

for restitution has been brought to Germany not by force but on the grounds of a legal business transaction is acknowledged. It has occurred, however, that even when an unmistakable statement of the foreign supplier was produced to the effect that the item in question has been legally acquired by the German buyer, no German title to this item was acknowledged. Recently the German Ruckersatzungsamt Düsseldorf has been informed by R.D. & R. Division, Detmold that for a series of French, Belgian and Czech-Slovak firms a German counter-evidence proving legal acquisition of the item concerned would not be admitted, the firm concerned not having been free in their arrangements during the war. Also in this case, however, a detailed statement of reasons has not been given.

In the interest of German legal security it seems urgently necessary to issue absolutely clear regulations for the matter of restitutions. In this connection it might become necessary clearly to elaborate the proper meaning of restitutions and, starting from this basis, to distinguish between unambiguous cases and others where, according to international legal rules, a claim for restitution cannot be recognized as justified. Restitution can only have the meaning of returning for foreign property, illegally transferred to Germany during the war to its legitimate proprietor. It goes without saying that the German side will fully endorse the legitimacy of claims of this kind. Legal and voluntary purchasing transactions, however, cannot be interpreted to represent "Compulsory measures". Therefore according to German views they do not justify a claim for restitution. A transfer of property on the basis of a regular contract of sale, signed by the seller without any constraint, can by no means justify a claim for restitution according to the true meaning of restitutions. It would mean, however, an unjustified mixing up of restitutions with the general principle of reparations if a restitution claim in the case of a commercial transaction were based on the argument, that the commercial purchase price was paid in a depreciated currency. Damages arising from currency manipulations in the occupied territories may only be adjusted by general reparations, but not by a restitution in kind of legally purchased and voluntarily sold objects. The inferiority of a currency cannot be pleaded as a legal argument in order to declare null and void any individual, fully unobjectionable purchasing contract, and the warning of the Allied Powers of 5 January 1943 is meant for such cases where legal and voluntary contracts were pretended only. Nor is it considered justified to demand the surrender of German property as restitutions because of its being temporarily located to the occupied territories.

The economic importance of foreign restitution claims is very considerable. It may be stressed as an instance that the total weight of the restitution deliveries up to now affected by Württemberg/Baden amounted to about 8500 tons whereas the total weight of reparation deliveries from the same territory hitherto amounts to about 13,000 tons. Württemberg/Baden was compelled hitherto to surrender 1700 machine tools as restitution, Bavaria about 3400. These figures are sufficient to show that the economic effects of the withdrawal of capital goods for restitution purposes are very important and critically approach the damages caused by dismantlings. The "Level of Industry" as fixed for Germany by the Allies is so much deteriorated by restitutions particularly referring to modern machinery that the production figures mentioned in the revised Level of Industry Plan can scarcely be reached, the more so since extent and duration of restitution claims have hitherto not been fixed. For this reason it is requested to ensure that unequivocal legal principles be set up in the field of restitutions. In articles 75 and 76 of the Italian peace treaty clauses were inserted concerning the restitution of property of members of the "United Nations". These clauses provide for mixed arbitration committees, to which restitution claims may be asserted. These clauses also state the conditions under which restitution claims may be asserted and the cases in

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By

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NAFA Date

7/16/99

which proof of rightful acquisition is admitted. Articles 238 and 239 of the Treaty of Versailles, also contain clauses concerning restitutions and provide for a special procedure in the course of which both parties are entitled to be heard.

As it is to be expected that a general German peace treaty will not be signed in the near future, it is considered of the highest importance that, in the interest of legal security of the German economy the restitution problem be cleared in such a way that at least in the Combined Area guiding principles be drawn up with regard to preconditions and extent of restitutions. In this way not lawfully acquired items should be restituted to their rightful owners as quickly as possible, but on the other hand rightfully acquired German property should be protected. Information is requested, as to whether an appropriate regulation of the restitution problem may be expected.

Signed: Dr. Strauss
Acting Chief.

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 Authority NND 775057
 By TJ NARA Date 7/16/99

 Bipartite Control Office
 Office of U.S. Chairman
 Frankfurt, Germany.
 APO 757.

 Box 15
 "Reshnum"
 File 5
 16 March 1948.

COPY

MEMORANDUM

SUBJECT: Restitution Problems

TO: U.S. Deputy Chairman
Bipartite Control Office.

1. In accordance with the oral request of the U.S. Deputy Chairman, Bipartite Control Office, on 15 March 1948, we have considered the letter dated 5 February 1948 from the Verwaltung für Wirtschaft to the Bipartite Control Office on the subject of regulation of restitution problems. This letter raises certain legal problems although it also involves many questions of fact and, in the final analysis, raises a fundamental question of policy.

2. The letter does contain certain inaccurate statements with respect to legal matters. In the second paragraph, it is stated:

"Pursuant to the London statement of the Allied Powers dated 5/1/45 all transfers of property to Germans carried through during the war in the countries occupied by Germany are to be considered invalid no matter whether the transfer took the form of an apparently legal transaction or obvious pilfering was in question."

This statement does not adequately indicate the substance of the Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control which was promulgated in London on 5 January 1945 by eighteen countries. This declaration provided that these governments

"... reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected . . ."

MH 23-50

This Declaration, therefore, did not declare all transfers of property to Germans or Germany invalid but merely reserved the right to declare such transfers invalid.

3. The Allied Control Council in defining the term "restitution" for the purpose of determining what property removed by the Germans from Allied countries should be returned to the country of origin under the principles expressed in the Declaration of 5 January 1945, provided:

"2. Restitution shall be limited, in the first instance, to identifiable goods which existed at the time of occupation of the country concerned and which have been taken by the enemy by force from the territory of the country.

"Also falling under measures of restitutions are identifiable goods produced during the period of occupation and which have been obtained by force.

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 By TJ NARA Date 7/16/99

- 2 -

"All other property removed by the enemy is eligible for restitution to the extent consistent with reparations. However, the United Nations retain the right to receive from Germany compensation for this other property removed as reparations."
 Appendix A to CONL/P(46)3 (Revised).

The second paragraph of the VFW letter states that this document established a policy under which practically all items brought to Germany from the occupied countries during the war are liable to restitution regardless of the kind of acquisition. This assumption is not necessarily true under the terms of the definition, especially in view of the dubious meaning of the sentence. "All other property removed by the enemy is eligible for restitution to the extent consistent with reparations." This dubiety, however, is eliminated insofar as the U.S. Zone is concerned by the provisions of MGR 19-100.2, which provides that by use of the words "All other property removed by the enemy", it was desired to include all property which was removed in any other way than by force. The statement is then made:

" . . . This implies that restitution of property may be claimed whatever may have been the means or the reasons of dispossession. But the property removed in such manner does not entail an 'absolute right' to restitution, which may be granted only within the limits consistent with reparations.

"c. These 'limits consistent with reparations' must be understood in the following manner. If property claimed on account of restitution is indispensable for the operation of a whole factory allocated on account of reparations, this property may be retained and not restituted. Restitution will be made only if the removal of the equipment does not seriously diminish the production capacity of the plant and does not destroy the completeness of the equipment to such an extent that when this plant is delivered on account of reparations it loses all value owing to the fact that restitution has been made. If restitution of the object itself is not granted, the right of the claimant nation shall be satisfied by means of compensation to be taken from German property in objects of equivalent value, as far as possible by equipment, manufactured goods and raw materials. Compensation in lieu of restitution must not create additional expenditures by the U.S. in support of the U.S. Zone."
 MGR 19-100.2.

In view of these provisions, the conclusion contained in paragraph 2 of the letter that practically all items brought into Germany from the occupied countries are subject to restitution is correct.

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By TJ NARA Date 7/16/99

- 3 -

4. We are not familiar with the procedure asserted in paragraph 3 of the letter to the effect that restitutable property established to be desirable for the maintenance of the minimum standard of German industrial production has on occasion not been seized for restitution in the event such machinery had not been acquired by force. Such exemptions would not appear to be in accord with the policy presently enunciated in MGR 19-100.2 unless such property were indispensable for the operation of a whole factory allocated on account of reparations. It may be that such exemptions have been made in specific cases by Military Government. In the event that this type of exemption is of importance, it would seem essential that the policy enunciated in the Military Government Regulations be changed to provide for it as well as to provide for suitable methods of establishing such exemptions and the method of repayment to the claimant of the property.

5. Paragraph 4 of the letter complains that property of German origin evacuated to the occupied territories and then returned to Germany has been made liable to restitution. If such determinations actually have been made, the action would be outside the scope of the London Declaration, the Control Council definition and the policy expressed in the Military Government Regulations. There would appear to be no legal basis for taking such property as restitutions solely on the grounds set forth in the letter. Investigations, however, may develop that such property may have been taken for reparations or possibly as compensation in lieu of similar property which could not be restituted in accordance with the provisions of the Control Council definition (op cit).

6. The general discussion in paragraph 5 of the letter with respect to the legal basis upon which restitution should be made is not in accordance with the viewpoint which was adopted by the signatories to the London Declaration. The claim is made that any transfer of property on the basis of a legal contract of sale, signed by the seller without any constraint, can by no means justify a claim for restitution. The letter then goes on to state this is true even though the purchase price was paid in a depreciated currency and further that damages arising from currency manipulations may only be adjusted by general reparations. The London Declaration provided that every transaction in which the Germans acquired property in an occupied territory might be declared invalid regardless of whether such transaction appeared valid in form or purported to be voluntarily effected. This language is so sweeping that purchases made in depreciated currencies, although perfectly legal in all other respects, could be invalidated. The factual basis for the inclusion of this type of purchase within the scope of the London Declaration is that the Germans overvalued the mark in relation to the currencies of the occupied countries and, in addition, enforced price controls within the occupied countries at relatively low levels. In addition, many enterprises in the occupied countries were acquired by the Germans totally or to the extent of majority control and these enterprises made numerous sales of various kinds of property to other Germans. The legal theory behind requiring restitution of articles acquired in such fashion is that under these circumstances even at apparently voluntary contract could not in fact be voluntary as the deliberate juggling of currency and prices necessarily infringed upon the right of freedom to contract as well as the theory of just price, under the doctrine of laesio enormis, both of which constituted essential elements in the laws of the various occupied countries. (See Lemkin, Axis Rule in Occupied Europe, pp 36 et seq.)

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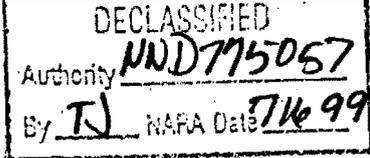
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Authority MWD 775067
By TJ NAFA Date 7/16/99

- 4 -

7. It may be that in view of changing conditions the policy associated with regard to restitution in Military Government Regulations should be abandoned and a more limited policy adopted with respect to what items should be restituted, or that, so far as certain items are concerned, restitution should be made in some other way. We do not express any opinion with regard to this point. We wish to point out, however, that insofar as the principle of restitution is concerned, the very broad provisions of the London Declaration were agreed to by the United States at governmental level and any variation in the terms in the agreement would necessarily need be made at the same level. This, however, does not affect absolutely the factual determination of whether or not any particular transaction should be declared invalid and the property which was the subject of that transaction restituted or retained in Germany.

8. If it is decided that an inquiry should be conducted into the present effect of restitutions upon the German economy, it is suggested that an interim reply be sent to the VFW stating that the matters raised in their letter are being examined. On the other hand, if it is felt that no such inquiry should be made, the letter may be answered by discussion of the legal points set forth in paragraphs 2 to 6 hereof. However, investigation would be necessary to determine the factual basis of the claim in paragraph 4 of the letter that property of German origin has been made liable to restitution.

Sigs R. D. KEARNEY
Legal Advisor



RG 260

Box 15

"Restitution"

File 5

SECRET

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)
 Property Division
 APO 742
 Berlin, Germany

2 July 1948

MEMORANDUM TO: Mr. Phillips Hawkins

SUBJECT : Restitution Policy

1. In compliance with General Clay's instructions regarding modifications to paragraphs 2 c and 2 h of your memorandum to him dated 21 June, subject: Completion of Restitution Program, please be informed that the policies as originally outlined in these two paragraphs have been rewritten as follows:

"Instructions issued in cable V-33179 dated 21 June 48 regarding application of minimum German economy provisions and valid commercial transactions provisions to restitution claims are rescinded and the following will govern: Where restitution of given item would seriously impair German economy, instructions in paragraphs 5 and 6 as read in the light of instructions listed in paragraph 2 B 2 of policy cable AGC In No. 3649 will be applied. Attention is invited to paragraph 6 of cable AGC In No. 3649 which specifies that provisions of paragraph 6 are preferred to those of paragraph 5 and that provisions of paragraph 5 will be avoided where possible."

"Instructions issued in cable CC-4820 dated 22 June 48 regarding capital industrial equipment now located in railroad repair shops are rescinded and the following will govern: Denial will be made on grounds provided in paragraph 6 of policy cable AGC In No. 3649, copies of which were given you during recent conference held in Karlsruhe."

2. The paragraphs as amended clearly provide that we will follow the Washington instructions in regard to these matters.

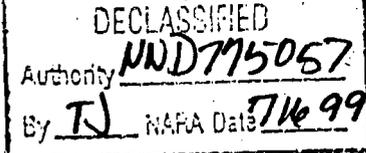


ORREN R. McJUNKINS
 Chief - Reparations and
 Restitution Branch

Tel: 43050

SECRET

308473



RG 260
Box 15
"Reshuhm"
File 5

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)

Property Division
APO 742
Berlin, Germany

21 June 1948

MEMORANDUM

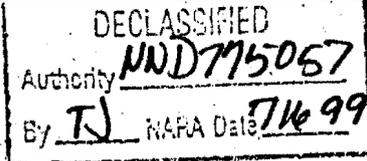
TO : General CLAY

FROM : Phillips Hawkins
Director, Property Division

SUBJECT : Completion of Restitution Program

1. A meeting was held in Karlsruhe on 16 and 17 June which was attended by representatives of the Restitution Control Office, Karlsruhe, the four Laender offices and by Mr. McJunkins and myself for the purpose of determining the present status of the Restitution Program and what action must be taken in order to complete the entire program not later than 1 January 1949. As a result of the discussions held, the following determinations were made:

- a. The outstanding non-cultural claims total 9,876.
- b. The Restitution Missions have submitted some 2,000 or 3,000 claims which have little value. These claims include such items as a pair of shoes, underwear, coats, radios, bicycles, cars, furniture, etc.
- c. The French and Czechoslovak Missions have recently submitted claims for approximately 15,000 sedans. These cars would be some 7 to 10 years old and would have little if any value.
- d. Arrangements have not been made to provide sufficient motor vehicles and gasoline which are required by both U.S. and German investigators in the Laender, and as a result, there has been an exceptionally high loss of man-hours because of lack of these facilities.
- e. The organization established in Bavaria to investigate claims has been very poorly planned. The individual in charge of the Restitution Program in Land Bavaria is definitely not qualified for the position and must be replaced.
- f. No work has been performed on the Monuments, Fine Arts and Archives program in Land Wuerttemberg-Baden during the past year because of the fact that they have had no MFA&A employees.



-2-

g. No schedules have been established either in the Restitution Control Office or in the Laender offices as to the work load that is to be accomplished during each month.

h. There has been no advance planning either in the Restitution Control Office or in the Laender offices for completing the Restitution Program.

2. It is my opinion that we can accomplish the Restitution Program by 1 January 1949 provided we take the following action:

a. Freeze all personnel assigned to Restitutions from transferring until their particular part of the work has been completed.

b. Transfer claims for both rolling stock and water transport to the Transport Group, Office of the Economics Adviser, OMGUS, as part of agreements for settlements as exchanges or debts.

c. Very strictly construe the concept of "bona fide commercial transactions" in order to deny as restitutions capital industrial equipment now in railroad repair shops.

d. Return to the Restitution Missions all claims for items having little value, such as personal effects, and especially those claims for which the cost of processing would probably exceed the value of the items involved.

e. Return to the Missions all cultural claims that do not have some evidence that the items are in the U.S. Zone of Germany.

f. Increase the T/O as follows (increases to be made on a temporary basis and to be effected by borrowing U.S. personnel now assigned to secretariats whose services are presently not being utilized):

(1) Restitution Control Office, Karlsruhe: No change.

(2) Land Bremen: No change.

