



# **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 13 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. Though 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.

The HCPO’s highly trained staff work with claimants to collect the most detailed and accurate information possible. Using unique investigative skills 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. 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 as each agency has unique and often complex guidelines, the HCPO helps claimants understand these guidelines in order to interpret decisions.

In the event that a claimant wishes to appeal a decision, the HCPO guides claimants through this process as well and performs additional research when possible. Alternatively, when claimants receive positive decisions that include monetary awards, the HCPO facilitates payment by explaining the various forms and by following up with the claims agency to confirm payment.

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, that since 1997 the HCPO has worked directly with almost all restitution and compensation processes in existence today. (See Figure 1).

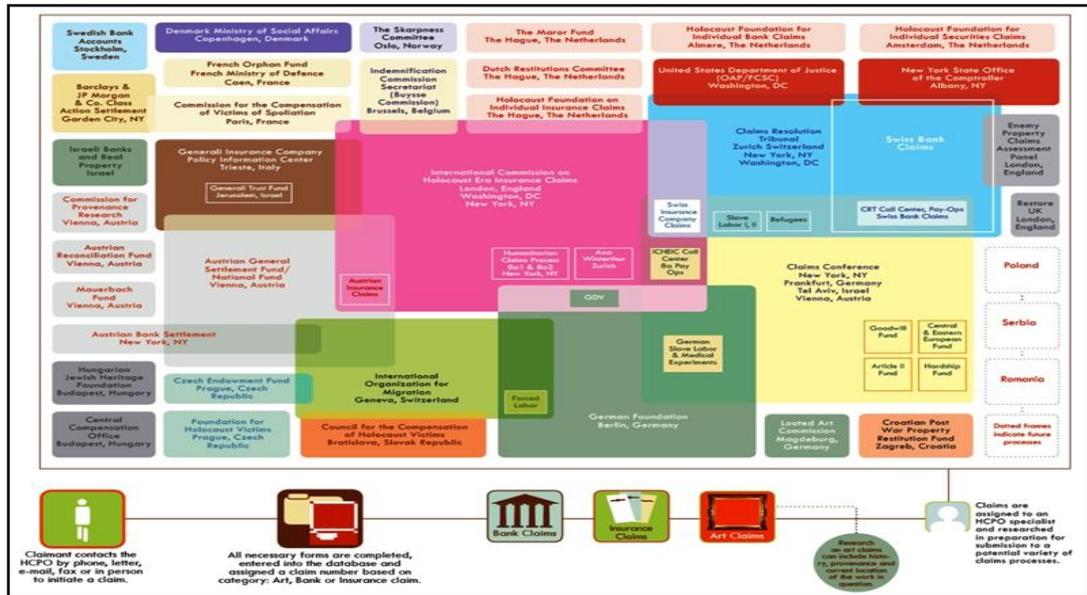


Figure 1 - Compensation Organizations and the HCPO

## II. Overview of Operations and Accomplishments

From its inception through December 2010, the HCPO has responded to more than 13,000 inquiries and received claims from 4,855 individuals from 45 states, the District of Columbia, and 38 countries. (See Figures 2 and 3).

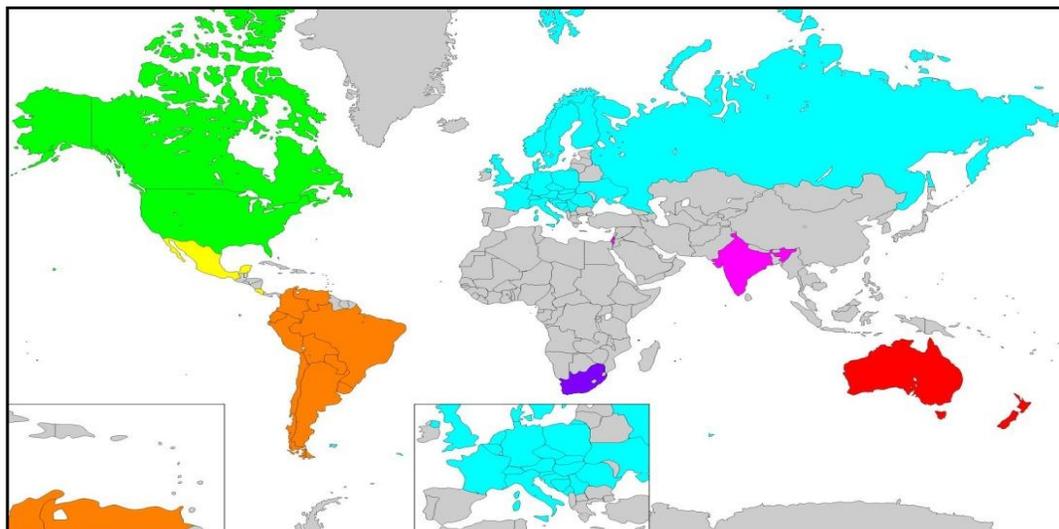


Figure 2 – International Geographic Distribution of HCPO Claimants  
(Areas appearing in color represent countries where HCPO claimants reside.)

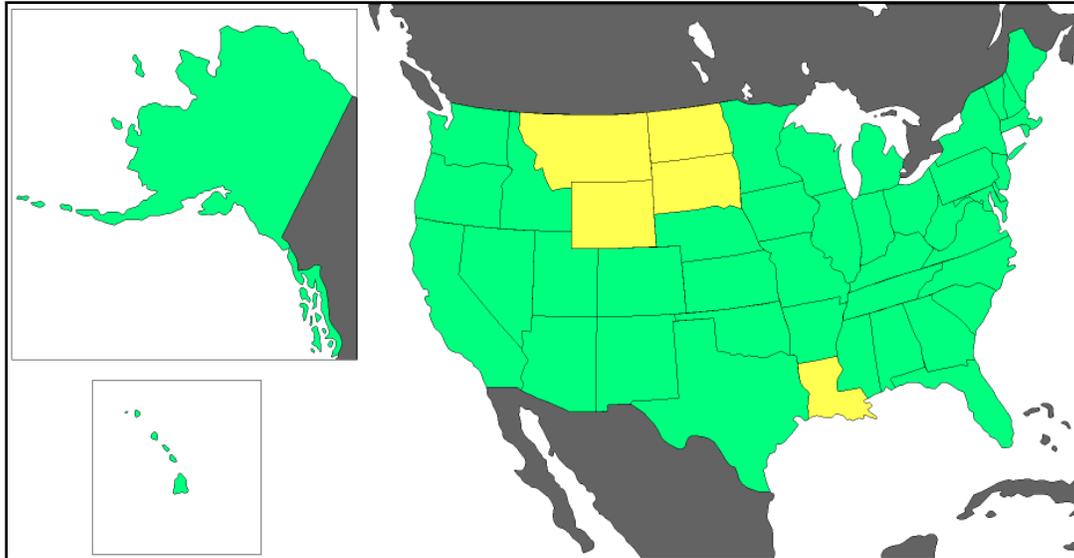


Figure 3 - Domestic Geographic Distribution of HCPO Claimants  
(Areas shaded green represent states where HCPO claimants reside.)

