

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial upon Request for Reconsideration

to [REDACTED 1],
also acting on behalf of [REDACTED 2]
represented by Edward E. Klein

in re Account of Fanny Hatvany

Claim Number: 501452/BW/MC
Appeal Number: 10261

This Certified Denial upon Request for Reconsideration is based upon the claim of [REDACTED 1] (the “Claimant”) to the unpublished account of Fanny Hatvany, née Latsko, (the “Account Owner”) at the Geneva branch of the French bank [REDACTED] (together with its legal successor, [REDACTED], the “French Bank”). This Certified Denial upon Request for Reconsideration is to the unpublished account of the Account Owner at the French Bank, part of the contents of which was held for her benefit in the name of the French Bank at the London branch of the [REDACTED] (together with its legal successor, [REDACTED], the “Swiss Depository”) and other British institutions, including the Winchester Safe Deposit Company (also referred to as “Winchester House”), as detailed in this decision.

All denials are published, but where a claimant has requested confidentiality, as in this case, the names of the claimant, any relatives of the claimant other than the account owner, and the bank have been redacted.

Procedural History

In a decision approved by the Court on 10 May 2006, the CRT treated the Claimant’s claim to accounts belonging to Fanny Hatvany, Lili Hatvany, Antonia Hatvany, J. Madaressy-Beck, Robert Cox, Mariella Madaressy-Beck, Edward Sundstrom and Joseph Hatvany. In that decision, the Claimant was informed that the CRT was unable to locate any accounts belonging to the above-named individuals in the Account History Database (“AHD”) 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”).

In a letter dated 5 July 2006, the Claimant requested reconsideration of the May 2006 decision and stated that he had submitted documents, including archival documents, showing that his great-grandmother, Fanny Hatvany, owned a Swiss bank account. This decision addresses these documents submitted by the Claimant, as well as additional documents that he subsequently

submitted. This decision also addresses additional documents submitted by the Claimant upon multiple requests of the CRT, further additional documentation subsequently submitted to the CRT upon Order of the Court, as well as additional documents obtained by the CRT. As detailed in this decision, these accounts were not reported by the auditors during the ICEP Investigation and thus were not included in the AHD.

Information Provided by the Claimant

The Claim Form– 5 March 2004 (the “Initial Submission”)

The Claimant, who is represented by Edward E. Klein, submitted a Claim Form on 5 March 2004, which identified the Account Owner as his great-grandmother Baroness Fanny Hatvany, née Latsko. The Claimant stated that his great-grandmother, who was Jewish, was born on 1 July 1868 in Budapest, Hungary, and was married to [REDACTED], who was a member of a leading Hungarian industrial family. The Claimant stated that his great-grandparents resided at Verboczy utca 7 in Budapest and that his great-grandfather died in 1913. He explained that his great-grandmother, who in 1944 still lived at the same address, went into hiding at the time of the Nazi occupation of Budapest, shortly after which the house was seized and occupied. According to information in the claim form and in a family tree submitted by the Claimant, [REDACTED] and Fanny Hatvany had two children: [REDACTED] (the Claimant’s maternal grandmother) who was born on 30 March 1890 in Hatvan, Hungary; and [REDACTED], who was born on 17 March 1894 in Hungary. The Claimant stated that [REDACTED] married [REDACTED], and had one daughter, [REDACTED] (the Claimant’s mother), who was born on 9 December 1916. The Claimant explained that [REDACTED] married [REDACTED] in 1940, and together they had one son, [REDACTED 2] (who is represented by the Claimant), who was born on 19 April 1942; that she divorced in 1945, and subsequently married [REDACTED], with whom she also had one son, [REDACTED 1] (the Claimant), who was born on 18 November 1947. According to the Claimant, Fanny Hatvany passed away in 1961; [REDACTED] passed away on 12 November 1967; [REDACTED] passed away on 2 June 1974; and [REDACTED] passed away on 8 November 2000.

In support of his claim, the Claimant submitted the following documents:

- 1) the will of [REDACTED], dated 23 February 1962, which devises her entire estate to her daughter [REDACTED];
- 2) the will of [REDACTED], dated 25 March 1966, which devises her entire estate to her niece [REDACTED];
- 3) the will of [REDACTED] which names the Claimant and the represented party as her heirs;
- 4) a birth certificate, reissued on 15 November 1939, which indicates that [REDACTED] was born to [REDACTED] and wife Fanny, née Laczko, in Budapest in 1890;
- 5) a birth certificate, which indicates that [REDACTED 1] was born on 18 November 1947 to [REDACTED] and [REDACTED]; and

- 6) a baptism/birth certificate, which indicates that [REDACTED] was born on 25 December 1916 to [REDACTED] and [REDACTED] and that she was baptized Catholic on 6 January 1917.

In his Claim Form, the Claimant specifically stated that he was claiming 13 bars of gold with a total weight of 162 kg 892.85 g, which were “never returned to Hatvany” and which he calculated as having a value of 2.2 million US dollars (US \$). The Claimant stated that this gold, as well as a number of securities, were held in an account numbered C.637 or 637 (“C.637/637”) for Fanny Hatvany in the name of the French Bank in secondary depository institutions, including the Swiss Depository, in London, England.

In support of his claim, the Claimant submitted a letter dated 11 November 1946, which indicates that Fanny Hatvany engaged the New York based law firm of Riegelman, Strasser, Schwarz & Spielberg (“RSSS”) to secure these assets, which were at that time located in London and presumably subject to the provisions of the United Kingdom Trading with the Enemy Act (“TWEA”).¹ He also submitted a statement of assets held in an account at the French Bank designated “C.637” dated 31 December 1947, which indicates that the following assets were on deposit in London:

- 100 preference shares of *De Beers Consolidated Mines Ltd.*;
- 9,200 shares of *British Sugar Corporation, Ltd.*;
- 100 shares of *Arthur Guinness Son & Co. Ltd.*;
- 2,100.00 Pound Sterling (“£”) of 2.75% *British Sugar Corporation Ltd.* bonds;
- £ 1,000.00 of *Café de Sao Paulo 1930* bonds; and
- 162 kg 892.85 g of fine gold in 13 bars.

The 11 November 1946 letter was signed by Hans Frank, the Hatvanys’ lawyer at RSSS, and addressed to the firm of H. Davis & Co. (“Davis”) in London. In it, Frank discussed approaches to the United Kingdom Board of Trade for the release of Fanny Hatvany’s assets in Great Britain, which were subject to the British Trading with the Enemy Act of 1939. In the letter, Frank wrote that Fanny Hatvany was admitted to the United States as a permanent resident on 9 November 1946, and that he (Frank) thereupon had submitted an application to the United States Treasury requesting that she be licensed as a non-blocked national in the United States for purposes of accessing her US-held assets, which had been frozen under the US Trading with the Enemy Act (“TEA”). Frank inquired in his letter whether Davis should wait for the decision of the US authorities before addressing the Board of Trade on the issue of the release of assets in the UK. Frank wrote that he had not yet been made aware of the name of the depository institutions in London where the assets were held, but that Davis should know, as “... Miss

¹ The Trading with the Enemy Act (c.39) (“TWEA”) was an Act of Parliament of the United Kingdom passed on 5 September 1939 which imposed penalties for trading with the enemy and made provision as respects the property of enemies and enemy subjects. Property in the United Kingdom was seized between 1939 and 1945 from commercial organizations and individuals resident in countries with which the United Kingdom was at war. It was intended to prohibit commercial or financial dealings with the enemy, and to preserve enemy assets in the UK in order to prevent the enemy from benefiting from them. See, generally, *History notes, British policy towards enemy property during and after the Second World War*, Foreign & Commonwealth Office, General Services Command, April 1998, available at: <http://www.enemyproperty.bis.gov.uk/fcoreport.pdf>.

[REDACTED] assumes that you know the name from the case of Mr. [REDACTED], which you have previously handled,” and included a statement of the assets that were held in the account, which is identical to the statement dated 31 December 1947 described above.

The CRT notes that the Claimant’s original claim was filed after the claim filing deadline for Deposited Assets claims. In a letter dated 31 March 2004, Mr. Klein responded to the CRT’s request for an explanation for the late filing. In that letter, Mr. Klein stated:

[t]his claim arose from the 2003 discovery of documents that provided information to us from which we discovered that there was a basis for making such a claim. Neither we nor our clients had reason to know of the claim involving a Swiss bank until documents were uncovered during historical research into distinct claims about artwork and real property that belonged to the Hatvany family. We then learned of the possible existence of the safe-deposit box at [the French Bank].²

The Claimant indicated that he was born on 18 November 1947 in Stockton, New Jersey. The Claimant is representing his half-brother [REDACTED 2], who was born on 4 September 1945.

Although the Claimant did not inform the CRT at the time, on 1 July 2004, approximately four months after filing his claim with the CRT, the Claimant filed a claim with the Enemy Property Claims Assessment Panel (“EPCAP”) located in the United Kingdom. According to documents submitted to the CRT by the Claimant in November 2010, this claim was filed by *Laurence Cohen & Associates* of West Hartford, Connecticut, on behalf of the Claimant following correspondence regarding the lateness of the claim submission (the claim filing deadline for EPCAP was 30 September 1999).³ The claim, entitled “Hatvany Gold Claim No. 1124,” sought the return of 162 kg [*sic*] of gold. Both [REDACTED 1] and [REDACTED 2] were represented in the EPCAP proceedings by Mr. Klein.⁴

EPCAP was created under the auspices of the UK’s Enemy Property Payments Scheme, which was set up by the Department of Trade and Industry. The purpose of the scheme is described as follows: “This scheme is to provide compensation to victims of Nazi persecution who had property in the United Kingdom which was confiscated by the British Government during the Second World War under UK legislation on trading with the enemy, and who have not had their

² The CRT notes that none of the documents submitted by the Claimant to the CRT refer to a safe deposit box.

³ EPCAP identified Laurence Cohen & Associates as a West Hartford, Connecticut, firm specializing in historical research and estate recovery. According to the EPCAP documentation, [REDACTED 1] engaged Laurence Cohen in 2000 to research the assets of the Hatvany family.

⁴ Although the EPCAP claim was in the name of the Claimant, the interest of his half-brother [REDACTED 2] in the assets was recorded, so that EPCAP treated both as claimants in the claim. The CRT notes that the documentation submitted by the Claimant does not include either the claim form submitted to EPCAP or early correspondence regarding the case. Thus, it is not clear whether Mr. Klein represented the Claimant and his half-brother throughout their EPCAP claim, though communication conveying EPCAP’s denial of the claim states that Mr. Klein submitted the claim on behalf of his clients. The CRT further notes that communications from Klein & Solomon to the CRT regarding the Claimant’s CRT claim are generally copied to Laurence (Lawrence) Cohen.

property returned.”⁵ Claims under the scheme are administered by the Secretariat of EPCAP and are determined by the Panel in accordance with the terms of reference, which give a right of appeal to an adjudicator.⁶ The decision of the adjudicator is also subject to judicial review before the High Court of Justice, Queens Bench Division.⁷ The outcome of the Claimant’s claim before EPCAP is described in detail below.

Information and Documents submitted with the Claimant’s Request for Reconsideration – 5 July 2006 (the “July 2006 Submission”)

In the letter requesting reconsideration dated 5 July 2006 from Mr. Klein to Special Master Bradfield, Mr. Klein stated that the Claimant was primarily seeking restitution for the value of the gold assets. Mr. Klein stated that the claim was specifically concerned with the 162 kg 892.85 g of fine gold in 13 bars evidenced in the 31 December 1947 statement of assets held in account C.637/637 owned by Fanny Hatvany that was submitted with the initial Claim Form.

In his letter, Mr. Klein made repeated references to the desire of the Claimant to receive restitution for the gold assets of the Hatvany family. Significantly, in reference to the content of account C.637/637 owned by Fanny Hatvany, Mr. Klein wrote that “[t]he Hatvany family never recovered the gold”; that “[the French Bank] identified the owners of the account as Hungarian citizens, and records after 1945 show that the gold was not seized during World War II”; that “[t]he authorities in the U.K. that are responsible for administering and disposing of “enemy property” have advised that there is no record of the government seizing the gold”; and that “[w]hile there were many years worth of correspondence between Baroness Hatvany’s counsel and various banks and government agencies in which they attempted to plan for the lawful transfer of the gold to the Hatvany family, which had relocated to the U.S. and elsewhere from the U.K., there is no evidence that the gold was ever located or transferred.”

Nevertheless, in his letter, Mr. Klein acknowledged that the Hatvany family recovered some of their assets, but insisted that the gold was never returned to the Hatvany family:

Ultimately some of the securities...that were held in London were released to the family. However the gold never was; it remained in the custody of the two U.K. depositories employed by [the French Bank]. However all that is relevant to the CRT is that the account in question is within the CRT’s jurisdiction and that certain assets deposited in the account, i.e., Baroness Hatvany’s gold, were never returned to the Hatvany family. Because of the conduct of [the

⁵ Cited in *The Queen on the application of Jacob Kaplan v Appeal Adjudicator, Enemy Property Claims Assessment Panel, Department of Trade and Industry*, 2004 WL 1054867, at para. 23.

⁶ *Id.* at para. 24.

⁷ See *Kaplan*. The Queen’s Bench Division oversees all lesser courts and is the appropriate legal forum where certain government decisions may be challenged on legal grounds. Generally, unless other appeal processes are laid down in law, anyone who wants to challenge the validity of any decision of a lesser court, tribunal, government authority or local authority brings a claim for judicial review in the Administrative Court of the Queen’s Bench Division. The Administrative Court has supervisory and appellate jurisdiction to oversee the legality of decisions and actions of inferior courts, tribunals, local authorities, Ministers of the Crown, and other public bodies and officials. See <http://www.hmcourts-service.gov.uk/aboutus/structure/index.htm> (last viewed on 30 March 2011).

French Bank], as well as that, of the Swiss depository in London, in securing those assets and maintaining appropriate records as to how the bank gold was disposed of, the Claimants deserve restitution.

