

# CLAIMS RESOLUTION TRIBUNAL

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In re Holocaust Victim Assets Litigation  
Case No. CV96-4849

## **Certified Award**

to the Estate of Claimant [REDACTED 1]<sup>1</sup>  
represented by Horacio Elijovich

and to Claimant [REDACTED 2]

## **in re Accounts of Alfred Herrmann and Eleonore Fischl**

Claim Number: 216399/HS/MC;<sup>2</sup> 402097/HS/MC; 402100/HS/MC;<sup>3</sup> 776507/HS/MC<sup>4</sup>

Award Amount: 506,537.50 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] (“Claimant [REDACTED 1]”), and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the unpublished account of Eleonore Fischl (“Account Owner Fischl”). This Award is to the published account of Alfred Herrmann (“Account Owner Herrmann”) at the Zurich branch of the [REDACTED] (“Bank 1”) and to the unpublished claims of the Account Owners against the [REDACTED] in Geneva (“Bank 2”) (together the “Banks”).

All awards are published, but where the claimants have requested confidentiality, as in this case, the names of the claimants, any relatives of the claimants other than the account owners, and the banks have been redacted.

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<sup>1</sup> The CRT notes that Claimant [REDACTED 1] passed away on 14 October 2004.

<sup>2</sup> In two decisions addressed to Claimant [REDACTED 1], which were approved by the Court on 17 December 2007, the CRT informed her that it did not locate an account belonging to the person she named as claimed account owner in her claims, Eleonore Fischl, in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). This decision addresses an account included in the Account History Database under the name of Alfred Herrmann (“Account Owner Herrmann”), as well as a document submitted by Claimant [REDACTED 1] pertaining to a claim that she herself asserted against Bank 2, and claims by both Account Owners against Bank 2 referenced in documents obtained from the Austrian State Archive. These latter claims against Bank 2 were not reported during the ICEP Investigation and thus were not included in the Account History Database.

<sup>3</sup> In a separate decision, the CRT treated the claim of Claimant [REDACTED 2] to the published account of E. Fischl. See *In re Account of E. Fischl* (approved on 30 May 2007).

<sup>4</sup> In 1999 Claimant [REDACTED 1] submitted an Initial Questionnaire (“IQ”), numbered ENG-0246-108, to the Court in the United States. Although this IQ was not a Claim Form, the Court, in an Order signed on 30 July 2001, ordered that those IQs which can be processed as claim forms be treated as timely claims. Order Concerning Use of Initial Questionnaire Responses as Claim Forms in the Claims Resolution Process for Deposited Assets (July 30, 2001). The IQ was forwarded to the CRT and has been assigned claim number 776507.

## Information Provided by the Claimants

Claimant [REDACTED 1] submitted an ATAG Ernst & Young claim form in 1998, an Initial Questionnaire in 1999, and a Claim Form, and Claimant [REDACTED 2], who is Claimant [REDACTED 1]'s son, submitted two Claim Forms, identifying Claimant [REDACTED 1] as Account Owner Fischl and identifying Account Owner Herrmann as Claimant [REDACTED 1]'s father, Alfred Herrmann.

The Claimants stated that Alfred Herrmann, who was married to [REDACTED], née [REDACTED], resided in Vienna, Austria, before the Second World War. The Claimants explained that Alfred and [REDACTED] Herrmann, who were Jewish, had at least one child, Claimant [REDACTED 1], who was born on 1 June 1911 in Vienna and was married on 17 May 1931 to [REDACTED]. According to the Claimants, [REDACTED 1] and her husband resided at Schafberggasse 7 in Vienna. Claimant [REDACTED 1] stated that her father opened an account for her at Bank 2 sometime before the end of March 1938, and that he also held an account at Bank 2 in his own name.

Claimant [REDACTED 1] explained that, after Austria was incorporated into the Reich in March 1938 (the “*Anschluss*”), she was captured by the Gestapo in Vienna and forced to work cleaning floors, and that she lost all of her property after the *Anschluss*. Claimant [REDACTED 1] explained that she fled Austria in 1938, residing first in Prague, Czechoslovakia, until September 1938, then in the United States until April 1939, and that she finally settled in Buenos Aires, Argentina.

The Claimants indicated that Alfred Herrmann died on 22 February 1948 and that [REDACTED] died on 7 April 1985, both in Buenos Aires. Claimant [REDACTED 2] indicated that Claimant [REDACTED 1] died on 14 October 2004, also in Buenos Aires.

In support of their claims, the Claimants submitted documents, including:

- (1) the birth certificate of [REDACTED 1], issued by the Vienna Jewish Community (*Israelitische Kultusgemeinde Wien*), indicating that she was born on 1 June 1911 in Vienna to [REDACTED] and Alfred Herrmann;
- (2) the marriage certificate of [REDACTED] and [REDACTED 1], issued by the Vienna Jewish Community, indicating that they were married on 17 May 1931 in Vienna, and that [REDACTED 1] resided at Schafberggasse 7 in Vienna with her parents, Alfred and [REDACTED] Herrmann;
- (3) [REDACTED 1]'s Austrian passport, dating from before the *Anschluss*, indicating that she was married to [REDACTED] and that she resided at Schafberggasse 7 in Vienna XVIII;
- (4) [REDACTED 1]'s residence certificate (*Heimatschein*), dated 7 March 1938 in Vienna, indicating that she was born in and resided in Vienna;
- (5) a reference letter (*Zeugnis*) from the textile firm *Hermann Pollack's Söhne* in Parnik bei Böhmisches-Trübau, Czechoslovakia (today Ceska Trebova, Czech