In total, the HCPO has successfully closed the cases of 1,725 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 3,084 individuals remain open.

The combined total of offers extended to HCPO claimants for bank, insurance, and other asset losses amounts to \$158,679,367, this represents an increase in offers of \$5,648,376 from the previous year. (See Figure 4).

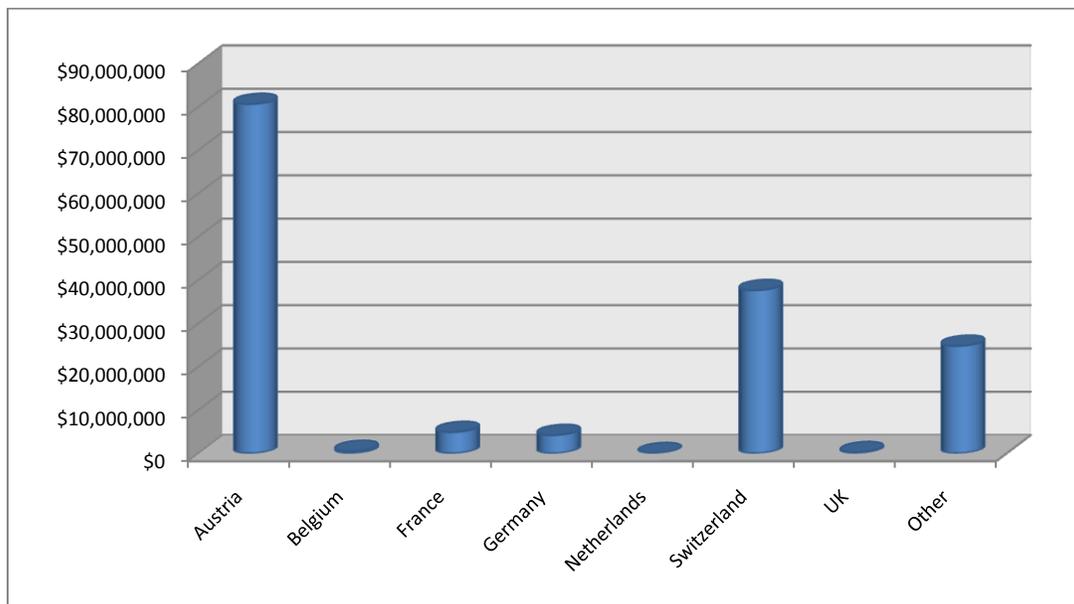


Figure 4 - Total Offers Extended to HCPO Claims to Date by Country

Of the claims filed with the HCPO to date, 2,371 individuals (from 42 states, the District of Columbia, and 37 countries) submitted claims for assets deposited in banks referencing 3,698 individual account-holders. The HCPO has closed the claims of 456 individuals; 1,915 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 \$75,490,787<sup>1</sup>, this represents an increase in offers of \$4,430,562 from the previous year. (See Figure 5).

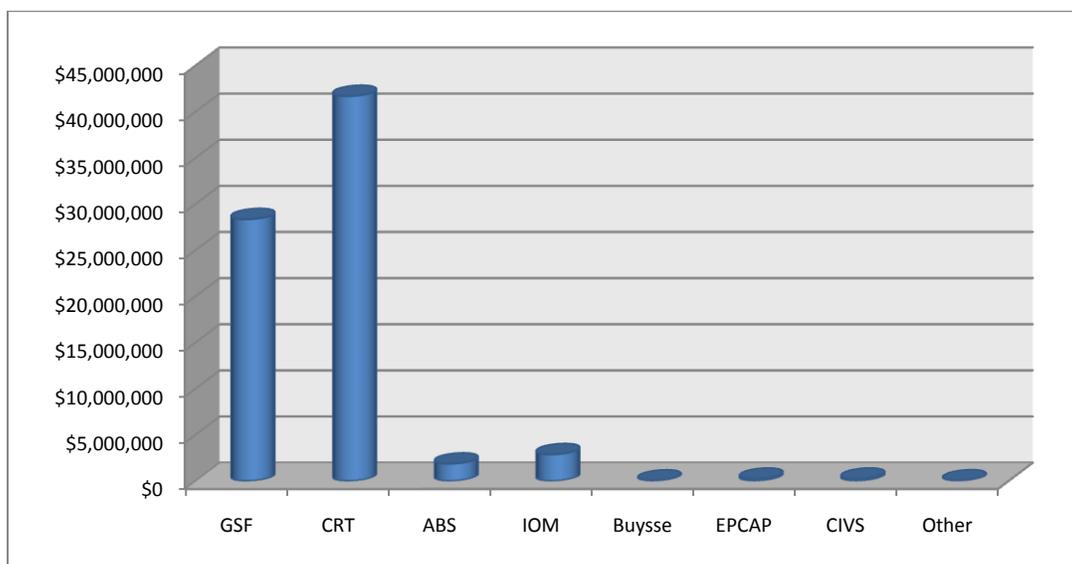


Figure 5 - Bank Claims

Furthermore, 2,327 individuals (from 42 states, the District of Columbia, and 25 countries) submitted insurance claims referencing 3,426 individual policy-holders. The HCPO has closed the insurance claims of 1,638 individuals; 689 individuals currently have open insurance claims most of which are under review for closure. 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 \$31,566,263, this represents an increase in offers of \$89,539 from the previous year. (See Figure 6).

