

**12. HOLOCAUST RESTITUTION IN THE UNITED STATES AND OTHER CLAIMS FOR HISTORICAL WRONGS – AN UPDATE**

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**I. INTRODUCTION**

In the 2001 edition of this Report, I summarized the lawsuits filed in the United States seeking financial restitution from European and American corporations for their Holocaust-era financial activities. To date, over \$8 billion has been pledged as a result of the Holocaust-era litigation, with elderly Holocaust survivors beginning to receive payments in the latter half of 2001.

Since 1996, when the first Holocaust-era lawsuit was filed, other historical claims have arisen which have adopted the Holocaust restitution movement as a model. All are a direct result of the successes achieved in the Holocaust restitution arena. Three such prominent movements are: (1) the lawsuits filed by victims of Japan and Japanese industry for wrongs committed during World War II; (2) the emerging call for African-American reparations stemming from slavery; and (3) the recent claims being made by survivors of the Armenian genocide for insurance proceeds paid by their deceased relatives.

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**II. HOLOCAUST RESTITUTION EFFORTS IN THE UNITED STATES**

**A. Cases Against European Banks**

**Swiss banks litigation** – The modern era of Holocaust asset litigation began in October 1996 with the filing of a class action lawsuit against the three largest private Swiss banks – Credit Suisse, Union Bank of Switzerland ( hereinafter “UBS”) and Swiss Bank Corporation – in federal district court in Brooklyn, New York. Thereafter, two other lawsuits were filed against the same banks, with all three actions consolidated in April, 1997, as *In re Holocaust Victim Assets Litigation*, Case No. CV-96-4849 (E.D.N.Y 1996.) In August, 1998, the banks settled the case for \$1.25 billion.

In addition to the Jewish claimants, the following four groups persecuted by the Nazis are also receiving a part of the \$1.25 billion settlement: (1) homosexuals; (2) physically or mentally disabled or handicapped persons; (3) the Romani (Gypsy) peoples; and (4) Jehovah’s Witnesses. In return for \$1.25 billion, plaintiffs agreed to drop all lawsuits against the Swiss banks being sued, as well as “the government of Switzerland, the Swiss National Bank, all other Swiss banks, and all other members of Swiss industry, except for the three Swiss insurers who are defendants in the [federal class action insurance litigation (*see* discussion below)].” Settlement Agreement, paragraph 3, *available at* <[www.swissbankclaims.com](http://www.swissbankclaims.com)>. In effect, the settlement agreement obtained by the two private Swiss banks insulates the entire nation of Switzerland and all its businesses from any kind of litigation – anywhere in the world – having any connection to World War II.

In accordance with American federal class action rules, Judge Korman held a hearing

in November, 1999, to confirm the fairness of the settlement, and in July 2000, did so.

Two sets of appeals also had to be resolved before distribution of the settlement proceeds could begin. In September 2000, the Second Circuit dismissed an appeal by a Polish-American organization that argued that ethnic Poles should be included in the settlement. *In re Holocaust Victim Assets Litigation*, 225 F.3d 191 (2d Cir. 2000). In July 2001, the Second Circuit dismissed an appeal by three Jewish survivors who claimed that the Plan of Allocation was unfair. *See In re Holocaust Victim Assets Litigation*, 2001 WL 868507 (2d Cir. 2001).

In July 2001, payments of approximately \$1,000 finally began to dribble in to aging survivors. The distribution of the Swiss settlement funds is still going on, albeit slower than expected. By the summer of 2002, less than 200 claims had been processed out of the 32,000 filed, 12,000 of which matched a name on one of the dormant account lists published by the Swiss banks. Out of the \$800 million allocated for those with claims to actual accounts, less than \$20 million had been distributed.

In June 2002, Judge Korman issued a new set of rules aimed to speed up the payment to the dormant account claims. The rules consisted of a new set of relaxed presumptions applicable when assessing claims.<sup>1</sup> Under these presumptions, if evidence of an account is found, then it is assumed that the moneys in the account have not been paid and are due to the claimant, unless there is clear evidence to the contrary. The presumptions were triggered by the Final Report issued by the Swiss government Bergier Commission in March 2002, which found that the Swiss banks engaged in wholesale destruction of records after the war.

The current plan is to have the \$800 million allocated for the dormant account claims to be distributed by sometime in 2003. If the total amount of the dormant account claims does not fully exhaust the \$800 million

fund, a secondary distribution will have to be made. The current status of the Swiss banks settlement is available at [www.swissbankclaims.com](http://www.swissbankclaims.com).

#### **German and Austrian banks litigation**

– German and Austrian banks maintained close business relationships with the Nazis, and profited handsomely from such dealings. In June 1998, three Holocaust survivors, all American citizens, filed a class action lawsuit against the two German banks, charging them with profiteering from the looting of gold and personal property of Jews. Thereafter, other lawsuits were filed against these two banks and other German and Austrian banks for their World War II-era activities.

In March 1999, the lawsuits were consolidated as *In re Austrian and German Bank Holocaust Litigation* in the Southern District of New York before Judge Shirley Wohl Kram. That same month, Bank Austria and its recently-purchased subsidiary, Creditanstalt, settled the lawsuits against them for \$40 million. A fairness hearing was held in November 1999, and Judge Kram approved the settlement in January 2000. *See Bazyler*, “Nuremberg in America: Litigating the Holocaust in United States Courts,” 34 U. Richmond L. Rev. 1, 239-42 (2000).

As of June 2001, no moneys have yet been distributed from the settlement. The current status of the Austrian banks settlement is available at [www.austrianbankclaims.com](http://www.austrianbankclaims.com). Litigation against the German banks continued. However, the “rough justice” settlement reached with the German government and industry in December 1999, and finalized in July 2000, (*see* below) also included the settlement of the claims made against the German banks.

**French banks litigation** – After the Nazis conquered France, French banks began to confiscate the accounts of their Jewish depositors in a process known as “Aryanization”

of the accounts. In late 1997 and early 1998, two class actions were filed against a half dozen French banks in federal court in New York, followed by another action in California state court in San Francisco. *Bodner v. Banque Paribas*, Case No. CV 97-7443 (E.D.N.Y. filed Dec. 7, 1997); *Benisti v. Banque Paribas*, Case No. CV 98-785 (E.D.N.Y. filed Dec. 23, 1998).

The lawsuits also named the British bank, Barclays Bank, and two U.S. financial institutions, Chase Manhattan Bank and J.P. Morgan & Co. These banks had branches in France during the war, and are alleged also to have participated in the confiscation of the assets of their Jewish depositors.

In July 1999, Barclays settled for \$3.6 million, to be paid to the families of its Jewish customers in France who lost their assets during the Nazi occupation.