The Claimant submitted two letters and a memorandum in support of his request for reconsideration. The first letter, dated 20 November 1946, is from the French Bank to RSSS and confirms receipt of RSSS' letter of 14 November 1946. The letter states that Baroness Fanny Hatvany had arrived in New York on 9 November 1946 and that her new address was 41 West 54th Street in New York. According to this letter, the French Bank had instructed Brown Brothers Harriman & Co. of New York (a New York private banking house, hereinafter "Brown Brothers") to reinvest the revenue of 14,722.58 United States Dollars ("US \$") from the sale of 400 shares of *General Electric* into the purchase of 75 shares *Panhandle Eastern Pipeline*, 100 shares *North American Company*, and 100 shares *Kennecott Copper* and to reserve the remainder to cover monthly maintenance payments of US \$1,000.00 to Fanny Hatvany. According to this letter, the following assets remained on account in number C.637/637 owned by Fanny Hatvany:

- 50 old US \$100.00 shares in Royal Bank of Canada, to be exchanged against 500 new US \$10.00 shares, deposited in New York with Brown Brothers; as well as
- 100 preference shares of *De Beers Consolidated Mines Ltd.*;
- 9,200 shares of *British Sugar Corporation*;
- 100 shares of *Arthur Guinness Son & Co. Ltd.*;
- £ 2,100.00 of 2.75% *British Sugar Corporation Ltd.* Bonds;
- £ 1,000.00 of *Café de Sao Paulo 1930* bonds, all deposited in London at Midland Bank; as well as
- 162 kg 892.85 g of fine gold in 13 bars, consisting of 112 kg 582.75 deposited with Winchester House, London, and 50 kg 310.10 deposited with the London branch of the Swiss Depository;

The letter also stated that the account held the following cash sums:

- SF 43,542.60 from the yield of the earlier sale of securities deposited in London, the revenue from which was converted into SF, and
- US \$2,327.88 freely usable and US \$1,759.49 under Gen. ruling 6 [usable under the US TEA Treasury regulations, other bank records show that this cash was held at Brown Brothers];

In this letter, the French Bank advised that it could not furnish acquisition values for this portfolio as it had received these assets for the account on 26 April 1938.

With his request for reconsideration, the Claimant also submitted a 35 page memorandum written by Hans Frank and dated 23 February 1947 to 20 March 1947 regarding "the conferences had and investigations made in the matter of the Hatvany family during Mr. [Hans] Frank's trip to Europe" during this time period, as well as correspondence relating to this trip. With regard to account C.637/637 owned by Fanny Hatvany, Frank noted that by that time all the assets that Fanny Hatvany held in that account in New York had been released to her, so that only the assets

held in the account in London were still at issue. The memorandum refers to Frank's conferences with family members and the family's lawyers regarding the release of Fanny Hatvany's assets in London. According to the memorandum, various options toward expeditious release were considered, including moving ownership to either [REDACTED], who was a US citizen, or [REDACTED], who had resided in the United States since before the War and was in the process of becoming a citizen. The memorandum further notes that [REDACTED] and [REDACTED]'s brother [REDACTED] had been outside Hungary since 1938, and that their other brother, [REDACTED], might be able to claim non-enemy status because he had been imprisoned by the Nazis under the German occupation.⁸ However, it was eventually decided that the family as a whole (the surviving members of the three branches that descended from the founder of the family's fortune, [REDACTED]) would try to establish non-enemy status for all in a test case involving shares of a British holding company, the *British Sugar Corporation*, of which the family was the beneficial owner. According to this memorandum, once this test case had been successfully concluded, the family would turn to effecting the release of the assets in account C.637/637 owned by Fanny Hatvany.

With his request for reconsideration, the Claimant also submitted a letter dated 2 March 1948 from F.A. Mann, of Hardman, Phillips & Mann (a firm of London solicitors employed by RSSS for the Hatvany case) to H. J. Frank regarding assets of the Hatvany family, including the *British Sugar Corporation* shares, the gold, and the securities of Baroness Hatvany, especially with regard to the release of the gold and the securities in account C.637/637 owned by Fanny Hatvany as affected by the Hungarian Peace Treaty provisions.

Additional Information submitted upon Request for Reconsideration – 4 May 2009 (the “May 2009 Submission”)

In a letter dated 4 May 2009 to Special Master Bradfield, Mr. Klein supplemented the information originally provided on request for reconsideration. In his letter, Mr. Klein explained that he obtained documentation during the course of a lawsuit filed on 5 July 2006 (the “2006 Lawsuit”) on behalf of the Hatvany heirs “against numerous Swiss banks.”⁹ According to Mr. Klein's letter, the account owned by Fanny Hatvany, numbered C.637/637, continued to exist as account C.2.637/52637 N/052637 N through end 1980 and that this account was closed, unknown to whom on 22 December 1980. He stated that “...banks' counsel provided us with documents showing that the bank [the French Bank] closed the account on December 22, 1980 without signature and without acknowledging where the proceeds went.”

In his letter, Mr. Klein wrote:

It is likely that the Hatvany family did not control this account [account 637]. This may be the explanation as to why the account

⁸ The CRT notes that this memorandum clearly indicates that Fanny Hatvany had four children – [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. In his Claim Form, however, the Claimant stated that she only had two children – [REDACTED] and [REDACTED].

⁹ The CRT notes that this was the first time the Claimant or Mr. Klein mentioned the 2006 Lawsuit to the CRT. Moreover, although Mr. Klein submitted some of the documentation that he claimed to have received in the course of the litigation, he did not provide any case documentation.

does not appear in the various CRT databases. The account was controlled by an appointee of [the French Bank], akin to a *Comptoir Financier*, and was not listed as Hatvany assets.

The CRT interrupts this narrative to note that *Comptoir Financier* was not appointed by the French Bank, but in fact operated in much the same way as a brokerage firm, which manages securities for its clients, and merely used the French Bank for safekeeping of the assets entrusted to its management, as well as for executing transactions. See discussion of *Comptoir Financier* *infra*, p. 8 (note 12) and p. 22.

In his letter, Mr. Klein asked:

Who withdrew these funds? Who withdrew all the funds so that the account was empty and closed on December 22, 1980? How these proceeds were removed is what puzzles us. The account was held in trust for [REDACTED], [REDACTED], [REDACTED] and Fanny, all of whom had died well before 1980.¹⁰ We also know from the bank statements provided by Swiss bank counsel that account 637 became account 52637.

There were at least 350,000 Swiss francs in the account and the Swiss Bank [presumably the Geneva branch of the French Bank] simply removed these proceeds and closed the account without taking responsibility for any of their actions.

As discussed we enclose all the bank statements we have received for these accounts.¹¹

In his letter, Mr. Klein also wrote that, absent “a complete accounting for the cash that remained in the accountonly to disappear on December 22, 1980 without a trace or signature ...we request a reasonable award for the Hatvany heirs, based upon this new evidence.”

With his letter, the Claimant’s representative submitted additional documents consisting of correspondence between the French Bank and the Geneva office of *Comptoir Financier*, as well as account statements regarding the account at issue dated from 1959 to 1980.¹² These documents are described in detail below. The CRT notes that the documents submitted by the

¹⁰ As noted above, in his original Claim Form, the Claimant stated that Fanny had two children – [REDACTED] and [REDACTED]. In his statement here, Mr. Klein references a third child – [REDACTED] – but fails to mention the fourth child – [REDACTED], even though documents he submitted with his request for reconsideration in July 2006 clearly show that Fanny had four children. See note 8, *supra*.

¹¹ The CRT notes that on 14 October 2010, Mr. Klein re-submitted these documents on a CD containing the scanned, electronic images of the bank records.

¹² As detailed below, *Comptoir Financier* was a Swiss security management firm which held and managed securities and other property for clients, utilizing the Geneva branch of the French Bank for the safekeeping of the assets [as well as for executing transactions]. See *Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its predecessors from September 14, 1949, to March 31, 1955*, U.S. Government Printing Office, Washington D.C., 1955, pp. 99-114. See also discussion *infra*.

Claimant, together with documentation obtained by the CRT, indicate that Fanny and all four of Fanny's children held accounts with *Comptoir Financier*, as follows:

- Fanny Hatvany: C.637 (later renumbered and variously listed in the bank records as C.2.637; 52637 N; and 052637 N)
- [REDACTED]: C.634
- [REDACTED]: number unspecified in the documents
- [REDACTED]: C.635
- [REDACTED]: C.636

The CRT notes that the Claimant did not specifically claim the accounts owned by Fanny's children and managed by *Comptoir Financier*. These accounts are discussed in more detail below.

The CRT notes that, upon learning of the 2006 Lawsuit filed by the Claimants in the U.S. District Court for the Eastern District of New York, the CRT obtained public records regarding this litigation.¹³ According to the Complaint, the Claimant brought suit against the French Bank, the Swiss Depository, the Royal Bank of Scotland, and other non-named banks (“XYZ Bank Nos. 1 – 100”) seeking restitution of the value of the gold held by Account Owner Fanny Hatvany at the French Bank, which was held on deposit at the Swiss Depository and at Winchester House.¹⁴ The Complaint states that “[REDACTED] was the sole heir of [REDACTED] and [REDACTED], who were, in turn, the only children and heirs of Fanny Hatvany.” The Complaint summarizes the requested relief sought in those proceedings: “Plaintiff seeks to recover the Gold from Defendants, or any of them. Alternatively, Plaintiff seeks an accounting of the manner in which Defendants, or any of them, transferred the Gold and damages for the full value of the Gold, to the extent it is no longer in the possession of any of the Defendants.”¹⁵

The public records show that the suit against the Royal Bank of Scotland was voluntarily dismissed by the Claimant on 12 March 2007; the suit against the Swiss Depository was voluntarily dismissed with prejudice by the Claimant on 27 July 2007; and the suit against the French Bank was voluntarily dismissed by the Claimant on 6 November 2007. An Order of Dismissal was entered by the Court on 15 November 2007.

Submissions of 20 August 2009 and 14 September 2009

As noted above, in his 4 May 2009 letter, the Claimant's representative referred to the 2006 Lawsuit filed on behalf of the Hatvany heirs “against numerous Swiss banks....” The CRT subsequently requested further information from Mr. Klein about this lawsuit. In a letter dated

¹³ See *Anthony A. Sundstrom v. BNP Paribas*, Case No. 1:06-cv-06105 (E.D.N.Y.) (Glasser, J.).

¹⁴ The Claimant erroneously believed the Royal Bank of Scotland to be the successor institution of the Winchester Safe Deposit Company. This belief apparently stemmed from the fact that the current address of London headquarters of the Royal Bank of Scotland is at Winchester House, 1 Winchester Street. The Winchester Safe Deposit Company was styled “Winchester House” in the documentation. In fact, there is no relationship between the Royal Bank of Scotland and the Winchester Safe Deposit Company.

¹⁵ *Anthony A. Sundstrom v. BNP Paribas*, Case No. 1:06-cv-06105 (E.D.N.Y.) (Glasser, J.). Complaint, p. 3.

20 August 2009, Mr. Klein responded to the CRT's request. According to this letter, he filed the 2006 Lawsuit on 14 November 2006 on behalf of the Claimant against several banks, including the French Bank, the Swiss Depository, and the Royal Bank of Scotland, the latter two of which the Claimant identified as the depositories with regard to the 13 bars of gold held by Fanny Hatvany.¹⁶ In his letter, Mr. Klein stated that, "the assets claimed in the Lawsuit were the same assets claimed with the CRT."

He also stated that

[t]he litigation resulted in Klein and Solomon, LLP receiving valuable information from [the Swiss Depository] about the Hatvany accounts. For instance, the documents we received during discovery showed that one of the more valuable accounts (Account 637 which was renamed Account 52637) was closed sometime in 1981 (hereinafter referred to as the "Account"). We do not have the exact date of the closure of the Account, but as of December 31, 1980 there was SFR 316,062.85 [*sic*] in the Account. The problem with these bank statements is that the Account was closed after all the Hatvany family members that had access to the Account had died. Additionally, there is no record of who closed the Account.^[17] [...]

We do not understand how it is possible that the Account was closed in 1981. All the potential inheritors of the account were long dead. [...]

It does seem possible that four of the thirteen gold bars were restituted to a member of the Hatvany family. However, the information we have received to date is not definitive on this issue.

In an email dated 20 August 2009, the CRT requested from Mr. Klein a copy of all the documentation produced by the banks during the course of discovery in the Lawsuit.¹⁸ Pursuant to this request, on 14 September 2009 Mr. Klein submitted a compact disk (the "September 2009 CD") containing scanned, electronic copies of "any and all documents we maintain on the Hatvany claim" and indicated that he "believe[s] this includes all documents we received during discovery from the lawsuit we commenced on November 14, 2006." Mr. Klein stated that "you will see by the file names on the compact disc there are some skipped numbers due to the Bates Stamp skipping ahead, or other error, but the files are complete."

¹⁶ As noted above, the Claimant erroneously believed that the Royal Bank of Scotland was the successor institution of the Winchester Safe Deposit Company. See note 14, *supra*.

¹⁷ Although Mr. Klein wrote that this "valuable information" about the assets that remained in the account until December 1980 was received from the Swiss Depository, the account statements originated from the French Bank. These assets were on deposit with the French Bank in Geneva, so the Swiss Depository could not possibly have had any records regarding these assets.

¹⁸ On 31 August 2009, the CRT contacted the Swiss Depository and requested a copy of the documents it produced to the Claimant during discovery. The Swiss Depository provided the CRT with documents, as detailed below. In a letter dated 10 November 2010, the CRT forwarded these same documents to Mr. Klein.

The September 2009 CD contained over 1,000 pages of documents and correspondence relating to the family's efforts and strategy to regain disposition of the assets in account C.637/637 that belonged to Fanny Hatvany, including:

- 1) a set of trust agreements between Fanny Hatvany and her four children and between the children designed to establish ownership of the assets in the account as belonging to a non-enemy national of the Allies;
- 2) an early version of Fanny Hatvany's will;
- 3) an early version of [REDACTED]'s will;
- 4) a set of documents, dated between 9 November 1946 to March 1947, tracing the release to Fanny Hatvany of the assets in her account numbered C.637/637 in the United States;
- 5) correspondence of the Hatvany lawyers in the United States and in the United Kingdom between themselves, with the family, and others in Hungary, Switzerland, and the United Kingdom regarding the release of Hatvany assets in the United Kingdom.

