

## INSURANCE AND DANGEROUS POLITICAL PERVERSITY

Gerald D. Feldman, *ALLIANZ AND THE GERMAN INSURANCE BUSINESS 1933-1945*  
(Cambridge University Press 2001)

Reviewed by Michael Sean Quinn\*

This is a business and social history of one of the largest insurance companies in Germany roughly during the Hitler years. The book has much to teach. Most of the law-oriented lessons are of a general, more or less political nature, and many of them are indirect. In the interstices of the data and narrative, however, is very interesting information about purely insurance matters. For example, the book illustrates the idea that techniques for reading insurance policies and related documents do not change much from age to age or area to area. Matters pertaining to insurance, politics, and society are a different matter, of course.

The book focuses, as the title indicates, on the Allianz group of companies and their leaders. The title suggests that the history will run from the early 1930's to the mid-1940s. In fact, it starts before then (although the treatment period of the pre-Nazi is cursory), and it goes on after the end of World War II by considering issues of denazification and restitution. Of course, the book does not discuss the growth of Allianz into one of the world's leading insurers after the Second World War—an outfit which merged with the Dresdner Bank recently, has its own sophisticated Center for Corporate History,<sup>1</sup> and which routinely carries huge, colorful ads in leading publications the

world over.<sup>2</sup>

Feldman's book is long (well over 500 pages), complex, deep, expansive, subtle in its moral judgments, and mostly well-informed about the business of insurance. On the other hand, the volume is written in academic English. The prose is as complex as the story told. The book is a slow read, as a result, and there is not much exciting about it. Some might say that business history is by nature dull. Perhaps this is so, but it is surely not as dull as most legal history. Then again, this book involves aspects of both, although the emphasis is on business history.<sup>3</sup>

The author of *ALLIANZ AND THE GERMAN INSURANCE BUSINESS*, is Chancellor's Professor at the University of California at Berkeley in the Department of History. He is also the Director of the Institute of European Studies at the same university. One of Feldman's previous books, *THE GREAT DISORDER*, received international prizes for European history.<sup>4</sup> He writes for and lectures to not only other academics but also to serious policy conferences, such as the London Gold Conference in 1997<sup>5</sup> and the United States Conference on Holocaust Assets in 1998.<sup>6</sup> It is important to know, given the balanced judgments Professor Feldman provides, that he identifies himself

1. See

2. For example, Allianz bought a two-page full-color ad in the *BUSINESS WEEK* for May 20, 2002. That spread, featuring father and son at a beach states that *Wherever you are, whenever you need us, Allianz Group is always there for you.* Allianz describes itself as *Europe's leading global insurer and provider of financial services.* The ad trumpets Allianz as *THE POWER BESIDE YOU.*

3. Feldman's discussions of litigation are always abbreviated and not of much interest to the lawyer who cares about litigation history. There are simply not enough details. This is true of both insurance disputes and business disputes. For example, a major lawsuit involving what we would know as antitrust, unfair business practices, and defamation gets only a paragraph and it is extremely difficult to see what happened.

4. The full citation to this book is Jerald D. Feldman, *THE GREAT DISORDER: POLITICS, ECONOMICS, AND SOCIETY IN THE GERMAN INFLATION, 1914-1924* (Oxford University Press 1993). It is a systematic study of inflation as an instrument of policy, especially "social pacification." Professor Feldman has published ten books in all, nearly 90 essays and articles, and some 60 reviews. Most of them are about business history in Germany.

as Jewish.<sup>7</sup> He also dedicated the book to the Jewish employees of Allianz.

Given the scope and thoroughness of the book, this review is not the place to provide a comprehensive summary. Generally speaking, however, the book involves four grand focal points: (1) insurer-governmental relationships during the Third Reich using Allianz as an illustrative case,<sup>8</sup> (2) the strictly business aspects of insurance, such as financial growth, new geographical markets,<sup>9</sup> investments opportunities, investment limitations, consolidation, mergers, takeovers, the management of reinsurance markets in a world at war, and finally, the continuing controversy in German business between so-called "private" insurance companies (which were stock companies) and so-called "public" insurance companies (which were much more like mutuals and which were often folded into their politically approved entities, such as municipalities, fraternities of farmers, workers groups, and so

forth),<sup>10</sup> (3) the biographies of significantly senior officials in the Allianz companies, and (4) more purely insurance-contract matters.

Obviously, these matters mix together in various ways. The Nazi state, for example, controlled interest rates very tightly and required, after a certain point, that a substantial fraction of insurer assets be in government bonds. In addition, the Third Reich bestowed upon itself the unilateral right, retroactively, to alter insurance contracts. (So much for the rule of law as applied to insurance!)

Obviously, not all of these matters can be described and discussed here. There must be some discussion, obviously, of relationships between Allianz and the Third Reich. (See § II.) Given the journal publishing this review, however, it seems most appropriate to focus on the last category: issues of insurance surrounding the contracts themselves. The goal here will be to indicate some of the types of insurance policies Allianz issued, the growth in these

5. This conference concerned "how much gold was stolen, where it went, and what should be done about it, including using assets of the Tripartite Gold Commission (TGC). The TGC was formed in 1946 by the United States, Britain and France to deal with recovered gold the Nazi's had seized from the national banks of occupied countries. Since 1946, the TGC has distributed gold and assets to 15 countries whose national banks were alluded during World War I I .... About 5.5 tons of gold, worth \$60 million, remained to be distributed. TGC officials recommended that these countries contribute their portions of the remaining assets to survivors of the Holocaust. [¶] At the London conference with International Fund for Needy Victims of Nazi Persecution was established for Holocaust survivors and their heirs. The United States pledged initial \$4 million, with the hopes that Congress would approve an additional \$25 million over the next three years." ( )

6. For information on this meeting summarized, see *Holocaust Assets Conference Resolves Thorny Issues*, JEWISH BULLETIN OF NORTHERN CALIFORNIA ONLINE (December 11, 1998) ( ). For an insurance-specific discussion see the speech of Under Secretary Stuart Eizenstat, *The Need for Others to Join the International Commission on Holocaust Era Insurance Claims* (December 2, 1998). ([http://www.state.gov/www/policy\\_remarks/1998/981202\\_eizenstat\\_ins2.html](http://www.state.gov/www/policy_remarks/1998/981202_eizenstat_ins2.html)).

7. Another significant source of information on insurance matters related to the Third Reich is the website of the so-called "Volker Commission," the actual title of which is "The Independent Committee of Eminent Persons." The website is . The focus of this Commission's activities is upon Swiss banks. Interestingly and ironically, Arthur Andersen was one of the auditors utilized by the Commission.