The other banks declined to settle, and filed motions to dismiss. The motions were denied and, as a result, a settlement was achieved in the last days of the Clinton Administration through the efforts of Stuart Eizenstat, appointed by Clinton as special envoy for Holocaust restitution issues.

The banks agreed to establish two funds to compensate claimants for assets seized by the French banks during the occupation. One fund, with no limits, will pay claimants who have documentation or some other substantiated proof of wartime assets held in French banks. The second fund, capped at \$22.5 million, will compensate claimants with less proof, known as “soft claims,” who will present their case to a commission. Each of the claims approved by the commission will be paid at least \$1500.

## **B. Cases Against European Insurance Companies**

In the time before the two world wars, insurance policies and annuities were popular investment vehicles in Europe. Jews in pre-war Europe often purchased insurance, and an

insurance policy was known as a “poor man’s Swiss bank account.” In 1997, a class action suit was filed in the Southern District of New York against twenty-five European insurance carriers (many of which were later dismissed due to the German settlement, discussed below) on behalf of all those with claims to unpaid Holocaust Era insurance policies. Shortly thereafter, the National Association of Insurance Commissioners, composed of the insurance regulators in all fifty states, created a working group on Holocaust and insurance issues. Some of the regulators began holding hearings, inviting the companies to explain their reasons for non-payment of these pre-war policies.

Prodded by the commissioners from California, New York and Florida, which contain the largest concentration of Holocaust survivors in the United States, five of the insurers sued, formed (and funded) the International Commission on Holocaust Era Insurance Claims, commonly known as ICHEIC, headed by former U.S. Secretary of State Lawrence Eagleburger.

ICHEIC was intended to be a non-adversarial alternative to the American litigation brought against the insurance companies, and correspondingly, the class action suit seemed to have stalled after its creation. In February 2000, after numerous delays, ICHEIC announced that it would begin a two-year claim process to locate and pay unpaid Holocaust-era insurance policies.

Unfortunately, to date ICHEIC has done a poor job. By May 2001, it distributed only \$3 million to claimants, while spending more than \$30 million in expenses. *See Weinstein, “Spending by Holocaust Claims Panel Criticized,” L.A. Times, May 17, 2001, at 1.* Eagleburger’s annual salary alone is \$350,000. In November 2001, the House Government Reform Committee, concerned with the spate of negative press reports about ICHEIC and its work, held a daylong hearing on the issue.

By early 2002, ICHEIC had run up \$40 million in expenses and, of the now 81,000

claims received, made offers on about 1,000 – still only about 1.5 % of the claims received. Moreover, of the 1,000 offers made by the ICHEIC insurers, many were for small sums, nowhere close to the valuation figure established by Eagleburger in his July 1999 directive. According to the *New York Times*, citing several ICHEIC members, some of the offers made by the insurers were as low as \$500, which survivor groups labeled “insulting.” For this reason, as of August 2002, less than half of the offers made by the ICHEIC insurers, (totaling \$20 million, of which \$14 million came from Generali, have been accepted by the claimants.

Several individual California lawsuits, five of which have settled, have yielded higher payments than the amounts distributed individually through ICHEIC.<sup>2</sup> While the settlement terms remain confidential, the *New York Times* reported that one of the California cases alone settled for \$1.25 million. Recently, some of those who had rejected the offers actually brought suit against ICHEIC in California, claiming the offers were unfair and misleading to survivors. *Haberfeld v. Assicurazioni Generali, S.p.A.*, No. BC250565 (L.A. County Super. Ct. May 16, 2001), available at <<http://www.shernoff.com/news/pressreleases/haberfeld.php>> (accessed Nov. 17, 2001). These claims seem to have revived the original class action, as the defendant insurers who were members of ICHEIC moved to have these cases consolidated in multi-district litigation and transferred to New York.

Following the consolidation and transfer, the insurers then moved to dismiss on the theory of *forum non conveniens*, arguing that either 1) ICHEIC was the proper forum for the resolution of these claims, or 2) the claims should be litigated in the various European countries where the contracts arose. On September 25, 2002, Judge Michael Mukasey wrote a lengthy decision denying these claims. Most importantly, his decision makes clear that ICHEIC, at least from a judicial standpoint, is

an utterly “inadequate forum” for the resolution of these policies. *In Re: Assicurazioni Generali SpA Holocaust Insurance Litigation*, 2002 WL 31133027(E. Dist N.Y. Sept, 25, 2002). It looks as if this seemingly stalled suit is about to become very active again, after an almost three-year hiatus.

In the meantime, several states had also created statutes requiring insurance companies operating in their state to disclose Holocaust era information, enforceable through the insurance commissioners’ licensing authority. The statutes of both Florida and California were challenged by the insurers on several due process grounds, and were struck down at the trial court level. However, in July, the Ninth Circuit reversed the trial court, so the California statute may yet pass constitutional muster. *Gerling Global Reins. Corp of America v. Low*, 296 F.3d 832 (9th Cir. July 15, 2002). (The Eleventh Circuit had already affirmed the trial court’s decision on the Florida statute. *Gerling Global Reins. Corp of America v. Gallagher*, 267 F.3d 1228 (11th Cir. 2001).). The insurers have applied for certiorari to the Supreme Court.

The current status of the ICHEIC claims settlement process is available at <[www.icheic.org](http://www.icheic.org)>.

### **C. Cases Stemming from the Use of German and Austrian Slave Labor**

Between eight and ten million people were forced to work as laborers in factories and camps in Germany, Austria, and throughout occupied Europe during World War II. Approximately 1.25 million of these laborers – now elderly – are alive today.

The reparations program to Jewish victims of Nazi persecution promulgated by West Germany specifically excluded payment for slave labor. Eventually, close to forty separate lawsuits were filed in various courts throughout the United States against numerous

German companies which used slave labor during World War II.

On September 13, 1999, two federal judges sitting in New Jersey issued separate opinions dismissing five of the lawsuits, against Ford Motor Company, *Iwanowa v. Ford Motor Co.*, 67 F.Supp.2d 424 (D.N.J. 1999), and against German companies Degussa and Siemens. *Burger-Fischer v. Degussa A.G.*, 65 F. Supp.2d 248 (D.N.J. 1999) Both judges held that the suits were precluded by the treaties entered into by Germany and the Allied powers after the war. Some claims against Ford were also found to be time-barred. The dismissals were appealed, but eventually became moot when German government and industry, in December 1999, entered into a preliminary settlement with the plaintiffs' lawyers and representatives of Jewish organizations to resolve all slave labor and related claims for DM 10 billion (approximately \$4.8 billion). In addition to claims for slave labor, the settlement also includes: (1) claims by mothers shipped to Germany whose children were taken away from them and placed in a *kinderheim*, a children's home, where they often died; and (2) claims by survivors of horrific medical experiments conducted by the Nazis, allegedly for the benefit of German private pharmaceutical concerns.