The CRT notes that Mr. Klein did not indicate the provenance of these documents, though they clearly were not produced by the banks during the discovery process in the Lawsuit.¹⁹ Information contained in this submission is summarized below.

Correspondence March – June 2010

In a letter to the CRT dated 25 March 2010, Mr. Klein presented additional information regarding [REDACTED] as follows:

[REDACTED], one of the direct beneficiaries of the account currently being considered by the CRT, moved to America to escape persecution in her native Hungary. She left behind almost everything, expecting to retrieve it later. [...]

[REDACTED] was the great aunt of [REDACTED 1] [the Claimant]. [REDACTED 1] has fond memories of his great aunt, but also remembers the anguish in her face from the evil she saw during World War II and her continued property deprivation. Not only were [REDACTED] and her relatives forced to leave Hungary without their possessions and access to their bank accounts but decades later they were still deprived of this very property.²⁰

In a letter to the CRT dated 8 April 2010, Mr. Klein presented additional information regarding the Claimant's efforts in seeking restitution and requested an expeditious resolution of the claim. Specifically, Mr. Klein wrote:

¹⁹ The Claimant later submitted additional documentation referring to proceedings before EPCAP. According to this documentation, EPCAP received "1,056 pages of Fried Frank documents" on 28 February 2006, indicating that this documentation was obtained from still existing files of Hans Frank and RSSS. Fried Frank is the successor law firm to RSSS. The CRT considers it likely that these are the same documents. See EPCAP Appeal Denial by Sir Christopher Staughton, 14 June 2010, p. 3.

²⁰ The CRT notes that [REDACTED] was in the United States as of 1920 and was a US citizen as of 1935.

The restitution of his [*sic*, presumably referring to [REDACTED]] heirs' accounts is a moral and financial necessity. The financial impropriety of the British government in vesting [*i.e.*, seizing] the gold bars and not returning them to the Hatvany heirs haunts his [[REDACTED 2]'s] financial and physical health.

...Over 50 years ago, in 1960, [REDACTED 1] took up the mantle of trying to resolve all the unfinished claims that his parents' generation was unable to. Now more than three generations of Hatvanys have attempted to recover what was once a great legacy.

In a letter to the CRT dated 23 June 2010, Mr. Klein reiterated the assertion that account owned by Fanny Hatvany under account numbers including 637/052637 was closed inappropriately:

The documents we have provided show that one of the more valuable accounts (Account 637 which became renamed Account 52637) was closed sometime in 1981 (hereinafter referred to as the "Account"). We do not have the exact date of closure of the Account, but as of December 31 1980 there was SFR 316,062.85 [*sic*] in the Account. The problem with these statements from the banks is that the Account was closed after all the Hatvany family members that had access to the Account had died. Additionally and astoundingly, there was no record of who closed the account.

Information submitted upon Order of the Court – 18 November 2010

In an Order of the Court dated 5 November 2010, the Claimant and/or his representative was instructed to provide an affirmative representation regarding the provenance of the documents re-submitted on the October 2010 CD (first submitted 4 May 2009) including information about when these documents were obtained and from whom, and any explanatory correspondence that may have accompanied this documentation. Further, the Claimant and/or his representative was instructed to affirm that all documents in his possession relating to the claimed assets had been forwarded to the CRT. Finally, the Claimant and/or his representative was instructed either to produce all decisions regarding claims submitted to EPCAP or any other restitution body regarding the assets claimed before the CRT, or provide an affirmative representation that no claim was filed with EPCAP or any other restitution body and that no determination was issued by EPCAP or any other restitution body regarding the claimed assets.

Pursuant to this Order, Mr. Klein submitted a Declaration (the "Declaration") and another CD (the "November 2010 CD") containing 111 pages of documents related to the Claimant's claims before EPCAP, as well as 45 pages of documentation regarding the earliest known records of account C.637/637 that was owned by Fanny Hatvany.

In his Declaration, signed by Mr. Klein and dated 18 November 2010, Mr. Klein stated that the documents contained on the October 2010 CD (and originally submitted in May 2009) were provided in early summer of 2007 by the French Bank and the Swiss Depository during the

course of discovery in the 2006 Lawsuit. He stated that “[t]his lawsuit was voluntarily dismissed on or about July 27, 2007 because the assets more appropriately fall under the CRT’s jurisdiction.”²¹

Mr. Klein further stated that the documents received during discovery “showed that one of the more valuable accounts (Account 637, which became renamed as Account 52637) was closed sometime in 1981. We do not have the exact closure date of this account, but as of 31 December 1980 there was SF 316,062.85 [*sic*] in this account. The funds in this account are at issue with this CRT claim. In addition, we do not know what happened to this Account between 1948 and 1959 – the banks never provided us with this information.” In his cover letter to his Declaration, Mr. Klein explained: “As stated in the affidavit, there is a gap in time, roughly 1948-1959, where there are no account records for 637...Any assets still in the account in 1959 until the account was closed sometime in 1981 were never claimed by the [REDACTED] brothers, the heirs to these assets.” Mr. Klein also stated in his Declaration that “There was no additional correspondence that was included with these bank statements.”

In his Declaration, Mr. Klein stated that the November 2010 CD contained documents labeled “CRT 1 – 45,” and that “[t]hese are earliest known records of account 637.” Mr. Klein wrote, “we are under the belief that these documents were already provided to CRT in previous correspondence. At the sake of being redundant they are on the enclosed CD as well.” He also stated that that “Upon information and belief, Klein & Solomon, LLP [Mr. Klein’s firm] has provided all documents in its control regarding the Hatvany accounts being adjudicated by the CRT.” These documents are described in detail below.

The November 2010 CD also contains correspondence and an unsigned draft of a trust agreement concerning an account numbered 636 at the French Bank held by Fanny’s son [REDACTED]. According to this document, the assets in account numbered 636 were held in the name of the French Bank in London and New York on behalf of [REDACTED]. This trust agreement is described in further detail below.

In his Declaration, Mr. Klein also stated that the November 2010 CD contained documents labeled “EPCAP 1 – 111,” which consist of “all relevant EPCAP decisions, appeals and recent correspondence regarding all cases the Hatvany heirs have brought before EPCAP.”²² He also stated that “Klein & Solomon, LLP has applied for restitution of numerous assets of the Hatvany family. We never applied to EPCAP for the assets in Account 637 that are currently being claimed from the CRT.”

According to these documents, on 9 June 2009, John Edwards, as the Director General, Finance Group, Department for Business, Innovation and Skills, informed Mr. Klein that EPCAP had assessed the claim he had submitted on behalf of his clients for the gold bars and that the Panel

²¹ As noted above, according to the Court’s Civil Docket concerning this case, which was obtained by the CRT, the Claimant voluntarily dismissed the case against the Swiss Depository with prejudice on 27 July 2007; voluntarily dismissed the case against the French Bank on 6 November 2007; and had earlier, on 12 March 2007 voluntarily dismissed the case against Royal Bank of Scotland.

²² According to the documentation, the Claimant and [REDACTED 2] submitted a second claim to EPCAP regarding the assets of the company *I.G. Deutsch & Sohn*, which is not relevant to the Claimant’s CRT claim.

had denied the claim. Mr. Edwards attached the Panel's Statement of Reasons, which is described in more detail below. The Statement noted that the claim had taken several years to complete, in part because of multiple requests by Mr. Klein for extensions of time to allow for further research. The last submission of documents had been received in February 2008, after which the Panel issued two "minded to dismiss" letters. These letters were to allow comment on the preliminary findings, after which Mr. Klein presented further arguments and documents. Though the original claim had been for 13 bars of fine gold weighing 162 kg 892.85, the Panel's dismissal concerned only 9 gold bars weighing 112 kg 582.75, because the claimants had amended their claim on 2 July 2007. According to the EPCAP documentation, on that date, Mr. Klein, in a letter addressed to EPCAP,

...withdrew the claim for the four bars deposited with [the Swiss Depository], London. This was because successor to [the Swiss Depository], recently discovered that a document in its possession demonstrates that the four bars were retrieved by [REDACTED], a daughter of the Baroness, on 7 July 1948. Mr. Klein provided us with a copy of a [the Swiss Depository], London form dated 12 July 1948 which confirmed that 4 bars of gold weighing Kg 50.310.10 were released in the name of [REDACTED].

The following findings of the EPCAP Panel are particularly relevant with regard to the Claimant's claim before the CRT:

- 1) on 2 July 2007, Mr. Klein submitted a copy of the 1 June 1948 letter from the French Bank to the Swiss Depository regarding the release of four gold bars to the EPCAP panel and officially withdrew the claim for the four gold bars held at the Swiss Depository;
- 2) the Claimant did not submit the will of [REDACTED] to the EPCAP panel, and indicated in a family tree submitted with the EPCAP claim form that [REDACTED] was the only one of the four siblings who had children;
- 3) that on 14 December 1946 an Order was made under powers conferred by the Trading with the Enemy Act granting to the Custodian the beneficial interest in all gold coin or bullion belonging to any 'enemy' as defined in the act, however by that date Fanny Hatvany was no longer resident in Hungary and had ceased to be an 'enemy';
- 4) that a declaration signed on 5 May 1948 by [REDACTED] in the British Consulate in New York titled "Declaration by clients applying for affidavits under the Affidavits Convention GB" supports the view that [REDACTED], who had power of attorney to act for Fanny Hatvany as well as power over the gold pursuant to a trust agreement, was free to dispose of the gold, as it was confirmed in this document that the various assets contained in the account, which lists the 13 gold bars among the securities, were her "actual property";
- 5) that according to the EPCAP panel, the Convention GB was an agreement concluded between the Swiss authorities and the Trading with the Enemy Department in the early years of the war. By this agreement certain "members" of the Convention, who were mainly approved Swiss bankers, were qualified to establish, under safeguards, a non-enemy declaration which excluded "belligerent enemy" interests, and its purpose

- was to support the collection for persons in Switzerland of income and capital proceeds from securities, lying physically either in Switzerland or in the UK;
- 6) that Fanny Hatvany was resident in Switzerland for a short period after the end of the War before departing to the United States, that control of the gold was transferred to [REDACTED] by Fanny Hatvany, that the four bars for which the claim was withdrawn were retrieved by [REDACTED], and there is no reason why a similar route was not adopted for the 9 bars, especially as Fanny and [REDACTED] had set up a legal mechanism to facilitate this [emphasis added];
 - 7) that there is no record of correspondence between members of the Hatvany family and their lawyers about the gold after 1948, and EPCAP found it significant that correspondence about the gold ceased at around the time that the four bars of gold were released to [REDACTED]; and
 - 8) that Mr. Klein indicated that an exhaustive search of records held by members of the Hatvany family and their lawyers failed to find any document which demonstrated that the gold was returned to the family, and that Mr. Klein contended that the absence of such documentation confirmed that the gold was not returned to the family. This argument was rejected by the EPCAP panel, who noted that the Swiss Depository identified documentation relating to the release of four bars, yet no document relating to this release was found in Mr. Klein's search conducted on behalf of the claimants, leading EPCAP to conclude that the claimants' search "cannot be considered entirely reliable or conclusive."

On 6 August 2009, Mr. Klein filed an Appeal to EPCAP's dismissal of his clients' gold claim. On 14 June 2010, Sir Christopher Staughton, as adjudicator, affirmed EPCAP's decision and gave his reasons for this affirmation in an 11 page statement, and summarized them at the end of his statement as follows: "A simpler answer for this Appeal is to say that Baroness Fanny Hatvany, or her descendants, had power to dispose of her 9 gold bars, and were likely to have done."

In a letter to EPCAP dated 3 August 2010, Mr. Klein expressed his wish to appeal Sir Christopher's decision. He further expressed his belief that the EPCAP process was subject to a "two-tiered tribunal system" and he accordingly now sought to appeal to the higher tiered tribunal.

In a letter to Sir Christopher dated 26 October 2010, Mr. Klein referred to a letter, dated 21 June 2010, in which he had asked Sir Christopher to confirm that "...following your decision, our clients have exhausted all remedies available to them under the EPCAP Constitution and Terms of Reference." Mr. Klein also asked Sir Christopher "...to explain the next appeal that we can make regarding the gold." No response from Sir Christopher was made available to the CRT. However, Mr. Klein appealed EPCAP's decision regarding another claim, numbered 1148, filed by his clients regarding the amount of a sum awarded to them by EPCAP for assets belonging to the firm *Ig. Deutsch & Sohn*. In a letter to the CRT dated 31 March 2011, Mr. Klein forwarded the appeal decision, reached by Sir Christopher, regarding that claim. In that decision, which Mr. Klein stated was sent to him on 3 March 2011, Sir Christopher, the EPCAP adjudicator for the appeal, wrote:

Claim 1124 was concerned with nine bars of gold which were in the property of Fanny Hatvany, or of her descendants. The claim in that case was heard by the members of the Panel of the Enemy Property Claims Assessment. The claim failed. An appeal was made to me as the Adjudicator, which also failed. I must mention that Mr. Edward Klein in his argument of October 26th 2010 seeks to support the claim no. 1124. That is not now to be allowed.

In his letter dated 31 March 2011 to the CRT, Mr. Klein stated that “no more avenues of appeal are available [to his clients for their gold claim] via EPCAP.”

