

# CLAIMS RESOLUTION TRIBUNAL

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

## **Certified Award**

to Claimant [REDACTED 1]

to Claimant [REDACTED 2]

and to Claimant [REDACTED 3], née [REDACTED]

all represented by E. Randol Schoenberg

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

Claim Numbers: 401121/BW; 401450/BW; 401133/BW;  
401459/BW; 400770/BW; and 401626/BW

Award Amount: 11,725,006.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”) and [REDACTED 3], née [REDACTED] (“Claimant [REDACTED 3]”) (together the “Claimants”) to the January 2005 published account of Bruno Graetz. This Award is to shares belonging to certain members of a syndicate of major Jewish shareholders (the “Syndicate”) of the *Österreichische Zuckerindustrie AG* (“ÖZAG”) which held an account at the Zurich branch of the [REDACTED] (the “Bank”). As further addressed below, the documents submitted by the Claimants show that the majority of the 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 the control of the Reich.<sup>1</sup> Eighty-nine percent of ÖZAG’s shares were held under the Syndicate Agreement. Pursuant to the Agreement, 40,195 (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. Among the Syndicate members was a family trust founded by the Claimants’ relatives.

On 13 April 2005, the Court approved an Award (the “April 2005 Award”) to a group of claimants (the “April 2005 Award Claimants”) representing the heirs of the Bloch-Bauer and Pick families, who, as major shareholders of ÖZAG, had contributed 41.2 percent of the shares in the Syndicate. As further explained below, the April 2005 Award was based on documents submitted by the heirs of the Bloch-Bauer and Pick families that record the origin and

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<sup>1</sup> The CRT notes that the nature of the Syndicate, its groups, and history are fully described in another award to different members of the Syndicate of *Österreichische Zuckerindustrie AG*. See *In re Account of Österreichische Zuckerindustrie AG*, approved by the United States District Court, Eastern District of New York (the “Court”) on 13 April 2005 (the “April 2005 Award”).

purpose of the Syndicate and the details of the Syndicate Agreement referred to above. As already noted, almost nine-tenths of ÖZAG's shares were held under the Syndicate Agreement, with 50.2 percent deposited with the Bank and held in the Bank's name on behalf of the members of the Syndicate. The family trust of the Claimants' relative in the present Award was also a major shareholder in the ÖZAG Syndicate, accounting for 23 percent of the shares held in the Syndicate. This Award addresses the shares of the family trust of the Claimants' relatives which were held under the Syndicate Agreement and which were not awarded in the April 2005 Award.

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

### **Executive Summary of Opinion**

This Award is one of three Award decisions that return to the Jewish shareholders of ÖZAG, or their heirs, the loss in value of their ÖZAG shares they suffered as a consequence of the Bank's active participation in the aryanization of ÖZAG, Austria's most important pre-War refiner of sugar.<sup>2</sup> The complicity of the Bank allowed the Nazi authorities to carry out the aryanization, as they had in many other cases, under the guise of law, with the Nazi authorities obtaining control of the company through purchases of shares at duress prices and outright confiscation under the pretext of criminal tax evasion. The Bank's actions were in clear 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 Reich under a 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 controlling number 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 under the Agreement.

Eighty-nine percent (71,246) of ÖZAG's shares were held under the Syndicate Agreement by four groups of Jewish owners: the Bloch-Bauers, Otto Pick, the Löw family and the Graetz Family Trust, and of these 40,195 (slightly over half of the company's total shares) were deposited with the Bank and held in the Bank's name on behalf of certain members of the Syndicate. None of the 71,246 shares held under the Syndicate Agreement could be sold or transferred without the consent of the Bank, nor could the Bank give its consent to any sales or transfers without the unanimous agreement of the beneficial owners. Furthermore, the Agreement specified that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and that "an earlier dissolution of the Syndicate is permitted only with unanimity." The clear objective was to set up a barrier to enforced sale or confiscation that depended almost entirely on the mutual expectation of the share owners, embodied in their Syndicate Agreement with the Bank, that the Bank not cooperate with, or give in to, the Nazi regime's demands or wishes.

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<sup>2</sup> See *In re Account of Österreichische Zuckerindustrie AG Syndicate*, approved by the Court on 13 April 2005; and *In re Account of Österreichische Zuckerindustrie AG Syndicate*, approved contemporaneously with this decision.

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. Criminal tax proceedings 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. In a separate action, criminal tax proceedings were initiated against the Löw brothers, ending with the confiscation of their assets, including their holdings of ÖZAG shares. Such tactics were a favored instrument in the Reich’s reach for the assets of its Jewish population.

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 in the forced “take-over” of ÖZAG by unlawfully selling the shares it held under the Syndicate Agreement to the designated aryanizer, Auer, at a fraction of the shares’ value, without obtaining the unanimous consent of the Syndicate Agreement’s participants. Moreover, by transferring a controlling interest in ÖZAG through the sale, the Bank effectively removed any protection provided by the Syndicate Agreement and thereby facilitated the Nazi regime’s acquisition of the remaining shares held at other depositories either by purchase at a similarly low price or by outright confiscation.

The CRT has determined that the Bank bears the responsibility for compensating the Claimants and their relatives for the Bank’s direct and active complicity in the confiscation and loss of value of the 71,246 shares of ÖZAG held by the Bloch-Bauer, Pick, Löw and Graetz families.

This Award to members of the Graetz family, 11,725,006.00 Swiss Francs, is among 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 aryanizer at a fraction of the shares’ value, less any sums received by the Claimants 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 nearly unique in its size, it is, unfortunately, representative of several general findings by the CRT. This Award is merely one of the striking examples of the betrayal of Jewish clients by Swiss banks. Having marketed themselves to the Jews of Europe as a safe haven for their assets, Swiss banks repeatedly turned Jewish-owned assets over to the Nazi regime in order to curry favor with it. They did this either in violation of their contractual obligations or by honoring account owners’ requests to transfer to assets entrusted to them to Nazi entities with full knowledge that the written requests were coerced -- both of which violated Swiss law.<sup>3</sup> An explanation for their conduct was provided by Paul Rossy, the chief executive officer of the Swiss National Bank, when he told a forum of economic leaders in July 1940 that

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<sup>3</sup> See *Switzerland National Socialism and the Second World War, Final Report of the Independent Commission of Experts Switzerland-Second World War* [Bergier Commission], Pendo, Zurich 2002; Edward R. Korman, “Rewriting the Holocaust History of the Swiss Banks,” in *Holocaust Restitution: Perspectives on the Litigation and its Legacy*, Michael Bazylar & Roger P. Alford eds., 2006, pp. 115, 119-20.

“[t]he world, and naturally our country as well, is confronted with totally new conditions to which it must become accustomed.... [O]ur country will have to consciously seek its place in this new world and endeavor to play an active role in it. In no case should we limit ourselves to passive adaptation alone.”<sup>4</sup>

This Award is also 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 Claimants and/or obtained by the CRT from archival sources. We can never know how many other examples of betrayal remain buried either in the records of the 2,757,950 accounts, of the total 6,858,116 opened in Swiss Banks between 1933-45, which the Banks concede were destroyed completely, or could have been found in those remaining accounts for which only fragmentary records survive.

