UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In Re: HOLOCAUST VICTIM ASSETS LITIGATION	Case No. 09-160 (ERK)(JO)
THIS DOCUMENT RELATES TO: In Re: CONSIDERATION OF SPECIAL MASTER HELEN JUNZ'S RECOMMENDATION FOR ADJUSTMENT OF DEPOSITED ASSETS CLASS PRESUMPTIVE VALUES	(Consolidated with CV 96-4849, CV 96-5161 and CV 97-461)

NOTICE OF MOTION BY THE STATE OF ISRAEL FOR ACCESS TO DOCUMENTS, DATA AND INFORMATION EXAMINED OR UTILIZED AS PART OF THE JUNZ RECOMMENDATION; AND FOR AN INTERVIEW WITH SPECIAL MASTER JUNZ

Please take notice that pursuant to Fed. R. Civ. P. 53(b)(2)(C), and upon the accompanying Memorandum of Law, the State of Israel, as *parens patriae* for all class members living in Israel, respectfully moves this Court for access to the documents, data, and information supporting Special Master Helen B. Junz's letter recommendations of October 10, 2008, July 15, 2007, May 14, 2007, and March 21, 2006 (the "Junz Recommendation"), as well as any reports or analyses with respect to such data; and an opportunity to interview Special Master Junz with respect to her methodology and Recommendation.

Dated: February 13, 2009
New York, New York

Respectfully submitted,

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MEMORANDUM OF LAW IN SUPPORT OF MOTION BY THE STATE OF ISRAEL FOR ACCESS TO DOCUMENTS, DATA AND INFORMATION EXAMINED OR UTILIZED AS PART OF THE JUNZ RECOMMENDATION, AND FOR AN INTERVIEW WITH SPECIAL MASTER JUNZ

The State of Israel, as *parens patriae* for all class members living in Israel, respectfully moves this Court for access to the documents, data, and information supporting Special Master Helen B. Junz's letter recommendations of October 10, 2008, July 15, 2007, May 14, 2007, and March 21, 2006 (the "Junz Recommendation"), as well as any reports or analyses with respect to such data; and an opportunity to interview Special Master Junz with respect to her methodology and Recommendation.

Background

On October 10, 2008, Special Master Helen Junz submitted her final report analyzing the "presumptive values" currently in use in the Deposited Assets Class claims process. Her Recommendation proposes a substantial upward adjustment to the presumptive values that have been used by the CRT to award accounts for which no balance information is known and for accounts with below-average known values. *See* October 10, 2008 Junz Letter at 13-16.

As this Court is aware, the original Plan of Allocation provided that when "the amount in the account is unknown, it is ... appropriate to make an award based on the average value of the type of account." Plan of Allocation and Distribution of Settlement Proceeds, at 110 (Sept. 11, 2000) (hereinafter "Plan of Allocation"). The Volcker Committee's findings served as the basis for the Plan of Allocation and provided the justification for how the funds were to be allocated among the class members. The Plan of Allocation was approved on November 22, 2000. These values are part of the CRT Rules that were adopted by this Court on February 5, 2001. *See* Rules Governing the Claims Resolution Process, Art. 29.

The Special Master asserts that, based on "new information," the average value of accounts with an unknown value is significantly higher than the amounts that were established by the Volcker Committee. *See* October 10, 2008 Junz Letter at 11. In short, the principal reason that the Volcker Committee's average values are lower is because the Volcker Committee excluded Category 3 accounts from its computations. It deemed this category of accounts unreliable for purposes of estimating average presumptive values because it believed the value data for these accounts was skewed and should not be extrapolated to the entire database of accounts. *See* Volcker Report, Annex 4 ¶ 42, Table 20 n.** (Dec. 6. 1999). As the Volcker Committee explained:

> Value information is only available for 11% of the accounts in [Category 3]. The accounts for which there is value information are securities custody accounts with high average values that are not representative of valuations of similar types of accounts in other categories. The relatively small number of accounts for which values are available in this category, combined with the apparently unrepresentative values contained in this sample, indicate that any valuations of this category would be inaccurate and misleading.

Id. Thus, because only 11% of the Category 3 accounts had a known value, and those known values were unrepresentative of the larger group, the Volcker Committee excluded them from the

analysis. Dr. Junz's assessment of presumptive values includes these Category 3 account without providing the underlying data or methodological basis for their inclusion.

Adoption of the Junz Recommendation would significantly increase the amount of funds allocated to the Deposited Assets Class. Special Master Gribetz acknowledged in his report dated December 19, 2008 at 3-4 (which endorses the Junz Recommendation), that the Recommendation "would have a substantial impact upon the amounts ultimately distributed to members of the Deposited Assets Class." In fact, it would cost approximately $265 million and would wipe out any possible additional allocation to the Looted Assets Class—funds that otherwise would go to the neediest survivors.

Discussion

As described more fully in Israel's Objections to Special Master Gribetz's December 19, 2008 Report and the supporting Declaration of Charles H. Mullin, Ph.D., annexed as Exhibit A thereto, there are serious questions about the statistical conclusions reached in the Junz Recommendation, including: (1) whether the new inclusion of Category 3 accounts in computing average values is based on sufficient data; (2) whether the recommendation to include such accounts is the product of reliable principles and methodologies in the field of statistics; and (3) whether Dr. Junz applied statistical principles and methodologies reliably in this case. Most significantly, it appears that the manner in which the additional "known" accounts were added to the sample used by Dr. Junz has biased the sample towards higher value accounts, which likely has resulted in a flawed recommendation to increase the presumptive value awards. Israel's objections to the Junz Recommendation include, but are not limited to, the following:

- The Junz Recommendation fails to present the methodological framework for departing from the Volcker Committee's decision to excluded Category 3 accounts from its computation of average values—accounts which the Volcker

Committee auditors excluded because they deemed them unreliable and believed these accounts would skew the computations in a way that would render their use "misleading." The Recommendation does not provide a basis for finding that the new-found Category 3 accounts are now representative of the category as a whole.

- A number of the known-value accounts in Dr. Junz's sample include accounts originally identified by the Volcker Committee as having unknown value, as well as accounts not originally identified. These accounts have been identified in a way that likely biases the data toward higher values.
- The Volcker Committee based its presumptive value estimates upon analysis of 7,797 accounts with known value. In contrast, Dr. Junz bases her presumptive value estimates on 6,945 accounts with known value. October 10, 2008 Junz Letter at 9. No explanation is provided as to why approximately 850 accounts have been removed from the Volcker Committee sample.

