

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----  
IN RE: HOLOCAUST VICTIM ASSETS  
LITIGATION  
-----

This Document Relates to: All Cases  
-----

X

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

:  
: MEMORANDUM & ORDER  
:  
:  
:  
:  
X

**MEMORANDUM & ORDER APPROVING 105 PLAUSIBLE UNDOCUMENTED  
AWARDS CERTIFIED BY THE CLAIMS RESOLUTION TRIBUNAL (SWISS  
DEPOSITED ASSETS PROGRAM) PURSUANT TO ARTICLE 31(2) OF THE RULES  
GOVERNING THE CLAIMS RESOLUTION PROCESS AND AUTHORIZING  
PAYMENT FROM THE SETTLEMENT FUND**

KORMAN, C.J.:

On August 9, 2000, I approved the Settlement Agreement between the parties and expressly retained jurisdiction over “the implementation of the settlement and distributions to plaintiff class members” as well as “the disposition of the settlement fund and escrow fund.” In their letter dated February 15, 2006, Special Master Judah Gribetz and Deputy Special Master Shari C. Reig (the “Special Master’s February 15, 2006 Letter”) submit for my approval the first 105 of what are anticipated to be some 13,000 plausible undocumented Deposited Assets Class claims recommended for payment by the New York-based Swiss Deposited Assets Class Program (SDAP) of the Claims Resolution Tribunal (CRT).

As set forth in the Special Master’s February 15, 2006 Letter, the Rules Governing the Claims Resolution Process, as amended, (the “Rules”) address the CRT’s responsibility for making awards with respect to accounts not identified during the investigation of the Independent Committee of Eminent Persons (“ICEP” or “Volcker Committee” Investigation). Article 22(3) of the Rules permits the CRT to “make an Award in a case in which the Claimant

plausibly establishes a right to an Account that falls within the CRT's jurisdiction but which, for whatever reasons, was not identified during the ICEP Investigation and therefore cannot be subject to Matching and/or Research."

The Special Master's February 15, 2006 Letter explains that in my July 26, 2000 opinion approving the Settlement Agreement as fair, as well as in my more recent opinion of February 19, 2004 (as amended on June 1, 2004) describing the banks' behavior, I observed that of the approximately 6.8 million accounts that were open or opened between 1933 and 1945, the subsequent wholesale destruction of documents by the Swiss banks has eliminated the records for nearly 2.8 million accounts. As the Volcker Committee recognized in its December 6, 1999 Report, this destruction of records has created an "unfillable gap" that can now never be known or analyzed for their relationship to victims of Nazi Persecution. Moreover, of the remaining 4 million Holocaust-era Swiss accounts for which records still exist, Swiss banking authorities generally have limited the CRT's access only to those in the "Account History Database" ("AHD"), consisting of approximately 36,000 accounts. Of these 36,000 accounts, Swiss authorities have permitted publication of only approximately 24,000 (21,000 in 2001, and 3,000 in 2005).

Accordingly, as more fully described in the Special Master's February 15, 2006 Letter, the Court has adopted a number of measures to attempt to compensate for the burdens imposed upon claimants due to the massive destruction of documents, and the restrictions placed upon the CRT's access to the remaining records. For example, I have recognized that potential heirs to Swiss bank accounts may have been dissuaded from filing claim forms if the names of their relatives did not appear on the lists of 21,000 account owners published in 2001, and 3,000 account owners subsequently published in 2005. Important information concerning potential Deposited Assets claims also may appear in the Initial Questionnaires that were filed as part of the notice process preceding my approval of the Settlement in July, 2000. Accordingly, on July

31, 2001, I authorized the CRT to treat as timely claims those Initial Questionnaires containing information sufficient to permit the questionnaires to be processed as Deposited Assets claims. As a result, the CRT has accepted and has been analyzing close to 100,000 claims: (1) the approximately 32,000 claim forms filed in connection with the 2001 published list; (2) the approximately 2,000 claim forms filed in connection with the 2005 published list; and (3) the approximately 70,000 Initial Questionnaires that were determined to satisfy the requirements set forth in my July 31, 2001 order.

In another attempt to compensate for the lack of bank documentation, I have adopted various presumptions in favor of claimants where bank records show that a Holocaust-era account existed, but do not show the ultimate disposition of the account. See CRT Rule 28 (“Presumptions Relating to Claims to Certain Closed Accounts”). Further, I have authorized the CRT to investigate documents obtained from sources other than the Swiss banks. To this end, the CRT has identified and I have approved awards for over 170 accounts that were not identified in the bank files analyzed in connection with the Volcker Committee Investigation but were documented in records obtained from archival sources, such as the Austrian State Archive and United States’ National Archives and Records Administration. Indeed, the largest award made to date, *In re Account of Oesterreichische Zuckerindustrie A.G.*, an award of approximately \$21 million that I approved in April 2005, was based entirely upon documents submitted by the Claimant and obtained from archival sources. No bank records survived to document the fate of that account.

However, as noted in the Special Master’s February 15, 2006 Letter, for many thousands of claimants, there are no existing documents that would prove that they or their family members owned Holocaust-era Swiss bank accounts. I therefore directed the CRT to commence an analysis of all of the Deposited Assets claims to determine whether an award should be recommended even in the absence of bank records or other documentation proving the existence

of an account. As pointed out by the Special Master, in similar circumstances, the Court has recognized the propriety of approving awards to claimants who have provided plausible but undocumented evidence that they performed slave labor for a German entity that transacted its profits through Switzerland (Slave Labor Class I) or for a Swiss company (Slave Labor Class II), or were refugees who were expelled from or mistreated in Switzerland (Refugee Class). While the claims of the overwhelming majority of former slave laborers and many of the refugees have been demonstrated through documentary evidence, including archival records obtained from German and Swiss governmental and private entities, it is clear that the claimants' testimonial evidence also must be taken into consideration because the underlying documentation has been destroyed.

