

distribution.”¹ Since his appointment, the Special Master has met or spoken with dozens of individuals and has reviewed many formal proposals submitted from around the world. Letters to the Court and to the Special Master, primarily from survivors of the Holocaust, have numbered in the thousands.

Although the suggestions to the Special Master for allocation and distribution have been diverse, they share common themes: that the task before the Special Master and, ultimately, the Court, is daunting; that the settlement of the litigation against the Swiss banks represents, in some small fashion, another historic opportunity in the attempt to redress the indescribable wrongs that have been wrought against the victims of the Holocaust; and that the allocation and distribution of the \$1.25 billion settlement fund should be meaningful, with some lasting impact upon class members.² Those who have communicated with the Special Master, especially the survivors, also have made it clear that they consider this settlement to be a further step along the often tortuous path toward accountability and remembrance.

The Special Master believes that the Proposal described below allocates and distributes an historic, yet limited, settlement fund in a manner which is fair, equitable and consistent with governing legal principles. He is ever mindful, however, that no amount of money could begin to compensate the millions of victims of Nazi persecution for the horrors they suffered during the Holocaust, that no amount of money could restore the generations that were lost, and that no amount of money could right the injustice perpetrated by Nazi Germany that has been termed “one of the greatest thefts by a government in history.”³

¹ See Settlement Agreement, Section 7.1 (attached hereto, together with its amendments, as Exhibit 1).

² A summary of the proposals submitted to the Special Master is attached hereto at Annex A.

³ U.S. and Allied Efforts to Recover and Restore Gold and Other Assets Stolen or Hidden by Germany
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While mindful of these irrefutable facts, the Special Master also recognizes, as we all must, that this Proposal arises out of the settlement of a consolidated, class action lawsuit, that the plaintiffs in the lawsuit do not include all those who suffered at the hands of the Nazis, and that the defendants (and other Releasees) are not the Nazis who inflicted the innumerable atrocities the term “Holocaust” brings to mind. Rather, this lawsuit was brought and settled on behalf of a circumscribed group of class members who have or may have claims against Swiss banks and other Swiss governmental and business entities for specific wrongs allegedly committed by those banks and other entities in connection with events surrounding World War II. It also must be recognized that this suit primarily concerns assets — assets which actually or allegedly were deposited into Swiss banks by victims of Nazi persecution and never returned to their rightful owners, and assets which either were looted by the Nazis or derived from the slave and forced labor to which they subjected their victims and which actually or allegedly were deposited into or transacted through Swiss banks and other entities. Taking all of the foregoing into account, as well as the numerous factors discussed in more detail below, the Special Master has endeavored to present a Proposal that is not only fair and equitable, but also as meaningful as possible given the number of potential claimants and the limited sum to be divided among them.

* * * *

This Proposal is divided into several sections. Section I provides an overview of the governing principles which have guided the Special Master, and also broadly outlines the allocation and distribution recommendations. This Section, I(A), introduces the Proposal.

During World War II - Preliminary Study (May 1997) (hereinafter, the “Eizenstat Report”), coordinated by then-Under Secretary of Commerce for International Trade Stuart E. Eizenstat and prepared by William Z. Slany, Department of State Historian, Foreword by Stuart E. Eizenstat, at iii. Mr. Eizenstat currently serves as Deputy Secretary of the Treasury and Special Representative of the
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Section I (B) discusses the Special Master's dual obligation to consider the concerns and suggestions of the class members, and at the same time to adhere to the requirements of the Settlement Agreement and United States law. Section I(C) summarizes the recommendations.

Section II describes the class action lawsuits giving rise to this Proposal, including the historical context in which the lawsuits were brought, the claims and defenses thereto asserted by the parties, the pertinent provisions of the Settlement Agreement and the Referral Orders, the Notice Plan that was implemented in this action, and the Court's July 26, 2000 Memorandum and Order, as corrected August 2, 2000, approving the class action settlement (the "Final Approval Order").⁴

Section III discusses the details of the Proposal for each of the five classes: the Deposited Assets Class (Section III(A)), the Looted Assets Class (Section III(B)), Slave Labor Class I (Section III(C)), Slave Labor Class II (Section III(D)), and the Refugee Class (Section III(E)). For each of the five classes, the Special Master describes the class definition, the allocation principles which have informed the Special Master's recommendations (based upon historical, factual and legal research summarized in Sections II and III and discussed in greater detail in several "annexes" accompanying this Proposal),⁵ and the details of the proposed allocation to the class as well as the mechanism for distribution.

President and Secretary of State for Holocaust Issues.

⁴ In re Holocaust Victim Assets Litigation, 96 Civ. 4849 (ERK) (MDG), slip op. (E.D.N.Y. July 26, 2000, corrected August 2, 2000).

⁵ These annexes are as follows: Summary of Allocation Proposals (Annex A); Legal Principles Governing Distribution of Class Action Settlements (Annex B); Demographics of "Victim or Target" Groups (Annex C); Heirs (Annex D); Holocaust Compensation (Annex E); Social Safety Nets (Annex F); the Looted Assets Class (Annex G); Slave Labor Class I (Annex H); Slave Labor Class II (Annex I); the Refugee Class (Annex J); and the Swiss Humanitarian Fund (Annex K).

Finally, the Special Master’s additional recommendations and conclusions are set forth in Sections IV and V below.

B. The Special Master’s Obligations

The Special Master has been guided by two paramount responsibilities. The first of these, as noted previously, has been the duty to employ “open and equitable procedures to ensure fair consideration of all proposals for allocation and distribution,” as required under the Settlement Agreement.⁶ As the Court noted in its Final Approval Order: “Under the Settlement Agreement, the Special Master, as a neutral third party, is to consider all suggestions regarding allocation and distribution directly from the class, without relying upon intermediating representatives, such as settlement class counsel or settlement class representatives.... The appointment of a Special Master here ... obviates the concern that hypothetical conflicts among class members relating to allocation and distribution would require separate representation, and thus call into question the adequacy of the representation. This is so because the class members represent themselves on this key issue, and have direct access to the Special Master and to me [the Court].”⁷

In accordance with this mandate, the Special Master has sought “to consider all suggestions regarding allocation and distribution directly from the class,” to provide “direct

⁶ Settlement Agreement, Section 7.1.

⁷ In re Holocaust Victim Assets Litigation, at 16, 17 (emphasis in original). The Court also noted that the “adequacy concerns that informed the Supreme Court’s decisions in Ortiz v. Fibreboard Corp., 527 U.S. 815, 119 S. Ct. 2295 (1999), and Amchem Products, Inc. v. Windsor, 521 U.S. 591, 117 S. Ct. 2231 (1997), are therefore absent from this case”). *Id.* at 17.

access” to those who have wished to communicate with him or with the Court, and to maintain a transparent and fair process throughout his tenure.⁸

The Special Master’s other duty is to ensure that the Proposed Plan of Allocation and Distribution comports with both the Settlement Agreement and with United States law. Because the \$1.25 billion settlement (the “Settlement Fund”) has its genesis in a class action lawsuit, the proposal for allocation and distribution necessarily must comply with class action law — an obligation which renders this Settlement Fund fundamentally different from the recently finalized German slave labor agreement, which also arose from litigation but ultimately was superceded by a complex negotiation conducted at the highest levels of the United States and German governments. The Swiss Confederation, by contrast, was not a party to the negotiations that produced this settlement, nor to the Settlement Agreement itself. The settlement is not a treaty, nor is it legislation (as is the German agreement). It is, instead, a contract between the plaintiff class members and the two defendant Swiss banks, governed by basic contract law but also subject to the stringent due process requirements of a procedural device apparently unique to the United States: the class action lawsuit. These requirements are intended to protect the interests of all class members, but may have the unfortunate effect of

⁸ To that end, in the fall of 1999, the Special Master requested expansion of the Internet site established as part of the notice process, “www.swissbankclaims.com,” to post a representative sampling of the proposals for allocation and distribution which have been submitted from around the world. As of September 7, 2000, there had been approximately 316,000 contacts with the Internet site. *See* Letter of Notice Administrator to Special Master, September 7, 2000 (hereinafter, “September 7, 2000 Notice Administration Letter”) (on file with Special Master). The approximately 564,000 Initial Questionnaires that have been received thus far from 109 countries likewise show the impact of this unprecedented global outreach upon the Holocaust survivor community. *See* Summary Reports of Initial Questionnaire Data Entered as of August 30, 2000 (hereinafter, “Initial Questionnaire Data”), at Table 1, p. 1; September 7, 2000 Notice Administration Letter. *See also* “Geographic Distribution of Initial Questionnaires by Claimant Country,” attached hereto as Exhibit 3. Additional Initial Questionnaires continue to be received by the Notice Administrators, who will continue to update their Summary Reports as needed.

delaying distribution of the Settlement Fund to those who, by now, have been waiting for more than two years — and in the case of claimants to Swiss bank accounts, more than fifty years — to receive payments.⁹

The starting point of the legal analysis is the Settlement Agreement itself, signed on January 26, 1999, operative as of March 30, 1999 following execution of written “Organizational Endorsements” of the agreement by 17 major worldwide Jewish organizations, and amended as recently as August 9, 2000, largely in response to concerns expressed by class members and other interested persons.

