

*In re Holocaust Victim Assets Litigation (Hon. Edward R. Korman)*  
*Final Report on the Swiss Banks Holocaust Settlement Distribution Process,*  
*Special Master Judah Gribetz and Deputy Special Master Shari C. Reig*

EXECUTIVE SUMMARY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

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

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

***EXECUTIVE SUMMARY***

Judah Gribetz  
Special Master

Shari C. Reig  
Deputy Special Master

Morgan, Lewis & Bockius LLP  
101 Park Avenue  
New York, New York 10178  
March 28, 2019

**TABLE OF CONTENTS**

	<b>Page</b>
I. EXECUTIVE SUMMARY .....	1
II. THE \$1.25 BILLION SWISS BANKS HOLOCAUST SETTLEMENT .....	2
III. THE BACKGROUND.....	12
IV. SUMMARY OF DISTRIBUTION PROGRAMS.....	24
V. THE DISTRIBUTION PROGRAMS.....	31
A. The Deposited Assets Class .....	31
1. The Claims Program .....	31
2. Concealment by the Swiss Banks .....	33
B. The Looted Assets Class.....	47
C. Slave Labor Class I.....	55
D. Slave Labor Class II.....	66
E. The Refugee Class .....	73
F. Insurance Claims.....	82
G. The Victim List Project.....	85

## EXECUTIVE SUMMARY

**I. EXECUTIVE SUMMARY**

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, though, 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 victims' 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 with minimal value; or whatever records might once have existed no longer were kept. They said that the person asking could receive no further information without providing proof of who the account owner was, how that person was related, and how that person died (even if at the hands of the Nazis, who did not generally hand out death certificates, although Swiss banks nevertheless often continued to demand such proof of death). Account owners and their heirs were turned away time and time again, but they did not forget and they did not give up. Finally, in the 1990s, they obtained a forum to pursue their property: the United States judicial system. Because of that forum, more than 458,400 Holocaust victims and heirs worldwide have received nearly \$1.285 billion in compensation arising from the Holocaust-era activities of Swiss banks and other Swiss institutions.

This Executive Summary provides an overview of the principles and decisions that guided the distribution process.<sup>1</sup>

---

<sup>1</sup> This Executive Summary of the Final Report is intended to provide a summary 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

## EXECUTIVE SUMMARY

**II. THE \$1.25 BILLION SWISS BANKS HOLOCAUST SETTLEMENT**

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 in August 1998 for \$1.25 billion, to be paid jointly by Switzerland’s two major banks, United Bank of Switzerland (“UBS”) and Credit Suisse, creating a class action fund to be administered by the Court.<sup>2</sup> A formal Settlement Agreement was executed on January 26, 1999 (the “Settlement Agreement” or the “Settlement”). 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.<sup>3</sup> It was envisioned that the Settlement Fund would

---

opportunity to read the full Final Report (approximately 2,000 pages including exhibits and bibliography), some excerpts from the Final Report are repeated in their entirety in this Executive Summary.

<sup>2</sup> The Swiss government did not participate in the settlement and paid no part of the Settlement Fund of \$1.25 billion.

<sup>3</sup> Ambassador Eizenstat served variously in many governmental roles, including as President Clinton’s Under Secretary of State for Economic, Business & Agricultural Affairs, Under Secretary of Commerce, Deputy Secretary of the Treasury, and Special Representative of the President and Secretary of State for Holocaust-Era Issues. He remains actively involved with Holocaust compensation issues. He described his experiences with the 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 and other Holocaust litigation and settlement include, among others, Professor Michael J. Bazylar’s chapter, *Achieving A Measure of Justice and Writing Holocaust History through U.S. Restitution Litigation*, in *RETHINKING HOLOCAUST JUSTICE: ESSAYS*

## EXECUTIVE SUMMARY

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 establish a specific method of allocating the Settlement Fund among these diverse victim groups and classes. 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."<sup>4</sup> The Plaintiffs' Executive Committee on December 15, 1998 unanimously endorsed the Court's proposal to appoint Judah Gribetz as Special Master, responsible for devising the distribution plan. Shortly thereafter, on January 26, 1999, the parties signed the Settlement Agreement, and on March 31, 1999, the Court issued an order formalizing Mr. Gribetz's appointment. The Court approved the Settlement Agreement on July 26, 2000, at the same time imposing important conditions intended to facilitate the review of claims, including the production of records relating to Swiss bank accounts, Swiss use of slave labor, and refugees.<sup>5</sup> On September 11, 2000, the Special Master 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

---

ACROSS DISCIPLINES 235 (Norman J. W. Goda ed., Berghahn Books 2017); Michael Bazylar, *www.swissbankclaims.com: The Legality and Morality of the Holocaust-Era Restitution Settlement with the Swiss Banks*, 25 FORDHAM J. INT'L. L.J. S-64 (2001); Michael J. Bazylar, 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. Bazylar & Roger P. Alford eds., N. Y. Univ. Press 2006); LEORA BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW: UNFINISHED BUSINESS (Univ. of Mich. Press 2017); 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).

<sup>4</sup> 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](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.

<sup>5</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139 (E.D.N.Y. 2000).

## EXECUTIVE SUMMARY

the United States Court of Appeals for the Second Circuit affirmed on July 26, 2001.<sup>6</sup> By order dated October 3, 2002, the Court appointed Special Master Gribetz's colleague, Shari C. Reig (who had worked with the Special Master from the time of his appointment) as Deputy Special Master.

What has the Swiss Banks Holocaust Settlement claims process accomplished? It has resulted in the payment of nearly \$1.285 billion — an amount exceeding the \$1.25 billion settlement fund — to over 458,400 Holocaust victims and their heirs in every U.S. state, and in more than 80 nations. Of the \$1.285 billion, nearly \$720 million represents payments to owners or heirs of Swiss bank accounts. The Court-supervised bank account claims program resolved more than 104,000 claims to the accounts of over 415,000 potential account owners. The claims administrators “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.”<sup>7</sup>

One such award decision describes the claim filed by the nephew of Felix David, who owned a hardware store in Breslau, Germany and later moved to Berlin. Mr. David was forced into slave labor, and died in the Theresienstadt concentration camp in Czechoslovakia. At some point during the war years, an employee of a Swiss bank reported Mr. David's accounts to Nazi authorities, who in turn asked for the funds from the bank. The Swiss bank voluntarily turned over Mr. David's accounts to the Nazi authorities in Germany. Some six decades later, Mr. David's nephew finally was compensated for this loss.

Another award decision describes the claim filed by the heirs of Hedwig Hauser, born in 1915 in Czechoslovakia. At the age of 24, Mrs. Hauser was able to flee after the Nazi occupation in 1939, but her parents perished in the Treblinka death camp in German-occupied

---

<sup>6</sup> *In re Holocaust Victim Assets Litig.*, No. 96-4849, 2000 WL 33241660, at \*4 (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).

<sup>7</sup> Leora Bilsky, *The Judge and the Historian: Transnational Holocaust Litigation as a New Model*, 24 HIST. & MEMORY 117, 130 (2012).

## EXECUTIVE SUMMARY

Poland. Mrs. Hauser had owned a Swiss savings account, but it was never returned to her. Instead, in 1985, the bank transferred Mrs. Hauser's assets to a collective account for dormant assets. The account finally was returned to her heirs through the Court's claims process.

The almost \$720 million repaid to owners of Swiss bank accounts also includes the largest single award issued by the Court, in the amount of approximately \$22 million. One of the award recipients was Maria Altmann, a member of a family whose art was looted by the Nazis, and who filed suit in federal court in Los Angeles against the Austrian government seeking the return of that art.<sup>8</sup> Following several years of litigation, including proceedings before the U.S. Supreme Court as well as Austrian courts, Ms. Altmann in 2006 finally was able to reclaim her family's paintings, among them, the celebrated "Portrait of Adele Bloch-Bauer" by Gustav Klimt. Her struggle for restitution was highlighted in the 2015 film "*Woman in Gold*."

---

<sup>8</sup> *In re Account of Österreichische Zuckerindustrie AG Syndicate*, available at [http://www.crt-ii.org/awards/apdfs/Osterreichische\\_Zuckerindustrie.pdf](http://www.crt-ii.org/awards/apdfs/Osterreichische_Zuckerindustrie.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](http://www.crt-ii.org/awards), as well as at the website for this Settlement, [www.swissbankclaims.com](http://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 decisions (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 increases that were authorized by the Court after the initial awards (and in some instances, amendments) were issued.

## EXECUTIVE SUMMARY



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

Less well known is that in addition to losing their 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 these 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."<sup>9</sup> This was in violation of the bank's 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.

Through the Court's claims processes, thousands of other documented Swiss bank accounts were returned, with each family receiving an award averaging over \$184,000. The nearly \$720 million repaid to the Deposited Assets Class also included awards of \$7,250 each, made to Holocaust victims and heirs for claims that were credible but who could not provide sufficient documentation because of the banks' massive destruction of Holocaust-era records.<sup>10</sup>

The distribution process also has compensated more than 198,000 members of Slave Labor Class I. The vast majority of these individuals were slaves at the hands of the Nazis and their allies; the others were heirs of surviving slave laborers who passed away after the settlement was reached. These survivors received a total of over \$280 million. This sum

---

<sup>9</sup> William Glaberson, *For Betrayal by Swiss Banks and Nazis, \$21 Million*, N.Y. TIMES, Apr. 14, 2005.

<sup>10</sup> These were called "Plausible Undocumented Awards," or "PUAs."

## EXECUTIVE SUMMARY

represented some measure of financial recognition of the slave labor that the victims were forced to perform at the hands of the Nazis. Because of the pervasive ties among the Nazi government, German industry, and Swiss financial institutions, it was presumed that the proceeds of their labor ended up in Switzerland.<sup>11</sup>

One member of Slave Labor Class I was 106 at the time of his award. 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), this gentleman's name is not disclosed here, but his name, and all other relevant identifying information, are known to and were filed with the Court under seal.<sup>12</sup> He was born in Adelain, Hungary in 1897. At the age of 45, he was forced to join a labor battalion on the Eastern front and in Galicia (present day Ukraine). He spent two and a half years building roads, clearing minefields and digging antitank ditches, until he escaped. He went into hiding and was liberated in Hungary. Another member of Slave Labor Class I was a survivor who was born in 1918 in Baia, Romania. At the time of her application for compensation, she was completely incapacitated due to a stroke, and could not describe her experiences during the Holocaust. However, a Court-funded program enabled researchers to locate archival documents proving that she had performed slave labor in Mogilev, Belarus. Both of these survivors, and nearly 200,000 others, were compensated under the Settlement Fund.

The claims process has paid another 570 individuals nearly \$700,000 for another category of slave labor: that performed directly for Swiss-owned companies. These Nazi victims were designated, under the Settlement Agreement, as members of Slave Labor Class II. The recipients include a survivor who was deported from her home in Poland to Germany. She was a slave laborer for the Swiss company Maggi GbmH, at its plant in Singen, Germany. She

---

<sup>11</sup> The Court approved the claims of 173,914 Jewish former slave laborers. Another 24,109 claims were approved for Romani, Jehovah's Witness, homosexual and disabled former slave laborers.

<sup>12</sup> 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 disclosed on published lists in 2001 and 2005, 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. 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.

## EXECUTIVE SUMMARY

shared a small, locked, unheated room with 16 other young women and often was forced to sleep on the floor of the factory basement, receiving 600 grams of bread per week.

The Court's programs additionally recognized and paid over \$11.5 million to 4,158 persons under the Refugee Class claims process. These were survivors who sought refuge in Switzerland but were turned away or expelled, or who managed to gain admission into Switzerland, but suffered mistreatment. Among them was a French victim who was 20 years old when she and her father tried to flee to Switzerland in the fall of 1943. They were turned away at the Swiss border three times, and were forced to return to Paris. The claimant's father was deported to Auschwitz, where he perished. The claimant was able to flee to Lyon, where she spent the rest of the war in hiding. Another survivor recognized through the Court's Refugee Class program was a Romani victim born in Germany in 1921. In 1942, she fled to Switzerland with her two children. Although the family was allowed to enter Switzerland, they were interned at a camp on the Swiss-German border near Basel. They were expelled from Switzerland after a few weeks. The claimant's children died while the family was in flight, and she never saw her husband again.

The fifth Class established under the Settlement Agreement was the Looted Assets Class, consisting of Nazi victims whose assets were looted by the Germans or Nazi sympathizers. These survivors shared an important common bond. All were looted during the Nazi era; some portion of their property or its proceeds might have been transacted through Switzerland; and all were needy when the case settled. These individuals received compensation in the form of humanitarian aid. Although nothing in the settlement negotiated by the parties was specifically directed towards the plight of needy survivors, the Distribution Plan nevertheless made it possible for the Court to provide over \$256 million in food, medicine, medical devices, home health care, heating supplies, and other basic needs for more than 237,400 Holocaust survivors living at the edge of subsistence. Some of these victims settled, after the Holocaust, in Brooklyn, just a few blocks from the courthouse overseeing this matter, while others lived thousands of miles away. A significant portion of this class consisted of the so-called "double victims," who lived through both Nazism and Communism. After the collapse of Communism, these double

## EXECUTIVE SUMMARY

victims had lost the social safety nets that had been available to them, and that often were available to other victims in Israel, the United States and other parts of the world.<sup>13</sup>

One such survivor, who at the time of the settlement was bedridden and living in the former Soviet Union (“FSU”) on a monthly pension of \$28, had escaped a concentration camp and hidden in a forest outside of Kiev. At the age of 89, assistance programs augmented by funding from the Settlement Fund provided her with food packages, medicine, winter relief and weekly home care. In another example of the aid distributed under Court-funded programs, a concentration camp survivor in the U.S., who had for some time been able to live independently, later fell and injured his back. The Looted Assets Class programs enabled him to receive assistance from a part-time home health care aide.

The ability of these survivors to receive compensation was due in large part to the District Court’s conclusion that it was time to grapple with legal issues that in earlier years had been sidestepped.

Quite apart from legal principles advanced or substantial settlements achieved, perhaps the most important outcome of the *Holocaust Victim Asset[s] Litigation* is that claims made by Holocaust victims in American courts were recognized and responded to in an American court by a wise and courageous federal judge.... The judicial power of the United States has been harnessed in the cause of Holocaust justice and 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.<sup>14</sup>

There was nothing inevitable about the Court’s decision to support the settlement of the claims, as opposed to dismissal. Previous litigation had not produced these results. For example, slave laborers in the 1960s had attempted to bring suit in the U.S. against German companies. 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

---

<sup>13</sup> See *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”), Foreword, at x.

<sup>14</sup> LEONARD ORLAND, *A FINAL ACCOUNTING: HOLOCAUST SURVIVORS AND SWISS BANKS* xvii, 133 (Carolina Academic Press 2010) (Orland, *A Final Accounting*).

## EXECUTIVE SUMMARY

Auschwitz to take advantage of the proximity to such a large slave labor pool. Farben was also the company that manufactured the Zyklon B poison used in the gas chambers. In a 1966 decision, a U.S. court had dismissed the suit against Farben, finding 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 feasons 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.”<sup>15</sup>

Ironically, one of the claimants who received compensation under the Settlement Fund had been turned away decades earlier under the IG Farben case, as the Special Masters noted in a treatise on reparations: “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.... [T]he Court authorised an award of \$5,000 [subsequently increased to \$7,250] to a Holocaust survivor who plausibly had 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 a 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 on the Auschwitz arrival ramp 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.”<sup>16</sup>

---

<sup>15</sup> *Kelberine v. Societe Internationale*, 363 F.2d 989, 995 (D.C. Cir. 1966).

