



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LEGAL SERVICES

IN RE:
HOLOCAUST VICTIMS ASSETS
LITIGATION

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

This Document Relates to: All Cases

**AGUDATH ISRAEL WORLD ORGANIZATION
SUBMISSION TO THE HONORABLE EDWARD R. KORMAN
PROPOSAL FOR ALLOCATION AND DISTRIBUTION
OF POSSIBLE UNCLAIMED RESIDUAL FUNDS**

INTRODUCTION

(1) Pursuant to the Order of the Court herein of November 17, 2003, as modified by the further order of the Court of December 4, 2003, Agudath Israel World Organization (AIWO) is pleased to submit its proposal for allocation and distribution of possible unclaimed residual funds.

BACKGROUND

(2) On February 22, 2000, AIWO made a Submission to Special Master Gribetz, in the context of the Special Master's preparation of a Plan of Allocation and Distribution for the Settlement Fund that is the subject of these proceedings. That Submission is appended, and forms part of this Submission.

(3) Following the publication of the Special Master's Proposed Plan of Allocation and Distribution of the settlement proceeds, AIWO, on November 6, 2000, made a Submission to the Honorable Edward R. Korman, concerning the proposed Plan of Allocation and Distribution. A copy of that submission is appended hereto, and forms part of this Submission.

(4) This Submission follows from, and is a logical extension of, the two previous Submissions by AIWO, which are referred to above.

SUMMARY OF AIWO'S CONTENTION

- (5) Discussions regarding the allocation and distribution of proceeds of the Swiss Bank Settlement case have centered primarily on the entitlements and needs of individual survivors of the Holocaust. And of course this is entirely as it should be. Those who had their possessions taken, their surroundings destroyed and their lives uprooted, and were forced to rebuild from the ashes, surely stand on the firmest moral ground in laying claim to restitution. Apart from those who actually perished at the hands of the Nazis, they were unquestionably the worst-affected victims or targets of Nazi persecution. Those of us born after World War II, and raised in a benevolent and affluent Western democratic milieu, can only stand with humility in their presence, and marvel at the heroism of spirit that enabled so many of them to rebuild their lives after what they suffered and witnessed.
- (6) The Swiss Bank Settlement Agreement recognizes this in a number of ways, perhaps most centrally in its definition of "Victim or Target of Nazi persecution", which begins by referring to "any individual... persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish..."
- (7) At the same time, though, it is important to bear in mind that the definition of "Victim or Target of Nazi persecution" goes on to include any "community, congregation, group, organization or other entity which was persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish..."
- (8) As detailed more fully in our two previous submissions, the fact that the definition in the Agreement extends to a range of entities other than individuals – including, among others, yeshivos (schools and institutes of Torah studies) and kehilos (religious congregations or communities defining themselves by reference to some common geographic, social or religious bond) that were destroyed or targeted for destruction – is really no more than the recognition of an important historical fact: Just as the Nazis sought to exterminate all individual Jews (and tragically succeeded to the extent of 6,000,000), so too did they seek to destroy a whole culture, or way of life, as embodied in the educational and communal institutions that promoted that uniquely Jewish way of life. And it is this fact that

underpins, in a moral and historical sense, the inclusion of yeshivos and kehilos (among others) in the legal definition of Victims or Targets of Nazi persecution.

THE SPECIAL MASTER'S INITIAL RECOMMENDATION

- (9) In his initial "Proposed Plan of Allocation and Distribution", Special Master Gribetz recognized the role and significance of institutions such as yeshivos and kehilos, when he suggested the possibility of allocations to "cultural, memorial or educational projects" in the event of residual funds remaining, following what he referred to as "Stage 1" payments:

"In the event that any portion of the \$1.25 billion Settlement Fund remains after "Stage 1" payments, which includes Deposited Assets claims, distributions to surviving Nazi victims who are members of the Looted Assets, Slave Labor I and II, and Refugee Classes, and fees and administrative expenses, a second round of payments that can be made. During such a "Stage 2" of payments (if any) there can be additional distributions to surviving Nazi victims, and perhaps also to needy spouses and children of deceased Nazi victims. At that time, it also may be possible to allocate a portion of the remaining Settlement Fund to some of the proposed cultural, memorial or educational projects that have been submitted to the Special Master. To that end, the Special Master recommends that the Court review institutional proposals once an evaluation of the bank account claims, as well as the claims submitted by members of the other four classes, is completed." (pp 19-20, of the Special Master's Proposed Plan of Allocation and Distribution, emphasis supplied)

- (10) In the Memorandum & Order approving the Plan of Allocation and Distribution proposed by Special Master Gribetz, at pages 5-6, the Court quoted the aforementioned passage and expressly embraced the Special Master's recommendation that, upon completion of the evaluation of the claims submitted by the classes, consideration should be given to allocations for "cultural, memorial or educational projects."

