

Exhibits to Fee Petition of Burt Neuborne

EXHIBIT A

Listing of Major Tasks Performed by Lead Settlement Counsel

January 1999-September 2005

## Lead Settlement Counsel - Major Tasks

1. Develop Legal Basis for Settlement Structure:

February 1999-April 1999

2. Oversee Notice Plan:

May-August 1999

3. Respond to Fairness Objections:

Wolinsky; Senn; Eagleburger; Weiss et al.:

September-November 1999

May-June 2000

4. Renegotiate Aspects of Settlement Agreement: Amendment 2

art; insurance; access to bank account info; acceleration:

December 1999-November-2000

5. Support Fairness of Settlement in District Court - Chief Judge Korman:

May 2000-August 2000

6. Defend Class Definition - 2<sup>nd</sup> Cir:

October 1999-August 2000

7. Defend Appeals from Fairness Finding:

Weiss; Dunaevsky:

September 1999-May 2000

8. Oversee Allocation Process - Access to Special Master:

April 1999-September 2000

9. Support and Defend Allocation Plan in District Court - Chief Judge Korman

September 2000-November 2000

10. Defend Allocation Appeals:  
Weiss-HSF; Clark; Schonbrun; Katz; Friedman; Blaustyn:  
  
December 2000-July 2001
11. Brief and Argue Allocation Appeals - 2<sup>nd</sup> Cir.  
Clark; Katz; Friedman  
  
May 2001-August 2001
12. Enforce Compound Interest on Escrow Fund - Judge Block  
  
August 2001-August 2002  
April 2003-May-2003
13. Secure Income Tax Relief - Congress  
  
March 2001-June 2001
14. Defend Slave Labor II Self Identification and After-Acquired Rulings - 2<sup>nd</sup> Cir  
  
April 2001-February 2002
15. Defend After-Acquired Ruling on Remand - Judge Block  
  
February 2002-July 2003
16. Review and Oppose Attorney's Fee Applications - Chief Judge Korman  
  
December 2000-February 2001  
February 2002-December 2002  
July 2003-October 2003
17. Defend Appeal from Attorneys fee Ruling - Dubbin - 2<sup>nd</sup> Cir  
  
April 2004-September 2004  
April 2005-September 2005
18. Oversee Interest Allocation Process  
  
June 2002-September 2002  
July 2003-November 2003



19. Defend Special Master's Interest Allocation Reports - Chief Judge Korman

August 2002-September 2002

August 2003-November 2003

April 2004

20. Renegotiate Access to Information: Amendment 3

New publication/TAD Access/NYC facility

January 2003-June 2004

21. Defend Appeals from Interest Allocation Orders - 2<sup>nd</sup> Cir

DRA/Pink Triangle/HSF

April 2004-September 2004

April 2005-September 2005

22. Enforce Access to Bank Account Information - Judge Block  
NYC office; publication of additional names; TAD access

January 2004-July 2004

23. Consider Secondary Distribution Issues - Chief Judge Korman

September 2003-December 2003

January 2004 - May 2004

July 2005-September 2005

24. Implement Amendment 3

September 2004-December 2004

January 2005-September 2005

25. Oversee CRT; Slave Labor; Refugee Looted Assets Claims Process

Daily - routine tasks

November 2004-December 2004

January 2004-April 2004 - Bloch-Bauer

26. Communicate with Class Members

Daily - routine tasks

27. Public Education Concerning Settlement

November 2004-December 2004

January 2005-February 2005

EXHIBIT B

Time-Line: Burt Neuborne

January 1999-September 2005

Tasks in Swiss Banks Case

Burt Neuborne: Time Line - Swiss Case

- January 1997 - app'ted co-counsel for all parties
- February-March 1997 - organize Executive Committee
- April-May 1997 - research; briefing
- June, 1997 - file brief on merits
- July, 1997 - file amended cplts
- August, 1997 - argue case before Judge Korman
- Sept. 1997-July 1998 - Eizenstat negotiations
- August 1998 - Korman negotiations
- August 12, 1998 - settlement agreement
- September-December 1998 - draft settlement agreement
- January 1999 - execute settlement agreement
- February 1999 - organize settlement counsel
- March 1999 - develop theory of settlement - structure -  
notice, bifurcation, opt out, Special Master  
allocation - Rawls. Hirschman
- April 1999 - appted Lead Settlement Counsel  
Judah appted Special Master (March 31)
- May- August 1999 - notice; questionnaires; public education
- September-October 1999 - review objections; questionnaires  
Polish-American intervention
- November 1999 - fairness hearing - objections - Weiss  
Wolinsky; Schonbrun; Dunaevsky Art; Ins; info; cost
- December 1999 - fairness hearing; direction to renegotiate  
dismissal Dunaevsky appeal

January-June 2000 - negotiate Amendment 2  
Art; ins; info access; cost of admin/acceleration;  
Polish-American appeal

July 2000 - fairness opinion; withdrawal of Wolinsky objection

August 2000 - argue Polish-American appeal

September 2000 - Special Master's allocation report  
Decision in Polish-American appeal  
Weiss appeal; Dunaevsky appeal

November 2000 - allocation hearing; order adopting Special Master's report  
Dismissal of Weiss appeal

December 2000 - withdrawal of Dunaevsky appeal  
Allocation appeals - Clark; Weiss; Katz; Friedman; Blausteyn

January 2001 - atty fees; withdrawal of Schonbrun appeal

February 2001 - publication of bank account names

March-April 2001 - prepare appeals -Clark; Weiss; Katz; Friedman

May 2001 - withdrawal of Weiss appeals  
Lobby for tax relief

June 2001 - withdrawal Clark appeal  
Income tax exemption

July 2001 - withdrawal of Katz appeal; argument of Friedman appeal; opinion upholding  
allocation

August 2001 - dispute over escrow fund - transfer to settlement fund - compound interest

September 2001 - slave labor II; escrow interest

October-November 2001 - slave labor II appeal; CRT; Katz claim

December 2001 - slave labor II claim

January 2002 - argue slave labor II appeal

February 2002 - opinion in slave labor II; rehearing petition  
Attorneys fees review; escrow interest review

March 2002 - slave labor II; escrow interest; surgery

April 2002 - escrow interest motion  
review atty fees

May 2002- file escrow interest papers  
review atty fees

June 2002 - Dubbin fees  
Interest allocation  
Escrow interest

July 2002 - argue escrow interest case  
Review atty fees

August 2002 - post-argument papers  
Interest allocation

September-October 2002 - slave labor II papers on remand

November - Fagan's fees - plaintiff distributions

December 2002- slaver labor II neg

January-February 2003 - slave labor II neg

March 2003 - Interim Report

April 2003 - escrow interest opinion; collection

May-July 2003 - slave labor II neg

July 2003 - Dubbin fees

August-September 2003 - Dubbin allocation  
TAD/HCPO matching

October 2003 - interest allocation; HSF objections

November 2003 - HSF objections

December 2003 - allocation; secondary dist; info access; Dubbin

January 2004 - prepare motion for more info

February 2004 - Zurich negotiations on info access

March 2004 - AM 3 neg; Dubbin

April 2004 - DRA/Pink Triangle; Dubbin; secondary dist hearing; AM 3 neg

May 2004 - AM 3 neg

June 2004 - agreement on AM3; allocation appeals/ Dubbin fee appeal

July-August 2004 - HSF/Dubbin/DRA/Pink Triangle appeals

September 2004 - review reply briefs; Am 3/slave labor II releases/bank access to CRT denials

October 2004 - implement Am3/TAD access/names/NYC facility/acknowledgments

November 2004 - implement Am 3/names/TAD/Bloch-Bauer issues/notice/publication

December 2004 - Bloch-Bauer/interim report/implement Am3/late claims

January 2005 - Bloch-Bauer/publication of new names/notice

February 2005 - Bloch-Bauer/interim report

March 2005 - Mondex/Bloch-Bauer/CRT rejections - review

April 2005 - NYC facility/Bloch-Bauer/begin preparing for appeal

May 2005 - argue appeals/State dept/review ins process

June 2005 - TAD access/presumptive value/State Dept

July 2005 - presumptive value/TAD access/residual distribution/ICHEIC ins

August 2005 - vacation/TAD access/ICHEIC

September 2005 - TAD access/insurance claims/review opinions/Mondex/residual

EXHIBIT C

Combined Time-Charges

January 1999-September 2005

Swiss Banks Case



1999

January

1/26/99 - settlement signed

1/28/99 - conf call re structure

2 hrs - discussion among counsel re structure

1/28/99 - review possible structures

8.5 hrs - research; discussions

1/30/99 - review possible structures

11 hrs - research; discussions re possible structures

February

2/1/99 - structure/notice

6 hrs - research; conv Morris; review notice in other cases

2/1/99 - phone conf Mel

2 hrs - report on status; advice

2/2/99 - structure/notice/opt out

1 hr - review materials

2/2/99 - phone conf Mel

2 hrs - discussion of options

2/3/99 - review bifurcation

9 hrs - research cases; discussions with counsel

2/3/99 - phone conf Mel/Hausfeld

1.5 hrs - conf Mel/Mike re options

2/4/99 - memo re potential structures

5 hrs - draft memo re options on potential structures

2/5/99 - conf call with judge re structure

1.5 hrs - conf call with Judge re structure

2/6/99 - conf with Mel re structure

3 hrs - discussion of possible structures

2/7/99 - review notice issues

11 hrs - research; review materials; possible vendors

2/8/99 - discuss impact on elderly victims

3 hrs - psychologists on content of questionnaires

2/8/99 - report to court on notice issues

3.5 hrs - conf with court re notice issues

2/11/99 - memo re notice - Morris

3.5 hrs - memo to Morris re notice issues

2/13/99 - conf Morris re notice

4 hrs - discussion re notice issues

2/14/99 - conf Morris re structure

3 hrs - discussion re structure of settlement

2/15/99 - draft notice material

5 hrs - draft materials; discuss with colleagues

2/16/99 - draft notice material

4 hrs - redraft notice materials

2/17/99 - conf with Mel re structure

1.5 hrs - discussion re structure - tactics

2/18/99 - conf Morris re notice

3 hrs - discussion re notice issues

2/20/99 - review bifurcation - pre-commitment

14 hrs - research political science; caselaw

2/21/99 - pre-commitment memo - Rawls

6.5 hrs - research on "veil of ignorance"

2/22/99 - Hirschman - legitimacy of bifurcation

5 hrs - research on "exit; loyalty; and voice"

2/23/99 - report to court on bifurcation, notice

2 hrs - conf with court on theory of settlement

2/24/99 - conf Mel re structure - cost of admin

1.5 hrs - conf on structure; costs

2/25/99 - escrow agreement - cost of notice

8 hrs - review escrow agreement; research on cost of notice

2/26/99 - report to court re payment mechanism, costs

2 hrs - report to court on mechanics for payment; cost of notice

2/28/99 - letter objecting to exclusion of Poles

5 hrs - review cases on class definition

### March

3/1/99 - review class definition

6.5 hrs - review cases; notes of negotiations

3/2/99 - review settlement class cases

7 hrs - review settlement class cases - class definition issues

3/3/99 - review settlement class cases; class definition

3 hrs - continue reviewing settlement class cases; notes of negotiations

3/4/99 - review conflict rules in class actions

5.5 hrs - review conflicts rules in class actions - cases; ethical rules

3/6/99 - conf with Mel

2 hrs - conf re conflict issues

3/8/99 - Iwanowa oral

German cases - no charge to Swiss case

3/9/99 - review provisional certification material

5 hrs - review documents; re-draft

3/8-10 - Bonn negotiations

German cases - no charge to Swiss case

3/11-12/99 - trial lawyers re settlement

3 hrs - discussion of settlement; advice on structural options

3/18-19/99 - LA talk

9 hrs - draft speech; describe settlement to interested community

3/20/99 - review Morris's dec

2.5 hrs - review Morris's dec re notice; provisional cert

3/24/99 - conf Mel/Hevesi

5 hrs - discussion re structure

3/26/99 - appted settlement counsel

1 hr - discussion on role

3/26/99 - neg re structure

5 hrs - discussion re structure; opt out

3/26/99 - defend settlement

1 hr - memo re neg

3/26/99 - Swiss neg

1 hr - discussion re structure

3/26/99 - Swiss neg

2hrs - conf call re structure

3/26/99 - defense

2 hrs - draft response to critics

3/26/99 - conf at NYU

4 hrs - describe settlement to interested community

3/27/99 - review provisional certification materials

1 hr - review materials

3/28/99 - review provisional certification material

1 hr - review materials

3/30/99 - defend settlement

3 hrs - draft response to critics

3/30/99 - conf call re structure

2.5 hrs conf call re structure

3/30/99 - provisional certification granted

1 hr - review order; notify counsel

3/31/99 - Gribetz appointed

1 hr - review order; conv with Judah

## April

4/1/99 - provisional certification dec filed

2 hrs - review papers; disc. with counsel

4/2/99 - Hungarian issues

1 hr - meeting with victims

4/3/99 - begin drafting notice materials/questionnaires

5 hrs - drafting; cases; discussions

4/8/99 - conf with Witten re structure/notice

2.5 hrs - discussions with Witten over structure/notice

4/8/99 - notice materials; delivery systems

5.5 hrs - draft notice materials; research delivery mechanisms

4/12/99 - Hevesi press conf

3 hrs - draft materials; discuss settlement as part of notice program

4/13/99 - bifurcation issues

9 hrs - research bifurcation issues; memo re opt out

4/14/99 - notice, bifurcation

2 hrs - research; drafting notice materials; bifurcation mechanism

4/15/99 - Hevesi mtg

1 hr - meeting with Hevesi re structure

4/20/99 - app't lead counsel

1 hr - app'd lead counsel; discussion with colleagues

4/20/99 - JLS report

1 hr - meeting with JLS to organize students to help victims

4/22/99 - Judah Gribetz

5 hrs - meeting; general discussion; memo to files; report to counsel

4/23/99 - Mel Weiss

3 hrs - meeting re structure; advice

4/23/99 - AJC

2 hrs - meeting AJC - explain settlement; seek assistance

4/23/99 - Alumni

2 hrs - brief interested alumni - seek assistance

4/24/99 - Alumni

1 hr - discussions with alumni on settlement

4/26/99 - notice - structure

4 hrs - draft materials for notice; research structure

4/26/99 - Siemens argument

German cases - no charge to Swiss case

4/27/99 - review opposition to provisional certification

3.5 hrs - review documents opposing provisional certification

4/27/99 - memo re objections

4.5 hrs - draft memo on objections; case research

4/27/99 - Korman re notice/structure

2 hrs - report to court re notice; structure

May

5/4/99 - notice

3.5 hrs - review notice program; delivery mechanisms

5/4/99 - review notice plan

2.5 hrs - review notice program; cost; caselaw

5/5/99 - review notice plan

4.5 hrs - review cases on notice

5/6/99 - defend settlement - LA

4 hrs - explain settlement to west coast community leaders

5/7/99 - notice

5.5 hrs - review aspects of notice program; slave labor; refugee

5/7/99 - conf call re structure

3.5 hrs - conference with co-counsel re structure/notice

5/8/99 - review notice plan

3.5 hrs - review notice plan - bank accounts

5/10/99 - order adopting notice plan, setting fairness hearing for 11/29

1 hr - review order on notice plan/fairness hearing

5/11-12/99 - Washington re German talks

German cases - no charge to Swiss case



5/16/99 - conf Mel re opt out/bifurcation

3 hrs - report to Mel on status/advice

5/17/99 - Mel

2 hrs - conf on bifurcation/notice

5/18/99 - Witten

3.5 hrs - conf with Witten re notice/fairness

5/19/99 - Austrian press

1 hr - description of settlement; notice program

5/20/99 - TV

1 hr - description of settlement - notice program

5/21/99 - review notice materials

2.5 hrs - review progress of notice program

5/21/99 defense

2.5 hrs - description of settlement to community leaders/ notice program

5/24/99 - conf re structure/allocation

3.5 hrs - discussion re structure/allocation

5/26/99 - Chicago survivors

5 hrs - description of settlement to Chicago community/notice program

5/27/99 - notice; structure

5 hrs - review mechanics of notice program; cost

5/27/99 - notice

5 hrs - review caselaw on notice; no changes needed

5/28/99 - admin

3 hrs - mechanics of bill payment; review invoices

5/28/99 - memo

2 hrs - memo to files re status of notice program

## June

6/1/99 - conf with Korman, Gribetz, Witten

3.5 hrs - conf on status of notice; allocation of costs

6/2/99 - Morris Ratner

4 hrs - conf re notice program; cost allocation

6/3/99 - distribution mechanics

4.5 hrs - review of distribution options

6/11/99 - begin distribution of notice

2 hrs - distribution of notice; review mechanics

6/14-15/99 - Charlottesville

5 hrs - describe settlement to 4<sup>th</sup> Cir judges; conf re structure

6/17/99 - written testimony House Judiciary

5 hrs - draft Congressional testimony describing settlement

6/15-18 - Bonn negotiations

German cases - no charge to Swiss case

6/22/99 - Swiss archives

3 hrs - effort to obtain information - call; letters

6/28/99 - Mel Weiss

2 hrs - report on notice program/discussion of allocation

6/29/99 - Mike Hausfeld

2 hrs - report on notice program/discussion of allocation

6/29/99 - NY Hilton - notice press conf

4 hrs - press conference on settlement/ notice program

## July

7/6/99 - NYS Banking

4 hrs - conf re bank account claims

7/12/99 - Degussa/Siemens argument

German cases - no charge to Swiss case

7/13/99 - NYS Banking

1 hr - memo re NYS banking issues

7/21/99 - Judah Gribetz

3 hrs - prep/mtg with Judah re allocation issues

7/26/99 - Judah Gribetz

4 hrs - prep/mtg re allocation issues; memo to files; inform colleagues

7/27-29/99 - Bonn

German cases - no charge to Swiss case

## August

8/1/99 - Pop's death

8/3/99 - memorial service

8/4/99 - Leslie's birth

8/5/99 - Greenaway oral

German cases - no charge to Swiss case

8/9/99 - Swiss admin

5 hrs - review invoices; mechanics of bill payment

8/10/99 - notice

4 hrs - review status of notice program

8/10/99 - Judah Gribetz

5 hrs - prep/discussion allocation issues

8/22-24/99 - Bonn

German cases - no charge to Swiss case

8/23/99 - notice

2 hrs - review Swiss notice materials after negotiations recess

## September

9/1/99 - report of notice administrator

4.5 hrs - review report of notice administrator

9/3/99 - status conf

3.5 hrs - report to judge on notice; questionnaires; costs

9/7/99 - Swiss admin

5 hrs - review invoices; bank accounts

9/11/99 - review notice program report

6 hrs - review notice report; review selected questionnaires

9/12/99 - defense

1 hr - description/defense of settlement

9/12/99 - defense

1 hr - description/defense of settlement

9/13/99 - dismissal of German cases

German cases - no charge to Swiss case

9/14/99 - speech; memo re Swiss case

4 hrs - report on status of settlement; memo to files on open issues

9/19/99 - role on fees

3 hrs - case research on role on fee disputes

9/22/99 - review notice program report

4 hrs - review notice administrator report; conv with colleagues re notice

9/24/99 - claim info

4 hrs - review of claim information

9/28/99 - info

4 hrs - review of claim information; memo re claims program

## October

10/9/99 - conf Mel

3 hrs - report on status/ advice

10/11/99 - lecture UVA

3 hrs - description of settlement; issues raised in administration

10/13/99 - admin

3 hrs -review invoices; costs

10/13/99 - Mel

2 hrs - conv re allocation issues

10/14/99 - Morristown JCC

3.5 hrs - description of settlement to NJ community/notice program

10/17/99 - Westchester JC

3.5 hrs - description of settlement to Westchester community/notice program

10/20/99 - Senn objection

2.5 hrs - review Senn objections - insurance releases

10/21/99 - review Senn objection

5 hrs - review Senn objections - case research

10/21/99 - conf with judge

2.5 hrs - conf with judge re Senn objection; other objections

10/22/99 - begin reviewing randomly selected questionnaires

11 hrs - read questionnaires; notes re claims program

10/22/99 - last day to file objections

1.5 hrs - compile objections for review

10/22/99 - intervention motion by Poles

5 hrs - research re intervention - exhausting day

10/23/99 - begin drafting fairness dec; memo of law

5 hrs - drafting; case research; review objections

10/24/99 - begin reviewing objections; questionnaires

5.5 hrs - review questionnaires; objections

10/25/99 - review DRA contingent objection

3.5 hrs - research nature of contingent objection; review notice

10/26/99 - review notice program

4 hrs - case research; review notice issues

10/27/99 - conf call re fairness hearing

3.5 hrs - conf call to plan for fairness hearing

10/28/99 - Mel's office

4 hrs - conf on fairness; review of objections

10/28/99 - chamber's conf

4 hrs - chambers conf - review of objections

10/29/99 - review Polish objection

4 hrs - research re Polish objection

10/29/99 - review notice administrators' report

5 hrs - review final notice administrator's report; correlate with objections

10/30/99 - memo re various objections; report to judge

5 hrs - memo to files re various objections; conf with judge re fairness hearing

10/31/99 - memo to files on success of notice program

3.5 hrs - memo re success of notice program; correlation to objections

November

11/1/99 - review random questionnaires

9 hrs - read questionnaires; notes on claims programs

11/2/99 - read questionnaires

3 hrs - memo re questionnaires

11/2/99 - Lieff, Cabreser

3.5 hrs - conf with Morris/Elizabeth re fairness; notice

11/3/99 review Morris' fairness papers

2.5 hrs - review Morris' papers - no changes

11/3/99 - chamber's conf Korman

4 hrs - conf re notice/objections/costs/fairness hearings

11/3/99 - Mel's

2.5 hrs - prep for chambers conf

11/4/99 - review notice report

1 hr - review notice report

11/4/99 - complete final draft dec fairness

11 hrs - draft; research; discussions

11/5/99 - file dec re fairness/structure

3 hrs - complete and file fairness declaration

11/5/99 - review Swiss objections

5.5 hrs - review objection for fairness hearing

11/5/99 - review def memo



1 hr - review banks' materials

11/8/99 - status conf with judge

4 hrs - chambers conference in prep for fairness hearing

11/8/99 - Marilyn Henry

1 hr - description of settlement for Israeli audience

11/8/99 - Chicago talk

2 hrs - description of settlement to Chicago community

11/12/99 - Columbia talk

2 hrs - description of settlement to New York community

11/15/99 - Polish appeal

5 hrs - case research; begin preparing for appeal

11/15/99 - JLSA

1 hrs - organize students to assist victims

11/15/99 - Mel's office

4 hrs - prep for fairness hearing

11/15/99 - file supp dec re fairness-response to objections

12.5 hrs- complete declaration responding to objections - exhausting day - 4am on plane

11/15-18/99 - negotiations Bonn

German cases - no charge to Swiss case

11/19/99 - Judah

4 hrs - discussion re fairness hearing/allocation issues

11/19/99 - Swiss admin

5 hrs - review invoices; bank accounts; payment mechanics

11/20/99 - review Eagleburger objections

2 hrs - review Eagleburger objections; compare with Senn

11/22/99 - review notice material/report

3 hrs - prepare for conf with Eliz Cabreser re notice issues - 5am

11/22/99 - Eliz Cabreser

3 hrs - conf with Eliz cabreser re notice/fairness issues - 9am

11/22/99 - hearing on objections - all afternoon

3.5 hrs - court hearing re certain objections

11/22/99 - Schonbrun

1 hr - review of Schonbrun objection

11/22/99 - Duneavsky

1 hr - review of Duneavsky objection

11/22/99 - hearing Poles' motion to intervene

2.5 hrs - hearing on intervention motion - lv. court 7pm

11/22/99 - prepare brief on fairness

4 hrs - begin fairness brief - 8-12pm - exhausting

11/23/99 - prepare brief on fairness

9 hrs - draft fairness brief

11/24/99 - Sid Wolinsky

2 hrs - discussion of objection

11/24/99 - Schonbrun

2 hrs - discussion of objection

11/24/99 - conf call re objections

5 hrs - prep/conference call re status of objections

11/25/99 - prepare for fairness hearing

3.5 hrs - prepare for fairness hearing; caselaw; review objections

11/26/99 - prepare for fairness hearing

4.5 hrs - research; allocation possibilities

11/27/99 - review Weiss let

1.5 hrs - review insurance release issue

11/28/99 - prepare for fairness hearing

5 hrs - review objections

11/29/99 - fairness hearing

12 hours - court hearing on fairness - all day

11/30/99 - conf call with judge

2 hrs - conf re fairness hearing

11/30/99 - conf call with counsel

4 hrs - discussion of issues raised at fairness hearing

11/30/99 - memo re objections - proposed responses

2 hrs - memo to files re objections/responses

## December

12/1/99 - conf call with judge

3.5 hrs - discussion of issues raised at fairness hearing

12/2/99 - draft dec response to hearing

5 hrs - begin drafting responsive declaration

12/3/99 - review of objections

4.5 analysis of objections; case research

12/4/99 - review of objections

5 hrs - case research; review of filed documents; notice reports

12/6/99 - conf call re objections

3.5 hrs - discussion of objections among counsel

12/7/99 - CRT structure

5 hrs - consideration of bank account structure/CRT

12/7/99 - denial of Polish intervention motion

1 hr - review of denial of intervention motion

12/8/99 - mem on status

3.5 hrs - memo re status of fairness proceeding; notice program

12/9/99 - Judah re objections

3.5 hrs - disc with Judah re objections - info for clams process

12/9/99 - review Volcker report

11 hrs - review Volcker report issued on Dec 8

12/9/99 - memo on effect of Volcker report on settlement

5 hrs - memo analyzing effect of Volcker report on fairness - all night

12/10/99 - conf call with judge

3.5 hrs - conf call with court re Volcker/Jerusalem hearing

12/11/99 - review impact of Volcker audit on settlement - should we re-open?

5 hrs - consideration of whether Volcker report requires re-opening negotiations

12/13/99 - review notice material/ updated report

3 hrs - review notice materials for fairness hearing

12/14/99 - Jerusalem fairness hearing - all night

12.5 hrs - judge's chambers; phone hookup with Jerusalem

12/14/99 - Singer

3.5 hrs - conv re Volcker report

12/15/99 - memo re second fairness hearing

4.5 hrs - begin dec in response to second fairness hearing

12/15-18/99 - Berlin

German cases - no charge to Swiss case - agreement reached on size of German Found

12/19/99 - begin drafting dec responding to second hearing

5 hrs - draft responsive declaration

12/20/99 - reaction memo

2.5 hrs - memo to files on open issues

12/20/99 - prepare for mtg with judge on objections

2.5 hrs - prepare for discussion on response to objections

12/21/99 - prepare for meeting with judge

3 hrs - prepare for meeting with judge re objections

12/22/99 - chamber's conference re hearings - noon

4 hrs - direction to renegotiate aspects of agreement - ins/info access/costs/art