8. Feldman sees himself as contributing to the historical literature on business-governmental relationships during the Nazi period. See Jonathan Steinberg, *DEUTSCHE BANK AND ITS GOLD TRANSACTIONS DURING THE SECOND WORLD WAR* (Munich 1999), Lothar Gall, et al., *THE DEUTSCHE BANK 1970-1995* (London 1995), Mary Nolan, *VISIONS OF MODERNITY: AMERICAN BUSINESS AND THE MODERNIZATION OF GERMANY* (1994), Volker Berghan, *THE AMERICANIZATION OF WEST GERMAN INDUSTRY 1945-1973* (1985), and Henry A. Turner, Jr., *GERMAN BIG BUSINESS AND THE RISE OF HITLER* (1985). See also a significant number of German sources listed in Feldman's "Secondary Literature" bibliography. Interestingly, the Third Reich and significant figures therein (such as Hitler himself) bought insurance from Allianz. Much of this insurance was neither exotic nor in anyway unusual. Hitler, for example, insured his country estate with Allianz until Allianz cancelled the insurance. One wonders why that happened. Some of the other policies are more strange. For example the SS ran factories in many of the concentration camps. These were often insured by Allianz, as were SS vehicles and similar equipment. Curiously, insurance underwriters required safety improvements in some of these factories before they would issue insurance. The camps themselves, as government property, were not insured.

9. Allianz followed the German army into a number of parts of Europe with—from a business point of view—mixed success. After the war began, it tried to replace Lloyds in some areas of insurance—without much long-term success. Allianz had extremely interesting and difficult relations with Swiss Re, as a result of German militarism.

10. It should be remembered that Nazi ideology was socialistic in certain ways. So-called public insurance organizations fit better with socialistic ideas that stock companies do. Public insurers in the German sense are not the same as publicly-held companies as they are thought of in this country.

areas during the period, some of the litigation that came up surrounding insurance policies, and so forth. There will also be an emphasis on aspects of one incident where all of the main foci of the book come together in a potentially massive contract dispute, or group of disputes. The incident is the so-called "Night of Broken Glass," which occurred on or about November 10-11, 1938 and which had substantial insurance ramifications. (See § III.)

Feldman's book nicely illustrates the plentiful ways in which insurance, society, the economy, individuals, and the state can mix together. The particular mix in Germany under the Third Reich was, of course, perverse and ultimately disastrous. Nevertheless, the history of this period hints that and the insurance function and the law do not—and perhaps cannot—match up perfectly. Lawyers certainly do not understand this. (See § IV)

Next, there will be some discussion of a moral problem which the book raises for people like those who write for this journal and others like it. To be sure, the discussion comes up in the context of Feldman worrying about his own moral problems as a historian, but his worries are also ours, though—as it were—in a slightly different key. We also have a worry he does not (and academics in general do not). (See § V) Finally there is a short conclusion. (See § VI.)

### **I. Allianz the Company**

Allianz Insurance Corporation was founded in 1890.<sup>11</sup> It was, in effect, a daughter company of Munich Reinsurance Company, founded in 1880. Allianz was originally licensed to sell transportation and accident insurance, plus reinsurance for policies involving life, accident, fire, and transportation insurance.

Its transportation insurance line—which at that time must have been marine insurance, what is now called inland marine (including cargo) insurance, and railroad coverage—began with an interesting twist. Apparently, Allianz early emphasized the insurance of valuable personalty and gold. This speciality probably

started as high-end cargo insurance. It also had early involvement in machine insurance,<sup>12</sup> got involved in burglary and theft insurance, and eventually added liability. Within ten years, Allianz was a significant player in insuring major financial institutions in western Europe. It subsequently spread into all sorts of insurance activities. These included occupation (including what we know as worker's compensation) insurance, building and contents insurance itself (as opposed to reinsurance), animal policies (which is a form of property insurance), life insurance, weather (such as hail) coverage, and vehicular insurance. There is no discussion of divisions between primary and excess coverage, although reinsurance is superficially discussed from a business—though not legal—standpoint.

Allianz had a long history of acquiring other insurance companies. Once, during the early Nazi period, it was famously involved in taking over another large insolvent German insurance company, Frankfurter Allgemeine Versicherungs ("Favag"). The collapse and reorganization of this company was apparently a major business scandal at the time. (Feldman indicates that this series of transactions led to serious litigation. Unfortunately, he does not describe it; he only alludes to it.) Allianz acted as a savior company in at least two other major insurance insolvencies, one also involving a very interesting Austrian scoundrel at the center.

Allianz never restricted its activities to Germany or even Europe. Along with Munich Re, it had some early losses in the San Francisco earthquake of 1906. The losses of Munich Re's were much larger, and Allianz had only a very small fraction of the total loss. "The San Francisco earthquake," however, "was an important test of the strength of the German insurance business and there was one from which Munich Re (which was especially hard hit) and Allianz emerged very successfully and learned important business lessons about premium levels and risk sharing." By 1914, Allianz was Germany's largest direct writer of property insurance.

After the First World War, Allianz expanded into all

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11. "Allianz's names was changed often over the years. founded in 1890 as the Allianz Versicherungs-Aktien-Gesellschaft (Allianz Insurance Corporation), it was renamed the Allianz und Stuttgarter Verein Versicherungs-Aktien-Gesellschaft (Allianz and Stuttgart Association Insurance Corporation) in 1927; in 1940 it returned to the old name Allianz Versicherungs-Aktiengesellschaft."

12. There is no reference anywhere in Feldman to boilers. Nor is there any reference to construction insurance, such as builder's risk or surety bonds.

sorts of new forms of insurance. Of particular significance was auto insurance, although flight insurance was also important. Allianz did not restrict itself to transportation. After the Revolution of 1918, it also began selling civil commotion insurance separately from the general property policies. (It is important to recall—although Feldman does not highlight it—that the politics in Germany at the end of World War I approached anarchy in many places. Communist party agitations also posed a significant worry.)

There was never a time, during the first half of the Twentieth Century, when Allianz acted genuinely by itself. “Fundamental to the great period of expansion [running from 1918 through the middle of the Second World War] is Allianz’s intimate relationship with Munich Re. On April 15, 1921, Allianz and Munich Re concluded a joint contract and restructuring and deepening the relationship between the two companies.” In addition, one of the most important leaders of Allianz, Kurt Schmitt (1886-1950) started at Munich Re, returned after serving as Economics Minister in the Third Reich briefly, and stayed close to the company for the entirety of his career. This pattern is typical. In reality, if not in actual employment relations and titles, Allianz and Munich Re had nearly what we would now describe as a two-way revolving door.