The fundamental methodological support to increase the presumptive values has not been provided by Dr. Junz, and that absence forecloses meaningful review of her Recommendation. The only way to fairly assess the validity of her conclusions is for this Court to permit access to the data upon which Dr. Junz relied, as well as draft reports and analyses relating to that data. It is also important for the State of Israel to have an opportunity to interview Dr. Junz with respect to her Recommendation and the underlying methodological support for it. At a minimum, the State of Israel respectfully requests access to:

1. The Volcker Committee sample of known value accounts (personal identifying information could be removed);

2. The AHP-plus sample of known value accounts (personal identifying information could be removed);

3. A list of accounts included in the Volcker Committee's sample that were excluded from the AHP-plus sample, as well as an explanation for why they were excluded;

4. A list of accounts included in both samples for which the known information has been update in the AHP-plus sample, as well as an explanation for why the information was updated;

5. A list of accounts included in the AHP-plus sample for which no information was previously known, as well as an explanation for how the new information was collected;

6. An explanation for how the CRT selected accounts for which they sought additional information through "voluntary assistance;"

7. An explanation for why the Volcker Committee chose the mean instead of the median as its measure of central tendency;

8. The basis by which outliers (extremely high-value accounts) were determined and subsequently excluded from the analysis;

9. Copies of reports and analyses of the data sets, including a sensitivity analysis performed in support of the Recommendation and

10. An opportunity to interview Dr. Junz regarding her methodologies and conclusions.

Fed. R. Civ. P. 53(b)(2)(C) and its advisory committee notes (relating to appointment of Special Masters), reflect the importance of preserving and including as part of the Court file the materials relating to the Special Master's activities. Although none of the appointment Orders here specify the materials to be filed as part of the Court's record, the advisory committee notes to Rule 53 emphasize the importance of a full and complete record of evidence considered by any special master: "[a] basic requirement ... is that the master must make and file a complete record of the evidence considered in making or recommending findings of fact on the basis of evidence. The order of appointment should routinely include this requirement unless the nature of the appointment precludes any prospect that the master will make or recommend evidence-

based findings of fact." Fed. R. Civ. P. 53(b)(2)(C), advisory committee's notes. Here, of course, Dr. Junz has made evidence-based findings of fact and recommendations. As such, the evidence considered as part of those findings and recommendations should be recorded and filed, and all class members should have a full and fair opportunity to examine it.

Additionally, when a court adopts the findings of a master, these findings "must be considered the court's findings." Fed. R. Civ. P. 52(a)(4). Thus, like all courts' findings, they are subject to Rule 52(a) of the Rules of Civil Procedure, which requires a court to "find the facts specially." Fed. R. Civ. P. 52(a)(1). "This requires the court to make sufficiently detailed findings to inform the appellate court of the basis of the decision and to permit intelligent appellate review." *Krieger v. Gold Bond Bldg. Products, a Div. of National Gypsum Co.*, 863 F.2d 1091, 1097 (2d Cir. 1988) (internal citations omitted). In order to permit "intelligent" review of this Court's ruling based on Dr. Junz's recommendations, the Court should make available the underlying data and the methodology that are the basis for her Recommendation.

It is also important to emphasize that throughout these proceedings, this Court has stressed the vital importance of having an open and transparent process when determining how the funds should be allocated. *See, e.g., In re Holocaust Victim Assets Litigation*, 2000 WL 33241660, at *4 (E.D.N.Y. Nov. 22, 2000), (agreeing with lead class counsel's conclusion that the "'openness and transparency of [the Special Master's] deliberations adds immeasurably to the moral and legal persuasiveness of his proposed plan of allocation'"), *aff'd*, 413 F.3d 183 (2d Cir. 2005). That same transparency must be employed now—when the final allocation of funds is to be determined and will have lasting effects on class members.

Conclusion

WHEREFORE, for the foregoing reasons, Israel respectfully requests that this Court compel access to the underlying documents, data, and information contained in the Junz

Recommendation, as well as any drafts of reports and analyses with respect to such data; and an opportunity for representatives of the State of Israel to interview Dr. Junz with respect to her methodology and Recommendation.

Respectfully submitted,

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February 13, 2009

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OBJECTIONS BY THE STATE OF ISRAEL TO SPECIAL MASTER GRIBETZ'S DECEMBER 19, 2008 REPORT

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The State of Israel ("Israel"), as *parens patriae* for all class members living in Israel, respectfully submits its Objections to the report of Special Master Gribetz dated December 19, 2008 (the "Gribetz Report"), and the series of letter recommendations by Special Master Junz (collectively the "Junz Recommendation") attached thereto.[1] The recommendations propose that the Court make a substantial upward adjustment to the "presumed values" that have been used to establish award amounts for accounts as to which no balance information is known or for which balance information is known but believed to be below average.[2] The State of Israel considers the recommendations misguided. They are not based on an adequate evidential basis; they fail to take account of the moral and legal claims of the neediest class members; and they have been proposed to be adopted in a manner that is profoundly antithetical to the transparency and openness that has heretofore characterized these proceedings. The Court should reject them *in toto*.

BACKGROUND

1. The Volcker Report and the Class Action Cases in This Court

In May 1996, the World Jewish Congress and other Jewish organizations, together with the Swiss Bankers Association, established an entity called the Independent Committee of Eminent Persons (the "ICEP"). The ICEP, chaired by Paul A. Volcker (and known as the "Volcker Committee"), conducted an audit of Swiss banks to identify accounts from the Holocaust era that could possibly belong to victims of Nazi persecution. *See In re Holocaust Victim Asset Litig.*, 105 F. Supp. 2d 139, 151 (E.D.N.Y. 2000).

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[1] The State of Israel also hereby reserves the right to respond to the January 30, 2009 letter to the Court from Special Master Junz (filed February 11, 2009).

[2] Special Master Junz calls these "presumptive value awards."

Beginning in late 1996, Plaintiffs brought four class action lawsuits in this Court against Defendants, the largest Swiss banking institutions. Plaintiffs alleged that, in knowingly retaining and concealing the assets of Holocaust victims, accepting and laundering illegally obtained Nazi loot and transacting in the profits of slave labor, Swiss institutions and entities, including the named Defendants, collaborated with and aided the Nazi regime in furtherance of war crimes, crimes against humanity, crimes against peace, slave labor and genocide. *Id.* at 141.

Meanwhile, "the Volcker Committee proceeded with what is likely the most extensive audit in history, employing five of the largest accounting firms in the world at a cost of hundreds of millions of dollars . . . ." *Id.* at 151.

While that audit was ongoing—and before any ruling on the legal or factual merit of any of the claims or defenses—the parties reached an informal agreement to settle this case for $1.25 billion in August 1998, with knowledge that the Volcker Committee's investigation was ongoing. *Id.* The Settlement Agreement encompassed claims by all class members. Of particular interest here are the "Deposited Asset Class" and the "Looted Asset Class," which the Settlement Agreement defined as follows:

> 1. Deposited Assets Class: 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 release for relief of any kind whatsoever relating to or arising in any way from deposited assets or any effort to recover deposited assets.
>
> 2. Looted Assets Class: 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 release 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.

See id. at 143.

Before the Settlement Agreement was approved, the Volcker Committee prepared a 100-plus page report, which it released on December 6, 1999 (the "Volcker Report"), setting forth its findings in detail, which included the revelation that approximately 54,000 Swiss bank accounts appeared to have a "probable" or "possible" connection to a Holocaust victim. The Volcker Committee grouped these accounts into four categories. Accounts in Category 1 were foreign accounts with an exact or near-exact match to the name of a victim of Nazi persecution; accounts in Category 2 were unmatched accounts of account holders resident during the relevant period in an Axis or Axis-occupied country; accounts in Category 3 were matched or near-matched accounts of account holders resident during the relevant period in an Axis or Axis-occupied country; and accounts in Category 4 were accounts that were open during the relevant period, dormant following 1945, and as to which the residence of the owner was unknown. Volcker Report, Annex 4 at 65-67.

Within each of the four categories were a variety of types of accounts: savings accounts; demand deposit accounts; custody accounts; safe deposit box accounts; and other accounts. *Id.* at 71, Table 17.

The Volcker Committee quantified the values of the accounts by making a series of judgments. It decided to include in its computations all accounts from Categories 1 and 2. It decided to exclude from its computations all accounts from Categories 3 and 4. Its reasoning was as follows:

> Book value information was not available for all 53,886 accounts identified. In Category 1, 70 percent of the accounts had known values; in Category 2, 80 percent of the accounts had known values; and in Category 4, 98 percent of the accounts had known values. However, for Category 3, the largest Category of

accounts, the number of accounts with known values—only 11 percent—was clearly insufficient to make a meaningful estimate of the value of that whole category accounts.