12/22/99 - review supplemental submission

2 hrs - review declarations; proposed supplemental

12/22/99 - memo re direction to renegotiate

2 hrs - memo to files on negotiations directed by court

12/23/99 - order modifying reference to Special Master

1 hrs - review order/role of Special Master

12/26/99 - review of Weiss, Dunaevsky, Wolinsky objections

11 hrs - review and analysis of pending objections likely to be pursued

12/28/99 - review settlement structure - implementation memo

10 hrs - review settlement structure in light of likely objections

12/28/99 - dismiss Dunaevsky

3 hrs - arrange for dismissal of Dunaevsky appeal - oppose ifp

12/29/99 - plan to renegotiate art/insurance/access to info/cost of CRT

5 hrs - prepare plan for renegotiation

12/30/99 - Dublin let

2 hrs - review letter - analyze likely objection

## 2000

### January

1/3/00 - Witten - plan for renegotiation

3.5 hrs - initial discussion of re-negotiation

1/4/00 - structure/admin

8 hrs - review of structure, administration - areas for re-negotiation

1/4/00 - plan for implementation of each class

3.5 hrs - class by class plan of implementation

1/5/00 - begin neg on art

7 hrs - mtgs; research re art issues

1/6/00 - structure/admin

2.5 hrs - mechanics of distribution; CRT info

1/6/00 - report to judge; structure of CRT

3.5 hrs - discussion of CRT; info needs

1/6/00 - Bradfield, Burgenthal, Korman

3.5 hrs - discussion re staffing CRT

1/7/00 - neg art

4.5 hrs - disc re art; British practice

1/8/00 - neg art

5.5 hrs - disc and research re art law issues; US practice

1/9/00 - memo re art/neg on cost of CRT - acceleration

11 hrs - British practice; discussion on funding CRT/acceleration-interest

1/10/00 - begin ins discussions

9 hrs - research; review of pending ins cases

1/11/00 - memo on approaches

5 hrs - memo on options for ins/acceleration of payment

1/12/00 - ins discussions

8 hrs - discussion of insurance options with various parties

1/13/00 - begin discussions on info access

12.5 - research; discussion of info options with various parties

1/14/00 - info access neg - Swiss addresses

14 hrs - review questionnaires; caselaw; Swiss address problem

1/15/00 - acceleration discussions

9 hrs - discussions re acceleration; interest calculations; alternatives

1/17/00 - admin structure

4 hrs - conf with Zurich re info needs

1/17/00 - Mel

3 hrs - conf with Mel re state of negotiations

1/18/00 - neg ins/info access

9 hrs - discussion/drafting on ins/info access

1/19/00 - neg info access

11 hrs - research re court's power to order info; discussions

1/20/00 - memo re neg status; neg continue on all issues

6.5 hrs - conf with parties on status of neg on each issue

1/21/00 - draft art changes

5.5 hrs - research re forum non in art cases; drafting

1/22/00 - report to court on status of neg

9.5 hrs - prep/report to court re status of neg/disc re power to order info

1/23/00 - neg continues - all issues

11 hrs - negotiation on all issues; dis with various parties

1/24/00 - acceleration discussions; AM 2 discussed

7 hrs - acceleration computations; form of AM 2 discussed

1/25/00 - PILF



2 hrs - organize student volunteers to help victims

1/28/00 - oral - McCain

Brennan Center - no charge to Swiss case

1/29/00 - cost of CRT - acceleration

11 hrs - research re cost of CRT/ discussion of text/ calculations

1/30/00 - conf with Mel

4 hrs - conf with Mel re status of neg/tactics

1/30/00 - conf with court

3 hrs - conf with court re status of neg

1/31/00 - Dubbin/Weiss objection filed

2hrs - review of documents

## February

2/2/00 review Dubbin/Weiss objection

9 hrs - research re possible ins claims

2/2/00 - neg continue; art completed; ins underway

6.5 hrs - agreement reached on art; drafting; continue ins talks

2/2/00 - Swiss TV

1 hr - describe settlement to Swiss audience

2/3/00 - conf with judge Korman

5 hrs - memo/prep/disc of issues

2/3/00 - ins neg

4.5 hrs - disc with various companies

2/4/00 - neg continue - acceleration

7.5 hrs - drafting; escrow agreement; calc; research re text

2/7/00 - conf call - allocation

9 hrs - prep; discussions re allocation options; research

2/8/00 - allocation

9 hrs - discussions with interested parties over allocation issues

2/9/00 - NYS Bank

2.5 hrs - disc with banking officials re info access

2/9/00 - cost of CRT

7 hrs - review budget; discuss alternatives

2/10/00 - 9am con call

9 hrs - allocation issues; ost call discussions with interested parties

2/11/00 - conf call

7 hrs - AM - allocations issues; CRT costs, access to info

2/11/00 - mtg with Korman

4 hrs - PM - status report; chambers

2/11/00 - AM 2 neg

6.5 hrs - evening - drafting; research

2/13/00 - AM 2 neg

9 hrs - disc with various parties on info access

2/14/00 - AM 2 neg

9 hrs - CRT info access; research; drafting discussions

2/16/00 - chamber's conf

5 hrs - chambers conf re info access; ins; cost

2/17/00 - memo summarizing state of neg

3.5 hrs - draft memo summarizing iopen issues; discussion

2/16-18/00 - Berlin negotiations

German cases - no charge to Swiss case

2/18/00 - draft Swiss order

4 hrs - draft order compelling info - not signed

2/19/00 - Polish brief

15 hrs - research for Polish appeal brief

2/19/00 - AM 2 neg

3 hrs - ins info access - late night

2/20/00 - Polish brief

14 hrs - research re Polish brief - standing; class definition

2/21/00 - Polish brief

15 hrs - research; begin drafting brief

2/23/00 - AM 2 neg

11 hrs - research re Swiss law on info; discussions with co-counsel

2/23/00 - Korman, Witten

7 hrs - late afternoon conf re status; evening discussions

2/24/00 - memo re status of neg

4 hrs - memo re status of discussions

2/25/00 - Korman's chambers

5 hrs - status report; discussion of options

2/28/00 - AM 2 neg

8.5 hrs - discussions with various parties

2/29/00 - chambers conf

4 hrs - chambers conf re status/options

### March

3/1/00 - Witten

4 hrs - disc re info access; draft

3/1/00 - NY Times

2 hrs - describe settlement

3/2/99 - review notice to disabled

5 hrs - review notice to disabled/research/review documents

3/2/00 - Korman conf call

3 hrs - status review; disc options

3/2/00 - Witten call

2.5 hrs - discussion of open issues

3/3/00 - AM 2 ins

5 hrs - ins discussions with various parties

3/3/00 - AM 2 neg

2 hrs - draft proposals

3/3/00 - AM 2 neg

3 hrs - research re claims process

3/4/00 - ins neg

9 hrs - discussions on insurance claims program; research

3/5/99 - review Wolinsky material, confer with Morris

5 hrs - review notice issues; conf Morris

3/7-8/00 - German neg. DC

German cases - no charge to Swiss case

3/10/00 - neg

11 hrs - round robin discussions on all issues

3/10/00 - AM 2 neg

2 hrs - draft proposals

3/11/00 - Swiss neg

5 hrs - info access/database

3/12/00 - Swiss neg

5 hrs - info access/publication issues

3/13/00 - Polish appeal

11 hrs - review appellant's brief; research

3/14/00 - begin drafting fairness dec

14 hrs - begin drafting final fairness dec

3/14/00 - Hebrew Union speech

2 hrs - describe settlement to reform rabbis

3/14/00 - AM 2 neg

1 hrs - draft proposal - late night

3/16/00 - Circuit brief - Polish case

11 hrs - draft; research

3/16/00 - conf call

6.5 hrs - Polish appeal discussions/court/all counsel

3/17/00 - Morris

7 hrs - review notice docs/discuss publication issues

3/18/00 - report to Korman on neg status

6 hrs - prepare/report to court on status of all negotiations

3/20/00 - Polish appeal - sched - Scardilli

3 hrs - sched; disc issues

3/21-24/00 - Berlin

German cases - no charge to Swiss cases

3/26/00 - draft text of AM 2

11 hrs - drafting; discussions; research

3/27/00 - power of court to order info

9 hrs - research; effort to persuade court

3/28/00 - Korman

5 hrs - discussion re power/prep

3/29/00 - chambers conf

4 hrs - status of all neg

3/30/00 draft order compelling info

11 hrs - draft order compelling info; research; discussions

April

4/1/00 - conf court re inherent powers

4 hrs - discussion; research

4/2/00 - AM 2

5 hrs - ins program; memo/ disc

4/3/00 - memo AM 2

8 hrs - ins claims program/research/drafting/discussions

4/3/00 - draft dec re fairness

4 hrs - work on fairness draft

4/4/00 - Dubbin objection

4.5 hrs - review Dubbin objection

4/4/00 - conf Mel re negotiations, structure

2.5 hrs - conf re structure; neg tactics

4/6/00 - Columbia panel

1 hrs - describe settlement to student volunteers

4/7/00 - fairness dec

7.5 hrs - draft/revise

4/8/00 - ins neg

7 hrs - disc Marc/ various companies

4/10/00 - AM 2

7.5 hrs - disc re CRT information access

4/11/00 - neg - all day

14 hrs - various discussions CRT info access/ins claim process

4/11/00 - AM 2

6 hrs - draft proposals - all night

4/12/00 - conf with judge

6 hrs - prep/disc ins issues

4/12/00 - Mel Weiss

5 hrs - prep/conf re all open issues

4/13/00 - review objections for fairness dec

9.5 hrs - review all objections on fairness/dec

4/14/00 - acceleration calc, info access

4.5 hrs - disc. Info access/calc acceleration

4/15/00 - memo re liability for CRT costs

5 hrs - memo on CRT costs/original text

4/16/00 - research re tax status of settlement

8.5 hrs - research re taxability of interest/dist

4/17/00 - memo re possible tax relief

5 hrs - draft memo re tax relief

4/18/00 - Swiss neg - all day

12.5 hrs - research re Swiss law; fed power; ins claims

4/18/00 - AM 2

5 hrs - evening - drafting

4/18/00 - AM 2

2 hrs - phone conf with Zurich re ins



4/18/00 - AM 2

1.5 hrs - draft memo re open issue - late night

4/19/00 - conf call - Roger

4 hrs - prep/call re issues

4/19/00 - report to court

5 hrs - prpe/report on status of ins neg

4/20/00 - AM 2

3 hrs - ins discussions

4/21/00 - AM 2

4 hrs - ins discussions

4/23/00 - AM 2

5 hrs - disc re ins claim program

4/24/00 - AM 2 neg

6.5 - ins program disc/drafting

4/25/00 - access to info

5 hrs - info access disc/research re discovery

4/26/00 - AM 2

5 hrs - various disc on al open issues

4/27/00 - Dubbin/Weiss objection

3.5 hrs - review objection; discuss issues

4/27/00 - proposed disc order

11 hrs - draft/discuss proposed discovery order

4/28/00 - dec re fairness

11 hrs - redraft/disc/research

4/28/00 - ins neg

5 hrs - conv various parties re ins

4/30/00 - Polish appeal

14 hrs - review cases; draft brief

May

5/1/00 - neg - Witten

5 hrs - discuss open items/ consult colleagues

5/3/00 - AM 2 neg

6 hrs - conf on open issues

5/3/00 - Polish appeal

11 hrs - draft brief

5/4/00 - chamber's conf

6 hrs - memo chambers conf

5/6/00 - Whittier talk

2 hrs - describe settlement to California victims

5/8/00 - AM 2

4 hrs - info access disc

5/9/00 - Wilmer, Cutler

4 hrs - ins/CRT/slave labor II

5/9/00 - proposed order

5 hrs - draft proposed order on fairness

5/10/00 - Swiss structure, neg

5 hrs - slave labor II/ interest/swiss address

5/10/00 - dec fairness

6.5 hrs - fairness decl/revise/circulate draft

5/11/00 - conf with Mel; Gideon, Israel Singer

3.5 hrs - disc re Judah's objections

5/12/00 - conf with judge

5 hrs - disc open neg issues/Judah's concerns

5/12/00 - admin

3 hrs - review invoices; casts

5/12/00 - fairness

3 hrs - dec on fairness; theory of structure

5/13/00 - AM 2

7 hrs - ins claims process; access to records

5/14/00 - Dubbin let

2 hrs - review/respond

5/16/00 - Romani objection

2 hrs - discuss Romani concerns

5/16/00 - AM 2

2 hrs - research re ins

5/16/00 - AM 2 Gribetz

2 hrs - conf Judah/info access

5/16/00 - AM 2

2 hrs - conf with counsel re ins

5/17/00 - conf call

2 hrs - status report to court

5/17/00 - Korman

2 hrs - discussion of options

5/18/00 - conf call

5 hrs - series of calls on all issues

5/19/00 - conf with judge

3 hrs - status conf - Judge's chambers

5/19/00 - draft order

5 hrs - draft order - releases/ins/info access

5/20/00 - Korman

3 hrs - disc info access - CRT

5/21/00 - AM 2

5 hrs - info access CRT - Witten

5/22/00 - draft AM 2

9 hrs - draft text of AM 2

5/24/00 - AM 2

5 hrs - discuss draft of AM 2 with all parties

5/24/00 - AM 2

2 hrs - revise aspects of text

5/25/00 - AM 2

5 hrs - discuss revised AM 2

5/26/00 - Mel - conf call

3 hrs - several discussions during day re status of neg

5/26/00 - AM 2

3 hrs - discussions open issues

5/30/00 - Marc Cohen

5 hrs - prpe/ins discussions

5/30/00 - AM 2

2 hrs - draft CRT info access

5/31/00 - AM 2

5 hrs - discuss draft - CRT info access

## June

6/1/00 - AM 2

6 hrs - conv with various companies re ins info

6/1/00 - AM 2

2 hrs - disc re Swiss address issues

6/1/00 - AM 2 -

2 hrs - memo re Swiss address issues

6/1/00 - interest

1 hr - re-calculate interest from acceleration

6/2/00 - AM 2

3 hrs - ins/Marc/Zurich call

6/2-6/00 - Palermo - draft Velazquez brief

3 hrs - describe settlement to Italian Jewish community

6/7/00 - Judah

4 hrs - discuss info access

6/7/00 - Mel

4 hrs - discuss neg/strategy

6/7/00 - Witten

2 hrs - discuss re releases

6/8/00 - AM 2

5 hrs - conv re info access/releases

6/8/00 - AM 2 Gribetz

4 hrs - discuss Judah's concerns

6/9/00 - AM 2

5 hrs - redraft AM 2; circulate

6/9/00 - AM 2

2 hrs - discuss redraft with counsel

6/9/00 - AM 2

1 hr - memo re status of neg

6/10/00 conf re status of neg

5 hrs - general discussion of open items

6/12/00 - Roger

4 hrs - review of positions

6/12/00 - AM 2

4 hrs - work on text; circulate

6/13/00 - draft dec fairness

11 hrs - work on fairness dec

6/13/00 - draft dec fairness

4 hrs - research caselaw

6/13-14/00 - adjourn German appeals

German cases - no charge to Swiss case

6/16/00 - conf re Swiss

4.5 hrs - conv on ins/info access/claims process

6/16/00 - AM 2

5 hrs - discussion of info access/disc/releases

6/16/00 - AM 2

2 hrs - ins /call Zurich

6/16/00 - draft dec fairness

9 hrs - fairness dec. /research - late night

6/17/00 - report to judge re status

3 hrs - status report/options disc

6/18/00 - fairness dec

6.5 - draft dec/research

6/19/00 - discuss draft dec

5 hrs. - circulate/discuss draft dec

6/20/00 - AM 2

9 hrs - ins neg; Zurich/conv various companies

6/22/00 - draft dec fairness

8 hrs - final draft/fairness dec

6/23/00 - AM 2

5 hrs - general discussions - all open issues - some progress

6/26/00 - file dec re fairness

5 hrs - complete/file fairness dec

6/26/00 - AM 2

6 hrs - ins neg/Zurich

6/26/00 - ins neg - cancel Zurich

5 hrs - ins neg./ access to info - cancel trip

6/28/00 - escrow settlement neg

5 hrs - review escrow mechanics for payment

## July

7/1/00 - ins neg

4 hrs - disc with various companies

7/2/00 - ins neg

5 hrs - discussion of claims program

7/2/00 - conf Wolinsky

2.5 hrs - conf re withdrawal of objection

7/5/00 - Wolinsky - withdrawal objections - disabled



1.5 hrs - review withdrawal; inform counsel

7/6/00 - Roger; Marc - ins

7 hrs - all day effort to break ins impasse

7/6/00 - AM 2

5 hrs - discussion/drafting examples for Swiss address exception

7/6/00 - DRA withdrawal

1.5 hrs - discuss withdrawal

7/7/00 - judge's chambers

6 hrs - review issues for fairness opinion

7/7/00 - AM 2

6 hrs - CRT info access - research/disc/drafting

7/7/00 - neg

6.5 hrs - CRT info access - drafting/Swiss law/US law - late night

7/8/00 - complete Sup Ct. Brief in Velazquez

Brennan Center - no charge to Swiss case

7/9/00 - discussion gay groups

3 hrs - discuss cy pres

7/10/00 - ins neg

5 hrs - draft ins provisions for AM 2

7/11/00 - AM 2

5 hrs - draft/discuss ins provisions of AM 2

7/12/00 - AM 2

5 hrs - review/discuss text of AM 2

7/12/00 - Judah

4 hrs - defend text/conv with Judah

7/12/00 - Roger

2 hrs - seek changes sought by Judah

7/13/00 - AM 2

5 hrs - discuss info access/releases/self id

7/13/00 - neg

5 hrs - slave labor II issues

7/14/00 - memo

2 hrs - draft status memo on neg - early am

7/14/00 - review cy pres

8 hrs - read cy pres cases

7/14/00 - conv Whinston

1 hrs - conv Steve re DRA

7/14/00 - AM 2 neg

1hr- revise text

7/14/00 - IJA talk - appellate judges

1 hr - describe settlement to judges

7/15-17/00 - Berlin sign accords; conf with Mel on Swiss

German cases - no charge to Swiss case

2 hrs - conf with Mel in Berlin re Swiss neg

7/21/00 - dec re fairness from Paris

2 hrs - draft dec from Paris

7/22/00 - tel/court Paris

2 hrs - draft dec/telephone conf from Paris

7/23/00 - dec re fairness from Pari

4 hrs - dec from Paris

7/24/00 - conf w. Mel

4 hrs - review draft opinion

7/25/00 - Korman's chambers

4 hrs - review draft opinion

7/26/00 - fairness opinion issued

3 hrs - review; discuss opinion

7/26/00 - Dunaevsky opinion issued

1 hr - review Dunaevsky opinion

7/27/00 - review opinion; memo re open issues

4 hrs - review opinion; memo re open issues; slave labor II

7/27/00 - Swiss neg ins

5 hrs - ins neg - claims program; publication

7/27/00 - AM 2

6 hrs - claims program

7/27/00 - Polish appeal

11 hrs - cases; draft brief

7/28/00 - AM 2

3 hrs - ins program; refugee lists

7/28/00 - Makor talk

1 hr - explain settlement - New York community

7/31/00 - Finkelstein objection

3 hrs - review Finkelstein objection - respond

7/31/00 conf call - Wolinsky/Korman

3 hrs - conf call re amended opinion; confirm withdrawal of objection

### August

8/2/00 - amended fairness opinion - remove crit DRA

1 hr - review opinion; disc with colleagues

8/2/00 - memo to file re conv with Witten

2 hrs - disc. Witten - Slave Labor II definition

8/2/00 - Witten re releases

2 hrs - self id discussion

8/2/00 - fairness order

2 hrs - review fairness order

8/3/00 - prepare for oral in Polish appeal

8 hrs - case research; document review; outline oral

8/4/00 - moot court

9 hrs - prep/participate in moot court - revise oral; review briefs

8/4/00 - AM 2 dec

2 hrs - ins discussions - publication

8/5/00 - Polish appeal - review briefs/cases

11 hrs - prepare for oral; case research; analyze arguments

8/5/00 - AM 2

2 hrs - ins discussions

8/6/00 - banks' objection to self-ID

4 hrs - disc of alternatives; consequences of rejection

8/6/00 - moot court

6 hrs - prep/participate in moot court

8/7/00 - prepare for oral

6 hrs - review notes of negotiations; basis for definition

8/7/00 - AM 2

5 hrs - ins neg - marc - claims procedures

8/8/00 - prepare for oral

6 hrs - re-read all cases

8/9/00 - argue Polish appeal

5 hrs - deliver oral; begin work on post-argument brief

8/9/00 - corrected fairness opinion issued

2 hrs - review amended opinion; disc with counsel

8/9/00 - Korman's chambers

5 hrs - conf on next steps

8/9/00 - final order on fairness issued

1 hr - circulate order - late night

8/9/00 - review Swift let

1 hr - review letter - late night

8/10/00 - Korman, Gribetz

4 hrs - conversations re next step

8/11/00 - ins neg

5 hrs - neg re claims; publication; releases

8/11/00 - AM 2

5 hrs - publication issues; info access

8/12/00 - ins neg

6.5 hrs - discussions re claim procedure; publication; releases

8/13/00 - structure of CRT; publication schedule

5 hrs - publication of bank accounts; CRT procedures

8/13/00 - review Swift let

2 hrs - review/discuss Swift's concerns

8/15/00 - publication issues

5 hrs - mechanics of publication

8/16/00 - info for slave labor I

5 hrs - access to info for Slave labor I

8/17/00 - conf with Mel

3 hrs - report on status; advice

8/23/00 - phone conf. Mel

3 hrs - report on ins issues; publication; costs

8/24/00 - dinner Ed Korman

personal - no charge to Swiss case

8/25/00 - standing letter

3 hrs - post argument letter re standing in Polish appeal

8/28/00 - Claims Conf - admin

5 hrs - mechanics of slave labor I; costs

8/28/00 - appted German Foundation trustee

German cases - no charge to Swiss case

8/29-9/1/00 - Berlin

German cases - no charge to Swiss case

### September

9/4/00 - memo re open items

5 hrs - allocation/insurance

9/5/00 - Witten

3 hrs - discussion re Slave labor I/ins/allocation

9/8/00 - Swiss ins

5 hrs - claims program; info access

9/8/00 - phone conf Korman re Dubbin/Weiss

5 hrs - conf re Weiss appeal; research - appeal inevitable

9/9/00 - review Dubbin N/A

3 hrs - review N/A; research issues

9/10/00 - defense

2 hrs - explain/defend settlement

9/11/00 - Gribetz conf

3 hrs - review allocation plan

9/11/00 - allocation plan released

1 hr - disc re allocation

9/11/00 - notice plan

2 hrs - prepare notice plan; disc allocation with colleagues

9/11-15/00 - Zurich - ins/CRT

40 hrs - review of ins records

9/12/00 - phone conf with Mel

2 hrs - report on records; tactics

9/16/00 - defense of allocation plan

8 hrs - defense of allocation plan to various critics

9/18-21/00 - Berlin

German cases - no charge to Swiss case

9/20/00 - dec supporting plan of allocation

5 hrs - draft dec supporting allocation plan

9/21/00 - opinion in Polish appeal

2 hrs - review opinion; inform counsel

9/21/00 - chambers - Roger/Marc

4 hrs - meeting in chambers re ins/self-id

9/22/00 - review Polish opinion

1 hr - conv re opinion

9/23/00 - admin - cost of notice

5 hrs - review invoices; plan mechanics of notice; publication



9/27/00 - Korman/Swift re ins

2 hrs - conf re status of insurance neg

9/28/00 - conf call - Claims Conf

2 hrs - discussion of mechanics of Slave labor I; coordination with German Found

9/28/00 - memo re pending appeals

9 hrs - analysis of pending appeals

### October

10/2/00 - conf call re admin

2 hrs - discuss mechanics of allocation; bank accounts

10/4/00 - Velazquez argued - Supreme Court

Brennan Center - no charge to Swiss case

10/5/00 Polish mandate issued - conf with Polish lawyers

3 hrs - conv with lawyers re possible litigation

10/5/00 - Swiss ins

4.5 hrs - disc re claims procedures; burden of proof

10/6/00 - Marc Cohen

4 hrs - disc re publication

10/6/00 - Judge Korman/Volcker

2.5 hrs - disc mechanics/funding of CRT

10/6/00 - conf with Mel

2 hrs - status report/advice

10/8/00 - Fagan

4 hrs - review Fagan fee application

10/10/00 - Korman re ins

2.5 hrs - report to court re status of ins neg

10/11/00 - Marc Cohen

6 hrs - ins neg - claims procedures; caselaw

10/11/00 - revised Polish opinion

1 hr - review revised opinion; memo to files

10/12/00 - Gideon - process

1.5 hrs - slave labor I process

10/12/00 - Marc - ins neg

2 hrs - disc; memo re status of neg

10/16/00 - Bradfield

3 hrs - mechanics of Slave labor II; publication; info access

10/16/00 - Marc Cohen

5 hrs - ins neg - all issues

10/16/00 - Gideon

1 hr - slave labor claim process; confidentiality

10/16/00 - ins neg

2 hrs - discussion with counsel re alternatives

10/17/00 - Dubbin/Weiss appeal reinstated

1 hr - review reinstatement; research

10/17/00 - conf re sched appeals

1 hr - conv with clerk re Weiss appeal

10/17/00 - Dunaevsky appeal

1 hrs - confirm dismissal

10/17/00 - Marc Cohen

3 hrs - ins neg - burden of proof/publication

10/17/00 - Korman's chambers/Gideon - Israel Singer

3 hrs - conf re mechanics of publication

10/17/00 - Saul Kagan

1 hr - explain issues to Saul Kagan

10/18/00 - Dunaevsky appeal

1 hr - confirm dismissal

10/18/00 - memo re ins

3 hrs - memo re insurance issues

10/18/00 - atty fees

3 hrs - review fee issues;caselaw;documents

10/18/00 - Korman's chambers - Bradfield

3 hrs - discussion of CRT procedures

10/18/00 - Marc Cohen

1 hr - review status of neg

10/19/00 - Ford talk

1 hr - describe settlement to Ford Foundation

10/20/00 - Marc Cohen

5 hrs - ins neg - all issues

10/21/00 - Swiss neg - all day

9 hrs - marathon session - all issues

10/23/00 - Weiss appeal - move to dismiss

4 hrs - draft motion to dismiss

10/23/00 - atty's fees

5 hrs - review all fee issues

10/23/00 - insurance neg

5 hrs - complete ins neg; memo to files

10/24/00 - Dunaevsky app - review

3 hrs - resist reinstatement

10/24/00 - Weiss appeal - merits

9 hrs - research all issues; memo to files

10/24/00 - Weiss papers - review

3 hrs - review arguments

10/25/00 - CRT non-party banks - power to compel?

5 hrs - research on power over non-parties

10/25/00 - CRT info access - power to compel?

5 hrs - research re power over needed info; Swiss law

10/25/00 - Wolinsky

3 hrs - DRA cy pres potential

10/25/00 - Rosen let

2 hrs - defense of settlement - late night

10/27/00 - Korman's chambers - ins

4 hrs - report to court re ins neg - status

10/27/00 - ins neg

5 hrs - last effort to resolve ins issues

10/29/00 - review Rechter letters

2 hrs - defend settlement provisions

10/30/00 - Dunaevsky appeal - tax, notice, releases

3 hrs - admin tasks

10/31/00 - joint motion re distribution

4 hrs - prepare papers supporting allocation proposal

10/31-11/3/00 - Berlin

German cases - no charge to Swiss case

## November

11/3/00 - review DRA comments on Special Master's report

2.5 hrs - review DRA criticism of allocation plan

11/5/00 - review Schonbrun papers

8 hrs - review Schonbrun objections; research

11/6/00 - Hungarian issues

3.5 hrs - meet with Hungarians re claims

11/7/00 - conf call with counsel

5.5 hrs - prep/conf call re allocation issues/ins

11/8/00 - conf with Mel

4 hrs - review all pending appeals; advice

11/13/00 - draft dec allocation

5 hrs - prepare dec on allocation - first draft

11/14/00 - dec allocation

6 hrs - revise dec; review objections ; research

11/16/00 - appellate motion practice/Weiss

4 hrs - dec re dismissal of Weiss appeal

11/16/00 - supplemental memo re Weiss appeal

3 hrs - legal memo re dismissal of Weiss appeal

11/17/00 - draft dec allocation

5 hrs - complete allocation dec; circulate

11/17/00 - draft dec allocation

6.5 hrs - revise to account for comments

11/20/00 - Weiss appeal dismissed

2 hrs - review dismissal; memo to files

11/20/00 - file dec supporting allocation plan- response to Schonbrun

1 hrs - file supporting dec; separate response to Schonbrun

11/20/00 - hearing on allocation plan

9 hrs - attend hearing on allocation

11/20/00 - objections from Dubbin, Romani, Katz

2 hrs - review objections raised at hearing - late night

11/20/00 - banks object to self ID/after-acquired

1 hr - review objection to self-id/after-acquired definition - late night

11/21/00 - ins neg

11 hrs - memo reviewing all options

11/21/00 - Meili payment

5 hrs - review Meili payment issues - late night

11/22/00 - review Meili issues

2 hrs - review Meili issues; research

11/22/00 - opinion adopting allocation plan

2 hrs - review; discuss opinion on allocation

11/23/00 - memo re implementation of plan - publication/admin

9 hrs - memo re implementation plan

11/25/00 - defense of allocation plan/cy pres

5 hrs- discussion re allocation/cy pres/residual payment

11/26/00 - ins neg

3 hrs - final talks - ins

11/27/00 - atty fees let

4 hrs - review fee issue; caselaw

11/28/00 - Meili - not as a fee

3 hrs - draft memo on Meili fee payment/taxation

11/29/00 - memo re defense of allocation plan/relative power of claims

9 hrs - memo re correctness of allocating on basis of legal claims

11/29/00 - letter to Wells

2 hrs - letter defending settlement/allocation

December

12/1/00 - Dunaevsky - review - in forma pauperis

5 hrs - research ifp

12/4/00 - defense of settlement

2.5 hrs - letters defending settlement

12/5/00 - conf with court re allocation

4.5 hrs - conf with court re implementation

12/8/00 - opposition to in forma pauperis by Dunaevsky

2 hrs - draft opposition papers/file

12/8/00 - implementation orders

1 hrs - review; circulate implementation orders

12/8/00 - appointment of Volcker/Bradfield as Special Masters

1 hr - review; notify counsel

12/15/00 - Dunaevsky dismissal

2 hrs - review dismissal; notify counsel; court

12/15/00 - Dunaevsky - review issues on tax

3 hrs - review tax issues raised by Dunaevsky appeal

12/19/00 - publication of allocation plan

3.5 hrs - disc. database/publication/notice issues

12/19/00 - banks object to self ID/after acquired

2 hrs - conf with banks /objection on self-id/after-acquired

12/20/00 - Dunaevsky appeal



1 hr - review all papers

12/22/00 - Dubbin appeal

2 hrs - review appeal on allocation

12/22/00 - Schonbrun appeal

2 hrs - review issues raised by appeal

12/22/00 - Romani appeal

2 hrs - review Romani appeal/allocation

12/22/00 - Katz appeal

2 hrs - review issues - looted assets/cy pres

12/22/00 - Blaustein appeal

1 hr - review issues

12/22/00 - Friedman appeal

2 hrs - review issues; role of CC

12/27/00 - request to depose Schonbrun on relationship with clients

5 hrs - draft/research re deposing Schonbrun - do his clients know what he is arguing?

12/28/00 - memo re allocation appeals; Wolinsky withdr; Schonbrun;

Weiss/Dubbin/Clark/Friedman//Blausteyn

11 hrs - structure arguments for all pending appeals

12/29/00 - report to court that no pending fairness appeals - open to distribute

3 hrs - report to court; counsel

2001

January

1/3/01 - Dubbin fairness appeal - opposition to reinstatement - Oakes/Parker

2.5 hrs - opposition to reinstatement motion - drafting; research

1/4/01 - CRT - funding, structure

5.5 - mechanics of claims processing; research; drafting

1/5/01 - hearing on atty's fees

6.5 hrs - prep;hearing on atty fees

1/5/01 - question Schonbrun's status - judge angry ethics violation

1.5 hrs - Schonbrun - ethics issues; research; consultation

1/8/01 - admin, notice

5.5 hrs - review invoices; notice issues

1/9/01 - press Schonbrun dep - withdraw appeals

3.5 hrs - prep/conf on status of appeal

1/9/01 - review appellate issues

5 hrs - research re appeal issues

1/12/01 - appeal, oppose reinstatement

6 hrs - oppose reinstatement; draft papers; research

1/12/01 - CRT/escrow fund - review statements

4.5 hrs - review escrow fund account - payment mechanics

1/15/01 - Fagan fees

3 hrs - disc re Fagan's fees; review documents

1/16/01 - memo re evidence rules; presumptions

11 hrs - research re evidentiary presumptions for CRT - analogues

1/17/01 - report to court re CRT presumptions

4 hrs - draft; file dec re presumptions

1/17/01 - withdrawal of Schonbrun appeal

3 hrs - withdrawal of Schonbrun appeal/inform court-colleagues

1/18/01 - CRT evidence rules

6 hrs - research/disc/drafting bp and inference rules for CRT

1/18/01 - appeal caption

1.5 hrs - correct appeals caption - clerk

1/18/01 - Bradfield/CRT

1 hr - conf re rules

1/19/01 - defense of settlement

3 hrs - letters/memo defense of settlement

1/23/01 - submission of CRT rules and procedures

5 hrs - disc/memo on proposed CRT rules

## February

2/5/01 - CRT claims process

5 hrs - research/memo/disc CRT claims rules

2/5/01 - publication of bank account names

3.5 hrs - monitor publication; discuss with community leaders

2/6/01 - bank account pub

5 hrs - discuss publication; claims process with counsel/community leaders

2/7/01 - bank account pub

5 hrs - discuss publication; claims process with press/community leaders

2/8/01 - bank account pub

7.5 hrs - notice of bank accounts; database; community leaders

2/10/01 - oppose reinstatement of Dubbin fairness appeal

5 hrs - research re merits of fairness appeal

2/11/01 - bank account pub

3.5 hrs - discuss publication/notice/claim procedure

2/13/01 - bank account pub

4.5 hrs conf re publication/claims procedures

2/16/01 - Dubbin fairness appeal - issues

5 hrs - research; drafting Dubbin fairness appeal

2/16/01 - Dubbin fairness - issues

2 hrs - memo re appeal issues

2/18/01 - info on slave labor

4.5 hrs - mechanics of link between slave labor I/German Found

2/19/01 - info on refugees

5 hrs - conv re access to info on refugees

2/20/01 - slave labor admin-coordinate German Foundation

5 hrs - coordination with Germ Found

2/21/01 - income tax of fund - review options

3.5 hrs - review options on refund; investment; allocation

2/22/01 - investment conf

3.5 hrs - conf on investment options

2/22/01 - neg re info access

3.5 hrs - neg re info access - voluntary coop/database

2/23/01 - neg re info access

3.5 hrs - info access disc/non-party banks

2/25/01 - slave labor admin

5 hrs - German info for slave labor I and II

2/26/01 - issues in Romani appeal - IOM

7 hrs - research re allocation issues raised by Romani appeal

2/28/01 - IOM, issues in Katz appeal - cy pres

9 hrs - research issues raised by Katz appeal/IOM process

2/28/01 - issues in HSF appeal - allocation; cy pres

11 hrs - research re HSF allocation appeal/cy pres history - late night

### March

3/1/01 - ins - operation of plan

3 hrs - conv with Zurich re operation of ins program

3/2/01 - review notice materials

4 hrs - review notice materials in connection with appeals

3/5/01 - open items

4 hrs - status memo; research on open issues

3/7/01 - conf w Romani leaders

4.5 hrs - conf with Romani leaders re allocation

3/8/01 - CRT admin

5 hrs - operation of CRT process; conv with banks

3/9/01 - CRT admin cost

4 hrs - review invoices; discuss cost with counsel

3/11/01 - banks - slave labor II - self id

4 hrs - conf; memo re self-id problems; review materials

3/12/01 - after-acquired; review investment - costs

9 hrs - research/conf on after-acquired/ review invoices/investments

3/15/00 - memo re pending appeals; challenges

11 hrs - research on pending appeals/challenges

2/16/01 - Clark/Romani conf

3.5 hrs - conf with Ramsey Clark

3/16/01 - Dubbin conf

3.5 hrs - conf with Dubbin re ins issues/appeals

3/16/01 - conf on Katz

2.5 hrs - conf re Katz estate appeal

3/17/01 - report to court on legal issues

5 hrs - report to court on status of all legal issues

3/18/01 - conf with court re slave labor II

5 hrs - prep/conf with court on slave labor II issues

3/19/01 - conf with Gribetz re slave labor II

4.5 hrs - conf with Judah on slave labor II

3/22/01 - sched appeals

3.5 hrs - conf re sched appeals

3/23/01 - Swift letter

2.5 hrs - review objections; respond to letter

3/29/01 - Clark - Romani

8 hrs - conf with Ramsey Clark/draft memo

3/29/01 - Clark- Romani

9 hrs - conv with Clark; research/drafting re issues

3/30/01 - review of request for extension by Dubbin

2.5 hrs - review; oppose request for extension

#### April

4/4/01 - review request for extension by Dubbin, oppose

3.5 hrs - oppose extension

4/4/01 - order listing slave labor II releasees

8 hrs - review list of releasees/conv with banks

4/5/01 - Dubbin/Weiss dec - opposing extension

2 hrs - review; respond to dec seeking extension

4/5/01 - Dubbin/Weiss

2 hrs - research re open issues

4/6/01 - Dubbin/Weiss - opposing extension

2 hrs - draft file opposition papers

4/6/01 - Dubbin/Weiss – review

1hr

4/9/01 - Dubbin/Weiss - conf

3 hrs - review files; research; conv with Mel

4/9/01 - Dubbin/Weiss

4 hrs - conf re appeals

4/9/01 - Dubbin/Weiss

2 hrs - memo to files re appeals

4/10/00 - letter to Chief Judge re sched

1.5 hrs - letter to court re sched

4/10/01 - banks re slave labor II

5 hrs - research; conf re issues

4/10/01 - sched appeal

2 hrs - conf re sched of Dubbins appeal

4/11/01 - Schoen - taxes

5 hrs - review tax status - 1099

4/12/01 - review Dubbin let to court

1 hrs - review Dubbin let

4/24/01 - banks appeal on slave labor II

1 hrs - review bank appeal on slave labor II

4/26/01 - issues raised by bank appeal - too late?

11 hrs - research re appealability of slave labor II issues



4/29/01 - Dubbin issues - conf

4.5 hrs - conf Dubbin re appeal issues

May

5/3/01 - conf Dubbin

3.5 hrs - appeal issues; appendix

5/4/01 - conf Clark

5 hrs - conf Clark; appeal issues; research

5/4/01 - conf Gerardi

3.5 hrs conf re Katz appeal issues

5/7/01 - discuss Dubbin/Weiss let/appeal withdrawal

5 hrs - discuss withdrawal of Dubbin appeals; draft letter

5/10/01 - Romani app - appendix; brief

9 hrs - counter designation of appendix; research

5/12/01 - Dubbin/Weiss - conf re withdrawal

5 hrs - disc withdrawal of appeal/conf with counsel/Mel

5/12/01 - Dubbin/Weiss conf with Judge Korman

3 hrs - conf with court re appeal

5/13/01 - conf Dubbin

5 hrs - conf re withdrawal - draft

5/13/01 - conf Clark

6 hrs - conf Clark re appendix; issues

5/13/01 - conf Gerardi

3 hrs - conf re katz appeal

5/14/01 - draft Weiss letter

2 hrs - disc text

5/15/00 - letter to Weiss

4 hrs - complete letter/ inform court/counsel

5/16/01 - Dubbin/Weiss - memo

1 hrs - memo re withdrawal of appeal

5/16/01 - Dubbin let

5hrs - conf re withdrawal of fairness appeal; resumption of distribution phases

5/16/01 - notice issues - allocation plan - publication

7 hrs - notice/allocation/dist issues

5/17/01 - review briefs - Katz/Clark

11 hrs - review briefs; read cases

5/17/01 - Second Cir mandamus issued

German cases - no charge to Swiss case

5/18/01 - review briefs

9 hrs - review briefs; read cases

5/19/01 - review income tax issues

memo re tax issues; draft legis

5/20/01 - conf Mel on tax

3.5 hrs - conv re legislation;tactics

5/21/01 - review brief

11 hrs - review briefs; research; drafting

5/23/01 - Clark - Romani

14 hrs - work on Romani brief

5/25/01 - conf Mel - tax relief

5 hrs - prep/conf with Mel re tax relief; draft bill/memo

5/26/01 - draft memo for staffs on tax

9 hrs - draft memo for Cong staffs re tax relief

5/27/01 - review Romani issues

11 hrs - draft response to Romani brief

5/28/01 - Clark - Romani

6 hrs - conf with Clark re withdrawal of Romani appeal

5/30/01 - Bundestag query

German cases - no charge to Swiss case

5/30/01 - Dubbin/Weiss fairness appeal withdrawn

1 hr - review order/notify court

5/30/01 - HSF allocation appeal withdrawn

1 hr - notify counsel

## June

6/1/01 - report to court - no bar to distribution

4 hrs - memo to files/report to court - all bars to dist removed

6/1/01 - Romani appeal sched

3.5 hrs - app sched - appendix

6/2/01 - draft tax legislation

11 hrs - draft tax legislation

6/2/00 - conf Schumer, Nadler re tax relief

9 hrs - conf Schumer's staff; other Cong staff

6/3/01 - conf with Mel re tax relief

3 hrs - conf with Mel re tax legislation; tactics

6/4/01 - distribute tax memo to Congressional staff

11 hrs - complete memo; distribute; series of phone conf

6/6/01 - Congress grants tax relief

2 hrs - review Cong stat on tax relief; notify counsel

6/6/01 - report to court on tax status; investment review

3 hrs - notify court re tax status; review investments; allocation issues

6/11/01 - Romani appeal

11 hrs - research brief in Romani appeal

6/11/01 - Romani appeal

2 hrs - begin drafting Romani brief

6/12/01 - Romani appeal

9 hrs - complete draft of Romani appeal brief

6/12/01 - Katz appeal

9 hrs - begin drafting Katz appeal brief - late night

6/13/00 - Blaustyn appeal

2hrs - Balustyn issues - dism appeal?

6/14/00 - memo re remaining appellate issues

11 hrs - memo re pending appeal issues

6/14/00 - conf with Clark

5 hrs - conf with Clark re withdrawal

6/15/00 - conf Gerardi

2 hrs - conf with Gerardi re withdrawal of Katz appeal

6/16/00 - conf Blaustyn

1 hr - conf Blaustyn

6/19/01 - Finkelstein

7 hrs - review Finkelstein attack on settlement; respond

6/29/01 - memo to Special Master

5 hrs - memo to Special Masters re notice/allocation issues

6/29/01 - Friedman appeal

9 hrs - draft Friedman brief

## July

7/5/01 - Romani/Katz

7 hrs - draft briefs

7/5/01 - allocation brief

11 hrs - draft briefs on allocation issues

7/8/01 - dec re appeal withdrawal - no deals

3 hrs - draft; file dec re withdrawals - no deals intended

7/10/01 - Romani appeal

14 hrs - draft brief

7/11/01 - claim info

7.5 hrs - review operation - CRT/ slave labor I

7/11/01 - prepare for oral

14 hrs - review all briefs; prepare for orals in all appeals

7/13/01 - Romani appeal

6.5 hrs - prepare for oral

7/16/02 - Romani appeal

9 hrs - prep/moot court

7/16/01 - moot court

5.5 moot court/post moot memo - late evening

7/17/01 - prepare for oral

11 hrs - review all cases

7/18/00 - dec in support of motion to withdraw - no deals

3.5 hrs - draft/file dec re withdrawal

7/18/01 - Katz withdrawal

1 hrs - review order

7/19/01 - prepare for oral

7 hrs - oral prep - outline arguments

7/19/01 - argue allocation appeal

4 hrs - argue appeals

7/19/01 - dec re withdrawal - no deals

2 hrs - dec re withdrawal - no deals intended

7/20/01 - Eagleburger

4 hrs - conf re ICHEIC

7/20/01 - Gerardi/Katz letter re dismiss

3 hrs - letter re dismissal - draft/send

7/26/01 - opinion re allocation

4.5 hrs - Circuit opinion upholding allocation

### August

8/2/01 - escrow transfer to settlement fund

6 hrs - conf with court/counsel/banks re transfer from escrow fund

8/2/01 - phone conf Chris S

2.5 hrs - prep/call Chris S re escrow transfer - interest

8/3/01 - phone conf. Chris S

2 hrs - cal Chris S re escrow transfwer - mechanics - which banks - form of transfer

8/3/01 - review Pink Triangle submission - conv judge

6 hrs - review Pink Triangle papers - research re cy pres outside class

8/4/01 - report to court re interest issue

9 hrs - prep/report to court re interest issue - review documents in initial negotiation

8/6/00 memo re interest issue

10 hrs - conv Mel/Mike ; prepare memo on issues raised by interest

8/8/01 - escrow transfer - admin

6 hrs - arrange for transfer to Citibank/HSBC - investment issues

8/8/01 - escrow transfer

2 hrs - conv Mel about transfer/accounts/investment

8/9/01 - conf Mel re interest; advice

5 hrs - prep/conv Mel re interest - recollection of initial neg

8/16/01 - withdrawal of appeals, conf/mem

5 hrs - conv on status of all appeals; confirmation of withdrawal; slave labor II

8/17/01 - funds transferred from escrow to settlement fund

2 hrs - monitor transfer of funds from escrow to our banks

8/19/01 - memo re interest issues - accounting

9 hrs - memo - preliminary calculation of interest due

8/25/00 - memo re implementation of appeal

11 hrs - memo re issues raised by slave labor II appeal

## September

9/4/01 - review DRA cy pres plan - conv judge

6 hrs - review DRA cy pres plan ; conf with court

9/4/01 - slave labor II appeal

11 hrs - research re issues - slave labor II ; review initial neg documents

9/4/01 - conf Mel re slave labor II appeal

5 hrs - prep/conf with Mel re slave labor II issues; memo

9/5/01 - appellate jurisdiction



14 hrs - read appellate jurisdiction cases; memo

9/7/01 - appellate jurisdiction

11 hrs - research re appellate jurisdiction - prepare chronology

9/10/01 - analysis of number of releases

11 hrs - analysis of difference in releases under both approaches

9/11/01 - implications of slave labor II

5 hrs - research on financial; practical consideration of open ended slave labor II class

9/14/01 - conf Mike H. re intent of parties

3 hrs - conv Mike H about intent of parties/review notes

9/15/01 - review of documents on intent of parties

11 hrs - review documents used in original neg; textual reading

9/16/01 - textual analysis

9 hrs - close textual analysis ; various readings; memo

9/17/01 - slave labor II appeal

11 hrs - case research - all issues - power to impose self - id

9/19/01 - slave labor II

14 hrs - begin drafting brief

9/19/01 - slave labor II appeal

12 hrs - work on brief; case research

9/20/01 - slave labor II appeal

9 hrs - draft self-id provisions of brief

9/21/01 - slave labor II appeal

11 hrs - draft after-acquired aspects of brief

October

10/11/01 - OSI-Romani

4 hrs - conv re OSI and Romani issues

10/12/01 - report to court re Romani

2 hrs - report to court re Romani/OSI as alternative to IOM

10/12/01 - CRT operations

5 hrs - review CRT operations/invoices

10/14/01 - CRT operations - cost

5 hrs - review cost of CRT operations; explore alternatives

10/15/01 - slave labor I operations; lists; cost

3hrs -review costs, operation of CC slave labor I operation

10/16/01 - IOM operations - review

3 hrs - review IOM operations slave labor II/gays/disabled

10/17/01 - report to court re slave labor I/II

5 hrs - prep/conv court re mechanics of slave labor I/II

10/17/01 - Romani distributions - review

11 hrs - review Romani distributions; cost; efficiency; acceptance

10/19/01 - looted assets dist - fair allocation?

11 hrs - review looted assets allocation for fairness

10/20/01 - legal issues in looted assets

11 hrs - case research re cy pres allocations

10/22/01 - disabled dist. review

6 hrs - review dist to disabled; why so few?

10/22/01 - gay dist. Where are the victims?

6 hrs - review efforts to find gay victims; why so few?

10/23/01 - conf Jehovahs Witnesses

3.5 hrs - conv JW; review files

10/25/01 - CRT, why so slow?

11 hrs - prep/conv of rate of CRT dist; ways to speed up process; software

10/27/01 - conf with court re distribution issues

5 hrs - prep/conf with court on state of distribution

## November

11/1/01 - oral sched

3 hrs - sched slave labor II oral

11/12/01 - slave labor II - review briefs

13 hrs - review all briefs - re-read cases

11/21/01 - dist. mechanics

3 hrs - review invoices/mechanism for distribution

11/26/01 - questionnaires - review, use

5 hrs - conv re use of info in questionnaires; use of students

11/26/01 - questionnaires

6 hrs - review randomly selected questionnaires

11/27/01 - defense

2 hrs - defense of settlement against criticism on speed of distribution

## December

12/01/01-12/28/01

German fee brief - Second Circuit - no charge to Swiss case

12/12/01 - Gerardi let

4 hrs - review Katz appeal issues - can we help?

12/13/01 - let on escrow interest

9 hrs - letter to banks re amount owed in interest

## 2002

## January

1/4/02 - Gallagher conf

3 hrs - discuss insurance plans; access to our data

1/5/02 - health ins review

5 hrs - research/conv re possible ins plans

1/8/02 - IRS - refunds

2 hrs - 1099's; tax status

1/9/02 - class communication

3 hrs - memo re open issues to class

1/10/02 - review Pink Triangle cy pres motion

4 hrs - review motion; research cases

1/11/02 - slave labor II appeal - review cases

9 hrs - review cases/relevant documents

1/12/02 - prepare for oral

10 hrs - review cases; review issues

1/13/02 - prepare for oral

10 hrs - review jurisdictional issues

1/14/02 - moot court

7 hrs - prep/participate in moot court

1/15/02 - slave labor appeal - prepare

11 hrs - prepare for oral; outline argument; review briefs; cases

1/16/02 - argue slave labor II appeal

7 hrs - prep/deliver oral argument/begin work on post-argument material

1/17/02 - slave labor II appeal - post argument material

8 hrs- prepare post argument letter brief

1/18/02 - slave labor appeal

6 hrs - draft post argument briefs/chronology/declaration

1/18/02 - slave labor II appeal

2 hrs - status report to court/counsel

1/18/02 - slave labor II appeal

2 hrs - memo re options depending on court decision

1/22/02 - slave labor II appeal

5 hrs - complete/send post argument material to court

1/22/02 - letter to Gallagher

5 hrs - letter to Gallagher re ins possibilities/access to data

1/23/02 - slave labor II appeal

4 hrs - review defendants' post argument submission

1/25/02 - defense to Finkelstein

5 hrs - respond to Finkelstein's assault on settlement

1/28/02 - notice issues - close down phones?

4 hrs - conv on phone banks/notice issues; mechanics of payment; review invoices

1/30/02 - review German fee briefs

German cases - no charge to Swiss case

## February

2/8/02 - Self Help conf

4 hrs - review program; possible assistance

2/13/02 - open items

2 hrs - review open issues

2/13/02 - AM 2 neg

11 hrs - review operation of AM 2 - is it working?

2/13/02 - tax refund

1 hr - monitor tax refund; allocation issues

2/13/02 - AM 2 neg, accelerated payment

1 hr - interest calculation on accelerated payment

2/20/02 - review fee issues

7 hrs - review fee applications; cases

2/23/02 - file dec re atty's fees

3 hrs - draft/file dec on fees

2/26/02 - doc re fees

5 hrs - review outstanding fee issues

2/26/02 - letter re fees

3 hrs - draft/file letter re fees/conv with Mel/counsel re fees

2/26/02 - slave labor II

5 hrs - review opinion/memo to files/notify court-counsel

2/26/02 - slave labor II - appeal rehearing

9 hrs - rehearing petition - draft

2/26/02 - slave labor II - rehearing

8 hrs - complete rehearing petition

2/27/02 - slave labor II; escrow memo

11 hrs - escrow interest issues; file rehearing petition

2/28/02 - Swiss memo of law (1997)

11 hrs - review memo - theory of settlement structure

March

3/2/02 - accounting for escrow interest  
5 hrs - review interest calc.; research

3/4/02 - memo re possible resolution of slave labor II issues  
7 hrs - memo re possible resolution of slave labor II issue/disc banks

3/8/02 - collapse at gym - hospital  
personal

3/8/02 - file German fee reply brief from hospital  
German cases - no charge to Swiss case

3/11/02 - defense of settlement  
3 hrs - memo re defense of settlement

3/13/02 - dec re Fisher fees  
3 hrs - draft/revise dec on fees

3/14/02 - heart problems - examinations  
personal

3/15/02 - memo to files re escrow interest  
11 hrs - review escrow interest issues - draft memo of law

3/16/02 - review of documents on intent  
11 hrs - review original documents

3/17/02 - conf with Roger on escrow interest; slave labor II  
11 hrs - prep/conv with banks re slave labor II; escrow interest

3/18/02 - review of Dubbin fee application  
11 hrs - review Dubbin fee application; cases; documents

3/19/02 - draft escrow papers



14 hrs - draft dec/memo on escrow issue/file with Block

3/22/02 – heart surgery

personal

3/23-28/02 – hospital recovery

personal

3/29/02 – home - recuperation

personal

3/29-4/10/02 - home recuperation - telephone conf; review pending fee applications

11 hrs - review open issue - fees/escrow/slave labor II/dist mechanics

3/31/02 - status mem

6hrs - status memo on all open issues

#### April

4/4/02 - review Dubbin filing - Bergier report

4 hrs - review Bergier report re Dubbin/banks

4/5/04 - memo re escrow interest - review documents

5 hrs - review escrow documents; caselaw;memo

4/6/02 - review CRT distributions

3.5 hrs - review CRT decision/dist mechanics

4/10/02 - dec re Marks fees

2 hrs - dec marks' fees - draft/file

4/11/02 - admin; Dunaevsky

2 hrs - review invoices/check Dunaevsky dismissal

4/11/02 - dec re fees

4 hrs - draft dee dec; reveiw petitions

4/13/02 - conf re escrow interest; slave labor II

6 hrs - prep/conv with counsel re escrow interest/slave labor II

4/14/02 - draft rebuttal of banks'

5.5 hrs - draft rebuttal of banks escrow submission

4/15/02 - draft dec on escrow interest

9 hrs - draft rebuttal dec re escrow interest

4/16/02 - conf Mel

2.5 hrs - status report - slave labor II/ escrow interest advice/tactics

4/17/02 - report to judge; memo to files

5 hrs - prep/conv with judge re open issues/memo to files

4/18/02 - review status of slave labor I, II

8 hrs - review awards to slave labor I, II - mechanics of payment; invoices

4/26/02 - admin, brief

6.5 hrs - review invoices; pay bills; investment check; draft brief

4/27/02 chambers conf

4.5 hrs - status report - all issues

4/28/02 - begin preparing motion papers for slave labor II/escrow interest

11 hrs - begin drafting briefs for both slave labor II/escrow interest

May

5/2/02 - escrow interest papers - draft dec

6.5 hrs - draft dec re negotiations

5/3/02 - draft dec - Simkins conversation

8.5 hrs - dec re Simkins conversation during summer

5/5/02 - begin memo of law - escrow interest

11 hrs - draft memo of law/cases escrow interest

5/6/02 - conf w. Mel re escrow/slave labor II

2.5 hrs - conv with Mel - tactics in both slave labor II/escrow interest

5/7/02 - review fee requests

8.5 hrs - review fee requests - documents/notes/cases

5/13/02 - file dec re atty fees

7 hrs - draft/revise/file dec re atty fees

5/14/02 - file motion for interest

9 hrs - complete/file escrow interest materials with Judge Korman

5/14/02 - letter re compound interest

2 hrs - letter describing calculation of interest

5/14/02 - report to court

1 hr - status report to Judge Korman re escrow interest issue

5/15/02 - review recusal issues

5 hrs - research re recusal/memo

5/15/02 - draft dec compound int

3.5 hrs - draft dec re interest issues - summer conversations

5/15/02 - compound interest

4 hrs - memo re calculation issues

5/17/02 - Korman recusal - assignment to Block

4 hrs - Korman recusal - assignment of interest issue to Block/notify counsel

5/19/02 - review Dubbin let

3 hrs - review Dubbin let re allocation

5/22/02 - CRT burden of proof rules

5 hrs - review bp rules after recent cases on presumptions

5/23/02 - schedule motion

2 hrs - conf Block re scheduling motion

5/26/02 - review Dubbin fee material - Hazard

9 hrs - review Hazard support of Dubbin fee; case research

5/28/02 - compound int on escrow funds

11 hrs - complete review of issues - prepare for argument

5/29/02 - report to court - status of CRT process

4 hrs - report to court on information difficulty - database/TAD

5/30/02 - review power to order additional info

11 hrs - research re power to order info

5/31/02 - report to court

2.5 hrs - prepare report to court on info issues/court's power

June

6/1/02 - int/slave labor II - prepare papers for Block  
11 hrs - prepare additional papers for Judge Block - response to banks

6/3/02 - review Dubbin memo on fees  
9 hrs - review Dubbin's memo on fees - read cases/arguments

6/3/02 - review Dubbin reply papers  
9.5 hrs - review reply papers filed by Dubbin

6/4/02 - memo  
5 hrs - memo to files re Dubbin fees

6/5/02 - CRT status - Volcker let  
3.5 hrs - review letter re CRT - Volcker's concerns

6/6/02 - interest allocation discussions; Judah, judge  
5 hrs - discuss allocation of interest

6/7/02 - interest allocation discussions  
3.5 hrs - discuss interest allocation with parties/counsel

6/8/02 - review court's cy pres power  
14 hrs - cases/memo on court's cy pres power

6/9/02 - conv Dubbin re allocation  
5 hrs - prep/conv Dubbin re allocation

6/11/02 - conv court re interest allocation - increase slave labor I  
5 hrs - prep/conv court re allocation/increase slave labor I, II

6/13/02 - interest - slave labor II?  
7.5 hrs - allocation of interest; treatment of slave labor II/cases/disc

6/14/02 - begin reviewing banks' escrow interest materials

11 hrs - begin reviewing banks' escrow documents

6/15/02 - review banks's escrow interest memo of law

14 hrs - review banks memo of law/read cases/analyze arguments

6/16/02 - review relevant cases - Block's past opinions

14 hrs - review cases/read Block's past opinions

6/18/02 - begin reply papers

12 hrs - begin drafting reply papers

6/19/02 - reply papers

14 hrs - complete reply papers/draft/revise/file

6/21/02 - memo re oral argument; moot court

5 hrs - prepare for oral/memo/moot court

6/22/02 - conf Mel

3 hrs - review escrow issues/advice/tactics

6/23/02 - report to court - escrow interest, slave labor II, CRT decisional pace

4.5 hrs - report to Judge Korman; escrow interest/slave labor II/CRT pace

6/26/02 - defense of proposed allocation

6 hrs - review proposed allocation; defend al;location plan

## July

7/2/02 - review distribution to plaintiffs

5.5 hrs - review distributions to class members/CRT process info access

7/4/02 - prepare for oral

9 hrs - read cases for oral; outline arguments

7/5/02 - conv Roger - possible to resolve?

