



# **NEW YORK STATE BANKING DEPARTMENT HOLOCAUST CLAIMS PROCESSING REPORT**

**As Required by Section 37-a of the Banking Law**

**Report to the Governor  
and the Legislature**

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## **I. Background**

For over 11 years the State of New York has played an integral role in helping individuals of all backgrounds obtain a measure of just resolution for the theft of property during the reign of the Nazi regime. Banks, insurance companies, and private and public art collectors are now more willing to consider claims from Holocaust victims and/or their heirs whose property was looted. The processes for filing such claims, however, can be difficult to navigate.

The Holocaust Claims Processing Office ("HCPO") of the New York State Banking Department was created on June 25, 1997 to provide institutional assistance to individuals seeking to recover assets lost due to Nazi persecution. The mission of the HCPO is threefold:

1. recover assets deposited in banks;
2. recover proceeds of unpaid insurance policies issued by European insurers;
3. recover art lost, looted, or sold under duress between 1933 and 1945.

Individual claims are assigned to members of the HCPO's highly trained staff who work with claimants to collect the most detailed and accurate information possible. Using unique investigative skills, research expertise, and their command of foreign languages, staff members corroborate information provided by claimants with research in archives, libraries and other resources. The documentation which the HCPO secures on behalf of claimants has proven instrumental in substantiating their claims.

The HCPO then submits claim information to the appropriate companies, authorities, museums or organizations with the request that a complete and thorough search be made for the specified asset(s) and when applicable that the lost asset be restituted to the claimant. To ensure rigorous review of these inquiries, the HCPO maintains frequent contact with entities to which it submits claims. Staff members regularly update claimants on the status of their claims. Claimants contact the HCPO with questions at any time knowing that they have a committed advocate who will be responsive to their concerns. Because the HCPO is highly respected for its service and sensitivity to the issues, claimants and other agencies often refer individuals to the HCPO for assistance.

Once an agency has completed its review of a claim and reaches a determination, the HCPO reviews the decision to ensure that it adheres to that agency's published processing guidelines. Since claimants may lose track of the many claims they submitted and since each agency has unique and often complex guidelines, the HCPO helps claimants understand these guidelines in order to interpret decisions.

The HCPO's experience has been that the knowledge and expertise of its staff alleviates burdens and costs often incurred when individuals pursue claims on their own. Successes are a direct result of the importance attached to and attention paid by the HCPO to individualized analysis. Indeed it is fair to say that, at one point or another since 1997, nearly all roads to restitution and compensation have converged at the HCPO and the HCPO has worked directly with almost all restitution and compensation processes in existence today. (See Figure 1).

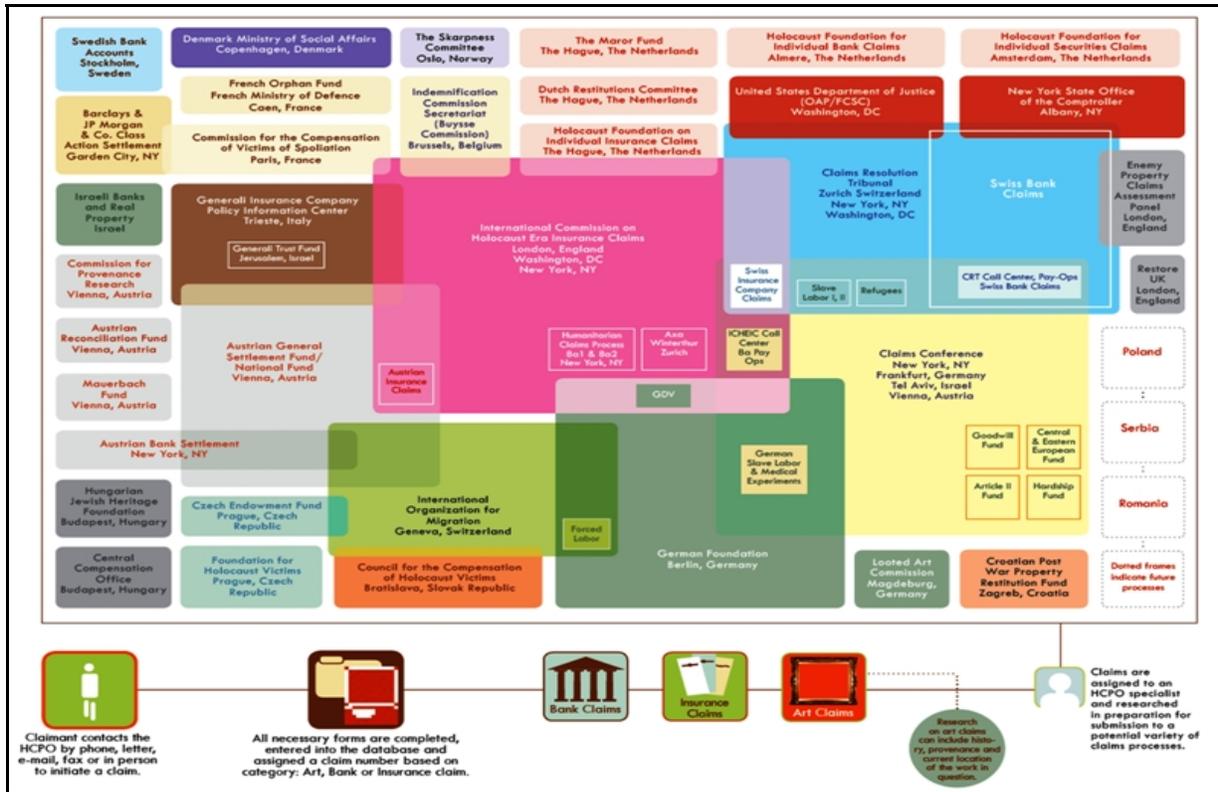


Figure 1 - Compensation Organizations and the HCPO

## II. Overview of Operations and Accomplishments

From its inception through December 2008, the HCPO has responded to more than 13,000 inquiries and received claims from 4,788 individuals from 45 states and 38 countries. (See Figures 2 and 3).

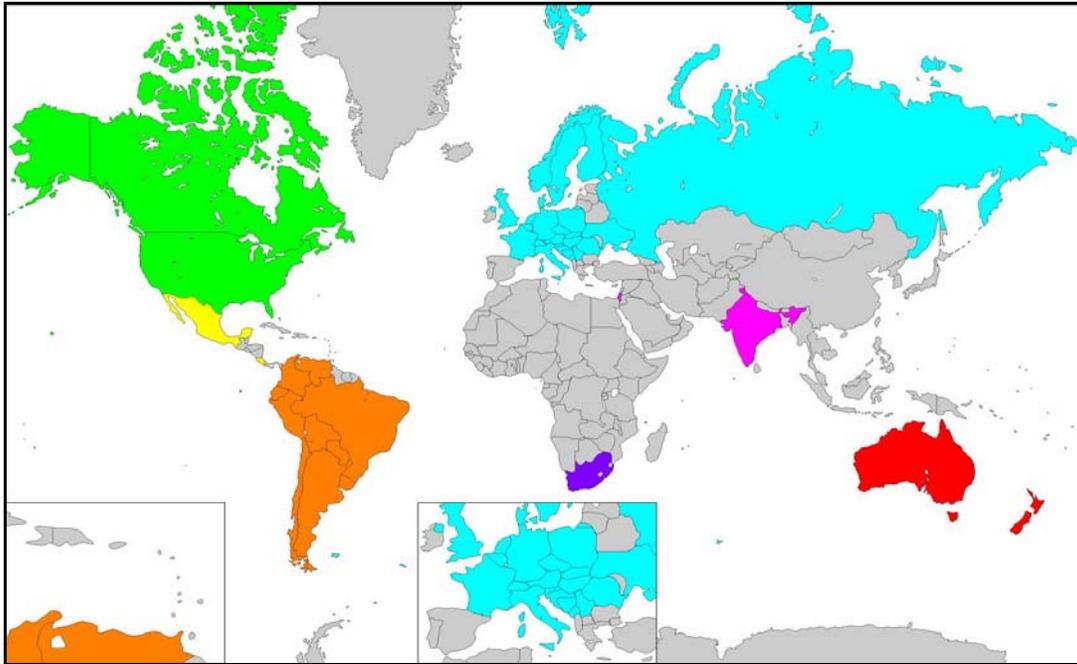


Figure 2 – International Geographic Distribution of HCPO Claimants  
(Areas appearing in color represent countries where HCPO claimants reside.)

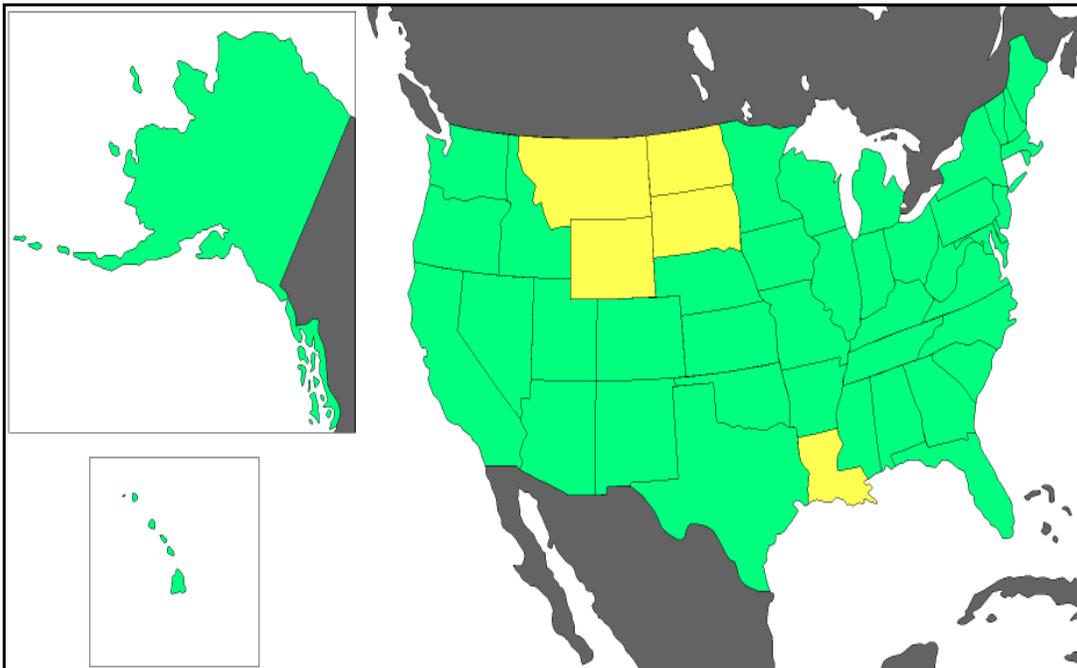


Figure 3 - Domestic Geographic Distribution of HCPO Claimants  
(Areas shaded green represent states where HCPO claimants reside.)

In total, the HCPO has successfully closed the cases of 1576 individuals in which either an offer was accepted, the claims process to which the claim was submitted issued a final determination, the assets claimed had been previously compensated via a post-war restitution or compensation proceeding, or otherwise handled appropriately (i.e. in accordance with the original accountholders' wishes); the claims of 3,212 individuals remain open.

The combined total of offers extended to HCPO claimants for bank, insurance, and other asset losses amounts to \$136,047,665. (See Figure 4).

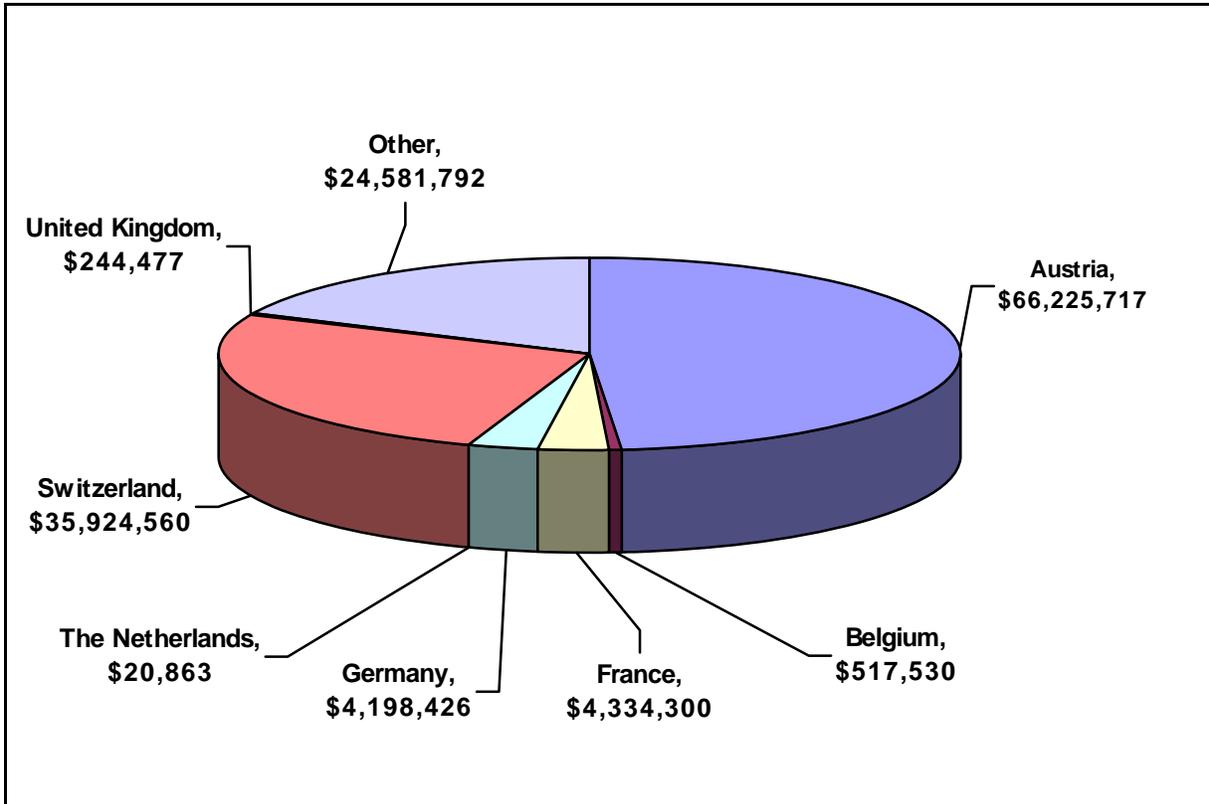


Figure 4 - Total Offers Extended to HCPO Claimants To Date By Country

Of the claims filed with the HCPO to date, 2,345 individuals (from 42 states and 35 countries) submitted claims for assets deposited in banks referencing 3,667 individual account-holders. The HCPO has closed the claims of 456 individuals; 1,889 individuals currently have open bank claims which have been submitted to a number of parallel claims processes.

To date, offers extended to HCPO claimants seeking the return of bank assets total \$65,680,925<sup>1</sup>. (See Figure 5).

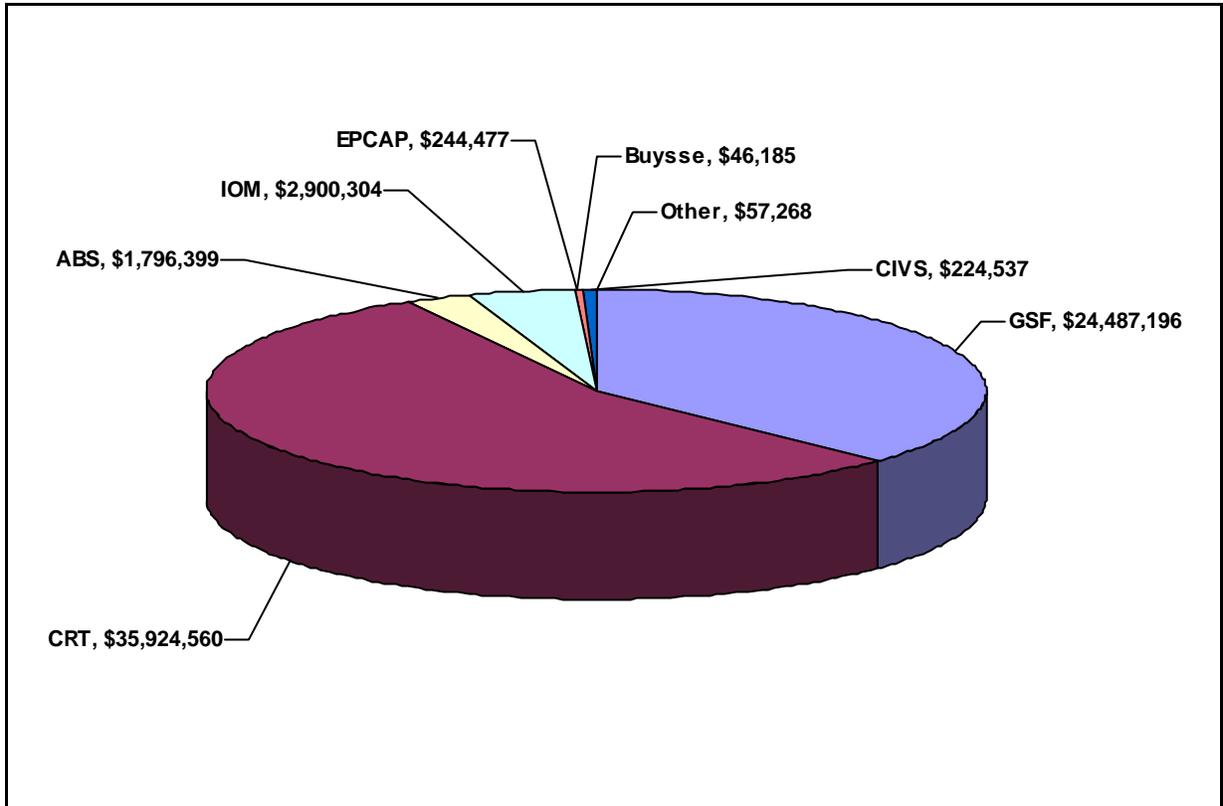


Figure 5 - Bank Claims - Over \$65 Million Offered To Date

<sup>1</sup> This sum includes two dormant Lithuanian Holocaust era bank accounts, previously held by Citigroup, transferred to The Foundation for the Lithuanian Jewish Heritage.

Furthermore, 2,292 individuals (from 42 states and 24 countries) submitted insurance claims referencing 3,400 individual policy-holders. The HCPO has closed the insurance claims of 1,094 individuals; 1,198 individuals currently have open insurance claims most of which are under review for imminent closure in light of the dissolution International Commission on Holocaust Era Insurance Claims. Claims for unpaid insurance policies have been submitted into a number of parallel claims processes for consideration.

To date, offers extended to HCPO claimants seeking the proceeds of insurance policies total \$30,296,637. (See Figure 6).

