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Civil Procedure

Righting Past Wrongs or Interfering in International Relations? World War II-Era Slave Labor Victims Receive State Legal Standing After Fifty Years

Diane Richard Foos

Code Sections Affected

Code of Civil Procedure § 354.6 (new).

SB 1245 (Hayden); 1999 STAT. Ch. 216 (*Effective* July 28, 1999)

*My friends, I am under no illusions. Compared to the enormity of the evil visited upon the Jewish people by the Nazi war machine, these efforts constitute mere drops of justice. But, it is my hope that, one day, these drops of justice will far outnumber the tears of sorrow that accompany our memories.*¹

I. INTRODUCTION

Prior to and during the Second World War, about seven million slave laborers were forced to work in Nazi Germany.² No German company was required to use slave laborers under Hitler, but such companies readily preyed upon the slave

1. Governor Gray Davis, speech at Yom Hashoah (Remembrance Day) Event II, Pan Pacific Park, Los Angeles, California (Apr. 18, 1999) (visited Aug. 4, 1999) <<http://www.ca.gov/s/governor/rmkshashoah.htm>> (copy on file with the *McGeorge Law Review*); see *id.* (referring to Governor Davis' high priority of "justice in the defense of human rights," particularly his involvement in a statewide campaign to resolve victims' insurance claims and an action brought by the Simon Wiesenthal Center against firms that exploited slave labor during World War II).

2. 1999 Cal. Legis. Serv. ch. 216, sec. 1(b), at 1854; Letter from Lewis M. Barth, Dean, Hebrew Union College-Jewish Institute of Religion, to the Honorable Adam Schiff (Mar. 26, 1999) (on file with the *McGeorge Law Review*); Letter from Michael Beal, Rabbi, B'Nai Tikvah Congregation, to the Honorable Adam Schiff (Mar. 19, 1999) (on file with the *McGeorge Law Review*); Letter from Si Frumkin, Chairman, Southern California Council for Soviet Jews, to the Honorable Tom Hayden (Jan. 29, 1999) (on file with the *McGeorge Law Review*); Letter from Dr. Robert Kirschner, Program Director, Skirball Cultural Center, to the Honorable Adam Schiff (Mar. 31, 1999) (on file with the *McGeorge Law Review*); Letter from Nathan Pollak to the Honorable Adam Schiff (Mar. 29, 1999) (on file with the *McGeorge Law Review*); Letter from Harriet A. Rothenberg, State Public Affairs Chair, National Council of Jewish Women, to the Honorable Tom Hayden (Feb. 12, 1999) (on file with the *McGeorge Law Review*); Letter from Barbra Streisand to the Honorable Tom Hayden (Feb. 22, 1999) (on file with the *McGeorge Law Review*). Hereinafter, this Note will refer to this collection of letters as "Letters."

laborers, and the slaves were a significant part of the workforce.³ Throughout the Holocaust,⁴ many millions of slave laborers were murdered, but thousands survived.⁵ Today, California is home to many victims of Nazi persecution and the heirs of those victims.⁶

Some of these victims have recently filed lawsuits against particular corporations that allegedly have retained illicit profits from World War II-era slave labor.⁷ These plaintiffs are pursuing compensation for intentional infliction of emotional distress and the victims' unpaid efforts.⁸ The text of one complaint provides a victim's recollection of being forced to sort through the "personal possessions [of prisoners] for precious metal items to be re-smelted."⁹ Other complaints describe the experiences of victims who worked seven days a week, fourteen hours a day, under brutal conditions, often without shoes or sufficient nourishment.¹⁰ Additionally, some accounts describe five-mile walks to work everyday, and "on the spot executions" for individuals who could not meet expectations.¹¹

3. Denis Staunton, *German Firms Set up Fund for Victims of Slave Labour*, THE IRISH TIMES (Berlin), Feb. 17, 1999, at 10, available in 1999 WL 12323930. But see Letter from Gavin McHugh, Senior Vice President, California Manufacturer's Association, to the Honorable Tom Hayden (May 17, 1999) (on file with the *McGeorge Law Review*) (expressing concern that Chapter 216 could "inappropriately be deemed to apply to affiliates of non-German companies that were seized by the Nazi government," referencing Ford Motor Company in particular, and concluding that "whatever occurred at the facilities of U.S. affiliates seized by Nazis was and is the responsibility of the German government, as successor to the Nazi regime").

