

An hourglass-shaped graphic with a globe in the top bulb and a smaller globe in the bottom bulb. The top bulb is dark blue, and the bottom bulb is light blue. The hourglass is centered on the page.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-98-699>

February 2, 2009

Congressional Research Service

Report 98-699

*HOLOCAUST SURVIVOR AND HEIR LAWSUITS TO
RECOVER SWISS BANK DEPOSITS*

M. Maureen Murphy, American Law Division

Updated August 12, 1999

Abstract. In the wake of all the adverse publicity and with the threat of economic sanctions by various state and local governments, a settlement was reached on August 13, 1998, without a binding court decision, by which Credit Suisse and Union Bank of Switzerland agreed to pay \$1.25 billion in four installments. The question of how the settlement funds are to be allocated will be decided after the court appointed Special Master completes a process of notifying potential claimants worldwide and solicits their proposals.

WikiLeaks

CRS Report for Congress

Received through the CRS Web

Holocaust Survivor and Heir Lawsuits to Recover Swiss Bank Deposits

M. Maureen Murphy
Legislative Attorney
American Law Division

Summary

Victims of Nazi persecution during the World War II era, or their heirs, have long attempted to recover assets that were deposited in Swiss banks to protect them from Nazi confiscation or that were directed to Switzerland as property of the looting Nazi government. Three class action lawsuits have been underway in federal district courts seeking to force two Swiss banks that represent the majority of deposit-taking activities of the 1930's and 1940's, Credit Suisse and Union Bank of Switzerland (UBS), to disgorge these assets and to make compensation. The cases involve complex legal questions that seemed destined for long, costly, and contentious litigation. The confluence of various factors—including documents rescued from shredding by an employee of UBS and evidence that earlier searches by the Swiss banks for dormant Nazi-era accounts had not been thorough—prompted certain U.S. local and state authorities to threaten economic sanctions. In the wake of all the adverse publicity and with the threat of economic sanctions by various state and local governments, a settlement was reached on August 13, 1998, without a binding court decision. The court has scheduled a hearing on November 29, 1999, on the issue of whether to accept the settlement. The question of how the settlement funds are to be allocated will be decided after the court appointed Special Master, Judah Gribetz, completes a process of notifying potential claimants worldwide and solicits their proposals.

On October 18, 1996, a class action lawsuit was filed in the United States District Court for the Eastern District of New York on behalf of plaintiffs representing: (1) certain Swiss bank depositors, and their heirs, who had made deposits during the World War II era and had not been able to recover their assets; (2) the rightful owners, and their heirs, of assets that the Nazis had looted; and (3) slave laborers, and their heirs, who worked for German companies at no wages to avoid concentration camps and death. Essentially, the plaintiffs claimed that the Swiss banks "participated in a common scheme and course of conduct to launder Nazi Regime money, as well as to fund and profit from Nazi World War II atrocities...[and a pattern of] knowingly and/or recklessly accepting looted or cloaked assets, of acting intentionally and in concert to prevent the recovery of assets of

forced slave laborers and of other victims of the Nazi Regime."¹ Included in the plaintiff's filings was a list of 7,000 names of persons who, in 1962, had requested a search for assets in their families' names that they presumably believed had been deposited with the banks. On August 13, 1998, announcements were made by the representatives of the plaintiffs and defendants that a settlement had been reached by which two Swiss banks, Credit Suisse and UBS, agreed to pay \$1.25 billion. Terms of the settlement must be approved by Judge Edward Korman, of the United States District Court for the Eastern District of New York in Brooklyn, who has presided at the trial and settlement negotiations. Since none of the contentious issues in the litigation have been decided by the court, the settlement agreement will not dispose of questions as to whether federal courts have jurisdiction over such claims; whether sufficient evidence was assembled on any of the issues presented; or whether the theory of liability is legally sustainable. Among the factors thought to prompt the defendants to agree to a settlement were the cost of protracted litigation, the prospect of adverse publicity, and the threat of disinvestment in Swiss bank securities by various city and state governmental authorities, including the Comptrollers of New York City and New York State and the Treasurers of California and Pennsylvania.²

The settlement agreement provides for the settling of the lawsuits against the Swiss banks and extinguishes all related claims of the plaintiffs against those defendants. It provides for the payment of \$1.25 billion in four installments. The court has scheduled a November 29, 1999, hearing on the issue of accepting the settlement. The question of how the settlement funds are to be allocated or distributed will be decided after the court appointed Special Master, Judah Gribetz, completes a process of notifying potential claimants worldwide, soliciting their proposals and comments. He will then draft a plan and present it to the claimants for their comments before submitting it to the court.

