

# CLAIMS RESOLUTION TRIBUNAL

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In re Holocaust Victim Assets Litigation

Case No. CV96-4849

## Certified Award

to Claimant Maria Victoria Altmann,  
also acting on behalf of Peter John Gerald Bentley, formerly Peter Heinz Bloch-Bauer; Michael Bentley; Lisa Turner, née Bentley; Susan Kololian, née Bentley; Barbara Hislop, née Bentley; Joan Ball, née Bentley; Francis Gutmann; Nelly Auersperg, née Gutmann; George Bentley; Trevor David Mantle; Elizabeth Jarvis, née Prentice, formerly Elizabeth Pick; and Marietta Hurst, née Prentice, formerly Marietta Pick  
represented by E. Randol Schoenberg

**in re Account of *Österreichische Zuckerindustrie AG* Syndicate**

Claim Number: 215866/MC

Award Amount: 26,450,993.36 Swiss Francs

This Certified Award is based upon the claim of Maria Victoria Altmann, née Bloch-Bauer, (the “Claimant”) to the account of Ferdinand Bloch-Bauer.<sup>1</sup> This Award is to the unpublished account belonging to certain members of a syndicate of major shareholders (the “Syndicate”) of the *Österreichische Zuckerindustrie AG* (“ÖZAG”) at the Zurich branch of the [REDACTED] (the “Bank”). As further addressed below, the documents submitted by the Claimant show that certain major shareholders of ÖZAG, together with the Bank, concluded a syndicate agreement on 5 March 1938 (the “Syndicate Agreement”) designed to protect their shares in the company from falling under Austro-German control. Eighty-nine percent of ÖZAG’s shares were held under the Syndicate Agreement. Pursuant to the Agreement, slightly over half of the company’s total shares were deposited with the Bank and held in the Bank’s name on behalf of the members of the Syndicate.

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<sup>1</sup> In her Claim Form, the Claimant also identified other family members who held Swiss bank accounts. In separate decisions, the CRT has awarded accounts belonging to Luise Gutmann, Leopold and Antoinette Bloch-Bauer, Otto Gutmann, and Otto and Käthe Pick to their heirs, who were represented by the Claimant. *See In re Accounts of Luise Gutmann* (approved on 18 August 2004), *In re Accounts of Leopold and Antoinette Bloch-Bauer* (approved on 13 October 2004), *In re Accounts of Otto Gutmann* (approved on 18 November 2004), and *In re Accounts of Otto and Käthe Pick* (approved on 18 November 2004). The CRT did not locate an account belonging to the Claimant’s relative, Ferdinand Bloch-Bauer, in the Account History Database prepared pursuant to the investigation of the Independent Committee of Eminent Persons (“ICEP” or “ICEP Investigation”), which identified accounts probably or possibly belonging to Victims of Nazi Persecution, as defined in the Rules Governing the Claims Resolution Process, as amended (the “Rules”). The Claimant should be aware that the CRT will carry out further research on her claim to determine whether an award may be made based upon the information provided by the Claimant or upon information from other sources.

All awards are published. In this case, the Claimant has requested confidential treatment for her relatives, whom she is representing. The names of these relatives and the bank have been redacted.

### **Executive Summary of Opinion**

This Award compensates the heirs of Ferdinand Bloch-Bauer and Otto Pick, two of the major shareholders of *Österreichische Zuckerindustrie AG* (“ÖZAG”), Austria’s most important pre-War refiner of sugar, for the major losses that they suffered as a result of the Bank’s active participation in the confiscation of their shareholdings in ÖZAG by Nazi authorities. The Bank’s complicity in this Nazi discriminatory property confiscation was in violation of the legally binding commitments the Bank had made to these shareholders to protect their assets from seizure by, or forced transfer to, the Nazis under the Syndicate Agreement entered into on 5 March 1938, immediately prior to Austria’s incorporation into the German Reich (the “*Anschluss*”). The Bank was a signatory of the Syndicate Agreement, a party to the Agreement, a depository of a majority of the shares of ÖZAG and a fiduciary under the Agreement to act for the benefit of shareholders who had assigned their shares to the Bank for the protection it had offered them under the Agreement.

Under this Syndicate Agreement, the Jewish owners of more than 50 percent of ÖZAG’s shares transferred their shares to the Bank’s name and instructed the Bank, which physically held these shares, as well as other depositories holding the remainder of their shares, that the shares subject to the Syndicate Agreement could not be sold or transferred without the consent of the Bank. Moreover, it was also explicitly provided in the Syndicate Agreement that the Bank could not give its consent to such sales or transfers without the unanimous agreement of the beneficial owners. The clear objective was to set up a barrier to enforced sale or confiscation that depended almost entirely on the mutual expectation, embodied in their Syndicate Agreement with the Bank, that the Bank not cooperate with, or give in to, the Nazis.

Within days of the *Anschluss*, the worst fears of the Jewish ÖZAG shareholders were realized. Most Syndicate members fled the country, often after surrendering or abandoning all their possessions. Leopold Bloch-Bauer, Ferdinand Bloch-Bauer’s nephew and Otto Pick’s son-in-law, was arrested before he could flee. He was finally permitted to emigrate after abandoning all his property in Austria and promising to help procure a transfer of ÖZAG shares to a Nazi “purchaser.” Criminal tax proceedings, supported by an audit report drafted by a self-proclaimed anti-Semite and Nazi party member, were commenced within days against the company by Nazi functionaries in an avowed effort to drive down the price of ÖZAG shares in order to enable a distress sale at a fraction of true value to a hand-picked Nazi “purchaser,” Clemens Auer – a Cologne businessman with close ties to the Nazi party. The tax proceedings were terminated once the Nazis gained control of the company. Similar tactics had been used by the Nazis to “aryanize” Jewish-owned property in Germany.

Sadly, the Bank did not live up to the expectations of the ÖZAG shareholders or to its legal and fiduciary commitments. The CRT found that the Bank had actively cooperated with the forced sale of their ÖZAG shares by unlawfully transferring those shares that were held by the Bank to a designated Nazi “purchaser” at a small fraction of the shares’ value, without obtaining the

unanimous consent of the Syndicate Agreement participants. Moreover, by effectively breaking the protections provided by the Syndicate Agreement by transferring a controlling interest in ÖZAG through this sale, the Bank facilitated the Nazi seizure of the remaining shares held at other depositories at a similarly very low fraction of their true value.

The CRT has determined that the Bank bears the responsibility for compensating the Claimant and her relatives for the Bank's direct and active complicity in the confiscation and loss of value of the 33,037 shares of ÖZAG held by the Pick and Bloch-Bauer families.

This Award, 26,450,993.36 Swiss Francs, is the largest approved by the Court to date. The amount of the Award reflects the value of the stock in question on the date the Bank violated the terms of the Syndicate Agreement by unlawfully transferring ownership to a designated Nazi "purchaser" at a fraction of the shares' value, less any sums received by the Claimant and the persons she represents in connection with the shares. The Award includes the standard interest equivalent multiplier of 12.5 to bring the Award up to current value.

While this Award is unique in its size, it is, unfortunately, representative of several general findings by the CRT. First, this Award is merely a striking example of the widespread betrayal of Jewish clients by Swiss banks. Having marketed themselves to the Jews of Europe as a safe haven for their property, Swiss banks repeatedly turned Jewish-owned property over to Nazis in order to curry favor with them. Second, this Award is striking in that no record of the rise and fall of the ÖZAG Syndicate was found in the Bank's records. Rather, the documents upon which this Award is based were submitted by the Claimant and/or obtained by the CRT from archival sources. We will never know how many other examples of betrayal were buried in the records of the 2,757,950 accounts (of the 6,858,116 opened in Swiss Banks between 1933-45) the Banks concede they have destroyed completely or would have been found in the remaining accounts for which only fragmentary records survive. Third, this case reflects the strategies used by Nazis to seize control of Jewish property, ranging from outright theft to sophisticated distress sales orchestrated by compliant tax officials and faithless banks and disguised by the veneer of "law." Finally, the Award reflects the special difficulties faced by Austrian Jews in seeking restitution. It is enough to note that the representative of Austria overseeing the restitution proceedings regarding ÖZAG in 1956 was himself a member of the Nazi party and had worked in the office responsible for the confiscation of Jewish assets beginning in 1938.

## **Full Opinion**

### **Information Provided by the Claimant**

The Claimant submitted a Claim Form indicating that certain major shareholders of ÖZAG, together with the Bank, concluded a Syndicate Agreement on 5 March 1938 designed to protect their shares in the company from falling under Austro-German control. The Claimant indicated that one of the members of the Syndicate was her father's brother, Ferdinand Bloch-Bauer, who was born on 16 August 1864 in Mlada Boleslav, Austro-Hungary (now the Czech Republic), and was married to her mother's sister, Adele Bloch-Bauer, née Bauer, on 20 December 1899 in

Vienna, Austria.<sup>2</sup> The Claimant indicated that her parents, Gustav and Therese (Thedy) Bloch-Bauer, had five children: Robert, Karl, Leopold, Luise, and Maria (the Claimant).

The Claimant further indicated that another member of the Syndicate was her sister-in-law's father, Otto Pick, who was born on 17 August 1874 and who was married to Käthe (Katharina) Pick, née Pollack von Parnau. According to information provided by the Claimant, Otto and Käthe Pick had two children: Hans Pick, who was born on 27 February 1907 and was married to Eva Pick, née Schlesinger-Acs; and Antoinette Bloch-Bauer, née Pick, who was born on 29 May 1909 and was married to the Claimant's brother, Leopold Bloch-Bauer, in 1929.

In support of her claim, the Claimant submitted numerous documents, including:

- 1) a registration form for confiscated assets, dated 15 November 1946, submitted to the Vienna Magistrate District Court (*das Magistratische Bezirksamt für den 3. Bezirk, Wien III*) for the *Brucker Zuckerfabrik Clemens Auer* (the "1946 Registration");
- 2) a statement, dated 3 March 1956, submitted by Dr. Gustav Rinesch to the Vienna Restitution Commission, regarding the ownership of ÖZAG shares and in consideration of their confiscation (the "1956 Ownership Statement");
- 3) the partial decision (*Teilerkenntnis*), dated 3 May 1956, of the Vienna Restitution Commission regarding the restitution of ÖZAG shares (the "Partial Decision");
- 4) a letter, dated 28 July 1956, from Dr. Gustav Rinesch to the District Court of Vienna, enclosing a copy of a draft settlement between the Republic of Austria, Karl Rigal, general partner *Brucker Zuckerfabrik Clemens Auer* and former ÖZAG shareholders for the restitution of the ÖZAG shares (the "Draft Settlement");
- 5) a position paper, dated 31 August 2004, submitted to the Austrian Arbitration Tribunal for Restitution in Kind, by the Revenue Department of the Austrian Attorney General's Office (*Finanzprokuratur*) representing the Austrian Federal Government as the intervener against the Claimant's request for review of the restitution agreement relating to the family's residence (the "*Finanzprokuratur*");
- 6) a formerly classified industry report prepared after the Second World War by the Property Control Branch of the United States Allied Commission for Austria ("USACA") about ÖZAG (the "Industry Report");
- 7) a report prepared after the Second World War by Albert Perry, Jr., for the Property Control Branch, USACA about ÖZAG (the "Perry Report");
- 8) documents regarding the Bloch-Bauer's art collection and the family's efforts to reclaim their looted assets;
- 9) a study on changes in ownership in Austrian industry from 1938 to 1945, prepared under the auspices of the Austrian Historical Commission, which includes a chapter on aryanization and restitution in the sugar industry contributed by Berthold Unfried ("Unfried");
- 10) correspondence between the Claimant's representative and Unfried;
- 11) selected excerpts about the Pick family from *Was Einmal War*, a book by Sophie Lillie about Vienna artworks looted by the Nazis ("Lillie");

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<sup>2</sup> According to the Claimant's submissions, Ferdinand and Gustav were born Bloch, and Therese and Adele were born Bauer. When Therese and Adele's only brother died in 1917 without a son to carry on the family name, the two families changed their names to Bloch-Bauer.

- 12) the resume (*Lebenslauf*) of the Nazi-appointed auditor of ÖZAG, Guido Walcher, dated 20 April 1938 (the “Resume”);
- 13) the Interim Report on the Audit of the Books of the ÖZAG (*Zwischenbericht zur Überprüfung der Geschäftsbücher der ÖZAG von Guido Walcher*), dated 29 April 1938 (the “Interim Report”);
- 14) Ferdinand Bloch-Bauer’s second-to-last and final will;
- 15) family correspondence;
- 16) the inheritance certificate of Ferdinand Bloch-Bauer, which indicates that the Claimant is a descendant of Ferdinand Bloch-Bauer’s brother Gustav Bloch-Bauer;
- 17) the change of name deed of Leopold Lionel Garrick Bloch-Bauer, certifying that he changed his name to Leopold Lionel Garrick Bentley on 10 November 1938;
- 18) a copy of the notice of name change that appeared in a newspaper, advising that Leopold Bloch-Bauer and Antoinette Bloch-Bauer had changed their last names to Bentley and that they had also changed the last name of their child, Peter John Gerald Bloch-Bauer, to Bentley;
- 19) the will of Luise Gattin, formerly Gutmann, bequeathing her residual Estate to her children, Francis Gutmann and Nelly Auersperg;
- 20) the will and letters probate of Robert Bentley, formerly Bloch-Bauer, bequeathing his residual Estate to his wife, Hylda Bentley;
- 21) the will and letters probate of Hylda Bentley, bequeathing her residual Estate to Trevor David Mantle;
- 22) an agreement, dated 11 October 1998, between Trevor David Mantle and George Bentley, stipulating that Trevor David Mantle and George Bentley are to share equally, in value and/or kind, any property “recovered pursuant to the legislation currently pending in the Austrian Parliament,” the net share to which George as lineal heir of Robert Bentley and/or Trevor as named alternate executor of the Estate of Robert Bentley and as residual beneficiary to the Estate of Hylda Bentley, may be entitled (the “Agreement”);
- 23) the birth certificates of Elizabeth Jarvis and Marietta Hurst, dated in 1933 and 1935, respectively, in Vienna, indicating that their father was Dr. Hans Pick;
- 24) a letter to Hans Pick from the vital statistics division of the British Columbia Board of Health, dated in 1941, and a notice of name change from a newspaper, dated 10 November 1938 in British Columbia, both indicating that Hans Pick, his wife, Eva, and their daughters, Elizabeth and Marietta, changed their surname from Pick to Prentice and that Hans Pick changed his first name to John;
- 25) Marietta Hurst's marriage certificate, indicating that her maiden name was Prentice; and
- 26) the will of Antoinette Bentley, formerly Antoinette Bloch-Bauer, née Pick, which names her five grandchildren (the children of Peter Bentley), as the beneficiaries of her residual estate.

The Claimant stated that she was born on 18 February 1916 in Vienna. The Claimant represents her nephew (the son of Leopold and Antoinette Bentley, formerly Bloch-Bauer), Peter John Gerald Bentley, formerly Peter Heinz Bloch-Bauer, who was born on 17 March 1930 in Vienna; her grand-nephews and nieces (the children of Peter Bentley and grandchildren of Leopold and Antoinette Bentley), Michael Bentley, Lisa Turner, née Bentley, Susan Kololian, née Bentley, Barbara Hislop, née Bentley, and Joan Ball, née Bentley; her niece (the daughter of her sister,

Luise Gutmann, née Bloch-Bauer), Nelly Auersperg, née Gutmann, who was born on 13 December 1928 in Vienna; her nephew (the son of her sister, Luise Gutmann, née Bloch-Bauer), Francis Gutmann, who was born on 5 January 1934 in Vienna; her nephew (the son of her brother, Robert B. Bentley, formerly Bloch-Bauer), George Bentley; her relative Trevor David Mantle; and the children of Dr. Hans Pick (Antoinette Bentley's brother), Elizabeth Jarvis, née Prentice, formerly Pick, who was born on 8 December 1933 in Vienna; and Marietta Hurst, née Prentice, formerly Pick, who was born on 3 July 1935 in Vienna.

Attached to this Award as exhibits are: a copy of the Bloch-Bauer family tree (Exhibit A); a Glossary of Key Terms and Persons (Exhibit B); a Timeline of Events (Exhibit C); the Syndicate Agreement (Exhibit D); the resume of the Nazi-appointed auditor of ÖZAG, Guido Walcher, dated 20 April 1938, both in the original German and in an English translation prepared by the CRT (Exhibit E); and a Summary of ÖZAG Shareholdings (Exhibit F).

### The Bloch-Bauer and Pick Families: Background

According to information provided by the Claimant, Ferdinand Bloch-Bauer, who was Jewish, was a citizen of Czechoslovakia with a principal residence, until 1938, at Elisabethstrasse 18 in Vienna. The Claimant indicated that Ferdinand and his wife Adele had no children. Ferdinand was a patron of Gustav Klimt and owned seven of his most important paintings. The Klimt paintings were housed in his large home on Elisabethstrasse, which was decorated with other fine artworks, tapestries, porcelain, and furniture. When Adele suddenly died of meningitis in 1925, Ferdinand created a memorial room with two full-length portraits of her and four landscapes, all painted by Klimt. In 1936, Ferdinand delivered one Klimt painting to the Austrian Gallery at the request of its director. The other six Klimt paintings remained in Ferdinand's possession until the *Anschluss*. Ferdinand Bloch-Bauer, who had supported efforts to resist the Nazis, fled Austria in March 1938, just prior to the *Anschluss*. He found refuge first at his summer home in Czechoslovakia, a large castle and estate outside Prague. When the Nazis annexed the Sudetenland in September 1938, Ferdinand fled to Zurich, Switzerland, and his estate outside Prague was later used as the principal residence for Reinhard Heydrich, the Nazi commander of the so-called Protectorate of Bohemia and Moravia. By early 1943, Ferdinand's entire art collection, including all the Klimt paintings, had been liquidated and expropriated.

Ferdinand died on 13 November 1945 in Zurich, never having recovered any of his property. His last will and testament, dated 22 October 1945, divided his estate among three of his nieces and nephews: the Claimant and Robert Bentley, formerly Bloch-Bauer, were each to receive 25 percent of his estate, and Luise Gutmann, née Bloch-Bauer, was to receive 50 percent of his estate. Ferdinand's heirs are still attempting to recover the Klimt paintings from Austria.<sup>3</sup>

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<sup>3</sup> According to documents provided by the Claimant, when Adele Bloch-Bauer died, she left behind a short will that asked, but did not require, that her husband consider donating the two portraits and four landscapes to the Austrian Gallery. Gustav Bloch-Bauer, who was an attorney, was named the executor of Adele's estate. In the ensuing probate proceedings in Vienna, the Klimt paintings were declared to be Ferdinand's property, not Adele's. In 1926, Gustav stated that Ferdinand intended to fulfill his wife's wishes, although he was not legally required to do so. However, Ferdinand did not execute any written document confirming this alleged intention. None of Ferdinand's later wills included a bequest to the Austrian Gallery. The Bloch-Bauer heirs have been trying to recover the looted artwork since the end of the Second World War. The CRT notes that the U.S. Supreme Court recently ruled that the

As noted above, Leopold Bloch-Bauer, Ferdinand's nephew and the Claimant's brother, was married to Antoinette Bloch-Bauer, née Pick, who was the daughter of Otto and Käthe Pick. Sophie Lillie (hereinafter "Lillie"), in her book regarding Vienna artworks looted by the Nazis, writes that Otto Pick, who was Jewish, was born in Jaromer, Bohemia (now the Czech Republic), to David Pick and his wife, Eleonore Pick, née Schick.<sup>4</sup> His wife, Katharina (Käthe) Pick, née Pollack von Parnau, was born on 23 December 1882 in Vienna to Berthold (Bernhard) Pollack von Parnau and Käthe Pollack von Parnau, née Sachs. Otto Pick was the owner of the firm *E. G. Pick* in Oberleutensdorf (now Litvinov, Czech Republic); President of the *Hutfabrik AG* in Temesvar, Romania; and member of the board of directors (*Verwaltungsrat*) of the *Messe AG* and the *AG Roth-Kostelezter Spinnerei und Weberei* in Prague, Czechoslovakia (now Czech Republic).

According to Lillie, Pick owned a large collection of silver objects and gold boxes from Augsburg, Germany, which was kept in his residence at Reisnerstrasse 40 in Vienna. The residence, which was built in 1913 – 1914 by Ernst Epstein, was owned by his daughter Antoinette Bloch-Bauer and was occupied by the SS immediately after the *Anschluss*. In July 1938, the house was confiscated by the Nazi Party for use by the Reich's Propaganda Office.<sup>5</sup> The Nazis also confiscated, among other assets belonging to Antoinette Bloch-Bauer, a Stinson S R-9 recreational airplane, possession of which, as Lillie notes, indicates the high socio-economic position enjoyed by the Pick family. Furthermore, the villas belonging to Käthe Pick and her siblings, Dr. Bruno Pollack-Parnau, Else Mandl-Maldenau, and Berta Schlesinger, located at Andergasse 38, 40, and 42 in Dornbach, Vienna XVII, as well as other real property owned by the siblings, were confiscated beginning in June 1938.<sup>6</sup>

According to several telephone conversations the CRT conducted in August, September, and October, 2004, with Mr. Peter Bentley, who is the son of Leopold and Antoinette Bentley, formerly Bloch-Bauer, and whom the Claimant represents, on the night of the *Anschluss*, Mr. Bentley, his mother, and his cousins, Elizabeth and Marietta Pick (the two daughters of Hans and Eva Pick), drove to the border of Austria and Czechoslovakia and escaped to Czechoslovakia. Mr. Bentley stated that his father, Leopold Bloch-Bauer, accompanied his family as far as the border to ensure that they had reached safety, and then returned to Austria. Mr. Bentley further stated that his father was later arrested and imprisoned by the Nazis. Both the Perry and the Industry Reports about ÖZAG, both of which were prepared after the Second World War by the Property Control Branch of the United States Allied Commission for Austria, confirm that Leopold Bloch-Bauer was arrested by the Gestapo shortly after the *Anschluss*. According to these reports, his release was negotiated by the Vienna *Merkurbank* (later *Länderbank*) in return for Mrs. Leopold Bloch-Bauer and the Pick family putting their assets in Austria under "trust

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Claimant could pursue her legal claims in a United States court against Austria's government and national museum regarding her relative's looted art. *See Republic of Austria v. Altmann*, 124 S. Ct. 2240 (2004).

