IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 08-20198-CIV (ALTONAGA/Turnoff)

WORLD HOLDINGS, LLC, a Florida Limited Liability Company, Plaintiff, vs. THE FEDERAL REPUBLIC OF GERMANY, a foreign state, Defendant.	:

AMENDED VERIFIED COMPLAINT

COMES NOW the above-captioned Plaintiff, World Holdings, LLC, a Florida limited liability company ("Plaintiff"), and files its Amended Verified Complaint against Defendant Federal Republic of Germany ("Defendant" or "Germany"), and states as follows:

I. SUMMARY OF AMENDED VERIFIED COMPLAINT

1. For over 74 years, Germany has done all it can to avoid its obligations under certain United States Gold Dollar bearer bonds – the Dawes bonds and the Young bonds – issued by Germany in 1924 and 1930 respectively. Germany marketed these bonds, and guaranteed their repayment, to hundreds of thousands of individual American and other investors. While Germany was supposed to use the bonds to build a peaceful democracy, Hitler

came into power in 1933 and used them to rebuild Germany's war machine. Specifically, in 1934, Germany defaulted on the bonds, driving down their prices, repurchased them at large discounts, and quietly transferred or otherwise disposed of the bonds for value in Europe and elsewhere.

2. After World War II, Germany again needed foreign investment to rebuild. This time, however, given its record of default, Germany also needed to reassure the financial markets that it could be trusted to pay its debts. So Germany publicly acknowledged and purported to accept its obligation to pay its pre-World War II debts; but it had no intention of paying the full amount due on the Dawes and Young Bonds.

3. To that end, Germany entered into the Agreement on German External Debts in London, England, a multilateral treaty known as the London Debt Agreement that provided an offer of settlement to the bondholders. That offer, however, promised less than a full recovery to accepting bondholders, which amount was to be paid over time, up and until 1980.[1] Non-accepting bondholders, those who did not accept Germany's offer of partial payment, could choose instead to pursue recovery after the accepting bondholders were paid.

4. To further cheat bondholders, Germany represented to the Allies that some of the bonds that Germany had repurchased before World War II had not been resold or cancelled. Rather, so Germany said, the repurchased bonds had been kept in vaults by the Reichsbank (but inexplicably, not marked as cancelled), and were subsequently stolen by Russian troops in 1945 and re-circulated back into the world markets.

[1] Despite an original maturity date of 1980, accepting bondholders were not paid in full until 1994. There are, however, certain additional bonds due to accepting bondholders that were issued after the reunification of Germany in 1990 that address interest arrears for the period of 1945 to 1952. These additional bonds remain outstanding and are anticipated to be fully paid by 2010.

5. Using this fiction that any bearer bond in the marketplace could be a bond "stolen" by Russian soldiers, Germany played on anti-Soviet sentiment in the United States during the early 1950s, and in conjunction with the London Debt Agreement, induced the United States to enter into a bilateral treaty, the Agreement between the Government of the United States of America and the Government of the Federal Republic of Germany Regarding the Validation of Dollar Bonds of German Issue, known as the Validation Law. In order to accept the offer under the London Debt Agreement, accepting bondholders first had to prove that their bonds were located outside of Germany as of January 1,1945 pursuant to the Validation Law. Unbeknownst to the United States, Germany lied. Plaintiff has now uncovered evidence that Germany maintained a contemporary list of repurchased bonds and that the Soviets had already returned bonds to the German Government in 1950. These documents were recently found in German archives that had been sealed for over 50 years.

6. Plaintiff, a Florida company, holds or controls valid Dawes and Young bearer bonds.

7. Plaintiff has made an express demand for payment on Germany, which Germany has ignored. Plaintiff has further asked that it be allowed to prove that its bonds were outside Germany in 1945. Germany ignored that request as well.

8. Accordingly, by this Amended Verified Complaint, Plaintiff respectfully asks that the Court order Germany to honor its obligations under the bearer bonds, and pay all principal and accrued interest due.

II. PARTIES

9. Plaintiff, World Holdings, LLC, is a Florida limited liability company. Plaintiff owns or controls the bearer bonds that are the subject of this Amended Verified Complaint.

