

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant Monique Milleret, Bernard Wauthier-Wurmser and Claimant Alain Wauthier-Wurmser, all represented by Denis Delcros and Christophe Aubrun of l'Etude généalogique Aubrun-Delcros-Delabre

## **in re Accounts of Hélène Wahl-Israël and René Wahl**

Claim Numbers: 221950/MBC, 221951/MBC, 221952/MBC, 221953/MBC, 221954/MBC,  
221955/MBC

Award Amount: 246,204.00 Swiss Francs

This Certified Award is based upon the claims of Monique Milleret (“Claimant Milleret”), Bernard Wauthier-Wurmser (“Claimant Bernard Wauthier-Wurmser”) and Alain Wauthier-Wurmser (“Claimant Alain Wauthier-Wurmser”) (together the “Claimants”) to the accounts of Hélène Wahl (“Account Owner Hélène Wahl”) and René Wahl (“Account Owner René Wahl”) (together the “Account Owners”) at the Geneva branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as none of the Claimants have in this case, only the name of the bank has been redacted.

## **Information Provided by the Claimant**

Claimant Milleret submitted a Claim Form identifying the Account Owners Hélène Wahl, née Israël, and René Wahl as her parents. Claimant Bernard Wauthier-Wurmser and Claimant Alain Wauthier-Wurmser submitted Claim Forms identifying the Account Owners Hélène Wahl, née Israël, and René Wahl as their grandparents. The Claimants indicated that Hélène Wahl was born in Lyon, France, on 14 February 1890, and that René Wahl was born in Epinal, France, on 16 June 1881. The Claimants further indicated that the couple had two children: Colette Wauthier-Wurmser and Claimant Milleret. Colette Wauthier-Wurmser, Claimant Bernard Wauthier-Wurmser’s and Claimant Alain Wauthier-Wurmser’s mother, was born in Lyon on 9 January 1915 and died in Paris, France, on 9 June 1977. Claimant Milleret was born in Lyon on 19 June 1921. According to the Claimants, their relatives resided in Lyon at 37 cours de la Liberté from 1915 to 1937, at 4 rue Chambovet until 1921, and at 18 boulevard des Belges from 1936 to 1939. The Claimants stated that René and Hélène Wahl owned a men’s clothing factory in Lyon. The Claimants further stated that René Wahl was Jewish, that he died before the German invasion of France, and that Hélène Wahl, who was also Jewish, had to flee to Beaulieu, France, when the Germans invaded France. The Claimants indicated that Hélène Wahl hid there until the end of the Second World War. The Claimants explained that Hélène Wahl’s apartment,

which was located at 18 rue des Belges in Lyon, was confiscated by the *Gestapo* during the German occupation, and was returned to her after the end of the Second World War. The Claimants stated that H el ene Wahl passed away on 22 September 1976 in Cannes, France.

Claimant Bernard Wauthier-Wurmser stated that he was born in Lyon on 11 June 1946, and Claimant Alain Wauthier-Wurmser stated that he was born in Lyon on 5 October 1938. In support of their claims, the Claimants submitted documents, including their birth and marriage certificates, as well as H el ene and Ren e Wahl’s marriage and death certificates.

### **Information Available in the Bank Records**

The bank records consist of a letter from the Swiss Compensation Office, an extract from the Bank’s numbered accounts database, a registry card, and an extract from the database of the auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) of the 1941 Freeze of Swiss Assets in the United States and/or assets and accounts denominated in United States Dollars (the “1941 Freeze”), dated 21 May 1948. According to these records, the Account Owners were Ren e Wahl and *Mme* (Mrs.) H el ene Wahl, n e Isra el, who resided in Lyon, France, at 18 boulevard des Belges. The bank records indicate that the Account Owners held a custody account, numbered 49889/90, and an account of unknown type, numbered 54886.

According to the bank records, the custody account was frozen in the 1941 Freeze, and the total amount in the custody account, which included 1,180.70 United States dollars, was 16,367.00 Swiss Francs as of 21 May 1948, when it was closed by an unknown entity. There is no indication in the bank records as to the value of the account of unknown type. The bank records do not show if or when the account of unknown type was closed, or to whom the account was paid. The auditors did not find the account of unknown type in the Bank’s system of open accounts, and they therefore presumed that it was closed. These auditors indicated that there was no evidence of activity on this account after 1948. There is no evidence in the bank records that the Account Owners, or their heirs closed the accounts and received the proceeds themselves.