* * * *

Fully conscious of the difficulties and the inherent range of uncertainty in such estimates, the Committee considered various approaches to approximating such fair current values for accounts due victims. The range of uncertainty in any such approximation is reduced for those categories carrying the strongest probability of a victim relationship and the greater proportion of known account values. For Categories 1 and 2, which carry the highest probability, some 77 percent of account values are known. . . .

The total fair current value of Category 1 and 2 accounts...would be SFr. 411 million using the mean value of known account values, or less if the median value (SFr. 271 million) is used. Because some of these accounts will not, in fact, be resolved in favor of claimants, these estimates are highly likely to be larger than amounts actually due and awarded to victims.

For [the 30,692] Category 3 accounts, the projections are substantially more uncertain. Relatively few of those accounts (11 percent) have known values. A large portion of the funds are clustered in relatively few custody accounts. These and all Category 3 accounts have been closed for reasons unknown, adding a further element of uncertainty as to the proper valuation. For those reasons, the Committee felt no reliable projection of current values properly due victims for Category 3 was feasible. For Category 4, for which most account values are known, the probability of a relationship to a victim is appreciably less, and the average size of the accounts is relatively small.

Volcker Report Annex 4, pp. 71-72 (footnote omitted).

The Volcker Commission also explained, with regard to Category 3,

Value information is only available for 11% of the accounts in this category. The accounts for which there is value information are securities custody accounts with high average values that are not representative of valuations of similar types of accounts in other categories. The relatively small number of accounts for which values are available in this category, combined with the apparently unrepresentative values contained in this sample, indicate that any valuations of this category would be inaccurate and misleading.

Id. at 75, Table 20, n.**.

"[I]n conducting the negotiations that culminated in the $1.25 billion Settlement Agreement, plaintiffs' negotiating team utilized figures derived from an economic analysis of the flow of funds into Switzerland during the relevant period that were extremely close to the figures that were eventually suggested by the Volcker Report." *In re Holocaust Victim Asset Litig.*, 105 F. Supp. 2d at 152 (citing Declaration of Burt Neuborne (June 26, 2000) ("Neuborne Decl. II") ¶ 8). According to the Court, "the findings of the Volcker Report confirmed, rather than undermined, an important element of class counsel's expectations concerning plaintiffs' potential recovery in this case, and which class counsel had in mind when agreeing upon the settlement amount." *Id.* During this period, Chairman Volcker testified before Congress that his Committee was "working closely with Judge Korman and with the Special Master, Mr. Judah Gribetz, appointed by Judge Korman to develop a plan of distribution of the settlement . . . ." Testimony of Chairman Volcker before the House Banking and Finance Committee, p. 78 (Feb. 9, 2000).

2. Notice and Comment Provisions for Original Proposed Settlement Agreement

The Court adopted an extensive notice plan to provide class members (including members of the Looted Asset Class) with notice of the certification of the Settlement Classes, the terms of the Settlement Agreement, and their rights with respect to the Settlement Agreement. This plan included: (1) worldwide publication that included 371 appearances in mainstream newspapers and 622 appearances in Jewish publications, placed in 40 countries; (2) press efforts that resulted in additional coverage in at least 552 news articles and 34 countries; (3) extensive community outreach programs; (4) a direct mail program, including more than 1.7 million notice

packages sent to potential class members in 137 countries; (5) a voice response system that fielded almost 500,000 calls; and (6) an Internet notice effort which resulted in over 316,000 "hits" on the Court ordered website. Plan of Allocation and Distribution of Settlement Proceeds, at 86-87 (Sept. 11, 2000) (hereinafter "Plan of Allocation"). The Court appointed "notice administrators" who filed reports with the Court detailing the "exhaustive efforts undertaken to give all settlement class members an opportunity to learn of their rights, evaluate the basic terms of the proposed settlement and comment, either by submitting correspondence, e-mailing the notice administrators or returning an Initial Questionnaire." *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 144. One of "the most critical aspects of the notice plan was designing a way for class members and other interested parties to raise objections to the Settlement Agreement." *In re Holocaust Victim Assets Litig.*, 311 F. Supp. 2d 363, 366 (E.D.N.Y. 2004), *aff'd*, 424 F.3d 150 (2d Cir. 2005).

The Court then presided over two fairness hearings—one in New York and one in Israel—which provided a forum for class members and other interested parties to voice their concerns. Following those hearings, the Court approved the Settlement Agreement. The Court credited the Volcker Report's conclusion that the $1.25 billion settlement was fair to all class members. *See In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 153. According to the Volcker Report,

> [T]he investigation was not and could not be complete in the sense of reconstructing all accounts in Swiss banks in 1945. Had that been possible, additional victim accounts would be identified, and some victim accounts may have been missing among the 4.1 million identified accounts. In reviewing and balancing all these considerations, the Committee believes that claims of [Deposited Asset Class] victims can be met within the amount specified in the [Settlement Agreement], with funds from that settlement available for distribution to others covered by the settlement."

Volcker Report, Annex 4 at 72.

In determining that the Settlement was fair to all class members, the Court also took into account the response of more than 550,000 individuals to questionnaires, and the fact that fewer than 500 class members opted out. *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 147. The moral approbation of the survivor community weighed heavily in the Court's approval. Indeed, the Court began its fairness opinion by stating:

> The words of Ernest Lobet, a survivor of the Holocaust, provide the best summary of the conclusion that I reach after the analysis to follow:
>
> > "I have no quarrel with the settlement. I do not say it is fair, because fairness is a relative term. No amount of money can possibly be fair under those circumstances, but I'm quite sure it is the very best that could be done by the groups that negotiated for the settlement. The world is not perfect and the people that negotiated I'm sure tried their very best, and I think they deserve our cooperation and . . . that they be supported and the settlement be approved."

Id. at 141 (citation omitted).

The Court also quoted with approval the views of the United States, that:

> "The United States supports approval of the settlement the parties have reached. It is fair and just and promotes the public interest, as expressed in the policy that the United States government has pursued for the past four years. Because the parties reached for common ground rather than prolong their difference[s], the elderly victims of the Holocaust will receive the benefits of this settlement in their lifetime and much more quickly than would have been possible had the litigation continued.
>
> But of equal importance, the United States regards this settlement as an excellent example of how cooperation and the will to fulfill a moral obligation can lead to voluntary resolution of disputes over Holocaust-era claims."

Id. at 148 (citation omitted).

Finally, the Court observed, in approving the Settlement, that the evidence available

today would have been insufficient for many claimants to bank account proceeds to meet the standard of proof required at trial. As the Court put it, "the practical and legal problems resulting from the destruction of evidence and the passage of time counsel against litigating these claims. Indeed, a claims resolution process applying rules for recovery less rigorous than a legal proceeding could result in the payment of more claims than would otherwise be possible." *Id.* at 153 (citing Declaration of Stuart E. Eizenstat (Nov. 23, 1999) ¶ 2 ("'the number of victims who would be covered by some sort of negotiated settlement is often greater than can be achieved through litigation'").

3. The Plan of Allocation and the CRT Rules

Pursuant to the Settlement Agreement, the Court appointed Judah Gribetz to serve as Special Master to develop a Plan of Allocation. March 31, 1999 Order, Referral to Special Master for Development Of Plan to Allocate and Distribute Settlement Proceeds. The estimates of the Volcker Committee were of "vital significance" to the Plan of Allocation: "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." Plan of Allocation at 11. The Plan of Allocation based the original class allocations on the work of the Volcker Committee:

> [B]ecause 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 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.