The Settlement Agreement created five specific classes of claimants: the “Deposited Assets Class,” the “Looted Assets Class,” “Slave Labor Class I,” “Slave Labor Class II” and the “Refugee Class.” With the exception of “Slave Labor Class II,” a class member must be a “Victim or Target of Nazi Persecution.” That term is defined as “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, Romani, Jehovah’s Witness, homosexual, physically or mentally handicapped.” (Settlement Agreement, Section 1).

⁹ As the Court pointed out in its Final Approval Order, however, it is not only class action legal requirements which have delayed distribution of the Settlement Fund. *See In re Holocaust Victim Assets Litigation*, at 27 (describing the “inordinately long and unexplained delay of four months” on the part of the Swiss Federal Banking Commission prior to issuing a recommendation crucial to the resolution of bank account claims, as discussed in much greater detail below); *id.*, at 46 (“the principal reason for tolerating extended negotiation on the modifications [to the Settlement Agreement; *see infra*] was my [the Court’s] belief that a fair and efficient claims distribution mechanism can best be accomplished by accommodation rather than conflict. The defendant banks now force me to choose between reasonable accommodation and my duty to protect the class beneficiaries. I choose the latter.”).

As noted, claimants also must fall within at least one of five classes, defined in the Settlement Agreement as follows:

- “The **Deposited 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 Deposited Assets or any effort to recover Deposited Assets.” (Settlement Agreement, Section 8.2(a)).
- “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.” (Settlement Agreement, Section 8.2(b)).
- “The **Slave Labor Class I** consists of Victims or Targets of Nazi Persecution who actually or allegedly performed Slave Labor for companies or entities that actually or allegedly deposited the revenues or proceeds of that labor with, or transacted such revenues or proceeds through, Releasees, and their heirs, executors, administrators, and assigns, and 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 the deposit of such revenues or proceeds or Cloaked Assets or any effort to obtain redress in connection with the revenues or proceeds of Slave Labor or Cloaked Assets.” (Settlement Agreement, Section 8.2(c)).
- “**Slave Labor Class II** consists of individuals who actually or allegedly performed Slave Labor at any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or other business concern headquartered, organized, or based in Switzerland or any affiliate thereof, and the individuals’ heirs, executors, administrators, and assigns, and who have or at any time have asserted, assert, or may in the future seek to assert Claims against any Releasee other than Settling Defendants, the Swiss National Bank, and Other Swiss banks for relief of any kind whatsoever relating to or arising in any way from such Slave Labor or Cloaked Assets or any effort to obtain redress in connection with Slave Labor or Cloaked Assets.” (Settlement Agreement, Section 8.2(d)).
- “The **Refugee Class** consists of Victims or Targets of Nazi Persecution who sought entry into Switzerland in whole or in part to avoid Nazi persecution and who actually or allegedly either were denied entry into Switzerland or, after gaining entry, were deported, detained, abused, or otherwise mistreated, and the individuals’ heirs, executors, administrators, and assigns, and 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

such actual or alleged denial of entry, deportation, detention, abuse, or other mistreatment.” (Settlement Agreement, Section 8.2(e)).

These class definitions potentially encompass millions of people. The estimate of Jewish survivors of Nazi persecution alone ranges from 832,000 to 960,000, a number increased by the varied estimates of Roma, Jehovah’s Witness, disabled and homosexual survivors.¹⁰ Moreover, each of the five classes includes, among others, “heirs,” a term undefined in the Settlement Agreement but governed by New York law (*see* Settlement Agreement, Section 16.3). New York law does not limit “heirs” to children, spouses or even near relatives. Rather, the definition of “heirs” extends well beyond even great-grandchildren of grandparents — and, moreover, must be determined at the time of the decedent’s death. Under this definition, the Special Master believes that heirs of Nazi victims, all apparently class members, easily number in the millions.¹¹

To be a class member, however, such a person or entity also must have an identifiable connection to a “Releasee,” a term which, as defined by the parties in the Settlement Agreement, includes all Swiss banks, all Swiss governmental bodies, and virtually all Swiss business entities.¹²

¹⁰ *See* Annex C (“Demographics of ‘Victim or Target’ Groups”); Notice Plan, at 6.

¹¹ The Notice Plan placed the number of heirs at approximately 2,000,000. Notice Plan, at 6. That number, however, is a significant underestimation, because the Notice Plan defined “heirs” as *children of survivors only*. As described above, New York law imposes no such limitation — nor does the law of Germany, Israel or, for that matter, the Talmud — and so under the Settlement Agreement, the classes include many millions of individuals. *See* Annex D (“Heirs”).

¹² *See* Settlement Agreement, Section 1. The Settlement Agreement also defines many other significant terms, such as “Asset,” “Deposited Asset,” “Matched Asset,” “Looted Asset,” “Cloaked Asset,” “Slave Labor,” “Releasee,” “Settling Defendants,” “Other Swiss Banks,” and “Nazi Regime.” In addition, several of these terms are defined elsewhere in this Proposal or in the Annexes.

The Special Master has been ever mindful of the language of the Settlement Agreement, as drafted and amended by the parties and approved by the Court, while considering carefully the concerns and suggestions that have been voiced by class members and others in their thoughtful proposals.

The Special Master also has been guided by class action allocation and distribution principles set down by the courts of the United States. Among other things:

- the allocation and distribution plan must be equitable;
- a lengthy and cumbersome process of individual eligibility determinations must be avoided;
- a remedy other than direct monetary distributions to individual class members — a “*cy pres*” remedy providing for participation of certain class members in selected programs designed to address specific needs — is appropriate in certain circumstances;¹³ and
- administrative expenses must be minimized, particularly where, as here, the settlement fund is limited and the class members are numerous.¹⁴

C. Summary of Special Master’s Proposal

1. The Deposited Assets Class

The allocation and distribution of the Settlement Fund must reflect the unique historical background against which this lawsuit arose and upon which it was settled: the allegation that Swiss banks failed to return thousands of bank accounts that had been opened primarily by Jewish victims of the Nazis who attempted to shield some of their financial assets

¹³ “*Cy pres*” means the “next best” alternative. “Typically, the court employs *cy pres* where class members cannot be located or where individual recoveries would be so small as to make distribution economically impossible.” In re Matzo Food Products Litigation, 156 F.R.D. 600, 605 (D.N.J. 1994); In re “Agent Orange” Product Liability Litigation, 818 F.2d 179, 185 (2d Cir. 1987) (“[a] district court may, in order to maximize ‘the beneficial impact of the settlement fund on the needs of the class,’ set aside a portion of the settlement proceeds for programs designed to assist the class”).

¹⁴ These legal principles are more fully described at Annex B (“Legal Principles Governing Distribution of Class Action Settlements”).

from the Third Reich. Because virtually all of these accounts were owned by people who were killed in the Holocaust, by definition, the “Deposited Assets Class” that seeks the return of these accounts is comprised almost entirely of heirs. More than three years after the complaints were filed in this lawsuit, the unprecedented forensic accounting investigation conducted by the Independent Committee of Eminent Persons (“ICEP,” also known as the “Volcker Committee” after its Chairman, Paul A. Volcker), concluded that some 54,000 Swiss bank accounts are “probably” or “possibly” related to Holocaust victims, and, accordingly, that these accounts can be returned to their proper owners, virtually all of whom by now are the original owners’ heirs.¹⁵

When the parties first began to negotiate the specific terms of the Settlement Agreement in August 1998, and finalized them in January 1999, they recognized that the Volcker Committee’s then-ongoing forensic accounting investigation of Swiss banks, when brought to completion, would be of vital significance to a final allocation and distribution of the Settlement Fund. The parties to the Settlement Agreement provided for that possibility by according the “Deposited Assets Class” priority among the five settlement classes.¹⁶ Under the terms of the

¹⁵ The Volcker Committee, its report of December 6, 1999 (hereinafter, the “Volcker Report”), and related subsequent events, are described in greater detail in Sections II and III(A) of this Proposal, as well as in the Final Approval Order. As the Court explained, the Volcker Committee has since made a modest adjustment to its initial finding of 54,000 accounts: “On February 23, 2000, the Volcker Committee announced that a review of the approximately 54,000 accounts identified as ‘probably’ or ‘possibly’ related to victims of Nazi persecution resulted in the elimination of certain accounts because they were duplicates or because of other technical factors, reducing the total number of such accounts to between 45,000 and 50,000. *See* Volcker Committee Press Release (Feb. 23, 2000).” In re Holocaust Victim Assets Litigation, at 19-20.