Before the Nazis took over the German economy, Allianz was truly a cosmopolitan company. It was progressive in the way that it treated its employees. It learned what was valuable in other markets. For example, American insurers were ahead of German insurers in the use of up to date office machinery, and Allianz went out of its way to learn how to adapt this skill. Allianz was also concerned with both foreign trade and foreign exchange, so it tried to position itself to mitigate the irrational monetary dictates of the Hitler government. Moreover, in early years, many at Allianz attempted to resist virulent anti-Semitism, although—as the years went by—Allianz’s record in this matter was substantially less than perfect.

Feldman reprints a letter from Schmitt, for example, which in effect contains the familiar doubtful disclaimer, “I am no anti-Semite, but . . .” (How often have we heard discourses begin in this country, “I am no racist, but . . .”) Schmitt goes on to describe behavior of certain people in the Favag litigation consequent upon Allianz’s taking over that bankrupt insurance company. He describes how some of the Jewish lawyers encountered in this process were “loud, frivolous, and presumptuous, beyond all measure.” They were also exclusive, he wrote, in the sense that they associated only with Jews. Finally, they were pushy, he said. Schmitt remarked that the type he was describing, was “very strongly represented in the legal profession.” Part of what Schmitt complained about was how bluntly and perhaps harshly he was dealt with, how he was attacked while acting as a witness (rather like someone truly in the dock), he said, and how the lawyers “road roughshod over the interests of other people with cold-bloodedness and cynicism.” One could almost believe that Schmitt’s slurs are the misdirected products of his frustrating dealing with litigators—many of whom (apparently, also in Germany) think that being harsh is effective—rather than any particular ethnic group. Schmitt himself acknowledges that, “[t]here are Christians who are second to none in what has been described[.]” Generous interpretive options suffer, however, from the fact that Schmitt also suggests that Jews in the banking field were “too strong and too loud and also [had] an unhealthy influence. A certain pushing of them back and holding them to great modesty can only be desired and good.” As far as the comments about Jewish lawyers, Schmitt records that Jewish friends of his confirm his opinion. (Of course, this is the same kind of remark one often hears in racist discussions, “Some of my best friends are black,” or words to that effect.) Possibly, Schmitt’s observations were class based.<sup>13</sup>

With regard to the treatment of Jews, the performance of Allianz is, from beginning to end, inconsistent, paradoxical, and puzzling. Early in the

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13. Schmitt’s remarks may simply have been based on the way many lawyers must in fact behave themselves. On necessity, there is a certain cold-bloodedness about litigation lawyering. When witnesses are lying, exaggerating, trying to stay away from a subject, some prodding is often necessary, and that prodding cannot always be genteel, and it cannot always be civil, at least according to some. This conduct may be especially at home in insolvency-based litigation. My anecdotal experience is that depositions in bankruptcy cases are often tendentious games of hide and seek. Friends tell me that insurance insolvency litigation is often no different.

Third Reich, Schmitt served as Economic Minister and wore an SS uniform in public with apparent pride. At the same time, "he thoroughly and consistently disapproved of the attacks on Jewish business colleagues and the already visible efforts to drive them from German business life." He was often seen in public with Jewish executives, to the consternation and dismay of Party faithful. To some extent, Allianz tried to protect many of its Jewish employees.

In sum, Feldman believes that Schmitt, and many like him, suffered from lapses and blindnesses which amounted to culpable "cognitive catastrophes" which led them to fail to understand what they were getting into. Schmitt was not a great reader, for example, and he had unquestionably not delved into *MEIN KAMPF* at any length. Many like him, may have been shrewd insurance executives and entrepreneurs, but they lacked analytical political intelligence, not to mention depth. They failed to see that, for example, "the SS was certainly not the Rotary Club and the uniform [of that organization] was not exactly a business suit."

Schmitt did not last as Economics Minister for very long. The publicly stated reason for his departure was health. After he left that post, he ended up as a general director at Munich Re. Later, Schmitt turned down an offer to become Ambassador to Great Britain, supposedly for health reasons, but probably because he could not stomach the Third Reich. Other Allianz executives had to deal with the government and the Party on a regular basis for many years. Some of them got pretty good at it, although none appeared to like it much.

## II. Insurance and Aryanization

Insurance companies, the world over, create contracts, standardize them, negotiate modifications or deviations, receive premiums, invest money, deal with claims, and try to both organize and run their businesses. In theory, insurance companies try to make claims determinations in accordance with contract language, standard practice, applicable, and industry custom (with contract language finishing first).<sup>14</sup> Broadly speaking, this observation is true the world over. There is a sense in which sound insurance

practice presupposes the idea that people (read: insureds) should be treated equally, in accordance with contract terms only, and fairly. These ideas appear to have been the starting point for Allianz. Thus, there is a correspondence between liberal economic theory, the ideology of capitalism, and the essence of insurance, so long as it is clearly understood that the relationship between insurer and insured is not equal in every respect and so long as modifications are made to protect parties to insurance contracts from their inherent inequalities.

The political situation in Nazi Germany complicated things vastly, partly because the state wanted insurance decisions made their way and partly because the regime repudiated the normative foundations of sound insurance practice. As the Third Reich evolved, the government and the Party became more and more determined to pervert the idea of fidelity to contract, and simply to try and have things their way. At least at first, Allianz resisted this idea—especially when it was to the company's advantage. Consider for example the blood purge of June 30, 1934. Hitler, Goebbels, and Göring moved against the SA and instigated the murder of Ernst Röhm, other SA leaders, and some functionaries as well. The Nazi party tried to collect accident insurance covering two of the victims of the purge, although it tried to do so in the names of their survivors.

The general counsel of Allianz refused on the grounds that they [the victims] were subjects of an *execution, not an accident*. He did so despite warnings that as a member [of the Nazi party] he stood under the jurisdiction of the Party of the Nazi Lawyer's Organization as well. Other cases, [this general counsel] also resisted pressure from High-Party officials. Apparently, [this man] was so incensed with Nazi attitudes toward the law that he wanted to resign from the Party in 1935 but [another Allianz executive], who feared that [the general counsel] would also announce his reasons, warned him that such a step would be damaging both to himself and the concern. The result, [the general counsel] remained in

14. The phrase "industry custom" here means both customs in the insurance industry and customs in the insured's industry (such as the construction industry).

the party but was having difficulties during the war with the Gestapo and other Nazi agencies because of his protection of politically suspect persons and employees with Jewish spouses, although . . . he was not always as fastidious about legal niceties as was later claimed. [Emphasis added.]

