

Fordham International Law Journal

Volume 25, Issue 6

2001

Article 11

The Methods Used to Secure Monetary Restitution

Transcripts*

*

Copyright ©2001 by the authors. *Fordham International Law Journal* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/ilj>

The Methods Used to Secure Monetary Restitution

Transcripts

Abstract

Record of panel discussion of the methods used to secure monetary restitution for Holocaust survivors and their heirs. Panelists discussed class action suits brought on behalf of survivors and the use of large-scale litigation to win monetary restitution.

THE METHODS USED TO SECURE MONETARY RESTITUTION

NOVEMBER 1, 2001

- MODERATOR: Menachem Z. Rosensaft, Esq., *Partner, Ross & Hardies**
- PANELISTS: Michael Geier, *Deputy Director General for Legal Affairs, German Ministry of Foreign Relations***
Samuel J. Dubbin, Esq., *Dubbin & Kravetz, Lead counsel in class action, South Florida Holocaust Survivors Coalition****
H. Carl McCall, *Comptroller, New York State†*
Gideon Taylor, *Executive Vice-President, Conference on Jewish Material Claims Against Germany, Inc. ††*

* Menachem Rosensaft is a partner at Ross & Hardies in New York, concentrating in international, securities, and general commercial litigation. He is a former Executive Vice President of the Jewish Renaissance Foundation, Inc., the Founding Chair of the International Network of Children of Jewish Holocaust Survivors, and a former National President of the Labor Zionist Alliance. He is a member of the United States Holocaust Memorial Council's Executive Committee and a former Chair of its Content Committee and its Collections and Acquisitions Committee. An officer of the Park Avenue Synagogue in New York City, Mr. Rosensaft has written numerous articles for the *New York Times*, *The Washington Post*, *Newsweek*, the *Los Angeles Times*, the *Jerusalem Post*, and other publications.

** Michael Geier is the Deputy Director General for Legal Affairs in the German Ministry of Foreign Relations in Berlin. For two years, Mr. Geier headed Otto Graf Lambsdorff's staff. A lawyer and career diplomat, Mr. Geier has held posts in Brazil, Argentina, Jamaica, Mozambique, Burkina Faso, and Tunisia.

*** Samuel Dubbin is a founding partner of Dubbin & Kravetz, a firm specializing in administrative, regulatory, and commercial litigation. During the Clinton administration, Mr. Dubbin served as a Special Assistant to Attorney General Janet Reno, as Deputy Assistant Attorney General for Policy Development, and as Chief Counsel to the National Highway Traffic Safety Administration.

† H. Carl McCall is the Comptroller of the State of New York. As Chief Fiscal Officer of the State, he is responsible for governmental and financial oversight and pension fund management. Mr. McCall has served as President of the New York City Board of Education, as a Commissioner of the Port Authority of New York and New Jersey, and as the Commissioner of the New York State Division of Human Rights. He served three terms as a New York State Senator and as an Ambassador to the United Nations. Currently, Mr. McCall is a member of the Council on Foreign Relations.

†† Gideon Taylor is the Executive Vice President, Conference on Jewish Material Claims Against Germany. He is a former Assistant Executive Vice President of the American Jewish Joint Distribution Committee. He currently serves as Treasurer of the World Jewish Restitution Organization.

Melvyn I. Weiss, Esq., *Milberg Weiss Bershad Hynes
& Lerach LLP*†††

PROFESSOR ROSENBAUM: I would like to ask Menachem Rosensaft, the Moderator of the next panel discussion, to begin the next series of conversations.

Menachem Rosensaft is a Partner in the law firm of Ross & Hardies. He is an Executive Committee member of the United States Holocaust Memorial Museum Council, and he is also the Founding Chairman of the International Network of Children of Jewish Holocaust Survivors.

MR. ROSENSAFT: Good afternoon.

I have a couple of preliminary comments before we start.

For a lawyer in this context, and I think Comptroller McCall may find himself in strange company, to be asked to speak about methods, strategies, and procedures involved in settlement discussions is somewhat akin to the rabbi who gave a long, and somewhat endless, sermon around the time of Passover, and finally started referring to the hail being visited upon the Egyptians being the size of tennis balls. At which point, someone in the congregation yelled out, "Finally a subject you know something about."

Please allow me just a couple of introductory comments to put this afternoon's discussion into context.

First, a slight correction, and I know that Gideon Taylor is going to talk about this later on. It is true that in the context of today's tobacco settlements and other settlements, the DM 10 billion settlement of the slave labor cases may appear to be small. However, let us remember that in 1952 the Luxembourg Agreements providing compensation for Holocaust survivors was unprecedented, huge in size by standards of those days, and has resulted since then in the German Government paying over DM 100 billion in compensation. I do not mean to suggest that that is in any way sufficient, but merely to put the entire discussion into somewhat of a historical context.

††† Melvyn I. Weiss, Senior Partner of Milberg Weiss Bershad Hynes & Lerach LLP, is a leading practitioner in the fields of securities, insurance, environmental, anti-trust, and consumer litigation, often representing plaintiffs in class actions. Mr. Weiss was one of the chief negotiators and a lead counsel for claimants in the Swiss Bank litigation involving Holocaust confiscations settled for U.S.\$1.25 billion and lead counsel in recovering U.S.\$5 billion for German Holocaust victims.

Second, again something which I think we often forget: none of the litigation and settlements at issue nor any of the reparations paid since 1952 have been for what is commonly called a wrongful death action. From 1952 on, survivors have been compensated only for their individual suffering and with individual proof of that suffering being a requirement for any payment. Not a single survivor has ever received a single Deutsch Mark, dollar, or any other amount of money for the loss of a wife, a husband, a parent, or a child.

I am saying that to put this into the context of the type of wrongful death actions that have become rather commonplace. In the O.J. Simpson case, for example, a civil jury awarded millions of dollars for the loss of one individual. Imagine such awards placed in the context of six million lives lost, if you only include the Jewish victims of the Holocaust, and you place the discussion in a slightly different context.

What we would like to do today is to proceed in the following manner. I would like to first ask Comptroller McCall to discuss the political role that he, Comptroller Hevesi, and others played and his perception of that role in obtaining some of the settlements; then proceed on to Mel Weiss, Michael Geier, Sam Dubbin, and Gideon Taylor to give some brief introductory perspectives, following which we will have a discussion based on that.

Comptroller McCall.

MR. McCALL: Thank you very much, and thank you for the opportunity to share with you my experience with this very important event.

I want to be clear about the motivation for myself and Comptroller Alan Hevesi. I want to chronicle exactly what happened, and also point out the people who were helpful to us in coming to the conclusions that we came to and the actions that we engaged in.

First of all, we began to discover that the Swiss banks, in particular, had not played the kind of role that we had heard historically that they had played during the war. When the World Jewish Congress began to disclose the real activities of the Swiss Government and the Swiss banks, it was very clear to us that something should be done in response to that situation and that

the persons who were the victims of the Holocaust and their families should receive some restitution for what happened.

This was all based on one issue for us. It was a moral issue and it was an issue of justice—a terrible injustice had taken place and there had to be a remedy. Therefore, we listened very carefully to the discussions that were promoted by the World Jewish Congress and others.