<sup>16</sup> 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, *The ‘Canada’ Commando as a Force for Resistance in Auschwitz: Redefining Heroism*, 12.2 PROTEUS: A J. OF IDEAS 30, 32 (Fall 1995). Professor

## EXECUTIVE SUMMARY

“The professor’s mother [and aunt] – who [were] paid under the Swiss Banks settlement because of the complex claims processes Judge Korman was willing to undertake – happens to have been one of the plaintiffs in the IG Farben case: the very lawsuit that was dismissed in 1966 because the claims seemingly presented so many obstacles. Now, [over] forty years later, this Holocaust survivor finally ... received some measure of compensation for what happened to her in Europe in the 1940s, because a United States federal judge concluded in the 1990s that justice was long overdue.”<sup>17</sup>

---

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, the scope of which is still being examined. *See, e.g.*, Erich Lichtblau, *The Holocaust Just Got More Shocking*, N.Y. TIMES, Mar. 3, 2013 <https://www.nytimes.com/2013/03/03/sunday-review/the-holocaust-just-got-more-shocking.html?mtref=www.google.com&gwh=BC7B399D2403CD97B5DAC0FC6A88D2A9&gwt=pay&assetType=opinion> (discussing the research and cataloguing by the United States Holocaust Memorial Museum of more than 42,000 Nazi camps and ghettos, many of which had not been previously known).

Upon stepping off the train at Auschwitz itself, 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. 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 admonition and lied to Josef Mengele himself 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 told 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 told 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.

<sup>17</sup> Gribetz & Reig at 142. As Professor Michael Bazyler, one of the first scholars to delve into the Holocaust-era litigation of the late 1990s, has stated: “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.” 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).

## EXECUTIVE SUMMARY

**III. THE BACKGROUND**

The Swiss Banks Settlement claims process provided what historian Michael Marrus has called “some measure of justice” to Holocaust victims.<sup>18</sup> However, the conflict that led to the settlement could have and should have been avoided entirely, had the banks responded promptly to their clients’ pleas, beginning immediately after the Holocaust, to open their files and their vaults. As pointed out by the committee led by former Chairman of the Board of Governors of the United States Federal Reserve System Paul A. Volcker that audited the banks in the 1990s: “[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. An historic opportunity was missed.”<sup>19</sup>

The lawsuits were filed because this “historic opportunity was missed.”<sup>20</sup> 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,” and they demanded “proof that could only be supplied by access to the banks’ records.”<sup>21</sup> The problem was that the Swiss banking system was not designed to encourage the return of property. In contrast to other nations, dormant Swiss accounts did not escheat to the state, but instead were held by the banks, which were able to use the funds for their own purposes.

The banks also did not acknowledge that they had transferred deposits to the Reichsbank on the basis of coerced authorizations, since that practice “called their loyalty to depositors in

---

<sup>18</sup> See MARRUS at 136.

<sup>19</sup> PAUL VOLCKER, INDEP. COMM. OF EMINENT PERSONS, REPORT ON DORMANT ACCOUNTS OF VICTIMS OF NAZI PERSECUTION IN SWISS BANKS 1-2 (1999) (“VOLCKER REPORT”) ¶ 48.

<sup>20</sup> *Id.*

<sup>21</sup> 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 7, 23* (June 3-5, 2009) (unpublished paper presented at the Conference of Int’l Ass’n of Procedural Law, Toronto).

## EXECUTIVE SUMMARY

question, and because they feared being asked to pay again since carrying out coerced payments to third-persons violated Swiss law.”<sup>22</sup>

When the issue arose in the mid-1990s, as it periodically had for decades, the banks’ response was reflexive: they took a survey and reported meager results. A preliminary survey in September 1995 revealed a total of 893 dormant accounts with a value of SFr. 40.9 million. The main survey, in February 1996, revealed even a lower amount: 775 accounts with a value of SFr. 38.7 million (approximately \$32 million).<sup>23</sup> Those reports by the banks followed a decades-long pattern of responding to inquiries from Holocaust victims about their assets by reporting only nominal amounts. A 1962 bank survey, for example, had yielded only 1,374 accounts, which were registered with the banks’ central office and were worth SFr 11.2 million after interest.<sup>24</sup> 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.<sup>25</sup>

This time, though, with renewed interest in the 1990s, 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.”<sup>26</sup>

The Swiss banks came under scrutiny, this time, not just by the victims, but by many in the financial community. As the *Economist* urged in 1996: “Now, half a century on, it is time

---

<sup>22</sup> *Id.*

<sup>23</sup> VOLCKER REPORT, Annex 5, ¶¶ 46, 49.

<sup>24</sup> VOLCKER REPORT, Annex 5, ¶¶ 44-45.

<sup>25</sup> *Id.* ¶ 45.

<sup>26</sup> DEBORAH E. LIPSTADT, HOLOCAUST: AN AMERICAN UNDERSTANDING 126 (Rutgers Univ. Press 2016).

## EXECUTIVE SUMMARY

for the banks to come clean and, if necessary, pay out.”<sup>27</sup> 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.”<sup>28</sup> TIME magazine ran a cover story on the issue of “Nazi gold.”<sup>29</sup>

The public focus on these issues ran especially high after one of the banks was found in January 1997 to be shredding Holocaust-era 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.”<sup>30</sup>

With this renewed attention, the banks’ Holocaust-era behavior was examined to a degree that Switzerland had not experienced before. The U.S. Congress held hearings on the subject (in 1996 and again in 2000),<sup>31</sup> while in Switzerland, two commissions were created to explore that nation’s actions during and after the Holocaust era.

---

<sup>27</sup> *Switzerland and the Jews: Some lessons learned*, ECONOMIST, May 11, 1996, at 15.

<sup>28</sup> Editorial, *The Secrets of Swiss Bankers*,” N.Y. TIMES, Sept. 25, 1996, <https://www.nytimes.com/1996/09/25/opinion/the-secrets-of-swiss-bankers.html> (*The Secrets of Swiss Bankers*).

<sup>29</sup> Johanna McGeary, *Echoes of the Holocaust*, TIME MAG., Feb. 24, 1997, at 36.

<sup>30</sup> Editorial, *Swiss Stonewalling*, N.Y. TIMES, Jan. 18, 1997, <http://www.nytimes.com/1997/01/18/opinion/swiss-stonewalling.html>.

<sup>31</sup> *See Swiss Banks and the Status of Assets of Holocaust Survivors or Heirs: Hearings Before the S. Comm. on Banking, Hous. and Urban Affairs*, 104th Cong. 2d Sess. (Apr. 23, 1996); *The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 104th

## EXECUTIVE SUMMARY

The Swiss Bankers Association (“SBA”), the World Jewish Restitution Organization (“WJRO”) and the World Jewish Congress (“WJC”),<sup>32</sup> through a May 2, 1996 Memorandum of Understanding, established the Independent Committee of Eminent Persons, led by former Chairman of the Board of Governors of the United States Federal Reserve System Paul A. Volcker (“ICEP” or the “Volcker Committee”).

Seven months later, on December 13, 1996, the Swiss Parliament and Federal Council established the Independent Commission of Experts Switzerland — Second World War (“ICE” or “Bergier Commission,” after its Chair). The Bergier Commission’s purpose was to “‘examine the period prior to, during, and immediately after the Second World War.’”<sup>33</sup> The Bergier Commission, which was comprised of internationally recognized historians and economists, was mandated to conduct a historical investigation into the “contentious events and incriminating evidence” of Switzerland’s conduct during and after the Second World War.<sup>34</sup> On March 22,

---

Cong. 2d Sess. (Dec. 11, 1996); *Restitution on Holocaust Assets: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 106th Cong. 2d Sess. (Feb. 9, 2000).

<sup>32</sup> The leaders of the U.S. and the State of Israel each expressed their confidence in the ability of the WJRO and WJC (and its then-President, Edgar M. Bronfman) to speak on behalf of Nazi victims’ claims of material loss. In a letter dated September 8, 1995, President Clinton stated 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.” In a May 2, 1996 letter, President Clinton reiterated his “continuing support in the area of restitution of Jewish property ... [including] the return of Jewish assets in Swiss banks.” Israel’s then-Prime Minister Yitzhak Rabin similarly stated that Bronfman “represent[ed] the Jewish people and the State of Israel” as to “restitution of Jewish assets deposited in Switzerland, along with the issues of restitution of Jewish property ... in countries of Central and Eastern Europe.” 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 51 n.127, available at <http://www.swissbankclaims.com/Chronology.aspx>. Excerpts from the Distribution Plan are also available in ORLAND, A FINAL ACCOUNTING 229-250; 293-364.

<sup>33</sup> Distribution Plan, Vol. I, at 64 (citation omitted).

<sup>34</sup> 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”). Excerpts are available in ORLAND, A FINAL ACCOUNTING 176-228.

The Bergier Commission’s members included Dr. Helen B. Junz (U.S.), who later was appointed by the Court as Special Master for the Deposited Assets Class claims process administered by the Claims Resolution Tribunal in Zurich (“CRT”), Jean-François Bergier (a Swiss historian appointed Chairman); Wladyslaw Bartoszewski (Poland), Linus von Castelmur (Switzerland), Saul Friedländer (Israel), Harold James (U.S.), Georg Kreis (Switzerland), Sybil Milton (U.S.), Jacques Picard (Switzerland), Jakob Tanner (Switzerland), Joseph Voyame (Switzerland) and Daniel Thürer (Switzerland). Because Dr. Milton and Dr. Voyame passed away during their tenures, Dr. Milton was replaced by Dr. Helen Junz, and Dr. Voyame was replaced by Daniel Thürer.

## EXECUTIVE SUMMARY

2002, the Bergier Commission issued its final report, condemning the behavior of the Swiss banks and other Swiss institutions during and after the Holocaust.

The Volcker Committee “pursued a more focused objective, ‘conduct[ing] 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,” with “two major goals: ‘(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.’”<sup>35</sup>

As the Volcker Committee observed, as noted above, the entire matter could have been avoided had Swiss banking authorities taken a different approach over the years. “[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.”<sup>36</sup> With the passage of so many decades, however, once the investigations began, they “faced challenging odds,” largely because the banks had destroyed so many account records.<sup>37</sup>

The Volcker Committee auditors found that there were approximately 6,858,116 accounts that had existed and remained open in Swiss banks between 1933-45, or were newly opened during this period. Of these more than six million accounts that had existed during the Holocaust era, no records remained for approximately 40% (2,757,950) of these accounts, which the Volcker Committee called “‘an unfillable gap ... that can now never be known or analyzed for their relationship to victims of Nazi persecution.’”<sup>38</sup> As to the approximately 4.1 million accounts for which records did remain, in many cases the banks had kept only incomplete documentation, often lacking full information about the account owner and the circumstances of

---

<sup>35</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 304 (E.D.N.Y. 2004) (quoting *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 151 (E.D.N.Y. 2000) and VOLCKER REPORT).

<sup>36</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 312 (citing VOLCKER REPORT ¶ 48).

<sup>37</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 304 (quoting *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 151).

<sup>38</sup> *Id.* (quoting *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 155 (citing VOLCKER REPORT, Annex 4, ¶5)).

## EXECUTIVE SUMMARY

the account closure. “Nonetheless, the Volcker Committee, which released its findings on December 6, 1999, succeeded in initially identifying 54,000 [later reduced to 36,000] accounts ... that it believed either ‘probably’ or ‘possibly’ belonged to victims of Nazi persecution.... [T]he Volcker Committee’s estimates were clearly conservative. Indeed, the Bergier Commission recognized that the Volcker Committee’s findings ‘constitute[d] only part of the total.’”<sup>39</sup>

At the outset of the process, when the proposal for a large-scale and definitive investigation of Holocaust-era accounts was being urged upon Swiss banks, the *New York Times* noted that the “search will not be easy and the amount of gold and other assets may prove 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.”<sup>40</sup>

The “amount of gold and other assets,” however, did not “prove smaller than imagined.”<sup>41</sup> It was far larger. As the Court observed of the Volcker Report, the “findings suggest[ed] that the value of deposited assets held by the Swiss banks could exceed the \$1.25 billion settlement amount.”<sup>42</sup> Swiss banker Hans Baer (an alternate member of the Volcker Committee, appointed by the SBA) likewise agreed that “the billion-franc mark [was] crossed quickly” when the 36,000 accounts highlighted by the Volcker Committee auditors as “probably

---

<sup>39</sup> *Id.* (quoting BERGIER FINAL REPORT at 446).

<sup>40</sup> *The Secrets of Swiss Bankers*. See also Editorial, *Banking on Switzerland*, WASH. POST, Jan. 17, 1997, available at <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 U.S., 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”).

<sup>41</sup> *The Secrets of Swiss Bankers*.

<sup>42</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 153 (citing VOLCKER REPORT, Annex 4, ¶¶ 41-42 and n.23).

## EXECUTIVE SUMMARY

or possibly” belonging to Holocaust victims were assessed at an “average base deposit of SFr 10,000.”<sup>43</sup>

Following the release of the Volcker Report, the banks reverted 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 audit. The banks moved to dismiss the class action litigation on the grounds that the lawsuits would interfere with the Volcker Committee’s important work,<sup>44</sup> 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 Krayner, 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 represent the best attainable results and therefore must be accepted as conclusive by all responsible parties.”<sup>45</sup>

That support for the Volcker audit, however, was less evident when the Volcker Committee issued its findings on December 6, 1999, concluding 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. On that same date,

---

<sup>43</sup> HANS J. BAER, *IT’S NOT ALL ABOUT MONEY: MEMOIRS OF A PRIVATE BANKER* 450-51 (Beaufort Books 2008).

<sup>44</sup> The Swiss government, though not a party to the litigation against the private Swiss banks, supported the banks’ motion to dismiss the suits. Alfred Defago, the Swiss Ambassador to the U.S., wrote to Judge Korman that “the suit would violate Swiss sovereignty” and “hamper” Mr. 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* wrote 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>.

<sup>45</sup> *The Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the H. Comm. on Banking and Fin. Servs.*, 104th Cong. at 69 (Dec. 11, 1996) (statement of Dr. Georg Krayner, Chairman, Swiss Bankers Association).

## EXECUTIVE SUMMARY

December 6, 1999, the Swiss Federal Banking Commission (“SFBC”) announced that it alone was responsible for decisions on publishing any of the accounts. The SFBC added that it would conduct additional analysis before reaching a decision on the Volcker Committee recommendations.<sup>46</sup>

When it concluded its analysis, the SFBC declined to adopt the full panoply of Volcker Committee recommendations. Mr. Volcker wanted to make available for public scrutiny all of the 4.1 million accounts that still remained, of the 6.8 million that had existed in total in Swiss banks in the relevant 1933-1945 period (the “Total Accounts Database” or “TAD”), with the hope that many of these accounts would be claimed by their heirs. The Swiss banking authorities disagreed.<sup>47</sup> Instead, following a “scrubbing” process that reduced the 54,000 accounts “probably or possibly” belonging to Holocaust victims to 36,000, the SFBC with limited exceptions allowed access only to those 36,000 accounts (the “Accounts History Database” or “AHD”). Of these 36,000 accounts, the SFBC authorized only 21,000 for publication, stating that the Volcker Committee had deemed those accounts to “probably” be related to Holocaust victims, while the accounts not authorized for publication were “possibly” related to victims.<sup>48</sup> (Some years later, another 3,000 accounts were published after 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.”<sup>49</sup>

The result was a claims process that had to operate without the access and cooperation that had been envisioned when the Volcker audit began.

---

<sup>46</sup> 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”).

<sup>47</sup> Distribution Plan, Vol. I, at 59.

<sup>48</sup> SFBC Press Release, 30 March 2000, 16.30; *see also* Distribution Plan, Vol. I, at 94-96.

<sup>49</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 155-158 (citations omitted).

## EXECUTIVE SUMMARY

Nevertheless, Holocaust victims who had waited so long deserved every possible opportunity to find their lost Swiss bank accounts. For that reason, rather than limiting the process to the formal bank account claim forms that were filed, consisting of some 33,000, the Court vastly expanded the program by accepting additional categories of claims. This included tens of thousands of “Initial Questionnaires” (preliminary surveys of potential class members) that sometimes only alluded to a possible Swiss account. With this liberalization of the rules, more than 104,000 bank account claims would be considered. Moreover, rather than restricting the search for assets to those persons that claimants had specifically stated were account owners, the Court authorized its administrative agent, the Zurich-based Claims Resolution Tribunal (CRT), to look beyond the accounts formally claimed.<sup>50</sup> The CRT was authorized to determine whether other family members, not specifically named by claimants as possible accounts owners

---

<sup>50</sup> The 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 the Court said of Dr. Junz in a 2006 Memorandum & Order: “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 served on the Court’s behalf as CRT Special Master, with important assistance from attorney Jaimie Taff, who also had worked at the CRT, and from Kristina Emminger. Mr. Bradfield, who passed away in July, 2017, had been counsel to the Volcker Committee and supervised the audit firms in their investigation of Swiss accounts. He played a crucial role in revealing the scope of the Holocaust-era assets that had never been returned to their rightful owners. The CRT, which at its height of operations numbered some 100 staff members, employed more than 280 persons over the years. The CRT was led throughout the claims process by its dedicated Secretaries General, Mary Carter (who passed away in July, 2012) and Dov Rubinstein. The CRT also received pivotal 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.