THE SPECIAL MASTER'S MORE RECENT RECOMMENDATION

- (11) On October 2, 2003, the Special Master filed his Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds. On page 13 thereof, the Special Master said:

"The Distribution Plan observed that in the event of an unclaimed residual fund following initial distributions, 'a second round of payments can then be made. During such a "Stage 2" of payments (if any) there can be additional

distributions to surviving Nazi victims, and perhaps also to needy spouses and children of deceased Nazi victims. At that time, it also may be possible to allocate a portion of the remaining Settlement Fund to some of the proposed cultural, memorial or educational projects that have been submitted to the Special Master. To that end, the Special Master recommends that the Court review institutional proposals once an evaluation of the bank account claims, as well as the claims submitted by members of the other four classes, is completed.' In re Holocaust Victim Assets Litig., 2000 WL 33241660, at *3-4, citing Distribution Plan, Vol. I, at 19-20. In accordance with these suggestions, and depending upon the amount of the residual, if any, the Court may wish to consider a modest distribution to communal, remembrance and/or educational programs. See Distributions Plan, Vol. I, Annex A (summarizing approximately 60 organizational proposals, posted at www.swissbankclaims.com). Any such funding recommendation, however, should be deferred until more information is available concerning the total amount of the possible unclaimed residual." (fn 14; emphasis supplied)

- (12) It is noteworthy that, in this passage, the Special Master suggests for the first time that any distribution to "communal, remembrance and/or educational programs" be "deferred" at this time; that such distribution should be considered "depending on the amount of the residual, if any"; and that at most any such distribution be "modest".

AIWO'S CONTENTION IN RESPONSE TO THE SPECIAL MASTER'S INTERIM REPORT

- (13) AIWO welcomes the continuation of both the Court's as well as the Special Master's consideration of what the Special Master has referred to, compendiously, as "institutional proposals" and "communal, remembrance and/or educational programs."
- (14) At the same time, however, we would invite the Special Master, and ultimately the Court, to reconsider the Special Master's suggestion that "the Court may wish to consider a modest distribution" to the programs referred to above – and that even that consideration be "deferred" for now and made ultimately to depend upon "the amount of the residual, if any."
- (15) Specifically, it is AIWO's contention that a more positive approach should be adopted, and that it is appropriate for a specific and meaningful amount to be allocated at this time to yeshivos and kehilos that may be seen as "Victims or Targets of Nazi persecution".

- (16) This would constitute recognition by the Court of the strong historical and moral claims adverted to in paragraph (8) above, and elaborated on in AIWO's Submission of February 22, 2000.
- (17) Of particular importance, too, given the nature of the proceedings before the Court, this would also address a significant legal dimension to the case. The term "Victim or Target of Nazi persecution", as defined in the Settlement Agreement between the parties, expressly includes institutional victims. The significance of such inclusion ought not be overlooked or minimized.
- (18) But it goes beyond the mere inclusion of institutional victims in the definition. In ordinary, colloquial parlance, it would be most unusual, in referring to victims of the Holocaust, to be understood to mean anything but individuals. The fact that the definition that constitutes the fulcrum around which the whole Swiss Bank Settlement Agreement revolves explicitly includes institutions takes on added significance. It serves to emphasize that the issue was in fact consciously addressed, and the definition gives legal expression to the underlying historical and moral claims of institutions.
- (19) Institutions, like individuals, were victims or targets; and institutional survivors, like individual survivors, need support to enable them to rebuild and sustain themselves.
- (20) In light of this, AIWO respectfully submits, it would be wrong to consider funding for institutional survivors as a mere afterthought. Rather, the historical, moral and – very importantly – legal dimensions to the case all require that institutional victims be dealt with, from the outset of deliberations regarding "Stage 2" payments, in a substantial and meaningful way.
- (21) This is all the more so when it is borne in mind that institutional survivors are the only Victims or Targets of Nazi persecution, for purposes of the Settlement Agreement, that have, thus far, not benefited in any way under the Agreement. It would be unthinkable for an entire category of victims to be excluded from meaningful participation in the benefits of the Settlement Agreement.

(22) The basis upon which yeshivos and kehilos deserve special funding consideration at this time are well articulated in paragraph 34 of AIWO's initial submission to the Special Master. Because of the relevance of this paragraph, we reproduce it in full below:

"Whether or not yeshivos and kehilos are deemed to fall within the Looted Assets Class, there are in any event cogent reasons to give them substantial consideration as high priority beneficiaries of any residual funds:

"a) As noted above, yeshivos and kehilos are recognized by the Settlement Agreement as being victims and targets of Nazi persecution;

"b) But for the destruction of historical records that would demonstrate that significant assets from these yeshivos and kehilos ended up in Swiss banks, yeshivos and kehilos would certainly fall within the Looted Assets Class;

"c) The yeshivos and kehilos of today are centrally involved in rebuilding what the Nazis sought to destroy. According to the distinguished Holocaust historian Dr. Michael Berenbaum, whose analysis is referred to above, 50-70% of the 6 million Jews murdered by the Nazis were Orthodox (see Exhibit A). These victims, whose bank accounts and looted assets thus probably form the bulk of what has until now remained in Switzerland, lived and died as observant Jews. It is today's Orthodox institutions of education and communal life that are doing the most to ensure the survival and continuity of the very way of life that those victims, had they been given the opportunity, would have sought to perpetuate. We do not presume to speak with certainty, but it stands to reason that those victims would have wanted a significant portion of their assets to be distributed to these institutions.