At a June 29, 1999, press conference in New York City, the attorneys appointed by the court to represent the settlement class announced that they were beginning a process

¹ "International Law--Class Action Filed Against Swiss Banks for Withholding Illegal Nazi Assets," Cohen, Milstein, Hausfeld & Toll's *E-journal* (<http://www.cmht.com/cwswgld.htm>). Cohen, Milstein, Hausfeld & Toll is one of the firms representing the plaintiffs. Similar allegations are made in a suit against Deutsche Bank, Dresdner Bank, and German Banking Institutions # 1 - 100, in an action brought in U.S. District Court for the Southern District of New York, filed on June 3, 1998. There is also a class action lawsuit brought by Holocaust victims and their heirs against various European insurance companies that wrote life and annuity policies in pre-World War II Europe. One of the companies, Assicurazioni Generali, an Italian firm, is reported to be in the process of agreeing to a settlement by which it will pay \$100 million and turn over documents and information that are expected to be useful with respect to the claims against the other defendant European insurance companies. These documents purportedly "detail how the Nazis liquidated the policies of Jews who were sent to death camps, how they funneled the money to Deutsche Bank, Dresdner Bank and other banks and how, after the war, the Italian Government made payments to Generali and other Italian insurers that the companies kept without telling policyholders." David Cay Johnston, "Italian Insurer Agrees to Pay \$100 Million in Holocaust Suit," *New York Times* A8, col. 5 (August 20, 1998). Assicurazioni Generali maintains that the \$100 million represents what it received from Communist governments that seized its assets and that the bulk of the claims against it, therefore, should be directed to the companies that succeeded, under the Communists, to these assets.

² Credit Suisse Group, "US class actions: banks reach settlement," (August 12/13 1998) (<http://www.csg.ch/news/980813-e.html>).

to attempt to notify on a worldwide basis all potential beneficiaries and elicit from them comments on how to apply the settlement funds. They stressed that anyone who had suffered in Nazi concentration camps or who has assets confiscated during the Nazi regime should fill out the questionnaires being distributed by them through various media. The questionnaires, the text of the settlement agreement, information on how to apply for inclusion in the distribution of settlement funds and how to comment on what should be done with the funds, and an audio of the press conference can be found on the Internet at: [<http://www.swissbankclaims.com>]. A toll-free telephone number has been established to provide similar information: 1-888-635-5483. Any class member who wishes to be excluded from the settlement should do so by October 22.

Included on that Website is the following statement on who may apply for inclusion in the settlement.

Four classes consist of "Victims or Targets of Nazi Persecution" defined as any individual, business or group persecuted or targeted for persecution by the Nazi Regime or its agents, because they are or were believed to be Jewish, Romani, Jehovah's Witness, Homosexual or Physically or Mentally Disabled or Handicapped and who:

Had assets (including such things as bank accounts, securities and safe deposit box contents), on deposit in any Swiss bank, investment fund, or other custodian prior to May 9, 1945 (Deposited Assets Class), OR

May have claims against private Swiss Entities relating to assets that were looted or taken by the Nazi Regime, or relating to "Cloaked Assets", which are assets disguised by a Swiss Entity for the benefit of an Axis company, entity or person associated with the Nazi Regime, between 1933 and 1946 (Looted Assets Class), OR

Performed slave labor for companies or other entities that may have deposited the revenues or proceeds of that labor with or transacted such revenue and proceeds through Swiss Entities (Slave Labor Class I), OR

Unsuccessfully sought entry into Switzerland to avoid Nazi persecution, or after gaining entry were deported or mistreated, and may have related claims against any Swiss Entity (Refugee Class).

The fifth Settlement Class consists of all persons, whether or not a Victim or Target of Nazi persecution as previously defined, who were forced to perform slave labor in any facility or work site, wherever located, that was owned, controlled or operated by any Swiss company or other entity (Slave Labor Class II).

All five of these Settlement Classes include heirs, successors, administrators, executors, affiliates and assigns of the persons or entities described above.