- Republic), dated 2 January 1928, indicating that [REDACTED] had been employed in the firm's cotton spinning mill;
- (6) a cover letter for an account statement from Bank 2 addressed to [REDACTED 1] of Vienna, dated 28 March 1938, which is further described below;
  - (7) [REDACTED 2]'s birth certificate, indicating that he was born on 27 August 1943 in Buenos Aires to [REDACTED] and [REDACTED 1], née [REDACTED], who was the daughter of Alfred Herrmann;
  - (8) Alfred Herrmann's death certificate, indicating that he was a national of Czechoslovakia, that he was married to [REDACTED], née [REDACTED], and that he died on 22 February 1948 in Buenos Aires at the age of seventy-three;
  - (9) [REDACTED 1]'s death certificate, indicating that she was born in Vienna, that her father was Alfred Herrmann, and that she died on 14 October 2004 in Buenos Aires; and
  - (10) a notarized transcription of a declaration by [REDACTED 2], dated 27 October 2007 in Buenos Aires, indicating that he is the only child and sole heir of the late [REDACTED 1], née [REDACTED], who did not create a will because she had no assets.

Claimant [REDACTED 1] indicated that she was born on 1 June 1911 in Vienna. Claimant [REDACTED 2] indicated that he was born on 27 August 1943 in Buenos Aires. As noted above, Claimant [REDACTED 2] informed the CRT that his mother passed away on 14 October 2004.

## **Information Available in the Banks' Records**

### Bank 1

Bank 1's record consists of a customer card. According to this record, Account Owner Herrmann was Alfred Herrmann of Prague, Czechoslovakia, who held a demand deposit account, which was opened on 31 December 1931 and closed sometime in 1939. The exact date of the account's closure is not legible in the record available to the CRT. However, the auditors who carried out the investigation of Bank 1 to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") indicated that Account Owner Herrmann's account was closed on 31 December 1939. The amount in the account on its date of closure is unknown.

There is no indication in Bank 1's record that Account Owner Herrmann or his heirs closed the account and received the proceeds themselves.

### Bank 2

The auditors who carried out the ICEP Investigation did not investigate Bank 2, which was liquidated during the Second World War.<sup>5</sup> The documents evidencing claims asserted by the

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<sup>5</sup> See Independent Commission of Experts, Switzerland - Second World War, Vol. 13, *La place financière et les banques suisses à l'époque du national-socialisme: Les relations des grandes banques avec l'Allemagne (1931-1946)*

Account Owners against Bank 2 consist of a bank statement cover letter submitted by the Claimants and records obtained from the Austrian State Archive. The Austrian State Archive records are described in further detail below.

The Claimants submitted a cover letter to an account statement, dated 28 March 1938 in Geneva, Switzerland, on Bank 2's letterhead. The Claimants did not submit the account statement itself. The cover letter indicates that Account Owner Fischl was Eleonore Fischl of Vienna, Austria. This document indicates that Account Owner Fischl held two amounts at Bank 2, one held under a standstill agreement (*Stillhalte*) with a balance of 72,490.00 Swiss Francs ("SF") and a "free" (*libre*) amount with a balance of SF 6,440.00.

### **Information Available from the Austrian State Archive**

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, or who were nationals of the Reich, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the "1938 Census"). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are records concerning the assets of Alfred Herrmann, numbered 21754; [REDACTED], numbered 43322; [REDACTED 1], numbered 37299; and [REDACTED], numbered 36617.

These records indicate that Alfred Herrmann, who was a company officer (*Prokurist*), was born on 3 June 1874 and that he was married to [REDACTED], née [REDACTED], who was born on 2 June 1880. The records also show that [REDACTED 1], née [REDACTED], was born on 1 June 1911 and was married to [REDACTED], who was born on 4 June 1906. These records indicate that Alfred and [REDACTED] Herrmann and [REDACTED] and [REDACTED 1] resided at Schafberggasse 7 in Vienna XVIII.

The 1938 Census records indicate that Alfred and [REDACTED] Herrmann co-owned the residence at Schafberggasse 7, which was valued at 40,000.00 Reichsmark ("RM"). According to these records, [REDACTED] owned one-half of a residence located at Sternwartestrasse 45 in Vienna XVIII, with his share valued at RM 15,000.00. These records also indicate that [REDACTED] was a trade representative (*Handelsvertreter*) with numerous textile firms, including *Hermann Pollack's Söhne* ("HPS") of Prague.

In their asset declarations, Alfred Herrmann and [REDACTED 1] listed claims (*Forderungen*) they had against Bank 2 and HPS, the latter having offices located at Gonzagagasse 16 in Vienna.<sup>6</sup> Alfred Herrmann reported three claims against Bank 2 and HPS associated with a standstill agreement and fees (*Stillhalteabkommen* and *Gebühren*), each of which earned 5½% interest: SF 131,000.00, SF 335,820.00, and SF 31,943.00. According to his asset declaration,

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(Chronos Verlag 2002) (*The Swiss Financial Center and Swiss Banks during the Nazi Period: The Major Swiss Banks and Germany (1931-1945)*) (hereinafter "Vol. 13 Bergier Report") at 465, 468, 472-73. As discussed in more detail herein, Bank 2, which was owned by the textile firm *Hermann Pollack's Söhne* ("HPS"), was liquidated after September 1941 by several other Swiss banks which were creditors of HPS. *Id.*

<sup>6</sup> In Account Owner Herrmann's 1938 asset declaration, the debtor appears as "*Herm. Pollack Söhne Wien I Gonzagagasse 16 [Bank 2] Genf.*" In Account Owner Fischl's 1938 Census declaration, it appears as "[Bank 2], Genève resp. *Herm. Pollacks Söhne.*"

the first two claims (in the amounts of SF 131,000.00 and SF 335,820.00) were scheduled to come due in April 1940. The third sum (SF 31,943.00) was callable at the present time (*auf Abruf*). A note in the declaration states that the amounts of SF 335,820.00 and SF 31,943.00 could be valued at only 50% of their face value, or RM 95,377.88 and RM 9,071.81, respectively (applying a SF/RM exchange rate of approximately 0.568 to 50% of the SF face values).<sup>7</sup>