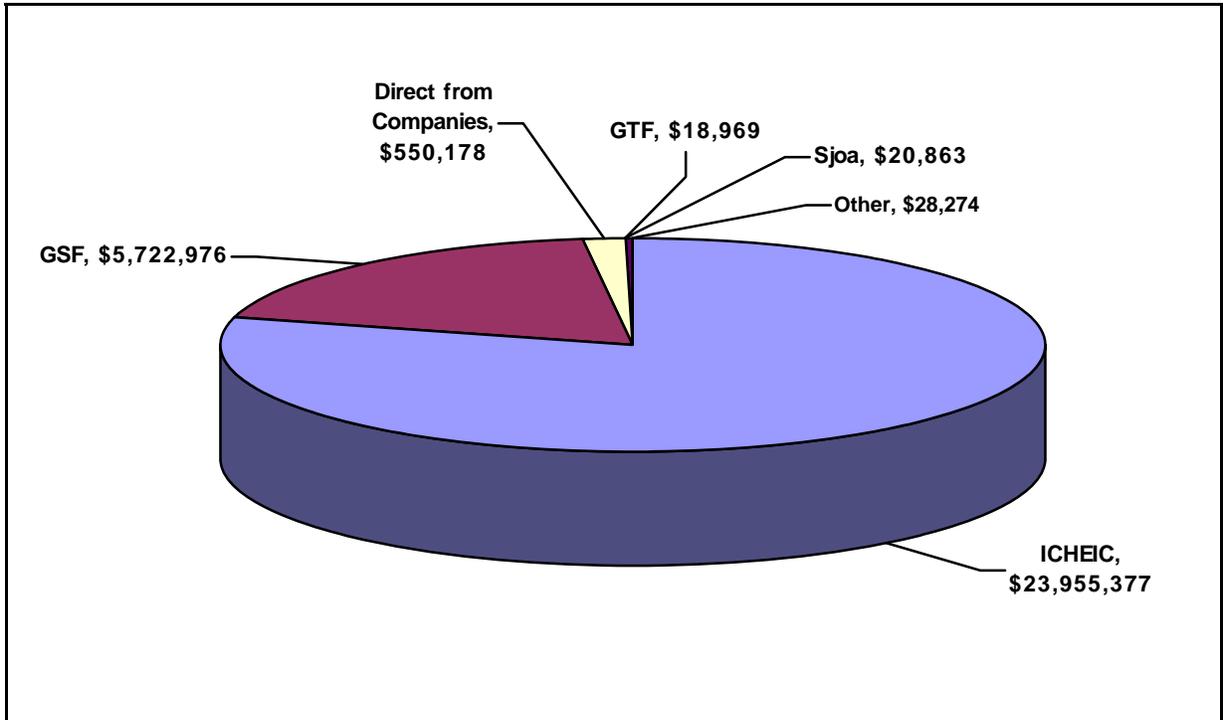


Figure 6 - Insurance Claims - Over \$30 Million Offered To Date

The HCPO has accepted 151 art claims (from 20 states and nine countries) referencing thousands of items, approximately 8,000 of these in sufficient detail to permit additional research. The office has closed the claims of 26 individuals, 125 individuals currently have open art claims. To date, 30 works of art have been restituted to HCPO claimants. (See Figure 7).

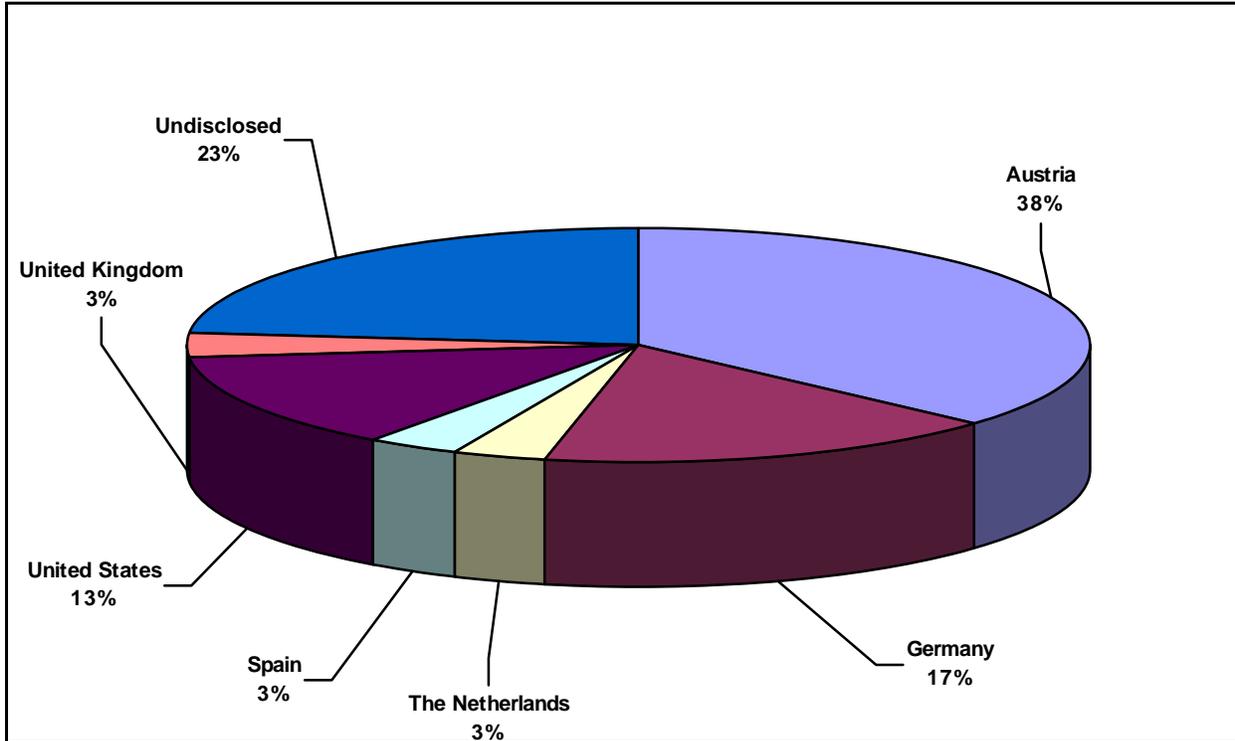


Figure 7 – Geographic Distribution of Artworks Returned to HCPO Claimants

Several compensation agencies administering programs covering bank account and/or insurance policy losses also assess claims for material and/or other losses resulting from Nazi persecution. Of the 4,788 individuals who filed claims with the HCPO 615 of them were found eligible for compensation under material asset, real property loss or other schemes. To date, offers extended to HCPO claimants seeking the proceeds of total \$40,070,103. (See Figure 8).

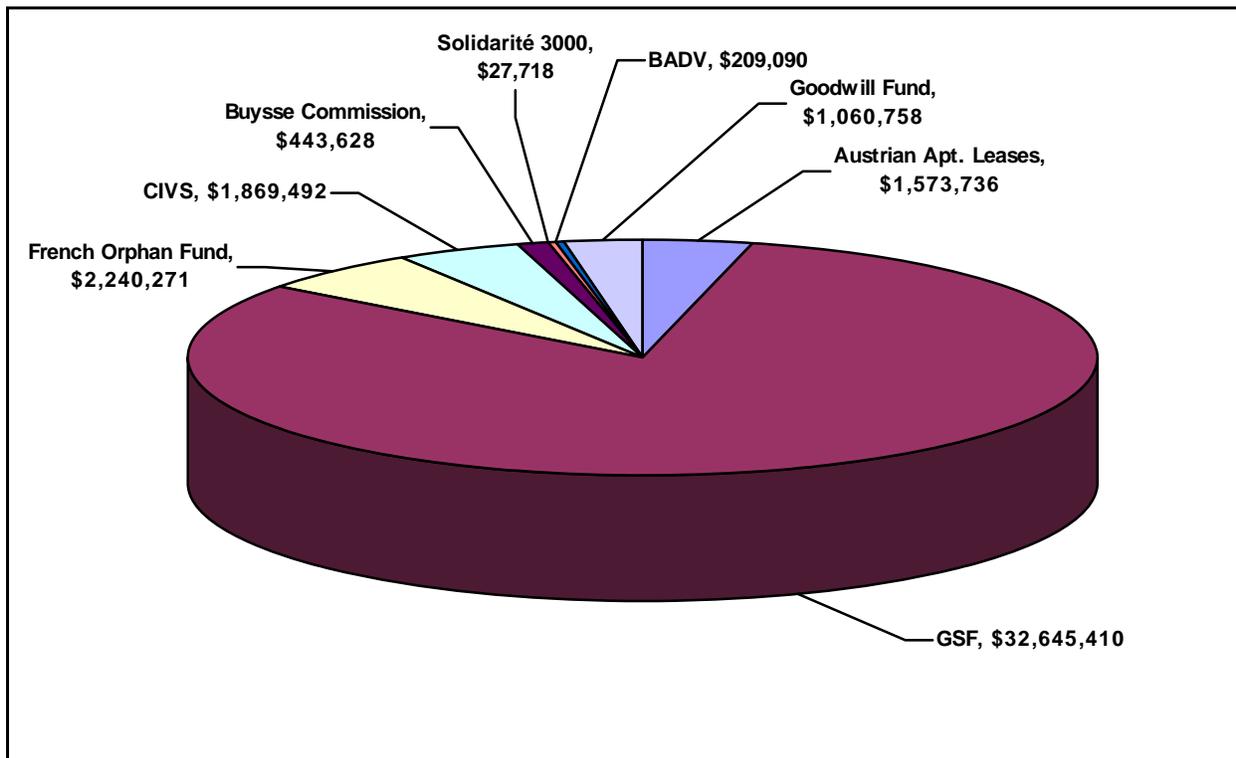


Figure 8 – Other Compensation Claims - Over \$40 Million Offered To Date

The HCPO anticipates that claims will require monitoring through the end of 2009 and beyond given that: the government of Israel recently established a claims processing entity for dormant bank accounts, securities, and other assets located in Israel; though the 110<sup>th</sup> Congress came to a close without settling the matter of the proposed Holocaust Insurance Accountability Act 2008 (HR 1746) it is plausible that the matter will be revisited in 2009; on June 6, 2008 the United States Court of Appeals for the Second Circuit affirmed the district court's approval of the settlement in the case of *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation*, although appellants continue to challenge this ruling, Generali has started to review and process the tens of thousands of claims submitted by class members; the German Ministry of Culture announced the creation of a new office entitled the Institute for Museum Research that will help museums, libraries, and archives identify items that were taken from the rightful owners during the Nazi period. Ultimately, therefore, the time required for submitting and processing claims is determined by circumstances beyond the HCPO's control.

### III. Summary of Holocaust-era Asset Restitution Processes and Developments

Please note that the processes described herein are not inclusive of all processes that the HCPO works with or that are currently handling or have handled HCPO claims but rather represent a sample comprised of the largest and most well known claims processes. In addition to the processes described herein the HCPO works with a variety of partner organizations, law firms and other professionals to research and resolve claims for property lost during the Holocaust-era.

#### A. Assicurazioni Generali S.p.A., Italy

Three class action suits were brought in the United States District Court Southern District of New York (the "Court") against Assicurazioni Generali S.p.A.<sup>2</sup> ("Generali") alleging that: (a) Generali withheld the value and/or proceeds of insurance policies sold to Holocaust victims prior to and during the Holocaust era; and (b) after the Holocaust, Generali refused to pay on the policies, did not disclose the nature and scope of its unpaid policies, and refused to identify or disgorge the value or proceeds of such policies.

After more than nine years of litigations, the lawsuits were dismissed with prejudice by the Court on October 14, 2004, principally on the ground that the claims asserted in the class actions were preempted by a Federal Executive Branch policy favoring voluntary resolution of Holocaust-era claims through ICHEIC rather than through litigation. Plaintiffs appealed the Court's decision to the United States Court of Appeals for the Second Circuit ("Second Circuit"). While that appeal was pending, the parties entered into the Settlement Agreement on August 25, 2006.

The Court conducted a hearing on January 31, 2007 to consider the fairness of the Settlement to all class members. After oral arguments, the hearing was continued until February 27, 2007 to permit the parties to amend the Settlement in light of the potential opening of the International Tracing Service ("ITS") archives<sup>3</sup> in Bad Arolsen, Germany. Subsequently, the parties agree to amend the Settlement Agreement to create an extended deadline for claims based on documents obtained from ITS. The Settlement Agreement was finalized and approved by the Court on February 27, 2007.

On October 2, 2007, the Second Circuit in New York vacated a prior order of the Court approving the Settlement Agreement and remanded the matter so that

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<sup>2</sup> *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation* Docket No. 05-5602, et al. filed in the United States District Court for the Southern District of New York

<sup>3</sup> The International Tracing Service ("ITS") in Bad Arolsen serves victims of Nazi persecution and their families by documenting and evaluating the fate of victims and maintaining this information in its archives. <http://www.its-arolsen.org/>

appropriate individual notice of the proposed settlement could be given to class members. The court ordered Generali to individually mail notices of the settlement to "all class members whose names are known" by the insurers within 60 days.

The Court held another fairness hearing and issued an order re-approving the settlement agreement on January 7, 2008. After having considered all of plaintiffs-appellants' arguments on appeal the Second Circuit found them to be without merit and affirmed the judgment of the Court and scheduled a new hearing on the fairness of the settlement. In June 2008 the Second Circuit denied objections, affirmed the Court's approval of the settlement, and denied a motion for rehearing.

On August 1, 2008, the Second Circuit requested clarification from the Executive Branch on whether court adjudication of these Holocaust-era claims against Generali would conflict with the foreign policy of the United States. The Department of State referred the request to the Department of Justice ("DOJ") for response. DOJ requested authorization from the Second Circuit to file an amicus brief by October 30, 2008.

In the interim, on October 24, 2008, three Members of Congress -- Rep. Ileana Ros-Lehtinen (R-FL), Rep. Robert Wexler (D-FL), and Rep. Steve Chabot (R-OH) -- filed an *Amici Curiae* brief in support of the survivors appealing the 2005 court decision. The *amici* argued that ICHEIC should not be considered the exclusive remedy for Holocaust-era insurance claims for several reasons, two being that ICHEIC process is now closed and according to certain estimations only a fraction of insurance policies have been settled.

A week later, DOJ submitted a brief to the Second Circuit noting that "[i]t has been and continues to be the foreign policy of the United States that the International Commission on Holocaust Era Insurance Claims (ICHEIC) should be regarded as the exclusive forum and remedy for claims with in its purview. The fact that ICHEIC has now concluded its operations does not alter the foreign policy of the United States."<sup>4</sup>

The Second Circuit has yet to submit a response to either brief.

The deadline for submitting a claim to Generali's Policy Information Center ("PIC") in Trieste, Italy was December 31, 2007; however, the deadline for submitted claims based on documents obtained from ITS was extended to August 31, 2008. To date, the HCPO has submitted 61 claims on behalf of 24 claimants to the Generali Policy Information Center for resolution. Although appellants continue to

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<sup>4</sup> Letter Brief, *In re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation*, 2008 U.S. Dist. LEXIS 744 (S.D.N.Y. Jan. 7, 2008) (Nos. 05-5602, et al.).

challenge this ruling, Generali has started to review and process the thousands of claims submitted. Claims are processed and reviewed in the order received.

**i. The Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust**

In June 1997, Generali announced it would set up a \$12 million in memory of those insured by Generali in East and Central Europe who perished in the Holocaust. The fund, The Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust ("GTF" or Generali Trust Fund), was established shortly thereafter. The GTF was set up in Israel to provide support to organizations dedicated to preserving the memory of the Holocaust; assist Holocaust victims and their families; and make "ex gratia" payments to beneficiaries and heirs of Generali insurance policies issued in Europe.

For nearly 10 years, individuals were able to submit claims for insurance policies directly to the GTF. In addition, the GTF carried out processing of Generali claims submitted through the International Commission on Holocaust Era Insurance Claims ("ICHEIC") between April 2001 and November 2004. ICHEIC terminated this agreement effective November 30, 2004. Thereafter, claims were handled by Generali itself.

As of the approval of the Settlement Agreement it is no longer possible to submit a claim to the GTF and all claims are filed directly with the PIC. Two HCPO claimants have claims filed outside of the ICHEIC process still pending with the GTF. To date, HCPO claimants who submitted claims to the GTF for settlement have received offers totaling \$18,969.

**B. Austrian Bank Settlement, Austria**

The Austrian Bank Holocaust Litigation Settlement was the result of a class action settlement that provided compensation to Holocaust victims and their heirs who suffered a loss due to the actions of the participating banks. In January 2000, the court approved the Austrian Bank Holocaust Litigation Settlement Agreement. In accordance with the Settlement Agreement, Austrian Banks paid a total of \$40 million for the benefit of the members of the Settlement Class. In March 2000, Individual Claims Officers began reviewing the approximately 58,000 claims submitted by claimants, relying heavily on documentation provided by the claimants.

The HCPO monitored 240 claims submitted by 107 individuals citing bank accounts at Creditanstalt and/or a predecessor to Bank Austria that were submitted to the claims settlement process coordinated by Schlam, Stone and Dolan, a N.Y. law

firm. The settlement process was marked by particular inefficiencies and lacked transparency. The HCPO received requests for additional information from the processors, but also requests for copies of previously submitted information and documentation.

Payments from the settlement were activated in the second quarter of 2003 and claimants reported 92 offers for a total of \$1,796,399. The average bank award value is \$19,526, with the largest award being \$182,250 and the smallest \$151. The Department estimates the actual amount to be higher; however, meaningful estimates were impossible without more accurate information from the claims processors, who cited privacy concerns as a reason not to disclose award amounts. According to the claims processors, compensation to qualified deposited asset claims was based on a formula that provided a limited upward adjustment from the 1938 value of the account(s). The settlement was not large enough to allow full payment of interest or present-day value. Each claimant with an eligible claim was to be paid a minimum of \$5,000.

An agreement between the Austrian General Settlement Fund and Schalm, Stone and Dolan to share award information, to prevent duplicate payments and allow for top-ups, has enabled the HCPO to gain a clearer understanding of offers extended to claimants through this settlement. It is anticipated that additional information relating to these awards will become available as the GSF issues decisions.

### **C. Austrian National Fund for Victims of National Socialism and the General Settlement Fund, Austria**

The Austrian National Fund for Victims of National Socialism (“National Fund”) was established by the Austrian parliament in 1995 to make amends to persons persecuted by the Nazis in Austria<sup>5</sup>. In accordance with the Washington Agreement<sup>6</sup>, a total of \$150 million was made available to the National Fund to compensate individuals for apartments and small business leases, household property and personal valuables and effects. Compensation was offered in the form of \$7,000 lump-sum payments. After processing 23,000 applications, the remaining funds were distributed to claimants as second payments of €1,000. Total amount secured for HCPO claimants to date is at least \$1,337,000 through

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<sup>5</sup> All Austrian survivors of Nazi persecution are awarded a symbolic payment of €5,087.

<sup>6</sup> The Governments of the Republic of Austria and the United States of America, Austrian companies, The Conference on Jewish Material Claims (including the Central Committee of Jews from Austria in Israel and the American Council for Equal Compensation of Nazi victims from Austria), The Austrian Jewish Community, entered into a joint Holocaust restitution settlement agreement on January 17, 2001.

the initial process and \$236, 736<sup>7</sup> in secondary payments.

The Washington Agreement also called for the creation of a compensation scheme that would acknowledge Austria's moral responsibility for the property losses that the victims of the Nazi regime suffered, hence the establishment of the **General Settlement Fund** ("GSF"), which the National Fund oversees. The Austrian federal law creating the GSF went into effect on May 28, 2001. The GSF was endowed with \$210 million, \$25 million<sup>8</sup> of which was earmarked for insurance policies. The GSF accepted applications for losses in the following categories: liquidated businesses, real property, capital assets (bank accounts, stocks, bonds and mortgages), movable property, insurance policies<sup>9</sup>, occupational or educational losses, and any other losses or damages.

After the last pending class action lawsuit in the US was dismissed, the Austrian Federal Government announced on December 13, 2005 that "legal peace" had been obtained and the GSF was granted access to the promised \$210 million and began making advance payments<sup>10</sup>. Between the signing of the agreement in 2001 and the declaration of "legal peace" in 2005 the GSF was neither able to make use of the funds to pay claims nor was the GSF able to invest the money into an interest bearing account until such time that payments could be issued.

The GSF Claims Committee reviews all applications using relaxed standards of proof and employs two types of procedures, the claims-based process and the equity-based process. The amount of evidence available determines which process is applied. Claims decided under the claim-based process are subject to appeal whereas decisions rendered under the equity-based process are not. Furthermore, advance payments for claims-based process decisions are equal to 15% of the amount awarded and under the equity-based process they are equal to 10% of the award; advance payments for insurance policies are always 15% of the offer regardless of the process used to reach the decision.