It led to inquiries that Alan Hevesi and I received from other financial officers around the country about our relationships with the Swiss banks, because most of us were doing business with the Swiss banks. In addition, the Swiss banks, as Stuart Eizenstat has pointed out, very much wanted to do business in our particular areas of jurisdiction.

So that we could get a sense of what might be done and what should be done, in December of 1996 Alan Hevesi and I called a conference with people who were in similar situations: city council members, treasurers, comptrollers, and people from around the country who had some financial relationship with foreign institutions.

That conference was very helpful, because we heard from a number of people. We heard from lawyers, who suggested what could be done; we heard from the Ambassador to Switzerland at that time, Madeleine Kunin; we heard from representatives of the State Department; Stuart Eizenstat, who has really played a brilliant and important role in all of this—you heard from him today, but let me tell you, as someone who worked with him, I cannot think of a person who did a better job or could have done a better job in that position than Stuart Eizenstat; Mel Weiss, who was very helpful to us in terms of providing advice and counsel.

We also heard from victims' families and we heard from people who were themselves survivors of the Holocaust. They told us their personal stories in terms of what had happened to them. They implored us to take action on their behalf because at this point in their lives they did want to see some justice, they did want to see some remedy for what they had suffered. All of those testimonies were very, very compelling.

As a result of that, Alan Hevesi and I formed a group called the Executive Monitoring Committee. We assembled the state treasurers or comptrollers from states such as California, Florida,

Pennsylvania, and Iowa, and we formed a committee that would go forward and try to find an appropriate role for people across the country who were in similar positions on this issue.

As we formed this group and stayed in touch with the World Jewish Congress, and with Mel Weiss and the people who were carrying out legal actions, it became clear to us that progress was not being made and that more action needed to be taken. So in December of 1998 we set forth a series of actions that we wanted to take, which were in fact sanctions against, at that time, the Swiss banks.

We made it clear that if the Swiss banks did not begin serious negotiations and enter into a settlement of some kind, that we would limit, and ultimately cease, financial relations with them or prohibit them from carrying out financial transactions in our jurisdictions. Alan Hevesi and I specifically said that the Swiss banks would not be able to do business in the City of New York or the State of New York unless they were willing to negotiate in good faith and reach a settlement, and we put a timetable on that.

Let me say that there was some disagreement with our position. Stuart Eizenstat was very clear that in representing the government he opposed the position we took for the reasons he gave today. He felt that local jurisdictions should not impose sanctions, that we were interfering with the foreign policy of the United States, and that it was probably an inappropriate, and maybe illegal, thing to do. We really had to ponder that position, and we did not agree with Stuart Eizenstat.

Alan Hevesi and I saw a very important precedent for this kind of action, and that was the campaign in the United States to end the apartheid regime in South Africa. The fact is that localities took actions and imposed sanctions against companies from South Africa doing business in New York and in the United States generally. The State Department then took the same position as it did with the Holocaust issue. The federal government felt that this was an inappropriate intrusion in foreign policy by localities. But many of us felt this was the appropriate thing to do.

I reminded Stuart Eizenstat of that at a hearing that Senator D'Amato held in Washington. I reminded him of the fact that I had been in South Africa and I had met in Capetown with Nel-

son Mandela—who was then President—who told me that if it had not been for those local sanctions, he would not then be sitting as the President of the Democratic Republic of South Africa.

So there was a precedent. When localities take this action, it does make a difference. So the conclusion is: when settlements were finally reached—not only with respect to the Swiss Government, but also in negotiations and threatened sanctions with respect to Germany, Austria, and France—we believed this was an appropriate thing for us to do.

When I look back on the whole thing, I am reminded of a story that I heard a minister recount in church. He talked about a woman in the congregation who had a nosebleed and her nose bled for several hours and would not stop. Several people came to her house and each of them had a different remedy to stop the nosebleed, all rather bizarre remedies: from praying over her, from taking some of the blood and putting it in a refrigerator, from having her spin around sixteen times and then sit down. When it was all over and her nose stopped bleeding, everyone took credit; everyone believed that it was his or her remedy that made the difference.

I am sure that this is the way people feel about this. There are some of us who were involved in the political action, imposing economic sanctions, who believe this did make the difference. Mel Weiss, and I am sure some of the other people involved in the legal action, believe that that made the difference.

I think the point is that all of the actions helped make it happen. It was the cooperative effort, the collection of activities, the fact that we all worked together throughout the whole process, I think ultimately that made the difference, and the fact is that we were all operating from the same basic set of principles. This was for all of us a moral issue, it was a matter of bringing about justice, it was a matter of righting a terrible wrong that had happened to people. We wanted to try to make a statement. Those of us in the United States wanted to make it clear that this should never happen again, and we tried to make that statement through the actions that we took.

That is the role that we played in this entire process. Both Comptroller Hevesi and myself and the 600 or so officials from

around the state who supported us believe that we did make a contribution and it was the right thing to do.

Thank you.

MR. ROSENSAFT: Thank you very much, Comptroller Mc-Call.

I will now turn the microphone over to Mel Weiss.

MR. WEISS: Thank you.

I want to make it clear up front that there were many lawyers who devoted tremendous effort in this attempt to get relief for these victims. They are not all here today, but I speak for all of them. I just want you all to know that we probably had twenty or twenty-five legal entities or law firms participating in various ways in representing these victims.

I subscribe entirely to the notion that you needed a multiple effort, multiple fronts of activity, to achieve these results. What I intend to do is go through each of the ways that we tried to do that. You will see at the end that each strategy played an important role in the outcome.

First, there were organizations that over a long period of time had been dealing with these kinds of issues and bringing the information to the fore that ultimately was usable by us as lawyers in starting these cases. The World Jewish Congress, of course, was in the forefront of many of those activities.

One of the big difficulties you have when you get involved in these kinds of attempts to get reparations or remuneration is that you start trampling on the turf of others who have been at it for a long time and, psychologically and in reality, a lot of problems arise as a result, because the ones who have been in it for a long time see it in a particular way and they have their aspirations that are based upon the history of their efforts, which had been very frustrating over a long period of time.

So at a certain period of time, information came to the fore that was sufficient for a group of lawyers to get together. In the first instance, it was the Swiss bank litigation.

We met and we started to deal with how we were going to plead this action. There were a lot of levels of wrongdoing that we wanted to allege against the Swiss. Some of it included the bank accounts that were never given to the victims after the war.

We always looked at this as sort of a two-pronged bad behavior attack, one during the war and one after the war. No matter

how these societies could explain their conduct during the war as being influenced by what the Nazis did to them, very few of them were able to respond in any way whatsoever to their failure to act properly as soon as that pressure was removed. It became clearer and clearer to us that the Swiss Banking Society, and indeed the Swiss Government, failed miserably in getting property back to people who entrusted their property in them during this most egregious time in history.

So we started the litigations. Many of us agreed up front that it would be done on a pro bono basis. But we quickly realized that we were going to need a lot more help in a lot of other ways to get the ball across the finish line, so we looked in the following directions: (1) we looked for economic threats that might assist us. Of course, Carl McCall just went through one of the most meaningful ways we achieved that, by working interactively with government officials, like Carl McCall and Alan Hevesi and the legions of other supporters of theirs from all over the country. Believe me, he mentioned five or six states and the representatives they had on his task force, but he had the support of virtually every person who controlled money in the federal and state systems throughout the United States. So there was the threat of sanctions.