10. Defendant is the Federal Republic of Germany, a foreign state.

III. JURISDICTION AND VENUE

11. Pursuant to both 28 U.S.C. § 1330(a) and (b), this Court has personal jurisdiction over Defendant. Because Plaintiff seeks relief *in personam* against Defendant, a foreign state not entitled to immunity pursuant to 28 U.S.C. § 1605(2), this Court has subject matter jurisdiction of the Amended Verified Complaint pursuant to 28 U.S.C. § 1330(a). Further, Germany's issuance of the Dawes and Young Bonds – which were negotiated and sold in New York City, are denominated in United States currency, and payable in New York City – falls within the commercial activity exception to the Foreign Sovereign Immunities Act.[2] A substantial portion of the property at issue is located in Miami, so venue is proper in the District Court for the Southern District of Florida, Miami Division, under 28 U.S.C. § 1391(f).

IV. FACTS

A. World War I and German Reparations

12. World War I, which resulted in the death of at least 10 million soldiers and civilians, was formally concluded with the signing of the Treaty of Versailles in January 1919. Germany was the principal aggressor and was required under the Treaty to make reparation payments.

13. By January 1923, Germany had defaulted on its reparation payments.

[2] The Foreign Sovereign Immunities Act provides that a foreign sovereign does not enjoy immunity if an action is based upon its commercial activity carried on in the United States. *See Republic of Argentina v. Weltover,* 504 U.S. 607 (1992); and *Morris v. People's Repulic of China,* 478 F. Supp. 2d 561, 567 (S.D.N.Y. 2007). A foreign sovereign's issuance of debt instruments within the United States satisfies the Foreign Sovereign Immunities Act's commercial activity exception. *Id.*

B. History of the Dawes and Young Bonds

14. In 1924, an international committee, led by former United States Comptroller of the Currency, Charles G. Dawes, proposed a plan for Germany to issue (among others) United States Gold Dollar bonds to help raise funds and stabilize its economy.

15. Showing support for the Dawes Plan, President Coolidge stated: "[W]e shall have the satisfaction of knowing that we have done what we could to dispel the hatreds of war, restore the destruction it has wrought, and lay a firmer foundation for industrial prosperity and a more secure peace. . . ."[3]

16. The Dawes Plan was duly put into effect. Thus, on October 15, 1924, Germany offered for subscription in the United States $110 million of German Government International 7 Percent Gold Bonds (the "Dawes Bonds"), denominated in United States Gold Dollars, in face amounts $100, $500 and $1,000.

17. The Dawes Bonds are bearer bonds. Further, they were listed on the New York Stock Exchange and negotiated and mainly sold through a placement agent in New York City.

18. Principal on the Dawes Bonds was to be paid on October 15, 1949, with interest payable biannually on the 15th of April and October in the intervening years.

19. Both principal and interest were payable in U.S. Gold Dollars in New York City at J.P. Morgan & Company, the offering fiscal agent in the United States.

20. The Dawes Bonds were backed by the full faith and credit of Germany; required Germany to maintain a sinking fund made up of revenues from customs receipts,

[3] Selected Public Statements on the Dawes Plan, 1924, [from the National Archives], President Coolidge address to the American Society of Newspaper Editors, New York, April 22, 1924 (New York Times, April 23, 1924, page 2).

tobacco, beer, and sugar taxes, and a spirits monopoly; enjoyed absolute priority over other German debts; and were marketed across the United States to individual investors.

21. Responding to the broad marketing campaign, and the assurances of payment provided by Germany, United States citizens rallied to invest in the Dawes Bonds, understanding that they would be used to help Germany in its economic recovery.

22. Germany, however, continued to need funding from outside sources. Accordingly, in 1929, another conference of financial experts was held under the Chairmanship of Owen D. Young, who had previously served on the Dawes Committee.

23. The resulting Young Plan provided for a second series of United States Gold Dollar bonds to be issued by Germany.

24. On June 1, 1930, pursuant to the Young Plan, Germany offered for subscription in the United States $98.25 million of German Government International 5½ Percent Gold Bonds (the "Young Bonds" and, together with the Dawes Bonds, the "Bonds").

