should receive correspondence?	Persecutee J ◯	Preparer K ◯ Both L ◯
If the persecutee is deceased, enter the date of death and attach a copy of the death certificate.	Year	Month Day	Heir	Spouse M ◯ Child N ◯ Grandchild O ◯ Sibling P ◯ Testamentary Heir Q ◯	

Part C - Additional Information

1. Applications to other compensation programs

Approval or rejection of a previous claim does not determine eligibility for this payment. **The information requested here will speed up the processing of your application.** Any payment you receive from this program will not affect compensation pensions you may already be receiving.

If you check any of these boxes, you do not need to complete questions on part D.

The information requested in those questions will be found in the file from the appropriate compensation program listed. Please mark the box for all compensation programs for which you applied - whether or not you were approved.

Compensation Program	Did you apply?	Claim Number, if known
Article 2 Fund	R ☐	
Central and East European Fund (CEEF)	S ☐	
Hardship Fund	T ☐	
BEG (known as Wiedergutmachung)	U ☐	
Israel Finance Ministry Disability Payments	V ☐	

2. Preferred language for correspondence Check ONE of the boxes.

German	Hebrew	English	Yiddish	Russian	Hungarian	Spanish	French
A ○	B ○	C ○	D ○	E ○	F ○	G ○	H ○

3. If eligible, preferred form of payment Check ONE of the boxes.

By electronic transfer directly to applicant's bank account. Please complete the bank information below. If any of this information changes, please notify the Claims Conference in writing. I ○

By check to current mailing address J ○

Bank Name	
	Bank Routing Number
Branch Name	
Street name and No.	
Postal Code or Zip Code	Country
City, Town or Village	
State or Region	
Account Holder's Name	
Account Number	

Part D - Important Instructions

If you checked a box in question 1 of Part C (the last question on the previous page), please skip all of the questions in Part D and go to Part E - Declarations starting on page 5. You should skip all of the questions in Part D because the information will be found in your previous application(s) and it is not necessary for you to fill out the information again.

If, however, you have never applied to any of the programs listed in question 1 of Part C please complete all of the remaining questions in this form, including all of those in Part D.

1. Residence Please list all countries of residence since liberation from slave or forced labor.

Year residence began	Year residence ended	Country
19		
19		
19		
19		
19		
19		

2. Last residence before internment, imprisonment or confinement

From Year 19	City, Town or Village
State or Region	
Country	

3. Internment

Please list all the places where you were interned, imprisoned or confined, to the best of your ability.

Please use the following codes for the Place Type ÷

Concentration Camp = KZ
Ghetto = GH
Labor Camp = ZL
Prison = PR
Other = OT

If you have a Liberation Certificate, Repatriation Document or Displaced Persons ID card, please attach a photocopy. If you wish to provide a more detailed description, you may attach an additional sheet. Please include the name of the company (ies) for which you were forced to work, if known.

		Year	Month		Year	Month	
❶	Period From			Until			Place Type Use codes
	Place Name						
	Company Name						
	State or Region						
	Country						
❷	Period From			Until			Place Type Use codes
	Place Name						
	Company Name						
	State or Region						
	Country						
❸	Period From			Until			Place Type Use codes
	Place Name						
	Company Name						
	State or Region						
	Country						
❹	Period From			Until			Place Type Use codes
	Place Name						
	Company Name						
	State or Region						
	Country						

4. Parents

		Year	Month	Day	First Name
Father	Birth Date				
	Last Name				
Mother	Birth Date				
	Last Name				

5. Siblings

❶	Birth Date	Year	Month	Day	First Name
	Last Name				
	Maiden Name				
	Former Name				
	Birth Place				
❷	Birth Date	Year	Month	Day	First Name
	Last Name				
	Maiden Name				
	Former Name				
	Birth Place				
❸	Birth Date	Year	Month	Day	First Name
	Last Name				
	Maiden Name				
	Former Name				
	Birth Place				
❹	Birth Date	Year	Month	Day	First Name
	Last Name				
	Maiden Name				
	Former Name				
	Birth Place				

Part E - Declarations

1. Previous slave labor compensation directly from a German company.

If you received any compensation from a German company, please list it here.

❶	Company Name					
	Amount in DM	Date of Compensation	Year	Month	Day	
❷	Company Name					
	Amount in DM	Date of Compensation	Year	Month	Day	

2. Medical Experiments

Please check the box if you were subjected to medical experiments in a Concentration Camp.

A ☐

3. Concentration camp in Austria

Please check the box if at any time during your persecution, you performed slave labor in a concentration camp (or subcamp or satellite camp of a concentration camp) on the territory of the Republic of Austria.

B ☐

4. Personal Declarations

(A) Personal declaration

I affirm that these are all true statements:

I was forced to perform Slave Labor or Forced Labor.

- Please indicate one place at which you performed forced or slave labor (even if you were in more than one place, it is only necessary to indicate one place).

Place of incarceration at which you performed forced/slave labor	Year (Please indicate one year, even if you were incarcerated for a longer period) 19

- I was Jewish at the time I was forced to perform Slave Labor or Forced Labor.
- I am aware that I have no legal entitlement to receive a payment from the Foundation.
- I have not applied for or received any payments from the Foundation for the same Nazi injustice for which I claim on this application.
- I have not received any payment for slave or forced labor in Austria from the Austrian Fund "Reconciliation, Peace and Cooperation".

(B) Consent

This consent will allow the Claims Conference to verify the information in this application.

- I authorize the Foundation "Remembrance, Responsibility and the Future", the auditor it authorizes, the Claims Conference and its representatives to conduct appropriate investigations regarding my application with all relevant governmental authorities, archives, non-governmental organizations, including commercial enterprises in Germany and their legal predecessors and authorize the same authorities, archives and organizations to give all requested information to the Foundation, Claims Conference or its representatives.
- I agree that in conjunction with the processing and verification of my application to the Foundation "Remembrance, Responsibility and the Future" or from its duly accredited representatives or partner organizations that their information may be used for:
  - Compilation of central records of the Foundation's payments;
  - Comparison with records of other indemnification payments for Nazi wrongs, for example, from the German government, from industry and the Fund "Reconciliation, Peace and Cooperation";
  - Research in archives in and out of Germany as is necessary to corroborate my statements.

(C) Waiver

The German legislation requires that you sign this waiver, **but it will become effective only if and when you receive payment.** This waiver does not affect your current payments or eligibility, now or in the future, for other German compensation and restitution programs.

In consideration for the payment from the Foundation "Remembrance, Responsibility and the Future" I irrevocably waive the following claims outside of the Foundation law:

- Against the Federal Republic of Germany, German Federal States and other public German agencies from all claims arising out of slave or forced labor and property damage;
- Against all German companies for claims in connection to National Socialist injustices;
- Against the Republic of Austria and Austrian companies in connection with slave and forced labor.

This waiver does not apply to claims or payments under German law on the consequences of war or indemnification measures or to any claims for the restitution of artwork. However, claims for restitution of artwork may only be asserted in Germany or in the country in which the artwork was taken.

I confirm that the enclosed information substantiating my claim for compensation from the German Foundation is complete, truthful, and made according to the best of my knowledge. I am aware that false statements can lead to reclamation of the payment by the Foundation and to further legal consequences.

Please sign where indicated and fill in the date
The applicant's signature must be notarized or confirmed by a notary public, bank, German consulate or a Jewish social service agency possessing a seal. For those who are homebound, the written confirmation of the applicant's signature by an attending physician is sufficien.t

Year 200 | Month | Day

Signature of applicant

Notary or confirmation
Subscribed and sworn before me on this date that remarks here. An identification card or passport has proven the applicant's identity.

Year 200 | Month | Day

Stamp and signature

5. Please check the appropriate box

Optional: Survivor Registries and Archival Research

If you would like to be included in either of these lists of survivors, check the appropriate box(es) and we will forward your name and address to that organization.

United States Holocaust Memorial Museum Registry of Holocaust Survivors	Yad Vashem's Computerized Databank of Holocaust Survivors
A ☐	B ☐

6. Pages attached

Indicate the number of pages you have attached to this form:
Please write your name on every attached page.

0

7

CONFERENCE ON JEWISH MATERIAL CLAIMS AGAINST GERMANY

SWISS REFUGEE PROGRAM APPLICATION

HOLOCAUST VICTIMS ASSETS LITIGATION (SWISS BANKS)

www.claimscon.org

This application is for Jewish victims or targets of Nazi persecution, who either (1) sought entry into Switzerland to avoid Nazi persecution and were denied entry into Switzerland or, after gaining entry, were deported, or (2) after gaining entry were detained, abused, or otherwise mistreated. The victimization had to occur between January 1, 1933 through May 9, 1945. Eligible applicants for category (1) listed above will receive US$1,250 upon approval with an additional amount of up to US$1,250 upon evaluation of all claims. Eligible applicants for category (2) listed above will receive US$250 upon approval with an additional amount of up to US$250 upon evaluation of all claims.

In accordance with the regulations of the Court, if the refugee died on or after February 16, 1999, the heir may apply to this Fund. Heirs may be eligible only if they are the spouse, child, grandchild, sibling, or testamentary heir of the refugee. Under the regulations of the Court, heirs of a refugee who died before February 16, 1999 are not entitled to payment.