(3) Land Wuerttemberg-Baden:

Non-cultural: 2 U.S. Investigators
1 U.S. Administrative Assistant

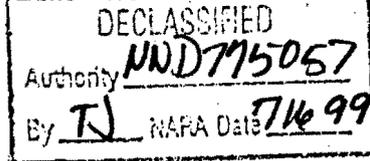
Cultural: 1 U.S. Employee

(4) Land Hesse:

Non-cultural: 2 U.S. Investigators
1 U.S. Administrative Assistant

Cultural: 2 U.S. Employees
3 German Employees

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-3-

(5) Land Bavaria: Requirements to be submitted after we have visited the Bavarian office.

g. Assign additional sedans, jeeps or trucks as follows:

(1) Land Bremen: No change.

(2) Land Wuerttemberg-Baden:

Sedans or jeeps:

For German investigators:	12
For U.S. investigators:	<u>4</u>
Total:	16

Trucks (for removal of property from repositories to collection points): 1 daily

(3) Land Hesse:

Sedans or jeeps:

For German investigators:	10
For U.S. investigators:	<u>2</u>
Total:	12

Trucks (for removal of property from repositories to collection points): 5 daily

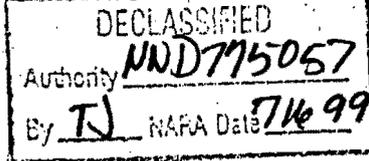
(4) Land Bavaria: Requirements to be submitted after we have visited the Bavarian office.

h. Inform the Missions that we will restitute properties which were removed from their countries within given dates. Also inform the Missions that the minimum German economy argument for locatable items of value will no longer be applied and that unless the Germans can prove that valid commercial transactions are involved, such claims which have been submitted by the Germans will be denied. The Germans will be given 15 days to submit a report proving that valid commercial transactions are involved.

i. We need instructions on the final disposition of 650 outstanding claims from Hungary.

j. Transfer custody of paintings and other items involving German ownership which are now located at collection points in Wiesbaden and Munich to the Minister Presidents of the Laender concerned. The Minister Presidents will be responsible for preservation of these properties until a German government has been established which will make final determination as to the proper recipient.

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-4-

k. Several of the Missions are pressing for replacement in kind for capital industrial equipment which was shipped out as reparations. We would like to inform the Missions that we have established no provisions for making such replacements and that these claims will be dropped, the Missions to be advised that if they wish to press this matter that they may possibly want to file claims against the nations to which the items were delivered as reparations.

l. U.S. captured enemy materials will not be restituted to the U.S.S.R. and Satellite nations. Restitution of U.S. captured enemy materials to the West will be discontinued as of 1 October 1948.

3. It is my opinion that if the recommendations as listed in the preceding paragraph are approved, we can complete the Restitution Program not later than 1 January 1949 in Lands Bremen, Hesse and Wuerttemberg-Baden. I will attempt to establish a plan with OMC Bavaria to complete the program in that Land by the same date and will inform you in the very near future regarding this matter.

Phillips Hawkins
PHILLIPS HAWKINS
Director

Tel: 43773

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By	<u>TJ</u> NAFA Date <u>7/6/99</u>

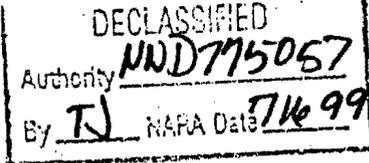
Box 15

" PH-27 'Reshnum'"
File 1

STUDY OF RESTITUTION PROBLEMS

In view of the fact that the Restitution program appears to have fallen short of anticipated progress and with a view toward expediting earliest practicable termination this branch desires to bring out the following points:

1. The number of restitution claims presented by allied restitution missions and the volume of property involved have far exceeded estimates made when the program was originally set up. This was due in part to a lack of understanding of the scope and intricacies of German dispossession methods practised in countries occupied by her forces. Secondly the allocation of US personnel and facilities has not been adequate to cope with the enormous administrative task involved in processing the many thousands of claims resulting from MGR Title 19. As a consequence of this, adequate control on restitution missions could not be exercised, resulting in a very large number of unauthorized and duplicate claims. Had adequate screening been possible from the start and had a minimum value for property to be claimed been set, the number of claims to be processed could have been reduced by 25%. It must be assumed that the various claimant nations are out to get all they can, making the exercise of controls an exclusive-



-2-

ly American problem.

2. Lack of clarity and conformity in consideration to be given the German economy has been the second great stumbling block. As the decisions on force removal and GME essentiality rendered by Restitution Control Branch and OMGUS Restitution Branch were, due to Washington directives, not always in conformity with field findings, the restitution program became not only very unpopular with the Germans, but also with other branches and divisions of Military Government. German agencies assigned to restitution tasks under US supervision spend more time combating restitution than actually restituting.

3. The third fault lies with the missions themselves and is mainly a question of administration. The Belgian and French Missions in Karlsruhe for example have a filing system so inefficient that the officers of these missions are constantly in a state of confusion, as to what they are actually supposed to accomplish. In one particular instance an item of declared property was claimed through seven different claims, from four different nations. An inter-allied restitution team visited the Collis firm of Westhausen/Wuerttemberg in 1946. The resulting nightmare of interlocking, conflicting and duplicating

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-3-

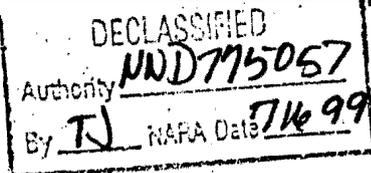
claims has not been entirely straightened out at this writing. The Polish and Yugoslav missions have at various times insisted on shipping items evaluated at less than RM 50. Representatives of all missions have been hindered by insufficient transportation; have been sent into the field without proper orientation and in many instances engaged in extra curricular activities at the expense of their tasks.

SUGGESTED REMEDIES

1. It is strongly urged that all claims involving property evaluated at less than 150 RM be immediately dropped regardless of status. In many cases as much time is involved in processing such a claim as that required for one covering property evaluated at 20,000 RM or more.

2. That a time limit of 30 days be imposed on all missions for the submission of proof of force and additionally required information. In addition all missions should be required to submit status reports on all their claims. Copies of these reports should be forwarded to the Laender and all claims active for more than one year should be dropped unless frozen by a GME application.

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-4-

3. That the German Ministry of Economics, Restitution Section operate under direct US supervision as heretofore or that provision be made to obtain leaves of absence for the men now on German Government payroll, but working for us, in order that they may be made employees of Military Government temporarily, and be provided with adequate transportation in order to fully implement this field personnel. In view of the type of work and the long hours involved, the Ministry of Economics personnel should be provided with extra rations from the German economy or the US Army noonday meal for indigenous employees. This branch has managed to assemble a select group of experienced personnel to accomplish certain phases of the restitution program. This group, although very willing could never be fully implemented because of transportation difficulties. In spite of such difficulties, this branch was for a short time able to increase the output of the Economics Ministry Restitution staff by 35% through the simple expedient of the Army furnished noonday meal. When in July 1947 this privilege could no longer be extended, efficiency immediately fell off not through any malicious intent, but because a ration of 1400 calories is insufficient to meet the physical demands of the task involved.

4. If the restitution program is to be successfully terminated at an early date adequate US supervision must be

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By	<u>TJ</u> NARA Date <u>7/16/99</u>

-5-

maintained. As mentioned before, restitution is very unpopular among the Germans and can therefore not be successfully imposed except by direct operational American supervision. As an example, in Hesse where such direct supervision is not exercised, the Belgian Mission found on spot checking that 40% of the reports submitted by German property control agencies were false. Restitution is very closely involved with US and Allied interests and cannot be competently supervised and administered by an occupied people. Numerous instances have also occurred where allied restitution officers have attempted to take advantage of the situation and have gone beyond the limits imposed by restitution regulations. Attempts at smuggling, black-marketing, and intimidation can be prevented only by direct US supervision.

5. Administrative clarity and consistency is imperative if the restitution program is to end in other than a state of chaos. Due to changing political conditions restitution directives have been in a constant state of flux. Whenever such a change is made all claims in processing are affected creating a great deal of confusion. The completion of claims of doubtful or contested nature can only be expedited if field documentation and findings are immediately passed on by a board acting according to clear cut directives. This branch has directed that all applications for retention of

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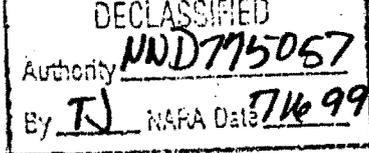
restitutable property under GME applications, Memorandum No. 5, 12, etc., be submitted by a suspense date. This is, however, a useless procedure when the claims involved are later allowed to remain in active state without action, for as long as one year. This branch has found, too, that many claims are investigated and reported on and then lie idle awaiting shipment for, in some cases, a year and a half, and in a great many cases as long as six to eight months. Whether this is due to lack of personnel in Restitution Control Branch or simply inefficiency on the part of the claimant nation's mission is not known.

6. To set an approximate target date for the completion of basic responsibilities regarding restitution the following recommendations for Wuerttemberg-Baden are made:

a. To increase the American personnel by two Investigators and one Administrative Assistant;

b. To increase indigenous office personnel by three (3) persons, and a provision be made to obtain leaves of absence for the men now on German Government payroll, but working under our supervision (12 in number) in order that they be made employees of Military Government for the remaining time necessary to complete restitution work.

c. To increase the number of vehicles allocated the Restitution Branch to twenty (20), this providing two (2)



-7-

vehicles to replace the others on staggered weekly inspection days in order to save personnel loss of time in the field.

d. That the cause for unusual length of time between location of property in the field and request for shipment of same be ascertained and corrected.

e. That claims for properties of less than 150 - 200 Reichsmark be cancelled, and in future not accepted as a valid claim. This amount does not necessarily have to be set at 150 - 200 Reichsmark but certainly should be set at some value close to this, which could be decided upon in a conference.

f. That claimant nation missions should be required to have sufficient personnel to administer their duties efficiently and promptly and eliminate duplication of claims, and to request shipment of claims within a given time limit after report of location - say, thirty days.

g. That a time limit of 30 days be imposed for the submission of proof of force and additionally required information.

h. That all missions be required to submit status reports on all their claims, maintain these up to date at all times, and that copies of these reports be forwarded through Restitution Control Branch to the Laender at the end of each month, and all claims that still retain or achieve an active status of more than one year be dropped unless frozen by GME application or otherwise disposed of.

16/6/48
WK

308484

DECLASSIFIED
Authority NND 775057
By TJ NAFA Date 7/6/99

"Box 15
Restitution Chambers"
File 13
Efficiency
output

Memorandum Concerning the Operation of the Restitution Program Under Military Government Law 59.

Submitted at the request of the Hon. William A. Clark,
Chief Judge,
Military Government Courts for Germany
APO 696-A, U.S. Army

The operation of the restitution program under Military Government Law 59 can be divided into three distinct phases:

- I. The Administrative process leading to amicable settlements.
- II. Judicial procedure before the German courts, and
- III. Judicial Review by the occupation authorities.

I. The Administrative Process Leading to Amicable Settlements

A. The Law.

MG Law 59 provides that petitions for restitution must be filed with the Central Filing Agency which is a Military Government Unit. ¹⁾ The period for filing of claims expired on 31 December 1948 ²⁾, but additional claims could be filed before 30 June 1949 by German Public Prosecutors acting on behalf of a successor organization ³⁾. The only successor organization appointed was the JRSO as trustee for heirless Jewish property ⁴⁾. The Central Filing Agency is required to transmit the petitions received to the German Restitution Agency in the district in which the property subject to restitution is located ⁵⁾. The Restitution Agency must then give formal notice to the parties concerned ⁶⁾ and attempt to reach an amicable settlement ⁷⁾. It may also render decisions en venue ⁸⁾ or enter a default judgment if the claimant fails to state a cause of action or the restitutor does not reply ⁹⁾. If no agreement can be reached the Restitution Agency refers the case to the local Restitution Chamber of the District Court for adjudication ¹⁰⁾.

- 1) Art. 55, 56, Reg. No. 1
- 2) Art. 56
- 3) Art. 70
- 4) Reg. No. 3
- 5) Art. 59
- 6) Art. 61
- 7) Art. 62
- 8) Art. 59
- 9) Art. 62
- 10) Art. 63

- 2 -

B. Experiences in Carrying Out the Law

52,866 petitions have been filed by individuals and 163,218 by the JRSO, making a total of 216,074. About 3000 additional petitions were filed for the JRSO by the Public Prosecutors. The JRSO presently estimates that after elimination of duplicates and withdrawals of JRSO petitions for properties awarded to individual claimants there will remain about 70,000 active petitions of the JRSO. About 30,000 of these can be held in suspense pending a final decision on some basic issue of liability involved in these cases.

By the middle of August 1949 the Central Filing Agency had transmitted 213,000 petitions. This transmittal was not made directly to the Restitution Agencies, but through the Land Central Offices for Restitution, which are German offices established in each land with administrative responsibility for the restitution agencies in their land. The Land Central Offices in Bavaria and Hesse are independent agencies accountable to the Minister President. In Württemberg-Baden it is a department of the Ministry of Justice. In Land Bavaria they supervise 5 Restitution Agencies, in Hesse 10, in Württemberg-Baden 4, and in Bremen 1 Restitution Agency. By 31 August these Land Central Offices had transmitted to their respective Restitution Agencies 46,138¹¹⁾ petitions of the total of 213,000 received from the Central Filing Agency. These petitions included 30,787 cases¹²⁾, since a petition sometimes covers more than 1 case. There is no bottle-neck in the transmittal of petitions from the Land Central Offices since the volume transmitted has been much greater than the Restitution Agencies have been able to cope with.

The Restitution Agencies have thus far finally disposed of a total of 3,417¹³⁾ cases either by dismissal, withdrawal, or amicable settlement. 1827¹⁴⁾ cases were forwarded to the Restitution Chambers for adjudication. This from November 1947, the effective date of Law 89, through August 1949 the Restitution Agencies have processed a grand total of 5,244 cases¹⁵⁾ of an estimated total of about 100,000 active cases. In August 927 cases¹⁶⁾ were disposed of in the Restitution Agencies.

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- 11) Page 11, GCHQS Progress Report of August
 - 12) Report p. 14
 - 13) Report p. 14
 - 14) Report p. 13
 - 15) Report p. 13
 - 16) Report p. 3, 4

- 3 -

C. Summary Responsibility -

The Property Division of the Office of Economic Affairs under the direction of Mr. Frank Miller, Telephone: Berlin 42750 - is responsible for supervising the entire administrative process leading to amicable settlements, including the Central Filing Agency, the Local Central Offices and the Restitution Agencies. This division maintains an Internal Restitution Supervision Section under the direction of Mr. Warner Loewenthal, Telephone: Bad Nauheim, 3041/3341, ext. 174. This section has one Field Supervisor in Bavaria, one for Mevitzberg-Baden and Hesse, and three Supervisors in the Central Office responsible for controlling the Central Filing Agency and the operations of the Restitution Agencies in all Länder. It receives reports concerning the progress of every case and issues a monthly statistical analysis, from which the figures in this memorandum have been drawn. 17)

D. Comments -

It is necessary that the rate of progress be accelerated if the "speedy restitution" proclaimed in the first sentence of the law is to be achieved. This can be done by "streamlining" the present procedure before the Restitution Agencies, increasing the staff of the Restitution Agencies and fixing target deadlines to which the German officials will be expected to adhere.

1. "Streamlining" the procedure -

The JRSO claims are the only ones amenable to mass handling since almost all individuals have only 1 claim which must therefore be handled as a separate item. If the JRSO claims can be "machine-processed", however, more than half the program will be disposed of. The basic principle which the JRSO has adopted to accelerate the program has been to seek amicable settlements in as many cases as possible. To this end each restitutor is invited to the JRSO Regional Office to discuss the case even before he receives a summons from the Restitution Agency. If prior agreement between the parties can be reached, the case can be disposed of by the Restitution Agency in a matter of minutes. If no agreement can be reached by the JRSO in the prior discussions, no lengthy appearance before the Restitution Agency should be required and after a brief appearance the case should be forwarded to the Restitution Chamber.

17) 10/24/48/2 Summary Progress Report of Petitions and Cases received by the Restitution Agency.

