

The Victim's Fortune: The Struggle for Restitution for Holocaust Victims

The Victim's Fortune, by John Authers and Richard Wolffe, is a story of lawyers, businessmen, government officials and Jewish leaders “striving for justice, and . . . squabbling over money” owed to Holocaust victims.¹ The book explores a “deadly matrix of strategies,” including competing class action lawsuits, independent auditing committees, extreme governmental pressure and threats of crippling economic sanctions.² It is the story of the restitution effort for victims of the Holocaust worldwide, and how it originated in Switzerland before fueling a restitution blitzkrieg through Eastern Europe.³ Authers and Wolffe expose ego driven compromises, and a campaign often willing to sacrifice moral reparation for monetary compensation.⁴

This book note focuses on how *The Victim's Fortune* catalogues the strategy used in Switzerland to gain restitution for Holocaust victims and its evolution into a model for similar restitution efforts in Italy, France and Germany.⁵ Part I discusses the restitution effort's origin in lawsuits against Swiss banks.⁶ Part II addresses the adaptation of the Swiss model to challenge Italian insurers.⁷ Part III relates the formula's strategic role in the French recovery.⁸ Part IV culminates with the direct confrontation of Germany.⁹ In whole, this note illustrates common themes, the recurring structure of the Swiss model and its successful application to the various circumstances confronting the restitution campaign.

1. JOHN AUTHERS & RICHARD WOLFFE, *THE VICTIM'S FORTUNE* (2002).

2. *Id.* at 105.

3. *Id.*

4. *See generally* AUTHERS & WOLFFE, *supra* note 1.

5. *Id.*

6. *See infra* notes 10-63 and accompanying text.

7. *See infra* notes 64-97 and accompanying text.

8. *See infra* notes 98-146 and accompanying text.

9. *See infra* notes 147-169 and accompanying text.

I. THE SWISS BANKS AND THE ORIGIN OF A
RESTITUTION MODEL

Switzerland, historically famed for its neutrality policy and secrecy in bank dealings, may appear an awkward starting point for a restitution campaign necessitated by arguably the most monstrous acts in modern history.¹⁰ However, in 1995, Kaspar Villiger, the Swiss president, drew attention to Switzerland when he issued an apology to all Jews who were refused entry into the country during the war.¹¹ Villiger's "noble" apology was met with international scrutiny.¹² As major media sources such as *Globes* and the *Wall Street Journal* began questioning the Swiss role in World War II, Swiss banks became the first target of the restitution effort.¹³ To address the increasingly hostile environment, the banks conducted an internal audit linking 893 dormant Swiss accounts with roughly \$24 million worth of assets taken from Holocaust survivors.¹⁴ This finding undercut traditional perceptions of Swiss innocence, enhanced the validity of potential claims and caused speculation that banks had profited unfairly from Holocaust victims to run rampant through the Swiss political body.¹⁵

Edgar Bronfman and Israel Singer, representatives of the World Jewish Congress (WJC) who were committed to recovering money wrongfully held in dormant accounts, ignited the fight against the Swiss.¹⁶ Bronfman, one of the biggest campaign donors in American Democratic politics, legitimized the effort in the United States and offered a direct link to the Clinton administration.¹⁷ Singer, not content with Bronfman's connections

10. See generally AUTHERS & WOLFFE, *supra* note 1.

11. *Id.* at 6.

12. *Id.* at 7.

13. *Id.* *Globes* suggested as much as \$7 billion in Holocaust survivors' money lay dormant in Swiss banks. *Id.* The *Wall Street Journal* ran an investigative story recounting survivors' struggles to reclaim their Swiss accounts. *Id.*

14. AUTHERS & WOLFFE, *supra* note 1, at 7.

15. *Id.* at 16.

16. *Id.* at 12.

17. *Id.* Edgar Bronfman, Sr., is the Canadian businessman who ran Seagrams, a distillery and entertainment conglomerate that helped him accumulate an estimated \$3.3 billion personal fortune. *Id.* He was also the acting President of the WJC. *Id.* at

to Democratic power, sought to fortify their position through the creation of a bipartisan alliance.¹⁸ He accomplished his goal of gathering bipartisan support by introducing Bronfman to Republican New York Senator Alfonse D'Amato, the chair of the Senate Banking Committee,¹⁹ and an astute politician who realized the restitution story's political worth.²⁰ The addition of D'Amato was a major coup, allowing the White House to remain silent as the Senator pushed the Swiss to address the dormant accounts.²¹ The formation of this powerful political alliance was crucial to the restitution effort's success, and intense political pressure became the first prong of the Swiss restitution model.²²

George Krayner, president of the Swiss Bankers' Association, organized the Swiss response to the dormant account allegations.²³ He first cited a 1962 Swiss government decree ordering banks and other companies to report all assets of "foreign or stateless persons subject to racial, religious or political persecution."²⁴ Krayner claimed the banks followed the decree "as diligently and completely as possible under the circumstances."²⁵ He then called particular attention to an active system allowing people to make claims on dormant accounts.²⁶ However, after several rounds of preliminary negotiations with the WJC, the Swiss

6. In the 1996 elections, the Democratic Party and President Bill Clinton counted Seagram's U.S. subsidy as their biggest soft money contributor. *Id.* at 12.

