

Much of the information in this case is drawn from sources that rest in the public domain. Any such information is not redacted.

CLAIMS RESOLUTION TRIBUNAL

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

Certified Denial

to the Trust established for the benefit of [REDACTED 1],¹
also acting on behalf of [REDACTED 2], [REDACTED 3], [REDACTED 4], [REDACTED 5],
the Estate of [REDACTED 6], [REDACTED 7], [REDACTED 8], [REDACTED 9],
[REDACTED 10], and [REDACTED 11]

to Claimant [REDACTED 12],
also acting on behalf of [REDACTED 13], [REDACTED 14], [REDACTED 15], [REDACTED
16], [REDACTED 17], [REDACTED 18], [REDACTED 19], [REDACTED 20], [REDACTED
21], [REDACTED 22], [REDACTED 23], and the Estates of [REDACTED 24], [REDACTED
25], [REDACTED 26], and [REDACTED 27],

and to Claimant [REDACTED 28],
all represented by Stephen M. Harnik

**in re Accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer,
Wistag AG and Wistag Partnership**

Claim Numbers: 224600/MC; 222470/MC; 222473/MC; 222474/MC; 222475/MC; 501790/MC

¹ On 3 August 2001, Stephen M. Harnik filed claims to the published accounts of Paul and Hermine Wittgenstein in the name of [REDACTED 1] (Paul Wittgenstein's son). Mr. Harnik did not submit a power of attorney authorizing him to act on behalf of [REDACTED 1]. The CRT therefore contacted [REDACTED 1], who, in letters dated 5 February 2002 and 29 March 2002, stated that he had not authorized the filing of these claims and did not wish to pursue them because he considered them to be without merit. In a letter to the CRT dated 26 April 2002, Mr. Harnik explained that as Trustee of the Trust established under the will of Paul Wittgenstein for the benefit [REDACTED 1], he was obligated to pursue the claims on behalf of the Trust, and that he had filed the original claims "on the basis of a power of attorney signed by [REDACTED] dated October 22, 2001." Therefore, and as restated by Mr. Harnik in a letter dated 1 August 2006, the individual [REDACTED 1] is not a claimant in this case. The claims originally submitted in his name are treated as claims filed by Mr. Harnik as Trustee of the Trust. In his letter of 26 April 2002, Mr. Harnik also stated that, in his capacity as trustee of the Trust for [REDACTED 1], he had assigned the Trust's claims to [REDACTED 2] ([REDACTED 1's sister). With this letter, Mr. Harnik submitted a claim signed by [REDACTED 2], which the CRT is consolidating and treating with the claim filed by the Trust. The Trust submitted three additional claim forms, which were registered under the Claim Numbers 222471, 222472, and 300737. The CRT is treating all these claims under the consolidated Claim Number 222470. The CRT notes that Mr. Harnik is a partner of Harnik & Finkelstein LLP, the successor law firm of Wachtell, Manheim & Grouf, which officially dissolved in 1991. See <http://www.harnik.com/index.php?geschichte> (the German language version of the Harnik & Finkelstein LLP official website) (last viewed on 17 September 2011). Samuel Wachtell and Harold Manheim, partners of Wachtell, Manheim & Grouf, represented Paul Wittgenstein during the events described in this decision.

This Certified Denial is based upon claims submitted by the Trustee of a Trust established under the will of Paul Wittgenstein for the benefit of his son, [REDACTED 1] (the “Trust”) to the accounts of Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, née Wittgenstein, and *Wistag A.G.* and/or *Wistag A.G. & Cie K.G.*; the claim of [REDACTED 12] (“Claimant [REDACTED 12]”) to the accounts of Helene Salzer and *Wistag A.G. & Cie.*; and the claims of [REDACTED 28] (“Claimant [REDACTED 28]”) (together the “Claimants”) to the accounts of the Wittgenstein family.

Specifically, based upon an agreement reached between Paul Wittgenstein and the *Reichsbank* detailed in this decision, the Claimants assert that Hermine and Helene Wittgenstein lost their complete shares in the *Wistag A.G. & Cie. Kommanditgesellschaft* (“*Wistag Partnership*”), and that Paul Wittgenstein lost all but SF 1.8 million of his *Partnership* share. Based upon an entry in *Wistag AG*’s balance sheet of 13 July 1940, they also claim that Paul lost another SF 90,386.00 that was referenced in that document. They also claim that the Wittgenstein siblings lost the assets in their personal accounts held at a Swiss bank. In a letter dated 12 February 2008, Stephen M. Harnik, who is the representative of the Claimants and the Trustee of the Trust, asserted that:

- Paul Wittgenstein received only CHF 1.8 million of his share in the *Wistag AG & Cie* [the *Wistag Partnership*] which had a nominal value of CHF 2,536,731.20 [European punctuation for amounts replaced by US punctuation throughout cite] and a market value of CHF 3.4 mio., at his free disposal; thus he lost CHF 1.6 million to the German *Reichsbank* (see his schedule of property and the certificate of the *WISTAG & Cie Kommanditgesellschaft* dated 22 March 1939). Moreover, he lost another CHF 90,386.- to the German *Reichsbank*, which is expressly mentioned in the *Wistag AG*’s interim balance sheet of 13 July 1940.
- Hermine Wittgenstein lost the assets in her account with [Bank I] in Zurich and her complete share of *Wistag AG & Cie*, which had a nominal value of CHF 2,008,086.40 and a market value of CHF 2,691,453.20, to the German *Reichsbank*. (We have used the respective ratio for Paul Wittgenstein.)
- Helene Salzer lost the assets in her account with [Bank I] in Zurich and her complete share of *Wistag AG & Cie*, which had a nominal value of CHF 1,689,434.32 and a market value of CHF 2,264,361.40, to the German *Reichsbank*. (We have used the respective ratio for Paul Wittgenstein.)²

This Denial is to the published accounts of Paul Wittgenstein (“Account Owner Paul Wittgenstein”) and Hermine Wittgenstein (“Account Owner Hermine Wittgenstein”) at the Zurich branch of the [REDACTED] (“Bank I”); the unpublished accounts of Helene Salzer (“Account Owner Salzer”), the *Wistag Aktiengesellschaft* (“*Wistag AG*”), and *Wistag A.G. & Cie. Kommanditgesellschaft* (“*Wistag Partnership*”) (together the “Account Owners”) at Bank I; the unpublished account of *Wistag AG* at the [REDACTED] (“Bank II”) and at the [REDACTED] (“Bank III”); and the unpublished accounts of the *Wistag Partnership* at Bank I, Bank III, and at [REDACTED] (“Bank IV”) (together the “Banks.”).

² Letter from Stephen M. Harnik to the CRT, 12 February 2008, pp. 1-2.

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

Information Provided by the Claimants

Mr. Harnik submitted claim forms on behalf of the Claimants, who are all related, and the Trust. In these claims, Mr. Harnik identified the Account Owners as three siblings of the Wittgenstein family and two foundations – the *Wistag AG* and the *Wistag Partnership* – established to protect the Wittgenstein family assets. According to the information provided by Mr. Harnik, Paul, Hermine, Helene, Margaret (Gretl), and Ludwig Wittgenstein were children of Karl Otto Klemens Wittgenstein and Leopoldine Wittgenstein, née Kallmus. Paul Wittgenstein was born on 5 November 1887 in Vienna, Austria and resided at Argentinierstrasse 16 in Vienna until late August or early September 1938, when he fled first to Zurich, Switzerland, and ultimately to New York, New York.³ Paul was married to [REDACTED 6], née [REDACTED], and together the couple had three children, [REDACTED 1] (“[REDACTED 1],” the beneficiary of the Trust); Elizabeth Wittgenstein, who died in 1974; and [REDACTED 2], née [REDACTED]. Paul Wittgenstein (Senior) died on 3 March 1961 in New York.

Hermine (Minning or Mining) Maria Franciska Wittgenstein was born on 1 December 1874 in Eichwald by Teplitz in Bohemia (today Teplice, the Czech Republic). According to the information provided by Mr. Harnik, Hermine Wittgenstein never married and resided at Argentinierstrasse 16 in Vienna from 1913 until her death on 11 February 1950.⁴

Helene (Lenka) Gabriele Sophie (Sophia) Salzer, née Wittgenstein, was born on 23 August 1879 in Vienna-Dornbach and was married to Dr. Max Michael Salzer. Helene Salzer died on 7 April 1956 in Vienna. According to information provided by the Claimants, Helene and Max Salzer had three children: Clara, Felix, and Maria. According to this information, Clara Salzer married Arvid Sjörgren, and they together had five children: [REDACTED 27], [REDACTED 22], Anna Moore, née Sjörgren, Katerina Einsenberger, née Sjörgren, and Gabriela Holmberg, née Sjörgren. Maria Salzer married Fritz Stockert, and together they had seven children: Paul Stockert, Ludwig Stockert, [REDACTED 25], [REDACTED 14], née [REDACTED], [REDACTED 26], née [REDACTED], Franz Stockert, and [REDACTED 24].

³ Mr. Harnik stated that Paul Wittgenstein resided from 28 November through April 1939 in Zurich. However, a decision of the Arbitration Panel for Restitution in Kind (*Schiedsinstanz für Naturalrestitution, 206/2006*) dated 12 July 2006 (hereinafter the “Arbitration Panel Decision”), which was submitted to the CRT by the Claimants, states that Paul Wittgenstein emigrated to Switzerland in August 1938 (p. 10, par. 57). The Arbitration Panel Decision dealt with Mr. Harnik’s and [REDACTED 2]’s claim under the provisions of the Austrian General Settlement Fund for Victims of National Socialism to Paul Wittgenstein’s one-third share of the a property located in Neuwaldegg, Austria, that had been jointly owned by the siblings. Other documentation available to or obtained by the CRT, including a passenger list, shows that Paul Wittgenstein resided in Zurich from late August or at least early September to late November 1938, and arrived in New York on the *S.S. Washington* on 9 December 1938.

⁴ During the last years of the War, in order to escape bomb threats in Vienna and the threat of the Russian advance, Hermine Wittgenstein lived part of the time on her sister Gretl’s estate in Gmunden, Austria. The Argentinierstrasse property suffered severe bomb damage in the last days of the War and was repaired by Hermine after the War.

Margaret (Gretl) Wittgenstein married Jerome Stonborough (a US citizen), and together they had two children, John and Thomas Stonborough. Ludwig Wittgenstein never married, became a British subject on 12 April 1939, and died on 29 April 1951 in Cambridge, England.⁵

In support of the claims, the Claimants submitted a number of documents referring to the negotiations held in the spring and summer of 1939 between the Wittgenstein family and the *Reichsbank*, as well as documents regarding *Wistag AG* and *Wistag Partnership* that were obtained from the Commercial Register of Zug, Switzerland. In addition, the Claimants and/or Mr. Harnik submitted:

- (1) selected pages from the asset declarations filed by Paul and Hermine Wittgenstein and Helene Salzer pursuant to a 1938 Census of Jewish-owned assets (the “1938 Census”);⁶
- (2) a document certified by the Surrogate’s Court of Nassau County, New York, indicating that the last will of Paul Wittgenstein had been admitted to probate, and indicating that certain trusts had been created under the will; pursuant to an order of the Surrogate Court dated 31 October 1991, successor letters of trusteeship were granted to Stephen M. Harnik as successor trustee of the Trust, the only still remaining trust created under that will;
- (3) a document certified on 23 October 2001 by the Surrogate’s Court of Kings County, Brooklyn, New York, indicating that letters testamentary on the estate of [REDACTED 6] were granted on 3 October 2001 to Morris A. Baldinger, the executor named in her last will;
- (4) the last will of Paul Wittgenstein, dated 24 March 1960;
- (5) the death certificate of [REDACTED 6], indicating that her maiden name was [REDACTED], that she was born on 26 December 1915 in Vienna, and that she passed away on 31 March 2001 in Pennsylvania;
- (6) the last will of [REDACTED 6], dated 18 December 1995, and its first codicil, dated 21 August 1996;
- (7) the birth certificate of [REDACTED 2], indicating that [REDACTED 2] was born on 10 March 1937 in Vienna, and that her parents were [REDACTED 6], née [REDACTED], and Paul Wittgenstein, a pianist, who was born on 5 November 1887 in Vienna and who was the son of Karl Otto Wittgenstein and Leopoldine Maria, née Kallmus;
- (8) an Austrian inheritance document, indicating that the estate of Hermine Wittgenstein, who died on 11 February 1950, was distributed in equal shares to her adopted sons Dr. Thomas Wittgenstein-Stonborough, John Jerome Wittgenstein-Stonborough and Dr. Felix Salzer-Wittgenstein, and to Therese Stockert; and
- (9) an Austrian inheritance document, indicating that the estate of Helene Salzer, who died on 7 April 1956, was distributed to her heir Dr. Felix Salzer-Wittgenstein;

⁵ David Edmonds and John Eidinow, *Wittgenstein’s Poker*, New York: Harper Collins, 2001 (hereinafter “Edmonds and Eidinow”), pp. 136, 304.

⁶ By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the *Reich*, and/or who were nationals of the *Reich*, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (the “1938 Census”). The CRT has obtained copies of the full 1938 Census files from the Austrian National Archive. The content of these files is described below.

- (10) a copy of the book *Margaret Stonborough-Wittgenstein: Bauherrin, Intellektuelle, Mäzenin*, by Ursula Prokop;⁷
- (11) selected pages from Hermine Wittgenstein's unpublished family memoirs (*Familienerinnerungen*);⁸
- (12) a copy of Claimant [REDACTED 28]'s American passport, indicating that he was born on 4 November 1932 in Vienna; and
- (13) copies of letters from Claimant [REDACTED 28] to a number of Swiss banks, including Bank I and Bank III, and to the Swiss Federal Banking Commission, the Swiss Banking Ombudsman, and the Independent Commission of Experts Switzerland - Second World War in 1999, inquiring about assets held in Swiss banks by the family company *Wistag AG*.

Upon the CRT's request, Mr. Harnik also submitted a copy of Decision 206/2006 of the Arbitration Panel for Restitution in Kind (*Schiedsinstanz für Naturalrestitution*) dated 12 July 2006 (hereinafter the "Arbitration Panel Decision"), which dealt with a claim submitted by Mr. Harnik and [REDACTED 2] under the provisions of the Austrian General Settlement Fund for Victims of National Socialism to Paul Wittgenstein's one-third share of property in Neuwaldegg, Austria, that had been jointly owned by the siblings.

Mr. Harnik, in his capacity of Trustee of the Trust, is representing [REDACTED 2] (the daughter of Paul Wittgenstein, Sr.), who was born on 10 March 1937, and her five children: [REDACTED 7], [REDACTED 10], [REDACTED 11], [REDACTED 8], and [REDACTED 9], née [REDACTED], who were born on 19 October 1959, 13 February 1962, 26 March 1964, 6 November 1967, and 25 July 1970, respectively. Mr. Harnik is also representing [REDACTED 3], [REDACTED 4], and [REDACTED 5] (the children of Gretl's son John Stonborough), who were born in 1943, 1944, and 1948, respectively, and the Estate of [REDACTED 6], née [REDACTED]. [REDACTED 6], who was Paul Wittgenstein, Sr.'s wife, was born on 26 December 1915 and passed away on 31 March 2001.

Claimant [REDACTED 28] (the son of Gretl's son Thomas Stonborough) was born on 4 November 1932; and Claimant [REDACTED 12] (the son of Maria Stockert's son Ludwig) was born on 19 November 1959. Claimant [REDACTED 12] is representing [REDACTED 13] (the daughter of Clara Sjörgren's daughter Anna Moore), who was born on 2 November 1957; [REDACTED 14] (the daughter of Maria Stockert), who was born on 9 May 1924; [REDACTED 15] (the daughter of Clara Sjörgren's daughter Gabriela), who was born on 25 September 1980; [REDACTED 16], [REDACTED 17], and [REDACTED 21], née [REDACTED] (the children of Maria Stockert's son Paul), who were born on 10 February 1962, 29 May 1960, and 4 May 1964, respectively; [REDACTED 18] (the widow of Maria Stockert's son Ludwig), who was born on 1 April 1924; [REDACTED 19], [REDACTED 20], and [REDACTED 23] (the children of Clara Sjörgren's daughter Katerina), who were born on 8

⁷ Ursula Prokop, *Margaret Stonborough-Wittgenstein: Bauherrin, Intellektuelle, Mäzenin* (Margaret Stonborough-Wittgenstein: Client, Intellectual, and Patroness), second corrected and expanded edition, Vienna: Böhlau Verlag, 2005 (hereinafter "Prokop").

⁸ Hermine Wittgenstein, *Familienerinnerungen* (Family Memories), 1944, Special Collections Division of the New York Public Library for the Performing Arts at Lincoln Center, Felix Salzer's Papers, box 48 (hereinafter "*Familienerinnerungen*").

November 1968, 30 October 1970, and 9 November 1982, respectively; and [REDACTED 22] (the son of Clara Sjorgen), who was born on 18 March 1937. Claimant [REDACTED 12] is also representing the Estates of [REDACTED 24], [REDACTED 25], [REDACTED 26], and [REDACTED 27]. [REDACTED 24] (the daughter of Maria Stockert) was born on 29 September 1930 and passed away on 21 September 2002; [REDACTED 25] (the daughter of Maria Stockert) was born on 28 December 1927 and passed away on 15 May 2002; [REDACTED 26], née [REDACTED], (the daughter of Maria Stockert) was born on 10 June 1938 and passed away on 12 December 2002; and [REDACTED 27] (the daughter of Clara Sjörgren) was born on 22 February 1950 and passed away on 23 September 2007.

A timeline of events and a register of persons are attached to this decision as Appendices A and B, respectively.

Information Obtained by the CRT

Family Background

In addition to the materials submitted by Mr. Harnik and the Claimants, the CRT has reviewed much of the vast literature regarding the Wittgenstein family. To date, the focus of much of this literature has been the life and work of the philosopher Ludwig Wittgenstein, and, to a lesser extent, that of his brother, the concert pianist Paul Wittgenstein. In telling these stories, the literature often refers to efforts of the various family members to protect themselves from the Nazi regime. None of the literature, however, has focused exclusively on the exact fate of the family's assets. Thus, references to the fate of the family's assets differ from publication to publication. Imprecise and unfounded conclusions contained in early writings about the family tend to be perpetuated by reference in later, more standard works about the family in general. Moreover, in relying heavily on the memoirs of Hermine Wittgenstein, much of the early literature takes these memoirs as objective truth.⁹ The following section relies on published sources and is augmented and complemented by information obtained through the CRT's research into still existing archival documents and by documentation made available by the Trust and Claimant [REDACTED 28], as described above.¹⁰

⁹ For background information about the period from 1938 to 1939, much of the published literature draws (sometimes virtually verbatim) on Hermine Wittgenstein's unpublished *Familienerinnerungen* (Family Memories), which were written between October 1944 and February 1949 (last notation). In quoting these memoirs, some authors warn that, not unusually, such a retrospective account of an emotionally highly charged period must be tested against the facts.

¹⁰ The main published sources relied upon in this decision include: Michael Nedo and Michele Ranchetti, *Wittgenstein, sein Leben in Bildern und Texten* (Wittgenstein, his life in pictures and texts), Frankfurt am Main: Suhrkamp, 1983 (hereinafter "Nedo and Ranchetti"); Ray Monk, *Ludwig Wittgenstein, the Duty of Genius*, London: Vintage Books, Random House, 1991 (hereinafter "Monk"); Brian McGuinness and G. H. von Wright (eds.), *Ludwig Wittgenstein: Cambridge Letters*, Oxford: Blackwell Publishers, 1997; Allan Janik and Hans Veigl, *Wittgenstein in Wien: ein biographischer Streifzug durch die Stadt und ihre Geschichte* (Wittgenstein in Vienna: a biographical survey through the city and its history), Vienna: Springer Verlag, 1998; Edmonds and Eidinow; Brian McGuinness, *Approaches to Wittgenstein, Collected Papers*, London and New York: Routledge, 2002; Nicole L. Immler, "Family Memoirs – About strategies of creating identity in Vienna of the 1940s, by example of the family of Ludwig Wittgenstein," Conference paper for The Contours of Legitimacy in Central Europe, European Studies Centre, St. Anthony's College, Oxford, 24 - 26 May 2002; Howard Reich, "Rediscovered score pianist's last

Of the nine children born to Karl Wittgenstein and Leopoldine Kallmus, only five survived into the period from 1933 to 1945. Daughter Dora died at birth in 1876; son Hans disappeared – a suspected suicide – in 1902; and sons Rudolf and Kurt committed suicide in 1904 and 1918, respectively.¹¹ The five surviving siblings were the brothers Paul and Ludwig, and the sisters, Hermine, Helene, and Margaret (Gretl).

The children of Karl and Leopoldine Wittgenstein were the fourth generation to bear the name “Wittgenstein.” Their great-grandfather, Moses Maier, was a land agent for the Seyn-Wittgenstein family and took his employer’s last name following the Napoleonic decree of 1808 requiring Jews to adopt a surname.¹² Moses Maier had eleven children, including his third son Hermann (Herrmann) (Karl Wittgenstein’s father). According to Ray Monk, who authored a book about the philosopher Ludwig Wittgenstein, when Hermann left his birthplace Korbach for Leipzig, he “cut himself off entirely from the Jewish community.”¹³ Nevertheless, on 27 November 1839, he married Fanny Figdor, who was a member of an eminent and wealthy Viennese Jewish family, and their marriage was recorded in the wedding book of the Jewish Community (*israelitische Kultusgemeinde*) of Vienna.¹⁴ Following the wedding, Hermann and Fanny moved to Gohlis, Germany, near Leipzig, where he was a successful wool trader. According to documentation later assembled by the District Office for Genealogical Research of the Nazi Party in Vienna (the “*Sippenamt*”), shortly thereafter, on 19 December 1839, Hermann and Fanny Wittgenstein, who were both identified as “brought up in the Jewish faith” (*im jüdischen Glauben erzogen*) were baptized in the Lutheran Kreuzkirche (Cross Church) in Dresden, Germany, and adopted the middle names Christian and Christiane, respectively.¹⁵ Following his baptism, Hermann Wittgenstein was recognized as a citizen (*Bürger*) of Leipzig on 14 January 1840. In 1851, the Wittgensteins moved to Vienna, where Hermann, like his father before him, worked as a land agent and invested the profits he made managing property in Vienna.

In Vienna, Hermann and Fanny Wittgenstein and their eleven children lived a comfortable middle-class life. Thanks to Fanny’s connections, the family played an active role in Vienna’s cultural life. Yet Hermann Wittgenstein remained aloof from the Jewish community and

legacy,” *Chicago Tribune*, August 11, 2002; Prokop; Mathias Iven (ed.), “*Ludwig sagt...*” *die Aufzeichnungen der Hermine Wittgenstein* (“Ludwig says...” the writings of Hermine Wittgenstein), Berlin: Parerga Verlag, 2006; Alexander Waugh, *The House of Wittgenstein*, London: Bloomsbury Publishing, 2008 (hereinafter “Waugh”); and Evan Burr Bukey, *Jews and Inter-marriage in Nazi Austria*. Cambridge: Cambridge University Press, 2011. This section also relies upon Hermine Wittgenstein’s *Familienerinnerungen* and selected documents submitted by Claimant [REDACTED 28].

¹¹ Waugh, pp. 22 – 30.

¹² Monk, p. 4; Waugh, p. 225.

¹³ *Id.*

¹⁴ *Gauamt für Sippenforschung der NSDAP* (District Office for Genealogical Research of the National Socialist German Workers Party, hereinafter “*Sippenamt*”), “1938-1943 Wittgenstein,” obtained from the Vienna City and State Archive (*Wiener Stadt und Landesarchiv*, hereinafter “Vienna City and State Archive”). The CRT notes that the *Gauamt* was a local Nazi party entity. Decisions on “racial” status such as were taken in the Wittgenstein case were made centrally in Berlin by the *Reichsstelle für Sippenforschung* (Reich’s Genealogical Research Office) (hereinafter “*Sippenstelle*”).

¹⁵ *Id.*

reportedly “acquired something of a reputation of an anti-Semite.”¹⁶ He baptized all his children as Protestants and forbade them from marrying Jews. Of his nine children who did marry, eight duly married non-Jews. Only Karl defied his father when, in 1874, he married Leopoldine Kallmus, who was half-Jewish and who had been raised Catholic.¹⁷

Karl had always been at odds with his autocratic father. In 1865, at the age of seventeen, he ran away to America.¹⁸ Upon his return in 1866, he briefly complied with his father’s wishes by spending a year on one of his father’s rented farms before turning to engineering.¹⁹ He swiftly rose to become Austria’s iron and steel king and in the process amassed an immense fortune. In 1898, at the age of fifty-one, he withdrew from his business activities and dedicated his life to his private pleasures, including the commissioning and collection of art.²⁰ Karl’s wife Leopoldine was a gifted musician. Their home, known as the Palais, became a center of Viennese cultural life. Karl was a strict father and expected his sons to seek success in business as he had. However, after the apparent suicide of his eldest son, he allowed the two youngest ones more freedom. Thus, Paul abandoned banking to become a concert pianist, and Ludwig, after a brief detour into aeronautics, became a philosopher.

When Karl died in 1913, he left his immense wealth to be equally divided among his wife and his six surviving children: Kurt, Paul, Ludwig, Hermine, Helene, and Gretl.²¹ As noted above, Kurt committed suicide during battle in the last months of the First World War in 1918.²² Paul, who made his debut on the concert stage in 1913, lost his right arm early in the First World War, and taught himself to play one-handed. To ensure having pieces to play, he commissioned music for the left hand from a number of eminent composers.²³ Ludwig returned from military duty in the First World War in August 1919, took up primary school teaching and decided to rid himself of his inherited wealth. To the astonishment of his family, he insisted on turning his fortune over to Hermine, Helene, and Paul and was adamant that this transfer be irreversible. He did not share his inheritance with his sister Gretl because her wealth had been invested in US securities and was therefore greater than that of her siblings, whose wealth had been eroded by Paul’s decision to invest their assets in Austrian war bonds, which diminished in value after the First World War.²⁴ Nevertheless, all five surviving siblings were immensely rich.

¹⁶ Monk, p. 5.

¹⁷ See Waugh, pp. 16 – 17.

¹⁸ *Id.*, p. 12.

¹⁹ *Id.*, pp. 14 – 16.

²⁰ *Id.*, p. 19.

²¹ *Id.*, p. 63.

²² *Id.*, pp. 126 – 128.

²³ These composers included Franz Schmidt, Richard Strauss, Sergei Prokofiev, Benjamin Britten, Erich Korngold, Paul Hindemith and notably Maurice Ravel. See Waugh, pp. 160 – 167, 180 – 184, 276 – 277.

²⁴ See Monk, p. 171; Waugh, pp. 140 - 141; and Prokop, p. 124. Prokop and Waugh note that strained relations between Ludwig and Margaret may have contributed to his decision to exclude her.

Karl's brother Ludwig (the uncle of Paul, Ludwig, Gretl, Hermine, and Helene) took an active role in protecting the family's wealth.²⁵ In 1919, fearing the consequences of the political upheavals following the First World War, he invested almost all of the family's capital in a limited partnership in one of the big private banks in the Netherlands, with himself as the trustee. The individual participants could only access their share of the interest income, but not any of the capital. Following the elder Ludwig's death in 1925, Helene's husband Dr. Max Salzer took his place as trustee.²⁶

In 1932, the Dutch bank in which the partnership was created abruptly terminated its relationship with the Wittgenstein family. In response, the family set up two legal entities in Zug, Switzerland, to hold the assets that it previously held. The first was the corporation *Wistag Aktiengesellschaft* ("*Wistag AG*"), which was constituted on 18 January 1932 and capitalized at SF 1 million, with 1,000 shares at SF 1,000.00 each. Of the 1,000 shares, Margaret (Gretl) Stonborough and her son Thomas, both US citizens, held 499 shares each.²⁷ The remaining two shares were held by Dr. Konrad Bloch, the Wittgensteins' Swiss lawyer.²⁸ The CRT notes that, according to a letter dated 24 December 1946 written by a lawyer for Paul Wittgenstein, in 1939 Paul owned 100% of the *Wistag AG*, although it is not clear how the ownership changed hands during this period.²⁹

The second legal entity was the *Wistag Partnership*, which was constituted on 26 January 1932 and capitalized at SF 8 million.³⁰ Its partner with unlimited liability was the *Wistag AG*, and Max Salzer was named as trustee. The partnership contract stipulated that the capital

²⁵ See Waugh, p. 157.

²⁶ Waugh, p. 168; *Familienerinnerungen*, pp. 157-158.

²⁷ The family, in the face of the ongoing banking crisis and the increasingly tight foreign currency regulations in much of Europe, apparently thought it prudent at that time to have the ownership of the *Wistag AG* in American hands.

²⁸ Notarized protocol of the meeting of the General Assembly to incorporate *Wistag AG*, 18 January 1932.

²⁹ Letter from Harold Manheim to A. L. Bienstock, 24 December 1946.