- 4 -

For this plan to be effective a controlled docket based upon the preparedness of the parties is absolutely essential. Two or three days each week (depending upon the ratio of individual claims to JRSO claims in the particular Restitution Agency) should be reserved for processing JRSO claims. Restitutors should only be summoned if efforts to reach amicable agreements have failed. In all cases where an amicable agreement was reached the JRSO attorney should present the written settlements to the Restitution Agencies together with a true copy of the valid JRSO claim, and a certificate that official records reveal no other claim for the property. The Restitution Agency will then prepare its order releasing the property from control or transferring it in the land registry and the restitutor should be sent a confirmed copy of the settlement closing the case rather than a summons to appear before the Agency. This procedure would permit a mechanical handling of hundreds of cases daily. Specifically this requires instructions to the Restitution Agencies through the Land Central Offices

- a) that special days (proportioned to the number of JRSO cases) be reserved for the JRSO and
- b) that parties only be summoned in accordance with a JRSO list showing that an appearance is actually required, and
- c) that no summons be issued to the restitutors where there is a written agreement with the JRSO showing an amicable settlement.

In respect to individual claims the procedure can be "streamlined" in a similar manner. Whenever the claimant has reached agreement with the restitutor the claimant should be permitted to present the written settlement together with proof that he is the rightful claimant and receive the necessary Restitution Agency order closing the case. The restitutor should not be required to appear for a hearing, but should receive an confirmed copy of the settlement.

If a special section is established in each Restitution Agency to deal exclusively with such agreements as they come up without waiting for the summons and place on the docket of hearings, this will constitute an added incentive to reaching amicable settlements and accelerate the entire procedure.

2. Increasing the staff -

Even if the tempo with which JRSO cases can be disposed of is accelerated it is still essential that the present staff of the Institution Agencies be sharply increased. There will be approximately 100,000 cases to be disposed of by the Institution Agencies. If they handle 2,000 per month, it will take 1 year. If they handle 4,000 per month, it will take 3 years. Their present rate is less than 1000 per month, which means that the present staff must be increased 4 times if their work is to be done in 3 years. Increased efficiency and mass processing of JRSO cases may speed the handling so that an increase of only 3 times the present staff would be necessary to complete their work in 3 years, but it would appear that 2 years should be minimum time allowed. Discussions should be held with the Land Control Office concerning their personnel problems with a view to determining whether any further increase in Institution Agency staffs is possible. In any case the occupation authorities should insist upon at least the tripling of the present Institution Agency staffs.

3. Deadlines -

The establishment of target depends upon what may be demanded and expected of the Institution Agencies within the realm of possibility. No firm determination can be made until the problem is carefully examined with the German Officials. The JRSO considers it possible to complete the investigation, negotiation and appearance before Institution Agencies on all active JRSO cases before June 1951. No reason is known why all individual claimants should not be prepared long before then. The speed with which the Institution Agencies are cleared depends therefore upon how much they are able to bear and how much the occupation authorities are willing to impose to see the Military Government law quickly enforced.

II. Judicial Procedure before the German Courts -

A. The Law -

The Institution Chamber of the District Court (Landgericht) having jurisdiction over the Institution Agency is the German judicial body of first instance to adjudicate cases where no amicable settlement was possible. 18) They also hear appeals from decisions on venue and default judgments rendered by the Institution Agencies. 19)

18) Art. 63

19) Art. 64

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 Authority NND 775057
 By TJ NARA Date 7/16/99

- 6 -

The Chamber is composed of a Presiding Judge, who must be a person normally assigned to a court, and 2 associates. One of the 3 judges must belong to a class of persons persecuted for racial or political reasons. 20) Decisions of the Chambers must be pronounced in an order and be supported by an opinion. 21)

Appeals from the orders of the Restitution Chambers may be heard by the Civil Division of the Court of Appeals (Oberlandesgericht), the highest German land court, and must be based upon a violation of the law. 22)

B. Experience in Carrying Out the Law -

There are 5 Restitution Chambers in Bavaria, 3 in Hesse, 4 in Württemberg-Baden and 1 in Bremen. The establishment of a number of panels within each chamber is being considered. From November 1947 through August 1949 they disposed of a total of 406 cases 23) only 272 of which were finally cleared 24). The practice to date indicates that 1/3 of the cases disposed of by the Restitution Agencies are forwarded to the Restitution Chambers. 25) It may therefore be anticipated that of the total of 100,000 cases which Restitution Agencies have to handle, about 30,000 will go to the Restitution Chambers. During the month of August the Chambers finally disposed of 43 cases and forwarded another 51 to the Court of Appeals and 2 more to the Board of Review 26) amounting to a disposition of 96 cases for the month.

There is one Court of Appeals (Oberlandesgericht) which hears restitution cases in Hesse, one in Bavaria, one in Bremen, and 2 in Württemberg-Baden. By the end of August 1949 they had disposed of a total of 43 cases, 27) of which only 13 were finally adjusted. The practice to date indicates that of the total number of cases disposed of by the Restitution Chambers about 20% are appealed to the Court of Appeals. 28) It may therefore be anticipated that 7,500 cases will reach the Court of Appeals. During the month of August the Court of Appeals disposed of 13 cases, only 3 of which were finally closed.

20) Art. 55

21) Art. 58

22) Art. 61

23) Report p. 17

24) Report p. 12, 16

25) Report p. 14-15

26) Report p. 7

27) Report p. 10

28) Report p. 16, 17

C. Emergency Responsibility -

The office of the General Counsel, HCOG has overall responsibility for the supervision of German Courts. The Administration of Justice Branch is under the supervision of Mr. Mortimer Hollender, Tel. 2nd Naubain, 2341, Ext. 377, and the German Courts Section which is immediately responsible for the German courts in general is under the supervision of Mr. Hans Weigert.

There is at present no section or person dealing exclusively with the progress of restitution cases through the German courts, although the clear assignment of this responsibility is being planned.

Comments -

As in the administrative process leading to amicable settlements it is apparent that the present staff in the Restitution Chambers and Court of Appeals is insufficient and that the number of persons required to do the work must be related to their output and the time limit to be allowed for completion.

The present output of the Restitution Chambers and Courts of Appeals can easily be increased by requiring them to devote more sittings to restitution cases. The chambers have only averaged 6 sittings per month on law 59 and the Oberlandesgerichte have only averaged 3 such sittings and even then only part of the day may have been spent hearing restitution matters. Furthermore, only some of the existing District Courts are hearing restitution cases and only 3 of the 8 Oberlandesgerichte receive restitution appeals. Both of these German courts could be required to have permanent panels dealing exclusively with restitution cases and their real rate of progress should then be determined. Once their capacity is known a decision can be reached as to the number of additional panels needed. Whatever time limit is set for the Restitution Agencies, it must be borne in mind that at least 6 additional months will be required by the Restitution Chambers and an additional 6 months will then be needed by the Court of Appeals. It is felt that with persistent supervision by HCOG and serious application by the German officials this aspect of the program can be completed within a reasonable time. Since no specific data as to the actual full-time capacity of the German courts is yet available not greater detail can be advanced at this time.

- 8 -

III. Judicial Review by the Occupation Authorities -

A. The Law -

A Board of Review is authorized to review decisions under Law 59 (23). Reg. 4 established a Board of 4 Americans to perform this function and rules of procedure were issued by the Board. Recently the responsibility for the review functions have been transferred to the Military Government courts for Germany. Military Government may issue regulations implementing Law 59, and Restitution is a power reserved to the occupation authorities (30).

B. Experience in Carrying Out the Law -

As of 21 August 1949 the Board of Review had received 24 cases. Six of these were rejected and 1 was withdrawn (31). No decisions were rendered by the Board. About 2% of the cases in the Restitution Chambers were forwarded to the Board of Review (32). Since it was estimated that 20,000 cases would go to the Restitution Chambers, the experience thus far would indicate that about 800 cases would reach the reviewing authority from the Chambers.

About 30% of the cases handled by the Oberlandesgerichte have thus far been forwarded to the Board of Review (33) which would indicate that about 2,000 cases will be sent to the Board in addition to the 800 coming from the Chambers. These figures, however, are based upon a very small sampling and should be weighed accordingly.

Comments -

The reviewing authority must wait for the appeals to be filed and therefore its progress is initially geared to the speed of the German courts. It is felt, however, that increased efficiency can be obtained by having as the reviewing authority a permanent panel of competent judges devoting full time exclusively to the restitution cases. The volume of cases anticipated certainly requires such full time assignment. The decisions rendered by the German courts indicate that many of the issues are exceptionally complicated and involve difficult interpretations of German law. A permanent panel could become specialized in this field and be in a much better position to render sound and speedy judgments than any group seeking to perform this function along with one or more others. If one or more members of the panel were versed in German law,

29) Art. 69
 30) Par. 2b, Occupation Statute
 31) Report p. 29

32) Report p. 17
 33) Report p. 19

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Authority	<u>NND 775057</u>
By	<u>TJ</u> NAFA Date <u>7/16/99</u>

- 9 -

it would be an invaluable asset. At least the Panel should have an American advisor, as sought by the Board of Review, who could combine knowledge of German law with an understanding of Military Government legislation. The decisions written by the Panel must be such as to earn the respect of the highest German courts and it cannot be done without competent technical help.

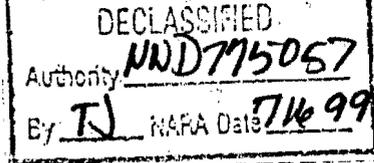
There are a few major issues each of which will determine many thousands of cases. Once these points are decided at the highest level, the parties concerned will stop pressing their cases through the courts. This single factor will greatly accelerate the entire program and it is therefore important that these points be definitely clarified as soon as possible. It should be borne in mind that the present rate of progress in all phases can be sharply increased once the cases become routine and fall into fixed patterns.

Summary and Conclusion -

As NS Law 59 is now being carried out the basic objective of speedy restitution will not be achieved. There are 3 phases of the restitution program which are inseparably linked. Progress in one phase is meaningless without equal progress in the others.

Certain revised techniques and staff increases can be expected to enable the administrative process leading to amicable settlements to be successfully completed within a reasonable time. A careful study must be made to determine the actual capacity of the German courts to handle restitution cases. Until that fact is known realistic planning is impossible. The volume of cases indicates that judicial review by the occupation authorities will be a difficult task requiring the full-time attention of competent judges.

What is immediately required is the co-ordination of the 3 HIGSO groups presently responsible for supervising the 3 phases of the program. As soon as additional facts are obtained concerning the exact work load and working capacity of those carrying out each phase a reasonable and co-ordinated time schedule may be established. It will then be for the High Commissioner, acting upon the basis of the power reserved to him under the Occupation Statute, to direct the responsible German officials to take all steps necessary for carrying out the letter and spirit of the restitution law.



Box 15
 "PH-27 Restitution"
 File 12

II. ORGANIZATION AND FUNCTIONS OF THE INTERNAL RESTITUTION SUPERVISION SECTION

1. Organization

In addition to the Section Chief, the Table of Organization of the Internal Restitution Supervision Section provides for three Supervisors to be attached to the Staff of the Section Chief, and for three Land Supervisors assigned to Bavaria, Hesse and Württemberg-Baden. One of the Supervisors attached to the Office of the Section Chief, will be assigned the responsibility for the supervision of restitution activities in Land Bremen and in the US Sector of Berlin.

2. Functions

The supervision of the Restitution Program will be carried out through constant observation of restitution activities and through continuing inspections of Restitution Authorities to insure proper and efficient administration of the program and its completion with the least possible delay.

More specifically, the functions of the Internal Restitution Supervision Section will include the following:

- a) to advise and assist Restitution Authorities in the performance of their task;
- b) to detect and remove, wherever possible, obstacles detrimental to, or hindering, the program;
- c) to report to Property Group, Office of the Economics Adviser, OMGUS, conditions which are deemed to require action at higher level;
- d) to devise and maintain a system of recurring reports which will enable the Internal Restitution Supervision Section to observe the progress of all phases of the program, and to furnish information on the current status of the program to Property Group, Office of the Economics Adviser, OMGUS;
- e) to ascertain whether directives and instructions issued by the German authorities are consistent with Military Government Law No. 59 and legislation issued thereunder;
- f) to point out the need for and propose to Property Group, Office of the Economics Adviser, OMGUS, the promulgation of implementing legislation and regulations which will further the expeditious carrying out of the program;
- g) to devise procedures and instructions for the practical application of policies established or to be established by Property Group, Office of the Economics Adviser, OMGUS;
- h) to maintain liaison with Legal Division regarding problems in connection with the functioning of the Restitution Courts.

III. SUPERVISION TO BE EXERCISED AT LAND LEVEL

1. General

Land Supervisors are the representatives of the Property Group, Office of the Economics Adviser, OMGUS. They operate under the supervision and direction of, and are responsible to, the Internal Restitution Supervision Section for the immediate supervision of restitution activities in the Land to which they are assigned. They will receive all instructions

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NND 775067

By TJ

NARA Date 7/16/99

and work assignments ~~will be~~ through the Internal Restitution Supervision Section, except in cases of great urgency when instructions will be received directly from the Property Group in which case the Land Supervisor in question will immediately notify the Internal Restitution Supervision Section of the assignment received.

2. Responsibility for the Handling of Correspondence

It is the policy of the Property Group, Office of the Economics Adviser, OEGUS, to reduce its correspondence to an absolute minimum. The Hauptbuero fuer Vermoegenkontrolle und Wiedergutmachung in der US Zone, 11 Thierschstrasse, Munich, Germany, which has been established to take over some of the functions previously discharged by the Property Control and External Assets Branch, has, therefore, been instructed to handle all correspondence concerning property control and restitution matters, with the exception of correspondence from other than routine sources, such as inquiries from Congressmen, etc., which will be handled by the Property Group.

In accordance with the above, Land Supervisors will forward correspondence received by them to either the Hauptbuero for a direct reply or to the Internal Restitution Supervision Section for transmittal to the Property Group. If correspondence is forwarded to the Hauptbuero, the correspondent will be informed of this action by a form letter, a sample of which is attached hereto (Annex A). In exceptional cases, such as serious complaints against Restitution Authorities, Land Supervisors are authorized to conduct an immediate investigation, the result of which will be transmitted to the Internal Restitution Supervision Section, together with the basic correspondence. The above does not apply to functional correspondence, e.g., correspondence between Land Central Offices for Restitution and Land Supervisors, which will either be handled by Land Supervisors or, if necessary, forwarded to the Internal Restitution Supervision Section. Land Supervisors will exercise special care to accept for handling only correspondence actually within the scope of activities outlined in this circular.

3. Responsibility for Property Control Matters Connected with Restitution Proceedings

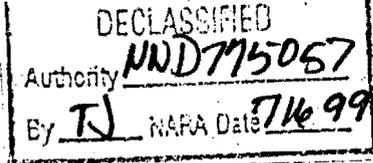
Land Supervisors will have no responsibility for property control matters except that they will ascertain whether restitution activities are being properly coordinated with property control activities in accordance with established procedures regarding the handling of distress properties (PC Circular No. 1 dated 3 January 1949).

Land Supervisors will report deficiencies occurring in performance of the aforementioned functions,

- a) to the Land Central Office for Restitution, whenever Restitution Authorities have failed to notify Property Control Agencies of the receipt of claim or final adjudication or settlement thereof;
- b) to the Office of the Land Civilian Agency Head whenever Property Control Agencies have not taken proper action upon receipt of notification from Restitution Authorities;
- c) to the Internal Restitution Supervision Section if the action taken in accordance with a) or b) above has failed to produce the desired results.

4. Inspections and Investigations

a) Routine inspections of Restitution Authorities will be conducted once a month and the results thereof will be reported on the "Routine Inspection Report Sheet" (see Part III, par.5-a(1)).



b) Special inspections of Restitution Authorities will be conducted whenever their activity reports show slow progress. Such determination will be made through evaluation of monthly activity reports submitted by Restitution Authorities (Form IG/PD/11b/F) and the recapitulation thereof as compiled by the Internal Restitution Supervision Section (Form OIGUS 584, 7 May 49).

c) Investigation will be made whenever warranted; e.g., upon receipt of information regarding irregularities on the part of officials connected with the program, preferential or prejudicial treatment of parties to restitution proceedings, reports on cases showing undue influence or abuse of power by restitution officials, and whenever directed by the Internal Restitution Supervision Section.

5. Reports

a) Routine Reports

Land Supervisors will submit to the Internal Restitution Supervision Section the following reports:

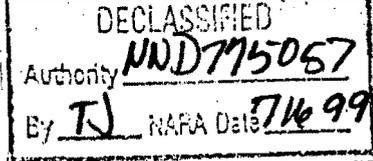
- (1) A "routine inspection report" to be submitted in duplicate on the "Routine Inspection Report Sheet", a sample of which is attached hereto (Annex B), upon completion of the regular monthly inspection of each Restitution Authority.