<sup>1</sup> This sum includes two dormant Lithuanian Holocaust era bank accounts, previously held by

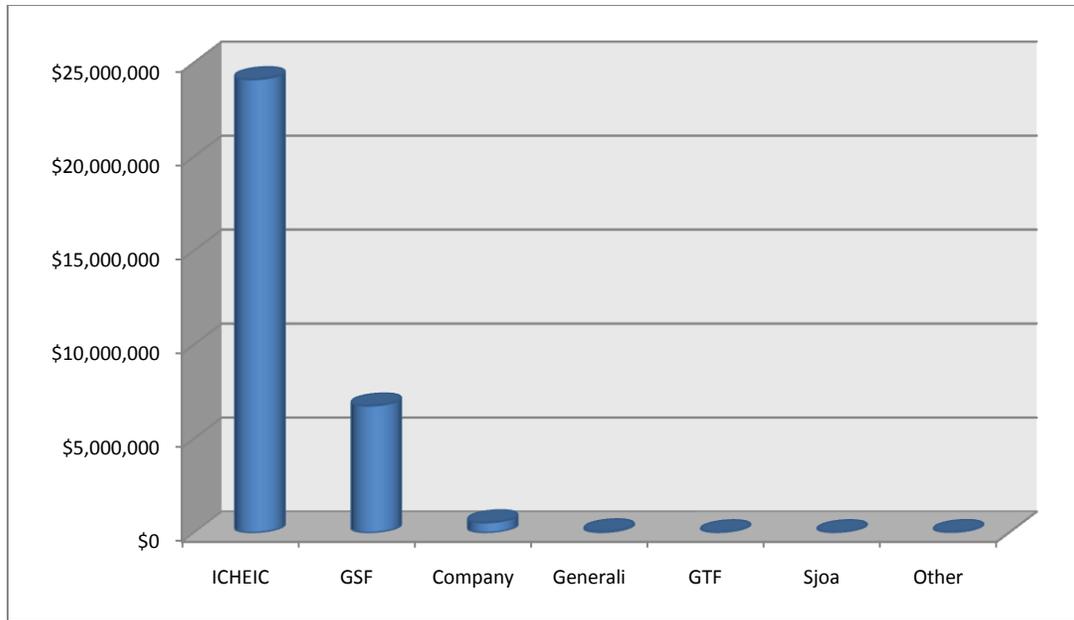


Figure 6 - Insurance Claims

The HCPO has accepted 157 art claims (from 18 states, the District of Columbia, and 12 countries) referencing thousands of items, approximately 8,000 of these in sufficient detail to permit additional research. The office has closed the claims of 28 individuals, 129 individuals currently have open art claims. To date, 50 cultural objects have been restituted to HCPO claimants. (See Figure 7).

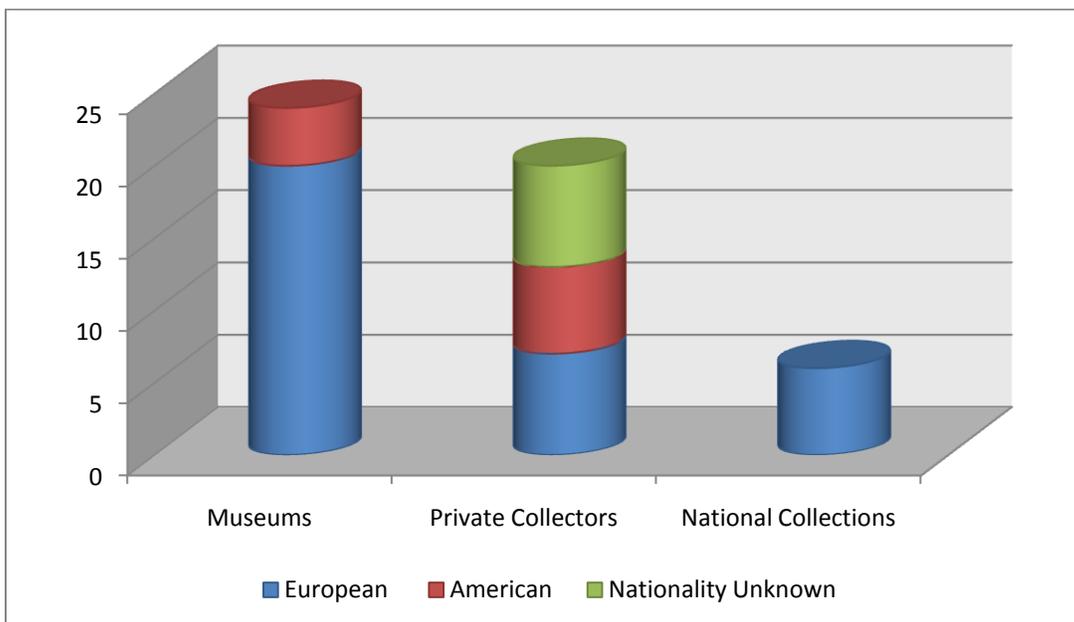


Figure 7 - Location of Objection at Time of Present-day Discovery

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 4,809 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 other material losses total \$51,622,317, this represents an increase in offers of \$1,128,275 from the previous year. (See Figure 8).