### **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 discretion of the CRT. In this case, the CRT determines it appropriate to join the six claims of the Claimants in one proceeding.

#### Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. Their relatives’ names and city of

residence match the published names and city of residence of the Account Owners. The Claimants also indicated that René and Héléne Wahl lived at 18 boulevard des Belges in Lyon, which matches unpublished information about the Account Owners contained in the bank records. The CRT also notes that even though the Account Owners appeared separately on the list published by ICEP on 5 February 2001, the Claimants were able to identify the Account Owners' relationship to one another. 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 Account Owner Héléne Wahl was a Victim of Nazi Persecution. The Claimants indicated that Account Owner Héléne Wahl was Jewish and forced into hiding when the Germans invaded France, and that her apartment was confiscated by the Gestapo.

#### The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting documents demonstrating that they are either René and Héléne Wahl's daughter or grandchildren. There is no information to indicate that the Account Owners have other surviving heirs.

#### The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) as provided in Article 28 (see Appendix A) of the Rules, the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, or their 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.

#### 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 the Account Owners were either their parents or grandparents, and these relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, nor their heirs received the proceeds of the claimed accounts.

#### Amount of the Award

In this case, the Account Owners held an account of unknown type and a custody account. Pursuant to Article 29 of the Rules, when the value of an account is unknown, as is the case of the account of unknown type, the average value of the same or a similar type of account in 1945 is used to calculate the present value of the account being awarded. Based on the ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss

Francs. The present value of this amount is calculated by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules, to produce an amount of 47,400.00 Swiss Francs.

The bank records indicate that the value of the custody account was 16,367.00 Swiss Francs as of 21 May 1948. In accordance with Article 31(1) of the Rules, this amount is increased by an adjustment of 200.00 Swiss Francs, which reflects standardized bank fees charged to the custody account between 1945 and 21 May 1948. Consequently, the adjusted balance of the custody account is 16,567.00 Swiss Francs. The present value of this amount is determined by multiplying it by a factor of 12, in accordance with Article 31(1) of the Rules to produce an amount of 198,804.00 Swiss Francs.

Thus, the total award amount is 246,204.00 Swiss Francs.

#### Division of the Award

According to 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, Claimant Milleret, the Account Owners' daughter, is entitled to receive one-half of the total award amount and her nephews, Claimant Bernard Wauthier-Wurmser and Claimant Alain Wauthier-Wurmser, the Account Owner's grandsons, are each entitled to receive one-fourth of the total award amount.

#### **Scope of the Award**

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they might be entitled, including research of the Total Accounts Database (consisting of records of 4.1 million Swiss bank accounts which existed between 1933 and 1945).

#### **Certification of the Award**

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

Claims Resolution Tribunal  
March 5, 2003

## APPENDIX A

In the absence of evidence to the contrary, the Tribunal presumes that neither the Account Owners, the Beneficial Owners, nor their heirs received the proceeds of a claimed Account in cases involving one or more of the following circumstances:<sup>1</sup>

- a) the Account was closed and the Account records show evidence of persecution, or the Account was closed (i) after the imposition of Swiss visa requirements on January 20, 1939, or (ii) after the date of occupation of the country of residence of the Account Owner or Beneficial Owner, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- b) the Account was closed after 1955 or ten years after the freeze of Accounts from the country of residence of the Account Owner or Beneficial Owner was lifted (whichever is later);
- c) the balance of the Account was reduced by fees and charges over the period leading up to the closure of the Account and the last known balance of the Account was small;
- d) the Account had been declared in a Nazi census of Jewish assets or other Nazi documentation;
- e) a claim was made to the Account after the Second World War and was not recognized by the bank;
- f) the Account Owner or Beneficial Owner had other Accounts that are open and dormant, suspended, or closed to profits, closed by fees, or closed to Nazi authorities;
- g) the only surviving Account Owner or Beneficial Owner was a child at the time of the Second World War;
- h) the Account Owners, the Beneficial Owners, and/or their heirs would not have been able to obtain information about the Account after the Second World War from the Swiss bank due to the Swiss banks' practice of withholding or misstating account information in their responses to inquiries by Account Owners, Beneficial Owners, and heirs because of the banks' concerns regarding double liability;<sup>2</sup>
- i) the Account Owners, Beneficial Owners, or their heirs resided in a Communist country in Eastern Europe after the War; and/or
- j) there is no indication in the bank records that the Account Owners, Beneficial Owners, or their heirs received the proceeds of the Account.<sup>3</sup>