The purpose of the "Routine Inspection Report Sheet" is that of achieving uniformity of reporting by listing those items for which current reports are deemed indispensable. It is, however, not intended to limit routine inspections to merely those items listed. On the contrary, Land Supervisors are encouraged to report any additional points of interest under "Remarks".

- (2) A "weekly report" containing a brief description of the activities and accomplishments during the reporting period. This report will be submitted in triplicate every Friday.
- (3) A "monthly report" covering in detail items reported in weekly and special reports (for special reports see 5 b), with emphasis on the progress made by Restitution Authorities and conditions impeding such progress. This report will be submitted in quadruplicate as of the end of each month and should be prepared in a style and manner which will permit its forwarding to higher authorities.

b) Special Reports

- (1) Deficiencies detected during inspections and investigations will be reported in writing to the Land Central Office for Restitution with a request for remedial action and for a report on the action taken. A copy of the request to the LCO will be forwarded to the Internal Restitution Supervision Section.
- (2) If, after serious efforts on the part of Land Supervisors, remedial action is not taken by the Land Central Office for Restitution, a report will be made to the Internal Restitution Supervision Section.
- (3) Additional reports will be made to the Internal Restitution Section on any matter deemed to warrant the attention of that office.



- (4) Whenever possible, reports outlined in 5 b, (1), (2) and (3), should be accompanied by proper documentation, or proof of the statements contained therein. If a report is based on verbal information, the exact source of such information will be included.

4. Records

a. Progress Charts

Land Supervisors will maintain uniform progress charts as devised by the Internal Restitution Supervision Section, listing Restitution Authorities within their area of jurisdiction as well as the completion of the various procedural steps which may be taken by said Authorities in the disposition of restitution cases before them. On or about the tenth of each month, the Internal Restitution Supervision Section will submit to Land Supervisors copies of OIGUS form 58A which will contain the figures necessary to complete the aforementioned charts.

b. Personnel Roster

Land Supervisors will maintain an up-to-date roster of German key personnel employed with Restitution Authorities.

c. Files

Land Supervisors will establish and maintain an active and an inactive file for the Land Central Office for Restitution and for each Restitution Agency, Chamber and Oberlandesgericht in their area of jurisdiction. Matters necessitating action, e.g., requests for investigations or specific complaints, will be kept in the active files until completion of the action, at which time they will be transferred to the inactive files pertaining to the respective Agencies or Courts. Additional files may be set up as deemed appropriate. Files will be maintained in such a manner that information contained therein will be readily available.

FRANK J. MILLER
Chief, Property Group

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By	TJ NARA Date 7/16/99

Box 15
 "P.H. 27" Restitution"
 "Restitution Supervision"
 File 12

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)
 Office of the Economics Adviser
 Property Group
 APO 807
 Bad Nauheim, Germany

IRSS Cir No. 1

1 July 1949

INSTRUCTIONS ON THE SUPERVISION OF RESTITUTION COURTS

1. Reference is made to PG Circular No. 1, dated 1 July 1949, concerning the supervision of the Restitution Program under Military Government Law No. 59.

2. It will be noted that the circular refers to Restitution Authorities generally and does not distinguish between Restitution Agencies and Restitution Courts. Direct reference to Restitution Chambers and Oberlandesgerichte has been omitted pending final decision as to the assignment of responsibility for the inspection of Restitution Courts.

3. Until further notice, the following procedure will be adopted by Land Supervisors with respect to Restitution Courts:

a) No physical inspections of Restitution Chambers and Oberlandesgerichte will be made;

b) If during inspection of Restitution Agencies, through analysis of progress reports, or through information from responsible sources, deficiencies in the operations of Restitution Courts are detected, Land Supervisors will report such facts in writing to the Legal Division at Land level. A copy of such report of deficiencies will be forwarded to the Internal Restitution Supervision Section. Should appropriate action not be forthcoming within a reasonable period of time, Land Supervisors will submit an additional report of all pertinent facts to the Internal Restitution Supervision Section.

4. The above procedure is designed to allow the Internal Restitution Supervision Section to discharge its responsibility for supervising the administration of the Restitution Program without interfering with the functions of the Legal Division with respect to Restitution Courts.

Werner M. Loewenthal

WERNER M. LOEWENTHAL
 Chief, Internal Restitution
 Supervision Section

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By TJ NARA Date 7/16/99

OFFICIAL

FOR GERMANY (US)

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PG Cir No. 1

1 July 1949

SUPERVISION OF THE RESTITUTION PROGRAM UNDER MILITARY GOVERNMENT LAW NO. 59

I. RESPONSIBILITY

1. Responsibility of Property Group, Office of the Economics Adviser, OMGUS

The responsibility for the general supervision of the administration of the Restitution Program in the US Zone has been assigned to the Property Group, Office of the Economics Adviser, OMGUS. It is responsible for policies and instructions with respect to claims for the restitution of identifiable property to which Military Government Law No. 59 is applicable.

Pursuant to letter AG 534 (PD) dated 23 April 1949, subject: "Establishment of a Zonal German Property Control and Internal Restitution Coordinating Agency", Land Directors of Military Government have no further responsibility with respect to the Property Control and Internal Restitution programs after 1 July 1949, except as may be specifically designated by OMGUS.

2. Responsibility of the Internal Restitution Supervision Section

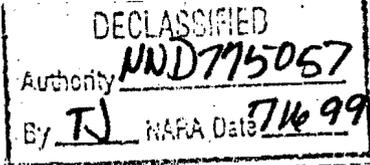
The Internal Restitution Supervision Section, under Property Group, Office of the Economics Adviser, OMGUS, exercises direct supervision over the functional operations of the authorities responsible for the administration of Military Government Law No. 59.

Immediate responsibility for the execution of the Restitution Program rests with the German authorities, through the Minister-Praesidenten of the Laender in the US Zone. It is carried out by and through Restitution Agencies and Courts established under Military Government Law No. 59, which are administered by officials selected or approved by the Minister-Praesidenten. Supervision of the program should, therefore, be conducted without interference with the actual operation of Restitution Authorities and in such a manner as not to cause unnecessary friction which may adversely affect the program.

Since Military Government Law No. 59 provides for sufficient safeguards against miscarriage of justice, through the right of appeal to the Restitution Chambers, the Oberlandesgerichte and, finally, to the Board of Review (composed of American judges), the Internal Restitution Supervision Section will concern itself mainly with the supervision of the administrative aspects of the program.

3. Responsibility of Legal Division, OMGUS

In accordance with the general responsibility in the field of administration of justice, Legal Division, OMGUS, is responsible for the supervision of the organization of the Restitution Courts and of the flow of cases through said courts.

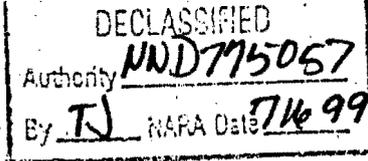


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 file 12

Confidential

The impressions which I received during a three months' period of representing American claimants before German restitution agencies in the American and French occupied zone have been manifold. As a result thereof I have come to believe that the fate of restitution is at this time (the law having finally been promulgated in all zones) strictly a personality problem. Wherever the German officials charged with the conduct of attempts for settlement (Schlichter, Amt fuer Wiedergutmachung, Gueteausschuesse und Einzelrichter) take their duty seriously in the spirit of the restitution laws ("speedy restitution to the largest extent possible") the over-all-spirit of willingness to reach speedy settlements, prevailing in the respective communities, causes approximately 80 % of the cases, which so far have come up, to be settled on a more or less satisfactory basis. In contrast thereto settlements are reached to a much smaller percentage and are far less satisfactory in such districts, where the German officials in a more or less open manner make known to the defendants that they approve of their standard defenses, i.e. that the respective laws are unjust, that they constitute new unlawfulness and that they could not stand enforced for all times.

German officials which I have met in the courts or restitution agencies in all three zones, but particularly in the American and French zone, are rarely free from such considerations, even when they do not (as it has happened in a number of cases) openly and flagrantly make a point to state their opinion as definitely opposed to those restitution laws. Only in a few instances I gained the conviction that I was pleading before a German official or judge, who was trying to the best of his ability



to live up to the spirit of the law as it is incorporated in article 1, subparagraph 1, first sentence of law 59.

The following observations are made for the purpose of recording my impressions gained in the various restitution agencies or courts, before which I had to appear or with whom I had other contacts during the summer of 1949.

- A: American Zone
I. Land Wuerttemberg-Baden
a) Schlichter fuer Wiedergutmachung
aa) Mannheim

Of the two officials, functioning in this agency I met personally with Dr. Runge, and I received a highly reliable report about the conduct of the other Schlichter, Dr. Fixon, from a defendant with whom I had concluded a settlement, which this defendant submitted to Dr. Fixon for recording within the meaning of article 65, law 59. Dr. Runge gives the impression of a man legally well versed and capable of dealing with difficult problems. While refraining from making any explicitly unfavorable statement concerning law 59, my general impression of Dr. R. was nevertheless that of a very reserved and by no means sympathetic position with regard thereto.

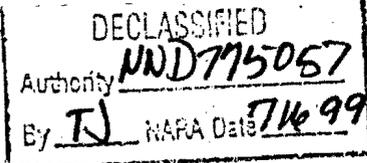
The report concerning Dr. Fixon, given me by Mr. Willi Walter, Steigerweg 51, Heidelberg, stated that this Schlichter, when confronted with a settlement concluded out of court through notarial acts, made approximately the following remarks: "Why are you giving back so much

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Authority NND 775057
By TJ NARA Date 7/16 99

to the American Jews, aren't you in the first place a German? I must protect the German interests, as I have been forced to leave my homestead in East Prussia." According to Mr. Walter, who took immediately exception against this outrageous behavior of a German official, Dr. Fixon required many additional informations from the defendant in this settlement, which had nothing to do at all with the problem of restitution, and even, after having received them, failed to take action as requested of him with regard to the settlement. Property control measures, which were pending with regard to the respective property were not lifted for more than 6 months after the conclusion of the settlement.

bb) Stuttgart

I met with both Schlichter, Oberamtsrichterin Dr. Beiswaenger und Oberlandesgerichtsrat Koehler. Both of these judges give the best example for the opinion stated before that restitution as required by law 59 will be fully successful whenever the judge, called upon to administer the law, makes serious efforts to execute the meaning of that law as prescribed by article 1, subparagraph 1, sentence 1. At the same time these two judges proved that this can be done without violating any of the basic rights of the defendants. Dr. Beiswaenger particularly strikes me as the prototype of a highly qualified Schlichter. With her never ending patience, beginning her working day at 7³⁰ in the morning and ending it late at night, she is trying to inform both parties in any given case of all important problems, which would indicate the need and the benefit of voluntary restitution. She



definitely favors restitution in principle and in the way as it is required by law. She therefore is one of the few German officials, with whom I met, who are fully capable and ready at all times to definitely and convincingly reject the above mentioned standard defenses of the defendants.

Dr. Koehler lives up to the same high level of "Schlichtung" as his distinct colleague, in spite of the fact that on various occasions one can notice his personal conviction that a different handling of the restitution problem than that in law 59 would have been preferable to him. Dr. Koehler however represents the type of a German judge, whose personal conviction never enters his consideration of law, even then, when he could easily influence the defendants to show a more or less intransigent attitude. No wonder that the percentage of settlements received by Dres. Beiswenger and Koehler is a high one and that in general the contents of those settlements are good and lead to an effective restitution.

oo) Ulm

I would say about the same, although in a less pronounced way, concerning the Schlichter in Ulm, Amtsgerichtsdirektor Dr. Heise. For him as well as for the Schlichter in Stuttgart I must however make one reservation which concerns the problems of aggravated confiscation within the meaning of article 30, law 59. Here all 3 Schlichter fail to give full recognition to the wording of this article

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Authority	<u>UND 775057</u>
By	<u>TJ</u> NARA Date <u>7/16/99</u>

as well as to that of article 2 and 3, law 59 and thereby come to a very weak interpretation of the law, such as advocated by Kuester and Schilling in contrast to the commentaries of Godin and the undersigned.

b) Wiedergutmachungskammern

aa) Mannheim

My impressions gained in pleading before the Wiedergutmachungskammer in Mannheim (Landgerichtsdirektor Huber and 2 attorneys) were favorable in general with the following reservations:

The court order which was lateron pronounced was ready and fully prepared with "reasons" prior to the beginning of the oral hearing. In it the court failed to give full recognition to the consequences of article 15 REG by adhering stridly to the principles of the German civil code with regard to the protection of good faith. Although it was a case, where it made ~~no~~ practical difference for the decision, the action of the court indicated a serious interference with the will of ^{the} military legislator and a failure to recognize the latter's power to disregard the German civil code.

bb) Stuttgart

This restitution chamber presided over by Landgerichtsdirektor Geyer, assisted by referent Landgerichtsrat Buesche, and a representative of the group of persecute~~rs~~s showed any extreme awareness and readiness to deal effectively with law 59 in the spirit of its legislator, except again for the beforementioned problem of "aggravated confiscation".

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 By TJ NARA Date 7/16/99

The chamber, sitting for many days and hours in a single case, took great pains to outline to the defendants that their (standard) defenses were completely unconvincing in fact and irrelevant in law. After having indicated clearly their readiness to pronounce judgement against him the chamber finally succeeded in talking the defendants and their obstructive attorney into a settlement to which three persons, not directly involved in these restitution proceedings were caused to become obligated parties.

II.

a)

Land Hessen

Aemter fuer Wiedergutmachung

aa)

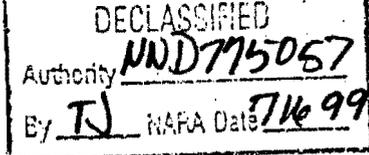
Darmstadt

I had no personal contact with Dr. Gottschalk, the manager of this office. Two decisions of him served upon me indicate however clearly the inefficiency from a legal point of view of the system maintained in Hessen, whereby legally unexperienced officials are to administer restitution. The decisions of this agency, which have come to my knowledge openly violate the most primitive requirements of German processual law as well as of article 62, subparagraph 1, law 59. In spite of the written recognition of a claim by the defendant, that agency rejected the idea of promulgating a decision under the before said article and caused a delay of many months by forwarding the case to the restitution chamber at Frankfurt, where the required "Anerkenntnis-Beschluss" was promulgated as a matter of course.

bb)

Wiesbaden

I met with Messrs. Petri and Linkert, who conduct hearings for this agency. While I have nothing special to report concerning Mr. Petri, except that he seems to be rather a colorless man, who has not much influence



upon the parties before him, a different situation prevails with Mr. Linkert. He is usually assisted by another lower official of that agency, who however seems to possess apparently more influence on the conduct of the affairs of the agency than would appear to be permissible. This assistant is a formalist, who obviously is intending to sabotage restitution by the most formalistic administration of law 59 and the executive orders promulgated thereunder. Mr. Linkert follows his line to a great extent although occasionally with some reservations. Both, he and his assistant make no attempt of hiding their conviction that, while restitution as such was a necessary consequence of Nazi unlawfulness, law 59 represented by no means their idea of settling the restitution problem. Mr. Linkert makes every possible effort to induce claimants to forego their rights of restitution in favor of additional payments within the meaning of article 16, law 59, although he is fully aware of the fact that such solution is detrimental in most cases to the true interest of the plaintiffs, especially of those who are living outside of Germany and are prevented by law 53 from enjoying the benefit of any additional payment, while carrying the risk of a DM-devaluation. Mr. Linkert in other instances appears to interfere more than it is desirable with plaintiffs' methods and tactics of procedure, thereby again minimizing the chance of fulfilling the meaning of article 1, law 59 ("restitution to the largest possible extent"). Defendants appearing before him are naturally favorably impressed by his method of proceeding. I would not go so far as to say that Mr. Linkert's intention would be directed

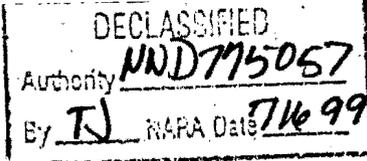
to such a result. He is however of those German officials, whose so-called sense of objectivity is making him try to reach settlements which he considers equitable, without basing himself on article 1, law 59.

cc) Giessen

The manager of this office is a very talkative gentleman, whose greatest pleasure appears to be to listen to himself. He is trying hard to give an objective explanation of the law to the parties appearing before him and thereby places himself on a higher level of efficiency than Mr. Linkert in Wiesbaden. Nevertheless Mr. Westermann does not omit certain sniding remarks about law 59 and thereby increases the force of opposition, which the defendants before him will show. Mr. Westermann is trying with words to reduce such opposition. On the other hand his own critical position towards law 59 increases the strength of the opposition.

dd) Offenbach

The manager of this agency, Dr. Mahr and his assistant (a former Breslau attorney) are men of the same type as I described Oberamtsrichterin Dr. Beiswaenger (Stuttgart). It is a real pleasure to work with them and to notice the influence their position has on the defendants appearing before them. That again confirms my opinion that success or failure of restitution depends entirely on the persons charged with its performance. In the last outcome neither the defendants natural unwillingness nor the critical attitude of the newspapers can decide the fate of restitution. That fate will depend entirely on the conduct of the Schlichter and judges, who are to administer the law.