It took over one and one-half years to finalize the German slave labor settlement. Final resolution was achieved in May 2001, when the German parliament gave final approval to a law funding the settlement fund. Under the contemplated scheme for distribution, those forced by the Nazis to work to death – slave laborers, and primarily Jews – who survived the war and are still living will receive payments of up to \$7,500. According to some estimates, approximately 240,000 former slave labor claimants are alive today.<sup>3</sup> Former forced laborers – primarily non-Jews, estimated to number today approximately 1 million – will be awarded \$2,500 each. In return for the

settlement, the plaintiffs' attorneys agreed to drop all the pending slave labor suits.

In June 2001, the checks started to go out. At the outset, claimants did not receive the entire DM 15,000 (\$7,500). Rather, the first set of payments paid out only DM 10,000 (equivalent at the time to \$4650). This led to confusion and disappointment, since the survivors had been told, and the media widely reported, at the time of the settlement and thereafter, that the amount would be DM 15,000 for slave labor claimants. To add to the muddle, the VTNP survivors in the Swiss banks settlement also began receiving at the same time a \$1,000 check from the slave labor portion of the Swiss banks settlement. Many believed that the \$1,000 came from the Germans, since both the German and Swiss funds were processed through the Claims Conference, with only the fine print on the check indicating the source of the funds. Nevertheless, once the German restitution process got going, the flow of funds moved quite quickly. By June 2002, one year after the payments first started to go out, more than DM 2.6 billion, (\$1.3 billion) had been distributed to claimants worldwide, over \$300 million of which was paid to Jewish survivors through the Claims Conference.<sup>4</sup>

Keeping in mind that the primary intent of the Fund was to compensate former slaves, DM 8.1 billion was allocated for this purpose. DM 1 billion was allocated for property losses, which included (1) payments to persons who suffered property losses at the hands of the Nazis but who, for technical reasons, could not collect under existing German indemnification programs and (2) payments for unpaid Holocaust insurance policies issued by German insurance companies. The remainder was set aside for various social and humanitarian projects to help needy survivors and for Holocaust education, designated as "projects of the 'Remembrance and Future Fund.'" German Foundation Law, Section 9(7).

As with the Swiss banks' \$1.25 billion settlement, Germany and its entire private

industry, for DM 10 billion have bought for themselves complete legal peace from bothersome American litigation.

Following the German precedent, the Austrian government and Austrian industry likewise agreed to compensate its former slave laborers and other victims of its policies. Under a preliminary agreement reached in October 2000, Austria pledged a total package of \$500 million to settle claims for Holocaust-era seizures of various types. Earlier, Austria had agreed to compensate former slaves and forced laborers, setting aside approximately \$410 million, and to supplement those payments with an additional \$112 million for pension payments to Jewish victims who fled Austria as children.

In February 2001, a month after Stuart Eizenstat put the second Austrian deal together, a suit was filed in federal court in Los Angeles by some of the non-labor claimants against Austria seeking to void the deal. As of August 2002, this lawsuit is still pending. Austria, like Germany before it, is presently withholding payments on this portion of the settlement because of this pending litigation. For the slave labor claims, all lawsuits against Austrian firms were dismissed by the class action lawyers. Over 20,000 former slaves have already received their one-time payout of \$7,000.

#### **D. Cases Regarding Artworks Looted by the Nazis**

Between 1933 and 1945, the Germans stole from both museums and private collections throughout Europe approximately 600,000 artworks. This includes paintings, sculpture, objects d'art, and tapestries. When rare books, stamps, coins and fine furniture are considered, the figure goes into the millions. It took 29,984 railroad cars, according to records from the Nuremberg trials, to transport all the German-stolen art back to Germany. The value of the art plundered by the Nazis is astounding: \$2.5

billion in 1945 prices, or valued at \$20.5 billion today.

After the war, the Allies set out on the complicated task of returning art and other cultural objects to the country of origin of those whose art had been recovered. While the effort was massive (for example, 60,000 artworks were returned to France, with 45,000 returned to their owners, mostly Jewish), it was only partially successful. Many Holocaust looted artworks are now turning up in surprising places. Museums all over the world have discovered that they are in possession of Nazi-stolen art. Looted art, unlike other areas of Holocaust restitution, has necessarily been approached on an ad hoc, case-by-case basis, rather than by class action litigation. And even though American legal rules involving stolen art may appear to be clear, the actual litigation of Holocaust art claims is, on the whole, complex, time-consuming and expensive.

*Goodman v. Searle*, involving Degas' *Landscape with Smokestacks*, was the first case brought. Friedrich Gutmann had purchased the Degas in 1932. In April 1939, anticipating the oncoming war, he sent the painting to an art dealer in Paris for safekeeping. In 1943, Gutmann and his wife attempted to escape from Nazi-occupied Holland to Italy, where their daughter Lili was living. They were arrested by the Nazis and sent to concentration camps, where they perished. After the war, the Gutmann children (now with the Anglicized name "Goodman") attempted to locate their parents' possessions, but were unsuccessful. In 1994, Simon Goodman, a grandson, was leafing through art books at the U.C.L.A. Art Library where he discovered a photo of the Degas pastel. The book listed the artwork as being in the private collection of Daniel Searle, a Chicago pharmaceutical tycoon.

On December 5, 1995, the Gutmann heirs wrote to Searle demanding the return of the *Degas*. Searle refused, claiming that the artwork rightfully belonged to him. The Goodmans then filed suit in federal court in

Manhattan, basing their jurisdiction on the fact that Searle bought the Degas there. Searle's attorneys successfully petitioned to have the suit moved to federal court in Chicago. There, Searle's attorneys filed a motion of summary judgment, arguing that the Degas had not been stolen by the Nazis, but rather was one of the artworks that Friedrich Gutmann sold prior to his deportation when he began experiencing financial difficulties during the war. The Gutmann heirs disputed this allegation.

The Goodmans also argued that Searle either was, or should have been aware, of the Degas' checkered pedigree or provenance. Searle claimed that when he purchased the pastel he relied on the expertise of the curators from the Art Institute of Chicago, a museum where he is a trustee, who assured him that the artwork had a clean provenance. Plaintiffs' attorneys, however, took pre-trial depositions of the two curators who reviewed the provenance of the Degas for Searle in 1987. Apparently, the curators missed evidence pointing to flaws in the pastel's ownership records, including the fact that it was once owned by a notorious wartime fence for art looted by the Nazis.