5.5 hrs - prep/conv re possible resolution

7/6/02 - review escrow interest materials

11 hrs - review original neg documents/letters from bank

7/8/02 - conf Mel, allocation, escrow interest

2.5 hrs - conf Mel re escrow issues/advice

7/9/02 - review proposals on allocation

9.5 hrs - review proposal on allocation/memo to files

7/9/02 - argue interest motion before Block

5.5 hrs - prep/deliver argument before Block on interest

7/10/02 - interest - post argument materials

9 hrs - prepare post-argument material for Block

7/10/02 - draft order Block

5 hrs - draft proposed order with appropriate interest calc

7/10/02 - defense of allocation to Rechter

3.5 hrs - draft letter defending settlement to Rechter - late night

7/10/02 - defense of allocation to Desperak

1 hr- defend settlement/draft/send letter - late night

7/10/02 - defense of allocation to Moscovic

1hr - defend settlement - late night

7/11/02 - draft doc re fees

8 hrs - review cases; draft memo re fees

7/12/02 - file dec re allocation

6.5 hrs - complete/file dec re fees

7/15/02 - class communication

4 hrs - conv with class members re issues in distribution

7/15/02 - defense - Gorbaty

2 hrs - letter defending settlement

7/17/02 - open items

6 hrs - review open items; memo to files

7/21/02 - draft dec. supp. dist.

6 hrs - draft dec re supplemental distribution

7/26/02 - IRS

2.5 hrs - correspondence; research re 1099

7/27/02 - review allocation-related filings

7.5 hrs - review file of proposed allocations; memo to files

7/30/02 - Dubbin/Weiss

4 hrs - review fee application; work on opposition

## August

8/2/02 - interest brief

11 hrs - draft brief on interest/cases/revision

8/2/02 - conv Judah re allocation

3.5 hrs - prep/conv re proposed allocation of supplemental funds



8/3/02 - review draft allocation rec

4.5 hrs - conf with counsel/revise allocation rec

8/4/02 - discuss allocation rec; concerns

5 hrs - discuss allocation concerns with counsel

8/4/02 - report to judge

2 hrs - report to judge on status of issues

8/6/02 - interest brief

8.5 - drafting/research

8/7/02 - compound interest

5 hrs - review industry standards

8/7/02 - draft motion re info; slave labor II

6 hrs - draft memo of law; revise papers

8/13/02 - compound interest - reply papers

9.5 hrs - review banks' submission - begin reply papers

8/15/02 - review interest allocation issues

11 hrs - review interest allocation issues; bank papers/our arguments

8/17/02 - conf Mel

3 hrs - prep/conf Mel re open issues

8/17/02 - conf judge

4.5 hrs - prep/conf judge re open legal issues

8/22/02 - review Judah's recommendation

5 hrs - review Judah's allocation recommendations

8/22/02 - file dec of support re allocation

4 hrs - draft/revise

8/23/02 - conv Dubbin re allocation

3.5 hrs - prep/conv with Dubbin re allocation/discussion of his objections

8/23/02 - review Dubbin material

6.5 hrs - review Dubbin's objections/discuss with counsel/Mel

8/25/02 - conf judge

4 hrs - conf on open issues; CRT mechanics

### September

9/3/02 - Swiss escrow interest - final papers

11 hrs - draft final papers for Block; cases; documents

9/5/02 - role on fees

5 hrs - review cases re role of lead counsel

9/5/02 - incentive payments - review law

4 hrs - research re incentive payments; cases

9/5/02 - draft on fees

5.5 hrs - draft dec re fees; review cases

9/6/02 - dec re incentive payments

4 hrs - draft dec re incentive payments

9/8/02 - slave labor II materials - begin motion papers

11 hrs - begin drafting motion papers for Block; review cases; documents

9/10/02 - slave labor II materials

9 hrs - conv/memo to file/intent of parties

9/11/02 - conf Mel

2.5 hrs - tactics on slave labor II

9/13/02 - review distributions to gays/disabled

5 hrs - review dist to gay/disabled/ mechanics/success/anything more?

9/14/02 - conf with judge re cy pres; allocation

5 hrs - prep/conf with court on cy pres for gays/disabled

9/16/02 - review Dubbin time charges

11 hrs - review Dubbin time charges/allocation to tasks

9/17/02 - review Dubbin time charges

7 hrs - review Dubbin cases/ conv with counsel

9/18/02 - conv Dubbin

1 hr -review file

9/18/02 - Dubbin fee

3.5 hrs - prep/conv Dubbin re fees

9/18/02 - Urbach fee

4 hrs - review documents; cases re fees for client contact

9/20/02 - review class action structure

9 hrs - review cases/articles on structure/role of class counsel

9/23/02 - draft dec slave labor II

11 hrs - draft dec re slave labor II - neg/intent of parties

9/24/02 - atty fees

6 hrs - review all outstanding fee petitions/memo to files

9/24/02 - cost reimb.

3.5 hrs - review cost application; rec to court

9/25/02 - Weiss conference - let

3.5 hrs - review files/notes/prep/send letter to Weiss on conf

9/25/02 - allocation of interest - Mel

2.5 hrs - disc Mel re interest allocation

9/26/02 - conf court re allocation

5.5 hrs - prep/conf with court on allocation order

9/28/02 - review court allocation order

2.5 hrs - review allocation order/inform counsel/defend order

9/29/02 - review all Dubbin material

11 hrs - review all Dubbin material/fees/allocation/fairness

## October

10/1/02 - review Dubbin fairness issues

9.5 hrs - review fairness issues raised by Dubbins - structure/counsel/notice

10/2/02 - compound int issues - neg

4.5 hrs - effort to negotiate resolution of compound interest issue

10/4/02 - draft dec

9 hrs - draft dec re Dubbin objections

10/9/02 - review Dubbin objections; recon

7 hrs - review Dubbin material/revise dec

10/10/02 - conf court

4.5 hrs - prep/conf with court re open items

10/10/02 - letter to court

2 hrs - draft/send letter to court re issues

10/13/02 - slave labor II memo - motion papers

11.5 hrs - work on slave labor II motion papers for Block

10/13/02 - Michelle - research

2 hrs - review memo re slave labor II releases

10/14/02 - investments

4 hrs - review investments; mechanics for re-investment

10/14/02 - investments

3 hrs - mechanics for payment; alternative investment strategies

10/14/02 - Dubbin

3 hrs - prep/conv Dubbin re fees/allocation

10/16/02 - letter re allocation

2 hrs - draft/send letters re allocation

10/18/02 - slave labor II - motion papers

9.5 hrs - revise slave labor II motion papers

10/23/02 - atty fees opinion issued

2 hrs - review opinion; notify counsel

10/23/02 - slave labor II

7 hrs - work on slave labor II motion papers

10/24/02 - slave labor II

8.5 hrs - complete declarations/circulate

10/23/02 - slave labor II memo

11 hrs - draft memo of law; cases; analysis

10/25/02 - slave labor II memo

14 hrs - complete memo of law /circulate

10/25/02 - Block dec

7 hrs - revise dev - late night

10/26/02 - Block dec

8 hrs - complete revised declarations

10/27/02 - investments

3.5 hrs - conv on investment; discuss with Mel/counsel

10/27/02 - slave labor remand

5 hrs - review motion papers for Block - revise memo of law

10/28/02 - slave labor remand

5 hrs - revise list of releasees/consequences of open class

10/28/02 - slave labor II

12 hrs - complete slave labor II papers

10/29/02 - conf re Fagans' fee

5.5 hrs - conf re Fagan's fee/size/am't to plaintiffs

10/31/02 - review Fagan's fee

9 hrs - review case law/petition/consult counsel/Mel

## November

11/1/02 - conf court - Fagan' fee

3.5 hrs - prep/conf with court re Fagan's fee

11/3/02 -conv Fagan's fee; security; dist to plaintiffs

4 hrs - conv/mechanics/security/dist to plaintiffs

11/4/02 - draft Fagan fee documents

4 hrs - draft/circulate Fagan fee documents

11/5/02 - neg Fagan fee

5 hrs - discuss/neg on Fagan's fees/communicate with counsel

11/6/02 - file dec re Fagan's fees

3.5 hrs- complete/file dec re Fagan's fees

11/22/02 - review Katz file

6 hrs - review Katz file/case law - can we assist

## December

12/7/02 - Fagan fees - dist

4.5 hrs - mechanics of dist Fagan fee/payments to plaintiffs

12/9/02 - fees

3 hrs - memo re open fee issues; notify counsel re Fagan

12/10/02 - slave labor II - neg

6 hrs - negotiations on resolution of slave labor II on our terms

12/11/02 - conf Mel

2.5 hrs - conf Mel - open issues - advice

12/12/02 - conf court

5 hrs - chambers conf with court- CRT issues

12/13/02 - info access - CRT

9.5 hrs - review of CRT process; info access issues

12/14/02 - review Romani dist - IOM

3 hrs - review IOM/Romani mechanics

12/18/02 - Weisshaus let

3 hrs - draft send letter to Mrs. Weisshaus urging her to accept funds

12/21/02 - slave labor II - review companies

14 hrs - company by company review of slave labor II release issues

12/24/02 - review slave labor II companies

6 hrs - complete company review of slave labor II releases for neg

## 2003

### January

1/3/03 – Dubbin fee

4.5 hrs - conv/research/caselaw re Dubbin fee

1/3/03 - fees

4 hrs - memo to files re remaining fee issues

1/7/03 – insurance legislation

3.5 hrs - conf Mel re insurance legislation



1/8/03 – Deborah Sturman

5 hrs - conv/memo re information sources/students/questionnaires

1/8/03 –Claims Conference

3 hrs - info memo slave labor I

1/10/03 – Wilmer, Cutler – slave labor II

5 hrs - prep/neg re slave labor II

1/13/03 – slave labor II

6.5 hrs - prep/neg slave labor II

1/17/03 – slave labor II neg

6.5 hrs- continuing disc/neg re settlement of slave labor II

1/22/03 – chambers conf

5 hrs - status report CRT mechanics/info access/rules

1/23/03 – fees – Marks

3 hrs - review papers; increase fee

1/27/03 – dec re fees

8 hrs- prep/conv/neg re slave labor II/Mel/co-counsel

1/27/03 - admin

7 hrs - draft dec re outstanding fee issues

1/28/03 – slave labor II

8 hrs - disc/neg/draft memo

1/30/03 – invoice review

2 hrs - review invoices/ mechanics

1/31/03 – Holocaust panel

4 hrs - prep/discuss settlement

February

2/6/03 – slave labor II neg

8 hrs - disc/neg/consultation

2/10/03 – income tax

4 hrs - state status/1099's for plaintiffs?

2/11/03 - Interim Report filed

4 hrs - review Interim Report - discuss with counsel

2/14/03 - Block

5 hrs - conf with judge/prep/discuss

2/18/03 – incentive awards

5.5 hrs – case law; research

2/19/03 – slave labor II settlement

11 hrs - prep/negotiations; disc; memo to files

2/20/03 – incentive payments

3 hrs - discuss amounts; recipients

2/20/03 – CRT II app process

8 hrs - appeals procedures for CRT II; case law; drafting; disc

2/21/03 – chamber's conference

5.5 hrs - prep/chamber conf on CRT; status report; appeals process

2/22/03 - discuss interim report - Judah

3 hrs - conv Judah re allocation; residual dist

2/22/03 - discuss interim report - judge

2 hrs - conv with Judge re residual dist; allocation

2/23/03 - urge residual dist

5 hrs - various discussions urging residual dist

2/24/03 - income tax

5 hrs - research on 1099's for plaintiffs/Meili

2/25/03 - conf Judah - resid dist

3 hrs - disc residual dist

2/25/03 - CRT II - status of claims process

8 hrs - review CRT procedures - how can pace be increased

2/25/03 - CRT II - status of claim process

2 hrs - memo re speeding CRT

2/28/03 - Gideon Taylor - pace of dist

2 hrs - conv on pace of dist

### March

3/1/03 - review interim report - urge residual hearing

7 hrs - review report/disc/memo on hearing on residual

3/2/03 - conf with court re residual dist - gay/disabled/US

5 hrs - prep/conf with court on residual/cy pres for gay/disabled/US allocation

3/3/03 - conf Mel

2.5 hrs - status report/advice

3/7/03 – slave labor II settlement neg

11 hrs - daylong discussion re possible settlement options

3/10/03 – conference with judge

4.5 hrs - conf with court on settlement options

3/11/03 – Wilmer, Cutler

9 hrs - continued discussion/memo/caselaw re settlement

3/24/03 – chamber's conference

5 hrs - chambers conf/ slave labor II/CRT pace/residual dist

3/26/03 – Makor speech

3.5 hrs - description of settlement to community

3/28/03 - Michelle

5 hrs - review slave labor II releases

3/31/03 - interim report mem

5 hrs - prepare memo on Interim Report - pros/cons

#### April

4/8/03 – slave labor II

9.5 hrs - neg slave labor II - use slave labor I release

4/8/03 – Swiss release – Slave Labor II

5 hrs - draft proposed release - late night

4/9/03 – slave labor II neg

8 hrs - discuss proposed release; confer with banks; co-counsel

4/11/03 – compound interest opinion issued

3 hrs - review interest opinion; notify counsel/court

4/14/03 – interest/slave labor II

7 hrs - review status of slave labor II/interest issues

4/16/03 – slave labor II neg

8 hrs - neg/disc/drafting slave labor II

4/22/03 – compound interest

5 hrs - compute interest due/ disc amount

4/22/03 – appeal

4 hrs - review appeals from interim report

4/22/04 – interest calculations

5 hrs - neg over interest calc - prejudgment

4/25/03 – chamber's conf

5 hrs - status review; interest/CRT/slave labor II

4/28/03 – CRT status

8.5 hrs - review status of CRT/info access/software/procedures/staffing

4/30/03 – info access

9.5 hrs - review open issues; disc court orders

4/30/03 – secondary dist

8 hrs - disc/memo re secondary dist

May

5/2/03 – open tax issues

4 hrs - state-fed issues/refunds

5/2/03 - Congress

6 hrs - ins draft

5/7/03 – Dubbin/tax

9 hrs - structure issues/ tax status

5/7/03 – conf Mel

2.5 hrs - status report/advice

5/8/03 – Schwartzer/Weiss

6 hrs - prep/conf re Weiss' new proposal

5/9/03 – legislation re Holocaust disclosure

7 hrs - draft; discuss with Cong staffs

5/12/03 – conf. Mel

1 hrs - advice on leg tactics

5/19/03 – IRS

5 hrs - 1099's/expenses/atty fees - tax status

5/20/03 – slave labor II

9 hrs - neg on settlement of slave labor II

5/23/03 – Gribetz

5 hrs - prep/disc/review report - allocation/residual issues

5/30/03 – distribution issues

11 hrs - review distributions to class members - all classes

## June

6/2/03 – status/tax/residual

11 hrs - review all open issues - memo to files

6/4/03 – disbursement memo

5 hrs - review counsel disbursement/invoices/payments to Special Masters

6/5/03 – Deborah Sturman

5 hrs - work with student volunteers/review questionnaires

6/13/02 - Gallagher let

3 hrs - ins issues in Fla

6/25/03 – Michael Bayzler

4 hrs - review discussion of settlement

6/30/03 – Michelle Weitz

9 hrs - review slave labor II releases' self id releases

## July

7/1/03 – conf. with judge

5 hrs - prep/conf re status - CRT /allocation/residual dist/slave labor I/II

7/2/03 – Michelle conf

5 hrs - review cases; articles

7/3/03 - review Dubbin fee application

7 hrs - review amended fee application

7/8/03 – conf. Judge Korman/Sam Dubbin

5 hrs - prep/conf Dubbin/court re fees/allocation

7/8/03 - review Dubbin declarations on fees

11 hrs - review all Dubbin decs re fees

7/9/03 - review rules governing objector's fees

7 hrs - research re standards for objectors fees

7/10/03 - review allocation fees

9 hrs - review issues on allocation/fees

7/11/03 - draft dec fees

11 hrs - draft dec re Dubbin fees; circulate

7/12/03 - file dec re Dubbin's fees

8 hrs - revise; file dec on fees

7/17/03 - appellate judges-conf

2 hrs - describe settlement to appellate judges

7/21/03 - file supp dec re Dubbin's fees

7 hrs - draft/file supp dec re fees

7/22/03 - conf Judge Korman

5 hrs - prep/conf with court re fees/claim processing rules

7/23/03 - Dubbin fee

5 hrs - conv Dubbin; case law/drafting re fees/allocation

7/24/03 - conf. with judge

3 hrs - conf with court re open issues

7/25/03 - Deborah Sturman

2 hrs - review questionnaire process



7/31/03 – conf Witten

11 hrs - prep/conf on all outstanding issues/info access

August

8/1/03 - int, slave labor II

3 hrs - status review - interest/slave labor II

8/1/03 – Kohn

4 hrs - review Kohn valuation issues

8/1/03 – late claims

8 hrs - research re rules governing late claims

8/1/03 - open items

5 hrs - memo re open items

8/3/03 - review Joint report/letter

2 hrs - review Joint report on FSU funds

8/6/03 - review Dubbin material

7 hrs - review Dubbin materials objecting to allocation

8/6/03 – late claims

7 hrs - discuss late claim issues/report to court

8/9/03 - letter to court re objections

4 hrs - letter to court on outstanding objections/late claims

8/27/03 – open items

11 hrs - status memo on all open items

September

9/3/03 – compound interest

11 hrs - neg on calc/case law

9/5/03 - neg

7 hrs - disc of interest payment; draft order

9/8/03 – motion, info

8 hrs - begin work on motion re info

9/8/03 – Judah

2 hrs - disc re CRT need for info

9/9/03 – Gideon Taylor

2 hrs - disc claim procedures

9/9/03 – Roger, Chris

9.5 hrs - prep/discuss info needs

9/10/03 – notice issues

7.5 hrs - case research; scrubbing issues

9/11/03 – draft dec info

11 hrs - begin drafting dec re info

9/11/03 – Dubbin fee

2hrs - review materials

9/12/03 – HCPO matches

10 hrs - research; disc; review documents

9/13/03 – info access neg

11 hrs - disc/counsel/banks

9/13/03 – Dubbin residual motion

9 hrs - review motion to compel residual dist

9/13/03 - letter to court

4 hrs - draft/send letter to court re motions

9/14/03 - review motion for immediate dist

9.5 hrs - review motion for immediate dist - cases/documents/court power

9/14/03 – draft interim report

11 hrs - late night review of interim report

9/15/03 – interim report

14 hrs - review interim report/discussions with counsel/press

9/16/03 – Chris, Roger

11 hrs - prep/discussion of info access issues/caselaw/dis with counsel

9/17/03 – open items

4 hrs - review outstanding issues

9/17/03 – chamber's conference

4.5 hrs - CRT info access/cost/pace

9/18/03 - appeal process

7 hrs - appeals processes; speed CRT decisions

9/18/03 - Joint let

2 hrs - review letter re FSU payments; circulate to court/counsel

9/19/03 – slave labor II stip

11 hrs - draft/circulate/revise stip resolving slave labor II

9/20/03 – slave lab neg

10 hrs - disc re stip revisions/mechanics of adoption

9/20/03 – AM Swiss call - Volcker

2 hrs - conf with Volcker re info

9/22/03 – TAD match

10 hrs - review files; disc with banks/work out procedure

9/22/03 – TAD matches

1 hrs - memo to files re TAD issues

9/22/03 - Kingsboro

2 hrs - describe settlement to community

9/23/03 – HCPO match

11 hrs - research/conv/caselaw on TAD match

9/23/03 - court's decision issued rejecting Dubbin objection

2 hrs - review opinion; inform counsel

9/25/02 - review Dubbbin let

2 hrs - review inevitable reconsideration letter by Dubbin

9/26/03 – IRS

2 hrs - memo re issues/explanation

9/26/03 – HCPO match

11 hrs - disc re process; review materials/discuss with auditors

9/30/03 - Michelle

4 hrs - review open issues with claimants; respond to queries

October

10/2/03 – Dubbin, my role

5 hrs - disc of role of lead counsel/research/memo

10/2/03 - Special Master's interim report issued

2 hrs - review report /discuss with counsel

10/3/03 - review Katz file; conv with judge re awards

5 hrs - review Katz file; conv with court re awards

10/3/03 – chamber's conference

5 hrs - chamber conf re interim report - hearing/secondary dist

10/4/03 – draft press release

4 hrs - draft/issues press statement re interim report

10/4/03 - response dec

11 hrs - draft responsive dec defending interim report

10/7/03 – press release

2 hrs - revise press release/disc with counsel

10/8/03 - draft dec on interim report

7 hrs - finish dec re interim report

10/9/03 - interim report filed

2 hrs - discuss report with counsel; interested parties

10/11/03 - draft dec on interim report

11 hrs - complete dec/circulate/discuss/revise

10/12/03 - conf Judah/judge re secondary dist

5 hrs - prep -discuss Judah/counsel/interested parties - secondary dist

10/13/03 – dec supporting interim report

11 hrs - revise dec on interim report; case/article research

10/13/03 – interim report - review

5 hrs - review/discuss interim report

10/13/03 – file dec interim report

9 hrs - complete/file dec re interim report

10/14/03 – CRT investigation

7.5 hrs - review CRT process; difficult case; denials

10/14/03 – info access concerns

9 hrs - discuss info access issue with Zurich/banks/court

10/15/03 – settlement on slave labor II

2 hrs - resolve slave labor II issues; stip to court

10/16/03 – Miami Herald

2 hrs - comment defending allocation

10/17/03 - review press release

2 hrs - review press release

10/20/03 – open items

7 hrs - review of all open issues; disc with counsel/Mel

10/21/03 – allocation

7 hrs - review cases on judicial power to order info; articles

10/22/03 – chamber's conference

5 hrs - chambers conf on open issues - CRT/allocation/secondary dist

10/22/03 - Bradfield

2 hrs - disc re CRT issues

10/30/03 – JDC letter

2 hrs - review letter; circulate; discuss

10/31/03 – ICHEIC mtg

9 hrs - prep/disc ICHEIC

### November

11/1/03 - review HSF response

11 hrs - review HSF papers objecting to interim report/allocation

11/5/03 – UJC

4 hrs - disc settlement with community

11/7/03 – Dubbin response

7 hrs - review Dubbin response/cases/arguments

11/8/03 – Dubbin response

9 hrs - review Dubbin response; conv counsel/Mel/ research

11/9/03 – Dubbin response

5 hrs - research caselaw/articles - conv with court

11/10/03 – draft dec

9 hrs - draft response to HSF/Dubbin papers/circulate

11/10/03 – draft dec

7 hrs - revise dec - late night

11/11/03 - insurance

5 hrs - review status of ins program

11/12/03 - Swift/Dubbin dec

9 hrs - review/respond to Swift materials

11/13/03 - Dubbin

5 hrs - review/respond Dubbin materials

11/13/03 - draft dec

7 hrs - draft dec - late night

11/14/02 - conv with court re allocation of interest

3.5 hrs - discussion of interest allocation

11/14/03 - file dec responding to HSF objections

5 hrs - complete/ file responsive dec

11/14/03 - Jerusalem

personal

11/15/03 - Jerusalem - Jewish Agency

2 hrs - discussion of allocation issues with Jewish Agency personnel

11/16/03 - Jerusalem - Scharansky

3 hrs - discussion of allocation issues with Scharansky

11/17/03 - Jerusalem

personal

11/17/03 - order on allocation of interim interest

5 hrs - review of order/disc with counsel



11/19/03 – Interim report

5 hrs - hearing on interim report

11/20/03 – Swift dec

5 hrs - review Swift dec/discuss with counsel/Mel/caselaw

11/20/03 - file dec responding to Swift

3 hrs - draft/file response to Swift

11/21/03 - CRT II info

11 hrs - review info needs; disc tactics/Mel

11/21/03 - review Dubbin filings

7 hrs - review issues raised by Dubbin filing - late night

11/24/03 - file supp dec in response to objections

9 hrs - complete/file dec responding to objections

11/24/03 – HSF study

5.5 hrs - review HSF study; disc with counsel; Judah - late night

11/24/03 – Bayzler

2 hrs - discuss issues with Bayzler

11/25/03 – ADL

2 hrs - discuss settlement with ADL leadership

11/25/03 – Israel/allocation

4 hrs - discuss Israeli allocation/ counsel/ Berger

11/25/03 - Michelle

2 hrs - conf with survivor leaders

11/26/03 – dist neg

4 hrs - discussion of alternative allocation formula

11/26/03 - review Stregner let/ response

3.5 hrs - review file/draft/send response re Katz

## December

12/3/03 - review Dubbin filings

6 hrs - review additional Dubbin material; circulate memo

12/4/03 – chamber's conf

3 hrs - chamber conf on CRT/allocation/secondary dist

12/4/03 – Mel

2 hrs - conf Mel on status

12/5/03 – Marc Cohen

5.5 hrs review of ins claims program

12/5/03 - waivers

2 hrs - waiver/acknowledgment issues - CRT

12/5/03 – dist dec

5.5 hrs - dec re distribution issues - draft/file

12/8/03 – info access

12 hrs - cases/articles on Swiss law/info access

12/8/03 – Roman Kent

2 hrs - conf Roman re allocation/pace

12/9/03 – Mel; Sharansky

6 hrs - prep/conf with Mel/Scharansky on allocation issues

12/10/03 allocation

6 hrs - general disc allocation with counsel/interested parties

12/10/03 – Gideon Taylor

2hrs - conf with Gideon on slave labor I/CRT

12/11/03 - ADL

2 hrs - defense of settlement - leadership of ADL

12/12/03 - review Dubbin filings

5 hrs - response to new Dubbin filing

12/15/03 – Dubbin standing

9 hrs - research re standing; caselaw/articles/memo to files

12/15/03 – Dubbin fees

2 hrs - review of fee issues

12/16/03 - review Blue Card proposal; discuss with Judah

3 hrs - review of Blue Card proposal/disc with Judah

12/16/03 - letter on standing

4 hrs - research/draft/send letter to court on standing

12/16/03 - conf Mel

2 hrs - conf Mel on open issues/advice

12/17/03 – NAHOS

2 hrs - response to NAHOS on allocation issues

12/18/03 – ADL

2 hrs - response to ADL on settlement

12/19/03 – conference

4 hrs - meeting with court/Judah re issues

12/19/03 - Gideon

2 hrs - conf re CRT/CC role

12/19/03 - Rechter

2 hrs - draft/send response

12/22/03 - Moskovic

1.5 hrs - draft/send response

12/22/03 - Rechter

1.5 hrs - additional comments

12/23/03 - review DRA cy pres proposal - conv judge

5 hrs - prep/conv judge re DRA/gay cy pres issue

12/23/03 - review Pink Triangle position

5 hrs - review gay allocation/Pink Triangle proposal/court

12/29/03 - review Eizenstat; conf Eizenstat

5 hrs - review Eizenstat material; conv Eizenstat re allocation/CRT

## 2004

### January:

1/2/04 - work on motion for additional info for CRT

9 hrs - research; review scrubbing process

1/4/04 – information access

11 hrs - review scrubbing material/holes in Volcker process

1/5/04 - ADL call

2hrs - review settlement allocations

1/8/04 - review 1997 memo

5 hrs - review settlement structure

1/8/04 - memo in info

7 hrs - continue working on holes in Volcker process

1/8/04 - Swiss TV

2 hrs - description of settlement to public

1/9/04 - Judah Gribetz

3.5 hrs - conv with Judah re info needs/holes in Volcker process

1/10/04 - draft dec. info access

11 hrs - review Volcker audit

1/11/04 - swiss disc dec

11.5 - review Volcker audit

1/12/04 - Swiss TV

2 hrs - description of settlement to Swiss

1/12/04 - draft dec. info access

12 hrs - draft memo re issues on info access

1/14/04 - draft dec info access

11 hrs - draft dec info access

1/15/04 - CRT II info access

12 hrs - holes in Volcker audit

1/16/04 - Self Help

3 hrs - review program; secondary dist

1/16/04 - draft dec. info access

6.5 hrs - draft dec re info access

1/17/04 - draft mem of law

12 hrs - memo of law; draft

1/17/04 - conv Schwarzer

2.5 hrs - disc Weiss proposal

1/20/04 - draft memo of law

7.5 hrs - draft memo

1/21/04 - draft memo of law

9 hrs - draft memo; case research

1/22/04 - draft memo of law

7 hrs - draft memo of law on access to new info

1/23/04 - Paul Berger

3.5 - conf with Paul Berger re Israeli allocation

1/25/04 - review IOM administrative operation

7 hrs - review IOM slave labor II/Romani/gay/disabled

1/27/04 - review new Weiss proposal for research

5.5 hrs - review new research proposal/structure

1/27/04 - memo of law

7.5 hrs - work on memo of law

1/27/04 - D.C. re pro-bono help

1 hr - DC pro bono for questionnaires

1/28/04 - draft memo of law

2 hrs - revise memo of law

1/28/04 - ADL conf call

2 hrs - discussion of settlement

1/30/04 - review Swiss proposals

11 hrs - review Swiss proposals for info access

1/30/04 - UJC proposal - cy pres issues

11.5 hrs - review UJC cy pres issues/allocation issues

February:

2/1/04 - review HSF material

4.5 hrs - review HSF materials; check figures/review demographic figures

2/1/04 - HSF memo of law

7 hrs - review HSF memo of law; analyze arguments; caselaw/ research re court's power

2/3/04 - conf Mel

2.5 hrs - status review/advice

2/3/04 - VOA - settlement

2.5 hrs - prep/discussion of settlement overseas

2/3/04 - draft memo of law

7 hrs - draft memo of law

2/4/04 - draft memo of law

9 hrs - complete drafting memo of law

2/5/04 - CRT - NYC

11 hrs - research Swiss law re using NYC claims facility

2/5/04 - draft memo

6.6 hrs - memo to files re NYC facility issues; circulate - late night

2/8/04 - Swiss disc memo

9 hrs - memo on additional info access; caselaw; articles

2/9/04 - Paul Berger

5 hrs - prep/conv re allocation and Israel - urge no litigation

2/10/04 - draft memo

11 hrs - begin drafting memo of law of challenge Volcker audit procedures

2/11/04 - memo re info

6.5 hrs - continue working on memo of law on access to info/notice

2/12/04 - CRT II NYC - memo

12.5 hrs - complete draft of memo; conf Mel/ mechanics of NYC operation

2/13/04 - call Switzerland

4 hrs - prep/conv with CRT/banks re onfo access

2/17/04 - chambers conf. PM

4.5 hrs - chambers conf - review of info issues - CRT

2/18/04 - file dec re info

4.5 hrs - complete/file dec re info

2/19/04 - dec Dubbin record



6.5 hrs - review Dubbin material/draft dec correcting record

2/19/04 - court's opinion

2.5 hrs - review opinion; inform counsel/ Mel

2/20/04 - draft dec info

9 hrs - work on dec re info/TAD/scrubbing

2/20/04 - lv for Zurich

2/21-24/04 - Zurich

39 hrs - meetings with CRT/banks/counsel

2/24/04 - Zurich memo

5 hrs - draft memo to file re issues raised during Zurich meetings

2/27/04 - draft dec info

11 hrs - continue drafting dec re additional info

### March

3/1/04 memo of law - info

7.5 hrs - begin drafting memo of law for motion on info

3/1/04 chambers conf

5 hrs - chambers conf re Zurich meeting/info access

3/2/04 - final dec info

12 hrs - complete dec for motion on info

3/3/04 - CRT info

9 hrs - conf with CRT/draft brief/case research

3/5/04 - conf call - survivors

3.5 hrs - prep/conf call with survivor leadership - info/allocation

3/9/04 - allocation decision issued

3 hrs - review opinion; inform counsel/ Mel

3/10/04 - review allocation decision

3.5 hrs - review allocation decision; discuss with interest parties

3/10/04 - conf Mel

2.5 hrs - conf Mel/allocation and info issues - advice/tactics

3/11/04 - conf court re gay/disabled; residual US

5 hrs - prep/conf with court re gay/disabled/US allocation - disagreement

3/11/04 - final dec info

12 hrs - complete motion papers for info motion - late night

3/11/04 - Marc Cohen

2.5 hrs - review ins issues - dinner mtg

3/17/04 - UJC meeting

2 hrs - defend allocation decisions

3/18/04 - CRT II - Am 3

9 hrs - prep/begin negotiations on info access - TAD,HCPO, NYC; publication

3/18/04 - CRT II - NYC

9.5 hrs - conv/research re NYC facility; Swiss law; software issues - late night

3/19/04 - Millersville talk

5 hrs - describe settlement to Holocaust scholars

3/25/04 - review reconsideration motions by Dubbin

9 hrs - review reconsideration motion by Dubbin; caselaw; fed rules

3/26/04 - review withdrawal of fee application by Weiss

4 hrs - discuss fee issues with counsel/inform court/co-counsel

3/26/04 - info access neg

12 hrs - memo to files; research on issues raised by info access neg

3/27/04 - review new proposal by Weiss

4.5 hrs - review new Weiss proposal/Mel - is it a good idea?

3/27/04 - swiss dec

7.5 hrs - revise motion dec re info access

3/27/04 - swiss dec

6.5 - complete revision of motion dec

3/27/04 - swiss info brief

12 hrs - complete drafting brief; circulate for comment

3/30/04 - Draft dec. DRA

5 hrs - draft dec on DRA cy pres - supporting modest proposal

3/30/04 - conf British victims

2.5 hrs - prep/conf British victims

3/30/04 - dec info

5 hrs - revise/expand dec

3/31/04 - Federation talk

2.5 hrs - describe settlement to Federation

3/31/04 - review modified fee application

5 hrs - review modified fee application; check for differences with original

3/31/04 - second Dubbin fee opinion by court

2 hrs - review second Dubbin fee opinion - case research; inform counsel

## April

4/1/04 - dec re cy pres -Pink Triangle/DRA

9.5 hrs - complete/file dec re cy pres for Pink Triangle/DRA

4/1/04- dec draft re allocation

4.5 hrs - draft dec re allocation proposal - late night

4/2/04 - order denying gay/disabled cy pres

4 hrs - prep/conv with court on order

4/3/04 - memo to files re denial of gay/disabled - my role

4 hrs - memo to file re denial of gay/DRA cy pres - research on my role

4/4/04 - DRA appeal

5 hrs - conf with court/DRA appeal

4/5/04 - cy pres memo

14 hrs - research on upcoming appeal/caselaw on cy pres

4/7/04 - CRT info - neg

11 hrs - prep/neg re info access to forestall motion

4/7/04 - chamber conf – Wolinsky

2 hrs – discuss DRA proposal

4/8/04 - response to HSF

12 hrs - draft response to HSF objections

4/8/04 - HSF N/A filed

1 hr. - review NA/memo to file/notify court/counsel

4/9/04 - review DRA motion

8.5 hrs - review reconsideration motion/conv with counsel/court

4/14/04 - draft DRA declaration

5.5 hrs - draft declaration correcting record; review documents

4/15/04 - DRA dec. filed

2.5 hrs - complete/file dec/ notify counsel

4/16/04 - Special Master's rec filed

9 hrs - review recommendations; consult with counsel; interest parties

4/18/04 - draft residual dec

5 hrs - draft dec re residual dist

4/19/04 - dec re dist

7.5 hrs - complete dec/memo re allocation

4/21/04 - allocation memo

5.5 hrs - complete allocation memo/circulate

4/21/04 - allocation

6 hrs - series of meetings on allocation issues

4/21/04 - draft memo - Judah

3 hrs - draft memo to Judah re allocation

4/22/04 - denial of HSF objection

1 hr - review denial of objection; circulate; discuss

4/22/04 - HSF N/A

1 hrs - review amended N/A - timely?

4/22/04 - allocation

5 hrs - continued discussions re allocation; residual dist

4/23/04 - NYC office

9 hrs - prep/conv re NYC office - mechanics of info transfer/claims work

4/24/04 - CRT II - neg

11.5 hrs - prep/neg/discussion of settlement of info access issue

4/25/04 - AM 3 - neg

11 hrs - prep/neg re amendment on info access

4/27/04 - letter to court in lieu of dec

4.5 hrs - draft letter to court in lieu of dec/ decide not to file dec/Mel

4/28/04 - review Israeli submission on allocation

14 hrs - review of Israeli recommendation; disc with court; counsel; judge

4/29/04 - residual hearing all day

14 hrs - prep/attend hearing

4/29/00 - objections to looted assets class admin

1 hr - memo to file re admin - late night

4/30/04 - access neg.

9 hrs - prep/neg/disc re info access resolution

4/30/04 - allocation review

8.5 hrs - review of allocation issues/proposal - late night

May

5/3/04 - motion re info

7.5 hrs - revise motion papers/prepare for filing

5/3/04 - chambers conf - Somer

4.5 hrs - chamber conf re NYC/TAD/notice

5/4/04 - CRT II neg info

6.5 hrs - continued discussion re info access

5/4/04 - Jerusalem - allocation mem

4 hrs - memo for Israelis re allocation

5/5/04 - motion re info

11 hrs - revise motion papers - send to banks

5/5/04- defense of settlement

1 hr - letter defending settlement

5/6/04 - defense of settlement

2hrs - letter defending settlement

5/11/04 - Volcker let

2 hr -Volcker letter/draft/send

5/11/04 - motion re info

7.5 hrs - continuing discussion re info access

5/11/04 - draft Korm order

3 hrs - draft order for Korman

5/12/04 - AM 3

9 hrs - prep/disc/neg re info access

5/12/04 - access neg

7 hrs - memo re legal/practical impediment to resolution - late night.