Id. at 14-15. The Plan of Allocation also stated that "the Settlement Agreement clearly was structured so that the Volcker Committee's ultimate conclusions would be incorporated into any eventual recommendation on allocation and distribution of the Settlement Fund," and that certain amendments to the Settlement Agreement "continue to reinforce the parties' original agreement to abide by the Volcker Committee's findings . . . ." *Id.* at 93 (footnote omitted). "Like the Court, the Special Master believes that the Volcker Committee's unprecedented investigation and historic findings deserve the utmost respect . . . . " *Id.* at 94.

Thus, the Volcker Committee's findings served as the basis for the Plan of Allocation and provided the justification for how the funds were to be allocated among the class members. Based on the Volcker Committee's findings, the Special Master recommended that the Deposited Assets Class should receive $800 million of the $1.25 billion settlement. *Id.* at 15. Most of the remaining funds were to be distributed among members of the other four classes.

With regard to unknown value accounts, the Plan of Allocation recognized that:

> when the amounts in accounts are unknown, it is appropriate to rely on presumptions to assist in the adjudication of such claims. For example, it is appropriate to make an award to a claimant of a closed account if the account holder perished in a concentration camp. If the amount in the account is unknown, it is also appropriate to make an award based on the average value of the type of account. As with all other aspects of the claims process, the Court will have the discretion to adjust such awards to assure fairness among all claimants.

Id. at 110.

The Special Master observed, however, that even with these presumptions, it was "highly unlikely, given the passage of more than half a century" that "all of the accounts designated by the Volcker Committee as 'probably' or 'possibly' related to victims of Nazi persecution [would be] actually claimed . . . ." *Id.* at 99. Thus, the Plan of Allocation contemplated that after "Stage 1" of the distribution not all of the $800 million allocated to Deposited Assets Class would be claimed, and provided that any residual funds should be distributed "to needy members of the Looted Assets Class, as well as to needy spouses and children of Nazi victims." *Id.* at 138.

This Court adopted the Plan of Allocation's recommendation to distribute funds to the Looted Assets Class based on *cy pres* principles that have been approved by the Second Circuit. As the Plan of Allocation explained, "[w]here, as here, a settlement fund is 'not sufficient to satisfy the claimed losses of every class member,' the Court of Appeals for the Second Circuit has made clear that it is 'equitable to limit payments to those with the most severe injuries' and to 'give as much help as possible to individuals who, in general, are most in need of assistance.'" *Id.* at 116 (quoting *In re Agent Orange Product Liability Litig.*, 818 F.2d 145, 158 (2d Cir. 1987)). To date, under this *cy pres* principle, 75 percent of the allocations to Jews within the Looted Assets Class have gone to needy survivors within the FSU. Needy class members living in Israel have been allocated 12.5 percent of the funds distributed to date. *See* Swiss Bank Settlement Fund Distribution Statistics as of Sept. 30, 2008.

4. Notice and Comment Provisions for Plan of Allocation

The Court adopted the Plan of Allocation after further notice and comment by class members. Summaries of the proposed Plan of Allocation were mailed to all 580,000 persons who had returned the Initial Questionnaires that were sent as part of the original notice effort.

Class members were then given an opportunity to comment on the Plan of Allocation at a hearing held by the Court, at which about 40 people spoke on behalf of thousands of class members. The Court observed that a hearing would give class members "an opportunity to communicate directly" with this Court "without any intermediaries to dilute the class members' direct influence" on the allocation of funds. *In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d at 150.

5. Certain Post-Confirmation Orders

Following confirmation of the Plan of Allocation, the Court issued a series of orders of relevance here. In its February 5, 2001 Memorandum and Order, the Court approved draft rules of the CRT. Those rules govern the CRT process for the resolution of claims of the Deposited Assets Class. The CRT Rules were based on the data and findings of the Volcker Committee. *See* Rules Governing the Claims Resolution Process, Introduction. The CRT adopted a "Relaxed Standard of Proof" which simply required a claimant to "demonstrate that it is plausible in light of all the circumstances that he or she is entitled, in whole or in part, to the claimed account." *Id.*, Art. 17. In accordance with the recommendation of the Plan of Allocation, the Rules also established the presumptive values for accounts with unknown amounts. These values were determined by the Volcker Committee. *Id.*, Art. 29; Gribetz Report at 11. The Court stated:

> I have given special attention to those provisions of the Rules that base awards on certain presumptions when a claimant has carried the burden of proof to warrant an award, but the amount in the account is unknown and/or information is missing on whether the account owner received the proceeds of the account. I find these provisions to be appropriate, but again endorse the provisions of the Plan which provide for an initial payment of 35 percent of such awards and payment of up to an additional 65 percent after all deposited assets awards have been paid.

February 5, 2001 Memorandum and Order, at 2.

Following this Order, the Court made a series of additional orders suggesting that the $800 million that had been set aside would be more than sufficient to pay the claims of claimants in the Deposited Asset Class. In May 2002, the Court approved the use of average 1945 account values for account holders whose known-value accounts were below the Volcker Committee's average value. May 28, 2002 Order, at 1. In other words, all claimants would receive, at minimum, the average value, regardless of the actual known value of their account.

In September 2002, the Court authorized initial payments to Deposited Asset Class members with accounts of unknown value to 65% of the average value rather than the 35% previously authorized. Sept. 25, 2002 Memorandum and Order, at 3. The Court also authorized a 45% increase in payments to members of three of the subclasses eligible for receipt of residual funds, and in June 2004 authorized such an increase to the fourth such subclass. Sept. 25, 2002 Memorandum and Order, at 3; June 22, 2004 Order, at 2.

In February 2003, the Court noted that "it appears that the $800 million set aside for these claims . . . will be sufficient to cover the Awards to Deposited Assets Class Claimants," and ordered that claimants with accounts of unknown value receive 100% of the average value of such accounts, with no hold-back. February 26, 2003 Order, at 1.

6. 2003 Interim Report and Proposed Reallocation

In November 2003, the Court adopted an Interim Report by Special Master Gribetz. The Interim Report indicated that approximately $131.5 million had been returned to members of the Deposited Assets Class. The Interim Report further recommended that this Court re-allocate unclaimed residual funds, if any, to the Looted Assets Class in accordance with *cy pres* principles. The Special Master noted that such an allocation had not yet "been the subject of discussion by class members . . . ." Interim Report on Distribution and Recommendation for

Allocation of Excess and Possible Unclaimed Residual Funds, at 7 (Oct. 2, 2003). Thus, the Special Master recommended that this Court "solicit proposals from a broad array of interested persons and organizations as to how best to identify and benefit the neediest survivors." *Id.* Additionally, the Interim Report recommended that the various recommendations should be the subject of discussion at a public hearing. The Court followed the Special Master's recommendations and solicited proposals concerning the allocation of the residual funds and comments on such proposals. *See* Nov. 17, 2003 Memorandum & Order Adopting Special Master's Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds, at 3-4. The Court ordered that all recommendations and comments "be made part of the public Court file, and/or posted by the Special Master" on the website for this litigation. *Id.* at 4. About a hundred recommendations were submitted from interested parties and incorporated into the Special Master's April 16, 2004 Recommendations for Allocation of Possible Unclaimed Residual Funds. The Court then held a one-day hearing in more than 60 people testified, representing thousands of people within the Looted Assets Class.