"d) In this context, it is relevant to note, and take into account, that many other causes and institutions devoted to Holocaust-related activities are already being generously funded by governments, and from other official sources such as the Claims Conference. Yeshivos and kehilos, in contrast, have thus far not benefited from any of the restitution-related funding streams. This failure to include the very educational and communal institutions that occupied such a central role in pre-War Jewish Europe, that have heroically re-established themselves in the post-War era, and that furnish the greatest hope for ongoing Jewish continuity, is both glaring and indefensible.

"e) These institutions are at once both the most ignored and yet perhaps the most needy. Dr. Marvin Schick and Jeremy Dauber's study, *The Financing of Jewish Day Schools* (Avi Chai Foundation, 1997), demonstrated that yeshiva day schools in the United States are severely underfunded in nearly every aspect of their operations, and do not receive adequate assistance from Jewish federations around the country. Dr. Schick's more recent study of Jewish day schools, *A*

Census of Jewish Day Schools in the United States, (Avi Chai Foundation, January 2000), notes that in the years ahead:

'... there will be a need for thousands of additional [classroom] seats. In the first decade of the century that is about to begin, there likely will be as many as 30,000--and perhaps more--additional day school students, a circumstance that will pose a challenge to school officials and communal leaders. Many day schools--especially the larger institutions--are already operating at or near capacity, and some are above capacity.'

The same growth pattern, and the same need, are evident in Israel, Europe and other parts of the world where Jews reside and seek to educate their children in a manner that will carry forward the glorious tradition and heritage that was sought to be destroyed in the Holocaust.

"f) This Settlement offers the Court an opportunity to help establish the central moral position of yeshivos and kehilos within the overall restitution framework."

AIWO'S SPECIFIC PROPOSAL

- (23) AIWO proposes that, in making a distribution to institutional survivors, the Court's focus should be on the educational and communal institutions referred to in AIWO's original Submission of February 22, 2000, namely yeshivos and kehilos that are successor institutions; that is to say, those that were sought to be destroyed by the Nazis and that have striven to rebuild themselves after the war.
- (24) AIWO proposes the establishment of a commission ("the Commission") to:
- (a) Determine the eligibility of yeshivos and kehilos in accordance with the criteria described in paragraph 26 below; and
 - (b) Oversee disbursement of such a sum as the Court ultimately allocates for successor yeshivos and kehilos.
- (25) The Commission will consist of no fewer than five and no more than nine members, to be chosen by AIWO with the approval of the Court, being people who are:
- (a) of good character, and of impeccable integrity and reputation;
 - (b) familiar with the history of yeshivos and kehilos in the pre- and post-Holocaust eras;

- (c) have demonstrated a long-standing commitment to, and involvement in, the perpetuation of yeshiva education and Jewish communal life.

DETERMINATION OF STATUS AS SUCCESSOR YESHIVA OR KEHILA

(26) First, the Commission will make decisions as to eligibility of yeshivos and kehilos as successor institutions to those that were sought to be destroyed by the Nazis. With respect to yeshivos, and to the extent applicable to kehilos, such determinations will be based on the extent to which they exhibit all, or alternatively some combination, of the following features of pre-War entities:

- (i) the same name;
- (ii) the same Rosh(ei) Hayeshivah, or Dean(s), or Rosh[e]i Kehila;
- (iii) alternatively to (ii), Rosh(ei) Hayeshivah (Kehila) who is/are sons, sons-in-law, lineal descendants, disciples or students of the pre-War Rosh(ei) Hayeshivah (Kehila);
- (iv) the same guiding philosophy;
- (v) the same approach to study;
- (vi) the same liturgy in prayers;
- (vii) other common features.

(27) In its original Submission, AIWO appended a list of 285 yeshivos and kehilos that responded to AIWO's solicitation of information designed to identify potential successor institutions. The majority of these institutions are located in Israel; a significant number in the United States; and others in Europe, the former Soviet Union and Australia.

(28) The Commission will communicate with these institutions, inviting them, to the extent they have not already done so, to submit evidence of eligibility. It will also undertake a major outreach campaign, through AIWO and its international network of affiliated national bodies, to invite submissions from other institutions wishing to demonstrate eligibility.

DISTRIBUTION CRITERIA

- (29) Out of the total sum to be allocated by the Court, it is proposed that, with respect to distributions to be made to yeshivos, the bulk of such distributions be made to each eligible yeshiva, based on the certified number of students studying in that yeshiva. We believe that such a "per capita" distribution would be both equitable and most readily capable of objective application and scrutiny.
- (30) At the same time, it is proposed that approximately 20% of the allocation (the precise percentage to be determined by the Commission upon being advised of the total allocation available for yeshivos and kehilos) be set aside for supplemental allocations to yeshivos (and kehilos) that are able to demonstrate special need worthy of additional funding.
- (31) In this connection, AIWO notes the special emphasis, by both the Court and the Special Master, on assisting Eastern European survivors, based on the notion of their being double victims, as well as their particularly needy circumstances. AIWO acknowledges the relevance of this consideration as it might be applied to Eastern European yeshivos and kehilos.
- (32) Before making any distributions, the Commission will submit its detailed distribution plan to the Court for approval.

CONCLUSION

- (33) Whilst AIWO does not nominate a specific sum to be allocated by the Court for institutional survivors, it requests that the sum be such as will make a meaningful contribution to their ongoing efforts to rebuild that which was destroyed, and will contribute to ensuring the continued survival of the Jewish people.