(2) Then, of course, there was the threat of boycotts. Believe me, as Stu Eizenstat said, the Government of the United States fought us at every turn every time we wanted to mention boycotts, because it is against their public policy to use boycotts as a weapon, especially against a nation and its industry that they consider allies.

(3) Another thing we did is we used public relations ("P.R."). Now, this became a very important aspect of what we did. I brought a couple of examples along with me to show how it worked. At some point—and, by the way, this was a ratcheting-up process, because we had to react to the counterforce on the other side with strong-arm tactics from time to time, meaning public relations tactics.

Before I get into the P.R., I want to make you understand that the negotiations with the Swiss and with the Germans were totally different. In the Swiss situation, the government turned their backs on us. In the German situation, the government was our primary ally. I give very low marks—zero—to the Swiss Gov-

ernment in their assistance, or lack of assistance, in this enterprise. I give high marks to the Swiss banks. I give low marks, but not as low as the Swiss Government—and I know that my colleague to my right is going to dispute this—lower marks to the German industrial complex and very high marks to the German Government.

But in any event, when we started to run into problems in getting the kinds of money we thought were appropriate from the Swiss industry, which was getting tremendous tax assistance from the government as well as direct contributions, we started this ad campaign. You might have seen it.

Here is an example: a full-page ad in *The New York Times*: “Mercedes Benz—design, performance, slave labor.” And then we had a little vignette, a story of a victim, and pictures of the assembly line at Mercedes Benz during the war.

We did it also with respect to Bayer and this ad appeared: “Bayer’s biggest headache: human experiments and slave labor.” Then we described how they got involved in human experiments.

I have to tell you, some of the documents that we examined during the course of this litigation were so compelling and awful that we had no hesitation publishing something like this, such as an acknowledgement from one of the experimenting identities: “We have received a shipment of 135 live bodies, emaciated but acceptable.” And then, sixty days later, “The last shipment has been used up. We are awaiting the next shipment.” Those were the kinds of things that we saw, that we had to deal with psychologically, and spurred us on to use this kind of publicity.

Or another document that I carry around with me all the time, showing the calculation of profits that the SS used in determining how much money they were going to make on each victim, showing how they amortized the cost of food and how they added to the ledger proceeds from the “efficient utilization of the corpse,” then four items “gold teeth, clothing, valuables, and money.” And at the bottom they added another element of profit: “Additional proceeds from the utilization of bones and ashes.” This is a real document.

So when we published these ads, we had no hesitation. But we wanted to be even-handed and, since the very first case that we filed for slave and enforced labor was against Ford Motor

Company because of the Ford Werke in Cologne, Germany, we had: "The assembly lines Ford would like to forget," and we published that one.

This advertising campaign became a news story in Germany, and they were good enough to take these ads and actually publish them in magazine articles, so we got a double whack for the dollar, so to speak. They took these ads and gave us free publicity with them all through Germany.

Every time we did it, Stu Eizenstat would call us up and he would be ranting and raging: "Count Lambsdorff is going to walk away from the bargaining table. You're killing the negotiation." We said, "No, we're encouraging them to get rid of this case for the right amount of dollars."

Here is another example of what we were up against. This was a cartoon in the Swiss newspaper. Just take a look at it. It is sort of a Hasidic Jew with a member of the Swiss Society and a turnstile down on the Swiss man's head forcing money out of his mouth. This is what we were up against. This is what Stu Eizenstat was talking about when he said that there was the attempt to say that we were encouraging anti-Semitism in these other countries.

Here is another document. We wound up doing a BBC one-hour special on this. It is a list of babies that were born dead to women who were forced into slave labor in Cologne, Germany, when Ford was operating its plant. They aired the program two times on CNN. Ford got them to pull it, but nobody ever denied that these things happened. So public relations was working both ways.

Another thing we did was we worked to get legislation. We got Chuck Schumer and others in both the Senate and the House to put bills before Congress that would overcome some of the legal hurdles that we were facing in the courts, such as statute of limitations and the like. We did the same thing in state legislatures, such as California, New York, and Illinois.

And then, of course, we used diplomatic efforts by getting our government to appoint Stuart Eizenstat to lead the effort in the Swiss situation. Most of the negotiations took place at the State Department in his office between ourselves and the representatives of the Swiss banks.

In the German situation, as Stuart said, we needed the legis-

tical support, if nothing else, to manage this effort. We had about eighty or ninety people sitting around a table that looked like it was a United Nations meeting. We needed seven different translators because people were using their native languages.

We needed real participation by victims. I have with me pictures of the people who came forward and a book of poems that Elly Gross, who sued Volkswagen, wrote. We had them published.

The non-governmental organization (“NGO”) support was fabulous, led by the World Jewish Congress, but we went beyond that. We got the Anti-Defamation League, we got almost every major Jewish organization, to work with us and act as surrogate clients to some degree.

Ultimately, we achieved financial recovery, psychological relief where people felt that during their lifetimes they were able to do something for themselves through their lawyers and their government against these horrible acts, and we got the apology from Germany. It was just a phenomenal outcome in a very difficult legal environment.

Thank you.

MR. ROSENSAFT: Thank you very much, Mel.

One shortcoming of discussions of this kind and conferences of this kind is that they usually take place in a one-sided manner, where, shall we say, the Jewish side or the side of those seeking reparations is represented but not the other. In today’s conference Thane and Fordham Law School are to be complimented for having both Count Lambsdorff this morning and our next speaker this afternoon, Deputy Director General for Legal Affairs of the German Ministry of Foreign Relations, Mr. Michael Geier.

MR. GEIER: Thank you very much.

It is very difficult for me to represent the perpetrators here because, I was born in 1944, so at the end of the war, I was nine months old.

Second is what Count Lambsdorff said today is quite clear. The overwhelming majority of the German people supported the Foundation Law and its outcome, and still support it. There was no discussion about victimization, as they had in Switzerland, never in the German press. Of the 2,000 letters I had to answer for Count Lambsdorff, there were only one or two, maybe three,

I remember with anti-Semitic content, which, considering everything, is very low.

I am very much tempted to answer a couple of things Mel Weiss said.

On his ad campaign, it is not the fact that the ad campaign was not correct or right. The problem was that it was directed against companies who from the very beginning were leading this effort. They saw themselves unjustly victimized because right from the beginning they were not only saying "we are going to pay," but they were also in the very difficult process of rallying the other companies. So, in other words, it was not the fact that these ads appeared, but the fact that, for instance, Daimler-Chrysler was so prominent in it, whereas DaimlerChrysler was in a very leading role.

It is very difficult for me to speak after Secretary Eizenstat, who has given a very fair impression of what our discussions were about. I followed them right from the beginning—that is from the summer of 1997. That was more than four years ago.

I feel personally that it is very regrettable that we are still encountering new obstacles nearly every month. I am not putting the blame on any side, but when we agreed, or at least seemed to have agreed, on money, the DM 10 billion, in December 1999, those of us with administrative and political responsibility had just one aim: to pay out the promised amounts to the elderly recipients in record time.