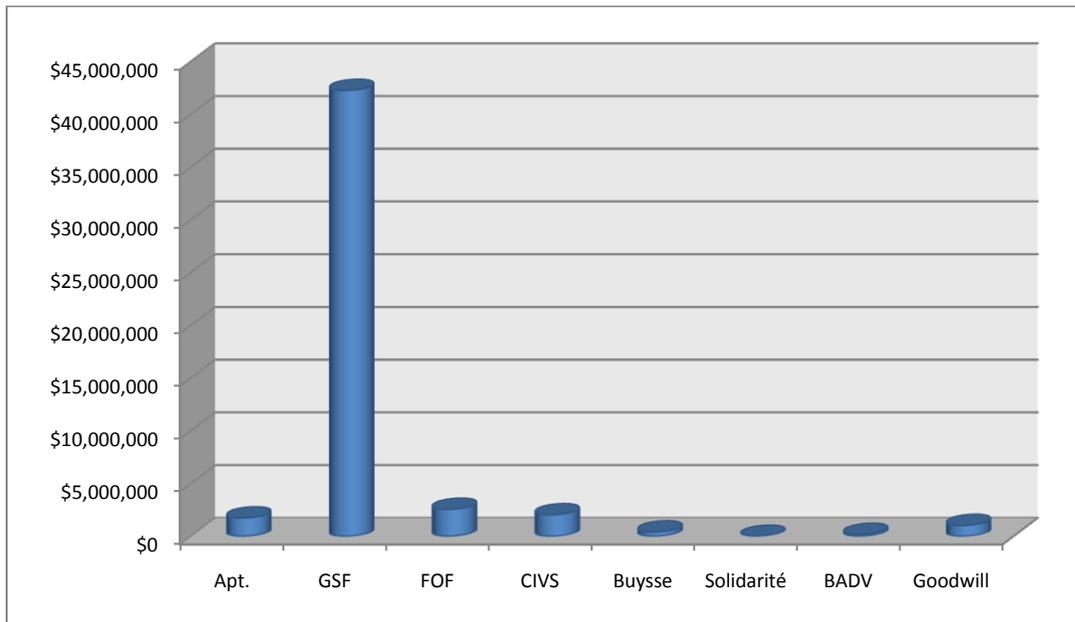


Figure 8 - Other Compensation Claims

The HCPO anticipates that claims will require monitoring through the end of 2011 and beyond given that: the claims processing entities in France, Israel, the Netherlands, and the United Kingdom are still accepting and handling claims; members of Congress continue to express an interest in adopting legislation to address unresolved claims for Holocaust-era insurance policies; insurance companies continue to review and process claims submitted directly to them; and the Federal Government is considering established a US Art Commission to mediate claims regarding Holocaust-era looted art and the proposal currently in circulation requests that the HCPO assist with such a process. 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 below 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 litigation, the lawsuits were dismissed with prejudice by the Court on October 14, 2004, principally on the ground that the claims 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 which 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 appropriate individual notice of the proposed settlement could be given to class members. Another fairness hearing was held on January 7, 2008 at which time the Court issued an order re-approving the settlement agreement. In June 2008 the Second Circuit 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. In response the 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 within its purview. The fact that ICHEIC

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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.

has now concluded its operations does not alter the foreign policy of the United States.”<sup>3</sup>

Plaintiffs-appellants filed a petition for *writ of certiorari* with the Supreme Court of the United States asking the Court to review the decision of the United States Court of Appeal for the Second Circuit. On February 23, 2009 the petition was denied.

On July 29, 2009, the Second Circuit inquired whether the current administration adheres to the position expressed by the DOJ’s letter brief of October 30, 2008. The DOJ submitted a supplemental letter brief in response on October 18, 2009. The supplemental brief affirms the position originally articulated in 2008. In addition, the brief quotes Amabassador Eizenstat’s statement from the *Opening Plenary Session Remarks at the Prague Holocaust Era Assets Conference*<sup>4</sup> which recommends that individuals who believe they are entitled to the proceeds of an unpaid Holocaust-era insurance policy apply to that company or the HCPO.

In response, on December 18, 2009, an *Amici Curiae* brief was filed on behalf of professors of constitutional law and foreign relations law of the United States in support of plaintiffs-appellants and a letter brief was submitted by plaintiffs-appellants’ attorney. The brief argues in support of plaintiffs-appellants seeking the reversal of a 2004 District Court decision preventing suits against the large Italian insurer accused of failing to honor Holocaust-era policies. The plaintiffs-appellants’ letter brief adds that any "voluntary" mechanism described by DOJ "is facially unacceptable as a legally exclusive, binding alternative to survivors' and heirs' state law rights. Whatever the process will entail, it does nothing more than create a new ICHEIC-style mechanism...."

More than three years after the appeal was filed, on January 15, 2010, the US Court of Appeals for the Second Circuit affirmed the judgment of the lower court.

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 submitted 81 claims on behalf of 29 claimants to the PIC for resolution. Subsequently, one of those claimants opted out of the Settlement. Decisions have been made on all 81 claims, resulting in six offers to three HCPO claimants in the amount of \$70,988. The valuation formula implemented under the Settlement Agreement uses the Consumer Price Index to determine the interest rates to be applied to the policies to reach present-day values.

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<sup>3</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.).

<sup>4</sup> <http://www.state.gov/p/eur/rls/rm/2009/126158.htm>

ICHEIC used the US Treasury long bond rate to reach the 1999 base value for policies. However, because the long bond rate was set quite low during the early part of the 1990s, ICHEIC decided to fix the annual interest rates at 5% per year after 2003, regardless of the corresponding long bond rate. The change in the Consumer Price Index during the comparable period has been far lower than 5% (roughly around 1%), as the Federal Reserve has consistently cut rates to combat potential inflation. Therefore, offers made under the terms of the Settlement are nearly one-quarter less than a comparable ICHEIC offer.

It should be noted that Generali submitted a letter dated February 4, 2008, to the U.S. House of Representatives Committee on Financial Services, in which they indicated that they would continue to process claims submitted to them even after the Settlement filing deadline had lapsed. For those claims submitted after the Settlement filing deadline, Generali noted that ICHEIC valuation guidelines and relaxed standards of proof would be applied.

**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 97 offers for a total of \$1,886,212. The average bank award value is \$21,681, with the largest award being \$182,250 and the smallest \$151. The HCPO 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

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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

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 \$1,540,000 through the initial process and \$271,260<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. 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. As of July 8, 2009, the GSF began issuing final payments. The overall allocation allows for payments equal to 10.56% of the offer extended through the claims-based process, 20.74% for any insurance policies and 17.16% for decisions extended under the equity-based process<sup>10</sup>. All awards are subject to a pro rata reduction, given that the funds available are not sufficient for all successful claims.

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

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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.

<sup>7</sup> Currency exchange rate as of September 30, 2004, as this is when the second payment of €1,000 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> When an individual has already received an advance payment, their final payment will equal 0.56% for offers extended through the claims-based process, 5.73% for any insurance policies and 2.16% for decisions extended under the equity-based process.

is applied. Claims decided under the claim-based process are subject to appeal whereas decisions rendered under the equity-based process are not.

As of the filing deadline of November 28, 2003, 378 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 206 HCPO claimants have received positive decisions from the GSF totaling \$28,370,345 for bank related assets. The average value of awards made for bank assets is \$137,720, with the largest total award being \$2,310,491 and the smallest \$98. Through the GSF's material loss claims process, 303 HCPO claimants have received positive decisions totaling \$43,131,806. The GSF has also issued decisions to 165 HCPO claimants for unpaid insurance policies totaling \$6,760,738. The average award value for insurance policies is \$21,600, with the largest being \$280,699 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

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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).

