

Chapter 3: Civil Law: Holocaust Restitution Litigation in the United States

D. Supplemental Material

<http://www.latimes.com/news/opinion/la-op-rosensaft19nov19,0,955668.story?coll=la-opinion-rightrail>

1. Profiting from the Holocaust

Lawyers who represent Holocaust survivors should do it for long-delayed justice rather than personal enrichment.

By Menachem Z. Rosensaft

MENACHEM Z. ROSENSAFT, a lawyer in New York, is the founding chairman of the International Network of Children of Jewish Holocaust Survivors.

November 19, 2006

IF LAWYERS EVER WONDER, in a rare moment of introspection, why they are generally held in low esteem, they need look no further than the obscene fee application pending before a federal magistrate judge in Brooklyn, N.Y.

Burt Neuborne, the court-appointed lead settlement counsel in a class action brought on behalf of Holocaust survivors against Swiss banks, has turned himself into the poster boy for avaricious attorneys. He demands \$4.75 million for his role in administering the \$1.25-billion settlement and determining distribution of the money.

Neuborne, a tenured professor at New York University's law school and legal director of NYU's Brennan Center for Justice, is looking to profiteer from Holocaust-era litigation. Survivors he purports to represent in the litigation have received \$1,450 each. A decision on his fee application could come any day.

No one can be required, or should be expected, to work for free. Lawyers — like doctors, plumbers or cab drivers — have a right to make a living. There is a difference, however, between fair compensation and utter exorbitance.

Neuborne wants to be paid \$700 an hour for the roughly 6,800 hours he claims to have spent on the Swiss banks case between Feb. 1, 1999, and Oct. 1, 2005. (Earlier this year, he agreed to remove 1,500 hours from his fee application after some of his billing practices were challenged.) That averages out to about 20 hours a week, for which he wants to be paid, again on average, \$675,000 a year. This would be on top of \$4.4 million he received in 2001 from another Holocaust-era settlement with German corporations that had exploited Jews and Roma/Sinti as slave laborers during World War II.

In sharp contrast, Kenneth R. Feinberg, who served as the special master of the September 11th Victim Compensation Fund, worked entirely pro bono.

Neuborne acknowledges that U.S. District Judge Edward R. Korman asked him in early 1997 to "serve in a pro bono capacity as co-counsel for the plaintiffs" in the Swiss banks litigation. As recently as September 2005, Neuborne told a federal judge in Miami that he was "the lead settlement lawyer in the Swiss case, in which I served without fee now for almost seven years." Three months after that, he submitted his multimillion-dollar tab to the court. He now argues that \$4.75 million is a smaller proportion of the \$1.25-billion Swiss banks settlement than he would normally be entitled to in a federal class action.

But the Holocaust was not just another mass tort. Governments, banks, insurance companies and private corporations all participated in, profited from or failed to prevent the brutal annihilation of European Jews. Unlike typical class-action suits, in which a manufacturer is deemed liable for a defective product or a corporation is charged with discrimination, the various Holocaust-era litigations are rooted in a crime against humanity for which much of the international community — including the United States — bears at least some responsibility. Stuart E. Eizenstat, who negotiated many of the Holocaust assets settlements while serving as undersecretary of State and deputy secretary of the Treasury in the Clinton administration, explained that these cases gave him, in his words, "a chance to help remove a cloud over the history of the United States, which had sacrificed so greatly to win the war but done so little to prevent civilian genocide and then help its survivors after the conflict."

Lawyers who take on matters in this context have moral and ethical obligations that transcend their narrow self-interest. They should view their representation of Holocaust survivors as an opportunity to bring about a long-delayed measure of justice rather than a means of enriching themselves.

In October 2000, Neuborne wrote in a letter to the editor in the *Nation* that "every penny in the \$1.25-billion Swiss bank case will go to Holocaust victims." U.S. Magistrate Judge James Orenstein, who has broad discretion in recommending what Neuborne's fee should be, should bear those words in mind as he ponders his ruling.

