Jonathan J. Faust*

Holocaust Litigation in U.S. Courts Involving Sovereign Entities

General Overview & Hungary's Experience

The Holocaust – one of the darkest chapters in human history – ended in May 1945. Fifty years later there was a proliferation of lawsuits in U.S. courts seeking restitution for Holocaust-era wrongs. These suits began with claims against private banks and industry, but soon implicated sovereign States and their agencies. This presentation provides an overview of civil litigation involving Holocaust-era claims, including Hungary's recent experience (e.g., claims for monetary reparations for expropriated property, slave labor, looted art work and personal injury). Criminal and deportation proceedings, and non-judicial reparations regimes are not addressed herein.

Holocaust litigation is very complex, with too many cases presenting too many nuanced claims, issues and holdings to give a detailed analysis of each.[1] The following provides a representative survey of the case law without qualitative judgments. Nothing presented is intended to diminish the rightful condemnation of the atrocities committed during World War II.

I The Swiss Bank Litigation: The Inaugural Holocaust Litigation

Holocaust restitution claims came to the fore in American courts in the late-1990s,[2] when political and press interest triggered litigation against Swiss banks.[3] By 1997, several separate U.S.

* BA (University of Michigan); JD (Columbia Law School); Partner, Katten Muchin Rosenman LLP (New York, NY); Lecturer at Columbia Law School.

1 See Appendix for a sampling of relevant decisions for the period 1999–2002, alone.

2 'A total of ten cases involving Holocaust-era claims were filed in the United States between the end of World War II and October 1996, the start of the new era of Holocaust-claim litigation.' *Alperin v. Vatican Bank,* 410 F.3d 532, 546 (9th Cir. 2005). While some such cases raised interesting issues, they are not covered herein. E.g. *Dreyfus v. Von Finck,* 534 F.2d 24 (2d Cir. 1976) (dismissing claims based on Act of State doctrine; 'violations of international law do not occur when the aggrieved parties are nationals of the acting state'), cert. den., 429 U.S. 835 (1976).

3 Many individuals opened Swiss bank accounts in the late 1930s and early 1940s to hide and preserve their assets as the Nazis rose to power. After the war, Swiss banks refused to assist heirs of account holders locate family assets, citing strict bank secrecy laws. Swiss banks had no incentive to help as the lack of any Swiss law requiring banks to turn over unclaimed accounts to the state, combined with regulations allowing account records to be destroyed after 10 years, enabled banks to keep dormant account proceeds as their own. *In re Holocaust Victim Assets Litig.,* 105 F.Supp.2d 139, 151, 154–155 (E.D.N.Y. 2000) (destruction of records); 2

class actions[4] had been filed against Swiss banks. These actions were consolidated in the U.S. District Court for the Eastern District of New York.[5]

The U.S. District Court described the plaintiffs' claims as follows:

> Plaintiffs alleged that, in knowingly retaining and concealing the assets of Holocaust victims, accepting and laundering illegally obtained Nazi loot and transacting in the profits of slave labor, Swiss institutions and entities… collaborated with and aided the [German] Nazi regime in furtherance of war crimes, crimes against humanity, crimes against peace, slave labor and genocide. Plaintiffs also alleged that defendants breached fiduciary and other duties; breached contracts; converted plaintiffs' property; enriched themselves unjustly; were negligent; violated customary international law [and local laws of the forum]; engaged in fraud and conspiracy; and concealed relevant facts from the [plaintiffs] in an effort to frustrate plaintiffs' ability to pursue their claims. Plaintiffs sought an accounting, disgorgement, compensatory and punitive damages, and declaratory and other appropriate relief.[6]

While the lawsuit involved claims against commercial (i.e. non-sovereign) banks, the Swiss government worked with U.S. officials to reach a resolution. In August 1998, while the bank defendants' motion to dismiss[7] was pending, a settlement in principle was reached to end the bank litigation and provide a broad release to the Swiss government and other Swiss business interests in exchange for a payment of $1.25 billion, plus a transparent audit of dormant accounts held by Swiss banks.[8]

Stan. J. Complex Litig. 139, 146 (2014) (no escheat). The Swiss government had little interest in encouraging account disclosure as the government had secretly used dormant account proceeds to: (i) make payments to the Nazi Reichsbank; and (ii) compensate Swiss citizens who lost property to foreign expropriation during and after World War II. E.g., Swiss Banks and Nazi Gold: Hearings before the House Comm. on Banking and Financial Servs., 105th Cong. (June 25, 1997) (Gerhard L. Weinberg: Swiss victims of Polish property nationalization compensated with proceeds from dormant accounts of Polish citizens); Amended Memorandum and Order, *In re Holocaust Victim Assets Litigation,* 319 F. Supp. 2d 301 (E.D.N.Y. 2004) (noting Swiss payments to Reichsbank). In 1996, the World Jewish Congress ('WJC') pushed for a full accounting of dormant Swiss bank accounts. U.S. Senator Alphonse D'Amato (NY), chairman of the Senate Banking Committee, was receptive to the WJC efforts and convened hearings on the issue. Then-President Clinton took note and appointed Under Secretary of State Stuart Eizenstat as Special Representative of the President and the Secretary of State on Holocaust Issues to oversee the resolution of such matters. See Burt Neuborne, 'Preliminary Reflections of Aspects of Holocaust-Era Litigation' (2002) 80 Wash U.L.Q. 795, 817 n. 75.

[4] A class action permits one or more plaintiffs to bring suit on behalf, and as representatives, of a larger group. A class action is allowed where there is a definable class; joining all members of the class is impractical due to numerosity; common issues of fact or law predominate; the proposed class representatives have claims or defenses that are typical of the class and can adequately represent the interests of the class. (Fed. R. Civ. Pr. 23) Aggregating the interests of a plaintiff group enables individuals to pursue relatively small claims that would not be viable to pursue on their own.

[5] *In re Holocaust Victim Assets Lit.,* 424 F.3d 132, 136 (2d Cir. 2002).

[6] *In re Holocaust Victim Assets Lit.,* 105 F.Supp.2d at 141–42.

[7] A motion to dismiss enables a defendant to argue, at the outset of litigation, that claims should be dismissed due to fatal legal or technical deficiencies; the motion generally cannot challenge factual issues raised in the complaint. See gen. Fed. R. Civ. P. 12; *Ashcroft v. Iqbal,* 556 U.S. 662, 678–79 (2009).

[8] *In re Holocaust Victim Assets Lit.,* 105 F.Supp.2d at 142–43; 80 Wash U.L.Q. at 808 n. 34, 811 n. 50.