Completed applications should be returned in enclosed envelope to:

Claims Conference P.O. Box 90133 Fredericksburg, VA 22404-0010 United States	OR	Claims Conference 44 Sophienstr. D-60487 Frankfurt am Main Germany

A claimant who makes a claim, as a member of the Refugee Class, is not precluded from making claims under the Settlement Agreement, under the Deposited Assets Class, or any of the other classes as defined in the Settlement Agreement.

Please type or neatly print all requested information in blue or black ink. Attach photocopies, not originals, of any requested documents.

Please note: Application must be postmarked by September 30, 2001. There is no fee to obtain or submit this application. Non-Jewish applicants should obtain a copy of a claim form from the International Organization for Migration (IOM), 17 route des Morillons, P.O.B. 71, CH-1211, Geneva 19, Switzerland; Tel.: +41 22 717 9230; website: http://www.swissbankclaims.iom.int

The Claims Conference will send you a written acknowledgement within 60 days of receipt of your completed application.

THIS APPLICATION MUST BE COMPLETED IN ROMAN CHARACTERS.

SECTION (A)–REFUGEE'S PERSONAL INFORMATION

1. Name

If refugee died on or after February 16, 1999, please complete Section A with most recent information available.

NAME	First Name	Middle Initial
	Last Name	
MAIDEN NAME	Last Name	
OTHER NAME(S) used by refugee during the Nazi era, if applicable	First Name	Middle Initial
	Last Name	
	First Name	Middle Initial
	Last Name	

2. Sex

Male ☐ Female ☐

3. Current Citizenship

4. Citizenship at Birth

5. Date(s) of Birth – Enter any birth date used during Nazi era.

Year	Month	Day	Year	Month	Day	Year	Month	Day

6. City of Birth as known at the time

7. Country of Birth as known at the time

8. Permanent Residence

Street Name and No.	
	Apartment No.
City Town or Village	
Province or State	
Postal Code or Zip Code	Country
Telephone No. (home)	
E-mail (if any)	

Refugee's Name _____

9. Mailing Address, if different from Permanent Residence

Street Name and No.	
	Apartment No.
City Town or Village	
Province or State	
Postal Code or Zip Code	Country
Telephone No. (home)	
E-mail (if any)	

SECTION (B)–HEIR'S PERSONAL INFORMATION

You need to complete this section if you are claiming for a refugee who died on or after February 16, 1999.

10. Please indicate the date of death. Year ____ Month ____ Day ____

11. What is your relationship to the deceased? spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will ☐

12. Attach proof of relationship to the deceased by submitting a copy of the marriage certificate, birth certificate, family registration booklet, will, etc.

13. You must attach a copy of the Death Certificate. Is a copy attached? Yes ☐ No ☐

14. Name of claimant

First Name	Middle Initial
Last Name	
Street Name and No.	
	Apartment Number.
City, Town or Village	
Province or State	
Postal Code or Zip Code	Country
Telephone No. (home)	
E-mail (if any)	

Relationship to the deceased: spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will ☐

Is proof of relationship to deceased attached? Yes ☐ No ☐

Information about persons other than claimant who are claiming for the deceased

Each person claiming must submit proof of relationship to the deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc. If more space is required please attach additional sheets.

15. SECOND PERSON CLAIMING (OTHER THAN CLAIMANT)

First Name	Middle Initial
Last Name	
Street Name and No.	
	Apartment Number.
City, Town or Village	
Province or State	
Postal Code or Zip Code	Country
Telephone No. (home)	
E-mail (if any)	

Relationship to the deceased: spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will ☐

Is proof of relationship to deceased attached? Yes ☐ No ☐

Refugee's Name _____

16. THIRD PERSON CLAIMING (OTHER THAN CLAIMANT)

First Name | Middle Initial

Last Name

Street Name and No.

Apartment Number.

City, Town or Village

Province or State

Postal Code or Zip Code | Country

Telephone No. (home)

E-mail (if any)

Relationship to the deceased: spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will ☐

Is proof of relationship to deceased attached? Yes ☐ No ☐

17. FOURTH PERSON CLAIMING (OTHER THAN CLAIMANT)

First Name | Middle Initial

Last Name

Street Name and No.

Apartment Number.

City, Town or Village

Province or State

Postal Code or Zip Code | Country

Telephone No. (home)

E-mail (if any)

Relationship to the deceased: spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will ☐

Is proof of relationship to deceased attached? Yes ☐ No ☐

18. Are there eligible heirs alive today who are not claiming? If so, please attach a sheet that provides the names and addresses of all known children and the spouse of the deceased. If the spouse is not alive and there are no living children, then provide the names and addresses of all known grandchildren. If there are no grandchildren as well, then provide the names of all living siblings. Finally, if there is no living spouse, children, grandchildren or siblings, then provide the names and addresses of all heirs identified in the will. Payment will be awarded to eligible heirs who timely file claims in accordance with the regulations of the Court.

SECTION –(C) Fill out only one of the following:

(1) CLAIM FOR DENIAL OF ENTRY OR EXPULSION

OR

(2) CLAIM FOR DETENTION, ABUSE OR OTHER MISTREATMENT

(1) CLAIM FOR DENIAL OF ENTRY OR EXPULSION

You need to fill in this section if you (or the deceased) sought entry into Switzerland to avoid Nazi persecution, but were denied entry into Switzerland, or were admitted into, but expelled from Switzerland during the period January 1, 1933 through May 9, 1945.

19. Did you (or the deceased) seek entry into Switzerland to avoid Nazi persecution and were you (or the deceased) denied entry into, or admitted into, but expelled from Switzerland during the period January 1, 1933 through May 9, 1945?

Yes ☐ No ☐

20. Please indicate the point at which you sought entry, or entered into Switzerland.

21. A partial list of persons denied entry into or expelled from Switzerland during the period January 1, 1933 through May 9, 1945 (the "Refugee Denial/Expulsion List") can be found on the Claims Conference website (www.claimscon.org) or can be obtained by writing to:

CLAIMS CONFERENCE
P.O. Box 799
New York, NY 10018-9998
USA

CLAIMS CONFERENCE
44 Sophienstr.
D-60487 Frankfurt am Main,
Germany

You do not need to be on the list to receive payment but it will expedite the process.

22. If your name appears on the list, please provide the exact spelling as it appears on the list.

First Name | Middle Initial

Last Name

OR

(2) CLAIM FOR DETENTION, ABUSE OR OTHER MISTREATMENT

You need to fill in this section if you (or the deceased) sought entry into Switzerland and were after gaining entry, detained, abused, or otherwise mistreated as a refugee in Switzerland during the period January 1, 1933 through May 9, 1945.

23. Did you (or the deceased) seek entry into Switzerland to avoid Nazi persecution and were you (or the deceased) after gaining entry, detained, abused, or otherwise mistreated?

Yes ☐ No ☐

Refugee's Name _____

24. Please indicate the place where you were detained, abused, or mistreated.

Please attach any and all documentary and other evidence (including witness statements) that you may have or that you may reasonably obtain in support of your claim. Such evidence may include, but is not limited to, the history of you and your family. Please fill out the Personal Statement, Section (F).

SECTION–(D) PARTICIPATION IN ANOTHER COMPENSATION PROGRAM

Please indicate below whether you (or the deceased) participated in, or applied to, another compensation program. Approval or rejection of a previous claim does not determine eligibility for this payment. Information about whether you (or the deceased) participated in another program may help the Claims Conference process your claim faster. Any money previously received from such a program **will not be deducted** from any Swiss Refugee Program payment.

25. Previous Compensation

Compensation Program	If yes, please check box	Claim Number, if known
a) German Federal Indemnification Program—Commonly known as Wiedergutmachung/BEG	☐	
b) Hardship Fund (Claims Conference)	☐	
c) Article 2 Fund (Claims Conference)	☐	
d) German Foundation "Remembrance, Responsibility, and Future"—Forced and Slave Labor Program	☐	
e) Central and East European Fund—CEEF (Claims Conference)	☐	
f) Israel Ministry of Finance Nazi Disability Payments	☐	
g) Other (please specify):	☐	

ARCHIVES

26. Information Previously Provided: Please indicate whether you have previously provided information or given testimony to a museum, archive, historian, etc.

a) Yad Vashem	☐
b) United States Holocaust Memorial Museum	☐
c) Survivors of the Shoah Visual History Foundation (commonly known as the Spielberg project)	☐
d) Other (please specify):	☐

SECTION (E)–PAYMENT INFORMATION

27. If your claim is approved, indicate how you would like to receive payment.

Check ☐ Bank Transfer (please attach a cancelled or voided check) ☐

SECTION (F)–PERSONAL STATEMENT

28. Please provide a description below of what happened to you, (or the deceased) during the period that you (or the deceased) were a refugee. Provide as many specifics as you can and advise us of what information you have that supports your claim. You can include documents, but you can also include your history. If your history has previously been provided to a historian, museum or archivist, please advise us of those specifics.