All awards are subject to a pro rata reduction, given that the funds available are not sufficient for all successful claims. At this time the GSF predicts that claimants may receive a second payment equal to 0-3% of claims-based and equity-based awards.

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<sup>7</sup> Currency exchange rate as of September 30, 2004, as this is when the second payment of 01,000 was announced.

<sup>8</sup> The Austrian Insurance Association and its member companies passed a unanimous resolution in April 2001 to contribute \$25 million to the GSF.

<sup>9</sup> Pursuant to an agreement between ICHEIC and the GSF, ICHEIC transferred all claims for Austrian insurance policies, which fell under the GSF's purview, to the GSF for evaluation and settlement.

<sup>10</sup> Advance payments that are made to individuals whose applications have already been decided though not all claims have yet been assessed.

As of the filing deadline of November 28, 2003, 372 HCPO claimants submitted applications to the GSF for compensation for a variety of asset losses. The HCPO continues to monitor these claims and conduct additional research. To date 163 HCPO claimants have received positive decisions from the GSF totaling \$24,487,196 for bank related assets. The average value of awards made for bank assets is \$150,228, with the largest total award being \$2,310,490 and the smallest \$98. Through the GSF's material loss claims process, 244 HCPO claimants have received positive decisions totaling \$32,645,410. The GSF has also issued decisions to 132 HCPO claimants for unpaid insurance policies totaling \$5,722,976. The average award value for insurance policies is \$21,515, with the largest being \$195,869 and the smallest \$39.

In cases where the value of the lost asset is known, the GSF Claims Committee calculates the award amount by converting the 1938 value of the property to the May 2003 US Dollar value. This, in principle, yields a value of 1 Reichsmark (RM) to \$4.91. In the event that no information is available regarding the 1938 value of the lost property, the Claims Committee awards lump sums based on the average comparable historic values. For the valuation of insurance policies the GSF applies *mutatis mutandis*<sup>11</sup>, the rules of ICHEIC. Insurance claims are subject to the same pro rata reduction guidelines as with other assets. Based on the awards reviewed by the HCPO, we have not been able to ascertain how the GSF values insurance policies.

#### **D. Claims Resolution Tribunal, Switzerland**

On February 5, 2001, a claims process was established as a result of the Settlement Agreement in the Holocaust Victim Assets Class Action Litigation in the U.S. District Court for the Eastern District of New York. In accordance with the Settlement Agreement, \$1.25 billion was paid to settle claims by members of five represented classes: the Deposited Assets Class, the Looted Assets Class, the Refugee Class, and two Slave Labor Classes. Of the \$1.25 billion settlement, up to \$800 million was set aside for awards to Deposited Assets class members.

The claims process was created to provide Nazi victims or their heirs with an opportunity to make claims to assets deposited in Swiss banks in the period before and during World War II. The Claims Resolution Process provided the first opportunity for Nazi victims and their heirs to have their claims to assets deposited in Swiss banks adjudicated by an impartial body, the Claims Resolution Tribunal ("CRT"). The claims process was triggered by the publication of a list of 21,000

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<sup>11</sup> "With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like. *Housman v. Waterhouse*, 191 App.Div. 850, 182 N.Y.S. 249, 251." ("*Mutatis Mutandis*." Black's Law Dictionary With Pronunciations. 6th ed. 1990. 1019).

names of account owners, who were probably or possibly victims of Nazi persecution. The deadline for submitting claims related to the 2001 list expired December 31, 2001.

On January 13, 2005, the CRT published a second list of approximately 2,700 names of account owners and 400 names of power of attorney holders. The 2005 list contained previously unpublished names that were: identified by the Independent Committee of Eminent Persons ("ICEP") auditors, who conducted a three-year investigation of Swiss banks, as possibly belonging to Holocaust victims; registered with or identified by Swiss authorities and the subject of post-war international agreements between Switzerland, Poland and Hungary; and names located by the CRT's own archival research. The deadline for submitting claims related to the 2005 list expired July 13, 2005.

On February 17, 2006, Chief Judge Edward Korman of the U.S. District Court of Eastern New York, who presided over the Holocaust Victims Assets class action litigation, approved the release of Plausible Undocumented Awards ("PUAs") to Deposited Assets Class claims. Recognizing the destruction of documents by the Swiss banks, the restricted access to the remaining records, and the ravages of war left many claimants without documentary evidence to prove the existence and ownership of a Swiss bank account eligible claimants receive a one-time payment of \$5,000.

As of the July 13, 2005 filing deadline, 1,816 HCPO claimants submitted claims to the CRT for resolution. To date, the CRT has offered 2,937 settlements on published accounts and 12,396 claimants have been approved to receive PUAs. Of the awards based on documentary evidence, 212 are to 180 HCPO claimants for a total of \$31,789,560 and 827 HCPO claimants have received PUAs for a total of \$4,135,000; the combined total of all CRT awards to HCPO claimants to date is \$35,924,560. To date, the average award value is \$137,024, with the largest total award being \$2,397,544 and the smallest \$122.

The CRT applies relaxed standards of proof when assessing claims and bases the amount of the award upon the historic value of the account, adjusted for fees and interest. If the value of the account cannot be determined by the bank records than an average value of a similar account during that period is applied. In addition, if the known amount of the account is less than the presumed average value of an account during the time period then the average value is applied. As of August 25, 2003, all account values are multiplied by a standard factor of 12.5 to adjust them to current values.

In the event a claimant passes away before receiving payment, the claimant's legal successors are entitled to receive the award. In order to obtain payment, the claimant's legal successors must establish an estate account.

In addition to claims-related work, the HCPO also provides support to the Superintendent of Banks in his role as a member of the Special Advisory Committee to the CRT. Involvement in such projects depends on the questions before the Advisory Committee, which are unpredictable in both substance and nature. The HCPO has provided extensive assistance to the CRT and the Special Masters on a number of projects, including: coordinating and supervising the Initial Questionnaire Review Pilot Project, an effort that involved half the HCPO staff in a coordinating and supervisory function in addition to 26 bank examiner trainees; participating in the tests of the Total Accounts Database (TAD); assisting with the Swiss Banks' New York Agencies accounts frozen under the Trading with the Enemy Act in 1941; and locating heirs of Swiss bank account owners.

#### **E. Claims Filed Directly with Insurance Companies**

Prior to the establishment of International Commission on Holocaust Era Insurance Claims ("ICHEIC"), the HCPO submitted claims for unpaid life insurance policies directly to the issuing insurance company or its present-day successor<sup>12</sup>. To date HCPO claimants who submitted claims directly to companies for settlement have received offers totaling \$550,178.

At ICHEIC's final meeting in March 2007, all ICHEIC member companies as well as over 70 companies in the German Insurance Association ("GDV" or Gesamtverband der Deutschen Versicherungswirtschaft), through its partnership agreement with ICHEIC, reiterated their commitment to continue to review and process claims sent directly to them in accordance with ICHEIC's relaxed standards of proof.

Moreover, in a letter dated April 23, 2008, the GDV informed the U.S. Department of State that their member companies would not only continue to address claims that specifically mention a company but would also consider inquiries that do not list a particular company. In September 2008 the GDV resumed providing market-wide research and acting as a central coordination point for all insurance inquiries as they did under ICHEIC. The GDV member companies have also decided to report their processing results to the GDV on a regular basis. To promote transparency the GDV will publish these results twice a year and will provide this information to legitimate domestic and foreign entities upon request.

To the best of our knowledge, since January 1, 2008, GDV member companies have received a total of 13 inquiries that name a German company (regardless of

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<sup>12</sup> Companies include: Assicurazioni Generali S.p.A., Prudential UK, Winterthur Leben, Migdal Insurance and Financial Holdings Ltd., Wiener Städtische, GAN Assurances Vie SA, Uniqa, Basler Leben, Signal Iduna, Gerling Lebensversicherung AG, Karlsruher Lebensversicherung AG, and DONAU Versicherung AG.

where the policy was issued) or refers to Germany as the place the policy was issued (no specific company is named). Of these 13 inquiries, six refer to a specific company and seven do not; nine are still under investigation and four have been closed as they were found to be ineligible for further compensation (the policies had either been paid out or settled under previous compensation programs).

Since ICHEIC's closedown at the end of March 2007, the HCPO has once again resumed dealing with insurance companies directly to resolve outstanding claims. As of March 2007 the HCPO has received 19 inquiries and/or claims for Holocaust-era insurance policies. Further research undertaken by the HCPO revealed that in one case the insurance policies were compensated through a postwar program; four individuals did not return the forms necessary to begin processing their claims; four other inquiries related to former ICHEIC claims; three inquiries related to GSF claims; two claims were submitted to the PIC; three were general inquiries regarding Holocaust-era insurance policies; and two claims are undergoing HCPO research. The HCPO submitted two new claims directly to the GDV.

The HCPO continues to work the GDV on matters related to Holocaust-era insurance claims either in connection with newly filed claims or with respect to former ICHEIC cases. The HCPO also assists the GDV with locating claimants and/or their heirs to ensure all individuals receive payment for the insurance policies claimed.

#### **F. Commission for the Compensation of Victims of Spoliation, France**

The French Commission for the Compensation of Victims of Spoliation ("CIVS") was created by French parliamentary decree in 1999 in order to make reparations for spoliation of financial or material property (i.e., furniture, personal property, professional equipment) that resulted from anti-Semitic legislation enforced during the occupation by either German authorities or the Vichy Government.

The HCPO continues to review claims referencing losses that occurred in France to determine for which, if any, of the two parallel claims processes (documented bank accounts and/or material losses) they might qualify. CIVS no longer accepts undocumented claims for bank accounts. Deadlines for submission have been extended a number of times and are open-ended for documented bank claims and material losses.

To date, the HCPO has submitted 130 claims that will need to be monitored through the life of the process and is aware of decisions to 46 claimants seeking the return of bank accounts in France resulting in \$224,537 in payments. The average award value for bank assets is \$4,582, with the largest being \$36,562

and the smallest \$1,500. In addition, the 60 claimants have received positive decisions for material losses totaling \$1,869,492<sup>13</sup>.

Once CIVS recommends that compensation be paid for bank-related claims the banks are responsible for compensation payments. Two separate funds, totaling \$72,500,000 have been created and are financed by the banks which held on to accounts not returned after the war. The CIVS implements a valuation factor for bank-related spoliation which adjusts the rate of 1941 French Francs to Euros. This rate has been set at 0.304 for 2007.

In the event a claimant passes away before the claim is settled, his/her heirs must inform the CIVS so that they may take over the claim should they wish to do so.

**G. The Company for Locating and Retrieving Assets of People Who were Killed in the Holocaust, Ltd., Israel**

The Company for Location and Restitution of Holocaust Victims Assets Ltd. ("Hashava Company") was established in the summer of 2006 in accordance with The Assets of Holocaust Victims Law (Restitution to Heirs and Endowment for the Purposes of Assistance and Commemoration) ("Assets Law") passed by the 16<sup>th</sup> Knesset in December 2005. The Assets Law was proposed and ratified following the work of a Parliamentary Inquiry Committee which investigated all aspects related to dormant bank accounts held in Israeli banks<sup>14</sup> and other assets whose owners are presumed to have perished during the Holocaust.

The Hashava Company's primary purpose is to return the assets of Holocaust victims, or their fair value, to their original owners or heirs. To meet this goal the Hashava Company was empowered to locate and coordinate all Holocaust victim assets located in Israel and to undertake steps to locate the legal heirs to these assets. Finally, the Company was granted the authority to make use of all assets for which an heir is not found by a date set by the Assets Law.

In July 2007, the Company launched its website and their online searchable database currently contains over 55,000 assets in Israel, previously owned by Holocaust victims. The launch of the website also marked the commencement of

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<sup>13</sup> Currency exchange rate based on date of individual decisions. This amount includes \$30,000 issued to two claimants (\$15,000 award to each claimant), under the March 2006 provision of Washington Agreement, as direct survivors.

<sup>14</sup> The Parliamentary Inquiry Committee (the "Committee") audited the five 'Palestinian' banks (Bank Le`umi Leyisrael, Bank Hapo'alim, Bank Hamizrahi Hame`uhad, Mercantile Discount Bank, and Discount Bank Ltd.) that were active in Israel, then Mandate Palestine, prior to the Second World War.

the restitution process to return these assets to the original owners or their heirs. Applications continue to be accepted by the Company.

The initial comparison of the Hashava Company's list to all names contained in the HCPO's internal database resulted in matches to 259 asset owners related to 195 claimants. Upon thorough review of each of these matches, it was determined that 64 asset owners, connected to 53 claimants, were likely to be positive matches. To date, 39 HCPO claimants submitted applications for 46 accounts to the Hashava Company for review.

In addition, the HCPO assists the Hashava Company with locating claimants and heirs of Israeli assets to ensure all individuals receive the property to which they are entitled.

On November 12, 2008 the Wall Street Journal published a front page article<sup>15</sup> that suggested that the banks in Israel challenge the Hashava Company's requests to reconstitute accounts and noted that the Hashava Company must pursue each institution over each asset that it allegedly held. Furthermore, the recently retired chairman of the Hashava Company conservatively estimated that \$500 million of victim's assets remain in Israel and that figure could reach as much as \$1 billion.

The New York State Banking Department currently regulates the New York agency of Bank Le'umi Leyisrael as well as the New York branch of Bank Hapo'alim.

#### **H. Enemy Property Claims Assessment Panel, London**

In March 1999, the British Government set up a payment scheme so that victims of Nazi persecution could apply for compensation for the seizure of assets in the United Kingdom during the Second World War under the 1939 Trading with the Enemy legislation. The Enemy Property Claims Assessment Panel (EPCAP) was established, under the auspices of the Department of Trade and Industry (DTI), to evaluate such claims.

The period for the submission of claims officially ended on September 30, 1999; however, more claims than expected were received and the final deadline was extended to August 31, 2004. Claims submitted to EPCAP after August 31, 2004, were considered on an *ad hoc* basis. The EPCAP Secretariat decided to stop referring new claims to the Panel as of May 1, 2006 and all claims received after that time were rejected on that basis. In September 2006, the HCPO was informed that new cases will continue to be referred to EPCAP on an *ad hoc* basis.

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<sup>15</sup> Simpson, Cam. "Battle for Holocaust Assets Roils Israel" The Wall Street Journal 12 Nov. 2008 [New York]: A1.

The HCPO continues to work closely with EPCAP in London to settle 29 claims filed by HCPO claimants for assets seized by the British government. To date 24 claims have been completed, for a total \$244,477<sup>16</sup>. The average award value for is \$17,463, with the largest being \$78,503 and the smallest \$418.

To calculate the compensation due EPCAP multiplies the value of property at the date of confiscation or liquidation by the rate of increase in the Retail Prices Index from confiscation/liquidation date to the payment date. Eligible claimants received 100% of their award.

#### **I. French Minister of Defense**

On July 13, 2000 the French government passed Decree 200-657 creating a fund for child survivors who were orphaned as a result of the deportations of Jews from France carried out during the German occupation of France during World War II.

Applications are restricted to people who were under 21 at the time and who had one or both parents murdered as a consequence of deportation by the French collaborationist authorities. Eligible applicants receive either a one-time payment of approximately €27,440 or a monthly pension of approximately €460. There is no deadline for submitting an application to receive this pension

Payments are made through the offices of the Minister of Defense. To date, 67 HPCO claimants have received payment under this program in the amount of \$2,240,271<sup>17</sup>.

#### **J. The German Foundation and the International Organization for Migration, Germany**

On August 12, 2000, the German Foundation Act came into force, creating a German Foundation entitled "Remembrance, Responsibility and Future" to provide financial compensation to former slave and forced laborers and certain other victims of Nazi injustice. Pursuant to the German Foundation Act, a number of partner organizations were appointed to process claims. The International Organization for Migration ("IOM") based in Geneva, Switzerland was designated to be the sole partner organization to process claims for property losses suffered as a result of direct participation of German companies.

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<sup>16</sup> Currency exchange rate based on date of individual decisions.

<sup>17</sup> Currency exchange rate based on date of individual decisions.

Under the German Foundation Act the IOM received €102.3 million (\$95,906,250<sup>18</sup>), in equal parts from the German Government and German companies, to pay eligible claimants for property losses. Of the funds available to settle property loss claims, approximately €76 million was set aside for claimants for property loss who were persecuted by the Nazi regime for their race, political convictions, faith or ideology and approximately €25.5 million for property losses suffered by non-persecutees.

In assessing claims the Property Loss Claims Commission implemented relaxed standards of proof. The IOM received approximately 35,000 claims of which 10,653 received positive decisions. Decisions were issued on a rolling basis, however, payments were not completed until all claims and appeals were resolved. All awards were reduced based on a uniform percentage, given that the funds available for property claims were not sufficient for all successful claims. Claimants received 86.5% of the total award offered.

The HCPO submitted 462 bank claims (predominantly Central and Eastern European) on behalf of 208 claimants to the IOM for settlement under the German Foundation Agreement. The IOM requested additional information from 183 claimants; negative decisions were issued in 332 cases and 112 appeals were filed. 132 claims received positive decisions with an aggregate award amount of \$2,900,304<sup>19</sup>; in most cases, awards included compensation for non-bank assets. The average award value was \$21,972, the largest award was \$410,497 and the smallest \$14.

IOM valuation guidelines adopted a method of valuation which classified each compensable item within a grid of standardized amounts based on the nature and size of the property lost and the location of the property loss.

In the event a claimant passed away before receiving payment, the legal successor had six months from the date of death of the claimant to notify the IOM. Failure to notify the IOM within the requisite time frame resulted in forfeiture of the claim.

#### **K. German Federal Office for Central Services and Unresolved Property Issues, Germany**

In a joint declaration issued on June 15, 1990, the governments of the Federal Republic of Germany and the German Democratic Republic established basic

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<sup>18</sup> The USD value is based on the exchange rate at the time the legislation was passed in Germany, July 14, 2000.

<sup>19</sup> The US Dollar amount is calculated based on the exchange rate at the time each award was received.

parameters for settling unresolved property issues, and these parameters were subsequently included in the Unification Treaty of August 31, 1990 as the Act for the Settlement of Unresolved Property Issues ("Property Act").

The German Federal Office for Central Services and Unresolved Property Issues (Bundesamt für zentrale Dienste und offene Vermögensfragen or "BADV") was established on January 1, 2006 as a senior federal office operating under the aegis of the German Federal Finance Ministry. The BADV now combines the activities formerly handled by the Federal Office for the Settlement of Unresolved Property Issues ("BARoV") and the Service Centre of the Federal Office for Finances.

In the area of unresolved property issues the BADV administers proceedings relating to applications filed under the Property Act and the Law on Compensation for the Victims of National-Socialist Persecution for restitution of and compensation for property confiscated during the Nazi Period. The BADV is also involved with investigating the provenance of artworks, tracing the owners of land and/or buildings and accounts, and remittance of compensation.

To date, 3 HCPO claimants have received payment from the BADV totaling \$209,090<sup>20</sup>. Claimants receive 100% of the proceeds as well as interest.

#### **i. Goodwill Fund**

In order to enable former Jewish property owners and their heirs to receive a payment even after the BADV application filing deadline of 1992, the Conference on Jewish Material Claims Against Germany -- the successor to unclaimed Jewish properties under German law -- established the Goodwill Fund in 1994.

Through the Goodwill Fund, former owners and heirs could apply for the proceeds of properties. Claimants receive 80% of the net proceeds of the sales price minus all costs and charges incurred by the Goodwill Fund.