18. *Id.* at 10-16. Israel Singer is an ordained Orthodox Jew from New York, NY. *Id.* at 11. Before his ordination, he marched with Martin Luther King, Jr. on twenty-six occasions. *Id.* A highly successful real estate entrepreneur, Singer earned doctorates in political science and teaching in Israel and New York. *Id.* He became active in New York politics and Jewish affairs in the 1970s. *Id.*

19. *Id.* at 14. This position gave Senator D'Amato oversight authority over all banks operating in the United States. *Id.* This included several lucrative Swiss Wall Street operations. *Id.*

20. AUTHERS & WOLFFE, *supra* note 1, at 14. "This was made in heaven!" D'Amato allegedly shouted several times at Singer and Bronfman. *Id.* It did not hurt that Brooklyn, D'Amato's central political staple, was also home to the world's largest concentration of Holocaust survivors. *Id.* Although Bronfman found such behavior distasteful, they were pleased to leave Washington with the feeling that Senator D'Amato would not hesitate to add his political weight to their effort. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 7.

24. *Id.* at 8.

25. AUTHERS & WOLFFE, *supra* note 1, at 8.

26. *Id.*

agreed to create an “Independent Committee of Eminent Persons” (ICEP) to conduct an audit to determine any fair amount the Swiss banks still owed to the survivors.²⁷ Formation of this independent commission was the second prong of the Swiss restitution model, and such committees were characteristic of future settlement efforts.²⁸

On October 4, 1996, Ed Fagan, a little known personal injury lawyer from New York, filed *Weisshaus v. Union Bank of Switzerland et al.*, a class action suit demanding more than \$20 billion in damages and alleging the Swiss deliberately stole the accounts of Gizella Weishaus and others.²⁹ Shortly thereafter, Michael Hausfeld,³⁰ a well-known New York attorney with extensive class action experience, filed *Friedman v. UBS*, a complaint alleging Swiss participation in a conspiracy to help the Nazis launder gold and banking profits from slave labor in concentration camps.³¹ In an effort to match the experience and prestige of the Hausfeld camp, Fagan sought out Bob Swift, a notorious Philadelphia human rights litigator whose most recent case involved an “epic suit” against Ferdinand Marcos, the former president of the Phillipines.³² Faced with the prospect of

27. *Id.* at 23. The resulting agreement called for auditors to get “unfettered access to all relevant files in banking institutions regarding dormant accounts and other assets and financial instruments deposited before, during and immediately after the Second World War.” *Id.* at 24. This represented a huge concession for the Swiss in that it abandoned their demand to preserve the sanctity of their institutional secrecy. *Id.*

28. See generally AUTHERS & WOLFFE, *supra* note 1.

29. *Id.* at 38. Each case discussed in this note was filed in state court in Brooklyn, New York. *Id.* There was proper jurisdiction over the cases because the named Swiss banks had branches in New York and many Holocaust survivors lived in the state. *Id.* This ensured that the jurors for the trial would be drawn from the world’s largest Jewish community. *Id.*

30. *Id.* at 39. Unlike Fagan, Hausfeld had substantial ties to the Jewish community. *Id.* Named after an uncle killed in the Holocaust, Hausfeld lost ten relatives to the Nazis, grew up in a Jewish Brooklyn community where parents would show each other their camp tattoos and adopted the Swiss bank cause as a moral crusade. *Id.* Representing the gulf in motivation among the divisive attorneys, Bob Swift remarked to Hausfeld, the moral crusader, “What are you getting so emotional about? This is just a matter of money.” *Id.* at 44.

31. *Id.* at 41. The *Friedman* claim was 109 pages in length, roughly ten times the size of the *Weisshaus* complaint. *Id.*

32. *Id.* at 42.

competing lawsuits,³³ Judge Edward Korman decided there could be no legal peace without some form of cooperation.³⁴ Therefore, he created an executive committee of ten lawyers, led jointly by Hausfeld and Swift.³⁵ The prospect of lawsuits scared the Swiss “far more than any of the tactics yet unveiled,”³⁶ and the team began to emphasize punitive damages that could push the damage result far higher than any figure expected from the ICEP audit.³⁷ This complex litigation strategy encompassing competing lawsuits, teams of class action attorneys and the threat of United States discovery to leverage settlement became the third prong of the Swiss restitution model.³⁸