Refugee's Name _____

SECTION (G)–SIGNATURE AND CONSENT

a) I (or the deceased) was a victim or target of Nazi persecution because I (or the deceased) was or was believed to be Jewish.

b) If it is determined that the claimant is a member of the Refugee Class, the claimant acknowledges by filing this claim form that he or she releases all Releasees of all Claims, as those terms are defined in the Settlement Agreement. "Releasees" generally include Swiss banks and business concerns and their affiliates, wherever located, and the Swiss Confederation and its governmental subdivisions. "Claims" include all claims and liability relating in any way to the Holocaust, World War II, and the treatment of refugees fleeing Nazi persecution by Releasees. A claimant that makes a claim as a member of the Refugee Class is not precluded from making claims under the Settlement Agreement or under any of the other four classes defined in the Settlement Agreement.

c) I agree that in connection with the processing and checking of this claim, my data (and that of the deceased) will be kept in a central database available to the court and a check will be made for the claims that may have been filed with IOM.

d) I authorize the Claims Conference and its representatives to conduct appropriate investigations regarding my application with all relevant governmental authorities, archives, non-governmental organizations, including commercial enterprises and their legal predecessors and authorize the same authorities, archives and organizations to give all requested information to the Claims Conference or its representatives.

e) I agree to a personal or telephonic interview by the Claims Conference in order for the Claims Conference to assist me in establishing my eligibility.

f) I confirm that the enclosed information sustaining my claim for compensation from the Swiss Refugee Program is complete, truthful, and made according to the best of my knowledge. I am aware that false statements can lead to reclamation of the payment.

g) **Please sign where indicated and fill in the date.**
The applicant's signature must be notarized or confirmed by a notary public, bank, Jewish social service agency, or other government official possessing a seal. For those applicants who are homebound, the written confirmation of the applicant's signature by an attending physician is sufficient. For those unable to sign, please submit both a physician's statement as well as a power of attorney or other legal guardianship.

Signature of applicant

Year 2001 Month Day

29. Applicant Identification. Please attach a photocopy of the form of identification you check below.

Identification Type: Israeli ID card A ☐ US Social Security number B. ☐ Passport C. ☐ Other _____ D. ☐

Identification number

Country

Subscribed and sworn before me on this date. An identification card or passport has proven the applicant's identity.
Stamp and signature of notary public/bank/Jewish social service agency official/attending physician/other government official

Stamp and Signature

Year 2001 Month Day

Optional: Survivor Registries and Archival Research
If you would like to be included in either of these lists of survivors check the appropriate box(es) and we will forward your information to that organization.

United States Holocaust Memorial Museum Registry of Holocaust Survivors A ☐

Yad Vashem's Computerized Databank of Holocaust Survivors B ☐

Indicate the number of pages you have attached to this form: Please write your name on every attached page.

_____

8

INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

CLAIM FORM FOR SLAVE LABOUR, FORCED LABOUR, PERSONAL INJURY OR DEATH OF A CHILD

Please read the attached guidelines carefully before you begin. This **IOM claim form** is for claimants who are **not Jewish** and who do **not live** in one of following countries: the Czech Republic, Poland, the Russian Federation or a country that was a republic of the former Soviet Union. Type or neatly print all requested information in black or blue ink. Attach photocopies, not originals, of any requested documents. Please submit to the IOM one original and one copy of the claim form and two copies of all attached documents.

CLAIMANT'S PERSONAL INFORMATION

1. Claimant's Last Name	2. Claimant's First Names	
3. Claimant's Maiden Name, if applicable		4. Sex Male ☐ Female ☐
5. Current Citizenship	6. Citizenship at Birth	7. Ethnic Origin

Other names used by claimant during the Nazi era, if applicable

8. Last Name	9. First Names

10. Date(s) of birth Enter any birth date used during the Nazi era			11. City of birth as known at that time
Year	Month	Day	12. Country of birth as known at that time

Permanent Residence

13. Street name and number, apartment number		14. City, Town or Village
15. Province or State	16. Country	17. Postal Code
18. Telephone-home	19. E-mail	
20. State your Country of permanent residence on 16 February 1999, if different from Country at number 16		

Mailing Address, if different from Permanent Residence

21. Street name and number, apartment number		22. City, Town or Village
23. Province or State	24. Country	25. Postal Code
26. Telephone-home	27. E-mail	

28. Are you claiming for a former slave labourer, forced labourer, personal injury victim or parent of a deceased child who died **on or after 16 February 1999?** Yes ☐ No ☐

29. If "Yes", what is your relationship to the deceased? ☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will

30. If "Yes", have you attached proof of relationship to deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc.? Yes ☐ No ☐

31. Were you (or the deceased) a prisoner of war (POW) at any time from 1939–45? Yes ☐ No ☐

32. If "Yes", you may file a claim only if you (or the deceased) were sent to a concentration camp or were discharged as a POW

POW Date of Discharge		
Year	Month	Day

IOM · OIM

Claimant's name .....

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

INFORMATION ABOUT DECEASED PERSON

You need to fill in this page only if you are claiming for a deceased person who died on or after 16 February 1999. If you are claiming on your own behalf, please go to next page.

33. Last Name of deceased	34. First Names of deceased
35. Maiden Name of deceased, if applicable	36. Sex of deceased Male ☐ Female ☐
37. Citizenship of deceased at birth	38. Ethnic Origin

Other names used by deceased during the Nazi era

39. Last Name of deceased	40. First Names of deceased

41. Date(s) of birth of deceased Enter any birth date used during the Nazi era			43. City of birth of deceased as known at that time
Year	Month	Day	
			44. Country of birth of deceased as known at that time
42. Date of death			45. Country where deceased died
Year	Month	Day	

46. You must attach a copy of the death certificate. Is a copy attached? Yes ☐ No ☐	*For official IOM use* *Please leave blank* Y ☐ N ☐

INFORMATION ABOUT PERSONS OTHER THAN CLAIMANT WHO ARE CLAIMING FOR DECEASED

Each person claiming must submit proof of relationship to the deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc. If more space is required, please attach additional sheets.

	Second Person Claiming (other than claimant)	Third Person Claiming (other than claimant)	Fourth Person Claiming (other than claimant)
47. Last Name			
48. First Name			
49. Street name and number, apartment number			
50. City, Town or Village			
51. Province or State			
52. Country			
53. Postal Code			
54. Relationship to deceased	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will
55. Is proof of relationship to deceased attached?	Yes ☐ No ☐	Yes ☐ No ☐	Yes ☐ No ☐

IOM · OIM

HID 2

Claimant's name .....

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

SLAVE LABOUR

You need to fill in this page only if you, or the deceased for whom you are claiming, were held in a concentration camp, ghetto or another place of confinement under comparable conditions and were subjected to slave labour. Comparable conditions include inhumane prison conditions, insufficient nutrition and lack of medical care. Otherwise please go to next page.

56. Indicate the types of place(s) where you (or the deceased) were held		
☐ Concentration camp	☐ Ghetto	☐ Other place of confinement

Name the place(s) where you (or the deceased) were held and indicate for which time periods

57. Concentration Camp	58. From		59. To	
	Year	Month	Year	Month
a.				
b.				

60. Ghetto	61. From		62. To	
	Year	Month	Year	Month
a.				
b.				

63. Other place of confinement	64. From		65. To	
	Year	Month	Year	Month
a.				
b.				

66. Name the company(ies) for which you (or the deceased) performed slave labour, if known	
a.	c.
b.	d.

Indicate which documents you have provided in support of your claim

For official IOM use Please leave blank	67. Document (photocopies only)	68. Number on document
a. ☐	☐ Liberation certificate	
b. ☐	☐ Repatriation document	
c. ☐	☐ Displaced persons card	
d. ☐	☐ Prison record *(Personalakte)*	
e. ☐	☐ Search result from the International Tracing Service *(Internationaler Suchdienst, Bad Arolsen)*	
f. ☐	☐ Other (please specify)	

Claimant's name .....

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

FORCED LABOUR

You need to fill in this page only if you, or the deceased for whom you are claiming, were deported to Germany or a German-occupied area and were subjected to forced labour and were held in extremely harsh living conditions. Otherwise please go to next page.

Where were you (or the Deceased) deported **from**	69. Town/City deported from	70. Country deported from
Where were you (or the Deceased) deported **to**	71. Town/City deported to	72. Country deported to

73. Date deported		74. Date released	
Year	Month	Year	Month

75. Did you perform forced labour for a company or public authority?	Yes ☐ No ☐
76. Did you perform forced labour in agriculture?	Yes ☐ No ☐
77. Were you held at anytime in a Work Reform Camp (*Arbeitserziehungslager)?*	Yes ☐ No ☐
78. Were you occasionally (for example on Sundays) allowed to move in the village or town or city where you were held?	Yes ☐ No ☐
79. Were you held under guard and subjected to constant searches and controls by guards or police both during and outside working hours?	Yes ☐ No ☐

Fill in numbers 80-81, if you performed forced labour for a **company or public authority**

80. Name the company(ies) or public authority(ies) for which you (or the deceased) performed forced labour	
a.	b.
81. Name the Work Reform Camp (*Arbeitserziehungslager)* or forced labour camp(s) or other place(s) where you (or the deceased) were held	
a.	b.

Fill in number 82, if you performed forced labour in **agriculture**

82. Name the person or entity for whom you (or the deceased) performed forced labour in agriculture, if known	
a.	b.

Indicate which documents you have provided in support of your claim

For official IOM use Please leave blank	83. Document (photocopies only)	84. Number on document
a. ☐	☐ Work book for foreigners *(Arbeitsbuch für Ausländer)*	
b. ☐	☐ Work card *(Arbeitskarte)*	
c. ☐	☐ Company work record *(Arbeitsbescheinigung)*	
d. ☐	☐ Work requisition labour office *(Arbeitsamt)*	
e. ☐	☐ Deportation card or attestation	
f. ☐	☐ Prison record *(Personalakte)*	
g. ☐	☐ Discharge certificate *(Entlassungsschein)*	
h. ☐	☐ Repatriation document	
i. ☐	☐ Displaced persons card	
j. ☐	☐ Search result from the International Tracing Service *(Internationaler Suchdienst, Bad Arolsen)*	
k. ☐	☐ Passport for foreigners *(Fremdenpass)*	
l. ☐	☐ Other (please specify)	

IOM · OIM

Claimant's name .....