The deadline for submitting applications to the Goodwill Fund was March 31, 2004. To date, 7 HCPO claimants have received a total of \$1,060,758<sup>21</sup> through this program.

#### **L. Holocaust Foundation for Individual Insurance Claims, The Netherlands**

The Holocaust Foundation for Individual Insurance Claims ("Sjooa Foundation" or Stichting Individuele Verzekeringsafspraken Sjooa) was established on November 9,

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<sup>20</sup> Currency exchange rate based on date of individual decisions.

<sup>21</sup> Currency exchange rate based on date of individual decisions.

1999 to assess claims for insurance policies taken out with companies that are members of the Verbond van Verzekeraars (Dutch Association of Insurers) and where the insured was a victim of Nazi persecution.

As a result of an investigation of the insurance companies' archives, a list of nearly 3,400 unpaid life insurance policies was published. The Sjoa Foundation will continue to accept claims until December 31, 2009. To date HCPO claimants who submitted claims to the Sjoa Foundation have received offers totaling \$20,863<sup>22</sup>.

#### **M. International Commission on Holocaust Era Insurance Claims**

The International Commission on Holocaust Era Insurance Claims ("ICHEIC") was established with offices in London and in Washington D.C. in October 1998 by the National Association of Insurance Commissioners ("NAIC") in cooperation with several European insurance companies, European regulators, representatives of several Jewish organizations, and the State of Israel. ICHEIC was charged with establishing a just process that would expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust. With the launch of ICHEIC's claims process in February 2000, the HCPO stopped taking new insurance claims, referring claimants to ICHEIC instead.

The HCPO submitted claims of 2,114 individuals to ICHEIC before the December 31, 2003 filing deadline. Offers extended to HCPO claimants through the ICHEIC processes on specific policies amount to \$22,189,377<sup>23</sup>. In addition, 1,578 HCPO claimants received awards, for a total of \$1,766,000<sup>24</sup> through ICHEIC's humanitarian claims process (8A1), which offered \$1,000 to claimants who had only anecdotal information, did not name a specific insurance company, and for which no additional documentation could be found. The combined total of all ICHEIC awards to HCPO claimants is \$23,955,377. The average ICHEIC award value for insurance policies was \$14,976, with the largest award for a single Holocaust-era insurance policy received by a claimant being \$808,044 and the smallest \$137.

After transferring insurance claims to ICHEIC's London Office, the HCPO took on more of a monitoring role; however, monitoring thousands of claims through a complex process is a labor-intensive task. The HCPO worked very closely with the

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<sup>22</sup> Currency exchange rate based on date of individual decisions.

<sup>23</sup> Currency exchange rate based on date of individual decisions as well as currency exchange rate as of March 31, 2007 in the case of several offers extended in Euro. This sum includes payment made for two Holocaust-era insurance policies issued by a government sponsored compensation scheme (Lastenausgleichsgesetz or "LAG").

<sup>24</sup> Claimants and secondary claimants were eligible to receive the \$1,000 payment; hence the total amount of 8A1 offers exceeds the \$1,000 per claimant ratio.

ICHEIC staff, participating in working groups providing critical assistance in this process and ensuring that claimants' concerns were adequately addressed.

In addition, the HCPO Director represented the US regulators on ICHEIC's Executive Monitoring Committee. In this capacity, the HCPO Director, at the request of the ICHEIC Chairman, participated in a review of ICHEIC's decision verification system, as well as the member companies' claims matching work. This review resulted in a number of recommendations for improvements that were implemented by ICHEIC.

At ICHEIC's request, the HCPO assisted with reviewing claims eligible for payments from the humanitarian fund in connection with claims for insurance policies issued by European insurance companies that were either nationalized or liquidated after the Second World War and for which there are no present-day successors. In order to facilitate this process, the HCPO invited a team of ICHEIC staffers to work side-by-side with HCPO staff in New York. After the review of approximately 8,000 claims and several payment tranches, the on-site ICHEIC team completed its task in June 2006 and disbanded.

On March 20, 2007, ICHEIC held its final meeting in Washington, DC at which time ICHEIC Commissioners adopted a resolution to dissolve ICHEIC on March 30, 2007. Subsequently, the NAIC International Holocaust Commission Task Force held its final conference call on March 26, 2007 and dissolved. During its seven years of operation, a total of \$306.24 million was offered or awarded to 48,000 claimants through the ICHEIC process.

As of December 2006, all timely filed claims received a final decision through the ICHEIC process and all appeals were settled by March 29, 2007. The HCPO has completed a full-scale review of all HCPO insurance claims to ensure that claims submitted through the ICHEIC process received decisions and that these decisions have been properly recorded in the HCPO's database. Since completion of this review the HCPO has begun identifying and preparing insurance claims for closure.

#### **N. The Jewish Community Indemnification Commission, Belgium**

By Royal Decree of July 6th, 1997, and subsequently by the Act of January 15th, 1999, The Study Commission on Jewish Assets was established to investigate the fate of the Belgian Jewish Community's assets which were plundered, surrendered or abandoned during the Second World War. The Study Commission examined the ways in which looting took place during the occupation, as well as the measures taken after the war, by the Government and the private sector, to restore the looted property to its owners or to pay compensation.

As an outgrowth of the Study Commission's final report, published July 12, 2001, the Belgian government enacted legislation creating the Belgian Jewish Community Indemnification Commission ("Buyse Commission") to consider claims for assets originally belonging to the Belgian Jewish community, which were plundered, surrendered, or abandoned during the Second World War.

The HCPO submitted 52 claims for accounts and securities held in Belgium. The Buyse Commission reported receiving claims from more than 6,000 individuals. The Commission started processing claims towards the end of 2003, giving priority to the oldest claimants. As of the Buyse Commission's final meeting, 40 HCPO claimants received positive decisions from the GSF totaling \$46,184 for bank related assets. The average award value for bank assets is \$5,773, with the largest total bank award being \$10,529 and the smallest \$1,996. Through the Buyse Commission's material loss claims process, HCPO claimants have received positive decisions totaling \$443,628.

The Buyse Commission offered two types of compensation for lost assets; the first was calculated on the basis of clearly identified and valued goods and assets using multipliers ranging from 24.78 to 37, while the second was based on lump-sum values where details of the despoiled assets were unavailable.

On December 17, 2007 the Commission held its final meeting and issued decisions on all remaining claims. Subsequently, the Buysee Commission Secretariat was dissolved and all HCPO claimants received decisions. At the request of the Chancellery of the Prime Minister, the HCPO continues to locate claimants and heirs of Belgian bank accounts to ensure all individuals receive their decisions.

#### **i. Solidarité 3000**

The Foundation established the Solidarité 3000 project to compensate individuals who were persecuted because of their Jewish descent and were in Belgium at any time between May 1, 1940 and the end of the Nazi regime and received little or no compensation to date. The maximum amount paid to qualified applicants is €3,000. As of the June 30, 2006 filing deadline 17 HCPO claimants applied to Solidarité 3000. To date, 10 HCPO claimants have received payments totaling \$27,718<sup>25</sup>.

#### **O. Nazi-Looted Art**

The Nazi use of art was directly linked to their efforts to seize power, conquer Europe and fulfill their anti-Semitic agenda; indeed the Nazi's turned looting into an

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<sup>25</sup> The US Dollar amount is calculated based on the exchange rate at the time each award was received.

official policy. From 1933 to 1945 the Nazi regime carried out the greatest spoliation of works of art in history; experts estimate that as many as 600,000 works of art were ‘lost’ during the war. Nazi plundering, which ranged from outright seizure to sales made under duress, was not limited to museum quality pieces but included works by lesser-known artists, decorative arts, and Judaica.

Unlike claims for financial assets such as bank accounts or insurance policies, claims for Holocaust-era looted art do not lend themselves to wholesale, centralized settlements. Instead, given the individualized nature of these cases, they require working with a variety of entities, from museums to private collectors, and must be resolved on a painting-by-painting or object-by-object basis.

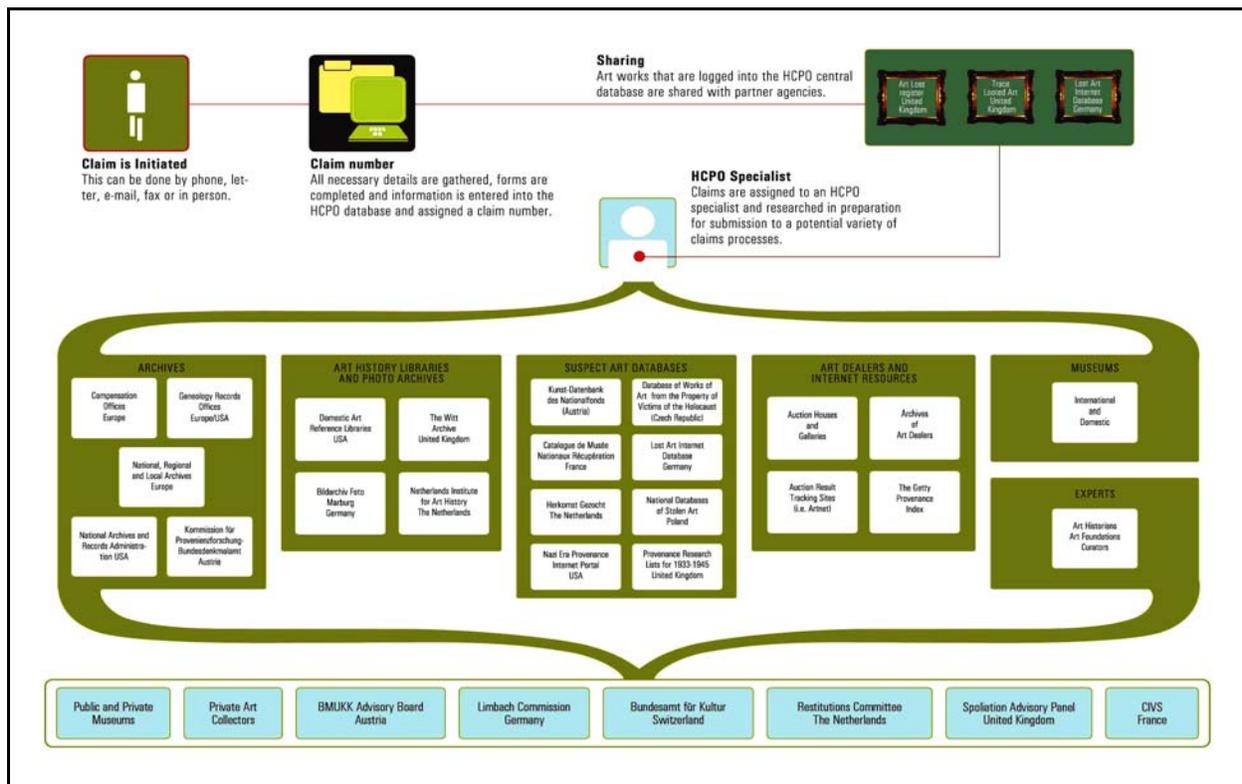


Figure 9 - Life Cycle of an HCPO Art Claim

In 2008, 12 works of art were restituted to HCPO claimants: eight works to the heir of Ignatz Pick; two paintings to the Estate of Dr. Max Stern; one drawing to the Estate of Alfred Sommerguth; and one painting to the Estate of Heinrich Morgenstern.

### i. Collection of Ignatz Pick

Ignatz Pick was an avid art collector as well as a successful antiquarian and gallery owner in Vienna, Austria before World War II. After the *Anschluss*<sup>1</sup>, Pick's antique business was *Aryanized*<sup>2</sup> and control over his personal art collection was turned over to a Nazi-approved administrator. The administrator sold pictures from the collection to raise funds necessary to pay the punitive taxes imposed by the Nazi regime as well as to pay the immigration taxes for Pick's wife and daughters who had fled Austria. Pick, unable to join his family in the United States, died alone on February 23, 1941 in Vienna.

After extensive historical, genealogical and provenance research the artworks were restored to the heir of Ignatz Pick. Due to the efforts of the Austrian Commission for Provenance Research and the Viennese Restitution Commission, the Austrian Ministry for Education and Culture and the Vienna Municipal Councilor for Cultural Affairs and Science decided to return, respectively, six works from the Wien Museum -- *Portrait of Anton Josef Elder v. Leeb* and *Portrait of Theresia v. Leeb*, both by Johann Baptist Lampi (see Figures 10 and 11), *Sleeping Child* by Josef Neugebauer (see Figure 12), *Mariahilfer Line* by J.W. Frey (see Figure 13), *Opening of the Prater* by Josef II by Johann Hieronymus Löschenkoh (see Figure 14), and *Allegorical Scene* by George Ehle (see Figure 15) -- and two works from the Albertina Museum -- *Family Picture* by Johann Michael Nader (see Figure 16) and *Oval Half-figure of a Young Man* by Leopold Kupelwieser (see Figure 17).



Figure 10



Figure 11



Figure 12

<sup>1</sup> German annexation of Austria in March 1938.

<sup>2</sup> Transfer of Jewish-owned businesses to German ownership.



Figure 13



Figure 14



Figure 15



Figure 16



Figure 17

## ii. Collections of Dr. Max Stern<sup>1</sup>

In August 1935, less than a year after Dr. Max Stern inherited Galerie Julius Stern in Düsseldorf from his father, he was prohibited from buying and/or selling art by the Reich Chamber for the Visual Arts, a sub-chamber of the Reich Chamber of Culture. Dr. Stern appealed this order for two years, until receiving final notice on September 13, 1937 to dissolve his gallery and liquidate his inventory.

Dr. Stern sold over 200 pictures at a forced sale at Lempertz auction house in Cologne on November 13, 1937<sup>2</sup>. Dr. Stern fled Germany for England on December 23, 1937 and was interned on the Isle of Man as an “enemy alien” at the outbreak of war in September 1939. After being released in 1940, Dr. Stern immigrated to Canada, where he spent another two years interned as a “civilian alien.”

<sup>1</sup> <http://maxsternproject.concordia.ca>

<sup>2</sup> <http://auktion392.com>

Dr. Stern finally settled in Montreal, Canada where he became one of the country's most influential art dealers and director of the Dominion Gallery. Upon his death in 1987, he bequeathed the bulk of his assets, including any potential recovery of lost artworks, to three non-profit institutions: McGill University (in Montreal), Concordia University (also in Montreal), and Hebrew University of Jerusalem (in Israel).

Last year the United States District Court for Rhode Island ordered<sup>30</sup> German born Baroness Maria-Luise Bissonnette, who had been in possession of the painting since her late step-father purchased it during the forced sale at the Lempertz auction house in Cologne in 1937, to turn over *Girl from the Sabine Mountains* by Franz Xaver Winterhalter (see Figure 18) to representatives of Dr. Stern's estate. The court stated that Dr. Stern's "relinquishment of his property" was clearly "anything but voluntary."

Mrs. Bissonnette challenged this ruling and appealed to the U.S. Court of Appeals for the First Circuit ("First Circuit"), which sits in Boston. On November 19, 2008, the First Circuit, in a landmark decision, affirmed<sup>31</sup> the lower court's ruling of the previous year. U.S. courts ruled that requiring Dr. Stern to sell the paintings from his gallery in November 1937 was the same as confiscating or stealing them from him.

In addition to the Winterhalter painting, *Flight into Egypt* by Jan Wellens de Cock (see Figure 19) was also returned to the Estate. After due diligence and cataloguing research, Christie's traced the painting back to 1936 with links to the Galerie Stern. Upon this discovery, Christie's notified the consignor and subsequently the Stern Estate and the HCPO, at which point negotiations for the return of the de Cock commenced. The actions taken by all parties involved exemplify the ways in which the HCPO attempts to resolve art claims – through cooperation, education, negotiation, and discussion.

The recovery of the de Cock stands as a splendid example of how amicable cooperation between the parties, in the spirit of the 1998 Washington Conference Principles on Nazi-Confiscated Art and other international doctrines on Nazi-looted art, can lead to fair and just resolution of claims.

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<sup>30</sup> Vineberg v. Bissonnette, 529 F. Supp. 2d 300 (D.R.I. 2007)

<sup>31</sup> Vineberg v. Bissonnette, 548 F.3d 50 (1st Cir. R.I. 2008)



Figure 18



Figure 19

### iii. Collection of Alfred Sommerguth

Alfred Sommerguth, a prominent member of Berlin society and the director and co-owner of Loeser & Wolff, one of the largest tobacco factories in existence before WWII, was forced to sell a substantial part of his art collection due to Nazi persecution. By 1939, Sommerguth had amassed an eclectic art collection of 106 artworks, which included Dutch and Italian Renaissance masterpieces as well as works by various French Impressionists.

After the Nazis rose to power, the Sommerguths, like all German Jews, were subjected to the horrors of anti-Semitic legislation that resulted in their persecution and expropriation of their personal property. On February 2, 1939 a significant part of the Sommerguth art collection was sold at the notorious auction house Hans W. Lange in Berlin. The proceeds from the auction were used to pay the discriminatory taxes levied on the Sommerguths by the Nazis.

In 1941, the then 82 year old Sommerguth fled with his wife to Cuba via Portugal. His bank account was frozen by the authorities leaving him without resources. In Cuba, Sommerguth fell ill with typhus and was confined to a hospital for one year. Alfred Sommerguth and his wife eventually immigrated to New York, where he passed away 10 years later; his wife died 3 years after.

This past spring, a German private collector, after learning the dubious provenance of *Tiroler Bäuerin* by Adolf von Menzel (see Figure 20), contacted Muggenthaler Research<sup>1</sup> and Joel Levi<sup>2</sup>, the representatives of the Sommerguth heirs with whom the HCPO works, and informed them that he was in possession of the drawing and

<sup>1</sup> <http://www.muggenthalerresearch.com/webpage.php>

<sup>2</sup> <http://www.jl-lawfirm.com/>

entered into a settlement agreement with the heirs for the restitution of the drawing. (See Appendix A).



Figure 20

#### iv. Collection of Kommerzienrat Heinrich Morgenstern

After the rise of Nazi regime, Kommerzienrat Heinrich Morgenstern a Jewish businessman from Fürth, Germany, was subject to the many anti-Semitic measures adopted by the Nazis. Morgenstern's lucrative manufacturing business was Aryanized, exorbitant punitive taxes were levied on him, and he subsequently fled Germany.

The Nazi authorities prohibited Morgenstern from taking his art collection. Morgenstern was, therefore, forced Morgenstern to sell over 200 pieces from his extensive and eclectic art collection at Rudolph Lepke's Kunst-Auctions-Haus in November 1938. Morgenstern passed away before the conclusion of the Second World War, and in 1946 his son began the diligent pursuit of locating and recovering his father's collection.

In 2006, David J. Rowland<sup>1</sup>, a representative of the Morgenstern heirs with whom the HCPO collaborates on this claim, discovered that the painting *Cossacks on the March* by Josef von Brandt (see Figure 21) was in Chicago, Illinois private collection. The private collector acquired the painting in 1972 at auction with no prior knowledge of its dubious provenance, as is often the case. Through amicable

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<sup>1</sup> <http://www.rowlandlaw.com/>

and forthright discussions the heirs of Heinrich Morgenstern and the private collector settled the claim to the painting.



Figure 21

An increased willingness on the part of museums, archives, auction houses, and others to confront the issues surrounding Holocaust-era looted art coupled with the proliferation of online resources and greater accessibility to previously restricted materials has enabled the HCPO to locate and pursue the restitution of dozens of missing artworks. In light of these developments, the Office anticipates more settlements in the coming months.