("CRT"). The claims process was triggered by the publication of a list of 21,000 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 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

On June 16, 2010, Chief Judge Korman approved an adjustment of presumptive values used in the claims resolution process and authorized a 43.5 – 45 % increase in payment to the Deposited Assets Class. The increase is based on an extensive examination conducted by CRT Special Master Helen Junz which revealed that the "presumptive values" for varying categories of Swiss bank accounts are higher than the amounts estimated at the inception of the program. In addition, eligible individuals who received the one-time PUA may receive a second and final payment of \$2,250.

As of the July 13, 2005 filing deadline, 1,825 HCPO claimants submitted claims to the CRT for resolution. To date, the CRT has offered 2,919 settlements for 4,632 accounts and the total number of PUAs approved to date is 12,567 less 284 full and partial deductions<sup>12</sup>. Of the awards based on documentary evidence, 230 are to 183 HCPO claimants for a total of \$35,700,606 and 832 HCPO claimants have received PUAs for a total of \$6,014,000; the combined total of all CRT awards to HCPO claimants to date is \$41,714,606. To date, the average award value is \$140,819, 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,

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<sup>12</sup> Full and partial deductions are made based upon payments made to documented awards.

2003, all account values are multiplied by a standard factor of 12.5 to adjust them to current values.

In addition to claims-related work, 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>13</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 publishes these results on its website<sup>14</sup>.

Since ICHEIC's closedown at the end of March 2007, the HCPO resumed dealing with insurance companies directly to resolve outstanding claims. As of April 2007 the HCPO has received 68 inquiries and/or claims for Holocaust-era insurance policies. For most of these cases the insurance policies were either compensated through a postwar program; related to a former ICHEIC claim; related to a GSF claim; were otherwise ineligible for compensation (i.e., the policies in question were

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<sup>13</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.

<sup>14</sup> <https://secure.gdv.de/entschaedigung/>

purchased from an Eastern European company which does not have a present-day successor to whom a claim can be filed); or were general inquiries regarding Holocaust-era insurance policies. Several of these inquiries are still in the process of being researched for possible compensation and/or the individual did not return the forms necessary to begin processing the claim.

The HCPO submitted eight new claims directly to the GDV; five of these claims have been rejected because no record of an unpaid policy was found. The other three are still pending investigation. The HCPO continues to work with the GDV on matters related to Holocaust-era insurance claims either in connection with newly filed claims or with respect to former ICHEIC cases. In addition, the HCPO submitted one claim directly to Generali and is awaiting a final decision.

#### **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.

On January 18, 2001, the Governments of France and the United States signed the Washington Agreement which regulated bank-related compensation. Up until February 2, 2005, claimants for whom no documentation of a bank account was found were permitted to submit an affidavit declaring that a bank account was owned during the relevant period. It is still possible to submit a claim for bank-related spoliations, but compensation will be paid only on accounts/safe deposit boxes that are identified in the archives and were never compensated or restituted after the war.

The HCPO continues to submit applications to CIVS for bank-related losses, as well as material spoliation. There is currently no deadline for submitting a claim to CIVS. To date, 73 HCPO claimants have submitted claims seeking the return of bank accounts in France. The HPCO is aware of decisions to 51 claimants resulting in \$245,037 in payments. The average award value for bank assets is \$4,299, with the largest being \$36,562 and the smallest \$1,500. In addition, 90 HCPO claimants have submitted claims for material losses and the HCPO is aware decisions to 73 claimants resulting in payments totaling \$2,191,742<sup>15</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

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<sup>15</sup> Currency exchange rate based on date of individual decisions. This amount includes \$45,000 issued to three claimants (\$15,000 award to each claimant), under the March 2006 provision of Washington Agreement, as direct survivors.

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 0.317 for 2009.

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") 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>16</sup> and other assets whose owners are presumed to have perished during the Holocaust.

Hashava'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, Hashava launched its website and their online searchable database currently contains over 60,000 assets in Israel, previously owned by Holocaust victims. The launch of the website also marked the commencement of the restitution process to return these assets to the original owners or their heirs. Applications continue to be accepted by Hashava.

To date, 50 HCPO claimants submitted applications for 64 accounts to Hashava for review. The HCPO is aware of 4 decisions resulting in \$6,083 in payments. The average award value is \$869, with the largest award being \$1,170 and the smallest \$298.

The HCPO continues to review claims for bank accounts and other assets to determine eligibility for submission. In addition, the HCPO assists Hashava with locating claimants and heirs of Israeli assets to ensure all individuals receive the property to which they are entitled.

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<sup>16</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.

In June 2009 the Jerusalem Post reported that Hashava filed a lawsuit in Israel against Bank Leumi for approximately NIS 300 million in assets which the company stated belong to Holocaust victims and their heirs. The vast majority of bank accounts opened by Holocaust victims were in Leumi. Hashava stated it found about 300 other accounts opened by Holocaust victims before the war in four other Israeli banks, with deposits totaling NIS 28 million. In 2010, Hashava and Bank Leumi agreed to enter in arbitration to determine how much is owed.

#### **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.

The HCPO continues to work closely with EPCAP in London to settle 31 claims filed by HCPO claimants for assets seized by the British government. To date 25 claims have been completed, for a total \$244,477<sup>17</sup>. The average award value for is \$16,298 with the largest being \$78,503 and the smallest \$349.

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. Foreign Claims Settlement Commission, United States**

In 1981 the Foreign Claims Settlement Commission ("FCSC") completed a program to determine the validity and amount of claims against the German Democratic Republic (GDR) for losses which arose from the nationalization or other taking by that government of property interests of nationals of the United States. When the program was authorized, no funds were available for payment of the awards issued by the Commission. The program was completed on May 16, 1981. The

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

Department of State subsequently conducted negotiations with the German Democratic Republic--and, after unification, with the Federal Republic of Germany--to obtain a claims settlement to provide funds for the payment of awards. Those negotiations culminated in the signing of a settlement agreement on May 13, 1992.

The FCSC granted awards to 2,437 claimants and a settlement agreement, which provided funds for the payment of the awards, was concluded with the Federal Republic of Germany on May 13, 1992. The Department of the Treasury, Financial Management Service, began advising claimants on the status of the program on September 25, 1992.