In her 1938 asset declaration, [REDACTED 1] reported three claims against Bank 2 and HPS, also associated with a standstill agreement, each of which earned 5½% interest: SF 22,490.00, SF 50,000.00, and SF 6,440.00. According to her asset declaration, the first two claims (in the amounts of SF 22,490.00 and SF 50,000.00) were scheduled to come due in April 1940. The third sum (SF 6,440.00) was free (*frei*). In her declaration, she noted: “The situation of the debtor firm is, as a result of extensive indebtedness, the amount of which the *Reichsbank* has exact knowledge, such that the claim falling due in 1940 ... can be valued at most with 50% of its face value. Also, the full collectability of the free account ... is placed in question.”<sup>8</sup> Thus, [REDACTED 1] estimated that the claims in the amounts of SF 22,490.00 and SF 50,000.00 would yield RM 6,431.00 and RM 14,298.00, respectively (applying a SF/RM exchange rate of 0.5719 to 50% of the SF face values).

These records do not contain information regarding whether the Account Owners’ claims were satisfied.

### **Information Available in the Bergier Report**

HPS is the subject of a case study by the Independent Commission of Experts, Switzerland - Second World War (hereinafter the “Bergier Commission” or the “Bergier Report”), on Swiss banks implicated in “aryanizations” of Jewish-owned businesses in Nazi-controlled territory.<sup>9</sup> According to this case study, Bank 2 was owned by HPS. The Bergier Report also notes that Alfred Herrmann worked for HPS in Vienna and Prague from 1892 until the end of August 1939. The following section summarizes this portion of the Bergier Report.

Before the Nazis’ rise to power, HPS was one of the most important textile firms in central Europe, with affiliates in Hungary, Czechoslovakia, Yugoslavia, Austria, and Germany.<sup>10</sup> HPS also owned two financial institutions in Switzerland: Bank 2 and *Société pour favoriser le commerce et l’industrie S.A.* (“Sopoda”), both located in Geneva. As a result of the world economic crisis in 1929 and the collapse of German and Hungarian banks in 1931, HPS encountered financial difficulties. In 1931 HPS reached a loan standstill agreement (*Stillhalteabkommen* or *moratoire*) with its creditor banks, including banks in Prague, Vienna,

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<sup>7</sup> “Diese Forderung kann nur mit 50% erkannt werden.”

<sup>8</sup> “Die Situation der Schuldnerin ist infolge der weitgehenden Verschuldung, über deren Umfang die Reichsbank genaue Kenntnis hat, eine derartige, dass die im Jahre 1940 fällig werdende Forderung ... allenfalls mit 50% des Nennwertes bewertet werden kann. Auch die volle Einbringlichkeit des freien Kontos ... ist in Frage gestellt.”

<sup>9</sup> Vol. 13 Bergier Report at 465-474.

<sup>10</sup> *Id.* at 465. See also Harold James, *The Deutsche Bank and the Nazi economic war against the Jews* (2001) (hereinafter “James”), at 163.

and London, the United Kingdom, as well as three banks in Switzerland: Bank 1, *Schwiezerische Bankverein*, and *Banque d'Escompte Suisse*.<sup>11</sup>

Under the standstill agreement, HPS's creditor banks created a triumvirate, composed of representatives from the Swiss, Austrian, and Czech banks, which participated in the management of HPS and was empowered to renounce the standstill agreement at any time.<sup>12</sup> *Banque d'Escompte Suisse*, which was HPS's single largest bank creditor, holding approximately 40% of HPS's bank debt, entered bankruptcy in 1935 and ceded most of its HPS credits to the Swiss Federal Loan Office, which then joined the standstill agreement with HPS and took over representation of the Swiss creditor banks in the triumvirate participating in HPS's management.<sup>13</sup> Additionally, in 1931, at the beginning of HPS's financial difficulties, certain employees of HPS, including Alfred Herrmann, deposited funds with Bank 2 and HPS, including deposits in the form of uncollected salaries and outright loans, in exchange for a guarantee by the creditor banks to pay interest and to repay the deposited amounts.<sup>14</sup>

The Jewish proprietor of HPS, Baron Otto Parnegg, died in 1937, and HPS was inherited by Baron Hans Groedel, who was also Jewish. The creditor banks subsequently reorganized HPS from a sole proprietorship into a corporation, except for the HPS branches located in Germany and Austria, which suffered under anti-Semitic boycotts. In addition to HPS's German and Austrian branches, Hans Groedel owned all of the shares of the incorporated portion of HPS, but all of these shares were pledged to the creditor banks.<sup>15</sup>

In 1937, in order to save the German branch of HPS by disguising its Jewish ownership, the Swiss creditor banks created a shell corporation in Switzerland to take ownership of the German branch.<sup>16</sup> After the *Anschluss* in March 1938, Nazi authorities appointed an official administrator to oversee HPS's Austrian branch, because of its Jewish ownership. HPS's leadership then sought to transfer the firm's financial management to Switzerland, specifically to Bank 2.<sup>17</sup> The creditor banks also reorganized HPS's Austrian branch as a corporation and removed its Jewish directors and employees.<sup>18</sup> The mass dismissal of HPS's Jewish directors and employees was repeated with HPS's branches in Czechoslovakia after the Nazi invasion of

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<sup>11</sup> After 1931, in addition to the Swiss banks mentioned above, the other major creditor banks of HPS included: *Böhmische Escompte-Bank & Creditanstalt* of Prague, Czechoslovakia; *Böhmische Unionbank* of Prague; *Zivnostenska Banka* of Prague; *Österreichische Industriekredit* of Vienna, Austria (successor to *Niederösterreichische Escompte-Gesellschaft*); and *Österreichische Creditanstalt-Wiener Bankverein* of Vienna (successor to *Wiener Bankverein*). Vol. 13 Bergier Report at 466 n. 110.