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

You need to fill in this page only if you are claiming for a personal injury or death of a child. Otherwise please go to next page.

PERSONAL INJURY – Medical Experiments

85. Were you (or the deceased) subjected to medical experiments under the Nazi regime? If No, go to number 88. Yes ☐ No ☐
86. Name the Camp where the medical experiments were conducted

Indicate which documents you have provided in support of your claim

For official IOM use Please leave blank	87. Document (photocopies only)
☐	☐ Medical certificate
☐	☐ Other (please specify)

PERSONAL INJURY – Child Lodged in Home for Children of Slave or Forced Labourers

88. Were you (or the deceased) lodged in a home for children of slave or forced labourers and was your (or the deceased's) health, either mental or physical, severely damaged? If No, go to number 94. Yes ☐ No ☐

89. Date placed in home for children		90. Name the camp where children's home was situated
Year	Month	
91. Date released from home for children		92. Name the home for children, if known
Year	Month	

Indicate which documents you have provided in support of your claim

For official IOM use Please leave blank	93. Documents (photocopies only)
☐	☐ Medical certificate
☐	☐ Other (please specify)

DEATH OF CHILD – Child Lodged in Home for Children of Slave or Forced Labourers

94. Are you (or was the deceased) the parent of a child who died while lodged in a home for children of slave or forced labourers? Yes ☐ No ☐

95. Child's Last Name			96. Child's First Names				
97. Name the camp where children's home was situated			98. Name the home for children, if known				
99. Date of birth of child			100. Date of death of child			101. Date placed in home for children	
Year	Month	Day	Year	Month	Day	Year	Month

Indicate which document you have provided in support of your claim

For official IOM use Please leave blank	102. Document (photocopies only)
☐	Please specify

OTHER PERSONAL INJURY

103. Did you suffer other personal injury in connection with National Socialist wrongs? Yes ☐ No ☐

Indicate which document you have provided in support of your claim

For official IOM use Please leave blank	104. Document (photocopies only)
☐	☐ Medical certificate
☐	☐ Other (please specify)

Claimant's Name .....

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

PARTICIPATION IN ANOTHER GOVERNMENT PROGRAMME

Please indicate below whether you (or the deceased) participated in another Government programme. Information about whether you (or the deceased) participated in another programme may help IOM process your claim faster. Any money previously received from such a programme **will not be deducted** from any payment made by IOM.

105. Government Programme	106. Your (or deceased's) Programme Identification Number
a. ☐ Germany, Federal Indemnification Law – *Bundesentschädigungsgesetz/BEG*	
b. ☐ Germany, Hardship Fund – *HNG Fonds*	
c. ☐ Germany, Hardship Fund – *Wiedergutmachungs –Dispositions-Fonds*	
d. ☐ Germany, Hardship payments for medical experiments	
e. ☐ Belgium, granted status of *Prisonnier Politique*	
f. ☐ Belgium, granted status of *Déporté pour le Travail Obligatoire*	
g. ☐ France, granted status of *Déporté Résistant* or *Déporté Politique*	
h. ☐ France, granted status of detainee in Work Reform Camp *(Arbeitserziehungslager/AEL)*	
i. ☐ France, granted status of *Personne Contrainte au Travail (PCT)*	
j. ☐ Italy, granted status under Law 791	
k. ☐ Italy, confirmed as *Internato Militare Italiano (IMI)*	
l. ☐ Slovenia, granted status under the Law on Victims of War – *ZZVN*	
m. ☐ Other (please specify)	

POTENTIAL ENTITLEMENT UNDER THE HOLOCAUST VICTIM ASSETS LITIGATION (SWISS BANKS)

You may be entitled to further payment pursuant to a settlement under the Holocaust Victim Assets Litigation (Swiss Banks) that was brought before the United States District Court, Eastern District of New York. Please answer the questions below so that IOM may send you the necessary information when it becomes available.

107. Were you (or the deceased) a Jehovah's Witness, Roma, homosexual or disabled and were you (or the deceased) held in a concentration camp, ghetto, another place of confinement, forced labour camp, prison, SS brigade, or a similar place and forced to work?	Yes ☐ No ☐
108. Were you (or the deceased) forced to work for a Swiss company, or a German company owned by a Swiss company, during the Nazi era?	Yes ☐ No ☐
109. If "Yes", name the Company for which you worked	
110. Were you (or the deceased) a Jehovah's Witness, Roma, homosexual or disabled and were you (or the deceased) either i) denied entry into or expelled from Switzerland by the Swiss authorities or ii) admitted into Switzerland as a refugee and detained, mistreated or abused by the Swiss authorities?	Yes ☐ No ☐

PAYMENT INFORMATION

111. If your claim is approved by the IOM, indicate how you would like to receive payment. Please note that heirs awarded compensation for the deceased will only be sent cheques in their own name for equal shares of the award.

☐ Cash (distributed by **IOM offices only**) ☐ Cheque ☐ Bank transfer (if bank transfer, provide banking information below)

Banking Information and Address

112. Bank	113. Account holder's name	114. Bank account number
115. Bank street name and number		116. Town or City
117. Province or State	118. Country	119. Postal Code
120. Bank telephone number	121. Bank routing number	

Claimant's name .....

German
Forced Labour
Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

PERSONAL STATEMENT

Please provide a brief description below of what happened to you, or the deceased for whom you are claiming, during the period That you (or the deceased) were a **slave labourer** or **forced labourer**. Describe the conditions in which you (or the deceased) were held.

If you are claiming for **medical experiments**, describe the nature and impact of the experiments on your health (or that of the Deceased). If you are claiming for **severe damage to health** while lodged in a home for children of slave or forced labourers, Describe your (or the deceased's) injuries. If you are claiming for the **death of a child** while lodged in a home for children of Slave or forced labourers, describe the circumstances of the child's death. If you are claiming for **other personal injury**, Describe the specific National Socialist wrong that caused the other personal injury.

Claimant's name .....

German Forced Labour Compensation Programme
REMEMBRANCE, RESPONSIBILITY and FUTURE

SIGNATURE, CONSENT AND WAIVER

Please sign where indicated. You must sign the official IOM claim form before a notary public or other official authorized to attest to the authenticity of signatures and documents. If you are homebound, you may sign the IOM claim form before an attending physician.

a) If you received compensation after 1945 from a **German company** for Nazi injustice, please indicate the name of the company and the amount below. This previously received compensation **will be deducted** from any payment that may be awarded to you by IOM. However, the information you provide here may help IOM process your claim faster.
Name of Company 122..... Currency 123..... Amount Received 124.....

b) I understand that my entitlement to receive payment under the German Forced Labour Compensation Programme is dependent on the conditions specified in the German Law.

c) I (or the deceased) have not applied for or received any payments under this Programme for the same Nazi injustice for which I claim on this claim form.

d) I (or the deceased) have not applied for or received a payment from the Austrian Reconciliation Fund for the same Nazi injustice for which I claim on this claim form.

e) I agree that in connection with the processing and checking of this claim my data and that of the deceased will be kept in a central database and a check will be made for claims that may have been filed by me with the other partner organizations.

f) I authorize the IOM to inspect all relevant third party files and databases to verify my claim, for example, German Government archives, Red Cross International Tracing Service archives, etc.

g) I waive irrevocably on **receipt of a payment** under the German Forced Labour Compensation Programme the assertion of any of the following claims **outside the German Law:**

i. Against the Federal Republic of Germany, German Federal States and other German public institutions in respect of slave labour, forced labour or property losses.
ii. Against German companies with regard to all claims connected with National Socialist injustice.
iii. Against the Republic of Austria and Austrian companies in respect of slave labour or forced labour.

This waiver does not apply to claims and payments to be made under German laws on the consequences of war or indemnification measures or to any claims relating to the return of works of art. The latter may only be asserted, however, in Germany or in the country from which the work of art was taken.

h) I attest that the information provided in support of this claim is true and made to the best of my knowledge. I am aware that false information may lead to action for the return of any payment made and further legal action.

Signature of claimant .....

Type of current Identification document 125..... Number of current Identification document 126.....

I have verified the claimant's identification card or passport and documentation of the claimant's permanent residence as of 16 February 1999. Where applicable, I have verified the relationship of the claimant to the deceased.

Stamp and signature of notary public/other official/attending physician

Date ..... City .....

Printed name of notary public/other official/attending physician

....
Last Name First Name

Address of notary public/other official/attending physician .....

.....

Telephone number of notary public/other official/attending physician.....