In March 1999, the District Court provisionally approved a class action settlement agreement (the 'Swiss Settlement Agreement') covering 5 distinct classes of claims: (i) Deposited Assets Class, covering Swiss bank account proceeds that were not returned; (ii) Looted Assets Class, covering property looted by Nazis; (iii) Slave Labor Class I, for those forced to work for German companies; (iv) Slave Labor Class II, for those forced to work for Swiss companies; and (v) Refugee Class, for those denied entry into, expelled from or mistreated in Switzerland.[9]

This settlement was made possible by the active encouragement (and involvement) of Swiss and U.S. government officials. Indeed, the Claims Resolution Tribunal (the entity to administer the settlement claims process) relied on a cooperative alliance between the U.S. court, the Swiss Bankers Association and Swiss government, including its Federal Banking Commission.[10] U.S. officials and the court expressed hope that the Swiss Settlement Agreement would serve as a template for other foreign governments and foreign industry to work together to reach a 'voluntary resolution of disputes over Holocaust-era claims'.[11]

II A Broader Wave of Litigation

The broad issues raised and resolved by the Swiss Bank litigation led to other Holocaust-era litigation implicating both private industry and sovereign States.

1 Bank Lawsuits Implicating State Actors – FSIA, U.S. Policy, Diplomacy & Comity

Various national banks and their commercial counterparts were sued for their alleged role in directly or indirectly: (i) expropriating funds from Holocaust victims; (ii) helping to finance the Nazi genocide; or (iii) otherwise profiting from Nazi persecution of others.

For example, in *Freund v. Republic of France,*[12] plaintiffs sued the Republic of France, a French national depository *(Caisse des Dépôts et Consignations or 'CDC')* and the French national railway *(Société Nationale des Chemins de Fer Français or 'SNCF').* Plaintiffs claimed that the CDC 'was the depository for most of the funds spoliated from the Jews and other detainees in the holding camps', and 'was also the recipient of funds… arising from the sales and auctions of Jewish Property.'[13] In short, plaintiffs claimed that France and its agencies took and kept property belonging to Holocaust victims.

The District Court granted all defendants' motions to dismiss all claims based on the defendants' immunity under the U.S. Foreign Sovereign Immunities Act, 28 U.S.C. § 1605, et seq.

---

[9] *In re Holocaust Victim Assets Lit.,* 105 F.Supp.2d at 143–44; *In re Holocaust Victim Assets Lit.,* 413 F.3d 183, 185 (2d Cir. 2001).

[10] *In re Holocaust Victim Assets Lit.,* 105 F.Supp.2d at 154–59; 80 Wash. U.L.Q. 795.

[11] *In re Holocaust Victim Assets Lit.,* 105 F.Supp.2d at 148.

[12] *Freund,* 592 F.Supp.2d 540 (S.D.N.Y. 2008) dism. aff., 391 F. Appx. 939 (2d Cir. 2010).

[13] *Id.*, 391 F. Appx at 941 (quoting complaint 20).

('FSIA').[14] The FSIA provides that U.S. courts lack subject matter jurisdiction over claims against foreign sovereigns and their instrumentalities (i.e., sovereign entities cannot be sued in U.S. courts) unless a specific statutory exception to immunity applies.[15] *Freund* held that plaintiffs failed to establish an exception to FSIA immunity because they did not show that the defendants: (i) still held any expropriated assets, or assets exchanged therefore; or (ii) engaged in commercial activity in the U.S.[16]

The District Court further held that, even if FSIA immunity did not apply, the suit would be dismissed as non-justiciable under the 'political question' doctrine[17] and 'principles of international comity'.[18] The court noted that: (i) in 1995 France publicly committed to address and resolve Holocaust-era claims; (ii) established the Commission for the Compensation of the Victims of Acts of Despoilment Committed Pursuant to Anti–Semitic Laws in Force During the Occupation (the 'CIVS') and a separate, smaller fund (the 'Fund') to provide reparations; and (iii) established the Foundation for Memory of the Shoah ('Foundation').[19] The French government also undertook to ensure appropriate funding and legal oversight.[20]

The CVIS, the Fund and the Foundation were formed through bi-lateral diplomatic efforts, with French and U.S. officials recognizing that 'it is in the interests of both the [United States and France] to have a resolution of these issues that is non-adversarial and non-confrontational, and outside of litigation,' and that 'both parties desire all-embracing and enduring legal peace with respect to all claims asserted against the Banks arising out of World War II…'[21] Given France's creation of reparation funds, the U.S. agreed to inform courts 'through a Statement of Interest… that it would be in the foreign policy interests of the United States for the [CIVS], the Foundation, and the Fund to be the exclusive remedies and fora for resolving… claims asserted against [French] Banks and that dismissal of such cases would be in its foreign policy interest.'[22]

In holding that the Freund plaintiffs' claims presented non-justiciable political questions, the court explicitly deferred to the U.S. Executive's exclusive foreign policy prerogatives and the Executive's expressly stated preference for non-judicial resolutions to Holocaust-era expropri-

---

[14] *Id.*, 391 F. Appx at 940–41.

[15] *Abelesz v. Magyar Nemzeti Bank,* 692 F.3d 661, 669 (7th Cir. 2012). There are several statutory exceptions to FSIA immunity, each with its own specific elements.

[16] *Freund,* 592 F.Supp.2d at 551, 555–58.

[17] The political question doctrine provides that certain disputes cannot be resolved by litigation because the issues: (i) are beyond the courts' capacity due to the lack of judicially manageable standards; (ii) implicate matter that is committed by the U.S. Constitution to the political branches of government, such as U.S. foreign policy; and/or (iii) intrude on the functions of the political branches, including respect for prior policy determinations or the government's practice of encouraging non-judicial resolution for certain categories of claims. See, *Am. Ins. Ass'n v. Garamendi,* 539 U.S. 396, 420–21 (2003); *Crosby v. Nat'l For. Trade Council,* 530 U.S. 363, 386 (2000); *Baker v. Carr,* 369 U.S. 186, 210–12 (1962).

[18] *Id.* at 551–52. '[C]omity of courts' is a set of principles 'whereby judges decline to exercise jurisdiction over matters more appropriately adjudged elsewhere.' *Hartford Fire Ins. Co. v. California,* 509 U.S. 764, 817 (1993).

[19] *Freund,* 592 F.Supp.2d at 547–50.

[20] *Freund,* 592 F.Supp.2d at 550.

[21] *Freund,* 592 F.Supp.2d at 549.

[22] *Freund,* 592 F.Supp.2d at 549–50.

ation claims. The court's holding as to comity expressly respected the CVIS and Fund mechanisms France set up to address Holocaust-era claims. Plaintiffs did not appeal the dismissal of the Republic of France or the CDC.[23] The appeal respecting the SNCF is discussed below.