³⁰ See Excerpts from the Commercial Register of Zug, Switzerland, pertaining to *Wistag Aktiengesellschaft & Cie.* ("*Wistag AG*") and *Wistag, Kommanditgesellschaft* ("*Wistag Partnership*"). The CRT notes that in his book, *The House of Wittgenstein*, Waugh writes (without citing a source) that the two legal entities were established in 1937; that John Stonborough controlled the SF 1 million partner capital of *Wistag AG* from its initiation, and that the *Partnership's* assets in 1939 were valued at SF 9.6 million. See Waugh, p. 228. The figure of SF 9.6 million appears in a memorandum to file dated 25 May 1939 written to reflect the unbinding views of Dr. Schoene (who represented the *Reichsbank*) that, in his opinion, the Wittgensteins should consider and that may be acceptable to the *Reich* officials ("*Unverbindlich dargelegte Ansichten des Herrn Dr. Schoene, welche nach seiner Meinung von den Klienten in Erwägung gezogen werden sollten und die der deutschen Reichsbehoerden annehmbar erscheinen dureften [sic]*"). The memorandum was suggested by A. L. Bienstock, so that he, Dr. Indra, Dr. Schoene, and Samuel Wachtell would have a written exchange of ideas. ("*Dieses Memorandum wurde von Mr. Bienstock vorgeschlagen, damit die Herren Dr. Indra, Dr. Schoene, Wachtell und Bienstock den Austausch ihrer Ansichten schriftlich festgelegt haben.*") In this memorandum, the amount of SF 9.6 million is also incorrectly noted as being "in Switzerland." ("*Die beilaeufige Summe von 9,600.000.—Schweizer Franken, jetzt in der Schweiz auf dem Namen der Wistag erliegend, ist wie folgt zu verteilen:....*") The memorandum does not cite any authority for its valuation of the *Partnership* at SF 9.6 million or for its claim that all the *Partnership's* assets were held in Switzerland.

contributions were irrevocably lodged in the *Partnership* until 1947.³¹ According to the documentation, as of 1938, Paul held 31.7 percent, Hermine 25.1 percent, and Helene 21.1 percent of the *Partnership*.³² The CRT notes that the documents do not specify how the remaining 22.1 percent of the *Partnership* was divided.³³

According to the *Wistag Partnership's* 6 June 1939 Statement of Accounts, the value of the *Partnership*, excluding the SF 1 million capital contribution of the *Wistag AG*, amounted to SF 7,845,160.37.³⁴ As shown below in Table 1, of this amount, approximately SF 4.85 million or 49.10 percent was held in Swiss bank; SF 3.32 million or 42.36 percent in a non-Swiss bank in the United States; and SF 0.67 million or 8.53 percent in a non-Swiss bank in the Netherlands.

Table 1. *Wistag Partnership* Statement of Accounts as of 6 June 1939 (in SF)

Location	Bank Deposits	Securities	Gold	Total	% of assets excluding <i>Wistag AG</i>
Switzerland					
Bank I	19,126.42	1,254,194.00	685,646.00	1,958,966.42	
Bank III	26,046.80	2,280,690.00	370,826.00	2,677,562.80	
Bank IV	16,838.75	198,980.00		215,818.75	
Sub-Total Switzerland	62,011.97	3,733,864.00	1,056,472.00*	4,852,347.97	49.10%
Netherlands					
Hope & Co	125,693.40	543,791.00		669,484.40	8.53%
United States					
Central Hanover Bank		3,323,328.00		3,323,328.00	42.36%
Total	187,705.37	7,600,983.00	1,056,472.00	8,845,160.37	
Less <i>Wistag AG</i> capital of SF 1 million				7,845,160.37	

* Equal to 217.7 kilogram

³¹ See Waugh, pp. 228, 254.

³² The percentage ownership is based upon the siblings' own declarations of assets filed pursuant to a Nazi decree in 1938, as detailed below. Paul's percentage share is confirmed in a letter from his lawyer, Harold Manheim, to A. L. Bienstock dated 24 December 1946: "Paul Wittgenstein was the owner of a 31.7% interest in *Wistag A.G. & Co.* [the *Partnership*]. He was also the owner of *Wistag A.G.*"

³³ None of the documentation available to the CRT, except for the German translation of the agreement reached between the Wittgenstein siblings and the *Reichsbank*, indicates who owned the remaining nominal SF 1,765,748.08 or 22.1 percent share of the SF 8 million capitalization of the *Wistag Partnership*. In that document, entitled "*Memorandum als Grundlage für eine Vereinbarung zwischen der Reichsbank und Paul Wittgenstein*" ("*Memorandum to serve as basis for an agreement between the Reichsbank and Paul Wittgenstein*") (hereinafter the "*Agreement*") and dated 21 August 1939, the shareholders of the *Partnership* are listed in the first paragraph. These include, in addition to the siblings, Lydia Oser-Wittgenstein, Franziska Siebert, Johanna Salzer and Hedwig Pauli. There is no indication that the latter were in any way involved or consulted in the negotiations with the *Reichsbank* detailed below. The CRT notes that these persons are not identified in the English version of the Agreement. Transcripts of the texts of the German and English versions of the Agreement, as well as the accompanying side agreements described below, are attached to this decision as Appendix C.

³⁴ *Wistag Partnership*, Statement of Accounts as of 6 June 1939.

These assets, together with the Swiss bank accounts personally held by Paul, Hermine, and Helene, are the subject of this case.

The *Anschluss* and the Fate of the Wittgensteins

1. Nuremberg Laws Classification

The Nazi racial laws, first promulgated at the Nuremberg rallies in September 1935 and thus known as the “Nuremberg laws,” generally divided persons of mixed Jewish and non-Jewish heritage (*Mischlinge*) into two main categories. Persons with two grandparents deemed to have been Jewish by the Nazis were labeled *Mischlinge* of the first degree (*Mischlinge ersten Grades*). Persons with one Jewish grandparent were *Mischlinge* of the second degree (*Mischlinge zweiten Grades*).³⁵ The first anti-Semitic decrees were enacted in Vienna on 12 March 1938 (the day of the incorporation of Austria into the *Reich*, or the “*Anschluss*”), and by 28 May 1938 the Nuremberg laws were passed into law, retroactive from 13 March 1938.³⁶

Although the Wittgensteins were well aware of their Jewish origins, they believed that their standing in the Austrian upper class, together with their and their parents’ Christian upbringing, set them apart from other Jews. Like much of Vienna’s Jewish population, the Wittgensteins were confident that the Nuremberg laws could never be implemented in Vienna, although Hitler’s intentions *vis-à-vis* Austria became ever clearer.³⁷ The Wittgensteins had a rude awakening shortly after the *Anschluss*, when they found that the Nuremberg laws would be fully applied to them, because three of their four grandparents were Jewish. In his book, *The House of Wittgenstein*, Alexander Waugh explains:

The case of the Wittgensteins looked, *prima facie*, pretty clear-cut. They were all brought up as Catholic Christians. Both their parents (Karl and Leopoldine) had also been brought up as Christians. Their maternal grandmother Marie Kalmus [*sic*] (née Stallner; 1825 – 1911) had no Jewish blood and was brought up Catholic, but her husband, their maternal grandfather, Jacob Kalmus [*sic*] (1814-70), was by blood and

³⁵ James F. Tent, *In the Shadow of the Holocaust. Nazi Persecution of Jewish-Christian Germans*. Lawrence, Kansas: University Press of Kansas, 2003 (hereinafter “Tent”), p. 3. Tent notes that the Nuremberg decrees also set forth restrictions regarding social interactions between Jews and non-Jews. Thus, the decrees “singled out full Jews as social pariahs who were not permitted to marry or have intimate relations with citizens who were *deutschblütig* (*i.e.*, of German blood). Offenders were deemed to have committed *Rassenschande* (racial defilement) and were subject to heavy jail terms which, in the later years of Hitler’s Reich, were tantamount to sentences of death.” Tent, p. 101.

³⁶ Waugh, p. 215.

³⁷ Paul’s brother, the philosopher Ludwig Wittgenstein, must have been well aware of the difficulties that the incorporation of Austria into the Reich would bring for him no later than 14 March 1938, when his friend Piero Sraffa sent him a long letter warning him of the consequences, including the fact that he would not be able to return to Vienna. Sraffa wrote: “If as you say it is of ‘vital importance’ for you to be able to leave Austria and return to England, there is no doubt – you must not go to Vienna. Whether you are a lecturer at Cambridge or not, now you would not be let out: the frontier of Austria is closed to the exit of Austrians.” [Emphasis in the original.] Nedo and Ranchetti, p. 296.

by upbringing Jewish. In 1832 both he and his mother converted to Catholicism. On the paternal side their grandmother Franziska Figdor (1814-90) was also Jewish – though she too was baptized as a Christian in adulthood, while her husband Hermann Christian Wittgenstein (1802-78) was, according to the wording on his baptismal certificate of 1839, ‘educated in the Jewish faith’. Three out of their four grandparents were therefore Jewish, which made them *Volljuden* (full Jews) under the Nuremberg legislation.³⁸

Faced with this threat, the Wittgenstein siblings first sought to obtain privileged status on the basis of the family’s standing in and its contributions to Austrian society and on the fact that neither they nor their parents had been brought up in the Jewish faith.³⁹ Thus, Paul and Gretl traveled to Berlin in June 1938 and made use of Gretl’s contacts to seek exemption from the discriminatory laws.⁴⁰ They were told bluntly that, without a second non-Jewish grandparent, there was no chance for an exemption. They then sought to establish that they had only two Jewish grandparents, which under the Nuremberg laws would give them *Mischling* status and shield them from the anti-Jewish laws. Thus, as detailed below, when Paul, Hermine, and Helene signed their 1938 Census declarations on 15 July 1938, they each noted they were doing so only provisionally, because they had sought to be freed from the requirement of declaring their assets because their grandfather Hermann Christian Wittgenstein was illegitimate and therefore not fully Jewish (*nicht Volljude*).

In a letter to the *Reich Sippenamt* dated 29 September 1938, Brigitte Zwiauer, who was the granddaughter of Karl Wittgenstein’s sister Emilie (Millie) and thus a cousin of the Wittgenstein siblings, argued that Hermann Christian Wittgenstein was actually the illegitimate child of a member of the House of the Princes of Waldeck who was placed with the family of the Prince’s land agent.⁴¹ In that letter, she stated that in Hermann Wittgenstein’s certificate of baptism of 1839

...it is noteworthy that while his wife is described as born legitimate, he is not. Similarly, the use of the formulation that he was ‘brought up in the Jewish faith’ is unusual, and was probably chosen deliberately so as to show that he actually was not part of the Jewish community, but only raised within it.⁴²

She further noted that Hermann took the name “Christian” and was later known as an anti-Semite who strictly avoided the “Jewish circle” in Vienna and did not permit his children to

³⁸ Waugh, pp. 218 – 219.

³⁹ See Waugh, p. 220.

⁴⁰ *Id.*, p. 222.

⁴¹ *Id.*, pp. 225, 238.

⁴² Letter from Brigitte Zwiauer to *Reich Sippenstelle*, 29 September 1938, in Vienna City and State Archive, “*Sippenamt*.” The German original reads: “*An diesem Taufschein, dessen beglaubigte Abschrift ich beifüge, ist bemerkenswert, dass wohl seine Frau, nicht aber er als ehelich geboren bezeichnet wird. Ebenso ist die Formel ‚im jüdischen Glauben erzogen‘ nicht gewöhnlich; sie ist wohl bewusst gewählt worden um auszudrücken, dass er eigentlich der jüdischen Kultgemeinde nicht angehörte, sondern nur in ihr erzogen wurde.*” [Emphasis in the original.] See also Waugh, p. 238.

marry Jews. She wrote that, of the nine of his eleven children who married, except for one son, who married a *Mischling*, all married “pure Aryans” and that this was very unusual in Vienna at that time.⁴³

Zwiauer also argued that the physical appearance of Hermann Wittgenstein and his children proved that they could not be Jewish. She wrote that members of the older generation of the family had had no interest in establishing these facts, and that they did not consider themselves to be Jewish, because they and their parents had been baptized. She also wrote that they wanted to avoid making public the stigma of their father’s illegitimacy.⁴⁴

Paul planned to leave Nazi Austria, even while the family continued its efforts to prove its mixed-race status. Because of his Jewish roots, he was prevented from performing as a concert pianist and was prohibited from giving piano lessons.⁴⁵ Perhaps more importantly, he was in violation of Nazi racial laws, because, unbeknownst to his family, he maintained a separate household with the non-Jewish [REDACTED 6] and their two children. According to Waugh, in the late summer of 1938, Paul received a court summons that charged him with racial defilement (*Rassenschande*) and threatened to take away the custody of his two children.⁴⁶ After unsuccessfully trying to convince his sisters of the dangers they faced if they remained in Austria, Paul fled to Switzerland in late August 1938. [REDACTED 6] and their two children joined him in Switzerland in late November 1938. He obtained an entry visa for the United States, but [REDACTED 6] and children were not able to accompany him. Paul left Switzerland on 28 November 1938 and arrived alone in New York on 9 December 1938.⁴⁷ They were finally reunited in August 1940 in Cuba, where they married in a Catholic ceremony.⁴⁸ Afterwards, Paul returned to New York with his family.

In the meantime, the family’s efforts to achieve *Mischling* status remained unsuccessful. In November 1938, the *Reichsstelle für Sippenforschung* (the Reich’s Genealogical Research Office, hereinafter the “*Sippenstelle*”) rejected the family’s arguments and advised them that they were considered to be fully Jewish (*Volljuden*).⁴⁹ But another avenue opened in early 1939, as both the *Reichsbank* and the siblings realized that each side could offer something of value to the other. Thus, the stage for negotiations between the *Reichsbank* and the Wittgenstein family was set.

⁴³ *Id.* The German original reads: “*Er nahm damals den Namen Christian an und war später bekannt, als Antisemit, der den Verkehr mit den Wiener jüdischen Kreisen streng vermied und der es auch nicht zuliess, dass seine Kinder Juden heirateten. Von seinen elf Kindern haben neun geheiratet, und ausser einem Sohn, der einen Mischling heiratete, alle rein arisch, was in dem damaligen Wien ganz ungewöhnlich war.*”

⁴⁴ *Id.* The German original reads: “*Die Mitglieder der älteren Generation hatten an dieser Feststellung kein Interesse. Sie hielten sich für Nichtjuden, weil ihre Eltern und sie selbst getauft waren und sie scheuten das Bekanntwerden des Makels der uehelichen Geburt des Vaters, die daher möglichst geheim gehalten wurde.*”

⁴⁵ Waugh, pp. 230 – 231.

⁴⁶ Waugh, p. 236. Waugh gives no reference for this point, which is not mentioned in the other sources.

⁴⁷ See New York Passenger Lists 1820-1957 available at www.ancestry.com.

⁴⁸ Waugh, p. 275.

⁴⁹ *Id.*, p. 239.

2. The Reichsbank Negotiations

The *Reich*, in preparation for war, increasingly sought to accumulate foreign currency and gold holdings, such as those that were held in the *Partnership*.⁵⁰ Nevertheless, under both the Implementation of the Ordinance on Foreign Exchange Control (*Durchführungsverordnung zur Verordnung über die Devisenbewirtschaftung*) of 23 May 1932 and the Law on the Management of Foreign Exchange (*Gesetz über die Devisenbewirtschaftung*) of 12 December 1938, shares in a foreign partnership fell outside the general requirement that all residents of the *Reich* offer their foreign currency denominated securities, foreign currency, and gold for sale to the *Reichsbank* in exchange for *Reichsmark* (hereinafter “*Anbietungspflicht*,” or “requirement to offer for sale”).⁵¹ Moreover, in the case of the Wittgensteins, the *Partnership* agreement required that the *Partnership*’s capital remain intact until 1947.⁵² In addition, the *Wistag AG*, which was the *Partnership*’s guaranteeing partner, was, at least at the time of the *Partnership*’s creation, owned by American citizens, though by 1939 *Wistag AG* was apparently wholly owned by Paul.⁵³ Paul (who owned almost one-third of the *Partnership*’s assets) was in the United States, and Ludwig (who was a director of the *Partnership* even though he had ceded his share to his siblings) resided in England. Furthermore, the *Partnership*’s assets were deposited in Swiss banks in Switzerland and in non-Swiss banks in the United States and the Netherlands.

⁵⁰ As detailed below, Hermine, Paul, and Helene reported the nominal value of their shares in the *Partnership*’s holdings – SF 2,008,086.40, SF 2,536,731.20, and SF 1,689,434.32, respectively, for a total of SF 6,234,251.92 – in their 1938 Census declarations and confirmed them again in the updates to their declarations dated 14 December 1938. Thus, the *Reich* authorities were well aware that the siblings held assets totaling at least SF 6,234,251.92 in the *Partnership*. The CRT notes that, according to the *Partnership*’s 6 June 1939 Statement of Accounts, only SF 3,852,347.97 (excluding *Wistag AG*’s SF 1 million capitalization) of the *Partnership*’s total assets of SF 7,845,160.37 (again excluding *Wistag AG*’s SF 1 million capitalization) was held in Swiss banks. Accordingly, even if all the *Partnership*’s assets in Swiss banks (*i.e.*, SF 3,852,347.97) belonged to the siblings (which has not been demonstrated, as together the siblings owned only 77.9 percent of the *Partnership* shares), this amount equaled only 61.79 percent of the total nominal value of the siblings’ *Partnership* shares (SF 6,234,251.92) that they reported in their 1938 Census declarations.

⁵¹ Arbitration Panel Decision, p. 30, para. 142, citing paragraphs 36 and 46 of the Law on the Management of Foreign Exchange of 12 December 1938 (*Gesetz über die Devisenbewirtschaftung*). Pursuant to regulations promulgated on 23 May 1932, residents of the *Reich* were required, *inter alia*, to report and either sell or transfer to the *Reichsbank* for sale “newly” acquired foreign currency denominated securities, whether held abroad or domestically, if not traded on a German exchange. See Article 1, §1 of the Implementation of the Ordinance on Foreign Exchange Control (*Durchführungsverordnung zur Verordnung über die Devisenbewirtschaftung*) of 23 May 1932 (RGL. IS. 238). Newly acquired securities were defined as those acquired after 12 July 1931, the date on which tight foreign exchange regulations consequent upon the 1931 banking crisis were first promulgated. Under these regulations dividends or interest paid in foreign currency on “old” (*i.e.*, acquired prior to 12 July 1931) foreign currency denominated assets had to be delivered to the *Reichsbank* as well. This so-called “requirement to offer for sale” (*Anbietungspflicht*) also applied to foreign currency and gold, with the same date restrictions. The *Reichsbank* in turn would credit the asset owner with the counter value in RM of the delivered foreign currency amounts.

⁵² Waugh, pp. 228, 254.

⁵³ As noted above, at the time of its incorporation, Margaret (Gretl) Stonborough and her son Thomas, both US citizens, each held 499 shares of the total 1,000 shares in *Wistag AG*. The remaining two shares were held by Dr. Konrad Bloch, the Wittgensteins’ Swiss lawyer. See Notarized protocol of the meeting of the General Assembly to incorporate *Wistag AG*, 18 January 1932. In a letter dated 24 December 1946, Harold Manheim, who was Paul Wittgenstein’s lawyer, wrote that in 1939 Paul Wittgenstein was “the owner of the *Wistag AG*.” Letter from Harold Manheim to A. L. Bienstock, 24 December 1946. See discussion *supra*, p. 9.

As described in the documentation provided by Bank III and detailed below, the *Reichsbank* first attempted to skirt these hindrances by pressuring the manager of the Wittgensteins' business affairs, Anton Groller, to sign over the *Partnership's* gold holdings at Bank III. Though Groller at first yielded to this pressure, the transfer was stopped by the Swiss directors of the *Partnership* and the *Wistag AG* in March 1939.⁵⁴ Its attempt to force a transfer of the *Partnership* assets thus thwarted, the *Reichsbank*, having become aware that the *Partnership's* funds could be released prematurely upon the unanimous consent of the interested parties, realized that it would need the agreement of the owners to obtain access to the *Partnership's* foreign currency denominated assets.⁵⁵

At about the same time, Gretl had learned from her son Thomas that in some cases in which funds were locked in foreign trusts, the owners of the funds agreed to an early release of the funds in exchange for privileged treatment by the Nazi authorities.⁵⁶ Gretl therefore sought an agreement in which the restrictions regarding access to the *Partnership's* funds would be set aside in exchange for *Mischling* status for her sisters Hermine and Helene, who wished to remain in Vienna.

The basis of these negotiations was that the family would in effect break the *Partnership's* provisions, thereby vesting the assets with each individual sibling according to his/her respective share in the *Partnership*. The siblings would then offer these foreign currency denominated assets for sale to the *Reichsbank* in exchange for *Reichsmark*, pursuant to both the Implementation of the Ordinance on Foreign Exchange Control (*Durchführungsverordnung zur Verordnung über die Devisenbewirtschaftung*) of 23 May 1932 and the Law on the Management of Foreign Exchange (*Gesetz über die Devisenbewirtschaftung*) of 12 December 1938, which required residents of the *Reich* to report and offer for sale to the *Reichsbank* their foreign currency denominated securities, as well as other foreign currency and gold.⁵⁷

In return for the siblings' agreement to effectively break up the *Partnership*, the *Reichsbank* would meet two conditions: 1) the *Reichsbank* would arrange for the siblings to be granted *Mischling* status of a type that would exempt them from the Nuremberg laws, thereby enabling the sisters Hermine and Helene, who did not wish to emigrate, to remain unmolested in the *Reich* and to retain the *Reichsmark* counter value of their assets, and 2) the *Reichsbank* would allow Paul Wittgenstein, who had emigrated to the United States and would not return to the *Reich*, to retain a certain part of the foreign currency assets he held in the *Partnership*. The remainder of his share of the *Partnership* assets would be delivered, in the *Reichsmark* counter value, to his sisters Hermine and Helene.

⁵⁴ See discussion *infra*, pp. 44 – 45.

⁵⁵ As noted above, the German version of the Agreement lists shareholders in the *Partnership*. In addition to the siblings, these included Lydia Oser-Wittgenstein, Franziska Siebert, Johanna Salzer, and Hedwig Pauli. There is no indication in the records that these other persons were involved in the negotiations with the *Reichsbank*. See discussion *supra*, note 33.

⁵⁶ *Familienerinnerungen*, pp. 175-180. The following narrative is drawn largely from these memoirs.

⁵⁷ The CRT notes that, because Paul had emigrated by the time the Agreement with the *Reichsbank* was reached and thus was no longer a resident of the *Reich*, he would not have been required to offer his foreign currency denominated securities and other foreign currency and gold to the *Reichsbank* for the *Reichsmark* counter value pursuant to these regulations. This fact is also noted in the Arbitration Panel Decision, p. 30, para. 142.

The first meeting with the *Reichsbank* took place in Vienna, likely in April 1939.⁵⁸ As described by Hermine, the participants were Gretl (representing the *Wistag AG*),⁵⁹ Helene's husband Max Salzer (as trustee of the participants in the *Wistag Partnership*), Anton Groller (as authorized signatory (*Einzelprokurist*) of the *Partnership*),⁶⁰ Dr. Schöne (as representative of the *Reichsbank*), Dr. Indra (Gretl's attorney, who acted at times for both the Wittgenstein sisters and the Nazi authorities), Helene and Hermine (as participants in the *Partnership*), and Marie and Fritz Stockert (Helene's daughter and son-in-law, respectively, representing the younger generation of the family). According to Hermine, the discussions were friendly in tone. The participants agreed to a second meeting with the Head of the *Reichsbank*'s Foreign Exchange Department, Dr. Görlich, in Berlin on 2 May 1939.

In her memoirs, Hermine quotes Gretl as describing the 2 May 1939 meeting as the commencement of "our 'friendship with the *Reichsbank*.'" ⁶¹ In that meeting, the outlines of an agreement emerged. In exchange for breaking the *Partnership*'s restrictions, Paul would retain an amount of foreign exchange that appeared to Hermine to be "relatively high" ("*ziemlich hoch*") and would be allowed to travel freely to and from Austria.⁶² Hermine and Helene would have the choice of emigrating and retaining "a not very large sum of foreign exchange," or remaining in the country, in which case they "of course would have to deliver all foreign exchange in return for *Reichsmark*," as was the case for all citizens of the *Reich* pursuant to the *Anbietungspflicht* detailed above.⁶³ As Hermine recalls, Dr. Görlich then turned to Hermine and said: "I take it that you will choose the first option [emigration]; you surely would not want to stay in the country as exceptional Jews against the expressed wish of the *Führer*?" Hermine writes: "I did not reply, because that [the latter] was what I wanted, only that!"⁶⁴

Following the Berlin meeting, the negotiations expanded to include Paul and his brother Ludwig, even though Ludwig had no direct financial interest in the matter. Both were skeptical about the durability of any negotiated accommodation with the *Reich*. Paul, who had no intention of returning to the *Reich*, sought to reserve as much of his assets as possible, while still ensuring the safety of his sisters, whose sole wish was to remain in the *Reich*. Intense negotiations between

⁵⁸ In her memoirs, Hermine does not provide a date for the first meeting. However, she wrote that at the conclusion of the meeting, they all decided to meet again in the first days of May 1939. *Familienerinnerungen*, p. 177.

⁵⁹ The CRT notes that it is not clear why Gretl represented the *Wistag AG* if it was wholly owned by Paul. See discussion *supra*, pp. 9, 14, note 53.

⁶⁰ This description of Groller's signatory powers appears to be at odds with the documentation provided by Bank III, which describes the *Partnership*'s withdrawal of these powers from Groller in February 1939. However, his presence throughout the negotiations and apparent position of trust thereafter indicate that his powers were reinstated once the *Reichsbank* changed its stance from coercion to negotiation. See discussion *infra*, pp. 44 – 45.

⁶¹ *Id.*, at 178. The German original reads: "von da an datiert unsere 'Freundschaft mit der Reichsbank.'"

⁶² *Id.*

⁶³ *Id.* The German original reads: "Für uns Schwestern wurde eine nicht sehr grosse Devisensumme für den Fall unserer Auswanderung bewilligt; wollen wir dagegen im Land bleiben, so mussten wir selbstverständlich all Devisen gegen Reichsmark abliefern."

⁶⁴ *Id.*, at 178. The German original reads: "Görlich sagte zu mir: 'Ich nehme an, Sie werden das erstere wählen; sie werden doch nicht als Ausnahmsjuden im Land bleiben wollen, gegen den ausdrücklichen Willen des Führers?' Ich gab keine Antwort, denn gerade das war es ja, was ich wollte, nur das!"

Reich authorities in Berlin and the Wittgensteins as well as among the Wittgensteins themselves ensued. The negotiations were often acrimonious, with Hermine complaining that Paul's advisors were "without exception Jews, for whom it must have been unbearable to see that such a large fortune would fall into the hands of their worst enemy, and they encouraged his resistance toward his sisters, who wanted to remain in the criminal state."⁶⁵ In turn, Paul complained that the Stonboroughs instructed their lawyer not to speak to him (Paul) directly, so that he could not know their negotiation strategy, behavior of which he said "even Polish Jews" would be ashamed.⁶⁶

The CRT notes that, in describing the negotiations in May 1939, Alexander Waugh writes in his book *The House of Wittgenstein* that Paul agreed to turn over SF 2.5 million worth of gold to the *Reich*, as a good will payment prior to the conclusion of an agreement with the *Reich* and without any concessions from the *Reich* in return.⁶⁷ However, there is no evidence that such a good will payment was ever made, either in gold or in currency. Waugh himself does not cite any document to support the assertion that SF 2.5 million in gold was actually paid to the *Reichsbank* prior to the conclusion of the negotiations. In fact, just prior to relating this payment of SF 2.5 million in gold, Waugh notes that the *Partnership* held gold at Bank I and Bank III with a total 1938 value of \$235,000.00 (equivalent to "215 kilogram bars of fine gold"), which in 1938 was equal to approximately SF 1,026,950.00, not SF 2.5 million.⁶⁸

Moreover, as detailed below, the records available to the CRT show that in total (at both Bank I and Bank III), Paul and the *Partnership* held 31 gold bars with a combined weight (fine weight) of 363.8361 kilograms and a value of only approximately SF 1,377,041.00 (not SF 2.5 million). Of these 31 gold bars, 25 were held at Bank I and 6 were held at Bank III. Four of the gold bars at Bank I were held in an account belonging to Paul; the remainder of the gold bars was held in accounts belonging to the *Partnership*. Of the 25 gold bars at Bank I, 10 were removed from Bank I prior to the *Anschluss* (6 on 4 July 1935 and the 4 belonging to Paul on 29 December 1937). Of the remaining 15 gold bars at Bank I, 3 were removed on 28 May 1938, approximately one year prior to the time when the "pre-payment" was supposedly made. The remaining 12 gold bars at Bank I are reflected in the *Partnership's* 6 June 1939 Statement of Accounts, and Bank I's records show that these 12 gold bars were transferred to an account numbered 4617 on 5 September 1939. Though the owner of account 4617 is not specified, the CRT concludes this was an account designated by the *Reichsbank* to receive the *Partnership's*

⁶⁵ *Id.*, at 179. The German original reads: "Seiner Ratgeber in dieser Sache waren ausnahmslos Juden, denen es unerträglich sein musste, ein so grosses Vermögen in die Hände ihres ärgsten Feindes fallen zu sehen, und sie nährten noch seinen Widerstand gegen seinen Schwestern, die in dem verbrecherischen Staat bleiben wollten."