This case is also significant because it depicts the strategies used by the Reich to seize control of Jewish-owned property, ranging from outright confiscation to sophisticated “take-over” deals, involving distress sales orchestrated by spurious tax proceedings and faithless banks and disguised by the veneer of “law.”

Finally, the Awards illustrate some of the special difficulties faced by Austrian Jews in seeking restitution. It may suffice to note that the official representing the Austrian Government in 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 following the *Anschluss*.

## Full Opinion

### Information Provided by the Claimants

The Claimants, who are related, submitted claim forms in 2005 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 the Reich’s control. The Claimants stated that their relatives, Dr. Victor (Viktor) Graetz and Dr. Bruno Graetz, who were brothers and who were Jewish, were co-founders and co-beneficiaries of the Graetz family trust (“*Graetz’sche Familienstiftung*”) (the “Graetz Family Trust”), which was a major shareholder in ÖZAG and a member of the Syndicate.

The Claimants identified Dr. Victor Graetz as the father of Claimant [REDACTED 1] and the paternal grandfather of Claimant [REDACTED 2] and Claimant [REDACTED 3], who are Claimant [REDACTED 1]’s children, and Dr. Bruno Graetz as Claimant [REDACTED 1]’s uncle and Claimant [REDACTED 2] and Claimant [REDACTED 3]’s paternal great-uncle. The Claimants stated that Victor Graetz was married to Emma Graetz, née Schwitzer. Dr. Bruno Graetz, who was born in Rumburg, Austria-Hungary (later Czechoslovakia) on 9 February 1878, and married to [REDACTED], née [REDACTED], on 28 July 1922 in Vienna, Austria.

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<sup>4</sup> Independent Commission of Experts Switzerland-Second World War [Bergier Commission], *Switzerland and Gold Transactions in the Second World War, Interim Report*, 1998, p. 77 n. 64 available at <http://www.uek.ch/>.

According to the statutes of the trust submitted by the Claimants (the “Trust Deed”), the Graetz Family Trust was founded under Swiss law on 18 July 1931 in St. Gallen, Switzerland, by Dr. Viktor Graetz, Dr. Bruno Graetz, and Mrs. Emmy Graetz, née Schwitzer, all of Vienna, as a common capital fund to provide for the security and support of the founders, their wives, and their legitimate issue.. The Trust Deed further indicates that the Graetz Family Trust was to be “managed by Trustees unconnected with the interests of any of the individual beneficiaries, in a country with stable political, economic and financial conditions.”<sup>5</sup> According to the documentation submitted by the Claimants, the Graetz Family Trust held among its assets 16,480 shares of ÖZAG.

When in the late 1930s the political situation in Europe deteriorated, the Board of Trustees of the Graetz Family Trust decided to dissolve the trust and distribute its assets. The Claimants submitted a resolution of the Board of Trustees (the “Resolution”) dated 10 January 1939, and a protocol (the “Protocol”) dated 11 January 1939, concerning the dissolution and distribution of the assets of the Graetz Family Trust. According to the Resolution, the trustees and beneficiaries of the Graetz Family Trust decided to dissolve the trust “due to the prevailing precarious political, economic and monetary circumstances in Europe, as well as the securities laws and the laws related to the blocking and confiscation of assets; as well as the fact that the beneficiaries had been forced to move their places of residence to various different countries, which impedes communication among the beneficiaries and the Board of Trustees.”<sup>6</sup> The Resolution further indicates that Dr. Bruno Graetz was appointed as the single power of attorney holder and signatory for the Graetz Family Trust. According to the Protocol, two-thirds of the capital assets of the Graetz Family Trust were to be distributed to the family of Dr. Victor Graetz, with 130,000.00 United States Dollars (“US\$”) earmarked for [REDACTED 1] (Claimant [REDACTED 1]), and the remaining one-third of the trust assets were to be distributed to the family of Dr. Bruno Graetz, with US \$130,000.00 earmarked for the wife of Dr. Bruno Graetz, [REDACTED].

The Claimants indicated that Dr. Victor Graetz died in Salsdon, Surrey, England on 19 November 1939; that Dr. Bruno Graetz died on 5 February 1968 in Vienna; and that [REDACTED], née [REDACTED], died at some point before 18 September 1979, when her will was probated in the state of New York, the United States. Claimant [REDACTED 1] stated that he is the only child of Dr. Victor Graetz, and that Claimant [REDACTED 2] and Claimant [REDACTED 3] are his children. According to the Claimants, Bruno and [REDACTED] Graetz died without issue. Claimant [REDACTED 1] stated that he was born on 20 October 1920 in Vienna. Claimant [REDACTED 2] stated that he was born on 24 October 1952 in Providence, Rhode Island, and Claimant [REDACTED 3] stated that she was born on 4 December 1954 in Providence.

In support of their claims, the Claimants submitted numerous documents, including:

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<sup>5</sup> Graetz Family Trust Deed, English translation (submitted by Claimants), page 2.

<sup>6</sup> See Resolution of the Board of Trustees (*Kuratoriumsbeschluss der Graetz'schen Familienstiftung St. Gallen*) dated 10 January 1939 (the “Resolution”) at (1)(a) and (b).

- 1) Documents, including the Trust Deed, Resolution, and Protocol, regarding the formation, dissolution and final distribution of the Graetz Family Trust, located in St. Gallen, Switzerland;
- 2) a birth certificate, issued on 2 April 1938 by the Roman Catholic Parish of Rossau in Vienna, which indicates that [REDACTED] was born on 25 June 1891 and baptized on 6 July 1891 in Vienna;
- 3) a marriage certificate, issued on 4 April 1938 by the Augsburg Protestant church in Vienna, which indicates Dr. Bruno Graetz and [REDACTED] were married on 28 July 1922;
- 4) a certificate of nationality, issued by the Republic of Czechoslovakia on 6 April 1938, which indicates that Dr. Bruno Graetz was born in Rumburg, Czechoslovakia on 9 February 1878 and was a member of the Protestant religion;
- 5) a document dated 23 September 1938, which indicates the transfer (*remise*) of 16,480 shares of ÖZAG into an account numbered L 3440 in the name of the Graetz Family Trust at the Geneva, Switzerland, branch of the Bank;
- 6) a letter from the Bank dated 3 January 1939, to Dr. Bruno Graetz, regarding the Bank's sale and the proceeds of 26,480 shares of ÖZAG for RM 75.00 per share;
- 7) a letter from the Bank to the Graetz Family Trust, regarding the transfer of "M 1,236,000.-" [sic], representing the proceeds of the sale of the 16,480 ÖZAG shares belonging to the Graetz Family Trust to the personal account of Dr. Bruno Graetz;
- 8) a memorandum dated 14 April 1939, according to which Graetz Family Trust assets totaling US \$2,930,359.00 were distributed, with one-third (1/3) being given to the family of Bruno Graetz and two-thirds (2/3) being given to the family of Victor Graetz as the final distribution of the trust funds;
- 9) the last will and testament of Dr. Victor Graetz, dated 29 August 1939;
- 10) an Order (*Beschluss*) concerning the estate of Victor Graetz issued by the District Court of Vienna (*Bezirksgericht Wien*) on 27 April 1948;
- 11) correspondence and an assignment agreement concerning the assignment by Dr. Bruno Graetz of all his claims to restitution of his interest in ÖZAG to his nephew, [REDACTED 1] (Claimant [REDACTED 1]) on 18 April 1956 (the "Assignment Agreement");
- 12) correspondence from [REDACTED 1] (Claimant [REDACTED 1]) to Dr. Bruno Graetz in 1957 which indicates that 16,480 ÖZAG restitution claims (each representing individual ÖZAG shares) of the Graetz Family Trust were sold to an Austrian sugar consortium and that subsequently payment of US \$927,827.63 had been transferred to New York; and
- 13) a Report of the Death of an American Citizen, dated 12 February 1968, which indicates that Dr. Bruno Graetz, a US citizen, died on 5 February 1968 in Vienna.