2 Bank Lawsuits Implicating State Actors – Limits of Court's Capacity

Alperin v. Vatican Bank, in the United States District Court for the Northern District of California, is notable for the broader claims asserted. The *Alperin* plaintiffs claimed that defendants – including the Vatican Bank, the financial arm of the sovereign Vatican State – not only profited by receiving and retaining looted assets, but that the defendants' actions aided and abetted the genocidal acts of the Nazi-supported Croatian Ustasha regime (the 'Ustasha'). Plaintiffs claimed conversion, unjust enrichment, restitution, the right to an accounting, and violations of human rights and international law.[24]

The appearing defendants (one defendant defaulted) moved to dismiss, asserting a range of legal arguments. By agreement of the parties, the court focused its dismissal analysis on the argument that plaintiffs' claims were non-justiciable political questions.[25] The court then held that claims for the return of, or compensation for, specific stolen property are justiciable because they arise under well-settled law providing a concrete base for determination, with routine evidentiary considerations and could be resolved without implicating U.S. foreign policy or prior government actions.[26] To the contrary, the court held that more esoteric claims that defendants violated international law or human rights by aiding the war objectives of the Ustasha could not be civilly litigated.[27] The court noted that it is 'not a war crimes tribunal' and that 'to act as such would require [the court] to intrude unduly on certain policy choices and value judgments' and priorities of the Allies' political branches in resolving World War II.[28] *Alperin*'s analysis focused on the technical capacity of the courts as well as respect for the Executive branch of government.[29]

---

[23] *Freund,* 391 F. Appx at 940–41.
[24] *Alperin,* 410 F.3d at 538–39.
[25] *Id.* at 538, 541 n. 4.
[26] *Id.* at 547–548, 552–553. This holding simply concluded that the court was capable of adjudicating the claim. The court expressly noted that it was not otherwise assessing the factual or legal merits of the claims or the various other legal hurdles the claims faced. *Id.* at 539.
[27] *Alperin,* 410 F.3d at 548, 559–560.
[28] *Id.* at 548 (U.S. civil court is not proper vehicle to render 'retroactive political judgments as to the conduct of war').
[29] There was, of course, other bank litigation – including suits against Austrian and German banks. In February 19, 1999, all such cases were consolidated with the consolidated complaint alleging that the defendant banks cooperated and conspired with the Nazi regime to steal plaintiffs' deposited assets and to exploit and profit from slave/forced labor. *D'Amato v. Deutsche Bank,* 236 F.3d 78, 81–82 (2d Cir. 2001). In March 1999, the Austrian Banks and the plaintiff class reached a $40 million settlement. *Id.* The German banks were later included in a sweeping settlement discussed as part of the slave/forced labor cases below. See *Duveen v. U.S. Dist. Ct.,* 250 F.3d 156 (2d Cir. 2001).

3 Slave/Forced Labor – Government Intervention to Settle Disputes

Prior to the late 1990s, there were very few slave/forced labor[30] suits because claims against the German government and German companies were barred by various international agreements and treaties intended to facilitate the rebuilding of the German economy.[31] However, in 1997, a German court ruled that Germany's immunity from suit had ended.[32] The combination of Germany's expired immunity and the discussion of slave labor claims in the Swiss Settlement Agreement, invited a new round of U.S. lawsuits against German interests.

a) Germany & Austria

In March 1998, Elsa Iwanowa, brought a class action against Ford Motor Co. and its German subsidiary, Ford Werke A.G., in the U.S. District Court for the District of New Jersey claiming that she had been forced to work as 'unpaid, forced labor' for Ford Werke A.G. from 1942 through 1945. Iwanowa asserted claims for unjust enrichment, breach of contract and violations of customary international law.[33] Eventually, more than fifty slave/forced labor lawsuits were filed against German and Austrian companies.[34]

The *Iwanowa* and *Burger-Fischer* defendants successfully moved to dismiss the complaints, with the courts emphasizing the non-justiciable political questions presented.[35] The plaintiffs filed appeals, but the parties – prompted by U.S. and German government officials eager to avoid the diplomatic and economic strain of such cases – agreed to pursue a global settlement before the appeals were heard.[36]

Settlement negotiations included representatives from a consortium of seventeen German corporations (called the German Economy Foundation Initiative), plaintiffs' attorneys, and government officials from various countries.[37] A sweeping, global settlement agreement was signed in July 2000, under which the German government created and administered a 10 billion Deutsche Marks foundation (with funding provided equally from government and industry sources) to compensate all victims of German oppression and to create a fund to promote tol-

---

[30] Slave laborers worked under horrific conditions in concentration camp-like environments. Forced labors worked under despicable, but less horrific, conditions. 80 Wash. U.L.Q. at 799.

[31] *Garamendi,* 539 U.S. at 403–404 (citing the 1953 London Debt Agreement, 4 U.S.T. 443, 449, T.I.A.S. No. 2792); *Gross v. German Foundation Indus. Initiative,* 456 F.3d 363, 366 (3d Cir. 2006); *In re Assicurazioni Generali, S.P.A.*, 592 F.3d 113, 114–115 (2d Cir. 2010) (Allies concerned that litigating reparations claim would cripple the new Federal Republic of Germany).

[32] *Krakauer v. Fed. Rep. Germany,* Bonn, 1* 134/92 (1997), rev'd other grounds, OLG, Cologne, 7U 222/97 (1998); see *Gross,* 456 F.3d at 366; 80 Wash U.L.Q. at 813.

[33] *Iwanowa v. Ford Motor Co.,* 67 F. Supp.2d 424 (D.N.J. 1999).

[34] *Gross,* 456 F.3d at 367, 370; see E.g., *Burger-Fischer v. DeGussa AG,* 65 F.Supp. 2d 248 (D.N.J. 1999); *In re Nazi Era Cases,* 129 F. Supp.2d 370 (D.N.J. 1999).

[35] *Iwanowa,* 67 F. Supp.2d at 483, 486 ('the Executive branch [of the U.S. government] has always taken the position that claims arising out of World War II must be resolved through government-to-government negotiations,' and not litigation); *Burger-Fischer*, 65 F.Supp. 2d at 272–285 (noting history of diplomacy to resolve Holocaust era claims).

[36] *Garamendi,* 539 U.S. at 405–406; *Gross,* 456 F.3d at 367.

[37] *Gross,* 456 F.3d at 367–368.

erance generally.[38] The settlement covered most claims against all German business interests and industry.[39] In exchange for Germany creating this well-funded and broadly responsive reparations mechanism, the U.S. entered into an Executive Agreement, which obligated the U.S. to file a Statement of Interest requesting the dismissal of any future Holocaust-era litigation against Germany and German business.[40]

While the German state was not directly sued in the typical slave/forced labor cases, it played a central role in reaching a massive global resolution to all claims against German government and business interests – setting up, helping to fund and administering the settlement. Indeed, direct communications between U.S. President Clinton and German Chancellor Gerhardt Schroeder were instrumental in finalizing the terms of settlement, including the size of the settlement fund and the type of legal protections to be provided to Germany interests.[41] The success of this settlement arrangement led to similar agreements with Austria and France.[42]

b) California state statute slave labor claims

In 1999, in response to the dismissal of slave labor cases brought in federal court, California passed a statute expressly creating a state cause of action for World War II slave labor claims.[43] By early 2000, several dozen state-level class actions were commenced in California against German and Japanese corporations (and their successors or affiliates) pursuant to this statute by plaintiffs seeking lost wages and damages for the other injuries and mistreatment they suffered. These suits, which were later consolidated in federal court, typically were dismissed as non-justiciable political questions and the California statute was deemed an unconstitutional state intrusion on the foreign affairs powers of the U.S. President.[44]

In addition, slave labor claims by U.S. nationals against Japanese companies for violations of California Code of Civil Procedure § 354.6 and other state law were dismissed by reference to the Treaty of Peace with Japan, which ended the war between the Allied Powers and Japan.[45] Courts held that Article 14(b) of that treaty waived (and therefor barred) claims of each country's nationals against the other.[46] Claims brought by non-U.S. nationals (e.g., Chinese and

---

[38] *Garamendi*, 539 U.S. at 405; *Gross,* 456 F.3d at 368–370; see 'Agreement Concerning the Foundation of Remembrance, Responsibility and the Future' (2000) 39 Int'l Legal Materials 1298.