Dated: New York, N.Y.
January 30, 2004

Respectfully submitted,

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Previous

Submissions

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)
(Consolidated with CV 96-5161
and CV-97-461)

AGUDATH ISRAEL WORLD ORGANIZATION
SUBMISSION TO SPECIAL MASTER JUDAH GRIBETZ

INTRODUCTION: THE HISTORIC NATURE OF THESE PROCEEDINGS

- (1) It is difficult to imagine a court proceeding operating, at once, at two different levels, more so than is the case in this litigation.
- (2) At one level, it is a case that has all the normal trappings of litigation in court, inasmuch as documents have been filed, claims are made and monetary relief is sought – the task of the Court being to adjudicate among the competing legal arguments. At the same time, though, one term which appears in the court papers – Holocaust – utterly transforms the case; it leads it to assume historical and moral proportions, and the Court's task is transformed into providing a measure of justice – however small and inadequate – in the widest and deepest sense of that term, in respect of an event in history which itself assumed, and continues to maintain, cosmic proportions.

- (3) At one level, too, the plaintiffs in the case, as in every litigation, are legal persons recognized by the law and named in the court papers. But in a deeper, metaphorical sense, and to draw on the powerful imagery invoked by Mr. Gideon Hausner, the Attorney General of Israel, when he opened the case for the prosecution in the trial of Adolf Eichmann, six million plaintiffs are, in spirit, looking over the shoulders of the parties and, ultimately, the Court.
- (4) This submission to the Court, while presented in a form appropriate to the first level, is framed with the deeper level very much in mind.

AGUDATH ISRAEL WORLD ORGANIZATION
AND ITS ROLE IN THE PROCEEDINGS

- (5) Agudath Israel World Organization (AIWO) is an 88-year-old confederation of Orthodox Jewish communities in different parts of the world. It has a long and distinguished record in the realm of international human rights, with particular emphasis on freedom of religion, as well as matters relating to culture and education. For over 50 years, since 1948, it has enjoyed consultative status with the United Nations, under Article 71 of the U.N. Charter.
- (6) AIWO was founded in Poland in 1912, and before the Second World War had active national constituent organizations in a range of European countries. Today, its national organizations function in Israel, the United States, England, Belgium, Holland, Switzerland, Mexico, Argentina, Russia, Austria, Canada, Ukraine and Moldova. In addition, it has representation and/or constituencies in numerous other countries.
- (7) AIWO is a constituent member of the Conference on Jewish Material Claims Against Germany (colloquially known as “the Claims Conference”), and also of the World Jewish Restitution Organization (WJRO). The latter organization is designated in the Settlement

Agreement as both an intervening party as well as a representative of the Settlement Classes, and the WJRO is itself defined to include “all of its constituent bodies” – including, that is, AIWO.

- (8) In this submission (which is independent of and supplemental to the submission of the WJRO, and reflects the particular perspective of AIWO and its constituency), AIWO advocates as follows: consideration, and inclusion in distribution plans for the Settlement Fund, to the maximum extent possible, of yeshivos (schools and institutes of Torah studies) and kehilos (religious congregations or communities defining themselves by reference to some common geographic, social or religious bond) which were sought to be destroyed during the Holocaust, and which have rebuilt themselves, in various forms and in various parts of the world, since the Second World War.
- (9) AIWO’s purpose in this submission is to explain the significant moral and historical bases which underlie the claim for substantial Settlement Fund distribution to the aforementioned yeshivos and kehilos, as well as those legal aspects of the Settlement Agreement that underpin it.

AIWO’S CONTENTION IN THESE PROCEEDINGS

- (10) AIWO’s contention, as elaborated below, is twofold:
- (a) The first relates to the Looted Assets Class, under the terms of the Settlement Agreement. There is no question that yeshivos and kehilos were targeted by the Nazis for persecution and destruction, and that they had significant tangible assets that were looted by the Nazis, including valuable artifacts of religious life. If the Court holds that, in order to fall within the Looted Assets Class, it is unnecessary to demonstrate a clear evidentiary nexus between

specific looted assets and the Releasees, then, it is submitted, yeshivos and kehilos which were sought to be destroyed during the Holocaust and were subsequently re-established after the War – either directly or through successor entities – qualify as members of the Looted Assets Class, and therefore qualify for part of the Settlement Amount on that basis.

(b) Further, and alternatively, if any amount of the Settlement Fund remains as a residual, after satisfying the claims of the Settlement Classes, yeshivos and kehilos that were sought to be destroyed during the Holocaust, and have rebuilt themselves in the years since the Second World War, have a profound moral claim thereto. They played a central role in pre-War European Jewish life; they were clearly targeted for persecution and destruction by the Nazis; they have labored assiduously and heroically to rebuild themselves in the post-War era; they play a vital role in contemporary Jewish life; and they serve as a central factor – perhaps *the* central factor – in ensuring Jewish continuity for generations to come.