Information Available in the Banks’ Records

Information Obtained by the CRT through Voluntary Assistance from the Swiss Depository

The CRT notes that the auditors who carried out the investigation of Swiss banks to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”) did not report an account belonging to Fanny Hatvany during their investigation. The documents evidencing the existence of an account at the French Bank, a portion of assets of which were deposited with the Swiss Depository, were submitted by the Claimant. Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Swiss Depository to obtain additional information about the assets from this account that were deposited with it in the French Bank’s name (“Voluntary Assistance”). Specifically, after having become aware of the 2006 Lawsuit initiated by the Claimant, the CRT requested the documents provided to the Claimant during discovery in the 2006 Lawsuit, as well as any additional information regarding accounts held by the Hatvany family. On 27 May 2009, the Swiss Depository made available to the CRT documents relating to assets in account C.637/637 which had been held at the Swiss Depository in the name of the French Bank for Fanny Hatvany. In an email dated 26 October 2010, a representative of the Swiss Depository confirmed to the CRT that these documents were made available to the Claimant in a meeting in June 2007.²³

The documents provided by the Swiss Depository consist of correspondence between the French Bank and the Swiss Depository and between the Swiss Depository and the British authorities, including the Bank of England, as well as between the Swiss Depository and [REDACTED]. According to a Registration Slip dated 12 August 1941, prepared by the Custodian of the Public Trustee Office pursuant to the Trading with the Enemy Act 1939, 4 gold bars (50 kg 310.10 fine), one additional gold bar, and FF 73,800 in French gold coins were held in London by the Swiss Depository in the name of the French Bank. Notations on the card indicate these items were released in 1948.

The documents also include a letter dated 7 June 1948 from the French Bank to the Swiss Depository, which informed the Swiss Depository, at the formal request of the French Bank’s

²³ The CRT notes that the Claimant voluntarily dismissed, with prejudice, his suit against the Swiss Depository approximately one month after this meeting, on 27 July 2007. See note 21, *supra*.

client, that the 4 bars of gold weighing kg 50.310.10 were the property of [REDACTED], an American national who resided in New York, and requested that this gold be put at her disposition. The French Bank advised the Swiss Depository that the documents necessary to obtain the release of these assets would be forwarded at a later date and that, in the meantime, it enclosed a copy of a declaration made by the client in which she applied for the de-blocking of her assets under the Convention between Great Britain and Switzerland (the “GB Convention”).²⁴ In this declaration, signed by [REDACTED] on 5 May 1948 before the British Consulate in New York, [REDACTED] stated that she was a US citizen since 18 November 1935. She listed all the assets held in account 637, including the 162 kg 892.45 in 13 bars of fine gold, and confirmed that she was the owner of these assets. The documents also include a Non-Enemy Declaration form completed by [REDACTED], which indicates she arrived in the United States in October 1920, that she was granted U.S. citizenship on 18 November 1935, and that she was making the declaration in respect to 4 gold bars (50 kg 310.10 fine) held at the London branch of the Swiss Depository in the name of the French Bank.

On 10 June 1948, the Swiss Depository responded to the French Bank and confirmed that it had received and understood the French Bank’s instructions regarding the disposition of the 4 bars of gold once they were released. The Swiss Depository noted that this gold had been included in an earlier declaration signed by [REDACTED] in applying for the de-blocking of assets under the GB Convention.

In a letter dated 24 June 1948, the Swiss Depository wrote to the Controller General, Administration of Enemy Property, to advise that it [the Swiss Depository] had received an application for release of four gold bars held by it for the account of the French Bank, which were in turn owned by [REDACTED], and which were reported to the Custodian. This letter also requested that the Controller General notify the Swiss Depository that the 4 gold bars may be considered free from the Trading with the Enemy legislation.

In a letter dated 8 July 1948, the Swiss Depository wrote to the French Bank to notify it that the Swiss Depository had been informed by the British authorities that the 4 gold bars held by [REDACTED] were considered to be free from the Trading with the Enemy legislation. According to an internal memo from the Swiss Depository, the 4 gold bars (kg 50.310.10) and securities held by the Swiss Depository for the account of the French Bank on behalf of [REDACTED] were released on 12 July 1948.

In a letter dated 12 July 1948, [REDACTED] wrote to the Swiss Depository from his address at Great Fosters, Egham, Surrey, to instruct it to deliver the 4 bars of gold owned by [REDACTED] and the one bar and the French gold coins owned by [REDACTED] to their respective accounts at Samuel Montagu & Co., London.²⁵ Consistent with the relationship between the French Bank and its bailee – the Swiss Depository – the latter responded to [REDACTED] in a letter dated 14 July 1948. In its letter, the Swiss Depository confirmed that it had now received the necessary

²⁴ As noted in the EPCAP decision, the GB Convention was an agreement concluded between Great Britain and Switzerland in the early years of the War. Under this agreement, assets held by Swiss persons or entities in Great Britain that had been blocked by authorities under the TWEA legislation could be de-blocked consequent upon affidavits issued by approved Swiss bankers certifying the non-enemy status of the owner of the asset in question.

²⁵ The CRT notes that Samuel Montagu & Co. was a merchant bank and noted bullion broker.

instructions from the French Bank in Geneva to allow it to put the 4 bars of gold weighing 50.310.10 kg and 1 bar weighing 401.772 ounces plus FF 73,800 in gold coins at the free disposition of [REDACTED] and [REDACTED], both of New York, respectively. It also informed him that, in response to his instructions, it had approached the Bank of England to receive the authorization to transfer the assets. The CRT notes that although no documents were made available to the CRT from Winchester House – as bailee for the French Bank for the other 9 gold bars – there is no reason to believe that such a letter was not sent from the French Bank to that institution as well. This conclusion was reached by EPCAP in its finding that that Fanny Hatvany was resident in Switzerland for a short period after the end of the War before departing to the United States, that control of the gold was transferred to [REDACTED] by Fanny Hatvany, that the four bars held at the Swiss Depository were retrieved by [REDACTED], and that there is no reason why a similar route was not adopted for the other 9 gold bars, especially as Fanny and [REDACTED] had set up a legal mechanism to facilitate this (*see discussion supra*, page 14).

The documents obtained through Voluntary Assistance include the Swiss Depository's letter dated 13 July 1948 to the Bank of England seeking this authorization. In this letter, the Swiss Depository advised the Chief Cashier of Bank of England (Foreign Exchange Control Office) that the Swiss Depository held four gold bars (kg 50.310.10) belonging to [REDACTED], as well as 1 gold bar (401.772 fine ounces) and FF 73,800.00 in French FF 20.00 coins belonging to [REDACTED], which had all been released from the Trading with the Enemy legislation. The Swiss Depository informed the Bank of England that it had received instructions from [REDACTED] and [REDACTED] to deliver the gold to Messrs. Samuel Montagu for their respective accounts, and therefore sought authorization to complete the transfer.

In a letter dated 19 July 1948, the Chief Cashier, Bank of England responded to Swiss Depository's letter of 13 July, and stated that the Bank of England had no objection regarding the transfer to Messrs. Samuel Montagu of 1 bar of gold and FF 73,800.00 gold coins of [REDACTED], and 4 gold bars of [REDACTED], under the assumption that no change in beneficial ownership was involved.

On 26 July 1948, the Swiss Depository wrote to [REDACTED] to inform him that, according to his instructions, they had that day transferred 1 bar of gold and FF 73,800.00 gold coins belonging to [REDACTED], and 4 gold bars belonging to [REDACTED] to Messrs. Samuel Montagu. On that same day, 26 July 1948, the Swiss Depository wrote to the French Bank to confirm that the gold bars and coins belonging to [REDACTED] and [REDACTED] had been transferred to MM. Samuel Montagu & Co.

Bank Records submitted by the Claimant

The Claimant's various submissions included two that contained account statements and records from the French Bank: the May 2009 submission, which included records for the account dated from 1 May 1959 to 31 December 1980; and the November 2010 submission, which included records from the account dated from 1939 to 1948.

The records from the French Bank from the period from 1939 to 1948 consist of account statements and ledger sheets concerning the securities held in account C.637/637 that was owned by Fanny Hatvany and recording the coupon payments and distributions made into and out of various foreign currency denominated sub-accounts from the period of 1941 to 1948. The account statements include lists of securities contained in the account as of various dates, and reflect the crediting of coupon payments and the sale and purchase of various securities for the account throughout this time period. For example, one account statement shows the purchase of four new securities for the account on 8 January 1947. Various ledger sheets reflect activity on U.S. dollar-, Pound Sterling-, and Swiss Franc- denominated sub-accounts of C.637/637, including, for example: coupon dividend payments from various stock from 1942 until 4 March 1947, when an amount of US \$2,307.46 was credited (*bonification*) to Brown Brothers; coupon dividend payments and the purchase and sale of various securities, leading to the transfer of an amount of US \$4,067.00 to New York on 14 January 1945; payments made to [REDACTED] ("*Paiement B.H.*") totaling SF 6,800.00 from 3 April 1944 to 12 June 1944; the transfer of £ 3711.19.2 (equal to SF 63,103.30) into the account on 19 September 1946; and a payment of SF 450.35 to Fanny Hatvany (*Mme. F.H. Copenh*) on 30 October 1946.

The records from the French Bank from the period from 1959 to 1980 consist of account statements, as well as correspondence between the French Bank and *Comptoir Financier*. According to the account statements, the account was numbered C 2.637 from 1 May 1959 to 31 December 1965, at which time the account number was changed to 52637 N. Later statements dated from 31 December 1965 to 31 December 1980 show that the account number was later changed to 052637 N ("*C.2.637/52637 N/052637 N*").²⁶ The correspondence includes an exchange of form letters dated between 1959 and 27 July 1966 regarding instructions for the utilization of newly issued security rights held in account C.2.637/52637 N/052637 N.

Together, the statements and correspondence show the contents and value of the account on various dates and reflect sales of securities and a substantial increase in the value of the account, as well as active management of the account. For example, an order dated 17 January 1963 from *Comptoir Financier* to the French Bank instructed the French Bank to buy 9 shares of a communal investment fund (*9 parts de FONDS COMMUN D'INVESTISSEMENT*) for account C 2.637, with the notation that the shareholder was a foreign resident (*porteur domicilié à l'étranger*) and with a hand-written notation of "H.B." The CRT notes that this notation likely refers to "[REDACTED]." Two account statements dated 30 June 1971 and 30 September 1971 show that the account held 14 securities valued at SF 335,578.00 on 30 June 1971, and that during the next three months, four securities were sold and nine new securities were added to the account for a total of 17 securities. According to these statements, the value of the account increased by SF 159,020.00 in this time period, for a total account value as of 30 September 1971 of SF 494,598.00. Two other account statements dated 31 March 1972 and 30 June 1972

²⁶ According to the records available to the CRT, from 1 May 1959 through 31 December 1964 the account was designated C.2637. On the next available statement, dated 31 December 1965, a new form was introduced, which carried the designation C.2637 in the box identifying the "account owner" and the designation 52637 N in a new box identifying the "file" (*dossier*). The records show that sometime between 30 September and 30 December 1966, the account owner box was dropped from the form and the account was identified only by its file designation (52637 N). Sometime between 30 June and 30 September 1979, the file number was modified to read 052637 N. This number remained unchanged through 31 December 1980, when the account had a zero balance.

show that the shares of a communal investment fund increased from 30 shares as of 31 March 1972 to 50 shares as of 30 June 1972. According to the account statements, on 10 December 1980, SF 370,000.00 was withdrawn by cashier's check from the account, leaving a negative balance. The statements show that from 10 December to 17 December 1980, the remaining portfolio was sold, and that on 19 December 1980 the residual balance of SF 24,835.45 was similarly withdrawn, leaving a zero balance.

Summary Information about the Hatvany Family Members and their Assets²⁷

The wealth of the Hatvany's originated with [REDACTED], who in the nineteenth century founded the company *Ig. [Ignacz] Deutsch & Sohn* in Budapest. The company combined a number of important industrial and financial activities, including a bank of the same name. [REDACTED] had two sons, [REDACTED] and [REDACTED]. The "son" in the company name referred to the younger son, [REDACTED]. In 1879 the two brothers, as well as other landowning members of the family, were ennobled and adopted the geographical name Hatvany as a prefix. The next generation expanded the company further, adding sugar interests that grew into one of Hungary's most important exports. In 1910, the family received a baronetcy and in 1911 adopted the name Hatvany or Hatvany de Hatvan.²⁸

[REDACTED]' son [REDACTED] had two sons, [REDACTED] and [REDACTED], both of whom died before the end of the Second World War. [REDACTED]'s widow, [REDACTED], remained in Hungary until 1946, and by March 1947 was in either France or Switzerland. [REDACTED] and [REDACTED]'s children, [REDACTED] and [REDACTED], née [REDACTED], resided in France and Switzerland since 1924 and 1937, respectively. [REDACTED]'s son [REDACTED] resided in France as of an unspecified date. [REDACTED]'s son [REDACTED] had three children – [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] had remained in Hungary during the War, but by March 1947 he resided in France. [REDACTED] married [REDACTED] – both she and her husband perished in the Holocaust.²⁹ [REDACTED] and [REDACTED] had one daughter, who married

²⁷ Sources for the information contained in this section include documents submitted by the Claimant, including Letter from Hans Frank to F.A. Mann dated 21 March 1947 and family affidavits regarding the release of the assets in London and New York; documents obtained by the CRT, including *Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors from September 14, 1949 to March 31, 1955*, U. S. Government Printing Office, Washington D.C., 1955, pp. 99-114, and documents from the Library and Archives Canada (the "Canadian Archives"); various biographical articles, including Györgyi Fajcsák, [REDACTED], *an Unknown Connoisseur of Oriental Art*, *Ars Decorativa*, vol. 23-24, 2004-6, pp. 55-65, and László Varga, "Hatvany Deutsch Family" in the *Yivo Encyclopedia of Jews in Eastern Europe*, Yivo Institute for Jewish Research, 2010.

²⁸ In addition to being an important economic force in Hungary, the family also became well-known in cultural life, including in Jewish cultural life. [REDACTED] was the president of both the Hungarian Rabbinical Seminary and the Hungarian Literary Society. The next generation was yet more prominent on the cultural scene: [REDACTED]'s son [REDACTED] was an artist and art collector and his brother [REDACTED] was a writer. [REDACTED]'s daughter [REDACTED] was a playwright and his son [REDACTED] was an orientalist and art collector. This generation debated the future of Judaism in the face of assimilation and came to a parting of ways: whereas [REDACTED], [REDACTED] and [REDACTED] converted to Christianity, [REDACTED] argued against full assimilation and became an active supporter of the Zionist movement.

