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March 11, 2004

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

Re: Holocaust Victim Assets Litigation

Dear Sir:

Enclosed herewith please find Class Counsel's Comments on Proposals for the Distribution of Residual Unclaimed Settlement Funds.

Very truly yours,

Robert A. Swift

RAS:pdw
enc.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**IN RE
HOLOCAUST VICTIM ASSETS
LITIGATION**

}
} Master Docket No. CV-96-4849
} (ERK) (MDG)
}

**CLASS COUNSEL'S COMMENTS ON PROPOSALS FOR THE
DISTRIBUTION OF RESIDUAL UNCLAIMED SETTLEMENT FUNDS**

The undersigned Co-Chair of the Plaintiffs' Executive Committee and Settlement Class Counsel submits the following comments on the proposals for the distribution of unclaimed residual settlement funds which were published at www.swissbankclaims.com.

I. Overview

With one exception, the approximately 75 proposals for distribution of the unclaimed residual settlement funds published on the litigation's website fall woefully short of benefitting the members of the Looted Assets Subclass. In general, they can be characterized as well-intentioned submissions to promote missions of specific nongovernmental organizations (NGO's). None propose to benefit the entire Looted Assets subclass. Virtually all are skewed to providing welfare-like services to indigent subclass members rather than tendering financial benefits for purposes chosen by individual subclass members. Most require a high degree of administration and extend for many years.

The one exception is the proposal by the undersigned Class Counsel to provide subclass members reimbursement for medical services or medical insurance of up to \$1,000. Unlike other proposals, this proposal:

- Provides benefits to all Holocaust survivors in the subclass worldwide
- Gives subclass members freedom of choice to select the benefit they want
- Is nonsectarian among the subclass members
- Provides for medical care which is universally needed
- Limits estimated administration costs to 1%
- Distributes the entire unclaimed residual settlement funds, estimated at over \$600 million, within 1-2 years

II. The Entire Looted Assets Subclass Has an Entitlement to Benefits

There is a mistaken notion in the proposals, encouraged by the Court and Special Master, that a *cy pres* award of unclaimed residual settlement funds is charitable in nature and should be administered on a charitable basis. In reality, a *cy pres* award is simply an alternative to payment of claims on a claims-made basis. The original objective is the same, which is to compensate **all** class members for their settled claims. In the *Holocaust Victim Assets Litigation*, all members of the Looted Assets subclass relinquished their claims and can no longer pursue those claims against any person or entity in Switzerland. Their claims are released. Once this

Court determined that payment of compensation on a claims-made basis was not economically or administratively feasible, it was incumbent on the Court to create a *cy pres* alternative which would benefit all members of the subclass as nearly as possible. As a matter of law, there must be congruity between those who released their rights and those who receive benefits.

III. Survivors Should Not Be Treated Like Wards of the Court

Fashioning of *cy pres* relief is not an opportunity to transform a federal court into a foundation, have an Article III judge make decisions as which class members are more deserving of benefits, and have those benefits doled out as welfare. The *cy pres* benefit here is an entitlement, not a gift or alms. There is a tendency in this case – and among NGO’s generally – to view class members as incapable of handling their financial affairs; and that NGO’s can better decide how to spend their entitlements. Speaking on behalf of tens of thousands of Holocaust survivors, the undersigned can safely say that this view is resented. No subclass member wants to be regarded as a ward of the Court or NGO. No subclass member has ever told the undersigned that he or she was incapable of deciding how to spend any compensation obtained and instead wished an NGO to relieve him or her of that responsibility. Virtually no subclass member would prefer to receive a food pack instead of legal tender so the subclass member can exercise his or her free will to decide what to buy. Survivors

of 9/11 were not treated as “wards” receiving welfare; why should mature survivors of the Holocaust be so treated?

IV. The Proposals Fail to Target the Entire Subclass

There are many worthwhile causes and legions of good charities, but the Settlement Fund was not created as a private foundation for the Court to distribute monies to generic causes and charities. Distribution of unclaimed residual settlement funds must be targeted to the Looted Assets subclass. Each of the proposals carves up the subclass and urges a disproportionate distribution to the group served by the NGO, which has either a geographical, ethnic, national or religious bias. Moreover, it is preferable to distribute compensation for benefits directly to the subclass rather than indirectly through NGO's. Yet no NGO proposes this. Should the Court select a distribution scheme from these various proposals, the scheme will necessarily be piecemeal and patchwork. There is no proposal, save that submitted by the undersigned, which is unified and egalitarian among subclass members.

V. The Court Must Avoid Entanglement in NGO Politics

The federal court system is both secular and nonpolitical. By contrast, NGO's in the Jewish, Romani and Jehovah Witness worlds are political – political not in the governmental sense but the disparity of mission. The selection of specific NGO's from these worlds to handle distribution necessarily involves elevating them as a

result of the funds they will handle; and deprecating those NGO's not selected. To avoid any appearance of partiality based on religion or nationality the Court should select a secular for-profit organization, possibly an accounting firm, to handle disbursement of funds and audit the distribution of benefits.

March 11, 2004



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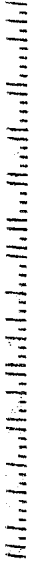
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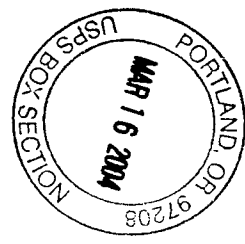
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