<sup>12</sup> *Id.* at 466 n. 114.

<sup>13</sup> *Id.* at 80, 255, 466 n. 114. The Swiss Federal Loan Office is known as the *Caisse de prêts de la Confédération* ("CPC") or the *Darlehenkasse der Schweizerischen Eidgenossenschaft*.

<sup>14</sup> "When the enterprise encountered difficulties in 1931, [Alfred Herrmann] agreed to leave a part of his money at [Bank 2], as well as *Hermann Pollack's Söhne*." ("*Lorsque l'entreprise rencontra des difficultés en 1931, il accepta de laisser une partie de son argent aux [Bank 2], ainsi qu'à Hermann Pollack's Söhne.*") Vol. 13 Bergier Report at 472.

<sup>15</sup> *Id.* at 467.

<sup>16</sup> *Id.* at 467.

<sup>17</sup> *Id.* at 468 n. 119, citing an internal communication, dated 19 May 1938, between the Zurich and Basel branches of *Schweizerische Bankverein*, which was one of HPS's creditor banks.

<sup>18</sup> Vol. 13 Bergier Report at 468 n. 120, 469.

Bohemia and Moravia and the annexation of these territories as the *Reichsprotectorat* of Bohemia and Moravia on 15 March 1939.<sup>19</sup>

According to the Bergier Report, by July 1939, HPS's German and Czech branches were practically aryanized, and the aryanization of the Austrian branch was well underway.<sup>20</sup> Alfred Herrmann, who had worked for HPS since 1892, was stripped of his authority as an officer of the firm on 26 April 1939 in Prague, and left the firm at the end of August 1939.<sup>21</sup>

According to a letter dated 26 April 1939 from Hans Pospischil, a representative of the creditor bank triumvirate, to one of the creditor banks, *Österreichische Industriekredit AG* of Vienna:

Today the situation appears such, that an even greater focus on the inevitable dismissal of the Jewish employees must be considered. Mr. Truog [a creditor bank representative in the management of HPS] took de facto leadership in Prague today, because authority had to be withdrawn from the two current Jewish officers – Alfred Herrmann and Otto Fried. At present 59 people are employed at the Prague office, of which 29 are Jews, who moreover occupied the more important positions, while the support personnel are Aryans. In particular, there are Jewish employees throughout the export division.<sup>22</sup>

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<sup>19</sup> *Id.* at 469-471 n. 126, n. 129. According to the Bergier Report, the directors of the Swiss creditor banks and the Swiss Federal Loan Office “thought essentially to save their investments [in HPS] and had hardly any consideration for the people they dismissed.” (“*Les banquiers suisses impliqués dans cette affaire et les représentants de la CPC pensaient essentiellement à sauver leurs investissements et n’avaient guère de considération pour les personnes qu’ils licenciaient.*”) According to the Bergier Report, the creditor banks were obliged to compensate certain Jewish employees who had been dismissed from HPS; however, in some cases, HPS was able to avoid compensation payments by making a pretext that the dismissal was due to a fault of the employee. Employees who had term deposits with Bank 2 and HPS were entitled upon their dismissal to early repayment of these sums. However, in some cases, the creditor bank triumvirate refused early repayment because the dismissal was carried out by the Nazi-appointed administrator of HPS, rather than by HPS itself. *Id.* at 470 – 471, 473, n. 136.

<sup>20</sup> An internal communication, dated 5 July 1939, between the Zurich and Basel branches of *Schweizerische Bankverein* noted: “The Aryanization of the German and Czech firms is now in general accomplished. Some difficulties of a more formal nature still exist with the Vienna branch, but these should also be resolved in the foreseeable future.” (“*Die Arisierung der deutschen und tschechischen Betriebe ist nun im allgemeinen durchgeführt. Gewisse Schwierigkeiten mehr formeller Natur Bestehen noch bei der Wiener Niederlassung, doch dürfen auch diese in absehbarer Zeit behoben sein.*”) Vol. 13 Bergier Report at 468.

<sup>21</sup> Vol. 13 Bergier Report at 471 n. 129, 472. Under a measure promulgated in the *Reichsprotectorat* of Bohemia and Moravia on 21 June 1939, with retroactive effect to 15 March 1939, Jews were barred from holding management positions absent special permission of the *Reichsprotector*. *Verordnung des Reichsprotectors in Böhmen und Mähren über das jüdische Vermögen vom 21 Juni 1939*. See Klaus-Dietmar Henke, *et al.*, *Die Dresdner Bank im dritten Reich: Die Expansion der Dresdner Bank in Europa* (2006) at 308-9. However, a general interdiction on the employment of Jews was not proclaimed until 10 January 1941. Vol. 13 Bergier Report at 470.