The relief we all felt when we gathered around German President Rau was not shared. New fights have started since and culminated last week into two actions against the U.S. Government. If these actions are successful, it would put a full stop to the promised legal peace, the legal peace promised by President Clinton and Chancellor Schröder to the German industry in December 1999. So much for the bad news.

Now, the good news is that more than 400,000 slave and forced workers, more than eighty percent non-Jewish—and that was never hidden—have already received a total of DM 1.5 billion. That money is paid in two installments. That is why the sum is still comparatively low. By the end of the year, a quarter of the Foundation's capital will be paid out, DM 2.5 billion, to 600,000 elderly persons. That is roughly half of the expected total number of those eligible.

It is not my part in this discussion to explain the truly amazing legal inventions or the subject of legal closure, amazing at least in the eyes of a German lawyer. I leave this to Mel Weiss. The American legal system is stunningly different from our German system, including the methods used to close the legal argument.

While underlining the class action lawyers' constructive approach and by admitting the fact that the class action suits that they brought to court greatly increased the disposition of the German companies to join this effort, the idea of compensation for forced labor by the German industry is much older. It was on the German political agenda before Brandt's Ostpolitik. It has been a cherished subject first of the German Green Party, and later of the Social Democrats, and it was introduced formally as a bill in June 1989, after having been the subject of a number of parliamentary inquiries. So, with all due respect, the class action lawyers did not invent the subject.

That holds more true for the restitution and compensation for property losses. Count Lambsdorff has discussed it at some length this morning. Nobody can deny that the number of claims that have not found any satisfactory response over the last fifty years is very small indeed.

There are no heirless bank accounts in Germany, no heirless insurance accounts, and the question of profits from forced labor is at least disputed. I personally feel that the facts alleged in the class action suits I have read, maybe two dozen or so, amount to little more than a description of the unbearable sufferings and the equally undeniable fact that the German industry was part of Hitler's military political complex. Recent studies have confirmed that many were willing helpers.

I wish to introduce, though, the question: to what degree are Bayer, Alliance, or DaimlerChrysler identical to the companies fifty years back? In their management, certainly not, nor in their ownership, which may be held in shares by many people sitting around in this room. To speak of guilt of companies seems to be a metaphysical subject.

I do not wish to comment on U.S. Government regulatory pressure. I just try to imagine what would happen if European governments would try to apply similar pressure on U.S. companies in Europe.

I only wish to mention that the last subject mentioned in the invitation of this panel, the presence of victims' representatives in this discussion, dates back in Germany to the Luxembourg Agreement of 1952, when the Conference of Jewish Claims Against Germany, founded for this purpose, was accepted as a German Government partner and has been a very trusted partner ever since.

The Claims Conference has been our partner for many decades, and I have been proud to sit in many of the meetings with the Conference, and I do not see it in the interest of Jewish survivors to replace it by others.

Thank you very much.

MR. ROSENSAFT: Thank you very much.

Now for a slightly different perspective from another attorney representing survivors in some of the litigations, Sam Dubbin.

MR. DUBBIN: Thank you very much.

I want to thank Fordham, and Thane in particular, for putting this together for a really all-encompassing discussion of this very, very important topic.

I am a lawyer. I represent Holocaust survivors from Florida and the rest of the United States. I did spend a little time in the Clinton Administration in the Justice and Transportation Departments, but I turned in my government badge and I am now a private lawyer.

When I returned to Miami, I was approached by the Holocaust survivor community, because I had been involved with their issues before and I was someone who was known in the legal and political community, and they said: "You know, all these things are taking place with accounts and insurance policies" and, by the way, this was a community of fifteen survivor clubs representing 10,000 people. Their point to me was: "We are not in the discussion."

They started telling me how in fact not only were they not in the discussion about what was happening in 1997 and 1998, but they had not been part of the discussion or part of the process since the 1950s with respect to what we are calling reparations and restitution.

Every survivor suffered and every survivor lost everything

from a material standpoint and almost everything from a family standpoint.

So what should we be doing today, in addition to making sure that bank accounts are paid and insurance policies are paid to identifiable heirs, to come up with something we might call a morally satisfactory restitution process?

I am framing my remarks by the following questions and answers: Number one, how should we measure the success of a satisfactory process in the year 2001? Have the processes to date that we have been talking about here been satisfactory? What can be done today to achieve a result that would get us closer to that elusive platitude of some measure of justice for Holocaust victims? The people with whom I work very closely do not believe that has even been approached in any way, shape, or form, not in terms of the dignity of the survivor and not in terms of the material value of any of the settlements that have been achieved.

Although most of my remarks will probably be pretty critical of what has gone on, I want to leave you with a hopeful message, because it is not too late to rectify the shortcomings of what has happened over the last few years. Although for many people it is too late to rectify the shortcomings of the last fifty years, there is still the possibility today that if the survivor community and the people who say they care about the survivor community work together, we can ensure that the existing issues that are still on the table—and there are some still on the table—generate an amount of money, and that the existing settlements that have occurred be devoted to something the survivors want and need, which is home health care on a guaranteed basis from an insurance company, guaranteed by the appropriate authorities.

So what would a satisfactory compensation/restitution system have?

Number one, it ought to have complete historical accuracy, public disclosure, and truth as its objective. Number two, it should have the direct involvement of elected survivor leaders who are sent by and accountable to grassroots Holocaust survivor organizations—and I do not mean individuals who, although they are survivors, are sent there by other organizations that are philanthropies or defense organizations or other kinds of community organizations. I mean they have to be fully accountable to grassroots survivors and be responsible to those survivors for

the decisions that are made for property recovery in the name of survivors. It seems basic.

The third criterion for the adequacy of any outcome should be measured from the point of view of survivors. The touchstone should be: Does it deliver dignity today for the survivors who remain and does it deliver some meaningful benefit to those victims? It should not be driven by the political or philanthropic agendas of governments, of nations, of industry, even the greater Jewish community, or even the State of Israel.

So with that framework in mind, you might have an idea what some of my answers are.

Has the process been satisfactory to date? Really, no, it has not yielded a morally satisfactory outcome.

Now, there are exceptions. The German apology, without a doubt; the revelation in the Swiss bank litigation that Swiss companies actually exploited slave labor, which was not well known—some things have come out to improve the historical record, factually and morally, that have been beneficial. I do not want to sit here and say that a lot of the things that many people have worked hard to accomplish are not significant, because they are. But measured from the standpoint of the survivors whom I, as an attorney, am representing, these are the conclusions we have drawn.

Although we began with the South Florida survivor community, when the agenda of home care was discussed among other leading survivor groups around the country—New York, Los Angeles, Chicago, Detroit, Boston, Texas—other survivor groups all came together and said: “We’re having the same problem. We’re not getting adequate health care in our communities. The system for the Jewish family services is just not doing the job. And people are standing up talking about U.S.\$10 billion in restitution for Holocaust victims, and we’ve got people on waiting lists who can’t get an hour of day care from the establishment. How can that be tolerable?”

So these groups have come together to form an organization, called Holocaust Survivors Foundation (“HSF”) USA. It is an umbrella group of grassroots-elected survivors leaders from the communities I have mentioned. Leo Rechter is in the audience today, who is one of the Board Members. I know there are other individuals who were involved.