7. Comments of the State of Israel

Following publication of the Interim Report, the State of Israel appeared in the case as *parens patriae* for all class members living in Israel. The State of Israel supported the distribution to members of the Deposited Asset Class. *See, e.g.*, Memorandum of State of Israel and World Jewish Restitution Organization in Response to Special Master's Recommendations for Allocation of Possible Unclaimed Residual Funds (April 27, 2004). The State of Israel also supported this Court's adherence to *cy pres* distribution in order to help the neediest members of the Looted Asset Class. *See id.* Based on these *cy pres* principles, the State of Israel put forth its recommendations as to how this Court could reach the neediest victims, many of whom reside in

Israel. The State of Israel also asked this Court to recognize a forgotten group of victims of the Shoah—Jews from North African and Middle Eastern countries who came under the control of the Nazis and their collaborators. These victims are within the scope of the plain language of the Settlement Agreement, and Israel urged the Court to recognize and document their inclusion in the Class. *See* Supplemental Memorandum of the State of Israel in Support of Submissions to the Special Master (March 24, 2004). The State of Israel also demonstrated that more than 100,000 of the neediest class members had emigrated from the FSU countries to Israel. *See* Memorandum of State of Israel and World Jewish Restitution Organization in Response to Special Master's Recommendations for Allocation of Possible Unclaimed Residual Funds (April 27, 2004). These submissions quantified, for the Court, the needs of class members living in Israel and demonstrated the dire economic situation for the neediest survivors living in Israel. *See id.*

8. The Recommendation to Re-Value Accounts

On December 19, 2008, Special Master Gribetz submitted the report now under scrutiny. Special Master Gribetz does not expressly endorse the recommendation of Special Master Junz, but does not criticize it either. In our judgment, the Junz Recommendation is premised on what appears to be unsound methodology and analysis. The Recommendation rests in large part on Special Master Junz's decision to include the known values of Category 3 accounts in her recomputation of the average values—the precise course rejected by the Volcker Committee as "no[t] reliable," "inaccurate," and "misleading." Volcker Committee Report Annex 4 at 72, 75, Table 20, n. **

It is worth observing that the Volcker Committee had 30,692 Category 3 accounts, of which 3,252 (or 10.6%) had known values. March 21, 2006 Junz Letter at 10, table 3; *see also*

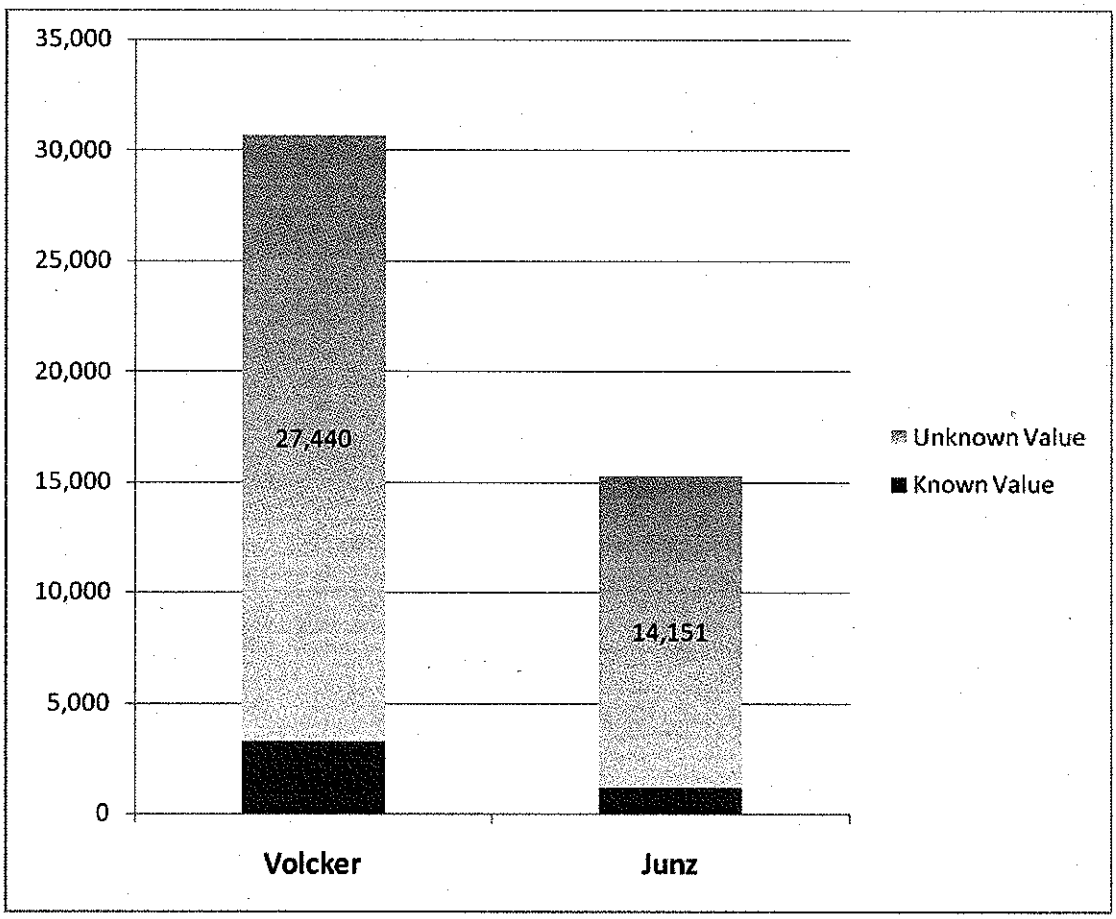
Volcker Report, Annex 4 at 75, Table 20. By way of contrast, the database used by Special Master Junz had 15,290 Category 3 accounts. It appears that these included approximately 1,146 known-value accounts (or 7.5%).[3] The following Table and Chart illustrate the difference (such as it is) between the known-value accounts in the Volcker Committee's computations and those in Special Master Junz's computations:

[3] Special Master Junz's March 21, 2006 letter (p. 10) contains a table setting out these figures. However, in her October 10, 2008 letter (p. 10), Special Master Junz identifies 205 additional newly valued accounts in Category 3. Therefore, we have added the 205 new known-value accounts to the figures from the March 21, 2006 letter.

Table No. 1: Known vs. Unknown Values in Category 3 Accounts

	Volcker	Junz
Known Value	3,252	1,139
Unknown Value	27,440	14,151
Total	30,692	15,290
Percent	10.6%	7.4%
Source: Junz Letter of March 21, 2006, augmented by 205 additional known-value accounts		

Chart No. 1: Known vs. Unknown Values in Category 3 Accounts



The new recommendation to include Category 3 accounts in the computation of the average value stems in part from additional account information that was provided by the banks at the request of the CRT. *See* Junz Recommendation at 2. As part of that process, Credit Suisse provided account value information for 239 accounts, 212 of which previously had been awarded. *Id.* at 5. Of those 212 accounts (205 of which were Category 3 accounts), some 84 accounts "proved to have known values in excess of the values at which they had been awarded." *Id.* That is, the true value of 84 of the 212 accounts was *higher* than their presumptive value. Because 84 accounts amount to approximately 40% of the 212 accounts, that suggests that the remaining 128 accounts (or 60%) had true values *below* the presumed value number. Thus, more than half of the accounts—60%—have already been compensated by the Court at a higher amount than their true value, effectively giving those class members excess funds that cannot fairly be attributed to them.

DISCUSSION

The passage of time, the willful destruction of records, the genocide, and the massive and violent dislocations following the end of the Nazi regime make it inevitable that many, many victims' Swiss bank accounts would go unclaimed. The Court is now faced with a fundamental practical question arising out of this reality: What is the most appropriate use of funds in such accounts? The recommendation before the Court is that these funds should be reallocated among some members of the Deposited Asset Class, in a way that can be expected to give excess awards to the majority of the members of that class. That is, the majority of Deposited Assets claimants whose accounts are of unknown value will receive more than the "true value" of their accounts, assuming that the "true value" could be discerned. The State of Israel does not believe that this is a sound proposal. Rather, the excess funds should be redistributed to the neediest living

survivors within the Looted Asset Class, consistent with the *cy pres* principles originally recommended by Special Master Gribetz, embodied in the Plan of Allocation, adopted by this Court, and approved by the Second Circuit.

