Human Rights
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*12 ANOTHER ATTEMPT TO HEAL THE WOUNDS OF THE HOLOCAUST

Allyn Z. Lite [FNa1]

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In October 1942, Elsa Iwanowa, then seventeen, was abducted by Nazi troops from her hometown of Rostov, Russia, and transported to Germany with approximately 2,000 other children as young as fourteen years of age. She was initially taken to Wuppertal, Germany, where she was literally purchased, along with thirty-eight other children from Rostov, by a representative of Ford Werke AG, a wholly owned subsidiary of Ford Motor Company. The Rostov children were taken by truck to the Ford plant in Cologne, where they lived without heat, running water, or sewage facilities and were required to perform heavy labor at Ford's Cologne plant, drilling holes into the motor blocks of engines for military trucks, from 1942 to 1945. Her work was supervised by Ford security officials and foremen. Forced laborers who failed to meet production quotas were punished and beaten with rubber truncheons. Those who became ill were transferred to Buchenwald concentration camp and were replaced by other concentration camp inmates. Attempts to escape were met with execution or transfer to Buchenwald.

In 1942, at the age of fifteen, Gerry Blumenfeld was abducted by German troops who occupied Eastern Poland and transported by cattle car to Klettendorf concentration camp. In early 1943, Blumenfeld was selected by the German armament manufacturer Krupp AG to work at Langenbielau, an annex to the notorious Gross-Rosen concentration camp. Under Krupp's control, Blumenfeld and hundreds of other prisoners, some only fourteen years old, lived in overcrowded, wooden barracks without heat, insulation from the rain, running water, or sewage facilities. The barracks were overrun with rats, mice, lice, fleas, and ticks. The food was so poor that the prisoners fought each other for the leftover soup that other workers had rejected. Disease and dysentery were rife; more than half of the camp's prisoners died of typhus. Krupp's physicians refused to enter the camp because it was so filled with vermin and rotting corpses.

Blumenfeld and his fellow prisoners were awakened daily at 3:00 a.m., required to run to an assembly and roll call, then forced to march for fifty minutes to the Krupp plant. Their days were spent carrying loads of stones up three stories; at the end of fourteen-hour workdays,***13** those who were too exhausted to continue were sent to nearby Auschwitz to be put to death and replaced by other concentration camp inmates. Those who attempted to escape were shot.

Zelig Preis, eighteen, was abducted by German troops in Eastern Poland in 1942. He was transported by cattle car to the concentration camp Plaszow and put to work at a subsidiary of the German industrial giant Siemens. Already in bad health, Preis was assigned to an overcrowded, unheated barracks without running water, sewage facilities, or adequate food. Preis and his fellow inmates were awakened at 5:00 a.m. each morning for roll call, marched six miles to the construction site, and worked for ten to twelve hours a day at hard labor. The frail and exhausted were also sent to Auschwitz and replaced by fresh camp inmates.

Michael Vogel was deported by the Nazi regime to Auschwitz, along with his parents, two brothers, and two sisters. Vogel's mother and two of his siblings were immediately murdered in the gas chambers. His other brother and sister were forced to perform slave labor, starved, tortured, and subsequently gassed. Like all prisoners who

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arrived at Auschwitz, Vogel was stripped of his valuables, including a gold Omega watch given to him by his grandfather for his bar mitzvah in November 1936; this was placed in a box full of watches taken from other deportees. Three months after his arrival, Vogel was assigned to the Aufraeumungs-Komando, whose responsibility it was to search deportees for gold, jewelry, watches, and other valuable personal belongings. The valuables included gold teeth ripped from the mouths of concentration camp inmates. Vogel's assignment was to sort the valuables into separate boxes for rings, watches, necklaces, and other types of jewelry, which he did through fall 1944. These precious metals were sent to various Degussa locations in Germany, where they were smelted, refined, and returned to a branch of the Reich Economics Ministry. (Degussa also manufactured and marketed the deadly poison gas known as Zyklon B, which was used to murder Michael Vogel's parents, siblings, and many others in Auschwitz.) Rudolph Hess, the Kommandant of Auschwitz, later wrote in his autobiography that "valuables worth many millions of pounds were seized."