[39] The Foundation was intended to cover, among other things, claims for slave/forced labor reparations, expropriated accounts, and unpaid insurance benefits. 80 Wash. U.L.Q.at 800–802.

[40] *Garamendi,* 539 U.S. at 405–406; *Gross,* 456 F.3d at 368–370; *In re Nazi Era Cases*, 198 F.R.D. 429 (D.N.J. 2000); *In re Nazi Era Cases,* 129 F. Supp.2d 370 (D.N.J. 2001).

[41] *Garamendi*, 539 U.S. at 405–406; *Gross,* 456 F.3d at 368–69; 80 Wash U.L.Q. at 823–824.

[42] *Agreement Between the Governments of the United States of America and France Concerning Payments for Certain Losses Suffered During WW II,* Jan. 18, 2001, 2001 WL 416465; *Agreement between the Austrian Federal Government and the U.S.,* 40 Int'l Legal Materials 523, 2001 WL 685580 (May 2001); *Garamendi,* 539 U.S. at 408 n.3.

[43] California Code of Civil Procedure § 354.6.

[44] *Deutsch v. Turner Corp.,* 324 F.3d 692 (9th Cir. 2003).

[45] Sept. 8, 1951, 3 U.S.T. 3169, T.I.A.S. No. 2490.

[46] E.g., *In re WW II Era Japanese Forced Labor Litig.,* 114 F.Supp.2d 939, 944–49 (N.D.Cal. 2000); *In re WW II Era Japanese Forced Labor Litig.,* No. MDL–1347 (N.D.Cal. Feb. 8, 2001).

Koreans) were not resolved by the Treaty of Peace with Japan but were dismissed on the grounds that, inter alia, the claims presented non-justiciable political questions.[47]

3 Insurance Lawsuits – Government Cooperation

A separate line of lawsuits was commenced against insurance companies by policy beneficiaries who claimed that the issuing insurers either: (i) failed to pay out benefits due under life and property policies during the Holocaust; or (ii) paid out the benefits to Nazi officials (not the named beneficiaries). Plaintiffs asserted claims for breach of the insurance contracts, and tort claims regarding the insurers alleged cooperation with the Nazi regime to keep Jewish families impoverished and unable to flee.[48]

In 1998, given the proliferation of such suits, several countries worked with U.S. officials, Holocaust survivor associations and the U.S. National Association of Insurance Commissioners to create the International Commission on Holocaust Era Insurance Claims ('ICHEIC') to serve as a forum to negotiate a resolution to Holocaust-era insurance policy claims.[49] Working with the ICHEIC, host countries' own Holocaust reparations funds and national insurance regulators, more than $300 million dollars has been offered or awarded to more than 48,000 claimants as a result of the ICHEIC process.[50]

After the formation of the ICHEIC, subsequent Holocaust-era insurance policy suits against European insurers (often brought under favorable state laws) were dismissed under the political question doctrine.[51]

Once again, state actors, while not defendants in litigation, nevertheless interceded to develop a successful, non-judicial framework for addressing Holocaust era claims –helping form and fund the ICHEIC, and linking the ICHEIC process to existing national reparations funds.[52]

4 Looted Art – Government Assets and Policies

The Nazi's rampage through Europe included a calculated effort to loot art. Some looting was outright thievery. Other looting involved pretextual transfers of title under extreme duress.[53] Some looted art was transferred to official Nazi collections, some was kept by Nazi officials in

---

47 *In re WW II Era Japanese Forced Labor Litig.,* 164 F.Supp. 2d 1160, 1164–78 (N.D.Cal. 2001).

48 *Garamendi,* 539 U.S. at 402–403.

49 *Garamendi,* 539 U.S. at 401–407; *Assicurazioni Generali, S.P.A.,* 592 F.3d at 114–15.

50 *Id.*

51 *Garamendi,* 539 U.S. at 401, 420–421 (California state statute requiring disclosure of information about Holocaust-era insurance policies impermissibly interfered with the President's conduct of foreign affairs including disposition of war-era assets and U.S. policy favoring resolution of claims through voluntary settlement funds such as the ICHEIC); *Assicurazioni Generali, S.P.A.,* 592 F.3d at 114–15.

52 E.g. *Garamendi,* 539 U.S. at 408 n.3 (noting Austrian national reparations program addresses insurance claims); 80 Wash. U.L.Q. at 802 (German Foundation covered insurance claims).

53 *Von Saher v. Norton Simon Museum of Art at Pasadena,* 754 F.3d 712, 714–15 (9th Cir. 2014) (Nazi's looted and 'forcibly purchased' art); *Cassirer v. Thyssen-Bornemisza Collection Foundation,* 737 F.3d 613, 615–16 (9th Cir. 2013); *Restituting Nazi-Looted Art,* 15 Vand. J. Ent., & Tech. L. 673, 678–79 (2013).

personal collections and some was hoarded in undifferentiated stockpiles (large caches of Nazi-looted art hidden in castles, banks, salt mines and caves).[54] Other looted artwork remains hidden to this day.[55]

In the late 1990s, government and museum archives became digitized and governments declassified documents after the Cold War, making it easier to search for stolen artwork being offered for sale or displayed in galleries and museums.[56] In addition, members of the art trade and insurance industry created the Art Loss Register ('ALR') to track stolen art.[57]

Often the current holder of the art work – whether a national museum or private collector – is the last in a string of owners who acquired the piece without knowledge that it had been looted during the Holocaust.[58] However, unlike most European law, in the United States 'a thief cannot pass good title' so, 'absent other considerations, an artwork stolen during World War II still belongs to the original owner, even if there have been several subsequent buyers and even if each of those buyers was completely unaware that she was buying stolen goods.'[59] To take advantage of more favorable U.S. law, Holocaust-era victims often wait until art located abroad is temporarily loaned or displayed in the U.S. before bringing suit.[60]

Looted art litigation does not readily lend itself to class actions as the particular factual circumstances by which the art was taken determine the precise legal issues presented and whether an existing voluntary settlement fund or treaty might potentially pre-empt any claim. Relevant factual considerations include, for example, where the art was stolen from, the nationality of the owner from whom the art was taken, the type of taking (physical theft or coerced sale), the nationality and official position (if any) of the original wrongdoer, and the current location and owner of the art.[61] Thus, each looted art claim is pursued and decided on its own, unique facts.[62] Nevertheless, there are primarily two types of legal claims: (i) 'replevin' claims, seeking the physical return of the stolen art; and (ii) conversion and related claims, seeking monetary damages as reparations.[63]

---

[54] *Von Saher,* 754 F.3d at 716.