I. THE RECOMMENDATION RESTS ON QUESTIONABLE DATA AND ANALYSIS, WHICH RENDERS ITS ULTIMATE CONCLUSIONS UNRELIABLE

The central tenet of Special Master Junz's proposal is the inclusion of known-value Category 3 accounts to compute average values for each type of account. Most significantly, this inclusion would nearly triple the "presumed value" of custodial accounts—from $147,727 to $352,273. *See* October 10, 2008 Junz Letter, at 13.

This proposal fails to meet even a minimum level of reliability.[4] To begin, the Special Master has failed to present the Court with the information to determine whether the recommendation is based on a statistically reliable methodology. As discussed in the Declaration of Charles Mullin, a methodologically reliable statistical analysis must, at a minimum, disclose: (a) the data generating process that produced the sample; (b) the assumptions included as part of the analysis that permits extrapolation from the sample to the population of interest; and (c) the reliability of the resultant extrapolation. *See* February 12, 2009 Declaration of Charles H. Mullin, Ph.D. ("Mullin Decl."), at ¶ 6 (attached hereto as Exhibit A). The Junz letters do not explain the data-gathering process. They do not explain how the new data differ

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[4] Fed. R. Civ. P. 53 sets forth the appropriate standard of review of the findings of fact made or recommended by a Special Master. Rule 53(f)(3) provides as follows:

> Fact Findings. The court must decide *de novo* all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:
>
> (A) the findings will be reviewed for clear error; or
>
> (B) the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final.

from the old data. They do not explain why the new Category 3 data form a reliable base on which to extrapolate to all of Category 3. And they do not attempt to set the conclusions in the context of statistically reliable evidence. The absence of such information impairs meaningful analysis. However, certain conclusions seem reasonable.

First, nothing in the recommendation resolves the dangers of extrapolation within Category 3, identified by the Volcker Committee. It is helpful to recall that, in making the valuation estimates, the Volcker Committee included Categories 1 and 2 because the large number of known values made the risk of error very low. Because some 77% of these accounts were of known value, they were less subject to data collection bias. In contrast, the Volcker Committee rejected the use of Category 3 data, where only 11% of the accounts had a known value. The potential for bias toward high-value accounts, combined with the relatively smaller sample size, led the Volcker Committee to *exclude* Category 3 accounts in computing account valuations because the data was "no[t] reliable," "inaccurate," and "misleading." Volcker Committee Report Annex 4 at 72, 75, Table 20, n. **

The Junz sample does not appear to be any more reliable for purposes of extrapolation than the Volcker sample. Rather than 11% of Category 3, the Junz known-value accounts seem to compose just 7.5% of the total number of Category 3 accounts in the data set. The Junz letters do not offer a cogent explanation of why extrapolation from 7.5% of the accounts is more reliable than extrapolation from 11% of the accounts.

In addition, the Volcker Committee looked askance at the inclusion of Category 3 because of the substantial concentration in that category of "custody accounts," which are of significantly higher value than the other kinds of accounts. Volcker Report, Annex 4 at 72. (Note that the average value of custody accounts is more than six times higher than average

values of savings or demand accounts.) Special Master Junz's recommendation letters do not address the high concentration of custody accounts among the known value accounts in Category 3—one of the reasons why they were excluded by the Volcker Committee.[5] However, the data in table 1 of her October 2008 letter allow some evaluation. The following table takes the figures from that table, but formats them in a way that permits comparisons:

Table 2: Percentages of Types of Accounts by Category (Known Values Only)

	Category 1 & 2		**Category 3**	
Type	Number	Percent	Number	Percent
Demand	2,460	45%	241	21%
Savings	865	16%	39	3%
Custody	**453**	**8%**	**359**	**32%**
Unknown	1,684	31%	492	44%
Total	5,462		1,131	

This table shows that 32% of the known-value accounts in Category 3 are custody accounts, compared to only 8% of the known-value accounts in Categories 1 and 2. The risk that the Volcker Committee identified in this regard has thus not diminished.

Second, Special Master Junz does not address the evident compromise within the Volcker Committee that resulted in the original methodology. (Chairman Volcker testified before the House Banking Committee that his own Committee had "debated . . . endlessly" on valuation. Hearing before House Committee on Banking and Finance, p. 80 (Feb. 9, 2000).) Most obviously, the Volcker Committee elected to use mean values rather than median values to set

[5] The March 21, 2006 letter states that the "spread of the number of known value accounts across the six account types in Category 3 is no more skewed towards a particular account type than is that in the other categories." March 21, 2006 Junz Letter at 12. This assertion is not repeated in later letters, and appears incorrect in view of the data presented in the 2008 letter, described below.

the presumed value award. This is no small matter—use of the mean has significant ramifications. That is because, as a general matter, the distribution of wealth within a large population is skewed—a small number of very wealthy people typically account for the majority of the wealth. For that reason, a small number of very wealthy individuals (or, in this case, accounts) can dramatically bias the mean. Mullin Decl. at ¶ 18.[6] As Dr. Mullin explains, the reliability of such samples for the purpose of estimating the mean is actually lower than their reliability for estimating the median, because the median is unaffected by outliers. The Volcker Committee excluded Category 3 but used the mean rather than the median.

Third, the letters do not describe the data-generating process that produced the new data. However, certain elements of that process appear to be biased to higher-value accounts. Mullin Decl. at ¶ 9. This tends to undermine, rather than enhance, the reliability of the Junz known-value data set. In contrast to the Volcker Committee process—which relied on bank records—the CRT process included: (a) claimant-generated information, and (b) archival information that was not considered by the Volcker Committee. As a general matter, it is reasonable to assume that higher-value accounts generated more documentation that has been preserved by banks, claimants, or others. *Id.* at ¶ 7. It also is a fair assumption that holders of higher-value accounts have the economic motivation to find and present such data. *Id.* at ¶ 10. Holders of low-value accounts, on the other hand, would have had less documentation and less economic motivation to make a claim. Further, the names of low-value account holders were not published. Thus, it appears that the method of data generation itself biased the Junz sample toward higher-value accounts. *Id.*

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[6] Dr. Junz acknowledges that "all outliers were at the high end of the range." October 10, 2008 Letter at 12 n.27.

Similarly, the CRT's request for "voluntary assistance" from the banks resulted in the inclusion of accounts that had unknown values in the Volcker data. *Id.* at ¶ 11. The Junz letters do not explain how the CRT selected accounts for which it wanted additional information through the banks' "voluntary assistance." While it is not possible to assess with certainty whether these requests biased the data sample further, it is reasonable to surmise that the CRT's requests were focused on higher-value accounts, further biasing the Junz sample.

* * *

Despite the foregoing infirmities, the data collected from the "voluntary assistance" (and described in the most recent of the letters) is revealing in one important respect—it shows that the real question before the Court is whether to send excess unclaimed money into the hands of members of the Deposited Asset Class or the neediest members of the Looted Assets Class.