B)Wiedergutmachungskammern

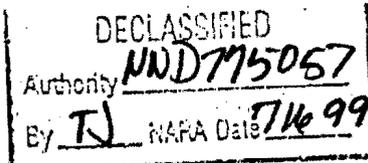
I had only dealings with the first restitution chamber in Frankfurt (Landgerichtsdirektor Ortweiler). As the jurisdiction of this chamber is well known I refrain from making any remarks at this time. I believe however that the chamber as well as the second one, now in charge of Landgerichtsdirektor, Kunkel, will in future decisions avoid some of the criticism, which its jurisdiction, especially with regard to the revaluation problem, has caused. In general this chamber is one of the most effective sitting in restitution matters.

III.Land Bayern

My experiences with restitution agencies for this land have been very few so far. I feel therefore it would not be appropriate for me to pass judgment on the persons handling restitution matters in this Land. I should like however to state as my observation the fact of the great delay in the handling of restitution matters in this Land. Whether or not this is a consequence of the institution of "Gueteausschuesse". I am not prepared to state at this time, but nowhere did I find so little speed in advancing matters than in this Land.

B:French ZoneI.Land Badena)Landgericht Freiburg

The restitution chamber is presided over by Landgerichtspräsident Dr. Matt, Referenten ~~and~~ Landgerichtsrat Dr. Federer and Assessor Danckelmann. I had occasion to reject the two former judges for the



reason that I had to suspect the absence of their impartiality. My application was denied. It was based on the fact that the main problem of the law suit was prejudicated by the president and the referent in a letter which was sent to me immediately after the law suit was received in court.

Subsequent oral conversation with the respective judges indicated that they are not in principle opposed to restitution although they apparently consider French military order 120 as unsatisfactory and incompatible with their idea of a "mild restitution". In several instances before Assessor Danckelmann her attitude appeared quite helpful to the benefit of the plaintiffs.

b)

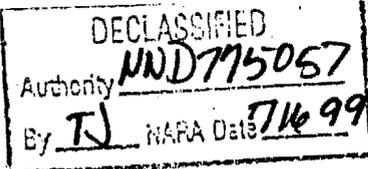
Landgericht Offenburg

The chamber is presided over by Landgerichtsdirektor Schiruska, whose referent is Landgerichtsrat Feickert. The chamber holds to a middle of the road position. It apparently believes that the law is too strict and should be eased; expecting such a development, the chamber shows an inclination to compromise in its decisions. It denies the existence of collective terror such as has been assumed by many other restitution chambers in the French zone.

c)

Landgericht Konstanz

This chamber is presided over by Landgerichtsdirektor Hanecka and is the one most opposed to restitution. This opposition has become known by the chamber's jurisdiction. It is so outspoken even in the courtroom

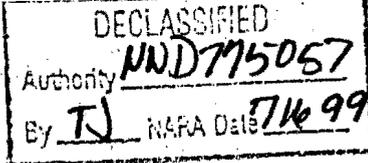


proceedings themselves that nobody present in the courtroom could be left in doubt for a moment as to the chamber's intention to sabotage the law as much as possible. During my presence in the courtroom, proceedings were held in 2 trials in which only Gentile parties were interested. One concerned the claim of a farmer against another farmer, who under pressure of the Nazi system had acquired the former's property. A witness (district attorney) was heard and the line of questioning by the presiding official was obviously meant to lead the witness to such statements as would be detrimental to the case of the plaintiff. In another case a social-democratic organization, whose property was taken over by the State and resold to a third party, was asked by the presiding judge, for what purpose the "nudists" wanted to take this property away from the poor fellow who had bought it from the State. Describing this action as a great injustice, which could not be of lasting nature, Landgerichtsdirektor Hanecka with a harsh voice scolded the presiding official of the plaintiff with the following remarks: "You are worse than the Jewish community and the Catholic Church. They too want everything back."

II.

Land Wuerttemberg-Hohenzollern

In this Land I appeared only once before a court, i.e. the restitution chamber in Ravensburg. The presiding officer, Landgerichtpraesident Schmidt, was using the strictest formalities, although the defendant, who had failed to appear in court, had informed the judge that he was recognizing the claim. Basing himself on a remark of the defendant that he and his



family had always helped the Jews and that he therefore considered the claim as a great injustice, Landgerichtspraesident Schmidt questioned me, whether I would not think it to be better to waive the claim, so this defendant would not fail to help the Jews" the next time."

III.

Land Rheinland-Pfalz

a)

Landgericht Mainz

This chamber having been presided over previously by Landgerichtsdirektor Loewe is now led by Landgerichtsrat Schmahl, who is said to have been denazified only recently. As every attorney in Mainz will be able to testify, Landgerichtsrat Schmahl is administering French military order Nr.120 with such a degree of formalism that his intentions to sabotage it become clear to everybody. He made a remark for instance that it would take 5 years or more to cause the necessary publications under article 18 of order 120 and that therefore no trials could be conducted for a long time to come. Indeed he cancelled trial dates set by the previous presiding officer, and to which I had requested to appear, from New York within 48 hours before the beginning of the trials, and he refused to set new trial dates for the said formalistic reasons.

b)

Landgericht Koblenz

I met all the judges of this chamber when I appeared for the purpose of pleading 15 cases before it. Praesident Oberamtsrichter Dr. Krause as well as Referent Staatsanwalt Schilken and Assessor Geeb impressed me as generally favorable to the principle of restitution, although not wholly satisfied with the law

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Authority	NND 775057
By	TJ NARA Date 7/16/99

as it now stands in the French zone. They complain especially about the interference of the "Sonderfonds" for the victims of Nazi persecution", which has only been recently constituted for the Land Rheinland-Pfalz and which at this late time is completely unaware of the problems created by the law. I was told that consequently the Fonds opposes nearly all settlements which have been reached before the chamber and that therefore there was no further inclination on the part of the chamber to waste its efforts in obtaining such settlements. In this court I observed the re-appearance of what was once called "kochende Volkseele" to such a degree that Assessor Geeb had to threaten the spectators with expulsion from the courtroom. It is significant that the outbursts of indignation were especially loud at the moment when I outlined to the court in a Reichsfluchtsteuer case, the obvious fact that the Jewish plaintiff was confronted with the choice between paying the flight tax or going to the gas chambers. Obviously the latter remarks did not please the ears of the spectators.

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Authority	<u>NND 775057</u>
By	<u>TJ</u> NAFA Date <u>7/16/99</u>

RG 260
Property Div.
Box 16
"Staff Studies"
(File 33)

TAB A

20 January 1949

Function: LEGAL
For COMUS Action

D 77

The Laenderrat (Directorate)
requests US Military Government to
take action on the following decisions:

REF. NO.: D 77-1LAENDERRAT (DIRECTORATE)
DECISION:SUBJECT: Draft Law amending
Article 88 of US Military
Government Law No. 59Request to Military Govern-
ment to amend Article 88 of
Military Government Law No. 59

D 77 - 1

ANNEX 1

Reasons:

Article 88 of Military Government Law No. 59 provides that applications for the registration in the Commercial Register of former trade names must be filed within the period provided for the filing of claims for restitution. Pursuant to Article 56 of the Restitution Law, this period expired on 31 December 1948.

Handling of restitution cases has shown that claimants usually do not file an application for registration of former trade names, unless the prerequisites are given or it is, at least, secured that it is possible for them to resume operation of the enterprise concerned, i.e. if the former basis for production or operation is restituted to them.

The interrelation between the time-limit under Article 88 and the period of limitation for filing claims as stipulated in Article 56 on the one hand, and the psychologically understandable attitude of claimant on the other hand would be that now, upon the lapse of the time-limit stipulated in Article 88, a great number of claimants would lose their rights to restore to the enterprise to be restituted the former trade name. In order to preclude such consequence which would not be understood by the claimants, it is urgently required that the time-limit under Article 88 be separated from the period of limitation for filing claims, or rather that this time-limit be extended until 30 June 1949.

308513

C O P Y

TAB A

9 December 1948

Function: LEGAL
For CMGUS Action

INT 34-2

The Laenderrat
 requests US Military Government
 to take action on the following decision:

REF. NO.: INT 34-2LAENDERRAT DECISION:

SUBJECT: Draft Law amending
and supplementing
Article 79 of US
Military Government
Law No. 59

Request to Military Government to
 approve the attached Draft Law amending
 and supplementing Article 79
 of Military Government Law No. 59,

and to consent that the Restitution Law be amended pertainingly.

INT 34-2

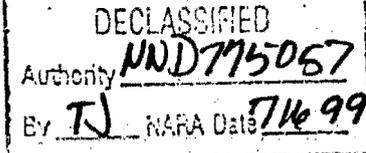
ANNEX 2

Reasons:

In the processing of restitution claims filed pursuant to Military Government Law No. 59 the following problem has arisen:

In many cases, jews have left behind testamentary dispositions in order to prevent that, after their deportation, their property would, pursuant to the Eleventh Ordinance to the Reich Citizen Law (11. Verordnung zum Reichsbürgergesetz) be seized by the Reich. In these testamentary dispositions, especially relatives staying abroad, e.g. parents, grandparents, brothers, sisters, half-brothers and half-sisters and their descendants, as well as spouses, were excluded from inheritance.

Such testamentary dispositions made in the period between 30 January 1933 and 8 May 1945 are voidable pursuant to Article 79 of the Restitution Law. The provisions under Articles 2080 et seq. of the German Civil Code shall apply to the avoidance. Whereas, however, pursuant to Article 2082 of the German Civil Code the time-limit for disclaimers of inheritance (one year) begins to run as from the date on which the person entitled to exercise the right of avoidance is informed of the cause for avoidance, this provision has been annulled by Article 79, paragraph 3. According to the latter provision, avoidance will to be filed by 31 December 1948



REF. No. INT 34-2
(Cont'd)

However, in very rare cases only the dependents of the testator knew of the existence of such testamentary dispositions and their contents.

In the numerous cases where testamentary dispositions of missing persons are concerned, the procedure before the Probate Court must be preceded by a procedure on the basis of the Law concerning Declarations of Death, dated 4 July 1939, since the Probate Courts are not able to open a will unless they have been informed of the testator's death, cf. Article 40 of the Law concerning Testamentary Dispositions (Testamentsgesetz) (Article 2260 of the German Civil Code).

Since, moreover, in many cases the heirs receive neither any information of the opening date nor a copy of the will, because they are not mentioned in the will, the Probate Court must, in addition, be informed that, pursuant to Article 47 of the Law concerning Testamentary Dispositions (Article 2264 of the German Civil Code), the heirs want to receive a copy of the will.

Experience gained from more than one hundred of such cases has shown that the technical implementation of such procedures for the purpose of a declaration of death and the opening of a will meets with great difficulties. To a great part, these difficulties result from the confusion brought about by war and destructions; in many cases the Probate Court must procure the respective testamentary disposition from the court at a former place of residence of the testator, a procedure which, on account of the zonal borders causes additional delays; or else, inquiries must be made at the card-files of testamentary dispositions with the Amtgericht Berlin-Mitte.

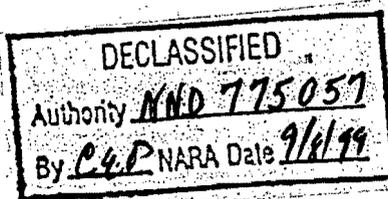
In a great number of cases, it can be taken for granted that an avoidance of testamentary dispositions pursuant to Article 79 of the Restitution Law cannot be filed by 31 December 1948 because of technical difficulties. Since, moreover, also the provision of Article 203 of the German Civil Code pursuant to which a time-limit shall be suspended as long as the person entitled to file avoidance is prevented from legal prosecution by force majeure, shall be precluded, a general extension of the period for avoidance as provided for in Article 79 of the Restitution Law as well as a simplification of the procedure in order to avoid new hardships is deemed advisable.

Such extension of the time-limit should, if possible, become effective prior to 31 December 1948.

Ai-Kr/E

"Duress Properties"

file



OFFICE OF MILITARY GOVERNMENT
FOR GREATER HESSE
Property Control Division

APD 633
Wiesbaden
26 Nov 46

SUBJECT: Control of Duress Property

THRU: Land Civilian Agency Head for Greater Hesse,
Wiesbaden

TO: Civilian Agency Head Frankenberg/Eder,
Neustadterstrasse 24

1. Reference your letter 5 November 1946, regarding subject matter.

2. As to the order to take all properties under control which have been transferred from former Jewish owners since date of November 1938, this office is without a copy of any written instructions of that nature. Further, no date has been established by Property Control after which, transfers effected gave cause for custody. In other words since January 1933 any property which appears to have been subject to duress was to be taken into property control custody.

3. Your opinion on this matter falls in line with numerous discussions which have taken place in Property Control circles but it has been felt that the placing of all property transfers since 1933 regardless of the extent of the applied duress would so hinder the German economy, that it was deemed more wise to take into custody only property which was unquestionably clear out cases of duress.

4. As to those properties transferred since 1933 which have not been taken into custody, appropriate action will be taken through the establishment of a claims office which is presently being formed.

5. Information regarding the operation of the claims agency will be disseminated through the office of the Land Civilian Agency Head at a later date.

6. It has been noticed that your letter was directed to this office, outside of normal channels, and we wish to call to your attention that matters pertaining to Property Control

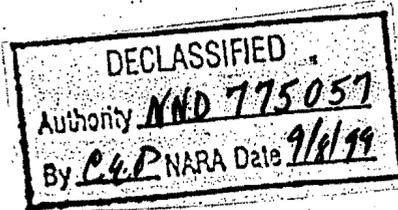
DECLASSIFIED
Authority *NND 775057*
By *C4P* NARA Date *9/8/99*

Ltr: OMG to CAH Frankenberg, subj.: Control of Duress Property
cont'd

functions will at all times be presented to this office
through the office of the Land Civilian Agency Head.

Telephone: Wiesbaden 24641
Ext 286, 486

W. R. RULE
US Civ
LPCC



C o p y

OFFICE OF MILITARY GOVERNMENT
FOR HESSE
Property Control Division

JPB/es

APO 807

Friedberg
15 Aug 47

SPECIAL REPORT TO LAND PROPERTY CONTROL CHIEF.

SUBJECT: Duress Property Investigation Conducted by the
Handelskammer.

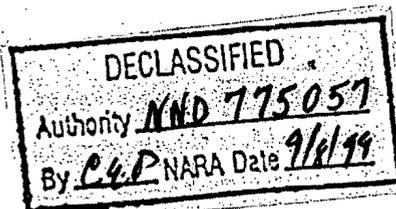
1. Accompanied by Mr. Allbright, the undersigned visited Fulda on 13 Aug 47 to obtain full information on the Chamber of Commerce activity in the kreis in connection with reported hearings on duress property.

2. Spoke with Mr. Waidner, Fulda, CAH, who reported that in 1946 he had received reports from the Chamber of Commerce Investigation Committee on about 60 properties. These reports summed up the evidence and presented the committee's recommendations in each case. Mr. Waidner said that he followed the advice of the undersigned, then Property Controller for the kreis, and failed to heed these investigations or give any weight to the recommendations. All he did with the reports was to file them and forget them.

3. Visited the Chamber of Commerce, where Dr. Jansen, manager, was consulted. He revealed that the Fulda Chamber of Commerce had appointed a body to hold hearings on all former Jewish property in the kreis. He said that the Chamber acted on instructions of the Hessische Wirtschaftsministerium, dated 30 Nov 45. A translation of the official ordinance authorizing the program is enclosed herewith, along with a questionnaire which all former Jewish firms had to complete.