In addition to compensating account holders or their heirs, the Swiss banks settlement provides for modest payments to former slave laborers and allocations to social service agencies that care for the neediest Holocaust survivors. Every dollar awarded to Neuborne by the court is one that could otherwise assist a victim of the Holocaust. Many elderly survivors — living on the Lower East Side of Manhattan, in South Florida or elsewhere — cannot afford desperately needed medical treatment. The combination of Medicare, Social Security and the meager reparations that some of them receive from Germany is insufficient to pay for doctors, extended hospital stays, nursing care, prescription drugs, eyeglasses and the like.

One of the principal purposes of the Holocaust assets litigations is to provide a safety net for the men and women who suffered so horrendously at the hands of the Nazis and to enable them to live out their remaining years with a modicum of dignity. That is why the court should repudiate Neuborne's excessive greed and instead designate most, if not all, of the \$4.75 million he seeks for the benefit of survivors.

2. What profit? I gave up \$10 million

<http://www.latimes.com/news/opinion/la-op-neuborne19nov19,0,7744922.story?coll=la-opinion-rightrail>

The head lawyer in the \$1.25 billion Swiss banks settlement defends his request for \$4.75 million in fees.

By Burt Neuborne

Burt Neuborne is the Inez Milholland professor of civil liberties and legal director of the Brennan Center for Justice at the New York University School of Law.

November 19, 2006

ATTACKS ON ME for seeking a court-awarded fee for seven years of labor as the lead lawyer in the \$1.25-billion Swiss banks Holocaust settlement give new meaning to the phrase "no good deed goes unpunished."

I began my work on behalf of Holocaust survivors in December 1996, when U.S. District Judge Edward R. Korman asked me to serve as counsel in the Swiss banks litigation. I redrafted the complaints, wrote the principal legal brief, argued the case and spearheaded the negotiations that succeeded on Aug. 12, 1998, in obtaining the historic settlement. I then told Korman that although I was entitled to as much as \$10 million, I would not seek a fee for those services. At that point, no one expected me to do more work on the Swiss banks case. Instead, beginning in September 1998, I devoted myself to the German slave labor cases that led to the creation of the \$5.2-billion German Holocaust Foundation.

In April 1999, Korman asked me to return to the Swiss banks case to carry out the complex settlement. Given the grueling, time-consuming nature of the work, he agreed that I would be entitled to reasonable hourly fees. Korman has publicly acknowledged that he "retained me" and that I am entitled to a fee. My detractors say Korman should have given formal notice that I was no longer working for free. But notice to a class of 1 million people would have cost a fortune (it cost \$40 million to give notice of the terms of the settlement) while accomplishing nothing because the class was not entitled to insist that I return to work for them for free.

My work as lead settlement counsel over the last seven years has been massive and unrelenting, requiring me to spend, to date, more than 7,000 hours providing complex legal services to the settlement fund. I appeared in 30 contested legal proceedings, including multiple federal appeals, two Supreme Court proceedings and three trial-type hearings in the district courts.

In fact, my work increased the fund by almost \$100 million because I persuaded Congress to exempt all interest on the \$1.25-billion fund from federal income taxation. Thus far, more than \$900 million has been distributed from the Swiss settlement fund to about 400,000 people — more than \$400 million to Swiss bank account owners, averaging \$130,000 per account; more than \$300 million to former slave laborers, with each recipient receiving \$1,450 from the Swiss fund plus \$7,500 from the German

Holocaust Foundation; \$205 million for the relief of the poorest survivors; \$15 million to refugees expelled from Switzerland; and a \$10-million grant to Yad Vashem (Israel's Holocaust Martyrs' and Heroes' Remembrance Authority) to compile a definitive list of all Holocaust victims. I anticipate that hundreds of millions of dollars in additional bank account claims will be paid.

Thus, my requested fee of about \$4.75 million, based on the usual hourly billing rate for similar services, works out to about \$10 per recipient, payable entirely from the tax-free interest earned on the settlement fund. Because of my work, even after all fees and expenses are paid, the survivors will receive more than 100% of the \$1.25-billion settlement.

