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Book Review (reviewing Leonard Orland's A Final Accounting)

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Orland, Leonard. *A Final Accounting: Holocaust Survivors and Swiss Banks*. Durham: Carolina Academic Press, 2010. 620 pp. Hardcover. ISBN13: 978-1-59460-1. \$ 60.00

Leonard Orland is the Oliver Ellsworth Professor of Law at the University of Connecticut. He has written a fine, if a bit unwieldy, book that traces the sad history of money and other assets deposited in supposedly sacrosanct Swiss banks by European Jews during the Nazi era to its long overdue resolution by the American justice system. The book provides background and perspective on how and why the \$12.1 billion in pre-war dollars (about \$250 trillion today) of financial assets of Holocaust victims disappeared into thin air in the years following World War II. These assets were given over to Swiss banks by Jews and other Holocaust victims seeking to protect their life savings, having been lured by Swiss promises of secrecy and protection; but their heirs were met with cold, calculating denial by these same banks when they attempted to reclaim their rightful inheritance after the war.

Orland provides the narrative for the justice provided by American courts beginning in the late 1990's with the Holocaust Victim Asset Litigation¹ case and settlement, which culminated in the Swiss banks' agreement to pay \$1.25 billion for the relief of Holocaust survivors into a fund based and administered in the United States. The settlement monies were distributed as financial and medical services to hundreds of thousands of survivors all over the world. All legitimate claimants and their heirs to dormant Swiss bank accounts received the full proceeds of the accounts, which accounted for approximately \$100 million of the fund, and the remaining funds were distributed to the neediest Jewish, Roma, Jehovah's Witness, disabled and homosexual survivors.

Part one of this work concentrates on the documented historical record of the obfuscation and intransigence of the Swiss banks whose actions continued right up to the settlement that culminated the litigation. Part two explains the origins of the class action suit, and includes examples of the coordinated, complicated and voluminous defenses made by the Swiss banks, and shows how the class action suit provided a forum for justice to the survivors of the Holocaust. It enumerates in some detail the actions

¹ Holocaust Victim Asset Litig., 105 F. Supp. 2d 139 (E.D. N.Y. 2000), aff'd 14 Fed. Appx. 132 (2d Cir. 2001), reissued without alteration, 413 F.3d 183 (2d Cir. 2005).

of the trial judge, the Honorable Edward R. Korman of the United States District Court for the Eastern District of New York who very ably led the parties to a successful settlement and supervised the distribution of settlement funds. Part three explains the intricacies and controversies of the settlement and shows how the judge applied equitable standards and the doctrine of *cy pres* in determining who would receive settlement money. Finally, part 4, shows how this litigation set the standard for other Holocaust era cases that sought restitution and justice for human rights claims related to the Nazi era.

Part 4 also contains a chapter on “Historic Injustice Litigations”² which is the book weakest part. It attempts to argue that the standards established by the court in the Holocaust Victim’s Asset Litigation case should be applied to other human rights class actions, including the Mexican Braceros claims, the Japanese Comfort Women and Forced Labor claims, South African apartheid class actions, African American Slavery Restitution claims, Armenian Genocide and litigation against former Philippine President, Ferdinand Marcos. Most of the plaintiffs in these class actions sought relief in U.S. courts under the Alien Tort Claims Act and the Torture Victims Protection Act and most, if not all, have been unsuccessful and have been dismissed before trial or did not succeed in obtaining compensation for the plaintiff victims. These statutes were not at bar in the original case, and the authors’ inclusion here seems forced and it is not clear whether their presence in the book was a means to advocate for setting a standard for the settlement of class action human rights cases, a way to showcase the courage and fortitude of Judge Korman, a way show that most cases brought on behalf of victims of “historic injustices” are unsuccessful, or all three factors. It is simply not clear.

Having said that, this is still a valuable book. Along with all the background and the detailed account of the case, are several hundred pages of supporting documents for the litigation in several appendices. Included are excerpts from the Bergier Commission Commission’s Final Report of the Independent Commission of Experts for Switzerland, litigation documents from the class action and other related documentation. From a research standpoint, of particular value and interest is the Judah Gribetz’, the Special Master who supervised the distribution of the fund), bibli-

² Leonard Orland, A Final Accounting: Holocaust Survivors and Swiss Banks 109 (2010).

ography, which has over 500 entries. The appendices comprise the major portion of the book, and are over 400 pages in length.

In the first pages of this book you will find the famous biblical quote “Justice, justice you are to pursue.”³ That it took over 55 years, a justice system in a foreign country and on a different continent, a forthright judge and a novel legal concept for holocaust survivors to obtain some measure of restitution for their incalculable losses is a testament to the tenacity of those who pursued justice, both on their own behalf’s and for others.

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³ Deuteronomy, chapter 16, verse 20.