5/13/04 - info neg

6.5 hrs - general discussion of issues

5/13/04 - CRT neg

6.5 hrs - recusal/confidentiality protection

5/15/04 - info access

5 hrs - confidentiality/software

5/15/04 - info access

2 hrs - conv/mem Mary Jane Schriber re auditors

5/16/04 - info access

6 hrs - disc mechanics of NYC operation

5/16/04 - Block order

2.5 hrs - submit confidentiality order

5/16/04 - Swiss allocation mem

5.5 hrs - memo re allocation issues on appeal – late night

5/19/04 - fees

4.5 hrs - review of outstanding fee issues; update case research

5/19/04 - neg info access

6.5 hrs - neg re TAD access; mechanics

5/21/04 - CRT II info

9 hrs - discussion re 3B publication; challenge audit



5/21/04 - draft recusal order

3.5 hrs - disc with court/draft/submit

5/22/04 - CRT II info

5 hrs - conv with counsel re info access/research/review documents

5/22/04 - CRT II info

5.5 hrs - draft documents on info access

5/23/04 - CRT counsel mem

7 hrs - draft/circulate memo re status of negotiations

5/25/04 - recusal from Swiss bank issues

2 hrs - review/discuss recusal from contest bank issues

5/27/04 - AM 3

6.5 hrs - disc on info access; TAD match/cluster-busting

5/28/04 - NYC draft order

7 hrs - draft proposed order resolving issues

## June

6/1/04 - HSF appeal

6.5 hrs - begin preparing for appeal; case review/documents

6/2/04 - Bradfield

2 hrs - review CRT procedures/info needs

6/2/04 - Bradfield

1.5 hrs - memo to files re CRT needs

6/2/04 - publication of names

8 hrs - prep/disc re mechanics of name publication; existence of lists

6/2/04 - proposed NYC order

4 hrs - draft order authorizing NYC facility

6/3/04 - AM 3 NYC

7 hrs - disc final version

6/3/04 - AM 3 NYC

2 hrs - memo to files on open issues for discussion

6/3/04 - AM 3 NYC

6.5 hrs - draft various alternatives - late night

6/4/04 - HSF appeal

4 hrs - work on appeal issues - caselaw/arguments/docs

6/4/04 - access neg

7 hrs - discussion re final version of info access settlement/counsel

6/5/04 - access neg

7 hrs - disc re final version of info settlement/court/CRT/Judah

6/5/04 - Slave Labor II - NYC

3 hrs - review of personnel by banks

6/5/04 - request approval from Swiss officials

5 hrs - draft/send request for approval of final version to Switzerland

6/6/04 - sched appeal

2 hrs - conf re schedule

6/6/04 - defense

1 hr - defense of allocation to leaders

6/7/04 - defense

1.5 hrs - defense of settlement

6/7/04 - defense

2 hrs - defense of settlement

6/8/04 - info neg

7 hrs - prep/discussion on implementation of info agreement

6/9/04 - info access

7 hrs - prep/discussion of publication mechanics

6/10/04 – text of AM 3

5 hrs – draft language

6/14/04 - allocation let

2 hrs - description of allocation decisions

6/15/04 - dec re confidentiality order for AM 3

4.5 hrs- draft/file dec re confidentiality issues

6/15/04 - issuance of confid order by Block

1 hrs - review Block's order

6/15/04 - sched appeal

2 hrs - sched appeal - disc

6/15/04 - sched appeal

1.5 hrs – Circuit conf on sched

6/17/04 - Swiss appeal

2 hrs - review documents on DRA/Pink Triangle

6/24/00 - dec responding to Rosenbaum

5 hrs - draft/file dec responding to Rosenbaum

6/28/04 - Korm let

1 hr - letter to court re status of appeal

## July

7/2/04 - sched app

3 hrs - sched app

7/6/04 - review Dubbin fee issues - memo to files

11 hrs - memo to file re Dubbin fee issues

7/7/04 - review DRA/Pink Triangle issues - memo to files

12 hrs - memo to files re issues raised in DRA/Pink Triangle appeals

7/9/04 - review HSF issues - memo to files

12 hrs - memo to files re issues raised by HSF appeal

7/10/04 - publication of new names

7 hrs - disc/drafting re pub new names - 1962 list; Polish Hungarian list

7/11/04 - TAD matches

9.5 hrs - disc re TAD matches; access state of archives; personnel

7/12/04 - HSF

5.5 hrs - review caselaw/docs/conv Mel

7/13/04 - HSF

6.5 hrs - outline of arguments - responses

7/14/04 - Dubbin

5.5 hrs - Dubbin fees - both applications

7/15/04 - HSF appeal

14 hrs - jurisdiction; timeliness; merits

7/16/04 - HSF appeal

13 hrs - case research

7/16/04 - HSF appeal

6 hrs - disguised fairness issues - late night

7/17/04 - Dubbin

1 hr - review issues

7/17/04 - AM 3 implementation neg

5 hrs - meeting re publication/TAD access

7/16/04 - HSF

2 hrs - appendix

7/19/04 - HSF

1 hr - appendix

7/19/04 - HSF

9 hrs - merits of attack of structure/caselaw/articles

7/19/04 - sched appeal

1hr - set briefing/appendix sched

7/22/04 - Swiss officials approve NYC operation

2 hrs - review limited approval; memo to files; communicate

7/26/04 - DRA brief

11 hrs - review DRA brief - read cases

7/26/04 - DRA brief

7 hrs - outline response - late night

7/27/04 - HSF

14 hrs - review issues in HSF brief

7/27/04 - CRT II info - Swiss appeal

2 hrs - mechanics of NYC office/appendix issues

7/28/04 - Pink Triangle

11 hrs - review brief/cases arguments

7/29/04 - HSF appeal

11 hrs - review brief/cases/arguments

7/30/04 - HSF appeal

11 hrs - read cases cited in brief/memo to files

## August

8/1/04 - Dubbin appeal

12.5 hrs - review brief; read cases outline responsive arguments

8/1/04 - Dubbin appeal - late night

1 hr - memo to files re open issues

8/2/04 - Swiss law

8 hrs - research on impact on NYC operation - early morning

8/2/04 - HSF appeal

7 hrs - research re fairness issues

8/2/04 - open items

2 hrs - memo - late night

8/2/04 - Swiss law

2 hrs - draft/circulate memo to staff of NYC office

8/3/04-8/23/04 - draft four responsive 2<sup>nd</sup> Cir briefs - every day - at least 10 hrs per day

200 hrs - draft four briefs; prepare appendices for all appeals; conv counsel; court

8/04/04 – draft proposed consolidated brief for all four cases

8/5/04 – appendix prep – review documents

8/09/04-8/11/04 - review appendices in each case – review documents in record

8/10/04 – review/assemble/ read prior reported opinions

8/12/04 – appendices – complete

8/13/04 – review recent articles

8/14/04 - Jewish Life – review articles

8/15/04-8/17/04 – review relevant precedents

8/18/04 – begin drafting briefs

8/18/04 - edits

8/18/04 - edits

8/19/00 - edits

8/19/04 - edits

8/19/04 - edits

8/20/00 – new drafts – four app briefs

8/21/04 – final version HSF brief

8/21/04 – final version DRAbrief

8/21/04 - revise PT/DRA brief

8/21/04 - Swiss briefs – final version Dubbin fees brief

8/21/04 – revise HSF final

8/22/04 - oversize brief motion

3 hrs - draft/ file motion re oversized briefs

8/23/04 - QP

2 hrs - review questionnaire use

8/23/04 - DRA PT final version

8/23/04 - Dubbin fee - final draft

8/23/04 - cover let

8/23/04 – complete HSF brief

8/23/04 – complete DRA brief

8/23/04 – complete PT/Dubbin fee brief

8/24/04 - review completed briefs

8 hrs - final analysis for all issues; form of briefs

8/24/04 - Dubbin

6.5 hrs - check appendices - supp appendix

8/24/03 - Swift

9 hrs - review Swift material

8/24/04 - slave labor II letters

1 hr - letters re slave labor II releases

8/25/04 - Swift



9 hrs - draft responsive brief

8/26/04 - Swift brief

4 hrs - complete/file responsive papers

8/26/04 - Swift allocation

7 hrs - review Swift allocation position/compare with earlier proposals

8/27/04 - Swift brief

6 hrs - timeliness; status

8/27/04 - slave labor II releases

2 hrs - letters re slave labor II releases

8/27/04 - CRT AM 3

4 hrs - issues concerning NYC/TAD access

8/27/04 - CRT info

4 hrs - publication issues

8/30/04 - HSF sched

3 hrs - sched reply brief

8/30/04 - HSF sched

2 hrs - draft dec opposing delay

8/31/04 - HSF

4 hrs - draft opposition to delay

8/31/04 - Dubbin appeal

3 hrs - sched reply; oppose delay

September

9/1/04 – motions re scheduling briefs

2 hrs – draft motions

9/1/04-9/3/04 - review briefs; analyze appeal issues

25 hrs - read all briefs; analyze arguments/responses

9/4/04 - provide banks claims data - review agreement

5 hrs - review agreement re claims data; conv Judah; court

9/4/04 - review slave labor II releases

2 hrs - review slave labor II after-acquired releases

9/4/04 - HSF - sched

1.5 hrs - motion re sched

9/8/04 - review reply brief - DRA

11 hrs - review reply brief; read cases - analyze responses

9/8/04 - slave labor II releases

2 hrs - review releases for after-acquired companies

9/9/04 - review reply brief - Pink Triangle

7.5 hrs - review reply brief; analyze responses

9/17/04 – bank access to CRT data

2 hrs – memo/disc re bank access to CRT denials

9/17/04 - access issues

5 hrs - prep/discuss publication/TAD access/NYC operation

9/17/04 - status of lead settlement counsel

7 hrs - research analysis of structure of settlement – late night

9/18/04 - reported opinions

2 hrs - review opinions; discuss; circulate

9/24/04 - review reply briefs - HSF/Dubbin

12 hrs - review reply briefs in Dubbin fee/HSF appeals

9/28/04 - Dov/Mary - call

3.5 hrs - prep- conv with CRT re info access/ appeals procedure

9/29/04 - survivors conf call

2.5 hrs - conf call with survivor leaders; status of CRT

9/30/04 - Judah/Shari

2 hrs – prep/conv re CRT issues

#### October

10/6/04 - Slave Labor II release materials

2 hrs – review release responses

10/7/04 - memo re bank info/slave labor II/TAD

3.5 hrs – review settlement agreement/memo re bank access to CRT data

10/7/04 - Dov – conv re implementing Am 3

1.5 hrs – review implementation steps

10/8/04 – conv Dov/Mary implementing Am 3

2 hrs – plans for implementation; TAD access

10/11/04 - rebalance portfolio?

1.5 hrs – review assets

10/11/04 - Evron – assist survivor/conf call

1 hr – review open issue

10/12/04 - Evron – conf call

1 hr – discuss issues with survivor leaders

10/12/04 - residual claims/Switzerland

1.5 hrs – respond to inquiries

10/12/04 - Slave labor II releases

2 hrs – review responses from Swiss companies

10/13/04 - memo re bank info/TAD match/pub

3 hrs – review open CRT items/memo to files

10/13/04 - memo re Price Waterhouse/TAD access

2 hrs – review agreement; Swiss law re access to TAD archive

10/14/04 - draft new acknowledgment/release

3 hrs – review release language/draft new language

10/15/04 - conf call with Zurich (Dov, Mary, Brita) re implementation of Am 3

4.5 hrs – prep/call/follow up call with Dov/Mary

10/15/04 - Dov/Mary – revised acknowledgment; PW TAD access

2 hrs – follow up call/memo

10/20/04 - Paul Berger – residual distribution

1 hr – Israeli proposal

10/20/04 - revised acknowledgment

2 hrs – review language/work out wholesale solution

10/21/04 - Helen Junz – NY escheat issue

3 hrs review NY law/memo to file

10/22/04 - Spira denial

1.5 hrs - review issue

10/22/04 - Pavlovec appeal

2hrs – review issues

10/22/04 - CRT valuation issues in Bloch-Bauer/ignore Nazi tax proceedings

3 hrs – research valuation issues/memo to files

10/26/04 - Dov/Mary – access to TAD archive

2 hrs – strategy for PW access

10/26/04 - Pavlocec appeal – draft letter/phone

3.5 hrs – research re issues/memo/responsive letter

10/27/04 - Dov – publication of new accounts

2.5 hrs – conv re TADS access/needed documents

10/28/04 - memo to Judah re impact of 1939 Swiss visa change

3.5 hrs – research/memo re effect of visa change on presumptions

## November

11/1/04 - review of open items/memo to files re open items

2 hrs – memop to files re open items

11/3/04 - memo to court re publication issues/Helen Junz

3 hrs – review of documents/ memo to court

11/9/04 - Helen Junz – Bloch-Bauer issues

2.5 hrs – research re valuation/liability in Bloch-Bauer

11/10/04 - notice to Swiss authorities re publication

1.5 hrs – draft letter/review documents

11/10/04 - Dov – regulatory approvals for publication

1.5 hrs – conv re formalities

11/11/04 - Evron – conf call with survivors

1 hr – conv with survivor leaders

11/11/04 - Dov – publication issues – assemble names

2.5 hrs – mechanics of assembling names

11/11/04 - CC/Swiss authorities – publication of new names

3 hrs – discussion of preconditions to publication

11/17/04 - Morris – notice plan for new publication

1.5 hrs – mechanics of notice/ cost of notice

11/18/04 - Morris – notice plan

2 hrs – discussion of cost/effectiveness

11/18/04 - Special Master compensation; review

1.5 hrs – review application/memo to court

11/19/04 - Morris – notice plan

1 hr – conv re modified plan

11/23/04 - Morris – notice plan; budget

1 hr – cov re accounting for costs

11/23/04 - review Dov/Mary memo on implementing Am 3

3 hrs – review memo/research of Swiss law re access

11/26/04 - Dov/Mary – UBS letter

1.5 hrs – conv re UBS letter on access to TAD

11/26/04 - Mary – Am 3 implementation memo

1.5 hrs – conv re implementation strategy

11/26/04 - Mary/Dov – PW TAD access

2 hrs – requirements for TAD access

11/29/04 - Bazylar essay – interim report to community

3.5 hrs – begin drafting

11/29/04 - Dov – access to TAD archive

1 hr – conv re strategy

11/29/04 - Dov – wording of documents

2 hrs – review proposed CRT letters re TAD access

11/30/04 - receipt of Swiss authorization

1.5 hrs – Swiss regulatory approval received/acknowledged

11/30/04 - counsel survivors

## December

12/1/04 - notice of publication – Swiss authorities

2 hrs – draft formal notice of publication to Swiss authorities

12/1/04 - Bloch-Bauer – Judah/edit/review

5 hrs – read draft opinion/research/begin edit

2/2/04 - formal notice of publication

1 hr – notice sent out

12/2/04 - Mary – Bloch-Bauer edit

2 hrs – conv with Mary/review draft

12/2/04 - Evron – conf call

1 hr – discussion with survivor leaders

12/3/04 - edit Bloch-Bauer

3 hrs – edit draft

12/3/04 - UBS concerns with NY facility

2 hrs – conv re security in NY facility

12/3/04 - appeals process for refugees

2.5 hrs - design appeal process for refugee class

12/3/04 - Bazyler piece

1.5 hrs – draft interim report

12/6/04 - Bazyler piece

3 hrs - draft

12/10/04 - UBS concerns – NY facility

2.5 hrs – inspection of NYC facility

12/10/04 - Bazyler piece

3.5 hrs – draft; revise

12/14/04 - Bazyler piece

3 hrs – draft; review documents

12/14/04 - reply to Swift re info

2 hrs – review documents/memo/letter



12/16/04 - Bazylar piece

4 hrs – finish first draft

12/17/04 - Bazylar piece

2.5 hrs - edit/revise

12/20/04 - Bazylar piece

1 hr - revise

12/21/04 - reply to Swift re info

1 hr – letter/memo

12/21/04 - Bloch-Bauer draft

4.5 hrs – review draft/edit language

12/22/04 - late claims memo – draft order

4 hrs – draft proposed late claims order

12/26/04 - Bazylar piece

3 hrs – edit/revise

12/28/04 - late claims order

2 hrs – conv re late claims

12/30/04 - Bloch-Bauer edit/ memo on law/valuation

4 hrs – research re legal issues on valuation/liability

2005

January

1/3/05 - Bloch-Bauer edit – research re liability under Swiss law

5 hrs – edit/read Swiss materials

1/3/05 - Evron – conf call

1 hr – summary of issues for survivor leaders

1/4/05 - Evron – conf call

1 hr – discussion of open issues

1/4/05 - Bloch-Bauer edit

3 hrs – edit Executive summary

1/4/05 - Claims Conf – press conf re publication – earned notice

2.5 hrs – review press materials/edit

1/4/05 - Claims conf – budget for notice program

1 hr – conv re accounting

1/4/05 - Morris/Greg – notice plan; budget

1 hr – conv re accounting

1/4/05 - conf with court re Bloch-Bauer

3.5 hrs – prep/conf with court re Bloch-Bauer

1/5/05 - Bayzler piece

1 hr - reveiw

1/5/05 - effect of Nazi tax proceedings on valuation

2.5 hrs – memo re valuation in Bloch-Bauer

1/5/05 – role of class counsel

2 hrs – research re role of class counsel

1/6/05 - Bazyler piece

1 hr - review

1/6/05 - draft press release for new publication

1.5 hrs – review/draft press materials

1/6/05 - conf with Mary re Bloch-Bauer edits

1.5 hrs – prep/conv with Mary re Bloch-Bauer

1/7/05 - Morris – notice plan/budget

1 hr – advice re cost

1/7/05 - arrange press conf re publication

1 hr – arrange press conf

1/7/05 - CC – schedule Jan 13 press conf at courthouse

1 hr – discuss press conf re earned notice

1/7/05 - Part III's; appeal schedule

2.5 hrs – review invoices; schedule oral

1/8/05 - Dov/Mary press material re publication

2 hrs – prep/edit press material re publication

1/8/05 - memo re valuation in Bloch-Bauer

2 hrs – memo re date of valuation; effect of WW II reparations

1/10/05 - CC – press materials

1 hr – review press materials

1/11/05 - Witten re open items

1.5 hrs – memo re open items

1/12/05 - new publication; press statement

2 hrs – draft press materials re publication

1/13/05 - press conf at court re new publication

3.5 hrs – prep/attend conf

1/13/05 - Bloch-Bauer edit – full edits

4.5 hrs edit draft

1/14/05 - Bloch-Bauer edit

2 hrs – edit draft

1/14/05 - Rosenfeld award

1 hr – discussion of payment mechanism

1/14/05 - Mary – Bloch-Bauer

1.5 hrs – conv re issues in Bloch-Bauer

1/14/05 - schedule appeal

1 hr – schedule oral

1/14/05 - Part III's

1 hr – review orders/invoices

1/21/05 - Bloch-Bauer edits (3)

3 hrs – edit draft opinion

1/25/05 - Bazyler piece

1 hr - revise

1/25/05 - schedule appeals

1 hr – schedule oral

1/28/05 - Evron – conf call

1 hr – conv with survivor leaders

1/28/05 - Bloch-Bauer draft/court/Bradfield

1.5 hrs – review Bradfield’s edits

February

2/4/05 - letter re Swift’s role on appeal

1.5 hrs – 2<sup>nd</sup> Cir – status of Swift

2/14/05 - Bazyler piece

1 hr - revise

2/16/05 - Judah/Hecht claim

1 hr - discussion

2/17/05 - Bloch-Bauer edit/research

3 hrs – post WW II events

2/17/05 - Hecht award

1 hr – review/conv with JudaH

2/18/05 - Bloch-Bauer edit

2 hrs – edit summary

2/20/05 - Evron – conf call

1 hr – conv with survivor leaders

2/22/05 - Bazyler piece

1 hr - review

March

3/9/05 - Bloch-Bauer – discuss with court/Mondex

2 hrs – review draft/research Canadian law

3/9/05 - file tax return/review return

2 hrs – review return/ file return - exemption

3/10/05 - conf with judge

3 hrs – review open issues; discuss Bloch-Bauer

3/10/05 - Part III's

2hrs – review orders/invoices

3/11/05 - CRT rejections

1.5 hrs – review rejections; review notice

3/16/05 - Mondex letter/address pub

2 hrs – draft; Canadian claims

3/21/05 - DRA settlement proposal/review

2 hrs – review settlement offer/notify court

3/23/05 - conv re Greta Beer

1 hr – review facts

3/25/05 - 2005 publication/Mondex

1 hr – research re fee issues

3/29/05 - response to Swiss complaint re residual distribution

1.5 hrs – draft response to protest

## April

4/4/05 - Bloch-Bauer edit

2 hrs – review final version

4/5/05 - Evron - conf call

1 hr – conv with survivor leaders

4/6/05 - Mary re Bloch-Bauer edit

1 hr – conv re propsed e3dits

4/6/05 - Judah re Bloch-Bauer

1 hr – conv re final draft

4/7/05 - memo to court re allocation

2.5 hrs – analysis of Israeli need

4/14/05 - Part III's; begin prep for oral

3 hrs – review orders/invoices; review briefs

4/14/05 - Evron – conf call

1 hr - conv with survivor leaders

4/18/05 - review Vatican bank case

1 hr – review case – potential application

4/18/05 - Part III's

1 hr – review invoices/orders

4/19/05 - response to SBC re denial of transmission

1.5 hrs – response to Swiss officials/conf with Court

4/22/05 - Morris/ appeal prep

3 hrs – review cases; conv with Morris

4/22/05 - response to Swift's info request/Judah

2 hrs – conv with Judah; review of documents

4/26/05 - Paul Berger

1 hr – conv on possible residual distributions

4/28/05 - Kohn appeal

2 hrs – review Kohn's appeal

4/28/05 - O'Donnell letter/Credit Suisse/transmission

1.5 hrs – draft letter/conv with Court

May

5/4/05 - Deborah/Part III's; response to Swift

2.5 hrs – review invoices/orders; draft letter to 2<sup>nd</sup> Cir opposing Swift

5/5/05 - letter to Circuit re Swift's status

1 hr – edit/send letter

5/5/05 - Part III's (multiple)

1 hr – review invoices/orders

5/5/05 - Judah/draft response to Swift

2 hrs – conv/draft

5/6/05 - Deborah/declaration re Swift response

1.5 hrs – draft declaration for 2<sup>nd</sup> Cir

5/6/05 - letter to Swift re information

3.5 hrs – review documents/draft letter to Swift

5/6/05 - motion to supplement record

1 hr – draft/file



5/9/05 - Diana Taylor response

1.5 hrs – review her letter/review documents

5/10/05 - Bazyler piece

1 hr – review final version

5/10/05 - review Diana Taylor's testimony

1 hrs – read testimony; memo re response

5/11/05 - preparation for oral

5 hrs – review record/ briefs/ prepare chronology

5/12/05 – preparation for oral

3.5 hrs – review prior reported opinions

5/13/05 – preparation for oral

5.5 hrs – review briefs/cases – notes for oral

5/14/05 – preparation for oral

7 hrs – moot court/review cases/ briefs/ notes for oral

5/15/05 – preparation for

6.5 hrs – rehearsal/review of record/read cases

5/16/05 - argue appeals/2<sup>nd</sup> Cir

4 hrs – prep/deliver oral in four cases

5/18/05 - Judah re response to Diana Taylor

2 hrs – prep/conv with Judah

5/18/05 – post argument supplement record

1 hr – draft/file

5/18/05 - Part III's

1 hr – review invoices/orders

5/24/05 - response to Swift's post argument letter

3 hrs – read Swift's letter/review settlement agreement/draft response for 2<sup>nd</sup> Cir

5/25/05 - Evron conf call (3)

1 hr – conv with survivor leaders

5/26/05 - Swiss ins claims

1 hr – review procedures/conv with Zurich

5/27/05 - Mary/Doc – Credit Suisse non-cooperation

1.5 hrs – conv re non-cooperation/review documents

5/27/05 - Judah – CRT transmission to NY

1 hr – opinion on transmission

5/31/05 - Swiss ins/Judah/Court

1.5 hrs – conv re expedited payments

5/31/05 - recommendation on early payment of Swiss ins claims

1 hr – draft memo/letter on expedited payment

## June

6/7/05 - Evron – conf call

1 hr – conv with survivor leaders

6/9/05 – research re jurisdiction over PW

1.5 hrs – can we obtain a court order on TAD access? - yes

6/10/05 - Dov - access to TAD archive – PW

2 hrs – conv with Zurich re TAD access/review of documents

6/10/05 - Mondex/Court

1 hrs – conv with court re Mondex/review of documents

6/20/05 - Mary - Credit Suisse non-cooperation

1.5 hrs – conv re Credit Suisse/review of documents

6/23/05 - conf with court

2.5 hrs – review of open issues

6/28/05 - Swiss ins claims

1 hrs – review of ins claims

6/28/05 - memo to O'Donnell re Credit Suisse

3 hrs – memo to State Dept re case/problems

6/29/05 - review Helen's presumptive value memo

3 hrs – review Helen's analysis/ begin memo to files

6/29/05 - Dov/Mary on presumptive value

2.5 hrs – conv with Dov/Mary re valuation issues

6/29/05 - Dov – Swiss ins claims

1 hr – conv re insurance claims; review documents

6/30/05 - Dov/Mary – access to TAD/valuation/insurance

2 hrs – conv re open issues

6/30/05 - O'Donnell memo

1 hr – review memo/conv re issues

July

7/5/05 - presumptive value memo/Court

3 hrs – draft presumptive value memo for court

7/5/05 - Judah – valuation

1 hr – conv with Judah re valuation issues

7/7/05 - Swiss ins

1 hr – review claims to ICHEIC

7/8/05 - Swiss insurance

1 hr – review procedures for ICHEIC

7/11/05 - Dov/Mary – Swiss insurance claims

1 hr – conv with Zurich on insurance

7/12/05 - Judah – access/insurance

1 hr – conv re open issues

7/12/05 - court re State Dep't assistance

3 hrs – conf re open issues

7/13/05 - Swiss ins claims – review

CC critique

7/15/05 - Part III's

1 hr – review orders/invoices

7/18/05 - IAEP letters re TAD access - Bradfield

2 hrs – review letters/conv with Zurich

7/19/05 - Scarlis memo

2 hrs – memo describing issues

7/20/05 - Dov – TAD access (3)

2 hrs – conv with Zurich/review documents

7/20/05 - Basil Scarlis

1.5 hrs – conv/response re Credit Suisse

7/20/05 - Dov/Mary – Price Waterhouse; Bank access to TAD

1.5 hrs – conv with Zurich re strategy

7/21/05 - Basil Scarlis

1 hr – conv re issues

7/21/05 - Mondex; Judah

1 hr – conv Judah/review documents/Canadian law

7/21/05 - Dov – TAD access

2.5 hrs – conv Zurich/review documents/draft letters

7/22/05 - Bradfield – TAD access

1.5 hrs – review Bradfield's letter/memo/call Zurich

7/22/05 - Dov/Mary – meeting with PW re TAD access

2 hrs – conv re strategy/review PW letter

7/22/05 - Dov/Mary – access banks/authorities/PW/IAEP

1 hr – conv Zurich re tactics

7/26/05 - ICHEIC/Swiss ins claims

1 hr – routing ins claims to ICHEIC

7/26/05 - Paul Berger

1 hrs – conv re residual claims

7/27/05 - Dov – access to TAD archive

1 hrs – conv re tactics

7/27/05 - CC – conf re distributions

1.5 hrs – review of distribution mechanisms

7/29/05 - Dov – IQ's

2 hrs – conv with Zurich re IQ's/review of documents

7/29/05 - Mary – overview of implementation of Am 3

2.5 hrs – review of memo on implementation

### August

8/1/05 - Diana Taylor letter/court

2 hrs – draft response

8/3/05 - Loniger questions

1 hr – review file

8/4/05 - Dov/Mary – response to Hess/PW

2 hrs – review documents/conv with Zurich

8/7/05 - claims conf

1 hrs – conv re NY facility/processing new claims

8/9/05 - Dov/Mary – TAD access/insurance claims

2 hrs – report on TAD access progress/ conv Zurich

8/10/05 - Rudman mtg – review ICHEIC data

1 hr – schedule meeting

8/29/05 - Rudman mtg (conf call)

3 hrs – conf with Rudman

8/31/05 - Mondex material from Judah

1.5 hrs – review Mondex material from Judah

8/31/05 - Swiss ins memo – Karen

1.5 hrs – review CC memo re Swiss ins process

8/31/05 - claims conf

1 hr – conv re circulation of report

8/31/05 - Mondex memo/Judah

1 hr – review Canadian law

### September

9/6/05 - Part III's

1 hr – review invoices/orders

9/6/05 - Paul Berger

1 hr – conv re status of appeals/review documents

9/7/05 - Paul Berger

1 hr – conv re Israeli claims

9/9/05 - appeals decided/review opinions

3 hrs – review opinions

9/10/05 – 2<sup>nd</sup> Cir opinions

1.5 hrs – memo to files re impact of appellate opinions

9/12/13 - Part III's

1 hr – review orders/invoices

9/13/05 - Paul Berger

1 hr – conv on opinions

9/13/05 - Swiss ins – Gideon

1 hr – circulate ins report/review report

9/14/05 - Evron – conf call

1 hr – conv with survivor leaders

9/20/05 - object to delay on rehearing/granted to October 7

1 hr – conv with counsel

9/21/05 - Part III's

1 hr – review orders/invoices

9/27/05 - Part III's

1 hr – review orders/invoices

9/28/05 - Dov/Mary –TAD access

2 hrs – conv with Zurich re progress/review documents

9/29/05 - ICHEIC mtg – humanitarian program

1 hr – schedule mtg

9/29/05 - David Mills – Mondex

1.5 hrs – memo re addresses of claimants

9/29/05 - issues raised by Mondex

1 hr – memo to files re Mondex issues

9/30/05 - Swiss ins – Karen



1.5 hrs – review ins memo

9/30/05 - Part III's

1 hr - review orders/invoices

EXHIBITS D-1 through D-7

Representative Documents

(Separately Bound)

EXHIBIT E

Curriculum Vitae

Burt Neuborne

## CURRICULUM VITAE

**Burt Neuborne**

**Professional Experience:**

	Academic
2005	Inez Milholland Professor of Civil Liberties New York University School of Law
2001	Election to American Academy of Arts and Sciences
1994-2005	John Norton Pomeroy Professor of Law New York University School of Law
1977-1994	Professor of Law New York University School of Law
1974-1976	Associate Professor of Law New York University School of Law
1990	Recipient of Distinguished Teaching Award New York University

Courses Currently Taught:

Civil Procedure  
Evidence  
Federal Courts  
Constitutional Law  
Holocaust Litigation

Faculty Committees:

Academic Personnel, Chair (three years)  
Academic Personnel, Member (eleven years)  
Lawyering Personnel, Member  
Teaching of Advocacy, Chair  
Long Range Planning, Member  
Clinical Development, Member  
Research, Member  
Executive, Member

Advisory Roles:

Review of Law & Social Change  
Joint Degree Program in French Studies

**Professional Experience:**

Practice

1996-present

Legal Director  
Brennan Center for Justice at NYU School of Law

Recent Representative Brennan Center Cases (partial):

*Senator Mitch McConnell et. al. v. FEC*  
co-counsel to Senators McCain, Feinberg, Snow, and Jeffords, and  
to Representatives Shays and Meehan in defense of campaign  
finance reform legislation

*Velazquez v. Legal Services Corporation*  
challenge to restrictions on activities of federally-funded lawyers  
for poor

*Steve Forbes v. NYS Elections Comm'm*  
*John McCain v. NYS Elections Comm'n*  
challenges to restrictive ballot access measures in connection with  
1996 and 2000 Republican Presidential primaries in New York  
State

1999-present

Court-Appointed Lead Settlement Counsel  
*In re Holocaust Victim Assets Litigation*  
(Swiss Banks - EDNY)

2000-present

Lawyer-Member of Board of Trustees  
German Foundation "Remembrance, Responsibility  
and the Future" (appointed by United States to represent the  
interests of Holocaust victims; re-appointed 2004 )

1999-present

A principal counsel and negotiator in connection with litigation  
and international negotiations on behalf of slave laborers  
victimized by German industry during WWII – See Eg., *In re Nazi  
Era Cases Against German Defendants Litig.*, 129 F. Supp. 370  
(D.N.J. 2000); *In re Austrian & German Holocaust Litig.*, 250  
F.3d 156 (2<sup>nd</sup> Cir. 2001).

1995-present	Member, Civil Rights Reviewing Authority United States Department of Education
1992-1994	Volunteer Counsel NOW Legal Defense & Education Fund
1988-1992	Member, New York City Human Rights Commission
1982-1986	National Legal Director American Civil Liberties Union
1976-1988	Court-appointed Counsel in <i>Cullen v. Margiotta</i> (coerced campaign contributions). See <i>Cullen v. Margiotta</i> , 811 F.2d 698 (2d Cir 1987)
1972-1974	Assistant Legal Director American Civil Liberties Union
1967-1972	Staff Counsel New York Civil Liberties Union
1964-1967	Associate Casey, Lane & Mittendorf

### Educational Background

1961-1964	Harvard Law School (cum laude)
1957-1961	Cornell University A.B. (History)

### Publications:

Books:	Building a Better Democracy: Reflections on Money, Politics and Free Speech – A Collection of Writings by Burt Neuborne (2002)
	<u>El Papel de los Juristas y del Imperio de la Ley en Sociedad Americana</u> (1995)(The Role of Judges and the Rule of Law in American Society: Three lectures

at the Universitat Pompeu Fabra in Barcelona, translated by Prof. Maria Cuchillo).

Free Speech Free Markets Free Choice: An Essay on Commercial Commercial Speech, written under the auspices of the Association of National Advertisers (1987)

Political and Civil Rights in the United States  
(Volume I, 1976)(with Paul Bender and Norman Dorsen);  
(Volume II, 1979)(with Paul Bender, Norman Dorsen and Sylvia Law).

The Rights of Candidates and Voters (1976)  
(with Arthur Eisenberg).

Unquestioning Obedience to the President (1972)  
(with Leon Friedman).

Chapters:

American Democracy and the Poor: A Tale of Three Tiers,  
in Carrington (ed), *Law Made in Skyboxes* (2006)(forthcoming)

*Harrisiades v. Shaughnessy*: A Case Study in the  
Vulnerability of Resident Aliens, in Martin and Schuck (eds)  
*Immigration Stories* (2005)

A Tale of Two Cities: Administering the Holocaust Settlements in  
Brooklyn and Berlin, in Bazylar and Alford (eds) *Holocaust  
Restitution: Perspectives on the Litigation and Its Legacy* (2005)

Notes for Revised Opinions in *Bush v. Gore*, in  
*The Longest Night* (2001)

An Overview of the Bill of Rights, in  
*Fundamentals of American Law* (1996)

The Supreme Court and Civil Rights in the Post-War Era,  
in *Facts on File: United States* (1990).

The Origin of Rights: Constitutionalism, the Stork and the  
Democratic Dilemma, in *The Role of Courts in Society* (1988)

Justiciability, Remedies, and the Burger Court, in *The Burger Years: Rights and Wrongs in the Supreme Court* (1987).

Mr. Justice Powell, an Essay, in *The Justices of the Supreme Court* (6th Edition)(1987)

Litigation Strategy, in *Encyclopedia of the American Constitution* (1986).

Justice Blackmun, in *Encyclopedia of the American Constitution* (1986).

Freedom of Expression in the United States, in *The Limitation of Human Rights in Comparative Constitutional Law* (1986).

Articles:

The Role of Courts in Time of War,  
29 *NYU Rev. of L. & Soc. Change* 555 (2005)

The House Was Quiet and the World Was Calm,  
The Reader Became the Book: Reading the Bill of Rights as a  
Poem, 57 *Vand. L. Rev* 2007 (2004)

Annals of Constitutional Courts: The Supreme Court of India, 3  
*ICON* (2003)

Preliminary Reflections on Aspects of Holocaust-Era Litigation in  
American Courts, 80 *Wash. U. L.Q.* 795 (2002)

Making the Law Safe for Democracy: A Review of the Law of  
Democracy. 97 *Michigan Law Review* 6 (1999)

Is Money Different? 77 *Texas Law Review* 7 (1999)

Toward a Democracy-Centered Reading of the First Amendment.  
73 *Northwestern University Law Review* 4 (1999)

Remembering and Advancing the Constitutional Vision of Justice  
William J. Brennan, Jr. 43 *New York Law School Law Review* 41  
(1999)



The Supreme Court and Free Speech: Love and a Question.  
42 St. Louis University Law Journal 3 (1998)

One Dollar-One Vote: A Preface to Debating  
Campaign Finance Reform 37 Washburn L.J. 1 (1997)

Innovation in the Interstices of the Final Judgment Rule:  
A Demurrer to Professor Burbank 97 Colum. L. Rev. 2091 (1997)

Campaign Finance Reform: The Constitutional Question -  
Buckley's Analytic Flaws 6 J.L. & Pol'y 111 (Brooklyn Law  
School) (1997)

Who's Afraid of the Human Rights Commission?  
23 Fordham Urban Law Journal 1139 (1998)

Parity Revisited: The Uses of a Judicial Forum of Excellence  
44 DePaul Law Review 797 (1995)

Blues for the Left Hand: A Critique of Cass Sunstein's Democracy  
and the Problem of Free Speech, 62 Chi. L. Rev. 423 (1995)

Speech, Technology, and the Emergence of a Tri-Cameral Media,  
17 Hastings Communications and Entertainment Law Journal 17  
(1994)

Ghosts in the Attic: Idealized Pluralism, Community and Hate  
Speech, 27 Harv. Civ. Rights-Civ. Liberties Law Review 371  
(1992)

Of Sausage Factories and Syllogism Machines:  
Formalism, Realism and Exclusionary Selection Techniques,  
67 N.Y.U. L. Rev. 419 (1992)

Notes for a Restatement (First) of the Law of Affirmative Action:  
An Essay in Honor of Judge John Minor Wisdom,  
64 Tulane L. Rev. 1543 (1990)

State Constitutions and the Evolution of Positive Rights,  
20 Rutgers L. Jour. 881 (1989).

The First Amendment and Government Regulation of the Capital  
Markets, 55 Brooklyn L. Rev. 5 (1989)

Notes for a Theory of Constrained Balancing,  
38 Case Western Res. L. Rev. 576 (1988)

The Role of the Legislative and Executive Branches  
in Interpreting the Constitution, 73 Corn. L. Rev. 375 (1988)

Equitable Estoppel, Unjust Enrichment and the Good Samaritan  
Doctrine: Three Possible Defenses to a Farmers Home  
Administration Foreclosure Proceeding, 15 N.Y.U. Rev. of Law &  
Social Change 313 (1987)

The Binding Quality of Supreme Court Precedent,  
61 Tulane L. Rev. 991 (1987).

A Dialogue on the Settlement of Constitutional Cases,  
2 Chi. L. Forum 177 (1987) (with F.A.O. Schwarz, Jr.).

The Nylon Curtain: America's National Border and the Free Flow  
of Ideas, 26 William & Mary L. Rev. 719 (1985) (with Steven  
Shapiro).

Judicial Review and Fundamental Rights,  
26 Ariz. L. Rev. 6 (1984) (with Charles Sims).

Judicial Review and Separation of Powers in France and the  
United States, 57 N.Y.U. L. Rev. 363 (1982).

Toward Procedural Parity in Constitutional Litigation,  
22 William & Mary L. Rev. 725 (1981).

A Rationale for the Protection and Regulation of Commercial  
Speech, 46 Brooklyn L. Rev. 437 (1980).

Observations on Weber, 54 N.Y.U. Law Rev. 546 (1979).

The Myth of Parity, 90 Harv. Law Rev. 1105 (1977).

The Procedural Assault on the Warren Legacy,  
5 Hofstra L. Rev. 545 (1977).

Miscellaneous: Addicted to the Courts, in The Nation (2005)  
A Blueprint for the Reform of the Democratic Process, in The American Prospect (2001)  
Mr. Justice Blackmun, an Essay, in National Law Journal (1979)

**Major Cases (partial):**

Velazquez v. Legal Services Corporation (First Amendment protection for federally-funded lawyers for poor)

McConnell v. FEC (campaign finance reform)

In re Holocaust Victim Assets Litigation (recovery of Holocaust assets from Swiss banks)

Iwanowa v. Ford Motor Company

Burger-Fischer v. Degussa (use of slave labor during WWII by German industry)

In re Austrian and German Holocaust Bank Litigation (mandamus to permit creation of German Holocaust Foundation)

Stieberger v. Bowen (Executive branch non-acquiescence in lower court precedent)

Rockefeller v. Powers (access to primary ballot)

McCain v. NYS Elections Comm'n (access to primary ballot)

Cullen v. Margiotta (coerced political contributions; RICO)

LILCO v. New York State Public Service Comm'n. (commercial and corporate speech)

James v. Board of Education (academic freedom)

Ellis v. Dyson (federal jurisdiction)

Long Island Vietnam Moratorium Committee v. Cahn

(flag desecration)

Rosario v. Rockefeller (election law - voting in primary)

SWP v. Rockefeller (ballot access for third parties)

Holtzman v. Schlessinger (bombing of Cambodia)

Da Costa v. Laird (legality of Vietnam war)

McMillan v. United States (CIA mail opening)

Itzcovitz v. Selective Service System  
(immigration/selective service/international law)

**Personal Data**

Born: January 1, 1941 (NYC)

Married: Helen Redleaf Neuborne

Children: Ellen Neuborne m. David Landis  
Henry Neuborne Landis (1995)  
Leslie Neuborne Landis (1999)

Lauren Neuborne (1969-1996)

EXHIBIT F

Memorandum of Law

June, 1997

June 1997  
Hans

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

In re:	)
HOLOCAUST VICTIM ASSETS	) Master Docket No.
LITIGATION	) CV-96-4849 (ERK) (MDG)
	) Consolidated with
	) CV-96-5161 and CV-97-461

Memorandum of Law Submitted by Burt Neuborne

Introductory Statement

I am serving, with the consent of the Court, in a pro bono capacity as co-counsel in each of the three consolidated cases herein, and as a legal resource for the more than 80,000 persons who have contacted counsel in connection with the recovery of assets allegedly deposited in a Swiss bank on the eve of the Holocaust. I submit this memorandum of law to respond to several expert submissions filed by legal academics retained by defendants.<sup>1</sup>

The submissions of several academic experts retained by defendants go beyond the proper scope of expert commentary defined by the Federal Rules of Evidence. In fact, they are extended legal briefs couched as the ostensibly neutral opinion of an academic expert. Rather than move to strike the improper expert affirmations, however, plaintiffs have resolved to rebut them. Instead

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<sup>\*</sup> I do not hold myself out as an expert in every aspect of the cases before the Court. I am, however, an experienced academic lawyer, with a record of scholarship and teaching in the area of judicial protection of human rights. My academic qualifications are described in an Appendix, supra, at p.79.

of presenting plaintiffs' rebuttal in the form of an expert counter-affirmation that would merely compound defendants' misuse of the genre, plaintiffs submit this rebuttal in the form of an advocate's memorandum of law to reflect the fact that what is at issue in this case is not the discovery of a neutral truth known only to academic experts, but the resolution of a contested legal issue. We deal here in legal advocacy; not academic expertise.

### The Nature of Plaintiffs' Claims

Plaintiffs present three classic legal theories entitling them to relief against defendant banks.

#### 1. The Deposited Assets Claim

First, thirteen named-plaintiffs allege that close family members deposited assets for safekeeping in one or another of the defendant banks on the eve of the Holocaust which have never been returned. Plaintiffs demand return of the "deposited assets", together with appropriate compensatory and punitive damages for defendants' obstructive and evasive behavior in seeking to prevent return of the deposited assets for more than 50 years.