25. In conjunction with the issuance of the Young Bonds, the Bank for International Settlements (the "BIS") was created to facilitate payment on Germany's various debt obligations.

26. The Young Bonds are similar in many respects to the Dawes Bonds. They are bearer bonds, backed by the full faith and credit of Germany. Further, they were marketed in United States newspapers; denominated in United States currency; negotiated and sold in New York City; listed on the New York Stock Exchange; payable in New York City; and required Germany to maintain a sinking fund, which would be funded by revenues from a direct annual tax on the German Railway Company.

27. In the event only one set of bonds could be repaid, the Young Bonds provided that they were second in priority to the Dawes Bonds but otherwise were entitled to absolute priority over other German debts.

28. The principal on the Young Bonds was originally due and payable on June 1, 1965; interest was payable bi-annually on the 1st of June and December in the intervening years.

29. The newly formed BIS was appointed the Trustee of the Young Bonds and appointed the agent of the Trustee for the Dawes Bonds.

C. German Breach of the Dawes and Young Bonds' Terms

30. Shortly after Adolf Hitler came into power, Germany breached its obligations under the Bonds by discontinuing payments to the sinking funds in June 1933.

31. According to the BIS archive records, on July 12, 1933, J.P. Morgan and Co. complained of this default to the BIS, stating:

> Those associated with us in marketing the American issue of this loan and on behalf of the holders of the bonds we protest vigorously against any failure to transfer the regular sinking fund payments and we urge that you continue to make every effort possible to secure the regular transfers of the required sums in foreign currencies notwithstanding any transfer restrictions that the German Government may have in force.[4]

The BIS archive records were closed to the public until 1998.[5]

32. In May 1934, the BIS, in turn, wrote to the Minister of Finance of Germany, warning that "the Trustee can but and will protest against any infraction of the terms

[4] Telegram from J.P. Morgan & Co. to Morginter, Trustee for the German Government 5.5% loan 1930 (July 12, 1933) (on file with the BIS, File no. 7.13(3)B, Box/Folder YL DO6/F02).

[5] Bank for International Settlements, *The Archive Collections of the BIS*, available at http://www.bis.org/about/archive.htm (last accessed May 13, 2008).

of the General Bond and other pertinent contracts, particularly as regards the subject of the full performance of the payments therein provided."[6]

33. At this time, however, Germany had no apparent interest in honoring its debts. Instead, Germany was intent on using all available resources to rearm.

D. German Default on the Dawes and Young Bonds

34. Germany ceased making interest payments on the Young Bonds on or about June 1, 1934.

35. The following month, on July 1, 1934, Germany ceased making interest payments on the Dawes Bonds.

36. The Trustees continued to protest against the defaults by Germany, to no avail.

E. Germany Repurchases Bonds

37. By its default, Germany immediately depressed the market for the Dawes and Young Bonds, allowing Germany to repurchase the Bonds at discounted prices.

38. Germany began repurchasing Bonds in the early 1930s, and either cancelled or quietly transferred or otherwise disposed of them for value. The buyback process was integral to the Third Reich's economic management and remained in operation through the end of World War II.

39. The Golddiskontbank was the principal agent by which Germany repurchased Bonds and other securities. According to records in the recently available German archives, the Golddiskontbank maintained a register of the Bonds it acquired.

[6] Letter from Leon Fraser to the German Finance Minister (May 16, 1934) (on file with the BIS, File no. 7.13(3) B, Box/Folder YL doc 6/F02).

40. Accordingly, while Germany was in default of its interest payments using the excuse it did not have the means to pay the Bonds, Germany was in fact engaged in repurchase of the principal. Moreover, Germany was simultaneously rearming itself at a cost of between 8 and 12 billion Reichsmarks.

F. World War II

41. With its invasion of Poland in 1939, Germany started World War II.

42. As it was in World War I, Germany was the chief antagonist in World War II.

43. It is estimated that total military and civilian casualties were up to 60 million people.

44. The outbreak of war made any demands for payment or pursuit of remedies under the Bonds impractical if not truly impossible.