In reviewing this claim, the CRT also relied on the following documents, which were submitted to the CRT by the April 2005 Award Claimants:

- 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) 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”);
- 4) 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”);
- 5) a report prepared after the Second World War by Albert Perry, Jr., for the Property Control Branch, USACA about ÖZAG (the “Perry Report”);
- 6) 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”);
- 7) correspondence between the Claimant’s representative and Unfried;
- 8) the resume (*Lebenslauf*) of the Nazi-appointed auditor of ÖZAG, Guido Walcher, dated 20 April 1938 (the “Resume”); and
- 9) 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”).

### ÖZAG Prior to the *Anschluss*

As detailed in the April 2005 Award, ÖZAG, incorporated on 6 August 1909, had its factory in Bruck an der Leitha (Lower Austria), its main offices in Vienna, and 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 approximately one-fifth of Austrian sugar production.<sup>7</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>8</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)

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<sup>7</sup> Industry Report, p. 2.

<sup>8</sup> *Id.*, p. 1.

- 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.

The Industry Report further states that the shares were traded only occasionally on the Vienna stock exchange and “before the *Anschluss*” were quoted at about S 300.00 to 350.00 or RM 200.00 to RM 230.00 per share. 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, ÖZAG’s share capital consisted on 13 March 1938 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>9</sup>

As noted above, barely a week before the *Anschluss*, the Jewish shareholders of ÖZAG formed a Syndicate in which the Bank played a central role as a partner in the Syndicate and as a fiduciary. The purpose of the Syndicate was to protect their shares, and thereby the company, from being seized or otherwise brought under the control of the Reich. The Syndicate Agreement thus specified that none of the 71,246 shares held under the Agreement could be sold or transferred without the consent of the Bank, nor could the Bank give its consent to any sales or transfers without the unanimous agreement of the beneficial owners. Furthermore, the Agreement specified that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and that “an earlier dissolution of the Syndicate is permitted only with unanimity.” In order to further strengthen the protective power of the Agreement, a number of Syndicate members transferred just over 50 percent of the shareholdings into the name and custody of the Bank. According to the Syndicate Agreement, the 71,246 shares participating in the Syndicate Agreement thus were held as follows:<sup>10</sup>

The Bank held 40,195 shares on behalf of:

- |   |        |
|---|--------|
| • The <i>Graetzsche Familienstiftung</i> (Graetz Family Foundation)<br>St. Gallen, Switzerland (Dr. Bruno Graetz) | 16,480 |
| • <i>Sapafin AG</i> Chur, Switzerland<br>(Otto Pick)  | 16,500 |

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<sup>9</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 quoted on the Exchange because shares were traded only sporadically, the bulk being held firmly.

<sup>10</sup> Perry Report, Exhibit 2, Translated copy of Syndicate Agreement. The CRT notes that the shares attributed to the Löw family in the Syndicate Agreement total 21,729, while other official documents indicate that the family in fact owned 21,665 Syndicate shares. See discussion, *infra*, regarding assets declared by Wilhelm Löw and Marianne Hamburger-Löw in their 1938 Census declarations, as well as the Perry Report, Exhibit 24, p. 2, and Industry Report, p. 2. In this decision, the CRT concludes that the Löw holdings in ÖZAG totaled 21,665 shares.

• Ferdinand Bloch-Bauer and several family members	7,215	
		Subtotal
		<b>40,195</b>
<i>Credit Industriel</i> , Glarus (acting for the Löw family) <sup>11</sup>	5,100	
Dr. Ferdinand Bloch-Bauer	3,300	
Dr. Gustav Bloch-Bauer	2,335	
Dr. Marianne Hamburger-Löw	8,329	
Mrs. Gertrude Löw	8,300	
Dr. Otto Pick	3,687	
		Total
		<b>71,246</b>

The achievement of the objective of the Syndicate Agreement thus was based upon the expectation of Syndicate members, embodied in the Agreement to which the Bank was party, that the Bank not cooperate with, or give in to, the Nazi regime's demands or wishes.

#### The Path to the Aryanization of ÖZAG

As set out in the April 2005 Award, within days after the *Anschluss*, the Gestapo seized the company's ledgers. Criminal tax proceedings were initiated against ÖZAG and its two subsidiaries on 27 April 1938, and a member of the Nazi Party (*Nationalsozialistische Deutsche Arbeiterpartei* or NSDAP) was appointed to audit the firm. The tax proceedings were to play a central role in the plan of the *Vermögensverkehrsstelle* (the agency within the Economics Ministry charged with dealing with Jewish-owned assets, hereinafter the "VVSt") to facilitate the aryanization of the company's shares.

According to the Perry Report, the criminal tax investigation allegedly revealed, among other things, taxable sums that had not been declared in the company's annual tax returns, subjecting it 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.

In a letter dated 3 December 1938, the VVSt, having concluded that the tax proceedings were putting sufficient pressure on 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 acceptable purchasers. *Martin Brinkmann A.G.* withdrew, however, being unwilling to risk the tax penalty overhang and Auer, correctly interpreting the purpose of the tax proceedings, became the designated aryanizer. In a letter dated 20 December 1938, he then

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<sup>11</sup> The *Credit Industriel* was a financial institution, owned by *Schweizerische Bankverein*, specifically set up to cloak financial holdings of its clients. It participated in the Syndicate with 5,100 ÖZAG shares on behalf of the Löw group.

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 percent of the total) could be obtained, RM 75.00 per share.