IOM - OIM

9

INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

CLAIM FORM FOR SLAVE LABOUR CLASS I

Holocaust Victim Assets Programme
SWISS BANKS

This **IOM claim form** is for persons who were persecuted or targeted for persecution because they were or were believed to be Romani, Jehovah's Witness, homosexual, or physically or mentally handicapped, and who performed slave labour for German companies or for the Nazi regime. Please read the attached guidelines carefully before you begin filling in the form. Type or neatly print all requested information in black or blue ink. Attach photocopies, not originals, of any requested documents. **Please submit one original and one copy of the claim form and two copies of all attached documents to IOM.**

1. Were you (or the deceased) a victim or target of Nazi persecution because you (or the deceased) were or were believed to be:

☐ Romani ☐ Jehovah's Witness ☐ homosexual ☐ physically or mentally handicapped

CLAIMANT'S PERSONAL INFORMATION

2. Claimant's Last Name	3. Claimant's First Names
4. Claimant's Maiden Name, if applicable	5. Sex Male ☐ Female ☐
6. Current Citizenship	7. Citizenship at Birth

Other names used by claimant during the Nazi era, if applicable

8. Last Name	9. First Names

10. Date(s) of birth Enter any birth date used during the Nazi era			11. City of birth as known at that time
Year	Month	Day	
			12. Country of birth as known at that time

Claimant's Father	Claimant's Mother
13. Last Name	15. Last Name
14. First Names	16. First Names

Permanent Residence

17. Street name and number, apartment number		18. City, Town or Village
19. Province or State	20. Country	21. Postal Code
22. Telephone-home		23. E-mail

Mailing Address, if different from Permanent Residence

24. Street name and number, apartment number		25. City, Town or Village
26. Province or State	27. Country	28. Postal Code
29. Telephone-home		30. E-mail

31. Are you claiming for a former slave labourer who **died on or after 16 February 1999**?	Yes ☐ No ☐
32. If "Yes", what is your relationship to the deceased?	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will
33. If "Yes", have you attached proof of relationship to deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc.?	Yes ☐ No ☐

Claimant's Name .....

INFORMATION ABOUT DECEASED

You need to fill in this page only if you claim for a person who died on or after 16 February 1999.

34. Last Name of deceased	35. First Names of deceased
36. Maiden Name of deceased, if applicable	37. Sex of deceased Male ☐ Female ☐
38. Citizenship of deceased at birth	

Other names used by deceased during the Nazi era

39. Last Name of deceased	40. First Names of deceased

41. Date(s) of birth of deceased Enter any birth date used during the Nazi era			43. City of birth of deceased as known at that time
Year	Month	Day	
			44. Country of birth of deceased as known at that time
42. Date of death			45. Country where deceased died
Year	Month	Day	

46. You must attach a copy of the death certificate or other documentary proof of death. Is a copy attached? Yes ☐ No ☐

INFORMATION ABOUT PERSONS OTHER THAN CLAIMANT WHO ARE CLAIMING FOR DECEASED

Each person claiming must submit proof of relationship to the deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc. If more space is required, please attach additional sheets.

	Second Person Claiming (other than claimant)	Third Person Claiming (other than claimant)	Fourth Person Claiming (other than claimant)
47. Last Name			
48. First Names			
49. Street name and number, apartment number			
50. City, Town or Village			
51. Province or State			
52. Country			
53. Postal Code			
54. Relationship to deceased	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will
55. Is proof of relationship to deceased attached?	Yes ☐ No ☐	Yes ☐ No ☐	Yes ☐ No ☐

Claimant's Name .....

CLAIM INFORMATION

Every claimant needs to fill in this page.

56.	Did you (or the deceased) perform work for little or no remuneration involuntarily at the insistence, direction or under the auspices of the Nazi regime? Yes ☐ No ☐

57. Indicate the types of place(s) where you (or the deceased) performed slave labour

☐ Concentration Camp ☐ Ghetto ☐ Work Reform Camp (*Arbeitserziehungslager*)

☐ Forced Labour Camp ☐ Other place of labour – specify.....

Name the place(s) where you (or the deceased) were held and indicate for which time periods

58. Concentration Camp	59. From		60. To	
	Year	Month	Year	Month
61. Prisoner Number				
62. Ghetto	63. From		64. To	
	Year	Month	Year	Month
65. Work Reform Camp (*Arbeitserziehungslager*)	66. From		67. To	
	Year	Month	Year	Month
68. Forced Labour Camp	69. From		70. To	
	Year	Month	Year	Month
71. Other place of labour – specify	72. From		73. To	
	Year	Month	Year	Month

74. For whom did you (or the deceased) perform slave labour?	
a.	b.
c.	d.

Indicate which documents you have provided in support of your claim

75. Document (photocopies only)	76. Number on document
a. ☐ Liberation certificate	
b. ☐ Repatriation document	
c. ☐ Displaced person's (DP) card	
d. ☐ Prison record *(Personalakte)*	
e. ☐ Search result from the International Tracing Service *(Internationaler Suchdienst, Bad Arolsen)*	
f. ☐ Work book for foreigners *(Arbeitsbuch für Ausländer)*	
g. ☐ Work card *(Arbeitskarte)*	
h. ☐ Company work record *(Arbeitsbescheinigung)*	
i. ☐ Work requisition labour office *(Arbeitsamt)*	
j. ☐ Deportation card or attestation	
k. ☐ Discharge certificate *(Entlassungsschein)*	
l. ☐ Passport for foreigners *(Fremdenpass)*	
m. ☐ *Foglio matriculare* (Italy)	
n. ☐ Other (please specify)	

Claimant's Name.....

PARTICIPATION IN ANOTHER GOVERNMENT PROGRAMME

Please indicate below whether you (or the deceased) participated in another Government programme. Information about whether you (or the deceased) participated in another programme may help IOM process your claim faster. Any money previously received from such a programme **will not be deducted** from any payment made by IOM.

77. Government Programme	78. Your (or deceased's) Programme Identification Number
a.☐ Germany, Federal Indemnification Law – *Bundesentschädigungsgesetz/BEG*	
b.☐ Germany, Hardship Fund – *HNG Fonds*	
c.☐ Germany, Hardship Fund – *Wiedergutmachungs–Dispositions-Fonds*	
d.☐ Belgium, granted status of *Prisonnier Politique*	
e.☐ Belgium, granted status of *Déporté pour le Travail Obligatoire*	
f. ☐ France, granted status of *Déporté Résistant* or *Déporté Politique*	
g.☐ France, granted status of detainee in Work Reform Camp *(Arbeitserziehungslager/AEL)*	
h.☐ France, granted status of *Personne Contrainte au Travail (PCT)*	
i. ☐ Italy, granted status under Law 791	
j. ☐ Italy, confirmed as *Internato Militare Italiano (IMI)*	
k.☐ Slovenia, granted status under the Law on Victims of War – *ZZVN*	
l. ☐ Other (please specify)	

79. Have you (or the deceased) filed a claim for compensation for slave or forced labour under the German Foundation "Remembrance, Responsibility and Future"? Yes ☐ No ☐

80. If yes, indicate the partner organization of the German Foundation with which you (or the deceased) filed your claim:

- ☐ Belarus Foundation "Understanding and Reconciliation"
- ☐ Conference on Jewish Material Claims Against Germany
- ☐ German-Czech Foundation "Fund of the Future"
- ☐ German-Polish Foundation "German-Polish Reconciliation"
- ☐ International Organization for Migration (IOM)
- ☐ Russian Foundation "Understanding and Reconciliation"
- ☐ Ukrainian National Foundation "Understanding and Reconciliation"

Please attach copy of claim form or certificate of payment, if available. 81. Claim Number .....

82. Have you (or the deceased) filed a claim for compensation for slave or forced labour under the Austrian Reconciliation Fund? Yes ☐ No ☐

If yes, please attach copy of claim form or certificate of payment, if available. 83. Claim Number .....

PAYMENT INFORMATION

84. If your claim is approved by the IOM, indicate how you would like to receive payment. Please note that heirs awarded compensation for the deceased will only be sent cheques in their own name for equal shares of the award.

☐ Cash (distributed by **IOM offices only**) ☐ Cheque ☐ Bank transfer (if bank transfer, provide banking information below)

Banking Information and Address

85. Bank	86. Account holder's name	87. Bank account number
88. Bank street name and number		89. Town or City
90. Province or State	91. Country	92. Postal Code
93. Bank telephone number	94. Bank routing number	

Claimant's Name .....

PERSONAL STATEMENT

Every claimant needs to fill in this page.

Please provide a brief description below of what happened to you, or the deceased for whom you are claiming, during the period that you (or the deceased) were a slave labourer.

Claimant's Name .....

SIGNATURE AND CONSENT

Please sign where indicated. You must sign the official IOM claim form before a notary public or other official authorized to attest to the authenticity of signatures and your identity. If you are homebound, you may sign the IOM claim form before an attending physician.

a) If you (or the deceased) received compensation after 1945 from a **German company** for Nazi injustice, please indicate the name of the company and the amount below. This previously received compensation **will not be deducted** from any payment that may be awarded to you by IOM under the Holocaust Victim Assets Programme. However, the information you provide here **may help IOM process your claim faster**.

Name of Company (95)..... Currency (96)..... Amount Received (97).....

b) I (or the deceased) have not applied for or received any payments under this Programme for the same Nazi injustice for which I claim on this claim form.

c) I agree that in connection with the processing and checking of this claim my data and that of the deceased will be kept in a central database and a check will be made for claims that may have been filed by me with other partner organizations.

d) I authorize the IOM to inspect all relevant third party files and databases to verify my claim, for example, German Government archives, Red Cross International Tracing Service archives, etc.

e) I attest that I (or the deceased) was persecuted or targeted for persecution because I (or the deceased) was or was believed to be Romani, Jehovah's Witness, homosexual or physically or mentally handicapped.

f) I attest that the information provided in support of this claim is true and made to the best of my knowledge. I am aware that false information may lead to action for the return of any payment made and further legal action.

Signature of claimant .....

Type of current identification document (e.g. passport, national identity card, etc.) (98).....