This passage starts with sound insurance reasoning, and the Allianz lawyer had the right emotional reactions.

The aryanization of the insurance industry took several forms. The Nazi Party tried to drive Jews out of the insurance business. Many organizations would not buy insurance from any company that was unwilling to certify that it had no Jews employed by it. This boycott included insurance executives, underwriters, claims people, clerical workers, and agents as well. Another form of aryanization was to insist on the idea that no insurance assets be invested in Jewish businesses. In addition, there were attempts by the government and the Party to expropriate insurance claims proceeds by means of various deceptive devices.

Radical Nazi theorizing tried to romanticize insurance to separate it from capitalist ethics entirely. This outlook was probably articulated most clearly by Franz Schwede-Coburg, who was close to radical Nazis, who wished to socialize and nazify insurance, and who contended repeatedly for supervisory positions in the government over insurance. "In Schwede-Coburg's view," according to Feldman,

the purpose of insurance was to protect the German people against the consequences of accident, disaster, and other harms and to serve as the trustee of the premiums paid for this purpose—not to act as a gathering point of large amounts of capital. By collecting capital in the manner in which it had insurance 'had completely alienated itself [wrote Schwede-Coburg] from its purposes and become a milking cow for large shareholders and a pile of directors and general directors. . . . The cancerous evil of this insurance system [i.e., the capitalist system], however, is above all that in order to earn the sums an organization has to be built up that no longer stands in any relationship

to the economic purpose of insurance.'

Feldman rightly describes this outlook as a "ferociously anti-capitalist approach" and contrasts it to the "liberal position" of Schmitt and other Allianz executives, although their true position had to be "veiled in politically correct language." Feldman's description of the ideological context of insurance politics reflects these problems:

Clearly, the battle over the future of the German insurance system was ultimately a struggle between the radical wing of [the Nazi party]—who thought themselves social reformers and wished to revitalize anti-liberal as well as various eugenic and racial programs—and the business men who had come to terms with the regime but usually had an entirely different vision of the world and continued to hope that the regime could be bent to their purposes, or at least be made more rational."

This argument continued throughout the period.

### III. Night of Broken Glass

Allianz faced a number of historically interesting coverage decisions during the period. German politics created some of the problems. The war created others. Insurers, under their policies, were not liable for property damage caused directly in the course of military operations, but indirect property damage associated in various ways with military activity was much more difficult to deal with. There seemed to be a consensus, for example, that routine losses incurred during war-caused blackouts were not to be considered war damages whereas damages incurred in defense against enemy air attacks were. Obviously, this consensus leaves a huge undecided middle ground. Needless to say, these issues became much more complicated as the war progressed.

The situation created by the war was not an unmixed curse for insurers. In particular, Allianz "increased its intake of premiums substantially during the war: above all fire insurance on industrial facilities and transport." Still, at the beginning of the war, private vehicle insurance dropped sharply. However, "there was a growth in premiums paid for vehicle

transport after December 1941, thanks to the high volume of transport in the occupied areas and in Southeastern Europe.” (Allianz was extremely active in Southeastern Europe.)

Probably, from a historical and sociological point of view, the most interesting and revealing insurance coverage problems arose out of Great Pogrom which is also known as *Reichskristallnacht*. In 1938, Nazi persecution of Jews was in half-swing with much more yet to come. On June 17, 1938, the head of the Economic Group for private insurance, at a meeting of the advisory counsel, indicated that the so-called “Jewish Question” was picking up steam again. He indicated that the Hitler Youth was likely to take action against Jewish property. He stated that he personally would not insure anymore Jews. Insurance company representatives told him that the Hitler Youth needed to think again, since there were still many property policies in place covering Jews, and they could not be simply terminated. The director of a glass insurance company was particularly vocal in this regard. Others pointed out that so long as Jewish commercial property was insured, defacing it and smashing up the glass could serve no useful purpose. “Non-Jewish Germans would have to pay in the end—and worse yet, most of the glass came from abroad[,]” thereby causing conflict with governmental policy regarding foreign exchange. Someone else at the meeting—a hotheaded, ignorant Nazi ideologue—suggested that insurers simply turn down all such claims, but the insurers recognized that this was not a real answer. In addition, the glass insurance companies had additional problems. It was customary “glass insurers to replace the broken glass for their customers rather than make cash payments,” but this practice made very little sense since if the Hitler Youth would simply strike again.

Shortly after the June 17th meeting, the *Judenaktion* which had begun somewhat earlier heated up in earnest. During the interval between June 17 and June 21, 2000 Jews were arrested for such minor “offenses as jaywalking. These arrests were accompanied by renewed breaking of Jewish shop windows, along with the plundering of shops, while police failed to provide adequate protection.” A stop was put to this “action” at a precise time on June 22. There was some concern about negative attention abroad and the impact of an “action” like this on tourism.

These events were but a rehearsal for the events

of November 9-10, 1938. On November 7, 1938, a Polish Jew shot a German official in Paris, who died on November 9th. As a consequence, Hitler decided to release a “spontaneous” action in response to the assassination. It became the “Night of Broken Glass.” It was a

Party and SA orgy of vandalism, burning, looting, and sadistic mistreatment of Jews throughout the Reich that led to the destruction of several hundred synagogues and 7500 businesses, the murder of at least 91 Jews, and a wave of arrests in which 30,000 Jews were dragged away for usually brief but terrifying incarcerations in concentration camps, thereby producing further deaths and suicides.

The first reaction of the Party was that insurance companies were not to *pay* anything. Subsequently, it was ordered that the Jews were not to *receive* any insurance compensation. In what is perhaps the largest understatement in a uniformly restrained volume, Feldman remarked that “[n]eedless to say, the leadership of the insurance business was also well aware that the fire, glass, and especially burglary and theft branches had a problem on their hands.”

Most of the property insurance policies issued to Jewish merchants probably did not include civil disturbances within the perils covered. If the insuring agreements of some of the policies were formulated in general terms, it is almost certain that riot, civil commotion, and civil disturbances would have been excluded. Such was standard in insurance policies, then and now. Moreover, it is not quite clear that what happened was a civil disturbance, or riot, in the usual understandings. For one thing, riots are usually directed at the government, not by it. For another thing, true riots are not organized by governmentally sanctioned paramilitary units. They are usually much more spontaneous and much more disorganized. No one is really calling the shots. If that is true, then the street actions of 1938 would be much more like governmental condemnations than they would be like anything else. Needless to say, thoughtful insurance executives were puzzled. They were also frightened. A truthful analysis of the situation would require out-and-out attacking the government.

