

MENACHEM Z.

November 23, 1999

Judah Gribetz, Esq.
Special Master
In re: Holocaust Victim Assets Litigation
Master Docket No. CV-96-4849 (ERK)
Richards & O'Neil, LLP
885 Third Avenue
New York, NY 10022

Dear Mr. Gribetz:

I am writing with respect to the Notice of Pendency of Class Action and Proposed Settlement and Hearing in the above-referenced matter. While I appreciate that a great deal of work and effort has gone into negotiating this proposed settlement, and while I in no way question the good faith or integrity of any of the parties to it, I have reservations concerning certain fundamental elements of the proposed settlement. I further take the liberty of suggesting a disposition of the Settlement Fund that would have a far greater beneficial impact on the lives of Holocaust survivors than the disposition contemplated in the Notice of Pendency.

I am a graduate of the Columbia University School of Law, and have been a member of the New York Bar since 1980. For most of my professional career, I was an international litigator. I presently run a foundation engaged in Jewish cultural activities in Eastern and Central Europe. I am the son of two survivors of the Nazi death camp of Auschwitz-Birkenau, and the Bergen-Belsen concentration camp. My parents are both deceased. I was born in the Displaced Persons camp of Bergen-Belsen in May 1948. I am also the founding chairman of the International Network of Children of Jewish Holocaust Survivors, and have recently been appointed by President Clinton to a second term on the United States Holocaust Memorial Council. I am providing this brief background solely for purposes of identification. I am writing this letter exclusively in a personal capacity, and not on behalf of any of the organizations or institutions with which I am in any way affiliated.

The Claimants

I realize that much thought went into the formulation of the Proposed Settlement. Nevertheless, I respectfully submit that it is flawed in a number of fundamental respects. In particular, the definition of eligible claimants, and the inclusion of "heirs, successors, administrators, executors, affiliates and assigns" of Holocaust victims in all of the Settlement Classes defined

in the Notice of Pendency, should be carefully scrutinized and, I respectfully suggest, reconsidered. I am especially troubled by the declaratory sentence that "Not all Holocaust victims, survivors or their heirs are affected by this Settlement."

As contemplated in the proposed settlement, the principal four Settlement Classes include those victims or Targets of Nazi Persecution who:

1. Had assets (including such things as bank accounts, securities and safe deposit box contents), on deposit in any Swiss bank, investment fund, or other custodian prior to May 9, 1945 (Deposited Assets Class), or
2. May have claims against Swiss entities relating to assets that were looted or taken by the Nazi Regime . . .between 1933 and 1946 (looted Assets Class), or
3. Performed slave labor for companies or other entities that may have deposited the revenues or proceeds of that labor with or transacted such revenues or proceeds through Swiss entities (Slave Labor Class I), or
4. Unsuccessfully sought entry into Switzerland to avoid Nazi persecution, or after gaining entry, were deported or mistreated, and may have related claims against any Swiss entity (Refugee Class).

I respectfully suggest that the first of these classes, the Deposited Assets Class, is conceptually different from the other three, and must therefore be treated differently. Of course, the right to an identifiable asset such as a bank account or the contents of a safe deposit box is a vested personal right that, upon the death of the original owner, belongs to such original owner's heirs and successors. The other three classes, however, are far more generic in nature.

Virtually every single victim of the Holocaust, the survivors as well as the millions who perished, had "assets that were looted by the Nazi Regime." Such assets include gold coins and jewelry, precious stones, household items made of silver and other valuable personal property. In addition, the perpetrators of the Holocaust regularly extracted gold fillings from the teeth of Jews who had been gassed or otherwise murdered in the Nazi death and concentration camps. Many of these gold assets were melted down together with other gold items. Other valuable looted assets were sold, and the proceeds used in any number of ways. I submit that it would be impossible to determine which specific assets somehow ended up, directly or indirectly, in the control of a Swiss entity. I defy anyone to ascertain the identity of the owners of looted gold wedding rings, other jewelry or gold fillings that were melted down and deposited in or passed through a Swiss bank.

Similarly, I submit that the overwhelming majority of Holocaust survivors simply do not know whether they "[p]erformed slave labor for companies or other entities that may have deposited the revenues or proceeds of that labor with or transacted such revenues or proceeds through Swiss entities (Slave Labor Class II)." In the ghettos and Nazi death and concentration camps, Jews were forced to perform slave labor for a wide variety of German entities. These Holocaust

victims were not provided with W-2 forms or other documentation setting forth the identity of their employers! Furthermore, since the performed slave labor benefitted the German state as a whole as well as its leaders, I submit that *all* "assets that may have been deposited" by German government-related entities or German officials with any Swiss entity at any time during the Second World War could legitimately be considered the direct or indirect proceeds of slave labor.