## EXECUTIVE SUMMARY

but mentioned in the claim materials, might have owned Holocaust era Swiss bank accounts. As a result, over 415,000 separate names provided by claimants needed to be and were analyzed.

In addition, 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 a so-called “voluntary assistance” process yielded more information. More than 1.5 million “matches” of possible owners to accounts were generated by all of these efforts. These matches needed to be studied one by one, an analysis that was impacted and delayed by the absence of millions of records that had been destroyed by the banks.

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 (approximately \$500,000 in 2018, and considerably less in 1947), ended up decades later with a judicially-supervised and transparent claims process that found and returned almost \$720 million in bank accounts to Holocaust survivors and their heirs.<sup>51</sup>

\*

\*

\*

When the case settled, many observers believed that this process of finding and compensating individuals for the material harms they had suffered could not, and should not, be undertaken. One viewpoint was that the Court could take the \$1.25 billion, divide it up among the more than 600,000 persons who had expressed interest in the case (or perhaps the millions who were potentially eligible under the Settlement Agreement’s broad criteria), and issue payments in equal amounts to all claimants, regardless of their Holocaust-era experiences. A nearly opposite viewpoint was that the best use of the settlement was to fund projects that would benefit (or be named in the memory of) Holocaust survivors *en masse*, with no individual payments.

Both methods would have been considerably faster and less costly than an individualized claims process. However, neither the *pro rata* distribution of the fund across a broad swath of

---

<sup>51</sup> See VOLCKER REPORT, Annex 5 (“Treatment of Dormant Accounts of Victims of Nazi Persecution”), ¶¶ 26-30.

## EXECUTIVE SUMMARY

claimants, whatever their personal experiences in the Holocaust, nor the transfer of lump-sum payments to a handful of programs, was deemed by the Special Masters and the Court to be an appropriate means of distributing the Settlement Fund. The Settlement Fund was not simply cash. It was the tangible symbol of the long-awaited recognition, decades after the Nazi era, of many truths: that lives were shattered and property was stolen, including Swiss bank accounts whose owners still could be identified from records that continued to exist; that unspeakable individual losses still could be remembered and materially compensated in some way; and that memories of the Holocaust still mattered, and would be solicited and preserved.

It was therefore crucial for the distribution process to take into consideration every victim on whose behalf the claims were brought. Otherwise, compensation efforts would have run the risk of “anonymizing” the victims, one of the many catastrophic effects of the Holocaust itself. As historian Gerhard L. Weinberg has observed, grouping Nazi victims together can make one “lose sight of the fact that each [person] 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?”<sup>52</sup>

Each man, woman and child, whether he or she perished or survived, had a unique story. Those narratives were heard by the U.S. judicial system. Some 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 summarized personal histories revealing new dimensions about the scope of the Holocaust, and the role played by Switzerland. These histories revealed Swiss bank accounts, meticulously stripped to nothing; back-breaking labor in the concentration camps and ghettos for institutions that sent their profits into Switzerland; enslavement by Swiss companies; and Swiss border guards handing refugee families over to

---

<sup>52</sup> 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).

## EXECUTIVE SUMMARY

German authorities, often over the objections of Swiss civilians who decried their nation's official policies.

As a result of the \$1.25 billion Settlement Agreement, some of these material losses were compensated, and in the case of those who lost bank accounts, repaid in full as nearly as possible. In addition, thousands of individual stories, including many not previously known, were revealed and recorded. They are available on the internet (<http://www.swissbankclaims.com/>), where they will remain part of the historical record of the Holocaust.<sup>53</sup> And 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 Agreement under the Court's Victim List Project. Through the 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 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.

In sum, as a result of these choices in allocating and distributing nearly \$1.285 billion (an amount that, due to interest and tax benefits, ultimately exceeded the \$1.25 billion Settlement Fund), more than 458,400 victims have received financial compensation. Perhaps of equal importance, some additional portion of the memory of the Holocaust has been preserved, and as author and scholar Menachem Rosensaft has noted, it is the "[p]reservation and transfer of memory" that is "the most critical mission ... so as to ensure meaningful and authentic

---

<sup>53</sup> 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.

## EXECUTIVE SUMMARY

Holocaust remembrance in future generations. As the ranks of survivors steadily dwindle, this task becomes ever more urgent.”<sup>54</sup>

Judge Korman’s active management of the litigation and settlement also helped pave the way in the years that followed for millions of dollars in additional compensation for Holocaust victims and heirs. Professor Michael Bazylar has described as “startling” the ability of the case “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.”<sup>55</sup> For this reason, the Swiss Banks Holocaust Settlement was “the mother of all Holocaust restitution settlements.”<sup>56</sup>

\* \* \*

This Executive Summary, and the Final Report on the Swiss Banks Holocaust Settlement Distribution Process that the Executive Summary describes, highlight the main issues and accomplishments for the settlement as a whole, and for each Settlement Class.

#### IV. SUMMARY OF DISTRIBUTION PROGRAMS

The starting point for the claims process was the Settlement Agreement itself, signed on January 26, 1999, and operative as of March 30, 1999, following execution of written “Organizational Endorsements” by 17 major worldwide Jewish organizations.<sup>57</sup> The Settlement

---

<sup>54</sup> Menachem Z. Rosensaft, *Introduction to GOD, FAITH & IDENTITY FROM THE ASHES: REFLECTIONS OF CHILDREN AND GRANDCHILDREN OF HOLOCAUST SURVIVORS* xix, xx (Menachem Z. Rosensaft ed., Jewish Lights Publ’g 2015).

<sup>55</sup> MICHAEL J. BAZYLAR, *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA’S COURTS* 51-52 (N. Y. Univ. Press 2003). See also 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”).

<sup>56</sup> BAZYLAR, *HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA’S COURTS* 51-52.

<sup>57</sup> In a so-called “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 following organizations: Agudath Israel World Organization, Alliance Israelite Universelle, the American

## EXECUTIVE SUMMARY

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.”<sup>58</sup>

The Settlement Agreement defined the five classes 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.”

---

Gathering/Federation of Jewish Holocaust Survivors, American Jewish Committee, American Jewish Congress, American Jewish Joint Distribution Committee (“JDC”), 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 Wiesenthal Center, World Jewish Congress, and World Zionist Organization, within 20 days after the parties executed 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.”

Each of the “Organizational Endorsers” signed a “Related Agreement” (included as part of the Settlement Agreement) that “endorse[d] the Settlement Agreement” as “fair, adequate, and reasonable;” “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.”

<sup>58</sup> Settlement Agreement, Section 1.

## EXECUTIVE SUMMARY

- “**Slave Labor Class I** consists of Victims or Targets of Nazi Persecution who actually or allegedly performed Slave Labor [‘work for little or no remuneration’] 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.”
- “**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 any kind whatsoever relating to or arising in any way from such actual or alleged denial of entry, deportation, detention, abuse, or other mistreatment.”<sup>59</sup>

U.S. class action law required that potential class members be notified of the settlement. Plaintiffs’ class counsel devised a complex worldwide Notice Plan to inform Holocaust survivors, heirs and others that a settlement had been reached. The Notice Plan was implemented immediately after the settlement was announced, and some elements of it continued for several years during the claims process, 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

---

<sup>59</sup> Settlement Agreement, Section 8.2.

## EXECUTIVE SUMMARY

mail, worldwide publication, public relations, the internet and grass roots community outreach.<sup>60</sup>

The elements of the Notice Plan included:

- placement of the Court-approved Notice in paid publications, including 371 appearances in mainstream newspapers and 622 appearances in Jewish publications, in 40 countries;
- press efforts that resulted in additional coverage in at least 552 news articles, and 34 countries;
- 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 that resulted (at the time) in over 316,000 “hits” on the Court-ordered website.<sup>61</sup>

This massive notice program resulted in the return of almost 600,000 six-page surveys — “Initial Questionnaires” (“IQs”) — to the Notice Plan administrators, from potential class members throughout the world. These Initial Questionnaires were analyzed to determine the geographic location of class members, the interest and participation of survivors, the types of claims and losses they were describing, and a host of other information important to the formulation of allocation and distribution recommendations.

Assessing the scope of the notice program, which cost approximately \$37 million, the Court found that it had been “the most comprehensive, effective and successful in the history of class action litigation.”<sup>62</sup> 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.”<sup>63</sup>

---

<sup>60</sup> 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.

<sup>61</sup> See Plaintiffs’ Memorandum in Support of Final Approval, at 12-13 (citing reports by Notice Plan administrators); September 7, 2000 Notice Administration Letter.

<sup>62</sup> *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.

<sup>63</sup> *Id.* 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

## EXECUTIVE SUMMARY

The Court held a “fairness hearing” on November 29, 1999 in New York, and conducted a supplemental hearing in Israel on December 14, 1999. The parties agreed to modifications to the Settlement Agreement after certain objections and comments were made at the hearings. In response to concerns about the ability to administer the Deposited Assets Class distribution process — such as whether the process could be fair if the defendant banks, which controlled much of the account-related information, did not cooperate — the Court added a number of requirements in addition to those enumerated in the Settlement Agreement. The Court required Swiss authorities to authorize publication of account owner names; permit the consolidation of fragmented and separate databases into one main source; and cooperate with the administrative process and claims administrators, such as by providing additional account information upon request.

The Court granted final approval of the settlement on July 26, 2000, observing 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.”<sup>64</sup>

Special Master Gribetz, who was charged with filing a Proposed Plan of Allocation and Distribution of Settlement Proceeds, 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 Distribution Plan was adopted in its entirety on November 22, 2000. The implementation of this Distribution Plan is the subject of this Final Report.

To briefly recap the key distribution elements:

- **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 bank accounts as basic contractual obligations. The allocation of up to \$800 million also was premised upon the Volcker Committee’s audit. The Volcker Committee auditors identified approximately 54,000 accounts (subsequently

---

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 \*4.

<sup>64</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 149 (E.D.N.Y. 2000).

## EXECUTIVE SUMMARY

reduced to approximately 36,000), as “probably” or “possibly” belonging to Nazi victims or their heirs. 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. 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 process pre-dating the Settlement (“CRT-I”). The CRT was to be overseen by Court-appointed Special Masters, initially Paul Volcker and ICEP counsel Michael Bradfield, and later by Dr. Helen Junz, along with Zurich-based Secretaries General Mary B. Carter and Dov Rubinstein.

- **Slave Labor Class I:** 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.<sup>65</sup> The Plan determined that payments to all surviving slave laborers were warranted because historical research demonstrated that virtually every major slave labor-using entity maintained banking and other financial relationships with Switzerland. Accordingly, 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 Distribution Plan provided for the same administrative agencies, processing mechanisms and deadlines utilized by the German Foundation “Remembrance, Responsibility and the Future” (“German Foundation”). This was a \$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. The plaintiffs’ attorneys in the German slave labor case sought to follow the lead of the Swiss Banks Settlement, and many of the same counsel participated in both cases. The German Foundation legislation came into force before the Swiss Banks Settlement was approved. Following the decision of the German Foundation, which designated two international non-governmental organizations, the Conference on Jewish Material

---

<sup>65</sup> 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 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”). *See* 2001 Economic Growth and Tax Relief Reconciliation Act, Sec. 803 (exemption extended indefinitely under the Holocaust Restitution Tax Fairness Act of 2002).

## EXECUTIVE SUMMARY

Claims Against Germany, Inc. (“Claims Conference”) and the International Organization for Migration (“IOM”), to process the claims of, respectively, Jewish and non-Jewish former slave laborers, the Court adopted the Distribution Plan’s recommendation and appointed the two organizations to perform the same functions on behalf of Slave Labor Class I.<sup>66</sup>

- **Slave Labor Class II:** The Distribution Plan provided for payments of \$1,000 (subsequently increased to \$1,450) to former slave laborers for Swiss entities, or the heirs of those slave laborers who died on or after February 16, 1999. This was the one class that was open to all Nazi victims; it was not limited to the five designated “victim or target” groups specified in the Settlement Agreement. All Slave Labor Class II claims were processed by the IOM.
- **Refugee Class:** 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. 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. As a result of knowledge gained during the claims process, it became clear that some individuals had suffered both types of injury, and they received compensation for each category of harm (for a total of \$4,350).
- **Looted Assets Class:** The Distribution Plan provided that the neediest class members were to benefit from humanitarian aid programs providing food, medicine, shelter and similar assistance. The Court agreed with the Special Masters’ observation that 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 to assist the neediest Holocaust survivors. The Distribution Plan initially allocated \$100 million, and ultimately, a total of more than \$256 million, over a 10-year period, later increased to 15 years. The payments were distributed with the understanding that the assistance would augment, but not replace, already-existing humanitarian aid programs overseen by the

---

<sup>66</sup> Since 1951, the Claims Conference has secured compensation and restitution for Nazi victims and their heirs. It has negotiated for and distributed payments from Germany, Austria and other governments (including monthly lifetime pensions for many survivors); recovered unclaimed property; and funded and operated programs to assist needy Jewish Nazi victims worldwide. The IOM, also established in 1951, remains the leading non-governmental organization in the field of migration, with 127 member states and offices in some 100 nations. <http://www.swissbankclaims.com/Glossary.aspx>.

## EXECUTIVE SUMMARY

- JDC<sup>67</sup> and Claims Conference. The program also funded 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 to be administered by CRT-II, but directed in considerable measure by the specific Swiss insurance companies that agreed to participate in the Settlement. Approximately \$1.44 million in insurance claims ultimately were paid.
  - **Victim List Project:** On behalf of all class members, the Distribution Plan provided for the creation of a \$10 million project (later increased to \$14.5 million) to memorialize all Victims or Targets of Nazi Persecution, those who survived and those who perished. The project funded new research by Yad Vashem and the USHMM to collect and digitize the names of millions of Holocaust victims, whose identities had not previously been known.

As discussed in detail below and in the Final Report, a vast number of survivors and heirs sought to and did take part in these claims processes. Nearly 1,113,000 claims were received from around the world, and over 458,000 awards were approved.

## V. THE DISTRIBUTION PROGRAMS

The programs for each class are described in greater detail below.

### A. The Deposited Assets Class

#### 1. *The Claims Program*

The Deposited Assets Class claims process analyzed more than 104,000 claims to Swiss bank accounts believed to have been owned by more than 415,000 victims of Nazi persecution. The claims process succeeded in identifying thousands of Holocaust-era Swiss bank accounts. It repaid, to many thousands of account owners and heirs, almost \$720 million of the up to \$800 million allocated under the Distribution Plan.

---

<sup>67</sup> The JDC, founded in 1914, is a humanitarian agency involved in relief efforts benefitting Jewish and non-Jewish individuals worldwide. *Id.*

## EXECUTIVE SUMMARY

The task was enormous, unprecedented and difficult. One of the largest, most complex, and historically significant forensic accounting audits ever conducted, the Volcker Committee audit, had revealed that 6.8 million Holocaust-era Swiss bank accounts had existed in the 1933-1945 period. Over the decades, the banks had destroyed records for 2.7 million of those accounts, and often had kept only incomplete data for many of the remaining 4.1 million accounts. Swiss banking authorities limited the claims process largely to the approximately 36,000 accounts that the Volcker Committee auditors deemed most likely to have probably or possibly belonged to Holocaust Victims. Subsequent independent research initiated by the CRT yielded additional accounts, so that this database reached 37,954 accounts. Of these accounts, Swiss banking authorities permitted publication of approximately 21,000 accounts. Following post-settlement litigation, an additional 3,000 accounts were published.

The CRT in Zurich, acting under the Court's supervision, analyzed claims on a case-by-case basis for 415,453 relatives named by the claimants. 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 precisely which family member had held a Swiss bank account. Accordingly, it was the CRT's policy to investigate every name mentioned in a claim form, whether or not a claimant formally had designated that person as a potential account owner.