²⁹ In the proceedings of the FCSC regarding [REDACTED]'s claim to her *Union Nasic* shares, [REDACTED] is erroneously described as [REDACTED]'s brother-in-law. He actually was [REDACTED]'s brother-in-law.

[REDACTED] and had two children, [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED], who were nationals of Liechtenstein, resided in Switzerland since before the War.

[REDACTED]' son [REDACTED]'s had one son, [REDACTED], who was married to Fanny Latzko (Laczkó de Vágújhely), who was herself from a prominent and wealthy family. [REDACTED] died in 1913, without leaving a will. Although in his claim form the Claimant stated that [REDACTED] and Fanny had only two children, the documents he submitted clearly show that they had four – [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

[REDACTED] married [REDACTED] in 1924 and divorced in 1931. They had one son, [REDACTED], who was born in 1926 in Hungary. In 1943, [REDACTED] escaped from France to Switzerland with the help of a courier, whom he later married sometime in the 1940s. There appear to be no further records regarding this second marriage. After the War, [REDACTED] lived in Geneva, but returned to France sometime in or after 1947. [REDACTED] was confirmed a non-enemy national by the British Consulate in Geneva on 21 July 1944 and again on 24 May 1945, and his securities on deposit in London were released on 23 September 1946.³⁰ He was also confirmed a non-enemy national by the Canadian authorities, who authorized the release of Canadian securities deposited in Canada at the Royal Bank of Canada by the French Bank, which held them on behalf of [REDACTED] on 29 April 1946.³¹ Accordingly, [REDACTED]'s securities had been released by both jurisdictions (the UK and Canada) well before the Hatvany's efforts to effect the release of Fanny's assets in account C.637/637 gathered momentum. [REDACTED] died in June 1980 in France.

[REDACTED]'s son [REDACTED] was married to [REDACTED], and together they had a daughter, [REDACTED], who was born in Budapest in 1947. [REDACTED] died in 1988 in France.

Fanny's daughter [REDACTED] emigrated to the United States in 1920, when she was 26, and become a US citizen in 1935. She had no children, and died on 2 June 1974.

Fanny's daughter [REDACTED] married [REDACTED] in 1909 and divorced in 1911. They had a son [REDACTED]. After her divorce in 1911, in 1913 [REDACTED] married [REDACTED], whom she divorced before 1918. They had a daughter, [REDACTED], who was born in 1916. After the War, [REDACTED] lived in the United States, and by 1947 was in the process of gaining US citizenship. [REDACTED] died on 12 November 1967.

[REDACTED] and [REDACTED]'s son [REDACTED] married [REDACTED], and they had a daughter, [REDACTED], who was born in 1949.³² [REDACTED], though not mentioned

[REDACTED], who together with [REDACTED] and [REDACTED] appears to have had management powers over Hatvany family funds, was the father of [REDACTED] and [REDACTED] and the son-in-law of [REDACTED].

³⁰ Letter from Hans Frank to F. A. Mann, 21 March 1947, p. 5; Archives Canada, RG 117, vol. 938 and vol. 2267, file 35855.

³¹ Archives Canada, RG 117, vol. 938 and vol. 2267, file 35855.

³² [REDACTED] filed a separate claim with the CRT to the account of her grandfather, [REDACTED]. In her claim form, Ms. [REDACTED] stated that her grandfather was married to "a wealthy Jewish lady --

individually in [REDACTED]'s will, was a beneficiary of [REDACTED]'s estate. [REDACTED] and [REDACTED]' daughter [REDACTED] married [REDACTED] in 1939. They had one son, [REDACTED 2], later [REDACTED] (who is represented by the Claimant). [REDACTED] divorced [REDACTED] in 1945, and married [REDACTED] in 1946. They had one son, [REDACTED 1] (the Claimant). [REDACTED] divorced [REDACTED] in 1965.

Fanny's son [REDACTED] had, together with his mother, remained in Hungary throughout the War. Fanny had gone into hiding when the Germans entered Hungary on 19 March 1944. [REDACTED] was imprisoned by the German occupation forces, but managed to escape and join his mother in her hiding place. After the War, Fanny Hatvany secured a Russian exit visa in June 1946 and emigrated to the United States via Switzerland, briefly stopping in Copenhagen and arriving in New York on 9 November 1946. [REDACTED] resided in France from February 1947 and later in England. He eventually emigrated to the United States on 22 January 1948.³³ [REDACTED] had no children. According to information provided by the Claimant in his claim form, Fanny died in 1961, though according to publicly available information, she died in 1964.³⁴ [REDACTED] died on 22 December 1961.

As noted above, Fanny's husband [REDACTED] died in 1913 without a will. He left a large estate, including his interest in the broader family holdings. The latter were largely held in the family bank and, consequently, the activities of the bank included in important part the management of the family's wealth. The bulk of that wealth was at the relevant time, and apparently from 1913, pooled in a family fund called the "Hatvany Family Management" ("the Family Fund"). In a letter dated 21 March 1947 to F. A. Mann (the London solicitor in the case), Hans Frank (the Hatvany family attorney) explained the Family Fund essentially as an investment fund into which family members had pooled inherited assets, which upon a member's death were allocated to his/her descendants according to percentages agreed by these descendants. Thus, individual family members had an undivided fractional interest in the assets of the Family Fund and could draw on this interest or make testamentary provisions as they wished.

In a decision regarding an unrelated claim filed on behalf of [REDACTED] with the US Foreign Claims Settlement Commission ("FCSC"), the FCSC explained that a considerable portion of the Fund was held with *Comptoir Financier* in Geneva.³⁵ According to this decision, *Comptoir Financier* was

[REDACTED]." Ms. [REDACTED] did not claim any assets belonging to [REDACTED] or Fanny Hatvany. In her claim form, Ms. [REDACTED] stated that her father died on 9 March 1954 in Budapest.

³³ [REDACTED], Affidavit, 17 June 1949.

³⁴ See <http://freepages.genealogy.rootsweb.ancestry.com/~prohel/names/misc/latzko.html#fan1> (last viewed on 30 March 2011).

³⁵ The Foreign Claims Settlement Commission of the United States ("FCSC") is a quasi-judicial, independent agency within the Department of Justice which adjudicates claims of U.S. nationals against foreign governments, under specific jurisdiction conferred by Congress, pursuant to international claims settlement agreements, or at the request of the Secretary of State. Funds for payment of the Commission's awards are derived from congressional appropriations, international claims settlements, or liquidation of foreign assets in the United States by the Departments of Justice and the Treasury. The FCSC's Authorizing Statutes are the International Claims Settlement Act, 22 U.S.C. 1621 *et seq.* and the War Claims Act, 50 U.S.C. App. 2001 – 2017.

a Swiss security management firm, which holds and manages securities and other property for clients, utilizing the Geneva branch of the Bank for the safekeeping of the assets [as well as for executing transactions]. The bank is not informed of the name of the owner and keeps records in the name and for the account of the *Comptoir Financier*. When a client wishes to sell, exchange, deposit or withdraw securities, he notifies *Comptoir Financier*, which, in turn, instructs the bank to take appropriate action by reference to a specified account number.³⁶

Though the Family Fund's assets were held by *Comptoir Financier* in the name of *Ig. Deutsch & Sohn*, individual family members held such accounts with *Comptoir Financier* in their own names as well, as noted above.³⁷ The designation of Fanny Hatvany's account as C.637 indicates that her account had a *Comptoir Financier* association, as Mr. Klein acknowledged in his letter of 4 May 2009. The documents submitted by the Claimant, together with documentation obtained by the CRT, indicate that all four of Fanny's children also held accounts with *Comptoir Financier*.³⁸ Thus, as noted above, according to the documents from FCSC, [REDACTED] held account number C.634, which was opened in 1938 to receive a capital distribution worth US \$80,000 - \$85,000 from the Family Fund and closed in November of that year, when these assets were transferred to her account in the United States.³⁹ In the 1948 draft of her will, [REDACTED] referenced "my account at *Comptoir Financier*" and bequeathed the assets in that account to her brother [REDACTED]. According to documents obtained from the Canadian Archives, [REDACTED] held an account numbered C.635. These documents refer to the release of securities by the Canadian Custodian of Enemy Property held in the name of the French Bank for this account on behalf of [REDACTED]. Upon release, these securities were transferred to [REDACTED]'s account at the Swiss Depository. [REDACTED] held account C.636. By an unsigned Agreement dated 1946, he recognized a one-quarter each interest in the assets of this account for [REDACTED], [REDACTED], and [REDACTED]. According to this Agreement, these assets were to put in a Trust with [REDACTED] as Trustee.

An important part of the Family Fund's assets consisted of major sugar refineries in Hungary and Czechoslovakia, other real and financial assets in Hungary and Yugoslavia, and a holding company, the *British Sugar Corporation*, in Great Britain. As explained below, the joint management of the family wealth, specifically as it related to recovery of the *British Sugar*

The FCSC was established in 1954 (Reorganization Plan No. 1 (5 U.S.C. App.)), when it assumed the functions of two predecessor agencies: the War Claims Commission and the International Claims Commission. The FCSC and its predecessor agencies have successfully completed 43 claims programs to resolve claims against various countries including the Federal Republic of Germany, Iran, Yugoslavia, Bulgaria, Romania, Hungary, the Soviet Union, Czechoslovakia, Poland, Italy, Cuba, China, East Germany, Vietnam, Ethiopia, Egypt, Panama, and Albania. In all, more than 660,000 claims have been adjudicated, with awards totaling in the billions of dollars. See <http://www.justice.gov/fcsc/about-comm.html> (last viewed 28 March 2011).

³⁶ *Settlement of claims by the Foreign Claims Settlement Commission of the United States and its predecessors from September 14, 1949, to March 31, 1955*, U. S. Government Printing Office, Washington D.C., 1955, p. 101.

³⁷ See discussion *supra*, page 8.

³⁸ As noted above, the Claimant did not claim any of these accounts. See discussion *supra*, page 8.

³⁹ US National Archives, 61A248 550 3674/2, Foreign Claims Settlement Commission, Transcript of Proceedings in the Matter of [REDACTED], Docket Y-1063, Washington DC., 17 August 1954, pp. 17-18 and p. 31.

Corporation shares, played a role in the strategies adopted to gain the release of the assets the French Bank held for Fanny Hatvany in Great Britain. Accordingly, in this respect the concern here is not only with Fanny Hatvany and the assets she held in her own right, but also with the families of the three grandsons of [REDACTED] – [REDACTED], [REDACTED], and [REDACTED], as described above. These three branches of the family, located in the US, France and Switzerland, were involved in the post-War efforts to reclaim the family’s assets. Of relevance in this case is the family’s effort to obtain access to the shares of the *British Sugar Corporation*, the holding company of which the family was the beneficial owner, but the shares of which were held in the name of the Hungarian *Hatvany Sugar Corporation (Hatvaner Zuckerfabrik A.G.)*.

The family began to seek the release of blocked or seized assets in the United Kingdom and the United States and recovery of their assets in Hungary no later than mid-1946, and in the case of some individual members of the family already in 1944 – 1945. The main difficulties faced in the recovery of the assets under discussion here was the fact that four members of the group – Fanny, [REDACTED], [REDACTED] ([REDACTED]’ widow) and [REDACTED] ([REDACTED]’s son) [REDACTED] – all were Hungarian nationals and had remained in Hungary throughout the War. Thus, unless proven otherwise, they were considered enemy nationals for purposes of the Trading with the Enemy legislation of the United States and the United Kingdom.

As noted above, much of the large amount of material the Claimant submitted on request for reconsideration consists of extensive correspondence between the lawyers in the US, Great Britain and Switzerland, and between the lawyers and the family discussing the options for obtaining the release of the assets frozen or seized under the respective Trading with the Enemy legislation of the US and the UK. As the assets of interest here were held in the name of the French Bank, the Hatvanys, as well as the other family groups, at first wanted to maintain anonymity of ownership at least until they could be assured that all those involved could be established as non-enemy nationals under the TEA and/or the TWEA. To overcome the “enemy” problem, they also considered various options for changing ownership of the assets, either to [REDACTED], who was a US national, or to [REDACTED], who was the only one among the four family members who resided in Hungary during the War who had been imprisoned by the Germans. Tax considerations, especially avoidance of inheritance taxes, as well as how to deal with the British foreign currency restrictions in disposing of released assets, also played a major role in these discussions, including how to best dispose of the gold holdings in account C.637/637 once free disposition had been established.

With respect to Fanny Hatvany’s assets, the Hatvanys had begun to consider various options to regain the free disposition of her assets in the US and in Europe well before her arrival in the United States on 9 November 1946. As noted above, her affairs in this respect were handled by Hans Frank of RSSS, who also liaised with the family’s lawyers and accountants in the UK, Switzerland and elsewhere. The main option entertained by the Hatvanys centered on transferring ownership of the assets in question to [REDACTED], whose non-enemy status and leverage position was unquestionable because she had been a US citizen since 1935.

The first reference with respect to recovering the assets in account 637 belonging to Fanny Hatvany available to the CRT is contained in a “Memorandum of Agreement between Fanny Hatvany and [REDACTED], [REDACTED], [REDACTED] [*sic*] and [REDACTED]” (the latter four being Fanny’s children), dated 6 June 1946, *i.e.*, while Fanny Hatvany was still in Hungary. The Memorandum therefore was signed by [REDACTED] as Fanny’s attorney-in-fact, and by [REDACTED], [REDACTED] and [REDACTED], who all were in Geneva on that day. According to the Memorandum, the assets in account C.637/637 belonging to Fanny Hatvany originated from funds in the estate of [REDACTED]. Prior to the War, they were under the control of Fanny Hatvany, but as [REDACTED] died *in testate*, the children considered that Fanny merely had the right to the income from the funds during her lifetime and that the principal upon her death was to go to the then surviving issue of her late husband. Under the agreement, Fanny would create a trust by transferring to [REDACTED] as trustee all the assets in account 637 and would retain the income from these assets during her lifetime. Upon her death, the principal would be distributed to the survivors of the four children in equal shares, with issue of a predeceased child taking their parent’s share.