### The Breach of the Syndicate Agreement

The Bank notified the Syndicate members of Auer's offer on 17 December 1938.<sup>12</sup> The offer failed to obtain the required unanimous agreement of the members of the Syndicate, and thus, under the terms of the Syndicate, was rejected. This 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 Pilgrim 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>13</sup> In its 22 December 1938 letter, the Bank further 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>14</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 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>15</sup>

While the records do not indicate whether the Bank received any responses to this letter, other documents indicate that the Bank did not even wait until 15 January 1939 before executing 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 on his behalf 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, or put at the disposal of, the *Länderbank*, for a total of 37,047 shares.<sup>16</sup> The 1956 Ownership Statement notes that Auer

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<sup>12</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>13</sup> Perry Report, Exhibit 16.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> The additional 10,567 shares included 6,500 shares held by Lloyd and Davies on Pick's behalf, which according to the Perry Report, were held at the Bank, but had earlier been put at the disposal of to the *Länderbank*. The Syndicate Agreement also indicates that 40,195 shares were held in the Bank's name and deposited at the Bank, which would include the 6,500 shares held by Lloyd and Davies on Pick's behalf. Thus, the original holding at the Bank were indeed 40,195 shares. However, according to the documentation, Otto Pick reluctantly "induced" his friends Lloyd and Davies to put their 6,500 shares at the disposal of the *Mercurbank* (later *Länderbank*) as part of the negotiated release of his son-in-law, Leopold Bloch-Bauer, from a Nazi prison and permission for his leaving Austria for Switzerland. These shares apparently remained physically at the Bank, and it is not clear when exactly

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 Trust and 10,000 had been held by Otto Pick. These notes also are in line with a listing of ÖZAG shares acquired by Auer provided by the *Länderbank* in a letter dated 13 February 1940 to Auer for purposes of showing "proof of aryan ownership" (*Ariernachweis*) for a large part of the shares.<sup>17</sup> This letter confirms that 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>18</sup>

With regard to 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 executing the sale. The remaining Syndicate shares were sold to Auer after 15 January 1939, the deadline the Bank had set for receiving replies to their dissolution proposal. With regard to the 21,665 shares held by the Löw family, these shares were seized by the tax authorities (*Finanzverwaltung*) in the context of illegal tax proceedings against the family sometime before 17 July 1938<sup>19</sup> and sold to Clemens Auer via the VVSt on 28 August 1939 at RM 90.00 per share.<sup>20</sup>

With regard to the shares held by the Graetz Family Trust, in a letter submitted by the Claimants dated 3 January 1939 and addressed to Dr. Bruno Graetz at the hotel *Waldhaus Dolder* in Zurich, the Bank referred to a telephone conversation and oral discussion of the same day and confirmed that it had sold 26,480 shares of ÖZAG on 31 December 1938 at RM 75.00 a share. The letter stated that the sale had been executed by *Dresdner Bank Berlin* and included the text of a telegram from *Dresdner Bank*, which stated that the shares needed to be delivered as soon as possible to the *Länderbank* in Vienna. In the meantime, *Dresdner Bank* had credited the Bank's *Aktienspermark-Konto* (blocked securities RM account) with RM 1,986,000.00, with a value date of 31 December 1938. *Dresdner Bank*'s telegram then discussed the two blocked account options open for this deposit: 1) preferential *Aktienspermark*, for which proceeds from the sale of securities held before 13 March 1938 (*i.e.*, predating the *Anschluss*) were eligible; or 2) *Handelsspermark* (blocked trading RM). In its letter to Dr. Bruno Graetz, the Bank explained that new foreign currency regulations made the first option moot, but that it believed it would be

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they were transferred to the *Länderbank*. Though a reference made to their transfer says "about middle of 1939, the exact date had to be investigated," the shares were actually sold to Auer through the *Länderbank* on 30 December 1938. Perry Report, Exhibits 14, 17, and 21.

<sup>17</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 the aryanization tax. The authorities maintained that the shares were "Jewish" shares, even if sold by a Swiss bank. Unfried, p. 653.

<sup>18</sup> Perry Report, p. 6.

<sup>19</sup> By decree on 26 April 1938, the Nazi Regime required all Jews who resided within the Reich, 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 her 1938 Census declaration, number 28862, signed 15 July 1938, Marianne Löw-Hamburger reported owning 25 percent of 21,665 shares of ÖZAG and noted that these had been confiscated. Wilhelm Löw's asset declaration, number 28859, signed also on 15 July 1938, has the identical entry.

<sup>20</sup> Partial decision, p. 8; Industry Report, p. 6; and Perry Report, Exhibit 17.

able to use the *Handelsspermark* for the same triangular transaction that it had employed for the sale of *Aktienspermark*. It further noted that the demand for *Spermark* appeared to have been revived and therefore advised Dr. Graetz that it had accepted the *Handelsspermark* option in a wire to the *Dresdner Bank*. The Bank noted that Dr. Bruno Graetz continued to set the sale limit for the *Spermark* at “20.--” [RM 20.00 for 100 *Spermark*] or better.

This letter is followed by a transaction notification from the Bank, dated 10 January 1939, confirming the sale of 16,480 shares of ÖZAG for RM 75.00 per share and the deposit of the proceeds, amounting to RM 1,236,000.00, in the “new” *Handelsspermark* account of the Graetz Family Trust; at the same time the Bank debited the Graetz Family Trust with an amount of RM 4,424.60 for commission and expenses relating to the sale of the shares. On 17 January 1939 the Bank advised Dr. Bruno Graetz that it had received an order from the Graetz Family Trust to transfer the proceeds of the sale of the ÖZAG shares to his new personal demand deposit account at the Bank. In a letter, dated 18 January 1939, the Bank advised the Graetz Family Trust that it had executed this order and credited Dr. Bruno Graetz’ account with RM 1,236,000.00, (presumably in *Handelsspermark*).

In summary, according to the Industry and the Perry Reports, 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 average price per share of about RM 82.00.<sup>21</sup> After his purchase, Auer transformed the corporation into a sole proprietorship and renamed it *Brucker Zuckerfabrik Clemens Auer* (“*Brucker Zucker*”).

### The Restitution of ÖZAG

Shortly after the war, the original owners, or their heirs, began their efforts to reclaim their ownership of ÖZAG. These efforts were complicated by the exceptionally hostile circumstances

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<sup>21</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. Perry Report, Exhibit 17, p. 1. The total cited on page 1 of Exhibit 17 derives from a listing that attempts to divide Auer’s ÖZAG share 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 Reich 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) and the Patzenhofer block of 4,448 shares for RM 400,320.00 (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, and then sold to Auer for RM 2,246,850.00 (average price per share RM 90.00). 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 the Draft Settlement. In the latter, however, the number of shares held by each owner was reduced in agreement with the owners as more shares were being claimed than had been issued.

the claimants faced, as well as by the fact that though ÖZAG's headquarters were in Vienna, the physical plant was in the Soviet occupied zone of Austria.<sup>22</sup>

On 15 November 1946, the public administrator (*öffentlicher 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.