Searle also argued that the claim was time-barred based on the Illinois courts' "discovery rule" in which plaintiffs in a stolen art case must show that they had searched diligently for the work during the intervening time between its disappearance and finding it in the defendant's possession. Since Searle's ownership of the work had been published in several art books over the years, the Goodmans argued that the New York "demand and refusal" law should apply – a much more lenient approach. The court found in favor of the Goodmans, and the case was quickly settled.

In June 1999, the second modern-day Holocaust looted art case to reach litigation – and the first against an American museum -- also settled. *Rosenberg v. The Seattle Art Museum* was filed in July 1998 in Seattle federal court. The case involved the artwork *Odalisque*, a 1928 painting by Henry Matisse,

also known as *Oriental Woman Sitting on Floor*.

Paul Rosenberg, one of the most prominent and wealthy art dealers in pre-war France, acquired the *Odalisque* in 1929. Because Rosenberg was Jewish, he fled France for the United States in 1941. The Nazis then seized more than four hundred of his paintings. After the war, Rosenberg returned to Paris and, by the time he died in the late 1950's, managed to recover most of his stolen art. The *Odalisque*, however, was not one of them.

As with the stolen Degas, the legal journey leading to the return of the *Odalisque* came about through pure serendipity. In 1997, Hector Feliciano's *The Lost Museum*, a book describing the numerous artworks stolen by the Nazis and found in France, was published in the United States. Feliciano described many of the missing art works, and included a long discussion of the *Odalisque*. Shortly thereafter, the grandson of Prentice Bloedel, a Canadian timber magnate, was at a party in Seattle, and happened to be flipping through the pages of Feliciano's book, lying on the party host's coffee table. He spotted a photograph of the *Odalisque*, and recognized it as a painting that had been hanging for many years at his grandparents' country home. A year earlier, the Bloedel family had donated the painting the Seattle Art Museum, commonly known by its acronym SAM. The Bloedels then contacted Feliciano. He informed Paul Rosenberg's heirs.

In August 1997, the Rosenberg heirs contacted SAM, informing them of their ownership claim upon the *Odalisque*. In July 1998, the heirs brought suit for the recovery of the painting. In June 1999, while the litigation was ongoing, SAM agreed to return the painting to the Rosenberg family.

The next, and without a doubt the most famous, Holocaust looted art case was the litigation over the Schiele paintings on loan from Austria to New York's Museum of Modern Art (MoMA). From October 1997 to January 1998, MoMA held an exhibition of artwork by the Austrian modernist painter Egon Schiele,

made up of 150 works of art on loan from the Leopold Museum in Austria. Among the Schiele works were two of his paintings, *Dead City III* (“*Dead City*”) and *Portrait of Wally* (“*Wally*”). The Schiele exhibition was a great success for MoMA. However, as the exhibition was winding down, the heirs of two Holocaust victims contacted MoMA with a most unexpected accusation. *Dead City* and *Wally* were Nazi-stolen artworks. On December 31, 1997, five days before the exhibition was to close, the museum was informed that *Wally* was stolen from Lea Bondi Jaray (“*Bondi*”), an Austrian Jewish art dealer who fled Austria in 1938. *Dead City* was stolen from Fritz Grunbaum, also an Austrian Jew, who did not survive the war.

The Bondi and Grunbaum heirs requested the museum to hold on to the paintings, allowing them to remain in New York pending determination of their true ownership. MoMA replied that it would deny these requests. Although MoMA expressed sympathy for the claims, Lowry explained that MoMA’s loan agreement with the Austrian government required the museum, upon conclusion of its exhibition, to ship the paintings back to Europe.

In a usual stolen property case, a party who seeks the return of alleged stolen property seeks injunctive relief barring its removal from the jurisdiction, but this was unavailable to the heirs because New York law bars parties seeking recovery of a stolen artwork from seeking such relief.

The heirs tried another route. They contacted the New York District Attorney’s office. Robert Morgenthau, the Manhattan District Attorney, sprang into action. Hours before the paintings were to be returned to the Austrian government, the District Attorney was able to stop their departure from New York by impaneling a state criminal Grand Jury which issued a subpoena ordering MoMA to appear as a witness before it, and to produce the two paintings, thereby effectively preventing their departure. MoMA filed legal proceedings in New York State court to quash the subpoena.

In May 1998, the New York Supreme Court judge presiding over the case ruled in favor of MoMA. The District Attorney appealed. In March 1999, the Appellate Division of the New York Supreme Court reversed the decision. *See In re Application to Quash Grand Jury Subpoena Duces Tecum (People v. The Museum of Modern Art)*, 688 N.Y.S.2d 3 (1998). The appellate court held that a subpoena to appear before a Grand Jury and produce evidence did not constitute “seizure” and therefore the issuance of a subpoena upon MoMA was not violative of Section 12.03 prohibiting “a seizure ... upon any work of art.” *Id.* MoMA appealed from this ruling. In September 1999, The New York Court of Appeals, the highest court in New York State, reversed the appellate court.. *People v. The Museum of Modern Art*, 93 N.Y.2d 729 (1999). It held that the anti-seizure law permits no exceptions, and applies to any legal proceedings that would result in keeping the paintings in New York beyond its agreed-to loan period. In this case, the court held, because the criminal subpoena issued by the Grand Jury led to an indefinite detention of the paintings in New York, it amounted to a “seizure” of the artworks.

The decision did not sit well with state legislators. In May 2000, the New York State legislature unanimously enacted an amendment to ACAL 12.03, clearly announcing that the law only prohibits seizure in civil, and not criminal proceedings. The amendment was passed despite strong opposition from New York museums. On May 25, 2000, Governor George Pataki signed the legislation into law.

The amendment, however, came too late to be of practical significance to the loaned Schiele works. *Dead City* was shipped back to Vienna, where it is now safely ensconced at the Leopold Museum. However, within hours of the New York court decision voiding the state subpoena, U.S. Attorney, Mary Jo White, obtained an emergency court warrant allowing the United States Customs Service in New York to seize *Wally*. The federal warrant was issued

on the ground that the painting was stolen property knowingly imported into the United States in violation of the U.S. National Stolen Property Act. 18 U.S.C. § 2314 (2000). Contemporaneously with the warrant application, White filed a civil suit in federal court in Manhattan seeking permanent forfeiture of the painting from the Leopold Foundation. Like the warrant, the civil forfeiture action asserted that the Foundation, in violation of National Stolen Property Act, transported *Wally* into the United States knowing it to have been property stolen by Welz. In turn, the Lea Bondi heirs and the Leopold Museum filed competing claims for the painting in the same action.