4. See Simon Wiesenthal Center, 36 Questions About the Holocaust (visited Aug. 4, 1999) <<http://www.wiesenthal.com/resource/36quest1.html>> (copy on file with the *McGeorge Law Review*) (specifying that the term "Holocaust" refers to "the period from January 30, 1933, when Hitler became Chancellor of Germany, to May 8, 1945 (V-E Day), the end of the war in Europe").

5. See *id.* (recognizing that according to most authorities, approximately six million Jews were victims of the Nazi Holocaust); Letters, *supra* note 2 (stating that most of the slave laborers died, but thousands survived).

6. 1999 Cal. Legis. Serv. ch. 216, sec. 1(a), at 1854 (West).

7. See Governor Gray Davis, *Governor Davis Joins Holocaust Lawsuit*, Press Release PR99:074, Mar. 31, 1999 [hereinafter *Davis Press Release*] (copy on file with the *McGeorge Law Review*) (indicating that Governor Gray Davis has joined a lawsuit brought by the Simon Wiesenthal Center and several California residents against various companies doing business in California, including Deutsche Lufthansa AG, Deutsche Bank AG, Dresdner Bank AG, Commerzbank AG, VIAG, General Motors Corporation, and Ford Motor Company, alleging retention of "illicit profits from Nazi slave labor"); Henry Weinstein, *5 Holocaust Survivors Sue German Firm over Slave Labor*, L. A. TIMES, Mar. 6, 1999, at A15 (mentioning that in Newark, New Jersey, numerous class action suits prompted by similar allegations have been filed in federal court against companies such as Phillip Holzman AG, a lucrative corporation that does significant business in California and other parts of the United States); Law Offices of Shernoff, Bidart, Darras & Arkin, *Slave Labor Lawsuit Filed on Behalf of Holocaust Victims*, Press Release, Mar. 5, 1999 [hereinafter *Shernoff Press Release*] (copy on file with the *McGeorge Law Review*) (describing a lawsuit filed by six California residents against billionaire corporation Phillip Holzman AG, a premiere German construction company with subsidiaries in the United States, including California-based Holzman USA and Metric Constructors, Inc., seeking damages for unfair business practices, for intentional infliction of emotional distress, and for the value of services performed).

8. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1245, at 2 (May 18, 1999).

9. *Davis Press Release*, *supra* note 7.

10. *Shernoff Press Release*, *supra* note 7.

11. *Id.*

The defendants claim that United States courts have no jurisdiction to hear these cases and, "even if they did, the statute of limitations has expired."¹² Chapter 216 thwarts these arguments and strengthens the hands of World War II-era slave labor victims who may feel that compensation from a common survivor fund in lieu of individual lawsuits is insufficient.¹³ Chapter 216 forces firms to respond to individual and class action claims, providing an incentive to the firms to settle cases in order to avoid costly lawsuits accompanied by negative publicity.¹⁴

Furthermore, although Chapter 216 was originally developed with Holocaust survivors in mind, it also applies to former prisoners of war (POWs) who suffered at the hands of Japanese-based corporations during World War II.¹⁵ In addition to economic redress, some former POWs are seeking injunctions that would bar certain Japanese companies from doing business in America, a request that, if fulfilled, "could shake the Japanese economy."¹⁶

II. BACKGROUND

A. Prior Roadblocks for World War II-Era Slave Lawsuits

After World War II, various treaties and agreements were executed in order to resolve the conflict with Germany and its allies and to consider reparations.¹⁷ Advocates for the victims argue that suits against German companies were deferred until the culmination of the reparations phase, which was marked by the ratification of the Two-Plus-Four Treaty in 1991.¹⁸ This theory suggests that the statute of

12. Henry Weinstein, *Bill Signed Bolstering Holocaust-Era Claims*, L.A. TIMES, July 29, 1999, at A3.

13. Weinstein, *supra* note 12, at A3.

14. *Id.*

15. Ann W. O'Neill, *POW Files Suit for Compensation Law*, L.A. TIMES, Aug. 12, 1999, at B1; *see id.* (highlighting the story of Lester I. Tenney, a former POW and current California resident, who has filed a Chapter 216 test case in Los Angeles Superior Court against defendants Mitsui & Co., Ltd. of Japan and New York, and Mitsui Mining Co., alleging "unconscionable exploitation" of prisoners and seeking recovery on claims of slavery, forced labor, infliction of emotional distress, and civil assault and battery).