<sup>22</sup> The original reads:

*Heute sieht die Situation so aus, dass durch das unausbleibliche Ausscheiden der jüdischen Angestellten an eine noch stärkere Konzentration gedacht werden muss. Die faktische Leitung von Prag hat heute Herr Truog inne, da den noch dort anwesenden zwei jüdischen Prokuristen - Alfred Herrmann und Otto Fried - die Prokuren entzogen werden mussten. Im Prager Büro sind derzeit 59 Personen beschäftigt, von denen 29 Juden sind, die wieder die wichtigeren*

The Jewish owner of HPS, Baron Hans Groedel, was also removed from the organization.<sup>23</sup> The Bergier Report cites a contemporaneous report by one of the Swiss creditor banks, according to which employees who had deposited money with HPS before their dismissal, mostly Jewish officers of HPS, were repaid on average 75% of their money if they agreed to accept payment in Reichsmark, or 25% of their money if they were repaid in Swiss Francs.<sup>24</sup> The Bergier Commission noted that these transactions posed special problems for HPS' Jewish former employees who had been forced to flee their countries of residence, since they had little room to maneuver in negotiating with the creditor banks.<sup>25</sup>

In September 1941, HPS was dismantled and divided among the creditor banks. The Austrian banks took all of the HPS branches located in the Reich (Germany, Austria, and the annexed portions of Czechoslovakia), as well as the debts of these branches. The Swiss banks took the HPS branches located in Hungary and Yugoslavia, as well as the two financial institutions in Switzerland owned by HPS, namely Bank 2 and Sopoda, “as well as the debts and the obligations related to these enterprises.”<sup>26</sup> The total debt acquired by the Swiss creditor banks amounted to SF 12,932,869.00.<sup>27</sup> The Swiss creditor banks liquidated both Bank 2 and Sopoda.<sup>28</sup>

In 1944, after reaching safety in Argentina, Alfred Herrmann renewed his claims with the Swiss creditor banks who had liquidated Bank 2. Alfred Herrmann's claims stemmed from three sources: salary arrears, the contingent assignment of approximately SF 32,000.00 of Alfred Herrmann's “free” assets to HPS in Vienna to cover his “flight tax” (*Reichsfluchtsteuer*), a part of which the Swiss banks used instead to pay HPS's debts; and the repayment of only 20% on the assets that he had deposited at Bank 2 in 1931.<sup>29</sup> In a letter to *Banque d'Escompte Suisse* dated 18 October 1944, Alfred Herrmann, by then residing in Buenos Aires, wrote:

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*Posten innehatten, während das Hilfspersonal Arier sind. Vor allem sind in der Exportabteilung durchwegs jüdische Angestellte.*

*Id.* at 471 n. 129.

<sup>23</sup> The internal communication of 5 July 1939 between the Zurich and Basel branches of *Schweizerische Bankverein* indicates that Hans Groedel's anticipated compensation of 150,000.00 Swiss Francs (“SF”) and 300,000.00 Czech Crowns (“KC”) had not been paid and would be substantially reduced. (“*Die ... Abfindung ... dürfte auf jeden Falle eine wesentliche Reduktion erfahren.*”) Vol. 13 Bergier Report at 468.

<sup>24</sup> *Id.* at 472 n. 133, quoting the internal communication of 5 July 1939 between the Zurich and Basel branches of *Schweizerische Bankverein*: “With the so-called depositors, mostly Jewish company officials, who invested their savings with the business and demanded back these balances upon their dismissal from the firm, settlements could be reached based on an average of 25% for claims payable in Swiss Francs and 75% for credit balances payable in Reichsmark.” (“*Mit den sogenannten Einlegern, meistens jüdische Beamte, die ihre Ersparnisse beim Unternehmen angelegt hatten und diese Guthaben anlässlich ihres Ausscheidens aus der Firma zurückverlangten, konnten Arrangements auf Basis von durchschnittlich 25% soweit die Forderungen auf Schweizerfranken lauten, und 75% für die in Reichsmark zahlbaren Guthaben, getroffen werden.*”)

<sup>25</sup> Vol. 13 Bergier Report at 472.

<sup>26</sup> *Id.* at 468.

<sup>27</sup> *Id.* at 468 n. 123. *See also* James, at 163.

<sup>28</sup> Vol. 13 Bergier Report at 465, 468, 472-73.

<sup>29</sup> The original reads:

*Ses prétentions portaient principalement sur trois points: des arriérés de salaires; une cession de 32 000 francs qu'Alfred Her[r]mann avait accordé à Hermann Pollack's Söhne de Vienne pour payer ses impôts – impôts qui*

In 1939, finding myself in territory dominated by the Nazis, I was forced, without power to oppose it, to sign a declaration which put me entirely in your hands. You have liquidated my assets at 20% and subjected my children's capital to the same measure. I left an assignment on my free capital of about 32,000.00 Swiss Francs at the Viennese firm, as a guarantee in case my capital there was insufficient to cover the Reich emigration tax. You have used this amount unjustly to cover the debts of [HPS] and thereby gave the opportunity to the administrator of the firm in Vienna to seek cover for this sum in my private property. This measure was a violence on your part and I insist that you rectify it.<sup>30</sup>

According to the Bergier Report, the Swiss creditor banks decided not to issue a formal refusal to Alfred Herrmann's claims, "because they considered that a part of the demands concerned the Austrian and Prague banks and that the other part couldn't be paid, because [Bank 2] had been liquidated."<sup>31</sup>

At the end of the case study on HPS, the Bergier Commission stated that it was unable to reach clear conclusions as to the responsibilities among the various actors implicated in the Alfred Herrmann case, or indeed in the case of HPS.<sup>32</sup>

According to the Bergier Commission:

In this case of Alfred Her[r]mann as in the whole case of *Hermann Pollack's Söhne*, we cannot draw clear conclusions about the responsibilities of the various actors involved. The creditor banks

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*touchaient les émigrants ou «taxe de fuite» – et qui furent utilisés, en partie, par les banques suisses pour couvrir les dettes de Hermann Pollack's Söhne; le remboursement des avoirs d'Alfred Her[r]mann par [Bank 2] à hauteur de 20% seulement. Enfin, Alfred Her[r]mann s'opposait à l'utilisation de ses biens aux [Bank 2] en échange de dettes qu'il avait auprès de Hermann Pollack's Söhne de Vienne.*

*Id.* at 472-73.