Finally, with respect to the fourth class, while Holocaust survivors who are still alive today would know whether they "unsuccessfully sought entry into Switzerland," there is no reasonable way to ascertain such information with respect to most other victims of the Holocaust, including survivors who died between 1945 and the present. Thus, countless legitimate claims in this category can never be made, and there is no reasonable way to verify the accuracy of claims that may be made on behalf of Holocaust victims who are no longer alive.

The fact is that millions of Holocaust victims, including hundreds of thousands of heirless victims, had assets looted from the that passed through Swiss entities in one form or another, or were forced to perform slave labor for Nazi entities or individuals who subsequently "deposited the revenues or proceeds of that labor with or transacted such revenues or proceeds through Swiss entities." There is no way to document even a majority of these instances of collaboration by Swiss entities with the perpetrators of the Holocaust. Accordingly, I believe that *all* Holocaust survivors should be entitled to assert claims in this proceeding.

Also, I believe it is critical that only the so-called Deposited Assets Class should include "heirs, successors, administrators, executors, affiliates and assigns" of the original claimants. I respectfully submit that the other classes should be limited *exclusively* to the survivors themselves, and not be inherited by their children, family members or other successors. In much the same way that pension rights are not transferable or subject to inheritance, generic claims for Holocaust-related reparations should go to the individuals who suffered. I make this argument for two reasons. First, in order for the settlement to be meaningful, it should not be diluted any more than absolutely necessary. Even if only survivors are eligible claimants, the amount to which any one individual might be entitled is extremely small. If heirs and successors are also to be entitled to share in the overall fund, the number of claimants will be expanded to such a dramatic extent as to make any recovery utterly meaningless.

Allowing generic claims by individuals other than the survivors themselves under the proposed formulation of the settlement would be terribly unfair. Most survivors did not tell their children precisely where they were and what they were forced to do during the Holocaust years. Even if a survivor told his or her child or children that he or she was in one or more Nazi concentration, slave labor or death camps, the survivor often did not provide any precise chronology. For example, the son or daughter or a survivor may know that the parent was in Auschwitz, but may well be unaware whether said parent was an inmate at Auschwitz I, Birkenau, Buna or one of the other Auschwitz sub-camps. This is especially relevant if claims have to be linked to particular enterprises with a direct or indirect Swiss connection. Most survivors at this stage of their lives probably could not identify every factory of every camp in

which they were forced to work. Certainly, their children are unlikely to have such specific knowledge. Accordingly, allowing heirs to assert claims would benefit those children or grandchildren of Holocaust survivors who had the foresight and strength to provide details of their experiences to their children, and at the same time would discriminate against the descendants of those survivors who for whatever reasons did not provide such detailed accounts of their Holocaust experiences to their children.

Furthermore, if heirs and successors are to be allowed to assert claims based on the presently contemplated categories, it should not only be the heirs and successors of survivors, but also the heirs and successors of the millions who were murdered during the Holocaust. For example, my parents, both now deceased, were inmates at Birkenau and Bergen-Belsen. Between August 1943 and April 1945, my father was also an inmate at Auschwitz I, a labor camp in Poland named Lagisha, and the concentration camps of Langesalza and Dora-Mittelbau, both in Germany. My father had three sisters and a brother, and numerous nephews and nieces, all of whom perished at Auschwitz and in other Nazi camps. I have no intention of submitting a claim in this proceeding, but if I were to do so, I could theoretically submit such claims not only on behalf of my parents but on behalf of all the other members of my father's family of whom I am their sole heir. If such claims were to be allowed, the Court would have to consider hundreds of thousands of claims, very few of which, incidentally, would be subject to any realistic verification.

Disposition of the Settlement Fund

Given the absence of universal health care in the United States, Holocaust survivors living on Manhattan's lower East Side, in Brooklyn and in the less affluent retirement communities of South Florida and elsewhere cannot afford desperately needed medical treatment. The combination of Medicare, Social Security benefits and the meager reparations some survivors receive from Germany is insufficient to pay for doctors, extended hospital stays, nursing care, prescription drugs, eyeglasses and the like. Often, survivors must decide whether to buy food or medication, whether to pay the rent or get their dentures fixed.

In sharp contrast, World War II veterans of the German armed forces, including many who actively participated in perpetrating the Holocaust, receive full health care and generous pensions from the German government. There can be no excuse for allowing the victims of history's greatest atrocity to live under worse conditions than the criminals who persecuted them and murdered their families.