So here was the situation in a nutshell. The

government wanted the Jews who had suffered property damage to receive no compensation. In addition, the government did not want insurance prices to Aryans to rise as a result of *Kristallnacht*. At the same time, the government was ravenous for money.

Moreover, the government had an awkward position on its hands. On April 20, 1938, the Reich Supervisory Board for Insurance affirmed that it was conceptually inconsistent in a National Socialist state for insurers to market riot insurance because such states of affairs were impossible in the National Socialist society. Indeed, the Supervisory Board had wanted to eliminate all reference to the term "riot" and related terms from insurance contracts, since such states of affairs could not possibly exist. This suggestion was not adopted because of insurer resistance, ostensibly based on the need to take foreign business into account. Nevertheless, the proposed decree remained under discussion. As a result, it was awkward openly to claim that the events of November 9-10 were a civic disturbance and outside coverage. Leaders, such as Goebbels, who were the very ones to instigate the attack had decreed "civic disturbance no longer existed in National Socialist Germany."

To create even more difficulties, "government officials were in a position to exercise dictatorial authority with respect to the payment or non-payment of insurance claims." [Section 81a] of the Reich Insurance decree gave the government the power to set aside existing clauses in the general insurance conditions if it deemed such actions "in the public interest." As a result, insurance companies were not in a position to make, fair, contract-based decisions. Consequently, the insurance companies would have to negotiate with the government and the Party at least as much as they would have to negotiate with policyholders. In addition they would have a much weaker position.

Governmental leaders, for their part, were faced with a dilemma. If they decreed that the insurance companies pay, then Aryans would be paying for Jewish damages. Göring, for example, "argued that not only [does the] destruction of a Jewish store not hurt the Jew (since insurance covered the damages), it also destroyed goods meant for consumption by the people." Göring wanted the government's propaganda machine to make it perfectly clear that insurance

companies, not Jews, suffered from riotous activity. In addition, Göring intended to issue a decree, based on his plenary power, to relieve the insurers of having to pay compensation. His view "was, of course, in full conformity with Hitler's decision that the Jews receive no insurance payments[.]" Nevertheless, Göring had an insatiable thirst to foreign exchange, and he believed most of the damages were covered by foreign reinsurance and hence not really injurious to German insurance interests. He therefore wanted to devise a program he could get the insurance companies to pay somebody so he could lay his hands on other foreign exchange. "The question of how German insurance companies could be spared payment of Pogrom damages while foreign reinsurance companies continued to pay their share was a mystery concerning which Göring was apparently oblivious." Naturally, officials of Allianz, and other insurers, tried to educate him. The way they tried to do it was by distinguishing between rental property, which did not belong to Jews--and this was often the case with Jewish stores--and really Jewish property, such as inventory. As the insurance officials pointed out, most of the glass insurance was for property owned by Aryans, since the Jewish merchants were usually only renters.

Throughout this entire controversy, senior government decision-makers, such as Göring, simply could not get clear about the fact that there was no separate coverage for civic disturbance and tumult and that in many property policies, when there was coverage included in the insuring agreement, the coverage was excluded. Although Feldman does not discuss the matter, it looks like most of the insurance policies at issue were name peril policies. Consequently, unless there was specific coverage for riots, or something like them, included in the insuring agreement, it would not be necessary to exclude them from coverage, since they would never be there. In some cases, however, it might also be necessary to exclude coverage for riots, for example if there was a broad insuring agreement. Apparently, such exclusions were common. In any case, one of the main enterprises of the insurance executives in this debate was to try to educate the government as to the way insurance policies conceptually worked. They appear to have made little headway.

During the course of these dialogues, government officials, led by the ever thoughtful Reinhard

Heydrich, suggested either that insurance companies pay what they owe to Jewish insureds and then the money would be confiscated or that the middle step (i.e., paying the insureds) be avoided by the government simply ordering the insurance companies to pay the Finance Minister, rather than the insureds. As pure history, one of the weakest sections of Feldman's book is his attempt to figure out, from fairly flimsy evidence, whether officials of Allianz embraced this idea or rejected it. The argument hinges on who said what to whom in response to what at a particular meeting. Indeed, Feldman's argument rests upon the intent behind a single word, "Aha!". The discussion is reminiscent of some legal arguments one would just as soon forget.

In the end, the government came up with a series of devices to lay its hands on whatever insurance money there was. For example, shortly after the Great Pogrom, the government enacted the "Decree for the Restoration of the Appearance of the Streets Around Jewish Enterprises." It placed the burden of cleaning up and repairing damages on the Jews, and, to do the job, it "mandated confiscation by the State of any insurance to which Jews of German citizenship could make claim."

A second, vaguely similar decree, imposed an "atonement tax" on Jews of German citizenship. It ordered that all such Jews with assets in excess of a certain level be obligated to pay 20% of their assets in four payments to the government. Especially significant for the insurance question was §7 of the implementation decree, which provided that "insurance payments in connection with the Pogrom to Jews with German citizenship and stateless Jews were to be made directly to state revenue offices and to be credited against any levy on their assets. Insofar as such payments exceeded the latter, however, they were to be confiscated by the Reich anyway." Lastly, the government enacted the "Decree for the Exclusion of Jews from German Economic Life." This decree excluded Jews from "owning or running any enterprises after January 1, 1939." That decree "promoted a massive repurchase of Jewish life insurance assets and ultimately raised the question whether Jews were insurable at all."

The general counsel of Allianz, referred to earlier, began to respond to the government by narrowly defining the relevant damages under the confiscation decrees. He took the position that the decrees

covered only damages that "directly affected the appearance of the streets and involved businesses and homes." Thus, he took the position that damages to the interiors of homes and businesses did not fall within the decrees. A similar view with respect to §7 of the Implementation Decree. In the view of Allianz's lawyer, §7 "did not establish liability but only stated that, if liability existed, then insurance payment was to go to the revenue office and to be counted in the atonement tax payment. "That raised the central question: *Did the insurer have liability?* The answer was negative, said Allianz, and it gave three reasons.