As part of the voluntary assistance process, Credit Suisse provided account value information for 239 accounts, 212 of which previously had been awarded. October 10, 2008 Junz Letter at 5. Of those 212 accounts (205 of which were Category 3 accounts), some 84 accounts "proved to have known values in excess of the values at which they had been awarded." *Id.* That is, the true value of 84 of the 212 accounts was *higher* than their presumptive value. The 84 accounts amount to approximately 40% of the 212 accounts, which suggests that the remaining 128 accounts (or 60%) had true values *below* the presumed value number. Thus, more than half of the accounts—60%—have already been compensated at a higher amount than their true value. Such class members will not be subject to any reduction in their awards because the Court set the average presumed value as a floor for any award. And, if the Junz Recommendation is adopted, excessive awards going to these class members will increase exponentially, with some awards nearly tripling.

Several things are clear. None of the money belongs to the Defendants. None of the money ever did. The accounts always belonged to depositors—not the banks. The true owners of many, many accounts did not come forward—either because they and their heirs perished in the Shoah or because they did not know about the accounts. So there is unclaimed money that must be distributed to someone. The question is who should receive this unclaimed money. There are two choices before the Court: (a) heirs in the Deposited Asset Class who came forward but, by virtue of the lack of documentation or low-value documented accounts, have received "presumed value" awards and who could receive higher "presumed value" awards, or (b) the neediest survivors, who are members of the Looted Asset Class.

The recommendation letters are telling in that they do not acknowledge this reality. They are also notable for their sweeping conclusions, made without citation to evidentiary support. Among the more glaring:

- With respect to Category 3 accounts, Special Master Junz writes, "in our examination of the value information in the Total AHD-plus and in the actual award experience, it became clear that the reasons for exclusion of Category 3 from the average value calculations did not apply to the current data set and that exclusion of this important Category was no longer warranted." Oct. 10, 2008 Letter at 6. That is a conclusion, not an explanation.

- Special Master Junz says that "differences in average values by type of account could be expected" as a result of the scrubbing process. *Id.* at 7, *see also* 6 n.17. No explanation as to why this is so.

- Special Master Junz writes that "differences in approach [compared to the Volcker Committee's assumptions] result in significant differences in account valuation, but whether they work to add or subtract from the average values recorded in the ICEP audit depends on each case." *Id.* at 8. Again, the letters provide no explanation of what the

differences are, how they are viewed as material, and what effect they have on the overall analysis.

Other aspects of the Junz Recommendation require further scrutiny and verification, as well. For example, the Volcker Committee based its presumptive value estimates on analysis of 7,797 accounts with known value. In contrast, Special Master Junz bases her presumptive value estimates on 6,945 accounts with known value. *See* Oct. 10, 2008 Junz Letter at 9. She does not explain why approximately 850 accounts have been removed from the Volcker data set. In order to assess the conclusions of the Junz Recommendation, it is imperative to know which accounts in known value were not included and why these accounts were not included. *See* Mullin Decl. at ¶ 17.

Similarly, Special Master Junz states that the number of known-value observations for Safe Deposit Boxes is "too small to be statistically reliable" but then nonetheless asserts, "the data makes it clear that an increase in the presumptive value for this type of account is warranted." Oct. 10, 2008 Junz Letter at 12. She offers no explanation as to why it is appropriate to rely upon statistically unreliable data to support a more than four-fold increase in the presumptive valve for that type of account (at current values, from $14,091 to $60,227). *See* Gribetz Report at 36.

The Special Master's Recommendation also discusses the 2002 "Hydoski Memorandum" and its finding, as part of the ICEP process, that the known balances in Category 3 were much larger than the known balances in Categories 1 and 2 and that the relatively few values in Category 3 were skewing the data (thus the decision to exclude Category 3 accounts). *See* Oct. 10, 2008 Junz Letter at 7. Special Master Junz asserts that this finding is no longer supported by the data. But rather than engage in a detailed analysis of the original data and the factual support for discounting it, attached is a December 2008 letter from Mr. Hydoski, in which he states

unremarkably that recalculation of the values in light of new data would be "methodologically sound." December 1, 2008 Letter to the Court from Frank Hydoski, attached as Exhibit E to the Gribetz Report.

It would be unreasonable to take this letter as an endorsement of Special Master Junz's recommendations. Tellingly, Mr. Hydoski expressly *declined* to endorse the recommendations before the Court: "I have not been asked to comment or take a view on these specific matters, nor do I have sufficient information to test conclusions or check calculations." *Id.*

II. THE RECOMMENDATION FAILS TO PROTECT THE RIGHTS OF MEMBERS OF THE LOOTED ASSET CLASS

The Plan of Allocation and applicable case law provide the Court with discretion to adjust distributions "to assure fairness among all claimants." Plan of Allocation at 110.[7] But this discretion must be exercised in accordance with the Court's duty to assure fairness to *all* members of the Class.[8] The recommendations fail to account for this duty.

The State of Israel has unequivocally supported the Court's determination to exhaust all reasonable efforts to locate and provide compensation to members of the Deposited Asset Class (primarily heirs of depositors), as required by the Plan of Allocation. We are persuaded, however, based on the record before the Court, that it would be inconsistent with the Court's

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[7] *See Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978) (approving reallocation where supported by the evidence, and where it was "incumbent upon the district court to exercise its broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members more equitably"); *compare County of Suffolk v. Long Island Lighting Co.*, 14 F. Supp. 2d 260, 269 (E.D.N.Y. 1998) ("where the applicants' proposed modifications are so detrimental to the rights of some members of the class that the issue takes on constitutional dimensions, there can be little doubt that the district court is constrained in the exercise of its equitable powers..... The court's discretion rarely, if ever, extends to modifications which directly contradict the fundamental expectations underlying the original settlement.").

[8] *See Beecher v. Able*, 575 F.2d at 1016 ("' a court supervising the distribution of a trust fund has the inherent power and the duty to protect unnamed, but interested persons'") (quoting *Zients v. LaMorte*, 459 F.2d 628, 630 (2d Cir. 1972)); *cf. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 627 (1997) (emphasizing importance of "structural assurance of fair and adequate representation for the diverse groups and individuals affected").

duties to assure fairness to all members of the class to adopt the Junz Recommendation in any way. The Recommendation would have this Court recast the ground rules established by the work of the Volcker Committee and the Plan of Allocation.

As important as the methodological infirmities discussed above, the Recommendation before the Court does not address the reasonable expectations of the neediest members of the Looted Asset Class.

In this regard, Special Master Gribetz observes that the members of the Looted Asset Class had the most challenging claims to prevail upon as a jurisprudential matter. *See* Gribetz Report at 15 (stating that the Deposited Asset Class claims are "the strongest" of the settlement classes; claims of the other classes were "based on novel and untested legal theories of liability, would have been very difficult to prove at trial, and will be very difficult to accurately value.") (quoting *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2005)). That assertion is of no moment now that the Settlement Agreement has been executed, approved and implemented. The Defendants elected not to test the claims of the Looted Asset Class members; instead the Defendants elected to settle those claims with a Settlement Agreement that binds all members of the Class, including members of the Looted Assets Class. It was no doubt understood by all involved that the $1.25 billion settlement in all likelihood *understated* the damage inflicted by the Defendants, and further that the ability of the Court to distribute funds to depositors would be rough justice at best, impaired by the passage of many years, the genocide, the violent dislocations during and following the end of the Nazi regime, and the willful destruction of evidence by agents of the Defendants themselves. Surely the Defendants faced financial exposure in litigation against all class members far higher than the amount of the Settlement, and yet the members of the Looted Asset Class (with very few exceptions) did not

opt out of the Settlement but rather supported it. The Settlement Agreement has now resulted in material distributions to tens of thousands of needy survivors, who have placed their fate in the hands of the Court, and who believe that the Court views their claims as having legal and moral legitimacy. In our view, it would be profoundly unfair to the neediest survivors now to deem their status as claimants unworthy of full protection of the Court—at a time late in the lives of the members of that Class and long after the Plaintiffs settled their claims by staying in the Class rather than adjudicate their claims.