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. Each of these 1.5 million matches needed to be examined by a member of the CRT staff. Many of the matches required detailed and individualized analysis to determine whether the account owner actually had held a Swiss bank deposit to which the claimant was entitled. In many instances, the bank records were sparse, containing little more than an owner's name and perhaps the city or even only country of residence. Because many names were common, numerous — sometimes dozens or more — matches often were linked to the same account. Each match had to be analyzed to determine which claimant, if any, was the proper heir.

The nearly \$720 million in awards repaid to Deposited Assets Class members were the result of three mechanisms. First, approximately \$615.5 million was paid for accounts for which

## EXECUTIVE SUMMARY

documentation had been located, either from bank records or from archives or other sources provided by the claimants or located by the CRT through supplemental research. The average value of each awarded *account* was \$115,889. Because many awards included more than one account, the average value of each authorized *award* was \$184,130. Second, the Settlement Agreement provided that the Settlement Fund would cover the payments made under the CRT-I process (pre-dating the settlement), to the extent that the accounts had been owned by Holocaust victims. These payments totaled approximately \$18.2 million. Third, approximately \$86.1 million was paid for “Plausible Undocumented Awards” (“PUAs”) in the amount of \$7,250 each, which were based upon plausible claims for which no documents could be located, primarily because the banks had destroyed them.

## 2. *Concealment by the Swiss Banks*

The Deposited Assets Class program helped to reveal the extent to which the Swiss banks were viewed as a beacon of safety by targets of Nazi persecution, and the lengths to which those same banks went to stonewall, conceal and withhold assets from their account owners.

The first attempts to retrieve bank accounts deposited in Switzerland by victims of the Holocaust began just after the Second World War, and continued unsuccessfully over the years. As summarized by the Court in a 2004 decision detailing the many “[d]ecades of improper behavior by the Swiss banks,”<sup>68</sup> the banks adopted a post-War strategy of deflection in response to queries by individual claimants as well as “in the face of broad-based efforts to uncover assets of Nazi victims.”<sup>69</sup> Drawing upon the historical findings of the Bergier Commission, the Court observed 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

---

<sup>68</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 303, 312 (E.D.N.Y. 2004).

<sup>69</sup> *Id.*

## EXECUTIVE SUMMARY

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.”<sup>70</sup>

Swiss law provided the motivation, as well as the means, for this behavior. Unlike other countries, in the decades after the Holocaust, there was no escheat law in Switzerland requiring banks to turn over unclaimed accounts to the state. Without such law, there was an incentive to deflect inquiries about Holocaust-era accounts, since the Swiss banks could keep any assets remaining in dormant accounts.<sup>71</sup>

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 the Court pointed out.<sup>72</sup> “[S]till more successful” was the banks’ “wholesale destruction of records.”<sup>73</sup> While the “Swiss banks generally complied with Swiss law on record keeping,” this was “precisely the ruse. The Swiss Code of Obligations require[d] 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 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.”<sup>74</sup>

---

<sup>70</sup> *Id.* at 313 (quoting BERGIER FINAL REPORT at 455).

<sup>71</sup> *Id.* at 308-309.

<sup>72</sup> *Id.* at 314.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 314-15.

## EXECUTIVE SUMMARY

Moreover, the banks worked together to turn away these inquiries. “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.”<sup>75</sup>

Even with this pattern of document destruction, and even after decades of stonewalling, millions of Holocaust-era bank records did still exist at the time of the Settlement. It was therefore possible to locate and pay the proceeds from specific accounts to specific Holocaust victims and heirs. Further, the underlying causes of action were quite straightforward and did not require application of tenuous legal theories. Plaintiffs were asserting claims for simple breach of contract and unjust enrichment. The Special Masters’ allocation and distribution proposal therefore placed greatest emphasis upon establishing an individualized claims process for Deposited Assets Class claims, a recommendation that the District Court adopted and the Court of Appeals upheld in 2001.

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 value.<sup>76</sup>

The Court and its administrative agents were confronted with many hurdles as they sought to create an equitable and efficient distribution mechanism, including the Swiss authorities’ restriction of access limiting the CRT to the approximately 36,000-account AHD, rather than the 4.1 million-account TAD, and the authorization to publish only 25,000 account owner names.

---

<sup>75</sup> *Id.* at 311 (quoting BERGIER FINAL REPORT at 446).

<sup>76</sup> *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001) (reissued as published opinion July 1, 2005).

## EXECUTIVE SUMMARY

Further, the CRT was limited in its ability to review auditor and banking records even for the approximately 36,000 accounts in the AHD. Swiss banking authorities required the Court to employ a “Data Librarian” who reviewed and often redacted information from each bank record before it was provided to the CRT. The defendant banks initially were reluctant to cooperate with the CRT’s requests for “voluntary assistance” (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. One of the two defendant banks, UBS (through the important assistance of its counsel, Britta Delmas) ultimately did provide regular and helpful responses to CRT requests for further information.

Many gaps in the evidentiary record still remained. As the Court explained in its 2004 opinion, the banks destroyed documents because of, among other things, the post-war concern that they might be held accountable for behavior that even the banks’ own legal experts had counseled against. “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.”<sup>77</sup>

For example, after Germany invaded Poland, “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.”<sup>78</sup> Credit Suisse nevertheless consulted with the Swiss Bank Corporation and concluded that they “still had important interests in Germany, and should avoid friction and unpleasantness whenever possible.”<sup>79</sup> While there might have been “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,” perhaps warranting a decision to disregard the lawyers’ advice, “that was clearly

---

<sup>77</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d at 305-06.

<sup>78</sup> *Id.* (quoting BERGIER FINAL REPORT at 276-77).

<sup>79</sup> *Id.*

## EXECUTIVE SUMMARY

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.”<sup>80</sup>

In view of the historical evidence, the Court permitted the CRT to presume, in the absence of evidence to the contrary, that where bank records were lacking — since the banks had destroyed them — it was plausible that the documents would have shown that the bank had cooperated with Nazi authorities in transferring victim funds out of a supposedly secure Swiss bank account. The CRT also was permitted to use the earliest historically appropriate date to determine whether an account had been subject to transfer under duress.<sup>81</sup>

This was an application of “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 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.”<sup>82</sup> The burden of proof essentially would be

---

<sup>80</sup> *Id.*

<sup>81</sup> Such dates included Hitler’s accession on January 30, 1933 (in the case of Germany); Italy’s 1936 alliance with Germany; and Austria’s 1938 incorporation into the Third Reich (the *Anschluss*).

This decision at the outset of the claims process - to recognize that in Germany, the Holocaust began as soon as Hitler took power in January 1933 - essentially anticipated later Congressional statutes concerning the date upon which Holocaust confiscations in Germany began. As the 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*, 894 F.3d 406, 413 (D.C. Cir. 2018): “[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).” 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].” *Id.* See also Stewart Ain, *Victory for heirs of German Jewish Art Dealers Allegedly Fleeced by Nazis*, JEWISH WEEK, July 18, 2018.

<sup>82</sup> Gribetz & Reig, at 132-33 (citing *In re Holocaust Victim Assets Litig.*, 319 F. Supp. 2d 301, 316-17 (E.D.N.Y. 2004)). See also JAY E. GRENIG & JEFFREY KINSLER, HANDBOOK OF FEDERAL CIVIL DISCOVERY AND DISCLOSURE § 16:8 (“The ‘spoliation inference’”) at 879-880 (3d ed. 2010) (citing Judge Korman’s analysis to demonstrate the black letter legal principle that the “preferred sanction in the event of negligent destruction of

## EXECUTIVE SUMMARY

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, which over decades had destroyed the evidence. The application of the adverse inference meant that as long as a 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 records conclusively demonstrating the fate of the account. This was one way in which the Court sought to avoid "one of the tragedies of many restitution cases," where "the absence of documentation became a barrier to justice."<sup>83</sup>

The Court also authorized the CRT to use presumptions to determine an account's value. Where the bank records did not show the value, but nevertheless made it clear that the account had existed during the Holocaust, the CRT was permitted to accept the common sense principle that a Nazi victim would not have held a zero-value account, but rather that the account had been looted. The ICEP auditors provided the CRT with average ("presumptive") values, depending upon the type of account, such as demand deposit, custody and safe deposit accounts. These averages were drawn from the auditors' calculations based upon those accounts that did have known balances. In other instances, accounts with known balances that were lower than the presumptive values likewise may have been looted, as indicated by historical evidence as well as data located by the CRT. It was also known that Holocaust victims who were forced to reveal their assets to the Nazis may have underreported the value, hoping to evade total confiscation. In the absence of bank records demonstrating the account's actual fate, the Court authorized the CRT to award these accounts not at the actual value or reported values, but rather at the higher, presumptive, values.

For those records that did remain, the CRT continually sought as much information as the banks were willing to provide. This was through the "voluntary assistance" mechanism required

---

evidence is the 'spoliation inference' — the drawing of an adverse 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"); 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).

<sup>83</sup> Peter Hayes, *Summary and Conclusions*, CONFISCATION OF JEWISH PROPERTY IN EUROPE, 1933-1945 - NEW SOURCES AND PERSPECTIVES-SYMPOSIUM PROCEEDINGS 143, 145 (U.S. Holocaust Memorial Museum 2003).

## EXECUTIVE SUMMARY

by the Court as part of its July 26, 2000 decision approving the Settlement Agreement as fair, and as later set forth in the CRT Rules. The supplemental information from the banks often enabled the CRT to identify account owners more accurately, resulting in an award where it otherwise could not have been made. For example, sometimes the records provided through “voluntary assistance” would reveal a maiden name or profession not previously identified in the bank records. The CRT’s examination of these additional records also led to the discovery of more accounts that could be analyzed and, in many cases, awarded, as well as a more accurate assessment of the value of assets, such as securities, that were held in custody accounts. Most significantly, this ongoing scrutiny and reassessment of account records led CRT Special Master Junz to recommend, and the Court to adopt, an upward adjustment of many of the presumptive values that had been initially assigned by the ICEP auditors. This presumptive value adjustment, alone, resulted in additional payments of almost \$100 million to thousands of Holocaust victims and heirs.<sup>84</sup> Because the Court insisted that the banks provide information to assist with the claims process, the CRT was able to recommend more awards, and at higher values, than would have been the case if the CRT had been limited solely to the documentation presented at the outset of the claims process.

The Court also instructed the CRT to incorporate a variety of procedural mechanisms to assist class members. These, too, were grounded upon the premise that Holocaust victims or their heirs should not be disadvantaged by the banks’ massive destruction of documents. Thus, for example, the Court authorized payments known as Plausible Undocumented Awards. As the Court observed, “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.”<sup>85</sup> However, claimants often provided detailed and credible information describing a relative’s Swiss bank deposit, and it was only the lack of bank records that prevented definitive confirmation of these accounts. For example, one claimant described how her grandfather had

---

<sup>84</sup> See *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010), discussed more fully *infra*.

<sup>85</sup> 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 at 3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Feb. 17, 2006).

## EXECUTIVE SUMMARY

been a manager in the Company of Merchants of Shkolnikov, Belarus and traveled to Switzerland for business and to deposit funds. Another claimant recalled that her father had owned a brass furniture manufacturing company in Warsaw, had traveled to Switzerland for business before the war, and later was refused entrance into Switzerland as a refugee. Under the PUA process, 12,301 such claimants received payments of \$7,250 each.

The determination to apply liberal rules was balanced by the equally important consideration of ensuring that erroneous claims were not paid. Issuing unfounded awards would distort the historical record, and would cast doubt upon the merits of the claims that were awarded. It also would dilute the Settlement Fund, which had to be distributed among several other classes (*e.g.*, slave labor, looted assets and refugees). Thus, the CRT recommended that the Court deny claims that did not match to the accounts to which the CRT had access;<sup>86</sup> did not identify a relative from whom the claimant would have properly inherited the account;<sup>87</sup> identified an individual with the same or similar name as the claimant's relative, but who actually was a different person;<sup>88</sup> or did not identify a "Victim or Target of Nazi Persecution" as required under the Settlement Agreement.<sup>89</sup> In several instances, bank records and other documentation demonstrated that the account had been closed properly and the proceeds returned to the account owner.<sup>90</sup> In all such cases (and in cases in which awards were made but claimants challenged the amount or division of the award), claimants were entitled to appeal the CRT's initial determination. Under the Court's direction, the CRT's Special Masters, Michael Bradfield

---

<sup>86</sup> The vast majority of names provided by claimants did not match to any of the 37,954 names in the AHD. The CRT issued a total of 89,858 such decisions, known as "No Match Letters." Nevertheless, in a number of instances, a claimant received a "No Match Letter" for one family member's account, because no account had been found belonging to that person, but received an award payment for another family member's account, since evidence of that account had been located.

<sup>87</sup> 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.

<sup>88</sup> Many victims shared the same name, but that did not mean that they were the same person. In total, 6,673 identity denials were issued.

<sup>89</sup> The person named as an account owner had to be a "Victim or Target of Nazi Persecution" as identified under the Settlement Agreement (*i.e.*, someone who was or was believed to be Jewish, Romani, Jehovah's Witness, homosexual or disabled). The CRT issued 2,288 "inadmissibility" decisions.

<sup>90</sup> A total of 167 denials were issued to 512 accounts on such grounds.

## EXECUTIVE SUMMARY

and Helen Junz, analyzed appeals and thereafter Judge Korman reviewed them. In several instances, Judge Korman reviewed the appeals directly.

\*

\*

\*

The thousands of bank account awards confirm some of the harshest conclusions of the Volcker Committee and Bergier Commission, which the Court summarized in its 2004 opinion about the banks' behavior. Swiss banks failed to protect depositors from Nazi confiscation of assets, and in many cases facilitated these efforts. The banks also at times coordinated their efforts to prevent access to accounts by their owners or rightful heirs in the post-War period.

To take but one example, the Court awarded SF 2,510,300 in the decision, *In re Accounts of Liselotte Löhner and Eva Löhner*.<sup>91</sup> These accounts had belonged to two young girls who were killed in the Holocaust at the ages of 15 and 13: Liselotte Löhner, born in 1927, and her sister, Eva, born in 1929. They were the daughters of the renowned librettist Fritz (Friedrich/Bedrich or "Beda") Löhner and his wife Helene, the claimants' aunt. Dr. 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 made Löhner a millionaire.

---

<sup>91</sup> *In re Accounts of Liselotte Löhner and Eva Löhner*.

EXECUTIVE SUMMARY



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://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?piBildID=9997094>. Photo courtesy of Karl Winkler.

On March 13, 1938, immediately after the *Anschluss*, Dr. 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, reserved for prominent persons). In September 1938, Dr. Löhner was deported from Dachau to Buchenwald.

## EXECUTIVE SUMMARY

Even in Buchenwald, Dr. Löhner continued to write music. He was imprisoned with the composer Hermann Leopoldi. Together, they created the “Buchenwald March,” which was played every morning during the prisoners’ roll-call and as they marched to perform slave labor.<sup>92</sup> Dr. Löhner hoped that his former friend and colleague, Fritz Léhar, would help secure his release. However, as described by the CRT, Mr. Léhar by then had adapted to the new political situation 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). Dr. Löhner, the co-writer of the operetta, was not mentioned in the program.

---

92



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.

## EXECUTIVE SUMMARY

In 1942, Helene Löhner, her mother, and the Löhners' two young daughters (Liselotte and Eva, the account owners) were deported to Minsk in Belorussia. They all perished in the Maly Trostinec concentration camp. That same year, Fritz Löhner was deported to Auschwitz-Monowitz, where he was forced to perform slave labor for IG Farben. Five directors of the company saw Dr. Löhner working too slowly one day and complained that "the Jew there could work faster."<sup>93</sup> A Kapo, a prisoner given a supervisory position by the Germans over the slave laborers, beat Dr. Löhner to death on December 4, 1942.

The Swiss bank records and archival documents showed that there were several accounts held in the names of Löhner's daughters, in several Swiss banks. Dr. Löhner's 1938 Census form reported that he owned Swiss bank accounts, containing SF 45,000 and £ 5,000, in the name of Liselotte Löhner.<sup>94</sup> The 1938 Census form indicated that it was filled out by another individual at the authorization of Dr. Fritz Löhner, who was then imprisoned in Dachau. The same individual filled out the 1938 Census forms for Liselotte and Eva Löhner. Liselotte Löhner's 1938 Census form indicated that she was a minor and the daughter of Fritz Löhner, and that she held a custody account at a Swiss bank containing bonds. She also had a cash or savings account at the same bank.