<sup>4</sup> Sophie Lillie, *Was Einmal War. Handbuch der enteigneten Kunstsammlungen Wiens*, Czernin Verlag: Wien, 2003, (hereinafter, "Lillie"), pp. 821 – 836.

<sup>5</sup> Lillie, p. 821.

<sup>6</sup> Lillie, p. 822.

administration” of the bank and contingent upon Leopold’s promise to procure the transfer of a packet of his relatives’ ÖZAG shares that were held, in main part, in Switzerland.<sup>7</sup>

According to a statement by Otto Pick, dated 11 January 1940, Leopold departed Austria for Switzerland on 31 May 1938, after the *Mercurbank* guaranteed payment of his “flight tax” (*Reichsfluchtsteuer*).<sup>8</sup> In a written statement dated 31 May 1946, Leopold Bentley, formerly Bloch-Bauer, described the circumstances of his arrest and the pressure exerted on him to relinquish his family’s assets and to procure the sale of ÖZAG shares:

It was obvious that the *Mercurbank* [sic] cooperated closely with the Gestapo in 1938, to put adequate pressure upon its old and new customers. The functionaries of the *Mercurbank* came and liberated me when I was jailed for 9 days by the SA at the Police Station in Vienna XX. After lengthy discussions and under the steady danger of a new second arrest and deportation to a concentration camp, an arrangement was made with the *Mercurbank*, whereby all assets of the families Mr. and Mrs. Otto Pick, Dr. and Mrs. Hans Pick, Mr. and Mrs. Leopold Bloch-Bauer were taken over by the trustee administration, also taken over was the financing of Pick & Co. and finally the guarantee for the *Reichsfluchtsteuer* [flight tax] for all members of the family, as a compensation. Further the essential purpose was, to make possible my departure. Nevertheless, we signed everything required; my departure was delayed until the time, when Director Wolst squeezed out of me the promise, to procure for the *Mercurbank* a large packet of the shares of the “*Oesterreichische Zuckerindustrie A. G.*” after my arrival in Switzerland. This promise was carried out by me unfortunately. Beyond any doubt, the *Mercurbank* would not have been able to obtain even one share of this enterprise, if I, as well as my family, had been abroad. This transaction came about therefore only under pressure and squeeze.<sup>9</sup>

In a sworn affidavit dated 13 December 1946, Otto Pick provided his own account of the circumstances surrounding Leopold’s arrest:

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<sup>7</sup> The Industry Report states: “That duress was involved is indicated by the fact that the son-in-law of Pick and nephew of the company’s President Ferdinand Bloch-Bauer, one Leopold Bloch-Bauer, had been arrested immediately after the *Anschluss* and was released and given an exit permit through the intervention of the *Länderbank* only after he had undertaken to secure the sale of important foreign-owned blocks of shares to German interests.” Industry Report No. 6, U. S. National Archives and Records Administration, (“NARA”) Washington, D.C., RG 59, Legal Adviser, German assets in Austria/Italy, Box 22, p. 5 (hereinafter, the “Industry Report”). According to the Perry Report, in June 1938, after his arrival in Switzerland, Leopold Bloch-Bauer, through the Bank, offered a block of 10,000 shares belonging to Otto Pick to the *Länderbank Wien* at RM 160.00 per share. There were no purchasers at this price and the offer lapsed. Albert Perry, Jr. Report on *Brucker Zuckerfabrik Clemens Auer A.G.* NARA, Washington, D.C., RG 260-M1928-USACA, German external assets, Reports on businesses, Reel 4 (hereinafter, the “Perry Report”), p. 5; Exhibit 3, “Statement by Dr. Gustav Reinisch [sic] re Clemens Auer securing control of Brucker,” Exhibit 14, “Letter dated 31 May 1946 from Karl Bloch-Bauer, alias Bentley [sic], re pressure exerted by Nazi,” (original available only in translation), and Exhibit 15, “Affidavit dated 13 December 1946 by Otto Pick re sale of Brucker shares,” (original available only in translation). The CRT notes that, according to information provided by the Claimant, Karl Bloch-Bauer did not change his name.

<sup>8</sup> Perry Report, Exhibit 21, “Memorandum dated 11 January 1940 by Otto Pick, re sale of Brucker shares,” (original available only in translation), p. 1.

<sup>9</sup> Perry Report, Exhibit 14.



In the middle of May 1938, Dr. H. Mann, at that time Syndicus of the *Mercurbank* [sic], Vienna, turned up without being announced in Zuerich [sic], where I lived at the time with my family and demanded from me a series of documents with my signature, whereby almost our entire properties and interest in Austria should have been handed over to the *Mercurbank* for trustworthy administration and/or liquidation after appointing Dr. Mann as plenipotentiary. Certainly I was not inclined to do that, but [the] next day I decided to do so according to the word of honor given by Dr. Mann that my son-in-law Leopold Bloch-Bauer, (now L. L. G. Bentley) gets permission to leave Austria. Mr. Leopold Bloch-Bauer was arrested by the Nazis on March 13<sup>th</sup> – 22<sup>nd</sup>, 1938 and it is due to a lucky incident that he was not killed in the jail.<sup>10</sup>

Despite efforts to emigrate, Leopold Bloch-Bauer's mother, Theresia Bloch-Bauer, was not able to leave Austria immediately. According to a memorandum, dated 17 July 1947, written by Dr. Gustav Rinesch, a lawyer who had represented Bloch-Bauer interests before and during the *Anschluss* and did so again after the War, Leopold's father, Dr. Gustav Bloch-Bauer, died on 2 July 1938 in Vienna, and left his estate, which consisted in the main of 2,135 [sic] shares of ÖZAG, deposited at the *Creditanstalt Bankverein* and valued by Nazi authorities at RM 689,000.00, to his wife, Theresia, who, at the time, was preparing to flee Austria. According to Dr. Rinesch's memorandum, Theresia had already paid the required flight tax on her own property. However, after she assumed ownership of her late husband's property, she was assessed an additional tax of approximately RM 172,000.00, or 25 percent of the property's value. The estate could not be readily liquidated to raise the cash needed to pay the tax, and Theresia was not permitted to leave the country. According to Dr. Rinesch's memorandum, in an effort to prevent further delay, Theresia renounced her late husband's legacy on 22 December 1938. On 26 January 1939, Dr. Rinesch was appointed trustee (*Abwesenheitskurator*) for Theresia's five children, including Leopold, who were already abroad. With the children's authorization, Dr. Rinesch declared that four of the children also renounced the inheritance and that the fifth, Luise Baroness Gutmann, who had acquired Yugoslavian citizenship by marriage in 1932, accepted the inheritance as sole beneficiary. In his memorandum, Dr. Rinesch explained that by doing so, the children hoped that the inheritance could be protected from Nazi discriminatory taxes and confiscation, because Luise, as a Yugoslavian citizen, was not subject to such measures, while the other four still were citizens of the Reich and thus under the Reich's tax jurisdiction. Dr. Rinesch explained that although the probate court accepted this arrangement, the emigration authorities (*Reichsfluchtsteuerstelle*) did not and refused to issue Theresia the certificate declaring her free of any tax obligations (*Steuerunbedenklichkeitsbescheinigung*), which was required for emigration. Under these circumstances, Dr. Rinesch, as trustee, agreed to recognize the assessment of flight tax against Luise, despite the fact that she was under no obligation to pay such tax. According to Dr. Rinesch's memorandum, shortly after this agreement, on 25 February 1939, flight tax in the amount of RM 172,238.00 was assessed against Luise Gutmann.<sup>11</sup> Although Dr. Rinesch's memorandum does not specifically indicate when Theresia ultimately was able to emigrate, her

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<sup>10</sup> Perry Report, Exhibit 15.

<sup>11</sup> Perry Report, Exhibit 23, "Memorandum dated 17 July 1947, re disposal of shares of Dr. Gustav Bloch-Bauer," pp. 1 – 2. According to Dr. Rinesch's memorandum, he filed an objection to the tax based on its high amount, and the tax was ultimately reduced to RM 35,007.00. Perry Report, Exhibit 23, p. 1.

departure was likely delayed until at least 6 March 1939, when, according to Nazi records, her flight tax was paid.<sup>12</sup>

During the telephone conversations with the CRT, Mr. Bentley also provided information regarding the fate of the Pick family. Mr. Bentley indicated that, at the time of the *Anschluss*, Otto and Käthe Pick were in Egypt at a cotton spinning convention, that Hans Pick and his wife Eva were also out of the country, and that following the *Anschluss*, they did not return to Austria. Mr. Bentley stated that he, his parents, his cousins, and Hans and Eva Pick were reunited in Zurich a few months later, and they all traveled on the same ship from England to Quebec, Canada, in August 1938. After remaining briefly in Quebec, they traveled to Vancouver, Canada, where they settled. Mr. Bentley explained that Otto and Käthe Pick lived in Paris, France, after the *Anschluss*, and that they fled France early in 1940 shortly before the Nazi invasion. Mr. Bentley stated that Otto and Käthe Pick joined the family in Canada later. Mr. Bentley stated that he and his parents changed their last names from Bloch-Bauer to Bentley, and that Hans and Eva Pick changed their own and their children's last name to Prentice and "Hans" became "John" following their emigration to Canada. According to information provided to the CRT, Antoinette Bentley, formerly Bloch-Bauer, who was the daughter of Otto and Käthe Pick and the wife of Leopold Bloch-Bauer, passed away in November 2004. Mr. Peter Bentley subsequently informed the CRT that he wished any Award amount to which his mother would have been entitled to be distributed to his five children, in accordance with his mother's wishes as expressed in her will.

#### ÖZAG Prior to the *Anschluss*

Much of the Bloch-Bauer family's wealth stemmed from ÖZAG, which was founded on 6 August 1909. The firm, which was incorporated in Austria, had its factory in Bruck an der Leitha (Lower Austria) and its main offices on the upper floor of Ferdinand and Adele Bloch-Bauer's Elisabethstrasse residence. Ferdinand Bloch-Bauer served as president of the company and Gustav Bloch-Bauer's son Karl was the manager of the company. The firm was authorized to refine sugar beets and produce sugar beet products. According to the Industry Report, before the Second World War, ÖZAG was Austria's most important sugar refinery, accounting for

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<sup>12</sup> See discussion of records in the Austrian State Archive, *infra*, pp. 31 – 32. According to Dr. Rinesch's memorandum, the ÖZAG shares formerly belonging to Gustav were confiscated for partial payment of these taxes on 16 June 1939. Perry Report, p. 7, Exhibit 23, p. 2. According to Dr. Rinesch's memorandum, the shares were transferred by the Finance Office of Vienna to the *Preussisches Staatsbank* of Berlin. After Luise Guttmann's flight tax was reduced, the value of the seized shares exceeded the value of the tax, and Dr. Rinesch submitted a demand for the return of the shares. By that time, the shares had already been transferred to Berlin, and their return was deemed impossible. Instead, German bonds, which ultimately became worthless, were issued in place of the ÖZAG shares and other shares that had been confiscated. Perry Report, p. 7. In his memorandum, Dr. Rinesch wrote: "The later facts show that the main part of these shares, *i.e.*, 2,100 pieces were sold [sic] in October 1939 through the Dresdner Bank to Clemens Auer. Through what procedure these shares arrived at the Dresdner Bank, can not be explained by me." Perry Report, Exhibit 23, p. 2. The CRT notes that the Claimant recalled that her mother fled Austria in late October 1938. It is not clear, from the facts as outlined in Dr. Rinesch's memorandum, how Theresia would have obtained the necessary documentation that would have allowed her to leave the Reich at this time, though it is possible that she left on a temporary travel visa and obtained official permission to emigrate only later. The CRT notes that Theresia would have had to comply with the decisions of Nazi tax authorities even if she had already left the Reich or risk forfeiture of all her assets that remained within the Reich.

approximately one-fifth of Austrian sugar production.<sup>13</sup> This share is confirmed in the Perry Report, which notes that the processing of raw sugar and sugar products at the Bruck factory totaled 18 percent of Austrian production.<sup>14</sup>

According to the Industry Report, in 1938, 75,630 shares, or 94.5 percent of ÖZAG's total 80,000 shares, were closely held by the following groups:

- 21,665 shares by the Löw group (Austrian; Jewish)
- 16,480 shares by the Graetz group (Austrian; part Jewish; held through a family foundation located in Switzerland)
- 13,687 shares by Otto Pick (Czech; Jewish)
- 6,500 shares by the Davies-Lloyd group (British; agents who acted on behalf of Otto Pick)
- 12,850 shares by the Bloch-Bauer group (Czech and Austrian; Jewish)
- 4,448 shares by the Patzenhofer group (Austrian; non-Jewish)
- of the remaining 4,370 shares, less than one third (1,093), were widely dispersed.

According to the Industry Report, the shares were occasionally traded on the Vienna stock exchange and were quoted at about 300.00 to 350.00 Austrian Schilling (“S”) or RM 200.00 to RM 230.00 per share “before the *Anschluss*.” The company’s balance sheet dated 14 December 1937, shows that the firm’s balance sheet value as of 31 July 1937 was S 26,021,555.24, which included S 10,000,000.00 in share capital.<sup>15</sup> The Industry Report notes that the dividend payments of S 15.00 to S 18.75 per share were consistent with the stock exchange quotations.<sup>16</sup> According to the 1946 Registration of confiscated assets, which was submitted to the Vienna Magistrate District Court by the public administrator appointed by the British Military Government for Vienna, on 13 March 1938, ÖZAG’s share capital consisted of 80,000 shares with a nominal value of S 125.00 per share, totaling S 10,000,000.00. The 1946 Registration indicates that, based on information provided by the Vienna Stock Exchange, the shares were worth S 300.00 each on 13 March 1938, which would indicate that the company’s value as of that date was S 24,000,000.00.<sup>17</sup>

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<sup>13</sup> Industry Report, p. 2.

<sup>14</sup> Perry Report, p. 1.

<sup>15</sup> Perry Report, Exhibit 25, “Extract from balance sheet of 31 July 1937.”

<sup>16</sup> Industry Report, pp. 3 – 4.

<sup>17</sup> “*Das Aktienkapital, 80.000 Aktien à Nom. S 125.- betrug am 13. März 1938 S 10.000.000.-. Laut Auskunft der Börsenkammer war die Aktie an diesem Stichtag mit S 300.- zu bewerten, woraus sich ein Wert des Unternehmens am 13. März 1938 mit S 24.000.000.- ergibt.*” Registration form for confiscated assets, dated 15 November 1946, submitted to the Vienna Magistrate District Court (*das Magistratische Bezirksamt für den 3. Bezirk, Wien III*) for the *Brucker Zuckerfabrik Clemens Auer* (the “1946 Registration”), p. 1. The CRT notes that, according to the information supplied by the Vienna Stock Exchange for this report, ÖZAG shares were not actually quoted on the Exchange because only very few were available for trading, the bulk being held firmly.

Prior to the *Anschluss*, Ferdinand Bloch-Bauer, together with ÖZAG's other major shareholders, took steps to protect the company from Nazi control.<sup>18</sup> According to the Perry Report, on 5 March 1938, a Syndicate Agreement was concluded in Zurich, Switzerland, representing 71,246 (89 percent) of the 80,000 shares. This Agreement restricted the sale of ÖZAG shares and the manner of shareholder voting and was designed to prevent the shares from falling under Austro-German control.<sup>19</sup>

Under the Syndicate Agreement, 40,195 shares (slightly over 50 percent of the firm's share capital) were held, on behalf of the shareholders, in the Bank's name and deposited with the Bank. According to the Syndicate Agreement, the Bank was the owner of these shares in its own name and "for a Swiss group" with respect to these shares. As such, the Bank itself was a member of the Syndicate. In the 1956 Ownership Statement to the Restitution Commission, the lawyer acting on behalf of the heirs of ÖZAG's major shareholders, Dr. Gustav Rinesch, specifically addressed the 40,195 shares held in the Bank's name and indicated that they were deposited in Zurich. Specifically, Dr. Rinesch explained that the deposit of the shares in the Bank was taken as a protective measure, which later proved to be ineffective.<sup>20</sup>

According to the Perry Report, the 1956 Ownership Statement, and the Draft Settlement, which was prepared during post-War negotiations between the German aryanizer, the Austrian government, and the heirs of ÖZAG's major shareholders regarding the restitution of the shares, the ownership of the 40,195 shares held in Switzerland in the Bank's name on behalf of the members of the Syndicate was as follows:

- *Graetzsche Familienstiftung* (Graetz Family Foundation) St. Gallen, Switzerland  
(Dr. Bruno Graetz) 16,480
- *Sapafin AG* Chur, Switzerland  
(Otto Pick) 16,500<sup>21</sup>

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<sup>18</sup> Perry Report, pp. 1 – 2.

<sup>19</sup> Perry Report, p. 1. According to Article II of the agreement, the purpose of the Syndicate was "the joint preservation and the execution of the appertaining interests and rights of the member[s] of the *Oesterr. Zucker-Industrie A. G.* as a share-majority, by the joint management of the enterprise through the administration elected by the members of the syndicate, as well as the guarantee of the stable administration and management." Perry Report, Exhibit 2, "Syndicate Voting Agreement," p. 2 (original available only in translation).

<sup>20</sup> "*Diese Deponierung war anfänglich als Schutzmassnahme gedacht, dieser Schutz stellte sich jedoch im weiteren Verlaufe als wirkungslos dar.*" Statement, dated 3 March 1956, submitted by Dr. Gustav Rinesch to the Vienna Restitution Commission, regarding the ownership of ÖZAG shares and in consideration of their confiscation (the "1956 Ownership Statement"), p. 4.

<sup>21</sup> According to the Perry Report, *Sapafin A. G.*, of Chur, Switzerland, was wholly owned by Otto Pick. Of the 16,500 shares held by *Sapafin* at the Bank, 10,000 were held by Pick directly, 4,250 were held by T. E. H. Davis [sic], and 2,250 were held by J. E. Lloyd. The CRT notes that the Perry Report refers to the name "Davis," while other documents, including a statement by Otto Pick, refer to "Davies." Davies and Lloyd were British and, as agents for Pick, held the shares on his behalf. Perry Report, p. 6. In a statement dated 11 January 1940, Otto Pick stated that the 6,500 shares held by Col. J. E. Lloyd and Capt. T. E. H. Davies, both of Liverpool, were deposited at the Bank. In his 11 January 1940 statement, Otto Pick stated that he induced Lloyd and Davies to put the 6,500 shares at the disposal of the *Mercurbank*, and that they were transferred to Vienna at approximately the middle of 1939. Perry Report, Exhibit 21, "Memorandum dated 11 January 1940 by Otto Pick re sale of Brucker shares," (original available only in translation), p. 1.

- Ferdinand Bloch-Bauer and several family members

7,215<sup>22</sup>

The remaining 31,051 ÖZAG shares that were held by Syndicate members were deposited outside Switzerland. Of these, Ferdinand Bloch-Bauer owned 3,300, Gustav Bloch-Bauer 2,335, Otto Pick 3,687, and the Löw family 21,665 shares.<sup>23</sup>

The Syndicate Agreement limited the ability of Syndicate members to dispose of their shares freely. According to Article III of the agreement, no member of the Syndicate could dispose of any Syndicate shares wherever they were held without obtaining prior unanimous consent of all Syndicate members.<sup>24</sup> The agreement stipulated that shareholders were to block their shares held outside the Bank at the place they were held and inform the institution concerned that these shares could be disposed of only with the consent of the Bank. Specifically, Article IV of the agreement, “Blocking of the shares,” states: “For the purpose of the execution of item II) [Purpose of the syndicate], all the shareholders have to block their shares at the place of deposit, by informing the place of deposit concerned, that a disposition of the shares during the period of the syndicate is admissible, only with the consent of the [the Bank].”

According to Article VIII of the Syndicate Agreement, all important decisions must be reached by unanimous consent of the Syndicate members. Article VIII specifically identifies the sale of shares by the Syndicate, the amendment of the Syndicate Agreement, and the anticipated dissolution of the Syndicate Agreement as types of decisions which require unanimous consent of the Syndicate members. Article X of the agreement specifies that the duration of the

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<sup>22</sup> Of the 7,215 shares held by the Bloch-Bauer group, 6,270 were held by Ferdinand Bloch-Bauer, 440 were held by Gustav Bloch-Bauer, 305 were held by Robert Bloch-Bauer, and 200 were held by the Claimant.

<sup>23</sup> According to a memorandum, dated 17 July 1947, the 3,300 shares owned by Ferdinand Bloch-Bauer were deposited at the company’s main offices in Vienna as of 13 March 1939. Perry Report, Exhibit 22, “Memorandum dated 17 July 1947, re shares of Ferdinand Bloch-Bauer.” According to the Perry Report, the shares held by Gustav Bloch-Bauer were deposited in the *Creditanstalt Bankverein* in Vienna. Perry Report, p. 7. The shares held by Gustav Bloch-Bauer in Vienna are severally noted as numbering 2,335 and 2,135. At page 2, the Perry Report indicates that Gustav Bloch-Bauer owned 2,335 shares in Vienna, which also is shown in the translated text of the Syndicate Agreement, while at page 7, it states that he held 2,135 shares in Vienna, which also is the number stated in Dr. Rinesch’s memorandum regarding the disposition of Gustav Bloch-Bauer’s estate and in Gustav Bloch Bauer’s 1938 Census declaration. Perry Report, Exhibit 23, p. 2. See also discussion *infra*, pp. 31 – 32. In the submission filed on behalf of the Pick, Graetz, Bloch-Bauer and Loew interests for recognition of their restitution claim to the company, the number of shares Gustav Bloch-Bauer held, including the 440 shares at the Bank, is given as 2,600. Perry Report, Exhibit 3, p. 2. Given these differences, the CRT has determined that it accepts the translation of the official text of the Syndicate Agreement, which shows the total number of shares held by the Syndicate as 71,246, of which Gustav Bloch-Bauer held 2,335 shares outside Switzerland, as being correct. The 3,687 shares belonging to Otto Pick likewise appear to have been held in Vienna. Perry Report, p. 2. The CRT notes that, according to the Perry Report, the number of Syndicate shares held by the Pick, Bloch-Bauer, Graetz, and Löw families total 71,182, not 71,246, which the Perry Report indicates is the total number of shares held under the Agreement. The documents do not clearly indicate the ownership of the remaining 64 shares. See discussion *supra*, pp. 11 – 12, and *infra*, notes 51 and 87.