Number of current identification document (99).....

AUTHENTICATION

I have verified the claimant's identification card, passport or other current identification document. Where applicable, I have verified the relationship of the claimant to the deceased.

Stamp and signature of notary public/other official/attending physician

Stamp

Signature .....

Date ..... City .....

Printed name of notary public/other official/attending physician

....

Last Name First Name

Address of notary public/other official/attending physician .....

.....

Telephone number of notary public/other official/attending physician.....

10

INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

CLAIM FORM FOR SLAVE LABOUR CLASS II

Holocaust Victim Assets Programme
SWISS BANKS

This **IOM claim form** is for persons who performed slave labour for certain Swiss companies or their affiliates during the Nazi era. For a list of such companies please consult the IOM web site at http://swissbankclaims.iom.int or contact the IOM office nearest you, at an address indicated in the attached guidelines. Please read the attached guidelines carefully before you begin filling in the form. Type or neatly print all requested information in black or blue ink. Attach photocopies, not originals, of any requested documents. **Please submit one original and one copy of the claim form and two copies of all attached documents to IOM.**

CLAIMANT'S PERSONAL INFORMATION

1. Claimant's Last Name	2. Claimant's First Names
3. Claimant's Maiden Name, if applicable	4. Sex Male ☐ Female ☐
5. Current Citizenship	6. Citizenship at Birth

Other names used by claimant during the Nazi era, if applicable

7. Last Name	8. First Names

9. Date(s) of birth Enter any birth date used during the Nazi era			10. City of birth as known at that time
Year	Month	Day	
			11. Country of birth as known at that time

Claimant's Father	Claimant's Mother
12. Last Name	14. Last Name
13. First Names	15. First Names

Permanent Residence

16. Street name and number, apartment number		17. City, Town or Village
18. Province or State	19. Country	20. Postal Code
21. Telephone-home		22. E-mail

Mailing Address, if different from Permanent Residence

23. Street name and number, apartment number		24. City, Town or Village
25. Province or State	26. Country	27. Postal Code
28. Telephone-home		29. E-mail

30. Are you claiming for a former slave labourer who **died on or after 16 February 1999**?	Yes ☐ No ☐
31. If "Yes", what is your relationship to the deceased?	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will
32. If "Yes", have you attached proof of relationship to deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc.?	Yes ☐ No ☐

Claimant's Name .....

INFORMATION ABOUT DECEASED

You need to fill in this page only if you claim for a person who died on or after 16 February 1999.

33. Last Name of deceased	34. First Names of deceased
35. Maiden Name of deceased, if applicable	36. Sex of deceased Male ☐ Female ☐
37. Citizenship of deceased at birth	

Other names used by deceased during the Nazi era

38. Last Name of deceased	39. First Names of deceased

40. Date(s) of birth of deceased Enter any birth date used during the Nazi era			42. City of birth of deceased as known at that time
Year	Month	Day	
			43. Country of birth of deceased as known at that time
41. Date of death			44. Country where deceased died
Year	Month	Day	

45. You must attach a copy of the death certificate or other documentary proof of death. Is a copy attached? Yes ☐ No ☐

INFORMATION ABOUT PERSONS OTHER THAN CLAIMANT WHO ARE CLAIMING FOR DECEASED

Each person claiming must submit proof of relationship to the deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc. If more space is required, please attach additional sheets.

	Second Person Claiming (other than claimant)	Third Person Claiming (other than claimant)	Fourth Person Claiming (other than claimant)
46. Last Name			
47. First Names			
48. Street name and number, apartment number			
49. City, Town or Village			
50. Province or State			
51. Country			
52. Postal Code			
53. Relationship to deceased	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will
54. Is proof of relationship to deceased attached?	Yes ☐ No ☐	Yes ☐ No ☐	Yes ☐ No ☐

Claimant's Name .....

CLAIM INFORMATION
Every claimant needs to fill in this page.

55. Indicate the types of place(s) where you (or the deceased) were held, if applicable		
☐ Concentration Camp	☐ Ghetto	☐ Work Reform Camp (*Arbeitserziehungslager*)
☐ Forced Labour Camp	☐ Other place of confinement – specify.....	

Name the place(s) where you (or the deceased) were held, if applicable, and indicate for which time periods

56. Concentration Camp	57. From		58. To	
	Year	Month	Year	Month
59. Prisoner Number				
60. Ghetto	61. From		62. To	
	Year	Month	Year	Month
63. Work Reform Camp (*Arbeitserziehungslager*)	64. From		65. To	
	Year	Month	Year	Month
66. Forced Labour Camp	67. From		68. To	
	Year	Month	Year	Month
69. Other place of confinement – specify	70. From		71. To	
	Year	Month	Year	Month

72. Name the company(ies) for which you (or the deceased) performed slave labour	
a.	b.
c.	d.

Indicate which documents you have provided in support of your claim

73. Document (photocopies only)	74. Number on document
a. ☐ Company work record (*Arbeitsbescheinigung*)	
b. ☐ Salary slips	
c. ☐ Other records related to the company	
d. ☐ Liberation certificate	
e. ☐ Repatriation document	
f. ☐ Displaced person's (DP) card	
g. ☐ Prison record (*Personalakte*)	
h. ☐ Search result from the International Tracing Service (*Internationaler Suchdienst, Bad Arolsen*)	
i. ☐ Work book for foreigners (*Arbeitsbuch für Ausländer*)	
j. ☐ Work card (*Arbeitskarte*)	
k. ☐ Work requisition labour office (*Arbeitsamt*)	
l. ☐ Deportation card or attestation	
m. ☐ Discharge certificate (*Entlassungsschein*)	
n. ☐ Passport for foreigners *(Fremdenpass)*	
o. ☐ *Foglio matriculare* (Italy)	
p. ☐ Other (please specify)	

Claimant's Name.....

PARTICIPATION IN ANOTHER GOVERNMENT PROGRAMME

Please indicate below whether you (or the deceased) participated in another Government programme. Information about whether you (or the deceased) participated in another programme may help IOM process your claim faster. Any money previously received from such a programme **will not be deducted** from any payment made by IOM.

75. Government Programme	76. Your (or deceased's) Programme Identification Number
a.☐ Germany, Federal Indemnification Law – *Bundesentschädigungsgesetz/BEG*	
b.☐ Germany, Hardship Fund – *HNG Fonds*	
c.☐ Germany, Hardship Fund – *Wiedergutmachungs-Dispositions-Fonds*	
d.☐ Belgium, granted status of *Prisonnier Politique*	
e.☐ Belgium, granted status of *Déporté pour le Travail Obligatoire*	
f. ☐ France, granted status of *Déporté Résistant* or *Déporté Politique*	
g.☐ France, granted status of detainee in Work Reform Camp *(Arbeitserziehungslager/AEL)*	
h.☐ France, granted status of *Personne Contrainte au Travail (PCT)*	
i. ☐ Italy, granted status under Law 791	
j. ☐ Italy, confirmed as *Internato Militare Italiano (IMI)*	
k.☐ Other (please specify)	

77. Have you (or the deceased) filed a claim for compensation for slave or forced labour under the German Foundation "Remembrance, Responsibility and Future"? Yes ☐ No ☐

78. If yes, indicate the partner organization of the German Foundation with which you (or the deceased) filed your claim:

☐ Belarus Foundation "Understanding and Reconciliation"
☐ Conference on Jewish Material Claims Against Germany
☐ German-Czech Foundation "Fund of the Future"
☐ German-Polish Foundation "German-Polish Reconciliation"
☐ International Organization for Migration (IOM)
☐ Russian Foundation "Understanding and Reconciliation"
☐ Ukrainian National Foundation "Understanding and Reconciliation"

79. Please attach copy of claim form or certificate of payment, if available. Claim Number .....

80. Have you (or the deceased) filed a claim for compensation for slave or forced labour under the Austrian Reconciliation Fund? Yes ☐ No ☐

81. If yes, please attach copy of claim form or certificate of payment, if available. Claim Number .....

PAYMENT INFORMATION

82. If your claim is approved by the IOM, indicate how you would like to receive payment. Please note that heirs awarded compensation for the deceased will only be sent cheques in their own name for equal shares of the award.

☐ Cash (distributed by **IOM offices only**) ☐ Cheque ☐ Bank transfer (if bank transfer, provide banking information below)

Banking Information and Address

83. Bank	84. Account holder's name	85. Bank account number
86. Bank street name and number		87. Town or City
88. Province or State	89. Country	90. Postal Code
91. Bank telephone number	92. Bank routing number	

Claimant's Name .....

PERSONAL STATEMENT

Every claimant needs to fill in this page.

Please provide a brief description below of what happened to you, or the deceased for whom you are claiming, during the period that you (or the deceased) were a slave labourer.

Claimant's Name .....

SIGNATURE, CONSENT AND WAIVER

Please sign where indicated. You must sign the official IOM claim form before a notary public or other official authorized to attest to the authenticity of signatures and your identity. If you are homebound, you may sign the IOM claim form before an attending physician.

a) If you (or the deceased) received compensation after 1945 from a **German company** for Nazi injustice, please indicate the name of the company and the amount below. This previously received compensation **will not be deducted** from any payment that may be awarded to you by IOM under the Holocaust Victim Assets Programme. However, the information you provide here **may help IOM process your claim faster**.