At a second Swiss bank, *Frl.* Liselotte Löhner owned a demand deposit account opened in 1931. The bank transferred the account to a suspense account on May 8, 1957, at which time the bank also charged commissions and fees for the period 1938 to 1957. 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. Those accounts were closed, respectively, on October 18, 1938 and December 31, 1938.

The 1938 Census form also contained correspondence between Dr. 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.

---

<sup>93</sup> The CRT's citation was the website [www.sfb.de/fernsehen/kulturreport/o30204\\_5.html](http://www.sfb.de/fernsehen/kulturreport/o30204_5.html).

<sup>94</sup> See *Glossary: In re Holocaust Victim Assets Litigation*, HOLOCAUST VICTIM ASSETS LITIG. (SWISS BANKS), at 3, [http://www.swissbankclaims.com/Documents\\_New/Glossary.pdf](http://www.swissbankclaims.com/Documents_New/Glossary.pdf) ("Austrian Census"): "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 assets as of 27 April 1938."

## EXECUTIVE SUMMARY

The Nazi authorities responded by advising the representative to take all necessary steps to obtain the required information. The representative then received an extension until August 25, 1938 to complete the 1938 Census form. On August 24, 1938, the representative submitted a supplemental declaration describing bank records that had been obtained from two of the three banks described above. He also provided the Nazi authorities with a letter from the music publisher *Glocken-Verlag*, detailing the profits Dr. Löhner was entitled to receive from his various compositions, including *Giuditte; Friederike; Land des Lächelns* and others. The 1938 Census records further indicated that by January 13, 1939, Dr. Löhner had been deported to Buchenwald, and that he was assessed a flight tax of RM 40,000, due on March 10, 1939.<sup>95</sup>

The CRT awarded all of the accounts to the claimants, cousins of Dr. Löhner's young daughters, Liselotte and Eva. The facts of this case were "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. This was "in order to ensure that assets held by the Löhner family were turned over to the Nazis."

Indeed, the two Swiss banks had gone even further than they had been asked. Fritz Löhner's letter – which clearly indicated that he was imprisoned in the Dachau concentration camp – authorized the banks to turn over his *own* account statements to the Nazis. Not only did the banks acquiesce to this "request," written under duress, but the banks also looked for *other* accounts to pass along to the Nazis. Although Fritz Löhner's letter was limited to his own accounts, and said nothing about his daughters, the banks handed over to the Nazis the information about Liselotte's and Eva's accounts.

---

<sup>95</sup> The Nazis levied a substantial tax, the so-called "flight tax," 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." BERGIER FINAL REPORT at 274.

## EXECUTIVE SUMMARY

In a December 30, 2004 letter, the Löhner cousins who received the award, writing from California and Australia, contacted CRT Special Master Junz and the CRT 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 . . . due to the cruelty of monsters. Thank you for persevering, in spite of hitting many dead end roads, which resulted in this large award. With mixed emotions, we are so very grateful.”

In another example of the banks’ behavior, *In re Account of Bertha Siegal*, the bank records showed that Bertha Siegel, who resided in Acquarossa Terme, Switzerland, held an account of unknown type. The proceeds of the account had been transferred to a suspense account at a Swiss bank on or before December 20, 1948. The bank records included a February 19, 1964 memorandum addressed to the bank’s Legal Department, referring to one of the earlier (and generally unsuccessful) post-War efforts to analyze Holocaust-era accounts: a 1962 requirement that the banks survey their accounts to determine if any had been held by Nazi victims. As described in the CRT decision, 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.’” Bertha Siegel had held just such an account. The bank did not return it to her heirs, but, rather, closed it out by fees and charges on the day of the internal memo to the bank’s Legal Department, February 19, 1964. The bank kept these fees and charges. Decades later, as a result of the Court’s claims process, Bertha Siegel’s heirs finally received repayment for their lost assets. They were awarded \$34,546.06.

\*

\*

\*

Financial journalist John Authers, who has written extensively about the Swiss Banks Holocaust litigation, has indicated that the claims process that resulted in these and thousands of other awards was the most significant legacy of the settlement.

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

## EXECUTIVE SUMMARY

meant more delays and more frustration, but it was the closest to “justice” that the Holocaust victims were likely to get.<sup>96</sup>

The late scholar and journalist Marilyn Henry aptly observed that 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.”<sup>97</sup> The U.S. legal system paved the way for some of those victims finally to receive compensation for their stolen property.<sup>98</sup>

**B. The Looted Assets Class**

Of the nearly \$1.285 billion in Swiss Banks settlement funds paid to Holocaust victims and heirs, over \$256 million was authorized for distribution among survivors in great financial need, through existing and newly-created humanitarian aid programs funded by the Court. More than 237,400 elderly, needy Holocaust survivors have been assisted. The help has come in a variety of forms: a side of beef delivered to Romani 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.

---

<sup>96</sup> John Authers, *The Road to Restitution*, FIN. TIMES WEEKEND, Aug. 16/17, 2008, at 23. 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).

<sup>97</sup> Marilyn Henry, *Metro Views: Bank accounts, bank accounts*, JERUSALEM POST, June 27, 2010.

<sup>98</sup> Ambassador Eizenstat made the same point about the \$5.2 billion settlement with German industry. At the Berlin ceremony in July 2000 to conclude the U.S.-German agreement, Ambassador Eizenstat explained: “We must be frank. It was the American lawyers, through the lawsuits they brought in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. It was their research and their work which highlighted these old injustices and forced us to confront them. Without question, we would not be here without them.” Stuart E. Eizenstat, Deputy Secretary of the Treasury and Special Representative of the President and Secretary of State for Holocaust Issues, Remarks at the 12th and Concluding Plenary on the German Foundation, Berlin, Germany, July 17, 2000.

EXECUTIVE SUMMARY



Tuba Weiner, recipient of food packages and other assistance funded through the Court. Tbilisi, Georgia. Photo courtesy of the JDC and James Nubile.



Roma man, recipient of Court-funded assistance, with IOM aid worker. Fejér county, Hungary, May 2003. Photo courtesy of the IOM and Delbert Field.

The Settlement Agreement itself made no provision for the needy. Rather, all Holocaust survivors theoretically were eligible for compensation. This raised “two obvious and

## EXECUTIVE SUMMARY

unsatisfactory possibilities for how to govern the distribution of money to this enormous class.”<sup>99</sup>

As the Court observed:

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.<sup>100</sup>

A *pro rata* system also was rejected as impractical.

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....<sup>101</sup>

There was, however, “a more reasonable alternative.” The Court accepted the Special Masters’ recommendation, 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.”<sup>102</sup> This insistence upon providing *meaningful* compensation transformed what could have been a token distribution of perhaps a few dollars to every person who claimed to have been looted, into a targeted humanitarian aid program — a “*cy pres*” or “next best” remedy<sup>103</sup> — that for 15 years helped to sustain many of the neediest victims, the great majority of whom lived in Central and Eastern Europe and the former Soviet Union, where social safety

<sup>99</sup> *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89, 96 (E.D.N.Y. 2004), *aff’d*, 424 F.3d 132 (2d Cir. 2005), *cert. denied*, 547 U.S. 1206, 126 S. Ct. 2891 (2006).

<sup>100</sup> *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d at 96.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> “*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](http://www.swissbankclaims.com/Documents_New/Glossary.pdf) (“*Cy Pres*”).

## EXECUTIVE SUMMARY

nets for the elderly were limited or nearly non-existent. The Second Circuit agreed with this solution twice, first in 2001,<sup>104</sup> and again in 2005.<sup>105</sup>

Funds for needy Jewish Nazi victims residing in the former Soviet Union (“FSU”) were to be distributed through the network of social service programs known as the “*Heseds*,” created by the global relief agency, the JDC, in 1992 to assist destitute, elderly Jewish victims of Nazi persecution still living in that part of the world. Beginning in 1995, the Claims Conference began to contribute significantly to the *Hesed* program, in recognition that many participants were Jewish victims of Nazi persecution. Many of these victims had fled for their lives in advance of the Nazis or lived under occupation, and so had been ineligible for prior compensation.<sup>106</sup> Most of those programs for many years had been limited to survivors who had 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 other parts of 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, and so were members of the Looted Assets Class.<sup>107</sup>

As to Jewish Nazi victims in other parts of the world, the Court adopted the Special Masters’ recommendation to render assistance through mechanisms managed and operated by the Claims Conference, largely through pre-existing programs. In Israel, where a substantial number of needy victims lived, the Court, through the Claims Conference, funded projects overseen by the Foundation for the Benefit of Holocaust Victims in Israel, which had been

---

<sup>104</sup> *In re Holocaust Victim Assets Litig.*, 413 F.3d 183 (2d Cir. 2001).

<sup>105</sup> *In re Holocaust Victim Assets Litig.*, 424 F.3d 132 (2d Cir. 2005), *cert. denied*, 126 S. Ct. 2891 (2006).

<sup>106</sup> *See generally* Distribution Plan, Vol. II, Annex E (“Holocaust Compensation”).

<sup>107</sup> *See* YITZHAK ARAD, THE HOLOCAUST IN THE SOVIET UNION 410 (2009) (“It is impossible to evaluate the exact worth of the property robbed from the Jews in the occupied Soviet territories and distributed or taken by the various [Nazi and local] groups and bodies described herein. But it can be assumed that the value of this property, which included money and valuables, vast quantities of household goods, and thousands of houses and apartments, would have totaled millions (if not billions) of Reichsmarks”). *See generally* Distribution Plan, Vol. II, Annex G (“The Looted Assets Class”) (citing, *e.g.*, Martin Dean, *Jewish Property Seized in the Occupied Soviet Union in 1941 and 1942: The Records of the Reichshauptkasse Beutestelle*, 14 HOLOCAUST & GENOCIDE STUD. 83 (Spring 2000)); *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d at 112 (citing Yitzhak Arad, *Plunder of Jewish Property in the Nazi Occupied Areas of the Soviet Union*, 29 YAD VASHEM STUD. 109-48 (2001)).

## EXECUTIVE SUMMARY

established in 1993. In North America, survivors were aided through well-established organizations such as Selfhelp Community Services; Guardians of the Sick Alliance; Jewish Family Services; Blue Card; and other local agencies, all under the Claims Conference umbrella. In other parts of the world, including Europe, South America and elsewhere, existing programs served the same role, where possible, and in some countries new programs were established to reach survivors. Both the JDC and the Claims Conference were directed to augment, but not replace, their humanitarian aid programs that already were funded by communal sources, as well as through certain governmental funds.

The global resettlement and relief agency, the IOM, was tasked with responsibility for locating and creating new service programs for the benefit of needy Roma survivors, as well as those who were victims or targets of the Nazis because they were Jehovah's Witnesses, homosexual or disabled. The program ended up assisting more than 75,000 such victims, including over 71,000 Roma. Most of these survivors had never received Holocaust compensation of any kind. The German Foundation similarly selected the IOM to manage a DM 24 million (then \$21 million) program ““for social purposes vis-à-vis the ... persecuted Sinti and Roma.””<sup>108</sup>

Certain survivors in the U.S. believed that the allocation to the Looted Assets Class should not have favored victims in the FSU as opposed to the U.S., where the survivor population was said to be larger. These individuals stated that the survivor needs taken into consideration in allocating *cy pres* funds were “largely a function of historical events that followed the injuries inflicted by the Nazi regime and by the Swiss bank defendants.”<sup>109</sup> The District Court did not accept that premise, nor did the U.S. Court of Appeals for the Second Circuit. The Court of Appeals held: “[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 [the District 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 [as of when the Second

---

<sup>108</sup> Distribution Plan, Vol. I, at 139 (quoting German Foundation Legislation, Section 9(4)4).

<sup>109</sup> *In re Holocaust Victim Assets Litig.*, 424 F.3d at 147.

## EXECUTIVE SUMMARY

Circuit was writing in 2005], \$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.”<sup>110</sup>

The Second Circuit also did not adopt a request to shift aid to population centers with the greatest number of survivors (as opposed to needy survivors). “[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.’”<sup>111</sup>

The *cy pres* remedy also initially was questioned by certain representatives of the Roma community, who sought to alter the *cy pres* remedy because of their concern that needy Roma could not be found. They later withdrew this request. In the end, as noted, Looted Assets Class programs assisted over 71,000 impoverished elderly Roma survivors with food, medicine, home health care and other services. With respect to homosexual Nazi victims, an organization believed 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.”<sup>112</sup> Another group believed that a percentage of the fund needed to be allocated for the benefit of disabled Holocaust victims. The organization stated that individual survivors were difficult to find, and so the fund should be put to use for memorial and educational projections on behalf of those victims. The group considered class action notice to have been “inadequate” and was concerned that disabled class members had not been accorded due process.<sup>113</sup>

---

<sup>110</sup> *Id.* (citation omitted) (emphasis in original).

<sup>111</sup> *Id.* at 148-149 (citation omitted) (emphasis in original).

<sup>112</sup> *In re Holocaust Victim Assets Litig.*, 424 F.3d 158, 166 (2d Cir. 2005) (emphasis in original).

<sup>113</sup> *In re Holocaust Victim Assets Litig.*, 424 F.3d 169, 171 (2d Cir. 2005).

## EXECUTIVE SUMMARY

On review, the Court of Appeals continued to uphold the distribution principles adopted by the District Court. 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.”<sup>114</sup>

The decision concerning allocations to needy survivors was appealed to the U.S. Supreme Court. On June 19, 2006, the Supreme Court denied review of the appeal, thus leaving intact the decisions of the U.S. Court of Appeals, as well as the District Court’s earlier opinions upon which the Court of Appeals rulings rested.<sup>115</sup>

The Court also was asked to review a later allocation decision regarding valuation of Holocaust-era Swiss bank accounts, which would have an impact upon funds that might remain for needy class members under the Looted Assets Class programs. After some years of study of records that were made available because of the CRT’s ongoing insistence upon greater access to bank files, CRT Special Master Helen Junz submitted a proposal to the Court recommending an increase in presumptive values for certain types of Swiss bank accounts. This recommendation was based upon her recalculation of average account values to take into consideration data that had not been available to, or fully assessed by, the Volcker Committee auditors when they made their original presumptive value estimates. Special Master Junz’s recommendation would significantly increase payments to many Deposited Assets Class members, and thus decrease any residual funds that might remain for other classes, such as the Looted Assets Class.

On June 16, 2010, the Court adopted Special Master Junz’s presumptive value recommendation.<sup>116</sup> Although certain objections had been filed, “even if the objections had any

---

<sup>114</sup> *In re Holocaust Victim Assets Litig.*, 424 F.3d at 169 (citation omitted).

<sup>115</sup> *See In re Holocaust Victim Assets Litig.*, 547 U.S. 1206, 126 S. Ct. 2891 (2006) (denying certiorari).

<sup>116</sup> *In re Holocaust Victim Assets Litig.*, 731 F. Supp. 2d 279 (E.D.N.Y. 2010).

## EXECUTIVE SUMMARY

merit, it would not result in an increase in the award to the Looted Assets Class that the objectors seek.”<sup>117</sup>

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 ... 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.<sup>118</sup>

\*

\*

\*

The Looted Assets Class consisted of hundreds of thousands of individuals, and the vast majority of these survivors and heirs accepted the decision to channel the greatest amount of aid to the neediest Nazi victims, who were “[o]ften forced to decide whether to use their meager resources to buy food or medicine, whether to heat their homes or get their glasses fixed.”<sup>119</sup> Settlement funds helped to provide food, medicine, fuel, warm clothing, home health care and other critical services to these survivors. The three programs funded by the Court — for Jewish victims in the Former Soviet Union, through the JDC; for Jewish victims in the U.S., Israel, and other parts of the world, through the Claims Conference; and for Roma, Jehovah’s Witness, homosexual and disabled victims, through the IOM — helped to ease the lives of the most desperate of Nazi victims around the world.

---

<sup>117</sup> *Id.* at 287.

<sup>118</sup> *Id.* at 288-89.