4. Dr. Jansen said that the Fulda committee consisted of the Oberbuergermeister, the judge of the Amtsgericht, the public prosecutor, a confidential clerk (prokurist) representing private industry and a trade union official. This body held numerous hearings, completed 67 investigations and had five others under way, when the program was halted in October 1946. According to Dr. Jansen, the Chamber of Commerce halted its investigations when it observed that neither Military Government nor the Property Control organization would follow its recommendations.

5. In the conduct of the hearings, the committee had the official powers to subpoena witnesses and documents, examine bank records and official registers, all such powers being subject to the approval of M.G. kreis detachments. In exercising such powers, Dr. Jansen said that the board



tried to hear all persons with personal knowledge of the sales, but he stated that no attempt was made to contact the former owners where they were known to be residing abroad. As his reasons he said that at that time mail channels to foreign countries were closed to Germans. He conceded that the failure to hear the accounts of the former owners might have resulted in the committee obtaining a one-sided account in some of the cases.

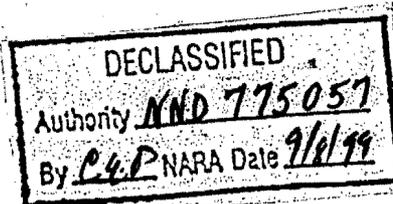
6. Perhaps the most significant thing about the whole investigation program in Fulda was that the committee did not report a single one of the 67 sales investigated as having been a duress sale. In about ten cases the committee found that the price paid was too low and recommended the payment of supplemental funds to the former owners, but in no case did it recommend that a sale be set aside.

7. The undersigned recommends that it might be of interest if this division inquired of the Economics Division as to the authority of the Wirtschaftsministerium in undertaking the program. It is thought that this may have been a violation of M.G. Law No. 2. Even tho. this CAH and those in the undersigned's other kreise have reported that they declined to accept the recommendations made by the Committee, some damage may have been done. For instance, several holders of duress property have complained of the continued Property Control custody pointing out that they had been cleared by an officially-appointed board set up by the Hessen Land government to try such cases. Since some people hold such an impression it would appear wise to determine the actual status of the whole C of C program. It is further observed that the existence of these hearings will affect any future property tribunals which may be set up to dispose of the duress property under control. The present holders will inevitably point to the results of these Chamber of Commerce hearings as a vindication of both the legality and correctness of their purchase. Possibly a Military Government declaration to the effect that these Chamber of Commerce hearings are to be construed as having no official status would help in counteracting this impression and clearing the stage for the new program when it is promulgated.

30 - 3-

JOHN P. BENJAMIN
 US Civilian
 Regional Property Control Supervisor

- 2 Incls.: 1. Transl. of Ordinance of "Hessisches Staatsministerium" dated 30 nov 45.
 2. Questionnaire for aryanized firms (1 copy, only).



TRANSLATION.

Ordinance of the "Hessische Staatsministerium" - The Minister for Economy and Transportation - dated 30 November 1945.

The Chambers of Commerce are hereby authorized:

1. In each area of the Chambers of Commerce in Greater Hesse the pertinent CoC has to form a committee which will investigate all occurrences which are connected with the aryanization of any kind of Jewish enterprise. Aryanization of any kind of enterprises refers to such properties and assets acquired from non-aryan owners from the first seller or by subsequent purchase or legal inheritance on or after 30 Jan 1933.

The committee will be composed of five members, of whom two must be qualified to act as a judge. The other three members will be selected from trade, industry and banks.

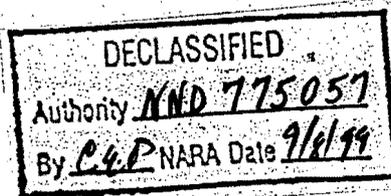
2. The tasks of the above committees are hereby determined as follows:

- a) To investigate which firms are to be considered as aryanized and have to be blocked for that reason according to current Military Government laws.
- b) To investigate which firms - which are considered as aryanized - need not be blocked or can be released from blocking, because the present owners have acquired the properties from the former non-aryan owners lawfully and by paying the fullequivalent.
- c) To investigate whether the present owners of enterprises acquired their shares under conditions detrimental to the rights and interests of the former non-aryan owners.

A report on the result of these investigations will be made and submitted to the pertinent Military Government Detachment. In the case c) a recommendation for the eventual appointment of custodians or administrators, who have to supervise the property until final decision, will be attached to the report.

3. The Committee is authorized to hear witnesses and experts, to inspect the blocks and to request all records necessary for the clarification of the case.

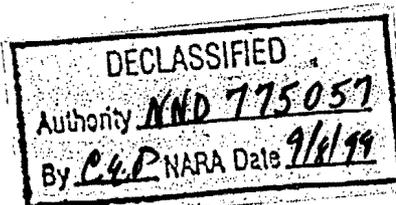
- a) Pursuant to written order of the committee all persons concerned, who may be able to testify or to produce records pertaining to the status of properties mentioned in above paragraphs, are obliged to appear before this committee and to testify or to submit records as may be required.



- b) On written request of the bank member of the committee all finance institutions which are in possession of information, reports or accounts correlated to the affairs under review of the committee are obliged immediately to submit this information, reports or accounts.
- c) On written request of one of the two legal members of the committee the files of the Trade Register will be made available for inspection and review.

The written orders and requests of the committee provided under a) to c) are not valid unless they are approved by the pertinent Military Government Detachment.

- 4. The committee will make its report to its best knowledge and belief after scrupulous review and just consideration of all records regardless of position, religion and race of the respondent.
- 5. The committee will use the instrumentalities and facilities of the Chamber of Commerce for the preparation and consummation of the proceedings.



C o p y

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)
 Finance Division
 Berlin, Germany
 APO 742

22 August 1947

SUBJECT: Application of MGR 17-501

TO: Office of Mil. Gov. for Hesse, APO 633, US Army.
 Attn: Land Property Control Chief.

1. It has been noted recently that the provisions of MGR 17-501 are not being applied with sufficient strictness by Property Control personnel in the field, especially in connection with duress properties, with the result that many properties are being taken under control which are not sufficiently important or valuable enough to warrant control. ||

2. Reference is made specifically to small plots of land of insignificant value which are not income producing either because the structure thereon has been completely destroyed or because the land itself is not suitable for agricultural purposes. It appears that no purpose is served in exercising custody with respect to such properties since nothing of value can be removed therefrom and no income is received which will warrant the appointment of a custodian. However, the only possibility for the evasion of Law 52 with respect to such properties is the unauthorized transfer of such properties from Property Control custody and, at the same time, giving a list of such properties to the Grundbuchrichter of the Amtsgericht of competent jurisdiction, with instructions that no transfers of title to the properties will be permitted. Such list may be added to as similar properties are discovered in future.

3. It is desired that a review be made of all such properties under control and necessary action taken to release those properties where Property Control action is not deemed warranted in light of the criteria set forth above. Report of completion of such review is requested not later than 1 October 1947.

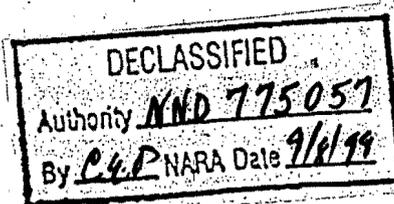
4. Attention is invited to the fact that the provisions of MGR 17-501 should be applied equally in the case of duress properties as well as non-duress properties.

s/ E.N. Reinsel
 t/ E.N. REINSEL
 Chief
 Property Control Branch

Tel: BERLIN 43759

Releases properties "of insignificant value" from control.

308523



Prop Con
JAP/gw

8 Sept 1947

SUBJECT : Policy Relating to Application of
Law No. 52, Article I, Section 2
("Duress" Properties)

TO : LCAH, Finance Ministry
Section VI - Property Control

1. The following clarification of principles is submitted for your information and guidance with respect to the exercise of Property Control action in "duress" cases:

- (a) Properties transferred from Jewish owners between 30 January 1933 and 8 May 1945.

If a claim has been made or filed, the property shall be placed under Property Control and custody maintained pending disposition under the provisions of a Restitution Law, when and as promulgated.

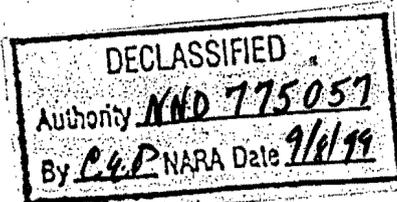
- (b) Properties transferred from Jewish owners between 30 January 1933 and 9 November 1938.

There is a presumption of "duress". Investigation shall be made and unless there is conclusive evidence that there was no duress, Property Control action will be exercised and maintained pending disposition under provisions of a Restitution Law, when and as promulgated.

- (c) Properties transferred from Jewish owners between 9 November 1938 and 8 May 1945.

Transfers of properties within this period will be deemed prima facie to have been made under "duress" and Property Control action will be exercised without exception, and maintained pending disposition under provisions of a Restitution Law, when and as promulgated.

p.t.o.



- 2 -

(d) Waiver of any Claim to Property by Former Owner.

Where a former owner of property, transferred at any time between 30 January 1933 and 8 May 1945, voluntarily and without inducement or legal consideration, executes a waiver of claim against the property, or has signed a statement to the effect that no duress was involved in the transfer of the property, and such waiver or statement is legally sufficient, the property may be released from control. The reason for release will be stated as "Transfer without duress according to filed written statement of former owner. Property Control custody erroneous."

(e) Private Agreements of Settlement between Parties Relating to Duress Properties.

Such agreements or settlements will not be sanctioned or accepted as a basis for release of the property from control. Such agreements, if made, should be held in abeyance for submission by the parties to such agency as may be established under the Restitution Law, for such action as may be deemed appropriate.

2. It will be noted that the foregoing principles merely constitute a succinct and convenient recapitulation of previously announced policies of this office as to the practice which should govern this category of properties.

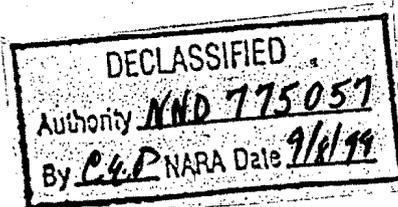
FOR THE DIRECTOR :

ZINN GARRETT
Land Property Control Chief

INFORMATION COPIES TO:

- 1 - CPCB
- 1 - LPCC Hesse
- 1 - LPCC Bavaria
- 1 - American Consulate
- 1 - Swiss Consulate
- 1 - French Consulate
- 1 - Allied Liaison Section

Tel : 93304, Ext. 218



OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)
Finance Division
Berlin, Germany
APO 742

9 September 1947

SUBJECT: Property Control Action Relative to Properties
Transferred under Duress

TO : Office of Mil Govt for Hesse, APO 633, US Army
Attn: Land Property Control Chief

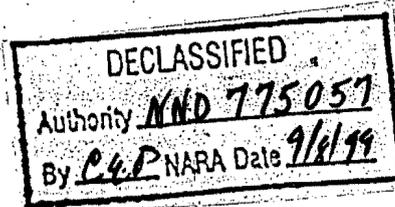
1. Reference is made to par 4, letter, this office, subject as above, dated 9 June 1947, copy of which is inclosed for ready reference.

2. Strict application in all cases of the rule set forth therein will result in substantial distortion of Property Control statistics. For example, a large U.S.-owned corporation, a small portion of whose property is being claimed by a former owner as property transferred under duress, would, under a strict application of this rule, require the classification of this U.S.-owned enterprise as "G-Property Transferred under Duress" rather than "A-Allied Property", even though the duress element in the total value is insignificant.

3. In view of the inaccuracy which would result by the strict application of the rule, it is desired to modify the rule to the extent of permitting the exercise of discretion by field personnel in classifying property of a transferee of alleged duress property who is also subject to a provision of Law 52 other than par 2 of Article 1. It is believed that such exercise of discretion in individual cases will result in substantially accurate statistics without incurring the clerical effort required to review all duress properties now under control and to record separately the duress and non-duress elements.

4. In exercising discretion in classifying such properties, it is recommended that field personnel be guided, in general, by the principles implied in the following hypothetical cases:

a. ~~The transferee holds duress property, the value of which is negligible both from an absolute standpoint and from the standpoint of comparison with his total property owned.~~ Under such circumstances, the entire property will be classified under the appropriate non-duress category.



b. The transferee of duress property also owns an insignificant amount of non-duress property. Under such circumstances, the entire property will be classified as "G-Property Transferred under Duress".

c. The transferee owns duress and non-duress properties in roughly equal amounts, and each element has a value which is substantial. Under such circumstances, accuracy can be achieved only by assigning separate serial numbers (i.e., separate "reason for control" symbols) and recording separately the duress and non-duress elements.

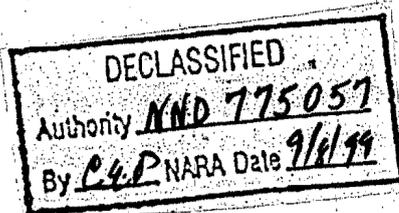
5. In all cases, however, adequate record of all duress properties should be maintained, so that property released from control will not include the duress element. In this connection, attention is invited to the provisions of letter, this office, subject: "Application of MGR 17-501", dated 22 August 1947, bearing in mind that a record must be maintained of all duress properties, whether or not under actual Property Control, in order to enable final disposition of such properties by competent juridical bodies pursuant to directives to be issued in future.

6. Action as outlined above will be taken immediately in order to correct the more substantial distortion of statistics with respect to duress properties. Ultimately, complete and accurate records should be devised for duress properties whether or not intermingled with non-duress properties. Such complete and accurate records can be achieved only by preparing a separate MG/PC/2/F for each element, duress and non-duress, owned by one person. Each MG/PC/2/F prepared in such case would be assigned the same serial number, with the exception that the "reason for control" symbol would be "G" for the duress element while the non-duress element would be classified under the appropriate non-duress category. Adequate cross-reference, would, of course, be maintained.

1 Incl:
ltr, this off,
dtd 9 June 1947

E. N. REINSEL,
Chief
Property Control Branch

Tel: BERLIN 43759



OFFICE OF MILITARY GOVERNMENT FOR HESSE
 Property Control Division
 APO 633 US ARMY

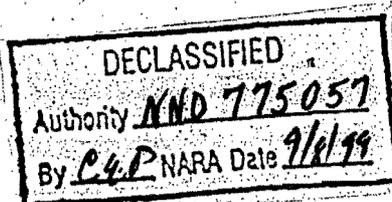
ACW/hd

Wiesbaden, Germany
 5 December 1947

SUBJECT: Duress Properties

TO: Office of Military Government for Germany (US)
 APO 742, U.S. Army
 ATTN: Finance Division, Property Control Branch
 Mr. Hartzsch

1. In compliance with your telephone request of this date, the following report is submitted for your consideration.
2. It is the feeling of this office that after 1 January 1948, duress properties should be handled at Land level as Allied and Neutral properties are now taken care of under MGR Title 17. It is the general observation of this office that serious attempts are being made to milk the assets of duress properties prior to final action under MG Law 59.
3. As inclosure No 1 you will find the history of a property belonging to the Vorsanger family. This case is reported to you as an indication of attempted depletion of assets of a duress property and the apparent participation by the Hessische Staatsministerium.
4. At the present time in Hesse there are 8088 units of property with a valuation of RM 244,704,327 in custody under "G" category. It goes without saying that a much greater number of German are affected by future application of MG Law 59 against these properties. A recent ICD survey is inclosed, marked No 2 and will give you some idea of the general Anti-Semitic feeling in Germany to-day. While no overt acts of Anti-Semitism have been shown in the Hesse Landesamt fuer Vermoegenskontrolle (Land Office for Property Control), it is only reasonable to assume that the percentage of Anti-Semitism as shown by the ICD survey will be reflected in the Landesamt fuer Vermoegenskontrolle.
5. All of the facts referred to above indicate to this office that complete independence in handling of "G" property



by German agencies may be premature. It is known that representatives of some of the Jewish agencies are extremely distrustful of such a plan. More specifically Dr. Kaiser, head of the Paris office of the American Joint Distribution Committee and Judge Levinthal, Advisor to General Clay on Jewish affairs, have come out openly in strong opposition to a complete turnover of responsibility for duress property into the hands of German agencies. Inasmuch as MG Law 59 contemplates a Non-German Review Board for cases appearing before the Restitution Chambers, it seems somewhat inconsistent that some checks by American Military Government are not placed over Property Control and the Restitution Agency. } ✓

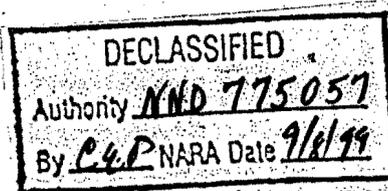
6. Basically this office believes that the Land Civilian Agency Head should submit financial reports on duress properties to the LPGA as are now required under Title 17 on Allied and Neutral properties. This office further believes that the right of appointment and removal of custodians and the right of approval of contracts of duress properties should be retained by the LPGA. In order that duress property of non-American ownership be given no preferential treatment over that of "A" property of American ownership this office is prepared to recommend that the same checks as proposed above be retained on "A" property after 1 January 1948. In view of the increasing number of "A" properties in the course of being decontrolled this office takes the position that it is prepared to all necessary work in connection with such a plan with the present American personnel of the Property Control Division, OMGH.