G. Germany's Post-World War II Actions in Respect to the Dawes and Young Bonds

45. Following World War II, Germany's economy was once again in dire need of foreign investment.

46. Recognizing Germany's financial challenges and the need to restore confidence, Konrad Hermann Josef Adenauer, the German Federal Chancellor, publicly proclaimed, in 1951, that "the Federal Republic hereby confirms that it is liable for the pre-war external debt of the German Reich."[7]

[7] London Debt Agreement, U.S.-Ger.-Fr.-other govts., Feb. 27, 1953, 4.1 U.S.T. 443, 601 (Appendix 1, Letter from Konrad Hermann Josef Adenauer, German Federal Chancellor, to Allied High Commission (March 6, 1951)).

47. Chancellor Adenauer emphasized that the payment of the debts must have "the objective of normalizing the economic and financial relations of the Federal Republic with other countries."[8]

48. The Dawes and Young Bonds were included in the pre-war liabilities acknowledged and affirmed by Germany.

49. Following Chancellor Adenauer's affirmation of Germany's prior debts, it was agreed that a payment plan would be negotiated.

50. Thus, the Conference on German External Debts opened in London on February 28, 1952, with the participation of the governments of France, the United Kingdom, and the United States, as well as twenty-two other countries, including both governmental and private creditor representatives, and the BIS.

51. After extensive negotiations, on February 27, 1953, the Federal Republic and the governments of the United States, Great Britain, France and fifteen other creditor countries signed the London Debt Agreement.

52. The London Debt Agreement resulted in a proposed settlement of most of Germany's pre-World War II debts, including the Dawes and Young Bonds.

53. The London Debt Agreement provides for an offer of settlement, i.e., bondholders could decline to accept the offer:

> (1) Only such creditors shall be entitled to benefit under any provision of the present Agreement and the Annexes thereto, including payment thereunder, as, in the case of bonded debts for which an ***offer of settlement*** is the appropriate procedure, ***accept the offer*** . . . .
>
> (2) – (a) In the case of bonded debts for which an ***offer of settlement*** is the appropriate procedure, the ***acceptance of the offer of settlement***, within the meaning of paragraph (1)

[8] *Id.*

> of this Article, shall be effected by submitting the old bonds or coupons –
>
> (i) for exchange, if new bonds or coupons are issued, or
>
> (ii) for enfacement, if the settlement terms are to be enfaced on the old bonds or coupons.[9]

54. The London Debt Agreement provided that the offer shall remain open for acceptance for at least five years, which time frame could be extended for cause.

55. When a bondholder accepted the London Debt Agreement's offer, two new bonds were issued for each original bond surrendered. The first bond – called an "extension bond" – covered the amortization of the original principal amount. The second bond – called a "funding bond" – covered interest due after July 1, 1934.[10]

56. The extension bonds offered in exchange for the 7 percent Dawes Bonds carried a reduced interest rate of 5½ percent per year and the principal was due in 1969.

57. The extension bonds offered in exchange for the 5½ percent Young Bonds carried a reduced interest rate of 4½ percent per year and the principal was due in 1980.

58. The funding bonds carried an interest rate of 3 percent and matured in 1972.

H. The Validation Procedure for the Dawes and Young Bonds

59. Before any bondholder could be paid, he or she was required to submit the bonds to a validation procedure.

60. To that end, the London Debt Agreement provides:

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[9] London Debt Agreement, *supra* note 6, 4.1 U.S.T. at 453 (emphasis added).

[10] The London Debt Agreement also provided for the issuance of a third bond for interest arrears for the period of 1945 to 1952 to be issued only upon the reunification of Germany. These bonds were issued after the reunification of Germany in 1990 and mature in October 2010.

> [Germany] undertakes to do all in its power in order to establish, on the basis of the German Validation Law passed by its Parliament and about to be enacted, an appropriate procedure for the validation of German foreign currency bonds, . . . Payment on bonds or coupons which require validation under the German validation procedure shall not be made until such bonds or coupons shall have been validated pursuant thereto.[11]

61. On February 27, 1953, as provided in the London Debt Agreement, the Validation Law was executed as a bilateral treaty with the United States.