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<sup>1</sup> See Independent Commission of Experts Switzerland - Second World War, Switzerland, National Socialism and the Second World War: Final Report (2002) (hereinafter "Bergier Final Report"); see also Independent Committee of Eminent Persons, Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks (1999)

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(hereinafter "ICEP Report"). The CRT has also taken into account, among other things, various laws, acts, decrees, and practices used by the Nazi regime and the governments of Austria, the Sudetenland, the Protectorate of Bohemia and Moravia, the Free City of Danzig, Poland, the Incorporated Area of Poland, the *Generalgouvernement* of Poland, the Netherlands, Slovakia and France to confiscate Jewish assets held abroad.

<sup>2</sup> See Bergier Final Report at 443-44, 446-49; *see also* ICEP Report at 81-83.

<sup>3</sup> As described in the Bergier Final Report and the ICEP Report, the Swiss banks destroyed or failed to maintain account transactional records relating to Holocaust-era accounts. There is evidence that this destruction continued after 1996, when Swiss law prohibited destruction of bank records. Bergier Final Report at 40 (stating "[i]n the case of Union Bank of Switzerland . . . , however, documents were being disposed of even after the Federal Decree [of 13 December 1996]"). The wholesale destruction of relevant bank records occurred at a time when the Swiss banks knew that claims were being made against them and would continue to be made for monies deposited by victims of Nazi persecution who died in the Holocaust and that were (i) improperly paid to the Nazis, *see Albers v. Credit Suisse*, 188 Misc. 229, 67 N.Y.S.2d 239 (N.Y. City Ct. 1946); Bergier Final Report at 443, (ii) that were improperly paid to the Communist controlled governments of Poland and Hungary, *see* Bergier Final Report at 450 -51, and possibly Romania as well, *see* Peter Hug and Marc Perrenoud, Assets in Switzerland of Victims of Nazism and the Compensation Agreements with East Bloc Countries (1997), and (iii) that were retained by Swiss Banks for their own use and profit. *See* Bergier Final Report at 446-49.

"The discussion on "unclaimed cash" persisted throughout the post-war period due to claims for restitution by survivors and heirs of the murdered victims, or restitution organizations acting on their behalf." *Id.* at 444. Nevertheless, the Swiss Banks continued to destroy records on a massive scale and to obstruct those making claims. ICEP Report, Annex 4 ¶ 5; In re Holocaust Victim Asset Litig., 105 F. Supp.2d 139, 155-56 (E.D.N.Y. 2000). Indeed, "[i]n May 1954, the legal representatives of the big banks co-ordinated their response to heirs [of account holders] so that the banks would have at their disposal a concerted mechanism for deflecting any kind of enquiry." Bergier Final Report at 446. Similarly, "the banks and their Association lobbied against legislation that would have required publication of the names of so called 'heirless assets accounts,' legislation that if enacted and implemented, would have obviated the ICEP investigation and the controversy of the last 30 years." ICEP Report at 15. Indeed, in order to thwart such legislation, the Swiss Bankers Association encouraged Swiss banks to underreport the number of accounts in a 1956 survey. "A meager result from the survey," it said, "will doubtless contribute to the resolution of this matter [the proposed legislation] in our favor." ICEP Report at 90 (quoting a letter from the Swiss Bankers Association to its board members dated June 7, 1956). "To summarize, it is apparent that the claims of surviving Holocaust victims were usually rejected under the pretext of bank secrecy . . . ", Bergier Final Report at 455, or outright deception about the existence of information, while wholesale destruction of bank records continued for over a half century. Under these circumstances, utilizing the fundamental evidentiary principles of United States law that would have applied to Deposited Assets claims had the class action lawsuits been litigated through trial, the CRT draws an adverse inference against the banks where documentary evidence was destroyed or is not provided to assist the claims administrators. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp.2d 139, 152 (E.D.N.Y. 2000); Reilly v. Natwest Markets Group, Inc., 181 F.3d 253, 266-68 (2d Cir. 1999); Kronisch v. United States, 150 F.3d 112, 126-28 (2d Cir. 1998).