Name of Company (93)..... Currency (94)..... Amount Received (95).....

b) I (or the deceased) have not applied for or received any payments under this Programme for the same Nazi injustice for which I claim on this claim form.

c) I agree that in connection with the processing and checking of this claim my data and that of the deceased will be kept in a central database and a check will be made for claims that may have been filed by me with other partner organizations.

d) I authorize the IOM to inspect all relevant third party files and databases to verify my claim, for example, German Government archives, Red Cross International Tracing Service archives, etc.

e) I agree to a personal or telephonic interview in order to assist IOM to establish my eligibility.

f) If it is determined that the claimant is a member of Slave Labour Class II, the claimant acknowledges by filing this claim form that he or she releases all Releasees of all Claims, as those terms are defined in the Settlement Agreement. "Releasees" generally include Swiss banks and business concerns and their affiliates, wherever located, and the Swiss Confederation and its governmental subdivisions. "Claims" include all claims and liability relating in any way to the Holocaust, World War II, and the use of slave or forced labour by Releasees. A claimant that makes a claim as a member of Slave Labour Class II is not precluded from making claims under the Settlement Agreement under any of the other four classes defined in the Settlement Agreement.

g) I attest that the information provided in support of this claim is true and made to the best of my knowledge. I am aware that false information may lead to action for the return of any payment made and further legal action.

Signature of claimant .....

Type of current identification document (e.g. passport, national identity card, etc.) (96)..... Number of current identification document (97).....

AUTHENTICATION

I have verified the claimant's identification card, passport or other current identification document. Where applicable, I have verified the relationship of the claimant to the deceased.

Stamp and signature of notary public/other official/attending physician

Stamp

Signature .....

Date ..... City .....

Printed name of notary public/other official/attending physician

....
Last Name First Name

Address of notary public/other official/attending physician .....

.....

Telephone number of notary public/other official/attending physician.....

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INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

CLAIM FORM FOR THE REFUGEE CLASS

Holocaust Victim Assets Programme
SWISS BANKS

This **IOM claim form** is for persons who were persecuted or targeted for persecution because they were or were believed to be Roma, Jehovah's Witness, homosexual, or physically or mentally handicapped, and who sought entry into Switzerland to avoid Nazi persecution and either were denied entry into Switzerland or, after gaining entry, were deported, detained, abused, or otherwise mistreated. Please read the attached guidelines carefully before you begin filling in the form. Type or neatly print all requested information in black or blue ink. Attach photocopies, not originals, of any requested documents. **Please submit one original and one copy of the claim form and two copies of all attached documents to IOM.**

1. Were you (or the deceased) a victim or target of Nazi persecution because you (or the deceased) were or were believed to be:

☐ Roma ☐ Jehovah's Witness ☐ homosexual ☐ physically or mentally handicapped

CLAIMANT'S PERSONAL INFORMATION

2. Claimant's Last Name	3. Claimant's First Names
4. Claimant's Maiden Name, if applicable	5. Sex Male ☐ Female ☐
6. Current Citizenship	7. Citizenship at Birth

Other names used by claimant during the Nazi era, if applicable

8. Last Name	9. First Names

10. Date(s) of birth Enter any birth date used during the Nazi era			11. City of birth as known at that time
Year	Month	Day	
			12. Country of birth as known at that time

Permanent Residence

13. Street name and number, apartment number		14. City, Town or Village
15. Province or State	16. Country	17. Postal Code
18. Telephone-home		19. E-mail

Mailing Address, if different from Permanent Residence

20. Street name and number, apartment number		21. City, Town or Village
22. Province or State	23. Country	24. Postal Code
25. Telephone-home	26. E-mail	

27. Are you claiming for a former refugee who **died on or after 16 February 1999**? Yes ☐ No ☐

28. If "Yes", what is your relationship to the deceased? ☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under a will

29. If "Yes", have you attached proof of relationship to deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc.? Yes ☐ No ☐

Claimant's Name .....

INFORMATION ABOUT DECEASED

You need to fill in this page only if you claim for a person who died on or after 16 February 1999.

30. Last Name of deceased	31. First Names of deceased
32. Maiden Name of deceased, if applicable	33. Sex of deceased Male ☐ Female ☐
34. Citizenship of deceased at birth	

Other names used by deceased during the Nazi era

35. Last Name of deceased	36. First Names of deceased

37. Date(s) of birth of deceased Enter any birth date used during the Nazi era			39. City of birth of deceased as known at that time
Year	Month	Day	
			40. Country of birth of deceased as known at that time
38. Date of death			41. Country where deceased died
Year	Month	Day	

42. You must attach a copy of the death certificate or other documentary proof of death. Is a copy attached? Yes ☐ No ☐

INFORMATION ABOUT PERSONS OTHER THAN CLAIMANT WHO ARE CLAIMING FOR DECEASED

Each person claiming must submit proof of relationship to the deceased by submitting a copy of a marriage certificate, birth certificate, family registration booklet, will, etc. If more space is required, please attach additional sheets.

	Second Person Claiming (other than claimant)	Third Person Claiming (other than claimant)	Fourth Person Claiming (other than claimant)
43. Last Name			
44. First Names			
45. Street name and number, apartment number			
46. City, Town or Village			
47. Province or State			
48. Country			
49. Postal Code			
50. Relationship to deceased	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will	☐ spouse ☐ child ☐ grandchild ☐ sibling ☐ heir under will
51. Is proof of relationship to deceased attached?	Yes ☐ No ☐	Yes ☐ No ☐	Yes ☐ No ☐

Claimant's name .....

CLAIM FOR DENIAL OF ENTRY OR EXPULSION

Please note that you can file a claim for (a) denial or entry or expulsion; or for (b) detention, abuse or other mistreatment, but not for both.

You need to fill in this section if you (or the deceased) sought entry into Switzerland to avoid Nazi persecution, but were denied entry, or if you were admitted into but expelled from Switzerland, during the period 1 January 1933 - 9 May 1945.

52. Did you (or the deceased) seek entry into Switzerland to avoid Nazi persecution and were you (or the deceased) denied entry, or admitted into but expelled from Switzerland during the period 1 Jan. 1933 - 9 May 1945? Yes ☐ No ☐

53. Please indicate the point where you sought entry or entered into Switzerland. .....

54. A partial list of persons denied entry into or expelled from Switzerland during the Nazi era can be found at location mentioned in the enclosed Guidelines. Does your name appear on that list? Yes ☐ No ☐

55. Specify your name as it appears on the list .....

Please attach all and any documentary and other evidence (e.g., witness statements) that you may have or that you may reasonably obtain in support of your claim. Such evidence may include but is not limited to the history of you and your family.

CLAIM FOR DETENTION, ABUSE OR OTHER MISTREATMENT

You need to fill in this section if you (or the deceased) sought entry into Switzerland and were, after gaining entry, detained, abused or otherwise mistreated, during the period 1 January 1933 to 9 May 1945.

56. Did you (or the deceased) seek entry into Switzerland to avoid Nazi persecution and were you (or the deceased), after gaining entry, detained, abused or otherwise mistreated, during the period 1 Jan. 1933 - 9 May 1945? Yes ☐ No ☐

57. Please indicate the place where you were detained, abused or otherwise mistreated. .....

Please attach all and any documentary and other evidence (e.g., witness statements) that you may have or that you may reasonably obtain in support of your claim. Such evidence may include, but is not limited to, the history of you and your family.

PARTICIPATION IN ANOTHER GOVERNMENT PROGRAMME

Please indicate below whether you (or the deceased) participated in another Government programme. Information about whether you (or the deceased) participated in another programme may help IOM process your claim faster. Any money previously received from such a programme **will not be deducted** from any payment made by IOM.

58. Government Programme	59. Your (or deceased's) Programme Identification or Claim Number
a. ☐ Germany, Federal Indemnification Law – *Bundesentschädigungsgesetz/BEG*	
b. ☐ Germany, Hardship Fund – *HNG Fonds*	
c. ☐ Germany, Hardship Fund – *Wiedergutmachungs–Dispositions-Fonds*	
d. ☐ Germany, Foundation "Remembrance, Responsibility and Future" – Please specify the partner organization with which you filed your claim	
e. ☐ Austria, Austrian Reconciliation Fund	
f. ☐ Other (please specify)	

PAYMENT INFORMATION

60. If your claim is approved by the IOM, indicate how you would like to receive payment. Please note that heirs awarded compensation for the deceased will only be sent cheques in their own name for equal shares of the award.

☐ Cash (distributed by **IOM offices only**) ☐ Cheque ☐ Bank transfer (if bank transfer, provide banking information below)

Banking Information and Address

61. Bank	62. Account holder's name	63. Bank account number
64. Bank street name and number		65. Town or City
66. Province or State	67. Country	68. Postal Code
69. Bank telephone number	70. Bank routing number	

Claimant's Name .....

PERSONAL STATEMENT

Every claimant needs to fill in this page.

Please provide a brief description below of what happened to you, or the deceased for whom you are claiming, during the period that you (or the deceased) were a refugee.

Claimant's Name .....

SIGNATURE, CONSENT AND WAIVER

Please sign where indicated. You must sign the official IOM claim form before a notary public or other official authorized to attest to the authenticity of signatures and your identity. If you are homebound, you may sign the IOM claim form before an attending physician.

a) If you (or the deceased) received compensation after 1945 from a **German company** for Nazi injustice, please indicate the name of the company and the amount below. This previously received compensation **will not be deducted** from any payment that may be awarded to you by IOM under the Holocaust Victim Assets Programme. However, the information you provide here **may help IOM process your claim faster**.