Israel Singer saw the judicial response to the pending litigation as the perfect opportunity to reengage the political power of the Clinton administration.³⁹ On May 7, 1997, the administration became publicly involved when Stuart Eizenstat, a member of the Department of Commerce, released a scathing report.⁴⁰ Eizenstat accused the Swiss National Bank (SNB)—the Swiss equivalent of the Federal Reserve—of prolonging the Nazi war effort by knowingly receiving and laundering gold taken from Holocaust victims and occupied countries.⁴¹ SNB’s acceptance of German deposits totaling more than two times the German pre-war gold reserves formed the substantive basis for Eizenstat’s

33. AUTHERS & WOLFFE, *supra* note 1, at 75. Mel Weiss, an attorney representative of the difficult challenge the Swiss faced, was also preparing his own claim. *Id.* Weiss’s firm, Milberg Weiss, had won \$692 million in the past ten years, with his share totaling \$102 million. *Id.* Notorious for backroom dealing when his opponent needed to avoid court, Weiss typically charged contingency fees amounting to one third of the award, but had decided to fight this battle for free. *Id.* Weiss believed that “fifty-two years of obfuscation” would make it impossible to reconstruct any accurate damage figure, and as such, his sole goal was to deliver a measure of justice commensurate with the wrong done. *Id.* He was ready to look beyond the banks to target the Swiss government. *Id.*

34. *Id.* at 44.

35. *Id.* at 44-46.

36. *Id.* at 48. The Swiss saw U.S. Federal judges and juries as “both powerful and unpredictable.” *Id.*

37. *Id.*

38. AUTHERS & WOLFFE, *supra* note 1, at 44.

39. *Id.* at 50.

40. *Id.* Eizenstat worked as Undersecretary of State before later becoming Deputy Treasury Secretary. *Id.* at xii.

41. *Id.* at 51.

allegations.⁴² He argued the sophisticated bankers had constructive—if not actual—knowledge that a significant amount of the German deposits were stolen.⁴³ As tensions mounted with the increased political rhetoric, Singer formulated the economic attack that would become the final prong of the Swiss model.⁴⁴

From the beginning of the Swiss restitution effort, Singer realized that if all else failed, the threat of private and public sanctions could wield considerable power.⁴⁵ To implement his plan to intensify the pressure on the Swiss, Singer enlisted Alan Hevesi,⁴⁶ New York City's comptroller, whose position gave him control over one of the world's largest borrowers and pension funds.⁴⁷ Hevesi, in turn, compounded his influence by enlisting Matt Fong, the state Treasurer of California, who promised to bar the California Public Employees Retirement System (CalPERS)—the largest U.S. pension fund—from buying any new Swiss stocks.⁴⁸ Hevesi then invited over nine hundred American financial officers to an “educational gathering” in Manhattan,⁴⁹ with more than one hundred-fifty of the most influential of them agreeing to attend.⁵⁰ The meeting's stated purpose was to commit to a “moratorium” on sanctions that would be imposed if the Swiss failed to negotiate a settlement within ninety days.⁵¹ Hevesi's

42. *Id.* at 52. SNB accepted approximately \$400 million in German deposits, or roughly \$3.9 billion in 1997 money. *Id.* German pre-war gold deposits were valued at approximately \$200 million. *Id.*

43. AUTHERS & WOLFFE, *supra* note 1, at 52-54. The Swiss countered attacks on the morality of their decision to stay neutral by recalling that the United States chose to stay neutral for more than two years after Hitler invaded Poland. *Id.*

44. *Id.* at 62.

45. *Id.*

46. *Id.* at 63. Hevesi, the grandson of a chief rabbi of Hungary who had lost many of his ancestors in the Holocaust, had morally committed to the process long before Singer contacted him. *Id.* After reading in *The New Yorker* that the chairman of UBS's board viewed the effort as “really to do with the Jewish conspiracy to take over the world's most prestigious financial centers,” Hevesi was prepared to join the fight. *Id.* at 65.

47. *Id.* at 63. At the time, the New York City pension fund held shares worth \$69.55 million in the big three Swiss banks. *Id.* at 65.

48. AUTHERS & WOLFFE, *supra* note 1, at 67.

49. *Id.* at 69.

50. *Id.*

51. *Id.* This was actually Singer's suggestion. *Id.* Hevesi, who had no real intention to impose further sanctions, greeted the suggestion as a perfect way to increase leverage by delaying an action he had no plans to implement. *Id.*

threat was to “impose an economic boycott as severe as that of South Africa years before,”⁵² and he supported his statement with numbers showing that the United States was Switzerland’s largest trading partner, with more than 400 Swiss companies doing \$15.4 billion in annual export business with the United States.⁵³ This threat of crippling economic sanctions was the fourth and final prong of the Swiss restitution model.⁵⁴