AIWO'S HISTORICAL RESEARCH PROJECT

(11) In conjunction with the recently-formed Committee to Preserve the Legacy of the Pre-War European Yeshivos, AIWO has undertaken a project to research and prepare a major study of the centers of Torah learning and chassidus that were destroyed in the Holocaust, and the rebuilding of such centers in the years since 1945. This project, which began in September 1999 and is scheduled to be completed over a period of a year or so, is at this point still in the nature of a work in progress. We have assembled and consulted with a team of a dozen historians and archivists, and have contacted hundreds of yeshivos, seminaries, synagogues, and kehilos in Israel, the United States, and other countries. To date, as Stage

One of the project nears completion, close to 300 submissions have been received from organizations representing over 1,000 institutions around the world.

- (12) As an appendix to this submission, we are simultaneously submitting more detailed information on this research project, together with a compilation of selected case studies produced by some of the major yeshivos and kehilos that were targeted by the Nazis, suffered tremendous losses during the Holocaust, and have rebuilt themselves after the war.
- (13) Preliminary findings of the project suggest that:
- (a) There were as many as 800 yeshivos for boys and young men in pre-War Europe, at elementary, secondary and post-secondary levels (both accredited as well as non-accredited), serving a student population in excess of 200,000;
 - (b) Further, the equivalent network of Bais Yaakov girls' schools encompassed some 250 institutions, with a student population of approximately 40,000 students;
 - (c) There were several million observant Orthodox Jews who affiliated with several thousand European kehilos, and of the individual Jews, in excess of 3 million are estimated to have perished in the Holocaust. The latter figure is based on the expert opinion of the eminent Holocaust historian, Dr. Michael Berenbaum, who concludes that "we can say with certainty that a majority of the Jews who were murdered [in the Holocaust] ... somewhere between 50-70 percent ... were Orthodox." (Dr. Berenbaum summarizes his findings in a February 23, 2000 letter addressed to AIWO's Professor Harry Reicher, a copy of which is appended hereto as Exhibit A.)
 - (d) Despite the devastating destruction suffered by Jewish communities during the Holocaust, a small group of determined survivors managed to rebuild many of the yeshivos and kehilos that had existed in Europe. In Israel and in the United States, there are today hundreds of

such rebuilt institutions serving many thousands of students and kehila members. And in the last ten years, following the collapse of communism, there has been a remarkable rebirth of vibrant Jewish schools and communities in Eastern Europe and the former Soviet Union.

THE MORAL BASIS FOR THE CLAIM ADVANCED HEREIN

- (14) AIWO acknowledges, and fully endorses, the significant moral claim that Holocaust survivors themselves possess with respect to restitution funds. Indeed, many of AIWO's constituents are survivors, and have benefited from various restitution programs administered by such groups as the Claims Conference and the WJRO. This is as it should be. Those who had their possessions taken, their surroundings destroyed and their lives uprooted, and who were forced to rebuild from the ashes, surely stand on firm moral ground in laying claim to restitution.
- (15) AIWO submits that the same moral principle applies with equal force with respect to yeshivos and kehilos that had their possessions taken, their surroundings destroyed and institutions uprooted, and that were forced to rebuild from the ashes. Indeed, as elaborated below, in certain respects the claim on restitution funding of these yeshivos and kehilos occupies a uniquely compelling moral plane.
- (16) In this context, an underlying point is critical: Just as the Nazis sought to exterminate all individual Jews (and tragically succeeded to the extent of 6,000,000), so too did they seek to destroy a whole culture, or way of life, as embodied in the educational and communal institutions that promoted that uniquely Jewish way of life. And it is this fact that underpins, in a moral and historical sense, the inclusion of yeshivos and kehilos (among others) in the legal definition of Victims and Targets of Nazi Persecution.

- (17) Indeed, central to the Nazis' aim of destroying the Jewish people was the object of destroying Jewish learning and education, because they identified the classical Jewish texts as the source of the essential Jewish character. Thus, Hitler's chief ideologue, Alfred Rosenberg, writing in 1930, and searching to locate the underlying character of the Jew, pointed to the Talmud itself, as well as the Shulchan Aruch (code of Jewish law), both of which are central texts at the heart of a yeshiva curriculum. "The honorless character of the Jew", he wrote, "[is] embodied in the Talmud and in Shulchan- Aruch..." (Rosenberg, *The Myth of the Twentieth Century: An Evaluation of the Spiritual – Intellectual Confrontations of Our Age* (English translation by Vivian Bird) (Newport Beach, California, 1982), p. 368.)
- (18) In addition, the Nazis trained their destructive sights on Jewish learning because they perceived in Jewish education, as personified by Jewish educators, the "threat" (i.e. promise) of Jewish survival and continuity. This perception is reflected in a directive issued by the German Highest Security Office, dated October 25, 1940, prohibiting Jewish emigration from occupied Poland on the ground that an influx of Eastern European "Rabbiner", "Talmud-lehrer" and "Orthodox ostjuden" could foster "geistige erneuerung" (spiritual renewal) among American Jewry. (The October 25, 1940 directive is quoted in a November 23, 1940 circular of the Government of the German Governor of Poland to the district governors of German-annexed Poland. A copy of a transcript of this circular, which was discovered by the Israeli historian Moshe Prager, together with a rough translation thereof, is appended hereto as Exhibit B.)
- (19) The Nazis were evil, but they were not dumb. They understood that, more than anything else, Jewish education would guarantee Jewish continuity and Jewish survival – and, conversely, that their nefarious "Final Solution" objective could be furthered even in a

country like the United States, if they could only prevent the rabbis and Talmud teachers from heading a spiritual renewal of the rapidly-assimilating Jewish masses.