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, which was represented by their long-time lawyer Dr. Hunna.<sup>23</sup> After lengthy proceedings, all shares of the former ÖZAG were returned to their former owners or heirs in an interim settlement reached on 16 October 1956.

According to documents and correspondence submitted by the Claimants, in November 1955, in the context of these restitution proceedings, Dr. Bruno Graetz, who, according to the Resolution had been the single liquidator of the Graetz Family Trust, appointed his nephew, [REDACTED 1] (Claimant [REDACTED 1]) as a second liquidator. Subsequently, in 1956, Dr. Bruno Graetz assigned all his rights, title and interest in his "about seven percent (7%)" of ÖZAG shares,<sup>24</sup> to Claimant [REDACTED 1] in an assignment agreement (the "Assignment Agreement") dated 28 April 1956. Additional correspondence between Claimant [REDACTED 1] and Dr. Bruno Graetz indicates that at some point in 1957, the major restitution claim holders were offered a buyout of US \$56.60 per share by an Austrian sugar consortium. According to a letter from Claimant [REDACTED 1] to Dr. Bruno Graetz, dated 5 October 1957, all 16,480 claims held by the Graetz group, representing the 16,480 ÖZAG shares, had been sold, and he (Claimant [REDACTED 1]) had received US \$927,827.63 (corresponding to US \$56.30 per share) as total restitution payment for these shares. This amount was equal to SF 3,980,380.53.<sup>25</sup>

According to Unfried, who cites the Commercial Register, in February 1957, shortly before the final settlement was concluded, the Bloch-Bauer, Löw, Pick, and Graetz groups sold their 71,182 shares in the company to a sugar consortium (*Leipnik-Lundenburger, Ennser, Hohenauer/Strakosch and Siegendorfer Zuckerfabrik*) for S 118.6 million.<sup>26</sup> This amount may

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<sup>22</sup> See the April 2005 Award for details regarding the restitution proceedings.

<sup>23</sup> 1956 Ownership Statement, p. 1; Draft Settlement, pp. 1 – 2.

<sup>24</sup> The CRT notes that, according to the Protocol, Bruno Graetz was entitled to one-third of the Graetz Family Trust assets, including approximately 5,493 of the 16,480 ÖZAG shares owned by the Trust. These 5,493 shares represent 6.87 percent of the total 80,000 ÖZAG shares.

<sup>25</sup> When converting amounts into Swiss Francs, the CRT uses official exchange rates prevailing at the time. In 1957, US \$1.00 was worth SF 4.29.

<sup>26</sup> Unfried, p. 658, citing the findings of an audit of the newly established ÖZAG by Professor Dr. Bouffier, dated 30 September 1957, in the Vienna Commercial Register (*Handelsregister*), HRA B 9070, Bd. 1. Unfried notes that Auer maintained that the restituted parties received approximately S 120 to 140 million, and explains that the difference in the sums is due to the fact that the S 118.6 million refers only to the approximately 71,000 shares owned by the Bloch-Bauer, Löw, Pick, and Graetz groups.

be taken as the 1957 value for the 71,182 shares held by the Löw, Pick, Graetz, and Block-Bauer groups.<sup>27</sup> Of these 71,182 shares, 16,480, or 23.15 percent, were held by the Graetz Family Trust. Accordingly, S 27,455,900.00 (23.15 percent of S 118.6 million) may be considered as the value of the 16,480 shares held by the Graetz Family Trust and included in the 1957 restitution. This amount was equal to SF 4,618,082.38.<sup>28</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 April 2005 Claimants and/or obtained by the CRT and include records from the U.S. National Archives and Records Administration ("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 constituted 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 show that slightly over half (40,195) of ÖZAG's shares was held in the name of the Bank on behalf of several Syndicate members, and that initially almost all these 40,195 shares were deposited at the Bank.

### **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:

#### Dr. Victor Graetz

The documents concerning the assets of Dr. Victor Graetz, numbered 7401, indicate that he was born in Rumburg, Bohemia, on 28 January 1877, resided at Bartensteingasse 2 in Vienna, was married to Emma Graetz, née Schwitzer, who was born 5 February 1884 in Vienna, and that they had a son, [REDACTED 1], who was born on 20 October 1920 in Vienna. In his asset declaration, Dr. Victor Graetz noted that he and his wife were of the Protestant faith, but that he was considered a Jew ("*Ich gelte als Jude*"). He reported owning rental property and land worth RM 137,851.50, securities worth RM 7,870.38, liquid assets amounting to RM 128,680.13 and

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<sup>27</sup> 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, which is slightly below the 71,246 shown in the Syndicate Agreement attached to the Perry Report as Exhibit 2. See also note 21.

<sup>28</sup> In 1957, S 1.00 was worth SF 0.1682.

valuables, including jewelry and silver, worth RM 24,255.80. Finally, he reported having a beneficial interest in the Graetz Family Trust, which was domiciled in St. Gallen, Switzerland, and from which he drew no funds, because his income was at a level that obviated the need to do so.

The file further contains official correspondence, including a confiscation order and a flight tax (*Reichsfluchtsteuer*) assessment notice. The latter, dated 25 September 1940, assessed his flight tax at RM 203,250.00 on total assets of RM 813,000.00. These records further indicate that on 12 November 1938 Victor and Emma Graetz were no longer domiciled in Austria, but that atonement tax (*Judenvermögensabgabe*) had been paid, although to an unknown amount as the record could not be found. Finally, the file contains a confiscation order (*Beschlagnahmeverfügung*) issued by the Gestapo and dated 26 September 1941 for all assets owned by Victor Graetz.

### Emma Graetz

The documents concerning the assets of Emma Graetz are numbered 25334. According to these records, Emma Graetz was born on 5 February 1884, was married to Dr. Victor Graetz, who was considered to be Jewish (“*mein Ehegatte gilt der Rasse nach als jüdisch*”) but was of the Protestant faith, and resided at Bartensteingasse 2 in Vienna I. Emma Graetz’ asset declaration indicates that she owned a rental property valued at RM 70,600.00, liquid assets amounting to RM 3,831.66 and other valuables, including jewelry worth RM 19,988.99. She also reported a beneficial interest in the Graetz Family Trust, which was domiciled in St. Gallen, Switzerland, and from which she drew no funds, because her husband’s income was at a level that obviated the need to do so. The declaration was signed on 24 May 1938 by her husband as her legal representative. The file also contains the official approval of the sale of Emma Graetz’ rental property, under the “utilization of Jewish-owned property” law (*Einsatz des jüdischen Vermögens*) to an Aryan purchaser. The approval document, dated 12 March 1942 and issued by the County Administration of Vienna, Section: “Dejewing” of real property (*Entjudung von Liegenschaften*), indicates that the sale, in this case, was to a likely relative, Elisabeth Marie Windisch-Graetz and that the sale price was RM 68,000.00.<sup>29</sup>

## **The CRT’s Analysis**

### Identification of the Syndicate Member

The Claimants have plausibly identified a member of the Syndicate. The name of the family trust, of which the Claimants’ relatives were co-founders, matches the name of the family trust identified in the 1946 Registration and in the Draft Settlement as a member of the Syndicate who owned ÖZAG shares.