Following the reunification of Germany, in September 1995, the United States and the Federal Republic of Germany also concluded an agreement to settle claims of individuals who, as United States nationals, suffered "loss of liberty or damage to body or health" through persecution by the German Nazi regime, as a result of confinement in concentration camps.

The FCSC through US Department of the Treasury continues to accept claims for German losses. To date, 2 HPCO claimants have received payment from the FCSC totaling \$20,270.

#### **J. 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 €480. 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, 53 claimants have received lump sum payments and 20 claimants are receiving monthly pensions. The combined total of all payments received by HCPO claimants under this program to date is \$2,711,245<sup>18</sup>.

#### **K. 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

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<sup>18</sup> Currency exchange rate based on date of individual decisions.

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.

Under the German Foundation Act the IOM received €102.3 million (\$95,906,250<sup>19</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>20</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.

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<sup>19</sup> The USD value is based on the exchange rate at the time the legislation was passed in Germany, July 14, 2000.

<sup>20</sup> The US Dollar amount is calculated based on the exchange rate at the time each award was received.

## **L. 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 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, 4 HCPO claimants have received payment from the BADV totaling \$243,670<sup>21</sup>. Claimants receive 100% of the proceeds as well as interest.

### **i. Goodwill Fund**

To enable former Jewish property owners and their heirs to receive compensation after the BADV application filing deadline of 1992, the Conference on Jewish Material Claims Against Germany ("Claims Conference") -- 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 \$1,061,248<sup>22</sup> through this program. A new report commissioned by the Board of Deputies of British Jews and written by barrister Jeffrey Gruder, calls on the Claims Conference to

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

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

reopen the Goodwill Fund and criticizes the Claims Conference's process, including the deadline set for submission of claims.

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

The Holocaust Foundation for Individual Insurance Claims ("Sjoa Foundation" or Stichting Individuele Verzekeringsafspraken Sjoa) was established on November 9, 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 2,400 unpaid life insurance policies was published. Originally, the Sjoa Foundation was to accept claims until December 31, 2009, however, the Central Jewish Board and the Association of Insurers decided to continue processing applications for the next five years. To date HCPO claimants who submitted claims to the Sjoa Foundation have received offers totaling \$20,863<sup>23</sup>.

#### **N. 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 2,115 individuals to ICHEIC before the December 31, 2003 filing deadline. Offers extended to HCPO claimants through the ICHEIC processes on specific policies amount to \$22,349,253<sup>24</sup>. In addition, 1,579 HCPO claimants received awards, for a total of \$1,767,000<sup>25</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 \$24,116,253. The average ICHEIC award value for insurance policies was \$15,064.86, with the largest award for a single

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<sup>23</sup> Currency exchange rate based on date of individual decisions.

<sup>24</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>25</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.

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 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.

#### **O. 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 53 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, 48 HCPO claimants received positive decisions for a total of \$46,185 for bank related assets and \$443,628 for material losses. The average award value for bank assets is \$4,735, with the largest total bank award being \$10,529 and the smallest \$97.

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.

#### **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>26</sup>.

#### **P. 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 official policy. From 1933 to 1945 the Nazi regime carried out the greatest spoliation of works of art in history 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.

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<sup>26</sup> The US Dollar amount is calculated based on the exchange rate at the time each award was received.

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. In 2010, 8 works of art were restituted to HCPO claimants, some of which are described below. In addition, the HCPO has located over 19 other objects lost during the relevant period and is presently working towards their recovery.

**i. Collections of Dr. Max Stern<sup>27</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. Consequently, Dr. Stern sold over 200 pictures at a forced sale at Lempertz auction house in Cologne on November 13, 1937<sup>28</sup>.

In November 2010, the Dutch Restitutions Committee concluded that Dr. Stern lost Jan Brueghel the Younger's *Allegory of Earth and Water* — also known as *Allegory of Life and Water* — due to Nazi persecution, and it advised the Ministry of Education, Culture and Science to return the painting to the Stern Estate. The picture was formally returned to the Estate on November 17, 2010 at the Netherlands Institute for Cultural Heritage (Instituut Collectie Nederland), The Hague in the presence of President Woodsworth.

In November 2010, a second painting, *The Masters of the Goldsmith Guild of Amsterdam* by the Dutch artist Jurriaen Pool was the subject of a settlement agreement between the picture's owner and the Estate.

**ii. 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*, Pick's antique business was *Aryanized* and control over his personal art collection was turned over to a Nazi-approved administrator. The administrator sold art 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 to New York. Pick, unable to join his family in the United States, died alone on Feb. 23, 1941 in Vienna.

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<sup>27</sup> <http://maxsternproject.concordia.ca>

<sup>28</sup> <http://auktion392.com>

In February 2010, the HCPO assisted in the return of Johann Baptist Reiter's *Portrait of a Lady* by the Upper Austrian Provincial Museum to Monique Goss, the sole surviving heir and granddaughter of Pick.

### **iii. 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 January 2010, a settlement agreement between the current owner of Walter Firlé's *Preparing Dinner or Old Man and a Maid in a kitchen* and the Morgenstern heirs was reached with regard to the restitution of the painting, which was sold at the November 1938 Lepke auction.

### **iv. Collection of Dr. Arthur Feldmann**

Dr. Feldmann, a prominent Jewish lawyer from Brno, Czechoslovakia, was also a well-known collector of Old Master drawings. His collection consisted of over 750 drawings by Dutch, Italian and French 16th and 17th century artists.

On March 15, 1939, the Nazis invaded Brno and requisitioned the Feldmann villa for use as officer quarters and looted all the Feldmann's household goods and possessions, including the drawings collection. Like the fate of many European Jews at the time, Dr. Feldmann lost his livelihood, all of his property, and eventually his life after being arrested, tortured, and suffering a stroke. His wife Gisela was sent to Theresienstadt and later perished at Auschwitz. Dr. Feldmann's two sons fled Czechoslovakia in 1940 and survived the war.

In December 2008, Uri Peled, one of Feldmann's heirs, approached the HCPO with his extensive research that identified the drawing *St. Filippo Neri in Ecstasy* by Giovanni Francesco Barbieri (called Guercino) as being in the possession of the art gallery Nissman Abromson in Brookline, Massachusetts. All attempts at negotiations with the gallery during the previous eight years had stalled, and the Feldmann heirs requested that the HCPO become involved. The HCPO subsequently contacted Nissman Abromson about the provenance of the drawing. After providing them with additional documentation indicating that the Nazis looted the

drawing from Dr. Feldmann in 1939, Nissman Abromson consented to a settlement agreement with the Feldmann heirs.