<sup>119</sup> ROSENSAFT, GOD, FAITH & IDENTITY FROM THE ASHES: REFLECTIONS OF CHILDREN AND GRANDCHILDREN OF HOLOCAUST SURVIVORS xxii.

EXECUTIVE SUMMARY

C. **Slave Labor Class I**

The “Nazi Regime exploited the slave labor of hundreds of thousands of ‘Victims or Targets of Nazi Persecution’ in every corner of its realm .... [S]lave 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.”<sup>120</sup>

---

<sup>120</sup> Distribution Plan, Vol. I, at 144.

EXECUTIVE SUMMARY



Prisoners at forced labor constructing the Krupp factory at Auschwitz, Poland, 1942-43. <https://www.ushmm.org/information/exhibitions/online-exhibitions/special-focus/liberation-of-auschwitz>. Photo courtesy of the U.S. Holocaust Memorial Museum and the Instytut Pamieci Narodowej.



Jews from Hungary at forced labor. Musz, Baranowicze, Nowogrodek, Poland, 1938-1944. [https://photos.yadvashem.org/photo-details.html?language=en&item\\_id=102967&ind=0](https://photos.yadvashem.org/photo-details.html?language=en&item_id=102967&ind=0). Photo courtesy of Yad Vashem.

The Court's administrative agents, the Claims Conference and the IOM, analyzed nearly 330,000 slave labor claims, resulting in total payments from the Swiss Banks Settlement Fund of

## EXECUTIVE SUMMARY

over \$280 million for over 198,000 surviving victims of the Nazis (and certain heirs) under “Slave Labor Class I.”

The Slave Labor Class I payments supplemented larger awards authorized under the contemporaneous program established in Germany following litigation of slave labor claims initiated in the U.S., the German Foundation, as well as a similar program for survivors from Austria. The claims of 173,914 Jewish former slave laborers were approved for payment under the Swiss Banks Settlement. Of these individuals, over 171,000 — nearly 98% — also were approved for compensation by the German or Austrian Foundations. With respect to Roma, Jehovah’s Witness, homosexual and disabled Nazi victims, claims for a total of 24,109 slave laborers were approved, of whom 22,667 were Roma.

In addition to providing a measure of recognition to those who had labored for the Nazi regime to the profit not only of the Nazi government and German companies, but also Swiss financial institutions who provided and benefited from their financial services to these slave labor-using 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 historian 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 numbers of non-Jewish victims predominated, receiving more than three-quarters of the funds” from slave labor-related programs.<sup>121</sup> The Slave Labor Class I program also provided further impetus for important research, confirming and furthering still-incomplete knowledge about the economic aspects of the Holocaust, such as the widespread reach of Nazi slave labor, and the thousands of sites of enslavement previously unknown.<sup>122</sup>

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.”<sup>123</sup> Many of the survivors did “not even know the

---

<sup>121</sup> See MARRUS at 111.

<sup>122</sup> For further discussion on this subject, see Michael J. Bazylar, *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).

<sup>123</sup> Distribution Plan, Vol. I, at 143, 147-148.

## EXECUTIVE SUMMARY

name of the company they worked for, much less where the profits of their labor ended up.”<sup>124</sup> What was known, however, from archival records and other sources, was that virtually every private and governmental entity in Nazi Germany 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.”<sup>125</sup>

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 the Special Masters’ research at the outset of the case revealed that virtually all members of German industry had held Swiss accounts at some point during the Holocaust era.

“[M]ost significant German slave labor users had Swiss bank accounts.”<sup>126</sup> 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 Masters] received after months of negotiations with the defendant banks and with the assistance of the Volcker Committee<sup>127</sup> and the Swiss Federal Archives. [The Special Masters] 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.<sup>128</sup>

---

<sup>124</sup> *Id.*

<sup>125</sup> Cited in testimony of Deputy Treasury Secretary Stuart E. Eizenstat before the House Banking Committee on Holocaust-Related Issues, Sept. 14, 1999 at 6 (*available at* <https://www.treasury.gov/press-center/press-releases/Pages/ls96.aspx>). *See also* 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 and Alan P. Wertheimer eds., Westview Press 1995) (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).

<sup>126</sup> Gribetz & Reig, at 138, citing Distribution Plan, at 144.

<sup>127</sup> The “Volcker Committee,” as previously discussed, 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.

<sup>128</sup> Gribetz & Reig, at 139, citing Distribution Plan, at 146.

## EXECUTIVE SUMMARY

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 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.<sup>129</sup>

The research 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. Accordingly, all survivors who performed slave labor for German entities were members of Slave Labor Class I.<sup>130</sup> This presumption 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.’”<sup>131</sup>

The presumption that all proceeds of slave labor were linked with Swiss financial institutions enabled the Court to coordinate with the larger German Foundation slave labor program. Each Jewish, Roma, Jehovah’s Witness, homosexual and disabled former slave laborer who received a payment from the German Foundation (or the related Austrian Foundation) also would receive an additional payment from the Swiss Banks Settlement Fund. The Court would be able to use many of the same claims processing agents, mechanisms, deadlines, and if appropriate, legal and historical analyses as the German Foundation. Further, payments to all members of Slave Labor Class I would be in identical amounts, regardless of the length of time spent in slave labor, or the nature of the work performed, a policy also followed by the German

---

<sup>129</sup> *Id.*; see also Distribution Plan, Annex H and exhibits.

<sup>130</sup> Gribetz & Reig, at 137-40.

<sup>131</sup> Distribution Plan, Vol. I, at 147 (quoting *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 161 (E.D.N.Y. 2000)).

## EXECUTIVE SUMMARY

Foundation.<sup>132</sup> The Distribution Plan sought to streamline the German program in one respect, by designating only two of the seven German Foundation “partner organizations” to serve as administrative agents for the Court: the Claims Conference and the IOM.<sup>133</sup>

The claims process relied heavily upon information concerning Holocaust survivors that was already available from prior restitution programs from West Germany and then unified Germany, programs administered since the 1950s by the Claims Conference. The goal was to simplify the application process, both for the convenience of the aging claimants — many of whom previously had applied for and were receiving other types of Holocaust compensation — and for the benefit of the Settlement Fund and other class members. Nevertheless, the slave labor program was by no means simple. The program required an unprecedented global mobilization of resources. Every effort was made to locate potential claimants, analyze their histories, and pay claims in as short a period as possible, always while supported by evidence (mostly documentary, but sometimes testimonial), to ensure a legally and historically accurate record of the scope of slave labor throughout Nazi-occupied Europe.

\*

\*

\*

Estimating the number of potentially eligible claimants 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. Many historians have since reassessed or delved more deeply into the slave labor system. These scholars, who focus particularly upon Nazi economic policies, have concluded that slave labor was far more pervasive than previously believed. Historian Wolf Gruner, for example, has determined that “[a]t its maximum extent, more than one million Jewish men and women toiled for private companies and public builders, many of them in hundreds of now often-forgotten special labor camps.”<sup>134</sup> Other investigations also have unearthed a wealth of new data about the

---

<sup>132</sup> 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).

<sup>133</sup> Distribution Plan, Vol. at 154-56.

<sup>134</sup> WOLF GRUNER, *JEWISH FORCED LABOR UNDER THE NAZIS: ECONOMIC NEEDS AND RACIAL AIMS, 1938-1944* i (Kathleen M. Dell’Orto trans., Cambridge University Press 2006). *See also* Kees Gispens, Book Review, 40

## EXECUTIVE SUMMARY

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 — and by the German Foundation itself, which compiled an extensive (if incomplete) list of some 3,800 concentration camps and other places of detention.<sup>135</sup>

In 2012, the USHMM announced the publication of two new volumes of its *Encyclopedia of Camps and Ghettos, 1933-1945*. The USHMM research left no doubt that the number of camps and ghettos (and thus the number of places where slave labor was performed) was considerably greater than had been previously known. When the USHMM neared completion of the first phase of its work on the encyclopedia, the *New York Times* headlined its 2013 article: “The Holocaust Just Got More Shocking.”<sup>136</sup> The newspaper reported that the USHMM 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 ...”<sup>137</sup> 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 other places of confinement, “these sites, infamous though they are, represent only a minuscule fraction of the entire German network ...”<sup>138</sup> Thus, at the same time that the slave labor claims were being

---

CENT. EURO. HIST. 753 (reviewing WOLF GRUNER, *JEWISH FORCED LABOR UNDER THE NAZIS: ECONOMIC NEEDS AND RACIAL AIMS, 1938-1944* (2006)).

<sup>135</sup> German Found., *Directory of Places of Detention*, <http://www.bundesarchiv.de/zwangsarbeit/haftstaetten/index.php.en> (last accessed May 12, 2015). See also 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, 122 (Michael Jansen & Günther Saathoff eds., Palgrave Macmillan 2008) (“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”).

<sup>136</sup> 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>.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

## EXECUTIVE SUMMARY

processed, historians were still piecing together the vast scope of the Nazi slave labor machine.<sup>139</sup>

As to the potential claimants, tens of thousands of survivors eligible for slave labor payments under the Swiss Banks and German Foundation programs were receiving or had received other forms of Holocaust compensation. In those cases, the evidence supporting an individual's claim for prior Holocaust compensation, primarily proof of imprisonment in a camp or ghetto, already had been assembled, reviewed, submitted to and approved by Germany, years and even decades before the new slave labor programs that were created in the aftermath of the litigation of the late 1990s. Those survivors, therefore, were automatically eligible for payment under the German Foundation and Slave Labor Class I programs.

For those who had not previously received Holocaust compensation, the German Foundation legislation established criteria for assessing applications. 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."<sup>140</sup> The German Foundation's decision to accept a wide range of evidentiary proof — a policy also adopted by the Court — reflected the reality that, so many decades after the Holocaust, there were understandably gaps both in the documentation, as well as in the survivors' memories.

---

<sup>139</sup> The German government's historical expert, Lutz Niethammer, concluded that over 1.8 million individuals could be eligible for compensation, including over 281,000 persons (plus others who were children at the time of the Holocaust) who had been imprisoned in camps, ghettos and similar sites of slave and forced labor (*i.e.*, the locations where most Jewish laborers were confined). 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, 59-60 (Michael Jansen & Günther Saathoff eds., Palgrave Macmillan 2009). After the program closed, the German Foundation revisited these estimates in its 2017 publication, *THE GERMAN COMPENSATION PROGRAM FOR FORCED LABOR: PRACTICE AND EXPERIENCES*. The data demonstrated that over 2.25 million individuals had been potentially eligible for compensation, with 1.66 million ultimately paid, most of them non-Jewish laborers. Roland Bank, *Establishing the Program*, in *THE GERMAN COMPENSATION PROGRAM FOR FORCED LABOR: PRACTICE AND EXPERIENCES* 12, 21-23 (Günter Saathoff, Uta Gerlant, Friederike Mieth & Norbert Wühler eds., Found. Remembrance, Responsibility & Future 2017).

<sup>140</sup> Distribution Plan, Vol. I, at 152 (citing German Foundation Legislation at Section 11(2)).

## EXECUTIVE SUMMARY

With an eye toward reassembling this history, the “Claims Conference undertook to proactively 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.”<sup>141</sup> Among the sources consulted were “concentration camp lists, ghetto registers, transport lists, labour 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.”<sup>142</sup> The Claims Conference as well as the IOM presented new research demonstrating that the Nazi war machine had reached into parts of Europe not previously known to have supported slave or forced labor, such as work camps in Hungary, as well as camps in Bulgaria, Tunisia, Morocco and Algeria. Based on the historical evidence and the definitions under the Settlement Agreement, the Court approved payments to these victims, as did the German Foundation.

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 [earlier compensation programs,] the Article 2 Fund or the [Central and Eastern Europe Fund]. Nevertheless, the German Ministry of Finance opposed applying the new

---

<sup>141</sup> 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, 110-11 (Carla Ferstman, Mariana Goetz & Alan Stephens eds., Koninklijke Brill NV 2009).

<sup>142</sup> *Id.* at 111.

## EXECUTIVE SUMMARY

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.<sup>143</sup>

As to those 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.”<sup>144</sup> The IOM relied particularly upon this methodology for Roma claimants, whose personal statements were assessed for historical accuracy and credibility by experts, including those at Charles University in Prague and the USHMM. The IOM identified and described the conditions of various 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.

The IOM also received and the Court approved 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.” 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

---

<sup>143</sup> 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 LEGACY OF FORCED LABOUR DURING THE THIRD REICH* 79, 91 (Constantin Goschler ed., Berghahn Books 2017).

<sup>144</sup> *Id.*

## EXECUTIVE SUMMARY

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.”<sup>145</sup>

As with all other aspects of the Swiss Banks Settlement, the Court encouraged the claims administrators to assist claimants with the assembly of data needed to support claims, conduct additional research, and incorporate evidentiary presumptions in favor of the claimants, so as not to penalize Holocaust survivors 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, Jehovah’s Witness, homosexual or disabled as required under the terms of the Settlement Agreement; or the claimant’s inability to plausibly show that he or she had performed labor, or had been held at a labor site, during the Holocaust.

\*

\*

\*

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 at the financial level. Those who were paid under the Slave Labor Class I and German Foundation programs received several thousand dollars. While these amounts certainly were meaningful for survivors in many parts of the world, the payments were also symbolic: a recognition, decades after the Holocaust, that many business entities had profited from the back-breaking free labor that Hitler’s victims were forced to endure.

Yet in the case of Switzerland, at least, it is doubtful that any survivor could have demonstrated a sufficient link between his or her slave labor, and the Swiss entity that benefited from it. However morally strong the claim, it would not likely have been legally sustainable. As Judge Korman has said of the German slave labor lawsuits, which were dismissed by other U.S. courts: “I take no position regarding whether these [lawsuits] were correctly decided, or whether

---

<sup>145</sup> 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 135 (“IOM Final Report”).

## EXECUTIVE SUMMARY

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.”<sup>146</sup>

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, mostly elderly survivors of camps, ghettos, and labor battalions, met those goals.

**D. Slave Labor Class II**

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 Swiss 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 arose from the defendants’ insistence upon an “all-Switzerland” release as a condition to settlement.

The class was expected — and proved — to be complex and labor-intensive. Unlike the other four settlement classes, Slave Labor Class II 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 persons), but rather was open to any victim of the Nazis who labored in a camp owned by a Swiss entity. 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 or at any time have asserted, assert, or may in the future seek to assert Claims against any

---

<sup>146</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 148-49 (E.D.N.Y. 2000).

## EXECUTIVE SUMMARY

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.”<sup>147</sup>

While the Swiss Banks Settlement distribution recommendations were being formulated, on August 24, 2000, the National Swiss Press Agency released a report: “Firms with Swiss Capital and Forced Labour in Germany.” Its principal author, the Press Agency’s Head of Operations, Roderick von Kauffungen, observed that “[a]ll 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.”<sup>148</sup> The von Kauffungen report determined that without the use of forced labor, a “steady flow of mass produced products would not have been possible.”<sup>149</sup>

Who those persons were; where they worked; and whether those companies even knew the type of labor they were employing — or kept records of their Holocaust-era activities — was the challenge faced by the Court, the Special Masters, and their administrative agent, the IOM.

At the time of settlement, there was little data concerning Swiss companies or affiliates that may have used slave labor. As noted in the Court’s July 26, 2000 opinion approving the settlement, the Special Masters had consulted with representatives of the Swiss Federal Archives (“SFA”), which confirmed that although “indirect and scattered evidence could be found with time consuming research,”<sup>150</sup> the SFA could not identify “tangible information reflecting the situation of forced labor workers in German branches of Swiss firms.”<sup>151</sup>

---

<sup>147</sup> Settlement Agreement, Section 8.2(d).

<sup>148</sup> Roderick von Kauffungen, Head of Operations, Nat’l Swiss Press Agency, *Firms with Swiss Capital and Forced Labor in Germany 2* (Aug. 24, 2000) (informal translation obtained by Special Masters).

<sup>149</sup> *Id.*

<sup>150</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 162 (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)); see Kauffungen, *Firms with Swiss Capital and Forced Labor in Germany*, at 4-5 (explaining the difficulty of locating data concerning slave labor in Swiss companies in Germany).