<sup>24</sup> Article III of the Agreement states: “Each member of the syndicate loses the right of disposal, hypothecating, encumbrance [sic], or to make arrangements with the shares brought into the syndicate during the period of syndication in any other manner, except without the unanimous decision of the syndicate.” Perry Report, Exhibit 2, p. 2.

Syndicate was until 31 March 1943, with the possibility of prolongation, and specifies that “an earlier dissolution of the Syndicate is permitted only with unanimity.”

### The “Aryanization” of ÖZAG

Paul A. Shapiro and Martin C. Dean explain in their Foreword to the Symposium Proceedings, “Confiscation of Jewish Property in Europe, 1933 - 1945 New Sources and Perspectives,” convened at the Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum (the “Symposium Proceedings”), that the Nazis progressively robbed Jews of their entire means through a combination of special taxes, blocked accounts, and confiscatory measures. “Particularly impressive and equally disturbing is the robbers’ effort to ensure that property confiscation was carried out by ‘legal’ means through a vast array of institutions and organizations set up for this purpose.”<sup>25</sup> In his contribution to the Symposium Proceedings, Gerald D. Feldman links the Nazis’ reliance on “legal” means to Germany’s strong legal tradition that guaranteed and protected property rights and contractual obligations. By distorting existing laws and through the proliferation of new laws, decrees and regulations, the Nazis sought to “legitimize” and “legalize” their despoliation of the Jews.<sup>26</sup> As Peter Hayes summarized in the Symposium Proceedings, “Law established and defined Aryanization. Law made Aryanization a given; for many people it removed the question of the morality or legitimacy of the process.”<sup>27</sup>

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<sup>25</sup> Paul A. Shapiro and Martin C. Dean, “Foreword,” in the Symposium Proceedings, “Confiscation of Jewish Property in Europe, 1933 - 1945 New Sources and Perspectives,” Washington, D.C.: Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum, 2003, p. ii. Paul A. Shapiro is Director of the Center for Advanced Holocaust Studies of the United States Holocaust Memorial Museum. Martin C. Dean is Applied Research Scholar in the Center for Advanced Holocaust Studies of the United States Holocaust Memorial Museum, and formerly served as Senior Historian for the Nazi War Crimes Investigation Unit at Scotland Yard. Dr. Dean is author of *Collaboration in the Holocaust: Crimes of the Local Police in Belorussia and Ukraine, 1941 - 44* (2000) and several articles on Nazi confiscation of Jewish assets. For an overview of looting generally, including measures taken toward blocked accounts and with comments from Raul Hilberg and Avraham Barkai, see *In re Holocaust Victim Assets Litig.*, Plan of Allocation and Distribution of Settlement Proceeds, Vol. II, pp. G 4 – G 5.

<sup>26</sup> Gerald D. Feldman, “Confiscation of Jewish Assets, and the Holocaust,” in the Symposium Proceedings, “Confiscation of Jewish Property in Europe, 1933 - 1945 New Sources and Perspectives,” Washington, D.C.: Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum, 2003, p. 4. Gerald Feldman is Professor of History and Director of the Institute of European Studies at the University of California, Berkeley. He has published a number of books, including *Army, Industry and Labor in Germany, 1914 - 1918* (1966), *The Great Disorder: Politics, Economics, and Society in the German Inflation, 1914 - 1924* (1993), *Hugo Stinnes: Biographie eines Industriellen, 1870 - 1924* (1998), and *Allianz and the German Insurance Business, 1933 - 1945* (2001).

<sup>27</sup> Peter Hayes, “Summary and Conclusions,” in the Symposium Proceedings, “Confiscation of Jewish Property in Europe, 1933 - 1945 New Sources and Perspectives,” Washington, D.C.: Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum, 2003, p. 147. Peter Hayes is Theodore Z. Weiss Professor of Holocaust Studies at Northwestern University. He is author of *Industry and Ideology: IG Farben in the Nazi Era* (1987) and “Arisierung” im Nationalsozialismus: *Volksgemeinschaft, Raub und Gedächtnis* (2000). He is also editor of *Lessons and Legacies III: Memory, Memorialization, and Denial* (1999). Professor Hayes was the 1997-98 J. B. and Maurice C. Shapiro Senior Scholar-in-Residence at the Center for Advanced Holocaust Studies of the United States Holocaust Memorial Museum. He is also a member of the Academic Committee of the United States Holocaust Memorial Council.

The Nazis began the process of aryanizing ÖZAG through means that had the outward appearance of legality. Within days after the *Anschluss*, the Nazis initiated a tax investigation of ÖZAG, and of Ferdinand Bloch-Bauer personally. The tax proceedings were to play a central role in the Nazis' plan to facilitate the aryanization of the company's shares. In his study on the changes of ownership in Austrian industry from 1938 to 1945, prepared under the auspices of the Austrian Historical Commission, Berthold Unfried notes that on 14 March 1938, just two days after the *Anschluss*, the Gestapo came to the firm's main offices, confiscated the register and the books, and ordered that the company's only known Nazi party employee, a man named Malek who was the company's Chief Cashier, be appointed to run the company.<sup>28</sup> According to the Perry Report, the attorneys of Ferdinand Bloch-Bauer, as president of the company, and Viktor Pfeiffer, as director, appeared before the tax authorities on 28 March 1938 and delivered "an oral self indictment against the firm for tax evasion."<sup>29</sup> Despite these efforts, criminal tax proceedings were initiated against the company and its two subsidiaries on 27 April 1938.

The Nazis appointed the 44-year-old civil servant Guido Walcher to audit the firm. Walcher, seeking a position as an accountant or auditor with the state or municipal government, had submitted his resume (the "Resume") to Nazi authorities on 20 April 1938.<sup>30</sup> In his Resume, which was obtained from the Austrian State Archive, Archive of the Republic, by the Claimant's representative and forwarded to the CRT, Walcher described himself as "a descendant of an old Aryan family of civil servants." According to his Resume, from late 1924 until June 1929, Walcher worked at the construction firm of *Julius Berger Tiefbau A. G., Berlin* as supervisor in the construction department (*Baudirektion*) in the firm's offices in Brasnov, Romania. He worked briefly for the same firm as an auditor in its Berlin headquarters, and then was relocated to Teheran, Persia, where he was placed in charge of the office there (*kaufm. Leitung der Direktion*) until the fall of 1931.

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<sup>28</sup> Fritz Weber, Ulrike Felber, Peter Melichar, Markus Priller, Berthold Unfried, *Eigentumsänderungen in der österreichischen Industrie 1938-1945*, Historikerkommission: Vienna, 2002, p. 647, (hereinafter, "Unfried"), available at [http://www.historikerkommission.gv.at/deutsch\\_home.html](http://www.historikerkommission.gv.at/deutsch_home.html) (last viewed 28 September 2004). The Historical Commission was established jointly by the Austrian Federal Chancellor, the Vice-Chancellor, the Speaker of the National Assembly and the Speaker of the Federal Council Parliament in 1998 to investigate and report on the whole complex of expropriations in Austria during the Nazi era and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria. See also Perry Report, p. 5.

<sup>29</sup> The term "self indictment" is taken from the Perry Report, which later states that Ferdinand Bloch-Bauer "accepted" responsibility for certain discrepancies in the books while, at the same time, he and Carl [sic] Bloch-Bauer "wrote to their attorney stating that they had not received illegal payment of any kind." The term "self indictment" was therefore likely an overly literal translation of a German phrase that is more akin to pleading "*nolo contendere*" or declaring Chapter 11 bankruptcy. In a plea of *nolo contendere*, the target of a criminal investigation agrees to submit to the investigation, but does not agree that he/she violated the criminal law. In a Chapter 11 bankruptcy declaration, a business owner declares bankruptcy, acknowledges certain debts, and proposes a plan to meet them in an attempt to retain control of the company. In their declarations, Bloch-Bauer and Pfeiffer did not state any definite amounts of debt owed. They argued that it would take some time to review the books for the years 1930 to 1938, and it was therefore agreed that two separate detailed statements would be filed at the earliest possible date, the first to cover the years 1934 to 1937 and the second to cover the years 1930 to 1934. Subsequently, the company filed four supplemental tax declarations covering 1931 to 1937, which revealed an alleged underpayment of taxes on income amounting to a total of S 2,487,540.42 for that period. Perry Report, p. 4 - 5.

<sup>30</sup> Resume (*Lebenslauf*) of Guido Walcher dated 20 April 1938. Austrian State Archive, Archive of the Republic, ÖStA/AdR, 02/BMI, GA 32.482 (hereinafter the "Walcher Resume"). Obtained by the Claimant's representative and submitted to the CRT (Bates Number 006206). The Resume is attached to this Award as Exhibit E.

According to Walcher, his contract at the firm was cancelled under the pretext that his position was no longer needed (*angeblich wegen Mangel einer weiteren Beschäftigungsmöglichkeit*). In reality, he wrote, he lost his job because he had written articles against the “Jewish gold monetary system” (*das jüdische Gold-Geld-System*) and “international finance Jewry” (*Finanzjudentum*) and circulated them to various organizations, including the League of Nations, and various governmental representatives in Teheran. He attached as proof of his claims a letter dated 1 December 1930 from the (former) office of the Austrian Federal Chancellor to the Austrian Consulate in Teheran. Walcher wrote that, after he lost his job, he returned to Austria and joined the Nazi party. According to Walcher, because he could not find a permanent job, he began working as an accountant on the basis of a certification he had obtained in 1923 following the completion of a course at the Vienna Commercial Academy (*Wiener Handelsakademie*). He wrote, however, that despite repeated attempts, he was not able to be sworn in as a court auditor or to obtain a position as an auditor with the state financial authorities (*Finanzlandesdirektion*).

Walcher’s Resume continues to lay the blame for his unemployment on his publication of anti-Semitic tracts:

Due to my repeated publication – up until the Nazi Party was banned – of essays in then-Aryan newspapers, in which I tried to reveal the economic harm caused by the Jewish financial system (*jüdische Finanzsystem*), I was boycotted by the commercial and industrial communities (*Handels- und Industriekreisen*), which were, after all, almost entirely in Jewish hands, so that I was unable to find work as an accountant. Only during the past three years have I been able to find auditing work with various mid-size Aryan firms, but the pay barely suffices to survive.

My wish is to obtain a permanent position that matches my skills and experience, as an accountant or auditor with the municipal or state government.

While the documents do not indicate when the Nazis officially appointed Walcher to audit ÖZAG, he filed an interim report (the “Interim Report”) on his audit of ÖZAG’s books only nine days later, on 29 April 1938, and only two days after the formal initiation of the criminal tax proceedings.<sup>31</sup> On 20 May 1938, Walcher filed his 24 page final audit report on ÖZAG. In it, Walcher identified alleged discrepancies in the company’s books consisting of false entries, erasures, hidden accounts, double entries for the same items, expenses for which no vouchers existed, illegal payments and undervaluation of the inventory and real estate. Walcher’s report concluded that these irregularities, purportedly amounting to fraud and embezzlement, were carried out by the president, Ferdinand Bloch-Bauer, the manager, Karl Bloch-Bauer, and the director, Viktor Pfeiffer.<sup>32</sup>

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<sup>31</sup> Interim Report on the Audit of the Books of the ÖZAG (*Zwischenbericht zur Überprüfung der Geschäftsbücher der ÖZAG von Guido Walcher*), dated 29 April 1938, *Vermögensverkehrsstelle (VVSt)* Stat. 7881/1, ÖZAG (hereinafter, the “Interim Report”). Obtained from the *Schiedsinstanz für Naturalrestitution* (document B.6.a.1) by the Claimant’s representative and forwarded to the CRT (Bates Numbers 004389-004397).

<sup>32</sup> Unfried, pp. 647 – 648.



According to the Perry Report, the criminal tax investigation allegedly revealed taxable sums that had not been declared in either the company's annual tax returns or in Bloch-Bauer or Pfeiffer's self indictments and which were subject to the normal tax rate. Moreover, because the sums had not been disclosed, they were subject to a tax penalty that could range anywhere from three to nine times the amount of tax due on the unreported sums. The Perry Report states that, at the time of the investigation, rumors spread that the maximum penalty would be assessed, which would have consumed the company's free reserves and impaired the firm's capital with obvious effect on the share price. Ferdinand Bloch-Bauer officially accepted personal responsibility for certain discrepancies, apparently involving bribes to tax officials and others. At the same time, he and his nephew Karl Bloch-Bauer wrote to their attorney stating that they themselves had not received illegal payments of any kind.

As partial payment for Ferdinand Bloch-Bauer's personal tax liability, Nazi authorities confiscated ÖZAG's headquarters at Elisabethstrasse in Vienna and, during the course of the tax proceedings, auctioned them to the German Railroad (*Deutsche Reichsbahn*) for RM 250,000.00. In addition, the 3,300 ÖZAG shares owned by Ferdinand Bloch-Bauer and deposited in the company's main offices in Vienna were later confiscated by the tax authorities to cover his alleged tax debt.<sup>33</sup>

In a letter dated 3 December 1938, the Nazi authorities, apparently concluding that the tax proceedings would induce ÖZAG's shareholders to accept an offer at a fraction of the shares' true value, instructed the *Länderbank Wien* to purchase all available shares of the company and nominated Clemens Auer, a German industrialist from Cologne, and *Martin Brinkmann A.G.* of Hamburg as ultimate purchasers. According to the Perry Report, the first paragraph of the 3 December 1938 letter stated:

In the course of the Aryanization of the above mentioned firm [line redacted in the original] and assets [there] exists a desirable possibility, in consequence of the pending tax evasion penalty proceedings, of acquiring foreign share holdings under favorable conditions.<sup>34</sup>

In a letter dated 5 December 1938, the *Länderbank* directed both Auer and Brinkmann to submit bids for the shares. In its letter to Auer, the *Länderbank* wrote:

Today we received from the *Vermögensverkehrsstelle Wien I* the enclosed copy of an instruction and hasten to inform you accordingly.

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<sup>33</sup> Unfried, p. 651. See *supra*, note 23. In addition, the Vienna Finance Ministry (*Oberfinanzpräsidium Wien*) confiscated approximately 21,000 shares owned by the Löw group to cover that group's tax debt. The Löw family, like the Bloch-Bauer family, was subjected to a tax investigation relating to their agricultural and industrial interests virtually immediately after the *Anschluss*. As early as 18 March 1938, the two partners, Gustav and Wilhelm Löw, filed a "self indictment" with the tax authorities, but also could not avoid criminal proceedings. On 30 June 1938 they were assessed some RM 13 million in taxes and penalties and their property, including their block of 21,665 ÖZAG shares, was later confiscated and sold by the *Vermögensverkehrsstelle*, via the fiscal authorities, to Clemens Auer. Perry Report, p. 8.

<sup>34</sup> Perry Report, p. 5.

The *Vermögensverkehrsstelle* does not want to wait for the conclusion of the Tax Criminal Procedure [sic] instituted against the company, but want [sic] to utilize the status of uncertainty for the aryation and re-patriation of the enterprises, and that without making any allowance, whether and at which rate of exchange it will be possible, to procure a share-majority.

According to your instruction we ask you to send us as soon as possible a fixed-order for the absorption of all shares, which are available, to the limit, which appears appropriate to you.

By order of the *Vermögensverkehrsstelle* we asked Messrs. *Martin Brinkmann A. G.* respectively Senator Hermann Ritter by the same mail to forward his order.

The letter is signed “Yours faithfully, Heil Hitler! *Laenderbank Wien Aktiengesellschaft.*”<sup>35</sup>

In a letter dated 20 December 1938, Auer instructed the *Länderbank* to acquire the shares for his account. He authorized the *Länderbank* to offer RM 70.00 per share or, in the event that more than 20,000 shares (25% of the total) could be obtained, RM 75.00 per share.

### 1. The Breach of the Syndicate Agreement

The Bank notified the Syndicate members of the foregoing offer on 17 December 1938,<sup>36</sup> and the offer failed to obtain the required unanimous agreement of the Syndicate, and consequently can be said to have been rejected by the members of the Syndicate. The rejection was followed by a letter, dated 22 December 1938, from the Bank to the Syndicate members that confirmed that the *Länderbank* had made a firm offer for the shares of 70.00 blocked Reichsmark per share or, if at least 20,000 shares were offered, of 75.00 blocked Reichsmark, and that the offer was valid up to 30 December 1938. The letter also stated that Director Pilgrin of the *Länderbank* had informed the Syndicate that there was considerable discussion favoring the nationalization of the factory and that, in that event, it was doubtful whether a similar offer would be forthcoming.<sup>37</sup> In its 22 December 1938 letter, the Bank wrote that “we were unable to achieve the [required] unanimous agreement of the syndicate during the conferences on the sale, while some members of the syndicate, did not find the Vienna offer worthy of discussion, other members appeared not averse [sic] to a sale in the event of an improvement of the offer.”<sup>38</sup> The letter continued: “Not only in case of these difficulties is the continuation of the syndicate hard, but also because the addresses of several members of the syndicate are no longer known. Because of these difficulties and also

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<sup>35</sup> Perry Report, Exhibit 13, “Letter dated 5 December 1938 to Clemens Auer from Landerbank [sic], Wien, re purchase of shares of Brucker.”

<sup>36</sup> Perry Report, p. 5; Exhibit 16, “Letter dated 22 December 1938 from [the Bank] to syndicate members re offer of Clemens Auer.” In its 22 December 1938 letter, the Bank asked that the Syndicate members notify the Bank in Zurich at the latest by 4:00 pm on 29 December 1938. Perry Report, Exhibit 16.

<sup>37</sup> Perry Report, Exhibit 16.

<sup>38</sup> Perry Report, Exhibit 16.

because the situation has changed since the foundation of the syndicate we should like to propose the syndicate be dissolved according to the decision made at the beginning of March 1938 [the date the Syndicate Agreement was concluded]. If we have not received information to the contrary by 15 January 1939 we shall assume your approval.”<sup>39</sup>

While the records do not indicate whether the Bank received responses to this letter, other documents indicate that the Bank did not wait until 15 January 1939 before permitting the sale of Syndicate shares to Auer. According to the 1956 Ownership Statement, on 30 December 1938, the *Länderbank* informed Auer that it had been able to purchase for him 26,480 shares of ÖZAG that had been deposited at the Bank, at a purchase price of RM 75.00 per share, as well as an additional 10,567 shares that were deposited at the *Länderbank*, for a total of 37,047 shares.<sup>40</sup> In the same letter, the *Länderbank* informed Auer that it had a firm offer for an additional 3,300 shares, which brought Auer’s holdings to 40,347 shares and secured for him a majority holding.<sup>41</sup> The 1956 Ownership Statement notes that Auer himself, in handwritten notes on the *Länderbank*’s letter, indicated that of the 26,480 shares that he purchased from the Bank, 16,480 shares had been held by the Graetz family foundation and 10,000 had been held by Otto Pick. Of the 10,567 remaining shares, 6,500 shares were identified by the word “Liverpool,” while an additional 3,687 were identified as having been owned by Otto Pick.<sup>42</sup>

These transactions are reflected in a letter dated 13 February 1940 from the *Länderbank* to Auer, in which the *Länderbank* provided a listing of ÖZAG shares acquired by Auer for purposes of obtaining “proof of aryan ownership” (*Ariernachweis*).<sup>43</sup> According to this letter, Auer purchased 26,480 shares of ÖZAG from the Bank in Zurich on 30 December 1938 for RM 75.00 each. According to the Perry Report, these shares consisted of the 10,000 shares held by the Bank directly on behalf of *Sapafin A.G.*, which in turn was wholly owned by Otto Pick, and the 16,480 shares held by the Bank on behalf of the Graetz family.<sup>44</sup> The Perry Report goes on to

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<sup>39</sup> Perry Report, Exhibit 16.

<sup>40</sup> The additional 10,567 shares included 6,500 shares held by Lloyd and Davies on Pick’s behalf and, according to the Perry Report, were held at the Bank, not in Vienna. *See supra*, note 21. The Syndicate Agreement also indicates that 40,195 shares were held in the Bank’s name and deposited at the Bank. This figure apparently includes the 6,500 shares held by Lloyd and Davies on Pick’s behalf.

<sup>41</sup> 1956 Ownership Statement, pp. 9 - 10.

<sup>42</sup> 1956 Ownership Statement, p. 10. Auer did not indicate the provenance of the remaining 380 shares.

<sup>43</sup> Perry Report, Exhibit 17, “Letter dated 13 February 1940 from Landerbank [sic], Wien to Clemens Auer, re shares purchased for Auer.” According to Unfried, in 1939, Auer attempted to circumvent Nazi authorities in order to avoid paying aryanization tax on the ÖZAG shares he acquired. Auer maintained that, because he obtained the shares from a Swiss bank, they were not subject to an aryanization tax. The authorities maintained that the shares were “Jewish” shares, even if they were sold by a Swiss bank. According to Unfried, the matter was settled in a conference between Auer and Nazi authorities in February 1939, and Auer paid the taxes on the disputed shares. Unfried, p. 653. It appears that this letter was obtained in connection with that dispute. Though it appears anomalous that, if the dispute had been settled in February 1939 as Unfried contends, the *Länderbank* would a year later seek to support Auer’s contention that the shares he bought from the Bank in Zurich were “aryan,” it may be that it was provided in connection with the *Vermögenverkehrsstelle*’s offer to cancel the tax upon submission of proof of Aryan ownership. *See infra* note 55. The original document upon which Unfried based his statement about the resolution of the dispute is not available to the CRT.