⁶⁶ Memorandum of Paul Wittgenstein, 31 January 1945, p. 7.

⁶⁷ Waugh, p. 257, 258. The CRT notes that some of the family documents submitted by the Claimants contain vague and contradictory references to Paul's possible "good will" payment in either foreign currency or gold to the *Reich* during the early phases of the negotiations and prior to the conclusion of the agreement with the *Reich*. However, as detailed above, none of the documents shows that such a pre-payment, in either gold or currency, was ever made.

⁶⁸ Waugh, p. 239. Although Waugh also does not cite any document to support his reference to \$235,000.00 and 215 kilograms of gold, the CRT notes that they are roughly equivalent to the figures cited in the *Partnership's* 6 June 1939 Statement of Accounts, which refers to 12 bars of gold at Bank I and 6 bars of gold at Bank III with a total weight of 217.7 kg and total 1939 value of SF 1,056,472.00.

assets as specified under the Agreement. The 6 gold bars at Bank III are the same ones identified in the 6 June 1939 Statement of Accounts as being held on deposit at that bank as of that date. The 6 June 1939 Statement of Accounts also does not reflect any pre-payment in currency amounting to SF 2.5 million, but rather reflects amounts corresponding to the value of the *Partnership's* assets as of that date, one month after the alleged pre-payment.

Thus, there is no evidence to support the assertion that the *Partnership* and/or Paul held gold bars in a Swiss bank worth SF 2.5 million in early 1939 (the time of the supposed good will pre-payment) or that any gold bars or currency in this amount held in Swiss bank accounts belonging to the *Partnership*, *Wistag AG*, or the Wittgensteins personally were transferred to the *Reichsbank* prior to the completion of the Agreement.

The next stage of the negotiations is detailed in a memorandum dated 11 August 1939 written by Samuel Wachtell. According to this memorandum, Wachtell traveled to Europe for a meeting with Dr. Bloch, Dr. Schoene, Anton Groller, A. L. Bienstock, Gretl, and Gretl's brother Ludwig in Zurich. Wachtell noted that Dr. Bloch suggested he delay his arrival in Zurich for three days, from 7 August until 10 August, so that they could meet in Pontresina, Switzerland, to discuss their position prior to meeting with the others. Wachtell wrote that he and Dr. Bloch saw "very much eye to eye." They discussed the idea of depositing SF 1 million with the Bank for International Settlements in Basel, Switzerland, or some comparable institution, "upon conditions which would assure either the proper treatment of the sisters in Germany or sufficient means to take care of them, if they were to leave that country..."⁶⁹ According to Wachtell, he had made the proposal

in order to show the willingness of PW [Paul Wittgenstein] to seek any means which would show not only his readiness to sacrifice a million SF, but also to conciliate the Reichsbank and comply with the wishes of his family. Dr. Bloch thought that this million might be placed in trust for a probationary period – say two years, upon the agreement that at the end of that time the money would go to the Reichsbank if in the intervening period the sisters had not been bothered. There was also discussed the possibility of reaching a compromise in the direction of splitting the million in some way, one part being retained by us under some understanding still to be worked out, and the other to be given outright to the Reichsbank.⁷⁰

The CRT notes that a variant of this latter option was put forth in Side Agreement 1, which divided the SF 1 million capital of *Wistag AG* into two halves, with half being released to Paul and the other half going to John Stonborough for the express and limited purpose of providing for the care and upkeep of Hermine and Helene.⁷¹

⁶⁹ Memorandum regarding negotiations in Switzerland in August 1939 written by Samuel Wachtell, 11 August 1939, p. 1.

⁷⁰ *Id.*, at 2.

⁷¹ See discussion *infra*, pp. 21 – 22.

According to Wachtell's memorandum, on 11 August 1939 he and Dr. Bloch traveled to Zurich, where Wachtell and Dr. Indra met for several hours on 12 August. They discussed the (at that time still undecided) issue of the siblings' *Mischling* status, as well as Dr. Indra's view of what would be acceptable to the *Reichsbank*. According to Wachtell, at the time of this meeting, Dr. Indra confirmed that the *Sippenamt* was prepared to hand down an adverse decision with regard to the siblings' *Mischling* certification, on the ground that the "proof of Aryan ancestry was utterly insufficient." Dr. Indra explained that the office had refrained from handing down such a decision as a courtesy to the family, in order not to prejudice the possibility of getting a decree "in the Gnadenweg [through an act of mercy]." According to Wachtell, Dr. Indra also said that

he did not think any solution or agreement would be possible unless the million [that Bloch and Wachtell suggested depositing at the Bank for International Settlements in Basel or elsewhere for the benefit of the Hermine and Helene, and part of which ultimately came from the *Wistag AG* funds pursuant to Side Agreement 1] ... would be given outright to the *Reichsbank*. He did not see, he said, why that could not be done if the *Mischling* status were decreed, since in that case the sisters would be taken care of without any hardship or trouble in Germany, so that they would not need any outside funds. I raised the objection that any status conferred by Gnade [mercy, grace] could be withdrawn, so to say, by Ungnade [disgrace, disfavor]. Dr. Indra thought that was most unlikely in view of the age of the ladies. I objected that though this would ordinarily be an important factor in any other case, it would not be in this case, since the government would always have its eye trained on PWs remaining two million.⁷²

Dr. Indra tried to dismiss Wachtell's concerns that such a decree obtained through an act of mercy could be revoked just as easily by saying that "no one would dare do that in view of the high standing of the official who would sign the *Mischling* decree." Wachtell remained unconvinced, but Dr. Indra insisted that "the one who would sign such a decree, if it came down, would be the Fuehrer himself." Wachtell noted that he thought this was a "fantastic expectation, and told Indra so, but Indra assured me that that was entirely likely."⁷³

An agreement was finally reached on 21 August 1939, as detailed below. The siblings received their *Mischling* certification on 30 August 1939.⁷⁴ The CRT notes that the final agreements do not reference any payment of SF 2.5 million, either in gold bars or currency, or any other payment made by Paul or the *Partnership* prior to the conclusion of the final agreements.

⁷² Memorandum regarding negotiations in Switzerland in August 1939 written by Samuel Wachtell, 11 August 1939, p. 4.

⁷³ *Id.* at 3, 5. For discussion regarding Hitler's approval of *Mischling* certifications, see *infra*, p. 26, note 98.

⁷⁴ See Ruling regarding the Family's Origin" (*Abstammungsbescheid*) dated 30 August 1939 and signed by Kurt Mayer, head of the *Sippenstelle*, contained in the 1938 Census files of Hermine and Helene.

3. The Agreements⁷⁵

Under the final draft Agreement with the *Reichsbank* (hereinafter the “Agreement”), Paul was to receive SF 1,800,000.00 from the *Wistag Partnership*’s funds, plus advances he had made toward covering SF 300,000.00 in expenses and legal fees owed to the Wittgenstein lawyers (Samuel Wachtell for Paul Wittgenstein, Dr. A. L. Bienstock for the Stonboroughs, and Dr. Konrad Bloch for the *Wistag Partnership*), as well as for cash expenditures Dr. Indra and Dr. Schöne had incurred during the negotiations in the United States. The remainder of the *Partnership*’s funds, after provision for any taxes or other charges owed to Swiss entities, was to be transferred to the *Reichsbank*. Upon receipt, the *Reichsbank* was to credit the *Reichsmark* counter value of the monies received to Wittgenstein bank accounts as directed by the *Partnership*’s designated signatory, Dr. Groller.⁷⁶

The *Reichsbank* further undertook, at no financial cost to itself, to have all necessary permissions issued for the delivery of Paul’s personal belongings (including his musical instruments, art objects, and manuscripts, in so far as these were not subject to an export prohibition under the Monuments Protection Law (*Denkmalschutzgesetz*)), to be delivered to him, free of any charges normally made by the Foreign Exchange Control Office, at a rail terminal outside Germany.⁷⁷

As to the Wittgensteins’ *Mischling* status, the *Reichsbank*

undertakes and pledges to cause the issuance of a decree, to be communicated to Paul Wittgenstein, Hermine Wittgenstein and Helene Salzer, setting out the *Mischling* status of the three named persons and that *in the most favorable way as possible for them*.⁷⁸ [Emphasis added.]

The *Reichsbank* also undertook and pledged that the appropriate orders would be issued to confer both the status of a foreigner on Paul Wittgenstein with respect to the foreign exchange

⁷⁵ Sources relied upon in this section include documents submitted by the Claimants (including copies of documents from the files of Paul Wittgenstein’s New York lawyers Wachtell, Manheim & Grouf and other documents without known provenance) and archival and published documents obtained by the CRT. The CRT notes that there are two versions of the Agreement, both dated 21 August 1939. The English version was submitted by the Claimants. The German version was obtained from the files of the Austrian Federal Office of Monuments (*Bundesdenkmalamt*, hereinafter “BDA”) and appears to be a later translation. It is marked “*ad acta*,” apparently incorporating changes reflecting comments of the *Reichsbank*. Neither the literature nor the documentation available to the CRT contains the Agreement as finally signed by all parties, though it is clear that the two versions dated 21 August 1939 accurately reflect the substance of the Agreement. As noted above, copies of both versions, as well as the accompanying side agreements, are attached to this decision as Appendix C. *See supra*, note 33.

⁷⁶ Agreement, p. 2. The German original reads: “*Die Reichsbank wird nach Erhalt der oben bezeichneten Beträge deren Gegenwert in Reichsmark gemäss den gesetzlichen Bestimmungen auf jene Konti überweisen, die ihr vom Verwalter des Wittgensteinäschen Vermögens, Direktor Groller in Wien, aufgegeben werden.*” The English version specifies that the counter value was to be transferred to Hermine and Helene: “The *Reichsbank*, upon receiving the moneys above specified, shall direct the countervalue thereof in marks in accordance with law, to Hermina [*sic*] Wittgenstein and Helene Salzer, or to either of them as they may direct.”

⁷⁷ *Id.*

⁷⁸ *Id.* The German original reads: “*Die Reichsbank übernimmt es und verpflichtet sich, dass ein Bescheid herausgegeben und Paul Wittgenstein, Hermine Wittgenstein und Helene Salzer mitgeteilt wird, in welchem der Mischlingsstatus der drei Genannten erklärt ist und zwar so günstig als es für sie möglich ist.*” [Emphasis added.]

regulations (*Devisenausländer*) and, at the same time, but only until 31 October 1939, the status of a resident (*Deviseninländer*). The latter provision was designed to allow him to convey his *Reichsmark* assets and his real estate located in the *Reich* to his sisters Hermine and/or Helene.⁷⁹

The Agreement between Paul and the *Reichsbank* was accompanied by two Side Agreements, one between Paul and his nephew John Stonborough (hereinafter “Side Agreement 1”) and one between Paul and his sisters Hermine and Helene (hereinafter “Side Agreement 2”), both dated 21 August 1939.⁸⁰ Side Agreement 1 specifies that the agreement was made

[i]n consideration of the agreement bearing the same date between Paul Wittgenstein and the German Reichsbank, which the former entered into at the request of John J. Stonborough, and in consideration of the waiver by Paul Wittgenstein of his right to demand the entire sum representing his interest in the Wistag A.G. & Kommanditgesellschaft and in the Wistag Corporation and to consent to the liquidation thereof, and in consideration of his consent to reduce the amount of his share to the sum of Swiss francs 1,800,000.— (in words: one million eighthundred [*sic*] thousand) plus the counsel fees and expenses mentioned in the Reichsbank agreement....

Side Agreement 1 stipulated that Paul would confer all his rights in the *Wistag AG* and its assets to John Stonborough. In turn, John Stonborough would transfer the equivalent of SF 500,000.00 from the *Wistag AG*’s funds to Paul and would agree, whenever the need arose, to support Hermine and Helene Salzer “adequately and comfortably” and “to hold Paul Wittgenstein harmless and well indemnified against any claim, charge, or obligation, moral or legal asserted by any one in behalf of the said Hermine Wittgenstein and Helene Salzer, or by themselves.”⁸¹ This maintenance agreement was capped at the amount remaining in the *Wistag AG* after the SF 500,000.00 transfer to Paul. This agreement would be null and void if no ultimate agreement was reached between Paul and the *Reichsbank*.

Side Agreement 2 stipulated that the agreement to be concluded with John Stonborough would take care of Hermine and Helene’s financial needs should they decide to emigrate, but that in view of their stated determination to remain in their country of birth, Paul considered it his moral obligation to ensure also that his sisters would be financially secure in that country. Therefore, he agreed to convey all his *Reichsmark* assets and his real estate in the *Reich* to them, except for any payments relating to the shipment of his personal property abroad, as mentioned in the

⁷⁹ *Id.* The German original reads: “*Ferner wird die Reichsbank dafür sorgen, dass die erforderlichen Weisungen oder andere Bescheide ergehen, die Paul Wittgenstein den Status des Devisenausländers, und gleichzeitig, aber nur bis zum 31.10.1939, den Status des Deviseninländers zuerkennen. Letzteres um ihm zu ermöglichen, seine Vermögensschaften in Reichsmark und seine Grundstücke in Deutschland seinen Schwestern Hermine Wittgenstein und Helen Salzer, oder einer von ihnen, zu übertragen und zu überfertigen.*”

⁸⁰ See “Memorandum to serve as the basis of an agreement between Paul Wittgenstein and John J. Stonborough, both of New York” (“Side Agreement 1”), dated 21 August 1939; and “Memorandum to serve as the basis of an agreement between Paul Wittgenstein and his sisters, Hermine [*sic*] and Helene” (“Side Agreement 2”), dated 21 August 1939. The CRT notes that the versions of these memoranda made available to the CRT by the Claimants are in English. A transcript of the texts of these side agreements is included in Appendix C to this decision.

⁸¹ Side Agreement 1, p. 1.

Agreement with the *Reichsbank*, as well as any payments to discharge lawful obligations that might exist and be asserted against him in the *Reich* (e.g., Paul's flight tax obligation). This agreement was to be effective only if the agreements between Paul and the *Reichsbank* and Paul and John Stonborough were effected.⁸² The texts of the English and German versions of the Agreement, as well as Side Agreements 1 and 2, are attached as Appendix C to this decision. In a letter dated 30 May 1940, Paul Wittgenstein summarized the negotiations and their result to his nephew Felix Salzer (Helene's son), who resided in New York at that time.⁸³ According to his letter, the *Reichsbank*'s representative Dr. Schöne presented the alternatives to the siblings about a year earlier:

...you can be considered Jews or Aryans. If you are Jews than you will have to emigrate, but in view of your meritorious record, you would be permitted to keep some portion of your foreign-held assets to maintain yourselves abroad. If you are Aryans, then you can remain in the country, but then you will, *like all other Aryans*, have to put all your foreign assets at the disposition of the *Reichsbank*. As you then will not have to emigrate, there will be no need to hold on to foreign assets.⁸⁴
[Emphasis added.]

Paul explained that John Stonborough and his lawyer had immediately declared that the Aryan, *i.e.*, the *Mischling* alternative, was the only one they would consider. The consequence of their

⁸² Side Agreement 2. The actual text of Side Agreement 2 reads:

Whereas an agreement is about to be made between Paul Wittgenstein and Reichsbank for the settlement of the Reichsbank claims to part of the funds of Kommanditgesellschaft ... and whereas an agreement is also about to be made between Paul Wittgenstein and John J. Stonborough concerning the support and maintenance of Hermina and Helene in the event they should in the future desire to emigrate from Germany [*i.e.*, the *Reich*, which included Austria following the *Anschluss*] and whereas Hermina and Helene have emphatically communicated their determination to remain in the country of their birth and have informed Paul Wittgenstein that they have no intention whatsoever to emigrate and whereas Paul Wittgenstein feels himself morally obligated to place at the disposal of his sisters all mark balances and real estate which he has in Germany to the end that the sisters may live in comfort as long as they remain in that country, now therefore Paul Wittgenstein hereby agrees in consideration of his love and affection for his two sisters to transfer and convey to them (provided that shall be permissible under German law) all of his mark balances in Germany and to convey to them all of his real estate in that country. The only deduction to be made from his mark balances, so to be transferred, shall be for the purpose of paying all expenses such as packing, insurance, transportation, etc. of Paul Wittgenstein's personal property mentioned in an agreement bearing even [*i.e.*, the same] date between him and the Reichsbank. There shall also be paid out of the said mark balances, or out of the said real estate, any lawful obligations which may exist and be asserted against him in Germany.

The CRT notes that the "lawful obligations" referenced in Side Agreement 2 most likely refers to Paul's flight tax obligations.

⁸³ Letter from Paul Wittgenstein to Felix Salzer, 30 May 1940.

⁸⁴ *Id.*, p. 1. The German original reads: "*Ihr koennt als Juden oder als Arier gelten. Seid Ihr Juden, muesst Ihr auswandern; aber man wird Euch, mit Ruecksicht auf Eure Verdienste, einen Teil Eures auslaendischen Vermoegens belassen, damit Ihr im Ausland leben koennt. Seid Ihr Arier, dann duerft Ihr zwar im Lande bleiben, muesst aber Euer Auslandsvermoegen, wie alle anderen Arier, bis auf den letzten Heller der Reichsbank zur Verfuegung stellen. Da Ihr dann nicht auszuwandern braucht, besteht kein Grund Euch auslaendische Vermoegen zu belassen.*" [Emphasis added.]

decision was that Felix's aunt Hermine and his mother Helene were able to remain in Germany and to retain their assets, but were required to place their foreign currency at the disposal of the *Reichsbank*, in return for which they then received the counter value in *Reichsmark*.⁸⁵

In his letter of 30 May 1940, Paul explained to his nephew Felix that, even though he had to relinquish the assets he held in the *Reich* (per Side Agreement 2, these assets were transferred to his sisters), he was the only one of the siblings able to retain part of his foreign-held assets, because he had already escaped the reach of the Germans.⁸⁶ He also noted, in referring to his agreement with John Stonborough, that the *Reichsbank* demanded an additional payment of SF 92,000.00. Paul stated that he categorically refused to pay this amount because he feared it would only open the way for further such pressures and diminish his sisters' emergency fund significantly.

In a note to his partner Harold Manheim dated 3 February 1943, Paul's lawyer, Samuel Wachtell, alluded to this additional demand for SF 92,000.00. Wachtell wrote that, after the settlement agreements were made in 1939 and Paul's share transferred to him, the *Reichsbank* raised a question with respect to two claims totaling approximately SF 130,000.00. According to Wachtell's letter, the *Reichsbank* claimed that this amount should be deducted from the amount released to Paul because the *Partnership* had advanced Paul SF 30,000.00 in 1938 and another SF 90,000.00 in 1939, and thus he had already received these sums.⁸⁷ Wachtell described lengthy correspondence between himself, Dr. Bloch (representing the *Partnership*) and Dr. Indra (representing the *Reichsbank*) and observed that, "as a result of my efforts, this amount was finally collected [for Paul]. I think the equivalent in dollars is well over \$30,000."⁸⁸ The CRT notes that in 1939, US \$30,000.00 was equal to SF 133,200.00.

⁸⁵ The German original reads: "*Die Folge dieser Entscheidung war, dass Deine Mutter und Tante Minning zwar in Deutschland leben und ihr Vermoegen behalten durften, ihr auslaendisches Geld aber der Reichsbank zur Verfuegung stellen und dafuer Mark nehmen mussten.*"

⁸⁶ The CRT notes that, pursuant to the Agreement and Side Agreement 2, the *Reichsmark* counter value of Paul's foreign-held assets that he transferred to the *Reich*, as well as his assets within the *Reich*, were ceded to Hermine and Helene, who had the free use of them.

⁸⁷ Note from Samuel R. Wachtell to Harold Manheim, 3 February 1943. The CRT notes that the two payments of SF 30,000.00 and SF 90,000.00 together equal SF 120,000.00, not SF 130,000.00. However, the US dollar amount of \$30,000.00 (equal to SF 133,200.00) that was recovered suggests that the advances did indeed equal approximately SF 130,000.00 rather than SF 120,000.00.

⁸⁸ Note from Samuel R. Wachtell to Harold Manheim, 3 February 1943. The CRT notes that Wachtell wrote this note to his partner Harold Manheim to address a payment of \$10,000.00 Paul made to their firm Wachtell, Manheim & Grouf in February 1941. Wachtell explained to Manheim the work he had done for Paul regarding the SF 500,000.00 from *Wistag AG* that had been conceded to John Stonborough. He also noted that he had done "considerable work" for Paul in connection with Paul's immigration to the United States. He then explained the firm's policy regarding such work:

[y]ou are familiar with the practice of this office in matters of immigration. In the many hundreds of cases I have personally handled and those handled by the office, no charge was ever made as you know, because we felt we were making a personal contribution in labor and service to relieve a situation tragic beyond anything in history. You know that we have refused to make charges even in cases where the immigrant could well afford to pay. We did not wish to be subjected to the difficult task of deciding which immigrant can pay and which immigrant cannot pay and therefore refused to accept payment from any.

It appears that after the implementation of the Agreement, John Stonborough, who, pursuant to Side Agreement 1, had become the owner of *Wistag AG*, transferred SF 90,386.00 to the *Reichsbank*.⁸⁹ This is consistent with the amount that the *Reichsbank* claimed should be deducted from the amount to be released to Paul under the Agreement, because he had already received it as an advance in 1939 (along with an advance of SF 30,000.00 in 1938). John Stonborough apparently transferred this sum back to the *Reich* from the assets of *Wistag AG* that were transferred to him pursuant to Side Agreement 1. As detailed below, consistent with transfers made to the *Reichsbank* pursuant to the Agreement, John Stonborough received the *Reichsmark* counter value of this transfer.⁹⁰

4. Implementation of the Agreements

Dissolution of the Partnership and Transfer of its Assets

The implementation of the Agreement and Side Agreements appears to have proceeded generally as planned. In this regard, the CRT notes that the Claimant's representative, Mr. Harnik, acknowledged that the Agreement and Side Agreements were concluded in accordance with the memoranda dated 21 August 1939.⁹¹ After the siblings were certified as *Mischlinge* (see discussion *infra*), Dr. Indra notified the *Partnership* that the Agreement reached with the *Reichsbank* on 21 August 1939 had become effective on 1 September 1939. Accordingly, on 8 September 1939 the General Assembly of the *Wistag Partnership* decided to dissolve the *Partnership* and to divide its assets as stipulated in the Agreement.⁹² The *Partnership* was put in liquidation retroactively as of 1 September 1939 and was expunged from the Commercial Register on 9 October 1939.⁹³ According to its Statement of Accounts, on 6 June 1939, the total gross assets of the *Wistag Partnership* (including the capital amount of *Wistag AG*) amounted to SF 8,845,160.37.⁹⁴ In a letter dated 24 December 1946 to A. L. Bienstock, Harold Manheim

Wachtell explained that when Paul learned that no charge was to be made, he “flew off the handle. ... He for his own reasons of what he called noblesse, wanted to be clear that he had not been a beneficiary of actual services without having paid for them and therefore offered us the \$10,000 payable immediately and applicable entirely to the past [*i.e.*, including Wachtell's handling of the matter involving the remaining *Wistag AG* funds].” As noted above, the law firm of Wachtell, Manheim & Grouf officially dissolved in 1991. Its successor law firm is Harnik & Finkelstein LLP (whose partner Stephen M. Harnik represents the Claimants in this case). See *supra*, note 1.

⁸⁹ Zug Commercial Register, Attachment of Interim Balance Sheet as of 13 July 1940 to Letter from the *Treuhand- und Organisations A.G.*, Zug to General Meeting of the *Wistag AG* regarding capital reduction, 16 September 1940. This Interim Balance Sheet shows a transfer of SF 90,386.00 to the *Reichsbank*.

⁹⁰ See discussion *infra*, p. 52.

⁹¹ Letter from Mr. Harnik to the CRT, 12 February 2008, p. 1. Mr. Harnik wrote: “The memoranda to serve as bases for agreements dated 21 August 1939 are most important [of the documents submitted]. It must be inferred that the respective agreements were indeed concluded in accordance with those memoranda.” The CRT notes that Mr. Harnik did not provide final versions of the agreements, even though his law firm is the successor law firm of Wachtell, Manheim & Grouf, whose partners Samuel Wachtell and Harold Manheim represented Paul Wittgenstein during the events described in this decision. See *supra*, note 1.

⁹² Resolution of the General Assembly of the *Wistag Partnership*, 8 September 1939.

⁹³ See Excerpts from the Commercial Register of Zug, pertaining to *Wistag Aktiengesellschaft & Cie., Kommanditgesellschaft* (the *Partnership*).

⁹⁴ *Wistag Partnership*, Statement of Accounts as of 6 June 1939. The CRT notes that other available documentation regarding the *Wistag AG*'s finances indicates that it may have held assets in excess of its SF 1 million capitalization.

(who acted on behalf of Paul Wittgenstein after Samuel Wachtell's death sometime between July 1943 and February 1944) confirmed that the sum of SF 8,845,160.37 represented the total capital of both the *Wistag Partnership* and the *Wistag AG* and noted that, based on *Wistag Partnership's* 6 June 1939 Statement of Accounts, the division of the assets of *Wistag AG* and the *Partnership* would have been as follows:

Paul Wittgenstein 2,300,000 Swiss Francs, John Stonborough 500,000 Swiss Francs, the lawyers 300,000 Swiss Francs, the *Reichsbank* 5,445,160.37 Swiss Francs, now remaining in Switzerland approximately 300,000 Swiss Francs, total 8,845,160.37 Swiss Francs.⁹⁵

The CRT notes, however – as did the Arbitration Panel in its decision regarding the claim filed by Mr. Harnik and Ms. [REDACTED 2] regarding Paul's share of the property in Neuwaldegg – that it is not possible to establish which of the *Partnership's* individual assets were actually delivered to the *Reichsbank*.⁹⁶

Mischling Status

The notice certifying the siblings' *Mischling* status was issued by the *Sippenstelle* in Berlin on 30 August 1939 and was confirmed in a letter dated 10 February 1940 from Dr. Kurt Mayer, who was head of the *Sippenstelle* in Berlin, to the *Sippenamt* in Vienna:

Re letter of 12.1.40 Family Mi/Wu

In the matter of the origins of Wittgenstein and descendants, I made my decision on the instruction of the Reich Minister of the Interior of 29 August 1939, which in turn results from an order of the *Führer* and Reich Chancellor. In these circumstances, this office did not under its own jurisdiction examine the genealogical relationships in any detail. The decision of the *Führer* and Reich Chancellor also unreservedly concerns Hermann Wittgenstein (born Korbach 12.9.1802), who is deemed to be the German blooded ancestor of all descendants. For his grandchildren the legal presumption of the second sentence of paragraph 2, Article 2 of the First Decree to the Reich Citizen Law does not apply.^{97, 98}

Thus, according to an interim balance sheet dated 13 July 1940, at some earlier date *Wistag AG's* original capital of SF 1 million had been augmented by a reserve fund amounting to SF 150,000.00. See Interim Balance Sheet per 13 July 1940, attached to Letter, dated 16 September 1940, from the *Treuhand- und Organisations A.G.* to the General Assembly of *Wistag AG*, regarding the reduction of *Wistag AG's* share capital (*Aktienkapitalreduktion*).

⁹⁵ Letter from Harold Manheim to A. L. Bienstock, 24 December 1946.

⁹⁶ See Arbitration Panel Decision, p. 15, para. 77. The German original reads: “Im Oktober 1939 wurde die *W[istag] AG & Cie., Kommanditgesellschaft liquidiert und Anfang des Jahres 1941 das Aktienkapital der W[istag] AG auf Sfr 300.000—herabgesetzt. Nicht festgestellt werden kann, welche Vermögenswerte aus der W[istag] AG & Cie., Kommanditgesellschaft tatsächlich an die Reichsbank abgeliefert wurden.*” [Emphasis added.]

⁹⁷ Ruling regarding the Family's Origin (*Abstammungsbescheid*) dated 30 August 1939; Letter from Dr. Kurt Mayer, head of the *Sippenstelle* in Berlin, to the *Sippenamt* in Vienna, 10 February 1940, obtained from the Vienna City and State Archive, “*Sippenamt.*” For further discussion regarding this letter, see Waugh, pp. 266 – 267.

⁹⁸ Regarding Hitler's role in approving applications for *Mischling* status, see Edmonds and Eidinow, who note that there were 2,100 applications for reclassification in 1939; but that Hitler allowed only twelve of these to be

According to Dr. Mayer's letter, after the decision regarding the Wittgensteins' *Mischling* status was taken, certifications of family origin were issued to numerous descendants of Hermann Wittgenstein, so that there should be no further difficulties (presumably difficulties to the descendants) with respect to their racial classification according to the Nuremberg laws.