Together with some of the legal efforts that I am going to talk about, this is the agenda they are pursuing, so that the so-called final chapter does something from the perspective of the survivors themselves.

As far as the accountability and transparency of the settlements, the opposite is the truth, and Count Lambsdorff was good enough to tell us that when he said that ultimately, when the Germans settled, they did it for political and public relations reasons. There was not a full disgorgement of information and accountability about what happened.

So then the question is the tradeoff of money versus historical accountability. Again, I will leave that to you as to whether that was a satisfactory tradeoff.

Another good example involves the German Foundation agreement. Mr. Geier talked about the fact that in December of 1999 the slave labor agreement was made for DM 10 billion. But not a penny was paid out until June of the year 2000, eighteen months. Why did that happen? Because even though the negotiations had been all about slave labor, at the eleventh hour the German insurance industry got themselves into the settlement to get “legal peace” for a very low-capped amount of money, and all the property claims were then made part of the German Foundation Agreement, and so litigation ensued for the next eighteen months before one survivor received one slave labor payment. That is intolerable.

And in addition to that, the nature of that insurance settlement was that these are insurance policies we are talking about. We are not talking about slave labor cases that have been dismissed from court. We are talking about contracts with names and numbers and records that exist today. To cap the amount of money that the German insurers were supposedly going to be responsible for without guaranteeing that every single scrap of information would be made available so that families—whom I represent as well, by the way—who know that they had insurance policies could actually reclaim that money is not fair, it is not a satisfactory outcome.

The second criterion is survivors as a group, aside from the individuals who had the courage and the conviction—and I congratulate them for coming forward and working with Mr. Weiss and his colleagues, because that was, I know, a very stressful and

difficult thing to do—but as a group, survivors have not participated in the negotiations as to how much money the companies and the governments would pay or how the funds would be distributed.

Instead, the victims' interests have, by and large, been represented by non-survivor organizations, and I mean the Claims Conference, the World Jewish Congress, and the WJRO. The Claims Conference is a philanthropic organization, and of the twenty-four organizations that are on the board of the Claims Conference, only two are survivors' organizations.

So this is just not an acceptable perspective to negotiate for survivors, for the survivors I work with now. Any group that presumes to recover and allocate funds recovered in the name of survivors because it was stolen from victims of the Holocaust, should be controlled and its decisions should be controlled by the victims themselves. That is not the case today.

So for my third criterion, which is have the outcomes been satisfactory from the perspective of Holocaust victims, the answer is no. The opposite is true. In every deal made so far, the survivors have been at the bottom of the totem pole.

The Swiss, the Germans, and the U.S. Government have all gotten what they wanted. They got legal peace, and they got it for pennies on the dollar. The U.S. Government got what it wanted: it eliminated the messy diplomatic problems that were interfering with international trade, as Deputy Secretary Eizenstat was good enough to point out. They were embarrassed that their trading partners were facing these kinds of public relations disasters, and so they intervened to get a deal.

And again, as far as the disposition of funds called heirless by organizations, at this point there has not been satisfactory accountability for individual claims, and you can look at the failure of the International Commission for Holocaust Era Insurance Claims ("ICHEIC")—and I will be happy to talk about that, as we have talked about it before—and even, as Mr. Gribetz, I am sure, will tell you, the Swiss banks destroyed so many records that it has been very, very difficult to match individual bank accounts with their actual owners. That is a very sad thing.

But the organizations that purport to speak for survivors cannot inherit this money. All heirless or humanitarian funds

have to be controlled by grassroots survivors. That is where this group is coming from.

Now, let me just close by telling you the good news, which is the following. The HSF, whom I represent, and the Insurance Commissioner of the State of Florida, Tom Gallagher, and his predecessor Bill Nelson, have come up with a home care plan, to be backed by a major insurance company, Agon Insurance Company. What this would do would be to provide on a guaranteed basis for every survivor—so far it would be done in the State of Florida, if we could get the funding—a home care benefit that would be not the most generous in the world, but really very substantial: several hours a day, first-day availability, available for life.

Now, the actuarial calculation of this plan was done on the basis that not every survivor would ultimately need it or use it, but the beauty of it is that this is something that the survivors said they wanted. They are dealing on a day-to-day basis with people who survived the Holocaust but today are living in destitution and do not have family members to turn to for help, they do not have the resources, and they are not willing to subject themselves to the indignity of going even to the community to ask for help, because so many times in the past it was not there. So for U.S.\$50 million, the State of Florida would be willing to underwrite with Agon this kind of a guaranteed program for 7,500 survivors in the State of Florida.

The Florida Insurance Commissioner has proposed this to the ICHEIC, asking for pilot funding to get it started. If they could get U.S.\$10 million to start it in the State of Florida, just the State of Florida, you could build up an experience base to test some of the assumptions.

But I am also happy to tell you that, as a result of my intervention as an attorney in the *Swiss Banks* litigation, there will be a very serious discussion in the second round of allocation that is going to go before Judge Korman about how much of the residual dollars from unpaid Swiss bank accounts can be available to fund this kind of home care program.

I want to read a letter from Burt Neuborne, the lead settlement plaintiffs' counsel, who has done a fantastic job, worked very hard against difficult odds. I have certainly not always

agreed with him. But he said, in connection with the secondary distribution:

I have a great deal of sympathy with the argument that the needs of poor survivors in the United States should be carefully considered. I will support thoughtful plans designed to ensure that the needs of the American survivor community are addressed with resources in a fair proportion to the overall numbers and with due regard for the fact that they have not received significant allocations up to this point.

So my hopeful message to you is the following. If you are about getting a dignified outcome for survivors from this process in the year 2001, and you agree with the direction of the HSF that I have talked about to try to dedicate all available heirless funds for guaranteed home care for survivors, you need to support this effort today, tomorrow, and when it comes before Judge Korman—and, frankly, before the ICHEIC—because no one has decided how the heirless or humanitarian funds are going to be paid out today. There is no deal done. It is open. If the survivor community believes this is an imperative that they want to support, it is available to do that.

I will close my remarks now.

MR. ROSENSAFT: Thank you very much, Sam.

I am actually very pleased that both Judah Gribetz and Neal Sher are going to be on the next panel and, therefore, will have an opportunity, if they choose, to react appropriately.

I am now delighted to turn over the floor to Gideon Taylor for what I hope will also place our discussion this afternoon, not just including the most recent remarks, in somewhat of a historical context.

MR. TAYLOR: Thank you.

I fear that we have moved slightly from the drift of the subject that we were asked to address: the methods used to secure monetary restitution.

But what I want to do is, before I comment on that issue, just answer some of the comments that have been made. I am not sure they fit in this panel, but it is an issue that I have discussed before with Sam Dubbin—I am always happy to discuss it with Sam—and with many others, some of you in this room.

Firstly, the question of who speaks for survivors is a difficult question. Let us also put in context the survivor world. The sur-

vivor world is not a single simple world with a hierarchical organized structure. Survivors do not just live in the United States. They live in forty different countries across the world. There are different groupings within survivors in different countries, each with different opinions. And clearly, as an organization that deals with negotiations, has historically dealt with negotiations for the last fifty years, and has been dealing with this recently, we hear a range of different opinions from different survivors and different survivor groups. There is no more uniformity in the survivor world than there is in the Jewish world in terms of having a “survivor position” any more than there is a “Jewish position” on many of the issues that we face.