<sup>151</sup> *Id.*

## EXECUTIVE SUMMARY

In an interim report on Swiss slave labor, as well as in its Final Report, the Bergier Commission again stressed how little was known about Swiss companies' use of slave labor, including the number of victims. Nevertheless, the Bergier Commission believed that the figure estimated in the von Kauffungen report of 11,000 such laborers was "likely to be on the low side."<sup>152</sup> What was clear to the Bergier Commission was that "[a]ll branches of industry and commerce were involved ... and all sizes of business were represented, from small workshops or hotels such as the Insel in Konstanz [Germany] with only a few employees to large-scale set-ups such as Brown Boveri in Mannheim [Germany], which employed over 15,000 workers."<sup>153</sup> Moreover, the Bergier Commission thought it likely that Swiss subsidiaries used concentration camp inmates as slave labor.<sup>154</sup>

In light of the incomplete historical record, further proceedings were required to define the parameters of the class, particularly which companies were eligible for releases. 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 [July 26, 2000]."<sup>155</sup> Swiss entities that failed to identify themselves would be denied releases. Along with the need for more information, the Court explained that such "self-identification" 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."<sup>156</sup>

In response to the Court's order, 37 Swiss companies wrote to the Special Masters to identify themselves under Slave Labor Class II, some providing minimal information, but others offering detailed assessments of their own wartime histories. On December 8, 2000, a supplemental order directed the entities that had self-identified to notify the Special Masters as to whether they possessed the names of former slave laborers, and to provide such names if

---

<sup>152</sup> BERGIER FINAL REPORT at 313.

<sup>153</sup> *Id.* at 293.

<sup>154</sup> *Id.* at 311-14.

<sup>155</sup> *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 162.

<sup>156</sup> *Id.* at 162-63.

## EXECUTIVE SUMMARY

available.<sup>157</sup> The IOM was directed 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).<sup>158</sup>

Many companies responded to the Court’s 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 they provided were compiled to form a “Slave Labor Class II Name List,” which was used in the claims evaluation process.

Based on the information supplied by the companies, as well as the research conducted by von Kauffungen and the Bergier Commission, at the outset of the distribution process, the following Swiss companies were known to have used Holocaust-era slave labor:

- Alusuisse Group AG
- Brown, Boverie & Cie
- Bucher Industries
- Ciba Specialty Chemicals Holding, Inc.
- Ernst Deutsche Ramie Gesellschaft
- Georg Fischer
- Hesta AG
- Holderbank Financiere Glaris Ltd
- Lonza Group Ltd
- Nestlé S.A.
- Novartis A.G.
- Roche Holding AG
- Villiger Sohne Holding AG

---

<sup>157</sup> Memorandum & Order at 7, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Dec. 8, 2000).

<sup>158</sup> *Id.*

## EXECUTIVE SUMMARY

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.”<sup>159</sup> 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.”<sup>160</sup> Judge Korman ruled that “[c]ompanies which did not self-identify [were] not entitled to releases.”<sup>161</sup> Moreover, 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.”<sup>162</sup> In response to this order, the defendant banks filed an appeal with the U.S. Court of Appeals for the Second Circuit challenging the self-identification requirement that had been established in the Final Approval Order, as well as the “after-acquired companies” ruling in the April 4, 2001 Order.<sup>163</sup>

The Second Circuit found the appeal of the self-identification requirement to be untimely. 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.”<sup>164</sup> The defendant banks should have appealed when that order was issued in July 2000.<sup>165</sup> As to the remainder of the appeal, the Court of Appeals held that the “Settlement Agreement is ambiguous as to whether

---

<sup>159</sup> Order at 3, *In re Holocaust Victim Assets Litig.*, No. 96-4849 (E.D.N.Y. Apr. 4, 2001).

<sup>160</sup> *Id.* at 3-4.

<sup>161</sup> *Id.* at 4.

<sup>162</sup> *Id.*

<sup>163</sup> *In re Holocaust Victim Assets Litig.*, 282 F.3d 103, 105 (2d Cir. 2002).

<sup>164</sup> *Id.* at 106-07.

<sup>165</sup> *Id.*

## EXECUTIVE SUMMARY

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.”<sup>166</sup> 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.<sup>167</sup> The dispute was resolved by stipulation, in which the parties agreed that companies would be entitled to releases under the following circumstances:

1. “[T]heir activities during World War II occurred outside the area of Axis occupation and control;”
2. “[T]hey were created subsequent to World War II;” or
3. “[T]hey represent[ed] that after investigation they have found no evidence that they used ‘Slave Labor,’ as defined in the Settlement Agreement, during World War II.”<sup>168</sup>

While this post-settlement litigation was pending, thousands of claimants had applied under Slave Labor Class II, as anticipated. Each claim had to be reviewed individually by the IOM without benefit of a parallel process (*i.e.*, the German Foundation), and with very little historical information upon which to assess claims.

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.<sup>169</sup> However, 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.”<sup>170</sup> Claimants whose names did not appear on the Slave Labor Class II Names List nevertheless were eligible to receive

---

<sup>166</sup> *Id.* at 110.

<sup>167</sup> *Id.* at 111.

<sup>168</sup> 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).

<sup>169</sup> Distribution Plan, Vol. I, at 165.

<sup>170</sup> See JUDAH GRIBETZ & SHARI C. REIG, SPECIAL MASTERS’ INTERIM REPORT ON DISTRIBUTION AND RECOMMENDATION FOR ALLOCATION OF EXCESS AND POSSIBLE UNCLAIMED RESIDUAL FUNDS 83-84 (Oct. 2, 2003).

## EXECUTIVE SUMMARY

compensation if they “plausibly demonstrated to the IOM that [they had] performed slave labor for one of the entities identified on the Slave Labor Class II List.”<sup>171</sup>

The IOM analyzed 16,474 unique claims from claimants 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 payments from the Swiss Banks Settlement Fund of \$696,448.<sup>172</sup>

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. To take but one example, a claimant recounted how, in 1943, she and her family were deported from Vitebsk, Belarus to Germany to perform slave labor. They were 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. The barracks in the camp were destroyed during one of these air strikes, 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.

The Slave Labor Class II claims process recognized this claimant’s mistreatment for the first time. She was part of a considerable group of individuals whose labor for, and suffering at, the hands of Swiss companies had neither been known, nor compensated, in the decades after the Holocaust.

The focus upon Swiss use of slave labor expanded the historical knowledge of the Holocaust. Largely due to the litigation and claims process, a little-known but important aspect of Switzerland’s history was revealed. Swiss subsidiaries operating in Germany “maintain[ed]

---

<sup>171</sup> Distribution Plan, Vol. I, at 165.

<sup>172</sup> See Memorandum from Dir., IOM Claims Programmes, to Court, 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).

## EXECUTIVE SUMMARY

their autonomy and their private sector character,” while at the same time, as the Bergier Commission observed, “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.”<sup>173</sup> Certainly in the view of Switzerland’s own historical commission, that nation’s long-held belief in its wartime neutrality rested on questionable premises.

### E. The Refugee Class

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. Many sought to flee to safety just across the border in Switzerland. “[D]ue to its geographical position, it was the easiest country of refuge to reach on the continent.”<sup>174</sup> Within weeks, however, the Swiss Federal Council (*i.e.*, the Swiss government) decided that it was time to stem the tide of refugees, and in rapid succession adopted a series of administrative measures that made entry into Switzerland nearly impossible. “*Das Boot ist voll*. The boat is full. No phrase more clearly expresses the official Swiss attitude towards Jews fleeing Nazi persecution during the late 1930s and the Second World War.”<sup>175</sup>

On March 28, 1938, the Swiss Federal Council “made it compulsory for all holders of Austrian passports to have a visa.”<sup>176</sup> On August 18, 1938, it “decided to refuse entry to all

---

<sup>173</sup> CHRISTIAN RUCH, MYRIAM RAIS-LIECHTI, & ROLAND PETER, INDEPENDENT COMMISSION 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’”).

<sup>174</sup> BERGIER FINAL REPORT at 168.

<sup>175</sup> MITYA NEW, SWITZERLAND UNWRAPPED: EXPOSING THE MYTHS 2 (1997) (citing Swiss historian Alfred Haesler’s 1992 book, which took its title from a 1942 speech by Swiss justice minister Eduard von Steiger, “in which he warned that the Swiss ‘lifeboat’ was full and could not take any more refugees”).

<sup>176</sup> *Id.* at 108.

## EXECUTIVE SUMMARY

refugees without a visa,” thus effectively closing the Swiss borders.<sup>177</sup> Switzerland next demanded that Germany mark the passports of Jews in its territory with a “J-stamp,” and, on September 29, 1938, the two countries signed such an agreement. On October 4, 1938, the Swiss Federal Council introduced “compulsory visas for German ‘non-Aryans.’”<sup>178</sup> At the same time, in July 1938, 32 governments attended a conference convened by U.S. President Roosevelt in Evian, France. The Evian Conference ostensibly was to “set up a permanent organisation whose task would be to facilitate the emigration of refugees from Austria and Germany,” but “the majority of the 32 governments represented seemed to be more concerned about ‘getting rid’ of the refugees they had already taken in.”<sup>179</sup> In the face of these drastic measures, tens of thousands of individuals attempted to enter Switzerland. Many were successful, but many others were not.

As traumatic as their experiences had been, however, none of these Holocaust victims brought suit in the U.S. for compensation against Swiss institutions. Even in the broad consolidated class action complaints, no refugee claims were asserted, with the expectation that the claims against Switzerland, a sovereign nation, would not be considered valid under U.S. law. Rather, the refugee claims were raised only at the end of the process, in the Settlement Agreement, largely at the instance of the Swiss bank 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.<sup>180</sup> Thus, as with Slave Labor Class II, the Refugee Class was included to ensure an “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

---

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 124; *see id.* at 108.

<sup>179</sup> *Id.* at 164. *See also* GULIE NE’EMAN ARAD, AMERICA, ITS JEWS, AND THE RISE OF NAZISM 196 (2000) (“.... *Newsweek* provided perhaps the best one-sentence summary of the conference when it sardonically observed: ‘Most governments represented acted promptly by slamming their doors against Jewish refugees’”).

<sup>180</sup> *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.

## EXECUTIVE SUMMARY

billion to end the litigation, demanded that all of Switzerland be insulated from liability for any claim arising out of the Second World War.

Whatever the origin of the claims, the inclusion of a Refugee Class in the Settlement Agreement enabled thousands of Holocaust victims to be compensated for their suffering at the hands of Swiss officials. These claims comprise an important part of the historical record – a record that has been further expanded partly due to the class action litigation, the settlement and the distribution process.

The Settlement Agreement provided for compensation for those who gained entry into Switzerland as refugees but then suffered mistreatment, as well as for those who were turned away from the border or expelled. Some 4,158 such victims of the Holocaust were compensated through the Refugee Class programs, receiving from the Settlement Fund a total of \$11.5 million. 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.<sup>181</sup>

Of the 4,158 individuals compensated as members of the Refugee Class, 3,923 were Jewish, and their claims were processed by the Claims Conference. Another 235 individuals were compensated through the refugee program supervised on the Court's behalf by the IOM.

\*

\*

\*

The Bergier Commission — the historians and experts appointed by Switzerland to study that nation's role in the Holocaust — “gave [their] clearest and harshest answers with respect to refugee policy.”<sup>182</sup> The Bergier Commission was particularly critical of Switzerland's 1938 decision to pressure Germany to mark the passports of Jewish persons with a “J” stamp, as well as Switzerland's later sealing of its borders in August 1942.

---

<sup>181</sup> The original awards were established in the Distribution Plan at, respectively, \$2,500 (expulsion/denial of entry) and \$500 (mistreatment). As was true for several classes, these amounts were increased by 45% by Court 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).

<sup>182</sup> 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>.

## EXECUTIVE SUMMARY



Identification card issued to Marion Basfreund and stamped with a red J for Jude and the added middle name of "Sara." Berlin, Jan. 24, 1939. <https://collections.ushmm.org/search/catalog/pal168789>. Photo courtesy of the U.S. Holocaust Memorial Museum and Hilary Dalton.

The Bergier Commission also criticized the Swiss decision to exclude Jewish individuals from the category of political refugees, a group that Switzerland generally more readily welcomed. Thus, those “‘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.”<sup>183</sup> The Holocaust and its atrocities continued, but not until July 12, 1944 did Swiss police authorities issue “an official order that civilians whose lives were threatened should be admitted.”<sup>184</sup> This was 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.”<sup>185</sup>

Switzerland was not alone in its approach. Its restrictive policy comported with that of other countries, and its refugee policy “cannot be understood or judged without taking into account worldwide developments at the time.”<sup>186</sup> Nevertheless, the Swiss response was of particular concern, given Switzerland’s knowledge of the extreme dangers facing Jewish

<sup>183</sup> BERGIER FINAL REPORT at 114.

<sup>184</sup> *Id.* at 115.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 164.

## EXECUTIVE SUMMARY

refugees.<sup>187</sup> In addition, as the Bergier Commission observed, “[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.”<sup>188</sup> Further, although Swiss refugee policies were not exceptional, they had a singular effect. “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.... Switzerland, and in particular its political leaders, failed when it came to generously offering protection to persecuted Jews.”<sup>189</sup>

One of the key questions facing the Bergier Commission was the number of individuals impacted by Switzerland’s refugee policies. As with the files 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, the Bergier Commission was forced to analyze and draw conclusions from an incomplete historical record. The Bergier Commission stressed that “[s]ome files ... no longer exist, in particular those containing information about the expulsion of refugees.”<sup>190</sup> Other significant documents also had been destroyed, including those of the “Swiss Federal Police for Foreigners,” from which data regarding visa applications could have been derived.<sup>191</sup> Similarly, “there are no official reports that document the fate of [expelled] refugees after Switzerland turned them away.”<sup>192</sup> 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

---

<sup>187</sup> *Id.* at 119-120.

<sup>188</sup> *Id.* at 168.

<sup>189</sup> *Id.*

<sup>190</sup> JEAN FRANÇOIS BERGIER, INDEP. COMM’N OF EXPERTS, SWITZERLAND AND REFUGEES IN THE NAZI ERA 18 (1999) (“BERGIER REFUGEE REPORT”).

<sup>191</sup> *Id.* at 108 n.45.

<sup>192</sup> *Id.* at 128.

## EXECUTIVE SUMMARY

Swiss policy, is uncertain. Thus, the exact number of people Switzerland could have saved from deportation and murder remains unknown.”<sup>193</sup>

While it was “extremely difficult ... to calculate the number of refugees who were refused entry,” it was not impossible to reach an estimate. Approximately 20,000 individuals were believed to have been “turned back or deported,” and 14,500 were refused visas, for a total of 34,500 individuals whom Switzerland refused to admit.<sup>194</sup>

By contrast, 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 whom 21,304 individuals were or were believed to be Jewish.<sup>195</sup> Several other categories of admitted persons needed to be added to that figure: “2,000 people who were issued a cantonal tolerance permit;” “7,000 to 8,000 mainly Jewish emigrants who were in Switzerland at the outbreak of the war;” and “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.”<sup>196</sup>

While highlighting the significant numbers of refugees eventually admitted into Switzerland, the Bergier Commission criticized their treatment. Conditions in the internment camps were extremely difficult for many refugees. Between 1940 and 1948, “159 persons died in the ZL camps and homes; among them, the world-renowned tenor and cantor Joseph Schmidt.”<sup>197</sup> Born in Romania in 1904, Joseph (also known as “Josef”) Schmidt “began his career as a cantor and became an internationally known opera star and recording artist.”<sup>198</sup> His fate was discussed in “a seminal work on Swiss refugee policies, *The Lifeboat is Full*’ (*Das*

---

<sup>193</sup> *Id.* at 263.

<sup>194</sup> BERGIER FINAL REPORT at 117-118.

<sup>195</sup> *Id.* at 117.

<sup>196</sup> *Id.*

<sup>197</sup> Simon Erlanger, *Order Versus Education: The Aims of the Swiss Labor Camps for Refugees and Emigrants*, 31 YAD VASHEM STUD. 175, 181 (2003).

<sup>198</sup> *In re Account of Josef Schmidt.*

## EXECUTIVE SUMMARY

*Boot ist Voll*).”<sup>199</sup> Quoting from the book, which described the singer’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 .... 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.”<sup>200</sup>

Joseph Schmidt’s heirs received a Deposited Assets Class award in the amount of \$30,743.80, because his Swiss accounts had not been returned to the family after his death.<sup>201</sup>

\*

\*

\*

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 banking authorities also held back other important documents for years (and many

<sup>199</sup> ALFRED A. HÄSLER, *THE LIFEBOAT IS FULL: SWITZERLAND AND THE REFUGEES, 1933-1945* 268-70 (Charles Lam Markmann trans., Funk & Wagnalls Co. 1969).