62. The Validation Law, which incorporates the London Debt Agreement by reference, requires bondholders to show, by reference to evidence, that their Bonds were held outside Germany on January 1, 1945.

I. Germany's Justification for the Validation Law

63. Germany pressed for the implementation of the validation requirement during the negotiation of the London Debt Agreement.

64. As explained in the recitals to the Validation Law, the validation process was deemed necessary, because Germany claimed:

> a large number of . . . bonds, including such dollar bonds, were acquired for eventual retirement and thus no longer represented valid obligations;
>
> . . . such acquired bonds were retained in Germany and never presented to the trustees or the paying agents for cancellation;
>
> . . . a great many of the bonds so acquired or otherwise held in Germany disappeared during hostilities in Germany or soon thereafter;
>
> . . . these bonds may have fallen unlawfully into the hands of persons who will seek to negotiate them, or to make claim under them against the debtors, trustees or paying agents, or otherwise to profit from their unlawful acquisition.[12]

65. This "stolen bond theory" was later propounded by Germany in arguments before a federal court in the case of *Abrey v. Reusch*, 153 F.Supp. 337 (S.D.N.Y. 1957), which

[11] London Debt Agreement, *supra* note 6, 4.1 U.S.T. at 527.

[12] Agreement on Validation of Dollar Bonds of German Issue, U.S.-Ger., at 1, Feb. 27, 1953, T.I.A.S. No. 2793.

concerned the Validation Law. In that case, Germany argued and convinced the court as follows:

> After the First World War, and principally between 1924 and 1930, a large number of bearer Dollar Bonds were sold by German enterprises. . . . Prior to the outbreak of the Second World War, many of these Dollar Bonds had been repurchased and reacquired by the issuers for eventual retirement, and later submitted to meet the sinking fund and amortization requirements. Such reacquired bonds were retained in Germany and no longer represented valid obligations.
>
> During the Second World War, it was impossible to present such bonds to the American trustees or paying agents for cancellation. As a consequence, large numbers of these uncancelled bearer Dollar Bonds, in negotiable form, were held in the vaults of the German banks.
>
> . . . . .
>
> After the surrender of Germany, Russian occupation forces seized the uncancelled, negotiable Dollar Bonds, which they found in the German bank vaults within the area of their control. The face amount of such bonds was estimated at $350,000,000. These looted bonds were returned to circulation by the Russians.[13]

66. Germany's "stolen bond theory" therefore rests on the premise that Germany repurchased the bonds in the 1930s for retirement purposes and kept those bonds in a vault but never cancelled them. This justification presupposes that Germany did not have a list of the reacquired bonds, even though recently opened German archives show that the Golddiskontbank kept such a list. And, the theory is based on the proposition that the Soviets never returned the stolen bonds.

67. Germany has always known, or should have known, that the bonds quietly re-acquired by Germany prior to and during World War II and seized by Soviet authorities in 1945 were, in fact, returned by the Soviets in 1950, before the negotiation, adoption or implementation of the London Debt Agreement.

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[13] *Abrey v. Reusch*, 153 F.Supp. 337, 339 (S.D.N.Y. 1957).

J. Subordination of Non-Accepting Bondholders

68. The London Debt Agreement did not provide clear treatment for non-accepting bondholders, leaving non-accepting bondholders to their rights. It was understood, however, that if a bondholder chose not to accept Germany's offer of settlement, their bonds were subordinated to the payments to be made to accepting bondholders.