<sup>44</sup> Perry Report, p. 6.

say that, pursuant to the December 1938 offer, a total of 36,667 shares were transferred from the Bank to the *Länderbank*, including 6,500 shares held by Davies and Lloyd that were deposited with the Bank as part of *Sapafin* and as Pick's agents and that were also sold on 30 December 1938 to Clemens Auer through the *Länderbank* for RM 75.00 per share. The Perry Report states that the proceeds of the sale of these 6,500 shares were credited by the *Länderbank* to the debt that Pick allegedly owed it.<sup>45</sup> The Perry Report also indicates that Pick's remaining 3,687 shares were sold to the *Länderbank* on 31 December 1938 for RM 75.00 each and the proceeds credited to Pick's alleged bank debt.<sup>46</sup>

With regard to all the shares purchased by Auer in December 1938 that were within the control of the Bank, there are no records to indicate that the Bank obtained the necessary unanimous consent of the shareholders before agreeing to sell the shares to Auer.

The remaining Syndicate shares were sold to Auer after 15 January 1939. According to the Perry Report, 7,215 shares were held in Zurich by the Bank on behalf of Ferdinand Bloch-Bauer (6,270 shares), Gustav Bloch-Bauer (440 shares), Robert Bloch-Bauer (305 shares) and Maria Altmann (the Claimant) (200 shares) and were sold to Auer on 28 June 1939 through the *Länderbank* for RM 83.33 per share.<sup>47</sup> Both the Perry Report and the 13 February 1940 letter indicate that on 28 August 1939, Auer purchased an additional 24,965 shares from the Vienna Finance Office (*Finanzamt für Verkehrssteuern, Wien*) for RM 90.00 per share, including the 21,665 shares owned by the Löw group and the 3,300 shares owned by Ferdinand Bloch-Bauer, all of which had been held in Vienna and had been seized on 31 March 1939 pursuant to orders of the Finance Office, Vienna in connection with ongoing tax proceedings.<sup>48</sup> Gustav Bloch-Bauer's remaining shares had been deposited in the *Creditanstalt Bankverein* in Vienna and were seized pursuant to an order of the Finance Office dated 16 June 1939 in connection with the flight tax assessed against Gustav's widow, Theresia Bloch-Bauer.<sup>49</sup> According to the Perry Report, these shares were sold to Clemens Auer for RM 92.00 per share on 13 October 1939.<sup>50</sup>

In summary, according to the Industry Report, Clemens Auer acquired, from December 1938 to October 1939, 78,968 shares of ÖZAG (98.7 percent of the total) for RM 6.5 million, or at an

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<sup>45</sup> The Perry Report details the sale of these shares in a section devoted to the treatment of shares owned by Otto Pick. Perry Report, p. 6. The 13 February 1940 letter indicates that the shares held by Davies and Lloyd were sold on 31 December 1938, and incorrectly indicates that Davies held 2,450 shares, rather than the 4,250 that he actually held. The 13 February 1940 letter lists these shares as having come from "aryan" previous ownership. Perry Report, Exhibit 17, p. 1.

<sup>46</sup> Perry Report, p. 7.

<sup>47</sup> Perry Report, pp. 7 – 8.

<sup>48</sup> Perry Report, pp. 7 – 8; Exhibit 17, p. 1; Exhibit 22. The 13 February 1940 letter from the *Länderbank* lists the 3,300 block of shares twice – once as having been sold on 21 December 1938 by Ferdinand Bloch-Bauer, and once as having been sold, together with 21,665 shares belonging to the Löw group, on 28 August 1939 by the Finance Office of Vienna (*Finanzamt f. Verkehrssteuern, Wien* [sic]). Elsewhere in the Exhibits to the Perry Report and in the Perry Report itself, the tax authorities concerned are properly described as the *Oberfinanzpraesidium*.

<sup>49</sup> See *supra*, note 12.

<sup>50</sup> Perry Report, p. 7.

average price per share of about RM 82.00.<sup>51</sup> After his purchase, Auer transformed the corporation into a sole proprietorship and renamed it *Brucker Zuckerfabrik Clemens Auer* (“*Brucker Zucker*”).

## 2. Post-Aryanization

According to the 1956 Ownership Statement, after Auer acquired ÖZAG, he attempted to have it declared “aryanized” as soon as possible, so that he could replace the administrators that the Nazis had put in place at the company. Moreover, Auer, in an effort to avoid having to pay aryanization tax (*Arisierungsabgabe*), attempted to characterize the previous ownership of the shares as non-Jewish.<sup>52</sup> The 1956 Ownership Statement notes that Auer maintained he had acquired a large block of the shares from the Bank, and so these were not subject to aryanization tax because the previous owner (the Bank) was not Jewish. This assertion met with skepticism from Nazi officials at the time. According to documents from the Property Control Office cited by the 1956 Ownership Statement, a Nazi assessor named Keune at the Property Control Office remarked that Auer’s position was doubtful and that, according to his experience, Swiss banks usually represented foreign Jews or Jews who had fled in such transactions, even in those situations in which the bank itself appears as the seller.<sup>53</sup> In a letter to the head of the

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<sup>51</sup> According to page 1 of the *Länderbank*’s letter, Auer purchased 69,641 ÖZAG shares from December 1938 to September 1939. The letter indicates that Auer may have acquired additional shares. Furthermore, this total appears to double count some shares. Perry Report, Exhibit 17, p. 1. *See also supra*, note 48. The total cited on page 1 of Exhibit 17 derives from a listing that attempts to divide Auer’s ÖZAG shares acquisitions according to whether they were originally “Aryan” or “non-Aryan”-owned. On page 2 of the same Exhibit, Auer is reported to have acquired a total of 78,968 shares at an average price of RM 82.18. This number is consistent with the numbers reported in the Industry Report, which indicates that Auer obtained the shares as follows: A block of 33,695 shares (16,480 from Graetz; 10,000 from Pick; 7,200 from the Bloch-Bauers [sic]) for a consideration of approximately RM 2,500,000.00 in “blocked” marks (average price per share RM 75.00); 3,687 shares owned by Pick for RM 276,525.00 (average price per share RM 75.00); 6,500 shares held by Lloyd and Davies as agents for Pick for RM 486,525.00, paid into a blocked account (average price per share RM 75.00); an additional 2,100 shares of the Bloch-Bauer block from the German Ministry of Finance, which had confiscated the shares in connection with the tax proceedings, for RM 193,200.00 (average price per share RM 92.00); the Löw block of 21,665 shares and the remaining 3,350 shares of the Bloch-Bauer block were confiscated by the German tax authorities in connection with criminal tax evasion proceedings against the owners and their respective business interests, which were then sold to Auer for RM 2,246,850.00 (average price per share RM 90.00); and the Patzenhofer block of 4,448 shares for RM 400,320.00 (average price per share RM 92.00). According to the Perry Report, in this transaction – the last large acquisition by Auer made in October 1939 – considerable pressure was exerted on the seller. Auer also obtained miscellaneous smaller blocks of shares amounting to 3,538 shares at different prices and from unknown sources. Industry Report, pp. 4 – 7; Perry Report, Exhibit 17. The CRT notes that the numbers of shares per shareholder provided in the Industry Report vary slightly from the number of shares attributed to the various Syndicate members in the Perry Report and Draft Settlement.

<sup>52</sup> The aryanization tax was that share of the “windfall profit” that had accrued to the aryanizer through acquisition of assets at severely depressed prices that the Nazi authorities arrogated to themselves. The *Vermögensverkehrsstelle* in many cases would routinely calculate the so-called basic value (*Sachwert*), which generally was a fraction of the real value of the asset to be aryanized, and the transaction value (*Verkehrswert*), which generally was appreciably higher, though still below normal market values. The aryanizer would acquire the asset at the *Sachwert* and pay the authorities the aryanization tax, which was the difference between the *Verkehrswert* and the *Sachwert*. The calculations, as well as the eventual payment, were heavily influenced by who the aryanizer was and what connections he/she could bring to bear.

<sup>53</sup> “*Auer behauptet nach wie vor, dass von den Schweizer Aktien der grösste Teil von einer arischen Bank gekauft sei. Ich halte es für sehr zweifelhaft, und bin der Meinung, dass diese Frage genau geprüft werden muss. Im*

*Vermögensverkehrsstelle*, State Commissioner (*Staatskommissar*) Raffelsberger, Keune wrote that Auer was trying to assert that only 6,500 of the total shares that he purchased were of Jewish origin. These 6,500 shares, according to Keune, were those of the Liverpool trustees which belonged to the Pick interests.<sup>54</sup> According to the 1956 Partial Decision, the Nazi authorities determined that these 6,500 shares, together with the remaining shares obtained from the Syndicate members, were Jewish property, and were therefore subject to aryanization tax. In its Partial Decision, the Restitution Commission wrote that the two Englishmen who appeared as the sellers were “only trustees of the *Sapafin AG Chur*, whose ownership of 16,500 shares in 1938 is demonstrated in [various attachments].”<sup>55</sup> Ultimately, Auer was charged RM 292,029.00 in aryanization tax, of which he paid only half, the other half eventually being forgiven.<sup>56</sup>

According to the Perry Report, Auer financed his share purchases through four bank loans. Auer paid one of the loans by liquidating two of the company’s subsidiaries. The remaining three bank loans, which totaled RM 5,443,939.00, were charged as liabilities of the firm. The firm’s opening balance sheet, dated 1 January 1940, reflects these charges and shows the firm’s balance sheet value to be RM 16,508,479.80.<sup>57</sup> The Perry Report notes that the balance sheet indicates the capital of the firm as RM 6,191,708.80 as against the share capital of RM 6,666,666.66,<sup>58</sup> but that unobligated reserves were sufficient to make up the capital account impairment.<sup>59</sup> On 31 March 1944, Auer, apparently anticipating the Nazis’ ultimate defeat, and in an attempt to camouflage his interest in the firm, transformed the sole proprietorship into a limited partnership. Karl Rigal, an Austrian sugar factory manager, became the active partner with a contribution of RM 4,610,000.00. The reduction from the initial capital of 1940 was explained as the result of accumulated net losses and special depreciation charges during the years 1940 to 1944. The

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*allgemeinen pflegen Schweizer Banken nur als Vermittler für jüdische Transaktionen aufzutreten.’ ... ‘Zu Punkt 1) bemerke ich, dass nach meinen Erfahrungen die Schweizer Banken gewöhnlich derartige Transaktionen für geflüchtete oder ausländische Juden vermitteln. Dies gilt selbst dann, wenn sie nach aussen hin als Verkäufer im eigenen Namen auftreten.’”* 1956 Ownership Statement, p. 14 (citing Volume III, pp. 179, 184, Assessor Keune to the Industry Division of the Property Control Office).

<sup>54</sup> “*Es sind dies die zur Interessengruppe Ing. Pick gehörigen Aktien der Liverpools Treuhänder.*” 1956 Ownership Statement, p. 14.

<sup>55</sup> “*Die Aktien wurden von der Vermögensverkehrsstelle als jüdischer Besitz behandelt. ... Die als Verkäufer auftretenden beiden Engländer waren nur Treuhänder der Sapafin AG Chur. Ihr Besitz von 16.500 Aktien im Jahre 1938 ist durch die Beilagen L4 und L5, sowie durch die Beilage 4 erwiesen.*” Partial Decision, p. 18. The referenced attachments are not available to the CRT. In its Partial Decision, the Restitution Commission noted that the Property Control Office (*i.e.*, the *Vermögensverkehrsstelle*) presumed that the shares had been in Jewish ownership, but was not entirely clear of their origins. Nevertheless, they were treated as Jewish-owned shares, and were subjected to aryanization tax. The Partial Decision notes that the *Vermögensverkehrsstelle* offered to cancel the aryanization tax for these shares if Auer could provide documentation to prove that the shares did not come from Jewish ownership (as defined by the Nuremberg laws), and that Auer did not do so, even though he would have saved a substantial sum if he had done so. (“*Diesen Nachweis hat Clemens Auer nicht erbracht, obwohl er dadurch einen namhaften Betrag an Arisierungsaufgabe erspart hätte.*”) Partial Decision, pp. 18 – 19.

<sup>56</sup> 1946 Registration, p. 3. There is no indication that the canceling of the second installment was due to a reclassification of any of the shares as “non-Jewish.”

<sup>57</sup> Perry Report, Exhibit 26, “Extract from balance sheet of 1 January 1940.”

<sup>58</sup> The CRT notes that this amount is equal to S 10,000,000.00, which is the value of the share capital reported in the firm’s 31 July 1937 balance sheet.

<sup>59</sup> Perry Report, p. 9.

change of ownership was merely formal: according to the Industry Report, in March 1945, Auer still owned nearly 100 percent of the capital of *Brucker Zucker*.<sup>60</sup>

### 3. Resolution of the Tax Proceedings

Though the tax investigation had dragged on through 1938 and early 1939, its settlement terms were established reasonably quickly after the completion of ÖZAG's aryianization. According to the Perry Report, a decision on the tax suit was reached on 17 April 1939, which set a schedule for the payment of certain taxes. The tax suit was later reopened and an agreement was concluded on 8 November 1939 in Berlin with the "Reichs Finance President" [sic]. The settlement of 17 April 1939 was amended such that a tax payment of RM 806,000.00 was shifted from the firm to Ferdinand Bloch-Bauer, personally. It is probably no coincidence that this new agreement shifting RM 806,000.00 tax obligation from ÖZAG to its former Jewish owner took place within weeks after the aryianizer completed his acquisition of the company. In addition, a tax penalty of RM 180,000.00 against one of the firm's subsidiaries was forgiven. In this way, the original tax assessed against *Brucker Zucker*, which amounted to RM 1,836,700.00, was reduced by a total of RM 986,000.00. The remaining outstanding tax levied against *Brucker Zucker* was RM 850,700.00. The agreement further provided that payments already made were to be deducted from this figure.<sup>61</sup>

In evaluating the effect of the tax proceedings on the value of ÖZAG, Unfried maintains that, although the contents of the tax allegations are "not free of elements of National Socialist jargon,"<sup>62</sup> they were not constructed solely on the basis of Nazi prejudices. Though he acknowledges that no industrialist who was classified as "Jewish" could count on a fair criminal tax proceeding in 1938 and that the proceedings were undoubtedly used to force a decrease in the value of the shares, thereby making aryianization possible, Unfried also concludes that "actual punishable economic offenses" formed the basis for these proceedings, and that these negatively affected the value of the company, regardless of the fact that its owners were Jewish.<sup>63</sup>

A more accurate characterization of the tax proceedings would separate the investigation, which was clearly used by the Nazis to force the Jewish shareholders to sell their shares at low prices, and the conclusion of the proceedings, which, in terms of the size of the tax ultimately assessed against the company, was relatively insignificant and could not have had a significant effect on

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<sup>60</sup> Unfried, p. 654.

<sup>61</sup> Perry Report, p. 4. The CRT notes that Ferdinand Bloch-Bauer contested the legality of the tax proceedings and the finding holding him personally responsible for the firm's financial irregularities. In his penultimate will, dated 8 October 1942, which was submitted to the CRT by the Claimant's representative, Ferdinand wrote while in exile in Zurich: "In an illegal manner, a tax penalty of one million Reichsmark was imposed and my entire estate in Vienna was confiscated and sold off." Penultimate will of Ferdinand Bloch-Bauer, 8 October 1942.

<sup>62</sup> Unfried, p. 655.

<sup>63</sup> "Obwohl sie von Elementen des NS-Jargons nicht frei sind, scheint der Sachverhalt doch nicht bloss von NS-Vorurteilen konstruiert. Es ist klar, dass ein als "jüdisch" qualifizierter Industrieller im Jahre 1938 auf kein faires Strafverfahren rechnen konnte. Das Verfahren wurde zweifellos dazu verwendet, den Kurs der Aktien zu drücken und damit die Arisierung zu ermöglichen. Ebenso unzweifelhaft aber lagen diesem Strafverfahren real begangene strafbare Wirtschaftsdelikte zugrunde, die den Wert der Firma unabhängig davon belasteten, dass ihre Eigentümer "Juden" waren." Unfried, p. 655 - 656.

the true value of the company or its shares. With regard to the motivation behind the investigation itself, it appears that, in reaching his conclusions, Unfried did not consider Walcher's Resume, in which Walcher revealed himself to be an avowed and vocal anti-Semite and early and active member of the Nazi Party. As noted above, in his Resume, Walcher described how, long before either the *Anschluss* or the Nazi rise to power in Germany, he had drafted and circulated anti-Semitic tracts to various organizations, including the League of Nations and various governmental representatives, and cited a letter dated 1 December 1930 from the (former) office of the Austrian Federal Chancellor to the Austrian Consulate in Teheran, which took note of his writings. By documenting his inability to be sworn in by the courts as an auditor or to secure a permanent position as auditor, Walcher's Resume testifies to his lack of competence to perform an audit, especially an audit of a company the size of ÖZAG, regardless of his racist sympathies. Yet despite his inexperience, Walcher submitted his Interim Report on ÖZAG's books *only nine days* after he submitted his Resume to the Nazis seeking a position as auditor for the state or local government. The fact that the Nazis appointed Walcher, who must have been well-known in Austrian auditing and accounting circles as an incompetent anti-Semite, to perform the audit on ÖZAG reduces the tax investigation to the level of farce from the outset. Given this context, Unfried's concession that no industrialist who was classified as "Jewish" could count on a fair criminal tax proceeding in 1938 is clearly an understatement of sizable magnitude.

Even if the proceedings had not been based upon an audit report written by a virulent anti-Semite, Unfried's argument—that the actual punishable tax offenses, which were the subject of the investigation, significantly affected the value of the company—is specious. The CRT notes that the tax ultimately assessed against the company, RM 850,700.00, is minor in relation to a company with 80,000 shares and a value of over RM 16 million (as reported in the firm's 1 January 1940 balance sheet). In fact, this amount represents only 5.15 percent of the total value of the company and represents only RM 10.63 per share. Moreover, a substantial amount of the original tax assessed was shifted to the former Jewish owner, as opposed to being levied in full upon the company shortly after the aryanization process was complete.

As Perry notes, the various audits of the ÖZAG's books revealed irregularities which may have justified the tax proceedings, however "it appears that *the investigation was unduly severe* and that *the pending suit was used as a means to [force] the shareholders to sell at low figures*" [emphasis added].<sup>64</sup> Indeed, the letter from the *Vermögensverkehrsstelle* to the *Länderbank* dated 3 December 1938, which the Perry Report cites, makes quite explicit the Nazis' intent to use the tax proceedings to pressure the shareholders to sell.<sup>65</sup> The fact that the proceedings resulted in a relatively minor tax against the company indicates that the true value of the shares, despite Unfried's suggestions to the contrary, was not significantly affected by them.

#### 4. Proceeds of the Sale

With regard to the proceeds of the sale, the Perry Report states that at least 10,187 shares of Otto Pick's holdings were absorbed by the *Länderbank* to offset debt allegedly owed by Pick to that

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<sup>64</sup> Perry Report, p. 12.

<sup>65</sup> Perry Report, pp. 3 – 5.



bank, while the proceeds of a further 10,000 shares belonging to Pick were paid into a blocked account (*Aktien-Sperrkonto*) and later released to the Guarantee Trust Company of London, the United Kingdom, and converted to “\$28,000.00.” Similarly, the proceeds of Ferdinand Bloch-Bauer’s 6,270 shares held in Zurich were paid into a blocked account at the Dresdner Bank, Berlin for investment in German Treasury bonds and later transferred to Lowenherz, Amsterdam for the “free use of the seller.” The proceeds of the sale of 440 shares held by Gustav Bloch-Bauer and of the smaller holdings of Robert Bloch-Bauer and Maria Altmann (305 and 200 shares respectively) were handled in the same manner.<sup>66</sup> The CRT notes that these are the only references to such a release of blocked proceeds. Neither the Perry Report nor the other documents indicate whether these proceeds actually were released to the share owners, their heirs or nominees, although there is no reason to conclude that they did not receive the proceeds

### Restitution of ÖZAG in the Context of Post-War Austrian Restitution Practices

Because the CRT concludes that the restitution received from Austria after the War did not adequately reflect the true value of the ÖZAG shares held by Claimant and her relatives, it is useful to examine the post-War Austrian restitution practices. According to Bruce F. Pauley’s essay on Austria in the book, *The World Reacts to the Holocaust*, anti-Judaism and anti-Semitism continued to exist in post-War Austria, despite the fact that Austria’s pre-War Jewish population had been virtually eliminated.<sup>67</sup> Pauley writes that, probably in response to Austrian popular sentiment, the Austrian government, at least until the 1990s, had been less than anxious to compensate those former Austrian Jews who lost their homes, jobs, and property after the *Anschluss*. Immediately after the War, the popular fiction that Austria had been Nazi Germany’s “first victim” provided a convenient basis for the rejection of any thought that Austrian Jews had been persecuted by other Austrians.<sup>68</sup> This also allowed the Austrian government to reject responsibility for what had happened during the *Anschluss*, arguing that Austria had been an “occupied” country and making it eligible for reparations from Germany. At the same time, the German post-War government refused to accept responsibility for illegal or violent acts committed against Austrian Jews by Austrian citizens.<sup>69</sup>

Pauley writes that it is unlikely that political legitimacy was the only reason that the Austrian government rejected responsibility for Jewish property losses, which, according to Nazi-

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<sup>66</sup> Perry Report, pp. 6 - 7.