¹⁶ The Settlement Agreement as originally executed provided as follows: “the ICEP and the Claims Resolution Tribunal will continue, at certain Releasees’ expense, in a manner that is appropriate in light of this Settlement Agreement” and that “Settling Defendants shall pay Matched Assets [i.e., those determined by ICEP or the CRT to belong to particular claimants] to rightful claimants as and when determined by the ICEP or the Claims Resolution Tribunal,” with such payments “deemed to be included in, and part of, the Settlement Amount” (*see* Settlement Agreement, Sections 4.1 and 4.2). Although the parties have since negotiated certain amendments to the Settlement Agreement which, among other things, have resolved a dispute concerning the banks’ duty to pay for the

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Settlement Agreement, repayments to bank depositors are to be deducted first from the Settlement Fund.¹⁷ The remainder of the Settlement Fund is to be distributed among the other four settlement classes.¹⁸

As the Court so pointedly observed, the Volcker Report “provided legal and moral legitimacy to the claims asserted here on behalf of the members of the Deposited Assets Class.”¹⁹ The priority accorded under the Settlement Agreement to bank account claimants likewise is legally and morally appropriate. A person who placed money in a Swiss bank must be able to retrieve his or her assets from the bank entrusted with its safekeeping.²⁰ If that person was murdered by the Nazis, or has died since, then that person’s heirs likewise are entitled to be paid the sums that Swiss banks have been holding for them for more than half a century.²¹

Deposited Assets Class claims resolution process, they have left no doubt that the bank account claims still are accorded priority. Amendment No. 2 to Settlement Agreement, dated August 9, 2000 (hereinafter, “Amendment No. 2”) and the parties’ Memorandum to the File, dated August 9, 2000 (included as part of Exhibit 1 hereto) address the manner in which the Volcker Committee’s recommendations as to deposited assets will be implemented. *See, e.g.*, Amendment No. 2, pp. 3-7; Memorandum to the File, ¶ D (“It is the intent and agreement of the parties that all payments that the CRT and the CRT-SD have determined or will determine should be paid shall continue to be distributed promptly, without regard to any provisions in the Settlement Agreement or in Amendment No. 2 to the Settlement Agreement referring or relating to the ‘Settlement Date’ or the ‘Final Judgment and Order’”).

¹⁷ *See* Settlement Agreement, Section 5.2; *id.* Section 5.3; Amendment No. 2, pp. 3-7; Memorandum to the File.

¹⁸ It should be noted that no part of the \$1.25 billion settlement amount will revert to the defendant banks or to any other Swiss entities. *See, e.g.*, Referral to Special Master for Development of Plan to Allocate and Distribute Settlement Proceeds, March 31, 1999, at ¶ 3 (“The proposed Plan shall include a recommendation of where residual funds, if any, remaining after distribution to eligible members of the Settlement Classes (as defined in the Settlement Agreement) shall be distributed”).

¹⁹ In re Holocaust Victim Assets Litigation, at 23.

²⁰ The same, of course, is true for a corporate, communal or institutional entity with a traceable Swiss bank account.

²¹ By contrast, the two Slave Labor Classes and the Refugee Class assert claims of a more personal and less tangible nature, while the Looted Assets Class seeks compensation for the value of stolen property, rather than the return of the property itself (the vast majority of which cannot now be specifically traced to Switzerland in any event, if ever it could, *see* Annex G (“The Looted Assets
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To that end, as the Court has made clear, the findings of the Volcker Committee now must be acted upon. They are not merely for the history books. “A fair and efficient claims process in connection with the Deposited Assets Class must build on the fact that the Volcker Committee’s auditors, despite the massive destruction of relevant records over the past 60 years, were able to identify the approximately 54,000 Swiss bank accounts discussed above.”²² The Court and plaintiffs’ counsel agree — as does the Special Master — that

in order to continue the work of the Volcker Committee, it will be necessary to establish a deposited assets claims process designed to (i) notify potential claimants of the existence of the 54,000 accounts referred to in the Volcker Report [as subsequently adjusted; *see above*]; (ii) determine whether the original owners of such accounts are or were targets or victims of Nazi persecution, as defined in the Settlement Agreement; (iii) ascertain their heirs, if necessary; (iv) determine the amounts attributable to each account; (v) explore the circumstances surrounding the closing of certain of the accounts; and (vi) distribute the appropriate amounts to the current owners.²³

As the Court further observed, the “instrumentality for the administration of the claims process contemplated by the Settlement Agreement is the Claims Resolution Tribunal [CRT] established by the Swiss Bankers Association, the Swiss Federal Banking Commission and the Volcker Committee to arbitrate claims arising from the 1997 publication of 5,570 foreign accounts in Swiss banks. Modifications in procedures and personnel will be required and the [CRT] will operate under guidelines and criteria established with [the Court’s] approval, in

Class”)).

²² In re Holocaust Victim Assets Litigation, at 24.

²³ *Id.* at 24-25; Supplemental Declaration of Lead Settlement Counsel Burt Neuborne, June 26, 2000, ¶ 19. The Court also noted that “a fair claims process must provide a mechanism to enable any person with a potential claim to have names matched against the database of 4.1 million accounts for which records exist,” in addition to the matching of claims against the database of accounts “probably” or “possibly” belonging to victims or targets of Nazi persecution. In re Holocaust Victim Assets Litigation, at 24; Volcker Report ¶ 76.

consultation with the Volcker Committee The purpose of the [CRT] is to administer a fair and efficient claims process.”²⁴

Having worked closely with representatives of the Volcker Committee and the CRT for more than a year, and having visited the CRT’s Zurich offices and observed firsthand the dedication and experience of its staff, the Special Master shares wholeheartedly the Court’s faith in the CRT. It is the CRT that can best assure that the tens of thousands of claims expected to be filed against Swiss bank accounts are resolved speedily, equitably and accurately.²⁵

A claims process for the Deposited Assets Class may begin as soon as possible following publication of the recommended 26,000 accounts and consolidation of accounts databases, a process expected to commence promptly after the Court issues an order granting final approval of a plan of allocation and distribution.²⁶

As more fully discussed below, because a substantial number of the accounts characterized by the Volcker Committee as “probably” or “possibly” related to victims of Nazi persecution are closed, and thus of unknown value, the Court must determine the amounts that should be awarded to claimants of such accounts. Based upon his analysis of the Volcker

²⁴ In re Holocaust Victim Assets Litigation, at 24-25.

²⁵ Of the approximately 562,000 persons for whom data from their Initial Questionnaires has been entered thus far, 80,610 have indicated their intention to assert a Deposited Assets claim. *See* Initial Questionnaire Data, Table 1, p. 3; September 7, 2000 Notice Administration Letter. Most of these questionnaires were returned, as requested, by mid-October, 1999, prior to the December 6, 1999 release of the Volcker Report. Accordingly, many more thousands of people also may be expected to file claims against the approximately 26,000 accounts recommended for publication by the Volcker Committee.

²⁶ *See, e.g.*, Amendment No. 2, at ¶ 3.2 (referring to anticipated “expeditious publication” of account information, to “occur as soon as feasible after the Court issues an order approving a plan of allocation and distribution”); *id.* ¶ 3.3 at p. 4 (referring to anticipated “expeditious centralization” of bank account data “as soon as feasible after the Court issues an order approving a plan of allocation and distribution”); Memorandum to the File, ¶ D (referring to parties’ “intent and agreement” that bank deposit payments “shall continue to be distributed promptly”).