In July 2000, Judge Michael Mukasey issued his decision in the case, in what is now known as *Portrait of Wally I*. *United States v. Portrait of Wally*, 105 F.Supp.2d 288 (S.D.N.Y. 2000). In his ruling, he dismissed the U.S. Government's forfeiture case. Judge Mukasey found that the case could not proceed since, under federal law, *Wally* was not stolen property when it was brought into the United States for the MoMA exhibit. According to the court's reasoning, even if the painting was stolen when it was taken from Lea Bondi, it ceased to be stolen property as it was recovered by the U.S. Army from Welz. As a result, the legal predicate that would trigger the National Stolen Property Act -- the property at issue must be "stolen" -- was missing.

White asked Judge Mukasey to reconsider his decision and the opportunity to reargue the case to convince him that he made a mistake. Alternatively, White asked Judge Mukasey to reopen the case, take away his final judgment dismissing the action, and allow the government to file a new complaint in the case - in effect to start the forfeiture proceedings anew. The strategy for the last request was to file another complaint that would now make the Government's allegations fit the requirements of the National Stolen Property Act -- *i.e.* to make *Wally* "stolen property."

In December 2000, Judge Mukasey issued *Portrait of Wally II*. *United States v. Portrait of Wally*, 2000 WL 1890403 (S.D.N.Y. Dec. 28, 2000). The motion for reargument was denied. Surprisingly, however, he allowed the U.S. Government to file a new complaint in the case. As explanation for his unusual decision Judge Mukasey noted that "[t]his is not [an] ordinary case ... This case involves substantial issues of public policy relating to property stolen during World War II ... There are more interests potentially at stake here than those of the immediate parties pursuing this lawsuit. *Id.* The next month, the U.S. Government filed its Third Amended Complaint.

In April 2002, twenty-one months after his first decision and over a year after the U.S. Government filed its new complaint, Judge Mukasey issued *Portrait of Wally III*. *Portrait of Wally*, 2002 U.S. Dist. LEXIS 6445 (S.D.N.Y. 2002). Reversing his ruling of almost two years earlier, the judge now held that *Wally* indeed was "stolen property" under federal law. In this latest opinion, Judge Mukasey also dismissed the jurisdictional arguments made by the Leopold Foundation, MoMA and Austria, which filed an *amicus* briefs. In another defeat for Austria, Judge Mukasey denied defendants' motion to dismiss the Bondi heirs from the lawsuit. Last, he dismissed the separate claim of the grandson of Bondi's husband to the painting.

It was a stunning reversal. Austria's Leopold Foundation will now be forced to go to trial to determine which competing claimant is the rightful owner *Wally*. Once decided, the painting, now in storage with the U.S. Customs Service, will be turned over to its proper owner.

In July 1999, a fourth Nazi-stolen artworks case was filed in New York. The case, *Warin v. Wildenstein & Co., Warin v. Wildenstein & Co.*, No. 115413-99 (N.Y. Sup. Ct. July 27, 1999), involves eight rare medieval Christian manuscripts valued at approximately

\$15 million; and the parties are well-known personalities in the art world.

The manuscripts are *Books of Hours*, compilations of devotional prayers that are hand-written on parchment with elaborately designed color illustrations of religious subjects. Commissioned by wealthy European families during the Middle Ages, they date back to the 15th through the 17th centuries. The manuscripts are now in the possession of Wildenstein & Co., a legendary Manhattan art gallery.

The manuscripts allegedly belonged to Alphonse Kann, a renowned Jewish art collector in France. The lawsuit alleges that the manuscripts were part of Kann's collection of twelve hundred artworks, stolen by the Nazis from his villa in 1940 on the outskirts of Paris, after Kann left France for England. The defendants in the New York litigation, then 81-year old (and now deceased) Daniel Wildenstein and his two sons, Alec and Guy, maintain that the manuscripts did not belong to Kann. Rather, the Wildensteins claim that the medieval prayer books were part of the personal collection of Georges Wildenstein, their family patriarch, also Jewish, whose Paris art gallery was likewise looted by the Nazis. While Alphonse Kann fled in 1940 from France to England, Georges Wildenstein came to New York, where he reestablished his art empire.

In September 2001, Judge Marilyn Diamond of the New York Supreme Court, the trial judge presiding over the case, denied the defendants Wildenstein's motion for summary judgment on the grounds that the action was time-barred. In April 2002, the appellate division affirmed her ruling. *Warin v. Wildenstein & Co., Inc.*, 740 N.Y.S.2d 331 (2002). The case is now back before Judge Diamond proceeding through the pre-trial process.

Finally, Austria is also a party to another infamous Holocaust art lawsuit. The lawsuit involves six paintings of Austrian painter Gustav Klimt. The claimant is Maria Altmann, in her late 80's and living in Los

Angeles. (See [www.adele.at](http://www.adele.at)) Altmann is the niece and heir of Adele Bloch-Bauer. Adele and her husband Ferdinand Bloch-Bauer were prominent Austrian Jews, living the life of *bon vivants* in pre-war Vienna. The couple were friends of Klimt, and Adele posed as one of his models, including being the subject of some of the paintings in dispute. The paintings have the following titles: *Adele Bloch-Bauer I*, *Adele Bloch-Bauer II*, *Beechwood*, *Apple Tree I*, *Houses in Unterach am Attersee*, and *Amalie Zuckerkandl*. The paintings are now hanging in the Belvedere Gallery (the Austrian National Gallery) in Vienna.

Adele Bloch-Bauer died at age 43 in 1925, of meningitis. In her will, executed two years earlier, she named five of the Klimt paintings in dispute (and one other) and asked that Ferdinand donate them to the Austrian Gallery upon his death. In 1936, Ferdinand delivered one of the six paintings named in the will (and not subject to this litigation) to the Gallery. In 1938, in the aftermath of the *Anschluss*, Ferdinand fled Austria to Switzerland. Upon Ferdinand's flight, the Nazis raided and stole his possessions, including his home, his business and his artwork. Some of the Klimt paintings went to the Austrian Gallery and others to other Austrian museums. Ferdinand died in 1945, several months after the war ended. In his last will, written shortly before he died, he did not make any bequests to the Gallery or to any other Austrian institution.

After the war, Ferdinand hired Dr. Gustav Rinesch, an Austrian lawyer and family friend, to locate family property seized by the Nazis. After Ferdinand died, the three Bloch-Bauer heirs continued to retain Rinesch to recover their family's possessions, including the stolen artworks. In 1948, Rinesch negotiated a deal, whereby the heirs made a "donation" of the Klimt paintings mentioned in Adele's will to the Austrian Gallery in exchange for receiving an export license to bring out of Austria other artworks of the family. Rinesch also acknowledged in writing the validity of Austria's claims to the paintings. According to

Maria, neither she nor the other three heirs were ever aware of this deal. She always believed that the other Klimt paintings were donated by her aunt and uncle to the Austrian Gallery before the war.