7. Permission is requested to submit a copy of this report to Judge Levinthal, Special Advisor to General Clay on Jewish Affairs.

Incl: 1. Memo to Mr. Rule LPGA
 OMGH, dtd 5 Dec 47, subj.: Property
 VG 1231-68 - WILAG Wiesbaden
 2. Report on Anti-Semitism
 American Zone - Report Number 49, dtd
 3 March 1947

W. R. RULE
 US Civ
 LPGA

Tel: WIESBADEN 8341 Ext 360, 561



OFFICE OF MILITARY GOVERNMENT FOR HESSE
Property Control Division
APO 633

ACW/hd

US ARMY

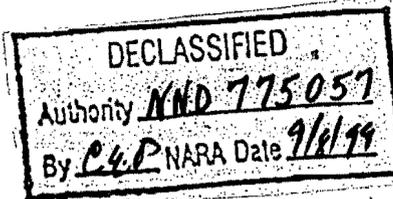
Wiesbaden, Germany
5 December 47

MEMORANDUM TO MR. RULE, LAND PROPERTY CONTROL CHIEF

Subject: Property VG 1231-68 - WILAG Wiesbaden

1. Property was originally taken under control custody in the name of August and Alice Vorsanger, 700 West 179th Street, New York City. Control was effected 13 August 1945. PC-3 was initiated 24 May 1947 changing category from "A" to "G" and naming the above persons claimants. The reason for control was changed to Article I paragraph 2. Custodian report indicates that the property was formerly owned by Mr. Steinberg and Mr. Vorsanger as a joint enterprise which was transferred late in 1938 or early 1939. The property itself at the present time is operating and a portion thereof has been leased by other agencies. The factory manufactures wood work for store fixtures and also scales for use in stores. At the present time the factory is attempting to produce refrigerator cabinets for retail outlets.

2. On 25 November 1947 Mr. Fritz Vorsanger appeared in this office at our request in order to hear remarks made by the custodian, a representative of the Civilian Agency Head Office and a representative of the Landesamt fuer Vermoegenskontrolle (Land Office for Property Control) in answer to an accusation that irregular practices had been going on within the property. The substance of the question period indicated that in 1945 there was little possibility to carry on production at the former level due to lack of sufficient raw materials. Custodian stated that former suppliers of material either could not or would not continue their business relationships with WILAG. He pointed out that most of the supply houses with which the firm had transacted business were located in the Russian Zone of Occupation. At this time, either thru good fortune or pre-arrangement, Mr. Koehler a former production engineer acquainted with the problems of the firm made his appearance. Mr. Koehler made a loan of RM 50,000 to WILAG for the purpose of obtaining raw material, said loan being at 4%. In early 1946 effort was made to lease additional premises in Kastel a suburb of Wiesbaden for the purpose of expanding pro-

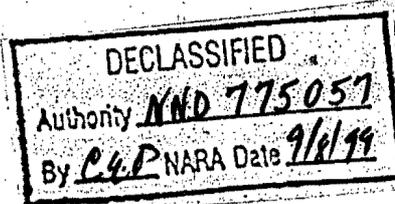


duction. The production to be undertaken in this new unit was to be raw material for the Main Plant in Wiesbaden. Statement was made that enamel and refrigerator cabinets were to be made in Kastel for Adam Opel, Bosch and WILAG primarily and other manufacturers of refrigerators. The application for the lease of the property was addressed to the Hessian Staatsministerium on 14 March 1946 inasmuch as the property was a Kaserne which had been turned over in accordance with Law 54 to the Land Minister President. No permission for such additional factory space was ever presented to Military Government. The Hessian Staatsministerium and WILAG signed their latest agreement on 12 June 1947 approval for same had not been given either by LPCC, LOAH, or CAH.

3. In May 1947 the Fleischverband loaned WILAG RM 50,000 for working capital purposes and again in September made another loan of RM 50,000. These loans are secured only by their entry in the records as Pre-payments. Sales in 1946 totalled RM 653,702 and as of 1 November were RM 810,000.

4. Mr. Vorsanger presented himself at this office indicating that "the entire management of his families property" was extremely odious to him. He was briefed on his position as that of a claimant and it was indicated to him that he had no right nor permission to go into the factory and obtain any information as to the present operation. He did however, relate a story of mismanagement and produced figures intended to verify his statements of mismanagement. The only conclusion that can be drawn from such action is that either he solicited and received such information or that it was voluntarily placed at his disposal. The latter seems highly improbable. Based upon his statements initial investigation was conducted eliciting the facts as set forth above. Immediate investigation was requested of the Land Civilian Agency Head which was undertaken at that time.

5. It is known to this office that Mr. Vorsanger has repeatedly talked with the Land Civilian Agency Head but the gist of conversation is not known inasmuch as the person conducting the investigation is not present nor is he expected to return until the middle of next week. Investigation is presently being conducted and the following are notes of the investigation made to date. Mr. Puttmann, Investigation Section LOAH, has talked with Mr. Vorsanger 4 December 1947. Purpose or results of the conversation are presently unknown. The custodian is absent with authority in the British Zone on a mission attempting the purchase of additional raw materials. In view of the investigation of the Landesamt fuer Vermoegenkontrolle (Land Office for Property Control) a telegram was dispatched requesting his immediate return. The investigation has revealed that the contract of loan

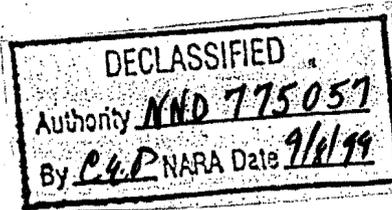


effective between WILAG and Koehler granted Koehler the right to draw raw materials out of the Kastel plant. The undrawn balance at this time is approximately RM 33,000. Instructions were given to prohibit any withdrawals except on authority of this office and also to prevent the entrance of Koehler to the Kastel plant pending results of complete investigation. It was further discovered that the custodian has a son working in the Kastel plant. No action was taken with respect to same.

6. Based upon the facts uncovered in this case to date it is the conclusion of this office that this is a clear case wherein attempts have been made to bleed the property of its liquid assets to the detriment of the claimants by the activation and operation of additional plant facilities where the costs of same do not appear to be in proportion to the end results. This conclusion is made with full recognition of the fact that an investigation is currently in process and that the end results of the investigation may possibly indicate a conclusion somewhat opposed to that stated herein. Upon receipt of final investigation report this office will take whatever action is necessary to clarify and rectify any action taken without proper authority.

Tel: Ext 365

ALLAN C WILSON
US Civ
Chief, Accounting Control Branch

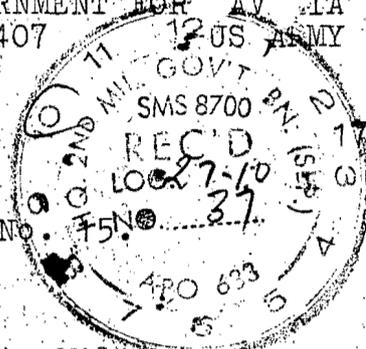


OFFICE OF MILITARY GOVERNMENT FOR AUSTRIA
 WEGNICH GERMANY APO 407

SE/em

Information Copy

AG 386 MGBFP



October 1947

SUBJECT: Order to Branch Staff No. 75

TO : See Distribution.

1. General License No. 9 to Military Government Law No. 52.

a. Reference is made to the Bavarian Law for Land Reform (Law No. 48) attached as Annex 9 to OBS No. 13.

b. Further reference is made to letter, Office of Military Government for Germany (US), Office of the Military Governor, subject "General License No. 9 Issued Pursuant to Military Government Law No. 52, also Known as General License No. 2, Issued Pursuant to Military Government Law No. 53, Authorizing for Settlement Purposes Transfers of Property Blocked under Military Government Laws No. 52 and 53" dated 24 September 1947, attached with copy of General License No. 9 as Annexes 1 and 2 to this OBS.

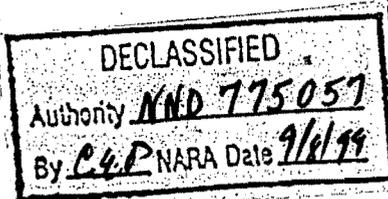
c. Quoted below are the instructions contained in TWX, dated 30 September 1947, from the CPCB to the EPCC, issued in accordance with paragraph 6 of the above mentioned letter:

" 1. Reference is made to General License No. 9, pursuant to Military Government Law No. 52 (amended), also known as General License No. 2 pursuant to Military Government Law No. 53, which, within the limitations of the license, permits transactions, otherwise prohibited by these laws, necessary for the transfer for land reform and settlement purposes of title to properties in property control custody, and to the implementing letter to the directors of the Offices of Military Government, both issued from the Office of the Military Governor on 24 September 1947. The following are the property control instructions referred to in paragraph 6 of the implementing letter.

2. You are to take every precaution to make certain that property control personnel do not present any impediments to conveyance by owners or to the institution of condemnation proceedings for the purpose of the Land Reform Law. This instruction is to be passed on to the Land Civilian Agency Head and by him to the Civilian Agency Heads and by them to all custodians who administer properties of a nature that they are likely to be subject to the provisions of the Bavarian Law for Land Reform No. 48 of 18 September 1946. Custodians shall make such reports or registrations of the properties in their administration as may be required by the Land Reform Law of the owners of similar properties. Upon transfer of title that portion of the property transferred for land reform purposes shall be immediately released from property control custody.

- 1 - 28 OCT. 1947

C 742



Ltr. OMGB, file 3 MGBFP, Subj.: Order P nch Staff No. 15, dtd 17 Oct 47. - Cont'd.

3. Your attention is specifically invited to paragraph 4 of the implementing letter which contains regulations to be issued by the appropriate Minister of Food & Agriculture in cooperation with the appropriate Minister of Justice relating to the property of persons outside of Germany. *Dunes of PCCs*

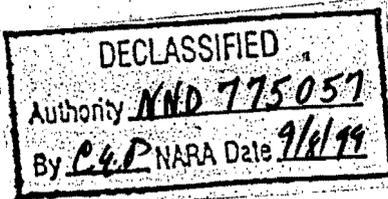
4. The property control custodians or the appropriate Civilian Agency Head, where no custodian has been appointed, shall accept service of any and all papers or documents served upon him by the Land Reform Authorities. He will ascertain the last known address of the non-resident owner and immediately mail to such owner together with the notice described in paragraph 6 hereof all papers which have been served upon him. In case the investigation of the custodian or the appropriate Civilian Agency Head, as the case may be, discloses that it is probable that a notice mailed to some other address may reach the owner sooner he shall also forward a copy of the papers and documents served upon him to such other address. The property control custodian or the appropriate Civilian Agency Head, as the case may be, shall have no further duty towards the non-resident owner, but may, if the owner fails to make an appearance, take such action on behalf of such non-resident owner as may seem reasonable and proper to see that the owner's interests under the Land Reform Law are fully protected.

5. A copy of all papers or documents served upon the property control custodian or appropriate Civilian Agency Head, as the case may be, as well as a copy of the notice referred to in the following paragraph which is sent to the owner, shall be forwarded to the Property Control Branch, OMGUS. Land Property Control Chiefs will take such steps as are necessary to see that these copies are forwarded from the custodian to Property Control Branch, OMGUS, in the speediest manner possible regardless of presently established channels.

6. We are sending you a form of notice which the custodian shall mail to the owner together with the papers or documents served upon him to him by the Land Reform Authorities. The property control custodian or the appropriate Civilian Agency Head, as the case may be, may add such information in addition to that contained in the form as may seem necessary or desirable in order to give complete notice in each particular case.

7. If the owner of the property or his address or whereabouts are unknown the property control custodian or the appropriate Civilian Agency Head, where no custodian has been appointed, shall immediately notify the Land Reform Authorities and shall represent the interests of the unknown or absent owner.

8. If the court appoints a person to represent the interests of a non-resident owner who fails to make an appearance or of an unknown absent owner there shall be no further duty or need on the part of the custodian or the Civilian Agency Head, as the case may be, to thereafter represent the interests of, or



Ltr. OMCOB, file 336 MGBFP, Subj.: Order Branch Staff No. 15, dtd 17 Oct-47. - Cont'd.

to act on behalf of, such non-resident owner who fails to appear or such unknown or absent owner.

9. If reports of any delays or difficulties arising in connection with this program come to your attention you will notify this office immediately by TWX or telephone so that this office may take such steps as may be necessary to facilitate solution of problem.

10. Properties released under this authority will be reported separately under 'released' on the property control statistical report. "

d. The form of notice to be sent Allied & Neutral owners by custodians, referred to in paragraph 6 of the above cited TWX, is attached as Annex 3 to this OBS. Two copies of each such notice sent, as well as of each paper or document served upon the custodian or Civilian Agency Head by Land Settlement Authorities, will be furnished the LPCC through the Landesamt channels (one of the copies to be further forwarded to the CPCB).

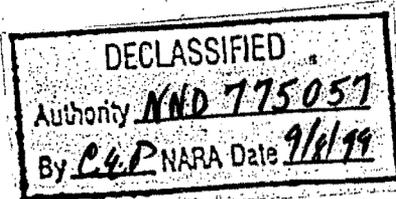
e. In no case will all of a property under control be transferred under the Land Settlement Law. Only that portion of property which is to be transferred under the provisions of this directive will be released from control. The MG/PC 3s completed for such release will specifically indicate that the property is being released for transfer under the Land Settlement Law.

f. Permission is hereby granted to divide controlled properties among "communities of heirs" (Gesamthandsvermögen) in those cases where it is necessary in order to permit compliance with Land Settlement Law. The Landesamt has been instructed to establish the necessary procedure regarding such division of property, to prevent any possibility of change in the title to controlled property which would permit an evasion of the confiscation of property pursuant to the Law for Liberation from National Socialism and Militarism.

g. Property Controllers are to assist CAHs in order to release from property control in the shortest time possible all property subject to the Land Settlement Law. It is to be noted that it is the Military Governor's express desire that the transfers of title to properties for purposes of the Land Settlement Law be completed by the end of this year.

2. Property Operated or Required for Operation by Newspaper Licensees of the Information Control Division.

a. Reference is made to letter, Office of Military Government for Germany (US), Office of the Military Governor, subject "Advance Notice of Amendment to Title No. 21, Procedure for the Retention or Taking of Property Control Custody of Certain Properties Operated or Required for Operation by Newspaper Licensees of the Information Control Division", dated 20 September 1947, and



Ltr. OMGB, file A# 386 MGBFP, Subj.: Order to Branch Stain No. 15, dtd 17 Oct 47. - Cont'd.

attached as Annex 4 to this OBS.

b. Change No. 1 to OBS No. 7, dated 22 April 1947, is hereby rescinded, except insofar as this change rescinded paragraph 4 of OBS No. 7.

