

# HOT LIST

## PRO BONO

A SPECIAL REPORT

## Relentless pursuit of justice for survivors

Undeterred by setbacks in court, Akin Gump takes Holocaust reparations to Congress.

BY ANDREW RAMONAS

In 90-year-old Leo Bretholz's battle against a French railroad, Akin Gump Strauss Hauer & Feld might be his last hope.

The firm is providing pro bono counsel to Bretholz and about 250 Holocaust survivors and their relatives in the United States seeking an opportunity to bring claims in U.S. federal court against Société Nationale des Chemins de fer Français, also known as SNCF. Bretholz and more than 75,000 people—mostly Jews—were transported by SNCF trains to Nazi concentration camps, according to Akin.

Holocaust survivors have brought suits in the United States against the company. But the Foreign Sovereign Immunities Act has shielded SNCF, which is owned by the French government. The 1976 law restricted suits that could be brought in U.S. courts against a nation or an instrumentality of a foreign government.

Akin is trying to take out SNCF's defense. The firm is lobbying Congress to pass legislation that would except from the statute rail-

roads that transported individuals to Nazi death camps. "These people do it because they want justice," said Bretholz, who escaped on Nov. 6,



**"OPTIMISTIC":** The Akin Gump team, from left: Geoff Verhoff, Raphael Prober, Keisha Vaughan, Patricia Millett and Francine Friedman represented Holocaust survivors seeking reparations from France's national railway.

1942, from an SNCF train headed for Auschwitz. "That will be their reward. That will be my reward."

Akin began its pro bono representation of the Holocaust survivors in 2005. Since 2009, some 50 Akin lawyers and staffers have spent about 2,800 hours on the matter.

The focus of Akin's work last year was the Holocaust Rail Justice Act, first introduced in 2003. The bill, which Rep. Carolyn Maloney (D-N.Y.) and Sen. Charles Schumer (D-N.Y.) reintroduced on March 17, has Republican and Democratic co-sponsors, totaling 44 in the House and 16 in the Senate.

Akin counsel Raphael Prober, who leads the firm's Holocaust team, said he and his colleagues were "very optimistic" about the chances the legislation would pass both houses of Congress before they adjourn in January 2013. "Everyone is acutely aware that time is very much of the essence," he said. "The survivors who we represent are in their 80s and 90s. And everyone really understands that now is the time this has to get done."

Rep. Ilena Ros-Lehtinen (R-Fla.), chairwoman of the House Foreign Affairs Committee and a co-sponsor of the bill, in November held the first congressional hearing on the legislation. With Bretholz looking on, Maloney said during the hearing that she and her House colleagues have "worked tirelessly" to move the measure forward.

"This legislation is necessary because there is absolutely no other recourse for these survivors and no other way for them to pursue justice," she said. "These survivors have simply fallen through the cracks."

Although SNCF has apologized for its role, the company has made no restitution to Holocaust survivors.

It claims that the Nazis forced it to transport Jews and other individuals.

Holocaust victims have pursued claims against SNCF in U.S. federal court twice since 2000. They most recently sought in 2006 in U.S. district court in New York the recovery of property and money they or the family members were ordered to give up at French holding facilities before they boarded the trains.

The plaintiffs asserted standing through an exception to the Foreign Sovereign Immunities Act that allows suits against foreign entities if property was taken in violation of international law and is located in the United States through commercial activity conducted in the United States or in the possession of an entity that does business in the United States.

### HANDSTIED

Although SNCF does business in the United States, the Holocaust victims failed to persuade U.S. District Judge Richard Sullivan that the company now owns property taken from the victims, as NLJ affiliate *New York Law Journal* reported. But even if the plaintiffs could prove their case, Sullivan said, his hands would be tied; the United States and France agreed in 2001 to resolve any claims stemming from World War II out of court.

The Holocaust victims appealed to the U.S. Circuit Court of Appeals for the 2d Circuit, but it upheld the lower court. They then filed a cert petition, which the U.S. Supreme Court denied in October.

Members of the Akin team handling the Holocaust matter aren't deterred. Helping the Holocaust survivors is an "incomparable experience for a lawyer," said partner

Patricia Millett, who worked on the cert petition. "We have a lot of great clients with a lot of great issues," she said. "But cases like this really remind you why you went to law school."

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