#### 2. The Constructive Trust Claim

Second, plaintiffs allege that the unique circumstances surrounding the solicitation, receipt, and continued retention of assets deposited by Jews in defendant banks on the eve of the Holocaust impress the assets with a constructive trust. Plaintiffs allege that defendant banks violated their fiduciary duties as constructive trustees by failing to take affirmative steps to return the assets in the years following the Second World War; by failing to keep and maintain adequate records of the deposited assets; and by allowing themselves to be placed in a blatant conflict of interest situation in which they continue to profit financially by failing to identify the true

owners.

### 3. The Looted Assets/Slave Labor Claims

Third, plaintiffs allege that the defendant banks knowingly and repeatedly acted as receivers of stolen property on behalf of officials of the Third Reich in connection with assets looted from Jews under conditions amounting to crimes against humanity, and genocide; and that the defendant banks knowingly and repeatedly trafficked in goods produced by Jewish slave labor with knowledge that they were trafficking in the fruits of war crimes. Plaintiffs demand disgorgement of any profits unjustly earned by defendant banks by knowingly assisting Nazis in the consummation of crimes against humanity, together with the return of any assets (or the value thereof) for which the banks acted as knowing receivers of stolen property.

#### The Factual Matrix Underlying Plaintiffs' Claims<sup>2</sup>

From 1933-45, Nazi Germany perpetrated unspeakable acts of barbarity against the Jews of Europe. When the killing finally stopped in 1945, six million Jewish men, women and children had been murdered, their property ruthlessly looted, their bodies wracked by slave labor. Even before the systematic killing started, beginning in 1933, the Nazi regime embarked on policy of anti-Semitism designed to confiscate property owned by German and Austrian Jews,

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<sup>2</sup> Plaintiffs' factual assertions are drawn from the historical record developed by the Nuremberg Tribunals, and from published historical sources. The factual assertions are particularized in plaintiffs' complaints, and in the Supplemental Recitation of Facts lodged with the Court. See generally U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II (1997) (the Eizenstat Report); United States Holocaust Memorial Museum, In Pursuit of Justice: Examining the Evidence of the Holocaust (1996).



and to drive them from positions of influence and respect. As the Nazi vise tightened, Jews throughout Europe sought a safe haven for their property in the hope that the Nazi nightmare would pass. Nazi Germany responded by making it a capital offense for a Jew to transmit wealth abroad without government permission.

In 1934, the Swiss banking community, motivated in part by humanitarian impulses, and in part by economic opportunism, sought to make Swiss banks more attractive to Jewish targets of Nazi persecution by enacting comprehensive bank secrecy laws designed to shield the identities of Jewish depositors from the Gestapo. As Gestapo surveillance intensified, Swiss banks permitted and encouraged Jewish depositors to open accounts in the name of nominees, and rapidly merged Jewish deposits into consolidated custodial accounts, rendering tracing and identification even more difficult.

Throughout the 1930's, European Jews, increasingly desperate about their fate under the Third Reich but unable to flee because of widespread immigration quotas, poured enormous sums into defendant banks<sup>3</sup>, lured by promises of confidentiality and trustworthiness. Only a careful review of Swiss bank deposits from 1933-45, especially deposits from abroad, can measure the full magnitude of the Jewish deposits. Plaintiffs have assembled the resources to conduct such a review. In addition, economists and historians retained by plaintiffs, using public records and newly available archival data, are prepared to reconstruct the flow of funds from the European Jewish community into Swiss banks, and to place a dollar value on the deposits. Plaintiffs are confident that a combination of vigorous discovery aimed at identifying Swiss bank

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\* The three defendant banks are the surviving entities representing more than 75% of the private Swiss banks operating in the years in question

deposits from abroad during the years in question, and careful economic reconstruction of the flow of funds into Switzerland, can produce an accurate figure representing the total value of funds deposited in Swiss banks by Jews on the eve of the Holocaust. At this point, plaintiffs' experts have determined that more than 100 million dollars was deposited by Jews in Swiss banks between 1933-45.<sup>4</sup>

As Europe became engulfed in war, the Holocaust began. Nazi Germany engaged in atrocious crimes against humanity, including the systematic looting of the property of Jews, both as a prelude to their shipment to extermination camps, and in the ghoulish aftermath of their mass murder.

In order to transform looted Jewish property into negotiable assets usable for the German war effort, it was necessary to find an international receiver of stolen property willing to fence the looted assets by laundering them into currency that could be used to purchase war material. Swiss banks knowingly assumed that role.

The very Swiss banks, including the three defendant banks and their predecessor entities, that had attracted substantial deposits from Jews by promising them bank secrecy and loyalty, willingly cooperated with the Nazis by knowingly receiving property looted from Jews, and laundering it into Swiss francs. Plaintiffs will prove that defendant banks were paid substantial commissions by the Nazis for knowingly laundering vast quantities of looted Jewish assets.

As Nazi Germany sensed defeat, it attempted to shore up its war machine by the use of

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<sup>4</sup> When interest and currency fluctuations are taken into account, plaintiffs' experts estimate the current value of the Jewish deposits at substantially in excess of one billion dollars.

Jewish slave labor. Increasingly, goods produced by slave labor were sold by the Nazis to generate the foreign exchange needed to finance the German war effort. The defendant banks, and their predecessor entities, having knowingly laundered the looted assets of Jews, then knowingly provided Nazi Germany with Swiss francs in return for goods produced by Jewish slave labor. Once again, plaintiffs will demonstrate that Swiss banks, including the three defendant banks and their predecessors, were paid enormous sums by the Nazis for their complicity in knowingly financing the importation into Switzerland of goods produced by Jewish slave labor. Plaintiffs' experts have determined that Swiss banks earned more than 75 million dollars by knowingly trafficking in the fruits of Nazi war crimes.<sup>5</sup>

With the collapse of Nazi Germany and the liberation of the Nazi death camps in 1945, and with European Jewry decimated and traumatized by the Holocaust, survivors of the death camps, and the families of those who failed to survive, approached the defendant banks, and their predecessors, in an effort to trace and recover sums deposited by Jews prior to the Holocaust. In one of the tragic moral perversions of recent times, Swiss bankers, including the defendant banks and their predecessors, relied upon the 1934 Swiss bank secrecy laws to frustrate efforts to trace the Jewish deposits; the same bank secrecy laws that had been used to induce Jews to deposit assets in Swiss banks in the first place.

Under the Washington Accords of 1946, the Swiss government acknowledged that retention in Swiss banks of gold looted by the Nazis from conquered governments would violate international law. Accordingly, the Swiss government promised to return gold held by Swiss

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<sup>5</sup>The current value of the profits earned by defendant banks as the knowing accomplices to Nazi war crimes exceeds one billion dollars.

banks that had been looted by Nazis from conquered nations. The Swiss never carried out their promises under the Washington Accords.

In 1962, the Swiss government made the same promise with respect to assets deposited by Jews, acknowledging that it would be unconscionable for Swiss banks to retain the deposited assets. But, as with the Washington Accords, the Swiss never kept their promise. Of the vast sums that plaintiffs will prove flowed from Jews into Swiss banks in the years before the Holocaust, only a pittance has ever been acknowledged. The vast bulk of the assets have simply disappeared into the Swiss banking system, constituting the single most egregious example of unjust enrichment in banking history.

Simply put, this case is an effort by survivors of the Holocaust and close family members of those who failed to survive, many thousands of whom reside in New York, to use the power of an American court to secure full restitution of the assets deposited for safekeeping in defendant banks on the eve of the Holocaust, and to force defendant banks to disgorge the unjust profits they earned by knowingly participating in the commission of war crimes. Twice in recent memory, in the 1946 Washington Accords, and the 1962 Swiss declaration, the Swiss government promised the international community that assets belonging to conquered nations, and to individual victims of Nazi persecution, would be returned. On each occasion the Swiss banking community reneged on the promise. Plaintiffs believe that if, at long last, justice is to be done, it must be in this Court.

## B. The Parties

### 1. The Swiss Bank Defendants

The three bank defendants, Credit Suisse, Union Bank of Switzerland, and Swiss Bank

Corporation, are the three largest banks in Switzerland. Each carries on extensive business operations in the United States, and the State of New York. By merger, acquisition, or transfer, plaintiffs estimate that the three defendant banks (and their predecessors) represent approximately 75% of the private banks operating in Switzerland between 1933-45, and an even higher percentage of the private Swiss banks likely to have received deposits from abroad during the period in question.

Defendant, Swiss Bankers Association, is the trade association of the Swiss banking industry, representing all Swiss banks. The Swiss Bankers Association lobbies assiduously in the United States, appearing before the Congress of the United States to advance the interests of the Swiss banking industry.

If discovery reveals additional Swiss banks that should be made parties herein, they will be added as parties-defendant.

## 2. The Individual Plaintiffs

The individual plaintiffs in these three consolidated actions are thirteen individuals who are representative of the more than 80,000 persons who have contacted counsel alleging that a family member deposited funds in a Swiss bank prior to the Holocaust, and that efforts to trace and retrieve the funds have been unsuccessful. While four of the individual plaintiffs<sup>6</sup> are able to identify the particular defendant bank in which a deposit was made, many claimants, including nine named-plaintiffs<sup>7</sup>, are unable, without the assistance of discovery, to identify the specific

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<sup>6</sup> Gizella Weiss Haus; Rudolphine Schlinger; Estelle Sapir; and Jacob Friedman.

<sup>7</sup> Lewis Salton; Charles Sonabend, Elisabeth Trilling-Grotch; David Burchowicz; Joshua Lustman; Moe Wiedler; Erwin Hauer; Irene

defendant bank in which a deposit was made.

### 3. The Institutional Plaintiffs

The institutional plaintiff, World Council of Orthodox Jewish Communities, Inc., (World Council) is an association of religious communities, originally centered in Germany and Eastern Europe, that suffered substantial persecution and looting at the hands of the Nazis. World Council seeks the return of looted communal property that was knowingly fenced by defendant banks, and other appropriate damages.

### 4. The Putative Plaintiff-Classes

Plaintiffs intend to move for class certification at the appropriate time. Plaintiffs anticipate at least three sub-classes:

#### The Deposited Assets/ Constructive Trust Class

(1) a class of persons seeking to recover assets deposited by Jews in defendant banks, or their predecessors between 1933-45, but which have not been returned to their true owners. Such a "deposited assets" class will seek specific restitution of deposited funds, an order of disgorgement requiring defendants to disgorge all deposits made by Jews from 1933-45 which have not been returned to their true owners, and appropriate damages from defendants for violating their duties as constructive trustees. The named representatives of the "deposited assets" class will be individuals who allege that between 1933-45, relatives deposited funds in Swiss banks that have never been returned, as well as representative default plaintiffs acting on behalf of those who failed to survive and whose information died with them;

#### The Looted Assets Class

(2) a class of persons seeking to recover assets looted by the Nazis and knowingly laundered into Swiss francs by defendant banks on behalf of the Nazis. Such a "looted assets" class will seek

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Zarkowski; and Lillie Ryba.

restitution, if possible, of specific looted assets or their current value, and an order of disgorgement requiring defendants to disgorge any profits earned by knowingly trafficking in looted assets. The named representatives of the "looted assets" class are persons from whom assets were looted by the Nazis, or their survivors, together with appropriate default plaintiffs representing those who did not survive; and

#### The Slave Labor Class

(3) a class of persons seeking to recover profits earned by defendants by knowingly acting as the financial conduit on behalf of the Nazis for the importation and sale of goods produced by slave labor. Such a "slave labor" class will seek an order of disgorgement requiring defendants to disgorge any profits earned by knowingly trafficking in goods produced by slave labor. The named representatives of the "slave labor" class are persons who were forced to perform slave labor by the Nazis, or their survivors, together with appropriate plaintiffs representing those who did not survive.

#### Argument

Some things are a good deal simpler than Swiss bankers make them appear. Despite more than four hundred pages of legal memoranda, and hundreds of additional pages of supporting affidavits, the legal issues raised by defendants' gargantuan motions to dismiss, delay, or transfer these cases are relatively uncomplicated, and are easily resolvable in favor of the plaintiffs.

Plaintiffs' claims for relief spring from the oldest and most widely shared idea in our conception of justice - the prevention of unjust enrichment. Western legal thought begins with Aristotle's injunction that the primary function of corrective justice is the avoidance of unjust enrichment. Aristotle, Nicomachean Ethics, bk v, ch. 4 (Richard McKean ed. 1941) ("The judge tries to equalize things by means of the penalty, taking away the gain of the assailant...The just

consists of having an equal amount before and after the transaction.").

The Restatement of Restitution, (1937) reflects the extent to which the common law has been shaped by Aristotle's principles of corrective justice.<sup>8</sup> Section 1 of the Restatement states:

"A person who is unjustly enriched at the expense of another is required to make restitution to the other".

Section 3 states:

"A person is not entitled to profit by his own wrong at the expense of another".<sup>9</sup>

Continental legal systems, especially systems like Switzerland's that are derived from Germano-Roman roots, are also deeply imbued with a commitment to preventing unjust enrichment.<sup>10</sup> Indeed, the Swiss Code of Obligations recognizes prevention of unjust enrichment

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<sup>8</sup>See, eg., Laycock, The Scope and Significance of Restitution, 67 Tex. L. Rev. 1277 (1989); Coleman, The Practice of Corrective Justice, 37 Ariz. L. Rev. 15 (1995).

<sup>9</sup> In addition to the Restatement of Restitution (1937), the principal scholarly works on the common law principle of unjust enrichment are George E. Palmer, The Law of Restitution (1978); and Goff & Jones, The Law of Restitution (1986). The authors of the Restatement, Austin Scott and Warren Seavey, wrote an important contemporaneous commentary. Seavey & Scott, Restitution, 54 Law Q. Rev. 29, 32 (1938) ("A person has a right to have restored to him a benefit gained at his expense by another, if the retention of the benefit by the other would be unjust."). See also John P. Dawson, Unjust Enrichment: A Comparative Analysis (1951).

<sup>10</sup> The unjust enrichment principle was the animating force behind the Roman action of "condiction", as well as the action for negotiorum gestio. The history of unjust enrichment in the Continental legal world is traced in Dawson, Unjust Enrichment: A Comparative Analysis, supra at 41-60. Its role in Swiss law is briefly described by Professor Tercier at para. 60-66 of his



as a principal function of justice, along with the enforcement of contract and tort remedies. Swiss Code of Obligations, para 62-68.

Embedded, as they are, in such a universally recognized maxim of justice, plaintiffs' claims give rise to numerous legal theories upon which relief can be granted within the meaning of Rule 12(b)(6). Rather than parse each theory, I will describe three over-arching duties owed by the defendant banks to plaintiffs, and describe how each of the duties is legally enforceable in contract, tort, and prevention of unjust enrichment under the laws of Switzerland and New York.

I.  
UNDER THE LAWS OF SWITZERLAND AND  
NEW YORK, DEFENDANTS ARE LEGALLY  
OBLIGATED TO RETURN THE "DEPOSITED  
ASSETS" TO THEIR RIGHTFUL OWNERS

Defendants concede that they are under a legally enforceable duty to return all assets deposited by Jews on the eve of the Holocaust. Whether one couches the banks' duty to return "deposited assets" as contractual<sup>11</sup>, as sounding in tort<sup>12</sup>, or as a classic exercise in restitution and

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affirmation in support of defendants, which actually provides significant support for plaintiffs' substantive claims under Swiss law.

<sup>xx</sup>The contract claim would arise out the express or implied nature of the agreement entered into between the banks and their depositors.

<sup>xx</sup> Wrongful retention of the deposited assets by defendant banks would be deemed a conversion under the common law, or a violation of Article 41 of the Swiss Code of Obligations. In both systems, if adequate relief can be obtained pursuant to contract, no need exists to resort to tort. With the abolition of the forms of action, however, it is not necessary to distinguish between contract or tort in order to respond to a Rule 12(b)(6) motion. It is enough to establish that recovery may be had under one

disgorgement designed to prevent unjust enrichment<sup>13</sup>, all parties are in agreement that defendants may not lawfully retain the so-called "deposited assets". Moreover, it matters not whether one applies Swiss law, or New York law to plaintiffs' claim for return of "deposited assets". All legal roads lead to the same conclusion: It would constitute unlawful unjust enrichment for the defendant banks to retain any "deposited assets".

A. Defendants Concede That Plaintiffs  
Who Are Able to Identify a Specific Bank State a Valid Claim for  
Return of the Deposited Assets

As even defendants' expert, Professor Tercier, concedes, four named-plaintiffs, Gizella

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theory or the other. See Rule 2 FRCP.

<sup>\*\*</sup> Under both the common law of New York, and the Swiss Code of Obligations, if neither contract nor tort can do complete justice, a court possesses wide discretionary power to forge an equitable remedy (often characterized as specific restitution or disgorgement), to prevent unjust enrichment. For an early recognition that unjust enrichment principles may supplement inadequate contract or tort remedies, see Hambly v. Trott 98 Eng. Rep. 1136 (K.B. 1776) (plaintiff permitted to "waive the tort and sue in assumpsit" to prevent unjust enrichment).

For examples of specific restitution, see Restatement of Restitution, section 4, comments c and d; Id at section 128. For examples of disgorgement designed to prevent unjust enrichment, see Snepp v. United States, 444 U.S. 507, 515 (1980) (ordering disgorgement of profits earned by breaching contract); Zacchini v. Scripps-Howard Broadcasting Company, 433 U.S. 562 (1977) (disgorgement appropriate to prevent wrongdoer from profiting from wrongful act); Simon & Schuster, Inc. v. Members of New York Crime Control Board, 502 U.S. 105 (1991) (approving use of disgorgement to prevent wrongdoer from profiting from crime, but invalidating disgorgement when applied solely to profits earned by speech); Moser v. Darrow, 341 U.S. 267 (1950) (breach of fiduciary duty requires disgorgement of unjust profits); Diamond v. Oreamuno, 24 N.Y.2d 494, 248 N.E.2d 910 (1969) (ordering disgorgement of profits earned by insider trading).

Weisshaus, Rudolfine Schlinger, Estelle Sapir, and Jacob Friedman, satisfy defendants' insupportably narrow definition of a proper plaintiff.<sup>14</sup> Thus, defendants concede that their Rule 12(b)(6) motion directed against plaintiffs' claim for the return of "deposited assets" must be denied, leaving at a minimum, four named-plaintiffs eligible to act as putative class representatives for the class of "deposited assets/constructive trust" claimants.

B. Plaintiffs Who Are Unable to Identify a Specific Bank May, Pursuant to Rule 20(a) FRCP, Join Defendant Banks as "Alternative" Defendants

The parties disagree over whether persons who allege that deposits were made in a Swiss bank, but who are currently unable in the absence of discovery to identify the precise bank, state a judicially cognizable claim for relief in an American court.<sup>15</sup>

Defendants, relying on the expert opinion of Professor Tercier, argue that, as a matter of Swiss contract law, unless a plaintiff identifies the specific bank in which a family member allegedly made a deposit, the action fails to state a claim under Swiss law. Tercier Affirmation, para. 18; 66; and 71.<sup>16</sup> Moreover, under a provision of the Swiss Code of Obligations that must be numbered Catch-22, Professor Tercier opines that no mechanism exists under Swiss law to

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<sup>14</sup>According to defendants, the only proper plaintiff is an individual who asserts a Swiss contract claim against a specified bank.

<sup>15</sup>Nine named plaintiffs fall into this category.

<sup>16</sup> Although I am not an expert on Swiss law, I feel justified in commenting on Professor Tercier's affirmation because it raises important federal procedural issues with which I have substantial familiarity. In fact, the picture of Swiss law painted by Professor Tercier, which I accept solely for the purposes of this motion, actually supports plaintiffs' claims for relief.

assist such a luckless plaintiff to learn the information needed to file a valid claim in a Swiss court.<sup>17</sup> Tercier Affirmation, para. 22-23.

But this case is not pending in a Swiss court. Even if Swiss substantive law is eventually deemed to apply to this case<sup>18</sup>, the procedural law of the forum codified in the Federal Rules of

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<sup>27</sup> While I am prepared to take Professor Tercier at his word that there is no mechanism under Swiss law that would permit numerous plaintiffs to seek judicial relief in a Swiss court solely because they cannot identify the precise bank into which funds were deposited, his description of Swiss law seems extremely harsh. It seems curious that a legal system like Switzerland's, with such a well-developed set of norms prohibiting unjust enrichment, would reach such a palpably unjust result.

There is, of course, a careful ambiguity in Professor Tercier's affirmation. At Para. 11, he states:

Claims against a (large) number of defendants without specifying the defendant against which the claim is directed, will not be successful in a Swiss court.

Professor Tercier carefully refrains from opining on whether three banks would constitute a "(large) number of defendants" under Swiss law.

<sup>28</sup>Since subject matter jurisdiction over plaintiffs' Swiss and New York-based claims for the return of the so-called "deposited assets" is granted by 28 U.S.C. section 1332, New York law, including New York conflicts law, must be applied under Erie v. Tompkins, 304 U.S. 64 (1938) and Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1941) to outcome-determinative issues. See Travelers Ins. Co. v. 633 Third Assocs., 14 F.3d 114 (2d Cir. 1994).

Plaintiffs believe that New York law should govern this case. However, since defendants' motions to dismiss must be denied under both New York and/or Swiss law, there is no need to attempt to decide the complex choice of law issues at this time.

Civil Procedure unquestionably governs procedural matters such as pleading, discovery, class action, and the scope and availability of equitable remedies. See Restatement (Second) of Conflicts of Law (1971) at secs. 122-143, especially sec. 127. Hanna v Plumer, 380 U.S. 460 (1965)(law of forum governs pleading and mode of service); Guaranty Trust Co. v. York, 326 U.S. 99 (1945) (law of forum governs the nature and availability of equitable remedies). Societe Nationale Industrielle Aerospatiale v. United States District Court, 482 U.S. 522 (1987)(discovery involving foreign defendants governed by FRCP, not Hague Convention or law of defendant's domicile).

Indeed, Professor Tercier candidly concedes that since the statute of limitations herein is a procedural matter, it will be governed by forum law, even if Swiss law governs the substance. - Tercier Affirmation, para 59.2.

If one applies the literal language of Rule 20(a) of the Federal Rules of Civil Procedure<sup>19</sup> to the nine named plaintiffs who allege that a deposit was made into a Swiss bank, but who are unable to identify the precise bank at this time, Rule 20(a) FRCP explicitly permits such a

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<sup>19</sup> Rule 20(a) states, in pertinent part:

All persons...may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction and occurrence or series of transactions and occurrences and if any question of law or fact common to all defendants will arise in the action. A...defendant need not be interested in...defending against all the relief demanded. Judgment may be given...against one or more defendants according to their respective liabilities. (emphasis added).

plaintiff to join one or more "alternative" defendant banks, and to use the mechanism of discovery to ascertain the precise bank into which a deposit was made. Where, as here, the three named defendant banks represent, through merger or succession, approximately 75% of the private Swiss banks operating during the years in question, the use of Rule 20(a) is particularly appropriate.

In words that could not describe this case more clearly, Wright, Miller & Kane's Treatise on Federal Practice and Procedure states at sec. 1654:

The need for alternative joinder of defendants typically arises when the substance of plaintiff's claim indicates that he is entitled to relief from someone, but he does not know which of two or more defendants is liable under the circumstances set forth in the complaint.

See, eg., Block Indust. v. DHJ, Indust., 495 F.2d 256 (8th Cir.

1974); Texas Employers' Ins. Ass'n v. Felt, 150 F2d 227 (5th Cir. 1945).

Thus, when one combines the substantive law of Switzerland, as described by Professor Tercier, with the procedural law of the forum, which Professor Tercier concedes will govern procedural matters such as pleading and discovery, all thirteen named plaintiffs state valid claims for the return of deposited assets, even in the eyes of defendants.

C. Defendants Are Collectively Responsible for the Return of All "Deposited Assets"

Defendants' assertion that no claim for deposited assets can go forward unless, prior to discovery, a plaintiff identifies a specific bank founders on two additional grounds. If, as plaintiffs allege, the defendant banks acted in concert with one another, as well as with the remaining Swiss banks, in failing to return the deposited assets, and in repeatedly breaching their

fiduciary duties as constructive trustees, each defendant will be jointly and severally liable for the collective refusal to return the funds, rendering it unnecessary, especially at this early stage of the proceedings, for each plaintiff to single out a particular bank as defendant. See Hall v. E.I. du Pont de Nemours & Co., 345 F. Supp. 353 (E.D.N.Y. 1972); Bichler v. Eli Lilly & Co., 55 NY2d 571, 450 NYS2d 776, 436 NE2d 182 (1982)(recognizing that concerted action can give rise to collective liability).

Moreover, even if, after discovery, it proves impossible to match a particular plaintiff with a particular bank because defendants have destroyed or failed to maintain adequate records, as long as a liability nexus exists between a class of plaintiffs and a group of defendants, proportionate liability for the deposited assets may be assessed on the basis of defendants' market share. See Hymowitz v. Eli Lilly & Co., 73 NY2d 487, 541 NYS2d 941, 539 NE2d 1069, cert. denied, 493 U.S. 944 (1989)(recognizing proportionate liability based on market share); Sindell v. Abbott Laboratories, 26 Cal.3d 588, 607 P.2d 924 (1980), cert. denied, 449 U.S. 912 (1980).<sup>20</sup>

It is, of course, premature to speculate about the existence of "concerted action" liability, or "market share" liability, since no discovery has taken place. Ideally, discovery will make it unnecessary to consider theories of collective liability. What is clear, however, is that defendants may not, under the procedural law of the forum, use Catch-22 logic to require dismissal of plaintiffs' claims before they are given an opportunity, through discovery, to determine the name of the Swiss bank into which their relatives deposited assets in an effort to safeguard them from

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<sup>20</sup>If discovery reveals that defendants have engaged in a common plan to destroy or fail to maintain adequate records, the defendant banks will be jointly and severally liable, as well, for breaching their duties as constructive trustees.

the Nazis.

Moreover, while it is too early in this action to consider whether defendants may be liable under theories of collective liability, plaintiffs have alleged facts that would justify imposing collective liability on each defendant under a theory of "concerted action", or "market share". See Hamilton v. ACCU-TEK, 935 F. Supp. 1307, 1327-31 (E.D.N.Y. 1996)(reviewing theories of collective liability).

Thus, in light of Professor Tercier's assessment of Swiss law, defendants' Rule 12(b)(6) motion must be denied against the four named-plaintiffs who have identified a specific bank as a defendant. Moreover, whatever substantive law is ultimately deemed to govern this case, Rule 20(a) FRCP, which governs pleading and discovery in this forum, forbids dismissal of the claims of the nine remaining named-plaintiffs who have alleged that a deposit was made in a Swiss bank, but who cannot identify the precise bank without the assistance of reasonable discovery.

## II.

DEFENDANTS HOLD THE DEPOSITED ASSETS IN CONSTRUCTIVE TRUST. AS CONSTRUCTIVE TRUSTEES, DEFENDANTS ARE: (1) OBLIGED TO KEEP AND MAINTAIN ADEQUATE RECORDS OF OWNERSHIP; (2) MAKE GOOD FAITH AFFIRMATIVE EFFORTS TO RETURN THE ASSETS TO THEIR RIGHTFUL OWNERS; AND (3) AVOID ANY CONFLICTS OF INTEREST. DEFENDANTS HAVE REPEATEDLY VIOLATED ALL THREE SETS OF FIDUCIARY OBLIGATIONS

Defendant banks hold assets deposited by Jews on the eve of the Holocaust in a constructive trust arising from the special circumstances surrounding the banks' solicitation and acceptance of the deposits, and the bank's knowledge of the tragic fate of most of the depositors.

The idea of constructive trust, or some analogous institution, exists in all civilized legal



systems as a metaphor for an enhanced fiduciary obligation undertaken by a person as a result of: (1) special inducements or promises made to another; (2) a dramatic power imbalance between two participants to a transaction; or (3) the obtaining of property by knowingly participating in a wrongful act. See Torres v. \$36,255.80 U.S. Currency, 25 F3d 1154 (2d Cir. 1994)(constructive trust created by representation); Zeller v. Bogue Ele. Mfg. Corp., 476 F.2d 795 (2d Cir.), cert. denied, 414 U.S. 908 (1973). As then Judge Cardozo noted: "the constructive trust is the formula through which the conscience of equity finds expression." Beatty v. Guggenheim Exploration Co., 225 N.Y. 380, 122 N.E. 378 (1919). See Restatement of Restitution (1937), ch. 7; Palmer on Restitution, *supra* at section 2.10.

In this case, all three bases for the establishment of a constructive trust are present. First, the property in question was obtained by defendant banks and their predecessors as a result of special inducements and promises made to prospective Jewish depositors. By enacting the Swiss Bank Secrecy Act of 1934, by cooperating in the opening of accounts in names of nominees, and by quickly merging accounts opened by Jews into anonymous consolidated custodial accounts, defendant banks made special representations concerning the attractiveness of Swiss banks as safe havens for the assets of targets of Nazi persecution. See Snepp v. United States, 444 U.S. 507 (1980)(imposing constructive trust on profits earned from breach of contract).<sup>21</sup>

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<sup>21</sup> To the extent a constructive trust is deemed to have emerged from the express and implied representations of defendant banks, it is traditionally enforced as a matter of contract. See Farnsworth, Your Loss or My Gain? The Dilemma of the Disgorgement Principle in Breach of Contract, 94 Yale L. J. 1339 (1985).

Significantly, Professor Tercier does not discuss constructive trust in his affirmation, despite Switzerland's extensive unjust enrichment jurisprudence.

Second, the relationship between the defendant banks and Jewish depositors on the eve of the Holocaust reflected a dramatic power imbalance giving rise to an enhanced duty of fair dealing. Defendants knew that the Jewish depositors who were the targets of defendants' special promises and inducements concerning the confidentiality and scrupulous honesty of Swiss banks were in desperate need as targets of Nazi persecution. Moreover, as the enormous magnitude of the Holocaust became fully known, defendant banks became aware that they were the sole repository of information needed to trace many of the Jewish accounts.

Under both Swiss and New York law, defendants' representations about the confidentiality and trustworthiness of Swiss banks, the dramatic power imbalance that existed between the banks and victims of Nazi persecution on the eve of the Holocaust, and the post-war recognition by defendants that they had become the principal, perhaps the only, source of information concerning the accounts of those who failed to survive the Holocaust, combined to impress a classic constructive trust on the deposited assets, calling forth a duty of scrupulous fair dealing, and absolutely forbidding defendant banks from deriving any economic advantage from retention of the deposits. Moser v. Darrow, 341 U.S. 267 (1950)(breach of fiduciary duty requires absolute disgorgement of profits flowing from breach); Beatty v. Guggenheim, 225 N.Y. 380, 122 N.E. 378 (1919)(employee who profits at expense of employer breaches a fiduciary duty and holds all profits as constructive trustee for employer); Diamond v. Oreamuno, 24 N.Y.2d 494, 248 N.E.2d 910 (1969)(seller trading on inside information holds profits as constructive trustee for purchaser).

Finally, the complicity of defendants in Nazi war crimes impresses yet another classic constructive trust on assets and profits traceable to knowing facilitation of crimes against

humanity.<sup>22</sup>

Three sets of fiduciary duties flow from the recognition that defendants hold the deposited assets as constructive trustees. First, defendants were, and are, under an affirmative duty to keep and maintain adequate records permitting the ultimate return of the deposited assets to their rightful owners.

Second, defendants were, and are, under an affirmative duty to search out the true owners of the deposits in order to return the property to its rightful owners.

Third, defendants were, and are, are under an absolute duty to refrain from placing themselves in a conflict of interest relationship with the true owners of the deposited assets by profiting in any way by failing to return them.

Once again, it matters not whether one applies well-developed Swiss concepts of unjust enrichment, the New York law of restitution, tort, or contract, or customary international law norms governing the duties of fairness owed to victims of crimes against humanity, the result is the same: Defendants hold the deposited assets as constructive trustees under a strict fiduciary

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<sup>22</sup> For celebrated examples of the use of constructive trust to recover profits earned by the unlawful use of another's property, see Olwell v. Nye & Nessen Co., 26 Wash.2d 282, 173 P.2d 652 (1946) (constructive trust to recover profits earned by unlawful use of another's property); Edwards v. Lee's Administrator, 265 Ky. 418, 96 S.W.2d 1028 (1936) (constructive trust to recover profits earned by wrongful use of property of another). The leading New York cases are Newton v. Porter, 69 N.Y. 133 (1877) (stolen assets transferred to lawyer as attorneys fee with knowledge of theft held by lawyer in constructive trust for true owner); Fur & Wool Trading Co. v. Fox, 245 N.Y., 156 N.E. 670 (1927). See also Terry v. Munger, 121 N.Y. 161, 24 N.E. 272 (1899). For an early common law application of the principle, see Lamine v. Dorrell, 2 Ld. Raym. 1216, 92 Eng. Rep. 303 (K.B. 1705).

obligation to seek out the accounts' true owners, and to refrain from profiting at their expense.

See Restatement of Restitution (1937), section 160, comment d; section 190, comment a; section 198, section a.

Defendants have made a mockery of their fiduciary status by repeatedly violating all three sets of fiduciary duties.

Having held themselves out to victims of Nazi persecution as attractive safe havens because of impenetrable secrecy and scrupulous honesty, defendants assumed a fiduciary obligation to the victims of Nazi persecution to keep and maintain adequate records required to untangle the true ownership of the deposited assets. Instead of scrupulously maintaining adequate records, defendants have destroyed crucial records in an effort to make it impossible to trace the assets.

Moreover, once the full magnitude of the Holocaust became widely known in 1945, defendants realized that many Jews who had deposited assets on the eve of the Holocaust had died at the hands of the Nazis. At that point, defendants' duties as constructive trustee obligated them to take affirmative steps to search out survivors and close relatives in order to return the assets to their rightful owners. Instead, defendants engaged in a 50 year pattern of deception, obfuscation and fraud, using Swiss bank secrecy laws as a device to hinder and prevent efforts to trace the ownership of deposited funds. Not only have defendants failed to conduct a good faith affirmative search for the true owners of the accounts, they have lied, obfuscated and connived in a 50 year effort to retain the accounts for their own unjust enrichment. In blatant disregard of their fiduciary obligations as constructive trustees, defendants cynically used the very bank secrecy laws that had initially induced Jewish depositors to resort to Swiss banks to frustrate

efforts by survivors to trace the true owners of the accounts.

Finally, defendant banks placed themselves in an impossible conflict of interest setting, in violation of the first principle of fiduciary obligation. As constructive trustees, they owe an absolute duty of loyalty to the owners of the accounts, requiring defendants to affirmatively seek the true owners out in an effort to return the funds. But, under Swiss law, as long as the true owners are not found, the defendant banks will continue to enjoy the economic benefit of the assets indefinitely.<sup>23</sup> Thus, defendants had, and continue to have, a major financial incentive to fail in their fiduciary duty to identify deposited funds and to restore them to their true owners.

Sadly, for 50 years, greed has triumphed over fiduciary duty, rendering defendants liable for their egregious breaches of faith. Having violated their obligations as constructive trustees under Swiss law, New York law, and customary international law, defendants must disgorge all economic advantage gained from their failure to take timely and effective affirmative steps to return the assets deposited by Jews on the eve of the Holocaust to their rightful owners.

Plaintiffs anticipate that discovery will reveal the identities of numerous depositors. Even if, however, it is no longer possible to trace deposited funds to a particular owner because defendants, in violation of their duties as constructive trustees, have destroyed the necessary

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<sup>23</sup>Under Swiss law, unclaimed deposited assets do not escheat to the government as abandoned property. Rather, once an account is dormant for ten years, a bank is authorized to destroy its records and to hold the assets in perpetuity. Plaintiffs believe that a substantial proportion of deposited assets found their way onto the balance sheets of Swiss banks through this technique. Yet other deposited accounts remained dormant, but were charged annual fees that eventually consumed the accounts. Still other accounts were closed by the nominees in whose names they had been opened, despite the bank's knowledge that the nominee was not the true owner.

records or failed to maintain the records in an adequate manner, defendant banks remain liable in damages for egregious breach of their fiduciary obligations. Under both Swiss and New York law, defendants cannot be permitted to profit from their wrongdoing.

III.  
PURSUANT TO CUSTOMARY INTERNATIONAL LAW, AS  
WELL AS THE LAWS OF SWITZERLAND AND NEW YORK,  
A FEDERAL COURT MAY ORDER DISGORGEMENT OF  
UNJUST PROFITS EARNED BY DEFENDANTS IN  
KNOWINGLY ASSISTING IN THE CONSUMMATION OF  
NAZI WAR CRIMES

Plaintiffs will prove that each defendant-bank (and their predecessors) participated in crimes against humanity by repeatedly receiving looted assets and assets produced by slave labor, with full knowledge that they were consummating the commission of Nazi war crimes. By repeatedly assisting Nazi war criminals in disposing of assets looted from Jews with full knowledge that the goods had been stolen from their rightful owners under conditions amounting to crimes against humanity, and by knowingly acting as the principal financial conduit for the importation and sale of products produced by Jewish slave labor, defendant banks earned substantial profits by enabling the Nazi regime to derive massive economic benefits from their crimes against humanity.

Whether one applies customary international law, enforced as federal common law, or the laws of Switzerland or New York to defendants' conscious wrongdoing, the result is the same: Defendants are under an enforceable legal duty within the meaning of Rule 12(b)(6) to disgorge to the victims, or their representatives, all profits earned as a result of knowingly participating in the commission of war crimes.

Defendants' retained international law expert, Professor John Norton Moore, contends that plaintiffs, in seeking civil disgorgement of the substantial unjust profits earned by defendant banks and their predecessors, fail to state a judicially enforceable claim within the meaning of Rule 12(b)(6) because: (1) the defendant banks were merely providing ordinary banking services

to the Third Reich; (2) it would be unfair to apply modern concepts of conspiracy and aiding and abetting to conduct occurring 50 years ago; and (3) claims sounding in violations of customary international law are not enforceable in federal courts in the absence of legislative authorization. However, Professor Moore's effort to shield defendants' knowing complicity in Nazi war crimes from judicial scrutiny cannot withstand analysis.

A. Defendants Are Alleged to Have Violated Customary International Law as Understood and Applied by the Nuremberg Tribunal

Professor Moore asserts that defendant banks, in knowingly serving as the financial intermediary for the receipt and disposition of assets looted from Jews by the Nazis, and in knowingly trafficking in the fruits of Jewish slave labor, did not violate customary international law as it was understood in 1940-45. Since, he contends, defendants' behavior did not violate customary international law at the time the acts were performed, it would be unfair to impose retroactive criminal liability on defendants in a manner that he equates with the imposition of ex post facto laws. Moore Affirmation, at para 64-80.

But this case does not involve an effort to criminalize lawful behavior retroactively. In the first place, plaintiffs do not seek criminal sanctions. They seek merely the disgorgement of unjust profits earned by knowingly participating in, and consummating, criminal acts by Nazis that everyone agrees were violations of law. United States v. Tull, 481 U.S. 412, 423-25 (1987)(distinguishing between disgorgement and punishment).

Thus, even if it would violate norms of fairness to impose criminal sanctions on someone,



like defendants, who claim to have believed that their complicitous activities were lawful<sup>24</sup>, no similar norms guarantee defendants the right to retain unjust profits earned by knowingly assisting others in the consummation of behavior everyone knew was a crime. Quite simply, Professor Moore has improperly conflated the ex post facto norms of criminal law and the norms governing equitable restitution.

In 1940, as now, a knowing trafficker in stolen goods was, and is, civilly liable to the victim for his unjust profits, whether or not he would be criminally liable as well. Eg. Newton v. Porter, 69 N.Y. 133 (1877); Fur & Wool Trading Co. v. Fox, 245 N.Y. 215, 156 N.E. 670 (1927); Diamond v. Oreamuno, 24 N.Y.2d 494, 248 N.E.2d 910 (1969). Moreover, in 1940, as now, the civil liability of a knowing receiver of stolen property to account to the owner for his unjust profits was, and is, the law in every civilized legal system.

Even more importantly, the customary international law norms asserted by plaintiffs in these cases were in effect in 1945. In fact, they track the norms articulated and applied by the Nuremberg Tribunal in 1949 in convicting the President of the Dresdener Bank, Karl Rasche. United States v. Ernest von Weizsaecker, XIV Trials of War Criminals 314, 774 (1950).<sup>25</sup>

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<sup>24</sup> The Supreme Court has rejected similar non-retroactivity arguments in the context of egregious behavior that violates the United States Constitution. Screws v. United States, 325 U.S. 95 (1945).

<sup>25</sup> The Rasche trial was conducted by an American military tribunal acting under the authority of Control Council Law No. 10, promulgated by the allies to provide for uniform prosecution of Nazi war criminals in the period following the initial Nuremberg prosecution by the International Tribunal. The norms applied in a Control Council 10 proceeding were identical to the norms governing the initial Nuremberg trial. See Matthew Lippman, The Other Nuremberg: American Prosecutions of Nazi War Criminals in Occupied

Professor Moore, citing the acquittal of Karl Rasche on certain charges argues that the Nuremberg Tribunal was reluctant to convict German bankers for engaging in ordinary commercial banking activities with Nazis, even when those banking activities knowingly furthered the Nazi regime. Moore Aff., at para. 99(c)(i). But Professor Moore overlooks the fact that the very Nuremberg Tribunal that acquitted Karl Rasche for making ordinary loans to the Third Reich, convicted him for knowingly trafficking in assets looted from Jews, and sentenced him to seven years in prison. United States v. Ernest von Weizsaecker, XIV Trials of War Criminals 314, 611, 621, 772-783 (1950). Indeed, a dissenting Nuremberg judge criticized the Rasche conviction, arguing that it rested on little more than actions of a banker in knowingly receiving looted property. Id at 940-41.<sup>26</sup>

Moreover, in convicting an official of the Reichsbank, Emil Puhl, the Nuremberg Tribunal explicitly held that knowingly receiving property looted from Jews as part of the plot to exterminate them constituted participation in a crime against humanity. The Tribunal stated:

It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing of the loot must be exonerated and held not guilty as a participant in the murder plan. Without doubt all such acts are crimes against humanity and he who participates therein is guilty of a crime against humanity. (emphasis added). Trials of Nuremberg, vol XIV, at 611 (Puhl)(emphasis added)<sup>27</sup>

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Germany, 3 Ind. Int'l & Comp. L. Rev. 1 (1992).