Report and the Final Approval Order, and upon consultation with representatives of the Volcker Committee, the Special Master estimates that the value of all bank accounts that will be repaid is within the range of \$800 million. Therefore, it is recommended that a total of \$800 million should be allocated to the Deposited Assets Class to (1) repay members of the Deposited Assets Class the full amounts of their respective deposits (adjusted for interest, inflation and fees), where such amounts are known, and (2) appropriately compensate other members of the Deposited Assets Class, where the actual value of the original deposit no longer is ascertainable from bank records. Approximately \$450 million will remain from the Settlement Fund to pay claimants to insurance policies, if a claims process is established by the parties,²⁷ as well as to pay members of the Looted Assets Class, Slave Labor Class I, Slave Labor Class II and the Refugee Class, and fees and administrative expenses, with perhaps additional funds remaining after the Deposited Assets claims process is completed.²⁸

²⁷ As a result of certain objections made at the Fairness Hearing, the parties reached agreement on a separate mechanism for resolving insurance claims. See Amendment No. 2, pp. 7-12. Insurance claims are to be treated either as “Looted Assets Claims” or as “Policy Claims,” *id.* p. 7. “The Court or its designee will determine whether Policy Claims are valid pursuant to criteria to be established within sixty days from the date of court approval of the settlement by agreement acceptable to the parties and the Participating Insurance Carriers.” *Id.* p. 7. “Policy Claims” will be payable both from the Settlement Fund and from a \$50 million payment to be added to the \$1.25 billion Settlement Fund by “Participating Insurance Carriers,” while “Looted Assets Claims” will be payable exclusively from the Settlement Fund. *Id.* p. 9. In accordance with the parties’ agreement, procedures for insurance claims are to be “included in the Court’s plan of allocation and distribution of the Settlement Fund” (*id.*); *i.e.*, the parties will be recommending such procedures to the Court in a forthcoming submission, and, if deemed acceptable, the procedures will be incorporated in the Court’s order granting final approval of a plan of allocation and distribution.

²⁸ See also Volcker Report Annex 4, ¶ 43 (“claims of victims can be met within the amount specified in the agreed class action settlement now being contemplated in U.S. District Court, with funds from that settlement available for distribution to others covered by the settlement”).

2. **The Looted Assets, Slave Labor Class I, Slave Labor Class II and Refugee Classes**

(a) **General Principles**

In contrast to the Deposited Assets Class, the Settlement Agreement precludes distributions to claimants in the Looted Assets, two Slave Labor and Refugee Classes until all appeals in this litigation have been exhausted.

Under Section 7.5 of the Settlement Agreement:

Commencing on the **Settlement Date**, and pursuant to the Court's supervision, Settling Plaintiffs may distribute the Settlement Fund in accordance with the plan of allocation and distribution finally approved by the Court. (Emphasis added).

The "Settlement Date" is a term defined in the Settlement Agreement:

Settlement Date means the date on which all of the following have occurred: (1) the entry of the Final Order and Judgment without material modification; (2) the achievement of finality for the Final Order and Judgment by virtue of that Order having become final and non-appealable through (a) the expiration of all appropriate appeal periods without an appeal having been filed (not including any provision for challenging the Final Order and Judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure) (b) final affirmance of the Final Order and Judgment on appeal or final dismissal or denial of all such appeals, including petitions for review, rehearing, or certiorari or (c) final disposition of any proceedings, including any appeals, resulting from any appeal from the entry of the Final Order and Judgment, and (3) the expiration of any right of withdrawal or termination under Section 15 of this Settlement Agreement.²⁹

²⁹ See Settlement Agreement, Section 1. The term "Final Order and Judgment" is defined in the Settlement Agreement (*id.*) as follows:

Final Order and Judgment means the order to be entered by the Court, in a form to be mutually agreed upon by the parties, approving this Settlement Agreement without material alterations, as fair, adequate, and reasonable under Fed. R. Civ. P. 23, confirming the certification of the Settlement Classes under Fed. R. Civ. P. 23, and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Settlement Agreement. For purposes of this Settlement Agreement, such order shall not become the Final Order and Judgment unless and until the Settlement Date occurs.

In a matter as far-reaching, complex and emotionally charged as this one, it is likely that one or more appeals will be filed. Any such appeals must run their course, a process that the parties undoubtedly will make every effort to expedite but which nevertheless will require some further period of litigation.³⁰ The Special Master's recommendations for the Looted Assets, two Slave Labor and Refugee Classes therefore must be tempered by the recognition that the proposed payments may not commence for some time.³¹

Assuming, however, that any appeals will be denied, it is recommended that distributions from the Settlement Fund to the Looted Assets Class, Slave Labor Class I, Slave Labor Class II, and the Refugee Class should be made in two stages. **With the exception of bank account claimants, the first payments ("Stage 1") should be made to Nazi victims only, either in cash or, in some instances, "in kind," primarily through food packages, medical aid and winter relief.** As more fully discussed below, this "two-track" payment scheme is necessary because the bank account claims, while as yet incapable of precise calculation, are likely to be substantial, and could vary within a range of several hundred million dollars. Representatives of the Volcker Committee have advised the Court and the Special Master that a preliminary assessment of bank account claims is expected to be completed within six months following commencement of the Deposited Assets Class claims process. At that

³⁰ For example, in the seminal class action case in this Circuit, In re "Agent Orange" Product Liability Litigation, 689 F. Supp. 1250, 1252 (E.D.N.Y. 1988), Judge Weinstein noted in the last published opinion regarding the settlement of that litigation that "[a]fter three and a half years of appeals, the distribution of the settlement fund is at hand."

³¹ A claimant may be a member of more than one settlement class. Thus, at least some claimants will have the more immediate benefit of repayment on their bank accounts even while awaiting the "Settlement Date" on other claims. For example, a refugee denied entry into Switzerland may have owned a Swiss bank account, and can have that account returned to him or her without regard to the "Settlement Date." Conversely, a claimant to a bank account eventually also may be eligible for compensation from programs designated to serve needy members of the Looted Assets Class (*see (continued on next page)*)

time, it may be possible to preliminarily assess whether a second stage of payments from the Settlement Fund can be made.

During the first stage of payments to members of the Looted Assets Class, the two Slave Labor Classes and the Refugee Class, the Special Master further recommends that there be **no payments from the Settlement Fund for the benefit of heirs, with two limited exceptions:** (a) certain heirs will be eligible for payments if the former slave laborer or refugee to whom the heir is related died after February 15, 1999,³² and (b) all class members, including heirs, will be benefited by a payment of \$10 million to a Victim List Foundation, the objective of which is to compile and make widely accessible, for research and remembrance, the names of all Victims or Targets of Nazi Persecution. During “Stage 1,” there should be **no other payments to institutions for funding programs other than those providing direct relief to needy elderly**

infra).

³² This limited exception is intended to track the recent German legislation establishing a fund of approximately \$5 billion to make payments to slave and forced laborers and certain property owners. As more fully discussed below, the Special Master recommends that distributions to members of Slave Labor Class I be made via the same mechanisms adopted in the German legislation. In the absence of the German agreement, the Special Master would have recommended that certain direct heirs be eligible to receive payments as part of the Slave Labor and Refugee Classes if the former slave or refugee had died after March 30, 1999 (when the Settlement Agreement became effective after all “Organizational Endorsers” had formally endorsed the agreement), or, alternatively, July 26, 2000 (when the Court issued its Final Approval Order). However, for administrative efficiency, and to err on the side of over-inclusiveness, the Special Master instead recommends that the German legislation date, February 15, 1999, be used. The Special Master further recommends that the same categories of heirs specified in the German legislation should be eligible to receive “slave labor” or “refugee” payments from the Swiss banks \$1.25 billion Settlement Fund: “In a case where the eligible person [*i.e.*, actual Nazi victim] has died after February 15, 1999 ..., the surviving spouse and children shall be entitled to equal shares of the award. If the eligible person left neither a spouse nor children, awards may be applied for in equal shares by the grandchildren, or if there are no grandchildren living, by the siblings. If no application is filed by these persons, the heirs named in a will are entitled to apply.” *See* Law on the Creation of a Foundation “Remembrance, Responsibility and Future” (“*Gesetz zur Errichtung einer Stiftung ‘Erinnerung; Verantwortung und Zukunft’*”), July 17, 2000, informal translation prepared by the United States Embassy in Berlin, available at <http://www.usembassy.de/dossiers/holocaust> (hereinafter, “German Fund” or “German Fund Legislation”), Section 13(1).

Holocaust survivors (*see* Section III(B)). This is so for all “institutional” proposals, whether memorial, educational, religious, or cultural, whether for the recognition of the “heirless” who did not survive the Holocaust or for any other laudable purpose.