[55] In late 2013, a massive cache of over 1,400 pieces of Nazi-era looted artwork was found in the Munich, Germany home of Cornelius Gurlitt, whose late father helped the Nazis to loot art. 'Mr. Gurlitt and the Lost Masterpieces' Wall Street Journal, Nov. 8, 2013.

[56] Erin L. Thompson, 'World War II Looted Art *Repatriation*' (2011) 33 Hastings Comm. & Ent. L.J. 407, 409–410; 15 Vand. J. Ent., & Tech. L. at 676.

[57] See www.artloss.com.

[58] E.g., *Cassirer,* 737 F.3d 616 (describing how certain looted artwork was sold and re-sold in post-war years); 15 Vand. J. Ent., & Tech. L. at 677–679.

[59] E.g., *Bakalar v. Vavra,* 619 F.3d 136, 140–141 (2d Cir. 2010) (contrasting New York law with Swiss presumption that valid title passes after 5 years).

[60] See *In re Holocaust Victim Assets Litig.,* 105 F.Supp.2d at 159.

[61] For example, the Swiss Settlement Agreement bars claims for money damages against Swiss business and government agencies for looted art, but does not bar claims seeking the return of a specific piece of looted art – as long as the claim is brought in the country where the looted art is located or from which it was looted. *In re Holocaust Victim Assets Litig.,* 105 F.Supp.2d at 159.

[62] 15 Vand. J. Ent., & Tech. L. at 684–85.

[63] 15 Vand. J. Ent., & Tech. L. at 682–83.

State actors often play a significant role in looted art litigation. First, claims are often brought against national and other public galleries holding looted works. Second, states voluntarily have carved out a role to provide resolutions. For example, the U.S. Congress passed The Holocaust Victims Redress Act ('HRA'), setting forth the 'sense of Congress' that all governments should undertake good faith efforts to facilitate the return of looted property.[64] Likewise, at the 1998 Washington Conference on Holocaust-Era Assets ('Conference') more than forty countries established the 'Washington Principles' under which the attendees agreed to restore looted property, ensure that clear and effective restitution and litigation policies are adopted within their respective borders and accelerate the restitution process.[65]

Public and municipal institutions have had different responses to claims for the return of looted art in their possession. Some institutions see a higher virtue in returning looted art. Others see a higher virtue in resisting such claims, maintaining institutional assets and working to keep once private art treasures available for public viewing.[66] Looted art plaintiffs have had a mixed litigation track record, with both FSIA immunity, political question, treaty defenses and even statutes of limitations (given often long term prior display of the piece) serving to defeat claims.

5 Railroads – A Focus on Governments' Roles in the Mechanics of the Holocaust

Another type of litigation focuses on one very particular aspect of the Holocaust – suing railroads for transporting Holocaust victims to ghettos and concentration camps. Such plaintiffs assert claims against (generally state-owned) railroads and related rail entities alleging that the defendants are liable for both: (i) actively participating in the Nazi's genocidal relocation and extermination plans; and (ii) expropriating property confiscated from victims during the deportation process.

Among the first of these cases was the *Freund v. Republic of France* case previously mentioned. As noted, the *Freund* plaintiffs sued defendants including the French railroad (the SNCF) and the agency that maintained the French railway detention facilities from which Jews were deported. Plaintiffs claimed that the railroad entities – which were agencies of the French state – were liable for participating in genocide and for keeping expropriated assets. Plaintiffs' claims were dismissed on FSIA, political question and comity grounds. On appeal, the Second Circuit affirmed the FSIA dismissal, noting that the plaintiffs could not establish that the SNCF still held any expropriated assets or property exchanged therefor (which is an essential element to the pleaded FSIA exception). The Second Circuit reasoned that the complaint's allegations that the CDC (a separate defendant) received and retained all expropriated funds belied any

[64] Pub. L. 105–158, Sec. 202, 112 Stat. 15 (1998).
[65] See *Von Saher,* 754 F.3d 720–21; 30 Touro L. Rev. 675, 681.
[66] See 15 Vand. J. Ent., & Tech. L. at 698–702.

continued possession of the same assets by the SCNF.[67] The Second Circuit elected not to evaluate the District Court's political question or comity analysis.[68]

III Hungary's Holocaust Litigation Experience

Hungary was not drawn into the Holocaust litigation of the 1990s and early 2000s. However, in 2010 Hungarian interests, including government interests, were sued across almost the entire spectrum of Holocaust claims.

1 Hungarian Bank Litigation

In 2010, an ostensible class action was commenced in the U.S. District Court for the Northern District of Illinois against Magyar Nemzeti Bank ('MNB'; the Central Bank of Hungary) and several commercial banks operating in Hungary. Plaintiffs claimed to be the heirs of Hungarian Jews whose Hungarian banking assets were confiscated during the Holocaust by the defendants (or their predecessors) pursuant to Hungarian laws requiring the banks to turn over Jewish assets to the then Nazi-dominated Hungarian government.[69]

Plaintiffs sought damages in excess of US$75 billion based on six causes of action: genocide, aiding and abetting genocide, bailment, conversion, constructive trust, and accounting. Plaintiffs' genocide claims alleged that the banks helped the Nazis through a wealth expropriation scheme intended to impoverish Jews – making it harder for them to escape genocide and harder for survivors to later reconstitute their communities. Plaintiffs also sought restitution for their deposited assets. As a Central Bank, MNB did not maintain deposit accounts and, thus, could not have seized any accounts. Nevertheless, Plaintiffs (incorrectly alleging a link between MNB and the Hungarian Postal Bank) claimed that MNB directly or indirectly received, and still benefits from, expropriated assets.[70]

All of the bank defendant moved to dismiss the complaint citing various of the defenses mentioned above. MNB made a comprehensive motion to dismiss asserting: (i) FSIA immunity; (ii) political question; (iii) treaty limitations on lawsuits;[71] (iv) the 'Act of State' doctrine, which

---

67 *Freund,* 391 F. Appx. at 940–41.

68 *Id.*

69 *Abelesz v. Magyar Nemzeti Bank,* 692 F.3d 661, 669 (7th Cir. 2012); *Albert, et al. v. Magyar Nemzeti Bank, et al.* Seventh Circuit Index No. 14–1319, June 23, 2015.

70 *Id.*

71 For example, in 1947, Hungary and the U.S. signed a treaty (the '1947 Treaty,' 1947 WL 26320, 61 Stat. 2109) which settled all Holocaust-era property expropriation claims against Hungary – including discriminatory property expropriation claims – as part of the U.S. foreign policy to end World War II-era hostilities. Articles 26 and 27 of the 1947 Treaty allocated resolution of such property expropriation claims to Hungary exclusively. Moreover, Article 40 of the 1947 Treaty created a U.S. Executive branch (diplomatic, not judicial) mechanism as the exclusive manner to resolve any disputes regarding Hungary's performance of its treaty obligations – including those respecting expropriated property claims. The 1947 Treaty does not create any private right of action.

provides that a foreign national may not sue a foreign sovereign in the U.S. for the sovereign's acts within that sovereign's own borders[72]; (v) statues of limitations; and (vii) failure to state a claim and other defects in plaintiff's allegations. The District Court denied the motions without providing a fulsome analysis of MNB's asserted defenses.