#### **v. HCPO Posting of Lost Objects**

The HCPO recently compiled a list of over 1,000 identifiable objects from information provided by our claimants, supplemented with information from our own archival research, which we provided to the Art Loss Register<sup>1</sup> (“ALR”), Trace Looted Art<sup>2</sup> and Koordinierungsstelle für Kulturgutverluste<sup>3</sup> (Germany’s central office for the documentation of lost cultural property). These three agencies have vast internet portals that have and will undoubtedly continue to aid the HCPO with locating and recovering lost works of art.

#### **vi. Section 233a of New York State Education Law**

On July 7, 2008 Governor Paterson signed a law, which went into effect of September 4, 1008, that amended Section 233a of the New York State Education

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<sup>1</sup> <http://www.artloss.com/>

<sup>2</sup> <http://www.tracelootedart.com/>

<sup>3</sup> <http://www.lostart.de>

Law<sup>38</sup>. This law gives the state's museum community a process to establish ownership of undocumented collections, long-forgotten loans, and doorstep donations. (See Appendix B).

This new law establishes a fair mechanism by which museums may resolve old loans and the ownership of undocumented property. Museums, however, cannot use this statute to take title to two types of property: 1) "Nazi-era" (1933-1945) disputed works, and 2) stolen property.

With the enactment of this law, the New York legislature provided museums with statutory guidelines to responsibly deal with undocumented property, and simultaneously preserved the rights of claimants to recover objects in museums that were involuntary lost, looted or sold under duress during the Nazi-era.

## **vii. Conferences, Panels and Symposia Regarding Nazi-era Looted Art**

### **a. Sotheby's**

The most recent in Sotheby's series of symposia on the subject of Restitution took place in the auditorium of Sotheby's Amsterdam on Wednesday, January 30, 2008. This symposium was co-sponsored by Muggenthaler Research. The morning session focused on Dutch cases and claims, while the afternoon was devoted to papers reflecting aspects of restitution over the last decade since the Washington Conference on Holocaust-Era Assets.

The Director of the HCPO attended the symposium and presented a paper which highlighted lessons learned in the area of art restitution. As the only government agency in the world to assist Holocaust survivors and their heirs, free of charge, with a variety of multinational restitution processes, the HCPO's experience emphasizes the importance of collaboration within the art restitution community as a means to create solutions to address common obstacles.

### **b. The Walters Art Museum**

In celebration of the return of the works of art to the heir of Ignatz Pick, The Walters Art Museum in Baltimore, Maryland hosted a panel discussion, entitled *Returned Treasures: A Reunion of Artwork Looted During the Nazi Era*, on October 5, 2008. Panelists, including the Director of the HCPO, discussed issues surrounding the past, present and future of museum provenance as well as legal and ethical issues raised by Nazi art looting.

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<sup>38</sup> The full text of the law, A11719 or S8650, can be found at <http://assembly.state.ny.us>.

### c. Symposium Taking Responsibility: Nazi-Looted Art – A Challenge for Libraries, Archives and Museums

To commemorate the anniversary of the Washington Principles<sup>39</sup>, the Prussian Cultural Heritage Foundation ("SPK" or *Stiftung Preussischer Kulturbesitz*) and the *Koordinierungsstelle für Kulturgutverluste* organized an international symposium which was held December 11 – 12, 2008 in Berlin, Germany. Presenters reviewed past developments in the field, examined perspectives and spoke about fundamental issues concerning the restitution of cultural artifacts, provenance research and possible "fair and just solutions". The symposium concluded with a panel discussion that brought together representatives of cultural institutions, the law, advocacy groups and the host organizations.

Two of the most notable and encouraging statements were those of Hermann Parzinger, president of the SPK and Bernd Neumann, German Federal Commissioner for Culture. In his address, Parzinger noted that previous compensation payments, which were often minimal, should not be a reason to deny a claim for restitution where the provenance can be verified.<sup>40</sup> Neumann, meanwhile, reaffirmed the German government's position that there will be no time limits for Holocaust victims or their heirs to reclaim looted art.

Though not all presentations were as constructive; Dr. Michael Eissenhauer, president of the German Museums Association, told attendees that German museums were reluctant to publish the results of the investigation of the provenance of works in their collections as it could result in an outbreak of claims. This was said despite the Washington Principles call for countries and museums to make every effort to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

The two day international symposium brought together a diverse cross-section of individuals, including representatives of cultural institutions, archivists, attorneys and advocacy groups as well as representatives from the HCPO.

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<sup>39</sup> On December 3, 1998 the 44 governments participating in the Washington Conference on Holocaust-Era Assets endorsed 11 principles for dealing with Nazi-confiscated art. Proceedings of the conference can be found at <http://www.state.gov/www/regions/eur/holocaust/heac.html>.

<sup>40</sup> Henry, Marilyn. "Digging out the provenance." *The Jerusalem Post* 23 Dec. 2008. 23 Dec. 2008 <<http://www.jpost.com/servlet/Satellite?articleref=1229868834494&pagename=JPost/JPTalkback/CommonFrame&type=ShowAll>> .

## **P. U.S. Congressional Activity**

### **i. Holocaust Insurance Accountability Act of 2007 (HR 1746)**

On March 28, 2007, Representative Ileana Ros-Lehtinen of Florida introduced a bill to the US House of Representatives entitled the Holocaust Insurance Accountability Act of 2007. The bill was immediately referred to the House Committee on Financial Services, and to the Committees on Foreign Affairs and Oversight and Government Reform, for consideration as to such provisions that fall within the purview of the committee concerned.

HR 1746 amends federal law governing the National Archives and Records Administration to direct the Archivist of the United States to: (1) establish a collection of records known as the Holocaust Insurance Registry, consisting of specified information provided under the Holocaust Victims Insurance Relief Act of 2007; and (2) make it accessible to the public.

The legislation further requires the Secretary of State to seek agreements with European countries to make information on covered policies available to the Registry: (1) insurers are to file certain disclosures of Holocaust-era policies with the Secretary of Commerce; and (2) the Secretary is to provide them to the Archivist. Insurers who do not comply are subject to a civil penalty and the Secretary is to notify each state's commissioner of insurance of the identity of each noncompliant insurer.

Finally, HR 1746 establishes a federal cause of action for treble damages for any claim against an insurer or related company arising out of or related to an insurance policy: (1) in effect at any time between January 30, 1933, and December 31, 1945; and (2) issued to a policyholder domiciled in any area that was occupied or controlled by Nazi Germany or by any ally or sympathizer of Nazi Germany.

On October 3, 2007 the House Committee on Foreign Affairs, Subcommittee on Europe chaired by Rep. Robert Wexler held a hearing entitled *America's Role in Addressing Outstanding Holocaust Issues* which primarily focused on this pending legislation. Following this hearing, on February 7, 2008 the House Committee on Financial Services held a hearing entitled, *The Holocaust Insurance Accountability Act of 2007 (H.R. 1746): Holocaust Era Insurance Restitution After ICHEIC, the International Commission on Holocaust Era Insurance Claims*. The committee heard testimony from both supporters and opponents of the legislation.

The issue of Holocaust-era insurance policies was raised in the Senate and on May 6, 2008, US Senate Committee on Foreign Relations, Subcommittee on International Operations and Organizations, Democracy and Human Rights held a hearing entitled *Holocaust Era Insurance Restitution after ICHEIC*. The Director of

the HCPO testified before the Committee, as did various supporters and opponents of the Holocaust Insurance Accountability Act of 2007. (See Appendix C).

Since the May 6, 2008 Senate hearing the National Association of Insurance Commissioners ("NAIC"), the HCPO, and the Banking and Insurance Departments have discussed a proposal by which the NAIC will provide financial support for the HCPO's efforts at monitoring the insurance claims submitted to European insurers now that ICHEIC has ceased operation. It is anticipated that the HCPO will serve as the primary contact point for state insurance regulators, insurance companies and claimants with inquiries concerning Holocaust-era policies and ICHEIC guidelines.

The US House of Representatives Financial Services Committee held a markup hearing on June 25, 2008 to consider an Amendment in the Nature of a Substitute to H.R. 1746 ("ANOS H.R. 1746" or "Holocaust Insurance Accountability Act of 2008) offered by the Chairman of the Committee, Representative Barney Frank (D-MA). ANOS H.R. 1746 proposed by Rep. Frank passed by voice vote with one approved amendment offered by Rep. Brad Sherman (D-CA). (See Appendix D).

ANOS H.R. 1746 requires insurance companies to respond to inquiries related to the existence of a policy within 90 days or be subject to a monetary penalty. It also requests that the Secretary of the Treasury endeavor to enter into an agreement with the HCPO to monitor company responses and report insurer compliance to Congress; and creates a federal cause of action for any claim arising out of or related to a covered policy against any insurer, though limited to companies that did not participate in the ICHEIC process.

On July 31, 2008 the US House of Representatives Financial Services Committee issued a report in connection with the markup hearing of June 25, 2008 which considered an Amendment in the Nature of a Substitute to H.R. 1746 ("ANOS H.R. 1746" or "Holocaust Insurance Accountability Act of 2008) offered by the Chairman of the Committee, Representative Barney Frank (D-MA). Upon filing of this report the legislation was referred to the House Committee on the Judiciary for review. The House Judiciary Committee indicated that HR 1746 would not be marked up this Congress. As such, the bill will not move forward at this time. It is anticipated that Congress will revisit the issue during their next session.

#### **ii. H. Con. Res. 371 and S. Res. 603**

On September 23, 2008, the U.S. House of Representatives approved resolution H. Con. Res. 371 which urges lagging European nations to move forward with Holocaust-era asset restitution. (See Appendix E).

The non-binding resolution praises the efforts of countries in Central and Eastern Europe that have enacted legislation for the restitution of, or compensation for, private and communal religious property confiscated during the Nazi and Communist eras and urges the countries in the same region that have not already done so to return confiscated properties to their rightful owners or, where restitution is not possible, pay equitable compensation.

The resolution specifically calls on the governments of Poland and Lithuania to: (1) enact legislation so that individuals or their heirs whose property, or communities whose communal or religious property was confiscated during the Nazi or Communist eras are able to obtain restitution of, or compensation for, such property; (2) the President and the Secretary of State to continue to engage in dialogue with the governments of Poland and Lithuania supporting such legislation's adoption; and (3) the Secretary to report to Congress every six months regarding implementation of this resolution.

A similar resolution was presented in the U.S. Senate, S. Res. 603, which reiterates the sentiments of H. Con. Res. 371 concerning restitution in Central and Eastern Europe. The Senate's resolution further states that the Senate would welcome a country in Europe to host a 2009 follow-up international conference to the Washington Conference on Holocaust-Era Assets which would address issues relating to: (1) restitution or compensation; and (2) the opening of archives and the work of historical commissions. S. Res. 603 has been referred to the Senate Committee on Foreign Relations. (See Appendix D).

## V. Holocaust Claims Processing Office Expenses in 2008

The HCPO has an approved full-time staff of nine, reduced from 12 due to budget cuts throughout the Department; currently nine positions are filled. The total cost of operating the HCPO during 2008 was \$747,135, including personal service, fringe and indirect costs, and non-personal service expenditures, as follows.

	Calendar Year 2008		
	Banking Department	Suballocation from Insurance Department <sup>41</sup>	TOTAL
Personal Service	\$312,636	\$256,064	\$568,700
Fringe and Indirect Costs	\$117,736	\$78,426	\$196,162
Non-Personal Service	\$3,149	\$1,387	\$4,537
TOTAL	\$433,521	\$335,877	\$769,398

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<sup>41</sup> Includes \$1,387 in travel costs reimbursed by Insurance Department.

## Appendix A

## **MUGGENTHALER RESEARCH AND LAW OFFICE JOEL LEVI**

([http://www.muggenthalerresearch.com/webpage.php?id=2&table=en&id\\_press=4](http://www.muggenthalerresearch.com/webpage.php?id=2&table=en&id_press=4))

### Drawing Lost Due to Nazi Persecution Returned by Altruistic Current Possessor

Almost 70 years after it was sold under Nazi duress at a forced sale, a painting has found its way back to the heirs of the original Jewish owner. The extraordinary return of this drawing was initiated by the current possessor. The drawing known as *Tiroler Bäuerin* by Adolf von Menzel is a pencil drawing measuring 21 x 12 cm.

This unusual story began, when Alfred Sommerguth, a prominent member of Berlin society and the director and co-owner of Loeser & Wolff, one of the largest tobacco factories in existence before WWII, was forced to sell a substantial part of his art collection due Nazi persecution. By 1939, Sommerguth had amassed an eclectic art collection of 106 artworks, which included Dutch and Italian Renaissance masterpieces as well as works by various French Impressionists.

After the Nazis rise to power, the Sommerguths, like all German Jews, were subjected to the horrors of anti-Semitic legislation that resulted in their persecution and expropriation of their personal property. On February 2, 1939 a significant part of the Sommerguth art collection was sold at the notorious auction house Hans W. Lange in Berlin. The proceeds from the auction were used to pay the discriminatory taxes levied on the Sommerguths by the Nazis. In 1941, the then 82 year old Sommerguth fled with his wife to Cuba via Portugal. His bank account was frozen by the authorities leaving him without resources. In Cuba, Sommerguth fell ill with typhus and was confined to a hospital for one year. Alfred Sommerguth and his wife eventually immigrated to New York, where he passed away 10 years later; his wife died 3 years after.

Mrs. Cornelia Muggenthaler and Mr. Joel Levi, Advocate, have represented the Sommerguth heirs in their restitution claims for many year. During this period several artworks from the Sommerguth collection were located in both private and public collection and subject to settlement or restitution. The success and nature of negotiations with current possessors of works formerly from the Sommerguth collection have varied considerably. The most unique and gratifying experience Mrs. Muggenthaler and Mr. Levi have had to date has been the altruistic return of von Menzel's *Tiroler Bäuerin*.

This past spring, Dr. Michael Venator, after learning of the von Menzel drawing's dubious provenance, wrote to Mrs. Muggenthaler upon the advice of the Koordinierungsstelle für Kulturgutverluste informing her that he was in possession of the drawing and wished to discuss its restitution. In most cases, private collectors are unaware that they are in possession of Nazi looted art until they are approached by the original owners or their heirs at which point restitution discussions ensue. During her lengthy career in the field of art restitution, Mrs. Muggenthaler has never been confronted with a case in which the private collector instigated the restitution process, until now.

Dr. Venator sought the assistance of the German federal government in ascertaining the rightful owners of the von Menzel drawing. Ultimately, the authorities were not able to adequately advise him, and he entered into a private settlement agreement directly with the representatives of the Sommerguth heirs.

In one of his many letters to Mrs. Muggenthaler he explained his decision. "As a German, in such as case, I cannot invoke the statute of limitations. How should I calculate? One minute of Alfred and Gertrud Sommerguth's fear of death against ten hours of the statute of limitations? No, I cannot do that. I have to give back the painting." Mrs. Muggenthaler and Mr. Levi are deeply impressed by such a moral approach. Since Dr. Venator acquired the drawing, in good faith, they offered to reimburse him the amount he paid

to purchase the picture in 1998 plus interest. Dr. Venator, very pleased by this offer, reiterated that he would have returned the drawing without payment.

Dr. Venator's experience as a private collector navigating the restitution process, and his magnanimous approach to this case, highlight the hurdles that likeminded collectors must surmount when confronted with the challenge of identifying rightful owners and resolving cases. Immediately following the Second World War, Collecting Points were established and operated by the allied military governments to assist with the return of looted artwork. Today, private collectors in the same who find themselves in the same situation as Dr. Venator can only contact the Commission for Looted Art in Europe and/or the Holocaust Claims Process Office of the New York State Banking Department for assistance.

With the ten year anniversary of the 1998 Washington Conference on Holocaust-Era Assets and the resulting Washington Conference Principles on Nazi-Confiscated Art swiftly approaching, the development of international, government sponsored, informational and service oriented resources to facilitate the resolution of Holocaust-era looted art claims is long overdue.

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Website: <http://www.jl-lawfirm.com>

**Holocaust Claims Processing Office**

New York State Banking Department  
One State Street  
New York, NY 10004-1417

Tel: +212-709-5583

Fax: +212-709-5592

Email: [claimsques@banking.state.ny.us](mailto:claimsques@banking.state.ny.us)

Website: <http://claims.state.ny.us>

## Appendix B

**A11719** Rules (Brodsky)

Same as **S 8650** MALTESE

Education Law

TITLE....Enacts provisions governing the ownership and management of properties owned by or lent to museums other than the state museum; repealer

06/20/08	referred to higher education
06/23/08	reported referred to codes
06/23/08	reported referred to rules
06/24/08	reported
06/24/08	rules report cal.775
06/24/08	ordered to third reading rules cal.775
06/24/08	passed assembly
06/24/08	delivered to senate
06/24/08	REFERRED TO RULES
06/24/08	SUBSTITUTED FOR S8650
06/24/08	3RD READING CAL.2237
06/24/08	PASSED SENATE
06/24/08	RETURNED TO ASSEMBLY
06/27/08	delivered to governor
07/07/08	signed chap.220

**SUMMARY:**

RULES COM (Request of Brodsky)

Rpld S233-aa (as proposed in S.3593A/A.995A), add S233-aa, Ed L

Enacts provisions governing the ownership and management of properties owned by or lent to museums other than the state museum; requires deaccessioning to be consistent with the museum's mission statement; proceeds of deaccessioning must be used for the collections, not operating expenses; requires furnishing certain information to donors and known testators of planned bequests; establishes provisions and requirements for museums' clarifying title to property lent and acquiring title to undocumented property; requires contact with The Art Loss Register in certain cases; authorizes unilateral conservation measures in certain cases; prohibits acquisition of title to property of uncertain provenance due to acts in areas under Nazi influence.