<sup>26</sup> Defendants' voluminous Exhibits omit the Rasche dissent. A copy will be made available to the Court.

<sup>27</sup> Once again, defendants' voluminous Exhibits omit the Puhl conviction. A copy will be provided to the Court. Professor

Throughout his affirmation, Professor Moore attempts to characterize defendants' behavior as ordinary "commercial banking transactions". Moore Aff., at para 106; 119. Defendants even seek to analogize their wartime behavior to a bank that finances a cigarette company.<sup>28</sup> Such financing, defendants note, does not violate the law, even though the bank knows that cigarettes result in death.

But defendants overlook the critical fact that manufacturing cigarettes is a lawful activity; looting property from Jews both before and after placing them in extermination camps; and enslaving Jews as a prelude to murdering them, is not. Thus, it borders on intellectual dishonesty to characterize defendants' behavior as ordinary commercial banking transactions. Ordinary banking services simply do not include knowingly participating in the commission of an ordinary crime, much less a crime against humanity.

Plaintiffs do not seek to impose liability on defendants for making loans, or for accepting ordinary deposits. Plaintiffs' "looted assets" claims are based on allegations of defendants' repeated actions in earning substantial profits from knowingly receiving stolen goods with knowledge that they had been looted from Jews under conditions that sink to the level of war crimes and crimes against humanity. Plaintiffs' "slave labor" claims are, similarly, not based on ordinary commercial banking transactions. They are based on defendants' repeated actions in earning substantial profits from knowingly acting as the vendor and/or financial conduit for

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Moore's affirmation does not mention the Puhl conviction. See Id at 609-619

<sup>28</sup> Defendants' Memorandum of Law in Support of Partial Motion to Dismiss Common-Law and Swiss Claims for Failure to State a Claim, at 4, n.7.

products that they knew were being produced by Jewish slave labor under conditions that sink to the level of war crimes and crimes against humanity.

Of course, Professor Moore may believe defendants' protestations that they did not know what they were doing when they repeatedly earned substantial sums by acting as international fences for Nazi stolen goods, or as the conscious purveyors of goods produced by slave labor. If one assumes lack of notice on the part of defendant banks, defendants' actions would not give rise to a claim for equitable disgorgement of unjust profits. But Professor Moore's conceded lack of first-hand knowledge, and his status as a paid consultant to defendants, hardly qualifies him to give an expert opinion on defendants' state of mind. Determining whether defendants possessed guilty knowledge is an issue of fact that must await subsequent development. At this stage of the proceedings, plaintiffs good faith allegations that defendants repeatedly acted with notice that they were engaged in assisting Nazis in the commission of criminal acts must, as Professor Moore concedes, be taken as true.

Thus, even if one accepts Professor Moore's effort to transplant retroactivity rules from the criminal law area to settings involving disgorgement of unjust profits earned in helping another to commit a crime, defendants' knowing receipt of looted assets clearly violated the norms of customary international law as those norms were understood and applied by the Nuremberg Tribunals in convicting bankers like Karl Rasche and Emil Puhl.

B. Individuals May Invoke Customary International Law Against Corporations Guilty of Participating in Crimes Against Humanity

Professor Moore asserts several additional objections to characterizing the defendant banks' wartime behavior as a violation of customary international law. First, he argues, since the defendant banks were performing as private actors, they are not subject to customary international law, which, according to Professor Moore, applies almost exclusively to state actors. Moore Aff. at para 108-113. Professor Moore immediately qualifies his assertion, however, by conceding that customary international law outlaws piracy by private individuals, and did so between 1940-45. Such a concession is, of course, completely consistent with the decision of the Nuremberg Tribunals to try numerous private individuals, as well as government actors, for violating customary international law.

In any event, since the bank defendants herein were not acting alone, but in repeated and close concert with officials of Nazi Germany, their legal status is not that of a purely private actor. While Professor Moore's international law credentials are impressive, he has obviously not studied the American precedents on state action which hold that when a private actor knowingly participates with a government official in the commission of an unlawful act, the private actor acts under color of law, and exercises state action. Eg. Adickes v. Kress & Co., 398 U.S. 144 (1970); Dennis v. Sparks, 449 U.S. 24 (1980); Tower v. Glover, 467 U.S. 914 (1984); Lugar v. Edmondson Oil Co., 457 U.S. 922 (1982); Batson v. Kentucky, 476 U.S. 79 (1986). See Albert v. Carovano, 824 F2d 1333 (2d Cir. 1987).

Moreover, Professor Moore's assertion that customary international law does not govern the activities of private actors is particularly unpersuasive when measured against the law of this

Circuit. In Kadic v. Karadzic, 70 F.3d 232, 246 (2d Cir. 1995), this Circuit explicitly rejected the notion that customary international law does not bind private individuals. In this Circuit, Professor Moore's invocation of Judge Edward's concurrence in Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 792 (D.C. Cir. 1984), cert. denied, 470 U.S. 1003 (1985) is merely of academic interest.

Professor Moore then makes the extraordinary assertion that, in 1945, customary international law norms were, ordinarily, not enforceable by private individuals. Moore Aff. at para. 114-117; 150-155;; 163-164. Accordingly, he argues that plaintiffs, as private persons, cannot invoke the Rasche, or Puhl precedents in support of a claim for equitable restitution.

Given the Supreme Court's historic invocation of customary international law on behalf of private persons in La Paquette Habana, 175 U.S. 677 (1900), Professor Moore's assertion that customary international law does not protect private individuals is puzzling. In fact, long before anyone dreamed the nightmare of Nuremberg, American courts had ruled repeatedly that customary international law norms are enforceable by private individuals in civil settings. Eg. Ware v. Hylton, 3 U.S. (3 Dall.) 199 (1796); Respublica v. De Longchamps, 1 U.S. (Dall.) 111, 114 (1784); Talbot v. Janson, 3 U.S. (3 Dall.) 133, 161 (1795); Talbot v. Seeman, 5 U.S. (1 Cranch) 1, 36 (1801); Thirty Hogsheads of Sugar v. Boyle, 13 U.S. (9 Cranch) 191, 198 (1815); The Nereid, 13 U.S. (9 Cranch) 388, 423 (1815); La Paquette Habana, 175 U.S. 677 (1900).

Professor Moore never explains why the customary international law norms recognized by the Nuremberg Tribunal and applied in the Rasche and Puhl cases should give rise solely to criminal liability when, for at least 150 years, customary international law had been understood to give rise to civil as well as criminal remedies.

Moreover, in this Circuit at least, Professor Moore's assertions have been soundly and repeatedly rejected. In Filartiga v. Pena-Irala, 630 F.2d 896 (2nd Cir. 1980), and Kadic v. Karadzic, 70 F3d 232 (2d Cir. 1995), this Circuit firmly ruled that private persons may invoke the protection of customary international law in a civil proceeding for damages when, as here, the challenged conduct is alleged to violate customary international law norms recognized by the Nuremberg Tribunals.

Professor Moore, by inexplicably citing only one-half of the verdict in Rasche, and ignoring the verdict in Puhl completely, argues that defendants' actions in knowingly and repeatedly acting as a receiver of stolen property on behalf of the Nazis did not violate the Nuremberg Principles, and, therefore, do not fall under Filartiga and its progeny. Moore Aff. at para 154. But, if the Rasche conviction is considered, and if the Puhl conviction is not ignored, it seems clear that plaintiffs are seeking relief for actions that have already been found by the Nuremberg Tribunals to have violated customary international law. Accordingly, the customary international law norms invoked by plaintiffs fall comfortably within Filartiga and Kadic.

Finally, Professor Moore makes the genuinely remarkable assertion that it would be unfair to punish current shareholders of the defendant banks for the unlawful acts of individual bank officials committed many years ago. Moore Aff., at para. 28. But the reality is that, unless the defendant banks are required to disgorge the unjust profits they earned by knowingly participating in the commission of Nazi war crimes and crimes against humanity, the banks (and their shareholders) will be unjustly enriched by the retention of profits they should never have earned. In effect, Professor Moore's assertion that corporate shareholders should not be forced to suffer merely because corporate officials earned substantial sums for the corporation by

knowingly participating in criminal activity would insulate corporations from the reach of domestic laws and international treaties prohibiting bribery, discrimination and pollution of the environment. In my years of experience as a civil rights lawyer and scholar, I have never experienced a setting where a corporation was deemed immune from disgorging unjustly earned profits because shareholders might suffer.

C. Customary International Law, as Articulated and Enforced by the Nuremberg Tribunal, is Judicially Enforceable as an Integral Part of the Federal Common Law

Professor Moore appears to argue, as well, that even if defendants' activities are viewed as violating customary international law as it was applied by the Nuremberg Tribunals in 1945, plaintiffs may not enforce Nuremberg customary international law norms in an American court without legislative authorization. Moore Aff., at para 163-166.

Professor Moore's assertions concerning the enforceability of clearly established customary international law norms in an American court are inconsistent with the great weight of judicial authority and academic opinion, especially in this judicial Circuit. In fact, the fundamental customary international law norms at issue in this case that arise out of the Nuremberg Charter are an integral part of the federal common law and, therefore, fully enforceable in an American court.<sup>29</sup> La Paquette Habana, 175 U.S. 677 (1900). See John Norton

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<sup>29</sup>Louis B. Sohn, The New International Law: Protection of the Rights of Individuals Rather Than States, 32 Am. U. L. Rev. 1 (1982); David Luban, The Legacies of Nuremberg, 54 Soc. Res. 779 (1987). See also Sandra Day O'Connor, The Federalism of Free Nations, 28 N.Y.U. Journal of Int'l Law and Politics, 35 (1996) (citing La Paquette Habana with approval, and urging recognition of Immanuel Kant's aspiration for world law



Moore, Federalism and Foreign Relations, 1965 Duke L. J. 248, 268-75 (Sabbatino establishes that customary international law is federal common law).

Professor Moore treats customary international law as though it were an esoteric concept, foreign to American jurisprudence. In fact, customary international law, defined as "general principles common to the major legal systems of the world", and the "general and consistent practice of states followed by them from a sense of legal obligation"<sup>30</sup> is an integral part of post-Erie v. Tompkins federal common law, and, as such, is fully enforceable in an American court. See, eg., Filartiga v. Pena-Irala, 630 F.2d 896, 887 n.20 (2d Cir. 1980)("International law has an existence in the federal courts independent of acts of Congress..."); Kadic v. Karadzic, 70 F3d 232, 246 (2d Cir. 1995)(referring to "settled proposition that federal common law incorporates international law"), cert. denied, 116 S.Ct. 2524 (1996); In re Estate of Ferdinand Marcos Human Rights Litig., 978 F2d 493, 502 (9th Cir. 1992)("It is well settled...that the law of nations is part of the federal common law"); Ishtyaq v. Nelson, 627 F. Supp. 13, 27 (E.D.N.Y. 1983)("[I]nternational law is a part of the laws of the United States that federal courts are bound to ascertain and apply in appropriate cases"); United States v. Feld, 514 F. Supp. 283, 288 (E.D.N.Y. 1981)(customary international law part of "our domestic law"); Xuncax v. Gramajo, 886 F. Supp. 162, 193 (D. Mass. 1995)("[I]t is well settled that the body of principles that comprise customary international law is subsumed and incorporated by federal common law"). See Bradley & Goldsmith, Customary International Law as Federal Common Law: A Critique of

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reflecting the "federalism of free nations").

<sup>30</sup>See Restatement of Foreign Relations (Third) (n. 2 to Preface) section 102(1)(c).

the Modern Position, 110 Harv. L. Rev. 816 (1997)(criticizing the Second Circuit's position, but acknowledging that it is "entrenched" in modern law).

Professor Moore's views on the enforceability of customary international law in an American court appear to reflect the views of then-Judge Robert Bork, concurring in Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 813 (D.C. Cir. 1984)(Bork, J. concurring). Judge Bork's views were rejected, however, by his two fellow judges (726 F.2d at 776 (Edwards, J.); and 726 F.2d 826 (Robb, J.), and have been severely criticized by the academic community. Anthony D'Amato, What Does Tel-Oren Tell Lawyers? Judge Bork's Concept of the Law of Nations is Seriously Mistaken, 79 Am. J. Int'l Law 92 (1985). More importantly, Judge Bork's views have been resoundingly rejected by the Second Circuit. Filartiga v. Pena-Irala, 630 F.2d 896 (2nd Cir. 1980); Kadic v. Kardzic, 70 F.3d 232 (2nd Cir. 1995).

Thus, while Professor Moore's personal opinion on the judicial enforceability of settled customary international law norms arising out of the Nuremberg Tribunal is entitled to respectful attention, he appears to be urging a highly contested position in tension with his supposed role as an expert, and inconsistent with the settled law of this Circuit. The "entrenched" position of modern courts and the contemporary academic commentary, especially in this Circuit, conflicts sharply with Professor Moore's assertions.<sup>31</sup>

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<sup>xx</sup> The Supreme Court has repeatedly acknowledged the enforceability of customary international law in an American court without the necessity of legislation. John Jay, speaking as the first Chief Justice, noted that "the United States, by taking a place among the nations of the earth [became] amenable to the law of nations". Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 474 (1793). Justice Gray, speaking for the Court in La Paquette Habana, 175 U.S. 677 (1900), which applied customary international law to exempt coastal fishing vessels from capture,

Under current Second Circuit law and practice, if a defendant is alleged to have violated basic humanitarian tenets of customary international law (with the norms enunciated by the Nuremberg Tribunals serving as the paradigm), the customary international law norm is recognized as an integral part of the federal common law. Filartiga v. Pena-Irala, 630 F.2d 896(1980); Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995). As federal common law, the customary international law norm is enforceable in a federal court without the need of additional legislative authorization. See Martha A. Field, Sources of Law: The Scope of Federal Common Law, 99 Harv. L. Rev. 881, 890 (1986). Finally, subject matter jurisdiction over a customary international law claim arising under federal common law exists pursuant to both 28 U.S.C. 1331, and 28 U.S.C. 1350. See Harold Hongjiu Koh, Transnational Public Law Litigation, 100 Yale L. J. 2347 (1991).

Since defendants are alleged to have knowingly received stolen property looted from Jews under circumstances that constitute war crimes and crimes against humanity, Rasche and Puhl explicitly hold that the banks' knowing conduct violated customary international law as

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stated:

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination".

See also, The Nereide, 13 U.S. (9 Cranch) 388, 423 (1815) (law of nations is part of "the law of the land"). Most recently, the Supreme Court acknowledged the enforceable nature of customary international law by observing that international law is "part of our law". First Nat'l City Bank v. Banco para el Comercio Exterior de Cuba, 462 U.S. 611, 623 (1983).

explicitly recognized and applied by the Nuremberg Tribunals. Since such a basic customary international law norm is recognized as an integral part of the federal common law, it is enforceable in federal court in a civil action for equitable disgorgement. Finally, since plaintiffs' claim arises under federal common law (as well as the law of nations), subject matter jurisdiction is conferred by 28 U.S.C. 1331, and 1350.

D. Customary International Law, as Federal Common Law, is Routinely Enforceable by Orders of Restitution and Disgorgement

Professor Moore suggests that the customary international law norms recognized at Nuremberg may not be enforced through orders of restitution and disgorgement. Moore Aff., para. 108-111. But he ignores two crucial precedents. First, the Nuremberg Charter itself explicitly provided for restitution as one of the goals of the international tribunal. See Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis Powers, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 284. Indeed, numerous orders of restitution were issued by the Nuremberg Tribunal and its affiliated entities. See, eg., Benjamin B. Ferencz, Less than Slaves: A Sequel to Hitler's Holocaust, the Story of Jewish Forced Labor (1979), at 34-35, 66 (I.G.Farben); 71-72, 86 (Krupp); 158, 170 (Flick); 127 (Siemens); 153 (Rheinmetall).

Moreover, in 1792, the very first example of the enforcement of customary international law in an American court involved an order of equitable restitution to a slave owner for losses suffered in violation of the law of nations.

In fact, an order requiring disgorgement of unjust profits earned by knowingly assisting in the commission of a crime is an equitable remedy available under all three potential sources of law in this case. Disgorgement of unjust profits earned by knowingly facilitating a crime is a well

developed facet of Swiss unjust enrichment law. See Dawson, Negotiorum Gestio: The Altruistic Intermeddler, 74 Harv. L. Rev. 817 (1961) (distinguishing between "conscious" and "unconscious" wrongdoers).<sup>32</sup>

Similarly, New York requires wrongdoers to disgorge profits earned as a consequence of their wrongdoing. Eg. Newton v. Porter, 69 N.Y. 133 (1877); Fur & Wool Trading Co. v. Fox, 245 N.Y. 215, 156 N.E. 670 (1927); Diamond v. Oreamuno, 24 N.Y.2d 494, 248 N.E.2d 910 (1969).

Not surprisingly, equitable disgorgement is also routinely available in federal court as a means of enforcing federal common law, of which customary international law is an integral part. Snepp v. United States, 444 U.S. 507, 515 (1980)(granting disgorgement to enforce federal common law of contract); Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977)(requiring disgorgement of profits from misappropriation of intellectual property); Affiliated Ute Citizens of Utah v. United States, 406 U.S. 128 (1972)(requiring bank to disgorge unjust profits); SEC v. First Jersey Securities, Inc., 101 F.3d 1450 (2d Cir. 1996)(explaining equitable doctrine of disgorgement in context of securities litigation); Janigan v. Taylor, 344 F.2d 781 (1st Cir. 1965)(discussing policy behind disgorgement of unjust profits). See generally Friendly, In Praise of Erie - And the New Federal Common Law, 39 N.Y.U. L. Rev. 383 (1964).

E. Under the Laws of Switzerland and New York, Defendants Are Under a Duty to Disgorge Profits Earned by Knowingly Participating in a Criminal Enterprise

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<sup>xv</sup>For the purposes of this Rule 12(b)(6) motion, defendants must be deemed conscious wrongdoers in light of plaintiffs' allegations that defendants acted with full knowledge that they were facilitating war crimes.

Plaintiffs' claim for equitable disgorgement of profits earned by trafficking in the fruits of criminal activity also states a claim under both Swiss and New York law.

New York law forbids a bank to knowingly assist in the commission of a crime. Moreover, equitable disgorgement of unjust profits earned by facilitating the commission of a wrong is a well recognized remedy under New York law. For example, in Newton v. Porter, 69 N.Y. 133 (1877), bearer bonds were stolen and transferred to a lawyer in payment for services rendered. The lawyer accepted the bonds knowing that they had been stolen. The lawyer then sold the bonds at a profit. In a pioneering decision, the New York Court of Appeals ruled that, in order to prevent a wrongdoer from obtaining unjust enrichment, the lawyer held the proceeds of the sale of the bonds, including any profit, in constructive trust for the true owner. Similarly, in Fur & Wool Trading Co. v. Fox, 245 N.Y. 215, 156 N.E. 670 (1927), furs were stolen, and then sold to a party who was on notice of the theft. The New York Court of Appeals ruled that, to prevent unjust enrichment of a wrongdoer, the purchaser held the furs, and any profits earned on them, in constructive trust for the true owner. In Diamond v. Oreamuno, 24 N.Y2d 494, 248 N.E.2d 910 (1969), the New York Court of Appeals ordered a defendant charged with insider trading to disgorge his profits to sellers. See also Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889)(murderer may not profit from wrongdoing by inheriting under his victim's will).

Just as the wrongdoers in Newton, Fur and Wool Trading Co., Diamond, and Riggs were required to disgorge all profits earned as a consequence of their wrongdoing, so the defendant banks are required under New York law to disgorge profits earned by knowingly facilitating the commission of Nazi war crimes.

Swiss law parallels both New York and customary international law by forbidding a bank

to knowingly assist in the commission of a crime. Swiss banks may not knowingly launder assets derived from criminal activity, or knowingly operate as receivers of stolen property. Moreover, the Swiss law of unjust enrichment requires a wrongdoer to disgorge profits traceable to his wrong.

Thus, whether one applies Swiss, New York, or customary international law to defendants' behavior in knowingly facilitating Nazi war crimes by laundering the fruits of the crimes into cash, the following legal principles are clear: (1) defendant banks and their predecessors repeatedly violated the law in knowingly assisting in the commission of blatantly unlawful acts by Nazi war criminals by trafficking in the fruits of war crimes and laundering them into cash; (2) defendants earned substantial sums as a direct result of their wrongful conduct; (3) defendants are bound to disgorge their ill-gotten profits to the victims of Nazi war crimes, or to their lawful representatives; and (4) defendants' duty to disgorge is fully enforceable in this Court as a matter of federal common law, or as an application of Swiss or New York law.<sup>33</sup>

#### IV. SUBJECT MATTER JURISDICTION EXISTS OVER EACH OF

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<sup>xx</sup> Under established law, defendants are also liable for the return of specific items of looted assets that they knowingly laundered, or for their current value. Such "specific restitution" liability may turn on the ability to trace specific assets to a particular bank. Accordingly, it is premature to consider it at length prior to discovery. Since discussion of liability for the return of looted assets is premature, I have concentrated on the defendants' unquestionable duty to disgorge profits earned by assisting in the commission of war crimes, which does not turn on an ability to identify specific assets.

## PLAINTIFFS' CLAIMS FOR RELIEF

In Point I, plaintiffs have established the existence of legally enforceable claims for relief falling into three broad categories: (1) "deposited assets" claims for the return of property placed for safekeeping in defendant banks, or their predecessors, on the eve of the Holocaust; (2) "constructive trust" claims for damages and restitution flowing from defendants' violation of their fiduciary duties as constructive trustees by failing to keep and maintain adequate records, by failing to take adequate affirmative steps to return the deposited assets, and by enriching themselves at plaintiffs' expense; and (3) "looted assets/slave labor" claims for disgorgement of all profits earned by defendant banks, and their predecessors, through knowingly assisting the Nazis in disposing of looted assets and goods produced by slave labor.

Plaintiffs claims for the return of deposited assets, and for the breach of duties of constructive trust, arise under the laws of New York and Switzerland.<sup>34</sup> Accordingly, subject matter jurisdiction over the deposited asset and constructive trust claims is present pursuant to 28 U.S.C. section 1332, regardless of whether the claims ultimately sound in contract, tort, or unjust enrichment.<sup>35</sup>

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<sup>34</sup> The sole exception is the existence of a customary international law claim against defendants for breach of constructive trust in failing to carry out duties owed to the victims of crimes against humanity. Since the constructive trust claim is so clearly supported by Swiss and New York law, plaintiffs will not stress the customary international law claim for breach of constructive trust.

<sup>35</sup> To the extent plaintiffs' constructive trust claims rest on customary international law, they arise under federal common law, with subject matter jurisdiction flowing from 28 U.S.C. section 1331 and 28 U.S.C. section 1350.



Plaintiffs' looted assets/slave labor claims for the disgorgement of unjust profits earned by defendant banks in knowingly trafficking in the fruits of war crimes arise under customary international law, as well as the laws of Switzerland and New York. To the extent the looted asset/slave labor claims for disgorgement arise under customary international law, subject matter jurisdiction is granted by 28 U.S.C. section 1331, since customary international law is an integral part of federal common law. Subject matter jurisdiction over plaintiffs' customary international law claims is also granted by 28 U.S.C. section 1350. To the extent that plaintiffs' looted asset/slave labor claims arise under the laws of Switzerland or New York, subject matter jurisdiction is granted by 28 U.S.C. section 1332.

Plaintiffs also invoke 28 U.S.C. section 1367, if necessary, to permit the court to resolve this entire case or controversy by asserting ancillary jurisdiction over aspects of the controversy that may not fall within a specific grant of subject matter jurisdiction, but which arise out the same "common nucleus of operative facts".<sup>36</sup>

A. Diversity Jurisdiction Exists Over the "Deposited Assets" and "Constructive Trust" Claims Pursuant to 28 U.S.C. sec. 1332

Plaintiffs invoke classic alien diversity jurisdiction under 28 U.S.C. sec. 1332. The three defendants banks, as well as the Swiss Bankers Association, are citizens of Switzerland within

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<sup>36</sup>Congress' principal purpose in codifying ancillary jurisdiction was to enable a Federal District Court to resolve an entire case or controversy without requiring redundant piecemeal litigation in numerous fora. Thus, while plaintiffs do not believe that resort to 28 U.S.C. section 1367 will be necessary, it exists as a jurisdictional safety-net granting the Court power to resolve this entire case or controversy in an efficient and just manner. See also Kokkonen v. Guardian Life Ins. Co., 114 S.Ct. 1673 (1994) (1367 does not eliminate non-statutory ancillary jurisdiction).

the meaning of Section 1332. Eleven of the thirteen named-plaintiffs are either citizens or residents<sup>37</sup> of the United States. Accordingly, as between the United States plaintiffs and the Swiss defendants, classic alien diversity exists.

Defendants mount two challenges to 1332 jurisdiction. First, they argue that since two named plaintiffs, and a significant number of putative members of the plaintiff-class, are citizens of foreign countries, "complete diversity" does not exist within the meaning of section 1332. Second, they argue that each individual plaintiff, including each member of any putative plaintiff-class, must satisfy the \$50,000 jurisdictional amount applicable to this case.<sup>38</sup> Neither objection can withstand analysis.

#### 1. Appropriate Diversity Exists

It is true, of course, that alien diversity jurisdiction does not extend to a suit by one alien against another. Hodgson v. Bowerbank, 9 U.S. (Cranch) 303 (1809). It is also true that, under the rule of Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806), section 1332 must be read as requiring complete diversity between the parties. Thus, the presence of alien parties on both sides of the case may, under certain circumstances, affect the ability to invoke sec. 1332. But, unless the non-diverse party is deemed indispensable within the meaning of Rule 19, the appropriate response to defendants' objection is to dismiss the non-diverse parties, not the entire complaint.

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<sup>37</sup> For the purposes of assessing diversity jurisdiction, permanent resident aliens are deemed citizens of the states in which they reside. See Singh v. Daimler-Benz AG, 9 F3d 303 (3d Cir. 1993) (1332 jurisdiction exists over action by permanent resident alien against German corporation and American subsidiary).

<sup>38</sup> The World Council plaintiffs must satisfy a \$75,000 jurisdictional amount.

Moreover, where, as here, the alien plaintiffs are in a position to invoke independent bases of jurisdiction under 28 U.S.C. secs 1331 and 1350 in connection with the constructive trust and looted assets/slave labor claims, they should be permitted to remain as 1332 plaintiffs in connection with the deposited assets claim under a grant of ancillary jurisdiction pursuant 28 U.S.C. 1367. Where alien plaintiffs litigating claims that arise out of the same "common nucleus of operative facts" as the 1332 claim within the meaning of United Mine Workers v. Gibbs, 383 U.S. 715 (1966), will remain in the case regardless of 1332, considerations of efficiency and fairness that underlie section 1367 call for retaining the alien plaintiffs under ancillary jurisdiction. Singh v. Daimler-Benz AG, 9 F3d (1993). Indeed, under Singh, the presence of a single United States citizen-plaintiff is sufficient to vest the Court with ancillary jurisdiction over the remaining alien plaintiffs.<sup>39</sup>

At an absolute minimum, even if the non-diverse alien plaintiffs are dismissed, the remaining United States plaintiffs may serve as class representative of a class of plaintiffs seeking recovery of deposited assets, which may include aliens without disturbing complete diversity. Under the rule of Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356 (1921), which was codified by Congress when it enacted 1367, the citizenship of a plaintiff class invoking diversity jurisdiction is measured by the citizenship of the named representative. In re "Agent Orange" Prod. Liab. Litig., 818 F2d 145, 162 (2d Cir. 1987), cert. denied 488 U.S. 1004 (1988).

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<sup>39</sup>Since the rule of complete diversity set forth in Strawbridge v. Curtiss is not constitutionally required, Congress is empowered to authorize 1332 jurisdiction in a "minimum diversity" setting, where the interests of efficiency and justice would be served by hearing an entire case or controversy. State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523 (1967). That is precisely what Congress did when it enacted 1367.

In Ben Hur, the Supreme Court ruled that the presence of non-diverse parties as members of a plaintiff class does not destroy complete diversity, as long as the class is headed by a named plaintiff with appropriately diverse citizenship. Defendants' complain about the Ben Hur rule, but can cite no authority supporting its erosion. In fact, the Ben Hur rule is deeply embedded in federal law. For 75 years, it has been the mechanism by which unincorporated associations, such as labor unions, participate in diversity actions in the federal courts as both plaintiffs and defendants. Indeed, the predecessor to Rule 17 FRCP was designed to assure that state law would not defeat the Ben Hur rule. Thus, to the extent that alien plaintiffs seeking return of deposited assets, or damages for breach of a duty of constructive trust, may not remain in the case individually pursuant to ancillary jurisdiction, they may, nevertheless, participate as members of a plaintiff class headed by United States citizens.

Finally, defendants' suggestion that the Ben Hur rule should not apply in a setting where aliens outnumber United States citizens is factually inapposite. Approximately one-half of all Holocaust survivors reside in the United States. Of the 80,000 persons who have approached counsel concerning assets in Swiss banks, the overwhelming majority are by persons residing in the United States. Thus, whatever the rule may be for a radically unbalanced class where a single United States plaintiff wags an overwhelmingly alien tail, any putative class in this case will contain an appropriate mix of United States citizens and aliens.<sup>40</sup>

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<sup>40</sup>Defendants also suggest that since many of the claimants are close relatives of persons who died in the death camps, the appropriate measure of their citizenship is that of the decedent, not the current plaintiff. But such an argument misunderstands settled law. Actions on behalf of an estate brought by a representative of the estate are measured for 1332 purposes by the citizenship of the decedent. But once the estate is

## 2. The Jurisdictional Amount is Satisfied

Nor is defendants' challenge to the jurisdictional amount any more persuasive. The short answer to defendants' jurisdictional amount objection is that virtually every claimant is asserting a good faith, colorable claim in excess of \$50,000.<sup>41</sup> As even defendants' concede, funds deposited in an interest-bearing account must include accrued interest in calculating the amount in controversy under 1332. If one assumes a modest 4% interest factor, deposits of considerably less than \$10,000 in 1934 would today require repayments in excess of \$50,000. When one adds a factor to account for currency fluctuation, the amounts increase to an even higher level.<sup>42</sup>

Moreover, to the extent plaintiffs seek damages for the willful violation of duties of constructive trust, the damages payable to each claimant will easily surpass the jurisdictional

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terminated, a close relative suing as the heir of a decedent is the real party in interest for the purposes of measuring diversity. The cause of action passes from the estate to the heir as a chose in action, which becomes the property of the heir.

Defendants' argument that the real parties in interest in connection with slave labor and looted assets claims, as well as the deposited assets and constructive trust claims, are persons who failed to survive the Holocaust is really an insupportable argument that their claims for justice failed to survive their deaths. In fact, a decedent's claim for restitution is no different than any person's whose property was stolen, or whose work was uncompensated. The claim for relief passes through their estates to their heirs or appropriate representatives, who become the real parties in interest.

<sup>41</sup> St. Paul Mercury Indemnity Co v. Red Cab Co., 303 U.S. 283 (1938).

<sup>42</sup> The deposits herein were made in Swiss francs, a currency that has increased in value almost fourfold against the American dollar. Whether ultimate payment is made to claimants in Swiss francs, or American dollars, the real dollar value of the claimed funds must reflect the current value of the Swiss franc.

amount, especially when the potential for punitive relief is considered.

Finally, the claim for disgorgement of unjust profits earned by trafficking in the fruits of Nazi war crimes must also be factored into the jurisdictional amount. Where, as here, the claim is for equitable disgorgement, the appropriate jurisdictional amount is the amount disgorged, not the amount payable to each plaintiff.

When one cumulates the accrued value of the deposited assets, the damages payable for wilful violation of a constructive trust, and the obligation to disgorge unjust profits earned by facilitating the commission of war crimes, no doubt exists that each plaintiff has asserted a colorable claim for more than \$50,000.<sup>43</sup>

B. Subject Matter Jurisdiction Exists Over the "Looted Asset/Slave Labor" Claims Pursuant to 28 U.S.C secs. 1331, 1332, 1350, and 1367

1. Federal Question Jurisdiction Exists Over

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<sup>xx</sup> Since each named plaintiff, and each putative class plaintiff, individually satisfies the jurisdictional amount, it is unnecessary to consider whether the plain meaning of 28 U.S.C. sec. 1367 alters the rule in Zahn v. International Paper Co. 414 U.S. 291 (1973), requiring each member of a diversity class to satisfy the jurisdictional amount. While District Courts in this Circuit have been reluctant to abandon the Zahn rule despite the plain meaning of 1367, several Circuits, and the weight of academic commentary, argue that the plain meaning of 1367 undermines Zahn. See, eg., In re Abbott Laboratories, 51 F3d 524 (5th Cir. 1995); Stromberg Metal Works v. v. Press Mechanical, Inc., 77 F3d 928 (7th Cir. 1996).

If necessary, plaintiffs will urge that, pursuant to the plain meaning of 1367, as long as individual named plaintiffs satisfy the jurisdictional amount, this Court has power to consider the claims of members of a putative plaintiff class without regard to the jurisdictional amount under the rubric of ancillary jurisdiction.

Customary International Law Claims Enforceable as  
an Integral Part of the Federal Common Law

Plaintiffs have demonstrated claims arising under customary international law for the disgorgement of all profits earned by defendants in participating in the commission of Nazi war crimes. Federal question jurisdiction exists over such claims because they arise under federal common law.

Defendants appear to concede, as they must, that claims sounding in federal common law fall within the grant of federal question jurisdiction in 28 U.S.C. sec. 1331 as a claim "arising under the laws of the United States". Illinois v. Milwaukee, 406 U.S. 91 (1972); Zschernig v. Miller, 389 U.S. 429 (1968); Clearfield Trust v. United States, 318 U.S. 363 (1943); DelCostello v. Int'l Bd. of Teamsters, 462 U.S. 151 (1983); Boyle v. United Technologies Corp., 487 U.S. 500 (1988). See Field, The Scope of Federal Common Law, 99 Harv. L. Rev. 881 (1986); Hill, The Law-Making Power of the Federal Courts, 67 Colum. L. Rev. 1024 (1967); Kramer, The Lawmaking Power of the Federal Courts, 12 Pace L. Rev. 263 (1992). See also Restatement (Third) of Foreign Relations Law secs. 111 (comment d), 112 (comment a)(1987).

Moreover, defendants appear to concede, as they must, that the overwhelming weight of judicial authority, especially in this Circuit, holds that the customary international law norms forbidding crimes against humanity and genocide recognized by the Nuremberg Charter are an integral part of the federal common law. Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir 1980); Kadic v. Karadzic, 70 F3d 232 (2d Cir. 1995), cert. denied, 116 S.Ct. 2524 (1996). See also In re Estate of Ferdinand Marcos Human Rights Litig., 978 F2d 493, 502 (9th Cir. 1992)("It is well settled...that the law of nations is part of the federal common law"); Ishtyaq v. Nelson, 627 F.

Supp. 13, 27 (E.D.N.Y. 1983)("[I]nternational law is a part of the laws of the United States that federal courts are bound to ascertain and apply in appropriate cases"); United States v. Feld, 514 F. Supp. 283, 288 (E.D.N.Y. 1981)(customary international law part of "our domestic law"); Xuncax v. Gramajo, 886 F. Supp. 162, 193 (D. Mass. 1995)("[I]t is well settled that the body of principles that comprise customary international law is subsumed and incorporated by federal common law"). See Bradley & Goldsmith, Customary International Law as Federal Common Law: A Critique of the Modern Position, 110 Harv. L. Rev. 816 (1997)(criticizing the Second Circuit's position, but acknowledging that it is "entrenched" in modern law); Crockett, The Role of Federal Common law in Alien Tort Statute cases, 14 B.C. Int'l & Comp. L. Rev. 29 (1991); Burley, The Alien Tort Statute and the Judiciary Act of 1789: A Badge of Honor, 83 Am. Jour. Int'l Law, 461, 465 n. 16 (1989).

When one puts the two concessions together, the inevitable conclusion is that sec. 1331 vests this Court with federal question subject matter jurisdiction over plaintiffs' customary international law/federal common law claims. Forti v. Suarez-Mason, 672 F. Supp. 1531, 1544 (N.D. Cal. 1987)("[A] case presenting claims arising under customary international law is a federal question"); In re Cincinnati Radiation Litigation, 874 F.Supp. 796, 821 (S.D. Ohio 1995).

Although the Second Circuit's analysis in Filartiga and Kadic forecloses the issue, the Circuit was not required to assert 1331 jurisdiction, since jurisdiction under 28 U.S.C. 1350 was present in both cases. See Filartiga, *supra*, at 887, n.2, and Kadic, *supra*, at 246. See also Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 779-80 n.4 (D.C. Cir. 1984)(Edwards, J., concurring). However, since Article III does not authorize suits by one alien against another, in order to uphold the constitutionality of 1350 in both Filartiga and Kadic, the Second Circuit was



obliged to hold that customary international law is a "law of the United States" within the meaning of Article III, rendering sec. 1331 jurisdiction inevitable. If customary international law is a "law of the United States" for the purposes of Article III, a claim arising under customary international law, by definition, arises under a "law of the United States" for the purposes of 1331.

## 2. Alien Tort Jurisdiction Exists Over Plaintiffs' Customary International Law Claims

Subject matter jurisdiction over plaintiff's customary international law claims is granted, as well, by 28 U.S.C. sec. 1350, the Alien Tort Act. The gravamen of plaintiffs' disgorgement claim is that defendants knowingly participated in acts of such barbarity that the term "tort" as used in 1350 is hardly an adequate characterization. But torts they were; torts of conversion, battery, unlawful imprisonment and wrongful death.<sup>44</sup>

Professor Moore's principal objection to plaintiffs' invocation of 1350 jurisdiction is that it is confined to alien plaintiffs. Since, he argues, many of the plaintiffs herein are United States citizens, they may not invoke the statute. Moore Aff., at para 157. As with defendants' objections

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<sup>44</sup> Professor Moore's suggestion, Moore Aff., at para 159, that plaintiffs may not join an alien tort claim under 1350 for disgorgement of profits earned by participating in war crimes with a contract claim under 1332 for return of the deposited assets collides with the liberal joinder policies of Rule 18 FRCP. What possible reason could there be to read the Alien Tort Act as requiring a federal court to re-import the technical pitfalls of the forms of action?

In any event, at most, Professor Moore's technical quibble about mis-joinder of a contract and a tort claim in the same proceeding would require the filing of two separate cases that would then be consolidated under Rule 42.

to diversity jurisdiction, however, Professor Moore overlooks the rule in Ben Hur.

As I have noted in connection with the existence of diversity jurisdiction, under the rule of Supreme Tribe of Ben Hur v. Cauble, 255 U.S. 356 (1921), which was codified by Congress when it enacted 1367, the citizenship of a plaintiff class is measured by the citizenship of the named representative. In Ben Hur, the Supreme Court ruled that the presence of non-diverse parties in a plaintiff class does not destroy complete diversity, as long as the class is headed by a named plaintiff with appropriately diverse citizenship.

The Ben Hur rule is deeply embedded in federal law. For 75 years, it has been the mechanism by which unincorporated associations, such as labor unions, participated in diversity actions in the federal courts. Indeed, the predecessor to Rule 17 FRCP was designed to assure that state law would not defeat the Ben Hur rule in cases involving labor unions. Thus, to the extent that alien plaintiffs invoke sec. 1350 as a jurisdictional statute to assert valid claims under customary international law, they may represent a class of persons raising common questions of law and fact containing United States citizens.

While plaintiffs believe that United States plaintiffs may invoke 28 U.S.C. sec. 1367 to join with alien plaintiffs in prosecuting 1350 claims with a common nucleus of operative fact, especially since the United States plaintiffs may invoke independent bases of jurisdiction under 28 U.S.C. secs. 1331 and 1332, at a minimum under Ben Hur, alien plaintiffs may serve as named representatives under 1350 for a class containing United States citizens.<sup>45</sup>

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<sup>45</sup> Plaintiffs believe that it would be preferable to acknowledge reciprocal ancillary jurisdiction under sec 1367 over the overlapping claims of United States and alien plaintiffs, since they arise out of an identical common nucleus of operative facts, and since each invokes an independent base of

3. Diversity Jurisdiction Exists Over Disgorgement Claims Arising  
Under Swiss or New York Law

Finally, to the extent that plaintiffs' claims for disgorgement of profits earned by facilitating the commission of Nazi war crimes arise under New York or Swiss law, subject matter jurisdiction exists under 28 U.S.C 1332, just as it exists in connection with plaintiffs' claims for the return of deposited assets, and for damages for the breach of duties of constructive trust.

V.  
NO BASIS EXISTS TO REFRAIN FROM  
EXERCISING CONGRESSIONALLY MANDATED  
JURISDICTION OVER THIS CASE

Plaintiffs have demonstrated, first, that they assert numerous claims for which relief can be granted; and, second, that this Court is vested with subject matter jurisdiction over each claim. Nevertheless, defendants urge the Court to decline to exercise Congressionally mandated subject matter jurisdiction, arguing that the Court should abstain in favor of a private effort sponsored and financed by the Swiss Bankers Association, and headed by Paul Volcker, designed to

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jurisdiction. Alternatively, the recognition of reciprocal overlapping classes headed by appropriate named plaintiffs under Ben Hur should permit all parties to pursue their claims in the context of a single consolidated proceeding.