This is not to suggest that heirs of Nazi victims, particularly surviving members of the immediate family, have not themselves suffered. Nor does the Special Master overlook the immeasurable losses sustained by educational, religious and other communal institutions at the hands of the Nazis. However, with a \$1.25 billion Settlement Fund and millions of potential claimants³³ — surely all of whom can point to material losses and, therefore, to potential class membership, particularly in the Looted Assets Class — the Special Master is compelled to recommend essentially a “triage” method of allocation and distribution. At the very head of the long line of individuals and groups who continue to suffer from the devastation inflicted upon their families and communities, stand the elderly survivors who lost “all but their lives,” to paraphrase one former slave laborer’s account of her family’s tragedy.³⁴

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 then 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

³³ *See* Annexes B, C and D, discussing, respectively, legal principles concerning the distribution of class action settlements, demographic data concerning surviving victims of the Nazis, and heirs.

³⁴ Gerda Weissman Klein, All But My Life (New York: Hill and Wang 1957).

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.³⁵

For the Looted Assets, Slave Labor I and II, and Refugee Classes, the Special Master makes one further general recommendation. The claims processes for each of these classes should be as straightforward, cost-effective and, most significantly, as “painless” — if ever that term can be applied to anything associated with the Holocaust — as possible. Therefore, none of the survivors should be asked to compete with one another for the limited funds available to them. It would be a great disservice to Nazi victims, most of whom are elderly and many of whom are in ill health, to place before them yet another obstacle by requiring them to prove that they lost more or were enslaved for longer periods or by more brutal entities than other survivors. As so aptly described by Lead Settlement Counsel Professor Burt Neuborne,³⁶ the allocation and distribution of the Settlement Fund must avoid at all costs

the adverse social and psychological consequences of ... a formal division of Holocaust victims into rival interest groups squabbling over a settlement fund that all agree is inadequate to provide full compensation to the victims. The members of the plaintiff classes are elderly victims of an unparalleled human catastrophe. At the close of their lives, it would be socially and psychologically irresponsible to pit one group of Holocaust

³⁵ For a more detailed discussion of these proposals, *see* Annex A (“Summary of Allocation Proposals”). Representative proposals also appear in their entirety at <http://www.swissbankclaims.com>.

³⁶ Professor Neuborne is the John Norton Pomeroy Professor of Law and Faculty Director of the Brennan Center for Justice at New York University Law School. In addition to being Lead Settlement Counsel, he is a founding member of the plaintiffs’ Executive Committee and serves as co-counsel for all plaintiffs herein.

victims against another in an unseemly battle for a larger share of a limited settlement fund that cannot do real justice to all.³⁷

(b) Specific Recommendations for Looted Assets, Slave Labor and Refugee Classes

In addition to the bank account claimants — who have been awaiting the return of family deposits for over half a century, whose claims form the core of this settlement, and whose allegations now have been “provided legal and moral legitimacy” as a result of “what is likely the most extensive audit in history”³⁸ — the Special Master further recommends that the neediest elderly Nazi victims should receive the highest priority. As discussed below, they are all presumed to be members of the Looted Assets Class. Surviving Nazi victims who were Slave Laborers (whether “Class I” or “Class II”) or Refugees likewise should receive distributions from the Settlement Fund during the first stage of payments.

(i) Looted Assets Class

Under the Settlement Agreement, a member of the Looted Assets Class is defined as a “Victim or Target of Nazi Persecution” who “ha[s] or at any time ha[s] asserted, assert[s], or may in the future seek to assert Claims against any Releasee.” In other words, there must be a connection between the looted asset and a Swiss entity — a “Releasee.” The definition of “Releasee” includes virtually every governmental and business entity in Switzerland. The Settlement Agreement therefore indicates that only those “Victims or Targets of Nazi

³⁷ Declaration of Burt Neuborne, Esq., November 5, 1999, ¶ 33, at page 20. For the same reasons — to avoid unnecessarily complicating distributions to class members — the Special Master also recommends that a survivor’s status as a “Victim or Target of Nazi Persecution” should be based upon self-declaration. In any event, for the four classes for which “Victim or Target” status is relevant, the claims process likely will confirm whether a claimant who seeks to participate in the settlement was, in fact, “persecuted or targeted for persecution because [he or she was or was] believed to be Jewish, Romani, Jehovah’s Witness, homosexual, physically or mentally handicapped.” Settlement Agreement, Section 1.

Persecution” who were looted, *and* whose stolen assets “were taken by or transacted through a Swiss entity,” are entitled to recover from the Settlement Fund.³⁹

Yet with limited exceptions, the historical record on looting, which continues to be expanded by new research and by newly-accessible archives, still remains incomplete. “There has not yet been a comprehensive study of the Third Reich’s looting and its consequences on all segments of the population in German-occupied areas. Neither has the plundering of Jewish victims been sufficiently researched.”⁴⁰ As discussed in detail elsewhere in this Proposal,⁴¹ on the one hand, recent investigations on behalf of the governments of Switzerland, the United States and Great Britain confirm that a considerable amount of loot, particularly gold, eventually found its way to Switzerland. On the other hand, there is relatively little information concerning the source of this loot. Moreover, not all of the loot ended up in the Reich’s coffers or in Switzerland. Rather, many plundered goods found their way into the offices, homes or pockets of the local population or Nazi administrators, with or without the Nazi government’s permission. As the Matteoli Commission recently concluded following its three-year investigation into Holocaust-era looting in France:

We do not ... claim to have analysed [sic] the subject exhaustively [T]here are many uncertain aspects that require more analysis We should not labour under any illusions however. Even if all the archives were available, if no file had been lost, it would be a vain attempt to trace, almost two-thirds of a century after the events, what actually happened

³⁸ In re Holocaust Victim Assets Litigation, at 19, 23.

³⁹ Settlement Agreement, Section 8.2(b). *See also* Initial Questionnaire, Item F(9) (“Do you have any evidence that your assets were taken by or transacted through a Swiss entity?”); *id.* Item F (“Looted Assets Claim Against Swiss Persons or Entities”).

⁴⁰ Switzerland and Gold Transactions in the Second World War - Interim Report (Bern 1998) (hereinafter, “Bergier Gold Report”), at 30.

⁴¹ *See* Section II *infra*; *see also* Annex G (“The Looted Assets Class”).

down to the finest detail. We must resign ourselves to the fact that many points will remain imperfectly explained.⁴²

Like the Matteoli Commission, the Special Master does not claim to have analyzed the subject of looted assets exhaustively. Yet even with unlimited time and funds to conduct further research, it will never be possible to recreate what was stolen or to retrace its path through Europe.⁴³ Therefore, the Special Master's recommendation for the Looted Assets Class recognizes the unprecedented scope of the Nazi theft, coupled with the virtual impossibility of analyzing or even nominally compensating the material losses suffered by the Jewish, Roma, Jehovah's Witness, disabled and homosexual victims and communities plundered across wartime Europe. This is particularly so where, as here, there are literally hundreds of thousands of surviving Nazi "Victims or Targets" and millions of heirs who may claim membership in the Looted Assets Class, since it may be presumed that all were looted but very few if any can prove that their property is linked to a Releasee.⁴⁴

The Special Master therefore recommends that to compensate the Looted Assets Class, the Court make two *cy pres* payments: one, to benefit the neediest survivors of Nazi persecution, and the other to benefit all members of this class as well as all other classes.

For the neediest members of the Looted Assets Class, a *cy pres* allocation can have a significant concrete impact upon the lives of many thousands of elderly survivors. One of the bitterest of ironies is that those who were robbed of the least, in a material sense, ultimately

⁴² See Summary of the Work of the Study Mission on the Spoliation of Jews in France, April 17, 2000 (available at <http://www.ladocfrancaise.gouv.fr>) (hereinafter, "Matteoli Report, April 17, 2000 Summary"), at 14.

⁴³ For a more detailed discussion of the scope of the Nazi plunder, the role that may have been played by Switzerland, and the difficulties in tracing the loot, see Annex G ("The Looted Assets Class").

⁴⁴ See Annex C ("Demographics of 'Victim or Target' Groups"); Annex D ("Heirs"); Annex G ("The Looted Assets Class").

may have lost the most. Elie Wiesel has observed that it was “not only the big fortunes, palaces and art treasures” that were destroyed by the Nazis. “Let us remember also the less wealthy families: the small merchants, the cobblers, the peddlers, the school teachers, the water carriers, the beggars. The enemy robbed them of their poverty.”⁴⁵ The enemy also robbed them of their future. Not only did they lose all that they had, but many have since lived for decades in destitution, unable to obtain even modest financial recompense.

