

AP

Judah Gribetz
Special Master
Holocaust Victim Assets Litigation

Case No. CV 96-4849
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August 19, 2002

Hon. Edward R. Korman
Chief Judge
United States District Courthouse
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Dear Judge Korman:

As a result of unanticipated interest and other income to the Settlement Fund, Your Honor requested that I review the available financial and distribution information to determine whether there are sufficient excess funds to provide for supplemental distributions to class members.

I have reviewed financial reports and current as well as anticipated class distribution statistics for the purpose of quantifying the excess assets that may be available to fund possible supplemental distributions or increased future distributions. Based upon these reports, in consultation with Professor Neuborne, and in accordance with the Plan of Allocation and Distribution that I filed with the Court on September 11, 2000, adopted by the Court on November 22, 2000 and upheld by the United States Court of Appeals for the Second Circuit on July 26, 2001 (the "Distribution Plan"), I recommend that the Court immediately increase by 45% the amounts that have been and will continue to be distributed to members of Slave Labor Class I, the Refugee Class and the Looted Assets Class. The cost of the additional 45% distribution to those who have already received payments is approximately \$63 million; the estimated total going forward is approximately \$102 million. The funds are derived from unanticipated tax relief and interest already earned on the Settlement Fund. This distribution will not diminish the \$800 million currently reserved for the Deposited Assets Class, nor do these proportionate adjustments represent a departure from the Distribution Plan other than a pro rata adjustment to the amounts previously designated for distribution. Such a disposition of

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unanticipated income accruing as a result of interest and tax relief legislation without invading the corpus of the \$1.25 billion settlement is a matter within the discretion of the District Court after the plan of allocation has been approved. In re "Agent Orange" Product Liability Litigation, 818 F.2d 179, 184 (2d Cir. 1987). With Special Masters Volcker and Bradfield, I make the further recommendation that certain adjustments be made to the timing of Deposited Assets Class payments.

A. Settlement Fund Status

For various reasons, additional income has accrued for the benefit of the original Settlement Fund of \$1.25 billion, and as a result, there are substantial funds available that can now be distributed to class members. First, at the Court's initiative, the Settlement Fund has been benefited by the efforts of Professor Neuborne, Melvyn Weiss, Laurence Goldfein of Eisner LLP (Settlement Fund accountants), the Conference on Jewish Material Claims Against Germany, Inc. ("Claims Conference"), and others, who worked with members of Congress to ensure passage of legislation exempting from taxes not only individual distributions to class members, but the Settlement Fund itself, including interest accruing thereon. See Economic Growth and Tax Relief Reconciliation Act of 2001, Section 803 ("No Federal Income Tax on Restitution Received by Victims of the Nazi Regime or their Heirs or Estates"). I am advised by Eisner LLP ("Eisner") that the tax legislation has benefited the Settlement Fund by approximately \$20 million, through 2001, and by approximately 38% of taxable income in future years. Second, while not unexpected, significant additional interest has accrued on the Settlement Fund because of the defendant banks' agreement, under Amendment No. 2 to the Settlement Agreement, August 9, 2000, to accelerate settlement payments partly to fund the expenses of the Deposited Assets Class claims resolution process. Third, the pendency of an appeal against the Distribution Plan also prevented the Court from authorizing distributions to most class members until the appeal was resolved in favor of the Distribution Plan, as occurred on July 26, 2001. Fourth, the processing of claims from the Deposited Assets Class has not proceeded as expeditiously as originally contemplated; as a result, unexpected interest has accrued on the undistributed portion of the allocation to the Deposited Assets Class. Under the Court's guidance, Special Masters Volcker, Bradfield and I have been coordinating procedural and organizational changes at the CRT to increase the efficiency and speed of the claims resolution process while maintaining its integrity.

B. Status of Distributions to Class Members

Significant sums already have been distributed to class members from the Settlement Fund. As the Court is aware, over the last year, my office has worked closely with the

administrative agencies responsible for overseeing, on the Court's behalf, the distribution of payments to class members. Under the management of the Claims Conference, the Slave Labor Class I and Refugee Class programs have operated efficiently and rapidly, with the result that close to 107,000 members of Slave Labor Class I, and approximately 530 members of the Refugee Class, have received or shortly will receive compensation in accordance with the Distribution Plan. To date, approximately 436 additional members of Slave Labor Class I have been or shortly are to be paid by the International Organization for Migration ("IOM"). Verifying the information in the IOM applications requires substantial research, as the vast majority of Roma and Jehovah's Witness class members who comprise the bulk of IOM applicants (in addition to homosexual and disabled class members) have not previously received restitution and data concerning their personal experiences is not readily available. With respect to future payments, the Claims Conference and IOM together estimate that, based upon the number of applications received, prior approval rates and other factors, approximately 130,000 additional individuals may be eligible for compensation under Slave Labor Class I. In addition, approximately 4000 additional persons may be eligible for compensation as members of the Refugee Class.