16. Mike Carter, *Bitter Ex-POW Sues His Tormenters*, SEATTLE TIMES, Sept. 16, 1999, at A1; *see, e.g., id.* (describing the experiences of Frank Mace, one of eleven plaintiffs in a federal lawsuit filed in Albuquerque, New Mexico, against Nippon Steel, Kawasaki, Mitsubishi, Mitsui, and Showa Denki, Japanese companies with collective yearly American sales of \$300 billion).

17. *E.g.*, Agreement on a Plan for Allocation of a Reparation Share to Nonrepatriable Victims of German Action, June 14, 1946, U.S.-Fr.-U.K.-Czech.-Yugo., 4 U.S.T. 75 [hereinafter Paris Reparations Treaty]; Agreement on German External Debts, Feb. 27, 1953, U.S.-Belg.-Can.-Ceylon-Den.-Fr. Republic-Greece-Iran-Ir.-Italy-Liech.-Lux.-Pak.-Spain-Swed.-Switz.-S. Afr.-Gr. Brit.-N. Ir.-Yugo. [hereinafter London Agreement]; Convention on the Settlement of Matters Arising out of the War and the Occupation, May 26, 1952, U.K.-N. Ir.-Fr.-U.S.-F.R.G., 332 U.N.T.S. 219 [hereinafter The Transition Agreement]; Termination of Treaty on the Final Settlement with Respect to Germany, Sept. 12, 1990, U.S.-F.R.G.-G.D.R.-Fr.-U.S.S.R.-U.K., 29 I.L.M. 1186 [hereinafter Two-Plus-Four Treaty].

18. *See* SENATE COMMITTEE ON RULES, FLOOR ANALYSIS OF SB 1245, at 4 (July 12, 1999) (stating that the Two-Plus-Four Treaty effectuated by East Germany, West Germany, and the four Allied powers brought the reparations phase of the Second World War to an absolute end, thus reversing the moratorium on the assertion of

limitations on wartime claims against German companies was tolled until a German court ruling ended the moratorium on November 7, 1997.¹⁹ Attorneys for the defendants disagree, and argue that all individual actions arising out of World War II were completely subsumed by the Paris Reparations Treaty.²⁰ Federal district judges in Newark, New Jersey, recently dismissed two similar lawsuits, holding, *inter alia*, that these issues are not for federal courts to decide because they are better left to the political branches of government.²¹

B. Slave Labor Reparations Fund

In February 1999, a dozen German corporations that admittedly exploited slave labor during the Second World War established a fund for victims of slave labor.²² The fund continues to grow, and is now supported by more than 100 German firms.²³ Some American firms are charged with the exploitation of slave labor as well, but these firms did not participate in the development of the fund despite urging from victims' representatives.²⁴ The function of the German foundation plan is to "counter lawsuits," particularly class action lawsuits filed in the United States, and to "remove the basis of the campaign being led against German industry."²⁵ The initiative, when compared with lengthy lawsuits, is seen by German industry as a more efficient method of compensation, in light of the ages of the victims.²⁶

This fund, however, will be accessible to former slave laborers only if international negotiators agree to preclude lawsuits against German firms for their actions during World War II.²⁷ International negotiators representing the German firms and the German government participated in fairly closed discussions with

claims prescribed by the London Agreement); *id.* (explaining that the actions were first deferred by the Paris Regulations Treaty in 1946, and then by the London Agreement on German External Debt in 1953); *see also* *Burger-Fischer v. Degussa AG*, 65 F. Supp. 2d 248, 255 (D.N.J. 1999) (contending that individual slave labor claims "never were and never were intended to be subsumed under the series of treaties and agreements following the end of World War II").

19. *See* SENATE COMMITTEE ON RULES, FLOOR ANALYSIS OF SB 1245, at 4 (July 14, 1999) (indicating that Chapter 216 codifies the ruling of the German court ending the moratorium on claims brought by victims of Nazi persecution).

20. *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424, 455-56 (D.N.J. 1999).

21. *Id.* at 483-89; *Burger-Fischer*, 65 F. Supp. 2d at 282.

22. Staunton, *supra* note 3, at 10.

23. *German Industry Far Short of Goal for Nazi Slave Labor Compensation*, AGENCE FRANCE-PRESSE, Jan. 7, 2000, available in 2000 WL 2708607.