<sup>30</sup> The original reads:

*En 1939, me trouvant en territoire dominé par les nazis, j'ai été forcé, sans pouvoir m'y opposer, à signer une déclaration qui me mettait tout à fait entre vos mains. Vous avez liquidé mon avoir en 20% et soumis à la même mesure les biens de mes enfants. A la firme Viennoise, je laissais une cession sur mes biens libres d'environ 32 000 francs suisses, en garantie pour le cas où mes biens chez elle ne suffiraient pas à couvrir l'impôt de sortie du Reich. Vous avez employé ce montant injustement pour couvrir les dettes de [HPS] et par ce fait donné l'occasion au commissaire de la maison viennoise, à la place de cette somme de chercher couverture dans ma maison particulière. Cette mesure était de votre part une violence et j'insiste que vous la répariez.*

*Id.* at 473 n. 134. Orthography unchanged from original.

<sup>31</sup> "Les banques opposèrent un refus formel à ces demandes, car elles considéraient qu'une partie des exigences concernait les banques autrichiennes et pragoises et que l'autre partie ne pouvait plus être versée, car [Bank 2] avaient été liquidés." Vol. 13 Bergier Report at 473.

<sup>32</sup> *Id.* at 473.

were focused primarily on the defense of their capital, which resulted from investments made before 1933. Their action helped to safeguard their capital and sometimes, when there was a convergence of interests, it enabled the preservation, at least temporarily, of the property of Jewish owners. But these actions did not have as their primary objective the protection of the victims of anti-Semitic measures. The proof of this is that the bankers did not hesitate to fire Jewish employees when the interests of the banks were threatened. A pragmatism based on strictly economic criteria determined the reactions of the businessmen, which could lead them to help the victims, but which most often led them to adapt themselves to the circumstances.<sup>33</sup>

## The CRT's Analysis

### Joinder of Claims

According to Article 37(1) of the Rules Governing the Claims Resolution Process, as amended (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the four claims of the Claimants in one proceeding.

### Identification of the Account Owners

#### *Bank 1*

The Claimants have plausibly identified Account Owner Herrmann as their relative. Their relative's name matches the published name of Account Owner Herrmann. The CRT notes that the Claimants indicated that their relative resided in Vienna, whereas Bank 1's record indicates that Account Owner Herrmann resided in Prague. The CRT notes, however, that the Claimants' relative's death certificate shows that he was a national of Czechoslovakia, which matches Account Owner Herrmann's published country of residence. Claimant [REDACTED 1] also

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<sup>33</sup> The original reads:

*Tant dans cette affaire d'Alfred Her[r]mann que pour toute l'affaire Hermann Pollack's Söhne, nous ne pouvons tirer de conclusions claires sur les responsabilités des divers acteurs impliqués. Les banques créancières se concentrèrent essentiellement sur la défense de leurs capitaux qui résultaient d'investissements antérieurs à 1933. Leur action contribua à la sauvegarde de leurs capitaux et parfois, lorsqu'il y avait convergence d'intérêts, elle permit de préserver, du moins provisoirement, les biens des propriétaires juifs. Mais ces actions n'avaient pas pour but essentiel de protéger les victimes des mesures antisémites. Preuve en est que les banquiers n'hésitèrent pas à congédier les employés juifs lorsque les intérêts des banques étaient menacés. C'est un pragmatisme fondé sur des critères strictement économiques qui déterminaient les réactions des hommes d'affaires, ce qui pouvait les amener à secourir des victimes, mais qui le plus souvent les conduisait à s'accommoder des situations.*

*Id.* at 473-74.

submitted her birth and marriage certificates, and Claimant [REDACTED 2] submitted his birth certificate and Claimant [REDACTED 1]'s death certificate, providing independent verification that their relative had the same name as Account Owner Herrmann. Additionally, the Bergier Report and the 1938 Census records together indicate that Account Owner Herrmann resided in Prague and Vienna.

The CRT notes that there are no other claims to this account.

### *Bank 2*

The Claimants have plausibly identified their relative as Account Owner Herrmann, who asserted claims against Bank 2 and who resided in both Vienna and Prague. The Claimants have also plausibly identified Claimant [REDACTED 1] as Account Owner Fischl.

The Claimants submitted Alfred Herrmann's death certificate, the certificates of Claimant [REDACTED 1]'s birth, residence, marriage, and death, Claimant [REDACTED 1]'s Austrian passport, and Claimant [REDACTED 2]'s birth certificate. These documents show Alfred Herrmann's marriage to [REDACTED], née [REDACTED]; Claimant [REDACTED 1]'s maiden name, [REDACTED]; Claimant [REDACTED 1]'s marriage to [REDACTED]; Claimant [REDACTED 1]'s and Alfred Herrmann's residence at Schafberggasse 7 in Vienna; and Alfred Herrmann's residence in Buenos Aires. This information matches the information contained in the Bergier Report pertaining to Account Owner Herrmann, the Bank 2 document pertaining to Account Owner Fischl, and the 1938 Census records pertaining to the Account Owners.

The Claimants also submitted a reference letter from HPS to [REDACTED], showing a family connection to HPS, which is consistent with information contained in the Bergier Report and the 1938 Census records. The CRT notes that the total amount of the assets appearing in the Bank 2 document submitted by the Claimants (SF 72,490.00 and SF 6,440.00) matches the total of the account balances reported in Account Owner Fischl's 1938 asset declaration (SF 22,490.00, SF 50,000.00, and SF 6,440.00). The CRT additionally notes that the balance of Account Owner Herrmann's "free" assets at Bank 2 (approximately SF 32,000.00) appearing in the Bergier Report, substantially matches the "free" amount reported in Account Owner Herrmann's 1938 asset declaration (SF 31,943.00).