In 1998, in the midst of the *Schiele* controversy, the Austrian government opened up the Austrian Gallery's archives to private researchers to independently confirm that Austria does not possess wartime-looted artworks. Among other things, researchers revealed not only the 1948 agreement, but also correspondence that indicated it had been a coercive process involving the export permits for their other belongings.

Later that year, a new Austrian restitution law was enacted aimed to return artworks that had been donated to Austrian museums after the war under the coercive policy of withholding export permits. Maria Altmann, as the sole surviving Bloch-Bauer heir, contacted Austria for the return of objects that were kept by the post-war Austrian government under the coercion program, including the Klimt paintings.

In June 1999, the Advisory Board created under the law rejected Altmann's claim to the Klimt paintings, deciding that the Klimt paintings were not coerced from the family but legally came to the Austrian Gallery under Adele's 1923 will and Ferdinand's orally expressed intentions before he fled Austria that the paintings would go the Austrian Gallery upon his death, in accordance with Adele's wishes.

Altmann's attorney proposed to Austria that the matter be resolved by private arbitration between the Austrian Gallery and Altmann. Austria declined. Altmann then prepared to sue in Austria. Here, a major practical problem arose. Under Austrian law, as in many other countries, a party filing a lawsuit is required to deposit with the court a filing fee amounting to a percentage of the amount sued. The filing fee in Austria is 1.2% of the value of a plaintiff's claim. Because the artworks were worth approximately \$150 million, Altmann was

required to deposit a filing fee of \$1.8 million with the court to have her lawsuit heard. A retired dress shop owner, she was unable to do so, and asked for special relief from the Austrian court. The Austrian court granted her a partial waiver, but the reduced fee still amounted to all of her available assets, approximately \$200,000, an amount she maintains she could not pay. Altmann decided to drop her lawsuit in Austria, and, in August 2000, filed her lawsuit in federal court in Los Angeles.

The Austrian defendants asked the court to dismiss this lawsuit on sovereign immunity grounds. Here, Altmann had no choice but to sue Austria and the Austrian Gallery, which under the FSIA, is considered "an agency or instrumentality" of the foreign state.

Judge Florence-Marie Cooper, on May 4, 2001, ruled in favor of Altmann. Judge Cooper found that the suit fell within three exceptions to the general rule of sovereign immunity in the FSIA: (1) property taken in violation of international law, (2) where that property is owned or operated by an agency or instrumentality of the foreign state, and (3) that agency or instrumentality is engaged in commercial activity in the United States.

Austria and the Austrian Gallery took an interlocutory appeal from Judge Cooper's denial of their motion. Before the Ninth Circuit, Austria argued that in denying Austria's motion to dismiss, the district court did not treat Austria fairly, *i.e.* in the same manner that the United States would be treated if our nation and one of its museums was sued in Austrian courts. On March 20, 2002, the appellate panel, took the unexpected step of ordering Altmann and Austria to enter into mediation. This decision broke new ground. It is the first time that a federal appellate court had ordered a foreign nation to take part in mediation proceedings. Austria, however, was not ready to budge. Only one mediation conference was held, after which the mediation unit at the Ninth Circuit informed the judges that settlement efforts proved fruitless. The case was resubmitted to the three

appellate judges for a decision and is still pending.

### **E. The Case of the Hungarian Gold Train**

The most recent addition to the Holocaust-Era litigation is a case involving Hungarian Jewish assets that were intercepted by the American army near the end of the war. After the German invasion of Hungary in March 1944, Jewish assets were seized in that country. In late 1944 and early 1945, these assets were loaded into a train to be shipped to Germany. The train was intercepted outside Salzburg, Austria by the U.S. Army on May 11, 1945. The property was stored in Salzburg for time, but in 1946, the U.S. Government (despite claims to the contrary from Hungarian survivors) declared it unidentifiable, and disbursed it in various ways that were unknown to the original owners at the time or during the intervening years.

In October 1999, however, a Presidential Advisory Commission released a report on the disposition of the train's assets, and survivors and their heirs subsequently filed suit against the United States for reparations. The complaint alleged three causes of action: 1) an unconstitutional taking under the Fifth Amendment, 2) breach of implied contract of bailment, and 3) violation of international law. The U.S., no differently from the European defendants, moved to dismiss based on lack of jurisdiction, failure of the plaintiffs to state a claim, and that the claims were time-barred.

On August 28, 2002, the District Court for the Southern District of Florida issued its first ruling in the case. Although it dismissed the Fifth Amendment claim because the plaintiffs were not American citizens (at least not at the time of the event), it also held that the other two claims were not time-barred, through the principles of equitable tolling. Thus, plaintiffs will have an opportunity to proceed on the basis of the contract and international law claims.

### **III. WORLD WAR II-ERA CLAIMS AGAINST JAPANESE COMPANIES**

The suits for Holocaust restitution have now led to claims being filed against Japanese corporations for their use of captured soldiers and civilians as slaves during World War II. Aging victims of Japan's wartime activities began filing their lawsuits in American courts only after seeing the successes achieved by their counterparts in the Holocaust litigation.

Approximately 25,000 American prisoners of war were shipped to Japan and Japanese-occupied Asia to work for private Japanese companies. See Linda Goetz Holmes, *Unjust Enrichment: How Japan's Companies Built Postwar Fortunes Using American POWs*, (Stackpole Books 2001), p. xvii. Additionally, the Japanese captured tens of thousands of British, Canadian, Australian and New Zealander soldiers, who also toiled as slave laborers for Japanese industry, along with local Chinese, Korean, Vietnamese and Philippine civilians. These companies are now some of the largest corporate concerns in the world: Mitsubishi, Mitsui, Nippon Steel, Kawasaki Heavy Industries, and at least forty other Japanese corporations.<sup>5</sup>

The first World War II Pacific Theatre restitution lawsuit was filed in July 1999, by former POW Ralph Levenberg against Nippon Sharyo Ltd. and its U.S. subsidiary. Eventually, victims of Japanese slave labor filed over two-dozen lawsuits against numerous Japanese corporations that had employed slave labor during the war. This litigation gravitated to California, as a result of a state law enacted in July 1999, permitting an action by a "prisoner-of-war of the Nazi regime, its allies or sympathizers" to "recover compensation for labor performed as a Second World War slave victim . . . from any entity or successor in interest thereof, for whom that labor was performed. The California statute extended the limitations period for filing such lawsuits until 2010.