As pressure mounted from both the public and private sectors, Judge Korman was reticent to see the crimes of the Holocaust tried in his court.⁵⁵ In August of 1998, he called the parties together to propose settlement alternatives.⁵⁶ Sensitive to Switzerland’s repeated refusal to accept any settlement implicating its government, Korman tailored an agreement releasing Swiss National Bank from liability, while forcing major Swiss private banks, such as Credit Suisse and UBS, to cover the nation’s full liability.⁵⁷ In the final proposal, the Swiss banks approved a \$1.25 billion settlement conditioned on their nation being protected from any conceivable legal attack on its war record.⁵⁸ With the agreement, the Swiss banks transformed settlement of the dormant bank account controversy into a national settlement that bought peace for all of Switzerland.⁵⁹

The settlement for Switzerland did not, however, end the restitution effort.⁶⁰ Instead, it was the first shot in the war to “reopen the history books across Europe,”⁶¹ with the four-pronged

52. *Id.* at 92.

53. AUTHERS & WOLFFE, *supra* note 1, at 92. It was his belief that in the world economy, well-organized interest groups were better positioned to take on companies than were sovereign states with their legal and diplomatic restrictions. *Id.* at 68. The State Department did not support the unilateral actions of the financial sector, urging Hevesi to stop mingling with foreign policy and reminding him that trade sanctions came under their purview, but he refused to back down. *Id.*

54. *See generally* AUTHERS & WOLFFE *supra* note 1.

55. *Id.* at 96.

56. *Id.* at 94.

57. *Id.* at 98.

58. *Id.* at 100. This would have in effect made the independent Swiss Commission irrelevant, wasting an audit that had taken two years and consumed \$500 million. *Id.*

59. AUTHERS & WOLFFE, *supra* note 1, at 104.

60. *Id.* at 105.

61. *Id.*

Swiss campaign—governmental pressure, independent auditing committees, competing class action lawsuits and threats of economic sanctions—becoming a model for challenges in Italy, France and Germany.⁶² Somber in victory, Abraham Foxman, the national director of the Anti-Defamation League, recalled the origins of the campaign:

Six million Jews died because they were Jews, not because they had money or bank accounts. Six million Jews, 99.9 percent, didn't have Swiss bank accounts, didn't have gold, didn't have jewelry, or art. They perished because of who they were. This debate, this discussion, as important as it is, skewed the whole message, the lesson, the truth of the Holocaust. I do not want the last sound bite of the history of the twentieth century to be Jews and their money.⁶³

II. TAKING THE FIGHT TO THE ITALIAN INSURERS

Italian insurers became the second target of the restitution effort due primarily to the confluence of two seemingly isolated events: the denial of Adolf Stern's family life insurance policies and an Italian insurance company's decision to purchase one of Israel's major insurers.⁶⁴ First, Adolf Stern,⁶⁵ a retired clothing salesman who lost a father, wife and daughter to the Auschwitz gas chambers while spending time in six different Nazi concentration camps himself, was repeatedly denied compensation by Generali,⁶⁶ an Italian insurer who refused to honor the deceased Stern family members' policies due to a lack of formal documentation.⁶⁷

62. *See generally* AUTHERS & WOLFFE, *supra* note 1.

63. *Id.* at 102-03.

64. *See id.* at 107-118.

65. *Id.* at 107-08. Stern was a highly successful property developer with a prosperous family. *Id.* He had contacts in Knesset and in both the British and Israeli media, which made him a formidable opponent. *Id.*

66. *Id.* at 109. Generali was a company founded by Jews, and one that had emerged as one of the premier insurers for Jews in prewar Eastern Europe. *Id.*

67. AUTHERS & WOLFFE, *supra* note 1, at 107.

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Second, in early 1996, Generali attempted to buy Midgal, Israel's largest insurance company.⁶⁸ As Generali offered \$330 million for the company, Stern became convinced that a "pillar of the Israeli economy" was about to be purchased with Holocaust victims' stolen money.⁶⁹ Stern took great umbrage at what he viewed as a serious affront to all Jews, and he adamantly set forth to expose the connection between Generali's wealth and the company's outstanding liabilities to Holocaust survivors.⁷⁰

Guido Pastori, Generali's chief legal counsel, denied Stern's allegations on three grounds: first, Pastori disavowed the viability of any legal claim due to the "very considerable number of years" elapsed; second, Pastori claimed that Generali's post-war nationalization alleviated any corporate responsibility for policies issued before the war; third, he insisted the company held no record of the Stern policies.⁷¹ Presuming that he was negotiating from a position of strength, Pastori readily agreed to have his staff look through company archives for outstanding policies.⁷² As a result, on December 10, 1996, Pastori's staff discovered a copy of Stern's father's life insurance policy, as well as 301,000 other outstanding pre-war policies insuring Holocaust victims.⁷³ An embarrassed Pastori forwarded the records to Stern, and Generali acknowledged possession of the insurance records.⁷⁴

Against the backdrop of the ongoing Swiss campaign and with the newly found records,⁷⁵ Stern representatives pressed for \$10 million to settle the claims of what those involved figured would now only amount to a few hundred families.⁷⁶ Generali countered with an offer of \$1 million.⁷⁷ However, Scott Vayer, a New York attorney retained by Generali, urged the company to

68. *Id.* at 110.