It was also agreed that [REDACTED]’s share was to be added to a parallel trust to be created by [REDACTED], of which [REDACTED] was also to be the trustee. This parallel agreement, also dated 26 June 1946, refers to the assets in an account numbered 636 held in the name of the French Bank in New York and London on behalf of [REDACTED]. As in the agreement with Fanny, this parallel agreement states that the assets came from funds in the estate of [REDACTED], but additionally also from funds consequent upon the reorganization and distribution of part of the assets of the firm [REDACTED] of Budapest, in which all of the surviving children of [REDACTED] – [REDACTED], [REDACTED], [REDACTED], and [REDACTED] – had an equal interest. [REDACTED] was to receive the income from the trust for his lifetime, or until the termination of the trust, with the principal divided equally between [REDACTED], [REDACTED] and [REDACTED], or their survivors, upon [REDACTED]’s death. The trust could be revoked by [REDACTED] if he proved unable to hold or recover assets in Hungary or Czechoslovakia that he had received from his father’s estate, or that his share in the estate proved not to have been larger than that received by his siblings.

Both agreements recognized that the transfer of the specified assets to the trustee required the consent of the United States and Great Britain, respectively. However, if that consent had not been secured on or before 31 December 1948, all the rights to the release of the assets would become vested in the trustee.

The agreements were translated into fully-fledged Trust Indentures in August 1946. In July 1946, Hans Frank, as the Hatvany’s lawyer, had ascertained the rules of Hungarian law relating to an estate of a deceased person who died *in testate*. The expert opinion obtained by Frank stated that the widow of the deceased person “receives a life interest over the whole estate” and that the whole estate, subject to this life interest, “is divided equally among the four children.”⁴⁰ This opinion thus confirmed the provisions as set out in the various trust agreements. In Fanny’s case, the Trust Indenture was dated 28 August 1946 and signed by her. It was accompanied by a Declaration, signed by [REDACTED], by a representative for [REDACTED] [signature

⁴⁰ Letter and Memorandum Joseph Dach to Hans Frank, 1 August 1946.

illegible] and by [REDACTED], and confirmed their agreement with the Trust Indenture's provisions and released Fanny and [REDACTED] from any claims the signatories might have had against Fanny regarding administration of or withdrawals from account 637. Similarly, the agreement with [REDACTED] regarding account 636 was also translated into a Trust Indenture. The copy of this document made available to the CRT is an unsigned draft, dated only 1946 and includes a number of changes, not material to the current case, from the earlier agreement.

The CRT notes that Fanny Hatvany left Hungary for Switzerland, via Vienna, on 17 July 1946. She arrived in Zurich, Switzerland, on 26 July 1946 and proceeded to Geneva, where she resided while awaiting her visa for the United States.⁴¹ The Trust Indenture thus was ready for her signature a month after her arrival in Switzerland. On 13 November 1946, a few days after Fanny's arrival in the United States, Hans Frank applied for recognition of non-enemy status on her behalf, and on 19 November 1946 she was granted the privileges of License 42 pending release of all funds either under General License 95 or special license of the US Treasury. This, according to Frank, established that she was not considered to be a person in the US who was a national of any blocked or enemy country. On 18 December 1946 Hans Frank duly filed an application for the release of all the assets held in the United States by the French Bank on behalf of Fanny Hatvany. This application was granted on 20 February 1947, and Fanny Hatvany was licensed to withdraw these assets from the French Bank's account at Brown Brothers and to transfer them to her own account at the Manufacturers Trust Co. in New York. Accordingly, the release of the assets in account 637 that were held in the United States was no longer an issue. Thus, Hans Frank in a report on his discussions with the family regarding recovery of their assets, wrote that, with respect to Fanny's assets, only those held for her by the French Bank in Great Britain were at issue.

Hans Frank took a trip to Europe in early 1947 to discuss recovery matters with the family and reported on this trip in a "Memorandum on Conferences with and Investigations made in the matter of the Hatvany Family, trip to Europe 23 February to 20 March 1947." As Fanny Hatvany's assets in the United States had been released on 20 February 1947, the main problem related to the assets in Great Britain, though some discussions touched on assets held in Hungary and elsewhere in Eastern Europe. The legal position taken by the lawyers was that, with her admission for permanent residence to the US on 9 November 1946, Fanny Hatvany had, as of that date and for purposes of the British TWEA, ceased to be an enemy national. The lawyers opined that by virtue of that fact, it would seem that she had gained free disposition of the gold, but not of the securities, which purportedly had been seized before that date. Various options, mainly based on their tax consequences, were discussed, including shipping the gold to Canada or elsewhere. Given, however, that no one was certain about the implementation of the British TWEA regulations in the post-War environment, the final decision was that any action with regard to these assets should be postponed, while the family pursued a "test case" to establish that all members would in fact be considered to have non-enemy status under the TWEA, so that there would be no danger involved in revealing the identity of the specific owners in the pursuit of regaining full disposition rights.

⁴¹ Rider to Fanny Hatvany's application to the U.S. Treasury, dated 13 November 1946 for treatment under Gen. License 42 (non-enemy treatment).

The test case on which the family agreed concerned the securities of the British holding company – the *British Sugar Corporation* – of which the family was the beneficial owner, with specified percentage interests held by each family member. Only [REDACTED] had no interest in the *British Sugar Corporation*.⁴² In taking this decision, the family and their lawyers apparently overlooked that the 2,446 shares of the *British Sugar Corporation* involved in the test case were formally owned by the *Hatvany Sugar Corporation*. During the War, these shares had been on deposit at *Ig. Deutsch & Sohn* in Budapest and, under the anti-Jewish laws at the time, transferred to a blocked Jewish account at the *Hazai Bank* in Budapest. There they were lost or destroyed during the siege and subsequent liberation of Budapest by the Russians. Accordingly, after the War, the *Hatvany Sugar Corporation* would need to agree to both the re-issuance of those *British Sugar Corporation* shares that had been lost or destroyed, and to their being issued outright to the family. While such agreement was necessary, it was not sufficient from the point of view of the TWEA, because the *Hatvany Sugar Corporation*, being a Hungarian entity, was considered an enemy corporation. Therefore, the beneficial ownership of the family would need to be legally established before the non-enemy status of individual family members could be tested. The non-enemy status question appeared to have been resolved quite early on. Nevertheless, the case dragged on for several years, first because of the technical issues and then because different interests within the family caused further delays.

The Hatvanys, clearly frustrated by the technical difficulties besetting the “test case” and the uncertainties about treatment of assets held by Hungarian nationals in the United Kingdom following adoption of the Peace Treaty with Hungary of 10 February 1947, decided sometime in 1947 to pursue the release of Fanny Hatvany’s assets separately. The Trust Agreement and associated side agreements described above were dated and signed on 25 March 1947. On 26 April 1947, Fanny Hatvany gave [REDACTED] full power of attorney with disposition rights over all her accounts in the United States, Switzerland and Great Britain. The power of attorney extended specifically to the following rights:

To withdraw any and all of the funds on deposit in my account or accounts in the United States, Switzerland or the United Kingdom of Great Britain; to purchase and to sell on my behalf securities of any kind, wheresoever and whatsoever, and to sell at any time all or any part of the gold which is on deposit for my account in the United Kingdom of Great Britain in the name of [the French Bank], Geneva Branch office, and generally to dispose of and invest and reinvest all of my assets, wherever situated.

On that same day, 26 April 1947, Fanny, [REDACTED] and [REDACTED] also executed an Agreement explaining the testamentary provisions Fanny was willing to make simultaneously with the agreement. In this will, she left her residuary estate to [REDACTED], or, should [REDACTED] predecease her, to [REDACTED]. However, she stated that she was desirous that

⁴² US National Archives, 61A248 550 3674/2, Foreign Claims Settlement Commission, Transcript of Proceedings in the Matter of [REDACTED], Docket Y-1063, Washington DC., 17 August 1954, p.47 reports a statement made by [REDACTED] to Isadore G. Alk, one of her attorneys, as follows: “My sister [REDACTED], when she married, was paid off on her interests, and she has no interest in the family assets.” The further discussion relating to this matter was off the record at the attorney’s request.

all her four children, [REDACTED] and [REDACTED] of New York, [REDACTED] of Geneva, and [REDACTED] of France and Hungary, should share in the estate. The Agreement stated that the reason for recognizing the rights of all four children was that Fanny was "...desirous of leaving her estate in trust for the benefit of her issue, having in mind the uncertain political conditions of the post-war period and so as to protect her descendants against the dissipation of the assets of the estate." The associated paragraph 2 of the Agreement thus states: "The residuary legatee agrees upon the death of the testatrix to divide the net residuary estate of said testatrix into as many shares as the testatrix shall have surviving or predeceases children leaving issue her surviving."

Fanny refrained from establishing a trust to protect any of her children, who at the time of her demise might be living in countries whose laws might prevent or curtail the ownership of assets in the United States. Instead, she named one residual legatee ([REDACTED]) and executed the Agreement. Fanny's desire to recognize the rights of all four children was included in the last clause of the Agreement, which reads, "[REDACTED] and [REDACTED], in the event that they shall become the sole residual legatees ...are desirous of fulfilling the wishes of the testatrix and acting in the manner provided for in this agreement." A supplementary agreement, dated 28 April 1947, provided that 5 percent of the net residuary estate, up to US \$10,000, be held in trust, and that the income from it be paid to Mrs. [REDACTED] [[REDACTED]'s divorced wife].

The Hatvanys, on the recommendation of their lawyers, decided to put their application for the release of the assets in Great Britain on hold until Fanny Hatvany had returned from a proposed trip to Hungary. In a letter dated 22 January 1948, the Hatvanys' London lawyers advised that they believed the time had come to reveal the identity of the beneficial owner of the assets in account 637 that were held in the name of the French Bank (originally for the benefit of Fanny, with [REDACTED] named as trustee of the assets in 1946). Further correspondence between the lawyers trying to interpret the provisions of the Peace Treaty with Hungary with respect to the release of the assets in the account at issue indicates that uncertainties remained. Furthermore, the *British Sugar Corporation* share test case continued to drag on. The documentation available to the CRT does not contain anything further relating to the actual date the Hatvanys decided to proceed on their own. However, according to the documentation made available by the Swiss Depository, the process started on 5 May 1948, when [REDACTED] signed the necessary declaration to allow the French Bank to issue a non-enemy affidavit for the release of assets under the GB Convention, as described above.

The *British Sugar Corporation* shares were finally distributed in 1952. By that time, the matter of the release of the assets the French Bank held for account 637 (originally owned by Fanny, with [REDACTED] named as trustee of the assets in 1946) in Great Britain had long been resolved. Thus, Hans Frank wrote in a letter to [REDACTED], dated 12 March 1952, that now that the funds for the release of which they had applied (the *British Sugar Corporation* shares, the redemption proceeds of a *British Sugar Corporation* bond, and accumulated dividends and interest) were at the free disposal of the entitled persons, his and his colleague's services would no longer be needed. Specifically, he stated:

...since the petition was filed at the time for the purpose of testing the attitude of the Board of Trade with respect to the non-enemy status of

some of the participants who had additional assets in the United Kingdom, and since apparently *these applicants have succeeded by other methods to gain control over such assets, there is additional reason why our services can now be dispensed with.* [Emphasis added.]

This statement by Hans Frank clearly shows that, by the date of his letter, the Hatvany family had gained control over their assets in the United Kingdom, including the assets claimed here.

The CRT's Analysis

Summary of Claim History

In his initial Claim Form submitted on 5 March 2004, the Claimant specifically stated that he was claiming 13 bars of gold with a total weight of 162 kg 892.85 g. The Claimant stated that this gold, as well as a number of securities, were held in an account numbered C.637 or 637 for Fanny Hatvany in the name of the French Bank in secondary depository institutions, including the Swiss Depository, in London. These assets had come under the control of the British authorities under their TWEA. The Claimant asserted that these assets had never been returned to Fanny or her heirs.

In a letter to Special Master Michael Bradfield dated 5 July 2006, Mr. Klein conceded that “[u]ltimately some of the securities ... that were held in London were released to the family. However the gold never was; it remained in the custody of the two U.K. depositories employed by [the French Bank].” Mr. Klein wrote, “all that is relevant to the CRT is that the account in question is within the CRT’s jurisdiction and that certain assets deposited in the account, i.e., Baroness Hatvany’s gold, were never returned to the Hatvany family. Because of the conduct of [the French Bank], as well as that, of the Swiss depository in London, in securing those assets and maintaining appropriate records as to how the bank gold was disposed of, the Claimants deserve restitution.” Mr. Klein did not specify which of the securities were released, and which were not, nor did he make any further reference to these securities in his subsequent submissions.

At the same time, the Claimant pursued a claim for the gold with EPCAP, as detailed above. The EPCAP claim was filed on 1 July 2004, just four months after the filing of the CRT claim. The Claimant’s EPCAP claim was denied on 9 June 2009. As detailed above, EPCAP’s denial concerned only 9 of the 13 gold bars, because on 2 July 2007 the Claimant withdrew his claim for the four gold bars held at the Swiss Depository, based upon information he had received from the Swiss Depository that confirmed that the four gold bars were released to [REDACTED]. Mr. Klein filed an appeal to the EPCAP denial on 6 August 2009. On 14 June 2010, the appeal was denied by the adjudicator, Sir Christopher Staughton. In a letter to EPCAP dated 3 August 2010, Mr. Klein expressed his wish to appeal Sir Christopher’s decision. In a subsequent letter to Sir Christopher dated 26 October 2010, Mr. Klein referred to a letter, dated 21 June 2010, in which he had asked Sir Christopher to confirm that “...following your decision, our clients have exhausted all remedies available to them under the EPCAP Constitution and Terms of Reference.” Mr. Klein also asked Sir Christopher “...to explain the next appeal that we can

make regarding the gold.” Thus, Mr. Klein continued to pursue the claim with the gold with EPCAP through the end of October 2010.