<sup>67</sup> Bruce F. Pauley, *Austria*, in *THE WORLD REACTS TO THE HOLOCAUST*, (David S. Wyman), Baltimore and London: The Johns Hopkins University Press, 1996, (hereinafter, “Pauley”), p. 493. According to Pauley, on the eve of the *Anschluss*, 185,000 Jews (not counting the 34,500 classified as Jews by the Nazis in the Nuremberg Laws of 1935) lived in Austria, among whom just under 170,000 lived in Vienna. Shortly after the War, the country’s Jewish population was little more than 11,000. In the mid-1990s, approximately 15,000 Jews lived in Vienna. At most, only 12,000 to 15,000 Jewish émigrés ever returned to Austria. Pauley, pp. 492 – 493. Bruce F. Pauley is a professor of history at the University of Central Florida. He is the author of *Hitler and the Forgotten Nazis: A History of Austrian National Socialism* and *From Prejudice to Persecution: A History of Austrian Anti-Semitism*.

<sup>68</sup> Pauley notes that a victims’ welfare law enacted by the Austrian parliament in 1945 and amended twenty-eight times thereafter at first recognized only members of the wartime Austrian resistance movement as victims. Only in 1961 were Jews recognized as victims, and then only if they had remained hidden in Austria during the War under “inhumane” circumstances. Not until 1969 were Jewish refugees recognized as victims. Pauley, p. 495.

<sup>69</sup> Pauley, p. 496.

compiled statistics, had amounted to the equivalent of US \$1.2 billion. Rather, the new owners had no desire to return the property to its original owners and exerted “enormous pressure” on the Austrian government to limit any potential restitution.<sup>70</sup> The first set of restitution laws was promulgated under considerable pressure from the Western Allies, in particular the United States. It took until 1953, again following pressure from the United States Department of State, the British Foreign Office, and world public opinion, for the Austrian government to consent to negotiate with the Committee for Jewish Claims on Austria, a coalition of Jewish communities in Austria and twenty-three international organizations. Even then, actual decisions were deliberately delayed until after the Austrian Treaty was signed in 1955 and direct influence of the Western Allies was terminated. Furthermore, the Austrians agreed only to a “moral, not a legal responsibility” for making compensation, a position it continued to hold into the 1990s.<sup>71</sup> According to Pauley, after nine years of negotiations, the Austrian government settled on a sum of US \$22 million for Jewish survivors, plus ten percent for administrative costs. For most of the post-War period, “[l]eft completely uncompensated were the almost total loss of income the Jewish refugees had suffered during the first two or three years following their departure from Austria, interrupted educations, lost promotions, illnesses induced by the persecutions, and, of course, the lives of sixty-five thousand murdered Jews.”<sup>72</sup>

The Austrian Historical Commission, which was established jointly by the Austrian Federal Chancellor, the Vice-Chancellor, the Speaker of the National Assembly and the Speaker of the Federal Council in 1998 to investigate and report on the whole complex of expropriations in Austria during the Nazi era and on restitution and/or compensation (including other financial or social benefits) after 1945 by the Republic of Austria, acknowledged the general reluctance to deal positively with the restitution of property that had been looted from and by private persons. The Austrian Historical Commission noted that without the pressure of the Western Allies, especially the United States, even less would have been done.<sup>73</sup> The 2003 Press Summary of the Final Report identifies the main problem with restitution as “the Austrian refusal to accept any (co-) responsibility for Nazi crimes and their consequences.”<sup>74</sup> It further notes that the legal structure of the Austrian restitution laws necessarily put the victim in the position of plaintiff, applicant and complainant and concludes that “even if this may have been an unavoidable

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Pauley, pp. 496 – 497. For a general discussion of Austria’s restitution and compensation programs through 2000, see *In re Holocaust Victim Assets Litig.*, Plan of Allocation and Distribution of Settlement Proceeds, Vol. II, pp. E 73 – E 76.

<sup>73</sup> See generally, Press Summary, Final Report, Historical Commission, (the “Final Report”) at [http://www.historikerkommission.gv.at/english\\_home.html](http://www.historikerkommission.gv.at/english_home.html) (last viewed 28 September 2004). For an example of extreme injustice in a post-War settlement, see *Schiedsinstanz für Naturalrestitution, Entscheidungsnummer 3/2003*, at <http://www.nationalfonds.org/aef/english/index.htm> (last viewed 28 September 2004). In that instance, the Arbitration Tribunal reviewed a claim lodged with the Austrian General Settlement Fund that had been initiated in 1948 by the heirs of real property owners. In 1957, the heirs agreed to a settlement of their claim. In the settlement, the heirs received S 618,000.00, which was approximately ten percent of the actual value of the property. The Arbitration Tribunal unanimously concluded that the settlement reached in 1957 constituted “extreme injustice.” (“*Die Schiedsinstanz gelangt daher einstimmig zu der Ansicht, dass der Vergleich zwischen den damaligen RückstellungswerberInnen und der Republik Österreich extreme ungerecht war.*”)

<sup>74</sup> Final Report, p. 16.

technical necessity after this kind of upheaval, it meant that as a result the victims had to suffer serious disadvantageous consequences.”<sup>75</sup> For the victims of Nazism who had escaped with their lives and who wanted their plundered possessions restored to rebuild their existence, it was extremely difficult to orient themselves under Austria’s complicated restitution laws. The Final Report specifically criticizes the judgments of the Restitution Commissions, acting under the terms of the Third Restitution Law: “In the early phase of restitution proceedings (late 1947 to early 1948) rulings tended to interpret the legal provisions in favo[u]r of the applicant for restitution, but by the early 1950s an increasingly restrictive attitude to the victims of Nazism is evident.”<sup>76</sup>

The generally hostile climate faced by exiled Austrian Jews claiming restitution in the 1950s was, in the case of the former shareholders of ÖZAG, even more specific. According to a study commissioned by the Historical Commission regarding the role of the *Finanzprokurator* in the restitution process, an official at the *Prokurator*, referred to in the report as “R. G.,” worked in the *Prokurator* prior to 1938. At that time, he was transferred to the main Finance Office (*Oberfinanzpräsident*) in Vienna, where he was involved in the confiscation of Jewish-owned assets. R. G., who was a member of the Nazi Party, was dismissed from public service on 6 June 1945 as part of the denazification of Austria’s public sector. In 1947, however, he was reclassified as “less guilty” (*minderbelastet*) and on 1 November 1948 he was rehired to join the *Finanzprokurator*. In 1950 he became director of his department, and in 1956 was assigned responsibility for the restitution proceedings in the matter of ÖZAG. The study notes that, “in this way, R. G. is a prime example in the area of restitution of the continuity between confiscation and restitution.”<sup>77</sup>

Against this backdrop, the CRT examines the specific restitution proceedings relating to ÖZAG. On 15 November 1946, the public administrator (*öffentliche Verwalter*) appointed by the British Military Government for Vienna filed the required form of registration of confiscated assets (*Anmeldung entzogenen Vermögens*) on behalf of *Brucker Zucker*. The 1946 Registration identifies *Brucker Zucker* as the successor in interest of ÖZAG. It also identifies the owners of the shares as of 13 March 1938, details the acquisition of the firm by Auer, and lists the citizenship and domicile of potential restitution claimants as of the date of registration.

Because ÖZAG had its headquarters in the Western Zone and its factory in the Soviet Zone of occupation, the restitution proceedings themselves were held in abeyance until the signing of the Austrian State Treaty in 1955, which restored full sovereignty to the Republic of Austria. Until that time, restitution proceedings were stalemated, as the Western Allies, especially the United States, considered Auer’s acquisition of ÖZAG invalid because it took place under duress and without adequate compensation, and therefore was fully restitutable to its previous owners. By contrast, the Soviets, who under the Allied agreement could claim German property in their Zone as reparations, viewed the Bruck factory as properly German-owned. Accordingly, they claimed rights to the company, and, on 16 April 1946, dismissed the public administrators appointed by

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<sup>75</sup> *Id.*

<sup>76</sup> Final Report, pp. 17 - 18.

<sup>77</sup> “R.G. ist damit im Bereich des Rückstellungswesens ein herausragendes Beispiel an Kontinuität zwischen Entziehung und Rückstellung.” Böhmer, p. 21.

the British and appointed a Communist, Anton Krischan, instead. This appointment was rejected by the Superior District Court of Vienna, which reinstated the previous administrators. As the Soviets ignored the Court decision, the administrators in fact could do little but administer the main offices.<sup>78</sup> In early October 1947, Dr. Rinesch was advised by a Soviet representative that the Soviet Government considered the factory at Bruck to be a German external asset and that, unless it could be proven that direct physical force had been used to acquire the shares or that shareholders had received no compensation whatsoever, the Soviet Government had no further interest in restitution claims.<sup>79</sup>

According to the documentation, the restitution proceedings were originally conducted pursuant to Austria's Third Law of Restitution (*Drittes Rückstellungsgesetz*). Dr. Rinesch acted as lawyer for the heirs of the major shareholders (the "Restitution Claimants"), with the exception of the Löw group.<sup>80</sup> Consistent with an interim settlement reached on 16 October 1956, all shares of the former ÖZAG were returned to their former owners or heirs. In October 1957 ÖZAG was formally reestablished and the points yet to be settled in the restitution case, relating mainly to the tax penalties and restitution of real property, were conducted under the Fifth Law of Restitution (*Fünftes Rückstellungsgesetz*).<sup>81</sup> During the proceedings, the Restitution Claimants argued that the criminal tax proceedings initiated against ÖZAG were illegal because Bloch-Bauer and Pfeiffer had come forward and indicted themselves prior to the tax investigation.<sup>82</sup> The Restitution Claimants also argued that the shareholders' legal rights to protection from such a suit were denied them because they were Jewish and that the suit was instituted and pursued so as to force them to sell their shares at artificially deflated prices. In these proceedings the Restitution Claimants were opposed by the Republic of Austria, which was eventually represented by the Revenue Department of the Austrian Attorney General's Office ("*Finanzprokuratur*").<sup>83</sup>

Unfried notes that the joining of the *Finanzprokuratur* in the proceedings led to a definitive settlement in January 1958: "In view of the *Finanzprokuratur*'s entry, the representative of the

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<sup>78</sup> *Id.*; Perry Report, p.10 and Exhibit 1, "Extracts from the Commercial Register."

<sup>79</sup> Perry Report, p. 11.

<sup>80</sup> According to the 1956 Ownership Statement and the Draft Settlement, Dr. Rinesch represented the heirs of Ferdinand Bloch-Bauer and Gustav Bloch-Bauer; Otto Pick, including the *Sapafin A. G. Chur*, Lloyd and Davies interests; the Graetz family foundation; and the Reininghaus and Patzenhofer groups. The Löw group was represented by Dr. Emerich Hunna. 1956 Ownership Statement, p. 1; Draft Settlement, pp. 1 – 2.

<sup>81</sup> Unfried, p. 655.

<sup>82</sup> Perry Report, p. 4. The Restitution Claimants argued that, because Ferdinand Bloch-Bauer and Pfeiffer had come forward to declare the previously undeclared taxes, they had not evaded taxes and should not be subject to criminal tax proceedings. According to the Perry Report, the attorneys for the Restitution Claimants submitted the statutory provisions, including Articles 239, 240 and 241 of the Austrian Income Tax Law (*Personalsteuergesetz*), governing tax security proceedings as documentary support. Perry Report, Exhibit 29, "Extracts from tax law applicable to tax penalty suit," (original available only in translation).

<sup>83</sup> For a general discussion of the role of the *Finanzprokurator* in Austria's restitution proceedings, see Peter Böhmer, Ronald Faber and Michael Wladika, *Die österreichische Finanzverwaltung und die Restitution entzogener Vermögen 1945 bis 1960. Die Finanzprokuratur. Historikerkommission*: Vienna, 2002, (hereinafter, "Böhmer").

claimants hereby withdraws all claims for restitution against the Republic of Austria.”<sup>84</sup> As a result, the settlement terms granted the Restitution Claimants the return of the ÖZAG shares. In return, the Restitution Claimants represented by Dr. Rinesch agreed to pay the Republic of Austria S 1.5 million within sixty days in settlement of outstanding issues, including S 297,133.07 owed in taxes from the years 1932 to 1937. The Restitution Claimants further agreed to withdraw their restitution claim for the property at Elisabethstrasse 18 in Vienna, which, together with other assets, remained in the possession of the Republic of Austria.<sup>85</sup> The Republic of Austria retained possession of the remaining assets of the former Brucker Zucker, worth approximately one million Schillings.<sup>86</sup> The Bloch-Bauer home outside Prague, as well as other real and personal property, was never restituted.

In February 1957, shortly before the settlement was finalized, the Bloch-Bauer, Löw, Pick, and Graetz groups sold their approximately 71,000 shares in the company to a sugar consortium (*Leipnik-Lundenburger, Ennser, Hohenauer/Strakosch* and *Siegendorfer Zuckerfabrik*) for S 118.6 million.<sup>87</sup>

The CRT disagrees with Unfried regarding the adequacy of this restitution. Specifically, Unfried concludes that the Restitution Claimants, and above all the Bloch-Bauers, after selling their shares for S 118.6 million in 1957, “almost certainly did not get back less than what was taken from them in 1938 - 39,” and that they were satisfied with the settlement. Unfried maintains that the Bloch-Bauer heirs used their British and Canadian citizenship, and their connections with the British occupation authorities, to position themselves favorably in the restitution proceedings. However, the restitution proceedings did not begin until after the factory had been handed over from the Soviet administration to the Republic of Austria in August 1955. At that time, the British were in no position to influence the outcome of the restitution negotiations. Unfried also refers to a 1956 letter from Robert Bentley to his wife, Thea, in which Robert Bentley recognized

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<sup>84</sup> “*Im Hinblick auf den ... Beitritt der Finanzprokuratur zieht der Vertreter der Rückstellungswerberin das gegen die Republik Oesterreich gerichtete Rückstellungsbegehren zurück.*” Unfried, p. 655.

<sup>85</sup> Unfried, p. 658. As noted above, Unfried indicates that the Elisabethstrasse property was auctioned in 1938 for RM 250,000.00. The actual value of the Elisabethstrasse property and other property has not been definitively determined. Ferdinand Bloch-Bauer did not submit a declaration of his assets pursuant to the decree of 26 April 1938, by which the Nazi Regime required all Jews who resided within the Reich, and/or 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”), nor is there an auction catalogue or other document to indicate the values. To compare 1938 with post-War values, the CRT notes that according to information at the *Geldmuseum* of the Austrian National Bank, on 30 November 1945, Reichsmark and “military Schillings” (used immediately after the Occupation) were exchanged for new Austrian Schillings at a rate of one to one. The “Currency Protection Law” (*Währungsschutzgesetz*), proclaimed in November 1947 to counter the inflationary pressures of the post-War period, *inter alia* devalued the Schilling by exchanging old for new Schillings at a rate of three to one. See [http://www.oenb.at/de/ueber\\_die\\_oenb/geldmuseum/oesterr\\_geldgeschichte/Schilling/vom\\_Schilling\\_zum\\_euro.jsp](http://www.oenb.at/de/ueber_die_oenb/geldmuseum/oesterr_geldgeschichte/Schilling/vom_Schilling_zum_euro.jsp) (last viewed 28 September 2004).

<sup>86</sup> Unfried, p. 657.

<sup>87</sup> Unfried, p. 658, citing the audit of the newly reestablished ÖZAG conducted by Professor Dr. Bouffier dated 30 September 1957. The CRT notes that the shares held by the Bloch-Bauer group (12,850), the Löw family (21,665), the Pick group (20,187), and the Graetz family (16,480) total 71,182. The CRT notes that this number varies slightly from the number of shares (71,246) attributed to Syndicate members by the Perry Report. See discussion *supra*, pp. 11 – 13 and notes 23, 51.

that the losses that the family had been forced to accept were attributable to Karl Bloch-Bauer's "boundless folly" (*bodenlosen Leichtsinn*) when running the factory in 1938.<sup>88</sup> According to information provided by the Claimant, the document containing this reference was forwarded to Unfried by the Claimant's representative, who explained in correspondence with Unfried that this statement, in context, reveals Robert's frustration over the fact that the Austrian authorities were again using claims of Karl's alleged "mismanagement" to coerce a settlement out of the heirs, in addition to the fact that he had given in to Karl's earlier pressuring to cede half of his share of Ferdinand's estate to Karl.<sup>89</sup> Unfried fails to note that the letter in which Robert made this statement, which was submitted to the CRT by the Claimant, also refers to the "inevitable need to settle with the State" (*den notwendigen Vergleich mit dem Staat*), which resulted in the heirs losing the residence at Elisabethstrasse and "approximately one-half million Schillings."<sup>90</sup> Rather than providing evidence of a fair venue for the consideration of the restitution claims, this statement, together with information regarding restitution practices in Austria in general and regarding the *Finanzprokuratur* official representing the Republic of Austria in the restitution of ÖZAG in particular, strongly suggests that the Restitution Claimants were aware of the limited possibility of a true restitution of their relatives' property, and accepted the terms of the settlement because they recognized that they could not expect anything more under those circumstances. Similarly, the CRT disagrees with the Perry Report's conclusion that there would be only a limited basis for restitution and notes that the report precedes any restitution proceedings.<sup>91</sup>

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

The auditors who carried out the investigation of this bank to identify accounts of Victims of Nazi Persecution pursuant to instructions of the Independent Committee of Eminent Persons ("ICEP" or the "ICEP Investigation") did not report an account belonging to the Syndicate of ÖZAG shareholders during their investigation of the Bank.

The documents that evidence the existence of a Syndicate and of an account belonging to the Syndicate of ÖZAG shareholders were submitted by the Claimant and/or obtained by the CRT and include records from NARA and the Austrian State Archive. These records demonstrate that 71,246 of the total 80,000 shares of ÖZAG were included in a Syndicate, which was concluded in Zurich on 5 March 1938. These records demonstrate that the Bank was a member of the Syndicate and party to the Syndicate Agreement itself. The records also show that slightly over half (40,195) of ÖZAG's total shares were committed to the Syndicate, that these shares were held in the Bank's name on behalf of a Swiss group of Syndicate members, and that they were deposited at the Bank.

Pursuant to Article 6 of the Rules, the CRT requested the voluntary assistance of the Bank in an effort to identify any available information about the Syndicate Agreement or the ÖZAG shares

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<sup>88</sup> Unfried, p. 658.

<sup>89</sup> Email exchange between E. Randol Schoenberg and Berthold Unfried, 14 March 2003.

<sup>90</sup> Letter from Robert Bentley to his wife, Thea, 9 August 1956.

<sup>91</sup> Perry Report, p. 12

that were deposited with the Bank. On 20 January 2005, the Bank provided the CRT with lists of account holders and accounts, ledger sheets, account cards, and documents pertaining to the release of assets that had been frozen in the 1945 Swiss Freeze of German Assets (the “1945 Freeze”). These documents do not provide any further information regarding the Syndicate Agreement or other ÖZAG shares that were deposited with the Bank. The lists of account owners do include the numbered account designations CQUE 9931 and CQUE 6120. According to one list, the designation CQUE 9931 referred to a custody account (*Depot*) numbered 12239 that was closed on 17 March 1939 and whose account designation was subsequently renumbered as 4065. Another document indicates that the designation CQUE 6120 referred to a custody account numbered 17639 and that the designation was renumbered as CQUE 6388 on an unspecified date. The documents also list an account, numbered 21439, held by *Sapafin A. G.* of Chur, Switzerland and indicate that this account was a custody account that was closed on 10 January 1939. The documents do not identify the assets held in the accounts held under the designations CQUE 9931 or CQUE 6120 or in the account numbered 21439 held by *Sapafin A. G.*, nor do they indicate the accounts’ value or disposition. The information in these documents is consistent with the information contained in the 1956 Partial Decision of the Vienna Restitution Commission, which, as noted above, indicate that the 7,215 shares held by the Bloch-Bauer group were deposited at the Bank under the designations CQUE 9931 and CQUE 6120. Together, these documents clearly indicate that ÖZAG shares were deposited at the Bank in at least three custody accounts and support the CRT’s conclusion that the remaining Syndicate shares deposited with the Bank were very likely held in custody accounts. Indeed, securities deposited with Swiss banks were typically held in custody accounts.

### **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 (the “1938 Census”). In the records of the Austrian State Archive (Archive of the Republic, Finance), there are documents concerning the assets of the following persons:

#### Gustav Bloch-Bauer

The documents concerning the assets of Dr. Gustav Bloch-Bauer are numbered 33686. They were submitted on 15 July 1938 by Dr. Arthur Mayer, legal representative of Theresia Bloch-Bauer, on behalf of the estate of Dr. Gustav Bloch-Bauer at the behest of his wife and sole heir, Theresia Bloch-Bauer, née Bauer.<sup>92</sup> They do not record the date of death of the respondent. According to these records, Dr. Gustav Bloch-Bauer was born on 22 September 1862 in Jungbunzlau, Austro-Hungary (today Mlada Boleslav, Czech Republic), and formerly resided at Stubenbastei 12 in Vienna I. In addition, the records indicate that Dr. Gustav Bloch-Bauer, an attorney, owned various fixed-interest securities worth a total of RM 28,954.68, as well as shares in various companies, worth a total of RM 378,787.00. The latter included 2,135 shares of ÖZAG, the value of which was estimated to range between S 125.00 and S 250.00 each as of 27

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<sup>92</sup> The records contain documents alternatively referring to Dr. Gustav Bloch-Bauer’s wife as Theresie, Theresia, and Therese Bloch-Bauer.

