

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: HOLOCAUST VICTIM
ASSETS LITIGATION

Case No. CV-96-4849
(ERK)(MDG) (Consolidated
with CV 99-5161 and
CV 97-461)

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ORDER

This Document Relates to: All Cases

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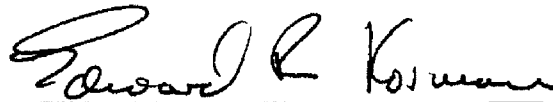
Korman, Chief Judge:

Upon hearing discussion of the issue, and on the basis of the material set forth in the Appendix to this Order, it is hereby

ORDERED that, in the absence of evidence to the contrary, it shall be presumed by CRT-II that German account owners and their heirs did not receive the benefit of any of their Swiss accounts closed on or after January 30, 1933. It is further

ORDERED that the Appendix annexed to this Order hereby is incorporated by reference as "Appendix C" to the Rules Governing the Claims Resolution Process (as amended).

SO ORDERED:



Edward R. Korman
United States District Judge

Dated: April 25, 2003
Brooklyn, New York

APPENDIX C

Of the several hundred awards CRT-II has issued to date, a number have involved German account owners whose Swiss bank accounts were closed between 1933 and 1936. The CRT has held in abeyance decisions on many of these accounts pending further analysis of German conduct during these early years of Nazi rule toward owners of foreign capital, and the Swiss banks' response to such German policies.^{1/} The March 22, 2002 Final Report of the "Independent Commission of Experts Switzerland – Second World War," Switzerland, National Socialism and the Second World War: Final Report ("Final Bergier Report") and its companion study on dormant accounts,^{2/} have clarified that Nazi expropriation of the Swiss bank accounts of Jewish and other targets of Nazi persecution commenced as early as 1933, shortly after Hitler's rise to power. The Bergier Commission further reported that Swiss banking practices enabled these expropriations to occur. Several of the claims analyzed by CRT-II since commencing operations provide specific examples of the practices outlined by the Bergier Commission.

Accordingly, based upon the conclusions of the Bergier Commission, as further evidenced by a number of claims and statistics analyzed by the CRT, the CRT adopts the following presumption:

where accounts of German owners were closed on or after January 30, 1933, the date of Hitler's accession as Chancellor, absent evidence to the contrary such as bank records, the CRT will presume that the account owners and their heirs did not receive the benefit of their assets.^{3/}

¹ Accounts of German account owners closed as of 1937 and thereafter have been awarded to claimants based upon the facts of the particular cases, the circumstances outlined in the Rules Governing the Claims Resolution Process (As Amended) ("CRT Rules"), Article 28 – Presumptions Relating to Claims to Certain Closed Accounts, and the adverse inference presumption under the law of the United States, also set forth in Article 28 (at note 3).

² Bonhage, Barbara, Lussy, Hanspeter, and Perrenoud, Marc, *Nachrichtenlose Verögen bei Schweizer Banken. Depots, Konten und Safes von Opfern des nationalsozialistischen Regimes und Restitutionsprobleme in der Nachkriegszeit. Unabhängige Expertenkommission Schweiz -- Zweiter Weltkrieg*, Hgg. Chronos Verlag, Volume 15 (hereinafter, "Dormant Accounts Study"). With the exception of a summary report, the Dormant Accounts Study has not been translated into English, and the CRT therefore has obtained its own translation of the main body of the study.

³ See CRT Rules, Article 28(a) (if account was closed after date of

A more detailed description of the basis for this conclusion – the findings of the Bergier Commission in its Final Report and the related Dormant Accounts Study, as well as the CRT’s own case examples – is set forth below.