The first argument was based on the decision of a German court 1923. In that case, a mob was angered by Germany's sinking of Brazilian ship in April 1917. The mob stormed and destroyed various German businesses. The businesses claiming damages from the insurance companies argued entitlement to compensation under the insurance contracts "because the disturbances were not directed against the Brazilian government or officials [and so did] not qualify a civil disturbance." German court rejected that view and ruled that "a civil disturbance existed when 'portions of the populace, which do not have to be considered numerically insignificant, set in motion in a way that disturbs the public peace and order and exercise violence be it against persons, be it against things.'" So, precedent was Allianz's first argument, in effect.

A secondary argument suggested that Great Pogrom was an *elementary event*, like an earthquake, for which there could be no coverage. American lawyers know this as argument by analogy.

As a tertiary argument, lawyers for Allianz, and other insurers, turned the government's theory on its head. Positing the well-known insurance principle that a policyholder should not profit from his own deliberate wrongdoing, it argued that the government had said that the Jewish community *as a whole* was responsible for the Paris assassination. Thus, the government had pronounced that all Jews were guilty of murder. So, argued the insurers, they should not be entitled to get insurance compensation for property losses caused by their crimes. It would be "a violation of good morals" for insurers to pay property losses to "those who had been found guilty of a crime: 'the active reprisal against the Jews has the character of a punishment approved by the State. It would contradict the general sense of justice in the

highest degree if the German insurance companies would have to remove this atonement and place it upon the Jews.” American lawyers would recognize this as an argument from public policy.

Feldman correctly diagnosis the “logic” of these miserable collateral arguments. They are:

[a] monument to sophistry and perversion of business and personal ethics that were coming to characterize businessmen like [those in senior positions at Allianz] in the pursuit of their interests under the conditions created by National Socialism. That said, it is important to recognize that the issue was not one of paying damages to Jews, since direct insurance payments for Pogrom damages to Jews were manifestly out of the question.

In other words, by utilizing the secondary and tertiary arguments, the insurance companies are trying to get out of making a payment, but they are not trying to escape making payments to those who actually suffered property losses. They are simply avoiding having to pay the Nazi government. Nonetheless, observes Feldman, the insurers

Did not shy away from reinforcing their position by arguing that insurance company liability would detract from the punishment being visited upon Jews. Promoting the ethicacy of anti-Semitic measures was thus an integral part of their argumentation against insurance company liability[.]

Responding to the events of November 1938 was not the last time that Allianz would utilize these kinds of perverse arguments.<sup>15</sup>

Naturally, the government’s position and what happened in the Great Pogrom gave rise to litigation. Jews who had suffered property losses made claims and brought lawsuits. The government had a mechanism for disposing of these lawsuits, however.

On December 13, 1934, it had decreed a proviso entitled “Settlement of Claims in Civil Law.” This law permitted the government to terminate claims brought in court alleging damages which arose from “the National Socialist uprising and renewal of the State[.]” The same decree permitted the government to resolve all such cases in accordance with what was described as the “healthy feeling of the people.” In other words, if the damages of one person arose from the activity of another and the activity of the other resulted from the Nazi Party’s attempt to transform German society, the government could terminate the plaintiff’s case and indeed, it could terminate the case if it felt that the sensibilities of truly German people might be offended. Allianz lawyers repeatedly invoked precisely this decree to terminate civil litigation arising out of the “Night of Broken Glass.”

Feldman’s evaluation of the performance of the insurance industry is nuanced and interesting:

The insurance industry leaders were well aware, even in the benighted Germany of 1938, that they were complicit in a very shady endeavor, if not in the sense that they were directly cheating Jews of insurance entitlements, then in the sense that they were aiding and abetting the cover-up of government activities generally viewed as criminal in the civilized countries with which Germany still consorted.

The creeping darkness of insurance claims decision-making was to become even worse in this context. At one juncture, for example, a senior Allianz official argued that “companies be freed of any liability [for physical damages to synagogues and Jewish institutional buildings], ‘since [with those buildings] one is dealing with the destruction of public property not worthy of protection.’” It is as though an American insurer were to argue that the actual cash value of such a building was zero precisely because of who it

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15. In passing, it is worth noting that the secondary and tertiary arguments are very poor as a matter of general insurance law. The second argument fails because while genuinely spontaneous riots may be elemental events, somewhat like earthquakes, they are not actually earthquakes, and it is earthquakes which are excluded (or, at any rate, not covered). In addition, it is far from clear that the disturbances of November 10-11, 1938, were elemental. Indeed, we know they were directed and controlled. The tertiary argument is surely, from the standpoint of purely general insurance law an awful argument. If *A* kills *B*, and the widow of *B* burns down the house of *A*, *A*’s property insurer will pay even though the fire is the result of *A*’s having committed murder.

belonged to or what was done there. Feldman points out, while the insurers may not have owed for damage to these buildings under their policies, since there may have been no coverage for civil commotions, to give this kind of argument is corrupt and corrupting. It might have been politically attractive, but there were no contractual or legal grounds for it.<sup>16</sup> Feldman is tempted by the view that the insurance executives are a wily lot and are simply trying to give the government an argument it will have to buy because of its more general ideological stance. Though Feldman does not say so, one wonders if giving of such arguments do not corrupt the character of otherwise upright lawyers. Post, to some extent, our adversary systems presupposes that giving of a certain argument is not inherently a corrupting event. One wonders!

#### IV. Insurance and Society

Even after the Third Reich ordained “principles” in accordance with which insurance companies would pay the government, rather than those who suffered losses, Allianz struggled on and negotiated its schedule to be even lower than the government had contemplated. In the end, insurance funded only 3% of the total losses resulting from “The Night of Broken Glass.” Feldman acknowledges that, arguably, it should not have paid anything since either there was no coverage or there were exclusions. Nevertheless—as indicated—he criticizes Allianz and others for “cooperating” in Nazi chicanery, even though he acknowledges that they had little choice. Of course, all sorts of subtle moral questions about obligations, duties, and blameworthiness come up in a context of tragic politics.

Broader and even deeper questions about the nature of insurance come up. The predominant business theories in Germany for a hundred years before the Nazi period emphasized the importance business as a protector of society, as opposed to

business as a generator of profits. This kind of ideology applies easily and naturally to insurance. It is easy to think of insurance companies as something like trustees of their policyholders, as protectors of risk communities, as fiduciaries of stakeholders, and so forth.