April 1938, and which were declared at the upper range value of S 250 each, for a total value of RM 355,833.33.<sup>93</sup> The CRT notes that Gustav Bloch-Bauer did not declare the total number of ÖZAG shares held in his name or in his behalf. The records also include a notation from the representative, indicating that Dr. Gustav Bloch-Bauer's assets were encumbered by income tax liabilities owed for the years 1928 to 1938, and that the total value of those liabilities would be declared in the future. A further notation states that several blocks of securities, including the ÖZAG shares, were being held back at the ÖZAG seat in Vienna against certain ÖZAG liabilities yet to be determined. The records cross reference the file numbered 50186 for Luise Guttmann [sic]. The records further contain a letter from Dr. Rinesch, the attorney acting for the Bloch-Bauer interests, to the *Vermögensverkehrsstelle*, stating that the 2,135 shares of ÖZAG, previously deemed to be worth S 250.00 each, were, according to the *Länderbank* of Vienna, valued at approximately RM 75.00 per share as of 23 May 1939. In that same letter, Dr. Rinesch also indicated that Baroness Louise Guttmann, as sole accepting heir of Dr. Gustav Bloch-Bauer's estate, had been assessed flight tax of RM 172,238.00 based on the valuation of the estate. Finally, the records include a notification from the *Vermögensverkehrsstelle* addressed to the Central Office for Jewish Emigrants, dated 22 March 1939, stating that, given that payment of flight tax had been properly secured, there now were no objections to the emigration of Therese Bloch-Bauer on this account. These records make no mention of assets held in a Swiss bank account.

#### Theresia Bloch-Bauer

The documents concerning the assets of Theresia Bloch-Bauer, numbered 33609,<sup>94</sup> indicate that she was born on 26 May 1874 in Augsburg, Germany and resided at Stubenbastei 12 and Elisabethstrasse 18, both in Vienna I. In addition, the records specify that Theresia Bloch-Bauer was married to Dr. Gustav Bloch-Bauer, an attorney. The records further show that Theresia Bloch-Bauer owned securities worth RM 53,053.00, as well as jewelry, precious metals, luxury items and art works worth RM 84,152.33. Furthermore, a letter dated 30 January 1939, which lists multiple items of jewelry worth a total of approximately RM 57,490.00, indicates that these were placed into a sealed envelope at the *Bankhaus Creditanstalt-Wiener Bankverein*, and that Theresia Bloch-Bauer could only access them with permission of the Exchange Control Office in Vienna (*Devisenstelle Wien*). The records further indicate that flight tax of RM 22,708.00 was assessed on 25 February 1939, and that Theresia Bloch-Bauer paid this in full on 6 March 1939. Finally, the records indicate that Theresia Bloch-Bauer's remaining assets were seized by the Nazis on 20 May 1941. These records make no mention of assets held in a Swiss bank account.

#### Robert Bloch-Bauer

The documents concerning the assets of Dr. Robert Bloch-Bauer, numbered 10337, indicate that he was born on 23 August 1903 in Vienna, was married to Thea Franziska Bloch-Bauer, née Stern, and resided at Brucknerstrasse 2 in Vienna IV. The records further show that Dr. Robert

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<sup>93</sup> The shares identified in his 1938 Census declaration appear to have been deposited in the *Creditanstalt Bankverein* in Vienna. See *supra*, note 23. As noted above, the Perry Report, in different locations, indicates that Gustav owned 2,135 and 2,335 ÖZAG shares held in Vienna. The 2,335 number appears more reliable, as it stems from the translation of the official Syndicate Agreement, which also shows the ÖZAG shares to total 80,000.

<sup>94</sup> Certain documents in these records also refer to Theresia Bloch-Bauer as Therese Sara Bloch-Bauer.



Bloch-Bauer owned securities worth RM 11,129.30, jewelry worth RM 5,315.00, and other unidentified assets worth RM 3,000.00. These records make no mention of assets held in a Swiss bank account.

#### Thea Franziska Bloch-Bauer

The documents concerning the assets of Thea Franziska Bloch-Bauer, numbered 08600,<sup>95</sup> indicate that she was born on 30 March 1918 in Vienna, was married to Dr. Robert Bloch-Bauer and resided at Brucknerstrasse 2 in Vienna IV. The records further indicate that Thea Franziska Bloch-Bauer owned various securities worth a total of RM 28,774.73, an insurance policy issued by *Victoria zu Berlin* worth RM 5,326.20, and jewelry worth RM 4,273.00. These records make no mention of assets held in a Swiss bank account.

#### Karl Bloch-Bauer

The documents concerning the assets of Karl Bloch-Bauer, numbered 44332, indicate that he was born on 27 April 1901 and resided at Stubenbastei 10 in Vienna I. The records further indicate that Karl Bloch-Bauer was manager of ÖZAG as well as Swedish consul. In addition, the records indicate that Karl Bloch-Bauer left Austria on 9 March 1938, and that he was residing in Paris, France by 30 July 1938, the date on which the records were filed. The records contain a notation from Karl Bloch-Bauer, indicating that he was unable to provide specific information regarding his assets, given that he no longer resided in Austria. Karl Bloch-Bauer did specify that he owned securities worth S 10,000.00, but added that these may have been used to pay debts owed by ÖZAG; he also stated that he owned shares in *Universal Editions AG*, but that he was unaware of their value because they had not paid dividends in years.

#### Luise Gutmann

The documents also contain records, referring to file number 50186, pertaining to Baroness Luise Guttmann [sic],<sup>96</sup> who was a Yugoslav national and resided at the time in Yugoslavia. The records, which are addressed to Baroness Guttmann in care of Dr. Rinesch, include various flight tax assessments. These assessments are justified on the basis of her status as sole accepting heir to the estate of Gustav Bloch-Bauer, who died on 2 July 1938. The first assessment, dated 25 February 1939, values the estate at RM 688, 952.00 and sets the flight tax at RM 172,238 (25 percent); the last, demanding RM 140,030.00, dated 7 January 1942, reduces the assessment to RM 35,007.00. These records make no mention of assets held in a Swiss bank account.

#### Otto Pick

The documents concerning the assets of *Ing.* (Engineer) Otto Pick, numbered 47766 and signed on 14 July 1938, indicate that Otto Pick, an industrialist and engineer, was born on 17 August 1874, and that he was married to Käthe Pick. According to these records, Otto Pick owned a

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<sup>95</sup> The records also refer to Thea Franziska Bloch-Bauer as Thea Franziske Bloch-Bauer.

<sup>96</sup> These documents also refer to Luise Guttmann as Louise Sara Guttmann. It is not clear why the documents pertaining to Luise Guttmann appear in Karl Bloch-Bauer's file. They were presumably misfiled as other correspondence concerning Luise Guttmann is included in Gustav Bloch-Bauer's file and as all these documents refer to her relationship to the estate of Gustav Bloch-Bauer.

textile mill, *Pick & Co.*, which was located at Esslinggasse 17 in Vienna I. That address is also listed as Otto Pick's place of residence; however, several documents in these records indicate that Otto Pick also resided at Reisnerstrasse 40 in Vienna III. The records further show that Otto Pick owned various securities worth nearly RM 1.4 million; these included 3,687 shares of ÖZAG, valued at RM 100.00 a share for a total worth of RM 368,700.00. The CRT notes that Otto Pick did not declare the total number of ÖZAG shares held in his name or in his behalf. The shares identified in his 1938 Census declaration appear to have been held in Vienna.<sup>97</sup> The records also contain a letter from an attorney, Dr. Franz Weiss, to the Viennese Nazi authorities, dated 14 January 1941, stating that he represented Otto and Käthe Pick, that they temporarily resided in Le Touquet, France, after leaving Austria, and that they left for the United States before the outbreak of the Second World War. That letter also indicates that Otto and Käthe Pick's entire domestic assets were transferred to the *Länderbank* in Vienna, which was appointed as the administrator of those assets, and that *Pick & Co.* was also transferred to a local administrator. In addition, the records contain a document stating that Otto and Käthe Pick resided in Le Touquet as of 23 July 1938. The records further show that Otto Pick was assessed flight tax of RM 540,854.00 on 27 January 1939, which was increased to RM 1,586,115.00 on 19 August 1939. The records also contain a document indicating that, sometime before 18 January 1939, Otto Pick's residence at Esslinggasse 17 was taken over by another family, and that the home located at Reisnerstrasse 40 was confiscated and assigned for use to the Nazi Ministry of Propaganda. That same document indicates that Otto Pick had a son, Dr. Hans Pick, who was born on 27 February 1907, was married to Eva Pick, who was born on 7 April 1911, and was residing in Le Touquet. Finally, these records contain an article from the Nazi newspaper, *Völkischer Beobachter*, regarding Dr. Hans Pick, which indicates that he formerly resided at Reisnerstrasse in Vienna, and states that he and his wife were residing in Zurich and Le Touquet at the time that the article was written, apparently in January 1939. These records make no mention of assets held in a Swiss bank account.

### Käthe Pick

The documents concerning the assets of Käthe Pick, numbered 47767, indicate that she was born on 23 December 1882 and resided at Reisnerstrasse 40 in Vienna III. The records further indicate that Käthe Pick owned rental property located at Rosenbursenstrasse 2 in Vienna I, as well as a one-quarter share of rental properties located at Gumpendorferstrasse 111 in Vienna VI, and at Andergasse 38-40, in Vienna XVII. In addition, Käthe Pick declared various securities worth a total of RM 123,325.00 as well as jewelry, precious metals and art works valued at RM 30,000.00. These records make no mention of assets held in a Swiss bank account.

## **The CRT's Analysis**

### Identification of the Syndicate Members

The Claimant has plausibly identified certain members of the Syndicate. The names of the Claimant, her brother, father, uncle, and father of her sister-in-law match the names of the

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<sup>97</sup> See *supra*, note 23.

individuals identified in the 1946 Registration and in the Draft Settlement as members of the Syndicate who owned ÖZAG shares.

In support of her claim, the Claimant submitted documents, including her uncle's will and documents regarding the history of her family and of ÖZAG, providing independent verification that she and her family members had the same names as those recorded in the 1946 Registration as members of the Syndicate. The CRT notes that there are no other claims to this account.

#### Status of the Syndicate Members as Victims of Nazi Persecution

The Claimant has made a plausible showing that the members of the Syndicate were Victims of Nazi Persecution. The Claimant stated that all members of the Syndicate, including Ferdinand Bloch-Bauer and Otto Pick, were Jewish and that they were forced to flee Austria to avoid Nazi persecution. Specifically, the Claimant indicated that Ferdinand Bloch-Bauer fled from Austria to Czechoslovakia, that he subsequently fled to Switzerland, and that the Nazis looted his homes and confiscated his real and personal property in Austria and Czechoslovakia. The Claimant also indicated that Otto Pick fled Austria for France and later Canada. The CRT notes that Otto Pick, like other Jewish members of the Syndicate, was required to register his assets in the 1938 Census, and that his property was confiscated by the Nazis. The Claimant also submitted the 1946 Registration, which certifies that the company was aryanized, that Ferdinand Bloch-Bauer, who was Jewish, was a major shareholder of the company, and that he fled Austria to evade Nazi persecution.

#### The Claimant's Relationship to the Syndicate Members

The Claimant has plausibly demonstrated that she is related to certain members of the Syndicate by submitting specific information and documents, demonstrating that she and members of her family were among the members of the Syndicate. These documents include the will of Ferdinand Bloch-Bauer, which identifies the Claimant as his niece; and documents pertaining to the Syndicate that specify that Otto Pick was the father-in-law of the Claimant's brother, Leopold Bloch-Bauer.

#### The Bank's Breach of the Syndicate Agreement

According to the documents submitted by the Claimant, the Syndicate shares were sold to Auer between December 1938 and October 1939. With regard to the 36,667 shares that were sold in December 1938, the CRT notes that the sale took place shortly after the Bank's 22 December 1938 letter, which referred to its communication of the *Länderbank's* offer to Syndicate members, confirmed Auer's offer, and relayed the *Länderbank's* warning that ÖZAG may be the subject of nationalization. As noted above, the Bank informed the Syndicate members that the offer was valid up to 30 December in Vienna and requested their decision by 29 December in Zurich. The Bank's letter states that it was "unable to achieve the unanimous agreement of the syndicate during the conferences on the sale." In fact, and according to the Bank's letter, some members of the Syndicate "did not find the Vienna offer worthy of discussion," while others "appeared not averse [sic] to a sale in the event of an improvement in the offer." Clearly, *all Syndicate members agreed not to sell the shares* at the price offered. Nevertheless, the Bank

disingenuously characterized the discussions as lacking consensus and cited this alleged lack of consensus as a basis for the dissolution of the Syndicate. In fact, there had been consensus among Syndicate members about the offer. More fundamentally, even if there had been no consensus, the Syndicate Agreement was designed specifically to govern those circumstances in which unanimous consent regarding the sale of shares was lacking and therefore could not be the basis for its proposed dissolution.

Although the Syndicate members previously rejected Auer's offer, according to the 1956 Ownership Statement and other records, on 30 December 1938, the Bank sold, for 75.00 blocked Reichsmark per share, 16,480 shares held by the Graetz family, 10,000 shares held by *Sapafin A. G.* on behalf of Otto Pick, and 6,500 shares held by *Sapafin A. G.* on behalf of Lloyd and Davies, who, in turn, acted as agents of Pick, all of which were held at the Bank.<sup>98</sup> There is no evidence that the Bank obtained the unanimous consent of the other Syndicate members, as called for under Article II of the Syndicate Agreement, before selling these shares.

Through its unauthorized and illegal sale of shares held in its own name, thus breaking the Syndicate, the Bank facilitated the sale of the remaining ÖZAG shares. On 31 December 1938, 3,687 shares held by Otto Pick in Vienna were sold to Auer for RM 75.00 per share.<sup>99</sup> The remaining Syndicate shares were sold to Auer after the 15 January 1939 deadline for the Syndicate's dissolution, as set forth by the Bank in its 22 December 1938 letter. The CRT notes that, according to Article VIII of the Syndicate Agreement, all important decisions must be reached by unanimous consent of the Syndicate members. Article VIII specifically identifies the sale of shares by the Syndicate, the amendment of the Syndicate Agreement, and the anticipated dissolution of the Syndicate Agreement as types of decisions which require unanimous consent of the Syndicate members. Article X of the agreement specifies that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and specifies that "an earlier dissolution of the Syndicate is permitted only with unanimity." As noted above, there is no evidence that the Bank received the required unanimous consent of the Syndicate members to dissolve the Syndicate Agreement.<sup>100</sup> The Bank's unilateral attempt to dissolve the Syndicate

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<sup>98</sup> As noted above, according to the 1956 Ownership Statement, on 30 December 1938 the *Länderbank* informed Auer that it had been able to purchase for him 26,480 shares of ÖZAG that had been held at the Bank, as well as an additional 10,567 shares, including 6,500 held by Lloyd and Davies on Pick's behalf, that had been deposited at the *Länderbank*. Both the Perry Report and the Syndicate Agreement, however, indicate that these shares were, in fact, held at the Bank, not at the *Länderbank*. See *supra*, note 40.

<sup>99</sup> Pursuant to Articles II and III of the Syndicate Agreement, Pick was obligated to block the transfer of these shares by informing the place of deposit of the need for the Bank's consent, and the Bank was obligated to withhold consent to transfer shares that had been blocked at their place of deposit without the unanimous consent of the Syndicate members. The available documents do not indicate whether the shares were actually blocked at their place of deposit, or whether the Bank consented to the sale of these shares.

<sup>100</sup> Article VII of the Syndicate Agreement requires the management of the Syndicate to inform members of decisions to be made with the request to reply within eight days after their receipt of the management letter, and that the absence of a reply is to be considered as a positive response to the proposed decision. The Bank could not have relied on this provision because the Syndicate cancellation proposal was made by the Bank alone on its own responsibility, but the Syndicate Agreement placed management responsibility in the hands of Ferdinand Bloch-Bauer and not in the Bank. Moreover, as detailed below, even if the Bank had management authority, which it did not, it proceeded to sell ÖZAG shares subject to the Syndicate Agreement that were held in its name on deposit at the Bank on 30 December 1938, in spite of the clear acknowledgment in its own letter that there was no agreement of any kind to a sale, just eight days after its letter of 22 December 1938, and certainly less than the eight days from

Agreement in the context of its sale of 32,980 shares without the unanimous consent of the other members of the Syndicate clearly violated the fiduciary duties it owed to other members of the Syndicate. Moreover, by violating its contractual commitments as contained in the Syndicate Agreement, the Bank clearly violated the legal obligations it had not only as a party to the agreement, but also as a member of the Syndicate itself.

The CRT notes that Nazi authorities were clearly aware of the existence of the Syndicate arrangement: Auer's initial offer to purchase ÖZAG shares was transmitted to the Syndicate members through the Bank. The CRT further notes that the documents indicate that none of the ÖZAG shares held in Austria was confiscated by the Nazis with regard to tax proceedings in progress against various Syndicate members, including Ferdinand Bloch-Bauer and the Löw family, until March 1939 at the earliest, which was after the Bank's unilateral and unauthorized sale of the shares held in its name and in its possession on 30 December 1938, with the consequent effect of dismantling the Syndicate, in violation of the Syndicate Agreement, suggesting that the prior existence of the Syndicate granted a measure of protection to the Syndicate shares. The CRT notes that, with the Syndicate Agreement in place, the Nazis were forced to obtain the consent of the Bank in order to acquire the majority of the ÖZAG shares (which were in the Bank's name), and that the Bank could not legally grant such consent because it did not have the unanimous consent of the Syndicate members for the sales. The Nazis, typically anxious to conform to the form, if not the substance, of law in their efforts to obtain the property they desired, apparently did not want to expropriate shares in an Austrian company if the Bank would not give its consent to the transfer of the shares, as required by the Syndicate Agreement. The Bank, unilaterally and in violation of its legal and fiduciary obligations, gave its consent, or obviated the need of the Nazis to obtain its consent, thus exposing the Syndicate members to Nazi coercion that forced them to sell their shares at confiscation level prices.

By permitting the sale of the shares absent unanimous consent of Syndicate members while the Syndicate Agreement was in force, by attempting to dissolve the Syndicate without authorization, in the context of its unauthorized and illegal sale of shares that it held in its own name on 30 December 1938, thus breaking the Syndicate, the Bank facilitated the confiscation and/or sale of the remaining ÖZAG shares, and by violating its contractual commitments as contained in the Syndicate Agreement, the Bank clearly placed its business interests with Nazi Germany ahead of the interests of the Syndicate members and clearly violated the fiduciary duties and legal obligations it owed to the ÖZAG shareholders. In its Memorandum and Order of February 19, 2004 (amended June 1, 2004), the United States District Court for the Eastern District of New York addressed the practice of Swiss banks during the Nazi era of complying with forced transfers or transfers ordered under duress and noted that, in authorizing such sales or transfers to the German Reich, the policy of Swiss banks clearly "placed their own perceived economic self-interest ahead of their customers as a matter of policy."<sup>101</sup> The Court's

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the time allowed under the Syndicate Agreement for members to receive the Bank's letter and respond thus allowing it to rely on the presumed agreement provisions of Article VII. Thus, when the Bank made the sale of the ÖZAG shares, it had no authority to terminate the Syndicate and acted to sell shares that it held in ÖZAG without authorization or authority in violation of the Syndicate Agreement that was still in effect in accordance with its terms.

<sup>101</sup> *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d. 59, 63 (E.D.N.Y. 2004), *as amended*, 319 F. Supp. 2d. 301, 305 (E.D.N.Y. 2004).

Memorandum and Order makes clear that the behavior of Swiss banks violated the fiduciary duty owed to their clients:

Time and time again, banks completed transfer orders which they knew were requested only because of Nazi persecution, and which they suspected were not in their customers' best interest. An example that reflects the concerted policy of the Swiss banks is described by the Bergier Commission as follows:

After overrunning Poland in September 1939, the new ruling [Nazi] power endeavoured to acquire Polish assets deposited in Switzerland. As early as 20 November 1939, the Polish bank Lodzer Industrieller GmbH asked Credit Suisse to transfer assets deposited with it to an account at the German Reichsbank in Berlin. The bank saw a fundamental problem in this procedure and asked its legal affairs department to examine the matter. The latter recommended not complying with the request since the customer's signature had most likely been obtained under duress by the occupying authorities. A further reason for refusing the request was that it had come from Berlin and contained incorrect information about the amount deposited with Credit Suisse. The legal affairs department also pointed out that for Poland, German foreign exchange regulations represented a war measure taken by an occupying force and that Switzerland had not yet recognized the new political situation. **Managing Director Peter Vieli subsequently discussed the issue with Rudolf Speich, his counterpart at the Swiss Bank Corporation.** The latter contacted the Reichsbank, which agreed that in view of the unclear constitutional situation in Poland, Swiss banks were not obliged to comply with requests from German administrators (*Reichskommissäre*). Nevertheless, according to a file note 'the directors of the Reichsbank and Dr. Speich were of the opinion that duly signed requests from customers for their assets held in Switzerland to be transferred to an account with the Reichsbank must be executed since absolutely no justification could be found for not doing so.' **Although there were legal and moral objections to transferring the funds, the consideration that they 'still had important interests in Germany, and should avoid friction and unpleasantness whenever possible' prevailed at CS [Credit Suisse].** They complied with the request and opted for the principle of carrying out legally signed orders even when they were not received directly from customers, but via the Reichsbank in Berlin. Their comportment in Poland was in this respect typical of how the banks dealt with the assets of Nazi

victims: **as a rule, they complied with transfer orders from foreign customers without properly checking whether the signatures they bore had been obtained under duress by the Nazi authorities and whether the orders were in fact in the customer's interest.**

Bergier Report, at 276-77 (emphases added) (footnote omitted). The two major banks in this example (Credit Suisse and Swiss Banking Corporation) consulted with one another and *together* decided to disregard the legal advice of Credit Suisse's legal department.<sup>102</sup>

While specifically addressing forced transfers and transfers made under duress, the Court's Memorandum clearly applies to this case as well. This is a case in which the Bank was "not obliged" to comply with Nazi efforts to purchase ÖZAG shares in its custody. On the contrary, the Bank was party to a contract which *specifically called upon it not to consent to sales of ÖZAG shares covered by the Syndicate Agreement* by predicating sales of such shares upon the unanimous consent of the Syndicate members. Rather than honoring its contractual duties to the Syndicate members, the Bank intentionally abrogated them by selling shares without the unanimous consent of the members and, in the context of such unilateral sales, by attempting to dissolve the Syndicate itself, thus breaking the Syndicate Agreement in violation of the terms of the Agreement. Here, as in the case of forced transfers and transfers made under duress, as well as in the case of transfers made simply at the initiative of the Bank to comply with German confiscatory laws, the explanation for the Bank's behavior would appear to lie in its effort to "avoid friction and unpleasantness" that could interfere with the smooth conduct of its own business interests in Germany to the great detriment of its Jewish clients.