MNB appealed to the Seventh Circuit, focusing on its FSIA immunity and treaty limitations on claims.[73] Restrictions on appellate court jurisdiction over interlocutory appeals, prevented MNB from immediately raising all of its motion dismissal arguments on appeal.[74]

The Seventh Circuit vacated the denial of MNB's motion to dismiss, holding that plaintiffs failed to establish an international law violation (which is an essential element to establishing an exception to FSIA immunity) because plaintiffs failed to demonstrate that they exhausted remedies that are or were available in Hungary or provide a legally compelling reason for their failure to do so.[75] Requiring exhaustion of remedies in the country in which the claims arose in order to overcome FSIA immunity is 'a well-established rule of customary international law' that 'is based on the power of U.S. courts to hear a claim and the comity between sovereign nations that lies close to the heart of most international law.'[76] More simply, 'the state where the alleged violation occurred should have an opportunity to redress [an expropriation claim] by its own means, within the framework of its own legal system.'[77]

The Seventh Circuit recognized that Hungary is a well-established European state (a member of both the European Union and NATO), with a well-functioning legal system that operates under established and cognizable rules of law. Thus, Hungary had the apparent ability to provide an adequate remedy for plaintiffs' claim that Hungarian property was expropriated from Hungarians in Hungary by Hungarian actors.[78] So, Hungary should have the first opportunity to address the plaintiffs' claims, by Hungary's own means and under Hungary's own legal system, before a U.S. court can step in.[79]

The Seventh Circuit also noted that the U.S. risked reciprocal, if not retaliatory, foreign judgments if U.S. courts adjudicated such massive, stale and extra-territorial claims against foreign sovereigns.[80] In other words, if U.S. courts could determine plaintiffs' claims for $75 billion against Hungarian State defendants – a sum representing 40% percent of Hungary's annual gross domestic product – based on allegations that Hungarian actors injured Hungarian citizens and property in Hungary 70 years ago, the U.S. could not complain if foreign courts entertained massive reparations claims against the U.S. for historic claims (e.g., slavery).

Procedurally, the Seventh Circuit vacated the denial of the motion to dismiss and remanded the case against MNB back to the District Court to consider the single issue of exhaustion – i.e.,

---

[72] See, *Samantar v. Yousuf,* 130 S.Ct. at 2278, 2290–91 (2010).
[73] *Abelesz,* 692 F.3d at 666; *Albert,* Seventh Circuit Index No. 14-1319, June 23, 2015 at pp. 3–7.
[74] 28 U.S.C. §1291.
[75] *Abelesz,* 692 F.3d at 666, 671, 679–85, 697; *Albert,* Seventh Circuit Index No. 14–1319, June 23, 2015 at pp. 3–7.
[76] *Abelesz,* 692 F.3d at 678–85, 697.
[77] *Id.* at 680.
[78] *Id.* at 679, 682, 683.
[79] *Id.* at 684.
[80] *Albert,* Seventh Circuit Index No. 14–1319, June 23, 2015 at pp. 2–14.

did Plaintiffs exhaust Hungarian remedies or provide a compelling reason for their failure to so do. On remand, MNB demonstrated, among other things, that Plaintiffs never sought judicial redress in Hungary even though, since 1989 (when Hungary became a Western democracy), Hungary possessed an independent, modern and well-functioning judicial system that is bound by European regulations and treaties that safeguard due process. MNB even identified various Hungarian legal theories potentially applicable to Plaintiffs' claims.[81] Based on this showing, the District Court dismissed MNB from the case. The Seventh Circuit Court of Appeals again denied Plaintiffs' appeal and affirmed the District Court's dismissal of Plaintiffs' claims.[82] The United States Supreme Court denied Plaintiffs' petition for certiorari on June 8, 2015.

2 Hungarian Railway Litigation

Two separate lawsuits were commenced by different plaintiffs in different forums seeking damages against Hungary's National Railroad Magyar Államvasutak Zrt. ('MÁV') and related entities for Holocaust-era claims.[83] Both cases involve similar central facts and claims, by which plaintiffs seek recompense for alleged atrocities committed against, and property allegedly stolen from family members forcibly deported to concentration camps during the Holocaust. Plaintiff's argue that Hungary's Holocaust experience was unique in its speed and ferocity – with half a million people deported within a few months, towards the end of the war when it was clear the Nazis had lost – suggesting the knowing complicity of MÁV and the other railway entities. Plaintiffs' also allege that the possessions of Jews were taken from them as they boarded the trains, and subsequently looted by the railroad and railroad employees.[84]

a) Illinois railways litigation

The plaintiffs group that commenced the aforementioned Hungarian Bank litigation in Illinois also brought suit against MÁV in the U.S. District Court for the Northern District of Illinois. Plaintiffs claim that MÁV's alleged role in transporting Jews and expropriating Jewish assets

---

[81] The commercial bank defendants had also appealed the denial of their motions to dismiss. Two of the private commercials banks – MKB Bank Zrt. and OTP Bank – were dismissed from the case for lack of personal jurisdiction (i.e., the banks had insufficient contacts with the U.S.). *Abelesz v. OTP,* 692 F.3d 638 (7th Cir. 2012). Given the dismissal of MNB, MKB and OTP, the final commercial bank defendant (Erste Bank) was later dismissed on the grounds of *forum non conveniens* or inconvenient forum. Since the other bank defendants could not be sued in the U.S., it would be more convenient to litigate any dispute with Erste Bank in Hungary, where MNB, MKB and OTP could all be sued as well.

[82] *Albert,* Seventh Circuit Index No. 14-1319, June 23, 2015 at pp. 2–4.

[83] *Fischer v. Magyar Államvasutak Zrt.,* No. C 868, 2013 WL 4525408 (N.D. Ill., Aug. 20, 2013) ('Illinois Railways Litigation') and *Simon v. Republic of Hungary,* – F.Supp.2d –, 2014 WL 1873411 (D.D.C., May 9, 2014) ('Washington D.C. Railways Litigation').

[84] In 2011, an effort to consolidate the two Hungarian railroad cases was denied because: (i) while MÁV wanted to consolidate the litigation in Washington DC, the Illinois Railroad Litigation plaintiffs insisted on litigating in Illinois, where the Hungarian Bank Litigation was pending; (ii) representations made to the Court suggested that allowing the cases to proceed in parallel would remain manageable. *In re Hungarian Holocaust Litigation,* 763 F.Supp.2d 1370 (U.S.Jud.Pan.Mult.Lit. 2011).

violated international takings law, aided and abetted genocide, made MÁV complicit in genocide, violated customary international law, and constituted unlawful conversion, unjust enrichment, and fraudulent misrepresentations.[85]

While the factual issues in the Illinois Bank Litigation and the Illinois Railways Litigation differ, they were decided on the same legal grounds, by the same judges (at both the District Court and Seventh Circuit level). Following similar District Court, Seventh Circuit and remand proceedings, the claims against MÁV were dismissed because plaintiffs failed to exhaust remedies that are or were available in Hungary.[86] As with the Illinois Bank Litigation, the U.S. Supreme Court refused to hear plaintiffs' appeal from the Seventh Circuit decision affirming the dismissal of claims against MÁV.

b) Washington D.C. railways litigation

Fourteen named plaintiffs in this proposed class action, sued MÁV, the Republic of Hungary and Rail Cargo Hungaria Zrt. ('RCH'), which is a freight rail company that is the successor-in-interest to MÁV Cargo Árufuvarozási Zrt., f/k/a MÁV Cargo Zrt., a former division of MÁV. The District Court, acting after the Seventh Circuit dismissed the class action complaint for lack of subject matter jurisdiction under the FSIA and for lack of personal jurisdiction.[87] The case remains pending.