The problem is that when the *stakeholder* (as opposed to *stockholder*) approach to business is used and the rule of law is, at the same time, corrupted, insurers become manipulable agents of dominant stakeholders. One underlying theme in Feldman’s study is that the stakeholder approach to business theory has an inherently dangerous aspect, so under just the right wrong conditions, something noble-sounding can be radicalized into something quite vicious.

Interestingly, the stakeholder approach to understanding and thinking normatively about business is common in business school textbooks, and there appears to be no self-consciousness whatever about the inherent dangers at the margins of this approach. Such textbooks seem to be far more interested in criticizing the narrowness of the shareholder approach to understanding and thinking normatively about business.<sup>17</sup> Even many insurance textbooks emphasize the importance of different groups of stakeholders, as opposed to the importance of shareholders.<sup>18</sup> (Classical business theory, based on simple capitalist dogma, of course held that corporate businesses have duties only to owners, and those where shareholders. The big duty of a corporate business is owed to shareholders to maximize profits. As a matter of contingent fact, so the theory went, profits would be maximized if the businesses served customers effectively.)

There is another interesting problem about insurance not directly discussed in Feldman’s book and which is not necessarily connected to the ideology of National Socialism but which weaves its way through the story. The problem is this. As much as any other business, insurance is wrapped up in the law. The

16. Now, arises the really interesting question. Suppose there are no *contract* grounds for denying a claim but there are *legal* grounds for denying it created by a corrupt state. What if an insurance company utilized the grounds the government has provided it? Is this ethical from an insurance standpoint. (Answer: No.) Is it ethical from a business stand point? (Answer: Perhaps so. What will lawfully maximize stakeholder value? (This hypo assumes that the insurance company had nothing to do with inducing the government to prevent it from payment.)

17. See Kenneth W. Clarkson, et al., WEST’S BUSINESS LAW 193-94 (8th Ed. 2001).

18. C. Arthur Williams, Jr., et al., RISK MANAGEMENT AND INSURANCE (8th Ed. 1998) (defining the idea of *stakeholder* in inconsistent ways).

“product” insurance companies sell is a bundle of legal rights and duties. It is called an insurance policy. In this context, the word “policy” derives from an Italian word, roughly, meaning *contract*. Insurance is the business of selling a certain kind of contract. That contract requires administration over time. Consequently, insurance is the business of selling a relationship which involves rights and duties over time. As everyone knows, insurance companies make heavy use of lawyers. The contract administrators of insurance companies—personnel in claims department—have to be trained in some aspects of the law, even if that knowledge is somewhat superficial.

At the same time, every coverage lawyer has seen insurance companies do things which appear to be strikingly at variance with what a lawyer would say the insurance company should do, given its contract. Sometimes, it is obvious that the insurance company is simply trying to avoid a large obligation. Other times, the insurance company appears to be guided by entirely honorable reasons, but they do not fit together very well with the dictates of strictly legal analysis. Thus, sometimes, insurance companies refuse to pay claims which most lawyers would agree are covered. On other occasions, insurance companies pay claims—both large and small—which their lawyers are—quite rightly—telling them are not covered.

How is this possible? One wonders if lawyers and insurance people fully understand one another. For lawyers, *The contract's the thing*. Perhaps for true insurance people, *The risk's the thing*. Insurance people may have a conception of the true role of insurance in social and economic risk protection, and they may understand, however dimly, that contract language, at least sometimes, fails to capture the true function of insurance. Figuring out whether this observation is true or false is inherently difficult. The claim itself is obscure, indeterminate, undeveloped, and wispy. It is really nothing more than a speculation. Confirmation is made even more difficult by the fact that it is *de rigeur* among both insurance people and lawyers alike to account for the fact that insurance companies sometimes pay losses which may not, strictly speaking, be covered by reference to considerations of self-interest only. It is not fashionable in business circles or—for that matter—in legal circles, to suggest that someone is doing something on principle. It sounds sissy, wimpish, or

maybe sanctimonious.

Of course, my conjecture could simply be false. Most lawyers upon whom I have tried out this idea are aghast. Part of this reaction, of course, is “Lawyer Narcissism.” My lawyer friends can’t believe that they don’t understand everything perfectly already. On the other hand, there is a true danger in the suggestion that there is some kind of mysterious insurance function which insurance people grasp and lawyers do not. The whole idea sounds elitist, and it could easily become corrupted by vicious insurers which are simply trying to avoid paying claims. The whole idea is especially fragile in the context of a full-blooded adversarial system which incorporates the Doctrine of Reasonable Expectations. Nevertheless, as dangerous as this idea is, it has some explanatory power, and may even contain some truth. Possibly, just possibly, an elaborated version of this argument might be usable in litigation at some point. Perhaps it could be used by a policyholder to suggest that a term that does not appear to be ambiguous really is ambiguous, as a results of the essence of the insurance function in society.

## V. Principles and Publications

Feldman’s history was a commissioned work. He was asked to write it by Allianz’s Board of Management in 1997. One immediate reason Feldman was asked to research the period and write a history was because of a class action which had been bought in the United States against Allianz for the way it treated Jewish policyholders. In addition, there were a number of press reports regarding misconduct by businesses and insurers during the period.

According to Feldman, Allianz adopted an enlightened attitude because it was difficult—indeed, impossible—to say what the allegations in press reports added up to,

at least for the ideologically unprejudiced, since there was no adequately researched and accurate account of the period of Allianz in the Third Reich. An understanding of Allianz’s history during that period was unlikely to emerge by simply stumbling from one unpleasant and damaging press revelation to another. Also, the adoption of a bunker mentality (as was attempted by some firms

and concerns inside and outside Germany) was not deemed an acceptable solution).

Consequently, Feldman agreed to research and write a history. It was intended to be more of a business and economic history rather than a political history, though the two topics are mixed together. According to Feldman, he always thought that it was extremely important "to examine the political and moral economy of entrepreneurial behavior, especially in the context of the Third Reich. This is especially true, according to Feldman, because so-called "'economic logic' does not exist independently of business ethics and basic moral standards."

