

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:	:	Case No. CV 96-4849 (ERK)(MDG)
HOLOCAUST VICTIM ASSETS	:	(Consolidated with CV 96-5161
LITIGATION	:	and CV 97-461)
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-----	:	ORDER
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This Document Relates to: All Cases	:	
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KORMAN, J.:

The Victim List Project established under the Distribution Plan is intended as a mechanism to encourage and help organize the compilation and greater accessibility worldwide of the names of individuals whom the Settlement Agreement was intended to benefit: Jewish, Romani, Jehovah's Witness, homosexual and disabled victims or targets of Nazi persecution, those who survived as well as those who perished. The Court notes the good progress made by the United States Holocaust Memorial Museum (USHMM), in cooperation with Yad Vashem, towards the creation of a worldwide catalog of all known archival and testimonial sources of the names of those who perished and of survivors who suffered; the acquisition of major archival sources of names; the mass digitization of the individual names of the victims of the Nazis and their allies; and the provision of public access to this information.

In furtherance of these goals, as of this date, I have authorized the transfer to the USHMM of three categories of documents that have been generated in connection with this action, and which contain data of great historic interest:

- On May 24, 2007, I authorized the International Organization for Migration (IOM) to transfer to the USHMM claim files and related documentation pertaining to the IOM's role as the Court-appointed administrator of Slave Labor Class I, Slave Labor Class II and Refugee Class claims filed by Roma, Jehovah's Witness, homosexual and disabled class members.
- On February 6, 2008, I authorized court-appointed Notice Administrator Poorman-Douglas (now known as Epiq Systems) to transfer to the USHMM the more than 600,000 Initial Questionnaires that were filed in response to outreach efforts intended to effectuate worldwide notice of the settlement and to solicit background information from potential class members.
- On June 13, 2011, I authorized the court-appointed administrator of the Deposited Assets Class claims process, the Claims Resolution Tribunal (CRT), to transfer to the USHMM claims documentation and related materials.

All three sets of materials were shipped to the USHMM under conditions establishing the USHMM as custodian of the documentation on behalf of the Court; protecting the security and confidentiality of the documents; and recognizing the need to establish rules to protect claimant privacy while ensuring the eventual accessibility of the documents to researchers and others as part of the Victim List Project's ongoing mission to collect victim names, and more broadly to contribute to the scholarship of the Holocaust, which after more than seventy years still remains incomplete.

Special Master Judah Gribetz and Deputy Special Master Shari C. Reig, and Victim List Project Director Wesley Fisher, in consultation with the USHMM, have proposed guidelines for access to the IOM claim files, Initial Questionnaires and CRT claims documentation that have been transferred to the USHMM as described above (hereinafter referred to as the "Transferred Materials"). These guidelines further the goals of research and transparency while protecting the confidentiality of claimants and other participants in this settlement process.

Accordingly, it is hereby ORDERED that the IOM claim files, Initial Questionnaires and CRT claim documentation transferred to the USHMM by court orders respectively dated May 24, 2007, February 6, 2008 and June 13, 2011 shall be subject to the following rules of access:

1. With the exception of the Court, the Special Masters and the court-appointed administrators (including but not limited to the IOM and CRT), no person or entity shall have access to the Transferred Materials pending completion of this settlement process in its entirety, except for designated USHMM archival staff for the purposes of collection management and conservation, and to locate and provide access to the Transferred Materials as authorized and required in this Order. The Court in its sole discretion will determine the date upon which the settlement process is deemed to have been completed, and will notify the USHMM at that time.