If necessary, separate actions may be brought under sec. 1350 on behalf of exclusively alien named plaintiffs, and under sec. 1332 on behalf of United States named plaintiffs, with both sets of plaintiffs invoking sec. 1331, and both cases certifying reciprocal broad based classes under Ben Hur, and with all cases consolidated pursuant to Rule 42. While such complex machinations may prove necessary, plaintiffs believe that the judicious application of ancillary jurisdiction is the preferable approach.

investigate whether any funds deposited by Jews on the eve of the Holocaust remain in Swiss banks in the form of dormant accounts.<sup>46</sup>

In addition, defendants urge the Court to defer to an investigation into the wartime behavior of the Swiss financial community sponsored by the Swiss parliament, and to the possible creation of a voluntary "Humanitarian Fund" that will be the subject of a referendum in Switzerland some time next year. Finally, Professor Moore, reinforced by a letter from the Swiss Ambassador to the United States, urges the Court to refrain from impinging on Swiss sovereign interests by acting in derogation of Swiss bank secrecy laws.

Defendants have even implied that proceeding with the case would be inconsistent with American foreign policy and contrary to the wishes of the Executive branch.

Defendants' argument for abstention is, at bottom, that plaintiffs will receive a better quality of justice in a non-judicial forum than in this Court. With due respect for defendants' newly discovered sense of justice, that decision is for the plaintiffs to make. Defendants are hardly in a position to give advice to their victims about where to find the best quality of justice. Indeed, defendants' strenuous efforts to deflect this litigation into a non-judicial forum of their own choosing and design speaks volumes about the importance of continuing this judicial proceeding. For 50 years, defendants have avoided making restitution of assets deposited by Jews on the eve of the Holocaust, and have avoided disgorging unjust profits they earned from assisting in Nazi war crimes, by acknowledging a wish to make amends, and then deflecting the implementation phase into non-judicial fora where they could control the flow of information,

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<sup>46</sup>Plaintiffs will refer to the Commission by its popular name, the Volcker Commission.

and where pragmatism would triumph over principle. The only forum defendants genuinely fear is a forum of principle, open to public view, where they can neither manage the flow of information, nor inject pragmatic considerations into the decision making process.

A. Federal Courts May Not Abstain in Favor of Private Investigations That Are Financed by Defendants, and Deemed Inadequate By Plaintiffs

1. No Conflict Exists Between The Volcker Commission and the Vigorous Prosecution of This Litigation

No conflict exists between the Volcker Commission and the vigorous pursuit of this litigation. Plaintiffs welcome the Volcker Commission's efforts, and appreciate the willingness of persons like Paul Volcker to attempt to unravel years of duplicity and fraud. But the Volcker Commission is not an adequate substitute for this judicial proceeding.<sup>47</sup>

The stated purpose of the Volcker Commission is to conduct an audit of Swiss banks to determine whether unclaimed funds exist that are traceable to deposits made by Jews on the eve of the Holocaust. By its own terms, therefore, the Volcker Commission is not empowered to investigate the conduct of defendant banks in assisting in the commission of Nazi war crimes. Thus, the Commission has absolutely no connection to plaintiffs' looted asset/slave labor claims for disgorgement of profits earned by facilitating the commission of war crimes.

Nor is the Volcker Commission authorized to provide relief for egregious breaches of defendants' fiduciary obligations as constructive trustees in failing to keep and maintain adequate

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<sup>47</sup> Plaintiffs are grateful to the members of the Volcker Commission for their efforts. Concerns about the scope and adequacy of the Volcker Commission's efforts are not intended to denigrate the good will of members of the Commission who are attempting to right a great historic injustice.

records, in failing to take adequate steps to seek out the true owners of the deposited assets, and in placing themselves in an impossible conflict of interest situation where they continue to profit financially by retaining the deposited assets. Thus, the Volcker Commission's work has little or no connection to plaintiffs' constructive trust claims for damages as a result of defendants' blatant self-dealing, and failure to take affirmative steps to return deposited assets.

Even in its dealings with deposited assets, the Volcker Commission fails to provide an adequate substitute for this judicial proceeding. The Commission's principal task will be to search for dormant accounts, or accounts closed by Swiss banks for non-payment of fees. But plaintiffs believe that accounts opened in the names of nominees, and funds merged into common accounts, constituted a significant percentage of the deposited assets. Such accounts will appear as neither dormant, nor closed for non-payment of fees. Moreover, an audit of dormant accounts, or accounts closed for non-payment of fees, will not adequately disclose accounts that were improperly closed by nominees, or shifted into newly named accounts. Indeed, plaintiffs fear that the only reason the Swiss Bankers Association agreed to an audit by the Volcker Commission is the SBA's belief that an audit confined to dormant accounts would yield only a fraction of the deposited assets.

Even the search for dormant accounts by the Volcker Commission is not an adequate substitute for a judicial proceeding. First, the documents to be made available to the Commission's auditors are to be selected by the banks. Second, the Commission must act in secret. Not even its members, including Paul Volcker, will have complete access to the original records and raw materials from which its reports will be made. Third, the auditors must be chosen from Swiss firms having close business ties to the banks.

Despite the narrow scope of the Volcker Commission, and plaintiffs' concerns about its structural efficacy, plaintiffs are anxious for the Volcker Commission to succeed. Accordingly, plaintiffs are prepared to pursue vigorously those aspects of this litigation that fall beyond the scope of the Volcker Commission's investigation, while seeking to cooperate with the Volcker Commission in pursuit of our common objectives concerning the expeditious return of all deposited assets. Plaintiffs, of course, reserve the right to reject the Volcker Commission's report, and to take all appropriate steps to protect plaintiffs' rights should the Commission's efforts appear inadequate, but, at this point, there is no conflict whatever between this case and the work of the Volcker Commission.

## 2. The Court Lacks Power to Abstain

The Supreme Court has repeatedly ruled that federal courts are under a duty to decide cases and controversies within their Congressionally prescribed jurisdiction. Quackenbush v. Allstate Ins. Co., 116 S.Ct. 1712 (1996)("We have often acknowledged that federal courts have a strict duty to exercise the jurisdiction that is conferred upon them by Congress"); Colorado River Water Conserv. District v. United States, 424 U.S. 800, 821 (1976)("[F]ederal courts have a virtually unflagging obligation...to exercise the jurisdiction given them"); England v. Louisiana Bd. of Medical Examiners, 375 U.S. 411, 415 (1976)("When a federal court is appealed to in a case over which it has by law jurisdiction, it is its duty to take jurisdiction"); Cohens v. Virginia, 6 Wheat. 246, 404 1821)(federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not").

Despite the repeated admonitions of the Supreme Court, defendants urge this Court to decline to entertain this case and to defer to the Volcker Commission under the rubric of

abstention. Under the Supreme Court's precedents, however, abstention may occur only when necessary to permit a state court to perform its judicial functions, and, then, only when a discretionary remedy is sought. Quackenbush v. Allstate Ins. Co., 116 S.Ct. 1712 (1996)(rejecting Burford abstention in action for damages).

Abstention is a narrow, federalism-based exception to the obligatory exercise of subject matter jurisdiction designed to permit state courts to perform their judicial functions free from unnecessary federal interference. See, eg., Younger v. Harris, 401 U.S. 37 (1971)(federal courts should abstain from interfering with pending state criminal prosecutions); Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496 (1941)(federal courts should abstain to permit state courts to resolve doubtful issues of state law that would obviate the need for constitutional adjudication); Burford v. Sun Oil Co., 319 U.S. 315 (1943)(federal courts should abstain from deciding issues of great importance to a state when unresolved issues of state law may impair their proper adjudication).<sup>48</sup> Contrary to defendants' suggestion, no federal court has ever abstained in favor of a private mediation effort that is sponsored, paid for, and designed by the defendants. Indeed, if a defendant can defeat or substantially delay the exercise of federal jurisdiction by the simple expedient of announcing itself ready to discuss a non-judicial resolution of the controversy pursuant to a process it designs and substantially controls, Congress' effort to prescribe subject matter jurisdiction would be vulnerable to a defendant's trump. Plaintiffs would always be forced to negotiate with defendants on defendants' terms, rather than seek justice in a court of law.

Where, as here, plaintiffs view a private mediation effort as well-intentioned but unlikely

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<sup>48</sup> Louisiana Power & Light Co. v. Thibodaux, 360 U.S. 25 (1959) is a modern application of Burford abstention.



to succeed, a Court simply lacks the power to abstain. Defendants do not suggest that plaintiffs are obliged pursuant to contract to submit their claims to arbitration, or to some other form of non-judicial resolution. Absent such a consensual agreement to defer judicial consideration, however, defendants' suggestion of a court-imposed restriction on access to court is unprecedented. In effect, defendants argue for a private "act of state" doctrine that would allow foreign banks to decide when they wish to be sued in an American court.

Defendants are masters of the shadows. Twice in the last 50 years, in 1946 and 1962, defendants reneged on solemn promises to make restitution of looted gold and deposited Jewish assets. Forced by aroused world opinion to make yet a third promise, defendant banks have designed a new procedure, the Volcker Commission, in which they control the flow of information, and in which they determine the relevant fields of inquiry. Plaintiffs wish the people of good will who are participating in the Volcker Commission's audit the best of luck in attempting to navigate the maze that defendants have constructed. As for plaintiffs, they wish to pursue justice on all three of their claims - deposited assets; constructive trust; and looted assets/slave labor - in an open judicial forum, where defendants do not control the flow of information; where defendants do not negotiate the questions to be asked; where the results of the investigation are open to full public view; where disputes about the facts can be resolved by an impartial arbiter; and where the capacity to enforce a judgment exists. Since the Volcker Commission is pursuing an incomplete agenda under a procedure substantially controlled by the defendant banks, even if this Court were empowered to abstain in deference to the Volcker Commission (it is not), it would be a tragic mistake to do so.

Defendants' suggestion that abstention is appropriate in deference to a Swiss

parliamentary investigation borders on the frivolous. Abstention is not authorized in deference to legislative investigations taking place in this country, much less a Swiss parliamentary inquiry. Moreover, the recent observation by the director of the Swiss parliamentary inquiry that it will take 10 years to complete the investigation renders abstention an absurdity. As with every other Swiss effort to deal with riches unjustly obtained during the Second World War, a Swiss parliamentary inquiry designed to take ten years to complete is a sham.

Defendants argue, as well, that Swiss concerns about a possible collision between their bank secrecy laws and United States discovery rules should induce this Court to decline to exercise jurisdiction in deference to Swiss sovereign prerogatives. To the extent defendants claim that international law requires an American court to defer to Swiss bank secrecy law, the argument has been rejected by the United States Supreme Court. Societe Nationale Industrielle Aerospatiale v. United States District Court, 482 U.S. 522 (1987)(discovery involving foreign defendants governed by FRCP, not Hague Convention or law of defendant's domicile). To the extent defendants urge dismissal for forum non conveniens, the recognition that Swiss bank secrecy law will block any effort to discover the truth in these cases argues strongly for retention of this case in a United States court. Under existing Supreme Court precedent, the availability of a forum capable of fairly processing plaintiffs' claims is a precondition to the exercise of forum non conveniens. Eg. Piper Aircraft v. Reyno, 454 U.S. 235 (1981); American Dredging v. Miller, 510 U.S. 443 (1994). As Professor Tercier's concession reveals, under Swiss law, a combination of bank secrecy and lack of discovery will render it impossible for the bulk of the plaintiffs to pursue their claims in a Swiss court. Thus, whether or not Switzerland is a democracy, and whether or not its judges are civilized is simply beside the point. Under Swiss law, plaintiffs

claims must be dismissed because there is no mechanism to establish them.

The tragic irony in defendants' position appears to have escaped them. Switzerland enacted its bank secrecy laws in 1934 to attract Jewish deposits. Defendants now argue that respect for those same bank secrecy laws should cause an American court to decline to exercise Congressionally conferred subject matter jurisdiction over a case seeking to use American discovery rules to trace deposits received by defendant banks from Jews on the eve of the Holocaust.

Finally, defendants insinuate that judicial action in this case is inconsistent with United States foreign policy. It is, however, an extraordinary act of arrogance for defendant banks to lecture this Court on American foreign policy. If anything, this judicial proceeding is virtually dictated by the revelations in the Report of the U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II (the Eizenstat Report). The Eizenstat Report chronicles, indeed parallels, many of the allegations about Swiss banking complicity in Nazi war crimes that give rise to plaintiffs' looted asset/slave labor claims. If the United States government wishes to inform the Court that maintenance of this action is detrimental to our national interest, it knows the Court's address.<sup>49</sup>

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<sup>49</sup>Defendants' efforts to cast this case as inconsistent with American foreign policy rest exclusively on a series of quotes by Under Secretary of Commerce Stuart Eizenstat extolling cooperation and criticizing confrontation as a means of resolving issues raised by the retention of wartime assets by the Swiss. Secretary Eizenstat's words were aimed at members of Congress who wished to use coercive methods to force Switzerland to disgorge. They were not intended to cast doubt on the use of the courts to resolve disputes. Only a Swiss banker would confuse confrontation with the resolution of a dispute in accordance with law.

Defendants' abstention motion is nothing less than an effort to dictate the forum in which plaintiffs may seek redress against defendants for 50 years of duplicity. The one forum defendants fear is the one forum they cannot control - an American court.

B. Forum Non Conveniens May Not Be Invoked Because Defendants Have Conceded That Swiss Courts Cannot Adequately Process Plaintiffs' Claims, and Because the Balance of Convenience Strongly Favors This Forum

If defendants cannot use abstention to deflect this case into a non-judicial forum of their own choosing and design, they seek to transfer it, pursuant to forum non conveniens, to a Swiss court where it will die a natural death. It is true, of course, that federal courts retain a narrow power under the forum non conveniens doctrine to defer to the courts of a foreign country in "rare circumstances". Piper Aircraft v. Reyno, 454 U.S. 235 (1981); American Dredging v. Miller, 510 U.S. 443 (1994). But an absolute precondition to a forum non conveniens dismissal is the existence of a foreign forum capable of granting relief to the plaintiffs.

In this case, defendants have conceded that Swiss courts lack adequate procedures to provide a forum to those plaintiffs who allege that deposits were made in a Swiss bank, but who are unable to identify the precise bank. Defendants' motion to dismiss plaintiffs' common law claims is predicated on an assertion by Professor Tercier that Swiss law provides no mechanism for such a plaintiff to pursue a legal claim in a Swiss court. Thus, in the absence of the discovery techniques available in this forum, defendants have conceded that a forum non conveniens transfer to a Swiss court is a death knell for the nine named plaintiffs, and the large body of similarly situated claimants whom they represent, who have stated a valid claim for relief, but who cannot identify a particular defendant bank at this stage of the proceedings.

Even as to the four named plaintiffs who have been able to identify a particular bank, forcing this litigation into a Swiss court would effectively terminate their claims. As Professor Moore notes, Swiss courts lack the power to force defendant banks to open their records to plaintiff discovery. Without discovery, plaintiffs are at the mercy of defendants who have spent the last 50 years refusing to return the assets in question.

Yet a third procedural obstacle in a Swiss court is the refusal of Switzerland to recognize the class action. Many of the claimants in this case are too poor to afford counsel. Indeed, as defendants note, most of the attorneys for the plaintiffs are participating without fee. Transferring the case to Switzerland would require each individual claimant to prosecute a separate action, making pro bono representation prohibitively expensive.<sup>50</sup> Indeed, even if they wished to do so, pro bono counsel herein cannot serve the plaintiffs in a Swiss court because of language, bar membership, and expense.

Thus, forum non conveniens is not available as a matter of law. Even if it were available, however, defendants have failed to make out a case for its invocation. First, and most importantly, the bulk of the plaintiffs reside in the United States. Almost none reside in Switzerland. In virtually every successful forum non conveniens case, American courts were confronted with plaintiffs who elected to sue in the United States instead of their home country. Piper Aircraft dealt with Scottish plaintiffs; Bhopal with Indian plaintiffs. The consequence of forum non conveniens in those cases was to require the plaintiffs to pursue their claims in their

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<sup>50</sup>Defendants' suggestion that a test case be litigated in Switzerland is useless, since, while plaintiffs raise many common questions of fact and law, the existence and amount of each account must be separately determined.

home countries.

In this case, many thousands of United States residents who are named plaintiffs or who have contacted counsel would be denied access to an American court.

Second, unlike the cases cited by defendants, much of the evidentiary material in this case is present in the United States, and in archives throughout Europe. While the records of defendant banks in Switzerland will, of course, be important, the archival records that paint a picture of the flow of funds into Swiss banks during the 1930's, and the records demonstrating the behavior of Swiss banks in facilitating Nazi war crimes, are not solely, or even predominantly, present in Switzerland. Indeed, much of the material is collected in the archives of the United States Holocaust Memorial Museum in Washington, D.C.

Moreover, to the extent plaintiffs' and other claimants' testimony is required, the bulk of the claimants reside in the United States. Almost none reside in Switzerland.

Finally, plaintiffs believe that a substantial proportion of the deposited assets were transferred to banks in New York State for safekeeping during the war years, and were unlawfully returned to Switzerland in violation of New York, and federal law, rendering a United States forum particularly appropriate.

Thus, even if discretion to dismiss on forum non conveniens grounds existed (it does not), defendants have not come close to establishing the preconditions for closing an American court to American residents whose claims cannot be adequately prosecuted in a Swiss court.

VI.  
PLAINTIFFS HAVE ARTICLE III STANDING, AND PRESENT  
CLAIMS POSING NO UNIQUE ISSUES OF JUDICIAL

## ADMINISTRATION

In a final effort to avoid judicial scrutiny, defendants argue that this case is not judicially manageable because plaintiffs lack Article III standing. In large part, defendants' standing arguments are merely replays of their contention that no plaintiff can state a legally cognizable claim under Rule 12(b)(6) unless it is directed at a particular bank. As plaintiffs have demonstrated, such a narrow view of the ability of a plaintiff to plead a case or controversy against one of several alternative defendants has been explicitly rejected by Rule 20(a) FRCP. Unless defendant argues that the relaxed pleading rules adopted by Rule 20(a) violate Article III, defendants' standing argument collapses as applied to all plaintiffs seeking the return of deposited assets, or damages for violations of defendants' duties as constructive trustees.

In fact, defendants' standing arguments are a premature challenge to possible remedial options available to plaintiffs if discovery fails disclose assets belonging to individual plaintiffs, or constructive trust damages payable to specific individuals. At that point, issues of defendants' collective liability and plaintiffs representative authority will be ripe for consideration. Plaintiffs are confident that, at the appropriate time, theories of group entitlement and collective liability will force defendants to disgorge all funds traceable to assets deposited by Jews on the eve of the Holocaust, and to disgorge any profits earned by defendant banks by facilitating the commission of crimes against humanity against the Jews of Europe during the Holocaust. Although it is premature until discovery has been completed, ample authority exists permitting plaintiffs to function on behalf of those who failed to survive, and those whose records have been destroyed or lost by the defendants. Eg. Heckler v. Mathews, 465 U.S. 728 (1984)(membership in injured group establishes Article III standing to vindicate group's rights); Powers v. Ohio, 499 U.S. 400

(1991)(recognizing standing to assert ius tertii when close relationship exists and hindrance to assertion of rights present); Havens Realty Corp. v. Coleman, 455 U.S. 363

(1982)(organizational standing to sue landlord for discriminating against individuals); Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333 (1977)(organization has standing to sue on behalf of its members); UAW v. Brock, 477 U.S. 274 (1986)(reaffirming organizational standing).

In the end, the issue may come down to permitting defendant banks to retain money that is not theirs' as a form of unjust enrichment, or requiring the banks to disgorge the unjust enrichment to close family members of the true owners, or, if no close family members survived, to appropriate institutional representatives of the victims for distribution to the communities from which the money was stolen. While plaintiffs are confident that no Article III impediment exists to full remedial justice in this case, consideration of such remedial issues should await completion of individual discovery, or at a minimum, a motion to certify one or more plaintiff-classes.<sup>51</sup>

#### Conclusion

For the above-stated reasons, defendants' motion to dismiss, delay, or transfer these consolidated cases should be denied in all respects.

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<sup>51</sup> Defendants' Rule 19 motion claiming that indispensable parties may exist in connection with the return of specific property and accounts is clearly premature. If and when discovery identifies settings in which absent parties should be brought into Court, the flexible procedures mandated by the Supreme Court will be more than adequate to deal with any possibility of unfairness. See Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102 (1968).



Dated: June 16, 1997  
New York, New York

Respectfully submitted,

Burt Neuborne  
40 Washington Square South  
New York, New York 10012  
(212) 998-6172  
Co-Counsel for Plaintiffs

## Appendix

Since 1991, I have been the John Norton Pomeroy Professor of Law at New York University, where I have taught for the past 23 years. During my academic career, I have regularly taught Federal Civil Procedure, Federal Courts, Evidence, Separation of Powers, Constitutional Law, and Judicial Protection of Human Rights. I have published widely in the area of Constitutional Law and judicial protection of human rights. A partial listing of my publications is annexed hereto.

I have also participated directly in the courts in an effort to advance and protect human rights. I served on the legal staff of the American Civil Liberties Union for eleven years, and was its National Legal Director from 1982-86. I served as Special Counsel to the NOW Legal Defense and Education Fund from 1989-92. I was appointed to the New York City Human Rights Commission in 1988, and served until 1992. Since 1995, I have served as Legal Director of the Brennan Center for Justice at New York University Law School, and am a member of the Civil Rights Reviewing Authority of the United States Department of Education.

During my career, I have been asked by the United States government to participate in international activities designed to enhance the rule of law. Under the auspices of the State Department, I have twice traveled to Turkey to work with groups attempting to expand the concept of international human rights. At the request of the Department of Justice, I traveled to the then-Soviet Union as a member of the United States delegation to the bilateral conference on strengthening the Rule of Law. Under the auspices of the State Department, I have traveled, at one time or another, to Germany, Venezuela and Argentina to discuss the enforcement of international human rights norms in those countries. I have recently returned from a Ford Foundation sponsored visit to South Africa to confer with Justice Richard Goldstone, the former Chief Prosecutor of the Bosnian War Crimes Tribunal and a member of the South African Constitutional Court, on techniques for the effective judicial enforcement of international human rights norms. I recently benefitted from a remarkable conference held at New York University School of Law on "The Interaction Between National Courts and International Tribunals". See Sandra Day O'Connor, The Federalism of Free Nations, 28 N.Y.U. Journ. of Int'l Law and Politics 35 (1995-96)(opening address to conference).

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Mr. Justice Blackmun, an Essay, in National Law Journal (1979).

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The Origin of Rights: Constitutionalism, the Stork and the Democratic Dilemma, in The Role of Courts in Society (1988)

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An Overview of the Bill of Rights, in Fundamentals of American Law (1996)

**EXHIBIT G**

**Declarations of Settlement Counsel in Support of Fee Application**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

IN RE HOLOCAUST VICTIM ASSETS LITIGATION	) Master Docket No. CV-96-4849 ) (ERK) (MDG) ) ) (Consolidated with CV-96-5161 ) and CV-97-461) ) )
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**DECLARATION OF SETTLEMENT CLASS COUNSEL MORRIS A. RATNER IN  
SUPPORT OF LEAD SETTLEMENT CLASS COUNSEL'S SETTLEMENT  
ADMINISTRATION FEE APPLICATION**

I, Morris A. Ratner, declare as follows:

1. I am a member of the law firm of Lief, Cabraser, Heimann & Bernstein, LLP ("LCHB"), in San Francisco, California, and New York City, New York. I am competent to testify in court. All statements herein are based upon personal knowledge. I have been involved in the above captioned litigation since its inception. I served as one of the members of the committee appointed by the Court to prosecute the litigation, and also served as Settlement Class Counsel under the leadership of Lead Settlement Class Counsel Professor Burt Neuborne. For example, I had primary responsibility for designing and implementing the various stages of the notice provided to Class members in this case (of the settlement, of the proposed plan of allocation, and of the Court's adoption of the plan of allocation and specific procedures for the filing of claims). See Morris A. Ratner, "The Settlement of Nazi-Era Litigation Through the Executive and Judicial Branches," 20 *Berkeley Journal of International Law* 212 (No. 1, March 2002). I have been appointed to serve as settlement class counsel in scores of other class action settlements over the course of the past decade.

2. Since the settlement was approved by the Court, I have worked closely with Professor Neuborne on issues relating to the administration of the settlement. My firm was awarded a fee in connection with the work we did to achieve the settlement; we elected to donate that fee to endow a clinical human rights chair at Columbia University Law School. We have not sought fees associated with the work we have done to implement the settlement. It has always been my understanding that the fee applications previously submitted were for the purpose of compensating counsel who achieved the benefit of the settlement represents to the members of the Settlement Classes, *i.e.*, whose efforts resulted in the creation of the settlement fund.

3. I never understood that the settlement implementation work to be performed by Lead Settlement Class Counsel would be uncompensated, and have never heard Professor Neuborne suggest he would not seek a fee for such work. I always understood that substantial time would be required by plaintiffs' Settlement Class Counsel to actually implement the settlement, and that Professor Burt Neuborne would take the lead in that capacity. I never considered it to be particularly significant to categorize Professor Neuborne's services as those of a lawyer or of a "settlement administrator," because in fact his legal skills were required for him to function as the lead plaintiffs' counsel administering the settlement, making it pointless to try to distinguish the categories of service in connection with implementation of this complex settlement.

4. The settlement could not have been fully implemented without Professor Neuborne's efforts to overcome post-settlement obstacles, including the defendant Banks' initial unwillingness to release information needed to administer the plan of allocation of Deposited Asset settlement funds. The effort to dislodge the records necessary to support payment of



individually tailored amounts, based on evidence, was nothing less than Herculean. Professor Neuborne worked tirelessly to obtain information from the Swiss Banks necessary to administer this settlement. His efforts not only allowed the settlement to be meaningfully and intelligently implemented, but also dignified the claims and memories of the Deposited Asset Class members who from the beginning insisted that allocation of deposited assets be done to the extent practicable in an historically faithful manner, based on facts that were until the settlement was actually administered exclusively in the possession of the defendant banks.

5. It has been my experience that Professor Neuborne has been open with other Class Counsel about settlement administration, and has been eager to accept any input or support in connection with settlement administration. It is my view that if any other plaintiffs' counsel have not invested their resources in settlement administration it is because they chose not to take a role in administration of the settlement. Specifically, Professor Neuborne has on multiple occasions sought and obtained my assistance in connection with the filing and preparation of various settlement administration pleadings, and on a continuing basis in connection with class action procedural questions as to which I and my firm have substantial experience.

6. In my extensive experience working the Professor Neuborne since the inception of this litigation, I have come to respect the manner in which he has efficiently administered the settlement. Professor Neuborne's detailed working knowledge of the relevant facts underlying the settlement and settlement administration structure, as well as his legal expertise and experience have allowed him to take less time to perform settlement administration work than it would have taken any other person with either less knowledge or experience. I believe that Professor Neuborne actually saved the class money that would have been paid in

fees had settlement administration been performed by persons with less knowledge or experience.

7. The argument that work performed by Professor Neuborne could have been efficiently delegated to untrained law students is entirely incorrect. This complex settlement required skillful and sophisticated lawyering at virtually every level.

I declare under penalty of perjury under the laws of the States of California and New York and of the United States.

Executed at Atlanta, Georgia, on February 2, 2006.



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Morris A. Ratner

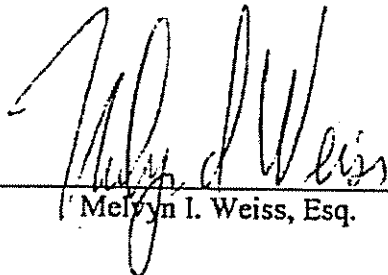


difficult task, calling for the sustained efforts of an imaginative and highly competent lawyer. I supported the consensus among plaintiffs' counsel to ask Burt Neuborne to accept the responsibility, and supported the decision of the Court to appoint him as Lead Settlement Counsel. Indeed, I urged Mr. Neuborne to accept the responsibility.

3. When Mr. Neuborne expressed an initial reluctance to undertake such a time-consuming and demanding set of responsibilities, I continued to urge Mr. Neuborne to accept the appointment. Although I never discussed the issue of compensation directly with Mr. Neuborne, it was my assumption that he would seek compensation since it would be unfair and unreasonable to impose such an intensely demanding multi-year responsibility without that prospect. Thus, although Mr. Neuborne had waived fees for achieving the settlement, I assumed that he would be compensated for his post-settlement work as Lead Settlement Counsel. Indeed, I am seeking an award of fees for my post-settlement work that I intend to donate to appropriate institutions.

4. I fully support his pending application for hourly lodestar fees.

Dated: February 1, 2006  
New York, New York

  
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Melvyn I. Weiss, Esq.

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

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In re Holocaust Victim Assets Litigation

CV 96-4849 (ERK)

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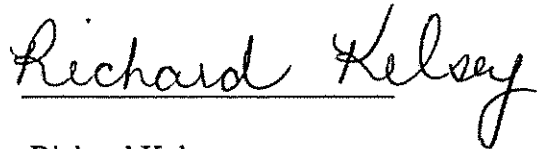
DECLARATION OF MICHAEL D. HAUSFELD

MICHAEL D. HAUSFELD, an attorney duly admitted to practice before this Court, hereby affirms under penalty of perjury:

1. I have served as one of the principal lawyers in this case from its inception. I served as co-chair of the plaintiffs' Executive Committee, participated fully in the briefing and oral argument of the motions to dismiss on August 1, 1997, played a significant role in the negotiations that led to the settlement herein on August 12, 1998, and played a role in the drafting of the settlement agreement that was signed on January 26, 1999. I make this declaration in support of the application of Burt Neuborne for compensation for his services to the settlement classes as Lead Settlement Counsel.
2. Immediately after the signing of the settlement agreement, it became apparent to all that implementation of this complex agreement would be an enormously difficult task, calling for the sustained efforts of an imaginative and highly competent lawyer. I urged Burt Neuborne to accept the responsibility, and urged the Court to appoint him as Lead Settlement Counsel.
3. When Mr. Neuborne expressed an initial reluctance to undertake such a time-consuming and demanding set of responsibilities, I wrote to the Court urging that Mr. Neuborne be persuaded to accept the responsibility. I also urged Mr. Neuborne personally to accept the appointment. I did so because of the obvious efficiencies and benefits to the Class and process in having Mr. Neuborne, with his stature and influence, shepherd the final settlement allocation and distribution.
4. Although I never discussed the issue of compensation directly with Mr. Neuborne, I clearly understood this obligation would involve

### Certificate of Service

I, Richard Kelsey, hereby certify that the persons listed below were served by first class mail with the Declaration of Michael D. Hausfeld on this ninth day of February 2006.



Richard Kelsey

Morris A. Ratner, Esq. Lieff, Cabraser, Heimann & Bernstein 780 Third Avenue – 48 <sup>th</sup> Floor New York, NY 10017-2024	Robert A. Swift, Esq. Kohn, Swift & Graf, P.C. One South Broad Street Suite 2100 Philadelphia, PA 19107
Michael D. Hausfeld, Esq. Cohen, Milstein, Hausfeld & Toll, P.L.L.C. 1100 New York Avenue, N.W. Suite 500, West Tower Washington, DC 20005	Roger M. Witten, Esq. Wilmer, Cutler Hale & Dorr, L.L.P. 399 Park Avenue New York, NY 10022
Melvyn I. Weiss, Esq. Milberg, Weiss Bershad & Schulman, L.L.P. One Pennsylvania Plaza – 49 <sup>th</sup> Floor New York, NY 10119-0165	Irwin Levin, Esq. Richard Shevitz, Esq. Cohen & Malad, L.L.P. One Indiana Square – Suite 1400 Indianapolis, IN 46204
Stephen Whinston, Esq. Berger & Montague, P.C. 1622 Locust Street Philadelphia, PA 19103	Samuel Dubbin, Esq. Dubbin & Kravetz, 701 Brickell Avenue – Suite 1650 Miami, FL 33131
Barry Fisher, Esq. Fleishman, Fisher & Moest 1888 Century Park East – Suite 1750 Los Angeles, CA 90067	Judah Gribetz, Esq. Special Master Bingham & McCutchen 399 Park Avenue New York, NY 10022

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

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In re Holocaust Victim Assets Litigation  
(ERK)

CV 96-4849

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DECLARATION OF IRWIN B. LEVIN AND RICHARD E. SHEVITZ

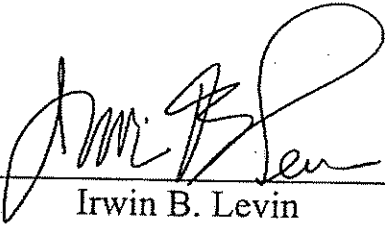
IRWIN B. LEVIN and RICHARD E. SHEVITZ, attorneys having been admitted to practice before this Court in the above-entitled matter, hereby affirm under penalty of perjury:

1. We are partners in the firm of Cohen & Malad, LLP, and played active roles in this case from its inception, including serving on the plaintiffs' Executive Committee, and participating in the motion practice and settlement negotiations, the drafting of the settlement documents and the administration of the settlement. We make this joint declaration in support of the application of Burt Neuborne for compensation for his services to the settlement classes as Lead Settlement Counsel.
2. Immediately after the signing of the settlement agreement on January 26, 1999, it became apparent to all that implementation of this complex agreement would be an enormously difficult task, calling for the sustained efforts of an imaginative and highly competent lawyer. We fully supported the consensus among plaintiffs' counsel to ask Burt Neuborne to accept that responsibility, and fully supported the decision of the Court to appoint him as Lead Settlement Counsel.
3. Although we never discussed the issue of compensation directly with Mr. Neuborne, it was our assumption that no one could be asked to accept such an intensely demanding multi-year responsibility without the prospect of reasonable compensation. Thus, although Mr. Neuborne had waived fees for achieving the settlement, we assumed that he would be compensated for his post-settlement work as Lead Settlement Counsel. We certainly do not

recall Mr. Neuborne expressing a willingness to serve as Lead Settlement Counsel for the rest of the case without fee.

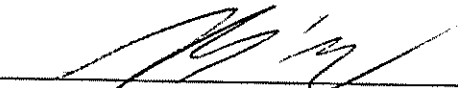
4. We fully support Mr. Neuborne's pending application for hourly lodestar fees.

Dated: February 2, 2006  
Indianapolis, Indiana



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Irwin B. Levin



---

Richard E. Shevitz



### Certificate of Service

I, Richard Kelsey, hereby certify that the persons listed below were served by first class mail with the Declaration of Irwin B. Levin and Richard E. Shevitz on this seventh day of February 2006.

Richard Kelsey

Morris A. Ratner, Esq. Lieff, Cabraser, Heimann & Bernstein 780 Third Avenue – 48 <sup>th</sup> Floor New York, NY 10017-2024	Robert A. Swift, Esq. Kohn, Swift & Graf, P.C. One South Broad Street Suite 2100 Philadelphia, PA 19107
Michael D. Hausfeld, Esq. Cohen, Milstein, Hausfeld & Toll, P.L.L.C. 1100 New York Avenue, N.W. Suite 500, West Tower Washington, DC 20005	Roger M. Witten, Esq. Wilmer, Cutler Hale & Dorr, L.L.P. 399 Park Avenue New York, NY 10022
Melvyn I. Weiss, Esq. Milberg, Weiss Bershad & Schulman, L.L.P. One Pennsylvania Plaza – 49 <sup>th</sup> Floor New York, NY 10119-0165	Irwin Levin, Esq. Richard Shevitz, Esq. Cohen & Malad, L.L.P. One Indiana Square – Suite 1400 Indianapolis, IN 46204
Stephen Whinston, Esq. Berger & Montague, P.C. 1622 Locust Street Philadelphia, PA 19103	Samuel Dubbin, Esq. Dubbin & Kravetz, 701 Brickell Avenue – Suite 1650 Miami, FL 33131
Barry Fisher, Esq. Fleishman, Fisher & Moest 1888 Century Park East – Suite 1750 Los Angeles, CA 90067	Judah Gribetz, Esq. Special Master Bingham & McCutchen 399 Park Avenue New York, NY 10022

EXHIBIT H

Declarations Establishing Market Rates

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

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In re Holocaust Victim Asset Litigation

Master Docket No. CV-96-4849

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**DECLARATION OF E. JOSHUA ROSENKRANZ  
IN SUPPORT OF PETITION OF BURT NEUBORNE**

1. I am a shareholder in the law firm of Heller Ehrman LLP, duly licensed to practice law in New York State. I submit this declaration in support of Prof. Burt Neuborne's petition for attorneys' fees. I make this declaration based upon actual knowledge, unless otherwise indicated.

2. I have known Prof. Neuborne for over a decade, and knew of his reputation as a brilliant scholar and litigator well before then. We have worked together litigating numerous cases. I have worked with and against hundreds of litigators in my career. I can say without hesitation that I have never encountered a litigator with finer strategic instincts, better advocacy skills, whether oral or written, and a deeper command of the law than Prof. Neuborne. He is at the pinnacle of the legal profession, and to my knowledge, he is viewed that way uniformly by those who encounter him or know him by reputation.

3. I understand that opponents of Prof. Neuborne's application have questioned his assertion that senior litigators in New York City firms charge upwards of \$700. The assertion is correct.

4. I base that view on my knowledge of the New York City market, generally. But I can support it concretely with reference to my law firm's billing rates.

5. By way of background, my law firm handles large complex litigation for many of the biggest companies in the world. Our clients are sophisticated consumers in the legal market. My firm did not have a New York office until six years ago. Among national firms, then, we were latecomers to a very competitive market. When we set our billing rates, we do not want to undersell ourselves. But we know also that we will be at a competitive disadvantage if we set our rates above market. My firm's management sets its rates based upon substantial market research. And the fact that our litigators in New are extremely busy suggests that our clients agree that our rates are not above market.

6. Our New York City office has about 100 lawyers. Of them, 29 are partners (or "shareholders," as we call them), and 14 are litigation partners.<sup>1</sup> Five of the 14 litigation partners, more than a third, bill at more than \$700 an hour. Indeed, all five bill at \$750 or more. Only two of those senior litigators are of Prof. Neuborne's vintage. The other three, while seasoned, are at least a decade junior to him.

7. The average billing rate for a litigation partner in our New York office is \$664 per hour. Not a single partner in our New York office—litigation or corporate—bills at less than \$530 per hour. That includes lawyers who were elevated to partnership in the past year.

---

<sup>1</sup> I am using this year's billing rates for all lawyers who were partners as of December 31, 2005. This month, between promotions and lateral hires, we have added several new partners, but their billing rates have not been finalized.

8. My own personal experience in private practice confirms that Prof. Neuborne could command at least \$700 an hour in this market. My background as a litigator is similar to Prof. Neuborne's, although I would not claim to have anywhere near his talent or experience. I have spent most of legal career as a public interest lawyer. Until I joined Heller Ehrman, I had never been in private practice. My firm brought me in as a partner a little less than three years ago. Having graduated law school in 1986, I have been a lawyer for less than 20 years, less than half the time Prof. Neuborne has.

9. My hourly billing rate is \$680.

10. Among my clients have been Philip Morris USA, Ernst & Young International, Bank of America, Merck KGaA, QUALCOMM Incorporated, Sony Electronics, Visa, and National Semiconductor. So far as I know, none of them has balked at paying my hourly rate.

11. In my view, in this market, Prof. Neuborne would be a bargain at \$700 an hour.

I declare, under penalty of perjury, that the foregoing is true.

January 17, 2006

New York, New York

  
E. JOSHUA ROSENKRANZ

## DECLARATION OF FREDERICK A. O. SCHWARZ, JR.

1. I submit this declaration in support of Professor Burt Neuborne's motion for attorney's fees.

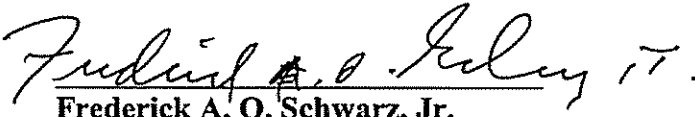
2. I am currently Senior Counsel at the Brennan Center for Justice at NYU Law School, where I have been on a full time basis since September 2002. Prior to that, I was a partner at Cravath, Swaine & Moore LLP. I became a partner at Cravath in 1969, but left twice for government service: first in 1975 and 1976 to be Chief Counsel for the United States Senate Select Committee (known as the Church Committee) investigating the FBI, CIA and other intelligence agencies, as well as related abuses of presidential power; the second in 1982 through 1986 as New York City Corporation Counsel.

3. I have worked with Professor Neuborne (starting when he was at the ACLU) extensively when in government, in private practice, and at the Brennan Center. If relevant, I could provide substantial details of my experience with him. But to summarize: in all my experience both private, public, and public interest, I have never dealt with a more talented lawyer. Extraordinarily creative and imaginative. Determined and tireless. A great legal thinker. A superb advocate. But beyond being a great analyst and a great advocate, Professor Neuborne is very attuned to what is the fair thing to do. (Of course, this makes him both a better person, and a better advocate.)

4. With respect to fees, I was a recipient of them until 2002, and have since kept up with what is charged by New York City firms by my frequent contact with colleagues in private practice. Apparently, there are some people (I know not who or the basis of their assertions) who say that senior litigators at New York City firms do not

charge more than \$700 per hour. They do. Indeed, a skillful litigator of Burt Neuborne's skill would charge more.

I declare, under penalty of perjury, that all the above is true.

  
Frederick A. O. Schwarz, Jr.

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NEW YORK

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In re Holocaust Victim Assets Litigation

CV 96-4849 (ERK)

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DECLARATION OF JAMES E. JOHNSON

JAMES E. JOHNSON, a lawyer duly admitted to practice before this Court, hereby affirms under penalty of perjury.

1. I am a partner in the firm of Debevoise & Plimpton LLP, specializing in litigation. Before joining the firm, among other things, I served for five years as Assistant Secretary then Under Secretary of the Treasury for Enforcement. I currently serve as Chair of the Board of Directors of the Brennan Center for Justice at NYU Law School, where I work closely with Professor Burt Neuborne in his capacity as Legal Director of the Brennan Center.