For the most part, these are the Nazi victims who have been called the “double victims” — those currently living in once-communist nations:

Serious inequities developed in the treatment of victims depending upon where they lived after the War. Those Holocaust victims who met the applicable definitions were assisted in resettlement, and if they emigrated to the West or to Israel, they have received pensions from the German Government. But the “Double Victims,” those trapped behind the Iron Curtain after the War, have essentially received nothing.⁴⁶

The Special Master has compiled considerable data concerning various Holocaust compensation programs.⁴⁷ The vast majority of such programs have been directed at those who have lived in the West,⁴⁸ whether during the Holocaust itself or following emigration after World War II. The Special Master is well aware of the many limitations associated with these programs. The compensation that has been provided to many Nazi victims in the West may have been nominal, at best, particularly among members of the non-Jewish “Victim or Target” groups. Nevertheless, many thousands of Nazi victims living in the West have been receiving monthly

⁴⁵ Elie Wiesel, *Opening Remarks*, in Proceedings of the Washington Conference on Holocaust-Era Assets (December 1998), at 16.

⁴⁶ See Eizenstat Report, Foreword, at x.

⁴⁷ See *id.*; see also Annex E (“Holocaust Compensation”).

⁴⁸ The Special Master uses the term “the West” to encompass Israel, Western Europe, the Americas and Oceania.

pensions, most commonly from Germany, but in some instances from other nations and, through German reparations payments, Israel. In sharp contrast, the great majority of Nazi victims still living in Central and Eastern Europe and the former Soviet Union have been excluded from virtually all indemnification and restitution programs. Yet it is also many of these very same people who continue to live in abject poverty. Adding insult to injury in their declining years, they now have also lost the “safety nets” that their governments provided during the Cold War era.⁴⁹ Because there are many in the West who also are desperately needy, the Special Master recommends that these survivors similarly should receive immediate priority in the distribution of the “looted assets” portion of the Settlement Fund.

The total amount recommended for distribution to the Looted Assets Class is \$100 million, 90% of which should go to Jewish class members and 10% of which should go to Roma, Jehovah’s Witness, disabled and homosexual class members, based upon historic precedent and current demographics.⁵⁰

For needy elderly Jewish members of the Looted Assets Class, the Special Master recommends that actual distributions should be managed, with the consultation and cooperation of local community representatives and Nazi survivors, and upon the Court’s approval and ongoing supervision, by two organizations with unrivaled expertise in the assistance of needy survivors: the American Jewish Joint Distribution Committee (the “JDC”) and the Conference on Jewish Material Claims Against Germany, Inc. (the “Claims Conference”). It is recommended that \$90 million be set aside for up to ten years to help fund the humanitarian

⁴⁹ For a more detailed discussion of “safety net programs,” *see* Annex F (“Social Safety Nets”).

⁵⁰ *See infra*, Section III(B), discussing the Paris Reparations Agreement and the Swiss Fund for Needy Victims of the Holocaust/Shoa; *see also* Annexes C (“Demographics of ‘Victim or Target’ Groups”) and K (“Swiss Humanitarian Fund”).

assistance programs described below and in greater detail at Section III(B). Up to 75% (\$67.5 million) of the “looted assets” allocation for Jewish Holocaust survivors should be designated for the augmentation of the JDC-Claims Conference “*Hesed*” program, which provides food packages, medical care, winter relief and other direct assistance to impoverished and ill elderly Nazi victims in the former Soviet Union. The remaining 25% (\$22.5 million) of the recommended “Stage 1” allocation to needy Jewish members of the Looted Assets Class should be designated for the augmentation or, in certain instances, creation of several comparable programs which provide direct emergency relief to needy Holocaust survivors in other parts of the world, particularly in Israel (the “Foundation for the Benefit of Holocaust Victims in Israel”), in North America (the “Holocaust Survivor Emergency Assistance Program”), and in Europe, Australia and South America. It is important to note here that the JDC and the Claims Conference are to serve as *conduits* to the needy elderly survivors, who can best and most quickly be reached by already-existing humanitarian programs.

For needy elderly Roma, Jehovah’s Witness, disabled and homosexual members of the Looted Assets Class, the Special Master recommends that distributions likewise be made through humanitarian programs. Under the German Fund, the International Organization for Migration (the “IOM”) has been allocated the sum of DM 24 million (approximately \$12 million as of August, 2000) for the administration of a humanitarian fund for the benefit of Sinti and Roma. Upon consultation with the IOM,⁵¹ the Special Master recommends that from this “Swiss

⁵¹ The IOM has agreed to establish such programs upon Court approval and with the Court’s supervision, as well as to perform other responsibilities in connection with administering this settlement. *See* Letter from Brunson McKinley, IOM Director General, to Judah Gribetz, Special Master, September 8, 2000 (annexed hereto as Exhibit 4). The Claims Conference likewise has agreed to perform a similar administrative role, upon Court approval and with the Court’s supervision.

banks” Settlement Fund, \$10 million be allocated to the forthcoming IOM program for targeted aid to needy survivors of Nazi persecution within the Roma community, as well as within the Jehovah’s Witness, disabled and homosexual communities.⁵²

As noted previously, it is also proposed that a separate allocation of \$10 million be designated for the benefit of other members of the Looted Assets Class, as well as the members of all five classes, including heirs, to fund a Victim List Foundation to compile and preserve the names of all of the “Victims or Targets of Nazi Persecution,” those who survived and those who perished. In this way, perhaps some benefit of the settlement can be preserved not only for the victims and their families, but also for future generations. The Special Master recommends that the Court consult with experts and interested parties to establish and implement the Victim List Foundation.

(ii) Slave Labor Class I

Like the Looted Assets Class, under the terms of the Settlement Agreement, members of Slave Labor Class I must demonstrate some connection to a Swiss releasee. In other words, former slave laborers who are “Victims or Targets of Nazi Persecution” must have performed such labor “for companies or entities that actually or allegedly deposited the revenues or proceeds of that labor with, or transacted such revenues or proceeds through, Releasees”; *i.e.*,

⁵² In response to the Special Master’s request, Watch Tower Bible and Tract Society of Pennsylvania, on behalf of the Jehovah’s Witness community, has provided a proposal supplementing that filed in October 1999, which outlines a thoughtful plan for assisting needy Jehovah’s Witness survivors of Nazi persecution (including those who may have been persecuted or targeted as members of other “Victim or Target” groups who have subsequently become Jehovah’s Witnesses). Moreover, representatives of the Roma community recently have requested that the Special Master recommend that the IOM establish and oversee humanitarian aid programs to needy Nazi victims. In its letter to the Special Master, the IOM confirmed that it intends to consult with Watch Tower, and with other interested survivors’ representatives and advocates, to coordinate programs and outreach for needy non-Jewish “Victims or Targets of Nazi Persecution.”

Swiss entities.⁵³ As more fully discussed below, and as set forth at Annex H (“Slave Labor Class I”), scholarship only recently has begun to focus in depth upon Germany’s use of slave labor, and much remains unknown — although historians agree that the use of slave labor was pervasive, extending to every corner of Europe conquered by the Third Reich.⁵⁴

Hundreds of public and private entities that used slaves had financial relationships with Swiss entities. The Special Master has obtained from the Swiss Federal Archives and from the Volcker Committee lists of German assets frozen in Switzerland pursuant to a Swiss Federal Council decree of February 16, 1945.⁵⁵ A comparison of the “frozen assets lists” to lists of German companies known, from sources such as the International Tracing Service of the International Committee of the Red Cross,⁵⁶ to have used slave labor, demonstrates that hundreds of such companies held Swiss bank accounts or other Swiss assets at the time of the asset freeze. Also significant are the bank accounts and Swiss gold transactions of the Nazi government, which exploited slaves and also reaped profits from private companies’ use of slaves.⁵⁷

Many former slaves do not know the name of the entity for which they performed their labor. Few, if any, can link their exploiter to the Swiss economy. The Special Master’s research justifies the legal presumption for Slave Labor Class I that virtually *all* German slave

⁵³ Settlement Agreement, Section 8.2 (c).

⁵⁴ See Section III(C); see also Annex H (“Slave Labor Class I”).

⁵⁵ See Annex H. The Special Master wishes to express his appreciation to the Swiss Federal Archives and the Volcker Committee for providing these lists.

⁵⁶ See International Tracing Service, Records Branch, Documents Intelligence Section, Catalogue of Camps and Prisons in Germany and German-Occupied Territories, Sept. 1, 1939 – May 8, 1945 (International Tracing Service: Arolsen, Germany, July 1949/April 1950/March 1951) (hereinafter, the “Catalogue”), in Martin Weinmann, (Hgg.), Das nationalsozialistische Lagersystem (3d ed.) (Frankfurt: Zweitausendeins, 1998).