On September 21, 2000, Judge Walker of the Northern District Court of California dismissed the lawsuits filed by American, British, Australian and New Zealand POWs. *In re World War II Era Japanese Forced Labor Litigation*, 114 F.Supp.2d 939 (N.D. Cal. 2000). The court held that the United States, in the 1951 Peace Treaty with Japan, waived, on behalf of itself and its nationals, all claims arising out of actions taken by Japan and its nationals (including private Japanese corporations) during the war. In September 2001, Judge Walker dismissed the claims of Chinese, Filipino and Korean civilian internees as well. In a 44-page opinion, the court held that the California state law, Cal. Code of Civil Procedure Section 354.6 authorizing such slave labor claims in California courts, was unconstitutional as an infringement on the powers of the federal government to conduct foreign policy. Without the aid of the California law extending the statute of limitations to 2010, the claims were time-barred.

Critical to the court's rulings was the appearance of the United States government in the litigation. In a Statement of Interest filed with the court, the United States asserted that the above-quoted language of the 1951 Peace Treaty barred claims of the Allied POWs. The court emphasized the "significant weight" to be given to the U.S. government's statement of interest. The position taken by the U.S. government in the Japanese litigation differed significantly from the position it took in the Holocaust litigation. In the Holocaust slave labor litigation, the government only advised the court that negotiations to compensate the former slave laborers of the German companies were under way. For the Japanese slave labor claims, however, the U.S. government not only sided with the Japanese companies, but, to date, has failed to press Japan and its private industry to recognize the same type of claims that it forced Germany and its private industry to resolve.

Subsequently, the U.S. government filed two more Statements of Interest, urging that cases filed by (1) alien civilians against private Japanese companies similar to the claims of the allied POWs and (2) claims by sex slaves of the wartime Japanese army - the so-called "comfort women" - also be dismissed. In October 2001, federal district court in Washington, D.C., dismissed the lawsuit filed by the "comfort women" against Japan. All the cases are now on appeal.

As of August 2002, it appears that the restitution movement against the Japanese companies (and Japan) is not achieving the same favorable results as those achieved in the restitution movement launched against the European companies (and European governments) for their wartime activities. While millions of aging Jewish and non-Jewish survivors in the United States and abroad are finally receiving some measure of justice for the wrongs committed against them during World War II by European enterprises, aging POWs and civilians who suffered at the hands of the Japanese industry are being denied the same treatment.

#### **IV. INSURANCE CLAIMS ARISING OUT OF THE ARMENIAN GENOCIDE**

During the Turkish Ottoman Empire, Armenians and other minorities purchased insurance policies from European and American insurance companies that had marketed their policies in the region. Many of the Armenian purchasers perished in the Armenian genocide during and after World War I. Their relatives, some of whom survived the genocide as young children but are now quite elderly, sought payment from the insurers, claiming that payments was never made.

The first, and to date only, lawsuit filed on these insurance claims, *Marootian v. New York Life Ins. Co.*, was brought by twelve elderly Armenians, all but one of whom resides in the United States, against the American

insurance giant New York Life Insurance Company. The insurance company did not dispute that it sold such policies to the Armenian population in Ottoman Turkey. It argued, however, that the suit should be dismissed because all of the policies contained forum selection clauses mandating that if a dispute ever arose about the policies, they would be resolved either before French or English courts. An additional problem was that policies were written and allegedly unpaid almost a century ago, so New York Life could argue that the lawsuits were time-barred.

In 2001, the California legislature enacted a statute similar to the statutes it passed in response to the World War II-era insurance and slave labor litigation. The statute, first, allows suits to collect premiums on Armenian genocide-era policies to be heard in California courts, despite the forum-selection clauses in the policies, and, second, extends the limitations period of such suits to 2010.

In an attempt at damage control, New York Life tried to settle the case, offering \$15 million. While the media initially reported that the case settled for that amount, plaintiffs ultimately rejected New York Life's offer as being insufficient.

Failing to settle, New York Life pressed on with its motion to dismiss. In a significant victory for plaintiffs, in December 2001, Los Angeles federal judge Christina Snyder denied New York Life's dismissal motion. In her decision, Judge Snyder held that, despite the English and French forum-selection clauses in the policies, the case could be tried in federal court in California. "The Court finds that enforcement of the forum-selection clauses in the NYLIC life insurance policies which are the subject of this action would be fundamentally unfair." *Marootian v. New York Life Ins. Co.*, 2001 U.S. Dist. LEXIS 22274 [\*53] (Nov. 30, 2001). In June 2002, the case entered the discovery stage, and trial is set to begin in spring 2003.

## V. THE CALL FOR AFRICAN-AMERICAN REPARATIONS

One of the most interesting consequences of the Holocaust restitution litigation has been to give fresh impetus to the call for payments to African-Americans by the U.S. government for slavery which ended with the Civil War. African-American Reparation proponents specifically point to the payments now being made for WWII-wrongs as precedent for their cause.

In 1999, prominent African-American activist Randall Robinson published *The Debt*, which forcefully argued for slavery reparations. The book's theme, however, did not gain much interest outside the African-American community until Robinson and others began to use the Holocaust restitution movement as a model for their cause. Robinson now was able to entice superstar attorney Johnnie Cochran to join the cause, and the talk now is of putting together another "dream team" of lawyers – this time to file suit for African-American slavery restitution.<sup>6</sup>

The call for African-American reparations presently has much momentum. The issue has been featured on all the major American television networks and lengthy and incisive articles have been written about it, including a recent piece in the *New York Times* and a cover story in the leading American law magazine, the *ABA Journal*. *Roots & Reparations*, ABA Journal, November, 2000.

In 2001, California enacted a law forcing American insurance companies who sold policies insuring slaves as chattel to disclose information about such policies. Cal. Insurance Code §§ 13811 - 13813. In May 2002, following the mandate of the California law, five American insurance companies reported that they insured slaves: Aetna, Inc., American International Group, Inc. (AIG), Manhattan Life Insurance Company, New York Life Insurance Company and Royal & Sun Alliance.

The first lawsuit was filed in March 2002 by Ed Fagan. Joining Deadria Farmer-

Paellmann, a 36-year-old long-time African-American reparations activist and who in 2000 exposed Aetna's slave insurance policies, Fagan filed his class action lawsuit in federal court in Brooklyn. Farmer-Paellman, on behalf of herself and nearly forty million African-Americans in the United States, sued Aetna and two other name-brand corporations, Fleet Boston Financial Corp. and CSX Corp. (the largest railroad on the East Coast), claiming they profited from slave labor. Apparently, Fleet and its predecessor, The Providence Bank, provided financing for the ships that brought the slaves to the New World. CSX's predecessors used slaves to construct railways across the United States. The suit sought unspecified damages, but Fagan and Farmer-Paellman declared that they would be asking for \$1.4 trillion, the figure alleged to represent the current value of unpaid African-American slave labor and interest.