Iwanowa, Blumenfeld, Preis, and Vogel somehow managed to endure the horrors they experienced at the hands of the Nazis and the German industrial companies for whom they labored. Each of these survivors has filed a lawsuit against the German companies that compelled their involuntary labor and never compensated them for their efforts. Each of the lawsuits, which are among more than a dozen filed in the United States District Court of New Jersey, seeks class action status on behalf of the survivors and heirs of those forced to labor without compensation by the various industrial companies.

Why and How Did It Happen?

Why did the industrial might of the refined society of Germany stoop to the barbarism of slave labor? The answer is greed. Quite simply, the German industrial machine during World War II sought to increase its profits on the backs and blood of its unpaid laborers.

By December 1941, Nazi Germany had achieved domination over territories with an aggregate population of 350 million people. When the drain on German manpower and the need for armament became so great that it was impossible to supply adequate workers voluntarily, the Germans, on a massive scale, turned to the compulsory deportation and enslavement of laborers from the conquered populations, including civilians, concentration camp inmates, and prisoners of war.

The International Military Tribunal at Nuremberg found that the slave laborers "lived and labored under the shadow of extermination," working under conditions that made "labor and death almost synonymous." Approximately seven million human beings were forcibly deported to Germany from their homes in occupied territories to work in support of the German war effort. As former Nuremberg prosecutor Benjamin B. Ferencz noted in his landmark work *Less Than Slaves* (Harvard University Press, 1979), the laborers were, in fact, less than slaves. Slavemasters traditionally care for their human property and try to preserve it; the plan of the German industrial machine was that its Jewish slave laborers would be used up and burned.

The Companies. Ford Werke AG began using French prisoners of war as forced laborers in 1941 and continued to utilize thousands of forced laborers throughout the war, in violation of Article 52 of the Hague Convention and the provisions of the Geneva Convention governing prisoners of war.

Another German industrial giant, Volkswagen AG, began using Polish slave laborers, women between the ages of fourteen and thiry-two, as early as June 1940. By 1944, tens of thousands of Ukrainian, Polish, Danish, Dutch, and Belgian citizens; Soviet, French, and Italian prisoners of war; and Jewish concentration camp prisoners were being used as unpaid slaves at Volkswagen's plants throughout Europe. At times they totalled 85 percent of Volkswagen's wartime workforce.

Between the years of 1939 and 1945, Krupp AG, referred to admiringly by Hitler as the "armorer of the Reich,"

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"employed" as slaves more than 55,000 foreign workers, 18,000 prisoners of war, and over 5,000 concentration camp inmates, not including replacements or workers in Krupp plants in the occupied countries. At the Nuremberg Tribunal, Alfried Krupp, then sole shareholder of Krupp AG, and ten of Krupp's leading employees were convicted of war crimes including enslavement and deportation of foreign and German nationals and concentration camp inmates.

***14** The use of unpaid forced and slave laborers by German industry was immensely profitable. As early as 1941, Volkswagen negotiated directly with Heinrich Himmler to acquire concentration camp inmates as slave laborers, and flourished under Hitler. By mid-1943, the allied forces had begun an air offensive that threatened to disrupt production at its main plant at Fallersleben. To protect Volkswagen's facilities and machinery, Himmler allocated concentration camp inmates to build subterranean facilities. The slave laborers were housed underground in conditions of extreme barbarity and were permitted to come to the surface only to clear rubble.

Volkswagen's strategy of safeguarding its machinery permitted the company to put it to immediate postwar use, enabling Volkswagen to gain a huge competitive advantage in the shattered European economy. That advantage is directly traceable to the use of slave labor. In 1946, the 10,000th postwar Volkswagen "Beetle" rolled off the assembly line, produced largely by machinery that had been saved by Volkswagen's slave labor force.

In 1938, Ford Werke AG, which had been producing passenger vehicles, began manufacturing tracked vehicles for the transport of troops and other military equipment. By 1941, it had ceased producing passenger vehicles and devoted its entire production capacity to manufacturing military trucks. Military historians estimate that approximately 60 percent of the three-ton vehicles provided for the German army were manufactured by Ford Werke. Already highly profitable in 1939, Ford Werke's annual profits doubled by 1943.