24. Ron Grossman, *Germans OK Paying \$5 Billion to War Slaves: Deal Puts Pressures on U.S. Corporations*, CHI. TRIB., Dec. 15, 1999, at 1, available in 1999 WL 2941695. *But see* Charles Babington, *Clinton Sends Team to Help with Settlement for Nazi Labor Camp Survivors*, WASH. POST, Dec. 16, 1999, at A32, available in 1999 WL 30308703 (stating that since the establishment of the fund amount, American car makers Ford and General Motors have been contemplating contributions).

25. Staunton, *supra* note 3, at 10 (quoting German Chancellor Gerhard Schroder).

26. *Id.*

27. Weinstein, *supra* note 12, at A3. *But cf. id.* (stating that German companies "want an agreement between governments rather than a court settlement").

representatives of the United States government throughout 1999, in hopes of reaching an agreement that could bestow compensation upon approximately 240,000²⁸ surviving slave laborers worldwide.²⁹ December 14, 1999, marked the turning point in these negotiations when an agreement was reached, capping German contributions at \$5.2 billion.³⁰ Talks are still underway between the parties, and the agreement will not become official until remaining details are settled.³¹ Political leaders from Germany and the United States embrace the plan,³² while plaintiffs' lawyers remain "cautiously optimistic."³³

The fund was originally deemed unacceptable by the World Jewish Congress and by attorneys who have filed class action suits on behalf of Holocaust-era slave labor victims against German companies.³⁴ If the plan fails, some United States leaders urge the imposition of sanctions upon German commodities.³⁵ Germany threatens to bring any imposition of penalties to the attention of the World Trade Organization.³⁶ This type of conflict could cultivate a trade war along with accompanying political strain.³⁷

28. Babington, *supra* note 24, at A32.

29. Weinstein, *supra* note 12, at A3; *Germans Offer \$3.3B to Laborers*, ASSOCIATED PRESS ONLINE, Oct. 8, 1999, available in 1999 WL 28126107 (noting that a past offer by Germany of \$3.3 billion was insulting to advocates of victims); *U.S., Germany Agree on Reparations Fund*, RUBBER & PLASTICS NEWS, Dec. 20, 1999, at 3 (noting a rejection of a subsequent \$4.2 billion offer); see also Weinstein (indicating that the German companies had hoped to arrive at an agreement by September 1, 1999, the sixtieth anniversary of the initiation of World War II, despite critics' claims that a myriad of unresolved issues remained and that the goal was unrealistic).

30. Stewart Eizenstat, *White House Press Briefing*, U.S. NEWSWIRE, December 15, 1999, available in 1999 WL 22284469.

31. *Draft Bill on Slave Labor Compensation Set for February*, AGENCE-FR.-PRESSE, Jan. 5, 2000, available in 2000 WL 2707325; see *id.* (discussing unresolved issues of overlapping compensation and the compensatory distinction between slave laborers, "who were to be worked to death," and forced laborers, "who were considered Nazi assets and received better treatment"); Burt Herman, *Nazi Victims Rip Compensation Plan: Unfair to Jewish Slave Labor Claimants, Lawyers Say*, CHI. SUN-TIMES, Dec. 17, 1999, at 64, available in 1999 WL 6571073 (explaining the need for the German Legislature to enact legislation before payments to victims can begin); see also Babington, *supra* note 24, at A32 (estimating settlement payouts at approximately \$8,000 each for slave laborers and between \$2,000 and \$3,000 each for forced laborers).

32. See *Clinton Supports German Offer to Nazi Slave Labor Victims*, AGENCE-FR.-PRESSE, Dec. 15, 1999, available in 1999 WL 25162646 (quoting President Bill Clinton, who referred to the plan as "an extraordinary achievement"); *id.* (citing German Chancellor Gerhard Schroeder's hope to do all he can "to provide legal finality").

33. Grossman, *supra* note 24, at 1.

34. Weinstein, *supra* note 12, at A3.

35. E.g., *Germany Warns of Possible Tensions with U.S. over Holocaust Slave-Labor Claims*, HA'ARTZ DAILY NEWSPAPER LTD. (Tel Aviv, Isr.), Oct. 3, 1999, available in 1999 WL 1747586.

36. *Id.*

37. *Id.* (citing Germany's chief mediator, Otto Graf Lambsdorf).