The next month, the Fagan team filed a second lawsuit, in New Jersey federal court, adding as defendants New York Life, investment firm Brown Brothers Harriman & Co, and railroad Norfolk Southern Corporation. The reparation lawsuits seek to create a "Fund for the African-American People," which can be used to ensure the existence of a vital African-American community in the future.

#### **IV. REPARATIONS FROM APARTHEID SOUTH AFRICA**

Victims of apartheid in South Africa are now seeking compensation from Swiss, German and American institutions who did business in South Africa during the apartheid years and directly benefited from the apartheid system. Already, Fagan has allied himself with a group of South African lawyers, and this legal team filed a series of class action lawsuits in summer 2002 in federal court in New York and in Swiss courts. Named as defendants are the Holocaust class action lawyers' old nemeses: Switzerland's UBS and Credit Suisse; Germany's Deutsche Bank, Dresdner Bank and

Commerz Banks; and also American corporate giants Citibank and IBM. In a throwback to the accusation made against IBM for its dealings with Nazi Germany, IBM is accused of supplying South Africa with computer technology as early as 1952 used to perpetuate the system of institutionalized racial discrimination and repression in apartheid South Africa. In a repeat of the Holocaust restitution scenario, Hausfeld has aligned himself with different group of South African lawyers and activists to pursue similar litigation.

The recently-filed South African apartheid lawsuits are an example of a historical wrong that should not have to wait fifty years or longer for redress. Multinationals that benefited from the apartheid system as late as the 1980s are being sued now.

## VII. **LEX AMERICANA: OTHER MOVEMENTS ADOPTING THE HOLOCAUST RESTITUTION MODEL**

The new trend by governments and corporations to finally “come clean” about the wrongs they committed in the past would not be occurring without the spotlight being shined on their activities through the lawsuits in the United States. American law, in the words of Professor Burt Neuborne, has become *Lex Americana*, being imitated throughout the world, with the Holocaust restitution cases becoming the leading model for victims and their representatives seeking to right past wrongs.

Currently, there are over a half-dozen campaigns being waged in both the United States and abroad for recognition and some measure of compensation stemming from past historical injustices. All are claiming inspiration from the American litigation model represented by the Holocaust restitution movement, and seeking to emulate the results achieved by the Holocaust restitution activists. These include:

**1. Bracero Workers** – claims for unpaid wages by Mexican nationals who worked as temporary guest workers [*braceros*] in the United States during World War II, when an estimated 400,000 Mexican nationals helped to fill jobs left vacant by U.S. workers fighting the war. The class action lawsuit, filed in 2001 in federal court in San Francisco, against the Mexican and U.S. governments, along with four banks, claims that the *braceros* are owed at least \$500 million, including interest, for a portion of the wages withheld from them by the defendants. The attorneys for the bracero plaintiffs are specifically pointing to the compensation obtained by the former German slave laborers as precedent for their suit. Attorneys (which include former Clinton Administration civil rights chief Bill Lann Lee)

say the cases “are similar because they involve not reparations but assets withheld through alleged complicity of foreign governments and financial institutions.”

**2. Sudeten Germans** – claims by Sudeten Germans expelled from Czechoslovakia after World War II as being “enemies of the Czechoslovak people” for properties lost in the aftermath of their expulsion. These former Czechoslovakian citizens and their heirs,--a significant number of whom were Nazis or benefited from Nazi Germany’s occupation of Czechoslovakia and who were driven from Czechoslovakia *en masse* at the end of World War II as revenge for the horrors of the Nazi regime--are claiming that, like Holocaust survivors and heirs, they are likewise entitled to compensation and restitution. For more info *see Sudetendeutsche Landsmannschaft/Sudeten German Heritage Union*, at <[www.sudeten.de](http://www.sudeten.de)>

**3. Gurkhas** – claims by the famed Gurkhas from Nepal, known for their ferocity on the battlefield and serving in the British military, for discrimination in pay, promotion and other benefits which they claim were denied to them during their military service in the British Army. Their lawyer is Cherie Booth, QC, wife of British Prime Minister Tony Blair, and a leading human rights advocate of her own right.

### Endnotes

<sup>1</sup> The presumptions are labeled Exhibit A, and are available on the CRT II website, [www.crt-ii.org](http://www.crt-ii.org).

<sup>2</sup> A substantial reason for settlement of these individual suits in California has been the aggressive stance taken by California against the insurers accused of failing to honor Holocaust-era insurance claims. California led the way in enacting new laws threatening suspension of licenses of such insurers (California Insurance Code Sections 790-790.15,

enacted in 1998), requiring the insurers to open their pre-war insurance records (California Insurance Code Section 3800, enacted in 1999), and extending the limitations period for filing suits for such claims until 3 December, 2010 (California Code of Civil Procedure Section 354.5, enacted in 1998). The states of Washington and Florida have followed suit by enacting similar statutes. *See* Holocaust Victim Insurance Act, Fla. Statutes, chapter 626.9543 (1999); Holocaust Victims Insurance Relief Act, Wash. Revised Code Section 48.04.060 (1999) and Holocaust Victims Insurance Act, Wash. Revised Code Section 48.04.040 (1999). The insurance companies have challenged these statutes, asserting that they are unconstitutional. To date, no final ruling has been issued on this question.

to file suit. *See* <[www.ncobra.com](http://www.ncobra.com)>.

<sup>3</sup> INTERNATIONAL MONITOR, Aug. 2000, p. 1 , available at <[www.comptroller.nyc.gov](http://www.comptroller.nyc.gov)> (website of the Office the New York City Comptroller Alan G. Hevesi).

<sup>4</sup> Besides the former slave laborers, individuals upon whom the Nazis performed medical experiments also began receiving moneys in 2002, most of whom also qualified for payments as slave laborers. Approximately 4,400 claimants sought compensation under the Medical Experiments portion of the German Fund. *See* 34 *University of Richmond Law Review*, 249-256 (medical experiments claims), 256-258 (*kinderheim* claims).

<sup>5</sup> The U.S. government-created Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group (“IWG”) is now searching through U.S. archives to ferret out, among other matters, information detailing the wartime activities of Japanese companies. *See* <[www.nara.gov.iwg](http://www.nara.gov.iwg)>, detailing the work of the IWG.

<sup>6</sup> The formal name of the legal team is “The Reparations Coordinating Committee.” Tamar Levin, *Calls for Slavery Restitution Getting Louder*, New York Times, June 4, 2001, at 1. A separate legal team, the “Reparations Litigation Committee,” established by the National Coalition of Blacks for Reparations in America (N’COBRA), is also planning