Name of Company (71)..... Currency (72)..... Amount Received (73).....

b) I (or the deceased) have not applied for or received any payments under this Programme for the same Nazi injustice for which I claim on this claim form.

c) I agree that in connection with the processing and checking of this claim my data and that of the deceased will be kept in a central database and a check will be made for claims that may have been filed by me with other partner organizations.

d) I authorize the IOM to inspect all relevant third party files and databases to verify my claim, for example, German Government archives, United States Holocaust Memorial Museum archives, Red Cross International Tracing Service archives, etc.

e) I attest that I (or the deceased) was persecuted or targeted for persecution because I was or was believed to be Romani, Jehovah's Witness, homosexual or physically or mentally handicapped.

f) I agree to a personal or telephonic interview in order to assist IOM to establish my eligibility.

g) If it is determined that the claimant is a member of the Refugee Class, the claimant acknowledges by filing this claim form that he or she releases all Releasees of all Claims, as those terms are defined in the Settlement Agreement. "Releasees" generally include Swiss banks and business concerns and their affiliates, wherever located, and the Swiss Confederation and its governmental subdivisions. "Claims" include all claims and liability relating in any way to the Holocaust, World War II, and the treatment of refugees fleeing Nazi persecution by Releasees. A claimant that makes a claim as a member of the Refugee Class is not precluded from making claims under the Settlement Agreement under any of the other four classes defined in the Settlement Agreement.

h) I attest that the information provided in support of this claim is true and made to the best of my knowledge. I am aware that false information may lead to action for the return of any payment made and further legal action.

Signature of claimant .....

Type of current identification document (e.g. passport, national identity card, etc.) (74)..... Number of current identification document (75).....

AUTHENTICATION

I have verified the claimant's identification card, passport or other current identification document. Where applicable, I have verified the relationship of the claimant to the deceased.

Stamp and signature of notary public/other official/attending physician

Stamp

Signature .....

Date ..... City .....

Printed name of notary public/other official/attending physician

....
Last Name First Name

Address of notary public/other official/attending physician .....

.....

Telephone number of notary public/other official/attending physician.....

12

HOLOCAUST VICTIM ASSETS PROGRAMME
(SWISS BANKS)
LANGUAGES

HVAP has the following Languages of Correspondence:	
1	Bulgarian
2	Czech
3	Dutch
4	English
5	French
6	German
7	Greek
8	Hebrew
9	Hungarian
10	Italian
11	Latvian
12	Polish
13	Portuguese
14	Romanian
15	Russian
16	Serbo-Croat
17	Slovakian
18	Spanish
19	Ukranian
HVAP has the following Claim Form Languages:	
Slave Labour Class I	
1	Czech
2	English
3	German
4	Polish
5	Russian
Slave Labour Class II	
1	Dutch
2	English
3	French
4	German
5	Hebrew
6	Italian
7	Polish
8	Russian
Refugee Class	
1	English
2	French
3	German
4	Hungarian
5	Italian
6	Russian
7	Slovak
Brochures	
1	Czech
2	Dutch
3	English
4	French
5	German
6	Italian
7	Polish
8	Russian
9	Ukraine

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CORRESPONDENCE:

1722. Letter of Support from Dr. Kurt Hauri, Chairman, and Daniel Zuberbühler, Director, of the SFBC to Paul Volcker, Chairman of ICEP (Jan. 29, 1997).

1723. Letters from William J. Clinton, President of the U.S., to Edgar Bronfman, President of the World Jewish Restitution Org. (Sept. 8, 1995 & May 2, 1996).

1724. Letter from Frank Hydoski, ICEP auditor, to Hon. Edward R. Korman (Dec. 1, 2008). **

1725. Letter from Hon. Edward R. Korman to Gabriel Schoenfeld, Editor of COMMENT. (Sept. 30, 2004). **

1726. Letter from Hon. Edward R. Korman to Diana Taylor, N. Y. State Banking Superintendent (Feb. 1, 2006). **

1727. Letter from Paul Shapiro & Radu Ioanid, Director, Center for Advanced Holocaust Studies & Director, International Archival Programs, United States Holocaust Memorial Museum to The German Foundation (Aug. 11, 2003). **

1728. Letter from Walter Stucki, head of the Swiss delegation, to the Chiefs of the Allied Delegations, May 25, 1946, RG 59.

FEDERAL COMMITTEE HEARINGS & STATEMENTS:

1729. *America's Role in Addressing Outstanding Holocaust Issues: Hearing Before the S. Comm. on Europe of the H. Comm. on Foreign Affairs*, 110th Cong. (Oct. 3, 2007) (Statement of Holocaust Survivors, Descendants and Restitution Claimants). **

1730. *Banking Deposits of WWII Jews in Swiss Banks: Hearings Before the S. Comm. on Banking, Hous. & Urban Affairs*, 104th Cong., 2d Sess. (Apr. 23, 1996).

1731. FEDERAL ASSEMBLY OF THE SWISS CONFEDERATION [CONSTITUTION] Dec. 20, 1962, Federal Resolution on the Assets in Switzerland of Foreigners or Stateless Persons who have been Victims of Racial, Religious and Political Persecution, *reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims Hearing Before the H. Comm. on Banking & Fin. Servs.*, 104th Cong. 2d Sess. at 264 (Dec. 11, 1996).

1732. *Full Committee Hearing on World War II Assets of Holocaust Victims, Hearing Before the H. Comm. on Banking and Fin. Serv.*, 106th Cong. (1999) (statement of Richard H. Weisberg, Professor, Banjamin N. Cardozo School of Law).

1733. Peter Hug & Marc Perrenoud, *Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries* 34 (Oct. 1996), *reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 104th Cong. 322 (Dec. 11, 1996).

1734. *Holocaust Era Insurance Restitution After International Commission on Holocaust Era Insurance Claims (ICHEIC): Hearing Before the S. Subcomm. on Int'l Operations and Orgs., Democracy and Human Rights of the Comm. on Foreign Relations*, 110th Cong. 2 (May 6, 2008). **

1735. *Opening up of the Bad Arolsen Holocaust Archives in Germany: Hearing before the H. Subcomm. on Europe of the Comm. on Foreign Affairs*, 110th Cong. 26 (Mar. 28, 2007). **

1736. JACQUES PICARD, SWITZERLAND AND THE ASSETS OF THE MISSING VICTIMS OF THE NAZIS (1993*), reprinted in The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking & Fin. Servs.*, 104th Cong. 2d Sess. 236 (Dec. 11, 1996).

1737. *Restitution of Holocaust Assets: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 106th Cong. 2d Sess. (Feb. 9, 2000) (statement of Paul A. Volcker, Chairman, Indep. Comm. of Eminent Persons).

1738. *Righting the Enduring Wrongs of the Holocaust: Insurance Accountability and Rail Justice: Hearing Before the H. Comm. on Foreign Affairs*, 112th Cong. 43 (Nov. 16, 2011). **

1739. Seymour J. Rubin & Abba P. Schwartz, *Refugees and Reparations*, 16 L. & CONTEMP. PROBS. 377 (1951) *reprinted in The Eizenstat Report and Related Issues Concerning United States and Allied Efforts to Restore Gold and Other Assets Looted by Nazis During World War II: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 105th Cong. 271 (June 25, 1997).

1740. *Swiss Banks and the Status of Assets of Holocaust Survivors or Heirs: Hearings Before the S. Comm. on Banking, Hous. & Urban Affairs*, 104th Cong. 2d Sess. (Apr. 23, 1996).

1741. *The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking & Fin. Servs.*, 104th Cong. 2d Sess. at 264 (Dec. 11, 1996).

1742. *The Eizenstat Report and Related Issues Concerning U.S. and Allied Efforts to Restore Gold and Other Assets Looted by Nazis During World War II: Hearing Before the H. Comm. on Banking and Fin. Serv.*, 105th Cong. (1997) (statement of Gerhard L. Weinberg, Professor, Univ. of N.C.).

1743. *World War II Assets of Holocaust Victims: Hearing Before the H. Comm. on Banking & Fin. Serv.*, 106th Cong. (1999) (statement of Jean-Pierre Landau, Dir. Gen. of the French Banking Ass'n).

MISCELLANEOUS:

1744. Congress Weekly: A Review of Jewish Interests, Dec. 11, 1942, 9 (3), includes: 1) Memorandum to the President of the United States; 2) The Record of Nazi Atrocities; and 3) President Roosevelt to Act on Hitler Massacres: Assures Jewish Delegation of Effort to Fix Guilt in Nazi Crimes against Jews.

1745. RANDOLPH PAUL, FOREIGN RELATIONS OF THE U.S., 5 REPORT TO PRESIDENT TRUMAN: IMPLEMENTATION OF THE SAFEHAVEN PROGRAM; NEGOTIATION OF ACCORDS WITH

SWITZERLAND AND SWEDEN ON LIQUIDATION OF GERMAN EXTERNAL ASSETS IN THOSE COUNTRIES 202 (1946).

1746. Franklin D. Roosevelt, Text of Memoranda submitted to the President by the Jewish Delegation (including Roosevelt's response), Congress Weekly: A Review of Jewish Interests 9 (38), (Dec. 11, 1942).

1747. Roger Weisenback, Call for Discussion (CFD) of RICHARD H. WEISBERG, VICHY LAW AND THE HOLOCAUST IN FRANCE (N. Y. Univ. Press, 1996).