**v. Collection of Franz (Frantisek) Gottlieb Schnabel**

Before the Second World War, Mr. Schnabel owned and managed Schnabel & Co., Wien and Neupakaer Baumwoll-Spinnerei & Weberei Gottlieb Schnabel. Sometime around 1942, the Gestapo ordered the confiscation of all of his business and personal assets. After the war, on August 18, 1947, Franz Schnabel (and the curator Dr. Jan Snyder Nova Paka) filed an Application for the Restitution of Czechoslovak Property, which included numerous "artistic paintings".

In March 2010, the National Gallery of the Czech Republic agreed to return three paintings by Joža Úprka, *Slovácké děvuchy/Pout' na Slovácku/Pout' na Hornácku, Slovácka Myjavanka*, and *U sv. Antoníčka* to the Schnabel heirs.

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

**a. Art Restitution in Austria**

On March 4-5<sup>h</sup>, 2010 the Director of the HCPO attended the conference "Art Restitution in Austria" held at the Austrian Cultural Forum along with two Claims Specialists. The aim of the meeting was to provide an overview of the looting of art that occurred in Austria during the Nazi era and Austria's post-war restitution efforts with a special focus on the 1998 art restitution law and the work of the Commission for Provenance Research.

**b. Wrestling the Dead Hand of History**

On March 26, 2010, the American Society of International Law Interest Group on the International Law of Cultural Heritage & the Arts hosted a panel discussion entitled "Wrestling the Dead Hand of History: Perspectives on a Proposed State Department Commission on Nazi Looted Art" in Washington, D.C. at which Ambassador J. Christian Kennedy, Ambassador Stuart Eizenstat, Lucille Roussin, Charles Goldstein participated on a panel moderated by Jennifer Kreder. The purpose of the panel was to explore the pros and cons of establishing a U.S. commission to deal with Holocaust-looted art work and how such a commission should be structured.

**c. Art Restitution Claims**

On November 9, 2010, the Director of the HCPO participated in a Panel entitled "Art Restitution Claims: Where Do We Stand, Where Are We Headed?" that was organized by the Art Law Association at Brooklyn Law School. Her presentation primarily addressed the role of the HCPO in resolving art restitution claims. Fellow panelists included Raymond Dowd, a partner at Dunnington, Bartholow, and Miller LLP, and Darlene Fairman, who is of Counsel at Herrick, Feinstein LLP.

#### **d. Third Annual Art Litigation and Dispute Resolution Symposium**

On November 19, 2010, the "Third Annual Art Litigation and Dispute Resolution" symposium was held at the New York County Lawyer's Association. The fifth panel "Update on Looted Art; Looted Art Cases Involving the Foreign Sovereign Immunities Act" included presentations by Howard Spiegler and Lawrence Kaye, Co-Chairs of the Art Law Group at Herrick Feinstein, which discussed current art restitution claims brought in U.S. federal courts against under FISA against various foreign governments. The Deputy Director of the HCPO and an HCPO art claims Specialist attended.

#### **e. "Lost Lives, Lost Art"**

Accompanying the November 2010 release of the English translation of the seminal book "Lost Lives, Lost Art: Jewish Collectors, Nazi Art Theft, and the Quest for Justice" by Melissa Muller and Monika Tatzkow, were a number of events and panel discussions in New York City at Christie's, the Neue Galerie and the 92<sup>nd</sup> Street Y. An HCPO art Claims Specialist attended two of these.

### **Q. U.S. Congressional Activity**

#### **i. Holocaust Insurance Accountability Act**

On March 28, 2007, Representative Ileana Ros-Lehtinen (R-FL) 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.

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.

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).

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 at that time. As such, the bill did not move forward.

On May 19, 2009, a revised draft of the Holocaust Insurance Accountability Act was introduced by Rep. Ros-Lehtinen, Ranking Member of the House Foreign Affairs Committee as Title XV -- Holocaust Insurance Accountability of H.R. 2475, *Foreign Relations Authorization an Reform Act, Fiscal Years 2010 and 2011*. Title XV, to be cited as the *Holocaust Insurance Accountability Act of 2009* provides that any State law creating a cause of action against any insurer or related company based on a claim arising out of or related to a covered policy would not be invalid or preempted by reason of any Executive agreement between the United States and any foreign country. The bill was referred to the House Committee on Foreign Affairs and to date no further action has been taken on this matter.

Rep. Ros-Lehtinen authored an op-ed published by the JTA (Jewish news service) on December 22, 2009 calling for "everyone on Capitol Hill to stand up for Holocaust survivors and the families of the victims." Rep. Ros-Lehtinen states that insurance companies should be required to disclose the names of Holocaust-era insurance policyholders, and Holocaust survivors or their heirs should be permitted to sue the insurance companies in U.S. courts.

On February 4, 2010, Rep. Ros-Lehtinen introduced the Holocaust Insurance Accountability Act of 2010 (H.R. 4596), which is a scaled down version of the bill proposed in the House in 2007, which was not passed. The 2007 bill (H.R. 1746) would have created a federal Holocaust Insurance Registry and a separate federal cause of action for Holocaust-era insurance policy claims. In contrast, the 2010 bill legitimizes claims based on state law and requires insurance companies to comply with state disclosure requirements. There are currently 23 cosponsors, three of whom are from New York. On this same day the bill was referred to the Committee on Foreign Affairs and the Committee on the Judiciary for consideration for such provisions that fall within the jurisdiction of the committee concerned.

On May 12, 2010, in an effort to move the Holocaust Insurance Accountability Act of 2010 (H.R. 4596) forward, twelve congressmen called upon Rep. John Conyers (D-MI), the chairman of the House Judiciary Committee, to hold a hearing that would allow litigants to file Holocaust-era insurance claims in U.S. court. The letter calling for a hearing was initiated by Rep. Adam Schiff (D-CA) and Elton Gallegly (R-CA). Other signatories included Anthony Weiner (D-NY) and Eliot Engel (D-NY).

On September 22, 2010, the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law in the House of Representatives held a hearing on the Holocaust Insurance Accountability Act of 2010 (H.R. 4596). According to the Chairman and Ranking Member of the Committee the purpose of the hearing was to educate the members on the issues surrounding Holocaust-era insurance claims.