C. Statutes of Limitations Issues

The plaintiffs contend that statutes for all slave labor claims began to run on November 7, 1997.³⁸ If this interpretation is correct, World War II-era slave labor claims brought under California's tort or contract statutes expired on November 7, 1998, and November 7, 1999, respectively. Prior to the enactment of Chapter 216, no exceptions existed for the applicable statutes of limitations for Holocaust slave labor survivor suits.³⁹

III. CHAPTER 216

Chapter 216 provides that any World War II slave⁴⁰ or forced labor victim,⁴¹ or heir of such slave or victim, may initiate proceedings to recoup compensation,⁴² including interest, for work completed without pay between 1929 and 1945, against any entity or successor in interest thereof for whom the labor was performed.⁴³ It also allows for the initiation of a suit in a superior court of California and provides for that court to retain jurisdiction over the case until its culmination.⁴⁴ Additionally, Chapter 216 extends the statute of limitations, retroactively,⁴⁵ for such claims until December 31, 2010.⁴⁶

38. *Supra* text accompanying note 19.

39. See CAL. CIV. PROC. CODE §§ 339-40 (West Supp. 2000) (lacking an exception to the statute of limitations for World War II-era slave labor victim cases). But see *id.* § 354.5(c) (West Supp. 2000) (extending the statute of limitations until December 31, 2010, for Holocaust victims or their heirs or beneficiaries, who have claims arising out of insurance policies purchased in Europe during World War II).

40. See *id.* § 354.6(a)(1) (enacted by Chapter 216) (defining "Second World War slave labor victim" as any individual removed from concentration camp or ghetto or averted from transferral to a concentration camp or from a ghetto to perform uncompensated labor for any length of time between 1929 and 1945, "by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers").

41. *Id.* § 354.6(a)(2) (enacted by Chapter 216) (stating that the definition for "Second World War forced labor victim" is any civilian belonging to a population overcome "by the Nazi regime, its allies or sympathizers, or prisoner-of-war of the Nazi regime, its allies or sympathizers," compelled to provide uncompensated labor for any interval of time between 1929 and 1945, "by the Nazi regime, its allies and sympathizers, or enterprises transacting business in any of the areas occupied by or under control of the Nazi regime or its allies and sympathizers").

42. *Id.* § 354.6(a)(3) (enacted by Chapter 216) (defining "compensation" as "the present value of wages and benefits that individuals should have been paid and damages for injuries sustained in connection with the labor performed," and indicating that "present value shall be calculated on the basis of market value of the services at the time they were performed, plus interest from the time the services were performed, compounded annually to date of full payment without diminution for wartime or postwar currency devaluation").

43. *Id.* § 354.6(b) (enacted by Chapter 216); see *id.* (adding that the work could have been performed "either directly or through a subsidiary or an affiliate").

44. *Id.*

45. 1999 Cal. Legis. Serv. ch. 216, sec. 1(d), at 1854 (West).

46. CAL. CIV. PROC. CODE § 354.6(c) (enacted by Chapter 216); see also *US Senators Present Bill to Compensate Nazi Forced Laborers*, AGENCE FR.-PRESSE, Nov. 5, 1999, available in 1999 WL 25138337 (describing a similar bill introduced in the U.S. Senate in November 1999).

Chapter 216 gives California superior courts jurisdiction over actions brought by victims or heirs seeking redress for slave or forced labor performed during World War II against “any entity or successor . . . for whom the labor was performed, either directly, or through a subsidiary or affiliate.”⁴⁷ California law provides a one-year statute of limitations for an action of “assault, battery, false imprisonment . . . or for injury to or for the death of one caused by the wrongful act or neglect of another.”⁴⁸ In addition, a two-year statute of limitations applies to actions based on “contract, obligation, or liability not founded upon an instrument of writing.”⁴⁹ Chapter 216 provides that World War II slave or forced labor claims will not be dismissed for tolled statutes of limitations if the suits are brought on or before December 31, 2010.⁵⁰

With Chapter 216, the California Legislature intends to establish further public policy in additional instances of demonstrated slave labor exploitation by companies currently conducting business in the State.⁵¹ The Legislature also plans to put mechanisms in place to monitor State pension fund investments in corporations owing remuneration to victims of World War II-era slave and forced labor.⁵²

IV. ANALYSIS OF CHAPTER 216

Chapter 216 is ambiguous as to whether it provides both subject matter and personal jurisdiction over World War II-era slave labor and forced labor claims. The statute uses language that is typically employed in reference to subject matter jurisdiction.⁵³

47. *Id.* § 354.6(b) (enacted by Chapter 216).