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<sup>29</sup> The CRT notes that Elisabeth Marie Windisch-Graetz was the daughter of Austrian Crown Prince Rudolf and his wife, Stephanie of Belgium, and the paternal granddaughter of Emperor Franz Joseph of Austria. In 1902, she married Prince Otto zu Windisch-Graetz, with whom she had four children. The couple separated in 1924, and she later married Leopold Petznek, a leader in Austria’s social democratic movement. The CRT notes that it is not clear exactly how the Graetz family is related to the Windisch-Graetz family.

In support of their claims, the Claimants submitted information and documents regarding the history of the Graetz Family Trust, providing independent verification that the family trust of the Claimants' relatives and the family trust recorded in the 1946 Registration as a member of the Syndicate had the same name. The CRT notes that there are no other claims to these Syndicate shares.

#### Status of the Syndicate Member as a Victim of Nazi Persecution

The Claimants have made a plausible showing that certain members of the Syndicate were Victims of Nazi Persecution. The Claimants stated that certain individuals who were the founders and beneficiaries of the trust were Jewish, and that these individuals fled from their home countries to avoid Nazi persecution.

The CRT notes that Dr. Victor Graetz, a founder and beneficiary of the Graetz Family Trust, 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 Nazi regime. The April 2005 Claimants also submitted the 1946 Registration, which certifies that the company was aryanized by the Nazi regime, and that the Graetz Family Trust was a major shareholder of the company.

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

The Claimants have plausibly demonstrated that they are related to a member of the Syndicate by submitting specific information and documents demonstrating that the Claimants' relatives were the founders and beneficiaries of the Graetz Family Trust, and that the trust was a member of the Syndicate.

#### 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 26,480 shares the Bank 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 having communicated the *Länderbank's* offer to Syndicate members, confirmed Auer's offer, and relayed the *Länderbank's* warning that nationalization of ÖZAG was under active discussion. As noted above, the Bank informed the Syndicate members that the offer was valid up to 30 December 1938 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 to a sale in the event of an improvement in the offer." Clearly, *no Syndicate member was willing 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 proposing the dissolution of the Syndicate. The Bank went so far as to move toward dissolution unilaterally by stating that in the absence of a response by 15 January 1939, agreement would be assumed, despite their citing as one of the reasons for dissolution the difficulty they had in maintaining current addresses for the membership. The facts, however, were very different from those portrayed by the Bank: there

had been consensus among Syndicate members about the offer: they had rejected it. 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 16,480 shares held by the Graetz family<sup>30</sup> and 10,000 shares held by *Sapafin A. G.* on behalf of Otto Pick for 75.00 blocked Reichsmark per share, all of which were held at the Bank, as well as 6,500 shares held by *Sapafin A. G.* on behalf of Lloyd and Davies, who, in turn, acted as agents of Pick.<sup>31</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, the Bank rendered the Syndicate Agreement moot and thereby facilitated the sale of the remaining ÖZAG shares. On 31 December 1938, 3,687 shares held by Otto Pick at the *Länderbank* in Vienna were sold to Auer for RM 75.00 per share.<sup>32</sup> The remaining Syndicate shares, including the shares held by the Löw family, were sold to Auer after the 15 January 1939 deadline set by the Bank for the Syndicate's dissolution, as set forth in its 22 December 1938 letter. The CRT notes that, according to Article VIII of the Syndicate Agreement, any important decisions must be reached by unanimous consent of the Syndicate members. Article VIII specifically identified 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 that required unanimous consent of the Syndicate members. Article X of the agreement specified that the duration of the Syndicate was until 31 March 1943, with the possibility of prolongation, and 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>33</sup> The Bank's unilateral attempt to dissolve the Syndicate Agreement in

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<sup>30</sup> According to a letter dated 23 November 1938 submitted by the Claimants, the shares of the Graetz Family Trust were at that time held at the Geneva branch of the Bank.

<sup>31</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, while being physically held at the Bank had been put, at Otto Pick's behest, at the disposal of the *Länderbank* in May/June 1938. See *supra*, note 16. Regardless of the physical location of these latter shares, the sale by the bank of at least 26,480 shares together with another 10,567 shares plus the "firm offer" the *Länderbank* had for another 3,300 shares sufficed to give Auer on 30 December 1938 certainty of a majority holding of 40,347 shares.

<sup>32</sup> Pursuant to Articles II and III of the Syndicate Agreement, Pick was obligated to block the transfer of his shares by informing the place of deposit of the need for the Bank's consent, and the Bank was obligated to withhold its consent 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>33</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. However, the Syndicate had placed the management function in the hands of Ferdinand Bloch-Bauer and not the Bank. Therefore, the Bank was in violation of the Agreement by usurping the powers of the management of the Syndicate. Thus, when the Bank made the sale of the ÖZAG shares, it had neither the authority to terminate the Syndicate nor the authority to

the context of its sale of 26,480 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 also 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 the VVSt clearly was 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, including the 1938 Census declarations filed by Wilhelm Löw and Marianne Hamburger-Löw, indicate that the Nazi authorities confiscated the ÖZAG shares held by the Löw family sometime before 15 July 1938 and forced the return and surrender of any assets held abroad, including presumably the ÖZAG shares held in Switzerland through *Credit Industriel*, before 1 October 1938, when the family was allowed to leave Austria. The CRT notes further that the authorities did not move to sell the ÖZAG shares they had confiscated until March 1939 at the earliest, which was after Auer, through the Bank's cooperation, had acquired a majority holding in ÖZAG. This suggests that until 30 December 1938, the Syndicate Agreement had offered a measure of protection in as much as the consent of the Bank was required for any sale of shares. The Reich, 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 confiscate the Austrian company outright and waited to complete the aryanization by the sale of the confiscated shares until they were assured that control of ÖZAG had been wrested from its owners and a majority share holding had been obtained. The Bank, unilaterally and in violation of its legal and fiduciary obligations, allowed these plans to succeed: with the sale of the shares held by the Bank, what protection the Syndicate Agreement afforded its members had been withdrawn and members thus became exposed to exactly the pressures they had sought to forestall – pressures that in the end forced them to sell their shares at duress prices.

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 and other documentation submitted by the Claimant,<sup>34</sup> were paid into blocked accounts.

In determining that an Award is appropriate, the CRT has considered the circumstances set out above, as well as the fact that, immediately following the *Anschluss*, the Nazi regime began a major effort to seize the assets of Austria's Jewish population. In addition, the CRT has found that, shortly after the *Anschluss*, the Nazi authorities instigated criminal tax proceedings against the company with the express purpose of depressing its share price. The CRT has noted that on 5 March 1938, one week before the *Anschluss*, ÖZAG's major Jewish shareholders, anticipating the Reich's likely attempt to seize their assets, had entered into a Syndicate Agreement, to which the Bank itself was a party, and which was specifically designed to prevent the shares from falling under the Reich's control. The CRT has found that the Bank nevertheless permitted the sale of Syndicate shares at a fraction of their true value in late December 1938 in violation of its obligations under the Syndicate Agreement, and that this action facilitated the Nazi regime's

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sell the shares it held in ÖZAG and, thus, was in clear violation of the Syndicate Agreement that was still in effect in accordance with its terms.