The Court's Memorandum also notes that, after the Second World War, when pressed for information about forced transfers made during the War, Swiss banks stonewalled as a matter of course and were of one mind about this. Moreover, in addition to stonewalling, the Court's Memorandum notes that the Swiss banks engaged in systematic and widespread destruction of documents in an effort to shield themselves from liability:

While stonewalling was generally an effective way for the Swiss banks to insulate themselves from liability and benefit economically, wholesale destruction of records was still more successful. Document destruction is likely the most contentious subject regarding the banks' behavior in the post-war period, and it is naturally the subject on which it is the most difficult to obtain information. As noted at the outset, there are records pertaining to 4,100,166 accounts out of an estimated 6,858,116 accounts open or opened between 1933 and 1945. ...

The Swiss banks generally complied with Swiss law on record keeping, but this is precisely the ruse. The Swiss Code of

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<sup>102</sup> 302 F. Supp. 2d. at 63-64, 319 F. Supp. 2d. at 305-306.

Obligations requires only that banks keep correspondence and accounting records for a period of ten years, regardless of whether an account is open or closed. Volcker Report, Annex 7 ¶ 3. If the banks could stonewall for ten years, then they could “legally” destroy the very documents which might answer claimants’ questions. This is exactly what they did. Banks “regularly and systematically” destroyed material that was ten years old. *See* Volcker Report, Annex 7, ¶ 11. In some banks, the document destruction was annual, in some it was semi-annual, and in some it was simply intermittent. But it happened across the board. And thus the banks destroyed countless records that might have been critical in explaining their Nazi era actions with respect to accounts once held by Nazi victims. The destruction was part of the banks’ ordinary course of business, and it was massive.<sup>103</sup>

Given the systematic and widespread destruction of documents, and given the findings of the Bergier Commission regarding the collective decision made by the banks regarding the release of information pertaining to their Nazi-era activities, it is not particularly surprising that no records of the Syndicate Agreement or the deposit of ÖZAG shares at the Bank were identified by the ICEP auditors during their investigation of the Bank. The records upon which this Award is based, including the Syndicate Agreement, the Perry Report and accompanying exhibits, the 1946 Registration, and the Draft Settlement, were preserved in other sources, including the United States National Archives (NARA), rather than by the Bank. These records were considered sufficiently reliable for use in post-War restitution proceedings not only by the Restitution Claimants but also by the Republic of Austria. Had the Allies not compiled reports regarding ÖZAG after the War, and had the Claimant, on behalf of the heirs of all the Syndicate members not submitted her well-documented claim, there would be no documentary evidence that would permit the Claimant and the other shareholder heirs to reclaim what is rightfully theirs.

The CRT notes that there is no evidence that the shareholders or their heirs received the full proceeds of the sales of ÖZAG shares, which, according to the Perry Report, were paid into blocked accounts. In her contribution to the Symposium Proceedings on “Confiscation of Jewish Property in Europe, 1933 - 1945 New Sources and Perspectives,” Susanne Meinl describes the various measures used by the Nazis to deprive Jews of their property, including regulations regarding currency transfers and the imposition of alleged tax debts.<sup>104</sup> According to Meinl, in view of Nazi Germany’s acute foreign exchange shortages, emigrants were permitted to transfer

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<sup>103</sup> 302 F. Supp. 2d. at 71, 319 F. Supp. 2d. at 314.

<sup>104</sup> Susanne Meinl, “The Expropriation of Jewish Emigrants from Hessen,” in the Symposium Proceedings, “Confiscation of Jewish Property in Europe, 1933 - 1945 New Sources and Perspectives,” Washington, D.C.: Center for Advanced Holocaust Studies at the United States Holocaust Memorial Museum, 2003 (hereinafter “Meinl”), p. 96. Susanne Meinl is a historian at the Fritz Bauer Institute, Frankfurt am Main. Dr. Meinl is the author of *Nationalsozialisten gegen Hitler* (2000), as well as several scholarly articles on anti-Semitism and right-wing political organizations in Weimar Germany. She is studying the plunder and expropriation of Jewish assets in the German state of Hessen and in 2002 she worked on the exhibition “Legalized Burglaries: The Fiscal Exploitation of Jews in the State of Hesse, 1933 - 1945.”



only small sums abroad. To transfer money legally, emigrants were required to deposit it into blocked accounts. Upon the transfer of the funds, the Nazis deducted a substantial sum, which ranged from 20 percent of the total sum in 1934 to 90 percent of the total sum in June 1938. “Toward the end of the period of legal emigration the cost of currency exchanges deteriorated to a point of vanishing returns. From September 1939 onward, those lucky enough to emigrate abroad could receive in exchange when they reached their new homes only four percent of the sums they had deposited in blocked accounts.”<sup>105</sup>

As noted above, the Perry Report indicates that Otto Pick owned a total of 20,187 shares. Of these, 16,500 were held at the Bank on behalf of *Sapafin A. G.* (including 6,500 shares held by Lloyd and Davies on Pick’s behalf), while 3,687 were held by Pick in Vienna. According to the Perry Report, all these shares were sold on 30 and 31 December 1938 to Auer for RM 75.00 per share. The Perry Report indicates that the proceeds of the sale of the 3,687 shares held by Pick in Vienna and the 6,500 shares held by Lloyd and Davies at the Bank in Pick’s behalf (which, at the rate of RM 75.00 per share, amounted to RM 764,025.00) were absorbed by the *Länderbank* in Vienna to offset debt allegedly owed by Pick to that bank.<sup>106</sup> The proceeds of a further 10,000 shares, which, at the rate of RM 75.00 per share, amounted to RM 750,000.00, were paid into a blocked account (*Aktien-Sperrkonto*) and later released to the Guarantee Trust Company of London, the United Kingdom, and converted to US \$28,000.00. The CRT notes that, in 1938, RM 750,000.00 equaled 1,316,100.00 Swiss Francs (“SF”) and US \$28,000.00 equaled SF 122,360.00.<sup>107</sup> Therefore, of the total RM 1,514,025.00, or SF 2,656,811.07, paid by Auer for Pick’s 20,187 shares, RM 764,025.00, or SF 1,340,711.07, was absorbed by the *Länderbank* in Vienna, and RM 750,000.00, or SF 1,316,100.00 was paid into a blocked account, of which only

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<sup>105</sup> Meinl, p. 96.

<sup>106</sup> The CRT notes that in a statement of 11 January 1940, Otto Pick refers to the 6,500 shares of ÖZAG held by his agents Lloyd and Davies and states that the proceeds of the sale of these shares was to be credited to the account of Pick & Co. at the *Mercurbank/Länderbank*, but that this was not done, and despite diligent efforts by Lloyd and Davies to see that this was done, the transfer was not made at any time prior to the end of the Second World War. Perry Report, Exhibit 21, “Memorandum dated 11 January 1940 by Otto Pick, re sale of Brucker shares,” (original available only in translation). The CRT further notes that there is no evidence that the proceeds of the sale of the remaining 3,687 shares held by Pick were ever credited to his account or that, in fact, Pick owed a debt to the *Mercurbank/Länderbank* at all. The CRT notes that, given the close cooperation between the *Mercurbank/Länderbank* and the Nazis, as evidenced in its 5 December 1938 letter to Auer which solicited bids for the ÖZAG shares and which is signed “*Heil Hitler!*” and in the post-War statements of Leopold Bloch-Bauer and Otto Pick, it is reasonable to conclude that Pick’s alleged “debt” may well have been a pretext used to confiscate Pick’s assets. See written statement by L. L. G. Bentley (“It was obvious that the *Mercurbank* cooperated closely with the Gestapo in 1938, to put adequate pressure upon its old and new customers”) and affidavit of Otto Pick (“In the middle of May 1938, Dr. H. Mann, at that time Syndicus of the *Mercurbank*, Vienna, turned up without being announced in Zuerich, where I lived at the time with my family and demanded from me a series of documents with my signature, whereby almost our entire properties and interest in Austria should have been handed over to the *Mercurbank* for trustworthy administration and/or liquidation after appointing Dr. Mann as plenipotentiary.”) Perry Report, Exhibits 13, 14, and 15. Given these facts and circumstances, and the plausibility standard of proof adopted in the Rules Governing the Claims Resolution Process, as amended (the “Rules”), the CRT concludes that it is clearly plausible that the alleged Pick debt to the *Länderbank* was conceived as a cover for the reality of the well-developed, and forcefully executed, confiscatory program to deprive all of the Jewish owners of ÖZAG of their ownership without meaningful compensation, and accordingly, the benefit of the doubt should be given to the Claimant and parties she represents, who should receive compensation for all 20,187 Pick shares of ÖZAG that were seized by Nazi authorities with the full complicity of the Bank.

<sup>107</sup> In 1938, RM 1.00 was worth SF 1.7548 and US \$1.00 was worth SF 4.37.

US \$28,000.00, or SF 122,360.00, was released to the seller. The amount released to the seller therefore represents only 9.30 percent of the purchase price actually paid into the blocked account. If we accept the true value of the shares as RM 200.00 per share, as discussed in detail below, then the sale of 10,000 shares should have netted RM 2,000,000.00, or SF 3,509,600.00. The amount ultimately released to Pick for the sale of these shares, SF 122,360.00, represents only 3.49 percent of the shares' true value.

Similarly, the Perry Report indicates that the 7,215 shares held by the Bank in Zurich on behalf of the Bloch-Bauer group were sold to Auer on 28 June 1939 for RM 83.33 per share, for a total of RM 601,225.95, or SF 1,055,031.30. According to the Perry Report, the proceeds were paid into a blocked account at the Dresdner Bank, Berlin for investment in German Treasury bonds and later transferred to Lowenherz, Amsterdam for the free use of the seller. Based upon the amount of proceeds ultimately released for Pick's 10,000 shares, the CRT has calculated the amount likely released from the sale of the 7,215 Bloch-Bauer shares. If the seller of 10,000 shares sold at RM 75.00 per share received 9.30 percent of the purchase price, or US \$28,000.00, then the sellers of 7,215 shares sold at RM 83.33 per share may be expected to have also received 9.30 percent of the purchase price, or RM 55,914.01 or US \$22,452.61. This amount was worth SF 98,117.90 in 1938. Again, if we accept the true value of the shares as RM 200.00 per share, as discussed in detail below, then the sale of 7,215 shares should have netted RM 1,443,000.00, or SF 2,532,176.40. The amount ultimately released to the Bloch-Bauer group for the sale of these shares, SF 98,117.90, represents only 3.87 percent of the shares' true value.

In determining that an Award is appropriate, the CRT has considered the circumstances outlined above, as well as the fact that, immediately following the *Anschluss*, the Nazi regime began a major effort to confiscate the assets of Jewish residents and/or nationals of the Reich, including Austria. In addition, the CRT has found that, shortly after the *Anschluss*, Nazi authorities instigated criminal tax proceedings against the company with the expressed purpose of depressing the price per share of the company. The CRT has noted that ÖZAG's major shareholders, anticipating Nazi attempts to confiscate their assets, entered into a Syndicate Agreement, to which the Bank itself was a party, on 5 March 1938, one week before the *Anschluss*, which was specifically designed to prevent the shares from falling under Austro-German control. The CRT has found that the Bank nevertheless permitted the sale of Syndicate shares at a fraction of their true value in December 1938, despite the lack of unanimous consent of Syndicate members required for the sale. The CRT has further found that the Bank's action in seeking to dissolve the Syndicate Agreement without the unanimous agreement of the Syndicate members and selling the ÖZAG shares that it held in its possession without authorization and in violation of its contractual commitments to the members of the Syndicate, led to the confiscation and/or sale of the remaining Syndicate shares, again at a fraction of their true value. The CRT has noted that the shareholders or their heirs received only a small portion of the sale price in 1938, and that there is no evidence that representatives of the Austrian government considered any such payments to the shareholders in 1957 during restitution proceedings. Given these findings and considerations, the CRT concludes that (a) the Bank actively cooperated with the Nazis in this confiscation process, or knowingly facilitated it, in violation of its legal and fiduciary obligations to the members of the Syndicate, (b) neither the Syndicate, its members, nor heirs of its members received the full proceeds from the sale and/or confiscation of the shares, except for the inadequate restitution received by the Restitution Claimants in 1957 and

which is taken into consideration below, and (c) the Bank is accordingly responsible for the loss suffered by the Syndicate members as a result of its conduct.

### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimant. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Syndicate members included her uncle, the father of her sister-in-law, her father, her brother, and the Claimant herself, and those relationships justify an Award. Third, the CRT has determined that neither the Syndicate members nor their heirs received the equivalent value of the claimed shares.

Further, the CRT notes that the Claimant represents her nephew, Peter Bentley, his five children, and the daughters of Hans Pick (John Prentice), Elizabeth Jarvis and Marietta Hurst. The CRT also notes that Peter Bentley's children, as the grandchildren of Otto Pick's late daughter Antoinette Bentley and as her named beneficiaries, and Elizabeth Jarvis and Marietta Hurst, as the daughters of Otto Pick's late son Hans Pick (John Prentice), have a better entitlement to the value of the shares belonging to Otto Pick than the Claimant, Peter Bentley, and the other relatives whom the Claimant represents, who are related to Otto Pick by marriage only.<sup>108</sup> The CRT also notes that the Claimant represents Francis Gutmann and Nelly Auersperg, who are the children of Luise Gattin, and George Bentley and Trevor David Mantle, who, pursuant to an Agreement between them discussed in detail below, are the heirs of Robert Bentley. The CRT notes that George Bentley and Trevor David Mantle are more entitled to the value of the shares belonging to Robert Bloch-Bauer (Bentley) than the Claimant and the other persons she represents, and that the Claimant and the heirs of her siblings are more entitled to the value of the shares belonging to Gustav Bloch-Bauer than Elizabeth Jarvis and Marietta Hurst. The CRT also notes that the Claimant is fully entitled to the value of the shares that she herself owned. The detailed division of the Award amount is set forth below.

### Amount of the Award

In determining the amount of the Award, the CRT has considered two measures of liability, both of which reach the same result.

One measure of liability views the Bank as an aider and abettor of the Nazis' unlawful activities in forcing a distress sale of the ÖZAG shares to a hand-picked "aryan" purchaser at a fraction of their true value. Under such a measure of liability, the Bank, as an aider and abettor, is jointly and severally liable to the sellers for the unjust enrichment obtained by the Nazi "purchaser" in being able to acquire the shares at a fraction of their value. The measure of damages under such a theory is the difference between the true value of the shares and the compensation actually received by the sellers. The shares' true value is appropriately measured by an average of the most recent pre-*Anschluss* sales. No deduction is taken as a result of efforts by Nazis to depress

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<sup>108</sup> The CRT notes that Antoinette Bentley passed away in November 2004. Her son, Peter Bentley, has submitted a copy of her will, in which his five children are named beneficiaries of Antoinette Bentley's residual estate. Peter Bentley has requested that the portion of the Award to which Antoinette Bentley would have been entitled be distributed to his children, according to her wishes as expressed in her will.

the company's value through discriminatory tax proceedings that were merely a pretext to artificially depress the market value of the shares. It is clear that the tax proceedings should not be considered to affect true market value because, as noted above, as soon as the company was aryanized, the Nazis dropped the tax proceedings in return for a relatively small payment that could not have had any significant effect on the true value of the company or its shares. Furthermore, the balance sheet value of the company per 1 January 1940, at 95 percent of its 31 July 1937 value, seemed not to have suffered at all.<sup>109</sup>

The second measure of liability is based on the Bank's actions in making unauthorized sales of shares and in otherwise unlawfully undermining the Syndicate Agreement as a breach of contract and fiduciary duty owed to the members of the Syndicate. Under such a theory, the Bank is liable to the sellers for damages caused by the breach of contract, measured by the difference between the price actually received and the true price that should have been received if the Syndicate Agreement had not been breached by the Bank (the true market value, calculated without regard to the discriminatory tax proceedings). While it is impossible to know for certain what the sales price would have been had the Bank not violated its duty by unlawfully abrogating the Syndicate Agreement, the best estimate of the company's true value is the average of the most recent pre-*Anschluss* sales on the Vienna stock exchange, consistent with the firm's balance sheet values and dividend payments.

The CRT notes that both measures of liability reach the same result – liability measured by the true value of the ÖZAG shares, measured by the most recent pre-*Anschluss* sale price of ÖZAG shares as certified by the Vienna stock exchange without regard to the discriminatory post-*Anschluss* Nazi market manipulations, less any amounts received by the sellers in connection with the post-war Austrian restitution proceedings. Deduction is made for that portion of the actual purchase price in 1938-39 that the records indicate were released to the sellers. No deduction is made in valuing the shares for the post-*Anschluss* discriminatory Nazi tax proceedings because the tax authorities abandoned them as soon as the firm was aryanized, settling for a modest amount that had no effect on the firm's true value.

The CRT has determined that the Bank bears the responsibility to compensate the Claimant and the parties she represents for the Bank's direct and active complicity in the confiscation and loss of value of the 33,037 shares of ÖZAG held by the Pick and Bloch-Bauer families, of which Pick held 20,187 and the Bloch-Bauer group (including Gustav Bloch-Bauer) 12,850.

The CRT notes that of the 20,187 shares held by Otto Pick, 16,500 were held at the Bank in the name of *Sapafin A. G. Chur*, which was wholly owned by Otto Pick. According to the Perry Report, of the 16,500 shares held by *Sapafin* at the Bank, 10,000 were held by the Bank directly, 4,250 were held by Capt. T. E. H. Davies, and 2,250 were held by Col. J. E. Lloyd, both of whom were from Liverpool, and who, as agents for Pick, held the shares on his behalf.<sup>110</sup> In a statement dated 11 January 1940, Otto Pick stated that the 6,500 shares were purchased by Lloyd and Davies upon his recommendation, that he induced them to put the shares at the disposal of the *Mercurbank*, and that they were transferred to Vienna at approximately the middle of

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<sup>109</sup> Perry Report, Exhibits 25 and 26.

<sup>110</sup> Perry Report, p. 6.

1939.<sup>111</sup> The CRT notes that, while Pick characterized the 6,500 shares as belonging to Lloyd and Davies, he may have done so under the assumption that the Nazis would be more likely to release the proceeds of the sale of shares to non-Jews, hoping in that way to get access to funds. Indeed, all other documents indicate that Lloyd and Davies held the shares as trustees on Pick's behalf.<sup>112</sup> Moreover, according to the Vienna Restitution Commission's Partial Decision of 3 March 1956, at the time of the sale, the Nazi authorities determined that these 6,500 shares, together with the remaining shares obtained from the Syndicate members, were Jewish property, and were therefore subject to aryanization tax. In its Partial Decision, the Restitution Commission wrote that the Lloyd and Davies were "only trustees of the *Sapafin A. G. Chur*, whose ownership of 16,500 shares in 1938 is demonstrated in [various attachments]."<sup>113</sup> In detailing the acquisition of the various blocks of shares, the Perry Report notes that the 6,500 shares held by Davies and Lloyd were sold on 30 December 1938 to Clemens Auer for RM 75.00 per share, and that the proceeds of the sale were credited by the *Länderbank* to Pick's debt to it.<sup>114</sup> The CRT notes that these shares were sold on the same day and at the same price as the remaining Pick shares, which suggests that the sales were transacted by the same owner. The CRT finds it unlikely that the proceeds of the sale of the 6,500 shares would have been credited to Pick's alleged bank debt had Pick not been recognized as the beneficial owner of the shares. The CRT also notes that Lloyd and Davies did not participate in the Syndicate Agreement concluded in Zurich on 5 March 1938, even though the 6,500 shares held in their trust were included in the Syndicate itself.<sup>115</sup> The inclusion of these shares in the Syndicate demonstrates that Otto Pick, rather than Lloyd and Davies, had ultimate control over their disposition. Finally, the CRT notes that the 6,500 shares were included in the 1958 Settlement reached between the Republic of Austria and the Restitution Claimants and pursuant to Austria's post-War restitution laws, which limited restitution to property confiscated by the Nazi Regime from Jewish

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<sup>111</sup> Perry Report, Exhibit 21, p. 6.

<sup>112</sup> The 1946 Registration identifies *Sapafin A. G. Chur* as the owner of a block of 16,500 shares at the Bank as of 13 March 1938, and specifies that the sole owner of all shares was Otto Pick ("*Alleineigentümer sämtlicher Anteile Ing. Otto Pick*"). 1946 Registration, p. 2. The Perry Report likewise identifies *Sapafin A. G. Chur* as the owner of a block of 16,500 shares and specifies that *Sapafin A. G. Chur* was "owned 100% by Otto Pick, a Czechoslovakian citizen living in Vienna." Perry Report, p. 1. The 1956 Ownership Statement groups the 6,500 shares held by Lloyd and Davies with the remaining Pick shares. 1956 Ownership Statement, pp. 1, 3. The Partial Decision similarly identifies the 6,500 shares held by Lloyd and Davies as being held in trust for Otto Pick. Partial Decision, p. 2.

<sup>113</sup> "*Die Aktien wurden von der Vermögensverkehrsstelle als jüdischer Besitz behandelt. ... Die als Verkäufer auftretenden beiden Engländer waren nur Treuhänder der Sapafin AG Chur. Ihr Besitz von 16.500 Aktien im Jahre 1938 ist durch die Beilagen L4 und L5, sowie durch die Beilage 4 erwiesen.*" Partial Decision, p. 18. The referenced attachments are not available to the CRT. In its Partial Decision, the Restitution Commission noted that the Property Control Office presumed that the shares had been in Jewish ownership, but was not entirely clear of their origins. Nevertheless, they were treated as Jewish shares, and were subjected to aryanization tax. The Partial Decision notes that the Property Control Office offered to cancel the aryanization tax for these shares if Auer could provide documentation to prove that the shares did not come from Jewish ownership (as defined by the Nuremberg laws), and that Auer did not do so, even though he would have saved a substantial sum if he had done so ("*Diesen Nachweis hat Clemens Auer nicht erbracht, obwohl er dadurch einen namhaften Betrag an Arisierungsaufgabe erspart hätte*"). Partial Decision, pp. 18 – 19.