EFF. DATE 09/05/2008

BILL TEXT:

STATE OF NEW YORK

11719

IN ASSEMBLY

June 20, 2008

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Brodsky) -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to property of other museums; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 233-aa of the education law, as added by a chapter  
2 of the laws of 2008 amending the education law relating to property of  
3 museums other than the state museum, as proposed in legislative bills  
4 numbers S.3593-A and A.995-A, is REPEALED and a new section 233-aa is  
5 added to read as follows:

- 6 § 233-aa. Property of other museums. 1. As used in this section:
- 7 (a) The term "museum" means any institution, including but not limited  
8 to museums, historical societies, zoological gardens, aquariums, botan-  
9 ical gardens, and arboreta, having collecting as a stated purpose in its  
10 charter, or owning or holding collections, or intending to own or hold  
11 collections, that is a governmental entity or not-for-profit corpo-  
12 ration. The term museum does not include the state museum.
- 13 (b) The term "deaccession" means the permanent removal or disposal of  
14 property from the collection of a museum by virtue of its sale,  
15 exchange, donation, or transfer by any means to any person.
- 16 (c) The term "person" means any natural person, partnership, corpo-  
17 ration, company, trust association, or other entity, however organized.
- 18 (d) The term "property" means any inanimate object, document, organ-  
19 ism, or tangible object under a museum's care which has intrinsic  
20 historic, artistic, scientific, or cultural value.
- 21 (e) The term "loan" means a deposit of property with a museum not  
22 accompanied by a transfer to such museum of title to the property.
- 23 (f) The term "lender" means a person legally entitled to, or claiming  
24 to be legally entitled to, property held by the museum or, if such  
25 person is deceased, the legal heirs of such person.
- 26 (g) The term "unclaimed property" means property which is on loan to a  
27 museum and in regard to which the lender, or anyone acting legitimately  
28 on the lender's behalf, has not contacted the museum for at least ten

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD17352-02-8

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1 years from the date of the beginning of the loan, if the loan was for an  
2 indefinite or undetermined period, or for at least five years after the

3 date upon which the loan for a definite period expired.  
4 (h) The term "undocumented property" means property that has been in  
5 the possession of a museum for at least ten years and for which the  
6 museum cannot determine the lender, donor, or owner by making a good  
7 faith and reasonable search for the identity and last known address of  
8 the lender, donor or owner from the museum records and other records  
9 reasonably available to museum staff.  
10 (i) The term "conservation measures" means any actions taken to  
11 preserve or stabilize a property, including, but not limited to, proper  
12 storage, support, cleaning, and restoration.  
13 2. The acquisition of property by a museum pursuant to this section  
14 must be consistent with the mission of the museum.  
15 3. Prior to the acquisition of property by gift, a museum shall inform  
16 a donor or prospective donor of the provisions of this section and shall  
17 provide a donor or prospective donor with a written copy of its mission  
18 statement and collections policy, which shall include policies and  
19 procedures of the museum related to deaccessioning.  
20 4. If the museum has knowledge of a planned bequest of any property  
21 prior to the death of the testator, the museum shall provide the testa-  
22 tor with a written copy of its mission statement and collections policy,  
23 which shall include policies and procedures of the museum relating to  
24 deaccessioning, provided, however, that any museum that routinely makes  
25 its mission statement and collections policy available on its website  
26 shall be deemed to have complied with this subdivision.  
27 5. Proceeds derived from the sale of any property title to which was  
28 acquired by a museum pursuant to this section shall be used only for the  
29 acquisition of property for the museum's collection or for the preserva-  
30 tion, protection, and care of the collection and shall not be used to  
31 defray ongoing operating expenses of the museum.  
32 6. (a) Notice by mail required by this section shall be mailed to a  
33 lender's last known address by certified mail, return receipt requested;  
34 provided, however, that notice shall be given by publication pursuant to  
35 paragraph (b) of this subdivision if the museum does not:  
36 (i) know the identity of the lender; or  
37 (ii) know the address of the lender; or  
38 (iii) receive proof that the notice mailed under this section was  
39 received within thirty days of mailing.  
40 (b) Notice by publication must be given at least once a week for three  
41 consecutive weeks in a newspaper of general circulation in:  
42 (i) the county in which the property is held by the museum; and  
43 (ii) the county of the lender's last address, if known.  
44 The date of notice under this paragraph shall be the date of the third  
45 published notice.  
46 (c) In addition to any other information required by this section, any  
47 notice given under this section must contain the following:  
48 (i) The name of the lender, if known.  
49 (ii) The last address of the lender, if known.  
50 (iii) A brief description of the property on loan to the museum refer-  
51 enced in the notice.  
52 (iv) The date of the loan, if known, or the approximate date of acqui-  
53 sition of the property.  
54 (v) The name and address of the museum.  
55 (vi) The name, address, and telephone number of the person to be  
56 contacted regarding the property.

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1 (d) A copy of all notices required by this section pertaining to prop-  
2 erty in the form of identifiable works of art known to have been created  
3 before nineteen hundred forty-five and to have changed hands in Europe  
4 during the Nazi era (1933-1945) shall be sent to The Art Loss Register  
5 or any successor organization having similar purposes on or before the  
6 date on which such notices are mailed or first published pursuant to the  
7 requirements of this section.

8       7. Unless there is a written loan agreement to the contrary, and  
9 notwithstanding any other provision of law regarding abandoned or lost  
10 property, a museum that has made a good faith and reasonable search for  
11 the identity and last known address of the lender from the museum  
12 records and other records reasonably available to museum staff may  
13 terminate a loan for unclaimed property in its possession in accordance  
14 with the provisions of this subdivision.

15       (a) If the museum has identified the lender and the lender's last  
16 known address, the museum shall give notice by mail, in accordance with  
17 subdivision six of this section, of its intent to terminate the loan.

18       (b) Such notice shall be entitled "Notice of Termination" and must  
19 include a statement containing substantially the following information:  
20 "The records of the (name of museum) indicate that you have or may have  
21 property on loan at (name of facility). The museum is seeking to deter-  
22 mine whether you wish:

23       (i) that the museum return the property to you,

24       (ii) that the property remain on loan to the museum subject to annual  
25 renewal (if the museum also wishes that the property remain on loan), or

26       (iii) that the museum obtain all of the lender's rights to the proper-  
27 ty, either to take the property into its collection or to dispose of the  
28 property, in its sole discretion. Please contact (name of contact) in  
29 writing within one hundred twenty days to advise the museum as to which  
30 of the above alternatives you wish to follow."

31       (c) If the lender does not respond to the notice of termination, with-  
32 in one hundred twenty days following receipt thereof, the museum shall  
33 send a second notice to the lender containing the following information:  
34 "On (date of first notice), the (name of museum) sent you a notice  
35 concerning property that, according to our records, has been lent to the  
36 (name of museum). You have not responded to that notice, a copy of which  
37 is enclosed, and the museum will commence proceedings to acquire title  
38 to the property if you do not contact (name of contact) in writing with-  
39 in one hundred twenty days of receiving this second notice."

40       (d) If the lender fails to respond to the second notice within one  
41 hundred twenty days of receipt thereof, the museum shall acquire all of  
42 the lender's rights to the property.

43       (e) If the museum does not receive proof that the notices mailed  
44 pursuant to this subdivision were received within thirty days of mail-  
45 ing, or if the museum has undertaken a good faith and reasonable search  
46 of museum records and other records reasonably available to museum staff  
47 but has been unable to determine the identity and last known address of  
48 the lender, the museum may terminate the loan by complying with the  
49 procedures established in subdivision eight of this section for acquisi-  
50 tion of title to undocumented property.

51       8. (a) Notwithstanding any other provision of law regarding abandoned  
52 or lost property, a museum may acquire the rights of the lender, donor,  
53 or owner to undocumented property by giving notice by publication, in  
54 accordance with subdivision six of this section, that it is asserting  
55 title to the undocumented property.

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1       (b) Such notice shall be entitled "Notice of Intent to Acquire Proper-  
2 ty" and must include a statement containing substantially the following  
3 information: "The (name of museum) hereby asserts its intent to acquire  
4 title to the following property: (brief description of property). If you  
5 claim ownership of this property, you must contact the museum in writing  
6 and make arrangements to collect the property. If you fail to do so  
7 within one hundred eighty days, the museum will commence proceedings to  
8 acquire title to the property. If you wish to commence legal proceedings  
9 to claim the property, you should consult an attorney."

10       (c) If the museum does not receive contact from any person who can  
11 provide documentation or other evidence establishing an ownership inter-  
12 est in the property within one hundred eighty days of the date of notice  
13 by publication, the museum shall cause a brief description of the prop-

14 erty to be submitted to the comptroller, who shall post such description  
15 on the unclaimed funds registry for not less than one hundred eighty  
16 days.

17 (d) If the museum does not receive contact from any person who can  
18 provide documentation or other evidence establishing an ownership inter-  
19 est in the property prior to or within thirty days following the conclu-  
20 sion of the unclaimed funds registry posting, the museum shall acquire  
21 title to the property.

22 9. The provisions of subdivisions seven and eight of this section  
23 shall not apply to:

24 (a) any property that was created before nineteen hundred forty-five  
25 and changed hands due to theft, seizure, confiscation, forced sale, or  
26 other involuntary means in Europe during the Nazi era (1933-1945); or

27 (b) notwithstanding any copy of a notice sent pursuant to subdivision  
28 six of this section, any property reported as stolen to a law enforce-  
29 ment agency or insurer or The Art Loss Register or any successor organ-  
30 ization having similar purposes no later than three years following the  
31 theft or discovery of the theft.

32 10. A museum shall acquire all rights to undocumented property that is  
33 not solicited by the museum and that is delivered to the museum or left  
34 on museum premises after January first, two thousand nine if no person  
35 provides documentation or other evidence establishing an ownership  
36 interest in the property within ninety days of delivery of such property  
37 to the museum.

38 11. (a) The museum shall give a lender prompt written notice by mail,  
39 in accordance with subdivision six of this section, of any known injury  
40 to, or loss of, property on loan or of the need to apply conservation  
41 measures. Such notice shall advise the lender of his or her right, in  
42 lieu of the application of such conservation measures, to terminate the  
43 loan and, no later than thirty days after having received such notice,  
44 either retrieve the property or arrange for its isolation and retrieval.  
45 The museum shall not be required to publish notice of injury or loss to  
46 any undocumented property.

47 (b) Unless there is a written loan agreement to the contrary, the  
48 museum may apply conservation measures to property on loan to the museum  
49 without giving formal notice or first obtaining the lender's permission  
50 if immediate action is required to protect the property on loan or other  
51 property in the custody of the museum or if the property on loan is a  
52 hazard to the health and safety of the public or the museum staff;  
53 provided that:

54 (i) the museum is unable to reach the lender at the lender's address  
55 or telephone number before the time by which the museum determines  
56 action is necessary; or

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1 (ii) the lender either (1) does not respond to a request for permis-  
2 sion to apply conservation measures within three days of receiving the  
3 request or will not agree to the conservation measures the museum recom-  
4 mends; or (2) fails to terminate the loan and either retrieve the prop-  
5 erty or arrange for its isolation and retrieval within thirty days of  
6 receiving the request.

7 If immediate conservation measures are necessary to protect the prop-  
8 erty or to protect the health or safety of the public or museum staff,  
9 the conditions set forth in subparagraphs (i) and (ii) of this paragraph  
10 shall not apply.

11 (c) Unless provided otherwise in an agreement with the lender, if a  
12 museum applies conservation measures to property under paragraph (a) of  
13 this subdivision, and provided that the measures were not required as a  
14 result of such museum's own action or inaction, such museum shall  
15 acquire a lien on the property in the amount of the costs incurred by  
16 such museum, including, but not limited to, the cost of labor and mate-  
17 rials, and shall not be liable for injury to or loss of the property,  
18 provided that such museum:

19 (i) had a reasonable belief at the time when the action was taken that  
20 the action was necessary to protect the property on loan or otherwise in  
21 the custody of the museum or that such property on loan was a hazard to  
22 the health and safety on the public or the museum staff; and

23 (ii) exercised reasonable care in the choice and application of  
24 conservation measures.

25 12. A lender shall promptly notify a museum, in writing, of any change  
26 of address or change in the ownership of property on loan to such muse-  
27 um.

28 13. The museum shall maintain or continue to maintain, as the case may  
29 be and to the extent such information is reasonably available, a record  
30 of acquisition, whether by purchase, bequest, gift, loan or otherwise,  
31 of property for display or collection and of deaccessioning or loan of  
32 property currently held or thereafter acquired for display or  
33 collection. Any such record shall:

34 (a) state the name, address, and telephone number of the person from  
35 whom such property was acquired, or to whom such property was trans-  
36 ferred by deaccessioning or loan, and a description of such property,  
37 its location, if known, and the terms of the acquisition or deaccession-  
38 ing or loan, including any restrictions as to its use or further dispo-  
39 sition, and any other material facts about the terms and conditions of  
40 the transaction, which records shall be updated if a lender informs the  
41 museum of a change in address, ownership of the property or other rele-  
42 vant information, or if the lender and museum negotiate a change in the  
43 terms of the transaction;

44 (b) include a copy of any document of conveyance relating to the  
45 acquisition or deaccessioning or loan of such property and all notices  
46 and other documents prepared or received by the museum; and

47 (c) in the case of property acquired pursuant to this section, include  
48 records documenting the search for the identity and last known address  
49 of the lender, and copies of all notices and other documents prepared or  
50 received by the museum in connection with the acquisition of title to  
51 such property.

52 14. Nothing in this section shall limit the ability of a lender and  
53 museum to bind themselves to different loan provisions by written agree-  
54 ment, nor shall this section abrogate rights and obligations of a lender  
55 or museum pursuant to a written agreement.

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1 § 2. This act shall take effect on the same date and in the same  
2 manner as a chapter of the laws of 2008 amending the education law  
3 relating to property of museums other than the state museum, as proposed  
4 in legislative bills numbers S.3593-A and A.995-A, takes effect.

## Appendix C

Statement of <sup>42</sup>

Anna B. Rubin  
Director  
Holocaust Claims Processing Office  
New York State Banking Department  
New York State Insurance Department

before the

Subcommittee on International Operations and Organizations,  
Democracy and Human Rights

United States Senate

“Holocaust Era Insurance Restitution after ICHEIC”

May 6, 2008

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<sup>42</sup> Please note that the complete testimony with appendices 1 and 3 are available on the HCPO's website at <http://www.claims.state.ny.us/sp080506.pdf>.

Good afternoon Chairman Nelson, Ranking Member Vitter, and Members of the Subcommittee. Thank you for the opportunity to testify before you today and share my knowledge on the very important issue of Holocaust-era insurance claims. As Director of the Holocaust Claims Processing Office (HCPO), I am especially pleased to be able to provide some insight into the work of New York State in its attempt to provide some measure of justice to the victims of a painful chapter in world history. Today I would like to provide you with background on the HCPO and in particular our experience working on Holocaust-era insurance claims, our cooperation with numerous compensation organizations, and our more recent efforts to assist individuals with outstanding insurance claims.

#### **I. Introduction to the Holocaust Claims Processing Office**

For over 10 years New York State has been at the forefront of efforts to ensure a just resolution of unresolved claims for assets lost due to Nazi persecution. As you are undoubtedly aware, disputes over Holocaust-era dormant Swiss bank accounts and unpaid life insurance policies came to the forefront in the late 1990s. During those early days, before settlements and claims processes, New York State recognized the need for an agency to assist individuals attempting to navigate the emotionally charged maze of Holocaust-era asset restitution and, as a result, established the HCPO as a division of the New York State Banking Department in June 1997. The HCPO is jointly funded by the New York State Banking Department and the New York State Insurance Department.

The HCPO was initially intended to assist individuals hoping to recover assets deposited in Swiss banks. It soon became apparent that claimants also needed help recovering a range of other property and by the end of its first year of operation, the HCPO expanded its mission to assist in the recovery of assets held in non-Swiss banks, proceeds from Holocaust-era insurance policies, and works of art that were lost, looted, or sold under duress between 1933 and 1945.

The HCPO is the only government agency in the United States that assists individuals to file claims with a variety of multinational restitution processes. Claimants pay no fee for the HCPO's services, nor does the HCPO take a percentage of the value of the assets recovered. To date, the combined total of offers extended to HCPO claimants for bank accounts, insurance policies, and other asset losses amounts to more than \$118 million, \$28.3 million of which is compensation for insurance policies. (See Appendix 1 – New York State Banking Department Holocaust Claims Processing Office Annual Report).

The goal of the HCPO is to advocate for claimants by helping to alleviate any cost and bureaucratic hardships they might encounter in trying to pursue claims on their own.

## **II. The HCPO's Insurance Claims**

Overall, the HCPO has handled in excess of 13,000 inquiries, of which 4,300 have been insurance-related inquiries from individuals in 46 states and 29 countries. Of the 4,300 insurance-related inquiries, the HCPO assisted 2,290 individuals from 41 states and 24 countries in making claims for insurance policies. For the most part the claims are for compensation of life, dowry, and education insurance policies.

## **III. HCPO Claims Research**

Claims received by the HCPO range from the purely anecdotal to the partially or even fully documented. Some claimants are able to furnish documentation such as the actual policy or premium receipt; handwritten lists kept by families that itemized their assets; and prewar and wartime confirmation letters from insurance companies referencing policy numbers and policies. In other instances, claimants document policy ownership through Nazi-era asset declarations; in some cases policy ownership is revealed by postwar compensation files.

Those who cannot provide documentation often know significant details. Claimants know there was insurance; they even recall purchasing it, and they remember perhaps the name and location of the agent. They remember accompanying parents to medical exams, or to photographers for dowry policy photographs.

Individual claims are assigned to members of the HCPO's staff of seven professionals -- comprised of historians, economists, political scientists, lawyers, art historians and linguists -- who provide assistance in a variety of ways. They assist in securing documentation through research in domestic and international public and private archives. As a result, the HCPO has cordial working relationships with archives, historical commissions, financial institutions, trade associations, and governmental colleagues at the federal, state, and local levels in many different countries. This network enables the HCPO to research prewar, Nazi-era, and postwar documentation to obtain evidence about an individual's asset ownership, details of the dispossession, and prior attempts at recovery.

Claimants have approached the HCPO convinced that the policies they are seeking were written by one company and the HCPO's research has been able to determine that it was in fact quite another. For instance, a claimant, originally from Vienna, approached the HCPO relatively certain that his father's life insurance policy was written by Der Anker or Phönix. Neither Der Anker nor UNIQA (the Phönix successor) had any record of a policy. The HCPO obtained a copy of the claimant's father's asset declaration from the Austrian Federal Archives, which revealed a Victoria life insurance policy, and even cited its repurchase value as of July 1938. In turn, the HCPO submitted the claim to the International Commission on Holocaust Era Insurance Claims for resolution.

#### **IV. HCPO Submission of Claims to Appropriate Entities**

With as much information in-hand as possible regarding the claimants' insurance policies, the HCPO must still determine where to file the claim. In order to submit a claim to the appropriate company or claims process, it is necessary to first determine what present-day company or claims process is responsible for the policy in question. For claims for policies issued by companies still in existence, finding the appropriate successor is relatively straightforward. But for others, determining the successor is more complex.

A considerable amount of the HCPO staff's time is devoted to successor company research. Researching successor companies is complicated by the following facts: policies written in contested geographical areas were transferred to a variety of companies and different portfolios within these companies; the prewar Nazi consolidation of the insurance

industry and the postwar reconstruction; and in some instances nationalization of the industry led to further changes in corporate structures. Moreover, the ravages of war and the passage of time have left many companies with little or no documentation regarding their prewar holdings or the holdings of their subsidiary companies.

Published industry handbooks and government statistical bulletins from the relevant time period help the HCPO determine where companies did business and provide some information regarding the aggregate statistics of the prewar insurance market as well as the market share of individual companies. For example, it is possible to state with some certainty which companies sold life insurance policies in Germany and Poland in 1936 and that in that same year the domestic German insurance market comprised 48.78% of the continental European insurance market, whereas the Polish market made up 0.68% of the market. (See Appendix 2 – Overview of the Interwar Economy and European Insurance Industry).

Once all of the HCPO's research is complete, the HCPO's role changes from detective to advocate and facilitator. The HCPO staff submits claims to all appropriate companies, regulatory authorities, governments, and any independent organization established to resolve these claims.

#### **A. The International Commission on Holocaust Era Insurance Claims**

The International Commission on Holocaust Era Insurance Claims (ICHEIC) was established in October of 1998 by the National Association of Insurance Commissioners in cooperation with several European insurance companies, European regulators, representatives of several Jewish organizations, and the State of Israel. ICHEIC was charged with establishing a process to address the issue of unpaid insurance policies owned by victims of the Holocaust. To accomplish this task, ICHEIC entered into agreements with European insurers and created mechanisms by which the Commission was able to identify, settle, and pay individual Holocaust-era insurance claims, at no cost to claimants, using relaxed standards of proof. With the launch of ICHEIC's claims process in February 2000, the HCPO transferred over 2,100 insurance claims to the Commission for settlement. The HCPO worked closely with ICHEIC staff in Washington and London, participated in working

groups, provided technical assistance and ensured claimants' concerns were adequately addressed.

### **B. The Austrian General Settlement Fund**

The Austrian General Settlement Fund (GSF) Law of 2001 created the legal basis for dealing with the financial claims of Holocaust victims. The Austrian Insurance Association and its member companies passed a unanimous resolution in April 2001 to contribute \$25 million to the GSF. The GSF has assumed the task of processing the insurance claims of Holocaust victims and their heirs. The HCPO has submitted claims on behalf of over 360 claimants either directly or through the GSF's partnership with ICHEIC. The HCPO continues to monitor these claims and conduct additional research.