In connection with the Looted Assets Class, the IOM, Claims Conference and American Jewish Joint Distribution Committee ("JDC") continue to oversee *cy pres* distributions to needy Nazi victims via humanitarian aid programs designated in accordance with the ten-year, \$100 million assistance program set forth in the Distribution Plan and described in subsequent submissions to the Court. To date, approximately \$12.3 million has been distributed to these programs.

C. Recommendations for Additional Distributions

1. Slave Labor, Refugee and Looted Assets Classes

Upon consultation with Professor Neuborne as well as with Eisner and the claims administrators, I propose that the Slave Labor Class I, Refugee Class and Looted Assets Class payments recommended in the Distribution Plan should now be proportionately increased by 45%. Under this proposal, each member of Slave Labor Class I, including those who have yet to be paid, would receive a total payment of \$1,450 rather than \$1,000. Members of the Refugee Class, including those yet to be paid, would receive either \$3,625 or \$725 (as opposed to the current sums of, respectively, \$2,500 or \$500), depending upon whether they were expelled or mistreated. Some survivors unfortunately will have passed away since receiving their respective Refugee Class or Slave Labor Class I payments. In such cases, heirs would be entitled to receive the supplemental payments recommended herein in accordance with the inheritance rules set forth in the Distribution Plan (see, e.g., Vol. I, at 18). The allocation to the Looted Assets Class

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would increase to \$145 million (reflecting a 45% increase to the \$100 million designation). The proportions allocated among the various "Victim or Target" groups and geographic regions, as set forth in the Distribution Plan, will remain the same.

With respect to Slave Labor Class II, the IOM, which is responsible for managing the Slave Labor Class II program, continues to process applications and develop criteria for analyzing claims submitted by the approximately 12,500 individuals who have stated that they performed labor for a company owned by or affiliated with a Swiss entity. Assuming that these 12,500 applicants represent the universe of possible class members, there will be sufficient funds eventually to permit a similar 45% increase in payments to those who have applied and are approved under the criteria for Slave Labor Class II set forth in the Distribution Plan as implemented by the IOM under the Court's supervision. However, the potential size of Slave Labor Class II is subject to the outcome of additional proceedings before the District Court arising from the Second Circuit's February 15, 2002 ruling. Because these proceedings could significantly increase the number of potentially eligible claimants, it is not possible to estimate the full cost of a distribution to the Slave Labor II Class pending resolution of the proceedings. Thus, I do not believe it is appropriate to recommend an adjustment to the Distribution Plan for this class at the present time.

2. Deposited Assets Class

The Distribution Plan already contemplates repaying in full the owners or heirs of Swiss bank accounts, adjusted to current values as determined under the Rules Governing the Claims Resolution Process. Article 37 of the Rules Governing the Claims Resolution Process provides for increases of awards based upon inflation and other factors "to bring the Awards up to current value." CRT awards initially were multiplied by a factor of 10; that factor since has been increased to 12. Accordingly, no increases in total Deposited Assets payments are recommended herein.

I remain aware, however, that Your Honor is determined to complete distributions to class members as promptly as possible. Under the Distribution Plan, owners of accounts of known value are compensated in full, while owners of accounts of unknown value (for which the CRT employs estimates based upon the type of account, i.e., custody, savings, demand and the like) receive an initial payment of 35% of the award, and, at the end of the claims process, are to receive a second payment of up to 65% of the recommended award. Distribution Plan, Vol. I, at 99. This recommendation, intended to ensure that all class members receive a pro rata share from the Distribution Plan, is comparable to that adopted by the German Foundation "Remembrance, Responsibility and the Future" in connection with forced labor claims. Id., at n. 313.

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I am advised by Special Masters Volcker and Bradfield that they have studied the approximately 32,000 Deposited Assets Claims submitted to the CRT, including an analysis of the approximately 12,000 claims which are potential matches to the 36,000-account Account History Database (the accounts determined by the Volcker Committee to have “probably” or “possibly” belonged to victims of Nazi persecution). Based upon this review, Special Masters Volcker and Bradfield agree that claimant awards can be immediately adjusted in two important respects. First, awards based upon estimated account values should be adjusted so that the claimant will receive an immediate payment of 65% (adjusted for current value), to be followed at the end of the claims process by a second payment of up to 35% of the recommended award. For accounts of known value, claimants will continue to receive payment in full (adjusted for current value); no revisions to the current process are required. Second, where the claimant is 75 years of age or over, any award recommended by the CRT should be paid in full (adjusted for current value), including those awards based upon estimated account values. Special Masters Volcker and Bradfield already have recommended, and the Court has approved, payments in full to a number of individuals who are 75 years of age or over, as their claims have been reviewed and awards finalized. See, e.g., Memorandum & Order dated July 1, 2002. The adjustments recommended herein would be incorporated in the Rules Governing the Claims Resolution Process and would be applied retroactively as well as to future awards.

