

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

In re: HOLOCAUST VICTIM ASSETS : LITIGATION :	:	Master Docket No. CV-96-4849
	:	(ERK) (MDG)
JACOB FRIEDMAN, et. al., : Plaintiffs :	:	
against :	:	Civ. Act. No. CV 96 5161
UNION BANK OF SWITZERLAND, : et. al. Defendants :	:	
GIZELLA WEISSHAUS, et. al. : Plaintiffs :	:	
against :	:	Civ. Act. No. CV 96-4849
UNION BANK OF SWITZERLAND, : et. al. Defendants :	:	
WORLD COUNCIL OF ORTHODOX : JEWISH COMMUNITIES, INC. : et. al. Plaintiffs :	:	
against :	:	Civ. Act. No. 97-0461
UNION BANK OF SWITZERLAND, : et. al. Defendants :	:	
	:	

FIRST SUPPLEMENTAL SUBMISSION OF LEAD  
SETTLEMENT COUNSEL IN SUPPORT OF THE  
SPECIAL MASTER'S PROPOSED PLAN  
OF ALLOCATION AND DISTRIBUTION

I make this supplemental submission to respond to certain objections filed on the eve of the Court's hearing on November 20 that were filed too late to be fully discussed in my original

submission.

1. Lawrence Schonbrun, purporting to represent three class members, complains that inadequate distribution of the Special Master's Plan took place. However, the entire plan, a nine hundred page document in two volumes, has been available on the Internet at [swissbankclaims.com](http://swissbankclaims.com), and from the website established by the Court since September 11, 2000. All telephone calls to the Court's chambers are answered by a recorded message describing the availability of the entire plan on a web site established by the Court. If Mr. Schonbrun experienced difficulty in obtaining the two volume report, he could have telephoned the Court and downloaded a complete copy of the plan immediately. Moreover, a telephone call to counsel or to the Special Master would have resulted in an immediate mailing of both volumes. In any event, the Notice Administrator will present the Court with a complete summary of all requests for the entire plan, and a summary of the status of each request.

2. Most of Mr. Schonbrun's objections flow from the fact that he has not studied the full text of the Special Master's Plan. His concern that no factual basis exists for the allocation of \$800 million to the Deposited Assets Class is allayed by the material at pp. 40-62, and 90-110 of the Special Master's Plan. The Settlement Agreement, including Amendment No. 2, make clear that repayment of the Deposited Assets is a priority, and compliance with the Volcker Report is a commitment of all parties. The Court's Memorandum and Order approving the settlement also recognizes the importance of the Volcker Report. The Special Master's Proposal summarizes the Report's findings that Category 1 and 2 accounts (open accounts with known values) are in the range of \$153-\$230 million. Category 3 accounts, where records of known values have been destroyed but where ownership can be established are valued (through imputation and other circumstantial evidence) at between \$466 million to \$1 billion. Category 4 accounts are

estimated by the Volcker Report to have a value of \$24 million. Thus, according to the Volcker Report, the estimated value of the Deposited Accounts is between \$643 million - \$1.254 billion, without accounting for additional claims that may supplement the Volcker record. Thus, the Special Master's decision to allocate \$800 million to the repayment of Deposited Assets is clearly a rational effort to respond to the data generated by the Volcker Report. If the allocation proves too low, the Special Mater's Plan provides for a pro rata payment. If the allocation proves too high, the Special Master recommends re-allocation pursuant to open and transparent procedures.

3. Concerns that the plan is not sufficiently detailed are wholly unpersuasive. For each of the five settlement classes, the Proposal specifies (a) the recommended distribution agent; (b) the proposed rules on which distribution should be based; (c) a recommended timetable for completing the claims process; and (d) the proposed reporting requirements to which each agency must adhere. Thus, for example, Mr. Schonbrud's concerns over the filing of annual reports, budgets and distribution plans is dealt with at pp. 136-37 of the Proposal. Similarly, the Proposal devoted pp. 122-30 to a detailed discussion of the "Hesed" Program, including the widespread support for the Program accorded by the governments of the United States, the Netherlands, and France. Finally, the Special Master' Plan makes clear that the three agencies charged with responsibility for monitoring humanitarian assistance programs must work under the close and ongoing supervision of the Court. Moreover, the plan includes detailed recommendations concerning the administration of the Deposited Assets Class (pp.90-110); Slave Labor I Class (pp. 148-58); the Slave Labor II Class (pp. 159-67; and the Refugee Class (167-179). Although the Special Master's Proposed Plan includes recommendations concerning timetables, it is up to the Court to establish and to approve the detailed rules governing the administration of the various

claims processes.

4. Mr. Schonbrud's assertion that members of the Looted Assets Class receive nothing under the Special Master's Proposed Plan is factually incorrect. In fact, the Special Master recommends a cy pres distribution of an initial amount of \$100 million allocated to the Looted Assets Class, with significant future allocations possible if funds allocated to the Deposited Assets Class are re-allocated at the close of the claims process. His insistence that each of the potentially millions of persons who qualify for membership in the Looted Assets Class receive a nominal payment would make it impossible to pay other classes, and would consume huge portions of the settlement fund in precisely the administrative costs that Mr. Schonbrud claims to oppose. Even if the Looted Assets award were arbitrarily confined to the 424,000 persons who reported that they were the victims of looting in the initial questionnaire, the amounts distributed to each person would be nominal. It is precisely in such circumstance that a cy pres distribution of the fund is permitted to "give as much help as possible to individuals who, in general, are most in need of assistance." (Proposal, p. 116, citing In re Agent Orange Product Liability Litigation, 818 F.2d 145, 158 (2<sup>nd</sup> Cir. 1987). It is worth noting that, although he objects to the Special Master's plan, Mr. Schonbrud does not hazard a guess as to how the Looted Assets Class should be administered, other than by suggesting a claims process to award sums to persons with plausible claims. But a claims process involving at least 800,000 claimants, operating without reliable data is simply incomprehensible. It would waste huge sums on an administrative process that would, at best, reach arbitrary results, and provide for a payment to each person so small as to be meaningless.

5. Mr. Schonbrud's objection concerning appellate delay appears incoherent. The settlement agreement provides that no payments may be made to beneficiaries until the

“settlement date,” which is defined as the close of all appellate proceedings. The Special Master’s Report merely notes that reality. Counsel is doing everything possible to expedite any appeals. I note, first, that Mr. Schonbrud’s clients did not appeal from the decision approving the settlement as fair and reasonable within the meaning of Rule 23(e) FRCP; and, second, for the reasons set forth in my original submission, no appeals lie from the orders of the Court entered in connection with the Special Master’s Plan.

6. Finally, Mr. Schonbrud’s concerns concerning the neutrality of the Special Master are baseless. The Court and counsel conducted a searching inquiry into Mr. Gribetez’s background and experience and unanimously endorsed him as a wholly neutral figure. Moreover, the open and transparent nature of the process followed by the Special Master, and the careful and balanced nature of his Proposed Plan belies any doubt concerning his neutrality.

7. Accordingly, Mr. Schonbrud’s objections should be rejected.

Dated: November 20, 2000

Respectfully submitted,

Burt Neuborne  
Lead Settlement Counsel  
40 Washington Square South  
New York, New York 10012