A. Bergier Final Report and Dormant Accounts Study

The Final Bergier Report examined some of the Third Reich’s economic measures affecting Swiss bank depositors, including Nazi victims, and observed that these “draconian” practices took effect as early as 1931 and intensified after Hitler’s rise to power:

After the banking and currency crisis of 1931, German foreign exchange controls became even more draconian. Non-declaration of assets in foreign currencies was already being severely punished before the Nazis came to power. Afterwards, penalties were further increased. Under the Law on Treason against the German Economy ... passed on 12 June 1933, all German citizens as well as all foreigners living in Germany were obliged to register the foreign currencies and securities they held abroad. In 1934, a similar law was passed in Italy. In 1938, all Jewish property in Germany had to be registered. At the same time, many special taxes and levies were introduced such as the so-called “*Sühneleistung*” (atonement fine) instituted after the pogrom in November 1938 and the *Reichsfluchtsteuer* (emigration tax), which were extended and already levied on people who were likely to emigrate. To avoid the high penalties and meet the financial burden, many Jews and others who were persecuted had to withdraw their assets and securities from Switzerland.

occupation of country of residence of Account Owner and before 1945, CRT presumes, in the absence of evidence to the contrary, that neither the account owners nor their heirs received the proceeds of the claimed account). With respect to Germany, the “date of occupation” will be interpreted as January 30, 1933. Article 28(j) provides that where “there is no indication in the bank records that the Account Owners or their heirs received the proceeds of the Account,” the CRT presumes that neither the account owners nor their heirs received the account proceeds. Footnote 3 to Article 28 sets forth the “adverse inference” rule under the law of the United States upon which Article 28(j) is based.

The machinery of Nazi legislation also specifically targeted assets abroad. According to a law passed on 19 November 1936, all people resident in Germany had to deposit their foreign shares with a designated German foreign exchange bank. In order to ensure that this regulation was respected, a further law against economic sabotage was passed shortly afterwards, according to which flight of capital could entail the death penalty. At the same time, the Nazi authorities subjected their victims to physical and psychological pressure in order to force them to turn over their assets.^{4/}

The Bergier Commission observed that Swiss banks did not attempt to interfere with transfers made under duress, which commenced as early as 1933:

The Swiss banks complied with the instructions of their German customers signed at times under duress, and transferred securities to the German banks indicated. Between 1933 and 1939 Credit Suisse, for example, transferred securities valued at around 8 million francs to Deutsche Bank, while the Zurich office of the Swiss Bank Corporation transferred securities totaling over 6 million francs in value in accordance with the 1936 Law on Compulsory Deposits (*Depotzwangsgesetz*). Furthermore, the Swiss Bank Corporation sold shares quoted in Switzerland for a total market value of 8 million francs on behalf of German customers who probably had to transfer these proceeds too to banks designated by the Reichsbank. A considerable number of such transfers took place in 1936, but transactions of this sort also continued during the war.^{5/}

The companion Dormant Accounts Study elaborates that the early German foreign currency restrictions had an immediate impact upon Swiss bank accounts in at least three respects: (1) a marked withdrawal of German capital from Swiss banks by customers acting under duress; (2) bank espionage; and (3) a “compensation” arrangement between the Swiss National Bank and the German Reichsbank whereby German assets in which the banks had an interest were “set off” by the savings deposits of the banks’ German clients.

⁴ Final Bergier Report, at 274-5 (emphasis added).

⁵ Id., at 275 (emphasis added).

a. Foreign capital withdrawal

The Dormant Accounts Study observes that because the Law on Treason against the German Economy (*Gesetz gegen den Verat der Deutschen Volkswirtschaft*), passed on 12 June 1933 (“Law on Treason, 12 June 1933”), was enforced through harsh measures, “very many German customers gave Swiss banks instructions to turn over their accounts and securities to the *Reichsbank*.”⁶ According to the Dormant Accounts Study, the withdrawal of money to Germany was so strong that it led to a drop in the balances and in cash registers. For the *Schweizerische Kreditanstalt*, next to the main branch, business in the Basel branch was particularly affected, so that in August 1933 “daily dozens of passbook/savings books from Germany [were] cashed in.”⁷ The branch at Kreuzlingen liquidated 650 passbook/savings books and 250 custody accounts. The Dormant Accounts Study observes that of the cantonal and local banks, the *Basler* and *Aargauische Kantonalbank*, the *Thurgauischer Kantonalbank* and the smaller border banks were most strongly affected.⁸ The Study further notes that an extraordinary number of accounts and securities were closed by German customers in 1933.⁹

A statistical analysis of German-domiciled accounts contained in the CRT’s Accounts History Database (“AHD”) tentatively matching to claims filed with the CRT bears out the findings of the Dormant Accounts Study.¹⁰ The CRT has identified 1,583 accounts of German account owners closed between 1933 and 1936 that may match to the names of account owners set forth on claim forms. Of these, some 830, or 52.4%, were closed in 1933. The following table details the number of tentatively matched accounts closed by month in the year 1933. The chart evidences a dramatic increase in closure following the enactment of the Law on Treason against the German Economy on 12 June 1933.¹¹

⁶ Dormant Accounts Study, at 66-67.