The CRT notes that since the decision specifically stated that the legal presumption set forth in the second sentence of Article 2, Paragraph 2 of the First Decree regarding *Reich* citizenship did not apply to Hermann Wittgenstein's grandchildren, the authorities interpreted the *Mischling* decision most favorably, and, among other actions, terminated the proceedings against the siblings to deprive them of their *Reich* citizenship and to confiscate their real estate holdings. With regard to the real estate holdings, in an internal memorandum dated 25 October 1940, the office charged with dealing with Jewish-owned assets (the *Vermögensverkehrsstelle*, hereinafter the "VVSt.") advised its Real Property Working Group (*Arbeitsgruppe Liegenschaften im Hause*) that the Wittgenstein siblings were no longer to be considered Jews ("...*bitte ich die Geschwister Wittgenstein nicht mehr als Juden zu betrachten.*")⁹⁹

The records show that Hermine and Helene not only survived the War without further harassment by Nazi authorities, but were able to maintain the lifestyle to which they were accustomed before the *Anschluss*. See discussion *infra*, pp. 38 - 39.

Delivery of Paul's Personal Effects and their Fate after the War

With regard to the delivery of Paul's personal effects, the records show that delivery was delayed because of disputes among various offices of the *Reich*, including between the Monuments Protection Office (*Zentralstelle für Denkmalschutz*) and the Flight Tax Office (*Reichsfluchtsteuerstelle*). Specifically, according to the available documentation, the Flight Tax

approved. Edmonds and Eidinow, p. 132. See also Tent, who notes that those seeking reclassification of "racial" status obviously wanted to escape persecution, however:

the bulk of the 9,636 applications sent to the Interior Ministry and on to Hitler were for persons seeking permission to marry and therefore to waive the decree for the protection of German blood. The Nazis developed a labyrinthine application process, demanding sets of photographs of the applicant as well as the submission of detailed questionnaires. The process aimed to establish the applicant's physical appearance (*i.e.*, "racial" characteristics), detailed family background, "Jewish" characteristics if any, agreeableness of personality (also highly arbitrary), career achievements, prior military service, and so on. In cases where the parentage of the Jew or *Mischling* was unclear, physical characteristics became especially important, and sometimes Nazi medical anthropologists and physicians were consulted on "difficult" cases. Needless to say, Nazi authorities were inclined to be highly suspicious of all such applications. Indicative of the fairness of the process is the fact that from 1935 to May 1941, Hitler approved only 263 applications for persons seeking to be recognized as *Mischlinge* first degree as opposed to full Jews. Then, exasperated by the entire process and growing less tolerant of *Mischlinge* anyway, he virtually ceased to approve any more, especially in the civilian sector, effectively terminating the appeals process by 1941.

Tent, pp. 12 – 13.

⁹⁹ VVSt. Memorandum dated 25 October 1940 addressed to *Arbeitsgruppe Liegenschaften im Hause*, regarding asset declarations numbered 19710, 19711, 21959 filed by Paul and Hermine Wittgenstein and Helene Salzer, respectively, and signed "Halik."

Office had previously issued an order authorizing the seizure of Paul's assets because he had not paid his flight tax. The Flight Tax Office subsequently lifted that order (apparently on the basis of the Agreement). The Monuments Protection Office complained about this, because it feared that Paul's artwork or other items of cultural or historical value could then be exported from the *Reich*.¹⁰⁰ In a letter dated 24 November 1939, Dr. Indra responded to the Monuments Protection Office and explained that the Flight Tax Office acted in complete accord with the agreements made with the *Reich*, that its actions were necessary for purposes of foreign currency management, and that the lifting of the seizure order was not designed to permit Paul's personal belongings to be hidden from the authorities.¹⁰¹ In an internal memorandum dated between April and June 1940, the Monument Protection Office noted "[i]n the export matter Paul Wittgenstein, a representative of the *Reichsbank* came and emphasized the foreign currency interests of the *Reich*, as according to an Agreement P.W. [Paul Wittgenstein] would settle his flight tax obligation with a payment of SF 1,200,000.00."¹⁰² The CRT notes that this representative was likely Dr. Indra, who had written to that office just a few months previously. A small part of Paul's belongings were subsequently released for export in 1940, but the remainder of his items was held in safekeeping during the War at the family estate at Hochreit.

After the War, Paul and his representative Franz Lichtenegger were able to obtain the release of most of his remaining belongings, while ceding two important paintings to the Austrian State Collections (the Belvedere Collections in Vienna) and designating three other important works as being under Monument Protection. This meant that he retained ownership of these items, but that they were not to be exported.¹⁰³ The CRT notes that, in his correspondence with the BDA,

¹⁰⁰ Letter from Alfred Indra to the Monument Protection Office, 24 November 1939, obtained from BDA. The CRT notes that, even though Paul had achieved *Mischling* status, he was still obliged to pay flight tax. This is because the flight tax, which became effective with the Fourth Ordinance of the *Reich* President for the Security of the Economy and Finances and Protection of Internal Peace of 8 December 1931 (*Vierte [Not-]Verordnung des Reichspräsidenten zur Sicherung von Wirtschaft und Finanzen und zum Schutze des inneren Friedens*) (RGBl. 1931 I, S. 699-745), was applicable to all, not just Jewish citizens of the *Reich*. The tax was instituted as a reaction to the flight of capital following the collapse of German banks in 1931, and was designed to discourage emigration and concomitant loss of capital from Germany. The tax was applicable to all persons who were citizens of the *Reich* as of 31 March 1931, who resided in the *Reich* as of 1 January 1928, and who subsequently gave up their residency in the *Reich*. Jews, many of whom fled the *Reich* to avoid persecution, may have suffered disproportionately under this tax after the rise of the Nazis. See, generally, Reimer Voß, *Steuern im Dritten Reich* (Taxes in the Third Reich), Munich: C.H. Beck Verlag, 1995, (hereinafter "Voß"), pp. 146 ff; and generally, Gerald D. Feldman and Wolfgang Seibel, *Networks of Nazi Persecution: Bureaucracy, Business, and the Organization of the Holocaust*, Berghahn Books, 2006, (hereinafter "Feldman and Seibel"), pp. 153 ff.

¹⁰¹ Letter from Alfred Indra to the Monument Protection Office, 24 November 1939, obtained from BDA. The German original reads: "Ich erkläre ausdrücklich, dass das Vorgehen der Reichsfluchtsteuerstelle völlig im Sinne der mit dem Reichswirtschaftsministerium getroffenen Abmachungen und vom Standpunkt der Devisenbewirtschaftung notwendig war. Ich erkläre jedoch ausdrücklich, dass die Aufhebung der Pfändung in keiner Weise benützt wurde, um Eigentum des Paul Wittgenstein, in welcher Weise immer zu verbringen, zu verbergen oder sonst den Behörden zu entziehen."

¹⁰² Note ad Z 1145/DSCH/40 undated but written between April and 4 June 1940 regarding Export Permission Request Paul Wittgenstein and related matters, obtained from BDA, "Personen, Paul Wittgenstein." The German original reads: "In der Ausfuhrangelegenheit Paul Wittgenstein hat ein Vertreter der Reichsbank vorgesprochen, der das devisenrechtl. Interesse des Reiches betonte, da durch einen Vertrag P.W. seine fällige Reichsfluchtsteuer durch eine Zahlung von 1.200.000.—Schweizerfranken beglichen wird."

¹⁰³ See letter from Paul Wittgenstein to BDA, 24 August 1950.

Lichtenegger made occasional references to Paul's flight tax, stating for example in a letter dated 4 January 1950 to the BDA that "Paul Wittgenstein left Austria in 1939. At his emigration he was assessed an extra-ordinarily high amount of flight tax. To enable him to pay this he had to sell his real estate assets. He was able to take only clothing, linen and a few family mementos."¹⁰⁴

Transfer of Paul's Real Estate Assets to Hermine and Helene and Possible Payment of Paul's Flight Tax

As detailed above, Side Agreement 2 provided that Paul convey to Hermine and Helene all of his *Reichsmark* balances and real estate in the *Reich*. Side Agreement 2 also stipulated that

[t]he only deduction to be made from his mark balances, so to be transferred, shall be for the purpose of paying all expenses such as packing, insurance, transportation, etc. of Paul Wittgenstein's personal property mentioned in an agreement ... between him and the *Reichsbank*. There shall also be paid out of the said mark balances, or out of the said real estate, any lawful obligations which may exist and be asserted against him in [the *Reich*].

In his 1938 Census declaration, Paul declared owing 100 percent of four properties in Vienna: Kohlmarkt 5 (valued by him at RM 520,000.00); Plankengasse 1 (valued at RM 234,000.00); Stuwertstrasse 17 (valued at RM 58,000.00); and Mariahilferstrasse 58 (valued at RM 380,000.00). He also declared ownership of one-half of the property at Argentinierstrasse 16 in Vienna (with his half valued at RM 121,604.00); and one-third of the property at Neuwaldeggstrasse 38 in Neuwaldegg, on the outskirts of Vienna (with his third valued at RM 73,450.00). Thus, the total value of Paul's interest in these six properties was RM 1,387,054.00, which in 1939, was equal to approximately SF 2,463,407.90.

After the conclusion of Side Agreement 2, on 2 November 1939 Paul conveyed his ownership share in five of the six properties by sales contract to his sisters. He sold Kohlmarkt 9 and Stuwertstrasse 17 (together valued at RM 578,000.00) to Helene; and Mariahilferstrasse 58 and his half-share of Argentinierstrasse 16 (together valued at RM 501,604.00) to Hermine. His one-third share in the Neuwaldegg property (valued at RM 73,450.00 in Paul's 1938 Census declaration but, according to the sale documentation, sold in equal shares of RM 37,720.00, for a total of RM 75,440.00) was transferred by sales contract in equal parts to Helene and Hermine on 7 December 1939.¹⁰⁵ The total value of the five properties sold by Paul was RM 1,155,044.00, which in 1939, was equal to approximately SF 2,051,358.14.

¹⁰⁴ Letter from Franz Lichtenegger to BDA, 4 January 1950, obtained from BDA, "*Personen*, Paul Wittgenstein." The CRT notes that Paul left Austria in 1938, not in 1939 as Lichtenegger wrote in his letter.

¹⁰⁵ The dates listed here are the registration dates of the transfers of ownership. Contract dates would have been somewhat earlier. For example, the Arbitration Panel's Decision states that the contract date for the Neuwaldegg property was 13 October 1939, with an addendum dated 5 December 1939. The Land Register recorded the transfer on 7 December 1939. As detailed below,

The transfer of Plankengasse 1 to Hermine was the only property that did not involve a sales contract.¹⁰⁶ According to the Land Register entries, preliminary note was taken on 6 December 1939 of the transfer of ownership of this property, and on 12 January 1940, the transfer was effected. The transfer was subsequently confirmed by a decision of the Regional Court of Vienna (*Landesgericht Wien*) dated 28 August 1940, and an entry in the Land Register, dated 10 October 1940, accordingly takes note of the Court's decision confirming the transfer.¹⁰⁷ A notation regarding a tax lien against the property, recorded on 18 May 1951, referred to potential tax liabilities assessed against Hermine's estate, but it appears not to have interfered with the further disposition of the property, and it was dropped in 1954. The Land Registers show that all six properties eventually reverted by deed of gift or inheritance to other members of the family, who in turn disposed of them freely.¹⁰⁸

The CRT notes that the Neuwaldegg property was the subject of a restitution claim filed by Mr. Harnik and [REDACTED 2] in 2003 with the Austrian General Settlement Fund, and which was decided by an Arbitration Tribunal for Restitution in Kind (the "Arbitration Panel").¹⁰⁹ In its 2006 decision regarding this claim, the Arbitration Panel noted that Paul had sold his one-third share of the Neuwaldegg property to his sisters, Hermine and Helene, in equal parts for RM 37,720.00 each, for a total of RM 75,440.00,¹¹⁰ and that the purchase price was paid directly "to the Finance Office Inner City East [*Finanzamt Innere Stadt Ost*] for the benefit of the vendor."¹¹¹

¹⁰⁶ The CRT notes that, according to the Arbitration Panel's Decision, the transfers of Paul's assets to his sisters were handled by Anton Groller under a power of attorney Paul had given Groller following Paul's flight from Austria in November 1938, which he amplified in October 1939 for the implementation of Side Agreement 2 with his sisters. According to the Arbitration Panel's Decision, this amplification specifically mentioned Plankengasse 1 as follows: "The power of attorney was restricted to 'the conclusion of and setting up of deeds of gift for my movable and fixed assets within the German Reich, especially with respect to the property Vienna I, P[lanken]gasse 1, EZ X9, KG Inner City; the explanations and steps of all sorts necessary in this connection, sales contract for EZ, X1, X2, X3 and X4, KG Neuwaldegg.'" Arbitration Panel Decision, p. 16, para. 82.

¹⁰⁷ The CRT notes that in a copy of the Land Register entries regarding Plankengasse 1, there is a handwritten penciled notation, in Latin script, against the heading of the 10 October 1940 entry, which states "Seized by Finance Office" (*Finanzamt Sicherstellung*). According to Land Registry personnel, who facilitated the CRT's access to this document, this notation was not present on the original document. They explained that this notation clearly was added after 2001, when a copy of the document was made for viewing and for satisfying copying requests. They added that it was clear that this notation had not been made by the Land Registry, because it was made in pencil and without any reference. The CRT also concluded that this notation originated after the War, as it is written in Latin script and in pencil, whereas all entries dating from the Nazi period were in German script and in ink.

¹⁰⁸ Excerpts from the Land Register (*Auszüge Grundbuch*) Inner City, Vienna and Neuwaldegg.

¹⁰⁹ See, generally, <http://en.nationalfonds.org/> (last viewed on 1 September 2011). The General Settlement Fund provides compensation for property confiscation connected to persecution during National Socialism in Austria. According to the Fund's website, more than 20,000 applications were filed by the claim filing deadline of 28 May 2003.

¹¹⁰ As noted above, in their 1938 Census declarations, Paul, Hermine and Helene had reported the value of their one-third shares as RM 73,450.00 each.

¹¹¹ Arbitration Panel Decision, pp. 16-17, para. 83 – 84. The German original reads: "Der Kaufpreis war bereits in der Weise berichtet worden, da jede der Käuferinnen an das Finanzamt Innere Stadt Ost zugunsten des Käufers [sic] eine Überweisung in der bezeichneten Höhe vorgenommen hat." The CRT notes that the German word "Käufer" means "buyer," but that the English translation of this paragraph contains a "rectification" that states: "[t]he sentence should read "as each of the purchasers had made a transfer of the mentioned amount to the tax office Innere Stadt East for the benefit of the vendor." This rectification is also consistent with the clear meaning of the

The Arbitration Panel noted that this property was not directly confiscated by the Nazis, but rather was part of a global financial arrangement between the family members and the *Reich*. The property in question remained under the co-ownership of Hermine and Helene. The property was later inherited by Felix Salzer, who sold it in 1971 for the amount of 23 million Austrian Schillings (“ATS”).¹¹² In its decision dated 12 July 2006, the Arbitration Panel recommended *in rem* restitution of a one-third share of a portion of the property at issue. The Arbitration Panel noted that another portion of the claimed property was a public road area, and that therefore restitution was not practical. The Arbitration Panel stated that a comparable asset would be awarded upon consultation with the city of Vienna. In a subsequent decision dated 26 May 2008, the Arbitration Panel awarded Mr. Harnik and Ms. [REDACTED 2] an amount of 7,400.00 Euros, which was the value of the property that could not be restituted outright as determined by an independent real estate assessor.¹¹³

The Arbitration Panel did not reach a determination as to why the purchase price for the Neuwaldegg property was paid to the tax authorities. The Arbitration Panel noted that in paragraph 8 of the purchase contract for the property, all parties to the contract declared that no Jewish interests were involved in the sale. The CRT notes therefore, that no aryazation tax (which would have gone to the VVSt. rather than the tax authorities) would have been applied to the sale. In its discussion of this payment, however, the Arbitration Panel referred to the document from the Monument Protection Office dated between April and June 1940 that references the visit of a representative of the *Reichsbank*, who stated that Paul would “settle his flight tax obligation with a payment of SF 1,200,000.00,” which in 1940 equaled approximately SF 680,520.00.¹¹⁴ The Arbitration Panel concluded that this agreement was the reason why Paul’s final flight tax assessment was not issued by the Finance Office Inner City East (*Finanzamt Innerer Stadt Ost*, the same tax office to which the purchase price for Paul’s share of the Neuwaldegg property was paid) until 24 July 1940. The Arbitration Panel noted that Paul’s final flight tax assessment replaced his provisional assessment dated 1 September 1939, and that the final tax, which had become due on 1 October 1938, was assessed at RM 1,602,907.00 on assets totaling RM 6,411,631.00. In its decision, the Arbitration Panel stated that it could not determine why Paul’s total assets had been valued at over RM 6,400,000.00, when, according to his 1938 Census declaration, they were valued at RM 4,374,000.00, some RM 2 million less than the amount upon which his final flight tax assessment was based.¹¹⁵ The CRT notes that in 1938

German original, *i.e.*, that the two (female) buyers each made a payment to the tax office for the benefit of the (male) seller.

¹¹² The Arbitration Panel noted that no restitution claim had previously been filed for this property, nor had Felix’s inheritance of the property every been questioned by the family, and that this was an indication that the issues surrounding this property seemed to have been put aside and settled by the global financial settlement. Arbitration Panel Decision, p. 4, para. 14.

¹¹³ Decision 206a/2008 zu 206/2006 of the Arbitration Panel for Restitution in Kind (*Schiedsinstanz für Naturalrestitution*), 26 May 2008.

¹¹⁴ Arbitration Panel Decision, p. 18, para. 91. *See also* discussion *supra*, p. 27 and note 102.

¹¹⁵ Arbitration Panel Decision, p. 18, para. 92. The German original reads: “*Erst am 24. 1940 wurde deshalb von der Reichsfluchtsteuerstelle des Finanzamtes Innere Stadt-Ost ein endgültiger Reichsfluchtsteuerbescheid für Paul W[itzenstein] ausgestellt, der an die Stelle des vorläufigen Bescheides vom 1. September 1939 trat. Darin wurde das Gesamtvermögen mit RM 6,411.631,-- beziffert und als Reichsfluchtsteuer RM 1,602.907,-- festgesetzt, die am 1. Oktober 1938 fällig geworden war. Warum das Gesamtvermögen von Paul W[itzenstein] von der*

(when Paul's flight tax officially became due), RM 1,602,907.00 equaled approximately SF 2,813,101.79 (more than double the SF 1.2 million figure cited in the Monument Protection Office document).

It is thus not clear if Hermine and Helene paid the purchase price for the Neuwaldegg property directly to the tax authorities as partial payment of Paul's flight tax. It is also not clear whether the purchase price they paid for Paul's four other properties that were conveyed to them through sales contract (Kohlmarkt 5, Stuwertstrasse 17, Mariahilferstrasse 58, and Paul's half share of Argentinierstrasse 16, which together were valued at RM 1,079,607.00 or SF 1,903,449.00 in 1940) was ultimately transferred to the tax authorities to settle his flight tax, or if Paul paid any flight tax whatsoever. Although no document exists to show that these payments were used to settle his flight tax, or that his flight tax was paid at all, various references in other documents strongly suggest that some amount was paid as flight tax for Paul, and that this payment came from the sale of his real estate to his sisters.¹¹⁶ First, in Side Agreement 2, Paul himself agreed that "any lawful obligations which may exist and be asserted against him in Germany" were to be paid out of the *Reichsmark* balances or from the real estate that he transferred to Hermine and Helene. Second, as noted above, the internal memorandum of the Monument Protection Office from April / June 1940 references a visit by a representative of the *Reichsbank* (likely Dr. Indra), who informed that office that Paul would settle his flight tax obligation with a payment of SF 1.2 million. Third, as noted in the Arbitration Panel's Decision, in an undated letter that was presumably written at the end of August 1939 to her brother Ludwig, Gretl (Paul's sister) reported on the outcome of the final negotiation with the *Reichsbank*. According to that letter, after the agreement granting Paul SF 500,000.00 from the *Wistag AG* was finalized, Gretl asked Paul's lawyer Samuel Wachtell whether Paul would compensate the *Wistag AG* (*i.e.*, John Stonborough) for this amount from his domestic (Austrian) assets. According to Gretl, Wachtell replied that Paul had relinquished his entire domestic wealth [to his sisters Hermine and Helene] "*i.e.*, everything that was left after deduction of the RFS [*Reichsfluchtsteuer* (flight tax)]."¹¹⁷ Finally, as detailed above, in a letter dated 4 January 1940 to the BDA regarding the release of Paul's personal belongings, Franz Lichtenegger wrote that Paul was assessed an extraordinarily high amount of flight tax, which he paid through the sale of his real estate.¹¹⁸

Reichsfluchtsteuerstelle mit über RM 6,400.000.-- bewertet und im Gegensatz dazu in der VA mit RM 4,374.000.--, somit um knapp zwei Millionen Reichsmark niedriger, angegeben worden war, kann nicht festgestellt werden." The CRT notes that the 25 percent flight tax on assets totaling RM 4,374,000.00 (as reported in Paul's 1938 Census declaration) would have equaled RM 1,093,500.00. Paul's 1938 Census declaration is described in detail below at pp. 36 – 38.

¹¹⁶ The CRT notes that the Arbitration Panel concluded that Paul did pay flight tax. Arbitration Panel Decision, p. 27, para. 131. The German original reads: "*Wie sich aus den Feststellungen ergibt, wurden die Geschwister W[itzenstein] nach Abschluss der Vereinbarung mit der Reichsbank als ‚Mischlinge‘ behandelt. Trotzdem waren sie Diskriminierungen unterworfen, wie z.B. die Kündigung Paul W[itzenstein]s und das Verbot, weiter zu lehren und öffentlich aufzutreten oder die Zahlung der Reichsfluchtsteuer durch Paul W[itzenstein]."* [Emphasis added.]

¹¹⁷ Arbitration Panel Decision, pp. 22 – 23, para. 114. The German original reads: "*W[achtell] sagte P[aul] verzichte auf sein ganzes Vermögen in seiner Heimat. D.h. auf alles, was nach Abzug der R.F.S. [Reichsfluchtsteuer] zurückbleibt."*

¹¹⁸ See discussion *supra*, p. 28.

As noted above, the document from the Monument Protection Office dated between April and June 1940 states that a *Reichsbank* representative (likely Dr. Indra) stated that Paul would settle his flight tax obligation with a payment of SF 1,200,000.00, which, in 1940, would have equaled approximately RM 680,520.00. Thus, it is possible that Hermine and Helene paid the tax authorities the purchase price for only some of the properties, up to an amount equaling SF 1.2 million (*i.e.*, RM 680,520.00), and they were able to avoid paying the higher *Reichsmark* amount of approximately RM 1.6 million that had been assessed against Paul on 24 July 1940. In this regard, Waugh remarks that “Hermine and Helene hired the services of Dr. Indra ...to protect their new-found fortune [the domestic assets that Paul transferred to them] from the tax man.”¹¹⁹ It is also possible that Paul’s flight tax was satisfied by crediting the total amount of RM 654,150.00 that the Paul, Hermine, and Helene paid in their first installments of atonement tax (prior to their receiving certification of their *Mischling* status) toward his flight tax. The CRT notes that this total is approximately equal to the SF 1.2 million (equal to RM 680,520.00) cited in the document from the Monument Protection Office referenced above. Alternatively, the tax as assessed at approximately RM 1.6 million could have been paid by the proceeds of the sale of the five properties (RM 1,155,044.00), plus some portion of the amount the siblings paid in their first installments of atonement tax (RM 654,150.00).

In any case, there is no evidence that any flight tax paid by Paul or on his behalf was paid by assets held in a Swiss bank. Rather, the available documentation shows that, if any flight tax was paid, it came from the sale of Paul’s real estate to his sisters, or from the *Reichsmark* counter value of the assets transferred from Switzerland that were placed at his sisters’ free disposition. Unlike the record for the Neuwaldegg property, there is no direct evidence that confirms that the sale proceeds for Paul’s remaining properties were paid to the tax authorities. If this were not the case, however, it is difficult to explain why the properties were conveyed by sales contract and not outright as gifts. The sales contracts, together with Paul’s agreement in Side Agreement 2 that “any lawful obligations which may exist and be asserted against him in Germany” be deducted from the *Reichsmark* balances or real estate that he agreed to convey to his sisters, suggests that his flight tax obligation would have been satisfied from the proceeds of the sale of his real estate.

The CRT notes, as did the Arbitration Panel, that prior to the proceedings before the Arbitration Panel, neither Paul nor his heirs sought restitution of the sale price for the Neuwaldegg property that was paid directly to the tax authorities, and that there is no evidence that Paul received any payment from his sisters for this amount – or for any other amounts that Paul conveyed to them pursuant to Side Agreement 2 – after 1945. The CRT further notes that there is no evidence that restitution was ever sought for payment of Paul’s flight tax, even though he would have been eligible for such restitution, and even though the Trusts set up by Paul’s will would have obliged the Trustee to pursue such a claim on behalf of the Trusts.¹²⁰ As detailed below, the flight tax

¹¹⁹ Waugh, p. 268.

¹²⁰ The CRT notes that the restitution law enacted in Austria after the War specifically entitled persecutees to compensation for atonement tax (*Sühneabgabe*) and flight tax (*Reichsfluchtsteuer*) and was implemented shortly after Paul Wittgenstein’s death on 3 March 1961. A public call for applications for compensation for these taxes and other financial losses consequent to racial persecution was issued by the *Abgeltungsfonds*, the institution set up to deal with these claims, and published in the *Wiener Zeitung* on 31 August 1961. See Austrian State Archive, AdR 06 Abg.F., *Allg. Akten, D4 Bericht, Beilage 8*. Regarding the obligations of the Trusts to seek restitution, see *supra*, note 1.

was not paid through the transfer of funds held in Swiss banks directly to a blocked account in the *Reich*. On the contrary, the evidence shows that the flight tax – if it indeed was paid – was paid from the proceeds of the sale of Paul’s real estate in the *Reich* or from the *Reichsmark* counter value of his assets that were placed at his sisters’ free disposition. Accordingly, no award amount is appropriate for the payment of tax under the *Holocaust Victim Assets Litigation*. See discussion *infra*, page 55.

Information Available from the Austrian State Archive

By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the *Reich*, and/or who were nationals of the *Reich*, including Austria, and who held assets above a specified level to register all their assets as of 27 April 1938 (as defined above, the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are files concerning the assets of Paul Wittgenstein, Hermine Wittgenstein, and Helene Salzer, née Wittgenstein, numbered 19710, 19711, and 21959, respectively. As noted above, the Claimants submitted selected pages from these records. The CRT obtained the full files, which are described below. The individual records for the three siblings are in large portions identical, and show that the siblings held similar portfolios. A summary listing of the securities held by the siblings in their portfolios is attached to this decision as Appendix D. The archival records also contain files concerning the assets of Jerome Stonborough (deceased), numbered 11778, and Margaret Stonborough, née Wittgenstein, numbered 11780.

Hermine Wittgenstein

The file concerning Hermine Wittgenstein contains her asset declaration, signed by her on 15 July 1938 in Vienna; an update of that declaration, signed on 14 December 1938; a form letter, dated 5 August 1938, advising that her reported foreign currency denominated securities should be offered to the *Reichsbank* and sold; and documents relating to her racial status under the Nuremberg laws. According to her asset declaration, Hermine Wittgenstein was born on 1 December 1874, resided at Argentinierstrasse 16 in Vienna IV, and was unmarried. She listed her religion as Roman Catholic and noted that she submitted her declaration provisionally because an application that would release her from the asset reporting requirement was still pending. The full text reads as follows:

This declaration is being made under the proviso that my brother Paul Wittgenstein in his own name, in my name, and in the name of our sister Helene Salzer, née Wittgenstein, have filed with the Office of the Reich Plenipotentiary a currently still pending application for the release from this declaration requirement. My siblings and I are convinced that our grandfather Hermann Christian Wittgenstein racially was not a full Jew. This is indicated by his physical appearance and his way of life, as well as by the physical appearance of his direct descendants. Genealogical research is being undertaken to establish whether our conviction is correct. If so, then two [of our] grandparents would be non-Jewish. I further point to the fact that for the past 100 years all members of the Wittgenstein family without exception were born and brought up as

Christians. The family itself originates from Germany, from where they immigrated into Austria around 1850.¹²¹

Hermine Wittgenstein listed among her assets land and real estate worth RM 2,913,839.00; valuables, including her art and manuscripts collections, worth RM 173,861.00; and financial assets, including her RM 1,148,424.61 (equal to SF 2,008,086.40, nominal value) share of the *Wistag Partnership's* assets, worth RM 1,921,536.29. Among her financial assets, Hermine Wittgenstein reported securities denominated in US dollars with a market value of RM 325,950.35. Hermine Wittgenstein did not indicate where the reported securities were held. However, the securities she listed are identical to those referenced in Bank I's records as contained in her custody account numbered 55872, as detailed below and in Appendix D. Hermine Wittgenstein also indicated that she held a demand deposit account at Bank I with a balance of US \$63.00. Hermine also reported that she owed Paul RM 107,512.00 for a loan he had made to her, and that she owed the *Partnership* SF 25,000.00 (which she noted was equivalent to RM 14,297.50) for an advance on her *Partnership* share.