No amount of money can ever fully or even adequately compensate Holocaust survivors for the pain and suffering to which they were subjected. Nevertheless, it is now possible for the Court to apply a substantial part of the \$1.25 billion Settlement Fund in this proceeding to alleviate their physical and psychological burdens to a significant extent. Moreover, if this Settlement Fund could be pooled with settlements presently being negotiated with German banks, insurance companies and corporations that exploited slave labor during the Holocaust or that otherwise were the recipients or beneficiaries of assets looted from Holocaust victims, most of the health

care needs of Holocaust survivors in the United States and elsewhere could be covered.

I do not propose, and indeed do not have the expertise, to set forth a comprehensive program for the Court's consideration. This should be done by experts in the health care field following a survey of survivors regarding their actual needs in this area. Numerous proposals have been and are being suggested. For example, my friend and colleague Rositta Kenigsberg, the Executive Vice President of the Holocaust Documentation and Education Center in Miami, Florida, has long advocated a program of comprehensive home health care for Holocaust survivors. Other possible options include Medicare supplement coverage, prescription drug coverage, and long term health care.

Based on the assumption that there are approximately 125,000 Holocaust survivors residing in the United States at the present time, the following calculations have been prepared by one highly experienced consultant to the health care industry, Mr. Tom Klein, vice president of Omni Managed Health, Inc. located at 50 Broadway, 5th floor, New York, NY 10004:

1. Medicare Supplement Coverage, including a combination of upgrade and uncovered cost, could be provided for approximately \$130 million annually;
2. Upgrading Medicare recipients to the highest level of prescription drug coverage could be provided for approximately \$90 million annually;
3. Immediate nursing home care could be provided at an approximate annual cost of \$120 million;
4. Immediate home nursing care could be provided at an approximate annual cost of \$45 million;
5. Long Term Care Insurance could be provided at an approximate annual cost of \$220 million.

I am attaching hereto a more detailed assessment of the various medical health care options for Holocaust survivors living in the United States that was thoughtfully prepared by Mr. Klein, and for which I am profoundly grateful.

It is clear, of course, that the \$1.25 billion settlement fund in this proceeding cannot cover the entire range of health care needs confronted by Holocaust survivors. It is also evident that survivors in other countries are also entitled to share in this settlement. However, at the same time the Court has, I respectfully submit, the power to apply the Settlement Fund in an equitable manner. Holocaust survivors who have never received any reparations for their persecution during the Nazi era, and survivors for whom the reparations they have received are inadequate to enable them to live out their remaining years with a modicum of dignity, can and should receive preferential consideration. Holocaust survivors residing in most countries other than the United States and the former Communist bloc nations have comprehensive health care coverage.

Giving preference to those Holocaust survivors who do not have and cannot afford such comprehensive health care coverage would be in the interest of justice.

Also, as already indicated above, if the Settlement Fund in this case could be pooled with other funds available from German banks, insurance companies and corporation for reparations to Holocaust victims, far broader coverage could be provided to a far greater number of Holocaust survivors. While the defendants in such other proceedings are not before this Court, virtually all the claimants and their counsel are. It might be possible for the Court to obtain the consent of all the parties before it to have certain of the German entities contribute set amounts to a pooled comprehensive health care fund administered by the Court, with such contributions (which could easily exceed the Settlement Fund) credited against the eventual resolution of the various proceedings and negotiations presently underway.

For example, since according to published reports, the various German banks and corporations are willing to enter into a settlement of at least \$4.3 billion, it might be possible to ask these entities to contribute \$1 billion or even \$2 billion to such a comprehensive health care fund, and obtain the consent of the World Jewish Restitution Organization and other participants in the settlement negotiations with these German entities to credit such contribution toward whatever settlement will eventually be reached in the German Holocaust-era slave labor negotiations.

Attorneys' Fees

I was pleased to learn from Professor Burt Neuborne in a recent telephone conversation that attorneys' fees in this case will not be awarded on a contingency fee basis, but rather will be based on a combination of a reasonable hourly rate and the respective contribution made toward the settlement by the individual attorneys or law firm seeking fees. Given the nature of the assets in question, it is critical that there not even be the slightest appearance that anyone might be profiteering from what is truly blood money.

Conclusion

I apologize for the length of this letter, but hope that it may in some small fashion help result in an equitable disposition of the Settlement Fund to improve the quality of life of Holocaust survivors in their declining years. If this can be accomplished, the settlement in this proceeding will be of historic dimension; otherwise, there is a very real danger that the impact of this settlement will be purely symbolic and ultimately meaningless.

Respectfully submitted,



Menachem Z.