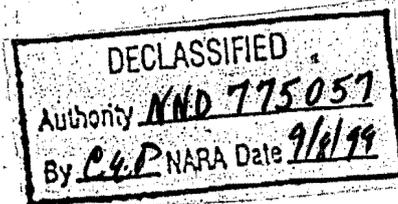
c. Attached as Annex 5 to this OBS is a quotation of Military Government Regulation 21-263.3 which continues in effect insofar as it is not superceded by the letter referred to in paragraph a above.

d. The procedure for the handling of property utilized by ICD registrants and for licensees will be as set forth in the following paragraphs.

e. Property Control will not assume custody of property otherwise not subject to control which is operated by Information Control registrant (printers, book-sellers, movie and theater operators, etc.) and licensees other than newspaper licensees (book publishers, movie producers, etc.). Any such property under control will be released when the owners of said property are "cleared" by denazification proceedings with only the requirement that prior written notice be furnished the Information Control Division before release is effected. CAHs will continue to furnish Property Controllers with a written notice of the clearance of the owner of a property operated by an Information Control Division registrant or licensee, other than a newspaper licensee, immediately after the Spruchkammer decision (not waiting until the decision becomes final). The Property Controller will continue to forward these notifications immediately to the LPCC who in turn will notify the Information Control Division, and so inform the LCAH. The LCAH has been instructed to notify the CAHs that property utilized by registrants or licensees other than newspaper licensees will not be released before the confirmation of the notification of Information Control Division has been received from the LCAH; further, in no case will CAHs release property prior to compliance with the provisions of paragraph 3 c of Instruction Letter No. 2.

f. Property utilized by an Information Control Division newspaper licensee will be retained under control even though the owner is "cleared" by a Spruchkammer, if a voluntary lease such as referred to in paragraph 2 of the letter cited in paragraph a above, is not completed. Such property will be classified "YJ" property.

g. The responsibility for attempting to negotiate a voluntary lease between the owner and the newspaper licensee will rest with the licensee. The custodian and the CAH will give all necessary encouragement to the owner and newspaper licensee to enter into such voluntary agreements. If a voluntary lease is not negotiated within 30 days after the licensee first offers to negotiate such a lease, a lease between the custodian and licensee will be



Ltr. OMGB, file 386 MGBFP, Subj.: Order to Branch Staff No. 15, dtd 17 Oct 47. - Cont'd.

completed. The duration for such mandatory leases will be a maximum of 5 years, with the provision that if, three months prior to the termination of the lease, the licensee is able to prove to the satisfaction of the office of the LPCC that he has without success made every reasonable effort to obtain other newspaper printing facilities and that such facilities are not available under reasonable conditions, that the LPCC shall authorize an additional extension of such lease for three more years.

h. At present there is no city in Bavaria where only one newspaper printing plant is available and more than one Information Control Division newspaper licensee is established, and therefore the provisions of paragraph 7 of the letter referred to in paragraph a above do not apply at this time.

i. Where the property of an owner is held in property control custody solely for the purpose for making such property available through a mandatory lease to a newspaper licensee of the Information Control Division, all approved rentals and other income, such as properly belong to the owner after the expenses of administration are deducted, shall be released to such owner. Future rentals paid by the ICD licensee or other proceeds or income from such property properly belonging to the owner, after administration expenses are deducted, will not be subject by reason of the custody of the property to being retained in property control custody or to blocking control under Law No. 52.

j. Reference is made to Memorandum, Office of Military Government for Germany (US), Office of the Chief of Staff, subject "Leases of Newspaper Printing Plants", dated 12 September 1947, attached as Annex 6 to this OBS.

k. In March 1948 the Control Office, in collaboration with the Legal Division of OMGUS will review the experience of Information Control Division in order to determine the wisdom of establishing a formal Board of Review before which the owners of property utilized by Information Control Division newspaper licensees may bring their grievances. Property Controllers will observe closely the handling of this type of property and be prepared at the end of six months to report fully on the operation of the procedure for leasing such printing plant facilities, so that the CPOB may make the necessary recommendations when the time comes for consideration of the desirability of establishing a review board.

3. Disposal of Capital Assets by Enterprises Subject to both Laws No. 52 and 56.

a. Reference is made to Bulletin No. 9, Office of Military Government for Germany (US), Decartelization Branch, subject as above, dated 11 August 1947.

This has been submitted at a previous date

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 Authority NND 775057
 By C4P NARA Date 9/8/99

Ltr. OMGB, file AG 86 MGBFP, Subj.: Order to Branch Staff No. 15, dtd 17 Oct. 47 - Cont'd.

b. Requests for disposal of capital assets of enterprises subject, at the same time, to Military Government Laws No. 52 and 56, shall be submitted to the Land Property Control Chief of the particular Land involved, which will "clear" such requests with the Decartelization Branch of the Land office of Military Government whenever the value of the capital asset or assets exceeds RM 10,000. All such requests for disposal of capital assets of controlled properties which are also subject to Law No. 56 will reach the Office of the LPCC through the normal Landesamt channels. Only in cases where enterprises are subject only to Law No. 56 and not Law No. 52 will requests for disposal of capital assets be submitted directly to the Decartelization Branch.

4. Control Council Law No. 58.

a. Reference is made to Control Council Law No. 58 which became effective on 6 September 1947 and copy of which is attached as Annex 7 to this OBS

b. Control Council Law No. 58 supplements the Appendix to Control Council Law No. 2 by adding the Reichsgruppe der öffentlich bestellten Vermessungs-Ingenieure to the list of Nazi organizations which are abolished and whose properties are declared confiscated.

c. All property of this organization located in Bavaria will be taken under control and disposed of in accordance with Control Council Directive No. 50 and Military Government Law No. 58.

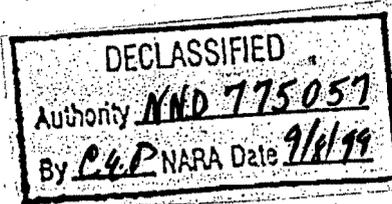
5. Duress Claims.

Check with Bender

a. Where evidence indicates that a property was transferred under duress, private settlement, disposing of such property between the claimant and present holder of the property is not authorized. All settlements of claims regarding duress properties must await, and be made in accordance with, the forthcoming Restitution Law on Identifiable Property.

b. Any private settlement of duress claims made since the publication of Law No. 52 is void under the provisions of Article V of Military Government Law No. 52.

c. Reference is made to paragraph 1 b (1) of OBS No. 7, which indicates that where the former owner has signed a statement since 8 May 1945 to the effect that no duress was involved, such property will not be taken under control, or if under control, may be released, unless reasons other than duress exist for control of the property. However, where the former owner has indicated that duress was involved in the transaction, but he individually does not desire to make a claim to the property or is willing to renounce his claim to the property, it is to be assumed that a private settlement has been or is being negotiated, which is in-



Ltr. OMGB, File AG 386 MGBFP, Subj.: Order to Branch Staff No. 15, dtd. 17 Oct 47. - Cont'd.

violation of the principle set forth in paragraph a above, and the property is to be considered subject to control.

6. Captured Enemy Material.

a. Reference is made to TWX, dated 7 June 1947, from the Economics Division, Office of Military Government for Germany (US), attached as Annex 8 to this OBS.

b. This TWX is quoted for the information of the Property Controllers. It is to be noted that the Gesellschaft zur Erfassung von Rüstungsgut has been instructed by the Economics Division, Office of Military Government for Bavaria, that the decision of the LPCC as to the definition of captured enemy material must be accepted by the Gesellschaft as final.

c. Reference is made to Memorandum, Office of Military Government for Germany (US), Legal Division, subject as above, dated 5 August 1947, attached as Annex 9 to this OBS.

d. This Memorandum further clarifies the definition of captured enemy material furnished in Property Control Circular No. 4, and is furnished for the information of Property Controllers.

7. General License No. 1.

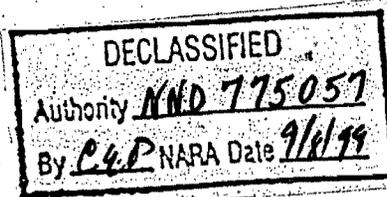
a. Reference is made to the following sections of Mitteilungsblätter of the Landesamt für Vermögensverwaltung und Wiedergutmachung which refer to the requirements which must be met before payments may be made to owners under the provisions of General License No. 1:

Can't be sent as written

47/1/II/18
 47/3/II/48
 47/6/II/77
 47/9/II/187

b. It is re-iterated that payments to owners under the provisions of General License No. 1 are only to be made where such payments are necessary for ordinary living expenses of such individuals and their dependents. In those cases where the controlled individuals are working, or have other sources of income, there is no requirement that they must receive a given amount of money under General License No. 1 and in accordance with the Mitteilungsblätter cited above such payments will not be made.

c. In the case of duress property it is especially necessary that careful check be made to insure that such pay-



Ltr. OMGB, file AG 386 MGBFP, Subj.: Order to Branch Staff No. 15,
 dtd 17 Oct 47. - Cont'd.

ments are absolutely necessary, and exceptional hardship would ensue if payment is not permitted, since any payment made from a YG property may be construed as decreasing the value of the property which may be restituted at some later date in accordance with the forthcoming Restitution Law.

FOR THE LAND DIRECTOR:

J. H. Lannon
 J. H. LANNON
 Land Property Control Chief

9 Incls.:

- Annex 1 - Ltr. OMGUS, dtd 24 Sept 47
- Annex 2 - General License No. 9
- Annex 3 - Draft of Notice Letter
- Annex 4 - Ltr. OMGUS, dtd 20 Sept 47
- Annex 5 - Quotation of MGR 21-263.3
- Annex 6 - Memorandum, OMGUS, dtd 12 Sept 47
- Annex 7 - Control Council Law No. 58
- Annex 8 - Copy, TWX, OMGUS, dtd 7 June 47
- Annex 9 - Memorandum, OMGUS, dtd 5 August 47

DISTRIBUTION:

- 1 copy - each Property Controller
- 1 copy - each Policy File
- 5 copies - Invest. & Enforcement Br. Fin. Div. OMGB
- 2 Info copies - CPCB, OMGUS
- 1 Info copy - LPCC, OMG for Wuerttemberg/Baden
- 1 Info copy - LPCC, Greater Hesse
- 1 Info copy - LPCC, Bremen
- 1 Info copy - OMG Berlin Sector, Property Control Br.
- 1 Info copy - Inspection Section, OMGB.

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Authority NND 775057
By C&P NARA Date 9/8/99

OFFICE OF MILITARY GOVERNMENT FOR HESSE
Property Control Division
APO 633 US Army

CMH/ee

21/

Wiesbaden, Germany
10 January 1948

SUBJECT: Duress Claims

TO: Land Civilian Agency Head for Hesse,
Wiesbaden, Biebricher Allee 142

CH

The following is quoted from a letter, dtd 17 Oct 47, received by this Office from Military Government for Bavaria for your information:

"Duress Claims.

a. Where evidence indicates that a property was transferred under duress, private settlement, disposing of such property between the claimant and present holder of the property is not authorized. All settlements of claims regarding duress properties must await, and be made in accordance with, the forthcoming Restitution Law on Identifiable Property.

File

b. Any private settlement of duress claims made since the publication of Law No. 52 is void under the provisions of Article V of Military Government Law No. 52.

c. Reference is made to paragraph 1 b (1) of OBS No. 7, which indicates that where the former owner has signed a statement since 8 May 1945 to the effect that no duress was involved, such property will not be taken under control, or if under control, may be released, unless reasons other than duress exist for control of the property. However, where the former owner has indicated that duress was involved in the transaction, but he individually does not desire to make a claim to the property or is willing to renounce his claim to the property, it is to be assumed that a private settlement has been or is being negotiated, which is in violation of the principle set forth in paragraph a. above, and the property is to be considered subject to control.

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Telephone:
Wiesbaden 59231, Ext 361

W.R. RULE
US Civ
LPCC

DECLASSIFIED
Authority **NND 775057**
By **C&P** NARA Date **9/2/99**

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OFFICE OF MILITARY GOVERNMENT FOR HESSE
Property Division, Property Control Branch

APD 633
Friedberg
11 June 48

MEMORANDUM TO LAND PROPERTY CONTROL CHIEF

SUBJECT: German Custom Regulations Permit Removal of Duress
Property from the Zone.

1. While investigating the current directives concerning the removal of chattel from Germany, a representative of this office visited the Friedberg Customs Office on 8 June 48. Mr. Herzberger, chief, stated that his regulations provide that emigrating persons can take chattel with them upon approval of the Landeswirtschaftsamt. Military Government approval is required only in case of removal of foreign currency, works of art or other valuables. No provision is made for preventing the removal of items subject to restitution under Law 59. This is a loophole which may be used to prevent return of duress properties shipped out of the jurisdiction of the US Military Government.

2. As shown in the attached translation of the Finance Ministry's directive of 9 Oct 47, an emigre must declare that his chattel being cleared contains a) no foreign currency, b) no items whose export is prohibited for security reasons and c) no valuables and important works of art or culture (unless M.G. approves same). It is suggested that an amendment be issued to this directive requiring that the emigre also declare that none of the items were obtained under duress as defined by Law 59 and are not subject to restitution under this law.

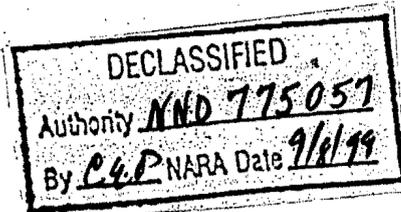
3. While it is also possible to require a certificate from the competent Restitution Agency stating that it does not have a claim on hand for the particular items being taken by the emigre, this would not be a practical procedure. Due to the systematic destruction of the Finanzamt records before and during the US occupation, it is seldom possible to trace missing movables sold under duress. And even in cases where the claimant gives the location of the property, these claims may not have been submitted to date because the deadline for claims is not until the end of the year. It would not be feasible to prevent the shipping of chattel until that deadline. Therefore it is felt by the undersigned that a declaration of the emigre might be sufficient.

30 - 30
PROPERTY DIVISION
OFFICE OF MILITARY GOVERNMENT FOR HESSE

JOHN P. BENJAMIN
Property Division Field Supervisor

1 Incl:

Custom
Custodian Regulations on the Removal of
Personal Property. - 6 -



OFFICE OF MILITARY GOVERNMENT FOR HESSE
 Property Division

JRC/hd

APO 633

US Army

Wiesbaden, Germany
 9 August 1948

SUBJECT: Duress Properties

TO: Land Civilian Agency Head for Hesse
 Wiesbaden, Biebricher Allee

1. In the near future we may anticipate the issuance of an order by the Military Governor, General Clay, whereby the successor organization for certain unclaimed Jewish properties will be designated. In this connection, so as to provide the successor organization with information which will permit them to claim all properties presently under custody which have not been the subject of a petition directed to the Central Filing Agency, Bad Nauheim prior to 31 December 1948, we request that certain information be made available.

2. The information given to the successor organization is to be limited to name of the former owner, address of the property and a brief description of that property. We request therefore that you employ the IBM card system and merely note on the reverse side of each card this information.

3. It is not the intention of Military Government to provide the successor organization with applicable forms MG/PC/2 or any fac-simile for the permanent files nor is it the intention of Military Government to make available, even for a brief survey any of the forms MG/PC/2 pertaining to duress properties under custody.

4. In view of the very short period of time such an organization will have for the accomplishment of necessary petitions prior to the filing date, your immediate accomplishment without undue delay, is requested.

5. We estimate that the required time for this operation will be approximately three weeks and therefore we would appreciate receiving notice one week in advance of the expected completion date so that arrangements may be made to have certain personnel of the successor organizations visit your Headquarters upon completion of this work for the purpose of obtaining the information which we have requested to be noted on the reverse side of each card.

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Authority *NND 775057*
By *C4P* NARA Date *9/18/99*

OFFICE OF MILITARY GOVERNMENT FOR HESSE
Property Division
APO 633

JRC/hd

US Army

Wiesbaden, Germany
15 December 1948

SUBJECT: Survey of Duress Properties with Unknown
Addresses of Claimants

TO: Office of Military Government for Germany (US)
APO 633, US Army
Attn: Property Division, Property Control &
External Assets Branch - Mr. Korfanty
Mr. Porter

1. Under date of 19 November 1948, with letter, subject as above, this office was requested to provide the Central Filing Agency with a list of duress properties under Property Control custody concerning which the addresses of former owners or claimants are not known.

2. We inclose herewith a list by Landkreise of all duress properties in custody indicating whether such properties were taken into custody as a result of a petition filed with the Central Filing Agency or as a result of correspondence from a person laying claim to the property or for other reasons.

3. This list has been prepared during the month of September, October, November and December and as you may note the reports all totalled, cover 10 993 serial numbers which has necessitated a great amount of paper work and which we should not like to partially reproduce in order to set forth only that information requested in your previously mentioned letter. From a strictly Property Control point of view it should be of considerable interest to note that in only 105 instances were properties covered by these reports claimed by petition submitted to the Central Filing Agency. More revealing is the fact that only 2020 of these properties were the subject of letters originating with former owners and claimants. In summation these reports disclose that of 10 993 properties the addresses of former owners or claimants are known for only 2125 of the properties or in other words, addresses are known in less than 25% of the cases.

so where did they come from?

Incl: a/n
Tel: WIESBADEN 59231
Ext 366

JOHN R CAIN
Chief, Property Control Branch

DUVA

101

By *JRC* NARA Date *9-3-99*