Secondly, in terms of the issue of home care, if we lived in a perfect world, we could have a perfect system of justice and a perfect system of home care for Holocaust survivors. Unfortunately, the world in which we live is not a perfect world. We do not have at our means and our disposal the capability to bring what we would want to bring to the table, nor do we have the patience and the luxury of time in which to do it.

For home care, if we only had 7,500 survivors in Florida, the world would be an easier place. But we do not. We have hundreds of thousands of survivors in different countries, many of whom need home care, many of whom need institutionalization, many of whom need medicine, and many of whom need food, depending on what country they live in, what conditions they live under, and where they are.

What I think you have—and maybe this is a question more appropriate for the next panel that addresses this issue—is attempts from many people, including Holocaust survivors who are part of the Claims Conference, who are part of the system and discussions of the Claims Conference and of the other venues in the hearings in the *Swiss Bank* case and in the other places where allocations are made, to try and balance out the needs of different Holocaust survivors in different countries and to try and help different Holocaust survivors with home care and many other critical elements of social service, whether it is food, medicine, or home care.

The Claims Conference, by the way, allocated last year and the last few years over U.S.\$20 million a year in home care. Of course it is not enough, but bear in mind that the program of

home care started a number of years ago, long before even the current lawsuits were initiated.

The issue of home care is very much on the agenda, it is an important topic, and I do not think anyone at this table or involved in this process minimizes the importance of it. It is clearly a critically important means to assist survivors in living out the rest of their lives with some hope of dignity, by having some kind of assistance while living at home.

I think that the discussion was: Is there justice, a measure of justice, a perfect justice? My view on the attempt to get compensation and restitution is that it is, by definition, a fundamentally impossible task. The task to try and deal with moral issues of enormous significance and to do justice—we can never do justice. The Germans used the term, and always used the term, *Wiedergutmachung*. It means literally making whole.

The Jewish side, Claims Conference, anyone on the Jewish side, never uses that term. It is not a term that I think we can ever accept or use when we talk about compensation.

I think also these issues that were discussed earlier today, the moral issues, are ones that underpin, I think, also the methods and systems that we use to try and get restitution. When the Claims Conference was founded, there was specific discussion about the name of the Claims Conference, to the extent that it was called the Conference—not on Jewish Claims Against Germany, but the word “material” was inserted—on Jewish Material Claims Against Germany, to make clear that the moral aspects of the Holocaust and moral restitution were not something that could be dealt with through compensation agreements and through payments. I think that principle remains as true today as it was fifty years ago.

The point I am making is that moral restitution and the issue of doing moral justice is one that will not be settled by a Swiss agreement, by a German agreement, or by any of these agreements.

I sat in the home of President Rau six weeks before he issued his apology, and I approached him, together with the Chairman of the Negotiating Committee of the Claims Conference, and sat down with him and discussed with him what he would say, the principle and the issue of the apology that he gave so eloquently six weeks ago. I think, of all the meetings that I

attended in those negotiations, it was perhaps the most important and significant.

The question was asked about the issue of the role of survivors. Holocaust survivors are part of every Claims Conference negotiating delegation, a major part, whether it is Germany, Austria, or in ICHEIC, where a representative is the Israeli survivor organization, and I think that aspect of the negotiations is a critical one, and I think that voice has been felt, was always felt.

People ask me what did survivors want in the negotiations, in terms of was it just, was it fair, and what was the viewpoint of the survivor population. I tell you there was one poll, if you can call it that, which was that during the negotiations the phone calls in our office reached from 100 or 150 a day to 700 a day, of people saying, "When will it be possible to get something before I die? When will it be possible get something before I die?" And I think it is the one issue, perhaps, that not enough attention was put on in this panel, which is: If we lived in a perfect world and had the luxury of time, to do all the things that the lawyers did with the lawsuits down to the bitter end, with all of the political activity we did with the governments, all the public relations activities in the media that we did and others did, and to try to do that and continue until we had perfect justice, we would have failed, clearly we would have failed.

I think that factor was perhaps the biggest shaping factor of the whole negotiations, and I think it must be there and understood by anyone who is looking in retrospect at what was achieved, what could be achieved, what can be achieved.

The last comment, I think, just generally, I wanted to make was clearly there were three different elements in the restitution compensation negotiations, and historically, going back to the time of Saul Kagan, who initiated many of the original negotiations, you had three elements: you had the legal element; you had the public relations aspects, the public aspect; and you had the diplomatic aspects. I think you had all three, particularly even going back to the early negotiations on slave labor, one of the first lawsuits filed in the early 1950s against A.G. Farben. So the issue of the legal route is not a new one today, though I think it never had the focus and attention that it has had in the last few years.

The diplomatic aspects of the restitution process cannot be

underestimated. If you look at the historical context, and not meaning in any way to belittle any of the recent agreements in which we participated, and the lawyers, and Carl McCall, and other elected officials were so prominent, it is very important also to put it in context.

The original BEG, or the Luxembourg agreements which led to the BEG, the German indemnification law, have led to reparations payments exceeding DM 100 billion. That is somewhere around U.S.\$50 billion, far higher in fact in today's money, if you apply today's money to that.

In the scheme, again I come back to the point that, of course it is not justice, of course it can never be enough, of course it is not perfect, but I think it is important to look at the context in which we operate, in which we live, in terms of the question that is put for the panelists of the methods used to secure monetary restitution.

I think one of the single most important factors in those Claims Conference negotiations, originally back in the 1950s, was the influence of the diplomatic process, and particularly the U.S. Government. I think that we cannot overstate the importance of the U.S. Government in all of this activity, historically and today.

The first time this issue came up in a formal context was back in the Paris Conference, right at the end of the war. You have the first recognition that assets that belonged to the victims could not remain with those who had killed, which comes with the U.S. Military Law Number 59, passed in 1947, in the military zone of the United States zone of Germany. So the historical role of the United States, the military governors of the United States, and later the high commissioners for Germany, were pivotal factors in securing the compensation and restitution legislation which came into effect through the BEG and later.

And again, just a final comment in terms of the BEG: it is important to understand that that piece of legislation led to almost 300,000 people receiving pensions. Now, were there many people excluded? Absolutely. Are there people today who are still not eligible? Certainly. Do we still have open issues with my colleague from the German Government? Yes, we do.

One of the items that was discussed at one point in the negotiations—and my colleague was present there—was whether

these open issues would remain in effect, and it was agreed—I must say both at our insistence, but with the German side’s acquiescence—that the open issues of ineligible survivors’ compensation would not be closed by this agreement, and ineligible people would still be a subject of further negotiation.

I think my closing comment would be that with the question of how will history judge the fairness or unfairness of what has been achieved over fifty years of negotiations, I come back to the response of Mao Tse Tung when he was asked what he thought were the implications of the French Revolution, and his answer was “it’s too early to tell.”

Maybe future generations will look back and decide to evaluate whether the moral costs, whether the financial costs, whether what we could not reach, what we can achieve in the future, was a success or not. I do not know. It is too early to tell.