<sup>34</sup> See Letter, dated 3 January 1939, from the Bank to Dr. Bruno Graetz.

ability to obtain the remaining shares at duress prices as well. The CRT has noted that the shareholders received only a small portion, if any, of the sale price in 1938, that subsequently assets remaining in Austria were confiscated, and that representatives of the Austrian government during the restitution proceedings in 1957 made no claim that remuneration had been received such as to warrant reduction of the restitution obligations. Given these findings and considerations, the CRT concludes that (a) the Bank actively cooperated with the Nazi authorities in this aryianization 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 the heirs of its members received the full proceeds from the sale of the shares, except for the inadequate restitution received by the Restitution Claimants in 1957 and the token amounts that some had received for transfer abroad from the aryianization sale, all of 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.

In the case of the Graetz Family Trust, the CRT notes that on 23 September 1938 its 16,480 ÖZAG shares were held in an account belonging to the Trust at the Geneva branch of the Bank. Furthermore, the Bank, after its sales of 26,480 shares to Auer on 30 and 31 December 1938, consulted with Dr. Bruno Graetz on 3 January 1939 about the available options for crediting the proceeds. In doing so, the Bank referred to the 16,480 shares owned by the Trust as having been given to it to sell. The CRT determines that this characterization does not diminish the responsibility of the Bank because, according to the terms of the Syndicate Agreement, the Bank required the unanimous approval of all Syndicate members before consenting to, let alone executing, a sale of ÖZAG shares held in the Syndicate. Moreover, none of the correspondence between the Bank and Dr. Bruno Graetz diminishes the Bank's clear cooperation with the *Länderbank* and Auer in setting up and completing the sale in a clear breach of the basic purposes of the Syndicate Agreement and its fiduciary obligations.

#### Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that their family trust was a member of the Syndicate, and that relationship justifies an Award. Third, the CRT has determined that neither the Syndicate member nor its beneficiaries and their heirs received the equivalent value of the claimed shares.

#### Amount of the Award

As set forth in the April 2005 Award, the CRT has considered two measures of liability, both of which come to the same result. One measure of liability would view the Bank as an aider and abettor in the aryianization of ÖZAG through the acquisition of its shares at distress prices. 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 aryianizer and the Reich in a sale under duress at prices well below the true value of the company. The measure of damages under this view is the difference between the true value of the shares and the compensation actually received by the sellers.

A second measure of liability is based on the view that the Bank's actions in making unauthorized sales of shares and in otherwise unlawfully undermining the Syndicate Agreement constituted a breach of contract and fiduciary duty owed to the members of the Syndicate. Under this view, 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).

As noted above, both measures of liability reach the same result – liability measured by the true value of the ÖZAG shares, as represented by the most recent pre-*Anschluss* sale price of ÖZAG shares as certified by the Vienna stock exchange, that is before the post-*Anschluss* manipulation by the Nazi authorities to depress the share value, less any amounts received by the sellers in connection with the post-war Austrian restitution proceedings as well as amounts documented to have been received from the aryanaization proceeds.

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 shareowners at the time of aryanaization. As noted above, the best evidence of the shares' true value is the average of the shares' selling price immediately prior to the Nazis authorities' 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. The April 2005 Award sets forth in detail the method by which the CRT determined the value of the ÖZAG shares to have been RM 200.00 (S 300.00) each at the time of the *Anschluss*.

As to the 16,480 shares owned by the Graetz Family Trust, the CRT notes that, at RM 200.00 per share, these shares would have been worth RM 3,296,000.00, or SF 5,783,820.80 in 1938.<sup>35</sup> According to the documentation, these shares were sold on 30 December 1938 to Auer for RM 75.00 per share. The Perry Report states that “the proceeds of the sale [of the Graetz Family Trust' shares] were paid into the Aktien Sperr-Markkonto and later transferred to Lazard Frères, New York, New York in favour of Bruno Graetz at the official Sperrmarkkonto rate of exchange.”<sup>36</sup> The CRT notes that the documentation provided by the Claimants shows that the proceeds of the sale of the ÖZAG shares, RM 1,236,000.00, were in fact deposited into a *Handelssperrmark* account.

The CRT notes that, according to documentation provided by the Claimants, all transfers of funds from the dissolved Graetz Family Trust to the families of Victor and Bruno Graetz were completed by 25 February 1939, and an accounting (*Berechnung*) was provided on 14 April 1939. Therefore, the CRT considers that the first quarter 1939 exchange rate for *Handelssperrmark* to Reichsmark is the appropriate rate to apply to calculate the proceeds received from the December 1938 sale. According to League of Nations statistics, 100 *Handelssperrmark* were worth RM 10.50 in the first quarter of 1939.<sup>37</sup> According to the Bank's

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<sup>35</sup> In 1938, RM 1.00 was worth SF 1.7548.

<sup>36</sup> Perry Report, p. 6.

<sup>37</sup> League of Nations, Exchange Rates, Table 120, pp. 225, 229. The CRT notes that this is very close to the quote of 10.59 for the RM per 100 *Effektensperrmark* in December 1938 as shown in Mathias Zurlinden, *Gold Standard*,

18 January 1939 letter to Bruno Graetz, the proceeds of the ÖZAG sale were credited to his account. The proceeds, or some portion thereof, were later transferred to Lazard Frères, New York, as indicated by a list of transfers, submitted by the Claimants and dated 25 February 1939, that shows a transfer of US \$51,937.00 to that institution.<sup>38</sup> As noted above, the Perry Report states that proceeds of the sale were transferred to Lazard Frères, New York.

At the prevailing rate of one *Handelssperrmark* equals 10.5 percent of one Reichsmark, the Graetz Family Trust thus is considered to have received RM 129,780.00, which was equivalent to SF 227,737.94. As a result, SF 5,556,082.86 is the value of the shares for which the Graetz Family Trust was not compensated in 1938.

The 16,480 shares owned by the Graetz Family Trust represent 23.15 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 S 27,455,900.00 or SF 4,618,082.38,<sup>39</sup> or 23.15 percent of the total S 118.6 million received for the 71,182 shares in 1957.<sup>40</sup> The difference between the 1938 uncompensated value (SF 5,556,082.86) and the value received in 1957 (SF 4,618,082.38) is SF 938,000.48. 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 11,725,006.00.