<sup>200</sup> *Id.*

<sup>201</sup> *In re Account of Josef Schmidt.*

## EXECUTIVE SUMMARY

were never provided at all), the Refugee Class claims process benefitted from the cooperation of Swiss officials, particularly those associated with the Swiss Federal Archive (“SFA”). The SFA arranged for the Court to receive important lists, including the names of 1,715 civilian refugees turned back at the Swiss border or expelled from Switzerland between March 14, 1938 and May 9, 1945 and collected by the SFA from various federal and cantonal sources; 2,159 civilian refugees turned back at the border to Geneva between 1939 and 1945; 99 civilian refugees turned back at the border to the Canton of Schaffhausen shortly before and during World War II; 2,343 refugees turned back at the Swiss border to Italy during World War II, mainly in 1943 and 1944, a list compiled by the State Archives of the Canton of Ticino; and 60 refugees turned away from the Canton Basel-City (a list provided by the Basel archives). Other cantonal archives subsequently provided the Special Masters with additional information.

As a new program involving claims that never had been compensated on a large-scale basis, the Refugee Class program posed unique administrative 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, “[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.”<sup>202</sup>

Every Refugee Class claim was analyzed individually by Claims Conference or IOM staff and submitted to the Special Masters for consultation and review. Thereafter, each claim recommended for approval was submitted to the Court, 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).

As with 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;

---

<sup>202</sup> IOM Final Report at 69.

## EXECUTIVE SUMMARY

reconsidering earlier recommendations in light of additional historical or documentary evidence; and contacting claimants for further details. Moreover, as with all of the Court's 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 since the Holocaust.

Among the claims compensated under this standard was that of a survivor who was born in Hungary in 1928. Her father went to the Swiss Legation in Budapest to apply for a visa for the family, but was turned down. 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. Another claimant, who was born in France in 1922, entered Switzerland in 1942. He was quarantined in Geneva, where Swiss police confiscated most of his money. He was then transferred to Camp Buren, where he suffered from hunger, and later sent to camps Wald, Eggitswil/Kloten, Eggiwill, and Chantiers Ambulants, where he performed hard labor without compensation. Both survivors received payments under the Refugee Class process.

Nevertheless, a number of claims had to be denied (1,586 in total), generally because the claimants had not met the basic threshold requirements for compensation. The grounds for denial rested upon one or more of the following factors: the claimant did not allege an attempt to enter Switzerland at the Swiss border or expulsion from Switzerland; the refugee on whose behalf the claimant filed had died on or before February 15, 1999; based upon the date of attempted entry, it was implausible that the claimant had sought entry into Switzerland in whole or in part to avoid Nazi persecution; and/or the claimant did not state that he or she was detained, abused or otherwise mistreated while in Switzerland as a refugee.

\*

\*

\*

Not all of the Swiss authorities who interacted with refugees believed that the only option was expulsion. A number of Swiss defied their orders and instead chose to help. "[C]onfronted with the refugees' distress on a daily basis," they "expressed revulsion about the increasingly

## EXECUTIVE SUMMARY

brutalised methods applied on both sides of the border,”<sup>203</sup> often at considerable personal risk to their careers and livelihood. 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.”<sup>204</sup>

In 1971, the government of St. Gallen declared Paul Grüninger’s behavior to have been “morally correct.” He was also honored for his actions by Yad Vashem.<sup>205</sup> He died the next year, in 1972. He was pardoned posthumously by a Swiss court.<sup>206</sup> Years after his death, Switzerland enacted a law intended to exonerate others who had undertaken risks of the kind assumed by Grüninger, eventually clearing the records of more than 137 people.

#### F. Insurance Claims

At the November 29, 1999 fairness hearing on the proposed settlement, some participants were concerned with the effectiveness of notice of the opportunity to submit claims against the Swiss insurance companies that were to be released. They also questioned the appropriateness of releases in the absence of a mechanism to pay valid Holocaust-era insurance claims as part of the distribution of the Settlement Fund. 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.

---

<sup>203</sup> Regula Ludi, *Dwindling Options: Seeking Asylum in Switzerland 1933-1939*, in REFUGEES FROM NAZI GERMANY AND THE LIBERAL EUROPEAN STATES 82, 92 (Frank Caestecker & Bob Moore eds., Berghahn Books 2010).

<sup>204</sup> *Id.* at 93.

<sup>205</sup> BERGIER REFUGEE REPORT, Appendix 2, at 298. *See also* CROWE, THE HOLOCAUST: ROOTS, HISTORY AND AFTERMATH, at 352.

<sup>206</sup> 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>.

## EXECUTIVE SUMMARY

The parties agreed to the *de facto* creation of a sixth class of beneficiaries who would be entitled to file claims against the participating insurance carriers.<sup>207</sup> 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, up to a combined total of US \$100 million.<sup>208</sup> Subsequently, when it became clear that the number of insurance claims was lower than anticipated, the parties revised the agreement so that the insurance process was to provide for up to \$50 million in payments, \$25 million of which was to be borne by the insurance carriers and \$25 million by the Settlement Fund.

On June 12, 2001, counsel for the respective parties agreed to the Claims Process Guidelines (the “Guidelines”), in which they established procedures for implementing the insurance program. Because the Zurich-based 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.

In total, the CRT received 2,080 insurance claims. In contrast to the bank account claims process — which, although limited by the incomplete documentation made available by the banks, nevertheless was controlled by the CRT, which matched and evaluated the claims — the Guidelines provided for the insurance claims to be submitted directly to the PICs. The companies, not the CRT, were to control the matching and research of claims against insurance policies.

Where possible, however, the CRT recommended that the Insurance Guidelines be adjusted to follow the more general equitable principles the Court had adopted as part of the bank account claims process. As a result, claimants often benefited from the application of more liberal inferences than those envisioned under the Insurance Guidelines. For example, although the Insurance Guidelines did not provide for compensation where two or more claims were

---

<sup>207</sup> See *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 160 (E.D.N.Y. 2000).

<sup>208</sup> Amendment No. 2 to Settlement Agreement, Aug. 9, 2000, included as part of the Claimant Application Materials exhibit to this Final Report and also available at [http://www.swissbankclaims.com/Documents/DOC\\_20\\_Amendment2.pdf](http://www.swissbankclaims.com/Documents/DOC_20_Amendment2.pdf).

## EXECUTIVE SUMMARY

equally plausible, nor did the PICs recommend payment in such cases, the CRT applied the Deposited Assets Class rule that enabled each plausible claimant to receive a *pro rata* share of the policy's value. As with bank accounts, the lack of a complete documentary record — due to the destruction of records or failure to produce a full set of files — was not an appropriate basis for denying a claim.

The total amount recommended for payment by Swiss Re was \$395,485.35, for 27 awards including 30 policies. The CRT, after performing its own review of many of the claims, recommended payment and the Court approved a considerably higher number: \$973,989.08 for 54 policies in 49 awards. The other PIC, Swiss Life, recommended only two awards, for which it calculated payments of \$6,363.11, whereas the CRT recommended and the Court approved payments for those two cases in the amount of \$22,068.75. Beyond the policies that Swiss Life had recommended, the Court, based upon the CRT's recommendation, also approved an additional 25 awards for 30 policies issued by Swiss Life or one of its affiliates (including awards to four policies issued by *La Nationale Vie Paris*, for which Swiss Life repudiated any responsibility). The total approved by the Court for Swiss Life awards was \$448,288.84.

In total, Insurance Class claims resulted in \$1,434,786 in authorized awards, of which \$1,400,251 was paid.

Under the parties' agreement, the insurers were obligated to reimburse the Settlement Fund for one-half of the claims that the companies deemed to be compensable. However, both insurers ultimately accepted the Court's determination that a greater number of claims were eligible for payment (and/or in greater amounts) than the companies had recommended, and reimbursed the Settlement Fund for the larger sum: one-half of the *awarded* (as opposed to the *recommended*) amounts. The PICs' good faith cooperation in repaying these amounts to the Settlement Fund enabled the Court to distribute these sums as residual funds, benefitting the neediest Holocaust survivors under the Looted Assets Class *cy pres* programs.

## EXECUTIVE SUMMARY

**G. The Victim List Project**

When the class action lawsuits against the Swiss banks were settled, decades after World War II had ended, 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. Their fate essentially was “to die nameless in a nameless ditch.”<sup>209</sup> As of the close of the claims process, however, over two-thirds (more than 4.5 million) of the six million Jews who died in the Holocaust had been identified. The names of millions of other victims who suffered but survived the Holocaust, both Jewish and non-Jewish, also are now known.

This is due in no small part to the Victim List Project created as part of the Swiss Banks Settlement distribution process, which has restored identity to millions. The program has been widely praised. Holocaust historian and former Deputy Director of the USHMM 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.”<sup>210</sup> 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.”<sup>211</sup> Author and law professor Thane Rosenbaum, founder and Director of the Forum on Law, Culture & Society and Distinguished Fellow at the NYU School of Law, has pointed out that “so many of those lives were until recently nameless. Knowing the names surely humanizes that loss.”<sup>212</sup> World Jewish Congress General Counsel and law professor Menachem Rosensaft, the founding chairman of the

---

<sup>209</sup> Roger Cohen, *The Last Jew in Zagare*, N. Y. TIMES, Nov. 7, 2011, <http://www.nytimes.com/2011/11/08/opinion/cohen-the-last-jew-in-zagare.html>. The author’s grandparents came from small towns in Lithuania. Had they not left before the Holocaust, “[t]heir hypothetical European fate was to die nameless in a nameless ditch.” *Id.*

<sup>210</sup> 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”).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

## EXECUTIVE SUMMARY

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.”<sup>213</sup>

The Victim List Project (originally described as the “Victim List Foundation” in the Distribution Plan) 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.<sup>214</sup> 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 under the Settlement Agreement, including those who had perished, or since the end of World War II, had passed away. The Victim List Project therefore was intended to benefit all class members, survivors and heirs alike, as defined by the Settlement. The Victim List Project was a way of recognizing them and ameliorating to some extent what was, of necessity, “imperfect justice.” By calling for the compilation and accessibility of the names of all “Victims or Targets of Nazi Persecution,” as defined in the Settlement Agreement, the aim — as with all other aspects of the proposed distribution process — was to recognize *individually* each person who had suffered, even those whom the Swiss Banks Settlement would not be able to compensate monetarily.

Of the \$1.285 billion distributed from the Settlement Fund, a total of \$10 million, later increased to \$14.5 million (1.1%), was set aside for the Victim List Project, with all other funds earmarked for individual payments to Holocaust survivors and certain heirs.<sup>215</sup> To assist with oversight of the project, the Court and Special Masters sought the assistance of the Claims

---

<sup>213</sup> *Id.*

<sup>214</sup> *See* Distribution Plan, Vol. I, at 18, 27, 116, 157.

<sup>215</sup> Because of interest and tax benefits accruing to the \$1.25 billion Settlement Fund, the Court was able to pay to claimants more than the amount originally authorized under the Distribution Plan, increasing the allocation to the Victim List Project (and to all other classes) by 45%.

## EXECUTIVE SUMMARY

Conference, which in the 1950s had founded Yad Vashem in cooperation with the Government of the State of Israel, and which by the 1990s had become the principal funder of Holocaust-related archives worldwide. It was hoped that, through the Victim List Project, research and memory would be furthered in a number of concrete ways, including:

- 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; and
- Broad-based cooperation among the leading relevant institutions towards these aims.<sup>216</sup>

The Victim List Project, under the direction of the Court, Special Masters and Dr. Wesley Fisher of the Claims Conference, and in conjunction with many organizations and people worldwide, essentially fulfilled these aims. In doing so, it was the catalyst for a great many changes in Holocaust studies and related fields.

One of the most significant accomplishments of the Victim List Project was the creation and posting on the internet of a unified, worldwide catalog of all relevant name lists (a “list of lists”), regardless of where held. Partly due to the Court’s funding, 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.<sup>217</sup> Similarly, the USHMM developed a presentation that is now part of the Holocaust Survivors and Victims Database.<sup>218</sup> This catalog contains entries not only of lists in archival documents, but also those published in books and in digitized form.

The Victim List Project also was the impetus behind the electronic compilation of the names of millions of Nazi victims. Within the bounds of various countries’ privacy laws, this

---

<sup>216</sup> See *Digital Collections: The Victim List Project of the Swiss Banks Settlement*, YAD VASHEM, <http://www.yadvashem.org/yv/en/resources/names/supporters.asp> (last visited May 14, 2015).

<sup>217</sup> See [http://www.yadvashem.org/yv/en/resources/list\\_of\\_list.asp](http://www.yadvashem.org/yv/en/resources/list_of_list.asp).

<sup>218</sup> See <http://www.ushmm.org/remember/the-holocaust-survivors-and-victims-resource-center/holocaust-survivors-and-victims-database>.

## EXECUTIVE SUMMARY

database has been made accessible worldwide. Partly as a result of the Swiss Banks Settlement, there is now greater willingness and greater ability on the part of both Yad Vashem and the USHMM to acquire historical files documenting confiscation of property that also are sources of the names of victims. Along with such written documentation, lists of names also have been acquired from photographs, testimonies, case files, information on artifacts, various card files, synagogue plaques, and elsewhere. In addition, the Court has funded projects enabling the compilation of names from a variety of other sources including records from the Swiss Banks Settlement itself (Initial Questionnaires and claim files); the International Tracing Service in Bad Arolsen, Germany, the largest repository of the names of victims of the Nazis and their allies; thousands of name lists held by the JDC Archives in Jerusalem; governmental archives of Russia, Kazakhstan, and Uzbekistan; a name card index and judicial files documenting the persecution of homosexuals and other non-Jewish groups as well as the mentally handicapped; and registration records for Jewish refugees in Central Asia.

Further, the Victim List Project has contributed to greater coordination and cooperation among Holocaust-related organizations generally; advances in cataloging methods for Holocaust-related archival materials as a whole; and new types of research in fields such as historical demography and genealogy. An unexpected benefit was that the materials made widely available through the Victim List Project have been consulted and used by Holocaust victims and heirs in claims for compensation and restitution. Similarly, because survivors and heirs now have internet access to a great deal of information about their relatives that otherwise was not readily available, there have been a number of family reunions among individuals who did not know that their relatives had survived the Holocaust, but who learned of one another from the online resources created in part from the Victim List Project.

In what may be one of the most lasting contributions of the Swiss Banks Settlement and its distribution programs, the largest presentation of history on the individual level for research and remembrance has returned identity to millions. And this is so, not only because of the Victim List Project, but because all of the Court's programs have emphasized that whatever the legal and political ramifications of the Holocaust, ultimately, it was a catastrophe that was inflicted upon individuals. Therefore, individuals have been recognized and compensated, and their stories have been recorded and preserved for history.

## EXECUTIVE SUMMARY

\* \* \*

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 these two historic 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. ... [M]any 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.... 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.... [I]n 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.<sup>219</sup>

Professor Neuborne's thoughtful reflection might be disputed in only one respect: the claims processes, particularly those established for the owners of Swiss bank accounts, made every effort to deliver justice, with significant results. If justice — at least on a material level, if certainly not on a moral level — could not fully be 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.

---

<sup>219</sup> Burt Neuborne, *Litigating the Holocaust: The Swiss Bank and German Slave Labor Cases* 30 (2013) (unpublished manuscript), at 90.

## EXECUTIVE SUMMARY

With the Holocaust-related litigation 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.”<sup>220</sup>

Many survivors recognized as much, feeling compelled to express their views on the results of the efforts that they had first initiated, and that were later continued in a U.S. court on their behalf. A Deposited Assets Class claimant in São Paulo, Brazil thus wrote that in “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 Haifa, Israel, a claimant wrote that she had “read and re-read the ‘CRT’ report” and “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 New York, another claimant explained that her family had been “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.”

---

<sup>220</sup> LIPSTADT, HOLOCAUST: AN AMERICAN UNDERSTANDING 128.