The charge that I misled the class into thinking that I was working for nothing is baseless. It was occasionally legally necessary for me to note that my pre-settlement work had been without fee. Unfortunately, some survivors claim to have misunderstood those statements. They claim to have believed that I was working without a fee during the post-settlement phase.

While I deeply regret any misunderstanding, Judge Korman and my co-counsel have made it clear that virtually everyone involved in the case understood that I was to be compensated for my post-settlement work.

I worked extremely hard for two years and generated \$1.25 billion for survivors. I waived a fee of up to \$10 million for that work. That's enough charity. There comes a point where no one can expect a lawyer to continue to work indefinitely without being paid.

In the real world, unless lawyers are paid fees that reflect the market value of their services, they cannot be expected to commit themselves to years of demanding work.

But for my work, there would have been no money to distribute to anyone. Given my years of dedication to the survivor community, and my success in assembling and distributing more than \$6.5 billion to Holocaust victims over the last decade, I do not apologize for seeking a reasonable market fee for my years of successful service in the Swiss banks case.

Supplemental Articles

Holocaust survivors owed as much as \$175 bln-study

Fri Jan 19, 2007 12:01 AM GMT

By Joan Gralla

NEW YORK (Reuters) - Holocaust survivors are still owed between \$115 billion and \$175 billion (58 and 88 billion pounds) in restitution despite six decades of efforts to return everything the Nazis stole, from their homes to businesses, a new study said on Thursday.

In the last decade, restitution efforts intensified due to the end of the Cold War, as well as public pressure spurred by new reports of the extent of Nazi looting and an uproar over efforts by Swiss banks to conceal victim accounts, said the study's author, international economist Sidney Zabludoff.

The study was prepared for Jerusalem-based Jewish Political Studies Review and made available to Reuters.

"At least \$115-\$175 billion (at 2005 prices) remains unreturned despite numerous clear and explicit international agreements and country promises made during World War Two and immediately thereafter," the study said.

European nations have pledged \$3.4 billion in restitution payments, though only about half of that was paid by 2005.

This slow pace reflected how quickly the restitution push faded after 2002, when the United States stopped squeezing European governments and public attention waned, said Zabludoff, a former White House, Treasury Department and CIA official.

"No additional noteworthy Congressional hearings were held, efforts by U.S. state regulators diminished sharply and there were unfavorable court cases" on insurance claims, the study said.

During the entire post-war period, only about 20 percent of the assets looted from Europe's Jews was returned, he said.

THOROUGH LOOTERS

Restitution is a complicated task because the Nazis were such thorough looters. And many of the people who survived the Holocaust, which killed 6 million of their relatives and friends, lost all ownership records.

The Nazis forced many Jews to sell their homes and everything they owned, from furniture to companies, often at "far less than prevailing market values," Zabludoff said.

And at the war's end, the Soviets confiscated "large amounts of stocks and bonds" from the Reichsbank in Berlin that belonged to Europe's Jews, he added.

Zabludoff's research has reopened clashes between survivors' advocates over how best to aid elderly Holocaust survivors in Europe, the United States and Israel, some of whom are extremely poor.

"Things are moving much too slowly," said Menachem Rosensaft, a New York lawyer who founded the International Network of Children of Jewish Holocaust Survivors.

In contrast, Elan Steinberg, the World Jewish Congress' former executive director who helped push Switzerland, Germany and Austria into large settlements, faulted the Conference on Jewish Material Claims Against Germany.

The conference, which negotiates with Germany and distributes its Holocaust reparations, should pay out its more than \$1 billion of reserves much more quickly, Steinberg said.

He added that individual survivors should get the money, not hospitals and agencies that also aid other people.

"What I and many Holocaust survivors think is that they are holding onto a mountain of cash while Holocaust survivors are going hungry and sick and are approaching the end," he said.

However, conference spokeswoman Hillary Kessler-Godin said only about \$275 million of the \$900 million of reserves it had at the end of 2005 has not been earmarked to pay property claimants and providers of services, like home care.

That means the money runs out in about three years, she said, adding the conference hopes fund-raising and more restitution payments will carry it through.

© Reuters 2007. All rights reserved. Republication or redistribution of Reuters content