The records further include an updated statement of Hermine Wittgenstein's assets as of 12 November 1938, dated 14 December 1938, in which she calculated the amount due for the first installment of the atonement tax (*Sühneabgabe*).¹²² In her update, she wrote that, based upon this calculation, she had transferred an amount of RM 242,850.00, equal to five percent of her net assets, to the *Reich* Finance Office in Wieden. She stated that this transfer, as well as the submission of the amended statement, was made under the proviso that clarification was still pending about whether or not the filing and atonement tax payment requirements applied to her.

This proviso reads as follows:

This transfer is made under the proviso under which I also made the declaration of my assets pursuant to the law of 27 April 1938, namely with the reservation that the racial status of one of my grandparents has not yet been established. An application regarding establishment of this [status] is pending with the *Sippenamt*, consequently it also is not clear at this time whether under the Nuremberg Laws I am considered to be a Jew or a *Mischling*.¹²³

¹²¹ The German original reads: “*Diese Anmeldung wird mit dem Vorbehalte erstattet, dass mein Bruder Paul Wittgenstein im eigenen Namen, in meinen Namen und in Namen unserer Schwester Helene Salzer geb. Wittgenstein ein – derzeit noch nicht erledigtes – Ansuchen um Befreiung von der Anmeldepflicht beim Amte des Reichsstatthalters in Wien eingebracht habe. Meine Geschwister und ich sind der Ueberzeugung, dass unser Grossvater Hermann Christian Wittgenstein der Rasse nach nicht Volljude war. Sein Aussehen und seine Lebensweise sowie das Aussehen seiner direkten Nachkommen weisen darauf hin. Es sind im Wege der Sippenforschung Erhebungen eingeleitet worden, um festzustellen, ob diese unsere Ueberzeugung richtig ist; wenn dies der Fall ist, so wären zwei unsere Grosselternsteile nichtjüdisch. Weiters weise ich darauf hin, dass alle Mitglieder der Familie Wittgenstein seit 100 Jahren ausnahmslos als Christen geboren und erzogen worden sind; die Familie selbst stammt aus Deutschland, von wo sie um 1850 nach Oesterreich eingewandert ist.*”

¹²² Pursuant to the Decree on Atonement Fine for all Jews who are German Subjects enacted on 12 November 1938, a tax of 20 percent (later raised to 25 percent) of registered assets was imposed upon Jews with German citizenship. The tax was designed to raise RM 1 billion for the German economy as damages “caused” by the Jewish community. The tax is often referred to as “atonement tax” (*Sühneleistung*) or the Jewish Wealth Levy (*Judenvermögensabgabe*). The amount owed was based upon assets reported in the 1938 Census. See, generally, Voß, pp. 149 ff, and Feldman and Seibel, pp. 156 ff.

¹²³ The German original reads: “*Diese Ueberweisung erfolgt unter dem gleichen Vorbehalte, unter welchem ich die Anmeldung meines Vermögens nach dem Gesetz vom 27 April 1938 erstattet habe, nämlich unter dem Vorbehalte, dass die rassische Zugehörigkeit eines meiner Grosselternsteile noch nicht feststeht. Zwecks Feststellung derselben*

In her statement she reported that she had, as required, offered all her foreign currency denominated securities to the *Reichsbank* and that their sale had been ongoing.¹²⁴ Pursuant to the Seventh Ordinance regarding the Implementation of the Foreign Exchange Control Law (*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung*), which became effective 19 November 1936, all persons residing or domiciled in the *Reich* were required to offer for sale all foreign currency denominated securities to the *Reichsbank* or other bank designated by the *Reich*.¹²⁵ Hermine listed the securities already sold as of 12 November 1938 and noted that the foreign currency proceeds of this sale had been transferred to the *Deutsche Golddiskontbank* and that as a result – through the receipt of the counter value in *Reichsmark* – her cash assets had increased (“*Durch die erfolgten Wertpapierverkäufe haben sich meine Bankguthaben und Zahlungsmittel erhöht...*”). She further confirmed that her share of the assets held by the *Wistag Partnership* had remained unchanged.

The file also includes a “Ruling regarding the Family’s Origin” (*Abstammungsbescheid*) dated 30 August 1939 and signed by Dr. Mayer (head of the *Sippenstelle* in Berlin), stating that, according to the Office’s verification, Hermine Maria Franciska Wittgenstein, who was born on 1 December 1874, was a Jewish *Mischling* with two fully Jewish grandparents. This Ruling is referenced in a letter, dated 24 October 1940, from the VVSt. to the Gestapo, which confirmed that the siblings, according to the copy of a Ruling provided by Paul’s legal representative, Dr. Indra, were to be considered *Mischlinge*, which with respect to the siblings apparently mooted previous discussions regarding withdrawal of citizenship from wealthy Jews.¹²⁶ Another internal memorandum included in the file dated 25 October 1940 advises the VVSt.’s Real Estate Division that the siblings were no longer to be considered Jewish (“*die Geschwister Wittgenstein nicht mehr als Juden zu betrachten*”).

Paul Wittgenstein

The file concerning Paul Wittgenstein contains his 1938 Census asset declaration, signed by him on 15 July 1938 in Vienna; an update of that declaration, signed by his representative A. Groller

läuft ein noch nicht erledigtes Ansuchen beim Sippenamt, so dass derzeit auch nicht feststeht, ob ich nach den Nürnberger Gesetzen als Jude oder als Mischling gelte.”

¹²⁴ The CRT notes that all the US dollar denominated securities listed as sold are included in Bank I’s records as being held in Hermine’s custody account 55872, as indicated above and as shown, with the CRT’s valuation as of the date of sale, in Appendix D.

¹²⁵ The Seventh Ordinance regarding the Implementation of the Foreign Exchange Control Law (*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung*) of 19 November 1936 was subsequently superceded by the Law on the Management of Foreign Exchange (*Gesetz über die Devisenbewirtschaftung*) of 12 December 1938, which also required that foreign currency denominated securities be offered for sale to the *Reichsbank*.

¹²⁶ The German original reads: “*Auf Grund unserer seinerzeitigen Besprechung zwecks Ausbürgerung vermögender Jüden, übersandte ich Ihnen das Vermögensverzeichnis des Obg. Vom Rechtsvertreter des Paul Wittgenstein, Dr. Alfred Indra, Wien IV, Reichsrathstr. 9 erhielt ich den in der Beilage fotokopierten Abstammungsbescheid, aus dem hervorgeht, dass dessen Klient Mischling ist. Aus diesem Grunde ist die Ausbürgerung hinfällig geworden und bitte ich mir das übersandte Vermögensverzeichnis umgehend zu retournieren. Gleichzeitig gebe ich Ihnen bekannt, dass die ebenfalls Wien 4, Argentinierstr. 16 wohnhaft gewesene Hermine Wittgenstein sowie die 4., Brahmplatz 4 gemeldete Helene Salzer geb. Wittgenstein ebenfalls auf Grund des Abstammungsbescheides des Leiters der Reichsstelle für Sippenforschung, Berlin als Mischlinge zu betrachten sind.*”

on 14 December 1938; and, in addition to the same documents contained in his sister's file, a note by the Police Registration Office, dated 21 August 1940, stating that Paul Wittgenstein was registered as having left for New York in April 1939 [*sic*], a preliminary flight tax assessment, date 1 September 1939, and a final assessment, replacing the earlier one, dated 24 July 1940. The final flight tax assessment, which differed only marginally from the preliminary one, was for amount of RM 1,602,907.00, had fallen due on 1 October 1938, and was based on total assets as of 1 January 1938 amounting to RM 6,411,631.00.¹²⁷

In his 1938 Census declaration, Paul Wittgenstein gave his date of birth as 5 November 1887, his address as Argentinierstrasse 16, Vienna IV, his religion as Roman Catholic and his profession as concert pianist. Paul also noted that he had filed an application on his own behalf and on behalf of his sisters Hermine and Helen seeking release from the asset reporting requirement on the basis that one of their three grandparents listed as being Jewish, Herrmann Christian Wittgenstein, was in fact not Jewish.¹²⁸

Paul listed among his assets land and real estate worth RM 1,387,054.00; valuables, including his art and manuscript collections, worth RM 174,878.00; music instruments and other items relating to his profession worth RM 57,700.00; and financial assets, including his RM 1,450,756.57 (equal to SF 2,536,731.20, nominal value) share of the *Wistag Partnership's* assets, worth RM 2,636,794.59. Among his financial assets, Paul reported securities denominated in US dollars with a market value of RM 421,322.99. Paul did not indicate where the reported securities were held. However, the securities he listed are identical to those referenced in Bank I's records as contained in his custody account numbered 55873, as detailed below and in Appendix D. Paul also indicated that he held a demand deposit account at Bank I with a balance of US \$63.00. Paul also reported that his sister Hermine owed him RM 107,512.71 for a loan he had made to her. The CRT notes that Paul did not report the gold he held in his custody account 3953 (*see* discussion, *infra*) at Bank I in his 1938 Census declaration.

The records further include an updated statement of Paul Wittgenstein's assets as of 12 November 1938, signed on his behalf by A. Groller on 14 December 1938, in which Groller calculated the amount due for the first installment of the atonement tax. In the update, Paul wrote that, based upon this calculation, he had transferred an amount of RM 218,700.00, equal to

¹²⁷ The preliminary flight tax assessment was for RM 1,600,000.00, based on total assets worth RM 6,400,000.00 as of 1 January 1938. The Arbitration Panel noted that it was unable to ascertain the reason why flight tax was assessed on basis of RM 6.4 million worth of assets, when Paul had reported the worth of his total assets at approximately RM 2 million less (RM 4.4 million) in his 1938 Census declaration. Arbitration Panel Decision, p. 18, para. 92.

¹²⁸ The German original mirrors the language included in Hermine's asset declaration and reads: "*Diese Anmeldung wird mit dem Vorbehalte erstattet, dass ich im eigenen Namen und im Namen meiner Schwestern Hermine Wittgenstein u. Frau Helene Salzer geb. Wittgenstein ein – derzeit noch nicht erledigtes – Ansuchen um Befreiung von der Anmeldepflicht beim Amte des Reichsstatthalters in Wien eingebracht habe. Meine Geschwister und ich sind der Ueberzeugung, dass unser Grossvater Hermann Christian Wittgenstein der Rasse nach nicht Volljude war. Sein Aussehen und seine Lebensweise sowie das Aussehen seiner direkten Nachkommen weisen darauf hin. Es sind im Wege der Sippenforschung Erhebungen eingeleitet worden, um festzustellen, ob diese unserer Ueberzeugung richtig ist; wenn dies der Fall ist, so wären zwei unsere Grosselternsteile nichtjüdisch. Weiters weise ich darauf hin, dass alle Mitglieder der Familie Wittgenstein seit 100 Jahren ausnahmslos als Christen geboren und erzogen worden sind; die Familie selbst stammt aus Deutschland, von wo sie um 1850 nach Oesterreich eingewandert ist.*"

five percent of Paul's net assets, to the *Reich* Finance Office in Wieden. He added the same proviso included in Hermine's statement that this transfer, as well as the submission of the amended statement, was made under the proviso that clarification was still pending about whether or not the filing and atonement tax payment requirements applied to him.

In his statement Paul reported that he had, as required, offered all his foreign currency denominated securities to the *Reichsbank* and that their sale had been ongoing.¹²⁹ As noted above, pursuant to the Seventh Ordinance regarding the Implementation of the Foreign Exchange Control Law (*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung*), which became effective 19 November 1936, all persons residing or domiciled in the *Reich* were required to offer for sale all foreign currency denominated securities to the *Reichsbank* or other bank designated by the *Reich*. Paul listed the securities already sold as of 12 November 1938 and stated that the foreign currency proceeds from this sale had been transferred to the *Deutsche Golddiskontbank* and that as a result – through the receipt of the counter value in *Reichsmark* – his cash assets had increased (“*Durch die erfolgten Wertpapierverkäufe haben sich meine Zahlungsmittel und Bankguthaben erhöht...*”). He further confirmed that his share of the assets held by the *Wistag Partnership* had remained unchanged.

Finally, the file includes the same correspondence as in Hermine Wittgenstein's file regarding the siblings' certification as being recognized as Jewish *Mischlinge*, except that the actual copy of this ruling is missing from Paul Wittgenstein's file.

Helene Salzer

The file concerning Helene Salzer, née Wittgenstein, contains her 1938 Census asset declaration, signed on 15 July 1938 in Vienna; an update to that declaration, signed on 14 December 1938; and the same documents as contained in her sister's and brother's files.

In her 1938 Census declaration Helene Salzer stated that she was born on 23 August 1879, resided at Brahmsplatz, Vienna IV, was Roman Catholic, and was married to Dr. Max Salzer, who was a section chief [in the public service] and not Jewish. She included the same statement included in the asset declarations of Paul and Hermine, namely that she was submitting her declaration provisionally because an application that would release her from the reporting requirement was still pending.

Helene Salzer listed among her assets land and real estate worth RM 1,945,817.00; valuables, including her art and manuscripts collection, worth RM 136,732.00; and financial assets, including her RM 966,187.48 (equal to SF 1,689,434.32, nominal value) share of the *Wistag Partnership's* assets, worth RM 1,729,155.69. Among her financial assets, Helene Salzer reported securities denominated in US dollars with a market value of RM 427,566.67. Helene Salzer did not indicate where the reported securities were held. However, the securities she listed are identical to those referenced in Bank I's records as contained in her custody account

¹²⁹ The CRT notes that all the US dollar denominated securities listed as sold are included in Bank I's records as being held in Paul's custody account 55873, as indicated above and as shown, with the CRT's valuation as of the date of sale, in Appendix D.

numbered 55874, as detailed below and in Appendix D. Helene Salzer also indicated that she held a demand deposit account at Bank I with a balance of SF 814.10.

The records further include an updated statement of Helene Salzer's assets as of 12 November 1938, signed on 14 December 1938, in which she calculated the amount due for the first installment of the atonement tax. In her update, she wrote that, based upon this calculation, she had transferred an amount of RM 192,600.00, equal to five percent of her net assets, to the *Reich* Finance Office in Wieden. She included the same proviso included in Hermine's and Paul's updates, namely that this transfer, as well as the submission of the amended statement, was made under the proviso that clarification was still pending about whether or not the filing and atonement tax payment requirements applied to her.

In her statement she reported that she had, as required, offered all her foreign currency denominated securities to the *Reichsbank* and that their sale had been ongoing.¹³⁰ The CRT notes again, that, pursuant to the Seventh Ordinance regarding the Implementation of the Foreign Exchange Control Law (*Siebente Durchführungsverordnung zum Gesetz über die Devisenbewirtschaftung*), which became effective 19 November 1936, all persons residing or domiciled in the *Reich* were required to offer for sale all foreign currency denominated securities to the *Reichsbank* or other bank designated by the *Reich*. Helene listed the securities already sold as of 12 November 1938 and stated that the foreign currency proceeds from this sale had been transferred to the *Deutsche Golddiskontbank* and that as a result – through the receipt of the counter value in *Reichsmark* – her cash assets had increased (“*Durch die erfolgten Wertpapierverkäufe haben sich meine Bankguthaben und Zahlungsmittel erhöht...*”). She further confirmed that her share of the assets held by the *Wistag Partnership* had remained unchanged.

Finally, the file includes the same correspondence as in Hermine Wittgenstein's file regarding the siblings' certification as being recognized as Jewish *Mischlinge*, including the 30 August 1939 notification of the ruling by Kurt Mayer, Head of the *Sippenstelle*, that Helene Gabriele Sophia Salzer, née Wittgenstein, was a Jewish *Mischling* with two grandparents who were racially fully Jewish.

The records further contain an internal memorandum prepared by the Vienna police, indicating that as of 27 August 1940, Helene Salzer was still residing at Brahmsplatz 4, Vienna IV, but that she spent the months from May to October at Neuwaldeggerstrasse 38, Vienna 19, where, according to her declaration, she owned one-third of the Wittgenstein family's house.

Jerome Stonborough and Margaret Stonborough, née Wittgenstein

The file concerning Jerome Stonborough contains his 1938 Census asset declaration and, as he predeceased the filing of the declaration, is signed on behalf of his estate by his widow Margaret Stonborough on 7 July 1938 in Vienna. According to this declaration, Jerome Stonborough, who was Jewish and an American citizen, was born on 7 December 1873 in New York and died on 15 June 1938 in Vienna. According to the instructions on the form, because he was foreign national

¹³⁰ The CRT notes that all the US dollar denominated securities listed as sold are included in Bank I's records as being held in Helene's custody account 55874, as indicated above and as shown, with the CRT's valuation as of the date of sale, in Appendix D.

who was resident in the *Reich*, he was required to report only assets that he held within the *Reich*. According to the declaration, his domestically-held assets consisted of art objects and collections worth RM 64,900.00.

The file concerning Margaret Stonborough, née Wittgenstein, contains her asset declaration, signed on 7 July 1938, and several pieces of correspondence. According to her asset declaration, Margaret Stonborough, who was Jewish, was born on 19 September 1882 and was a widow. She indicated in her asset declaration that she was an American citizen and that she resided at Kundmanngasse 19/21 in Vienna III. According to the instructions on the form, because she was foreign national who was resident in the *Reich*, she was required to report only assets that she held within the *Reich*. Accordingly, she reported owning real estate worth RM 429,000.00; claims deriving from real estate sales of RM 26,294.00; and other valuables, including art objects worth RM 20,235.00. The asset declaration was accompanied by a declaration, signed by Margaret Stonborough on 7 July 1938 and certified by the American Consulate, stating that she was an American citizen and that she accordingly claimed all the rights relating to her person and her property that ensued from that fact. The CRT notes that Margaret Stonborough's asset declaration does not contain the proviso regarding her racial status under the Nuremberg laws such as her siblings cited in their 1938 Census declarations.

As noted above, because Jerome and Margaret Stonborough were foreign nationals, they were required to report only assets they held within the *Reich*. The records concerning Jerome and Margaret Stonborough accordingly do not refer to any assets held in Swiss banks.

Information Available in the Banks' Records

The Banks' records reflect the financial assets of the family as set forth in the Agreement with the *Reichsbank*, the *Partnership's* financial statements, and the siblings' 1938 Census records. These records show accounts in the name of the *Partnership* and *Wistag AG*, as well as in the names of the siblings personally. A summary of the accounts addressed in this decision is attached as Appendix E.

Accounts belonging to *Wistag AG* and *Wistag Partnership*

The auditors who carried out the investigation of the 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 any accounts belonging to *Wistag AG* and *Wistag Partnership* during their investigation of the Banks. The documents showing the existence of accounts belonging to *Wistag AG* and *Wistag Partnership* were submitted in part by the Claimants. These documents include the interim balance sheets of *Wistag AG* and *Wistag Partnership*, the Auditor's Report for the *Wistag AG's* General Meeting, dated 16 September 1940, and *Wistag Partnership's* Statement of Accounts as of 6 June 1939.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of Bank I and Bank III to obtain additional information about accounts held by the Wittgenstein family members and/or by legal entities belonging to them ("Voluntary Assistance"). Bank I and Bank

III provided additional documents regarding certain of these accounts and showing the existence of additional accounts, as described in detail below.

Wistag AG

The CRT notes that *Wistag AG*'s 13 July 1940 Interim Balance Sheet, which was submitted by the Claimants, shows that as of that date, *Wistag AG* held assets totaling SF 1,150,000.00, including its SF 1 million capitalization and SF 150,000.00 in reserve funds. The Interim Balance Sheet shows that, as of this date, *Wistag AG* held cash assets totaling SF 169,067.00 at the Lausanne branch of Bank I, SF 5,479.00 at Bank II, and SF 62,962.00 at *Centrust Bank* in New York, as well as securities worth SF 218,690.00 that were held on deposit at *Centrust Bank* in New York. The Interim Balance Sheet also reflects losses registered from 1939 and 1940 in the amount of SF 543,025.60. Under the heading "Debtors" (*Debitoren*), it also reflects a debt to Felix Salzer of New York in the amount of US \$7,000.00 or SF 31,270.90, and a payment to the *Reichsbank* in the amount of SF 90,386.00.¹³¹ Under "Debtors," the Interim Balance Sheet also includes a debt owed to Paul in the amount of SF 29,119.50 reflecting payments advanced by Paul ("*Vorbezüge P.W.*"). The total amount listed under "Debtors" thus equals SF 150,776.40.

With regards to assets held in Swiss banks, the records show that *Wistag AG* held a total of 12 accounts – ten at Bank I, one at Bank II, and one at Bank III. *Wistag AG* also held one account at Bank I for the benefit of Paul.

Bank I

The documents provided by Bank I through Voluntary Assistance show that *Wistag AG* held one custody account, numbered 62615, and three demand deposit accounts, one of which was denominated in US dollars, at the Zurich branch of Bank I; and five custody accounts, numbered 16391, 16356, 16392, 18027, and 197640, and one demand deposit account at the Lausanne branch of Bank I. The records show that the custody account 62615 at the Zurich branch was closed on 10 January 1940 and the three demand deposit accounts at the Zurich branch were closed on 20 March 1940. Of the accounts held in Lausanne, custody account 16391 was closed on 17 January 1941, and custody account 16356 was closed on 7 February 1942. *Wistag AG* went into liquidation on 1 July 1948, from which date its designation was *Wistag AG in Liq.*

¹³¹ With regard to the payment in the amount of US \$7,000.00 to Felix Salzer, in a letter to Dr. Konrad Bloch dated 8 May 1940, Samuel Wachtell explained that, according to an arrangement Felix had with his mother, he was entitled to receive \$12,000.00 a year from the SF 500,000.00 in *Wistag AG* funds that Paul conceded to John Stonborough pursuant to Side Agreement 1. By the date of that letter, Felix had already received a payment for the year 1940 in the amount of \$5,000.00. Payment of the remaining \$7,000.00 was delayed because of the concerns expressed by the liquidators of *Wistag AG* whether Paul's consent was needed in order to make this payment (and other payments, including that to the *Reichsbank*), because it deviated from the purpose of the funds as specified in Side Agreement 1, namely, for the care and upkeep of Hermine and Helene. In his letter, Wachtell noted that he was not sure whether Side Agreement 1 conferred upon Paul a veto right regarding the use of the remaining funds, and suggested that "perhaps the liquidators [*sic*] can see their way clear to remitting from time to time the amounts Dr. Salzer is entitled to receive." Letter from Samuel Wachtell to Dr. Konrad Bloch, 8 May 1940, p. 1. Wachtell explained his position about this payment to Felix directly in a letter dated 24 April 1940, in which he set forth his understanding of the liquidators' question regarding the need for Paul's consent for payments from these funds. With regard to the payment to the *Reichsbank* in the amount of SF 90,386.00, see discussion *supra* and *infra*, pp. 24, 52.

(Liquidation). Thus, as of that date the remaining three custody accounts numbered 16392, 18027, 197640 and one demand deposit account were held in the name of *Wistag AG in Liq.* Of the custody accounts, account 16392 was closed on 19 July 1948, and account 18027 was transferred to account 197640, and both accounts were closed on 31 December 1948. The demand deposit account at the Lausanne branch is included in *Wistag AG's* 31 August 1943 Interim Balance Sheet, which shows its balance on that date as SF 4,459.80. Bank I's records show that that demand deposit account was closed on 30 March 1949.

In addition, *Wistag AG's* 31 August 1943 Interim Balance Sheet shows that by that date, a demand deposit account was held at the Lausanne branch of Bank I in the name of *Wistag AG* for the benefit of Paul. According to the letter from *Wistag AG's* auditors to the General Assembly of its shareholders that enclosed the 31 August 1943 Interim Balance Sheet, *Wistag AG* owed Paul an amount of US \$1,035.00. The auditors noted that this amount could not be paid to Paul because of the War, and so it was held in a separate account at the Lausanne branch of Bank I and blocked until after the end of hostilities.¹³² The CRT notes that *Wistag AG* was unable to transfer this amount to Paul apparently because of regulations that prevented such payment to German nationals during the War.

Bank II

According to the Auditor's Report for the *Wistag AG's* General Meeting, dated 16 September 1940 and submitted to the CRT by the Claimants, *Wistag AG* held a demand deposit account at Bank II. This account was valued at SF 5,479.00 as of 13 July 1940.

Bank III

The documents provided by Bank III through Voluntary Assistance show that *Wistag AG* held one custody account numbered 43009 at that bank. The customer card for account 43009 contains a note indicating that the account was blocked on an unknown date and that any dispositions needed to be checked with Director Hoch of Bank III. According to a notation dated 27 September 1939, the balance of account 34661, which belonged to the *Partnership*, was transferred to account 43009. Account 43009 was closed on 24 January 1940.

Wistag Partnership

The records show that *Wistag Partnership* held a total of 11 accounts – five at Bank I, three at Bank III, and three at Bank IV. These accounts are referenced in the *Partnership's* Statement of Accounts as of 6 June 1939, which was submitted by the Claimants, as well as in documents received from Bank I and Bank III through Voluntary Assistance.

¹³² Letter from *Treuhand- und Organisations A.-G.* [*Wistag AG's* auditors] to the General Assembly of Shareholders of *Wistag AG*, 3 September 1943, enclosing *Wistag AG's* balance sheet of 31 August 1943. The German original reads: "Als einziges Passivum der Gesellschaft geht aus den Büchern eine Schuld an Herrn Prof. Paul Wittgenstein, New York, von \$1,035.--, hervor. Dieser Betrag ist in den Aktiven ausgeschieden und auf einem separaten Konto bei der [Bank I] in Lausanne angelegt. Eine Ueberweisung an den Gläubiger kann infolge des Krieges gegenwärtig nicht stattfinden, sondern die Erledigung muss bis nach Beendigung der Feindseligkeiten aufgeschoben werden."

Bank I

The documents provided by Bank I through Voluntary Assistance show that *Wistag Partnership* held three custody accounts numbered 2824, 4250 and 47638, which were closed on 1 October 1936, 8 September 1939, and 6 October 1939, respectively, and two demand deposit accounts, one of which was denominated in US dollars, which were closed on 30 August 1939 and 30 September 1939, respectively. The *Partnership's* Statement of Accounts shows that one of the custody accounts at Bank I held 12 gold bars that were valued at SF 685,646.00 as of 6 June 1939. The Statement of Accounts also shows that the balance of the US dollar-denominated demand deposit account was SF 13,976.20 (US \$3,154.86 at an exchange rate of SF 4.43 to US \$1.00); and that the balance of the Swiss franc-denominated demand deposit account was SF 5,150.22, both as of 6 June 1939.

According to the Voluntary Assistance records, custody accounts 2824 and 4250 contained gold bars, and custody account 47638 contained securities, some of which had been transferred to the *Central Hanover Bank* in New York, many as late as 24 March 1939. The information regarding these securities contained in the Voluntary Assistance records corresponds to the listing of securities and their location contained in the *Partnership's* 6 June 1939 Statement of Accounts. The CRT notes that the Voluntary Assistance records show that approximately one-third of the dollar-denominated securities that are listed as being on deposit at Bank I in the 6 June 1939 Statement of Accounts were transferred to the *Central Hanover Bank* in New York on 28 August 1939.¹³³ The CRT notes that this date corresponds to the finalization of the Agreement with the *Reichsbank*, and that these transfers therefore reflect partial payment of the amounts Paul was to receive from the *Partnership* under the Agreement. According to the records, account 47638 was closed on 6 October 1939.

As detailed above, Bank I's records show that it held a total of 25 gold bars, each of which is identified in Bank I's records with the serial number of the bar. These 25 bars were initially deposited into the *Partnership's* custody account 2824 on 4 May 1933 (19 bars), 10 May 1933 (2 bars), and 13 July 1933 (4 bars). On 4 July 1935 (prior to the *Anschluss*), 6 of these gold bars were removed from account 2824. On 30 September 1936, the remaining 19 bars were transferred from account 2824 to Paul's custody account 3953 at Bank I. Account 2824 was closed on the following day, 1 October 1936.