48. *Id.* § 340(3) (West Supp. 2000).

49. *Id.* § 339(1) (West Supp. 2000).

50. *Id.* § 354.6(c) (enacted by Chapter 216).

51. 1999 Cal. Legis. Serv. ch. 216, sec. 2, at 1854.

52. *See id.*, sec. 3, at 1854 (requiring that the Treasurer, the Public Employees’ Retirement System, and the State Teachers’ Retirement System monitor investments in such companies and report the findings to the Legislature).

53. *See* 2 B. E. WITKIN, CALIFORNIA PROCEDURE *Jurisdiction* § 10 (4th ed. 1996) (stating that subject matter jurisdiction has been known as jurisdiction of the *court* over the amount in controversy or the type of case, and referencing the Second Restatement of Judgments in its definition of subject matter jurisdiction as “a *court’s* competency to decide the issue before it,” as opposed to “territorial jurisdiction[, which is] . . . the state’s jurisdiction over a particular person, thing or status” (emphasis added)). *Compare* CAL. CIV. PROC. CODE § 354.6 (enacted by Chapter 216) (lacking clarification of the word “jurisdiction”), *with* *Greener v. Workers’ Comp. App. Bd.*, 6 Cal. 4th 1028, 1035, 863 P.2d 784, 787, 25 Cal. Rptr. 2d 539, 542 (1993) (defining subject matter jurisdiction as “the power of the *court* over a cause of action or to act in a particular way” (emphasis added)).

A. *Subject Matter Jurisdiction*

Subject matter jurisdiction gives the court authority over a proceeding.⁵⁴ It is often known as jurisdiction “in the fundamental or strict sense,” or the “power to hear or determine the case.”⁵⁵ California superior courts have original jurisdiction in all cases except those specifically withheld from them by the state constitution.⁵⁶

Upon initial examination, the California Legislature’s attempt to grant subject matter jurisdiction and extend the statute of limitations for the survivors’ claims in State superior courts is permissible, as neither act appears to conflict with any provisions of the California or United States constitutions.⁵⁷

However, once the superior court has the claim in court, the constitutionality of the Legislature’s bestowing jurisdiction on the court will depend on how the court hearing the case interprets the post-World War II series of treaties that were created in hopes of reconciling conflict and addressing reparations between Germany and its allies.⁵⁸ If the court hearing the case determines that the treaties only deferred the claims, then a court’s extension of the statute of limitations and hearing of the claims is not unconstitutional under either the California or United States Constitution.⁵⁹ However, if the court holds that the treaties subsumed individual claims permanently, no statute of limitations will exist to extend, and to hear the claims would be in direct conflict with the World War II reparations treaties; such would be a federal constitutional violation under the Supremacy Clause.⁶⁰

In addition, if the current international negotiations⁶¹ produce an agreement or treaty specifically barring claims made by individuals against private corporations, the future treaty will supersede all actions by the California Legislature to the extent that the actions are in conflict with the treaty.⁶²

54. *Greener* at 1034, 863 P.2d at 787, 25 Cal. Rptr. 2d at 542.

55. *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 288, 109 P.2d 942, 947 (1941).

56. CAL. CONST. art. XI, § 10.

57. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1245, at 9 (May 18, 1999); *see* U.S. CONST. amend. X (stating that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”); *supra* text accompanying note 38 (specifying the jurisdiction of the superior courts under the California Constitution).

58. *Supra* notes 18-21 and accompanying text.

59. *See* U.S. CONST. amend. X (declaring that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”); *supra* text accompanying note 40 (recapitulating the subject matter over which California’s trial courts have personal jurisdiction pursuant to the State constitution).

60. *See* U.S. CONST. art. VI, § 2 (mandating that “all Treaties made, or which shall be made, under authority of the United States, shall be the supreme Law of the Land, and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”); *see also* *Missouri v. Holland*, 252 U.S. 416, 434 (1920) (rejecting the claim that the Tenth Amendment and state sovereignty concepts narrow the scope of the treaty power).

61. *Supra* notes 22-37 and accompanying text.

62. *Supra* note 60.