D. Conclusion

The above recommendations reflect distribution of the “excess” that has been generated on the principal and interest remaining in the Settlement Fund. The “Stage 1” distributions described in the Distribution Plan are still under way and it remains premature to analyze what amount, if any, will remain from the Settlement Fund as a “residual” perhaps to be allocated during a “Stage 2” of distributions. See Distribution Plan, at 19-20. Nevertheless, over the last year of operations, the Court, Special Masters, distribution agencies and Settlement Fund accountants have collected sufficient information concerning the respective application and compensation levels within the various classes so that it is now appropriate to make certain monetary adjustments to the original Distribution Plan. These adjustments will benefit the individuals who already have received payments, as well as those whose applications are currently under review.

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For the Court's convenience, I attach a Proposed Order implementing the recommendations set forth herein.

Respectfully submitted,



Judah Gribetz

cc: Prof. Burt Neuborne
Special Master Paul A. Volcker
Special Master Michael Bradfield
Class Counsel (distribution list attached hereto)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: :
HOLOCAUST VICTIM ASSETS :
LITIGATION :

Case No. CV 96-4849 (ERK)(MDG)
(Consolidated with CV 96-5161
and CV 97-461)

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This Document Relates to: All Cases :
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**PROPOSED
MEMORANDUM & ORDER**

KORMAN, Chief Judge:

On August 16, 2001, following the July 26, 2001 decision of the United States Court of Appeals for the Second Circuit upholding the Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"), I ordered the Escrow Fund agents to transfer the settlement payments from what had been the Escrow Fund into the Settlement Fund. Since that time, the \$1.25 billion Settlement Fund has benefited from unanticipated interest income. The Settlement Fund also has benefited from tax legislation exempting from federal taxes individual distributions from the Settlement Fund, and the Fund itself. See Economic Growth and Tax Relief Reconciliation Act of 2001, Section 803 ("No Federal Income Tax on Restitution Received by Victims of the Nazi Regime or their Heirs or Estates"). I requested that Special Master Gribetz review the available information to determine whether there are sufficient excess funds to provide for supplemental distributions to class members.

The Special Master has consulted with various parties including Claims Resolution Tribunal ("CRT") Special Masters Volcker and Bradfield, Lead Settlement Counsel Burt Neuborne, Settlement Fund accountant Eisner LLP, and the claims administrators (the CRT,

Conference on Jewish Material Claims Against Germany, International Organization for Migration and American Jewish Joint Distribution Committee). His findings are set forth in his letter to the Court dated August 19, 2002, incorporated herein. Based upon the current and projected income to and distributions from the Settlement Fund, he has recommended a 45% proportionate adjustment to the amounts previously designated for distribution to members of Slave Labor Class I, the Refugee Class and the Looted Assets Class. The cost of the additional 45% distribution to those who already have received payments is approximately \$63 million; the estimated total going forward is approximately \$102 million. The funds are derived from unanticipated tax relief and interest already earned on the Settlement Fund.

Under this proposal, payments to members of Slave Labor Class I – the approximately 107,000 individuals who already have received or have been approved for payment, as well as those whose applications currently are under review – will now increase from \$1,000 to \$1,450. Payments to individuals who were expelled from Switzerland or denied entry as refugees will now increase from \$2,500 to \$3,625; those admitted into Switzerland as refugees but mistreated will receive \$725 (from \$500). Humanitarian aid distributions to needy members of the Looted Assets Class will increase from \$100 million to \$145 million.

These proposed distributions will not diminish the \$800 million currently reserved for the Deposited Assets Class; however, with Special Masters Volcker and Bradfield, Special Master Gribetz recommends certain adjustments to the timing of Deposited Assets Class payments. Most members of the Deposited Assets Class receive an initial payment of 35% of the total award, to be followed by a payment of up to the remaining 65% of the award once the claims review process has been completed. The Special Master's August 19, 2002 letter advises that Special Masters Volcker and Bradfield, based upon their analysis of the claims submitted to

the CRT, recommend that these payments be reversed so that the initial payment is increased to 65% of the total award, to be followed by payment of up to the remaining 35%. Additionally, they recommend that the CRT pay in full any Deposited Assets award where the claimant is 75 years of age or over. As with the Slave Labor I, Refugee and Looted Assets Classes, these adjustments are to apply retroactively as well as to future compensation payments from the Settlement Fund.