Interestingly, Feldman's effort has met with both skepticism and criticism amongst scholars. Feldman is unbowed. He says that Allianz gave him complete freedom to write whatever he saw fit. Others have remained skeptical. It is natural to suppose that if someone or some organization places a good deal of money at your disposal and makes it possible for you to research, write, and produce a book from a prestigious publisher, you may be more charitably disposed towards them than you would be otherwise. Feldman's rebuttal of this outlook is no more than to assert boldly (1) that he has every right to do what he did, (2) that the book was never vetted by Allianz, (3) that the Allianz's management did everything possible to facilitate his work, (4) that he relied mainly on primary sources, and that none were denied him, and (5) that he is a renown scholar, with a good reputation for honesty and character, and Jew as well. Feldman acknowledges that it is unethical for a scholar to temper his work because of where he got his support, and that it would be unethical for a client to ask him or her to do so. Feldman sees "no reason . . . why historians should not be compensated for their work as independent scholars--especially when their expertise has been built up over a long professional life--or why reasonable compensation will make them less honest." Feldman might also have added that this is probably the only way that business history will ever get written--at least in the foreseeable future--since traditional historians have not taken this aspect of socio-economic history seriously. Perhaps his results from the fact that historians regard themselves as intellectuals and therefore regard business activities with disdain.

Feldman talks a good deal of sense here, but he

underestimates, it seems to me, two problems. First, he does not understand the degree to which bias can infiltrate one's view. At the same time, it must be conceded that Feldman is highly critical of the number of Allianz executives and acknowledges that they "threw whatever combination of political-shortsightedness, opportunism and sheer greed--nearly destroy German capitalism and had co-responsibility for the wreckage experienced by concerns by Allianz in 1945." Second, the opportunistic, ambivalent, ambiguous, and not entirely satisfactory history of Allianz tends to impeach the key premises in Feldman's argument. (Points (3) and (4) above.) Feldman argues that he relied extensively on primary sources. If Feldman's footnotes are accurate, this is undoubtedly true. But the significance of the premises rest, to a certain degree, upon Feldman's systematic access to all extent documents. This is particularly important since allied bombing of downtown Berlin destroyed many primary sources. How can Feldman verify that no primary sources have been concealed? It seems to me that there are only two arguments. One argument is that there is no internal nor external evidence of concealment. The other argument is that Allianz has worked to find documents and has said that it made everything available. The trouble is that the first supporting reason is diminished by the fragmentary nature of the documentary record, and the second basis is diminished by Allianz's opportunistic history. It is also diminished by the fact that Feldman did not--and could not--do all the primary source research himself. He had to use research assistants. I do not suggest that any of them were dishonest or even sloppy. Nevertheless, concealment is sometimes facilitated when discovery is done by teams.

In any case, practicing lawyers who write on legal doctrine face a somewhat similar--but by no means identical--problem. Lawyers who are known from mainly representing policyholders, often find that their writings, CLE outlines, and speeches, are ill-regarded, because of their client-base. The same thing is often true of lawyers who mainly represent insurance companies. Just as Feldman underestimates the extent to which largess may insinuate bias, those who automatically substantially discount the work of practicing lawyers because of their client base have a somewhat naive and distorted view of the world. This is true even though clients sometimes pay

for lawyers to work out their ideas and then publish them in law reviews. There has been some controversy in the legal ethics literature about whether lawyers are obligated to disclose the sources of their support when they write scholarly-looking pieces.

Of course, lawyers, even in law review publications do not have an actual duty to refrain from interested advocacy. Indeed, advocacy is expected. The vast majority of all high-caliber legal writing is normative in both content and intent. One wonders, however, if law-review advocacy is automatically shill-work, simply because the writer-lawyer has a client base. After all, even a paid advocate can have heartfelt conception of what constitute improved, properly conceived, or just relations.

Interestingly, lawyer-writers have a problem that Feldman and other historians do not have. If a lawyer is someone who principally earns a living advocating the position of a set of economic interests, one wonders if there may not be an ethical problem in that lawyer publishing a piece which is substantially inconsistent with the interest of his clients. One doubts that there could possibly be any violation of the law of lawyering for a lawyer to do this. Questions of prudence are entirely different from questions of ethics and morals, and they are not at issue here. (It may be very imprudent for such a lawyer to publish an article critical of his clients' interests. That is not at issue here.) In addition, the question being asked here does not pertain to whether bias may insinuate itself into the composition. The assumption of the question asked here is that when bias does not interfere with a lawyer-writer's vision, and the vision is substantially at variance with the interest of the lawyer's principal clients, might not the lawyer have a moral duty to refrain from speaking her own view in public?

How can there be such an ethical duty? Would it not be substantially at variance with the vision of a professionalized adversary system, which is different and separate from one's personal life. And, at least at the level of political theory, is there not some conflict between the claim that a lawyer ought to keep his mouth shut and the ideal of free speech in a morally informed democratically organized republic? What about personal autonomy?

My own preference is for the view that a lawyer ought to be able to say whatever he pleases and that

there is no—whether legal or moral— obligation to clients to refrain from stating one's own views outside the context of adjudicative controversies. (Notice, again, I am not talking about what is prudent.) To think otherwise is to fail to realize that the lawyer-advocate is like an artist in some ways. His job is to present the most compelling attractive, and pleasing work of argument he can devise. What she personally believes about that argument is entirely irrelevant. What matters is the eye, the ear, and understanding of the adjudicator. The objectivity of the lawyer-advocate has nothing to do with anything.

## VI. Conclusion

This book is not for everyone. For the lawyer who finds both history and insurance interesting, the book is rewarding. One wonders if it has any direct litigation uses. Suppose a lawyer were representing a policyholder in a bad faith case against Allianz. Suppose further that Allianz witnesses can be induced to testify about the glories of that company and its complete dedication to fairness and conformity to the right and the good. No doubt the ad like the one quoted in an early footnote above could come in on this matter. No doubt its adjustment manuals and/or claims department instructional material will make reference to the importance of fidelity to contract and the importance of fairness in handling both claims and underwriting matters. Yet the history of the company is plagued by a period of darkness. Could detailed reference be made to this in a bad faith trial? What if the policyholder were Jewish or a company owned by someone who is Jewish?

On the one hand, one might be inclined to doubt it. After all, the Nazi period was a long time ago. Different people were in charge of the company. Courts would probably not permit a quasi-racist reference to some viciousness in the German spirit. If anything flunks the *Daubert* test, its this type of idea. On the other hand, corporate entities, which are separate from the people who run them, persist over time; some of Allianz's poor conduct was less than 70 years ago; and it pertained to problems which still plague parts of the world. Moreover, Allianz itself has repeatedly said that it needs to come to terms with its history. Indeed, that is why it commissioned Feldman's book, why it has created an employee's edition, and why it sponsors continuing dialogue with

Feldman himself, as its website proudly announced.

Perhaps the gambit contemplated would be rejected. Perhaps it should be rejected. Perhaps it would be churlish even to try it. Nevertheless, if

someone wants to think about it, Feldman's book is a "must read," just as it is for any one defending against this gambit.