69. *Id.*

70. *Id.*

71. *Id.* at 112-13.

72. AUTHERS & WOLFFE, *supra* note 1, at 113.

73. *Id.* at 114.

74. *Id.*

75. *Id.* at 115. As a corollary, the Knesset began to investigate Generali's acquisition of Midgal, and the media began to circulate the story. *Id.*

76. AUTHERS & WOLFFE, *supra* note 1, at 116.

77. *Id.*

consider offering \$12 million.⁷⁸ “It’s really inappropriate for us to do what’s demanded of us in this context. So we should do better. We can hardly be criticized for that,” he advised.⁷⁹ The board of directors agreed, and the Generali Trust was established to fund “good works, memorials, and humanitarian gestures.”⁸⁰ Stern acquiesced to the deal under the stipulation that claimants with Generali insurance policies must be compensated from the Trust first.⁸¹ The agreement was signed, and Generali felt its obligation was met.⁸²

However, Marta Cornell, a sixty-nine year old Holocaust survivor living in Queens, New York, initiated events that ultimately upset the Generali settlement, clearing the way for the implementation of the Swiss restitution model in a protracted Italian campaign.⁸³ After reading about Ed Fagan’s lawsuit against the Swiss banks, she called him with a story similar to Adolf Stern’s.⁸⁴ Fagan quickly filed *Marta Cornell v. Assicurazioni Generali*.⁸⁵ He was not the only American attorney preparing for litigation.⁸⁶ Deborah Senn, the insurance commissioner for Washington state, received complaints from more than fifty Holocaust survivors living in the Seattle area who held unpaid insurance claims.⁸⁷ However, few had documentation of their policies, and Generali would not publish corporate records.⁸⁸ Without documentation linking the survivors and their relatives’ policies, there were no valid claims.⁸⁹ So Senn used federal statutes delegating the regulation of insurers to the states to prepare legislation in Washington state that would allow her to revoke the license of any insurer that refused to publish Holocaust

78. *Id.* at 117.

79. *Id.*

80. *Id.*

81. AUTHERS & WOLFFE, *supra* note 1, at 118.

82. *Id.*

83. *Id.* at 119.

84. *Id.*

85. *Id.* at 120.

86. *See generally* AUTHERS & WOLFFE, *supra* note 1.

87. *Id.* at 121.

88. *Id.*

89. *Id.*

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victims' names.⁹⁰ New York, California, and Florida followed suit.⁹¹ Thus, Generali's hope for a quick, clean settlement was now over, and they faced a coalition of states armed with lessons from the Swiss campaign.⁹²

The parallels to the Swiss restitution campaign were striking: first, the potential for competing lawsuits forced Italian companies to consider the possibility of exposing themselves to court procedures in the United States; second, political pressure was threatening the sanctity of corporate records; and, third, economic sanctions would prohibit the companies from doing business in America.⁹³ As a result of this increasing pressure, Italy formed an independent advisory commission to oversee possible settlement options.⁹⁴ Insurers throughout Europe—Allianx of Germany, Axa of France, and Basler Leben, Winterthru, and Zurich of Switzerland—soon joined as a preemptive measure to retain some control over the settlement.⁹⁵ Thus, although the details of the proposed settlement had not been finalized, with the implementation of the commission all four prongs of the Swiss settlement—competing lawsuits, independent auditing committees, governmental pressure and threats of economic sanctions—were present in the Italian effort.⁹⁶ The Swiss model had evolved, leaving behind the frenzied public rhetoric of the original campaign without sacrificing its level of success.⁹⁷

III. RECLAIMING ART FROM THE FRENCH

While the Swiss faced claims against their banks and the Italians faced claims against their insurers, France was confronted with allegations that nearly two thousand pieces of art hanging in French museums and government buildings were stolen from the

90. *Id.* at 122.

91. AUTHERS & WOLFFE, *supra* note 1, at 122.

92. *See id.* at 125.

93. *See generally* AUTHERS & WOLFFE, *supra* note 1.

94. *Id.* at 131.

95. *Id.*

96. *See id.*

97. *See generally* AUTHERS & WOLFFE, *supra* note 1.