B. *Personal Jurisdiction*

Personal jurisdiction is decided by a party's legal existence and its presence or other conduct in the state.⁶³ In California, courts may exercise jurisdiction over a defendant on any basis consistent with the constitutions of the State and the United States.⁶⁴ Due process permits state courts to assert personal jurisdiction over non-residents where "minimum contacts" exist between the forum state and the non-resident.⁶⁵ "To justify the court's assumption of jurisdiction, the defendant's activity must consist of some act or transaction in the forum state 'by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'"⁶⁶ Nevertheless, if the contacts of a non-resident defendant with the State of California are "substantial, continuous, and systematic," a court will have general jurisdiction over the defendant, even for completely unrelated activities.⁶⁷

If the language in Chapter 216 with respect to jurisdiction is limited to subject matter jurisdiction only, the ambiguous language is irrelevant to the primary actions expected to be brought. Thus far, the defendants being sued in California are all doing business in California, and hence have subjected themselves to general personal jurisdiction in California through their continuous and systematic contacts with the State.⁶⁸ Should a defendant not have general or specific contacts with California, the California courts will not have personal jurisdiction over the defendant, because to claim personal jurisdiction in such a case would be inconsistent with the constitutions of California and the United States.⁶⁹

Once it finds contacts, a court must determine whether jurisdiction is feasible by balancing the burden to the defendant against the benefit to the plaintiff, coupled with the interest of the State in assuming jurisdiction.⁷⁰ The defendants in these cases are large, multinational corporations doing business in California.⁷¹ California is home to many of the plaintiffs, all of whom are in their sixties, seventies, and

63. *Greener*, 6 Cal. 4th at 1034-35, 863 P.2d at 787, 25 Cal. Rptr. 2d at 542.

64. CAL. CIV. PROC. CODE § 410.10 (West 1973).

65. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); *see id.* (declaring the "minimum contacts" standard to be satisfied when the exercise of jurisdiction over the non-resident does not offend "traditional notions of fair play and substantial justice").

66. *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 898, 458 P.2d 57, 62, 80 Cal. Rptr. 113, 118 (1969).

67. *Cornelson v. Chaney*, 16 Cal. 3d 143, 147, 545 P.2d 264, 266, 127 Cal. Rptr. 352, 354 (1976).

68. *See supra* note 7 (identifying the defendants in some California lawsuits, and specifying these defendants' contacts with the State).

69. CAL. CIV. PROC. CODE § 410.10 (West 1973).

70. *Buckeye Boiler Co. v. Superior Court*, 71 Cal. 2d 893, 899, 458 P.2d 57, 62, 80 Cal. Rptr. 113, 118 (1969).

71. *See supra* note 7 (listing the defendants, noting their size, and indicating that they do business in California).

eighties.⁷² One can legitimately argue that any inconvenience to the defendant corporations would be outweighed by the plaintiffs' interests in not having to return to Germany fifty years after the War, which would further refresh their gladly dampened memories. On the other hand, some argue that California's interest in opposition to Chapter 216 is high, because Chapter 216 will turn California's judicial system into an international court of justice, resulting in overloads and slowdowns.⁷³

C. *Forum Non Conveniens*

Once a court finds personal jurisdiction, it still has the discretion to apply the doctrine of forum non conveniens. The California doctrine of forum non conveniens states that after determining that the alternate forum is a "suitable place for trial," a court should analyze a number of private and public factors to determine if trial in California is appropriate.⁷⁴ The private interest factors are "ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses."⁷⁵ The public interest factors include "avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide the cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation."⁷⁶ One could plausibly argue that justice would be better served if World War II slave or forced labor actions were brought and tried in Germany, because such would provide easier access to physical locations where events took place. However, more compelling reasons exist as to why the suits should be tried in California; for example, having the suits in California would give increased access to witness-victims, would be less burdensome for the elderly survivors, and would be logical given the level of interest in this State.

D. *Reawakening Otherwise Time-Barred Suits*

Chapter 216 allows plaintiffs to bring "otherwise time-barred suits."⁷⁷ Statutes of limitations are more of a "legislative grace" than a "fundamental right."⁷⁸ They

72. *Supra* note 2 and accompanying text.

73. See SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1245, at 9 (May 18, 1999) (arguing that the policy provisions of the bill are potentially far-reaching, and questioning whether the California court system is equipped to handle all of the cases that may arise as a result of a World War II-era slave labor victims moving to California).

74. *Stangvik v. Shiley*, 54 Cal. 3d 744, 751, 819 P.2d 14, 17-18, 1 Cal. Rptr. 2d 556, 559-60 (1991).

75. *Id.*, 819 P.2d at 17-18, 1 Cal. Rptr. 2d at 559.