Unlike its policies with most American-owned companies, Nazi Germany neither nationalized nor confiscated Ford Werke. Even when hostilities between the United States and Germany commenced in December 1941, instead of confiscating Ford Werke as "enemy property," Hermann Goering permitted the Ford Motor Company to continue its controlling ownership of Ford Werke. The company, in essence, served two masters, making profits for the American owners and trucks for the German army. In the years immediately following the end of the war, Ford Werke continued to produce trucks at a substantial profit at a time when much of Europe was devastated. By 1948, Henry Ford II was able to travel to Cologne to celebrate the 10,000th truck to roll off the postwar Ford assembly line.

From 1933 to 1945, Degussa AG actively cooperated with the Nazi regime in its commercial enterprises, refining and processing gold and other precious metals looted from Jews, Roma (the Gypsy population), Sinti, (the indigenous people of various Eastern European countries), homosexuals, and political dissidents. The victims' assets included coins, eyeglasses and dental gold and silver taken from concentration camp inmates. In press releases in 1997 and 1998, Degussa admitted that most of the gold, silver, and other precious metals stolen from Jewish citizens of Germany and other Nazi-occupied countries were refined at their facilities. To date, Degussa remains the world's largest supplier of dental gold.

Siemens AG also flourished under Hitler. Dr. R. Biengel, chairman of Siemens' Board of Directors, belonged to Hitler's "circle of friends," and at least nine Siemens board members were elevated by Hitler to the position of military economic leader. Siemens's importance as one of Hitler's main suppliers of military equipment permitted the company privileged access to slave labor and the concomitant profits derived from insignificant labor costs. Siemens realized enormous profits, tripling its capital reserves during World War II.

In addition to the cases against the German industrial manufacturers, lawsuits have been brought against German chemical and pharmaceutical companies such as Bayer AG, Hoechst AG, and Schering AG. The suits allege that during the Holocaust, the companies provided toxic chemicals to the Nazis, who then used those compounds to

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perform grotesque medical "experiments" on concentration camp inmates, including children. The medical experiments cases allege that, in addition to providing the chemicals, the chemical and pharmaceutical companies monitored and supervised the experiments and used the results as research and development to manufacture and market drugs sold during and after the war.

The Status of the Litigation

The genesis of all of these cases was stimulated by the end of the Cold War and the reunification of Germany, which resulted in the declassification and disclosure of archived documents in the United States, Germany, the former Soviet Union, and elsewhere. These provided the first opportunity for historians to conduct investigations into the role of German industry during the Holocaust.

The issue, of course, is whether the legal system of the United States will allow the pursuit of claims for compensation from these defendants. Increasing the difficulty is the fact that these events occurred a half-century ago. The complexity of the legal issues that arise in these cases is staggering: justiciability, the political question doctrine, statutes of limitation, interpretation of German law, interpretation of international treaties, the scope of customary international law, and the law of nations--all of which need to be litigated and decided. At the same time, negotiations for final settlements are ongoing among representatives at the highest levels of the State Department, the Federal Republic of Germany, and other interested nations and international groups, along with counsel for plaintiffs and defendants.

On September 13, 1999, opinions from two different U.S. district court judges were issued in ***15***Iwanowa v. Ford Motor Co.*, 67 F. Supp 2d 424 (1999); *Burger-Fischer v. Degussa*, 65 F. Supp 2d 248 (1999) (decided together with *Vogel v. Degussa* and *Klein v. Siemens*).

Degussa/Siemens specifically noted that: plaintiffs' factual allegations contained in their pleadings "are totally consistent with the history of the Nazi era and with the record developed during the post-war trials in Nuremberg"; "Degussa's and Siemens's executives were fully aware of the widespread use of slave labor and the inhumane conditions in which the victims lived and worked"; and "Degussa and Siemens voluntarily participated and profited from the use of slave labor and in the case of Degussa, in the manufacture and sale of Zyklon B and the refining of the stolen gold."