- (20) Sadly, the Nazis' evil insight has proven substantially accurate. Where there has been no Jewish education, there has been rampant Jewish assimilation. Indeed, experience in the United States has shown that intensive Jewish education is the best guarantor of preserving Jewish identity and affiliation; the less rigorous the Jewish educational experience, the less likely the assurance of Jewish continuity. As Peter Beinart observed, in "The Rise of Jewish Schools", in the October 1999 *Atlantic Monthly*:

"... [T]he supplementary [after school or Sunday] schools were supposed to inculcate sufficient Jewish identity to prevent intermarriage. Yet in 1990 the highly publicized National Jewish Population Survey made it abundantly clear that they had not. According to the NJPS, more than half of all Jews married between 1985 and 1990 married gentiles, and subsequent research has shown that graduates of supplementary schools are more than twice as likely as graduates of full-time Jewish schools to marry outside their faith."

- (21) Similarly, a major study by the Louis Guttman Israel Institute of Applied Social Research, *Jewish Involvement of the Baby Boom Generation: Interrogating the 1990 National Jewish Population Survey*, concluded in 1993 that "Jewish day schools are the best vehicle for implementing Jewish involvement and are the only type of Jewish education that stands against the very rapidly growing rate of intermarriage" in the United States. And the recently-published study, *A Census of Jewish Day Schools in the United States*, by Dr. Marvin Schick (Avi Chai, January 2000), proclaims, in its opening paragraphs:

"After being scorned and spurned for nearly all of this century as anachronistic institutions unsuitable for the American Jewish environment, day schools [a term which encompasses both yeshivos as well as day schools] have emerged as a centerpiece of the communal strategy to promote Jewish identity and ensure Jewish continuity. Everywhere, Federations and private Jewish foundations have placed day school education high on their agenda, at times employing rhetoric about the importance of religious Jewish education that for decades was the exclusive province of Orthodox Jews.

“This change in attitude was spurred largely – but not exclusively – by the frightening statistics of Jewish loss conveyed by the 1990 National Jewish Population Survey. The most shocking news was, of course, the report that the intermarriage rate had risen above 50%. Other indicators of identity and commitment pointed in the same direction of Jewish loss. Clearly, there was a need to change course, to seek out and support activities that held the promise that somehow the trend toward Judaic abandonment could be slowed and perhaps, in some instances, even reversed. Not surprisingly, day schools were embraced as institutions that could provide a secure foundation for the Jewish future of young Jews at risk.”(p.1.)

(22) It is only fitting and appropriate, therefore, as an act of moral symmetry, that the very Jewish education that guarantees survival of the Jewish people should be assisted out of funds paid by way of compensation from economic allies of the Nazis. A decision along these lines by the Court would also constitute a cogent affirmation of education as the underlying guarantor of Jewish continuity.

(23) Such a decision would further bring us full circle to the yeshivos and kehilos that were sought to be destroyed. The AIWO research project, even in its current preliminary stage, graphically demonstrates how the yeshivos and kehilos have re-built themselves, in Israel, the United States, in Europe and elsewhere. So much so, that to walk through the streets of Jerusalem and Bnei Brak, Williamsburgh and Boro Park, Toronto and Los Angeles, London and Antwerp, is to walk across a map of pre-War Europe; the names of cities and towns have been re-planted there in the form of yeshivos and kehilos that proudly bear their names, and represent what they stood for. It is in these institutions in these cities, as well as in other cities around the world, that the institutional victims and targets of Nazi persecution can be found today, and that the ultimate victory over Nazi ideology is most eloquently evident.

(24) Deserving special note are the many institutions that have been rebuilt in Poland, Hungary, Russia, Ukraine and numerous other places in Eastern Europe where 55 years ago there was only Jewish ruin and destruction. In the former Soviet Union alone, there are now

well over a dozen major Jewish schools serving several thousand students; in Moscow, St. Petersburg, Kiev, Odessa and elsewhere, Jewish communal institutions that were twin victims of Nazism and Communism are now being resurrected. Hungarian Jewry, too, has experienced revival through the establishment of yeshivos and Jewish communal institutions; this remarkable development is the subject of one of the case studies in AIWO's historical research project and appears in the appendix submitted herewith. Just recently, as reported in *The Jerusalem Post* of February 18, 2000, an umbrella organization--the Union of Jewish Religious Communities of Eastern Europe--has been formed to represent the over 300 communities (comprising close to four million Jews) of Russia, Ukraine, Belarus, Georgia, Azerbaijan, Croatia, Yugoslavia, Bulgaria, Hungary, Poland, Lithuania and Uzbekistan. Restitution funding directed at the Jewish citizens of these countries should not overlook the Jewish institutions of these countries.