3 Hungarian Art Case

Heirs of a Jewish Hungarian art collector brought action against Republic of Hungary, the Hungarian National Gallery, Hungary's Museum of Fine Arts, the Museum of Applied Arts, and Budapest University of Technology and Economics alleging that the defendants breached bailment agreements entered into after World War II, when they refused to return pieces of an art collection upon demand. Defendants moved to dismiss on numerous grounds. The U.S. District Court for the District of Columbia, initially granted the motion in part and denied it in part. Plaintiffs and Defendants both appealed.[88] The Court of Appeals, held that the defendants did not enjoy immunity because the plaintiffs' claims fell within FSIA's commercial activity exception. The Court further held that the 1947 Treaty and 1973 Treaty were inapplicable. Otherwise, the claims presented issues of fact that could not be resolved by a motion to dismiss.[89] The case remains pending.

---

[85] *Abelesz,* 692 F.3d at 666, 671, 679–85.
[86] *Abelesz,* 692 F.3d at 666, 671, 679–85, 697; *Fischer v. Magyar Államvasutak Zrt.,* Seventh Circuit Index No. 13–3073.
[87] *Simon,* 2014 WL 1873411.
[88] *De Csepel v. Republic of Hungary,* 714 F.3d 591 (D.C. Cir. 2013).
[89] *Id.*

4 Gold Train

One additional case involves Hungary, but not any Hungarian defendant. In the waning months of World War II, a train loaded with valuables expropriated from Hungarian Jews was sent west – away from the advancing Russia army. This train became known as 'the Gold Train'.[90] The U.S. military intercepted and seized the train in Salzburg, Austria.[91] Instead of returning the valuables, the items were dissipated over the ensuing years while in U.S. custody.[92]

In 2001, plaintiffs claiming rights to valuables on the train brought a class action lawsuit against the U.S. in the Southern District of Florida seeking compensation for the property that was never returned to them. That lawsuit led to a settlement agreement under which the U.S. government paid $25.5 million. The vast bulk of the proceeds went to provide social services and humanitarian relief to specified victims of Nazi persecution.[93] An additional $500,000 was to be used to set up an archive to identify and catalogue Gold Train artifacts and the document the treatment of the Hungarian Jewish community during World War II. *See* Settlement Agreement at 15.[94]

IV Trends & Conclusions

The recent Hungarian Holocaust litigation may well be among the last of its kind.

Despite the massive breadth and width of Holocaust-era litigation, Holocaust-era claims 'have, for the most part, not fared well' in court.[95] Few if any such cases were resolved on the substantive or factual merits. Most cases were dismissed on the grounds that the claims could not properly be adjudicated. Other cases were resolved by negotiated settlements, without taking a position on the merits.

The inauspicious litigation track record is due, in part, to the fact that strong moral claims do not necessarily translate into successful legal causes of action. '[T]he law is a tool of limited capacity. Not every wrong, even the worst, is cognizable as a legal claim.'[96] Practical considerations further diminish the likelihood of successful claims. The Holocaust ended 70 years ago. Most reparations issues have already been explored – either by litigation, treaty, non-judicial programs or otherwise. Recent litigation has been pursued by the children and grandchildren of Holocaust survivors; one should expect that future and more attenuated generations will be less likely to pursue claims.

---

[90] *Rosner v. U.S.,* 231 F.Supp.2d 1202, 1204, 1217–18 (S.D. Fla. 2002).
[91] *Id.*
[92] *Id.* at 1205.
[93] *Id.* at 1203–1204.; See Final Order and Judgment at 4, *Rosner et al. v. United States,* No. 01-1859 (S.D.Fl. Sept. 30, 2005).
[94] *Rosner et al. v. United States,* No. 01-1859 (S.D.Fl. Apr. 29, 2005).
[95] *Alperin,* 410 F.3d 541 n. 4.
[96] *In re Holocaust Victim Assets Litig.,* 105 F.Supp.2d at 148–49; *In re Austrian and German Bank Holocaust Litigation,* 80 F.Supp.2d 164, 177 (S.D.N.Y. 2000).

Moreover, legal challenges to claims continue to multiply. In addition to the legal defenses discussed above, Holocaust claims also have to overcome procedural hurdles such as statutes of limitations – i.e., the time period allowed to file claims.[97] Future lawsuits regarding events from the 1940s also face the evidentiary difficulties attendant to claimants/witnesses who are deceased or, if surviving, are old, infirm and dispersed globally. Likewise, any such claims would rely on old records which – if they still exist given the destruction of World War II and the passage of time – are in foreign languages maintained on foreign soil. These problems will only increase with time.

Furthermore, U.S. courts have begun to restrict their subject matter jurisdiction over extra-territorial claims – becoming less amenable to lawsuits (like Holocaust cases) in which it is claimed that foreign defendants injured foreign plaintiffs on foreign soil. Most Holocaust cases involving non-sovereign defendants invoked the jurisdiction of U.S. federal courts under the Alien Tort Statute ('ATS'), 28 U.S.C. §1350, which provides that federal courts may hear civil claims by foreigners for torts committed in violation of the law of nations or a treaty of the United States. However, two recent U.S. Supreme Court decisions greatly narrow ATS jurisdiction – holding that international law considerations, international comity and practical considerations require U.S. courts to refrain from exercising jurisdiction over foreign defendants who are alleged to have committed acts against foreign nationals on foreign soil.[98]

Kiobel and *Daimler* seem to shut the door to most extra-territorial Holocaust litigation. However, the law is a living thing that is always evolving. Creative lawyering and novel theories may yet breathe new life into efforts to pursue old claims.

---

[97] Future plaintiffs will have a difficult time credibly explaining why they did not bring sooner bring suit.

[98] *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1669 (2013). Kiobel recognized the potential 'international discord' and 'retaliative action' attendant to U.S. courts making determinations respecting 'conduct occurring within the territorial jurisdiction of another sovereign,' with 'foreign policy consequences not clearly intended by the political branches.' *Id.* at 1664, 1667 (rejecting extraterritorial application of the ATS). Letting U.S. courts determine matters that took place abroad also creates the risk 'that other nations, also applying the law of nations, could hale our citizens into their courts for alleged violations of the law of nations occurring in the United States, or anywhere else in the world.' *Id.* at 1669. Kiobel further held that the U.S. cannot and does not present itself as 'a uniquely hospitable forum for the enforcement of international norms. […] "No nation has ever yet pretended to be the *custos morum* of the whole world" […] '. *Id.* at 1668.