Two years after filing the CRT and EPCAP claims, on 14 November 2006, the Claimant filed suit in the US District Court for the Eastern District of New York. The Complaint in that lawsuit specified that the requested relief was the recovery of the gold or, alternatively, its full value. The Claimant voluntarily dismissed the suit against the Royal Bank of Scotland on 12 March 2007; voluntarily dismissed, with prejudice, the suit against the Swiss Depository on 27 July 2007; and voluntarily dismissed the suit against the French Bank on 6 November 2007. An Order of Dismissal was entered by the Court on 15 November 2007.

As for the claim before the CRT, in a letter to Special Master Bradfield dated 4 May 2009 (shortly before the EPCAP denial was issued), Mr. Klein submitted additional material to amplify the Claimant’s claim. According to Mr. Klein, this material, which consisted of approximately 250 pages of portfolio statements and correspondence relating to account C. 2.637, renamed as account 52637, had been provided to him during discovery in the 2006 Lawsuit. Mr. Klein asserted that, on basis of this documentation, it appeared that the Hatvanys did not have control over account 637, but that it was controlled by an appointee of the French Bank. As the CRT has noted above, *Comptoir Financier* was not appointed by the French Bank, but in fact operated in much the same way as a brokerage firm. *See* discussion of *Comptoir Financier infra*, pp. 7, 8 (note 12), 22. According to Mr. Klein’s letter, the account, numbered C.637/637, continued to exist as account C.2.637/52637 N/052637 N through the end of 1980, and that this account was closed on 22 December 1980. He stated that “...banks’ counsel provided us with documents showing that [the French Bank] closed the account December 22, 1980 without signature and without acknowledging where the proceeds went.” Thus, with this May 2009 letter, the claim appears to have been amplified to include the assets in account C.2.637/52637 N/052637 (originally account 637) at the time of the liquidation of the account’s contents in December 1980.

At the same time, the Claimant continued to pursue his original claim with the CRT for the gold held in London at the two depositories (the Swiss Depository and Winchester House) by the French Bank for account 637. Thus, in a letter dated 20 August 2009, Mr. Klein responded to the CRT’s request for information about the 2006 lawsuit and stated that he filed the 2006 Lawsuit on behalf of the Claimant against several banks, including the French Bank, the Swiss Depository, and the Royal Bank of Scotland. As noted above, the 2006 Lawsuit specifically sought the recovery of the gold or, alternatively, its full value. In his letter of 20 August 2009, Mr. Klein stated that, “the assets claimed in the Lawsuit were the same assets claimed with the CRT.” Thus, it is clear that as of this date, Mr. Klein was still actively pursuing a claim for the gold (which was the subject of the 2006 Lawsuit), as well as for the assets that were in account 637 at its closure in sometime in either 1980 or 1981.

Mr. Klein continued to pursue the claim for the gold before the CRT in 2010. In a letter to the CRT dated 8 April 2010, Mr. Klein presented additional information regarding the Claimant’s efforts in seeking restitution and requested an expeditious resolution of the claim. Specifically, Mr. Klein wrote: “The restitution of his [*sic*, presumably referring to [REDACTED]] heirs’ accounts is a moral and financial necessity. *The financial impropriety of the British government*

in vesting [i.e. seizing] the gold bars and not returning them to the Hatvany heirs haunts his [[REDACTED 2]'s] financial and physical health.”⁴³ [Emphasis added.]

In summary, the Claimant’s claim before the CRT appears to encompass the gold that was on deposit in London, as well as the assets in the Geneva branch of the French Bank that were closed out in 1980.⁴⁴ The Claimant has conceded that his family recovered “some” of the securities that were in the account, but did not claim the remaining assets that were held in London and New York. All the assets were held in an account numbered C.637/637, which continued to exist as account C.2.637/52637 N/052637 N through the end of 1980. The Claimant also did not claim other accounts held by Fanny’s children.

Basis for the Denial

With regard to the claim for the 13 gold bars, the CRT notes that neither Mr. Klein nor the Claimant ever informed the CRT that they had received, in June 2007, the documents from the Swiss Depository that led them to withdraw their EPCAP claim for the four gold bars held on deposit in the French Bank’s name, nor did they provide these documents to the CRT, despite their repeated statements that they had provided “all documents ... regarding the Hatvany accounts being adjudicated by the CRT.”⁴⁵ In fact, in his letter dated 20 August 2009, Mr. Klein explained that the Claimant voluntarily dismissed, with prejudice, the lawsuit against the Swiss Depository “because [the Swiss Depository] claimed they had provided Klein & Solomon, LLP with everything they had on the Hatvany family.” In his November 2010 Declaration to the Court, he stated that the lawsuit was dismissed, “because the assets more appropriately fall under the CRT’s jurisdiction.” Mr. Klein also wrote in his August 2009 letter, “[i]t does seem possible that four of the thirteen gold bars were restituted to a member of the Hatvany family. However, the information we have received to date is not definitive on this issue.” Mr. Klein’s explanation for the voluntary dismissal is misleading, at best. Clearly, the suit against the Swiss Depository

⁴³ The CRT notes that in his 8 April 2010 letter to the CRT, Mr. Klein stated that the British government had vested (*i.e.*, seized) the gold bars. However, by this date he had already received the EPCAP denial, which determined that no seizure had taken place, and that the gold bars had, in fact, been returned to the Hatvany family. Moreover, in his July 2006 letter to Special Master Bradfield, Mr. Klein wrote just the opposite, namely, that “[the French Bank] identified the owners of the account as Hungarian citizens, and *records after 1945 show that the gold was not seized during World War II*” and that “[t]he authorities in the U.K. that are responsible for administering and disposing of ‘enemy property’ have advised that *there is no record of the government seizing the gold.*” [Emphasis added.]

⁴⁴ As detailed above, the Claimant claimed the gold bars in both his 2006 Lawsuit and his EPCAP claim. In his letter of 20 August 2009, Mr. Klein stated that, “the assets claimed in the Lawsuit were the same assets claimed with the CRT.” However, just over a year later, in his November 2010 Declaration to the Court, he stated that “[w]e never applied to EPCAP for the assets in Account 637 that are currently being claimed from the CRT.” Thus, it is not entirely clear if the Claimant intends to maintain his claim for the 13 gold bars, or whether he intends to withdraw the claim for the gold and focus only on the assets that remained in the account until December 1980. For the avoidance of doubt, the CRT addresses the claim for all 13 gold bars below.

⁴⁵ Klein Declaration, 18 November 2010, para. 10. See *also* letter from Mr. Klein to the CRT, 14 October 2010 (“Enclosed with this letter is a compact disc with the entire documentation provided to us by the banks, during our litigation in the United States”); letter from Mr. Klein to the CRT, 14 September 2010 (“I enclose a CD which contains scanned, electronic copies of any and all documents we maintain on the Hatvany claim. We believe this includes all documents we received during discovery from the lawsuit we commenced on November 14, 2006”); and letter from Mr. Klein to Special Master Bradfield, 4 May 2009 (“[W]e enclose all the bank statements we have received for these accounts.”)

was dismissed with prejudice because documents produced by the Swiss Depository to the Claimant one month earlier definitively showed that the four gold bars that had been held there had been released to [REDACTED]. Mr. Klein did not submit these documents to the CRT, nor did he withdraw the claim before the CRT for these four gold bars, but instead continued to assert that there was no “definitive” evidence regarding their disposition.

With regard to the four gold bars held at the Swiss Depository, the CRT notes that the claim for these gold bars was withdrawn by the Claimant from his EPCAP claim with his explicit acknowledgment that the four gold bars were returned to the family, and that the documents provided to the CRT by the Swiss Depository clearly show that these four gold bars were put at the free disposition of [REDACTED] and [REDACTED] in 1948. These documents, together with the Claimant's own admission, constitute direct evidence that these specific gold bars were returned to the Hatvany family. This explicit proof is also consistent with other evidence that the entire account was actively managed by the Hatvany family after the War.

With regard to the remaining 9 gold bars, the CRT notes that the Claimant pursued these assets in a claim with EPCAP, and that EPCAP denied the claim in a decision dated 9 June 2009. The Claimant appealed that denial to an adjudicator on 6 August 2009, and in a decision dated 14 June 2010, the adjudicator denied the appeal.

In a Memorandum and Order issued on 28 March 2011, Judge Edward R. Korman, who oversees the *In re Holocaust Victim Assets Litigation*, ordered the Claimant and/or his representatives to advise him whether any appeal was taken from the EPCAP decision of 14 June 2010, as well as the outcome of any such appeal. In a letter dated 31 March 2011, Mr. Klein responded to this Order. In his response, Mr. Klein stated that there were no appeals pending at EPCAP, and that the gold bar claim and all related appeals had been rejected by EPCAP. Mr. Klein wrote that he had appealed EPCAP's decision of 14 June 2010, but that that appeal had been rejected and marked as final by EPCAP's Panel. He wrote that, “the Constitution and Terms of Reference for EPCAP clearly states [*sic*] that the Hatvany heirs are currently out of appeals or any further remedies.” Mr. Klein concluded by stating that “the CRT has been provided any and all relevant information on the Hatvany claim at EPCAP, and that no more avenues of appeal are available via EPCAP.”

On 1 April 2011, the Court issued a Memorandum and Order directing the Claimant and/or his representative to address the issue whether they should be precluded by the doctrine of issue preclusion from re-litigating the finding of the EPCAP Panel “that the Baroness Fanny Hatvany or her descendents had the power to dispose of her gold and were likely to have done so.” In its Memorandum and Order, the Court noted that the Claimant had a full and fair opportunity to litigate the issue before the Panel, including an internal administrative appeal to the Adjudicator. The Court also noted that “it also appears that judicial review of the Adjudicator's determination was available before the High Court of Justice, Queen's Bench Division.”

On 2 May 2011, Mr. Klein responded to the Court's Order of 1 April. In his response, Mr. Klein wrote that “[t]he EPCAP tribunal found that there was insufficient evidence to prove that EPCAP confiscated the gold bars, and that it is quite possible that Baroness Hatvany withdrew these gold bars or sold them. EPCAP only has jurisdiction over what the Custodian of the British

government [*sic*] had confiscated. CRT, on the other hand oversees what exists and existed in the bank's coffers. The Hatvany family has not received back the gold, so we believe that either the banks (under the CRT jurisdiction) or the United Kingdom government (under EPCAP's jurisdiction) currently has the gold bars." In his discussion of the issue of issue preclusion, Mr. Klein wrote, "Although we understand the Court's concerns in allowing us to litigate a case that was purportedly argued and decided in England, we would like the Court to take notice of the fact that a decision issued by the EPCAP tribunal is not a final judgment entitled to recognition in the US pursuant to the doctrine of comity and other case law, which recognize and enforce English judgments in the US. This is an administrative proceeding, subject to judicial review, and therefore, there should be no issue preclusion in this case. Furthermore, the British legal system does not offer its citizens a constitutional right to claim just compensation for condemnation or other takings of personal property."

In his response, Mr. Klein also wrote that the Hatvany heirs did not have an adequate and fair opportunity to litigate their claim before EPCAP, and that EPCAP "did not provide a fair or just forum" to entertain the Claimant's claims. Mr. Klein also discussed the judicial review of an appeal from another EPCAP decision (*Kaplan*), as well as another case cited in *Kaplan* and attempted to distinguish the facts of those cases with the facts of the case pursued by his clients.

On 17 May 2011, Mr. Klein wrote again to the Court in response to the Court's Order of 1 April 2011, and asked the Court to accept this letter as a "clarification" of his previous correspondence. In his letter, Mr. Klein wrote:

EPCAP was established by the British government to account for all funds and other assets that were deposited for safekeeping in Britain before 1942, and confiscated by the British government during World War II. Although in many cases, such as in the instant case, the roles of EPCAP and the CRT may overlap, as Swiss and other European financial institutions did deposit some of their funds and precious metals in Britain, a negative finding by EPCAP is by no means dispositive of the claim against the Swiss banks. It simply means that EPCAP cannot trace the existence of the missing assets.

The fact that EPCAP cannot locate the Hatvany's gold bars, assuming that the EPCAP officials conducted a thorough [*sic*] investigation, just closes one avenue of the CRT's inquiry. Indeed, the British banks may have returned the gold bars to the Swiss banks absolving themselves of any further responsibility. The CRT may very well possess evidence relating to the trail of the gold bars in their possession, but can nevertheless deny its existence due to my clients' lack of documentation.

In light of this fact, although the EPCAP findings may be given some recognition by this Court, these findings should not prejudice and impede my clients' suit against the CRT.

In his 17 May 2011 letter, Mr. Klein conceded that the EPCAP findings “may be given some recognition” by the Court. The CRT notes that EPCAP was established specifically to provide compensation to victims of Nazi persecution whose property in the United Kingdom was confiscated during the War under UK legislation and not returned to them; that EPCAP has unique access to UK government files regarding assets seized under the UK’s Trading with the Enemy Act; and that EPCAP specifically found that four bars were definitively retrieved by [REDACTED] and there was no reason why a similar route was not adopted for the remaining nine bars, especially as Fanny and [REDACTED] had set up a legal mechanism to facilitate this. EPCAP’s findings were confirmed upon appeal. Because of EPCAP’s unique role in dealing with claims to assets in the UK seized during the War, the CRT recognizes its findings, without reaching the issue whether they are entitled to preclusive effect, because those findings are supported by compelling direct and circumstantial evidence. *See also* Fed. R. Evid. 803(C). Indeed, for this reason, even without the supporting findings of EPCAP on the issue of the disposition of the 9 gold bars, the CRT would have reached the same conclusion as EPCAP regarding this issue.

This evidence, aside from compelling Swiss Depository records discussed earlier, includes documents establishing that [REDACTED] was in contact with the French Bank after the War regarding the gold and other assets in the account. Thus, in its letter dated 7 June 1948 to the Swiss Depository, the French Bank informed the Swiss Depository, based upon [REDACTED]’s formal request, that the 4 bars of gold held on deposit there were the property of [REDACTED], an American national who resided in New York, and requested that this gold be put at her disposition. It is therefore clear that [REDACTED] contacted the French Bank to secure the release of her assets. In furtherance of the release, [REDACTED] signed a declaration listing all the assets in the account, including the securities and the 13 gold bars, as described above. The Claimants acknowledge that at least “some” of the securities in the account were released to her, and the documents clearly show that the 4 gold bars were released to her. The CRT agrees with the EPCAP Panel’s finding that there is no reason why a similar route was not adopted for the 9 bars, especially as Fanny and [REDACTED] had set up a legal mechanism to facilitate this.