76. *Id.*, 819 P.2d at 17-18, 1 Cal. Rptr. 2d at 559-60.

77. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 1245, at 6 (May 18, 1999).

78. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 314 (1945).

are subject to a "large degree of legislative control."⁷⁹ Policies behind statutes of limitations include putting the adversary on notice and giving the defendant the right to be free of stale claims.⁸⁰

Because World War II survivors of slave and forced labor often have very painful memories, these memories are not likely to fade completely in their lifetimes⁸¹ despite the passage of fifty years.⁸² In addition, the defendants are certainly on notice as to the claims, as they are actively negotiating with the United States to prevent litigation, preferring to offer lump compensation from a common fund.⁸³ As the author of Chapter 216 states, the new law

sends a very powerful message from California to the U.S. government and the German government, who are in the midst of rather closed negotiations about a settlement. If the international negotiators want to avoid very expensive litigation by survivors as well as very bad public relations for companies[,] . . . they ought to settle Otherwise, this law allows us to go ahead and take them to court.⁸⁴

Chapter 216 has received much publicity, and regardless of whether the plaintiffs are successful in court, this law is an incentive for international negotiators and involved corporations to take World War II-era slave labor compensation seriously, and to work toward an expedient settlement that is agreeable to all parties.

Also, Chapter 216 may be criticized for dismissing the policy rationale behind statutes of limitation.⁸⁵ However, extending the statutes is within the realm of legislative power and is not a violation of a defendant's constitutional rights, barring preemption by a past or future treaty or agreement.⁸⁶

E. Impacts of Broad Policy Provisions

In passing Chapter 216, the Legislature expressed broad intentions of enacting additional policy as necessary to compensate any California resident who is a proven victim of World War II-era slave labor practices of any company

79. *Id.*

80. *Order of R.R. Tels. v. Railway Express Agency, Inc.*, 321 U.S. 342, 348-49 (1944).

81. *See generally supra* notes 2-11 and accompanying text (describing the difficult, and hence unpleasantly memorable, experiences of slave laborers in Nazi Germany prior to and during the Second World War).

82. *See Letters, supra* note 2 (indicating the ages of the victims).

83. *See supra* notes 22-37 and accompanying text (describing efforts to establish a fund and discussing negotiations between the German and United States governments to this effect).

84. Weinstein, *supra* note 12, at A3 (quoting Senator Tom Hayden).

85. *Supra* text accompanying note 80.

86. *See supra* notes 58-62 and accompanying text (discussing the Supremacy Clause, and indicating that a past or future treaty would supersede California law if a court found a conflict).

currently doing business in the State.⁸⁷ By establishing mechanisms to monitor State pension fund investments in corporations owing remuneration to victims of Holocaust-era slave labor, the Legislature may be suggesting the possibility of a divestiture bill, an alternative that has had serious financial ramifications on targeted corporations in the past.⁸⁸

V. CONCLUSION

If the courts ultimately interpret the series of World War II reparations treaties to stall individual World War II slave and forced labor claims against private corporations as opposed to simply barring them, then the Legislature presumably will have been within its rights in enacting Chapter 216.⁸⁹ However, if the treaties are interpreted to subsume individual claims, then the treaties themselves are in conflict with Chapter 216, and the new law is vulnerable to constitutional attack.⁹⁰

Chapter 216 reflects the California Legislature's commitment to securing compensation for Nazi slave labor victims.⁹¹ Assuming it is not preempted by the U.S. Constitution's Supremacy Clause⁹² due to a conflict with past or future treaties or agreements, Chapter 216 will put California and the United States in a better bargaining position to ensure that victims of World War II-era slave labor are represented as ambitiously as possible.⁹³

87. 1999 Cal. Legis. Serv. ch. 216, sec. 2, at 1854.

88. See 1986 Cal. Stat. ch. 1254, §§ 16640-50, at 4386-91 (exemplifying an occasion on which the Legislature used a divestiture bill as a means of taking a stance on the issue of apartheid in South Africa in 1986, which led to the withdrawal of billions of dollars worth of Public Employees Retirement System investments in companies that did business in South Africa).

89. *Supra* note 59 and accompanying text.

90. *Supra* note 60 and accompanying text.

91. 1999 Cal. Legis. Serv. ch. 216, sec. 1-2, at 1854.

92. *Supra* note 60.

93. Text accompanying *supra* note 84.