Two panels of witnesses appeared before the Subcommittee. Representatives Ileana Ros-Lehtinen (FL), who introduced the bill in February 2010, Adam Schiff (CA) and John Garamendia (CA), former Insurance Commissioner for CA. All three Representatives spoke in support of the legislation. The second panel consisted of two proponents and two opponents of the bill. Sam Dubbin, an attorney from Florida, and Prof. Michael van Alstine of the University of Maryland School of Law, both testified in favor of the bill. Ambassador Stuart Eizenstat and I appeared as witnesses against the legislation.

Since the hearing no further action has been taken on the bill by the House of Representative. However, during his last weeks in office, outgoing Senator Arlen Specter (D-PA) introduced new legislation in the final days of the 111th Congress which he contends would restore the rights of claimants seeking resolution of unpaid Holocaust-era insurance policies. In his statement, Specter urged that the legislation be taken up by the next Congress.

Senator Specter said the bill, S. 4033 entitled "Restoration of Legal Rights for Claimants under Holocaust-Era Insurance Policies Act of 2010," would "restore the right of Holocaust survivors and their descendants--many of them United States citizens--to maintain lawsuits in our courts to recover unpaid proceeds under Holocaust-era life insurance policies. Recent decisions of the federal courts about which I have spoken at length in prior floor statements and confirmation hearings have denied survivors and their descendants that right."

As of December 31, 2010 the Senate bill does not have any co-sponsors and was referred to the Senate Committee on the Judiciary for further action.

**ii. Leaders of the Commission on Security and Cooperation in Europe (U.S. Helsinki Commission) Call for Action on Holocaust-era Property Restitution**

On May 25, 2010, Senator Benjamin L. Cardin (D-MD), Chairman of the U.S. Helsinki Commission, convened the hearing entitled Holocaust Era Assets – After the Prague Conference, taking testimony from Ambassador Stuart E. Eizenstat, Special Advisor to the Secretary of State for Holocaust Issues and head of the US delegation to the Prague Conference of June 2009. Chairman Cardin noted the need for urgent follow through highlighting the governments of Poland and Lithuania, in particular. Ambassador Eizenstat testified that despite some progress, implementation remains uneven across the globe citing corruption, processing delays, difficulty in obtaining basic documentation and in some instances, the basic lack of legislation. In addition, Ambassador Eizenstat noted that Holocaust survivors often struggle to file claims for restitution; he pointed to the HCPO as the only organization in the US helping survivors with such issues and urged the federal government to assist the efforts of the HCPO.

**iii. H. CON. RES. 323**

On September 29, 2010 Representatives Debbie Wasserman Schultz (FL) and Frank Wolf (VA) introduced a resolution aimed at helping Holocaust survivors in the United States in need of in-home care. The goal of the resolution is to raise awareness of the social service needs of Holocaust survivors. Co-sponsors include Gary Ackerman (NY), Jerrold Nadler (NY) and Anthony Weiner (NY).

**R. Developments of Note in the Area of Holocaust-era Asset Restitution**

**i. Victims of the Hungarian Holocaust v. Hungarian State Railways (1:10-cv-00868)**

On February 9, 2010, a group of Holocaust victims, their survivors and heirs filed suit in the United States District Court Northern District of Illinois Eastern Division against the Hungarian state railway, claiming it aided the Nazi extermination of Jews at the Auschwitz concentration camp. The plaintiffs seek \$240 million in compensatory damages, plus an additional \$1 billion in punitive damages. The lawsuit was filed under the Alien Tort Claims Act. The plaintiffs' complaint accuses the railway, also known as MAV, of "aiding and abetting the Nazi genocide of 1944," and of "looting the plaintiffs' possessions, valuables, heirlooms stock certificates, currency and jewelry from the plaintiffs' luggage." The trial is scheduled to begin on April 22, 2010.

**ii. Holocaust Victims of Bank Theft v. Hungarian National Bank, Erste Group Bank, MKB Bayerische Landesbank, OTP Bank, and Creditanstalt Bank (1:10-cv-01884)**

In connection with the civil action pending against the Hungarian State Railways, on March 25, 2010, a group of Holocaust victims, their survivors and heirs filed suit in the United States District Court Northern District of Illinois Eastern Division

against several Hungarian banks, claiming that the banks were complicit in the spoliation of Hungarian Jews and have wrongfully withheld the assets of Holocaust victims. The plaintiffs seek \$2 billion in compensatory damages. In addition, the plaintiffs also seek punitive damages but did not name an amount.

**iii. Best Practices for the Restitution and Compensation of Immovable (Real) Property**

On June 9, 2010, forty-three countries backed the first set of global guidelines for returning real estate to its rightful owners or heirs. The nonbinding rules call for more transparency and speed in the processing of restitution claims for property stolen between 1933 and 1945. They also state that people claiming lost property should be given free access to all relevant local, regional and national archives. The guidelines are the product of year-long negotiations launched at the Prague Conference on Holocaust Era Assets in June 2009. A conference to review progress is slated to take place in two years.

**iv. California AB 2765**

Governor Arnold Schwarzenegger signed into law bill AB 2765 which extends from three to six years the statute of limitations for filing lawsuits against museums, galleries, or art dealers in order to recover stolen art or other items of “historical, interpretive, scientific (or) cultural importance” that were taken during the past 100 years. This law applies to both future lawsuits and to those already pending. This legislation essentially overrules a recent Ninth Circuit decision which stated that the California Statute of Limitations regarding Holocaust-era looted art was unconstitutional. This new law will enable at least two law suits concerning Holocaust-era looted art to move forward.

**V. Holocaust Claims Processing Office Expenses in 2010**

The HCPO has approval for a full time staff of nine: current staffing includes five filled positions and four vacancies, three of which occurred this past year due to attrition. The total cost of operating the HCPO during 2010 was \$864,699, including personal service, fringe and indirect costs, and non-personal service expenditures, as follows:

	<b>Calendar Year 2010</b>		
	Banking Department	Suballocation from Insurance Department	TOTAL
Personal Service	\$257,749	\$315,027	\$572,776
Fringe and Indirect Costs	\$215,815	\$74,939	\$290,754
Non-Personal Service	\$1,170	0	\$1,170
<b>TOTAL</b>	<b>\$474,733</b>	<b>\$389,966</b>	<b>\$864,700</b>