This conclusion is supported by the fact that in the voluminous correspondence regarding the recovery of other family assets from mid-1948 (when the four gold bars were released) through well into the 1950s, no further mention is made of any un-recovered assets in account 637. In fact, as noted above, Hans Frank, in his letter of 12 March 1952 to [REDACTED] regarding the *British Sugar Corporation* matter, wrote:

...since the petition was filed at the time for the purpose of testing the attitude of the Board of Trade with respect to the non-enemy status of some of the participants who had additional assets in the United Kingdom, and since apparently *these applicants have succeeded by other methods to gain control over such assets, there is additional reason why our services can now be dispensed with.* [Emphasis added.]⁴⁶

⁴⁶ Letter Hans Frank to [REDACTED], 12 March 1952, p. 2.

At the time of his March 1952 letter, Hans Frank was involved in claims [REDACTED] pursued in the United States for compensation for assets she owned in Czechoslovakia and Yugoslavia. Therefore, he would not have made such a statement if the assets held in London for account 637 – including the 9 gold bars – had not been returned to their rightful owners.

With respect to the other assets remaining in the account, which, as Mr. Klein acknowledged, had been renumbered C.2.637/052637 N, until the account's closure in 1980, Mr. Klein asserted in his May 2009 letter that “[t]he account was held in trust for [REDACTED], [REDACTED] [REDACTED] and Fanny, all of whom had died well before 1980. We also know from the bank statements provided by Swiss bank counsel that account 637 became account 52637. There were at least 350,000 Swiss francs in the account and the Swiss Bank simply removed these proceeds and closed the account without taking responsibility for any of their actions.” The documents, however, clearly show that [REDACTED] also had an interest in the account, and that the account was actively managed by the asset owner after the War.⁴⁷

First, with regard to the purported ownership of the account, according to the signed Trust Agreements and Fanny's associated will, after Fanny's passing in 1961 (or 1964), the account belonged in equal parts to her four children, and if any of the children predeceased her, to their issue. Thus, the documentation available to the CRT clearly shows that [REDACTED] was entitled to a one-quarter share in the assets in account 637, and that he was actively involved in the recovery of the family's assets after the War. Moreover, according to information obtained by the CRT from archival and other public sources, [REDACTED] had a child – [REDACTED], a famous scientist, who survived [REDACTED].⁴⁸ Thus, Fanny's four children and/or their heirs retained an interest in the account until its ultimate closure.

The CRT notes that the ultimate determination of who received the proceeds of account C.2.637/52637 N/052637 N at its closure in 1980 is irrelevant for the purposes of the CRT's decision.⁴⁹ In this case, the account records obtained by the Claimant from the French Bank

⁴⁷ The CRT notes that in his original Claim Form, the Claimant indicated that Fanny Hatvany had only two children, [REDACTED] and [REDACTED]. However, in his EPCAP claim, filed only four months after his CRT claim, the Claimant indicated that Fanny had four children – [REDACTED], [REDACTED] (formerly [REDACTED]), [REDACTED], and [REDACTED]. He also indicated that [REDACTED] did not have any children. In July 2006, Mr. Klein submitted documentation to the CRT that clearly refers to all four children. Yet approximately four months later, in the Complaint filed in the lawsuit on 14 November 2006, the Claimant averred that “[REDACTED] was the sole heir of [REDACTED] and [REDACTED], *who were, in turn, the only children and heirs of Fanny Hatvany.*” [Emphasis added.] The CRT also notes that [REDACTED] s son [REDACTED] was alive until 1954, and that his daughter, [REDACTED] is alive and filed a claim with the CRT for assets belonging to her grandfather, [REDACTED]. As noted above, Ms. [REDACTED] did not claim any assets belonging to Fanny or [REDACTED], though she would have surely been aware if any assets belonging to her grandmother had not been returned to her family. See *supra*, note 32.

⁴⁸ The CRT notes that both [REDACTED] and [REDACTED] were widely recognized in their fields of endeavor, so the “world-wide research” that was supposedly conducted on behalf of the Claimant could hardly have failed to reveal their existence.

⁴⁹ Nevertheless, the fact that [REDACTED] was the only sibling who remained in Europe in the post-War years tends to suggest that the remaining assets in account C.637/637, which by 1 May 1959 had been restyled as account C.2.637, had passed into the possession of [REDACTED]. This supposition is supported by the fact that after 1948 there is no further mention of the account in any of the documentation. It is also unlikely that [REDACTED], who lived until 1974, and [REDACTED], who was [REDACTED]'s heir and executrix, would have allowed a significant

during the 2006 Lawsuit clearly show that the account was actively managed during the post-War period. Thus, as evidenced in the portfolio statements detailed above, the portfolio was actively managed in the periods from 1939 to 1948 and from 1 May 1959 to the end of December 1980. The records show payments made from the account to [REDACTED] (from 3 April 1944 to 12 June 1944), as well as a post-War payment made from the account to Fanny (on 30 October 1946) and the purchase of shares for the benefit of [REDACTED] (on 17 January 1963). There was also at least one significant capital injection of over SF 150,000.00 in the period from 30 June to 30 September 1971. The value of the account would not have increased without active management on the part of the actual owner of the account.

The CRT also notes that the documentation provides a post-War record of continuous contact between the Hatvany family and their lawyers with the French Bank. Thus, at one point, the Hatvanys contemplated shipping the gold held in London to Switzerland to be sold there *via* the French Bank. The French Bank also provided the indemnity needed for the re-issuance of the lost *British Sugar Corporation* shares. It also cooperated in the release of the Hatvany assets in the United States, Canada and Great Britain by providing the non-enemy certification for Fanny, [REDACTED], and [REDACTED] under the certification agreements with the respective governments, as well as issuing the instructions for the assets to be put in the name their proper owners (*e.g.* [REDACTED] and [REDACTED] with respect to the gold held at the Swiss Depository, and [REDACTED] with respect to securities held at the Royal Bank of Canada), which enabled them to be transferred to accounts their clients held elsewhere. Finally, even if everyone for whom “the account was held in trust” had died by December 1980 (as asserted by Mr. Klein), given the Hatvany family’s record of vigorous and tenacious actions to regain control over their assets, it is not plausible that any family members with legal rights to the account did not leave any correspondence or legal documentation evidencing their interest in the account. Thus, neither [REDACTED]’s final will nor the probate documentation obtained by the CRT contains any indication of the assets in this account. Significantly, the CRT notes that the Claimant did not claim other assets held in the account, including the securities and cash held by the French Bank in New York at Brown Brothers and the securities held in London at *Midland Bank*. On the contrary, the evidence establishes that with regard to the securities and cash held by the French Bank in New York at Brown Brothers for account 637 on behalf of Fanny Hatvany, the documentation clearly shows that on 18 December 1946 Hans Frank filed an application for the release of all the assets held in the United States by the French Bank for account of Fanny Hatvany. This application was granted on 20 February 1947, and she was accordingly licensed to withdraw these assets from the French Bank’s account at Brown Brothers and transfer them to her own account at the Manufacturers Trust Co. in New York.

The CRT concludes that an award is not appropriate for either gold or the assets remaining in the account, which had been renumbered C.2.637/052637 N, until the account’s closure in 1980. This conclusion is consistent with CRT precedent that no award is appropriate because the Account Owner and/or his/her heirs managed the account after the War. *See, e.g., In re Account of Alexander Politzer* (noting that the bank in that case had sent account statements to the

amount of funds in their name to be managed and eventually appropriated by unauthorized parties. Assuming that [REDACTED] did own or control the account, it is reasonable that the account was closed when it was. [REDACTED] died in France in June 1980, and the account was closed approximately six months later, when his estate would have settled.

account owner in Argentina in 1947, that the account owner confirmed the accuracy of the statements, that the account owner visited the bank in Zurich on 21 November 1949, and that he informed the bank of the death of power of attorney holder and designated a new power of attorney holder on that date to conclude that the account owner maintained contact with the bank after the War and received the proceeds of the claimed account) (approved on 9 November 2006); *In re Accounts of Madame Fernand Corcos-Dreyfus*; *In re Account of Moritz Pakula*; *In re Accounts of Alice von Wassermann*; and *In re Accounts of Arthur Wohrizek* (all approved on 30 August 2010); *In re Accounts of Stanislaw (Steven) Feigenbaum (Fay) and Irene Feigenbaum*; *In re Accounts of Fritz Levy*; *In re Accounts of Max Knepel, Sonja Knepel and Gisela Feldmann* (upon request for reconsideration); *In re Accounts of Benno Sommerich and Irma Sommerich* (upon request for reconsideration); and *In re Accounts of Otto Walter* (finding that, with regard to two safes that were frozen pursuant to the 1945 Freeze of assets held in Switzerland by the citizens of Germany and the territories incorporated into the Third Reich (the “1945 Freeze”), and that were released from the 1945 Freeze in 1947, and noting that both the bank at issue and the Swiss Compensation Office were aware of the account owner’s residence in Jerusalem at the time that the safes were released from the 1945 Freeze, that the account owner accessed the safe deposit boxes after their release from the 1945 Freeze and received the contents himself) (all approved on 17 September 2010); *in re Accounts of Rudolf Bienenfeld, Accounts of Grete Bienenfeld, and Accounts of Riccarda Koritschoner* (noting with regard to a custody account and a U.S. dollar demand deposit account, both of which were frozen prior to 1948, and which were unfrozen and released to the bank at issue in 1948, that the bank’s records did not indicate if these accounts were later closed, and finding that given that the bank’s records indicated that the account owner was residing in London in 1948, and that he had provided the bank with his address in London, that the account owner received the proceeds of these accounts); *In re Accounts of Walter C. Wolff and Ellen Ruth Wolff* (noting with regard to a demand deposit account that the customer card showed the account owner’s residence in New York, where he moved in 1941, and that the account was closed on 31 December 1945, in finding that, given the account owner was in contact with the bank at issue after his move to New York and that the account was closed on 31 December 1945, months after the cessation of hostilities in the Second World War, that the account owner Wolff closed the account and received the proceeds himself) (both approved on 17 December 2010); *In re Accounts of Giovanni Brunner and Bozena Brunner* (noting with regard to a demand deposit account held by the account owners that the records clearly showed that the account was released from the 1941 Freeze in 1948 and closed on 1 September 1948, when the account owners resided in Italy, that the claimant stated that his relative contacted the bank at issue regarding an account in 1948, and that there was no indication in the files that the account owners questioned the amount released to them after this account was released from the 1941 Freeze, to conclude that the account owners had access to this account, closed it, and received the proceeds themselves); *In re Accounts of Philippe Franz Dan and Elisabeth Dan* (noting with regard to one account at issue that there was no evidence to suggest that the account owner was not able to access the proceeds of the account after they were transferred to the New York branch on 25 April 1949); and *In re Accounts of Emil Weil* (noting with regard to one account that the account owner was actively using the account in April 1945, when he used it to pay an invoice regarding the storage of his furniture in Switzerland, and that the claimant submitted a statement dated 14 January 1948, in which the bank at issue informed the account owner of the securities in the account on that date, a time at which the account owner was already residing in New York, to conclude that the

account owner was in contact with the bank concerning this account both at the conclusion of the Second World War, and after the Second World War, in 1948, and that he received the proceeds of this account) (all approved on 24 March 2011). The denial decisions *In re Knepel* and *In re Brunner* were subsequently appealed. Both appeals were summarily denied by the Court in decisions dated 10 November 2010.

In sum, with regard to all the assets in account C 637 (and successor account) (originally owned by Fanny, with [REDACTED] named as trustee of the assets in 1946 pursuant to the Trust Agreement described above) considered in this claim, the CRT notes generally that the Court has approved awards to accounts that were treated in one of two ways: (1) the account was closed or presumed closed during the Relevant Period, which is defined by the Rules Governing the Claims Resolution Process, as amended, as the period from 1933 to 1945, and was paid or was presumed to have been paid to the Nazis; or (2) the account remained open and dormant or suspended until after 1945, at which time it was either closed to fees, paid to various funds, or remains open and dormant or suspended. The account at issue in this case falls in to neither category. The documentation clearly shows that the assets remained in the account until after the War. Thus, the account was not closed to the Nazis. The account also did not remain open and dormant after the War. Rather, the documentation clearly shows that the Account Owner and her heirs were in active contact with the French Bank after the War to secure the assets' release. The Claimant concedes that *some* of the assets in the account were released to the Account Owner or her heirs, but asserts that *not all* of the assets in the account were released. Even if the Claimant's assertion were true (which is not the case, as detailed above), no award would be appropriate. The account at issue was clearly managed by the Account Owner or her heirs after the War. The French Bank recognized the Account Owner and/or her heirs as the rightful owner of the assets, and, by the Claimant's concession, returned some of the assets to the family. If not all the assets in the account were returned (which has not been shown to be the case), the Claimant's remedy lies with a direct action against the French Bank for misappropriation of the family's funds. Such action, however, has nothing to do with the Settlement reached in *In re Holocaust Victim Assets Litigation*.

Right of Appeal

Article 30 of the Rules generally provides claimants with the right to appeal decisions within ninety (90) days of the date of the letter accompanying the decision. Claimants are generally directed to address their appeal to the CRT, which then forwards it to a Special Master. In this case, however, the Court has directed that any appeal be submitted to the Court itself, rather than to the CRT, within thirty days of the date of the letter accompanying this decision. The reason for this direction is not only the Court's familiarity with this case, but also its desire to finish this process as expeditiously as possible. Any appeal must be based upon a plausible suggestion of error regarding the CRT's conclusions. Any appeal which is submitted without a plausible suggestion of error shall be summarily denied.

Certification of the Denial upon Request for Reconsideration

The CRT certifies this Denial upon Request for Reconsideration for approval by the Court.

Claims Resolution Tribunal