But what I do know is that I think that those who were involved in the negotiations used as many different means as possible, and as great an effort as possible, to secure as much funding as possible, to help as many survivors as possible, as soon as possible.

MR. ROSENSAFT: Thank you, Gideon.

I have been intrigued by the historical context that we have discussed over the past few minutes, and I would like to turn first to Comptroller McCall and ask how this particular episode in which you were involved contrasted with others, including the apartheid issue to which you briefly referred, and other efforts by government officials to exert pressure in a moral context?

MR. McCALL: I think it has had much more attention than many other efforts, and I think the cooperative effort here was very different. For instance, I do not think the struggle against apartheid had the legal support that this particular situation had.

But let me go from there to another issue that is probably related, and that is the difficulty we are having at the present time, that I am having personally, dealing with people from my own community who want to make a comparison of this issue with the African-American community’s call for reparations for slavery. That is an issue that I would hope at some point we can have a fuller discussion about.

There are obviously some differences, particularly with re-

spect to the reparations and the payments by companies in Eastern Europe. It was very clear that the companies that were the perpetrators of slave labor—the companies that enslaved and in fact were responsible for the death and demise of so many people—those companies still exist, so there is a group that you can go to and you can say “you are responsible for what happened and, therefore, we want some reparations.”

The problem is that, in terms of slavery, you cannot do that; you cannot find the owners of plantations. However, people make the point that the overall U.S. economy benefited from the slave labor of African-Americans who were brought here against their will. That slave labor helped bring about the great agrarian economy that led eventually to the industrial age in the United States. So, in fact, in many ways the United States economy was very much aided by slavery and, therefore, the people who were the victims of that, those persons and their heirs, should receive some kind of compensation. That is going to be a very interesting discussion and debate as we go forward.

I am challenged often by people from my own community, given the role that I played in this particular issue, in terms of why do not we take the next step and talk about reparations for slavery, particularly given the fact that an effort in that direction, which was known as affirmative action, has been so soundly opposed by many people, and opposed by people who were very supportive of this particular effort with respect to Holocaust reparations.

So I think that is an issue that we might want to come together again to have some discussion about, because I think it is going to become a very big issue for this country as we go forward.

MR. ROSENSAFT: Thank you, Comptroller McCall.

A somewhat related question to Mel Weiss: Could you place this particular effort in the context of other class actions? I might add in this context that Mel is one of the most noted class action attorneys in the United States, with probably more experience in the plaintiffs’ bar in this relationship, and more highly regarded, than virtually anyone else. So it is truly a fascinating question for me: How do you place this case in the context of some of the other class actions you have been involved in?

MR. WEISS: It was probably the most important, on many

levels, that I have ever been involved in, because it was not only trying to get a financial remedy, but, as I said earlier, there was a tremendous psychological aspect to this case for the class members. You heard today from Mr. Dubbin an example of the emotions that it generated.

We now, as an example, are bringing actions—I think Stu Eizenstat mentioned it earlier—on behalf of people who were victimized during the Second World War in Japan, prisoners of war who were put to work, against international conventions, in industrial complexes in Japan as well as the “comfort women” litigation.

So the class action, which is so uniquely American, has opened up paths for relief for victims of all kinds of inhumanities throughout the world. It was a clash of cultures, which I think Mr. Geier previously referred to, when the Germans were suddenly faced with a litigation device that they abhorred. Their automobile companies, when they come to sell cars in the United States, hate the class action because we believe in access to the courts in the United States, and we believe in getting broad remedies and also using it as a deterrent device, and they never saw this kind of animal in their own society.

Because of what we are doing here, we are now representing people who were victimized, for instance, in Nigeria, children who were given these injections by an American drug company, causing many deaths, without any approvals by the government. They just went over and used them for experimental purposes. We started those actions a couple of weeks ago.

So I think what we have created here is a new look at how class actions can be used.

I just want to take one minute to say something to Mr. Dubbin. None of us was even close to 100% happy with what we wound up getting in this settlement, but we all, to a person, recognized one of the things that has been talked about today, and that is the dying population of survivors—ten percent were dying per year. The advice we were getting from victims all over the world, who, as Gideon pointed out, come from many different cultures and have many different kinds of problems, where in some societies U.S.\$1,500 now can make all the difference in the world, where they can have a warm coat to put on their backs during a cold winter, every one of them, virtually every one, ex-

cept for some institutional entities that felt that their way of life was destroyed and wanted to get some remuneration, said to us: "Give the money to the victims and let each one of them make a decision for themselves as to how to spend it." That was the universal cry.

Now, you know, for us to have started down the path of trying to figure out what is in the best interests of different communities or victims—such as, what is a great objective, health care for a community down in Florida—would have been impossible. It would have led us down a path of delay, of dispute. So we had to take the clearest and simplest path. If it took eighteen months to get that money out, it would have taken ten years to do the other—to start negotiating health plans.

I mean, they are all splendid ideas and we give people a lot of credit for coming up with them, but I really resent the arrogance of people now demeaning this effort, which was something never previously achieved, fifty-some-odd years after no government was able to achieve it for these victims, and to denigrate it and demean it and take away the psychological benefit that people got that they finally did something for themselves before they died.

MR. ROSENSAFT: Thank you, Mel.

I will address a question to Sam, but not quite yet.

I would like to first ask, because I think it is rather helpful, especially in the context of Mel's explanation of the class action process, Mr. Geier to please educate us a bit and place this process the we have just gone through in the context of the German legal system, and what the possibility of success, or lack of possibility of success, of any such litigation would be in Germany.

MR. GEIER: Thank you very much.

Maybe, if you permit me, I will correct two things Mr. Dubbin said.

He said that at the last minute the banking and insurance cases came in. That is not true. The decision was taken in March 1999, with the consent of the U.S. Government, long before we settled on DM 10 billion.

And let me remind you that in most insurance cases, nobody knows exactly, but certainly more than ninety percent of the cases were closed by compensation. The German compensation laws naturally provided compensation for insurance claims.

The relevant law was enforced, if I am not completely mistaken, for fifteen years. So for fifteen years, everybody could come forward, a Holocaust victim could come forward and say, "I have an insurance claim and I want to have some kind of compensation."

As far as the German legal situation is concerned, it is still open, because there is a slave labor case before our Supreme Civil Court, which will be heard in a short while. Basically all former cases were dismissed because of the statute of limitations.

The question is still open for a different set of cases, namely that of the Sinthi and Roma community, before our Supreme Constitutional Court. The whole law is challenged because it denies access to German civil litigation.

So, in other words, what we negotiated will be put under test before two American courts, one here in New York and the other one in California, and at least the two highest German courts, one the highest civil court and the other one the Constitutional Court. So, the question is still not completely closed, but we are fairly confident that the solution we found, which is far from perfect, will hold.

MR. ROSENSAFT: Thank you.

I would like to turn to Sam Dubbin with a more specific question. The concepts of home health care and health care have been around, as Mel pointed out, quite a while. I seem to recall being part of a group that advocated it back in the mid-1990s, and I agree with Mel that the response was far from unanimous.

How do you respond specifically in the context of survivors in the United States and elsewhere who disagree and want other solutions? I understand you represent a particular client in the litigation. But on what basis do you do an exponential and say that this represents survivors generally?