The Special Master's October 2, 2003 Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds ("2003 Report") and April 16, 2004 Recommendations for Allocation of Possible Unclaimed Residual Funds ("2004 Report") noted that I had authorized the CRT to review the Deposited Assets Class claims to determine whether it would be appropriate to authorize payments to plausible but undocumented claims. The 2004 Report further observed that there was recent precedent for such payments, since a similar program was under way in connection with the International Commission on Holocaust Era Insurance Claims ("ICHEIC"), which under its "8A2" program has made payments of \$1,000.00 to claimants for whom insurance policies could not be located.

The Special Master's February 15, 2006 Letter explains that at the same time that protocols were developed for reviewing the plausibility of undocumented Deposited Assets claims, parallel efforts continued in an effort to obtain access to additional bank records and to permit publication of additional Holocaust-era account owner names. These efforts resulted in an agreement with defendant banks that permitted the publication of some 3,000 additional account owner names. The agreement also provided for the opening of a New York facility, the

Swiss Deposited Assets Program (“SDAP”), to assist with the processing of Deposited Assets claims. The publication of the new account owner names required the initiation of a new claims process. That process commenced in January 2005, after the parties had finalized negotiations over the precise scope of the information to be provided.

The anticipation and eventual availability of a new claims filing period for accounts impacted the timing of the program for compensating plausible undocumented claims. As described in the Special Master’s February 15, 2006 Letter, the decision was made to permit the new claims period to run to ensure that certain unscrupulous individuals did not take advantage of the new filing period to submit spurious claims that could have relied heavily upon information set forth in claim forms filed in connection with the 2001 publication. The new account owner names were published in January, 2005. That deadline has now expired, and as the Special Master advises, SDAP has completed the additional administrative tasks necessary to issue payment recommendations for several thousand plausible undocumented claims.

The Special Master’s February 15, 2006 Letter notes that the review process was complex because of the large number of claims involved: not only the approximately 34,000 claim forms submitted in connection with the lists of account owners published in 2001 and 2005, but also the approximately 70,000 Initial Questionnaires that included a reference to a Deposited Assets claim, for a total of some 100,000 claims. Further, the Special Master advises that SDAP was required to develop an analytical framework to ensure that “seemingly subjective information would be assessed critically and in accordance with a set of objective criteria.”

For the reasons set forth in the Special Master’s February 15, 2006 Letter, I hereby adopt these criteria and concur that they have been successfully applied. First, in all of the plausible undocumented awards – in the initial 105 awards, as well as the thousands of additional awards SDAP also expects to be recommending – SDAP has determined that the claims met the admissibility criteria as described in Article 18 of the CRT Rules. Thus, in every plausible

undocumented claim, the claimant plausibly has demonstrated that the relative he or she believes to have owned the account (the "Claimed Account Owner" or "CAO") was a Victim or Target of Nazi Persecution as defined under the Settlement Agreement; *i.e.*, a person who was persecuted or targeted because he was or was believed to be Jewish, Roma, Jehovah's Witness, homosexual or disabled.

Second, eligibility for awards has been limited to those family members most likely to have personal knowledge of the existence of a Swiss bank account, as well as to those likely to be the most direct heirs to the account. Thus, awards are recommended only for those persons in the "circle of heirs": the children, spouse, parents, siblings or grandchildren of the Claimed Account Owner.

Third, each claimant is eligible for one payment only, regardless of the number of claimed account owners believed to have owned Swiss bank accounts.

Fourth, to determine the plausibility of the undocumented evidence, claims were assessed according to the amount and detail of biographical information supplied by the claimant in connection with the Claimed Account Owner. The greatest weight is given to claims in which the claimant indicated that the Claimed Account Owner had a specific connection to Switzerland, showing the opportunity to open and maintain a bank account and increasing the likelihood that the account existed. Considerable weight also is allocated to claims in which the claimant indicated that the search for the family's Holocaust-era Swiss accounts was undertaken prior to 1997, when the Swiss bank account issue and the resulting litigation became highly publicized.

As required by Article 31(3) of the Rules, the Certified Awards shall be paid in full by the Special Masters after approval of such Awards by the Court. Each such Certified Plausible Undocumented Award shall receive a payment in the amount of U.S. \$5,000.00. I am advised that the total amount expected to be distributed to members of the Deposited Assets Class with plausible undocumented claims is approximately \$65 million, based upon SDAP's analysis of

the 100,000 claims and its determination that approximately 13,000 of these claims satisfy the relevant criteria and thus are eligible for payment. I am advised that within the next six months, SDAP will be submitting, for review and approval, the remainder of the eligible claims.

Therefore, it is hereby

ORDERED that the attached 105 Plausible Undocumented Awards are hereby approved for payment pursuant to Article 31(2) of the Rules. It is further

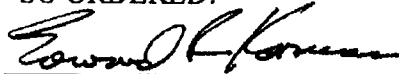
ORDERED that for the payment of these 105 Plausible Undocumented Awards certified by the CRT through its SDAP program and approved by the Court, the Signatories of the Settlement Fund are hereby directed to transfer immediately US\$ 525,000.00 from the Settlement Fund to the Swiss Banks Settlement-Dormant Accounts-Payment Account. It is further

ORDERED that the CRT and/or SDAP shall provide the Court with the name and address of every class member receiving an Award, which information shall be filed with the Court under seal.

I will issue additional orders approving additional Awards certified by the CRT and/or SDAP and transferring further sums from the Settlement Fund as the awards are certified to the Court.

Dated: Brooklyn, New York  
February 17, 2006

SO ORDERED:



---

Edward R. Korman  
United States District Judge