FITTING THE YESHIVOS AND KEHILOS INTO THE SETTLEMENT STRUCTURE:

(A) THE LOOTED ASSETS CLASS

(25) The second of the five Settlement Classes is described in the Settlement Agreement as follows:

“The Looted Assets Class consists of Victims or Targets of Nazi Persecution and their heirs, successors, administrators, executors, affiliates, and assigns who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee for relief of any kind whatsoever relating to or arising in any way from Looted Assets or Cloaked Assets or any effort to recover Looted Assets or Cloaked Assets.” (Clause 8.2(b))

(26) The first critical phrase here is “Victim or Target of Nazi Persecution”, and this is defined in Clause 1 to mean:

“any individual, corporation, partnership, sole proprietorship, *unincorporated association, community, congregation, group, organization, or other entity* persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish...”(emphasis supplied)

- (27) Taking yeshivos that were destroyed in the Holocaust, and subsequently rebuilt in the post-World War II era (and the same applies, *mutatis mutandis*, to kehilos, as Stage One of the AIWO Historical Research Project demonstrates):
- (a) They clearly fall within one or more of the emphasized terms in the definition of “Victims or Targets of Nazi Persecution”;
 - (b) Further, in their post-War incarnations they are at a minimum “heirs”, “successors” or “affiliates” of their pre-War antecedent entities.
 - (c) The foundation for (a) and (b) above is that they exhibit all, or alternatively some combination, of the following features of the pre-War entities:
 - (i) the same name;
 - (ii) the same Rosh(ei) Hayeshivah, or Dean(s);
 - (iii) alternatively to (ii), Roshe(ei) Hayeshivah who is/are sons, sons-in-law, lineal descendants, disciples or students of the pre-War Rosh(ei) Hayeshivah;
 - (iv) the same guiding philosophy;
 - (v) the same approach to study;
 - (vi) the same liturgy in prayers;
 - (vii) other common features.
 - (d) In each case, the yeshiva was persecuted, or targeted for persecution, by the Nazi regime, because it was Jewish. Indeed, as noted above, Jewish education was a special target of the Nazis’ “Master Plan”.

- (28) Further, for purposes of the definition of the “Looted Assets Class”, yeshivos which were destroyed during the Holocaust, and have subsequently been rebuilt in the post-War era, are among those who either have at any time asserted, or assert, or may in the future seek to assert, claims against any Releasee in relation to “Looted Assets” or “Cloaked Assets”.
- (29) The term “Looted Assets” is defined in Clause 1 to mean:
- “Assets actually or allegedly belonging in whole or in part to Victims or Targets of Nazi Persecution that were actually or allegedly stolen, expropriated, Aryanized, confiscated, or that were otherwise wrongfully taken by, at the request, or under the auspices, of, the Nazi Regime.”
- (30) Yeshivos and kehilos, no less than individuals, owned tangible assets that were looted by the Nazis. Every yeshiva in Europe had, at the very least, and apart from anything else, the basic ritual objects used in the daily, weekly and annual cycles of Jewish religious life and practice – Torah scrolls, holy books, libraries, kiddush cups, candlestick holders, Torah crowns and breastplates, and so on. Many of these objects were made of precious metals and had considerable monetary value aside from their intrinsic religious value.
- (31) It is accepted that, by virtue of a combination of the definitions of “Looted Assets” and “The Looted Assets Class”, it is necessary to demonstrate a nexus between specific assets from (in this case) yeshivos (as well as kehilos), on the one hand, and the Releasees, on the other. That nexus, we submit, need not be established by direct evidence; it can also be established by circumstantial evidence:

“Under appropriate circumstances, circumstantial evidence may be given the same weight as direct evidence. In criminal and civil cases, issues may be established by, and verdicts founded on, circumstantial evidence – that is, by inferences from established facts – when no direct evidence is available, so long as there exists a logical and convincing connection between the facts established and the conclusion [inferred].” 29A Am.Jur. 2d, Evidence, Sec. 1434.

(32) Here, while there may be a dearth of direct and unambiguous evidence of specific assets that were looted from yeshivos (as well as kehilos), and that directly or indirectly found their way to the Releasees, it is submitted that there is ample circumstantial evidence demonstrating the necessary nexus, as follows:

(a) The Nazis Systematically Looted the Property of Their Victims

Simply stated, "The leaders of the Third Reich... systematically robbed their victims and exploited looted property." Independent Commission of Experts: Switzerland – Second World War, *Switzerland and Gold Transactions in the Second World War: Interim Report* (Bern, 1998) [hereinafter "Bergier Interim Report"] (Abbreviated version, p.7.) This was a matter of policy for the Nazis, as explained by Ambassador Stuart Eizenstat in *U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany During World War II* (1997):

"The massive and systematic plundering of gold and other assets from conquered nations and Nazi victims was no rogue operation. It was essential to the financing of the German war machine. The Reichsbank itself – the central bank of the German state – was a knowing and integral participant." (p. iv.)

(b) Looted Assets Were Shipped to Berlin, Where Silver and Gold Were Melted Down

"In Berlin, Reichsbank officials struggled to cope with the mountain of Nazi booty, as vaults and corridors were filled to overflowing with war plunder. It was simple to send looted gold from concentration camp victims to the Reichsbank in Berlin to be melted down, but works of art and jewelry sometimes needed to be sold in their original condition to swell the coffers of the SS...." Adam LeBor, *Hitler's Secret Bankers: The Myth of Swiss Neutrality During the Holocaust* (Secaucus, New Jersey 1997), p.43.