I concur with these recommendations. Accordingly, it is hereby

ORDERED that Settlement Fund distributions hereinafter are to be made in the following amounts: (1) **Slave Labor Class I** members are to receive \$1,450; (2) **Refugee Class** members who were denied entry into or expelled from Switzerland are to receive \$3,625, and Refugee Class members who were admitted into Switzerland but mistreated are to receive \$725; (3) annual requests for funding from the three administrative agencies distributing humanitarian *cy pres* funds to needy members of the **Looted Assets Class** are to reflect the 45% increase described herein; and (4) **Deposited Assets Class** members aged 75 and over are to receive payment in full of their CRT awards, while class members who currently receive initial payments of 35% under the Distribution Plan and Rules Governing the Claims Resolution Process, are to instead receive initial payments of 65%, to be followed at the end of the claims resolution process by payments of up to the remaining 35% of the award.

To enable the administrative agencies retroactively to increase the payments to class members that already have been made from the Settlement Fund, it is further

ORDERED that the signatories to the Settlement Fund are hereby directed to transfer immediately the sums specified below to the claims administrators:

(1) **Claims Conference and IOM: \$50,030,100 is to be transferred to the Claims Conference, and \$646,200 is to be transferred to the IOM, each of**

which shall arrange for supplemental payments of (a) \$450 to each of the 106,987,436 members of Slave Labor Class I who received or were approved for payment prior to the date of this order (106,987,000 via the Claims Conference, Groups 1 through 7; another 436 via the IOM, Groups 1 through 3); (b) \$1,125 to members of the Refugee Class who were denied entry into or expelled from Switzerland, and \$225 to those who were admitted but mistreated, and who received or were approved for payment prior to the date of this order (via the Claims Conference, Groups 1 through 4); and (c) 45% increases in the Looted Assets Class *cy pres* funds distributed or scheduled for distribution by each organization thus far (to date, \$3,825,000 by the Claims Conference and \$1,000,000 by the IOM). The Looted Assets Class increases are to be allocated and distributed proportionately in accordance with, respectively, the IOM Supplemental Proposal for Humanitarian and Social Programmes dated June 10, 2002 and approved by Memorandum & Order dated June 24, 2002, and the Second Claims Conference Looted Assets Class Proposal dated July 11, 2002 and approved by Memorandum & Order dated July 22, 2002.

(2) **JDC: \$3,375,000 is to be transferred to the JDC**, a 45% increase in the \$7.5 million distributed thus far to the "Hesed" and other humanitarian assistance programs serving needy survivors in the former Soviet Union. This sum is to be distributed proportionately in accordance with the JDC's February 27, 2001 Proposal for the First Year of Operations, as supplemented by the JDC's April 4, 2001 report, and approved by orders dated April 13, 2001 and June 28, 2001.

(3) **CRT: \$8,854,401.46 is to be transferred to the Awards Payment Account of Special Masters Volcker and Bradfield for funding of the Claims Resolution Process.** From this sum, \$3,338,381.56 will be applied to increase by 30% each of the Deposited Assets Class awards approved to date for which partial payment has been approved (i.e., CRT Groups 1 through 8), thus bringing the total paid on each such award to 65%. The remaining \$5,516,019.90 will be applied by the CRT to pay in full those claimants aged 75 and over who have been approved for partial payments thus far.

I will issue additional orders transferring further sums from the Settlement Fund as applications from other class members are approved.

Dated: Brooklyn, New York
August __, 2002

SO ORDERED:

Edward R. Korman
United States District Judge

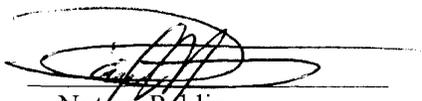
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ANN MADDEN, being duly sworn, deposes and says: that deponent is an employee of Bingham McCutchen LLP, is over 18 years of age, is not a party to this action, and resides in Hawthorne, New Jersey.

On the 19th day of August, 2002, deponent served a copy of the within August 19, 2002 Letter of Special Master Gribetz to Hon. Edward R. Korman on the following at the addresses on the attached service list by causing to be deposited true and correct copies of the same, properly enclosed in post paid wrappers in the official depository maintained and exclusively controlled by the United States Post Office located at 885 Third Avenue, New York, New York 10022.


Ann Madden

Sworn to before me this
19th day of August, 2002


Notary Public
DAVID MARCUS
Notary Public, State of New York
No. 4873948
Qualified in New York County
Commission Expires Oct. 20, 2002

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