⁵⁷ See Annex H (“Slave Labor Class I”) and its exhibit, the “Slave Labor Class I List”; see also Annex G (“The Looted Assets Class”).

labor-using entities are likely to have “deposited the revenues or proceeds of that labor with, or transacted such revenues or proceeds through, Releasees” (Settlement Agreement, Section 8.2(c)).⁵⁸

In Chief Judge Korman’s words, this “presumption ... simplif[ies] the administration of Slave Labor Class I by making it unnecessary for each claimant to prove a link between the German company for which slave labor was performed and a Swiss bank”⁵⁹ — thus relieving the elderly members of this class of the burden of demonstrating precisely which entity enslaved them and whether and how that entity channeled revenues or proceeds of their slave labor through a Swiss entity. Therefore, **all persons who performed slave labor for private entities, entities owned or controlled by the state or by Nazi authorities, or by the concentration camp or ghetto authorities, are members of “Slave Labor Class I.”** A “Victim or Target of Nazi Persecution” who was a slave laborer, regardless of where or when, should receive a distribution from the Settlement Fund.

Significantly, the German foundation formalized in Berlin on July 17, 2000, the Foundation “Remembrance, Responsibility and the Future,” is expected to compensate these individuals. Approximately 140,000 Jewish, and thousands of Roma, Jehovah’s Witness, disabled and homosexual former slave laborers, are expected to receive from the German Fund a payment of up to DM 15,000 (up to approximately \$7,500) each. Approximately 30,000 Jewish former forced laborers, as well as thousands of Roma, Jehovah’s Witnesses, disabled and

⁵⁸ As more fully discussed in Section III(C) below and in Annex H, that a slave labor-using entity may have transacted some portion of profits from the use of slave labor through a Swiss bank or other Swiss entity, is not meant to suggest that the Swiss entity had knowledge that some of the funds may have been derived from the use of slave labor, or that the Swiss entity necessarily was aware that the depositor made use of slave labor.

⁵⁹ In re Holocaust Victim Assets Litigation, at 39.

homosexual forced laborers, are expected to receive from the German Fund a payment of up to DM 5,000 (up to approximately \$2,500) each.

The Special Master recommends that each Jewish, Roma, Jehovah's Witness, disabled and homosexual former slave laborer who receives a payment from the German Fund (whether as a "slave" or "forced" laborer) also should receive an additional payment from this "Swiss Banks" Settlement Fund. Certain heirs of Slave Labor Class I members who died after February 15, 1999 also should be eligible for payment. Each eligible claimant in Slave Labor Class I should receive an equal payment of up to \$1000 per person (and in no event less than \$500 per person). There should be an initial payment of \$500 (50% of the recommended amount); after all claims are processed, a second payment of up to an additional \$500 (the remaining 50%) may be made. It is currently estimated that approximately 200,000 Jewish, Roma, Jehovah's Witness, disabled and homosexual former slave laborers will be eligible to receive payments from the German Fund (and so also from the "Swiss Banks" Settlement Fund).⁶⁰ If, however, many more eligible former slave or forced laborers make claims, then the Court may have to reconsider the amounts recommended here.

The Special Master has consulted with the two organizations charged, under the terms of the German Fund legislation, with distributing payments to many of the former slave and forced laborers: the Claims Conference and the IOM.⁶¹ Although the German Fund

⁶⁰ In addition to the estimate of claims to be made to the German Fund, it should be noted that approximately 205,000 people have filed Initial Questionnaires in this "Swiss Banks" action, indicating that they intend to assert slave labor claims. See Summary Sheets for Class Members (Annex C, Exhibit 3).

⁶¹ In addition to the Claims Conference and the IOM, five foundations also will be handling German Fund distributions for slave and forced laborers living in Eastern Europe. The foundations are located in Poland, Russia, Ukraine, Belarus and the Czech Republic. See *infra*. However, as more fully discussed at Section III(C), the Claims Conference and the IOM respectively have agreed to
(continued on next page)

distribution details are not yet finalized, it is the strong intent both of the Claims Conference and the IOM to minimize administrative burdens for the Nazi victims who will be receiving payments from the German Fund, such as by actively seeking out potential claimants, based upon German, Israeli and other compensation archives.

In light of the overlap between Slave Labor Class I and the German Fund, and the extensive preparations already under way to make distributions from the German Fund, the Special Master believes that the Claims Conference and IOM distribution mechanisms will be the most rapid, efficient and cost-effective for Slave Labor Class I.

(iii) Slave Labor Class II

Slave Labor Class II is not limited to “Victims or Targets of Nazi Persecution,” in contrast to the other four settlement classes. Rather, under the terms of the Settlement Agreement, Slave Labor Class II applies more broadly to “individuals” who performed slave labor for a Swiss entity, defined as “any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or other business concern headquartered, organized, or based in Switzerland or any affiliate thereof...”⁶²

As set forth in the Final Approval Order, little information exists concerning Swiss companies or affiliates that may have used slave labor:

The Special Master has expressed concern over the ability to administer Slave Labor Class II in the absence of information concerning the identities of persons who performed slave labor for a Swiss company or its affiliates during World War II. When this class was included in the Settlement Agreement, the defendant banks represented that Slave Labor

take charge of distributions to all Slave Labor Class I claimants from this Settlement Fund, under the Court’s supervision, regardless of the claimant’s place of residence, which will further streamline the distribution process, reduce administrative costs and enable the Court to maintain greater control.

⁶² Settlement Agreement, Section 8.2(d).

Class II consists of an extremely small number of persons who may have performed slave labor directly for an extremely small number of Swiss companies during World War II. Since then, they have backed off of this representation In the absence of information concerning the identities of the Slave Labor Class II members, it will prove extremely difficult to notify claimants that they may have a right to recover from the settlement fund. Indeed, because the Slave Labor Class II releasees consist almost entirely of affiliates or subsidiaries of Swiss entities that were incorporated in Germany and elsewhere, members of the class — *e.g.*, those who were forced to perform slave labor for a Swiss company in Germany or elsewhere, but who had no reason to know at the time that the company was Swiss — may not be aware that they are in the class even if they have notice of the settlement. Moreover, without information as to the numbers of slave laborers, it will not be possible for the Special Master to make an intelligent allocation of the proceeds of the settlement fund.⁶³

As the Court further noted, the Special Master has consulted with representatives of the Swiss Federal Archives,⁶⁴ who have confirmed that although “indirect and scattered evidence could be found with time consuming research,” it is “difficult to identify records on forced labor in German branches of Swiss firms in the existing file groups of the EPD [Swiss Federal Department of Foreign Affairs]”; the Archives could not readily identify “tangible information reflecting the situation of forced labor workers in German branches of Swiss firms” and “a systematic search for such evidence would be very time consuming.”⁶⁵

Because the data is scarce, and in recognition of defendant banks’ assertion that the “Bergier Commission’s [forthcoming] report will presumably shed some light on this aspect

⁶³ In re Holocaust Victim Assets Litigation, at 39-40.

⁶⁴ The Swiss Federal Archives, and particularly Prof. Dr. Christoph Graf and Mr. Guido Koller, have provided the Special Master with certain data, including a preliminary research report conducted at the request of the Special Master as well as excerpts from French and German publications addressing certain of the issues pertinent to Slave Labor Class II. The Swiss Federal Archives also has provided data relating to the Slave Labor I and Refugee Classes.

⁶⁵ See Swiss Federal Archives, Forced Labor in Swiss Controlled Firms in NS Germany; Records in the Swiss Federal Archives; Preliminary Overview (April 10, 2000), at 2 (hereinafter, “Forced Labor in Swiss Controlled Firms”) (on file with the Court and the Special Master); see also In re Holocaust Victim Assets Litigation, at 40.

of Switzerland's history,"⁶⁶ the Court asked for the good faith cooperation of the entities which seek to be released from claims under Slave Labor Class II. "[T]hose Swiss entities that seek releases from Slave Labor Class II" were "directed to identify themselves to the Special Master within 30 days of the date of" the Court's July 26, 2000 memorandum and order; the failure of such entities to identify themselves "will result in the denial of a release and permit those who have claims against those entities to pursue such claims independently of this lawsuit."⁶⁷ The Court further observed that "it seems reasonable to conclude that the small number of Swiss companies who the defendant banks suggested utilized slave laborers have good reason to know who they are."⁶⁸

As of the date of this Proposal, a number of Swiss companies have identified themselves to the Special Master, and sought releases for hundreds of their wartime subsidiaries. The companies coming forward range from relatively small businesses to some of Switzerland's largest industrial conglomerates. Information provided to the Special Master indicates that several thousand persons are likely to be members of Slave Labor Class II.⁶⁹ The names of many of these former slave laborers have been provided to the Special Master or may soon become available.