⁷ *Id.*, at 67.

⁸ *Id.*

⁹ *See id.*, at 65.

¹⁰ The “AHD” is the database of 36,000 accounts identified by the ICEP auditors as probably or possibly belonging to victims of Nazi persecution.

¹¹ There is no evidence in the bank records to indicate that these account closures voluntarily were initiated by the account owners in response to the German

Month (1933)	Number of Closings (Matched Accounts)
February 1933	37
March 1933	43
April 1933	38
May 1933	61
June 1-11, 1933	32
June 12-30, 1933	82
July 1933	117
August 1933	162
September 1933	70
October 1933	58
November 1933	68
December 1933	62
TOTAL	830

The CRT also has analyzed all German accounts in the AHD that were closed in 1933. The following table details the number of German-domiciled accounts closed by month in the year 1933 and again evidences a dramatic increase in closure following the enactment of the Law on Treason against the German Economy on 12 June 1933.

Month (1933)	Number of Closings (Matched Accounts)	Number of Closings (All Accounts in AHD)
February 1933	37	48
March 1933	43	64
April 1933	38	61
May 1933	61	82
June 1-11, 1933	32	42

legislation.

June 12-30, 1933	82	117
July 1933	117	182
August 1933	162	252
September 1933	70	111
October 1933	58	102
November 1933	68	88
December 1933	62	94
TOTAL	830	1,243

For all German-domiciled accounts in the AHD that are known to have been closed in 1933, 297 were closed in the four and one-half months *prior* to June 12, 1933, as opposed to the 764 accounts that were closed in the four and one-half months *after* June 12. This represents an increase of **257.2 percent**. This ratio is approximately the same for those accounts that tentatively match to names in claim forms: 211 matched accounts were closed in the four and one-half months prior to June 12, as opposed to 489 in the four and one-half months after June 12, an increase of **231.7 percent**.

Of the 1,243 total German-domiciled accounts identified in the AHD as having been closed in 1933, 946, or 76.1 percent, were closed after June 12, 1933. For the 830 matched accounts closed in 1933, 619, or 74.6 percent, were closed after June 12.

b. Bank Espionage

The Dormant Accounts Study observes that after Germany introduced foreign exchange controls in 1931, German tax and customs officials began to try to gather information about German-owned assets in Swiss banks through the means of bank espionage.¹²

Immediately after the introduction of foreign exchange controls in Germany in 1931, its financial and customs authorities attempted -- through bank espionage in Switzerland -- to obtain information about German clients. In individual cases, bank employees supplied this client information to German foreign exchange investigators. ...¹³

¹² See Dormant Accounts Study, at 105-126.

¹³ *Id.*, at 540.

The Dormant Accounts Study notes that the German government specifically targeted Swiss banks with German spies beginning in 1931 in order to locate assets that, despite recent legislation, had not been declared to the government. The Study describes the largest known case of “successful bank espionage” as involving an employee of the *Zürcher Kantonalbank*. According to the Study, in 1932, this employee betrayed approximately 400 addresses of German bank customers to the tax authorities in the German town of Singen. These customers had custody accounts in the bank totaling 18 million Swiss Francs.^{14/}

c. *Swiss National Bank and Reichsbank “Compensation” Arrangement*

The Dormant Accounts Study points out that Swiss banks along the German and Austrian border were particularly affected “[i]n 1933 and 1936 [by the Nazi Regime’s] introduction of capital flight legislation [and its forced implementation] under threat of draconian penalties.”^{15/} At the same time, confiscatory Nazi legislation within Germany also was impacting the banks’ financial interests by blocking assets backed by Swiss mortgages. To compensate for these losses, “the Swiss National Bank concluded a compensation procedure with the *Reichsbank*: the frontier banks could compensate their mortgage-backed claims blocked in Germany and/or Austria with savings deposits in Switzerland, as long as these had been reported to the National Socialist authorities. The credit accounts affected by the compensation thus ceased to exist.”

