UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

---------- X

IN RE:
HOLOCAUST VICTIM ASSETS
LITIGATION

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

This Document Relates to: All Cases

---------- X

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ NOV 17 2003 ★
P.M. _____
TIME A.M. _____

MEMORANDUM & ORDER ADOPTING SPECIAL MASTER'S INTERIM REPORT ON DISTRIBUTION AND RECOMMENDATION FOR ALLOCATION OF EXCESS AND POSSIBLE UNCLAIMED RESIDUAL FUNDS

KORMAN, Chief Judge:

On October 2, 2003, the Special Master filed with the Court his Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds ("Interim Report"). The Interim Report is posted on the Internet site for this lawsuit, www.swissbankclaims.com. The Special Master also filed and posted on the Internet site a summary Notice of the Interim Report, a copy of which is attached hereto.

As described in the Interim Report, thus far, approximately $485 million has been distributed or allocated to class members in the little more than two years since the resolution of appeals against the Settlement Agreement and the Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"). Almost $203.5 million has been distributed to members of the two slave labor classes; approximately $131.5 million has been returned to members of the deposited assets class; nearly $4.6 million has been distributed to members of the refugee class; and $145 million has been distributed or committed to programs providing

food, medicine, shelter, and other humanitarian assistance to needy "Victims or Targets of Nazi Persecution" under the cy pres principles governing administration of the looted assets class.

The Special Master has recommended that $60 million in currently available excess funds, derived primarily from interest on the Settlement Fund, should be allocated wholly to needy Nazi victims following the same cy pres principles described above. This recommendation is hereby adopted. I will address the objections of the Holocaust Survivor's Foundation-USA, Inc. and Robert Swift on the merits in an opinion to follow. Nevertheless, I agree with Professor Neuborne that the HSF has failed to establish that it has legal standing to object to the recommendation. Supplemental Neuborne Declaration, page 1, n.1.

It is therefore ORDERED that

1. the $60 million in currently available excess funds shall be allocated proportionately among the same "Victim or Target" groups and the same geographic regions enunciated in the Distribution Plan, and administered on the Court's behalf by the same three agencies: the American Jewish Joint Distribution Committee ("JDC"); the Conference on Jewish Material Claims Against Germany ("Claims Conference"); and the International Organization for Migration ("IOM").

2. The distribution of the $60 million in excess funds shall commence with the calendar year 2004 and continue over 7 ½ years, the duration of the Looted Assets Class programs for needy Nazi victims as adopted under the Distribution Plan. Beginning January 1, 2004, each administrative agency shall incorporate its respective proportion of the $60 million in excess funds into all funding requests, and shall allocate the distribution of the funds in accordance with Court-approved multi-year plans to provide sustainable levels of targeted essential social services.

All funds received from the Settlement Fund for purposes of distribution to needy Nazi victims shall be used solely to augment and not replace funds the JDC, Claims Conference and IOM currently receive or are scheduled to receive from other sources. To the extent that any donor other than the Court advises any of the three administrative agencies that its funding of

that agency is to be reduced as a result of any distributions made from the Settlement Fund, that agency shall immediately so advise the Court and the Special Master. The Court will modify this order accordingly, including, but not limited to, by reducing or eliminating the allocation of Settlement Funds to that administrative agency.

In accordance with the Special Master's recommendation that proposals be solicited for the allocation of possible unclaimed residual funds from the $1.25 billion Settlement Fund, it is hereby ORDERED that any person or organization who seeks to offer a plan for providing assistance to needy Nazi victims shall file a proposal specifying at least the following information:

1. Number and location of Nazi victims for the proposed "Victim or Target" group to be served (e.g., Jewish, Roma, Jehovah's Witness, homosexual and/or disabled), including (a) estimates of victims in Israel, the Former Soviet Union, Europe (including nation-by-nation), the United States (including state-by-state); Australia; South America and elsewhere; and (b) source materials upon which the data is based, including any expert opinion(s) relied upon;

2. Number and location of <u>needy</u> Nazi victims among the proposed "Victim or Target" group to be served, in accordance with the criteria set forth in item 3 below, including (a) estimates of victims in Israel, the Former Soviet Union, Europe (including nation-by-nation), the United States (including state-by-state); Australia; South America and elsewhere; and (b) source materials upon which the data is based, including any expert opinion(s) relied upon;

3. Assessment of survivor needs, including (a) analysis of specific requirements (e.g., medication, food, nursing care), taking into account different social safety nets available by geographic location and availability of other sources of assistance; (b) survivor longevity estimates by geographic location; and (c) absolute and relative poverty levels by geographic location, specifying, among other data, national statistics, United Nations and comparable non-governmental organization information;

4. Recommendation for distribution, specifying types of assistance, estimated number of recipients, length of program(s), and estimated

costs (using percentages rather than specific dollar amounts where necessary);

5. Recommended distribution agency or agencies, including (a) description of prior experience with humanitarian aid distribution in general and programs serving Nazi victims in particular; (b) estimated administrative expenses (using percentages where necessary); and (c) where available, attach latest financial and/or other programmatic reports for recommended agency; and

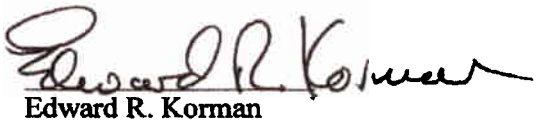
6. Names, addresses and affiliations of all persons and organizations associated with or endorsing the proposal.

It is further ORDERED that all such proposals shall be postmarked by December 31, 2003 and mailed to following address:

Holocaust Victim Assets Litigation
P.O. Box 8300
San Francisco, CA 94128-8300
U.S.A.

All comments on such proposals shall be postmarked by February 15, 2004 and mailed to the same address. All proposals and comments on such proposals shall be made part of the public Court file and/or posted by the Special Master at www.swissbankclaims.com. Any person or organization who wishes to comment upon the Special Master's recommendation to use unclaimed residual funds, if any, for needy Nazi victims shall mail these comments to the address listed above. The comments shall be postmarked by December 31, 2003. The Special Master shall review the proposals and on or about March 15, 2004 shall file with the Court and post on the Internet site his final recommendations for distribution of any residual unclaimed funds that may remain from the Settlement Fund. On April 1, 2004, at 10:00 a.m., I will hold a hearing on the Special Master's final recommendations.

SO ORDERED:



Dated: November 17, 2003
Brooklyn, New York

Edward R. Korman
United States District Judge