On 29 December 1937 (prior to the *Anschluss*), Paul removed 4 of the 19 gold bars from his account 3953. On 27 May 1938, Paul transferred the remaining 15 gold to the *Partnership's* custody account 4250 at Bank I, and his custody account 3953 was closed on 1 June 1938. On 28 May 1938, 3 of the 15 gold bars were removed from the *Partnership's* account 4250. The

¹³³ For example, Bank I's records show that on 28 August 1939, the following dollar-denominated shares listed in the 6 June 1939 Statement of Accounts as being held at Bank I were transferred to the *Central Hanover Bank* in New York: 120 of the 400 common shares of *Howe Sound*; 200 of the 600 7% preferred shares of *National Biscuit*; 400 of the 1,200 6% preferred shares of *Pacific Gas & Electric*; 220 of the 709 common shares of *Procter & Gamble* (Bank I's records show 709 shares; the 6 June 1939 Statement of Accounts shows 700 shares); 50 of the then remaining 150 5% preferred shares of *Procter & Gamble* (150 of the 300 shares listed in the 6 June 1939 Statement of Accounts had been sold during the period from June through August 1939); 60 of the 200 common shares of *St. Joseph Lead*; 100 of the 320 common shares of *U.S. Smelting & Refining*; and 100 of the 300 common shares of *Walgreen*.

remaining 12 gold bars were transferred to account 4617 at Bank I on 5 September 1939, and account 4250 was closed on 8 September 1939. As noted above, the owner of account 4617 is not identified in Bank I's records, but the CRT presumes that the account was designated by the *Reichsbank* to receive the transfer of the gold pursuant to the implementation of the Agreement. The CRT notes that the 12 gold bars identified in Bank I's records have the same exact weight (139.359 kilograms) as the 12 gold bars listed in the *Partnership's* 6 June 1939 Statement of Accounts as being held at Bank I, and therefore concludes that these were the same gold bars.

Bank III

Bank III's records show that *Wistag Partnership* held a custody account numbered 34661 and two demand deposit accounts, one of which was denominated in US dollars, at Bank III. According to the *Partnership's* Statement of Accounts, as of 6 June 1939 the custody account held 6 bars of fine gold with a weight of 75.3713 kilograms and a total value of SF 370,826.00, as well as securities valued at SF 2,280,690.00. The Statement of Accounts also shows that the balance of the US dollar-denominated demand deposit account was SF 298.00 (US \$67.32 at an exchange rate of SF 4.43 to US \$1.00); and that the balance of the Swiss franc-denominated demand deposit account was SF 25,748.80, both as of 6 June 1939.

The Voluntary Assistance records from Bank III include correspondence that details the attempts by the *Reichsbank* in March 1939 and September 1940 to gain control over the contents of accounts held by the *Partnership* at Bank III. Thus, in a letter dated 23 February 1939 and referenced on the customer card under "special instructions" for account 34661, *Wistag Partnership* requested that Bank III should "...immediately notify us if within the near future sizeable dispositions over our current accounts or custody accounts or by check should be made by our authorized signatory (*Prokurist*) Anton Groller and not process any such [disposition orders] until we so advise."¹³⁴

The customer card indicates that Bank III blocked custody account 34661 as of that date and that any dispositions were to be checked with Director Hoch of Bank III on the instruction of Director Marty.

Bank III's records also contain a letter dated 3 March 1939 to Bank III from Anton Groller, who was the manager of the Wittgenstein siblings' office in Vienna and had signatory powers over the *Partnership's* accounts. In this letter, Groller advised Bank III that the *Partnership* had transferred ownership of all the gold bars it held at Bank III to the *Reichsbank's* Main Office in Vienna and, that accordingly, these gold holdings were to be put at the *Reichsbank's* disposal. In a letter dated the following day, 4 March 1939, the *Reichsbank* ordered Bank III to immediately transfer the gold to its Main Cashier's Office in Berlin. In a letter dated 6 March 1939 and signed by Dr. Rüttimann, a director of the *Wistag AG*, and by Dr. Peyer, who was the designated signatory for the *Wistag Partnership* as of 13 February 1939, the *Wistag Partnership* advised Bank III that the *Partnership* had cancelled Groller's signatory powers and that Bank III therefore should not execute any disposition orders signed by him. According to an internal

¹³⁴ The German original reads: "Wir bitten Sie, uns unverzüglich zu verständigen, falls in nächster Zeit durch unseren Prokuristen Herrn Anton Groller in Wien grössere Dispositionen über unsere Konti oder Depots oder per Check bei Ihnen erfolgen sollten und solche bis auf unseren Bericht nicht auszuführen."

memorandum dated 7 March 1939 memorializing a telephone conversation between an official of Bank III (signature illegible) and Dr. Peyer, Dr. Peyer advised the Bank III official that Groller had written his letter of 3 March 1939 under duress. Bank III confirmed that it would notify the *Reichsbank* that the transfer of the *Partnership*'s gold to the *Reichsbank* could not be executed because the signature on the transfer order had been insufficient and the order had since been revoked. According to the memorandum, Bank III would seek the *Partnership*'s written agreement to Bank III's notification to the *Reichsbank*, and that, in any case, it was necessary to ensure that Bank III also "does not indirectly indicate to the *Reichsbank* that the *Wistag* [*sic*, clearly meaning the *Partnership*] holds gold deposits with them without the *Wistag* having released Bank III from its bank secrecy obligations in that respect."

The records from Bank III also include several drafts of the letter to be sent to the *Reichsbank*, as well as the final letter dated 9 March 1939, which states that Bank III could not take notice of the *Reichsbank*'s order (*Verfügung*) of 4 March 1939 because the *Wistag Partnership* had withdrawn signatory authorization from Groller, who had signed the order on behalf of the *Partnership*. The records also contain an internal memorandum detailing a telephone conversation with Dr. Bloch, who was concerned that the *Reichsbank* not become aware that the *Partnership* had already cancelled Groller's signatory authority in February 1939, *i.e.*, before Groller acceded to the authorities' pressure. According to a memorandum, dated 16 March 1939 and contained in the files, an official named Homberger in Bank III's legal department noted that copies of account correspondence normally sent to the Wittgenstein office in Vienna should be withheld. He wrote that Bank III's letters of 7, 9, and 15 March 1939 especially concerned

...a sensitive matter (regarding the making available, purportedly under duress, of approximately 450 kg of gold to the German authorities) and it might possibly not be advisable to allow a German Office [the Wittgenstein Office] to become aware of the internal correspondence with the *Wistag Partnership* on this matter.¹³⁵

The CRT notes that, other than the references to gold in the correspondence, Bank III's records do not specifically refer to gold held by the *Partnership* at Bank III, nor do they contain the serial number or other identifying information about gold bars held there. The number and weight of the gold bars held at Bank III is contained only in the *Partnership*'s 6 June 1939 Statement of Accounts. Although it is not possible (without the serial numbers of the bars) to determine whether the 6 gold bars held at Bank III were originally among the 25 that were deposited with Bank I in 1933, a comparison of their weight and value as provided in the 6 June 1939 Statement of Accounts suggests that they are different bars. As noted above, the Voluntary Assistance records obtained from Bank III regarding the *Wistag AG*'s custody account numbered 43009 show that the unspecified balance of the *Partnership*'s account 34661 was transferred to

¹³⁵ The German original reads: "Unsere Briefe vom 7., 9. und 15. März 1939 betreffen eine heikle Angelegenheit (angeblich seitens der deutschen Behörden erpresste Zurverfügungstellung von ca. 450 kg Gold) und es ist eventuell nicht tunlich, dass eine deutsche Stelle (Wittgensteinische Kanzlei) von unserer diesbezügl. internen Korrespondenz mit der *Wistag* Kenntnis bekommt." It is not clear why Bank III's memorandum refers to 450 kilograms of gold, when the records show that Bank III held only 6 gold bars with a weight of 75.37130 kilograms on behalf of the *Partnership*. Moreover, as detailed above, the total amount of gold bars referenced in all the records (including those from Bank I and Bank III) was only approximately 363.8 kilograms, not 450 kilograms. See discussion regarding early negotiations, *supra*, p. 17.

the *Wistag AG*'s custody account 43009 on 27 September 1939. Account 43009 was subsequently closed on 24 January 1940.

The records obtained from Bank III through Voluntary Assistance also include an internal memorandum to files from Bank III marked "strictly confidential" (*streng vertraulich*) and dated 7 September 1940. This memorandum, written by an official of Bank III, memorializes a conversation that official had with Dr. Indra on the evening of 6 September 1940 regarding the *Reichsbank*'s attempt to override the Agreement's clause specifying that the *Partnership* would hold back an adequate amount to cover potential and actual outstanding liabilities in Switzerland, including taxes. According to this memorandum, Dr. Indra had approached Bank III on behalf of "both the Austrian Wittgenstein group, who had interests in the *Partnership*, which was now in liquidation, and the *Reichsbank*." His visit concerned the release to the *Reichsbank* of the SF 350,000.00 in cash which still remained with the *Partnership* and which the liquidators refused to release. According to the memorandum, Dr. Indra noted that the liquidators had already delivered more than SF 7 million to the *Reichsbank*. The memorandum states that, according to Dr. Indra, although the liquidators had the right to hold on to the remaining cash assets until all outstanding Swiss tax liabilities had been resolved, the liquidators would agree to the immediate transfer of the SF 350,000.00 to Germany if a sufficiently strong Swiss bank guarantee were forthcoming. The writer of the memorandum considered whether Bank III could undertake such a guarantee. Specifically, the writer noted that the offer of an oral guarantee from someone at the *Reichsbank* that the *Reichsbank* would permit funds to be transferred to Switzerland, if that should become necessary, would not suffice without written confirmation, and that Dr. Indra could not deliver such written confirmation.

Though the records obtained from Bank III do not reflect Bank III's final response, it is clear that the *Reichsbank*'s request for the transfer of this amount back to the *Reich* was denied, and that this sum of approximately SF 350,000.00 remained at Bank III until after the War. In this regard, the CRT notes that according to a letter from Paul's lawyer Harold Manheim to Dr. Bloch (the representative of the *Wistag Partnership*), the approximately SF 350,000.00 retained by the *Wistag Partnership* at Bank III was still intact in 1947, and the parties had agreed that Paul was the "true owner" of this amount.¹³⁶ In his letter, Manheim noted that Paul's claim to "outright ownership of these assets rests upon documents which are all in your [*i.e.*, Dr. Bloch's] files," and requested that the amount be transferred to Paul during the calendar year 1947 in order to effect a "[f]airly substantial tax savings."¹³⁷

Bank IV

According to its Statement of Accounts as of 6 June 1939, the *Partnership* also held one custody account and two demand deposit accounts, one of which was denominated in US dollars, at Bank IV. According to the *Partnership*'s Statement of Accounts, as of 6 June 1939 the custody account held securities valued at SF 198,980.00. The Statement of Accounts also shows that the balance of the US dollar-denominated demand deposit account was SF 7,247.40 (US \$1,636.07

¹³⁶ Letter from Harold Manheim to Konrad Bloch, 18 November 1947.

¹³⁷ *Id.*

at an exchange rate of SF 4.43 to US \$1.00); and that the balance of the Swiss franc-denominated demand deposit account was SF 9,591.35, both as of 6 June 1939.

Personal Accounts held by the Siblings

The ICEP auditors reported two accounts of unknown type – one belonging to Paul Wittgenstein and one to Hermine Wittgenstein – at Bank I. Pursuant to a request for Voluntary Assistance, Bank I provided additional information about accounts personally held by the siblings. These documents consist of custody account identification cards (*Leitkarte*) and custody account portfolio holding cards (*Depotvalorenkarten*) for each security held within each sibling's custody account.

According to these records, the siblings each held a custody account and associated US dollar-denominated demand deposit account at Bank I. Paul also held one additional custody account. Specifically, the records show that Paul held a custody account numbered 55873, which was closed on 22 December 1938; a demand deposit account, which was closed on 20 April 1938; and a custody account numbered 3953, which contained gold bars. As detailed above, as of 1937, Paul's custody account 3953 held 19 gold bars. On 29 December 1937 (prior to the *Anschluss*), Paul removed 4 of the 19 gold bars from his account 3953. On 27 May 1938, Paul transferred the remaining 15 gold to the *Partnership's* custody account 4250 at Bank I, and his custody account 3953 was closed on 1 June 1938.

Hermine's custody account, numbered 55872, was closed on 22 December 1938, and her demand deposit account was closed on 20 April 1938. Helene's custody account, numbered 55874, was closed on 29 December 1938, and her demand deposit account was closed on 20 April 1938.

As noted above, Bank I's records show that the securities identified in the siblings' 1938 Census declarations were held in their respective custody accounts numbered 55873, 55872, and 55874.

The CRT's Analysis

Basis for the Denial

As noted at the outset of this decision, based upon the Agreement with the *Reichsbank*, the Claimants assert that Hermine and Helene lost their complete shares in the *Wistag Partnership*, and that Paul lost all but SF 1.8 million of his *Partnership* share. Based upon an entry in *Wistag AG's* balance sheet of 13 July 1940, they also claim that Paul lost another SF 90,386.00 that was referenced in that document. They also claim that the siblings lost the assets in their personal accounts held at Bank I. Specifically, in his letter dated 12 February 2008, Mr. Harnik asserted that:

- Paul Wittgenstein received only CHF 1.8 million of his share in the *Wistag AG & Cie* [the *Wistag Partnership*] which had a nominal value of CHF 2,536,731.20 [European punctuation for amounts replaced by US punctuation throughout cite] and a market value of CHF 3.4 mio., at his free disposal;

- thus he lost CHF 1.6 million to the German Reichsbank (*see* his schedule of property and the certificate of the WISTAG & Cie Kommanditgesellschaft dated 22 March 1939). Moreover, he lost another CHF 90,386.- to the German Reichsbank, which is expressly mentioned in the Wistag AG's interim balance sheet of 13 July 1940.
- Hermine Wittgenstein lost the assets in her account with [Bank I] in Zurich and her complete share of Wistag AG & Cie, which had a nominal value of CHF 2,008,086.40 and a market value of CHF 2,691,453.20, to the German Reichsbank. (We have used the respective ratio for Paul Wittgenstein.)
 - Helene Salzer lost the assets in her account with [Bank I] in Zurich and her complete share of Wistag AG & Cie, which had a nominal value of CHF 1,689,434.32 and a market value of CHF 2,264,361.40, to the German Reichsbank. (We have used the respective ratio for Paul Wittgenstein.)¹³⁸

Before addressing the disposition of the claimed assets, the CRT notes that Mr. Harnik ascribes a market value for the *Partnership* shares well above the nominal value the siblings had reported in their 1938 Census declaration. Thus, according to Mr. Harnik's figures, if Paul's SF 2,536,731.20 nominal value share was worth a market value of SF 3.4 million, and SF 3.4 million equaled 31.7 percent of the *Partnership*'s market value (corresponding to his ownership share of the *Partnership*), the total market value of the *Partnership*'s shares would have equaled approximately SF 10.7 million, or approximately 34 percent more than nominal value. However, the *Partnership*'s balance sheet as of 6 June 1939 shows its market value at only SF 7,845,160.37, which is slightly below its SF 8 million capitalization, rather than some 34 percent above it.

Mr. Harnik's valuation appears to be based upon values cited in a letter dated 18 April 1939 from Dr. Bloch to Paul Wittgenstein, in which Dr. Bloch confirmed that Paul Wittgenstein's total interest in the capital of the *Wistag Partnership*, based on asset values as of December 1938, amounted to approximately SF 3.4 million, or 31.7 percent.¹³⁹ Although Dr. Bloch refers only to the *Partnership* assets, a close analysis of the numbers clearly indicates that the total amount that he cites includes the SF 1 million capitalization from *Wistag AG*. Thus, in his 1938 Census declaration, Paul lists the nominal value of his shares of the *Partnership* as SF 2,536,731.20. This amount exactly equals 31.7 percent of the *Partnership*'s SF 8 million capitalization. Paul's share in the market value of the *Partnership* would have also been 31.7 percent, which, according to the 6 June 1939 balance sheet of the *Partnership* amounted to SF 2,486,915.84. This, together with the *Wistag AG*'s SF 1 million capitalization, would bring Paul's interest up to the "approx. SF 3.4 million" cited by Dr. Bloch.¹⁴⁰

¹³⁸ Letter from Stephen M. Harnik to the CRT, 12 February 2008, pp. 1-2.

¹³⁹ Letter, dated 18 April 1939, signed by Dr. Bloch and co-signed by Dr. Carl Rüttimann as directors and designated signatories for the *Wistag Partnership*, addressed to Dr. Paul Wittgenstein at the Hotel Webster in New York, in answer to his inquiry of 4 April 1939 regarding the size of his participation in the *Partnership*.

¹⁴⁰ This analysis is consistent with figures cited by Harold Manheim in a letter dated 24 December 1946 to A. L. Bienstock. In that letter, Manheim writes:

Paul Wittgenstein was the owner of a 31.7% interest in Wistag A.G. & Co. He was also the owner of Wistag A.G. As of June 6, 1939, the date of the last balance sheet which I have, the former organization had a net worth of 7,845,160.37 Swiss Francs. 31.7% of this amount would have been 2,466,915.83 Swiss Francs [*sic*, the actual amount would have been SF 2,486,915.83]. I

Thus, using the values cited in the *Partnership's* 6 June 1939 balance sheet, the market value of Paul's share of the *Partnership* was SF 2,486,915.84 (not including *Wistag AG's* SF 1 million capitalization), *not* SF 3.4 million as cited by Mr. Harnik. The market values of Hermine's and Helene's shares were SF 1,969,135.25 (25.1 percent) and SF 1,655,228.84 (21.1 percent), respectively, *not* SF 2,691,453.20 and SF 2,264,361.40, respectively, as cited by Mr. Harnik.

Furthermore, while the siblings each listed the nominal value of their respective shares in the *Partnership* in their 1938 Census declarations, they did not indicate where the assets reflecting these shares were located. According to the *Partnership's* Statement of Accounts as of 6 June 1939, SF 3,852,347.97 or 49.10 percent of the *Partnership's* total SF 7,845,160.37 in assets were held in Swiss banks (excluding the *Wistag AG* SF 1 million capitalization, which, for purposes of this decision, are presumed to have been held in Swiss banks as of the 6 June 1939 Statement of Accounts).¹⁴¹ Of the remaining assets, 8.53 percent were held in a non-Swiss bank in the Netherlands, and 42.36 percent were held in a non-Swiss bank in the United States. *See* Table 1, *supra*. Because no information is available as to where each sibling's assets that reflected his/her share in the *Partnership* were held, the CRT presumes that the same percentage of each sibling's share was deposited among the three locations that held the deposits of the *Partnership* as a whole. Thus, of Paul's SF 2,486,915.84 share in the *Partnership*, the CRT presumes that 49.1 percent, or SF 1,221,075.68, was held in Swiss banks. Similarly, of Hermine's SF 966,845.41 and Helene's SF 1,655,228.84 shares in the *Partnership*, the CRT presumes that 49.1 percent of each of their shares, or SF 966,845.41 and SF 812,717.36, respectively, was held in Swiss banks.

The CRT notes that this decision addresses only assets deposited in Swiss banks. Other assets, including real estate held by the siblings in Austria and *Partnership* assets held on deposit in non-Swiss banks in the Netherlands and the United States, fall outside the scope of the Settlement reached in the *Holocaust Victim Assets Litigation*. This is because in the present case, whatever wrong-doing associated with the dissolution of the *Partnership* cannot in any way be attributed to the behavior of the Swiss banks.

The CRT also notes that, as detailed above, the available records show that the *Partnership* held a total of 11 accounts at three different Swiss banks. The CRT notes that these accounts held *Partnership* assets, of which only 77.9 percent were owned by the three siblings. As noted

gather from the agreements that Professor Wittgenstein was also entitled to 100% of *Wistag A.G.* which has a paid in capital of 1,000,000 Swiss Francs bringing his interest up as of June 6, 1939 to 3,466,915.83 [*sic*, actually SF 3,486,915.83].

¹⁴¹ According to the protocol for the meeting of the constituting general assembly for *Wistag AG* (*notarielles Protokoll über die konstituierende Generalversammlung der Wistag Aktiengesellschaft in Zug*), dated 18 January 1932, *Wistag AG* was initially capitalized at an amount of SF 1 million, with 1,000 shares, each with a nominal value of SF 1,000.00. The protocol notes that the chair of the general assembly provided a letter from Bank III that included a certificate confirming that SF 1 million had been deposited at that institution to fully pay in the capital, that every share was paid in full in cash, and that no public offering of the shares took place. The German original reads: "Der Vorsitzende legt eine von heute datierte Zuschrift des [Bank III] in Zürich auf den Verhandlungstisch, enthaltend die Bescheinigung, dass bei diesem Bankinstitute Frs. 1,000,000.—zur Volliberierung des Aktienkapitals einbezahlt worden sind und zur Verfügung der in Gründung begriffenen Aktiengesellschaft stehen. Auf Grund dieser Vorlagen stellt die Generalversammlung durch einstimmigen Beschluss fest, dass das Grundkapital der Gesellschaft von Frs. 1,000,000.—durch Unterschriften gedeckt ist und dass jede einzelne Aktie in bar voll einbezahlt wurde, sowie, dass ein öffentliches Angebot derselben nicht stattgefunden hat."

above, it is not clear from the documentation available to the CRT who owned the remaining 22.1 percent of the *Partnership* assets, or how the Agreement with the *Reichsbank* was concluded without the consent of these other persons.¹⁴² In any event, it is clear that assets in the accounts held by the *Partnership* in Swiss banks were distributed pursuant to the Agreement and Side Agreements. As noted above, the Claimant's representative, Mr. Harnik, acknowledged that the Agreement and Side Agreements were concluded in accordance with the memoranda dated 21 August 1939.¹⁴³ Accordingly, in the discussion that follows, the disposition of the assets in the *Partnership* accounts is treated in terms of the total *Partnership* assets presumed to have been held in Swiss banks by each sibling, and not necessarily account by account.

Disposition of the Siblings' Partnership Shares held in Swiss Banks

With respect to Paul's SF 1,221,075.68 share in the *Partnership* that is presumed to have been held in Swiss banks, the CRT notes that, pursuant to the Agreement reached with the *Reichsbank*, Paul retained SF 1.8 million from the total *Partnership* funds (including those funds held in non-Swiss banks). As noted above, the Agreement also provided that SF 300,000.00 was to go to Paul to pay for lawyers' fees and other outlays, but according to an undated letter that was presumably written at the end of August 1939 from Gretl to her brother Ludwig, ultimately the *Reichsbank* agreed to pay the SF 300,000.00 in lawyers' fees.¹⁴⁴ According to Manheim, some SF 300,000.00 was retained by the *Partnership* to cover potential tax liabilities in Switzerland. In fact, according to Bank III's internal memorandum that reports on the visit of Dr. Indra on 6 September 1940, the amount retained by the *Partnership* for coverage of tax and other liabilities in Switzerland was SF 350,000.00.¹⁴⁵ This amount was still intact after the War and reverted, after some discussion within the family, to Paul Wittgenstein.¹⁴⁶

Furthermore, according to Samuel Wachtell, in 1938 and 1939 Paul had drawn advances on the *Partnership* totaling approximately SF 130,000.00, and Wachtell succeeded in preventing the *Reichsbank* from deducting this amount from the SF 1.8 million that was to be released to Paul under the Agreement.¹⁴⁷ According to Wachtell, he succeeded in collecting this amount for Paul, which equaled "well over \$30,000," which, as noted above, in 1939 was equal to SF 133,200.00.

¹⁴² See *supra*, notes 33, 55.

¹⁴³ Letter from Mr. Harnik to the CRT, 12 February 2008, p. 1. See discussion *supra*, p. 24 and note 91.

¹⁴⁴ Letter from Gretl to Ludwig, dated presumably August 1939, cited in Arbitration Panel Decision, pp. 22 – 23, para. 114.

¹⁴⁵ Internal Bank III Memorandum to Files, 7 September 1940, reporting on a conversation with Dr. Indra on the evening of 6 September 1940. As detailed above, this document was obtained from Bank III through Voluntary Assistance.

¹⁴⁶ Letter from Harold Manheim to Konrad Bloch, 18 November 1947.

¹⁴⁷ Note from Samuel R. Wachtell to Harold Manheim, 3 February 1943. See also discussion *supra*, p. 23 and note 87. The CRT notes that John Stonborough, against the express advice of Paul, transferred SF 90,386.00 from the *Wistag AG*'s funds, over which he now had decision making power, to the *Reichsbank*. The *Reichsbank* claimed that this amount should be deducted from the amount Paul was to receive under the Agreement, because he had already received it as an advance in 1939 (along with an advance of SF 30,000.00 in 1938), and therefore demanded that it be repatriated to the Reich. Paul emphatically disagreed and was ultimately able to retain this amount. John Stonborough apparently repatriated this sum from the assets of *Wistag AG* that remained in his control pursuant to

Thus, in sum, with respect to the assets of the *Partnership*, in accordance with the terms of the Agreement and two Side Agreements, Paul retained SF 1.8 million from his share of the *Partnership*, plus an amount of SF 350,000.00 that was set aside for tax purposes and that reverted to him after the War, as well as approximately SF 130,000.00 that was advanced to him in 1938 and 1939. Thus, in total, from the *Partnership* funds Paul received SF 2,280,000.00. The CRT notes that it is not clear where the funds to pay this amount to Paul were held on deposit, *i.e.*, whether they originated from *Partnership* assets held in Swiss banks, or in non-Swiss banks in the Netherlands and/or the United States. However, using the same distribution indicated in the *Partnership*'s 6 June 1939 Statement of Accounts and attributed to the siblings' assets as detailed above, the CRT presumes that 49.10 percent of this amount, or SF 1,119,480.00, was held in Swiss banks. Accordingly, of the SF 1,221,075.68 in *Partnership* assets held by Paul in Swiss banks, he received SF 1,119,480.00, or 91.68 percent, that was paid out directly to him. The remaining SF 101,595.68 represents only 8.32 percent of Paul's total *Partnership* holdings held in Swiss banks, and only 4.09 percent of his total *Partnership* holdings. Pursuant to the terms of the Agreement and Side Agreement 2, this amount was transferred to the *Reichsbank*, which then credited the *Reichsmark* counter value of the monies received to Wittgenstein bank accounts (*i.e.*, those belonging to Hermine and Helene) as directed by the *Partnership*'s designated signatory, Dr. Groller.¹⁴⁸ The CRT notes that this finding is consistent with the statement made by Paul Wittgenstein's son, [REDACTED 1], to the CRT regarding these claims. Thus, in a letter dated 29 March 2002, [REDACTED 1] wrote: "At the end of August 1939 all the Wistag money was liquidated in a final agreement between my father and his sisters. My father got most of his money and the sisters had to transfer their money to Austria/Germany. That is, the sisters didn't lose their money. For this reason I would ask again that nothing further be done in this matter."¹⁴⁹

With respect to Hermine's and Helene's SF 966,845.41 and SF 812,717.36 respective shares in the *Partnership* that is presumed to have been held in Swiss banks, the CRT notes that, as with Paul's remaining assets that were not returned to him directly, pursuant to the Agreement reached with the *Reichsbank*, these amounts were transferred to the *Reichsbank*, which then credited the *Reichsmark* counter value of the monies received to Wittgenstein bank accounts as directed by the *Partnership*'s designated signatory, Dr. Groller. These accounts were at the free disposition of their owners. This meant that Hermine and Helene received their amounts directly, and that Paul's share went to the accounts designated to the benefit of Hermine and Helene, because he had transferred all rights to his assets within the *Reich*, except as needed to cover legitimate liabilities, to these two sisters.

As the Agreement concluded with the *Reichsbank* stated explicitly that the *Reichsmark* counter value of the *Partnership*'s assets, which were transferred to the *Reichsbank* and the *Golddiskontbank*, was to be deposited into Wittgenstein accounts, the CRT determines that the Wittgensteins received the proceeds of the assets transferred into the *Reich* and could freely dispose of them. The documentation indicates that Paul Wittgenstein received his share in the

Side Agreement 1. As detailed below, however, consistent with transfers made to the *Reichsbank* pursuant to the Agreement, John Stonborough received the *Reichsmark* counter value of this transfer. See discussion *infra*, p. 52.

¹⁴⁸ See discussion *supra*, p. 22.

¹⁴⁹ Letter from [REDACTED 1], to the CRT, 29 March 2002. See also *supra*, note 1.

United States as agreed.¹⁵⁰ Accordingly, and given the siblings' status as *Mischlinge* rather than Jews, the CRT determines that the *Partnership* assets belonging to the siblings were placed at the free disposition of Paul in the United States and of Hermine and Helene in Vienna, and therefore no award is appropriate for these amounts.

Disposition of the Wistag AG Capitalization Assets held in Swiss Banks

With respect to the 12 accounts of the *Wistag AG*, the CRT notes that the negotiations with the *Reichsbank* solely affected the assets of the *Partnership* and that the *Wistag AG* remained intact. The documentation shows that the division of the *Wistag AG*'s capitalization was decided upon in Side Agreement 1 concluded between Paul Wittgenstein and John Stonborough. As detailed above, pursuant to that agreement, Paul conferred all his rights in the *Wistag AG* and its assets to John Stonborough. In turn, John Stonborough transferred the equivalent of SF 500,000.00 from the *Wistag AG*'s funds to Paul and agreed, if the need arose, to support Hermine and Helene, up to the amount available after the SF 500,000.00 payment to Paul.¹⁵¹ Thus, it is clear that the Wittgensteins were and remained in control of the *Wistag AG*'s assets. The corporation continued to function until it went into liquidation in 1948 and was dissolved in 1949. Accordingly, the CRT determines that no Award with respect to the *Wistag AG*'s accounts is appropriate.