Appendix

To demonstrate the breadth of cases, the following lists various reported decisions in Holocaust-era litigation between 1999–2002:

Swiss Bank Litigation

In re Holocaust Victim Assets Litig., 1998 U.S. Dist. LEXIS 18014 (E.D.N.Y. Oct.7, 1998) [stipulation describing settlement in principle); *In re Holocaust Victim Assets Litig.*, 105 F. Supp.2d 139 (E.D.N.Y. 2000) (upholding fairness of settlement under Rule 23(e)]; *In re Holocaust Victim Assets Litig.,* 225 F.3d 191 (2d Cir. 2000) (upholding definition of plaintiff class); *In re Holocaust Victim Assets Litig.,* 2000 U.S. App. LEXIS 29529 (2d Cir. Nov. 20, 2000) (dismissing appeal); *In re Holocaust Victim Assets Litig.,* 2000 U.S. Dist. LEXIS 20817 (E.D.N.Y. Nov. 22, 2000) (accepting Special Master's allocation plan); *In re Holocaust Victim Assets Litig.*, 2001 WL 419967 (E.D.N.Y. Apr. 4, 2001) (defining Slave Labor II class); *In re Holocaust Victim Assets Litig.*, 14 Fed. Appx. 132 (2d Cir. 2001) (upholding plan of allocation); *In re Holocaust Victim Assets Litig.*, 282 F.3d 103 (2d Cir. 2002) (vacating definition of Slave Labor II class; remand for determination of parties' intentions); *In re Holocaust Victim Assets Litig.*, 2002 U.S. Dist. LEXIS 20195 (E.D.N.Y. Oct. 23, 2002) (denying risk multiplier).

German Slave Labor Cases

Iwanowa v. Ford Motor Co., 67 F. Supp.2d 424 (D.N.J. 1999) (dismissing slave labor claims on various grounds); *Burger-Fischer v. Degussa AG,* 65 F. Supp.2d 248 (D.N.J. 1999) (dismissing slave labor claims as non-justiciable); *In re Nazi Era Cases Against German Defendants Litig.,* 198 F.R.D. 429 (D.N.J. 2000) (upholding voluntary dismissal of slave labor claims in connection with the establishment of the German Foundation); *In re Nazi Era Cases Against German Defendants Litig.* (Frumkin), 129 F. Supp.2d 370 (D.N.J. 2001) (dismissing slave labor case in accordance with the Statement of Interest filed by the United States); *In re Nazi Era Cases Against German Defendants Litig.,* 213 F. Supp.2d 439 (D.N.J. 2002) (denying motion to enforce interest payments allegedly owed to German Foundation by German industry). See also *Deutsch v. Turner Corp.,* CV-4405 (C.D. Cal. 2000).

German and Austrian Banks

In re Austrian & German Bank Holocaust Litig., 80 F. Supp.2d 164 (S.D.N.Y. 2000) (upholding Austrian bank settlement under Rule 23(e)); *D'Amato v. Deutsche Bank,* 236 F.3d 78 (2d Cir. 2001) (affirming fairness of Austrian bank settlement under Rule 23(e)); *In re Austrian & German Bank Holocaust Litig.*, 2001 U.S. Dist. LEXIS 2311 (S.D.N.Y. Mar. 7, 2001) (denying motion to dismiss German litigation voluntarily); *Duveen v. United States District Court (In re Austrian & German Holocaust Litig.),* 250 F.3d 156 (2d Cir. 2001) (granting writ of mandamus compelling voluntary dismissal of German bank litigation); *In re Austrian & German Bank Holocaust Litigation,* 2001 U.S. Dist. LEXIS 15573 (S.D.N.Y. Sept. 27, 2001) (denying motion to forfeit fees on the ground of conflict of interest) (appeal pending); *In re Austrian & German Bank Holocaust Litig.,* 2002 U.S. Dist. LEXIS 21433 (S.D.N.Y. Oct. 29, 2002) (denying motion to compel

interest payments). *See also Ungaro-Benages v. Dresdner Bank AG,* No. 1:01 CV 2547 (S.D. Fla. June 18, 2001) (seeking damages from German banks for property seizures).

Other Bank Cases

Alperin v. Vatican Bank, 410 F.3d 532, 546 (9th Cir. 2005)

Insurance Cases

Cornell v. Assicurazioni Generali S.p.A., 2000 U.S. Dist. LEXIS 2922 (S.D.N.Y. Mar. 15, 2000); *Cornell v. Assicurazioni Generali S.p.A.,* 2000 U.S. Dist. LEXIS 11004 (S.D.N.Y. Aug. 2, 2000); *Cornell v. Assicurazioni Generali S.p.A.,* 2000 U.S. Dist. LEXIS 11991 (S.D.N.Y. Aug. 10, 2000); *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.,* Judicial Panel on MultiDistrict Litig., 2000 U.S.Dist.LEXIS 17853 (Dec. 4, 2000); *Winters v. Assicurazioni Generali S.p.A.,* 2000 U.S. Dist. LEXIS 18193 (S.D.N.Y. Dec. 18, 2000); *Gerling Global Reinsurance Corp. of Am. v. Gallagher,* 267 F.3d 1228 (11th Cir. 2001); *Haberfeld v. Assicurazioni Generali S.p.A.,* 2002 U.S. Dist. LEXIS 4391 (S.D.N.Y. Mar. 14, 2002); *Schenker v. Assicurazioni Generali S.p.A.,* Consol., 2002 U.S. Dist. LEXIS 12845 (S.D.N.Y. July 11, 2002) (granting Basler and Winterthur motions to dismiss for lack of in personam jurisdiction); *Gerling Global Reinsurance Corp. Am v. Low,* 296 F.3d 832 (9th Cir. 2002); *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.,* 2002 U.S. Dist. LEXIS 18119 (S.D.N.Y. Sept. 25, 2002) (denying motion for order to suggest that multidistrict litigation panel remand cases to California courts); *In re Assicurazioni Generali S.p.A. Holocaust Ins. Litig.*, 2002 U.S. Dist. LEXIS 18127 (S.D.N.Y. Sept. 25, 2002) (denying motion to dismiss Generali).

French Bank cases

Bodner v. Paribas, 114 F. Supp.2d 117 (E.D.N.Y. 2000) (denying motion to dismiss); *Freund v. Republic of France,* 592 F.Supp.2d 540 (S.D.N.Y. 2008) *dism. aff.,* 391 F. Appx. 939 (2d Cir. 2010).

French Railroad cases

Abrams v. Societe Nationale Des Chemins De Fer Francais, 175 F. Supp.2d 423 (E.D.N.Y. 2001); *Freund v. Republic of France,* 592 F.Supp.2d 540 (S.D.N.Y. 2008) *dism. aff.,* 391 F. Appx. 939 (2d Cir. 2010).