Jews.⁹⁸ However, unlike the Swiss and Italians, the French openly acknowledged possession of the stolen art, as they had for over a half-century.⁹⁹ Putting the problem in perspective, Ronal Lauder, chairman of the French Modern Museum of Art, testified that “every institution, art museum and private collection” included stolen art, and he estimated that some 110,000 stolen pieces, worth between \$10 billion and \$30 billion, existed.¹⁰⁰

Therefore, the French restitution effort faced a new difficulty: instead of fighting to establish a claim, the argument focused on French responsibility.¹⁰¹ The campaign was forced to address France’s worst modern taboo—French complicity under the Nazi puppet regime of the Vichy.¹⁰² Since the war, the French adamantly maintained that the Vichy had been an aberration and an “illegitimate regime that that French Republic was not responsible for.”¹⁰³ However, in July 1995, newly elected French president Jacques Chirac changed the course of the controversy forever, admitting a “never ending debt” to the victims of the Holocaust.¹⁰⁴ “Those dark hours sully our history forever and are an insult to our past and our traditions. Yes, the criminal madness of the occupier was aided by the French, by the French state,” he said.¹⁰⁵ His words represented a new generation of French citizens, a generation willing to revisit how their parents had dealt with the Vichy.¹⁰⁶

After Chirac’s admission, the French campaign began to emerge in the familiar pattern established in Switzerland and Italy.¹⁰⁷ First, the French formed the Matteoli Commission to investigate French wrongs.¹⁰⁸ Then, in January of 1998, lawyers from New York filed suit against nine international banks

98. *Id.* at 134.

99. *Id.* at 135.

100. *Id.* at 137.

101. AUTHERS & WOLFFE, *supra* note 1, at 134.

102. *Id.* at 139.

103. *Id.*

104. *Id.*

105. *Id.*

106. AUTHERS & WOLFFE, *supra* note 1, at 141.

107. *See generally* AUTHERS & WOLFFE, *supra* note 1.

108. *Id.* at 142.

including France's Societe Generale, Credit Lyonnais, and Banque Paribas.¹⁰⁹ To further substantiate their claim, the suit included Barclays, a British bank, and American financial institutions Chase Manhattan and JP Morgan, each of which had a presence in France during the Nazi occupation.¹¹⁰ The suit alleged that the banks and the Vichy authorities "systematically plunder[ed] cash, gold, foreign exchange, securities, jewelry, art treasures, businesses, equipment, and other real, personal and/or intangible property."¹¹¹ The suit sought full accounting of the looted assets and their return, as well as the disgorgement of any unjust profits.¹¹² As in the actions taken against the Swiss, claims against the entire nation were brought against France's premier financial institutions.¹¹³ With lawsuits and the independent commission in place, only American political pressure and the threat of economic sanctions were missing from the four-pronged Swiss restitution model.¹¹⁴

Even after Chirac acknowledged publicly French responsibility, the nation's banks developed a two-prong defense.¹¹⁵ First, the Germans were to blame.¹¹⁶ Second, Charles de Gaulle had ordered the return of all Jewish assets and restitution was a thing of the past.¹¹⁷ Despite their steadfast denial of culpability, the French banks were dealt a critical blow when Barclays Bank, the only British institution among those being sued, settled its case by establishing a \$3.6 million fund for 335 claimants, exposing France to mounting pressure from the American political and financial communities.¹¹⁸ In the wake of the Barclays settlement, French banks appeared "obstructive, unreasonable, and unwilling to face up to wartime guilt."¹¹⁹

109. *Id.* at 143.

110. *Id.* at 143.

111. *Id.*

112. AUTHERS & WOLFFE, *supra* note 1, at 144.

113. *Id.*

114. *See generally* AUTHERS & WOLFFE, *supra* note 1.

115. *Id.*

116. *Id.*

117. *Id.* at 146.

118. *Id.* at 152.

119. AUTHERS & WOLFFE, *supra* note 1, at 152.

On September 14, 1999, a meeting of the Banking Committee of the United States House of Representatives sought to bring together the competing views of the French and American campaigners.¹²⁰ The meeting began with the American delegation blasting the Matteoli Commission and the French effort for its lack of “transparency and accountability,” saying that even the Swiss commission was more open.¹²¹ French authorities bristled at the Swiss comparison, reasserting their claim that they were a conquered nation acting under the influence of a German occupier, not a free nation of its own will like Switzerland.¹²² However, after the meeting’s bitter public discourse, both sides agreed to compromise.¹²³ The French allowed a member of the American delegation onto the Matteoli commission in exchange for a softening of the anti-French rhetoric that had filled the airwaves.¹²⁴

However, the class action lawyers were not willing to accede so easily.¹²⁵ On March 15, 2000, the lawyers gathered in Judge Sterling Johnson’s courtroom to protest French attempts to dismiss their cases.¹²⁶ In reviewing the motion, the judge was most concerned with the plaintiffs’ insistence on a judicially sanctioned accounting instead of the French government’s system for dealing with claims.¹²⁷ Judge Korman specifically questioned the good faith basis for the banks’ claims that they were cooperating with the government to achieve the Matteoli commissions objectives.¹²⁸ In response to the judge’s expressed concern, the plaintiffs cited France’s avoidance of claims for over half a century.¹²⁹ The French maintained that the court had no authority to set an adequate remedy in the case as the necessary documents would never come

120. *Id.* at 158.