**Proposal for Providing
Certain Insurance Benefits for
Holocaust Survivors**

It is estimated that there are approximately 800,000 Holocaust survivors worldwide, with about 125,000 residing in the United States. The Swiss banks have expressed a willingness to contribute to the betterment of the financial status of these Holocaust survivors.

Given that over fifty years have elapsed since the end of World War II, practically all survivors are at least 65 years old. For many survivors, the effects of their wartime experiences have manifested themselves throughout their lives in the form of various medical/psychological ailments. These conditions have with the passage of time become exacerbated and, in addition to the personal burden, for many they represent a real financial hardship.

In the United States the vast majority of people over 65 qualify for Medicare benefits. However, significant gaps in coverage still remain. In light of the situation outlined above, we believe that a program designed to alleviate at least the financial burdens associated with medical care, would be a most appropriate use of funds.

We have outlined below a number of areas of need that should be addressed by such a program. Each of these areas can be addressed independently or in combination with one or more of the components. Of course detailed administrative procedures would have to be developed before the actual implementation of the proposals.

In addition, Exhibit I, attached, outlines a framework for developing cost estimates for each of the components based on the best assumptions available to us. A word of caution. As is evident, the estimates are highly dependent on the accuracy of the assumptions. Accordingly, it is imperative to tap into any and all statistical sources that can be incorporated into the framework developed.

I. Medicare Supplement Coverage:

As noted, most survivors will have Medicare coverage. However, the program includes a number of internal limitations, such as hospital and medical deductibles, co-insurance requirements, doctor's charges in excess of the amount accepted by Medicare, etc. These limitations can result in significant out-of-pocket medical expenses. Private insurance coverage designed to fill in some or all of these gaps in coverage ("Medigap" insurance), can be purchased on an individual basis. Unfortunately, the cost of even the most basic of these policies can be too much for many seniors living on fixed incomes. We propose that for qualifying survivors, Medigap policies provided by one of the existing Medigap carriers, be made available on a fully subsidized basis.

II. Prescription Drug Coverage:

The Medicare program does not provide coverage for prescription drugs. The cost of drugs has been increasing at alarming rates. For many of the survivors the expenses associated with the newest forms of life saving drugs, reach into the thousands of dollars. While significant volume discounts in drug costs exist for many of the large insurance companies, individual survivors are required to pay at the retail price level. Although there has been much talk of expanding Medicare to include some prescription benefits, for many of the survivors the benefits will still be too limited. We propose that, in conjunction with one of the national Prescription Drug Benefit Management companies, such as Diversified Pharmaceutical Services, National Pharmacy Services, etc., a program for providing required drugs, on a high volume deeply discounted basis, be developed.

III. Home Health Benefits:

Although many of the survivors are suffer from various forms of disabilities or debilities, they would often be able to maintain their independence if some form of assistance were available. Unfortunately, benefits for home health aides are only available after hospitalization, and then only for a short period of time. Accordingly, we propose that working with one of the home health agencies, a program designed to provide assistance in the survivor's own home setting, be developed. This assistance can be non-medical, to assist in daily living activities, limited medical assistance by home health attendants to administer periodically required medications or injections, limited nursing care, etc. Such a program would allow the survivor to retain a sense of dignity by remaining in a familiar environment and obviate the need for confinement in nursing facilities as well as the attendant high costs.

IV. Long Term Care:

There are, of course, those for whom home care benefits will be insufficient. This group consists of those who have an immediate need to be confined to a facility and all those who presently live at home but may need such benefits in the future. We envision providing for these people in the following two ways.

- Working with the existing long term care industry, develop a program for guaranteed access and discounted payments for survivors requiring confinement to various facilities. We expect that the initial attempt would be to make use of the least acute care setting, such as an assisted care facility, and only as a last resort, to a nursing facility.
- Working with insurance carriers who presently provide insurance policies for long term care benefits, develop an insurance policy that will pay for confinement to such facilities. Because such policies would be provided to those who presently do not need it, it will be true insurance. Accordingly, the cost of such plans should be reasonable. We propose that the premiums for such policies be fully subsidized for those survivors that qualify.

- 10% require immediate home nursing care for an average of 30 days
- 30% of eligible will get coverage

Calculation

- a. Immediate nursing home care
 $125,000 \times .05 \times 25,000 \times .75 = \$117,187,500$
= \$120 Million
- b. Immediate home nursing care
 $125,000 \times .10 \times 120 \times 30 = \$45,000,000$
= \$45 Million
- c. Purchase Long Term Care Insurance
 $125,000 \times .3 \times 5,800 = \$217,500,000$
= \$220 Million