The CRT notes that there are no other claims to these accounts.

### Status of the Account Owners as Victims of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The information provided by the Claimants, as well as the information available in the 1938 Census records and the Bergier Report, indicates that the Account Owners were Jewish, that they resided in Austria after the *Anschluss* and in Czechoslovakia after the creation of the *Reichsprotektorat* of Bohemia and Moravia, that Account Owner Fischl was captured by the Gestapo and forced to work cleaning floors, and that Account Owner Herrmann was stripped of

his title at HPS. The CRT notes that the Account Owners were required to register their assets pursuant to the 1938 Census.

### The Claimants' Relationships to the Account Owners

The Claimants have plausibly demonstrated that Claimant [REDACTED 1] is Account Owner Fischl, that Claimant [REDACTED 2] is her son, and that she is the daughter of Account Owner Herrmann. In support of their claims, the Claimants submitted documents, including Claimant [REDACTED 1]'s birth, marriage, and residence certificates, and her passport, and Claimant [REDACTED 2] submitted Claimant [REDACTED 1]'s death certificate, showing that Claimant [REDACTED 1] had the same name, birth date, spouse, and address as Account Owner Fischl, and that her father was Account Owner Herrmann. Additionally, Claimant [REDACTED 2] submitted his own birth certificate and a notarized transcription of a declaration pertaining to Account Owner Fischl's estate, showing that Claimant [REDACTED 2] is Account Owner Fischl's child and sole heir.

The CRT notes that, in a letter quoted in the Bergier Report, Account Owner Herrmann indicated that he had more than one child; however, there is no indication in the records available to the CRT that the Account Owners have other surviving relatives.

### The Issue of Who Received the Proceeds

#### *Bank 1*

With respect to Account Owner Herrmann's account at Bank 1, the auditors who carried out the ICEP Investigation reported that the account was closed on 31 December 1939. The CRT notes that Account Owner Herrmann apparently resided in Prague until at least the end of August 1939, when he left HPS, by which time Bohemia and Moravia had already been incorporated into the Reich. The CRT does not have any further information about Account Owner Herrmann's whereabouts until Account Owner Herrmann's letter of 18 October 1944, quoted in the Bergier Report, which indicates that he was in Buenos Aires. Thus, the account may have been closed after Account Owner Herrmann fled Nazi-controlled territory. However, even if the account was closed after Account Owner Herrmann reached safety, given that Bank 1's record does not indicate to whom the account was closed, that Account Owner Herrmann fled his country of origin due to Nazi persecution, that he may have had relatives remaining in his country of origin and that he may therefore have yielded to Nazi pressure to turn over his account to ensure their safety, that Account Owner Herrmann and his heirs would not have been able to obtain information about his account after the Second World War from Bank 1, even for the stated purpose of obtaining indemnification from the German authorities, due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by account owners because of the banks' concern regarding double liability, and given the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), the CRT concludes that it is plausible that the account proceeds were not paid to Account Owner Herrmann or his heirs. Based on its precedent and the Rules, the CRT applies presumptions to assist in the determination of whether or not Account Owners or their heirs received the proceeds of their accounts.

## Bank 2

With regard to the claims the Account Owners had against Bank 2 and/or HPS that were originally scheduled to come due in April 1940 (claims totaling SF 131,000.00 and SF 335,820.00 for Account Owner Herrmann and SF 72,490.00 for Account Owner Fischl), the CRT notes that these claims were governed by the standstill agreement negotiated between HPS and its creditor banks in 1931, and that the Account Owners voluntarily agreed to subsume their claims to these amounts under this agreement at that time. Generally, standstill agreements were negotiated at this time to deal with short term foreign currency debt of German and other European entities during the 1931 banking crisis. Under such agreements, the principal amount is not collectible, though interest might be paid. The agreements were generally prolonged on a year to year basis. As J.W. Beyen, former Executive Director of the International Monetary Fund and of the International Bank for Reconstruction and Development (hereinafter “Beyen”) explained in his book, *Money in a Maelstrom*, the Standstill Agreement concluded in 1931 between Germany and its foreign creditor banks dealt with short term foreign currency debt of Germany.<sup>34</sup> Beyen’s work also serves to explain other standstill agreements (such as the one at issue here) concluded among other European entities and their creditor banks:

The first Standstill Agreement concluded in Basle under the auspices of the Bank for International Settlements expired on February 1<sup>st</sup>, 1932. ...The bankers who signed the agreement bound themselves not to call in their cash credits and not to cancel the credit lines under which German debtors could draw bills on them. Those who did not sign were free to call their cash credits and to cancel their credit lines, but what they were going to receive from their German debtors were blocked Reichsmarks. It had therefore several advantages to join the Standstill club: The debtor remained a debtor in the foreign currency in which the debt was expressed. The bulk of the credits was given in currencies other than Reichsmarks, and in the summer of 1931, the foreign creditors – remembering what happened to the Reichsmark before – were not too willing to run the risk of the Reichsmark which they expected to be devalued.<sup>35</sup>

Beyen notes that the bulk of the bankers accepted the Standstill Agreement, and that by doing so, they put themselves in a special class of creditors that was in the long run to receive better treatment than the owners of blocked Reichsmarks, the exchange of which was controlled with ever increasing technique. Beyen also notes that the Standstill Agreement was prolonged on a yearly basis for several years, and that it lasted in its original form until the outbreak of the Second World War and continued with continental European partners for some years after that.<sup>36</sup>

In the same manner, Alfred Herrmann and [REDACTED 1] agreed, in 1931, to the terms of the standstill agreement which limited the terms under which their claims would ultimately be recognized. The full terms of the specific standstill agreement negotiated between HPS and its

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<sup>34</sup> Beyen, J. W. *Money in a Maelstrom*. London: Macmillan & Co., Ltd. 1951 (hereinafter “Beyen”), at 62 – 76.