121. *Id.*

122. *Id.* at 159.

123. *Id.* at 164-72.

124. AUTHERS & WOLFFE, *supra* note 1, at 162.

125. *Id.* at 164.

126. *Id.*

127. *Id.* at 165.

128. *Id.*

129. AUTHERS & WOLFFE, *supra* note 1, at 165.

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under court control.¹³⁰ In addition, they reminded the court that the Swiss had settled under the authority of the American courts over two years earlier and still had not made a single payment to the survivors.¹³¹

While the lawyers waited for the judge's ruling, the final Matteoli report was released.¹³² According to the report, over 50,000 companies and buildings had been seized and sold, and the contents of 38,000 apartments had been converted.¹³³ In addition, more than 100,000 works of art and several million books had been looted.¹³⁴ Furthermore, the banks froze over 80,000 accounts.¹³⁵ On the other hand, the commission confirmed that restitution had been far more widespread than had been originally realized.¹³⁶ Roughly 92% of the bank accounts and 80% of the apartment losses had been returned.¹³⁷ Then, in September 2000, Judge Johnson found for the plaintiffs on all counts, a sweeping victory unprecedented in prior restitution litigation.¹³⁸ In doing so, he determined that his ability to hear the case was based on possible breaches of international law and the lack of an alternative court to hear the claim.¹³⁹ As in the Swiss model, faced with the possibility of discovery under the procedures of the United States and given a benchmark set by an independent commission, the time was ripe for the French to seek a settlement.¹⁴⁰

The two final pieces of the Swiss model—American political pressure and threats of economic sanctions—helped force the final settlement.¹⁴¹ The impending departure of the Clinton administration, scheduled to leave office in four months time, left Eizenstat with little time to utilize his strong ties to the

130. *Id.*

131. *Id.* at 165.

132. *Id.*

133. *Id.* at 167.

134. AUTHERS & WOLFFE, *supra* note 1, at 167.

135. *Id.* at 167.

136. *Id.*

137. *Id.*

138. *Id.* at 169.

139. AUTHERS & WOLFFE, *supra* note 1, at 169.

140. *See id.* at 170.

141. *Id.* at 171.

presidency.¹⁴² In addition, Hevesi began talk of impending economic sanctions from America's financial community.¹⁴³ As a result, focus turned toward giving the class action lawyers settlement alternatives to litigation based on an agreement that the American government would support dismissing pending claims from the U.S. courts.¹⁴⁴ Under the pressure of the self-imposed deadline, Eizenstat pulled together a deal where the French paid \$22.5 million, allowing each individual claimant to collect between \$1,500 and \$3,000.¹⁴⁵ Once again, the four-pronged Swiss restitution model effectuated a settlement.¹⁴⁶

IV. THE GERMAN INDUSTRIAL GIANTS

In March of 1998, amid this increasingly favorable climate for restitution, a class action lawsuit seeking restitution for forced laborers used in German factories was filed.¹⁴⁷ As had been the pattern in the Swiss and Italian campaigns, Ed Fagan was the first to file suit.¹⁴⁸ His claim included ten industrial giants such as Daimler-Benz, Volkswagen, Siemens and Krupp, and he predicted his case would attract "millions of people."¹⁴⁹ Unfortunately for

142. *Id.* at 170. As the settlement talks progressed, Eizenstat picked up a crucial endorsement, winning the support of Colin Powell, President-elect Bush's incoming Secretary of State, who pledged to keep him in his role if negotiations ran into the new administration. *Id.* at 179. However, Eizenstat, feeling that the artificial time constraints were helping to drive the deal, chose to keep this information to himself. *Id.*

143. *See id.* at 160-161.

144. AUTHERS & WOLFFE, *supra* note 1, at 176-177.

145. *See id.* at 179.

146. *See id.* at 181. In an interesting aside, as the talks closed, Parisian historians asked the inevitable questions. *See id.* Was the settlement a sign of things to come? *Id.* If so, would America be haunted by its action as African Americans were just beginning to raise the issue of racial reparations? *Id.*

147. *Id.* at 188.

148. *Id.* at 189.

149. AUTHERS & WOLFFE, *supra* note 1, at 189. Ironically, the initial target was not a German company, but was instead a pillar of American commercialism—Ford Motor Company. *Id.* at 188. "Unlike other enemy-owned companies, Ford Werke [Ford's German subsidiary] remained under American control during the war thanks in large part to Henry Ford's friendship with Adolf Hitler," an admirer of Ford's anti-Semitic pamphlet "The International Jew." *Id.* In 1943, forced laborers constituted half of Ford Werke's labor force. *Id.*

149. *Id.* at 189.