#### Division of the Award

As noted above, according to the Protocol, upon dissolution, two-thirds of the capital assets of the Graetz Family Trust were to be distributed to the family of Dr. Victor Graetz, with US

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*Deflation and Depression: The Swiss Economy during the Great Depression*, in 2 Swiss National Bank Quarterly Bulletin (2003). The CRT notes that the official rate was thus only about half of the RM 20.00 sale limit for *Sperrmark* [RM 20.00 for 100 *Sperrmark*] or better set by Bruno Graetz, according to the Bank's letter of 3 January 1939. See discussion, *supra*, p. 12. Although the 3 January 1938 letter might imply that Bruno Graetz anticipated obtaining a preferential rate through the triangular transactions the Bank had been arranging for the utilization of blocked Reichsmark, there is no evidence that he actually received a preferential rate or any rate other than the official rate for the first quarter of 1939.

<sup>38</sup> The CRT notes that the total transfer amount of US \$51,937.00 is almost identical to the US \$51,912.00 derived by converting the 1,236,000.00 *Handelssperrmark* to Reichsmark at the official rate of 10.5 percent and then converting this sum to US dollars at the official rate of US \$1.00 = RM 2.50. However, according to the list of transfers, US \$18,000.00 was indicated as belonging to Victor Graetz and US \$33,937.00 as belonging to Bruno Graetz, that is, approximately one-third of the total going to Victor Graetz and approximately two-thirds going to Bruno Graetz, though the Protocol indicates that the brothers' shares of the Trust assets were reversed. Nevertheless, the total sum is remarkably close to what a transfer of the *Handelssperrmark* would have amounted to.

<sup>39</sup> As noted above, in 1957, S 1.00 was worth SF 0.1682.

<sup>40</sup> The CRT notes that in his letter to Bruno Graetz dated 5 October 1957, Claimant [REDACTED 1] wrote: "We sold 16,480 claims and have received in New York \$927,827.63. We still have to pay fees and taxes, which will be quite substantial." As noted above, this US \$927,827.63 was equal to SF 3,980,380.53. It is not clear from his letter, however, whether the sum received in New York was the total proceeds of the sale of the ÖZAG shares, whether other payments were received thereafter, whether expenditures, additional fees and/or other payments had already been made from the original sale proceeds, *etc.* The CRT has therefore calculated the amount of restitution received by the Graetz family for the sale of its claims to their ÖZAG shares by relying on the amount cited in the official Commercial Register and taking a percentage of this S 118.6 million total restitution that corresponds to the percentage of the total shares restituted that the Graetz Family Trust owned (23.15 percent). See Unfried, p. 658, and discussion *supra*, note 26. The CRT notes that this method is consistent with the valuation of the restitution received by other Syndicate members, including the Bloch-Bauer, Pick, and Löw groups.

\$130,000.00 earmarked for Claimant [REDACTED 1], and one-third of the assets to be distributed to the family of Dr. Bruno Graetz, [REDACTED], the wife of Dr. Bruno Graetz. Accordingly, the CRT determines that, of the Award amount, two-thirds reflect assets belonging to Dr. Victor Graetz, and one-third reflects assets belonging to Dr. Bruno Graetz.

With regard to the share of the Award amount reflecting assets belonging to Victor Graetz, the CRT notes that, in his will, dated 29 August 1939, Victor Graetz addressed only his assets still located in the greater German Reich (“*das im Deutschen Reiche befindliche Vermoegen*”). He specified that these assets should be administered separately from his other assets, so that there would be no delay in executing the remainder of the estate. He noted in addition that he wished these assets to be treated separately because he, his wife, and son were refugees and therefore could not access these assets, and because he did not know whether or not these assets had been confiscated by the German authorities. Dr. Victor Graetz specified that these assets in German territory were bequeathed to his sister-in-law, [REDACTED], the wife of his brother Bruno Graetz, who resided in New York, New York. No provision is made in his will regarding the remainder of his assets.

The CRT notes that the 16,480 ÖZAG shares at issue were owned by the Graetz Family Trust, which was founded and domiciled in Switzerland. Moreover, the proceeds of the shares were transferred to Lazard Frères, New York, where they could have been easily accessed by Victor Graetz and his heirs. The assets were therefore not located within the German Reich, and their distribution upon his death would not have held up the distribution of the rest of his estate, which was the concern that prompted Victor Graetz to address his assets located within the Reich specifically in his will. These assets, like others located outside the Reich, were not specifically addressed in Victor Graetz’ will.

In the absence of a will or other inheritance documents, the CRT applies the general rule of distribution set forth in Article 23 of the Rules Governing the Claims Resolution Process, as Amended (the “Rules”). According to Article 23(1)(c) of the Rules, if the spouse of the account owner, or, as here, the owner of this share of the assets (here, Dr. [REDACTED]) 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. The CRT notes that Claimant [REDACTED 1], as the son of Victor Graetz, is more closely related to him than Claimant [REDACTED 1]’s children, Claimant [REDACTED 2] and Claimant [REDACTED 3]. Accordingly, Claimant [REDACTED 1] is entitled to the full portion of this share of the Award amount.

With regard to the share of the Award amount reflecting assets belonging to Bruno Graetz, the CRT notes that according to the 1956 Assignment Agreement, Dr. Bruno Graetz assigned his right, title and interest in his ÖZAG shares, to Claimant [REDACTED 1] in return for US \$25,000.00. Therefore, Claimant [REDACTED 1] is entitled to the Award amount reflecting the ÖZAG shares owned by Bruno Graetz.<sup>41</sup>

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<sup>41</sup> The CRT notes that, even absent the Assignment Agreement, Claimant [REDACTED 1] is entitled to this portion of the Award amount. According to Article 23(1)(c) and (d) of the Rules, if neither the spouse of the account owner, or, as here, the owner of this share of the assets (here, Dr. Bruno Graetz), nor any descendants of the account owner have submitted a claim, the award shall be in favor of any descendants of the account owner’s parents who have

With regard to the entire Award amount, the CRT notes, however, that, commensurate with the submission of his claim form, Claimant [REDACTED 1] assigned each of his children, Claimant [REDACTED 2] and Claimant [REDACTED 3], 20 percent of any proceeds awarded to him resulting from this claim. Pursuant to this agreement, Claimant [REDACTED 1] is entitled to 60 percent of the total Award amount, and Claimant [REDACTED 2] and Claimant [REDACTED 3] are each entitled to 20 percent of the total Award amount. The division of the Award amount is summarized in the following table.

<b>Party</b>	<b>Award Amount</b>
Claimant [REDACTED 1]	SF 7,035,003.60
Claimant [REDACTED 2]	SF 2,345,001.20
Claimant [REDACTED 3]	SF 2,345,001.20
<b>Total</b>	<b>SF 11,725,006.00</b>

### **Scope of the Award**

The Claimants 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  
29 December 2006

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submitted a claim, in equal shares by representation. Claimant [REDACTED 1], as the grandchild of Bruno Graetz' parents, is more entitled to the assets than Claimant [REDACTED 2] and Claimant [REDACTED 3], who are the great-grandchildren of Bruno Graetz' parents.