2. After the USHMM has received notification from the Court that the settlement process has been completed in accordance with the foregoing Paragraph 1, the USHMM shall provide access to the Transferred Materials under the following conditions:

(a) Through December 31, 2020:

i. In the event that an individual claimant (including an individual specified on a claim form as a "co-claimant") or his or her guardian or other legal representative provides a written request to the USHMM or the Court for his/her own claim form and/or other Transferred Materials pertaining solely to himself/herself, the USHMM shall provide that individual with a copy of the requested materials. The USHMM shall confirm the identity of the requesting

individual via review of that person's passport, driver's license or similar documentation. The USHMM shall similarly confirm the identity of the individual's guardian or other legal representative, if any, and shall further confirm that individual's authority to act on behalf of the requesting individual by review of a power of attorney or its equivalent. No Transferred Materials shall be conveyed to the requesting individual other than a copy of his/her own claim form and/or other Transferred Materials pertaining solely to that individual. The USHMM shall inform the Court by annual letter of all requests for Transferred Materials fulfilled pursuant to this Paragraph.

ii. In the event that the heir(s) or other legal successor(s) of a deceased individual (including an individual specified on a claim form as a "co-claimant") submit(s) a written request for a copy of said individual's claim form or other Transferred Materials pertaining solely to that individual, the USHMM shall provide a copy of the requested materials to the heir(s) or other legal successor(s). The USHMM shall confirm the death of the deceased individual by reviewing his or her death certificate, a probate order, or an equivalent court or governmental record and shall verify the requester's identity and relationship to the deceased by review of his or her birth certificate, driver's license, passport, a probate order, the decedent's will, or other appropriate court or governmental record.

iii. In the event that a request is made to the USHMM by a bona fide researcher (whether a member of the USHMM staff or a visiting researcher) for access to the Transferred Materials, the USHMM shall determine whether the

Transferred Materials are indispensable to the project of the bona fide researcher. If the USHMM so determines, the USHMM shall notify the Court of the research application, apprise the Court of the reason that the USHMM has determined the Transferred Materials to be indispensable to the research, and request on behalf of the bona fide researcher that the Court grant access to the Transferred Materials. Upon the Court's approval of the application, the USHMM shall redact any and all identifying, personal and sensitive information from the Transferred Materials that has not otherwise been published, including but not limited to names, contact information and/or other identifying data such as Social Security and bank account numbers. The USHMM will use sensitivity in regard to the release of medical and/or financial information and in any event shall redact identifying data as set forth above. In the event that, despite possibilities to redact automatically the electronic versions of the documents, the USHMM considers that the size and scope of a research request will require an unreasonable amount of staff time, the USHMM will include that information in its request to the Court on behalf of the bona fide researcher, along with a recommendation to the Court on how to resolve the matter.

iv. In connection with any Transferred Materials conveyed pursuant to this Paragraph 2(a), the USHMM shall redact any work product, notes and/or other materials that are clearly identifiable as having been added to the claim files by the Court, Special Masters and/or claims administrators.

(b) On or after January 1, 2021:

i. In the event of the death of a person whose personal or sensitive information is contained in the Transferred Materials (for example, an individual who has completed and submitted a claim form contained in the Transferred Materials, including an individual specified on the claim form as a “co-claimant”), all access restrictions may be removed upon the USHMM’s confirmation of that individual’s death via review of a death certificate, probate order or other governmental/court record. In no event, however, shall access restrictions be removed until the USHMM confirms (via review of the document(s) specified herein) the death of all individuals specified on the claim form as claimants or “co-claimants.”

ii. In the event that a request is made to the USHMM by a bona fide researcher (whether a member of the USHMM staff or a visiting researcher) for access to the Transferred Materials, before providing the bona fide researcher with access to the materials, the USHMM shall redact any and all identifying, personal and sensitive information from the Transferred Materials that has not otherwise been published or determined to be unrestricted in accordance with Paragraph 2(b)i hereof, including but not limited to names, contact information and/or other identifying data such as Social Security and bank account numbers. The USHMM will use sensitivity in regard to the release of medical and/or financial information and in any event shall redact identifying data as set forth above. In the event that, despite possibilities to redact automatically the electronic versions of the documents, the USHMM considers that the size and

scope of a research request will require an unreasonable amount of staff time, the USHMM shall have the bona fide researcher sign an agreement stipulating that he/she will not use or disclose in any resulting publication or otherwise any identifying, personal and sensitive information from the Transferred Materials that has not otherwise been published or determined to be unrestricted in accordance with Paragraph 2(b)i hereof.

iii. In connection with any Transferred Materials conveyed pursuant to this Paragraph 2(b), the USHMM shall redact any work product, notes and/or other materials that are clearly identifiable as having been added to the claim files by the Court, Special Masters and/or claims administrators.