### **C. Other Claims Processes**

In addition, HCPO insurance claims have been forwarded to a number of other entities for resolution, including the Generali Fund in Memory of the Generali Insured in East and Central Europe Who Perished in the Holocaust (GTF), the Holocaust Foundation for Individual Insurance Claims (Sjoa Foundation), the Claims Resolution Tribunal (CRT), and the Belgian Jewish Community Indemnification Commission (Buysse Commission). Claims were submitted to these organizations either in accordance with ICHEIC's partnership agreements with these entities or directly by the HCPO.

### **D. Insurance Companies Before and After ICHEIC**

Prior to the establishment of ICHEIC, the HCPO submitted claims for insurance policies directly to the issuing insurance company or its present-day successor, if one could be located. At ICHEIC's final meeting in March 2007, all ICHEIC member companies, as well as over 70 companies in the German Insurance Association, through its partnership agreement with ICHEIC, reiterated their commitment to continue to review and process claims sent directly to them in accordance with ICHEIC's relaxed standards of proof. Since ICHEIC ceased operations at the end of March 2007, the HCPO has once again resumed dealing with insurance companies directly to resolve outstanding claims.

## **V. Resolution of Claims**

Once a company or claims process has completed its review of a claim and reaches a determination, the HCPO reviews the decision to ensure that it adheres to that entity's published processing guidelines. Since claimants may lose track of all the claims they have submitted, and since each agency has unique and often complex guidelines, the HCPO helps claimants to understand these guidelines in order to interpret decisions.

In the event that a claimant disagrees with a company or claims process' determination of his or her claim, the HCPO guides claimants through appealing the decision and offers whatever further assistance it can. Alternatively, when claimants receive positive decisions that include monetary awards, the HCPO facilitates payment by explaining the various release and waiver forms and by following up with the claims agency to confirm payment.

## **VI. NAIC Proposal**

Recently, the National Association of Insurance Commissioners (NAIC), the HCPO, and the Banking and Insurance Departments of New York State have begun discussions of a proposal by which the NAIC will provide financial support for the HCPO's efforts at monitoring the insurance claims submitted to European insurers now that ICHEIC has ceased operation. It is anticipated that the HCPO will serve as the primary contact point for insurance companies and claimants with inquiries concerning Holocaust-era policies and ICHEIC guidelines. In order to facilitate the monitoring effort, the NAIC and its members will work with the HCPO to develop a bulletin on claims reporting, to help inform claimants of the opportunity to submit claims and the HCPO's ability to assist them. The HCPO will report the results of its monitoring activities to the NAIC.

Through this partnership, the HCPO will oversee the processing of any claims submitted through the HCPO to insurance companies to ensure compliance with ICHEIC's relaxed standards of proof. By monitoring and regular reporting, and by serving as a primary contact point for insurance companies and claimants, the HCPO can facilitate a process that will hopefully obviate the need for recourse to the judicial process. (See Appendix 3 – Correspondence between the NAIC and New York).

## **VI. Conclusion**

Like the missing property we search for, no two claims are alike; each requires conscientious individual attention and painstaking effort. The process of restitution is difficult and distressing for claimants; however, the HCPO's successes show that compensation for assets lost during the Holocaust-era is still possible. Experience has taught that the HCPO can greatly minimize the difficulties in dealing with matters of Holocaust-era asset compensation.

## Appendix 2

### Overview of the Interwar Economy and European Insurance Industry

#### I. Overview of Interwar Economic History

The aftermath of World War I was characterized by political and economic upheavals across Central and Eastern Europe. The costs of financing four years of warfare, the decline in agricultural and industrial production, and consequent shortages of food, fuel and raw materials and finally the dissolution and dismemberment of the Russian, Austro-Hungarian and German Empires contributed to a period of economic and political chaos.

The German and Austro-Hungarian Empires had financed their war efforts through printing paper currency, and by the end of World War I, the number of banknotes in circulation far outstripped the reserves of gold available to central banks to back paper money. As a consequence, several countries, most notably Germany, suffered through periods of hyperinflation in the early 1920s.

International intervention helped to stabilize currencies in the countries affected by hyperinflation. In 1924 Germany introduced a new currency, the Reichsmark, at the rate of one trillion paper marks to one Reichsmark. The Reichsmark was pegged at the German mark's prewar exchange rate against the dollar (1 US dollar equaled 4.2 Reichsmarks). Austria and Hungary both used loans from the League of Nations to stabilize their new currencies (the schilling and pengö respectively). Poland unsuccessfully attempted to stabilize its currency using only internal resources at first; in 1926 a new currency, the zloty, was introduced with the help of American loans.

Unlike the other countries formed out of the wreckage of the Austro-Hungarian Empire, the new Czechoslovak Republic managed to escape the worst of the

postwar economic toil. As a consequence, by 1925, when the other former members of the Danube monarchy and the Germans to the north were only just achieving currency stabilization, Czechoslovakia had already achieved its pre-1914 rate of industrial production.<sup>43</sup>

In contrast to the immediate post-war period, the mid-to-late 1920s were a time of relative calm and stable economic growth for most European countries. This relative prosperity was short-lived as the decline in agricultural prices that began in 1928 was followed by the collapse of the New York stock market in 1929 and world-wide economic depression.

The financial sector in Central and Eastern Europe also experienced a series of crises, beginning with the collapse of the Austrian Creditanstalt in May 1931. The Austrian banking crisis quickly spread to Germany – in May 1931, German banks lost 337 million RM (2.6 percent of total deposits); by the end of June, the three largest German banks (Deutsche Bank, Dresdner Bank and the Darmstädter- und Nationalbank) had lost a total of nearly 1.4 billion RM in deposits.<sup>44</sup> In addition to its direct impact on the industry, the 1931 banking crisis also ended the availability of new loans and credit on international financial markets for the countries of Central and Eastern Europe.

Without the availability of additional short-term credit, these countries were increasingly unable to service their existing debts. Central banks were forced to deplete their own foreign-exchange and gold reserves in order to prevent the collapse of industrial firms and banks. Countries across Europe abandoned the gold standard by the mid-1930s. In addition, Germany restricted currency convertibility and placed foreign exchange transactions under the aegis of the Reichsbank, rather

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<sup>43</sup> <http://www.czech.cz/en/economy-business-science/general-information/economy-development-and-potential/economic-history/czechoslovak-republic-and-protectorate-of-bohemia-and-moravia/>

<sup>44</sup> Harold James, *The German Slump: Politics and Economics, 1924-1936* (New York: Oxford University Press, 1987), p. 302

than relying on private banks, and other countries quickly adopted these measures in an effort to stem further capital flight.

Given the economic uncertainty introduced by the currency crises of the early 1920s and the banking crises of the early 1930s, the purchase of term life insurance policies and related life products, such as dowry and endowment insurance became one of the primary methods of savings for many people in Europe during the interwar years. However, the insurance market varied widely across countries in terms of number of companies issuing life insurance policies, policies per capita, premium income, and other assets.

## **II. The HCPO's Valuation**

To estimate the potential number of Holocaust-era insurance policies it was necessary to assess the size of the prewar European insurance market as a whole as well as to compare markets in different countries.

Rather than using insured sums, a nominal and often speculative amount, considering that companies wrote policies in excess their existing reserves (one of the causes of the failure of the Austrian Phönix insurance company in 1936), this report uses the actual income of insurance companies as represented by premium income to estimate the market size and market share of various companies.

The year 1936 was chosen as a representative prewar year in part because statistics for 1936 would include many policies that would have been cashed in or surrendered by 1938-1939 (as a result of the *Anschluss* of Austria and the German occupation of the Sudetenland region of Czechoslovakia as well as the imposition of asset reporting requirements on German Jews in April 1938).

The relevant volumes of the *Assekuranz Jahrbuch* and *Assekuranz Kompass*, annual insurance industry publications summarizing statistics provided by European government insurance regulators, provided data on premium income for 1936 in the local currency for each country. The aggregate premium income for each country was converted into 1936 US dollars (to provide a point of comparison across countries with different currencies) using conversion information from the *League of Nations Statistical Yearbook*.

ICHEIC's valuation guidelines for each country were applied to the 1936 sums to bring them up to December 2006 ICHEIC value as this was the final date for ICHEIC decision.

This method of converting 1936 dollars to present-day sums, unlike using the US Consumer Price Index or long bond rates, takes into consideration the deflation suffered by most European currencies after 1945. We are all aware of the 10:1 Reichsmark:Deutsche Mark conversion of 1948 which was introduced by the Western Allies. However, perhaps it bears repeating that, for example, hyperinflation in Hungary reduced the value of the pengö as follows:

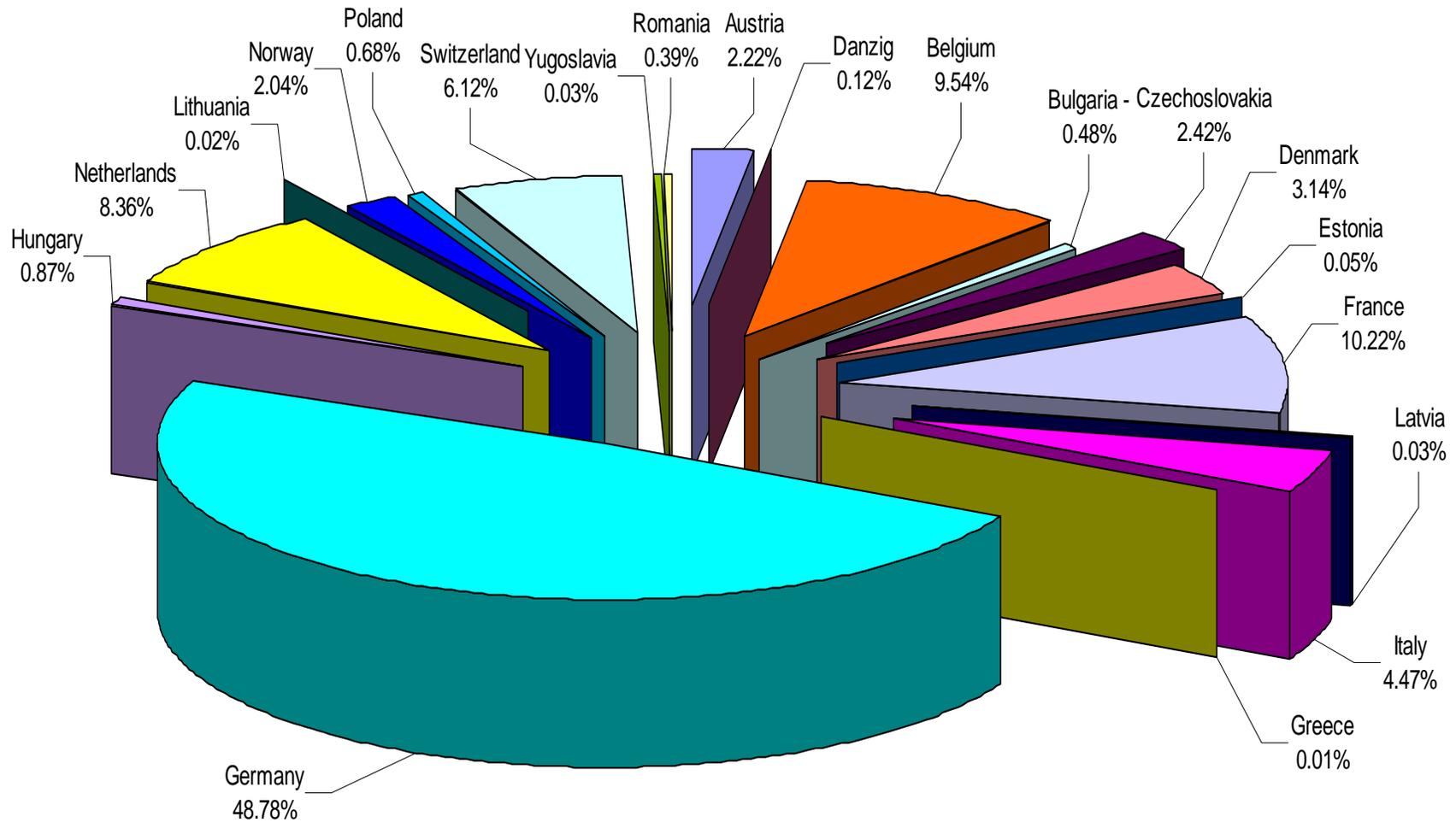
**1936 - \$1 = 3.39 pengö**

**1946- January: \$1 = 104,000 pengö**

**1946 – April: \$1 = 10.3 million pengö**

**1946 – July: \$1 = 1.835 billion pengö**

## 1936 Insurance Market - Nazi Occupied Continental Europe and Switzerland



Country	Population as of last official census in 1936 <sup>1</sup>	Premium income in 1936 local currency	Premium income in 1936	1936 Premium income - revaluation using ICHEIC valuation guidelines for through December 2006 <sup>2</sup>
Austria	6,760,000	108,054,000.00	\$20,195,292.60	\$961,762,635.18
Belgium	8,092,000	512,614,000.00	\$86,631,766.00	\$1,370,702,549.01
Bulgaria	6,090,000	359,230,000.00	\$4,346,683.00	\$46,953,216.70
Czechoslovakia	14,729,000	623,772,872.00	\$21,956,805.09	\$226,737,472.25
Danzig <sup>3</sup>	408,000	5,951,000.00	\$1,122,358.60	\$2,929,296.20
Denmark <sup>4</sup>	3,550,000	129,940,000.00	\$28,469,854.00	\$74,304,843.27
Estonia	1,126,000	1,576,000.00	\$428,987.20	\$4,327,489.01
France	41,229,000	1,987,350,000.00	\$92,809,245.00	\$91,012,232.57
Germany	66,104,000	1,100,931,000.00	\$442,904,541.30	\$1,155,957,895.06
Greece <sup>5</sup>	6,204,000	13,239,055.00	\$119,151.50	\$11,240,585.73
Hungary	8,688,000	26,873,000.00	\$7,906,036.60	\$56,003,677.06
Italy	41,177,000	771,237,000.00	\$40,567,066.20	\$942,182,444.30
Latvia	1,900,000	1,439,000.00	\$277,295.30	\$2,825,411.92
Lithuania	2,029,000	1,234,800.00	\$207,693.36	\$18,701,591.97
Netherlands	7,936,000	139,070,000.00	\$75,890,499.00	\$4,841,515,155.42
Norway <sup>6</sup>	2,814,000	75,010,000.00	\$18,497,466.00	\$48,277,427.48
Poland	32,133,000	32,970,000.00	\$6,214,845.00	\$66,098,327.80
Romania	18,053,000	486,974,000.00	\$3,554,910.20	\$37,540,972.02
Switzerland	4,077,000	241,650,000.00	\$55,531,170.00	\$3,148,207,128.39
Yugoslavia	13,934,000	135,501,000.00	\$311,652.30	\$32,712,427.56
<b>Total Market of Nazi-occupied Europe and Switzerland</b>	<b>287,033,000</b>		<b>\$907,943,318.25</b>	<b>\$13,139,992,778.90</b>

<sup>1</sup> Statistical Yearbook of the League of Nations, 1935/1936 (Geneva, 1936), p. 23

<sup>2</sup> The highest ICHEIC multiplier for each country was used to calculate present values in order to arrive at the most generous estimate of the prewar market in 2006 US dollars.

<sup>3</sup> In 1936, the size of the Danzig market was 0.25% of the German market. Because there is no ICHEIC valuation rate available for Danzig, this percentage of the German market was used to calculate the approximate size of the Danzig market in 2006 US dollars.

<sup>4</sup> In 1936, the size of the Danish market was 6.4% of the German market. Because there is no ICHEIC valuation rate available for Denmark, this percentage of the German market was used to calculate the approximate size of the Danish market in 2006 US dollars.

<sup>5</sup> Data from the 1938 *Assekuranz Kompass* is incomplete.

<sup>6</sup> In 1936, the size of the Norwegian market was 4.17% of the German market. Because there is no ICHEIC valuation rate available for Norway, this percentage of the German market was used to calculate the approximate size of the Norwegian market in 2006 US dollars.

## Appendix D

**110TH CONGRESS**  
REPT. 110-820  
**HOUSE OF REPRESENTATIVES**

*2d Session*

Part 1

--HOLOCAUST INSURANCE ACCOUNTABILITY ACT OF 2008

AUGUST 1, 2008- Ordered to be printed

*Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following*

R E P O R T

*together with*

*ADDITIONAL VIEWS*

[To accompany H.R. 1746]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1746) to require disclosure of Holocaust-era policies by insurers and establish a federal cause of action for claims arising out of a covered policy, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

## **AMENDMENT**

The amendments are as follows:

Strike all after the enacting clause and insert the following:

### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Holocaust Insurance Accountability Act of 2008'.

### **SEC. 2. FINDINGS.**

Congress finds the following:

(1) The Holocaust was one of the most heinous crimes in history, causing the suffering of millions of people through torture and other violence, including the murder of 6,000,000 Jews and millions of others, the destruction of families and communities, and the theft of their assets.

(2) After World War II, many Holocaust survivors and heirs of Holocaust victims presenting claims to insurance companies lacked

policy information and vital records needed to satisfy the burden of proof required to bring an insurance claim because such documentation was confiscated by the Nazis or lost in the devastation of World War II.

(3) Following the end of the Cold War, efforts to address open issues concerning restitution and compensation to the victims of Nazi persecution were renewed. International talks involving the United States, Germany, Austria, France, Israel, and other nations occurred and agreements were reached to enable restitution for a variety of claims, including claims based on Holocaust-era insurance policies.

(4) In response to the unique difficulties faced by those seeking to bring claims based on Holocaust-era insurance policies, Insurance Commissioners of the several States, the National Association of Insurance Commissioners (NAIC), major Jewish organizations and various European insurance companies established the International Commission on Holocaust Era Insurance Claims to provide a forum in which claimants could bring claims based on Holocaust-era insurance policies.

(5) In recognition of the preeminence of the States in protecting consumers in the insurance marketplace, Congress and the executive branch have a limited role in facilitating and assisting the Holocaust-era insurance restitution efforts of the several States as embodied principally in the ICHEIC process.

(6) After ICHEIC and its partner entities paid approximately \$300 million to more than 47,000 claimants and approximately \$200 million to Holocaust-related humanitarian organizations, ICHEIC formally concluded its operation in March 2007.

(7) Experts agree that, by the conclusion of the ICHEIC process, claims based on a substantial portion of Holocaust-era insurance policies issued to Holocaust victims in Western Europe had been addressed.

(8) Due to the political and economic conditions in Eastern Europe until the end of the Cold War, compensation efforts there have been more limited. The ICHEIC process did provide compensation for policies issued by the Eastern European branches and subsidiaries of Western European companies as well as for policies issued by nationalized or liquidated Eastern European insurers, drawing from ICHEIC's humanitarian funds. However, the Eastern European companies and countries did not participate in ICHEIC or any of the related compensation processes. Now that the nations of Eastern Europe have joined the community of free and modern nations, it is imperative that the nations of Eastern Europe proactively seek to identify and provide restitution for Holocaust-era insurance policies issued within their borders.

(9) All insurers that participated in ICHEIC are now willing to address all inquiries made by Holocaust victims and victims' heirs, check their archives, and settle legitimate claims based on relaxed standards of proof. To facilitate the ongoing monitoring of claims

based on Holocaust-era insurance policies, the Insurance Commissioners of the several States have agreed to coordinate their Holocaust-era insurance restitution efforts through the NAIC and the Holocaust Claims Processing Office. Similarly, entities that worked in partnership with ICHEIC have agreed to maintain their claims processing facilities and cooperate with the HCPO in the resolution of Holocaust-era insurance claims.

(10) It has been the policy of the executive branch to support the resolution of Holocaust-era insurance claims through an alternative to litigation. To that end, the executive branch has filed statements of interest in court seeking the dismissal of cases involving claims for non-payment of Holocaust-era insurance policies where there have been independent legal grounds to support such dismissal.