2. In my capacity as Chair of the Brennan Center's Board of Directors, I have personal knowledge of the experience, competence and standing of Professor Neuborne as a litigator in the New York legal community. I have observed him successfully litigate several significant and complex cases from the trial court to the Supreme Court. See, eg., *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001); *McConnell v. FEC*, 540 U.S. 93 (2003). He is rightly regarded as an experienced and extremely effective litigator of extraordinarily high standing.

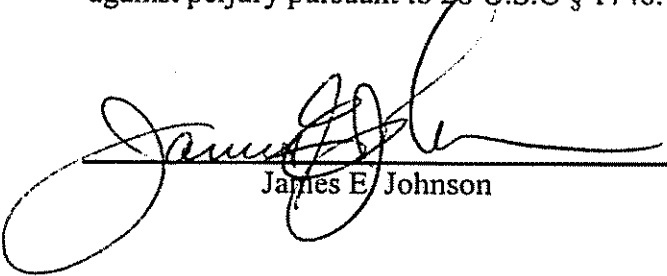
3. I am aware of the billing rates of litigators of comparable experience, reputation and standing in the New York legal community. I state without hesitation that litigators of Professor Neuborne's experience, reputation and standing in the New York legal community routinely bill in excess of \$700 per hour for complex matters.



Accordingly, Professor Neuborne's decision to discount his rates in this case to \$500 per hour renders his billing rate in this case considerably below the prevailing market for a senior litigator handling complex matters.

Dated: January 26, 2006  
New York, New York

I declare that the foregoing information is known to me and that it is true and accurate to the best of my knowledge, subject to laws against perjury pursuant to 28 U.S.C § 1746.



James E. Johnson

EXHIBIT I

Media Publication of Fee Application

THURSDAY, MARCH 2, 2006

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## News

### Top Lawyer on Holocaust Restitution Cases Taking Flak Over Fee Request

By NATHANIEL POPPER

January 13, 2006

The most respected legal strategist in the Swiss bank dispute has come under attack from other lawyers after requesting more than \$4 million in fees — a sum that would make him the highest paid attorney to work on the case.

The lawyer making the request, New York University law professor Burt Neuborne, gained respect and prominence for refusing to take any fees for his work in achieving the \$1.25 billion settlement in 1998 with the Swiss banks accused of withholding Holocaust-era deposits. More than a dozen lawyers litigated the case, several of whom told the Forward that they assumed Neuborne had continued to work pro bono.

Neuborne's application for fees, filed December 19, is for work he has done since 1999 in administering the settlement fund as lead settlement counsel. He was appointed to the position by the federal judge in the case, Edward Korman.

In the fee application submitted to Korman, Neuborne requested \$4.1 million for 8,178 hours of work since 1999. Together, the other lawyers who worked on the case were awarded \$5.3 million.

Lawyers seeking fees in Holocaust restitution and reparation cases have faced constant opposition because of the widespread belief that any money recovered should go to Holocaust survivors. Any request from Neuborne was certain to draw scrutiny because he has been held up as the exemplar of a public-minded pro bono attorney. In fact, Korman asked him to help decide on fees for the other lawyers, and Neuborne's current request faces opposition from those who expressed unhappiness with Neuborne's earlier recommendations.

Philadelphia attorney Robert Swift, who was on the executive committee of attorneys in the case along with Neuborne, filed a legal document December 29, asking the judge to refuse Neuborne's request. "Prof. Neuborne neither informed me that he intended to seek a fee during the administration of the settlement nor sought to engage the legal skills of me or most other settlement class counsel who were acting pro bono," Swift wrote.

Swift was not paid for work he did since the settlement, but he did receive \$1.2 million in fees for his work in achieving the agreement. He had requested greater compensation, which was rejected on Neuborne's recommendation.

In contrast to Swift, a number of other lawyers involved in the case, including those who worked pro bono, supported Neuborne's request and praised his efforts since the settlement.

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"The only person who could seriously challenge this either hasn't been paying attention or has a bone to pick," said Morris Ratner, a lawyer from the original case, whose law firm donated his fees to Columbia University's law school. "Burt single-handedly implemented a billion-dollar settlement. What he is seeking in fees is totally modest."

Michael Bazzyler, a legal historian who has written about the restitution movement, said that the work Neuborne has done since the settlement was more arduous than the work required to reach the settlement in the first place.

"The heavy-duty work has come during the distribution of the funds," Bazzyler said. "If anybody deserves fees in the Swiss case, it's Burt Neuborne."

The \$1.25 billion won from the Swiss banks is still being distributed — Neuborne estimated that about \$800 million already has been disbursed. The biggest continuing dispute is how to spend any unclaimed money. Korman, the judge, has decided to distribute most of the remaining funds to needy survivors in the former Soviet Union rather than to survivors in America. Neuborne has drawn the ire of some American survivor organizations for supporting Korman's decision. These groups also expressed unhappiness when hearing of Neuborne's fee request.

"He was yelling all the time that he was working pro bono," said Leo Rechter, the president of the National Association of Jewish Holocaust Survivors. "If it was up to us, we would have said that we didn't want his services."

While Neuborne received nothing for his work in achieving the Swiss settlement, he was awarded \$4.4 million for his work in a separate case, against German industries, which was settled in 1999. At the time, he said he was only accepting the money because it didn't come out of the survivors' pot. Neuborne's new fees would come from funds for survivors. Neuborne said this fee was fundamentally different from the one for the German case because it was for administering funds rather than for representing the survivors in court.

"There's a big difference between defending the victims' rights and performing a service for them once you get the money," Neuborne told the Forward. "It's like running an enormous business that is under legal attack all the time."

In his petition, Neuborne said he represented the settlement fund in 29 legal matters and increased the value of the fund by at least \$35 million. Among Neuborne's actions, he successfully lobbied to make any payouts to American survivors tax-free. He also successfully argued that the Swiss banks should pay millions of dollars in interest on the money held since the agreement.

In opposing Neuborne, Swift pointed out that on at least three days Neuborne billed for more than 24 hours. Neuborne said that happened because he billed any hours to the day in which he started projects, and he frequently worked through the night.

Even among attorneys who praised Neuborne's work, a few said they had not realized that Neuborne would receive compensation as lead settlement counsel.

"My assumption was that he was continuing to work pro bono," said Martin Mendelsohn, a Washington lawyer who worked on the case.

Neuborne said that when the judge initially asked him to be lead settlement counsel, he had declined the job and accepted only after the judge said he would be compensated. Korman told the Forward that he could not comment

on a pending case but said he would hold a hearing on the matter.

The hearing could create a difficult situation for Korman because he will have to preside over a matter in which he is personally involved. Neuborne said that he has lunch with Korman every month to discuss progress on the case and that the two have worked closely, in the face of strenuous opposition, to administer the fund.

"I've never worked harder. I've never been more successful. I've never been prouder of my legal work," Neuborne said.

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## Top lawyer in Holocaust restitution cases gets flak over fee request

By Nathaniel Popper

The most respected legal strategist in the Swiss bank dispute has come under attack from other lawyers after requesting more than \$4 million in fees - a sum that would make him the highest paid attorney to work on the case.

The lawyer making the request, New York University law professor **Burt Neuborne**, gained respect and prominence for refusing to take any fees for his work in achieving the \$1.25 billion settlement in 1998 with the Swiss banks accused of withholding Holocaust-era deposits. More than a dozen lawyers litigated the case, several of whom told the Forward that they assumed **Neuborne** had continued to work pro bono.

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"I've never worked harder. I've never been more successful. I've never been prouder of my legal work," **Neuborne** said.



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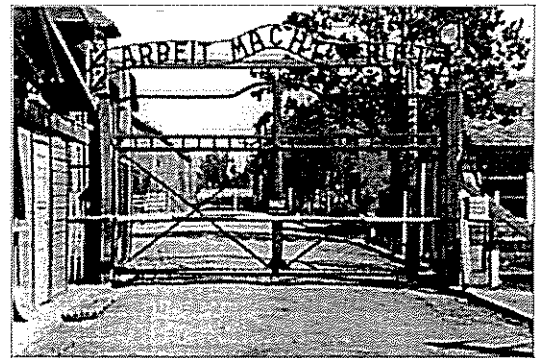


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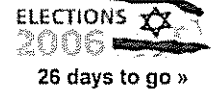
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### Lawyer's fee angers Holocaust survivors

By JPOST.COM STAFF



The gates of Auschwitz



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Eighteen American Holocaust survivors are unhappy with their attorney, Burt Neuborne, for charging them for his work on their case, *The New York Times* reported on Saturday.

Neuborne, who estimates that he put in some 8000 hours of work on his clients' reparation suit between 1996 and 1998, helped win them a settlement of \$1.25 billion. He charged \$4.1 million.

While his clients reportedly said this week in a number of interviews to various media outlets that they believed that Neuborne had taken on their case pro bono, Neuborne insisted that he never promised to accept the case for free.

The reported that Neuborne's clients have filed a formal objection against his fee.

Neuborne has asked Judge Edward R. Korman to grant him a hearing.



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37. blind self-righteousness  
Leonard S. Goldstein, Esq. - USA (02/27/2006 11:53)

36. fee  
diplomat - (02/26/2006 22:19)

35. Lawyer's Fees  
Americano - USA (Blue State) (02/26/2006 21:46)

34. 3% fee...That's not bad  
Ophir - USA (02/26/2006 18:52)

33. Fees  
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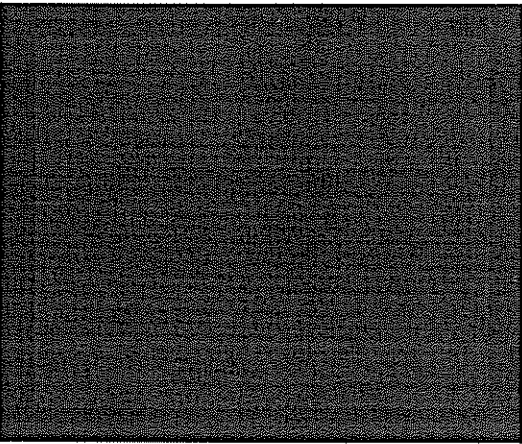
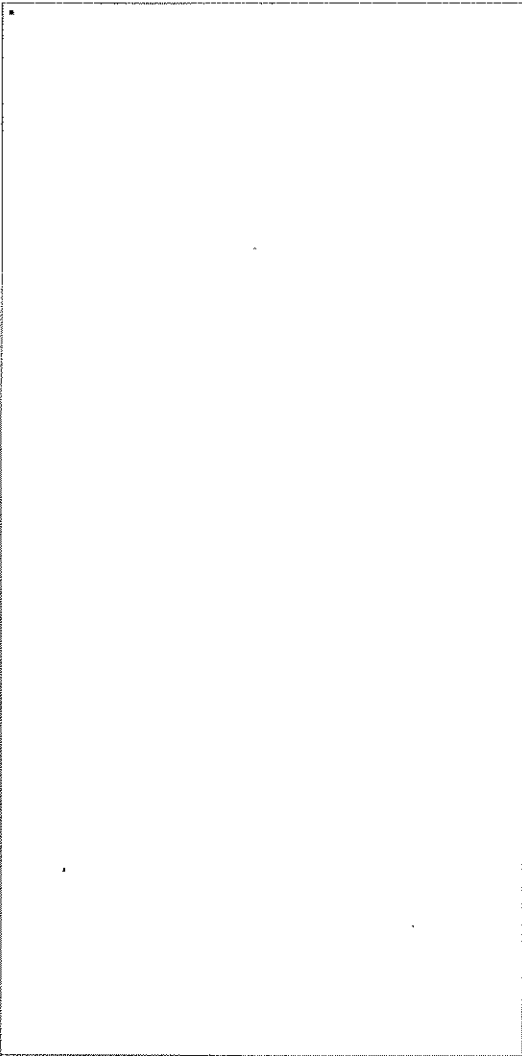


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- 32. Legal fees**  
 Meira - USA (02/26/2006 16:21)
- 31. legal "fees"**  
 doctor lawyer - USA (02/26/2006 13:19)
- 30. Ungrateful Clients - What's New?**  
 irsslex - USA (02/26/2006 09:59)
- 29. This is Unreal**  
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- 28. what if he lost**  
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 shimon - (02/25/2006 22:34)
- 24. you are dead WRONG my friend**  
 Shimon to # 20 - (02/25/2006 22:24)
- 23. greeeeeeed**  
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- 17. Plattitudes? Appreciation???**  
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- 15. Lawyer**  
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- 14. Pay the Guy**  
 James - United States (02/25/2006 20:02)
- 13. lawyer's fee**  
 Robert E. Green - USA (02/25/2006 19:48)
- 12. Lawyer's fee angers Holocaust survivors**  
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Voice from Holocaust speaks of darker times  
2006-02-25  
by Bonny C. Millard  
of The Daily Times Staff

Henry Fribourg and his family escaped from France before it fell to Hitler's Germany, but many of his extended family members died at the hands of the Nazis.

Fribourg shared his story with students at Eagleton Middle School, who have been studying World War II and the Holocaust.

"I went through a number of events I don't want anyone else to have to go through," he said Thursday during his presentation.  
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## That Holocaust Cartoon Contest

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THE WASHINGTON POST

World Opinion Roundup by Jefferson Morley  
A Daily Survey of What the International Online Media Are Saying

That Holocaust Cartoon Contest

The results of the infamous Iranian Holocaust cartoon contest are starting to come in.

The contest was launched earlier this month by the Iranian newspaper Hamshahri in response to Jyllands Posten of Copenhagen and other Western newspapers that ran controversial cartoons depicting the Prophet Muhammad. (For background, [click here.](#))

The intent of the contest, of course, is to expose what many Muslims see as a double standard. The newspaper contest explicitly asked, would Westerners defend the freedom to deliberately insult the memory of millions of European Jews killed by the Nazis?

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February 25, 2006 at 10:18 am

## Lawyer's fee angers Holocaust survivors

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By JPOST.COM STAFF

Eighteen American Holocaust survivors are unhappy with their attorney, **BuNeuborne**, for charging them for his work on their case, The New York Times reported on Saturday.

**Neuborne**, who estimates that he put in some 8000 hours of work on his clients' reparation suit between 1996 and 1998, helped win them a settlement of \$1.25 billion. He charged \$4.1 million.

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February 27, 2006, 4:26 pm

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## Symbol Technology Trial: Was the Mistrial a Mistrial?

Posted by Peter Lattman

Newsday ran a wacky story on Friday about the trial of three former executives at Long Island-based Symbol Technology, which ended after U.S. District Judge Leonard Wexler granted the defense's request for a mistrial after the jurors sent a note to the judge saying, "We are at a deadlock. We have exhausted all options."

Not a bad result for the defense, until the defense lawyers spoke to seven of the twelve jurors on the case, each of whom said that the jury had decided to acquit two of the three defendants (one being ex-general counsel Michael Borghese) and had decided to acquit the third defendant on all charges except one. Hence the "deadlock."

Defense attorneys are now asking that the jurors be brought back to court to say whether they have acquitted two of the defendants. The prosecutors say that "unreported deliberations [outside the courtroom] can have no legal significance," adding that a verdict only counts when announced in open court, not afterward.

Northwestern law professor Ron Allen tells Newsday that the case is "a mess." He says he doubts an appeals court would overturn the mistrial on these grounds and bring back the jury; one possibility, he suggests, is that the two defendants could be acquitted if a judge decided a retrial would amount to double jeopardy.

A hearing on the matter was scheduled for today, at the federal courthouse in Central Islip, N.Y., a stunning Richard Meier-designed building completed in 2000.

(Hat Tip: Bruce Carton at Securities Litigation Watch).

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February 27, 2006, 3:26 pm

## Stockbroker Wins \$1 Million Defamation Judgment Against Lawyer

Posted by Peter Lattman



CNBC on-air editor Charles Gasparino broke a story today on Phil Spartis, a former Salomon Smith Barney broker. Gasparino reported that Spartis was recently awarded a \$1 million defamation

## Pellicano Case Ensnaring More Lawyers

Posted by Peter Lattman

Hollywood lawyer Bertram Fields and his firm are negotiating with prosecutors to avoid charges in the burgeoning Anthony Pellicano case, reported the New York Times on Saturday. Fields, through his lawyer, John Kecker of San Francisco's Kecker & Van Nest, has denied knowledge of any illegal wiretapping, though he has admitted to employing Pellicano in past years. (Here's a prior Law Blog post on Pellicano's connection to Fields and his firm Greenberg Glusker Fields Claman Machtinger & Kinsella.)

The Times also reported that celebrity divorce lawyer Dennis Wasser, who reportedly has handled the divorces of Tom Cruise, Jennifer Lopez and Steven Spielberg, recommended Pellicano's services to the recently indicted lawyer Terry Christensen of Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro. Christensen represented billionaire Kirk Kerkorian and reportedly investigated the lawyer for Kerkorian's ex-wife Lisa Bonder Kerkorian in the couple's breakup battle.

(Is it us or do L.A. entertainment law firms have interminably long names? Does everyone connected to Hollywood need to see his name in lights?)

Here are more lawyers being dragged into the morass:

More than half a dozen other prominent Los Angeles lawyers, meanwhile, have retained defense counsel in connection with the Pellicano case. They include Charles Shepard, the head of litigation at Greenberg Glusker; David Moriarty, a former Greenberg Glusker associate who worked on several cases in which Mr. Fields was the lead partner and Mr. Pellicano was the investigator; and Daniel Davis, a Beverly Hills criminal lawyer who gained fame in the 1980s representing the main defendant in the McMartin preschool child molestation case.

Moriarty's lawyer, Nathan Hochman, said his client had done nothing wrong and was unaware of any wiretapping by Pellicano. Davis has cooperated with the government, his lawyer said.

Sunday's Los Angeles Times ran this front-page story on the scandal.

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February 27, 2006, 8:25 am

## Holocaust Survivors Angry Over NYU Law Professor Burt Neuborne's Fees

Posted by Peter Lattman

The New York Times reported on Saturday that a lawyer representing a group of 18 Holocaust survivors has filed an objection to the almost \$4.1 million in fees charged them by NYU law school professor Burt Neuborne. Some of the survivors argue that Neuborne said he was working on the case free of charge.

In 1998, Neuborne won a \$1.25 billion settlement for Holocaust survivors in a lawsuit accusing Swiss banks of helping Nazis steal hundreds of millions of dollars in Jewish holdings. He then represented survivors worldwide in effectuating the complex settlement, on which he says he's worked 8,000 hours over the past seven years. Some survivors and lawyers have complained about the settlement because most of the money has thus far gone to survivors in the former Soviet Union instead of those in the United States.

The Times reports that the lawyer who filed the fee objection is Samuel Dubbin of Miami's Dubbin & Kravetz. According to its Web site, Dubbin was once a special assistant to Attorney General Janet Reno.

Neuborne has asked U.S. District Judge Edward Korman of the Eastern District of New York to hold a hearing on the fees. He says he's substantially increased the value of the settlement fund and that six other lawyers had filed affidavits supporting his fee request (one has objected). Neuborne says,

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## Survivors Balking At Lawyer's Fee

*Lead counsel in Swiss bank settlement asking for \$4.1 million, says he 'acted honorably.'*

Stewart Ain - Staff Writer

In the eyes of Leo Rechter, president of a local survivors group, the lawyer appointed by the court to represent needy survivors in the distribution of the \$1.25 billion Swiss bank settlement was really the judge's lawyer, not theirs.



Rechter, of Hillcrest, Queens, said attorney Burt Neuborne fought the American survivors "every step of the way" as they sought a larger share of the settlement money. And he contends that Neuborne consistently maintained he was working without a fee.

So Rechter was aghast when Neuborne asked the court to pay him nearly \$4.1 million of the settlement money for his fee — \$1 million more than all needy U.S. survivors have received thus far from the settlement.

But Neuborne, a well-respected professor at the New York University School of Law, said Brooklyn Federal Judge Edward Korman and attorneys in the case had requested his help in January 1999. Neuborne said he had worked at no charge for thousands of hours over the prior two years to help forge the settlement achieved in August 1998, and had planned to resume his consulting practice and teaching duties. But the judge and the attorneys persisted, he said.

"They said the settlement was in trouble and that it was unclear if they could make it work," Neuborne recalled.

Neuborne said other class-action settlements "fell apart" because of difficulties in distributing the settlement.

"Everyone had separate lawyers, and each lawyer wanted money," he said of the other cases. "That is why the judge wanted me. He said if there is anyone around with the imagination and academic background to do this, it is you. I put together a mechanism where there was a single lawyer and a special master for the allocation and distribution, along with the supervising judge.

"This was something that would have fallen apart. I made it work."

An alliance of survivors' organizations has challenged Neuborne's fee request, and Neuborne last week asked that Korman hold a hearing so he can justify the 8,000 hours he said he worked on the case over the past seven years.

Neuborne insisted that from the start it was made clear that he would be paid from interest money generated by the settlement.

"The judge held an open hearing in court in which he talked about paying me," he said. "The judge distinguished between pre-settlement fees and post, and said my fees would be set on an hourly basis of \$500 an hour, which is 25 percent under what I charge clients."

Neuborne said he can understand those who question the size of his \$4.1 million fee.



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"It is reasonable for them to say that lawyers get paid too much," he said. "Reasonable people can argue. If I wanted to cheat and hide this, I could have put in a bill every three months and the amounts would have been low and under the radar. I didn't because I was not going to charge the class unless I succeeded. I said to the judge that if I couldn't work out a way for the settlement to succeed — for the money to get to the victims — then I haven't earned any money. I said I would take the risk that I wouldn't fail."

Although reluctant to discuss the case before the hearing, Neuborne said his "only regret is that the survivors are disappointed in me."

"I acted honorably," he insisted. "I hope that after the hearing they will agree."

But Rechter, 78, said his 1,200-member strong organization, the National Association of Jewish Holocaust Survivors, believes "this is holy money" that should be distributed to needy survivors only and not used to pay legal fees.

"We came here destitute, and finally after all these years money is coming and it should not be touched by anybody" but the needy, Rechter said.

In the February issue of the organization's newsletter, Rechter claimed that Neuborne "steadfastly opposed" pleas from an American survivors' alliance that more of the settlement money be allocated to needy U.S. survivors. The plan to which Neuborne agreed allocated 75 percent of the "looted assets" proceeds — totaling \$205 million — to survivors in the former Soviet Union.

"Throughout the years, the U.S. survivors have felt victimized by the process where an attorney appointed by the court was supposed to be our attorney as well, but who instead fiercely opposed our legitimate interests," Rechter wrote.

"He opposed our appeal last year before the Second Circuit Appeals Court, citing his 'pro bono' status in the allocation process," he added. "He brandished his 'pro bono' status like a badge of honor that implied his actions were above reproach because he allegedly had no financial interest in the case."

In those papers, Neuborne referred to himself as having the "assistance of other pro bono" attorneys in the case.

Sam Dubbin, a Miami lawyer who represents the nationwide survivors' alliance Holocaust Survivors Foundation, of which NAHOS is a part, provided a November 1999 court filing from Neuborne in which he wrote that "numerous lawyers [in the case], including lead settlement counsel, have waived all attorney's fees."

Dubbin also provided the transcript of a federal court proceeding in Miami last September in which Neuborne told the court, "I am the lead settlement counsel in the Swiss case in which I served without fee now for almost seven years."

Asked in a letter by three survivors to explain those comments in light of his request for a fee, Neuborne wrote back that he "never intended to suggest that I was serving as lead settlement counsel without fee. If my remarks were garbled, I apologize for the confusion."

"My intensive legal work for the class not only made possible the successful administration of the settlement, which has now distributed almost \$840 million to victims, it actually added more than \$50 million to the settlement fund. I am asking for 7 percent of the additional funds that my work added to the settlement fund."

Another survivor, Jack Rubin of Boynton Beach, Fla., said he also believed all along that Neuborne was working without a fee.

"Now that he is not, I'm disappointed because whatever he gets will be less for the survivors," he said. "I had thought that whatever he did he was doing to help the survivors."

But Neuborne insisted that it was he who "begged the judge" to "double the amount of money that went to poor" survivors using interest money from the

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settlement. And he said it was he who persuaded the Swiss banks to accelerate by one year the payment of \$343 million in settlement money, so that the survivors would get an extra year of interest from that money.

"We earned \$22.5 million from that money," Neuborne said, noting that he successfully argued at trial that the banks should pay compound interest and not simple interest as the banks wanted. That added an initial \$5 million to \$8 million to the settlement.

Neuborne added that he also worked to persuade Congress to make the settlement money tax exempt. And he noted that he worked to keep attorneys' fees in this case to \$11.1 million, including his fee. That compares to \$52 million in legal fees in the \$5 billion German Foundation settlement.

But David Mermelstein, 77, chairman of a survivors' group in Miami, said he was "shocked" that Neuborne never mentioned that he would be seeking compensation and questioned why he said repeatedly that he was working without a fee.

"Every month we had conference calls with him in which he said that he was not getting paid," Mermelstein said. "We were begging the judge every month for money. I gave the judge the names of survivors who are desperate ... but we were told there was no more money."

He said that if Neuborne's \$4 million was allocated along with other "looted asset" money, it would mean another \$1 million for needy American survivors. n

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## Clients sue lawyer

*The New York Times*

NEW YORK — From 1996 to 1998, Burt Neuborne represented Holocaust survivors in a historic lawsuit that accused Swiss banks of helping the Nazis loot hundreds of millions of dollars worth of Jewish holdings. His labours helped win a US\$1.25 billion settlement.

A respected civil rights lawyer and law school professor, Mr Neuborne did the work without asking a fee, and was widely praised for his central role in the case.

Then in 1999, Mr Neuborne took on an expanded role — as lead lawyer for the thousands of Holocaust survivors worldwide. But over these seven years, as the complex settlement played out and the judge made the difficult decisions about which survivors would get how much money, bitterness grew and became anger.

Now the anger, within a small American group of Holocaust survivors, is seething. And it is directed at Mr Neuborne. The 18 members of the group, who were already unhappy because they felt shortchanged by the settlement, are outraged that he filed a bill — for nearly US\$4,1 million — for his most recent work.

Several of the survivors said in interviews this week that they had thought Mr Neuborne was still working pro bono. And now a lawyer for the group has filed a formal objection to Mr Neuborne's fee.

For his part, Mr Neuborne fiercely defended both his work and his bill. He said he had never promised that his most recent work — by his count, 8 000 hours over the seven years — would be free.

Yesterday, Mr Neuborne filed court papers that seek to refute objections about his fee request from the group of American survivors. Mr Neuborne also asked Judge Edward R Korman, who is overseeing the case, to hold a hearing on his fee.

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But for the survivors who have objected, regardless of the outcome of any hearing, the bill was a betrayal, doubly so coming on the heels of what they say was Mr Neuborne's failure to represent their interests.

Some of the survivors have fiercely objected to the distribution of part of the US\$1.25 billion fund set up for social service needs for poor Jewish survivors whose assets were looted.

Judge Korman ruled in 2000 that a great majority of that fund — initially US\$100 million, which has since more than doubled — would go to Holocaust survivors in Russia because of what he said was the grinding poverty there and the greater need. About 4 percent was earmarked for American survivors. — The New York Times.



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## Lawyer's \$4.1 Million Fee Angers Holocaust Survivors

By [WILLIAM K. RASHBAUM](#)

Published: February 25, 2006

From 1996 to 1998, Burt Neuborne represented Holocaust survivors in a historic lawsuit that accused Swiss banks of helping the Nazis loot hundreds of millions of dollars worth of Jewish holdings. His labors helped win a \$1.25 billion settlement.

A respected civil rights lawyer and law school professor, Mr. Neuborne did the work without asking a fee, and was widely praised for his central role in the case.

Then in 1999, Mr. Neuborne took on an expanded role — as lead lawyer for the thousands of Holocaust survivors worldwide. But over these seven years, as the complex settlement played out and the judge made the difficult decisions about which survivors would get how much money, bitterness grew and became anger.

Now the anger, within a small American group of Holocaust survivors, is seething. And it is directed at Mr. Neuborne. The 18 members of the group, who were already unhappy because they felt shortchanged by the settlement, are outraged that he filed a bill — for nearly \$4.1 million — for his most recent work .

Several of the survivors said in interviews this week that they had thought Mr. Neuborne was still working pro bono. And now a lawyer for the group has filed a formal objection to Mr. Neuborne's fee.

For his part, Mr. Neuborne fiercely defended both his work and his bill, which he submitted in Federal District Court in

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Brooklyn in December. He said he had never promised that his most recent work — by his count, 8,000 hours over the seven years — would be free.

Yesterday, Mr. Neuborne filed court papers that seek to refute objections about his fee request from the group of American survivors. Mr. Neuborne also asked Judge Edward R. Korman, who is overseeing the case, to hold a hearing on his fee.

Several survivors, who met with the judge to complain about the fee request, pointing to a \$4.3 million fee he received in another Holocaust case and noting that that money did not come from funds that could have gone to survivors — as would that for Mr. Neuborne's current fee.

Several also said in interviews that they had heard Mr. Neuborne say his post-settlement work was pro bono. And their Miami lawyer, Samuel J. Dubbin, cited several statements by Mr. Neuborne in court documents, hearings and elsewhere that he said showed Mr. Neuborne wearing his pro bono status as a badge of honor.

Mr. Neuborne dismissed those arguments, saying that Mr. Dubbin had misconstrued his statements.

But for the survivors who have objected, regardless of the outcome of any hearing, the bill was a betrayal, doubly so coming on the heels of what they say was Mr. Neuborne's failure to represent their interests.

"No. 1 — that he was telling us all along that he will not get paid," said David Mermelstein, 77, who was sent to Auschwitz from a small town in the Carpathian Mountains and saw his parents, five brothers and a sister killed there. "And No. 2, to take away this money from the needy survivors is a crime."

Some of the survivors have fiercely objected to the distribution of part of the \$1.25 billion fund set up for social service needs for poor Jewish survivors whose assets were looted. Judge Korman ruled in 2000 that a great majority of that fund — initially \$100 million, which has since more than doubled — would go to Holocaust survivors in Russia because of what he said was the grinding poverty there and the greater need. About 4 percent was earmarked for American survivors.

But Mr. Mermelstein, who spoke in a telephone interview from his home in Miami, and several of the other survivors who have objected to the fee, said studies show that many American survivors are struggling to buy food and

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medicine.

Mr. Dubbin said that survivors in the United States, collectively through social service agencies, will receive about \$700,000 a year from that fund for the 10-year life of the settlement. Survivors in the former Soviet Union will receive more than \$16 million a year, he said.

Mr. Dubbin contended that Mr. Neuborne cited his pro bono status as evidence that he did not have a financial interest in the outcome of the case, thus suggesting he was neutral and fair — which Mr. Dubbin contends is not the case.

But Mr. Neuborne said that such status was important only before the settlement was reached.

Mr. Neuborne said that he had increased the value of the settlement fund by \$50 million and that he was hurt by the objections of the survivors. He noted that half a dozen other lawyers had filed affidavits supporting his fee request. One lawyer filed an affidavit objecting to the fees.

"It was a grueling job that nobody else wanted, and that I have done faithfully and successfully for seven years," Mr. Neuborne said. "There has to be a special application of the rule that no good deed goes unpunished for someone to say that because I voluntarily gave up my fees for getting the settlement — and that would be \$10 million — somehow I'm not allowed to be paid for seven years' work in successfully carrying it out."

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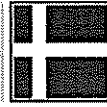
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## Holocaust survivors sue lawyer

25/02/2006 15:58 - (SA)

New York - The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims - they say he is charging millions for work they believed he was doing for free.

A group of Holocaust survivors in the United States has filed a court objection to lawyer Burt Neuborne's almost \$4.1m (R24.6m) bill for work he did after the 1998 settlement in the case.

According to The New York Times, Neuborne filed papers seeking to refute those objections on Friday. He also asked a judge to hold a hearing on his fee.

One of the Holocaust survivors in the dispute, David Mermelstein, 77, said: "Neuborne was telling us all along that he will not get paid, to take away this money from the needy survivors is a crime."

Holocaust survivors and their families sued Credit Suisse, UBS AG and other Swiss banks, accusing them of stealing, concealing or giving the Nazis hundreds of millions of dollars worth of Jewish holdings and destroying bank records to cover the paper trail.

In 1998, US district judge Edward Korman approved a \$1.25-bn (R7.5-bn) settlement and appointed a tribunal to process thousands of claims.

Neuborne, the court-appointed representative for survivors worldwide, defended his work, which he said he never promised would be free.

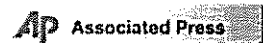
Neuborne said: "It was a gruelling job that nobody else wanted, and that I have done faithfully and successfully for seven years."

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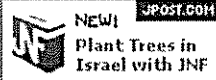
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### Lawyer's fee angers Holocaust survivors

By JPOST.COM STAFF



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Eighteen American Holocaust survivors are unhappy with their attorney, Burt Neuborne, for charging them for his work on their case, *The New York Times* reported on Saturday.

Neuborne, who estimates that he put in some 8000 hours of work on his clients' reparation suit between 1996 and 1998, helped win them a settlement of \$1.25 billion. He charged \$4.1 million.

While his clients reportedly said this week in a number of interviews to various media outlets that they believed that Neuborne had taken on their case pro bono, Neuborne insisted that he never promised to accept the case for free.

The reported that Neuborne's clients have filed a formal objection against his fee.

Neuborne has asked Judge Edward R. Korman to grant him a hearing.



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37. blind self-righteousness Leonard S. Goldstein, Esq. - USA (02/27/2006 11:53)

36. fee diplomat - (02/26/2006 22:19)

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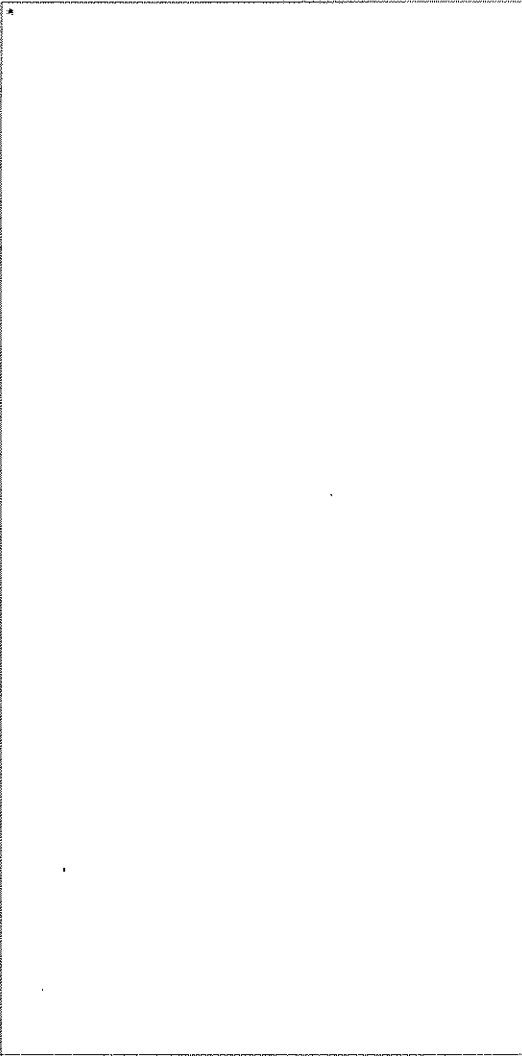
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- 26. #12**  
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- 12. Lawyer's fee angers Holocaust survivors**  
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- 11. A shondal**  
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- 10. lawyers**  
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## AP New York

### Lawyer for Holocaust victims criticized for fee

February 25, 2006, 7:10 AM EST

NEW YORK -- The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims, who say they are angry he's charging millions for work they believed was being done for free.

The dispute has now landed in court. An American group of Holocaust survivors has filed an objection to lawyer Burt Neubome's almost \$4.1 million bill for work he did after the 1998 settlement in the case, The New York Times reported Saturday. On Friday Neubome filed papers seeking to refute those objections, and asked a judge to hold a hearing on his fee.

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"No. 1... that he was telling us all along that he will not get paid," said David Mermelstein, 77, who was sent to the Auschwitz concentration camp, where his family was killed. "And No. 2, to take away this money from the needy survivors is a crime."

Holocaust survivors and their families sued Credit Suisse, UBS AG and other Swiss banks, accusing them of stealing, concealing or sending to the Nazis hundreds of millions of dollars worth of Jewish holdings and destroying bank records to cover the paper trail.

In 1998, U.S. District Judge Edward R. Korman in Brooklyn approved a \$1.25 billion settlement and appointed a tribunal to process thousands of claims.

Neubome, the court-appointed representative for survivors worldwide, defended his work, which he said he never promised would be free.

"It was a grueling job that nobody else wanted, and that I have done faithfully and successfully for seven years," Neubome said.

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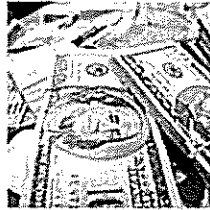
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## Holocaust lawyer criticized for fee

**Clients say they thought work was pro-bono**

Associated Press



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The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims, who say they are angry he's charging millions for work they believed was being done for free.

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"It was a grueling job that nobody else wanted, and that I have

done faithfully and successfully for seven years," Neuborne said.

(02.26.06, 11:59)

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### Lawyer Demands Multi-Million Dollar Payment In Holocaust Court Win

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February 25, 2006

Nearly eight years after the landmark decision by a Brooklyn judge to hold Swiss banks accountable for billions stolen from Holocaust victims, there's now turmoil involving the lawyer who won the case.

Some survivors claim attorney Burt Neuborne promised to handle the case for free, but they say they were surprised to receive a bill totaling several million for his work.

The 1998 case resulted in a \$1.25 billion settlement with several Swiss banks after they were accused of concealing or sending the Nazis hundreds of millions of dollars in Jewish holdings.

Neuborne says he never promised to do the case for free, and has asked a judge to hold a hearing on the issue.

No date has yet been set.

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## News

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# Lawyer for Holocaust survivors criticized for fee

Associated Press  
02/25/2006

NEW YORK - The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims, who say they are angry he's charging millions for work they believed was being done for free.

The dispute has now landed in court. An American group of Holocaust survivors has filed an objection to lawyer Burt Neuborne's almost \$4.1 million (â, ~3.4 million) bill for work he did after the 1998 settlement in the case, The New York Times reported Saturday. On Friday Neuborne filed papers seeking to refute those objections, and asked a judge to hold a hearing on his fee.

"No. 1 - that he was telling us all along that he will not get paid," said David Mermelstein, 77, who was sent to the Auschwitz concentration camp, where his family was killed. "And No. 2, to take away this money from the needy survivors is a crime."

Holocaust survivors and their families sued Credit Suisse, UBS AG and other Swiss banks, accusing them of stealing, concealing or sending to the Nazis hundreds of millions of dollars worth of Jewish holdings and destroying bank records to cover the paper trail.

In 1998, U.S. District Judge Edward R. Korman in Brooklyn approved a \$1.25 billion settlement and appointed a tribunal to process thousands of claims.

Neuborne, the court-appointed representative for survivors worldwide, defended his work, which he said he never promised would be free.

"It was a grueling job that nobody else wanted, and that I have done faithfully and successfully for seven years," Neuborne said.

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Holocaust survivors call lawyer's bills improper

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Sunday, February 26, 2006 ASSOCIATED PRESS

NEW YORK -- The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims, who say they are angry he's charging millions for work they believed was being done for free.

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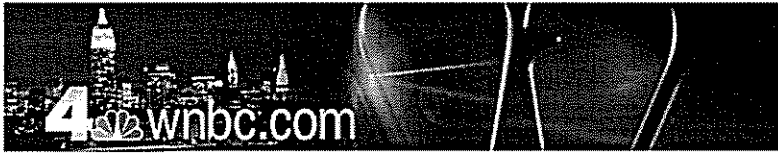
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News

Lawyer For Holocaust Victims Criticized For Fee

POSTED: 8:31 am EST February 25, 2006
UPDATED: 9:10 am EST February 25, 2006

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NEW YORK -- The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims, who say they are angry he's charging millions for work they believed was being done for free.

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Neuborne, the court-appointed representative for survivors worldwide, defended his work, which he said he never promised would be free.

"It was a grueling job that nobody else wanted, and that I have done faithfully and successfully for seven years," Neuborne said.

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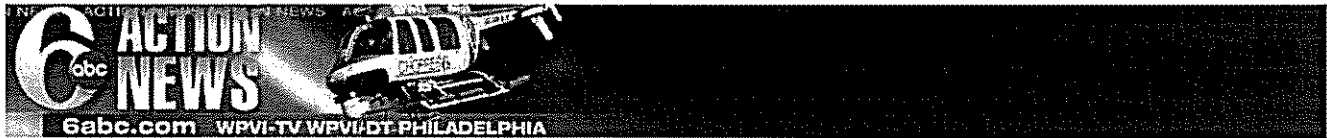
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## Lawyer for Holocaust Victims Criticized for Fee

February 25, 2006 - The lawyer who represented Holocaust survivors in a lawsuit against Swiss banks is facing criticism from some of the victims, who say they are angry he's charging millions for work they believed was being done for free.

The dispute has now landed in court. An American group of Holocaust survivors has filed an objection to lawyer Burt Neuborne's almost \$4.1 million bill for work he did after the 1998 settlement in the case, The New York Times reported Saturday. On Friday Neuborne filed papers seeking to refute those objections, and asked a judge to hold a hearing on his fee.

"No. 1 - that he was telling us all along that he will not get paid," said David Mermelstein, 77, who was sent to the Auschwitz concentration camp, where his family was killed. "And No. 2, to take away this money from the needy survivors is a crime."

Holocaust survivors and their families sued Credit Suisse, UBS AG and other Swiss banks, accusing them of stealing, concealing or sending to the Nazis hundreds of millions of dollars worth of Jewish holdings and destroying bank records to cover the paper trail.

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