(c) Much of the Silver and Gold Went Through Banks in Switzerland

"As well as supplying Berliners with a supply of cheap looted jewelry and gold and silver valuables, the Melmer system was also designed to sell war booty abroad, and so acquire the vital foreign currency the Third Reich needed to keep the Nazi war machine going. The Reichsbank memo concludes, 'Regarding the large accumulation of

foreign exchange expected through sales of such articles abroad, and the not inconsiderable accumulation of gold and silver from smelting of unexported items, prompt establishment of a uniform arrangement for handling these items is required.' That vital foreign exchange would, of course, be purchased through Swiss banks." (LeBor, p 46)

(d) Shipping Looted Assets to Switzerland was Critical for the Nazis

"Switzerland was essential for the Nazis. It was a warehouse of currency. The Nazis were dealing with the Swiss banks from the very beginning. The main economic collaborators of the German Reich, the bankers, the brokers, the insurance people, were working hand in hand with Swiss entities. The bottom line was that they needed that one thing: hard cash. And there was only one place they could find it, in Switzerland, and they knew they could only get it if they left the Swiss alone." (LeBor, p. 56, quoting Marc Masurovsky, consultant historian to the U.S. Senate Banking Committee on Switzerland and looted Nazi assets.)

The Bergier Interim Report came to the same conclusion:

"Foreign exchange control and economic warfare increasingly restricted international currency transactions so that, in the end, only the Swiss franc remained convertible. Swiss francs which the German government received in exchange for its gold supplies were therefore of great importance for the war economy, diplomacy, and intelligence services." (p. 7.)

- (33) The chain of logic and historical facts thus furnishes a circumstantial basis for interpreting the Looted Assets Class broadly, without requiring specific evidence of a direct nexus between any given claimant's assets and the Swiss banks. If the Court is inclined to accept such evidence, yeshivos and kehilos must be considered part of the class as well. Alternatively, as a result of hitherto unknown or unrevealed evidentiary material coming to light at some time in the future, yeshivos and kehilos "may in the future seek to assert claims against any Releasee" – again, no less so than any other claimant.

(B) THE CLAIM OF YESHIVOS AND KEHILOS TO A SHARE OF ANY RESIDUAL REMAINING AFTER SATISFYING THE CLAIMS OF THE SETTLEMENT CLASSES

- (34) Whether or not yeshivos and kehilos are deemed to fall within the Looted Assets Class, there are in any event cogent reasons to give them substantial consideration as high priority beneficiaries of any residual funds:
- a) As noted above, yeshivos and kehilos are recognized by the Settlement Agreement as being victims and targets of Nazi persecution;
 - b) But for the destruction of historical records that would demonstrate that significant assets from these yeshivos and kehilos ended up in Swiss banks, yeshivos and kehilos would certainly fall within the Looted Assets Class;
 - c) The yeshivos and kehilos of today are centrally involved in rebuilding what the Nazis sought to destroy. According to the distinguished Holocaust historian Dr. Michael Berenbaum, whose analysis is referred to above, 50-70% of the 6 million Jews murdered by the Nazis were Orthodox (see Exhibit A). These victims, whose bank accounts and looted assets thus probably form the bulk of what has until now remained in Switzerland, lived and died as observant Jews. It is today's Orthodox institutions of education and communal life that are doing the most to ensure the survival and continuity of the very way of life that those victims, had they been given the opportunity, would have sought to perpetuate. We do not presume to speak with certainty, but it stands to reason that those victims would have wanted a significant portion of their assets to be distributed to these institutions.
 - d) In this context, it is relevant to note, and take into account, that many other causes and institutions devoted to Holocaust-related activities are already being generously funded by

governments, and from other official sources such as the Claims Conference. Yeshivos and kehilos, in contrast, have thus far not benefited from any of the restitution-related funding streams. This failure to include the very educational and communal institutions that occupied such a central role in pre-War Jewish Europe, that have heroically re-established themselves in the post-War era, and that furnish the greatest hope for ongoing Jewish continuity, is both glaring and indefensible.

- e) These institutions are at once both the most ignored and yet perhaps the most needy. Dr. Marvin Schick and Jeremy Dauber's study, *The Financing of Jewish Day Schools* (Avi Chai Foundation, 1997), demonstrated that yeshiva day schools in the United States are severely underfunded in nearly every aspect of their operations, and do not receive adequate assistance from Jewish federations around the country. Dr. Schick's more recent study of Jewish day schools, *A Census of Jewish Day Schools in the United States*, (Avi Chai Foundation, January 2000), notes that in the years ahead:

"... there will be a need for thousands of additional [classroom] seats. In the first decade of the century that is about to begin, there likely will be as many as 30,000--and perhaps more--additional day school students, a circumstance that will pose a challenge to school officials and communal leaders. Many day schools--especially the larger institutions--are already operating at or near capacity, and some are above capacity."

The same growth pattern, and the same need, are evident in Israel, Europe and other parts of the world where Jews reside and seek to educate their children in a manner that will carry forward the glorious tradition and heritage that was sought to be destroyed in the Holocaust.

- f) This Settlement offers the Court an opportunity to help establish the central moral position of yeshivos and kehilos within the overall restitution framework.

CONCLUSION

(35) By approaching its task in this way, the Court will effectively be addressing, not only the strictly legal dimension to this case, but also, in a significant and meaningful way, the moral and historical dimensions as well.

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Respectfully submitted,

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