The Study notes that the *Volksbank* in particular benefited from this arrangement:

After the Swiss National Bank asked the *Reichsbank* to “cause those relevant German creditors to agree through the intervention of the *Reichsbank*” (citation omitted), the Basel branch of the

¹⁴ Dormant Accounts Study, at 106. See also ICEP Report, Annex 5, at 86, Par. 23 (“In 1932, advertisements appeared in a Swiss newspaper offering loans to Swiss bank employees; they were part of a scheme to purchase information from the employees regarding the names of Germans who held accounts in Swiss banks in exchange for a commission based on the total account value. One employee of a large commercial bank, who was arrested with the bank’s assistance, was convicted by Swiss authorities for espionage activities, in part, for providing account details of Germans owning Swiss bank accounts to the Nazis. At the time of his arrest, funds from 10 of the 74 accounts that he had disclosed to the Nazis had already been transferred to Germany”).

¹⁵ Dormant Accounts Study, at 540.

Schweizerische Volksbank was able to compensate for debts in Germany totaling approximately two million Swiss Francs with assets from savings accounts. The management of the *Volksbank*, who enjoyed excellent relationships with the *Reichsbank* through the middle of 1944, even gained an expansion of the compensation in December 1934 of approximately 760,000.00 Swiss Francs. In return, the *Volksbank* management declared itself willing to cancel [certain debts owed by Germany] in relation to additional assets that could be included in the compensation program. The *Basler Kantonalbank* was also satisfied with the border regulations, and was able, despite the resistance of German account owners, to “bring in” assets worth 600,000.00 Swiss Francs through the compensation of existing German debts worth 780,000.00 Swiss Francs.¹⁶

B. Examples from CRT-II Files

The CRT’s own case files confirm that Nazi confiscation of Swiss bank accounts began as early as 1933 and continued steadily thereafter. In In re Account of Auguste and Aaron Levis, the bank records contain a letter from one of the account owners dated July 28, 1933 asking for her safe deposit box to be closed because she was being forced to transfer

¹⁶ Dormant Accounts Study, at 175-176. The Study points out that the concept of using assets in Swiss banks to compensate Swiss economic claims was revived in the 1950s. When Eastern European states threatened to expropriate Swiss property located in those nations, Switzerland declared that it was willing, in partial guarantee of its economic interests, to pay to the respective Eastern European governments the “dormant” Swiss accounts of their nationals. Dormant Accounts Study, at 170. See also Peter Hug & Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Disposition of Assets Deposited in Swiss Banks by Missing Nazi Victims: Hearing Before the House Comm. on Banking and Fin. Servs., 104th Cong., 2d Sess. (December 11, 1996), at 322 (describing 1949 agreement between Switzerland and Poland whereby the assets of Polish citizens who had died supposedly without heirs were transferred to Poland and then used to compensate Swiss citizens who had claims against Poland for communist-initiated expropriations of Swiss assets) (cited in Distribution Plan, Vol. I, at 44 n. 94). A similar arrangement was reached with Hungary. Gerhard L. Weinberg, “German Wartime Plans and Policies Regarding Neutral Nations,” Statement before American Historical Association, January 10, 1998, at 3-4 (cited in Distribution Plan, Vol. II, Annex G, at G-33 n. 94).

the contents to the Reichsbank. The safe deposit box was in fact closed on November 4, 1933. The account owners were German Jews who died in Germany in 1933 and 1934. Likewise, in In re Account of Hedwig Bendix, the account owner, a German Jew who lived in Czechoslovakia until she was deported in 1941 for Lodz, Poland where she was presumably killed, held four accounts of unknown type, one of which was closed on September 20, 1934. The bank records indicate that some of the account owner's assets had been transferred to the Reichsbank.

In other cases, the evidence suggests that the account owner was an early target of Nazi persecution including, among other things, forced transfer of property. For example, in In re Account of Hermann Rothschild, the account owner, a German Jew who was imprisoned at the Dachau concentration camp from 1933 to 1935 or 1936, held a demand deposit account which was closed on March 20, 1935 by an unknown entity.