The CRT notes that *Wistag AG*'s 13 July 1940 Interim Balance Sheet shows a payment of SF 90,386.00 to the *Reichsbank*, and that Mr. Harnik therefore specifically claims this amount, asserting that Paul "lost this amount to the German Reichsbank." As detailed above, however, this payment was made by John Stonborough, who, pursuant to Side Agreement 1, had decision-making authority over *Wistag AG*'s funds. Thus, this transfer came from funds that Paul had ceded to John Stonborough. As detailed above, the *Reichsbank* claimed that this amount should be deducted from the amount to be released to Paul, because he had already received it as an advance in 1939 (along with an advance of SF 30,000.00 in 1938). Paul emphatically disagreed and was ultimately able to retain this amount. John Stonborough transferred this sum back to the

¹⁵⁰ Letter from Harold Manheim to A.L. Bienstock, 24 December 1946.

¹⁵¹ The actual balance sheet valuation of *Wistag AG* exceeded its capitalization by at least SF 200,000.00. According to the Arbitration Panel Decision, in an undated letter that was presumably written at the end of August 1939 to her brother Ludwig, Gretl Stonborough reported on the outcome of the final negotiation with the *Reichsbank*. In that letter, Gretl wrote that Paul's lawyer had insisted on Paul receiving SF 2.3 million from his *Partnership* share, but that in the end the *Reichsbank* agreed to pay the SF 300,000 in lawyers' fees, if Paul agreed to SF 1.8 million being put at his disposal. Thereupon, "we decided to make take the remaining 0.5 from J's [John's] amount [of the value of the *Wistag AG* shares] (which now stands at almost 1.2) and to add them to the 1.8 that has now been freed. There then remains 0.7 for J." Arbitration Panel Decision, pp. 22 – 23, para. 114. The CRT notes that the reserve amount of SF 500,000.00 (or SF 700,000.00, based upon Gretl's numbers) for the financial security of Hermine and Helene turned out not to have been needed. Indeed, the reserve was reduced through successive reductions in the capitalization of the *Wistag AG*. The first reduction, from SF 1 million to SF 300,000.00 was recorded in September 1940, one year after implementation of the Agreement and Side Agreements. By reducing the capitalization by SF 700,000.00, this step reduced *Wistag AG*'s capitalization by SF 200,000.00 more than what was needed to pay Paul SF 500,000.00 per Side Agreement 1. In September 1943, the capitalization was further reduced to SF 50,000.00. After covering any liabilities and losses, the freed funds were then distributed to the shareholders, thereby reducing the amount set aside as a security fund for the sisters. At the time of the General Meeting of 1 July 1948, at which the dissolution and liquidation of the company was decided, the capitalization of the *Wistag AG* still stood at SF 50,000.00.

Reich from the assets of *Wistag AG* that remained in his control pursuant to Side Agreement 1.¹⁵² According to the terms of Side Agreement 1, funds from the portion of *Wistag AG* that had been ceded to John were to be used exclusively for the care and upkeep of Hermine and Helene. The CRT therefore concludes that, as with other funds transferred to the *Reich* for the benefit of Hermine and Helene, John received the counter value of this amount in *Reichsmark* for their benefit. Therefore, no award is appropriate for this amount.

With regard to the demand deposit account with a balance of US \$1,035.00 that was held at the Lausanne branch of Bank I in the name of the *Wistag AG* for the benefit of Paul and that is reflected in *Wistag AG's* 31 August 1943 Interim Balance Sheet, as detailed above, the *Wistag AG's* auditors noted at that time that this amount could not be paid to Paul because of the War, and so it was held in a separate account at the Lausanne branch of Bank I and blocked until hostilities ended. Given that *Wistag AG* continued to function until it went into liquidation in 1948, the CRT concludes that this account was unblocked after the War and paid in full to Paul.

Personal Accounts held by the Siblings

As noted above, Paul, Hermine, and Helene together held seven accounts at Bank I. Paul held two custody accounts numbered 3953 and 55873, which were closed on 1 June 1938 and 22 December 1938, respectively; Hermine held one custody account, numbered 55872, which was closed on 22 December 1938; and Helene held one custody account, numbered 55874, which was closed on 29 December 1938. Paul, Hermine, and Helene also each held one US dollar denominated demand deposit account at Bank I, each of which was closed on 20 April 1938.

With regard to the custody accounts numbered 55873, 55872, and 55874 owned by Paul, Hermine, and Helene, respectively, the CRT notes that the accounts held very similar portfolios of securities. As shown in Appendix D, all but one of these securities was reported by the siblings in their 1938 Census declarations.¹⁵³ All these securities were sold between June and 20 December 1938.

In updates of their original Census declarations, each signed on 14 December 1938, the siblings detailed the changes in their assets between 27 April and 12 November 1938. In their updates, the siblings provided a list of securities sold and noted that they sold their foreign currency denominated securities as required and delivered the foreign currency proceeds to the *Golddiskontbank*.¹⁵⁴ They further noted that these sales explained the reduction in the value of their securities holdings and the increase their cash holdings. Table 2 below shows the decrease in the siblings' security holdings and the corresponding increase in their liquid assets (cash and demand deposit holdings) from 27 April until 12 November 1938. The CRT notes that the siblings' holdings in Swiss banks represented the majority of their foreign currency denominated security assets, and that, for each sibling, the decrease between the 27 April and 12 November security holdings is substantially similar to the increase of the cash and demand deposit holdings

¹⁵² See discussion *supra*, p. 24.

¹⁵³ The unreported security – common stock of the *Pan American Match Co.* – was a stock dividend received after the 27 April 1938 reporting date.

¹⁵⁴ See discussion *supra*, pp. 33 – 39.

during that time period, especially in view of price fluctuations and the siblings' need for cash expenditures. This increase in cash holdings – in amounts substantively similar to the amount of the decrease in security holdings – can only be explained by the fact that the siblings did indeed receive the *Reichsmark* counter value of the sale of their Swiss security holdings in accounts at their free disposition.

Table 2. Comparison of the Value of Personal Cash and Security Holdings Reported by Hermine, Paul, and Helene in their 1938 Census declarations as of 27 April and 12 November 1938 (all values in RM)

Hermine Wittgenstein			
	27 April	12 November	Difference
Securities	747,929.32	379,610.91	(368,318.41)
Cash (demand deposits)	25,183.29	382,059.25	356,875.96
Total	773,112.61	761,670.16	(11,442.45)
CRT Valuation of the proceeds of the sale of securities held in Bank I			275,063.20
Paul Wittgenstein			
	27 April	12 November	Difference
Securities	981,971.50	535,527.20	(446,444.30)
Cash (demand deposits)	204,066.52	705,952.31	501,885.79
Total	1,186,038.02	1,241,479.51	55,441.49
CRT Valuation of the proceeds of the sale of securities held in Bank I			366,879.16
Helene Salzer			
	27 April	12 November	Difference
Securities	750,965.68	416,871.37	(334,094.31)
Cash (demand deposits)	12,002.69	413,511.09	401,508.40
Total	762,968.37	830,382.46	67,414.09
CRT Valuation of the proceeds of the sale of securities held in Bank I			392,034.91

Note: (..) denotes a negative value.

The CRT notes that, with respect to the three demand deposit accounts denominated in US dollars held by Paul, Hermine, and Helene at Bank I and closed on 20 April 1938, the *Reichsmark* counter value of any proceeds of these accounts, if transferred into the *Reich*, would similarly have been at the siblings' free disposition. The CRT also notes, as detailed above, that the records show that Paul actively managed a second custody account numbered 3953 (not reported in his 1938 Census) containing gold bars at Bank I on 28 May 1938, over one month after the closure of these three demand deposit accounts, and that securities held in the *Partnership's* custody account 47638 at Bank I were transferred to the Central Hanover Bank in New York as late as 24 March 1939.¹⁵⁵

The CRT notes that the value of the siblings' assets as of 12 November 1938 (as declared in the 14 December 1938 updates to their asset declarations) was the basis for determining the amount of atonement tax. The 14 December 1938 updates also show that based upon these values, Hermine, Paul, and Helene transferred amounts totaling RM 242,850.00, RM 218,700.00, and

¹⁵⁵ See discussion *supra*, p. 42.

RM 192,600.00, respectively, equal to five percent of their individual net assets, to the *Reich* Finance Office in Wieden for their respective payments of the first installments of their atonement tax. The CRT notes that, as described above, each sibling included a proviso that clarification was still pending about whether or not the filing and atonement tax payment requirements applied to them, and that, as described above, this later “clarification,” in the form of the decree declaring the siblings to be *Mischlinge*, subsequently negated their requirement to pay atonement tax.

The records available to the CRT do not show when the amounts the siblings transferred for their first installment of atonement tax were returned to them. However, it is clear that after they received *Mischling* status, they were not required to pay atonement tax. The CRT therefore considers that these amounts were returned to them. Moreover, as detailed above, their atonement tax assessments were based upon assets held within the *Reich* at the siblings’ free disposition, as they reported in their 14 December 1938 updates (which formed the basis for the atonement tax assessment) that the value of the liquid assets available to them had increased due to the sale of their foreign currency denominated securities.¹⁵⁶ Accordingly, no award is appropriate based upon the preliminary (and later canceled) assessments of atonement tax upon the siblings.

In summary, and as set forth above, according to correspondence both between the VVSt. and the Gestapo and internally within the VVSt., once the siblings received their *Mischling* certification on 30 August 1939 and the Agreement with the *Reichsbank* came into effect on 1 September 1939, the authorities no longer considered the siblings to be Jewish, and ongoing proceedings to strip them of their citizenship and to obtain their real estate assets were terminated. In short, all assets within Austria, including the *Reichsmark* counter value of any foreign currency proceeds, were at the free disposition of the siblings.

This finding is consistent with historical analyses of the treatment of *Mischlinge* under the Nazi regime. Thus, in her discussion of *Mischlinge* as victims of compulsory measures in the Nazi regime, Beate Meyer, in her book “‘Jüdische Mischlinge’ Rassenpolitik und Verfolgungserfahrung 1933 – 1945” (“‘Jewish Mischlinge’ The Politics of Race and Experience of Persecution 1933 – 1945”), writes that “[b]ecause they [*Mischlinge*] were not subjected to forced aryanization, except when directly affected [for example], involving the inheritance from a Jewish father, and because the majority [of *Mischlinge*] did not emigrate, they were not forced to violate foreign currency regulations if they wanted to save their assets.”¹⁵⁷ This finding is also supported by the Arbitration Panel Decision, which noted with regard to the siblings’ attainment of *Mischling* status that they then were not directly subjected to the restrictive laws concerning

¹⁵⁶ As illustrated in Appendix D, the vast majority of the siblings’ securities held at Bank I were sold by 12 November 1938, and thus they had received the *Reichsmark* counter value of these assets before filing their 14 December 1938 updates.

¹⁵⁷ Meyer, Beate. “‘Jüdische Mischlinge’ Rassenpolitik und Verfolgungserfahrung 1933 – 1945” (“‘Jewish Mischlinge’ The Politics of Race and Experience of Persecution 1933 – 1945”). Munich and Hamburg: Dolling und Galitz Verlag, 1999 (hereinafter “Meyer”), p. 251. The German original reads: “Da sie – bis auf die mittlebare Betroffenheit, wenn es um das Erbe der jüdischen Väter ging – nicht unter die Zwangsarisierungen fielen und in ihrer Mehrheit nicht in die Emigration gingen, waren sie auch nicht gezwungen, gegen Devisengesetze zu verstossen, wollten sie ihr Vermögen retten.”

Jews.¹⁵⁸ In his note to Harold Manheim, Samuel Wachtell also states that Hermine and Helene were exempt from the Nuremberg laws after they obtained Mischling status. In that note, he writes: “You may recall that one of the conditions of the settlement was the issuance of decrees by the German Government that the Wittgenstein family were Mischlings of the first class, so that they were exempt from substantially all of the Nuremberg laws.”¹⁵⁹

As noted above, despite the *Mischling* certification, Paul would have been liable for payment of flight tax, because the tax applied to all persons who were citizens of the *Reich* as of 31 March 1931, who resided in the *Reich* as of 1 January 1928, and who subsequently gave up their residency in the *Reich*. Nevertheless, there is no evidence that Paul’s flight tax – if it was paid at all – was paid through the transfer of funds held in Swiss banks directly to a blocked account in the *Reich*. The CRT notes that Paul’s final flight tax assessment was dated 24 July 1940 and indicates that no flight tax had been paid by this date. By this time, however, both Paul’s personal accounts and the *Partnership*’s accounts in Swiss banks had been closed. As detailed above, it is not clear if Paul paid flight tax, and if so, how much was paid. However, the evidence suggests that if any amount of flight tax was paid, it was paid from the proceeds of the sale of Paul’s real estate within the *Reich* to his sisters, or from the *Reichsmark* counter value of Paul’s assets that were released to them at their free disposition, per Side Agreement 2, and not directly from a Swiss bank account to a blocked account in the *Reich*. Indeed, Side Agreement 2 explicitly provided that “any lawful obligations [*e.g.*, including his flight tax obligation] which may exist and be asserted against” Paul in Germany be paid from the *Reichsmark* balances or from his real estate in the *Reich* that he conveyed to his two sisters per that agreement.¹⁶⁰ Therefore, even if Paul’s flight tax were paid from these proceeds, no award is appropriate under the terms of the Settlement Agreement reached in the *Holocaust Victim Assets Litigation*, as the real estate assets were located within the *Reich* and were not held on deposit in a Swiss bank, and the assets received as *Reichsmark* counter value were held in the *Reich* at the sisters’ free disposition.

Given the facts set forth above, the CRT determines that with respect to custody accounts 55872, 55873 and 55874 held by Hermine, Paul, and Helene, respectively, and to the three demand deposit accounts held by them, the siblings received the proceeds of these accounts themselves in the form of the *Reichsmark* counter value put at their free disposition. As noted previously, per the Agreement and Side Agreements, Paul agreed to give the assets he held within the *Reich* to Hermine and Helene. Therefore, after the implementation of those agreements, Hermine and Helene had the disposition rights over his assets that both had been and subsequently were returned to the *Reich*. With respect to custody account 3953 owned by Paul at Bank I, as detailed above, in 1937 this account contained 19 bars of gold that had been transferred to it on 30 September 1936 from account 2824 belonging to the *Partnership*. On 29 December 1937

¹⁵⁸ Arbitration Panel Decision, p. 12, para. 65. The German original reads: “*Durch die Ablieferung der Devisen aus den Vermögenschaften der W[istag] AG & Cie. Kommanditgesellschaft an die Reichsbank sollte Letztere im Gegenzug sicherstellen, dass Hermann Christian W[it]tgenstein als ‘arisch’ angesehen werde, die Geschwister W[it]tgenstein somit über einen zweiten ‘arischen Grosselternanteil’ verfügten und daher den Status von ‘Mischlingen’ erhielten, die nicht unmittelbar der restriktiven Judengesetzgebung unterliegen würden.*” [Emphasis added.]

¹⁵⁹ Note from Samuel R. Wachtell to Harold Manheim, 3 February 1943, p. 3.

¹⁶⁰ See discussion *supra*, pp. 32 – 33.

(prior to the *Anschluss*), Paul removed 4 of the 19 gold bars from his account 3953. As these gold bars were removed prior to the *Anschluss*, and there is no record of them ever being deposited in a Swiss bank again, the CRT concludes that they were received by Paul. On 27 May 1938, Paul transferred the remaining 15 gold to the *Partnership*'s custody account 4250 at Bank I, and account 3953 was closed on 1 June 1938. Accordingly, the CRT concludes that this account was closed properly.

With respect to all the assets claimed in this case, 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. Where the evidence demonstrates that the accounts were actively managed by the owner or their heirs, even if ultimately resulting in a financial loss in the value of the assets held in Swiss banks, the claim has been denied. *See, e.g., In re Account of Fanny Hatvany* (appeal to Certified Award Denial denied by the Court on 2 September 2011) (denying claim to assets managed after the War by the account owner and her heirs); *In re Accounts of Kurt Friedmann-Frederich* (approved on 6 June 2011) (denying claim to assets allegedly embezzled by the executor of the account owner's estate); *In re Accounts of Johann Fritz Alfred Friedrich* (approved on 6 June 2011) (denying claim based upon the alleged mismanagement of the account owner's assets resulting in a loss of principle due to investment choices that subsequently proved to be undesirable because of post-War regulations dealing with the effects of German currency reform); and *In re Accounts of Alexander Stein* (approved on 17 December 2010) (denying claim based upon the post-War loss of value of the account owner's investments).

The assets at issue in this case fall in to neither of the two categories listed above (*i.e.*, the account was closed and presumed paid to the Nazis, or the account remains open and dormant or was suspended). The assets here instead are comparable to those in the denials cited above, in that the account owners maintained control over their assets during and after the Nazi era. The documentation clearly shows that Hermine and Helene received the *Reichsmark* counter value of their assets (including those originating from their shares in the *Partnership* and from their personal accounts). Paul's assets (including those originating from his share in the *Partnership* and from his personal accounts) were either transferred to him in New York, or their *Reichsmark* counter value was transferred to his sisters, who remained within the *Reich*, pursuant to Side Agreement 2. None of the assets that originated from Swiss bank accounts was confiscated by the Nazi regime. Rather, the assets were returned to the siblings and paid out either directly to Paul in the United States or, in their *Reichsmark* counter value, to Hermine and Helene in the *Reich*. The CRT notes that this finding is consistent with other cases in which the evidence shows that an account owner received the *Reichsmark* counter value of his/her assets. *See, e.g., In re Accounts of the Estate of Sophie Cohen, and Accounts of Alexander Oppler, Berthold Oppler, and Sigmund Oppler* (approved on 17 September 2010; decision upheld on appeal on 9 November 2011); and *In re Accounts of Selly Haase* (approved on 24 March 2011). In both these cases, the Court awarded the value of assets determined to have been repatriated to the *Reich* and confiscated by the Nazi regime but denied claims to assets for which the Jewish

account owners received the *Reichsmark* counter value at their free disposition in the *Reich*. To the extent that the account owners in these cases may have sustained financial losses resulting from the conversion of their assets to *Reichsmark*, those losses were not due to the fact that they were Jewish but, rather, because they, like all other residents of the *Reich*, were subject to German foreign currency regulations. This is even more so in the case of the Wittgenstein siblings, who upon receiving *Mischling* status, were treated “like all other Aryans.”

In summary, and for the reasons set forth above, the CRT concludes that no award is appropriate in this case.

Right of Appeal

Pursuant to Article 30 of the Rules, the Claimants may appeal this decision within thirty (30) days of the date of the letter accompanying this decision. 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. Appeals should be delivered in writing to the following address:

Honorable Judge Edward R. Korman
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Certification of the Denial

The CRT certifies this Denial for approval by the Court.

Claims Resolution Tribunal

Year	Month	Day	Event
1932	Jan.	18	<i>Wistag AG</i> is founded in Zug, Switzerland.
1932	Jan.	26	<i>Wistag Partnership</i> is established, with <i>Wistag AG</i> as partner with unlimited liability.
1938	Mar.	12	Austria is incorporated into the German Reich (the “ <i>Anschluss</i> ”).
1938	June		Paul and Gretl travel to Berlin to seek exemption from Nuremberg laws.
1938	July	7	Gretl signs her 1938 Census declaration.
1938	July	15	Paul, Hermine, and Helene sign their 1938 Census declarations.
1938	Aug.		Paul receives a court summons charging him with racial defilement (<i>Rassenschande</i>) because he has two children with a non-Jewish woman, [REDACTED 6] (later [REDACTED 6])
1938	Aug.	late	Paul Wittgenstein flees Austria to Zurich, then to New York.
1938	Sept.	29	Brigitte Zwiauer, a cousin of Karl Wittgenstein, writes to Genealogical Research Office of the Reich (<i>Sippenstelle</i>) arguing for <i>Mischling</i> status for family. Wittgensteins are informed by authorities that they are considered to be “full Jews” (<i>Volljuden</i>).
1938	Nov.		[REDACTED 6] (later [REDACTED 6]) and their two children join Paul in Switzerland.
1938	Nov.	28	Paul leaves Switzerland, unaccompanied by [REDACTED 6] and children.
1938	Dec.	9	Paul arrives in New York.
1938	Dec.	14	Anton Groller (on behalf of Paul), Hermine, and Helene sign updates to their 1938 Census declarations.
1939			By 1939 Paul owns 100% of <i>Wistag AG</i> , according to correspondence between Mannheim and Bienstock dated 24 December 1946.
1939	Feb.		<i>Partnership</i> withdraws Anton Groller’s signatory powers from the <i>Partnership</i> .
1939	Mar.		Anton Groller attempts to transfer <i>Partnership</i> ’s gold interests to Nazis; transfer is stopped by Swiss directors of <i>Partnership</i> .
1939	April		Negotiations commence between <i>Reichsbank</i> and Wittgensteins.
1939	April		Austrian authorities register Paul’s immigration to New York.
1939	April	12	Ludwig Wittgenstein becomes British subject.
1939	May	2	<i>Reichsbank</i> /Wittgenstein negotiations continue in Berlin with head of <i>Reichsbank</i> ’s Foreign Exchange Department, Dr. Görlich.
1939	June	6	Date of <i>Wistag Partnership</i> statement of accounts. <i>Partnership</i> net value (without <i>Wistag AG</i> capital) was SF 7.8 million, of which ca. SF 1.1 million was in gold in Switzerland. Total <i>Partnership</i> assets in Switzerland 49.10%, equal to SF 3.85 million.
1939	Aug.	21	Date of Agreement and Side Agreements available to CRT.
1939	Aug.	30	“Ruling regarding family’s origin” (<i>Abstammungsbescheid</i>) is signed by Kurt Mayer, head of genealogical research office of the Reich (<i>Sippenstelle</i>)
1939	Sept.	1	Preliminary flight tax is assessed against Paul for RM 1.6 million based on total assets of RM 6.4 million as of 1 January 1938. The assessment is sent to Paul in care of Dr. Indra.
1939	Sept.	1	Agreement with <i>Reichsbank</i> becomes effective.
1939	Oct.	9	<i>Partnership</i> is expunged from Zug commercial register.
1939	Nov.	2	Paul sells his property at Kohlmarkt 9 and Stewerstrasse 17 in Vienna for RM 578,000.00 to Helene; and Mariahilferstrasse 58 and his one-half share of

Year	Month	Day	Event
			Argentinerstrasse 16 for RM 501,604.00 to Hermine.
1939	Nov.	18	Berlin <i>Sippenstelle</i> confirms to Vienna <i>Sippenamt</i> that Wittgenstein siblings are <i>Mischlinge</i> of the first degree.
1939	Nov.	24	Dr. Indra notes objections from the Monuments Protections Office to the exporting of Paul's personal belongings and that the Flight Tax Office had, at his request, rescinded its order for seizure of Paul's assets for non-payment of flight tax.
1939	Dec.	6	Land Registry entry notes transfer of ownership of Plankengasse 1 from Paul to Hermine, valued at RM 234,000.00.
1939	Dec.	7	Paul sells his one-third share in property at Neuwaldeggerstrasse 38, valued at RM 73,500.00, in equal shares to Helene and Hermine. This amount is paid directly "to the Finance Office Inner City East in favor of the purchaser."
1940	May	30	Paul writes to his nephew, Felix Salzer (Helene's son), to explain the negotiations.
1940	June	4	Paul's Export Permission Request is denied / withdrawn.
1940	June	4	Internal memorandum of Monument Protection Office notes that Paul would settle his flight tax obligation with payment of SF 1.2 million, reportedly pursuant to an agreement with the <i>Reichsbank</i> .
1940	July	24	Final flight tax assessment is made against Paul for RM 1,602,907.00 based on total assets of RM 6,411,631.00 and is sent to Paul in care of Dr. Indra.
1940	Aug.		Paul and [REDACTED 6] are married in a Catholic ceremony in Cuba.
1940	Aug.	28	Vienna Regional Court Decision confirms transfer of ownership of Plankengasse 1 from Paul to Hermine.
1940	Oct.	24	<i>Vermögensverkehrsstelle</i> ("VVSt.") confirms to the Gestapo that the Wittgenstein siblings are <i>Mischlinge</i> .
1940	Oct.	25	VVSt. advises its real property division that the Wittgensteins are no longer to be considered Jews.
1948	July	1	<i>Wistag AG</i> goes into liquidation.
1949			<i>Wistag AG</i> is dissolved.
1950	Feb.	11	Hermine Wittgenstein dies in Vienna.
1951	April	29	Ludwig Wittgenstein dies in Cambridge, England.
1956	April	7	Helene Salzer, née Wittgenstein, dies in Vienna.
1960	Mar.	24	Paul Wittgenstein's last will.
1961	Mar.	3	Paul Wittgenstein dies in New York.
1961	Aug.	31	Publication of Austrian restitution law, entitling persecutees to compensation for atonement tax and flight tax.
1991			The law firm of Wachtell, Manheim & Grouf is officially dissolved. Its successor law firm is Harnik & Finkelstein LLP (whose partner Stephen M. Harnik represents the Claimants in this case).
1991	Oct.	31	Stephen Harnik is appointed as successor trustee of the Trust, the only extant trust remaining under Paul Wittgenstein's will.
1995	Dec.	18	[REDACTED 6]'s last will.
1996	Aug.	21	Codicil to [REDACTED 6]'s will.
2001	Mar.	31	[REDACTED 6] dies in Pennsylvania.

Name	Role
Bienstock, Dr. A.L.	Attorney for the Stonboroughs.
Bloch, Dr. Konrad	Attorney for <i>Partnership</i> in Switzerland, initially held two shares in <i>Wistag AG</i> .
Görlich, Dr.	Head of <i>Reichsbank</i> 's Foreign Exchange Department in Berlin, met with Wittgensteins during negotiation over <i>Partnership</i> 's foreign assets on 2 May 1939.
Groller, Anton	Manager of Wittgensteins' business affairs in Austria for a time, attempted to sign over <i>Partnership</i> 's gold holdings, however transfer was stopped by Swiss directors of the <i>Partnership</i> and <i>Wistag AG</i> in March 1939, as <i>Partnership</i> had withdrawn Groller's signatory power in February 1939.
Indra, Dr.	Attorney representing the Vienna Wittgensteins and at other times <i>Reichsbank</i> in negotiations.
Lichtenegger, Franz	Secretary of the office of the Wittgenstein Siblings, initiated post-War efforts to export Paul's possessions remaining in Austria that had been denied export permission by the Nazis.
Manheim, Harold	Attorney with firm of Wachtell, Manheim & Grouf in New York, representing Paul.
Mayer, Kurt	Head of Genealogical Research Office of the Reich (<i>Sippenstelle</i>) in Berlin, signed "Ruling regarding family's origin" (<i>Abstammungsbeschied</i>) confirming Wittgensteins' status as <i>Mischlinge</i> on 39 August 1939.
Peyer, Otto	Attorney for Wittgensteins in Switzerland, director of <i>Wistag Partnership</i>
Salzer, Max	Husband of Helene and trustee of <i>Wistag Partnership</i> .
Salzer, née Wittgenstein, Helene	Wittgenstein sibling, chose to remain in Vienna after the <i>Anschluss</i> .
Schöne, Dr.	Representative of <i>Reichsbank</i> in negotiations with Wittgenstein siblings
Stonborough, John	Son of Margaret (Gretl) and Jerome Stonborough and US citizen; entered into Side Agreement 1 with Paul regarding <i>Wistag AG</i> assets and support of Hermine and Helene.
Stonborough, née Wittgenstein, Margaret (Gretl)	Wittgenstein sibling, US citizen, initial holder of 499 shares of <i>Wistag AG</i> .
Stonborough, Thomas	Son of Margaret (Gretl) and Jerome Stonborough and US citizen; initial holder of 499 shares of <i>Wistag AG</i> .
Wachtell, Samuel	Attorney with firm of Wachtell, Manheim & Grouf in New York, representing Paul.
<i>Wistag AG</i>	Corporation (<i>Akteingesellschaft</i>) registered in Zug, Switzerland, established in 1932 to protect Wittgenstein family assets, initial capitalization of SF 1 million, 1,000 shares issued, Margaret Stonborough, née Wittgenstein, and her son Thomas, both US citizens each owned 499 shares. By 1939 reportedly 100% owned by Paul.