<sup>114</sup> Perry Report, p. 6.

<sup>115</sup> Syndicate Agreement, p. 1.

owners.<sup>116</sup> Moreover, the 6,500 shares were included in the package of shares sold by the heirs of the Syndicate members, including the Pick heirs, to a sugar consortium in 1957, shortly before the final settlement was reached between them and the Republic of Austria. Accordingly, the CRT concludes that Otto Pick is the beneficial owner of these shares, and that their value is rightly included in the Award amount.

The CRT notes that the ÖZAG shares were returned to the heirs of Otto Pick and Ferdinand Bloch-Bauer in a restitution proceeding against the Republic of Austria in 1957. According to Unfried, in 1957, the Bloch-Bauer, Löw, Pick, and Graetz groups sold their approximately 71,000 shares in the company to a sugar consortium for S 118.6 million.<sup>117</sup> This amount may be taken as the 1957 value for the 71,182 shares held by the Löw, Pick, Graetz, and Bloch-Bauer groups. Of these 71,182 shares, 20,187 were held by Pick and 12,850 were held by the Bloch-Bauer group for a total of 33,037 shares, or 46.41 percent of the total 71,182 shares sold by the settling Restitution Claimants. Accordingly, S 55,042,260.00 (46.41 percent of S 118.6 million) may be considered as the value of the 33,037 shares held by the Pick and Bloch-Bauer groups that were included in the 1957 restitution. This amount was equal to 9,258,108.13 Swiss Francs (“SF”).<sup>118</sup>

The CRT has compared the value of the restitution received with the true value of the shares prior to the *Anschluss*, consistent with the measures of valuation set forth above, with a deduction for any amount released to the share owners at the time of aryanization. As noted above, the best evidence of the shares’ true value is the average of the shares’ selling price immediately prior to the Nazis’ effort to manipulate their value. Accordingly, for the purposes of valuation, the CRT considers the value of the shares prior to their devaluation by the tax proceedings.

All available documentation confirms that ÖZAG shares, being in the main firmly held by a few stockholders, with less than five percent of the shares widely dispersed, were traded only sporadically and that the transaction price in March 1938 ranged from S 300.00 to S 350.00, which was equal to RM 200.00 to RM 230.00.<sup>119</sup> The CRT notes that, in his 1938 Census

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<sup>116</sup> The CRT notes that the Partial Decision and the settlement reached in 1957 included the Patzenhofer group, which, as the Restitution Commission noted in the Partial Decision, was not Jewish. In the Partial Decision, the Restitution Commission justified the inclusion of the Patzenhofer group by noting that the company itself and the shareholders as a legal group were considered to be Jewish by the Nazi regime. Partial Decision, pp. 8 – 9.

<sup>117</sup> Unfried, p. 658.

<sup>118</sup> When converting amounts into Swiss Francs, the CRT uses official exchange rates prevailing at the time. In 1957, S 1.00 was worth SF 0.1682.

<sup>119</sup> The Industry Report quotes a share price before the *Anschluss* of “S 300-S 350 or RM 200 to RM 230.” The Perry Report quotes a certification by the General Secretary of the Vienna Stock Exchange finding that the value of the shares in March 1938 was “S 320-350 for a par of S 125 per share.” Industry Report, p. 3; Perry Report, p. 9. The full text, dated 19 May 1947, is shown in Exhibit 27 to the Perry Report and confirms that the shares were not quoted on the Stock Exchange because they “were for the most part in permanent hands and only a very small part of them was available for trade.” Accordingly, the quotes provided were based on a few turn-overs and compared with officially quoted sugar shares. The 1946 Registration, dated 15 November 1946, cites information provided by the Stock Exchange, according to which, on 13 March 1938, the relevant date set for the registration (*Stichtag*), the shares were to be valued at S 300.00 each. Registration, p. 1. Unfried cites a memorandum written by Dr. Rinesch, dated 29 April 1955, in which he stated that the shares were worth S 300.00 per share in March 1938. Unfried notes

declaration dated 15 July 1938, Gustav Bloch-Bauer valued his ÖZAG shares as of 27 April 1938 at S 250.00 per share, which was equal to RM 166.67 per share.<sup>120</sup> The lower value attributed to the shares as of this date may reflect the effect of the ongoing tax investigation, which had begun several weeks prior, in March 1938. Moreover, there is ample evidence that respondents to the 1938 Census tended not to declare all the assets they held and/or to undervalue declared assets in an effort to safeguard some of their wealth for the future. For example, the CRT has found numerous cases in which an account owner filed a 1938 Census form, but did not declare accounts which are documented in the bank records available to the CRT.<sup>121</sup> Research relating to restitution records, specifically to 1938 Census records available in the Austrian State Archive, found many instances in which assets either were not declared at all or were declared at lower values than documented after the War.<sup>122</sup> Most telling, neither Gustav Bloch-Bauer, Robert Bloch-Bauer, nor Otto Pick declared the ÖZAG shares held at the Bank in their 1938 Census declarations. Rather, Gustav Bloch-Bauer only declared ownership of 2,135 shares that were held in Vienna, and Otto Pick only declared ownership of 3,687 ÖZAG shares, that were presumably held in Vienna.<sup>123</sup> Moreover, Otto Pick, in his 1938 Census declaration, valued his ÖZAG shares at only RM 100.00 each, even though they were clearly worth much more. Accordingly, the CRT considers both Gustav Bloch-Bauer's declaration of S 250.00 (or RM 166.67) per share and Otto Pick's declaration of RM 100.00 per share to be unreliable as the basis for determining the true value of the shares. However, it is clear that neither Gustav Bloch-Bauer nor Otto Pick would have *overstated* the value of the shares in his original declaration, as one could hardly conjecture that respondents would have overvalued their declared assets. In calculating the true value of the shares, the CRT has taken the quoted value of S 300.00 or RM 200.00 per share as the reasonable value of the shares.<sup>124</sup> The CRT has used the lower quoted value of S 300.00 per share, as provided in the Industry Report and the 1946 Registration, as a middle value between the S 250.00 (RM 166.67) floor (as declared in Gustav Bloch-Bauer's 1938 Census declaration) and the S 350.00 (RM 233.33) ceiling (as provided in the Industry

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that this value was used in a *Finanzprokurator* report dated 5 January 1956. Unfried, at 650. The opinion of the *Finanzprokurator*, dated 31 August 2004, confirms on p. 4 the share price of S 300.00 before 13 March 1938 and on p. 13 states that ÖZAG was capitalized "at the time of the *Anschluss* according to information provided by the Stock Exchange with RM 200.-- (S 300.--) a share..." In an effort to confirm this price, the CRT contacted the Vienna Stock Exchange to obtain the official quoted price for ÖZAG shares on 13 March 1938. In correspondence dated 14 October 2004, the Stock Exchange again confirmed that no official quotes were available for ÖZAG shares at the time. The CRT recognizes that the sporadic market for the few available shares may not be representative of the market for a large number of shares. As a result, however, the controlling block of shares generally commands a substantial premium.

<sup>120</sup> In a letter to the authorities, dated 23 May 1939, Gustav Bloch-Bauer's attorney, Dr. Gustav Rinesch, amended the asset declaration of Gustav Bloch-Bauer, who had since passed away. In that letter, Dr. Rinesch indicated that the ÖZAG shares which were originally valued at S 250.00 per share on 27 April 1938 had decreased in value to RM 75.00 per share. The CRT notes that, although neither the asset declaration nor Dr. Rinesch's letter specifically indicates the location of these shares, they appear to have been held outside of Switzerland. See *supra*, note 23.

<sup>121</sup> See, e.g., *In re Accounts of Maximilian Weich*, *In re Account of Juliane Steiner*, *In re Accounts of Fanny Margulies and Serafine Margulies*, *In re Account of Fritz Gutfreund*, and *In re Account of Max Wohlmuth*.

<sup>122</sup> See Junz, Rathkolb, Venus, et al., *Das Vermögen der jüdischen Bevölkerung Österreichs-NS Raub und Restitution nach 1945*, Historikerkommission: Vienna, 2004, p. 63.

<sup>123</sup> As noted above, there is a slight discrepancy in the number of shares attributed to Gustav Bloch-Bauer. See *supra*, note 23.

<sup>124</sup> While it may be impossible to determine the true value of the shares, the CRT considers Gustav Bloch-Bauer's declaration (of S 250.00 per share), as evidence that the shares were worth *at least* this amount.

Report). The CRT notes that this per share value is consistent with the firm's balance sheet values as of 31 July 1937 and 1 January 1940 and with the 1937 dividend payments.<sup>125</sup> The CRT also notes that in a decision dated 31 August 2004, the *Finanzprokurator*, delivering the views of the Austrian Federal Government as intervener in the Claimant's request for review of the restitution agreement reached with respect to their claim for the return of the Elisabethstrasse property, accepts the earlier valuation submitted by the representative of the restitution claimants and explicitly states the value of the shares to have been RM 200.-- (S 300.--) each at the time of the *Anschluss*.<sup>126</sup>

As for the 20,187 shares owned by Otto Pick, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 4,037,400.00, or SF 7,084,829.52 in 1938. As noted at page 41 above, Otto Pick received US \$28,000.00, or SF 122,360.00 from the proceeds of the sale. As a result, SF 6,962,469.52 is the value of the shares for which Otto Pick was not compensated in 1938. These 20,187 shares represent 61.10 percent of the shares that were restituted and then sold in 1957. The portion of the 1957 sale that corresponds to these shares is therefore SF 5,656,704.07, or 61.10 percent of the total SF 9,258,108.13 received by the Restitution Claimants. The difference between the 1938 uncompensated value and the value received in 1957 is SF 1,305,765.45. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules,<sup>127</sup> to produce an award amount of SF 16,322,068.16 for these shares.

As for the 9,570 shares owned by Ferdinand Bloch-Bauer, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 1,914,000.00, or SF 3,358,687.20 in 1938. As noted at page 41-42 above, the CRT has determined that Ferdinand Bloch-Bauer received 9.30 percent of the sale price, at RM 83.33 per share, of the 6,270 shares that he held at the Bank. The total sale price of the 6,270 shares was RM 522,479.10, and 9.30 percent of this amount is RM 48,590.56, or SF 85,266.71. There is no evidence that Ferdinand Bloch-Bauer received any compensation for the remaining 3,300 shares that were confiscated from him in connection with his alleged tax debt. As a result, SF 3,273,420.49 is the value of the shares for which Ferdinand Bloch-Bauer was not compensated in 1938. The 9,570 total shares owned by Ferdinand Bloch-Bauer represent 28.97 percent of the shares that were restituted and then sold in 1957. The portion of the 1957 sale that corresponds to these shares is therefore SF 2,682,073.93, or 28.97 percent of the total SF 9,258,108.13 received by the Restitution Claimants. The difference between the 1938 uncompensated value and the value received in 1957 is SF 591,346.56. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 7,391,832.00 for these shares.

As for the 2,775 shares owned by Gustav Bloch-Bauer, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 555,000.00, or SF 973,914.00 in 1938. As noted

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<sup>125</sup> At S 300.00 or RM 200.00 per share, the company's total value would equal S 24,000,000.00 or RM 16,000,000.00. As noted above, the firm's 31 July 1937 balance sheet value was S 26,021,555.24 (equal to RM 17,347,703.00), and its 1 January 1940 balance sheet value was RM 16,508,479.80 (equal to S 24,762,718.00). Perry Report, Exhibits 25 and 26; Industry Report, pp. 3 - 4.

<sup>126</sup> *Finanzprokurator*, p. 13.

<sup>127</sup> The multiplier is used to adjust 1945 values to present-day values. The adjustment is made in accordance with a formula established by the Special Masters with Court approval. See Rules, Article 31(1).



above, the CRT has determined that Gustav Bloch-Bauer received 9.30 percent of the sale price, at RM 83.33 per share, of the 440 shares that he held at the Bank. The total sale price of the 440 shares was RM 36,665.20, and 9.30 percent of this amount is RM 3,409.86, or SF 5,983.62. There is no evidence that Gustav Bloch-Bauer received any compensation for the remaining 2,335 shares that were confiscated from him in connection with his alleged tax debt. As a result, SF 967,930.38 is the value of the shares for which Gustav Bloch-Bauer was not compensated in 1938. The 2,335 total shares owned by Gustav Bloch-Bauer represent 8.40 percent of the shares that were restituted and then sold in 1957. The portion of the 1957 sale that corresponds to these shares is therefore SF 777,681.08, or 8.40 percent of the total SF 9,258,108.13 received by the Restitution Claimants. The difference between the 1938 uncompensated value and the value received in 1957 is SF 190,249.29. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 2,378,116.18 for these shares.

As for the 305 shares owned by Robert Bloch-Bauer, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 61,000.00, or SF 107,042.80 in 1938. As noted above, the CRT has determined that Robert Bloch-Bauer received 9.30 percent of the sale price, at RM 83.33 per share, of the 305 shares that he held at the Bank. The total sale price of the 305 shares was RM 25,415.65, and 9.30 percent of this amount is RM 2,363.66, or SF 4,147.75. As a result, SF 102,895.05 is the value of the shares for which Robert Bloch-Bauer was not compensated in 1938. The 305 shares owned by Robert Bloch-Bauer represent 0.92 percent of the shares that were restituted and then sold in 1957. The portion of the 1957 sale that corresponds to these shares is therefore SF 85,174.59, or 0.92 percent of the total SF 9,258,108.13 received by the Restitution Claimants. The difference between the 1938 uncompensated value and the value received in 1957 is SF 17,720.45. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 221,505.68 for these shares.

As for the 200 shares owned by the Claimant, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 40,000.00, or SF 70,192.00 in 1938. As noted above, the CRT has determined that the Claimant received 9.30 percent of the sale price, at RM 83.33 per share, of the 200 shares held at the Bank. The total sale price of the 200 shares was RM 16,666.00, and 9.30 percent of this amount is RM 1,549.94, or SF 2,719.83. As a result, SF 67,472.17 is the value of the shares for which the Claimant was not compensated in 1938. The 200 shares owned by the Claimant represent 0.61 percent of the shares that were restituted and then sold in 1957. The portion of the 1957 sale that corresponds to these shares is therefore SF 56,474.46, or 0.61 percent of the total SF 9,258,108.13 received by the Restitution Claimants. The difference between the 1938 uncompensated value and the value received in 1957 is SF 10,997.71. The current value of this amount is calculated by multiplying it by a factor of 12.5, in accordance with Article 31(1) of the Rules, to produce an award amount of SF 137,471.32 for these shares.

Consequently, the total award amount is SF 26,450,993.36.<sup>128, 129</sup>

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<sup>128</sup> This result exceeds the sum of the values of the various blocks of shares by SF 0.02 to compensate for the effects of rounding to two decimal places. See Exhibit F to this Award. The CRT notes that the same result is reached by calculating the shares in the aggregate. Using the figure of S 300.00 or RM 200.00 per share, the 33,037 shares

## Division of the Award

With regard to the 20,187 shares owned by Otto Pick, according to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Claimant represents her nephew, Peter Bentley, who is the son of Otto Pick's daughter Antoinette Bloch-Bauer; her great-nephew and great-nieces, Michael Bentley, Lisa Turner, Susan Kololian, Barbara Hislop, and Joan Ball, who are the children of Peter Bentley; and Elizabeth Jarvis and Marietta Hurst, who are the daughters of Otto Pick's son, Hans Pick (John Prentice). As noted above, Peter Bentley has submitted a copy of his mother's will, in which she names Peter Bentley's five children as the beneficiaries of her residual estate. Peter Bentley has requested that the portion of the Award to which Antoinette Bentley would have been entitled be distributed to his children, according to her wishes as expressed in her will. Accordingly, Peter Bentley's five children are entitled to share equally one-half of the value of the shares owned by Otto Pick, or SF 1,632,206.82 each, and Elizabeth Jarvis and Marietta Hurst are each entitled to one-fourth of the value of the shares owned by Otto Pick, or SF 4,080,517.04 each.

With respect to the 9,570 shares owned by Ferdinand Bloch-Bauer, according to Article 23(2)(a) of the Rules, if a claimant has submitted the Account Owner's will or other inheritance documents pertaining to the Account Owner, the award will provide for distribution among any beneficiaries named in the will or other inheritance documents who have submitted a claim. In this case, the will of Ferdinand Bloch-Bauer bequeaths his Estate to Luise Gutmann (50 percent), the Claimant (25 percent), and Robert Bentley (25 percent). The Claimant has submitted the will of Luise Gattin, formerly Gutmann, which bequeaths her residual Estate to her children, Francis Gutmann and Nelly Auersperg; the will and letters probate of Robert Bentley, formerly Bloch-Bauer, which bequeaths his residual Estate to his wife, Hylde Bentley; the will and letters of probate of Hylde Bentley, which bequeaths her residual Estate to Trevor David Mantle; and an agreement, dated 11 October 1998, between Trevor David Mantle and George Bentley, which stipulates that Trevor David Mantle and George Bentley are to share equally, in value and/or kind, any property "recovered pursuant to the legislation currently pending in the Austrian Parliament," the net share to which George Bentley as lineal heir of Robert Bentley and/or Trevor David Mantle as named alternate executor of the Estate of Robert Bentley and as residual beneficiary to the Estate of Hylde Bentley, may be entitled.

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belonging to the Pick and Bloch-Bauer groups were worth SF 11,594,665.52. The CRT has determined that US \$28,000.00, or SF 122,360.01, was released to Otto Pick from the sale of his 10,000 shares held at the Bank and that US \$22,452.61, or SF 98,117.90, was released to the Bloch-Bauer group from the sale of their 7,215 shares held at the Bank. The total amount received was SF 220,477.92, leaving SF 11,374,187.60 as the remaining value of the shares for which the original owners received no compensation during the aryанизation of the company. S 55,042,260.00 or SF 9,258,108.13 is then deducted from this amount for the purchase price obtained for the restituted shares in 1957. The difference in the two values is SF 2,116,079.47. The current value of this amount is calculated by multiplying it by a factor of 12.5, to produce an amount of SF 26,450,993.375, which, adjusted for the effects of rounding to two decimal places, is equal to the total award amount of SF 26,450,993.36.

<sup>129</sup> The CRT notes that this Award makes no effort to compensate the sums paid by the Restitution Claimants in connection with the Nazi-era tax proceedings or any other non-ÖZAG property.

Accordingly, Francis Gutmann and Nelly Auersperg are entitled to share equally 50 percent of the value of the shares owned by Ferdinand Bloch-Bauer, or SF 1,847,958.00 each. The Claimant is entitled to 25 percent of the value of the shares owned by Ferdinand Bloch-Bauer, or SF 1,847,958.00. Trevor David Mantle and George Bentley are entitled to share equally 25 percent of the value of the shares owned by Ferdinand Bloch-Bauer, or SF 923,979.00 each.<sup>130</sup>

With respect to the 2,775 shares owned by Gustav Bloch-Bauer, according to Article 23(1)(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. As noted above, the Claimant, who is the daughter of Gustav Bloch-Bauer, is representing the descendants of her siblings: Peter Bentley, who is the son of Leopold Bloch-Bauer; the five children of Peter Bentley; Francis Gutmann and Nelly Auersperg, who are the children of Luise Gattin; and George Bentley and Trevor David Mantle, who are the descendant and legal heir, respectively, of Robert Bloch-Bauer. As noted above, Peter Bentley has submitted his mother's will, which names his five children as the beneficiaries of her residual estate, and has requested that any Award amount to which his mother may have been entitled be awarded to his children, pursuant to her wishes as expressed in her will. Accordingly, the Claimant is entitled to 25 percent of the value of the shares owned by Gustav Bloch-Bauer, or SF 594,529.05, and the five children of Peter Bentley are entitled to share equally 25 percent of the value of the shares owned by Gustav Bloch-Bauer, or SF 118,905.81 each. Francis Gutmann and Nelly Auersperg are each entitled to 12.5 percent of the value of the shares owned by Gustav Bloch-Bauer, or SF 297,264.52 each. George Bentley and Trevor David Mantle are each entitled to 12.5 percent of the value of the shares owned by Gustav Bloch-Bauer, or SF 297,264.52 each.

With respect to the 305 shares owned by Robert Bloch-Bauer, as noted above, pursuant to the Agreement between Trevor David Mantle and George Bentley, they are each entitled to one-half of the value of the shares owned by Robert Bloch-Bauer, or SF 110,752.84 each.

With respect to the 200 shares owned by the Claimant, the Claimant is entitled to the full value of these shares, or SF 137,471.32.

In summary, the Award amount is divided as follows:

Claimant	SF 2,579,958.37
Peter Bentley	SF 0.00
Michael Bentley	SF 1,751,112.63
Lisa Turner	SF 1,751,112.63
Susan Kololian	SF 1,751,112.63
Barbara Hislop	SF 1,751,112.63
Joan Ball	SF 1,751,112.63
Elizabeth Jarvis	SF 4,080,517.04

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<sup>130</sup> The CRT notes that the Agreement between Trevor David Mantle and George Bentley refers specifically to "property recovered pursuant to the legislation currently pending in the Austrian Parliament" regarding repatriation of works of art and real property. Nevertheless, the CRT has concluded that the Agreement may be interpreted to govern the distribution of Ferdinand Bloch-Bauer's Estate under the *In re Holocaust Victim Assets Litigation*, as well.

Marietta Hurst	SF 4,080,517.04
Francis Gutmann	SF 2,145,222.52
Nelly Auersperg	SF 2,145,222.52
George Bentley	SF 1,331,996.36
Trevor David Mantle	SF 1,331,996.36
<b>Total</b>	<b>SF 26,450,993.36</b>

### **Scope of the Award**

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

### **Certification of the Award**

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

Claims Resolution Tribunal  
13 April 2005