(11) This Act does not endorse any State law cause of action and does not alter any applicable law, legal precedent or principle in effect at the time of its enactment that may be applicable to the resolution of Holocaust-era insurance claims. Nor does this Act alter the binding effect of any class action settlement involving Holocaust-era insurance claims.

### **SEC. 3. INSURER RESPONSE TO INQUIRIES ABOUT COVERED POLICIES.**

(a) Requirement-

(1) IN GENERAL- Subject to paragraph (2), an insurer receiving a written inquiry from an eligible person regarding a covered policy for which the person may be a beneficiary shall--

(A) not later than 90 days after such insurer receives such written inquiry, acknowledge the inquiry in writing and indicate whether such insurer is in possession of information specifically relating to such covered policy;

(B) within a reasonable period of time, provide to such eligible person all information in the possession of such insurer regarding whether such person is a potential beneficiary of such policy; and

(C) immediately notify the Holocaust Claims Processing Office in writing of the inquiry and provide a copy of all acknowledgments and information provided to such eligible person under subparagraph (A) or (B) to the HCPO.

(2) TERMINATION OF REQUIREMENT- An insurer receiving a written inquiry under paragraph (1) is not required to comply with the requirements of such paragraph for any written inquiry received on or after the date that is 10 years after the date of the enactment of this Act.

(b) Agreements With European Countries-

(1) AGREEMENTS- The Secretary of State shall seek to enter into an agreement with each European country with which no appropriate

agreement exists to facilitate the response requirements of subsection (a).

(2) REPORT- Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall submit to Congress a report on efforts to carry out this subsection.

## **SEC. 4. MONITORING BY THE HOLOCAUST CLAIMS PROCESSING OFFICE.**

The Secretary of the Treasury is authorized and encouraged to enter into an agreement with the Holocaust Claims Processing Office to provide for--

(1) the HCPO to monitor compliance with the requirements of section 3(a);

(2) the HCPO to notify the Secretary of the Treasury of the identity of any insurer that the HCPO is aware of that is not in compliance with the requirements of section 3(a) not later than 30 days after the failure of such insurer to comply with such requirements;

(3) the HCPO to annually notify the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Secretary of the Treasury, and the Secretary of State of the identity of each insurer that fails to comply with the requirements of section 3(a);

(4) subject to appropriations, the transfer to the HCPO of amounts equal to the amounts received by the Government under section 5 for use in carrying out paragraphs (1) and (2); and

(5) the issuance of such guidelines and regulations as are necessary to carry out this section and sections 3 and 5(a).

## **SEC. 5. PENALTY.**

(a) In General- The Secretary of the Treasury shall assess a civil penalty of not less than \$5,000 for each day that an insurer fails to comply with the requirements of section 3(a) for an inquiry referred to in such section, as determined by the Secretary after consideration of information provided by the Holocaust Claims Processing Office. Each failure to comply with the requirements of section 3(a) for an inquiry under such section shall be considered a separate offense.

(b) Alternative Assessment- If an insurer based outside of the United States is assessed a penalty under subsection (a) and refuses to pay such penalty and the Secretary is unable to collect such penalty from such insurer, the Secretary may seek to attach a lien on any payment (including the remittance of a dividend or management fee) to such insurer from a subsidiary of such insurer that is domiciled in the United States if--

(1)(A) such insurer owns substantially all of the voting shares of such subsidiary; or

- (B) there is substantial overlap of membership of the board of directors and executive officers of such insurer and such subsidiary;
  - (2) the Secretary notifies such insurer, such subsidiary, and the appropriate State regulator of such subsidiary of the intent of the Secretary to attach a lien to such remittance; and
  - (3) the Secretary provides such insurer and such subsidiary a reasonable opportunity to contest the attachment of the lien.
- (c) Regulations- The Secretary shall issue regulations to carry out subsection (b).

## **SEC. 6. FEDERAL CAUSES OF ACTION.**

- (a) Federal Cause of Action-
- (1) IN GENERAL- There shall exist a Federal cause of action for any claim arising out of or related to a covered policy against any insurer.
  - (2) STANDING- A claim under paragraph (1) may be brought by an eligible person.
  - (3) STATUTE OF LIMITATIONS- Any action brought under this Act shall be filed not later than 10 years after the effective date of this Act.
- (b) Right to Opt Out of Class Action Proceedings-
- (1) SENSE OF CONGRESS- It is the sense of Congress that claimants have the right to opt out of new or ongoing class action proceedings relating to claims based on Holocaust-era insurance policies in accordance with Rule 23 of the Federal Rules of Civil Procedure.
  - (2) CLARIFICATION- Nothing in this Act shall be construed to affect any class action settlement agreement, or releases given therein, made before the date of the enactment of this Act.

## **SEC. 7. LIMITATION ON FEDERAL CAUSE OF ACTION AND REQUIREMENT TO RESPOND TO INQUIRY.**

- (a) In General- No cause of action shall exist for a claim against an insurer relating to, and an insurer is not required to comply with the requirements of section 3(a) for a written inquiry regarding, a covered policy for which--
- (1) payment has been made or release has been granted;
  - (2) payment has been received or denied under the process of the International Commission on Holocaust Era Insurance Claims, any similar process that was conducted in partnership with ICHEIC, any government sponsored Holocaust claims process, the Holocaust Claims Processing Office, or any process for the resolution of Holocaust-era insurance claims established pursuant to a class action settlement; or
  - (3) the claimant previously filed an action against such insurer.

(b) Clarification of Applicability- Subsection (a) shall not apply to a claim for which a humanitarian payment has been received from ICHEIC and that is being asserted--

- (1) against an insurer that did not participate in ICHEIC; or
- (2) based on information not reasonably available before the conclusion of the ICHEIC process.

## **SEC. 8. EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT.**

(a) In General- The Secretary of the Treasury shall instruct the United States Executive Director at the European Bank for Reconstruction and Development to use the voice and vote of the United States to create and advocate the policies of the Bank to encourage Eastern European countries to engage in and pursue restitution programs in compliance with this Act.

(b) Report- Not later than one year after the date of the enactment of this Act, and three years thereafter, the Secretary of the Treasury shall submit to Congress a report on the progress of carrying out subsection (a).

## **SEC. 9. DEFINITIONS.**

In this Act:

(1) COMMISSIONER OF INSURANCE- The term 'commissioner of insurance' means the highest ranking officer of a State responsible for regulating insurance.

(2) COVERED POLICY- The term 'covered policy' means any insurance policy that was--

(A) in effect at any time after January 30, 1933, and before December 31, 1945; and

(B) issued to a policyholder or named a beneficiary who was deprived of their life, suffered damage to their mental or physical health, suffered loss or deprivation of financial or other assets, or suffered any other loss or damage to their property as a result of racial, religious, political, or ideological persecution by organs of the National Socialist Government of Germany or by other Governmental authorities or entities controlled by such Governmental authorities in the territories occupied by the National Socialist Government of Germany or its European allies during the period described in subparagraph (A).

(3) ELIGIBLE PERSON- The term 'eligible person' means a person who purchased a covered policy, a beneficiary of such person with respect to such policy, an heir of such person or such beneficiary with respect to such policy, or an assignee of such person, such beneficiary, or such heir with respect to such policy.

(4) HOLOCAUST CLAIMS PROCESSING OFFICE; HCPO- The terms 'Holocaust Claims Processing Office' and 'HCPO' mean the

Holocaust Claims Processing Office of the New York State Banking Department.

(5) INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS; ICHEIC- The terms `International Commission on Holocaust Era Insurance Claims' and `ICHEIC' mean the International Commission on Holocaust Era Insurance Claims established through the memorandum of understanding and bilateral or multilateral agreements between the Commission, relevant foreign governments, and the following insurers and their successors in interest:

(A) The Dutch Association of Insurers and the members of the Association.

(B) AXA SA together with its subsidiaries (the AXA Group).

(C) Assicurazioni Generali S.P.A.

(D) Zurich Life Insurance Company and its affiliates.

(E) Allianz SE.

(F) Winterthur Swiss Insurance Company together with its subsidiaries (the Winterthur Group).

(G) All insurers participating in the process of the Commission through bilateral or multilateral agreements.

(6) INSURER- The term `insurer' means any person engaged in the business of insurance in interstate or foreign commerce, if the person issued a covered policy, or a successor in interest to such person.

Amend the title so as to read:

*A bill to further facilitate payment of Holocaust-era insurance claims.*

Appendix E

110th CONGRESS  
2d Session  
**H. CON. RES. 371**

**CONCURRENT RESOLUTION**

Whereas the United States strongly supports an immediate and just restitution or compensation of property illegally confiscated during the last century by Nazi and Communist regimes;

Whereas the wrongful and illegal confiscation of property perpetrated by Nazi and Communist regimes was often an integral part of the persecution of innocent

people due to their religion, nationality, or social origin, or the expression of a view that differed from that of the ruling regime;

Whereas the protection of and respect for property rights is a basic principle tenet for all democratic governments that operate according to the rule of law;

Whereas the participating countries of the Organization for Security and Cooperation in Europe (OSCE) have agreed to achieve or maintain full recognition and protection of all types of property, including private property, and the right to prompt, just, and effective compensation in the event private property is taken for public use;

Whereas the Paris Declaration of the OSCE Parliamentary Assembly (OSCE Assembly) in July 2001 noted that the process of restitution, compensation, and material reparation of victims of Nazi persecution has not been pursued with the same degree of comprehensiveness by all of the OSCE participating countries;

Whereas the OSCE Assembly passed a resolution during the 10th session that urged the OSCE participating countries to ensure that they implement appropriate legislation to secure the restitution of, or compensation for, both property loss by victims of Nazi persecution and property loss by communal organizations and institutions or their successors during the Nazi era, irrespective of the current citizenship or place of residence of victims or their heirs, or the relevant successor to communal property;

Whereas the Government of the United States has, since 1947, with the passing of Military Law 59 in the occupied American Zone of Germany, supported the return of property looted during the National Socialist era to the rightful owners, or the heirs, of such property;

Whereas during the last decade, Congress has passed resolutions that endorsed, reiterated, and emphasized the longstanding support of the United States for the restitution and compensation for property illegally confiscated during the Nazi and Communist regimes;

Whereas some post-Communist countries in Europe have taken steps toward compensating victims whose property was seized and confiscated by the Nazis during World War II or subsequently seized by Communist governments after World War II;

Whereas the legislation addressing the return of or compensation for such confiscated property enacted by post-Communist countries in Europe has, in various instances, not been implemented in an effective, transparent, and timely manner;

Whereas private properties were seized and confiscated by the Nazis in occupied Poland during the Nazi era and by the Communist Polish government after World War II;

Whereas Poland, virtually alone among post-Communist countries, has failed to enact any legislation that provides for a process for the restitution of, or compensation for, private property seized and confiscated by the Nazi and Communist regimes;

Whereas Jewish communal properties were seized and confiscated by the Nazis in Lithuania during the Nazi era and by the Communist Lithuanian government after World War II; and

Whereas Lithuania, virtually alone among post-Communist countries, has failed to implement legislation that provides for the restitution of, or compensation for, Jewish communal property seized and confiscated by the Nazi and Communist regimes: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That Congress--*

(1) praises the efforts by those countries in Central and Eastern Europe that have enacted legislation for the restitution of, or compensation for, private and communal religious property improperly confiscated during the Nazi and Communist eras and urges each of those countries to ensure that the legislation is effectively and justly implemented;

(2) urges the countries in Central and Eastern Europe which have not already done so to return looted and confiscated properties to their rightful owners or, where restitution is not possible, pay equitable compensation, in accordance with principles of justice and in an expeditious manner that is just, transparent, and fair;

(3) calls on the Government of Poland to--

(A) immediately enact fair, comprehensive, and just legislation so that persons (or the heirs of such persons) who had their private property seized and confiscated by the Nazis during World War II or subsequently seized by the Communist Polish government after the war are able to obtain either restitution of

their property or, where restitution is not possible, fair compensation should be paid; and

(B) ensure that such restitution and compensation legislation establishes an unbureaucratic, simple, transparent, and timely process, so that it results in a real benefit to those many persons who suffered from the unjust such confiscation of their property, many of whom are well into their 80s or older;

(4) calls on the Government of Lithuania to immediately implement, fair, comprehensive, and just legislation so communities that had communal and religious property seized and confiscated by the Nazis during World War II or subsequently seized by the Communist Lithuanian government after World War II (or the relevant successors to the communal and religious property or the relevant foundation) are able to obtain either restitution of their property or, where restitution is not possible, fair compensation;

(5) calls on the President and the Secretary of State to continue to engage in an open dialogue with the Governments of Poland and Lithuania supporting the adoption of legislation requiring, in Poland, the fair, comprehensive, and nondiscriminatory restitution of, or compensation for, private property that was seized and confiscated during the Nazi and Communist eras and, in Lithuania, the fair, comprehensive, and just restitution of Jewish communal and religious property that was seized and confiscated during the Nazi and Communist eras; and

(6) calls on the Secretary of State to deliver a report to Congress, every six months, regarding the implementation of this concurrent resolution.

Passed the House of Representatives September 23, 2008.

Attest: Clerk.

110th CONGRESS  
2d Session  
**S. RES. 603**

Expressing the sense of the Senate on the restitution of or compensation for property seized during the Nazi and Communist eras.

**IN THE SENATE OF THE UNITED STATES**

**June 26, 2008**

Mr. NELSON of Florida (for himself, Mr. SMITH, Mr. CARDIN, Mr. COLEMAN, and Mr. MENENDEZ) submitted the following resolution; which was referred to the Committee on Foreign Relations

**RESOLUTION**

Expressing the sense of the Senate on the restitution of or compensation for property seized during the Nazi and Communist eras.

Whereas many East European countries were dominated for parts of the last century by Nazi or Communist regimes, without the consent of their people;

Whereas victims of Nazi persecution included individuals persecuted or targeted for persecution by the Nazi or Nazi-allied governments based on their religious, ethnic, or cultural identity, political beliefs, sexual orientation, or disability;

Whereas the Nazi regime and the authoritarian and totalitarian regimes that emerged in Eastern Europe after World War II perpetuated the wrongful and unjust confiscation of property belonging to the victims of Nazi persecution, including real property, personal property, and financial assets;

Whereas communal and religious property was an early target of the Nazi regime and, by expropriating churches, synagogues and other community-controlled property, the Nazis denied religious communities the temporal facilities that held those communities together;

Whereas, after World War II, Communist regimes expanded the systematic expropriation of communal and religious property in an effort to eliminate the influence of religion;

Whereas many insurance companies that issued policies in pre-World War II Eastern Europe were nationalized or had their subsidiary assets nationalized by Communist regimes;

Whereas such nationalized companies and those with nationalized subsidiaries have generally not paid the proceeds or compensation due on pre-war policies, because control of those companies or their East European subsidiaries had passed to the government;

Whereas East European countries involved in these nationalizations have not participated in a compensation process for Holocaust-era insurance policies for victims of Nazi persecution;

Whereas the protection of and respect for private property rights is a basic principle for all democratic governments that operate according to the rule of law;

Whereas the rule of law and democratic norms require that the activity of governments and their administrative agencies be exercised in accordance with the laws passed by their parliaments or legislatures and such laws themselves must be consistent with international human rights standards;

Whereas the Paris Declaration of the Organization for Security and Cooperation in Europe (OSCE) Parliamentary Assembly in July 2001 noted that the process of restitution, compensation, and material reparation of victims of Nazi persecution has not been pursued with the same degree of comprehensiveness by all of the OSCE participating States;

Whereas the OSCE participating States have agreed to achieve or maintain full recognition and protection of all types of property, including private property and the right to prompt, just, and effective compensation for the private property that is taken for public use;

Whereas the OSCE Parliamentary Assembly has called on the OSCE participating States to ensure that they implement appropriate legislation to secure the restitution of or compensation for property losses of victims of Nazi persecution and property losses of communal organizations and institutions during the Nazi era, irrespective of the current citizenship or place of residence of victims or their heirs or the relevant successor to communal property;

Whereas Congress passed resolutions in the 104th and 105th Congresses that emphasized the longstanding support of the United States for the

restitution of or compensation for property wrongly confiscated during the Nazi or Communist eras;

Whereas certain post-Communist countries in Europe have taken steps toward compensating victims of Nazi persecution whose property was confiscated by the Nazis or their allies or collaborators during World War II or subsequently seized by Communist governments after World War II;

Whereas, at the 1998 Washington Conference on Holocaust-Era Assets, 44 countries adopted Principles on Nazi-Confiscated Art to guide the restitution of looted artwork and cultural property;

Whereas the Government of Lithuania has promised to adopt an effective legal framework to provide for the restitution of or compensation for wrongly confiscated communal property, but so far has not done so;

Whereas successive governments in Poland have promised to adopt an effective general property compensation law, but so far the current Government of Poland has not adopted one;

Whereas the legislation providing for the restitution of or compensation for wrongly confiscated property in Europe has, in various instances, not always been implemented in an effective, transparent, and timely manner;

Whereas such legislation is of the utmost importance in returning or compensating property wrongfully seized by totalitarian or authoritarian governments to its rightful owners;

Whereas compensation and restitution programs can never bring back to Holocaust survivors what was taken from them, or in any way make up for their suffering; and

Whereas there are Holocaust survivors, now in the twilight of their lives, who are impoverished and in urgent need of assistance, lacking the resources to support basic needs, including adequate shelter, food, or medical care: Now, therefore, be it

*Resolved*, That the Senate--

(1) appreciates the efforts of those countries in Europe that have enacted legislation for the restitution of or compensation for private, communal, and religious property wrongly confiscated during the Nazi or Communist eras, and urges each of those countries to ensure that the legislation is effectively and justly implemented;

(2) welcomes the efforts of many post-Communist countries to address the complex and difficult question of the status of confiscated properties, and urges those countries to ensure that their restitution or compensation programs are implemented in a timely, non-discriminatory manner;

(3) urges the Government of Poland and the governments of other countries in Europe that have not already done so to immediately enact fair, comprehensive, and just legislation so that victims of Nazi persecution (or the heirs of such persons) who had their private property looted and wrongly confiscated by the Nazis during World War II and in turn seized by a Communist government are able to obtain either restitution of their property or, where restitution is not possible, fair compensation;

(4) urges the Government of Lithuania and the governments of other countries in Europe that have not already done so to immediately enact fair, comprehensive, and just legislation so that communities that had communal and religious property looted and wrongly confiscated by the Nazis during World War II and in turn seized by a Communist government (or the relevant successors to the communal and religious property or the relevant foundations) are able to obtain either restitution of their property or, where restitution is not possible, fair compensation;

(5) urges the countries of Europe which have not already done so to ensure that all such restitution and compensation legislation is established in accordance with principles of justice and provides a simple, transparent, and prompt process, so that it results in a tangible benefit to those surviving victims of Nazi persecution who suffered from the unjust confiscation of their property, many of whom are well into their senior years;

(6) calls on the President and the Secretary of State to engage in an open dialogue with leaders of those countries which have not already enacted such legislation to support the adoption of legislation requiring the fair, comprehensive, and nondiscriminatory restitution of or compensation for private, communal, and religious property that was seized and confiscated during the Nazi and Communist eras; and

(7) welcomes a country in Europe to host in 2009 a follow-up international conference a decade after the Washington Conference on Holocaust-Era Assets, for governments and non-governmental organizations, which would--

(A) address the issues of restitution of or compensation for real property, personal property (including art and cultural property), and financial assets wrongly confiscated by the

Nazis and their allies or collaborators and the subsequent wrongful confiscations by Communist regimes; and (B) review issues related to the opening of archives and the work of historical commissions, review progress made, and focus on the next steps required on these issues.