<p><i>Wistag Partnership</i> (the “<i>Partnership</i>”)</p>	<p>Partnership (<i>Kommanditgesellschaft</i>) registered in Zug, Switzerland, established in 1932 to protect Wittgenstein family assets. Originally owned by Paul (31.7%), Hermine (25.1%), Helene (21.1%), <i>et al.</i> Dissolved pursuant Agreement with <i>Reichsbank</i> that was effective as of 1 September 1939.</p>
<p>Wittgenstein, Hermine</p>	<p>Wittgenstein sibling, chose to remain in Vienna after the <i>Anschluss</i>.</p>
<p>Wittgenstein, Ludwig (1)</p>	<p>Wittgenstein sibling, immigrated to Cambridge, England, renounced all family wealth, became British subject in 1939.</p>
<p>Wittgenstein, Ludwig (2)</p>	<p>Brother of Karl Wittgenstein, uncle to Wittgenstein siblings.</p>
<p>Wittgenstein, Paul</p>	<p>Wittgenstein sibling, emigrated from Vienna to New York in August/September 1938, owner of 100% of <i>Wistag AG</i> as of 1939.</p>
<p>Zwiauer, Brigitte</p>	<p>Distant cousin of Karl Wittgenstein, who wrote to Genealogical Research Office of the Reich (<i>Sippenstelle</i>) arguing for <i>Mischling</i> status for family.</p>

Agreement between Paul Wittgenstein and the Reichsbank (German version)¹

Vertraulich [handwritten]

Abschrift.

Uebersetzung

ad acta [handwritten]

Memorandum als Grundlage für eine Vereinbarung zwischen der Reichsbank und Paul Wittgenstein

1. Von den Vermögenschaften der Wistag A.G. & Cie. Kommanditgesellschaft, die den einzelnen Beteiligten zustehen, nämlich: Dr. Max Salzer als Treuhänder von Paul Wittgenstein, Hermine Wittgenstein, Helene Salzer, Lydia Oser-Wittgenstein, Franziska Siebert, Johanna Salzer und Hedwig Pauli soll Paul Wittgenstein Sfr. 1,800.000.—(i.W. eine Million achthunderttausend Schweizerfranken) erhalten und zwar als freies Eigentum.
2. Der Wistag A.G. & Cie. Kommanditgesellschaft wird aus denselben Vermögenschaften die Summe von Sfr. 300.000.—(i.W. dreihunderttausend Schweizerfranken) überwiesen, um die Barauslagen und Honorare der Herren Bloch, Wachtell und Bienstock, gleichgültig ob sie bereits aufgelaufen sind oder noch auflaufen werden, zu bezahlen, ebenso die vorgelegten Barauslagen für den Aufenthalt des Dr. Alfred Indra und Dr. Hans Schöne in den Vereinigten Staaten im Zuge der Unterhandlungen, die zu dieser Vereinbarung geführt haben. Alle jene Beträge, die Paul Wittgenstein für diese Zwecke vorgeschossen hat sind ihm von der Wistag A.G. & Cie. Kommanditgesellschaft zu ersetzen.
3. Der Rest der oben angeführten Vermögenschaften soll an die Reichsbank bezahlt oder übertragen werden, jedoch nach angemessener Vorsorge für die Zahlung aller laufenden, zu Recht bestehenden Verbindlichkeiten der Wistag A.G. & Cie. Kommanditgesellschaft, einschliesslich der Steuerschulden, falls sie solche, sei es dem Kanton oder der schweizerischen Eidgenossenschaft schuldig ist, und der Kosten der Liquidation der Gesellschaft.
4. Die Reichsbank wird nach Erhalt der oben bezeichneten Beträge deren Gegenwert in Reichsmark gemäss den gesetzlichen Bestimmungen auf jene Konti überweisen, die ihr vom Verwalter des Wittgenstein'schen Vermögens, Direktor Groller in Wien, aufgegeben werden.
5. Die Reichsbank übernimmt es und verpflichtet sich zu veranlassen, dass alle Bescheide, Anordnungen und sonstigen Weisungen ergehen, die notwendig sind, dass das persönliche Eigentum des Paul Wittgenstein, als z.B. und insbesondere Musikinstrumente, Musiknoten.-Partituren, Bücher, Manuskripte, Bilder, Kunstgegenstände und andere höchst persönliche, zum Haushalt gehörige Gegenstände, die nicht Gegenstand eines Ausfuhrverbotes nach dem Denkmalschutzgesetz sind, für ihn oder für seine Rechnung, ohne irgend eine Zahlung oder andere Leistung an die Devisenstelle, an eine Eisenbahnstation ausserhalb Deutschlands frei ausgeliefert werden. Hierbei soll jedoch die Reichsbank nicht etwa verpflichtet sein die üblichen

¹ This version of the Agreement was obtained by the CRT from the files of the Austrian Federal Office of Monuments (*Bundesdenkmalamt*).

Transportkosten oder Zölle die von dem Land in das dieses persönliche Eigentum geschafft werden soll, vorgeschrieben werden, zu zahlen.

6. Die Reichsbank übernimmt es und verpflichtet sich, dass ein Bescheid herausgegeben und Paul Wittgenstein, Hermine Wittgenstein und Helene Salzer mitgeteilt wird, in welchem der Mischlingsstatus der drei Genannten erklärt ist und zwar so günstig als es für sie möglich ist.
7. Ferner wird die Reichsbank dafür sorgen, dass die erforderlichen Weisungen oder andere Bescheide ergehen, die Paul Wittgenstein den Status des Devisenausländers, und gleichzeitig, aber nur bis zum 31.10.1939, den Status des Deviseninländers zuerkennen. Letzteres um ihm zu ermöglichen, seine Vermögensschaften in Reichsmark und seine Grundstücke in Deutschland seinen Schwestern Hermine Wittgenstein und Helene Salzer, oder einer von ihnen, zu übertragen und zu überfertigen.
8. Die Erfüllung der Verbindlichkeiten aus diesem Verträge durch die Parteien soll, soweit durchführbar, Zug um Zug geschehen, jedoch sollen Dr. Konrad Bloch in Zürich und Dr. Alfred Indra in Wien gemeinsam ermächtigt sein und im gemeinsamen Einverständnis hierbei vorgehen, um nach ihrem gemeinsamen Ermessen einen Vorgang zu finden, wenn nach ihrem Dafürhalten die Zug um Zug Erfüllung sich als zu schwierig oder schwerfällig erweist. Die Herren Drs. Konrad Bloch und Carl Rüttimann sind ausdrücklich ermächtigt, mit der Uebertragung der Vermögensschaften an die Reichsbank gemäss diesem Abkommen zu beginnen sobald der Betrag von Sfr. 1,800.000.- und die Sfr. 300.000.- Herrn Paul Wittgenstein bzw. der Wistag A.G. & Cie, Kommanditgesellschaft freigestellt wurden und der Mischlingsbescheid für die oben erwähnten Personen ordnungsgemäss gefasst, kundgemacht und den Parteien oder deren Vertretern in gehöriger Form zugestellt worden ist.
9. Für den Fall, dass ein Gesetz oder der Order public entweder der Schweizerischen Eidgenossenschaft oder des Staates von New York oder der Vereinigten Staaten die Erfüllung dieses Abkommens ungesetzlich oder gegen den Order public verstossend machen sollte, so soll das Uebereinkommen, soweit es nicht bereits ausgeführt ist, nicht mehr zur Ausführung gelangen und die Parteien sind diesfalls ihrer restlichen Verpflichtung entbunden. Die Parteien wurden jedoch von ihren Rechtsvertretern belehrt, dass gegenwärtig ein Bedenken gegen diese Vereinbarung, sei es vom Standpunkte des Gesetzes, oder der Order public, weder in der Schweiz noch im Staate von New York noch in den Vereinigten Staaten besteht.
10. Die vorstehenden Bestimmungen bilden die Basis des abzuschliessenden Vertrages. Die Parteien kommen überein, und bestimmen demgemäss, dass das endgültige Abkommen auf dieser Basis- durch die Parteien oder durch deren gehörig bevollmächtigte Vertreter, die Herren Dr. Konrad Bloch, Bahnhofstr. 70 Zürich und Dr. Alfred Indra in Wien ausgefertigt und unterzeichnet werden soll und dass das Schweizerische Recht massgebend ist, wenn irgend eine Frage über die Auslegung dieses Uebereinkommens oder seine Durchführung sich ergeben sollte.

Zurich, den 21. August 1939

Samuel Wachtell
Paul Wittgenstein

Agreement between Paul Wittgenstein and the Reichsbank (English version)²

Mon., Aug. 21, 1939

Memorandum to serve as the basis of an agreement between the Reichsbank and Paul Wittgenstein.

1. From the funds of the Kommanditgesellschaft owned by the individual participants, Paul Wittgenstein shall receive Swiss Francs 1,800,000. In addition he shall receive Swiss Francs 300,000 for the purpose of covering all outlays made or to be made by him for the expenses of the parties and their agents (except Reichsbank and its agents) and to pay the counsel fees of Messrs. Bloch, Bienstock, and Wachtell in the ratios to be agreed upon among them.
2. The rest of the said Kommandit funds shall be paid or transferred to the Reichsbank after adequate provision has been made for all charges and claims, if any, of the government of the Swiss Confederation or any of the cantons, municipalities, or other bodies, corporate and politic, for taxes of any kind payable at the date of the conclusion of an agreement.
3. The Reichsbank, upon receiving the moneys above specified, shall credit the countervalue thereof in marks in accordance with law, to Hermina Wittgenstein and Helene Salzer, or to either of them as they may direct.
4. The Reichsbank undertakes and agrees to cause to issue all decrees, orders, or other directions to the end that the personal property of Paul Wittgenstein, such as and including, musical instruments, music scores, notes, books, manuscripts, pictures, art objects, and other personal and household belongings be freely delivered to him, or for his account, at a railroad terminal outside of Germany. But this shall not require the Reichsbank to pay any duties chargeable against the said personal property.
5. Paul Wittgenstein will transfer any and all Reichsmark balances he now has in Germany and convey any and all... [Line missing, but according to the German version this would have said in substance: "...convey any and all real estate property in Germany to his sisters Hermine Wittgenstein and Helen Salzer-Wittgenstein..."].
6. The Reichsbank undertakes and agrees to cause to be handed down, published, and communicated to the parties, a decree establishing the Mischling status for all the members of the Wittgenstein family with the exception of those who already enjoy such a status or a more favorable one.
7. In addition, the Reichsbank will cause to issue appropriate orders or dispositions conferring upon Paul Wittgenstein the status of Devisenauslaender and also (but only until the 31st October 1939) the status of Deviseninlaender in order to enable him to comply with the provisions of this agreement.
8. Performance by the parties of the provisions of this agreement shall be simultaneous (Zug um Zug).
9. The foregoing constitute [*sic*] the basic provisions of the proposed agreement. The parties hereby agree, and direct accordingly, that the final agreement which shall be signed duly by the parties or their duly authorized representatives shall be drawn by Dr. Konrad Bloch of no. 70 Bahnhofstrasse, Zuerich, and by Dr. Alfred Indra of Vienna, now

² This version of the Agreement was submitted to the CRT by the Claimants.

at Zuerich, and that the law of Switzerland shall govern whenever any question about the meaning of this agreement or its performance shall arise.

Side Agreement 1 between Paul Wittgenstein and John Stonborough³

Memorandum to serve as the basis of an agreement between Paul Wittgenstein and John J. Stonborough, both of New York.

1. In consideration of the agreement bearing the same date between Paul Wittgenstein and the German Reichsbank, which the former entered into at the request of John J. Stonborough, and in consideration of the waiver by Paul Wittgenstein of his right to demand the entire sum representing his interest in the Wistag A.G. & Cie. Kommanditgesellschaft and in the Wistag Corporation and to consent to the liquidation thereof, and in consideration of his consent to reduce the amount of his share to the sum of Swiss francs 1,800,000.-- (in words: one million eighthundred thousand) plus the counsel fees and expenses mentioned in the Reichsbank agreement, the parties mutually agree as follows:
2. Paul Wittgenstein will transfer and convey all of his shares of stock, if any, right, title, and interest in and to the Wistag A.G. and any property or rights owned by it to John J. Stonborough.
3. John J. Stonborough will pay from the funds and assets of the Wistag A.G. for the said transfer and simultaneously therewith a sum equivalent to Swiss francs 500,000 at the rate quoted for Swiss francs in cable transfers at New York on the day of the payment.
4. In addition, John J. Stonborough will agree at all times whenever it may become necessary to support and maintain adequately and comfortably Hermine Wittgenstein and Helene Salzer, now resident in Vienna, and to hold Paul Wittgenstein harmless and well indemnified against any claim, charge, or obligation, moral or legal asserted by any one in behalf [*sic*] of the said Hermine Wittgenstein and Helene Salzer, or by themselves. It is understood, however, . . . [section missing from original]... and when John J. Stonborough shall have applied to the maintenance and support of Hermine Wittgenstein and Helene Salzer all of the assets at present owned by the Wistag A.G. less the sum of Swiss francs 500,000 paid in accordance herewith to Paul Wittgenstein.
5. The Reichsbank agreement, referred to above, consists of a preliminary memorandum, which, it is intended, should be cast into final form by Drs. Konrad Bloch and Alfred Indra. It is understood and agreed that the instant agreement shall not be discharged or invalidated in any of its terms by reason of any additions or changes which may be made in the Reichsbank agreement by the mutual consent of Dr. Bloch and Dr. Indra.
6. The foregoing constitute [*sic*] the basic provisions of the proposed agreement. The parties hereby agree and direct accordingly that the final agreement, which shall be signed duly by the parties or their duly authorized representatives, shall be prepared by S.R. Wachtell of New York with the approval of A.L. Bienstock of New York or Alfred Indra of Vienna, or either of them.
7. The validity of this agreement is contingent upon the execution and performance of the proposed agreement between Reichsbank and Paul Wittgenstein either in the present tenor or with such changes or additions as Drs. Bloch and Indra may mutually consider necessary. Should no agreement be reached between Reichsbank and Paul Wittgenstein, this agreement shall become null and void. John J. Stonborough shall be entitled, on and

³ Side Agreement 1 was submitted to the CRT by the Claimants.

after the 15th of September 1939, to give written notice by registered mail to Paul Wittgenstein that unless an agreement between the latter and the Reichsbank be executed on or before a time stated in the notice, but not... [section missing from original] ... agreement to become void, and it shall in that event and under the conditions stated in the notice become void.

8. In the event any recourse to court should ever be taken by either of the parties hereto on this agreement, the law of the Forum shall apply to all questions which may arise in the suit, except where the Reichsbank agreement requires the application of Swiss law.

In witness whereof the parties have signed this agreement. [No signatures included.]
Zurich, the 21st day of August 1939.

Side Agreement 2 between Paul and Hermine and Helene⁴

Mon., August 21, 1929

(ie. 1939) [handwritten]

Memorandum to serve as the basis of an agreement between Paul Wittgenstein and his sisters, Hermina [*sic*] and Helene.

1. Whereas an agreement is about to be made between Paul Wittgenstein and Reichsbank for the settlement of the Reichsbank claims to part of the funds of Kommanditgesellschaft (fill in correct name) [*sic*] and whereas an agreement is also about to be made between Paul Wittgenstein and John J. Stonborough concerning the support and maintenance of Hermina and Helene in the event they should in the future desire to emigrate from Germany and whereas Hermina and Helene have emphatically communicated their determination to remain in the country of their birth and have informed Paul Wittgenstein that they have no intention whatever to emigrate and whereas Paul Wittgenstein feels himself morally obligated to place at the disposal of his sisters all mark balances and real estate which he has in Germany to the end that the sisters may live in comfort as long as they remain in that country, now therefore Paul Wittgenstein hereby agrees in consideration of his love and affection for his two sisters to transfer and convey to them (provided that shall be permissible under German law) all of his mark balances in Germany and to convey to them all of his real estate in that country. The only deduction to be made from his mark balances, so to be transferred, shall be for the purpose of paying all expenses such as packing, insurance, transportation, etc. of Paul Wittgenstein's personal property mentioned in an agreement bearing even date between him and the Reichsbank. There shall also be paid out of the said mark balances, or out of the said real estate, any lawful obligations which may exist and be asserted against him in Germany.
2. It is agreed that this agreement shall be effective only if and when the agreements between Paul Wittgenstein and the Reichsbank and between him and John J. Stonborough are executed and performed.

[No signatures attached.]

⁴ Side Agreement 2 was submitted to the CRT by the Claimants.

The Siblings' Portfolios: Name and number of securities and values on date of disposition

Name of Security	PAUL custody account 55873			HERMINE custody account 55872			HELENE custody account 55874		
	Nr.	Value in SF	Sold by 12 Nov 1938 (x)	Nr.	Value in SF	Sold by 12 Nov 1938 (x)	Nr.	Value in SF	Sold by 12 Nov 1938 (x)
5% Japanese Staatsanleihe 1907 per 12 March 1947							800	7,351.28	Sold 27 Dec 1938
American Locomotive Co. 7% cum. pref. shares à \$100	150	46,458.56	Sold 20 Dec 1938	150	46,704.38	Sold 20 Dec 1938	150	46,458.56	Sold 20 Dec 1938
American Smelting & Refining Co. 7% cum. pref. shares à \$100	180	104,962.33	x	180	104,962.33	x	200	116,624.81	x
American Smelting & Refining Co. common shares no face value				36	7,236.72	x			
American Telephone & Telegraph Co. common shares à \$100							62	37,880.80	x
American Tobacco Co. 6% cum. pref. shares à \$100	20	12,312.48	x	20	12,312.48	x	20	12,312.48	x
Atchison, Topeka and Santa Fe Railway Co. 5% non cum. pref. shares à \$100 ¹	13	3,181.36	x	270	69,614.10	x	270	69,614.10	x
Atchison, Topeka and Santa Fe Railway Co. 5% non cum. pref. shares à \$100	260	67,035.80	x	20	5,353.25	x	20	5,353.25	x
Atchison, Topeka and Santa Fe Railway Co. common shares à \$100	100	17,917.00	x	100	17,917.00	x	100	17,917.00	x
Atchison, Topeka and Santa Fe Railway Co. common shares à \$100	150	27,285.19	Sold 15 Nov 1938	150	27,285.19	Sold 15 Nov 1938	150	27,285.19	Sold 15 Nov 1938
Baltimore & Ohio Railroad Co. 4% pref. shares à \$100	22	763.11	x	22	763.11	x	30	1,040.61	x
Baltimore & Ohio Railroad Co. common shares à \$100	100	3,031.69	x	100	3,031.69	x	100	3,031.69	x
Canadian Pacific Railway Co. common shares à \$25	176	4,470.51	x	176	4,470.51	x	250	6,350.16	x
Corn Products Refining Co. 7% cum. pref. shares à \$100	40	29,016.80	x	40	29,016.80	x	40	29,016.80	x
Crucible Steel Co. of America 7% cum. pref. shares à \$100	100	37,691.25	Sold 14 Dec 1938	100	37,691.25	Sold 14 Dec 1938	100	37,691.25	Sold 14 Dec 1938
Diamond Match Co. 6% cum. part. pref. shares à \$25	250	43,700.00	x	250	43,700.00	x	250	43,700.00	x
Diamond Match Co. common shares no face value	200	24,362.75	x	200	24,336.53	x	100	12,163.38	100
Diamond Match Co. common shares no face value							100	12,163.38	100
General Cigar Co. Inc. 7% cum. pref. shares à \$100	30	15,502.58	x	30	15,502.58	x	50	25,837.63	x
Liggett & Myers Tobacco Co. 7% cum. pref. shares à \$100	20	14,901.70	x	20	14,901.70	x	20	14,901.70	x
Liggett & Myers Tobacco Co. common shares à \$25	10	4,430.09	x	10	4,430.09	x			
Liggett & Myers Tobacco Co. common shares, Class B à \$25	2	886.02	x	2	886.02	x			
National Biscuit Co. 7% cum. pref. shares à \$100	100	69,237.41	x	50	5,230.34	x	40	4,184.28	x
National Biscuit Co. 7% cum. pref. shares à \$100	50	5,448.84	x						
National Lead Co. 7% cum. pref. shares Class A à	150	107,051.67	x	50	35,683.89	x	200	142,735.56	x

¹ In his 1938 Census declaration, Paul declared ownership of 275 *Atchison, Topeka and Santa Fe Railway Co.* 5% non cum. pref. shares à \$100. Bank I's records reflect that he actually held 273 of these shares. This table reflects the amount noted in Bank I's records.

*Appendix D: Security Holdings of Wittgenstein Siblings
In re Accounts of Wittgenstein et al.*

\$100									
New York Central Railroad Co. common shares no face value	95	6,590.51	x	95	6,590.51	x	95	6,590.51	x
P. Lorillard Co. 7% cum. pref. shares à \$100	70	42,826.00	x	30	18,354.00	x	10	6,118.00	x
P. Lorillard Co. 7% cum. pref. shares à \$100							70	42,826.00	x
P. Lorillard Co. 7% cum. pref. shares à \$100							20	12,236.00	x
Pan-American Match Corp. common shares à \$25	20	983.25	not in Census	20	983.25	not in Census	20	983.25	not in Census
Peoples Gas Light & Coke Co. of Chicago shares à \$100	66	8,616.55	x	66	8,616.55	x	66	8,616.55	x
Pullman Inc. common shares, no face value	50	7,210.50	x						
Southern Pacific Co. common shares à \$100	250	20,279.53	Sold 16 Dec 1938	250	20,279.53	Sold 16 Dec 1938	200	16,223.63	Sold 16 Dec 1938
St. Louis-San Francisco Railway Co. 6% non cum. pref. shares à \$100	50	300.44	Sold 14 Dec 1938	50	300.44	Sold 14 Dec 1938	50	300.44	Sold 14 Dec 1938
St. Louis-San Francisco Railway Co. common shares à \$100							65	390.57	Sold 14 Dec 1938
Union Pacific Railroad Co. common shares à \$100	100	41,596.94	x	100	41,596.94	x	100	41,596.94	x
Union Pacific Railroad Co. common shares à \$100	100	41,405.75	Sold 15 Nov 1938	150	62,108.63	Sold 15 Nov 1938	100	41,405.75	Sold 15 Nov 1938
United Corp. \$3.00 cum. pref. shares no face value ²	30	3,572.48	x	30	3,572.48	x	30	3,572.48	x
United Corp. common shares no face value	54	589.95	x	54	589.95	x	54	589.95	x
United States Steel Corp. 7% cum. pref. shares à \$100							30	8,521.50	x
Virginia-Carolina Chemical Corp. common shares, no face value	150	2,294.25	x						
Virginia-Carolina Chemical Corp. common shares, no face value				150	2,294.25	x			
Totals SF		815,913.26	641,509.29		676,316.45	480,963.80		863,585.48	685,495.56
Totals RM		466,620.79	366,879.16		386,785.38	275,063.20		493,884.54	392,034.91
RM Value reported in Census as of 27 April 1938		421,322.99			325,950.35			427,566.67	

² In his 1938 Census declaration, Paul declared ownership of 130 *United Corp.* \$3.00 cum. pref. shares with no face value. Bank I's records reflect that he actually held 30 of these shares. This table reflects the amount noted in Bank I's records.

Appendix E: Summary of Account Information
In re Accounts of Wittgenstein et al.

	Bank	Account Owner	Act Nr	Act Type	Account Information	Disposition
1.	Bank I	Paul	55873	DD	US dollar account; reported in Census declaration specifying location.	Closed 20 April 1938.
2.	Bank I	Paul	55873	CA	Held securities; reported in Census declaration without specifying location. Securities sold 1938, foreign currency proceeds delivered to <i>Reichsbank</i> , RM counter-value received.	Closed 22 December 1938.
3.	Bank I	Paul	3953	CA	Held 15 bars of gold (not reported in Census); contents transferred to account 4250, which was owned by <i>Partnership</i> , on 27 May 1938.	Closed 1 June 1938.
4.	Bank I	Hermine	55872	DD	US dollar account; reported in Census declaration specifying location.	Closed 20 April 1938.
5.	Bank I	Hermine	55872	CA	Held securities; reported in Census declaration without specifying location. Securities sold 1938, foreign currency proceeds delivered to <i>Reichsbank</i> , RM counter-value received.	Closed 22 December 1938.
6.	Bank I	Helene	55874	DD	US dollar account; reported in Census declaration, specifying location.	Closed 20 April 1938.
7.	Bank I	Helene	55874	CA	Held securities; reported in Census declaration without specifying location. Securities sold 1938, foreign currency proceeds delivered to <i>Reichsbank</i> , RM counter-value received.	Closed 29 December 1938.
8.	Bank I	<i>Partnership</i>	47638	CA	Held securities valued at SF 1,254,194.00 as of 6 June 1939. One-third of the dollar-denominated securities listed in 6 June 1939 Statement of Accounts as being held at Bank I were transferred to Central Hanover Bank, NY on 28 August 1939 (likely as partial payment of Paul's share under the Agreement).	Closed on 6 October 1939.
9.	Bank I	<i>Partnership</i>	2824	CA	Held gold; contents transferred to account 3953, which was owned by Paul, on 30 September 1936.	Closed on 1 October 1936 (prior to <i>Anschluss</i>).
10.	Bank I	<i>Partnership</i>	4250	CA	Held 15 bars of gold transferred from account 3953, which was owned by Paul, on 27 May 1938; 3 bars of gold removed (" <i>ausgeliefert</i> ") from account on 28 May 1938; remaining 12 bars of gold transferred to account 4617, which was owned by an unnamed party, on 5 September 1939.	Closed 8 September 1939.
11.	Bank I	<i>Partnership</i>	N/A	DD	SF account. SF cash holdings at Bank I valued at SF 5,150.22 as of 6 June 1939.	Closed 30 September 1939.
12.	Bank I	<i>Partnership</i>	N/A	DD	US dollar account. US dollar cash holdings at Bank I valued at SF 13,976.20 as of 6 June 1939.	Closed 30 August 1939.
13.	Bank III	<i>Partnership</i>	34661	DD	US dollar account. US dollar cash holdings valued at SF 298.00 as of 6 June 1939.	Closure date unknown; part of negotiation with <i>Reichsbank</i> .
14.	Bank III	<i>Partnership</i>	34661	DD	SF account. SF cash holdings at Bank III valued at SF 25,748.80 as of 6 June 1939. Account still held SF 350,000.00 after the War, at which time it was agreed that this amount belonged to Paul.	Account paid to Paul after the War.
15.	Bank III	<i>Partnership</i>	34661	CA	Held 6 bars fine gold valued at SF 370,826.00 as of 6 June 1939.	Closure date unknown; part of negotiation with <i>Reichsbank</i> .
16.	Bank IV	<i>Partnership</i>	N/A	CA	Held securities valued at SF 198,980.00 as of 6 June 1939.	Closure date unknown; part of negotiation with <i>Reichsbank</i> .
17.	Bank IV	<i>Partnership</i>	N/A	DD	SF account valued at SF 9,591.35 as of 6 June 1939.	Closure date unknown; part of negotiation with <i>Reichsbank</i> ..
18.	Bank IV	<i>Partnership</i>	N/A	DD	US dollar account valued at SF 7,247.40 as of 6 June 1939.	Closure date unknown; part of negotiation with <i>Reichsbank</i> .

Appendix E: Summary of Account Information
In re Accounts of Wittgenstein et al.

	Bank	Account Owner	Act Nr	Act Type	Account Information	Disposition
19.	Bank I Zurich	Wistag AG	62615	CA		Closed 10 January 1940.
20.	Bank I Zurich	Wistag AG	N/A	DD		Closed 20 March 1940.
21.	Bank I Zurich	Wistag AG	N/A	DD	US dollar account referred to as “ <i>Separat Konto.</i> ”	Closed 20 March 1940.
22.	Bank I Zurich	Wistag AG	N/A	DD	Referred to as “ <i>Separat Kreditorenkonto.</i> ”	Closed 20 March 1940.
23.	Bank I Lausanne	Wistag AG	16391	CA		Closed 17 January 1941.
24.	Bank I Lausanne	Wistag AG	16356	CA		Closed 7 February 1942.
25.	Bank I Lausanne	Wistag AG	16392	CA		Closed 19 July 1948.
26.	Bank I Lausanne	Wistag AG	18027	CA		Transferred to account 197640 belonging to Wistag AG.
27.	Bank I Lausanne	Wistag AG	197640	CA		Closed 31 December 1948.
28.	Bank I Lausanne	Wistag AG	N/A	DD	Held SF 4,459.80 as of 31 August 1943.	Closed 30 March 1949.
29.	Bank II	Wistag AG	N/A	DD	SF account valued at SF 5,479.00 as of 13 July 1940 and SF 2,429.00 as of 31 August 1943.	Managed by Wistag AG auditors and paid to shareholders during liquidation.
30.	Bank III	Wistag AG	43009	CA	Undated notation that account was blocked by Bank III, likely following withdrawal of signatory power over <i>Partnership</i> accounts from Anton Groller in January 1939. Content of account 34661 at Bank III, which was owned by the <i>Partnership</i> , was transferred into this account on 27 September 1939.	Closed 24 January 1940.
31.	Bank I	Wistag AG for benefit of Paul	N/A	DD	Held US \$1,035.00 for the benefit of Paul. Account blocked until the cessation of hostilities.	Assets paid out to Paul after the War.