Because Slave Labor Class II appears to be of manageable size, and because the names of many class members are or may soon be known, the Special Master recommends an individualized claims process, to be administered by the IOM. The IOM should evaluate all

⁶⁶ In re Holocaust Victim Assets Litigation, at 39.

⁶⁷ *Id.* at 41.

⁶⁸ *Id.* at 44.

⁶⁹ See Roderick von Kauffungen, *Firms with Swiss Capital and Forced Labor in Germany*, National Swiss Press Agency, Aug. 24, 2000.

claims submitted to it by potential members of Slave Labor Class II: persons who performed slave labor for one of the Swiss entities which have identified themselves to the Special Master, as directed by Chief Judge Korman, and complied with their good faith obligation to provide the names of all former slave laborers in their possession or control.

The Special Master recommends that the names of these Swiss companies should be published following the Court's final approval of a plan of allocation and distribution.

Claimants who plausibly demonstrate, through documents, a statement or otherwise, that they performed slave labor for a company appearing on the published list should receive a payment, identical in amount, of up to \$1000 (and in no event less than \$500), the same amount recommended to be paid to members of Slave Labor Class I. Like Slave Labor Class I, payments to members of Slave Labor Class II should be made in two stages: an initial payment of \$500 (50% of the recommended payment), followed by a second payment of up to an additional \$500 (the remaining 50%) after all claims have been processed. Also like Slave Labor Class I, only certain heirs of Slave Labor Class II members who died after February 15, 1999 are recommended to be paid. As noted above, based on the data provided to the Special Master, several thousand persons are likely to be members of Slave Labor Class II. If, however, many more eligible former slave laborers for companies on the published list make claims, then the Court may have to reconsider the amounts recommended here.

As the Court observed in the Final Approval Order, persons who performed slave labor for a company that they believe was Swiss-owned or controlled, but is not on the published

list, can assert independent claims against those companies, since they are not released under this Settlement Agreement.⁷⁰

(iv) **Refugee Class**

A number of events have shed new light upon the status of refugees in Switzerland and upon the current ability to locate and compensate members of the Refugee Class. These developments include the December 10, 1999 release of a comprehensive study conducted by the Independent Committee of Experts (hereinafter, the “Bergier Commission”) and sponsored by the Swiss government concerning that nation’s World War II-era policies toward refugees;⁷¹ at least two Swiss monetary awards to refugees who were expelled from Switzerland; and extensive communications between the Special Master and representatives of the Swiss Federal Archives, which have resulted in the production of names of thousands of refugees for the Court’s use as part of the claims administration process.⁷²

The Bergier Refugee Report takes note of the unique pressures facing Switzerland before and during the War years, particularly in comparison to other countries equally unwilling to accept refugees, but is nevertheless critical of the Swiss response to those in flight from the Nazis.⁷³ The Bergier Refugee Report also provides significant statistical information about the potential membership of the Refugee Class, and has served as a basis for communications among the Court, the Swiss Federal Archives, and the Special Master. As a result, the Special Master has been provided with two types of information: a list of approximately 50,000 persons

⁷⁰ In re Holocaust Victim Assets Litigation, at 41.

⁷¹ See Independent Commission of Experts Switzerland – Second World War, Switzerland and Refugees in the Nazi Era (Bern 1999) (hereinafter, the “Bergier Refugee Report”).

⁷² These developments are discussed more fully in Section III(E), *infra*, as well as in Annex J (“The Refugee Class”).

registered as admitted into Switzerland as refugees and assigned to labor camps, homes, Swiss families or schools (the “List of Refugees Admitted into Switzerland”), and a database as well as additional lists which together contain the names of approximately 4,000 individuals registered by Swiss authorities before they were turned away from the Swiss border or expelled from Switzerland (the “List of Refugees Expelled From or Denied Entry into Switzerland”).⁷⁴

The existence of considerable — if incomplete — personal data regarding refugees, the recent decisions of Swiss judicial and political bodies in favor of at least three expelled refugees (one of whom, Charles Sonabend, is a named plaintiff in this litigation), and the comparatively limited number of surviving members of the Refugee Class, persuade the Special Master to recommend an individualized claims process for this class. Additionally, because those who survived the Holocaust by finding refuge in Switzerland generally fared far better than those who were denied entry into or expelled from that nation, the Special Master further recommends that claimants alleging “detention” (or, as stated in the Initial Questionnaires, “jail”), “mistreatment” or “abuse,” as those terms are used in Section 8.2(e) of the Settlement Agreement, should receive compensation more limited than that allocated to those whom Switzerland expelled or turned away.

Claimants who plausibly demonstrate, through documents, a statement or otherwise, that they were admitted into Switzerland as refugees and were detained, mistreated or abused there, *and* whose names are matched against the List of Refugees

⁷³ See generally Bergier Refugee Report.

⁷⁴ In light of the databases that have now been provided to the Court, and with the promise of the further assistance of the Swiss Federal Archives in the event that additional information becomes available, the Special Master believes that a fair claims process can commence, subject to any determinations the Court may make in the future concerning the releasees’ compliance with their obligation to act in good faith. See In re Holocaust Victim Assets Litigation, at 31-33, 38, 41, 43-46.

Admitted into Switzerland, should receive a payment, identical in amount, of up to \$500 (but in no event less than \$250). Based upon data in the Initial Questionnaires, approximately 3,000 people are expected to make a claim of this nature.⁷⁵ If, however, there are many more eligible claimants than currently anticipated, then the Court may have to reconsider the amount recommended here.

Claimants who plausibly demonstrate, through documents, an interview or otherwise, that they were denied entry into or expelled from Switzerland, should receive payments, identical in amount, of up to \$2500 (but in no event less than \$1250). One of the ways that claims will be evaluated will be to compare them to the List of Refugees Expelled From or Denied Entry Into Switzerland, which the Swiss government has authorized for publication.⁷⁶ Former refugees expelled or denied entry whose names do not appear on the list also may make a claim, since information other than the published list also will be evaluated; indeed, based upon data in the Initial Questionnaires, approximately 17,000 people are expected to make a claim of expulsion or denial of entry.⁷⁷ If, however, there are many more eligible claimants than currently anticipated, then the Court may have to reconsider the amount recommended here.

⁷⁵ See Summary Sheets for Class Members (Annex C, Exhibit 3).

⁷⁶ As more fully discussed below, to comply with Swiss legislation protecting certain personal data from disclosure, the Court has assured the Swiss Federal Archives that potential members of the Refugee Class will be provided the opportunity to exclude their names from publication. Since the Special Master does not recommend publication of the List of Refugees Admitted into Switzerland, but only of the much more limited List of Refugees Expelled from or Denied Entry into Switzerland, it is unlikely that many individuals will seek to remove their names from the list recommended for publication, although they certainly are free to do so.

⁷⁷ See Summary Sheets for Class Members (Annex C, Exhibit 3).

For both categories of refugee claimants, an initial payment of 50% of the recommended amount should be made; after all claims have been processed, eligible claimants then may be able to receive a second payment of up to the remaining 50%. Payments should be limited to former refugees or certain heirs of refugees who died after February 15, 1999.

The agencies to be charged with responsibility for initial evaluation of these claims should be the Claims Conference, for Jewish class members, and the IOM, for Roma, Jehovah's Witness, disabled and homosexual class members. The Claims Conference and IOM also can undertake research on behalf of the claimants, examining governmental compensation files and other available resources. Each agency will act under Court order and with ongoing judicial supervision. Claims not recommended for payment during the initial evaluation may be reviewed by an officer, appointed by the Court and independent of the IOM and the Claims Conference.

This proposal therefore takes into account the current availability of certain refugee data, but also acknowledges the serious gaps in the archival records, as described by the Bergier Commission,⁷⁸ and the obvious fact that most Nazi victims are unlikely to have escaped the camps or ghettos with their Swiss refugee paperwork intact.

These are the broad outlines of the Special Master's Proposal. The detailed allocation and distribution recommendations for each of the five classes are discussed at Section III below.

⁷⁸ See Section III(E) and Annex J ("The Refugee Class").