<sup>35</sup> *Id.*, at 64.

<sup>36</sup> *Id.*, at 65.

creditor banks are not available to the CRT (nor does it appear that they were available to the Bergier Commission). However, it is clear that the terms were negotiated to result in a lower payout amount for claims paid in foreign currency (such as Swiss Francs), than for claims paid in blocked Reichsmarks, which explains why the Account Owners received a lesser percentage of their claims, because paid in foreign currency, than they would have if they had been paid in blocked Reichsmarks. Although the Bergier Commission correctly noted that such arrangements more negatively affected Jewish creditors, since many had been forced to flee their original countries of residence, the arrangements themselves were the result of the historical banking crisis of 1931 and more generally of the world economic crisis of the preceding decade, and not the result of specific targeting of Jewish creditors. Thus, all creditors (both Jewish and non-Jewish) seeking repayment in foreign currency would have received the same return that the Account Owners in this case received, based upon the specifics of the standstill agreement negotiated at the time.<sup>37</sup>

For these reasons, the claims against Bank 2 and HPS arising from the standstill agreement and listed by the Account Owners as originally coming due in April 1940 are considered to have been extinguished by their subsequent payment in Swiss Francs (though at a reduced rate, as provided in the agreement). Accordingly, no award is appropriate for the claims arising under the standstill agreement.

With regard to the claims reported as free (*frei*) or callable (*auf Abruf*) at the time they were listed in the Account Owners' 1938 asset declarations, the CRT considers that these claims reflect the interest paid on the standstill capital, as is generally the case in claims arising under standstill agreements. Because they are considered under such agreements as freely accessible amounts, the CRT considers that these amounts (SF 6,440.00 claimed by Account Owner Fischl and SF 31,943.00 claimed by Account Owner Herrmann) should be considered as assets to which the Account Owners should have had free access.

With regard to the claim of SF 6,440.00 by Account Owner Fischl, the CRT notes that Account Owner Fischl reported this amount as "free," even though she noted that the full collectability of this amount was in question. The records do not show whether or not Account Owner Fischl's claim on this amount was ultimately recognized.

With regard to the claim of SF 31,943.00 reported by Account Owner Herrmann in his 1938 asset declaration, the records show that this claim was callable at the time of his asset declaration (*auf Abruf*). Thus, he should have been able to access this amount upon demand. The records show that Account Owner Herrmann had assigned this amount to HPS in Vienna on a contingent basis to cover his flight tax, and that the creditor banks used it instead to cover HPS's debts. It is therefore clear that he did not receive this amount.

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<sup>37</sup> As Beyen implies, even though creditors paid out in foreign currency received only a portion of their original capital, they likely were in a much better position than those creditors who chose not to agree to the terms of the standstill agreement. Such creditors would have likely received an even smaller portion of their claims, and that amount in blocked Reichsmarks.

### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that Claimant [REDACTED 1] is Account Owner Fischl and that Account Owner Herrmann was her father, and those relationships justify an Award. Third, the CRT has determined that it is plausible that neither Account Owner Herrmann nor his heirs received the proceeds of his account at Bank 1; that it is plausible that Account Owner Fischl did not receive the “free” amount on deposit at Bank 2; and that Account Owner Herrmann did not receive the “free” amount on deposit at Bank 2.

Further, the CRT notes that Claimant [REDACTED 1], as Account Owner Fischl and as the daughter of Account Owner Herrmann, has a better entitlement to the assets than Claimant [REDACTED 2], who is Account Owner Fischl’s son and Account Owner Herrmann’s grandson.

### Amount of the Award

With respect to Account Owner Herrmann’s demand deposit account at Bank 1, pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case here, the average value of the same or a similar type of account in 1945 is used to calculate the current value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of a demand deposit account was SF 2,140.00.

With respect to the “free” assets at Bank 2, the records show that Account Owner Fischl owned assets worth SF 6,440.00, and that Account Owner Herrmann owned assets worth SF 31,943.00, for a total amount of SF 38,383.00.

The combined total historic value of the three amounts is thus SF 40,523.00.<sup>38</sup> The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce a total award amount of SF 506,537.50.

### Division of the Award

Claimant [REDACTED 1] is entitled to her own account. With respect to Account Owner Herrmann’s accounts, under Article 23(c) of the Rules, if the Account Owner’s spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. Accordingly, as the child of Account Owner Herrmann, Claimant [REDACTED 1] is entitled to Account Owner Herrmann’s assets as

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<sup>38</sup> The CRT notes that, in an Order dated 16 June 2010, the Court amended Article 29 of the Rules Governing the Claims Resolution Process, as amended (the “Rules”), which establishes value presumptions for accounts with unknown or low values. Full information regarding the methodology and procedure used to determine the revised Article 29 presumptive values is available at [www.swissbankclaims.com](http://www.swissbankclaims.com). The CRT notes that any adjustment for accounts awarded at the previous presumptive value amounts, such as the Account Owner Herrmann’s demand deposit account described herein, will be addressed to the Claimants separately. The CRT notes that the other assets addressed in this decision are not affected by the Court’s Order of 16 June 2010, as these are considered accounts of unknown type, the presumptive value of which (SF 3,950.00) remains unchanged.

well. Therefore, Claimant [REDACTED 1] is entitled to the entire Award amount. As indicated above, Claimant [REDACTED 2] is not entitled to share in the Award.

**Certification of the Award**

The CRT certifies this Award for approval by the Court and payment by the Special Masters.

Claims Resolution Tribunal  
6 June 2011