(c) On or after January 1, 2041:

All access restrictions may be removed, with the following exception:

The USHMM shall have bona fide researchers sign an agreement stipulating that they will not use or disclose in any resulting publication or otherwise any identifying, personal and sensitive information from the Transferred Materials that has not otherwise been published or determined to be unrestricted in accordance with Paragraph 2(b)i hereof.

(d) On or after January 1, 2081:

All access restrictions may be removed.

3. Notwithstanding Paragraph 2 above, the Court may order disclosure of the Transferred Materials at any time at its sole discretion. Furthermore, upon the Court's request, the USHMM shall promptly provide access to the Transferred Materials to the Court, Special Masters and/or claims administrators (including but not limited to the IOM and CRT). Under no circumstances shall the USHMM refuse an order or a request by the Court for access to or copies of the Transferred Materials or any portion thereof.

4. Because of the sensitive nature of the Transferred Materials, the USHMM shall remain the sole custodian of the Transferred Materials for the life of such documents. The USHMM shall not transfer or otherwise delegate its custodial responsibilities under this Order to any other organization, entity, or third party, with the exception of the Court. On or after January 1, 2041, upon a request to the USHMM from Yad Vashem-the Holocaust Martyr's and Heroes' Remembrance Authority of Israel and subsequent approval of the Court, the USHMM may provide an electronic copy of all of the Transferred Materials to Yad Vashem.

5. With respect to the retention of the Transferred Materials, the USHMM shall consult with the Court to determine whether the Transferred Materials may be destroyed or instead transferred to another storage facility, subject to the following conditions:

(a) Under no circumstances shall hard copies of the Transferred Materials be destroyed if electronic copies of the Transferred Materials do not exist.

Specifically, although the USHMM possesses electronic copies of the materials transferred pursuant to the May 24, 2007 order (IOM files) and February 6, 2008 order (Initial Questionnaires), a complete electronic copy of the materials transferred pursuant to the June 13, 2011 order (CRT files) does not yet exist. The June 13, 2011 order is hereby amended so as to require storage for 25 years rather than 30 years, in accordance with Paragraph 5(b) below. The Court authorizes the USHMM to apply any unused funds from the \$181,393.00 allocated pursuant to the June 13, 2011 order toward the creation of an electronic copy of the CRT files. If sufficient additional funds to digitize the CRT files do not become available to the USHMM within 25 years, the USHMM shall return any unused funds from the Court's June 13, 2011 allocation and consult the Court, in accordance with this Paragraph 5, regarding the continued storage, destruction, or return to the Court of these Transferred Materials.

(b) For Transferred Materials for which electronic copies exist, under no circumstances shall the hard copies be destroyed for 25 years from the date of the respective orders authorizing transfer of the materials (i.e., May 24, 2007 for the IOM claim files; February 6, 2008 for the Initial Questionnaires; and June 13, 2011 for the CRT claims documentation.)

(c) The electronic copies of the Transferred Materials shall never be destroyed.

(d) If the Court approves destruction of the hard copies of the Transferred Materials in accordance with this Paragraph 5, the USHMM shall obtain a signed

statement verifying that the Transferred Materials were destroyed in a manner that protected the confidentiality of the documents, and shall forward a copy of the statement to the Court.

6. This Order may be modified by the Court at any time. The Court will consult with the USHMM as appropriate regarding any such modifications.

Brooklyn, New York
~~APR~~ APR 24, 2012

SO ORDERED:



Edward R. Korman

United States District Judge