The CRT also has made awards with respect to several claims for accounts closed in 1936, in which the banks apparently relied upon direct Nazi instructions to transfer securities pursuant to the November 19, 1936 Seventh Ordinance Regarding Implementation of the Foreign Exchange Control Law (the "Seventh Ordinance"). For example, in In re Account of Erna Solmsen, the account owner, a German Jew who died during deportation in 1942, held a custody account at the bank. The bank records indicate that on December 1, 1936, securities in the amount of 27,000.00 Swiss Francs were transferred from the account owner's account to the Dresdner Bank in Berlin and the account was closed. The bank records explicitly refer to the Seventh Ordinance. Bank correspondence dated February 16, 1937 states that in the period from the effective date of the Seventh Ordinance to January 31, 1937, securities from 291 customer custody accounts in the amount of 6,266,760.00 Swiss Francs were transferred to various banks in Germany.

Similarly, in In re Account of Walter Herzog, the account owner, a German Jew who perished in the Buchenwald concentration camp in 1945, held a custody account at a Swiss bank. The bank records refer to the Seventh Ordinance and also contain a letter dated November 25, 1936 from Deutsche Bank & Disconto-Gesellschaft in Konstanz informing the bank that all custody accounts containing foreign securities noted on the German Stock Exchange must be transferred to a Devisenbank in Germany. Deutsche Bank & Disconto-Gesellschaft offered its services in this regard. In addition, correspondence between the Swiss bank's primary branch and its Zurich branch describes the preparation of lists of account owners who are subject to the new law. In one letter, the bank's general director agreed to suggestions proposed by the Zurich branch to charge a transfer fee, in addition to a customary surcharge charge of .5 - 1% of the total value of the securities transferred to the German Devisenbank. The bank records indicate that the account of Walter Herzog, then valued at 20,000 Swiss Francs, was paid to Nazi-controlled Deutsche Bank & Disconto-Gesellschaft on January 28, 1937.

Likewise, in In re Accounts of Heinrich Fink, a claim originally submitted to the Holocaust Claims Processing Office ("HCPO") of the New York State Banking Department, the bank records pertaining to this account again refer to the Seventh Ordinance. As in the Solmsen case, bank correspondence in the Fink file dated February 16, 1937 indicates that from the effective date of the law through January 31, 1937, securities from 291 customer custody accounts, totaling 6,266,760 Swiss Francs, were transferred to various banks in Germany. The records further indicate that on December 14, 1936, securities in the amount of 5,000 Swiss Francs were transferred from the account of Heinrich Fink to the Dresdner Bank in Berlin. As a result of this transfer, the account was closed.

Finally, with respect to the German-Swiss compensation border bank compensation procedure outlined above, the practice is reflected in bank files reviewed by the CRT for an account owner from Herten, Germany. In In re Account of Karl Stein, the bank records, which consist of a ledger card, bank correspondence, internal bank lists, and printouts from the Bank's database, show that the account was held at the Rheinfelden branch of the Aargauische Hypothekenbank. The Account Owner held a numbered savings/passbook account. On December 8, 1933, according to the bank files, the account was on a list of Swiss bank accounts transferred to the German Government's account at the *Reichsbank*. The account balance on December 8, 1933 was 2,321.25 Swiss Francs.

The list of accounts that were transferred to the German *Reichsbank* -- in addition to that of Karl Stein -- is three pages long. The list indicates that as of December 8, 1933, assets totaling 195,900.75 Swiss Francs were transferred to the German Reichsbank. A handwritten addendum notes an additional 13,700.00 Swiss Francs that were transferred by December 18, 1933, for a total of 209,600.00 Swiss Francs from this bank's passbook/savings Account Owners alone.

The records also include lists of those mortgages that come into consideration as assets that could be used to compensate for the savings deposits of German Account Owners. One list indicates that these mortgages totaled 120,477.60 Swiss Francs as of December 8, 1933. Another list indicates mortgages totaling 174,387.70 as of that date.

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These anecdotal examples, drawn from some of the cases studied by the CRT, further illustrate the banking practices outlined in the Final Bergier Report and its companion Dormant Accounts Study. As noted above, the Bergier Commission's findings warrant the presumption that where accounts of German owners were closed on or after January 30, 1933, the proceeds of the accounts were not paid to the account owners or their heirs absent bank records or other evidence to the contrary.