Fagan, in his rush to file he included Eicon, a company founded by the children of Holocaust survivors, and he was forced to promptly amend his complaint.¹⁵⁰ As was the pattern, a competing set of lawyers, Mel Weiss and Deborah Sturman, quickly filed a second complaint naming Volkswagen as the primary defendant.¹⁵¹ Within months, another ten suits were filed.¹⁵²

The German companies benefited from lessons learned from the previous campaigns. First, they quickly established independent commissions to distribute funds to compensate survivors in hopes of deferring substantial international pressure, a tactic that worked in Switzerland, Italy and France.¹⁵³ Next, they relied on previous restitution campaigns, as had France, citing laws that paid nearly \$96 billion in claims to survivors by 1997.¹⁵⁴ Finally, Germans insisted on consolidating all claims against their nation from the start of the negotiations, and they had a government willing to partner with the private sector, which clearly distinguished this campaign from the others.¹⁵⁵ The Germans wanted to avoid the American lawyers, and they instead sought no less than a new treaty with the United States, “an agreement negotiated among diplomats to resolve the issue forever.”¹⁵⁶ The leading German official on Holocaust restitution stated, “[t]his is a government-to-government affair to be settled between governments. What kind of role would American lawyers have in that?”¹⁵⁷ However, political risks precluded any possibility that the United States Senate would ratify a treaty limiting Holocaust claims.¹⁵⁸

The Germans scored an early victory when two New Jersey judges dismissed five of the lawsuits. Judge Dickinson Debevoise wrote, “[e]very human instinct yearns to remediate in some way the immeasurable wrongs inflicted upon so many millions of

150. *Id.*

151. *Id.*

152. *Id.* at 190.

153. AUTHERS & WOLFFE, *supra* note 1, at 191.

154. *Id.* at 193.

155. *Id.* at 198.

156. *Id.* at 202.

157. *Id.*

158. *See* AUTHERS & WOLFFE, *supra* note 1, at 202.

people by Nazi Germany so many years ago, wrongs in which corporate Germany unquestionably participated.”¹⁵⁹ Despite its sympathy, the court conceded it did not have the power to do so.¹⁶⁰ Debevoise wrote, “[b]y what conceivable standard could a single court arrive at a fair allocation of resources among all the deserving groups? By what practical means could a single court acquire the information needed to fashion such a standard?”¹⁶¹

Even as the lawsuits were breaking down, and as the commissions began making payments, Eizenstat intervened, and brought with him the inherent threat of increased political pressure and economic sanctions.¹⁶² However, he also brought the Clinton administration’s willingness to “intervene in all current lawsuits to support their dismissal,” and a willingness to play off the Germans’ desire of “drawing a line under the Nazi era before the dawn of a new millennium.”¹⁶³ The Swiss model was in place, and as a result the sides agreed to settle for 10 billion deutsche marks.¹⁶⁴ Clinton declared, “We close the 20th century with an extraordinary achievement that will bring an added measure of material and moral justice to the victims of this century’s most terrible crime. It will help us start a new millennium on higher ground.”¹⁶⁵ Echoing the sentiments of Abraham Foxman, the National Director for the Anti-Defamation League, from the close of the Swiss settlements years earlier, President Johannes Rau of Germany offered,

I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering and for the injustice done to them to be named injustice. I pay tribute to all those who were subjected to slave and forced labor under German rule and in the name of the German

159. *Id.* at 218-19.

160. *Id.* at 219.

161. *Id.*

162. *Id.* at 226-27.

163. AUTHERS & WOLFFE, *supra* note 1, at 227.

164. *See id.*

165. *Id.*

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people, beg forgiveness. We will not forget their suffering.¹⁶⁶

Rau's plea for forgiveness constituted an unprecedented achievement, and for the first time in the restitution effort, survivors received moral—not merely monetary—reparation.¹⁶⁷ Ironically, in the end it was the lawyers who received most of the credit.¹⁶⁸ In the words of Stuart Eizenstat, "It was the American lawyers, through the lawsuits they brought about in U.S. courts, who placed the long-forgotten wrongs by German companies during the Nazi era on the international agenda. Without question, we would not be here without them."¹⁶⁹

V. CONCLUSION

The Swiss restitution model was highly successful in establishing international accountability for the atrocities of the Holocaust. High-level, bipartisan political coalitions created intense pressure on the European community. Competing class action lawsuits forced countries to negotiate or face expansive United States litigation procedures. Threats of crippling economic sanctions lured the business community into the process. Diverse independent commissions established the structure for compromise. Together, these tactics proved successful in Switzerland, Italy, France and Germany. They remain a viable model that could be used to address modern social injustices such as those occurring in Bosnia, Haiti or Somalia, or they could be used to address unaccounted for past wrongs such as the history of slavery in America. *The Victim's Fortune* is a gripping tale, and it leaves the reader with a fuller understanding of the fundamental importance of equality.

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166. *Id.* at 229.

167. *Id.*

168. See AUTHERS & WOLFFE, *supra* note 1, at 251.

169. *Id.*