MR. DUBBIN: The group that I am speaking for today is an American group. They would not ask for anything more than the American survivors' pro rata share of any so-called humanitarian funds or heirless funds.

By the way, even the concept of calling it "humanitarian funds" is really very offensive, because if this is all about a return of property, this was something that was owned by people, and it is not charity. That is why they should have the right to say what happens to it. It is not humanitarian in any way, shape, or form.

So they are advocating for the American survivors' fair share, probably twenty-five to thirty percent of the world's survivor population.

I will tell you that this is the overwhelming sentiment of the survivors' organizations throughout America that are part of this group. We are not talking about rolling back slave labor payments. We are not talking about stopping the payment of slave labor money from Germany or the Swiss banks. We are talking about two things. One is the pool of money that is going to be earmarked for so-called humanitarian funds.

And Mr. Weiss, I think, put the choice very well: Today, would it be better to divide it up pro rata and give everybody whatever comes of it; or would it be better to pool it, so that it would work with qualified regulators and a qualified insurance company, or group of insurance companies, who would be prepared to put forward an actuarially-based home care insurance-based plan that would guarantee people who need it a certain amount of home care? That would be devised, as the Florida plan has been done, based upon real numbers by real regulators who do this every single day.

The groups that I represent believe that they would rather know that those in need will have the security of knowing it is available and the dignity of knowing something came to them that was of great need to everybody, rather than the few hundred dollars that might come to them individually.

MR. ROSENSAFT: But it seems to be also clear that there are groups—and I know that Ben Meed in the audience, as President of the American Gathering of Holocaust Survivors—that you do not represent, that may feel differently on this subject.

MR. DUBBIN: I can tell you that Roman Kent of the American Gathering was quoted in *The Forward* about six months ago, and he said, "Yes, this money should be for survivors and it should go for home care." So there may be a different point of view, and I would welcome the discussion.

MR. ROSENSAFT: Thank you.

There is a question from the audience to Commissioner McCall, and I would like to read it: "If it is determined that some U.S. banks were holding on to Holocaust-era deposits for many decades, are you in favor that the amount of the initial deposits

ought to be subject to a multiplier effect, as was demanded from the Swiss banks?”

MR. McCALL: Absolutely. That is a basic principle of banking—that you pay interest. You had assets, you have been able to use those assets; those assets have in fact multiplied, and there should be a multiplier effect.

MR. ROSENSAFT: Procedurally to Gideon: At this point of the game, where do you see the process heading? In other words, are we heading towards some type of closure, or are there more procedural hurdles in our immediate future?

MR. TAYLOR: I think there are two separate issues. In terms of the German industry, the Foundation, that is a piece that is moving forward. There are some problems, as I mentioned, with the insurance issue.

The Claims Conference has now distributed since the agreement over U.S.\$200 million from the agreement to Holocaust survivors. That is a process that is moving forward and I do not think it is one that is going to stop. It is going to accelerate, to try to reach as many of those survivors as possible as quickly as possible.

In terms of whether the issue of restitution and compensation closed, I do not think that the issue of restitution and compensation, and certainly of compensation payments, of some kind of payment, is closed as long as there are survivors still alive.

I think there are certain groups of Holocaust survivors who are not eligible for current programs, for the Article 2 program and others, and I think there will be an ongoing battle and negotiations with the German Government to deal with those open issues.

So I think that is the sort of short answer to what can be a long and complex question.

MR. ROSENSAFT: I thank you.

We are now reaching the end of the program. What I would like to do is to give each of our panelists a maximum of one minute for a closing comment.

MR. GEIER: Thank you.

For me the most important side effect, but a principal effect, of our discussion was the searching of the minds in Germany at the municipal and the local level. You would not believe the number of local initiatives—schools who invite former

forced laborers from Ukraine, people who wonder what happened to the Jews who lived in their little town.

In other words, what has happened is a taking into account of what happened to all of us and what happened to the now grandfathers' generation in Germany. The positive effect of this communal effort I think is shared by most Germans and supported by the German Government.

Thank you very much.

MR. ROSENSAFT: Thank you very much. Commissioner McCall?

MR. McCALL: First of all, I want to commend the people who organized this. I think it was very important, and I think it is important to look back and see what we have been involved in.

I just want to echo the statement from Professor Neuborne that it is really too early to tell just what this means and where we go from here. But I think the more we have these kinds of opportunities to discuss this issue and the implications of what we accomplished in terms of dealing with other social issues and social problems that we confront, I think that would be a very useful thing as we go forward.

MR. ROSENSAFT: Thank you very much. Mel Weiss?

MR. WEISS: I just want to emphasize that what we were dealing with here might look like it was a lot simpler than it was. We were dealing with the cultures of many different countries. We were dealing with a population of Jewish survivors of approximately 150,000, but also non-Jewish victims of various types of over 1.5 million. So the internal negotiations were not just plaintiffs against defendants, but among the victims themselves for fair allocation of those moneys. It was very sensitive because you could not stand there and say that only one group was victimized or try to start quantifying the degree of victimization beyond the time that it was reasonable to do it.

So for those who think that these issues were not analyzed from top to bottom by very serious-minded people, trust me, they were at every level. Allocating it between and among very different types of claims was a very monumental task—insurance, property, labor claims, and the like.

MR. ROSENSAFT: Thank you very much. Sam Dubbin?

MR. DUBBIN: Thank you.

The keystone here should be what is satisfactory today to the

victims. With all due respect, the Swiss litigation was not perfect. I actually objected to the inclusion of the insurance industry there, and Judge Korman said I was right, and he took them out of the case. We appealed the allocation. I think we both had an opportunity, Judge Korman and the American survivors, to get a better understanding of where they were coming from.

But I do submit the following, that if survivors had a more significant role in the negotiations, the question, as Count Lambsdorff said before—he said, “We didn’t have a benchmark. We didn’t know what we were shooting for. We were picking numbers out of thin air.”

If the question had been: How could we define today an outcome that would give dignity and some material satisfaction to survivors, and the survivors had been in the discussion, I believe they would have said, “Make sure you get enough money so that every survivor in the world has the opportunity to live out his years with the proper dignity that they deserve after what they experienced.”

That is what this group is stepping forward today to say they want to achieve, and we believe that it is doable.

MR. ROSENSAFT: Thank you. Gideon Taylor?

MR. TAYLOR: Thanks.

Firstly, I want to really thank Fordham and Thane Rosenbaum for putting this together. I know it is not finished and there is more to do, to see, but it is a wonderful discussion and a sharing of very different perspectives. I think it has been fascinating both for those who were directly involved and those who were not.

For me personally, the last few years of being immersed in these negotiations has certainly changed my life and my perspectives on many issues, and that is something I feel personally privileged to have been part of.

I think the issue of restitution, or compensation, it is a place where you have a meeting of so many different facets of human life—of law, of politics, of history, of justice, of philosophy, of morality perhaps more than anything else. Trying to take that mix and to come up with something that is balanced and that people can be proud of is a difficult, if not impossible, task. I think it is one that is not over, will never be completely over. I

think it is a lot of people trying to do their best, with a lot more work still to do.

MR. ROSENSAFT: Thank you very much. I want to thank all the panelists.