69. As explained in a 1958 New York Times article:

> The rights of non-assenting bondholders were protected explicitly in the international convention that formulated the London debt settlement, in the treaty enacted between Germany and the United States, and in a subsequent law enacted by West Germany to implement the treaty. . . . However, such legislation stipulated that no payments could be made to non-assentees until settlements arrived at under the London agreement had been completed. In some circles, this commitment of Germany has been taken to mean that non-assentees must wait for payment at the original contractual debt rate until all bonds extended under the London settlement formula had been paid off. This might be 1980 or later.[14]

K. Final Payment on the Dawes and Young Bonds

70. The maturity dates for the Dawes and Young conversion bonds are, respectively, 1969 and 1980.

71. Although originally due in 1980, the conversion bonds were not actually paid until 1994, at which time the United States Securities and Exchange Commission noted that all conversion bonds had been paid in full.[15]

L. Plaintiff's Dawes and Young Bonds

72. Plaintiff owns or controls a significant number of Dawes and Young Bonds in the original principal amount of $1,000 and $100 denominations.

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[14] Paul Heffernan, N.Y. TIMES, *Old German Bonds Offer Financial Dilemma*, Oct. 27, 1958.

[15] SEC TODAY, *Germany May Exchange New Bonds for Interest on Pre-War Bonds Without Registration* (Apr. 15, 1994).

73. Representative copies of the Bonds are attached to this Amended Verified Complaint as Exhibit 1 (Dawes Bond) and Exhibit 2 (Young Bond).

74. On December 19, 2007, Plaintiff demanded payment of its Bonds in a letter sent to the Honorable Angela Merkel, Chancellor of Germany; the Honorable Frank-Walter Steinmeier, Federal Foreign Minister of Germany; the Honorable Peer Steinbrück, Federal Minister of Finance of Germany; and the Honorable Brigitte Zypries, Federal Minister of Justice of Germany, attached hereto as Exhibit 3.

75. Germany never responded to the December 19, 2007 letter.

76. Germany has maintained that all bonds must be submitted for validation before they can be paid. Upon information and belief, however, there is no existing Validation Board. Accordingly, although Plaintiff does not believe it is subject to the Validation Law and expressly reserves its rights to object to the same, on May 20, 2008, Plaintiff requested instruction from Germany as to how and where to submit its Bonds for validation, attached hereto as Exhibit 4. As of the date of this filing, Plaintiff has received no response to its inquiry.

COUNT I – BREACH OF CONTRACT TO PAY DAWES BONDS

Plaintiff hereby incorporates by reference Paragraphs 1-76 as if they were fully set forth herein and further states:

77. Defendant is in default of its obligation to pay Plaintiff outstanding principal and accrued interest on Plaintiff's Dawes Bonds, which default and accompanying bad faith conduct Germany concealed for several decades.

78. All conditions precedent for payment on Plaintiff's Dawes Bonds have occurred or been excused.

COUNT II – BREACH OF CONTRACT TO PAY YOUNG BONDS

Plaintiff hereby incorporates by reference Paragraphs 1-76 as if they were fully set forth herein and further states:

79. Defendant is in default of its obligation to pay Plaintiff outstanding principal and accrued interest on Plaintiff's Young Bonds, which default and accompanying bad faith conduct Germany concealed for several decades.

80. All conditions precedent for payment on Plaintiff's Young Bonds have occurred or been excused.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands the following:

1. That judgment be entered against Defendant as requested herein;

2. That Plaintiff be awarded damages in the amount of the accrued principal and interest, including compound interest, in respect of Plaintiff's Dawes Bonds, as well as prejudgment and post-judgment interest, attorneys fees and costs, and all other remedies the Court deems just and proper;

3. That Plaintiff be awarded damages in the amount of the accrued principal and interest, including compound interest, in respect of Plaintiff's Young Bonds, as well as prejudgment and post-judgment interest, attorneys fees and costs, and all other remedies the Court deems just and proper; and

4. That all relief, both general and specific, to which Plaintiff is entitled, be granted.

Dated: June 3, 2008
Miami, Florida

Respectfully submitted,

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VERIFICATION

The undersigned Eugene E. Thomason, of 17916 Cachet Isle Drive, Tampa, Florida, 33647, declares under penalty of perjury under the laws of the United States of America, that he is the managing member of Plaintiff World Holdings, LLC, and that he has read the allegations of the Amended Verified Complaint, and that the allegations therein are true and correct to the best of his knowledge.

Dated: May 30, 2008.

Eugene E. Thomason