Both courts found that plaintiffs had alleged cognizable customary international law claims against the defendants, which fell within the subject matter jurisdiction of a federal court, and both courts recognized that customary international law is fully enforceable in a federal court. Moreover, the *Ford* court held that plaintiffs' customary international law claims were timely, because the running of the applicable ten-year statute of limitations had been tolled until 1991 by operation of post-World War II treaties. However, both courts ruled that plaintiffs' otherwise timely and judicially cognizable customary international law claims had been extinguished by the operation of post-World War II treaties, and were, consequently, enforceable solely through diplomatic channels. Appeals in both *Ford* and *Degussa/Siemens* have been filed and are proceeding.

Plaintiffs' appeals in these cases focus on the interpretation and meaning of the post-World War II treaties entered into by the Allies and the defeated Germany, which have impact on the claims made by the plaintiffs in these class actions. Both district courts recognized that the treaties had created a seamless line that "postponed" plaintiffs' legal claims against the German corporations from the end of the war until a final resolution of the question of reparations. Section 5 of the London Debt Agreement of 1953 barred plaintiffs' legal claims from 1953 to 1991. In 1991, the Treaty on the Final Settlement with Respect to Germany (the 2 + 4 Treaty) became effective. This treaty, entered into between the Federal Republic of Germany and the German Democratic Republic on one side, and the United States, United Kingdom, France, and the U.S.S.R. on the other, reunified West and East Germany and terminated the occupying Allied powers' responsibilities over Germany. Both district courts accepted the 1996 decision of the

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German Federal Constitutional Court that held that the 2 + 4 Treaty had ended the "postponement" imposed on plaintiffs by the London Debt Agreement for the prosecution of their claims. The courts, however, also ruled that the 2 + 4 Treaty's failure to address plaintiffs' claims was fatal to their ability to seek redress in court. Thus, in effect, both district courts ruled that silence concerning plaintiffs' legal claims in the 2 + 4 Treaty acted to extinguish them.

After the dismissals, legislation was introduced by Senators Charles E. Schumer of New York and Robert Torricelli of New Jersey that would have the effect of granting to the district courts the authority to adjudicate such claims as those asserted by the plaintiffs here. Moreover, plaintiffs' counsel have requested that the Third Circuit invite the participation of the United States in these proceedings, to provide the position of the Executive Branch on the interpretation of the post-World War II treaties, particularly on the issue of whether silence as to plaintiffs' claims in the 2 + 4 Treaty serves to extinguish such claims.

On December 17, 1999, an agreement in principle was reached to establish a fund to compensate slave and forced labor survivors. That fund, in the amount of 10 billion DM ($5.2 billion U.S.) is to be funded by equal contributions of 5 billion DM by German industry and the German government. There may be additional contributions by American companies that had German subsidiaries that utilized slave or forced labor. The bulk of the funds are to be distributed on an accelerated timetable to survivors of German industry's use of forced and slave labor, its "Aryanization" of Jewish assets, its medical experiments, and its other Holocaust-era misconduct. There remain difficult and substantial terms still to be worked out among the parties, but the appeals at the Third Circuit are moving ahead.

Conclusion

These cases, as well as many others, have generated increasing interest by the U.S. press and enormous interest by the European press. Advertising by survivor organizations as well as other groups has appeared in widely circulated newspapers, disclosing the complicity of German industry in the Nazi's World War II program of extermination and the profits derived by such complicity.

No amount can ever compensate the survivors for the unspeakable horrors that they endured. By the same token, the civilized world and the American legal system are morally obligated to compel disgorgement of the profits earned by the companies whose affirmative actions were contributors to those horrors. That same moral imperative should compel these defendants, the backbone of Germany's economic revival, to step forward, acknowledge their participation in this sordid chapter of history, and, finally, act in a humanitarian way to help heal the still-open wounds of war.

[FNa1]. *Allyn Z. Lite is a partner at Lite DePalma Greenberg & Rivas, LLC in Newark, New Jersey, a firm that specializes in complex litigation including class actions. The firm is one of plaintiffs' counsel in the actions referred to in this article.*

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