It is important to emphasize, too, that any forecast or projection by this Court of the strength of the Looted Asset Class' claims was just that—a projection. No one can say how such claims might have fared as a matter of law in the Second Circuit or the Supreme Court. Nor can anyone say that such claims would have been untenable before a jury. In any event, once the Settlement Agreement was executed and approved, any assessment or projection about the strength of the claims became irrelevant—at that point, the claims of the class members merged into the Settlement Agreement and their rights became entitled to the full force of law.

In our judgment, the claims of the neediest members of the Looted Asset Class on the Settlement Fund *do* have both moral and legal legitimacy, and their claims on the excess funds now at issue carry equal or greater weight than the claims of heirs of owners of accounts as to which no documentation exists establishing the amount of the claim. Surely the claims of such members are superior to the claims of Deposited Asset Class members whose claims have been documented as *below* average values.

Special Master Gribetz's recommendation is silent on the adverse effect that the revision would have on members of the Looted Asset Class. But the Court cannot remain silent. It has a duty to weigh the needs of this subclass.

It is also important to emphasize that the recommendation before the Court goes far beyond a simple modification to the calculation of presumed value of certain accounts. As Special Master Gribetz observed, the recommended changes "would have a substantial impact upon the amounts ultimately distributed to members of the Deposited Assetts Class." Gribetz Report at 3-4; 35-36. This "substantial impact" can be quantified as a $200 million detriment to the neediest survivors.

The substantial adverse impact would be in sharp contrast to the prior reallocations approved by this Court. In 2003, for example, at the suggestion of Special Master Gribetz, this Court approved a supplemental distribution to Looted Asset class members in the amount of $60 million. *See* November 17, 2003 Memorandum & Order Adopting Special Master's Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds, at 2. In the Interim Report, Special Master Gribetz cited the Court's instruction to consider a supplemental distribution to class members, "without unduly jeopardizing the rights of any person under the Distribution Plan." Special Master's Interim Report on Distribution and Recommendation for Allocation of Excess and Possible Unclaimed Residual Funds (October 2, 2003), at 3.[9]

In contrast, no one now suggests that the Junz Recomendation may be adopted "without unduly jeopardizing the rights of any person under the Distribution Plan." That is because it cannot be adopted without having precisely that adverse effect.

The Court also should consider the effects of the Junz Recommendations on the large number of needy survivors living in Israel—especially those survivors who emigrated from the

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[9] In 2003, some $60 million in excess funds became available, mainly due to the benefit of special tax treatment and interest income accruing on the Settlement Fund. *See* November 17, 2003 Memorandum & Order, at 2.

Former Soviet Union (FSU). The Court's prior allocations have mainly focused on needy survivors living in the Former Soviet Union (FSU) countries. To date, 75 percent of the allocations to Jews within the Looted Assets Class have gone to needy survivors within the FSU. *See* Swiss Bank Settlement Fund Distribution Statistics as of September 30, 2008.

If this Court approves an upward adjustment to the presumed values for the Deposited Assets Class, the funds available to the Looted Assets Class will be significantly less than expected. Needy class members in Israel will be hit harder by the decrease in available funds due to the over-weighted allocation to FSU countries in the previous allocations. Notably, these allocations did not take into the account the large migration of the neediest class members from the FSU countries to Israel. As Special Master Gribetz has observed in the past, "the most desperately needy Nazi victims are those from the Former Soviet Union (FSU)—whether they remain in the FSU or they have immigrated elsewhere." Special Master's Recommendations for Allocation of Possible Unclaimed Residual Funds (Apr. 16, 2004), at 4 (describing the "most recent information concerning survivor demography and needs" as explained in the Court's opinion of March 9, 2004) (emphasis added).

Indeed, as we have shown in earlier submissions to this Court, most of the Jews from the FSU have, in fact, moved to Israel. In 1989, nearly 1.5 million Jews lived in the Soviet Union. Since 1990, 952,000 Jews and their family members immigrated to Israel from the FSU. By 2003, only 412,000 Jews remained. The survivor population followed the migratory trend: today more FSU survivors live in Israel than in their native lands.[10] Approximately 180,000

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[10] Sergio DellaPergola, *World Jewish Population 2003*, American Jewish Year Book, 103 (New York: American Jewish Committee, 2003) 588-612; Mark Tolts, *Demographic Trends of the Jews in the Former Soviet Union*, (Final Report - Fifth Year of Study) (Jerusalem: Division of Jewish Demography and Statistics, The A. Harman Institute of Contemporary Jewry, The Hebrew University of Jerusalem, 2004).

Jewish Shoah survivors of FSU origin now live in Israel, compared to 146,000 in the FSU, as reflected in the following table provided by Professor Sergio DellaPergola:

Country of residence, 2003	Jewish population		Jewish Shoah survivors	
	N	%	N	%
Total FSU origin	**1,440,000**	**100.0**	**445,000**	**100.0**
FSU	413,000	28.7	146,000	32.8
Israel	700,000	48.6	180,000	40.5
United States	207,000	14.4	91,000	20.4
Other countries	120,000	8.3	28,000	6.3

These FSU survivors, now in Israel, remain impoverished. The 2005 report by Sergio DellaPergola and Jenny Brodsky, "Health Problems and Socioeconomic Neediness Among Jewish Shoah Survivors in Israel"—which the State of Israel previously presented to this Court—describes the plight of the thousands of class members who continue to have unmet basic needs for sustaining life. DellaPergola and Brodsky confirmed earlier studies that a very substantial portion of the most needy class members (118,000) are immigrants to Israel from Russia and other poverty-stricken regions of the FSU. The following figures summarize the conditions of the destitute class members living in Israel as of 2005:

- 176,100 lived below or near Israel's poverty line (equivalent to $402 per month), even after receipt of social welfare support, with 98,800 of these below the poverty line;[11]
- 146,000 had insufficient heat in the winter;[12]
- 124,600 lived below or near the threshold of poverty and *also* suffer with problems due to physical/mental health and/or housing problems;[13]

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11 Sergio DellaPergola & Jenny Brodsky, *Health Problems and Socioeconomic Neediness Among Jewish Shoah Survivors in Israel*, (April 20, 2005), at 25.

12 *Id.* at 27.

- 118,000 had arrived from the FSU since 1990;[14]
- 107,400 had to choose between food and other basic needs;[15] and
- 86,000 could not afford the cost of calling or visiting their children.[16]

These are not just statistics. These are the daily reality of tens of thousands of people who are very needy. They are people who have almost nothing today. And they are people who have a legal and moral claim to a small modicum of aid, through the profoundly valuable and selfless work of those who made the Settlement Agreement in this case happen.

The Depositors have been paid. There are excess funds. The time has come to distribute those excess funds in accordance with the *cy pres* principles embodied in Special Master Gribetz's original Plan of Allocation.

III. ADOPTING THE RECOMMENDATION WITHOUT PROVIDING ADEQUATE NOTICE AND OPPORTUNITY TO COMMENT IS INCONSISTENT WITH THE COURT'S DUTIES TO ASSURE FAIRNESS TO MEMBERS OF THE LOOTED ASSETS CLASS

The Recommendation would have this Court fundamentally recast a ground rule of the claims award process established at the outset by the work of the Volcker Committee. If the Court is now to do so, it must provide the Class with meaningful notice and opportunity to be heard.

Under Rule 53, a court "must give the parties notice and an opportunity to be heard" when "acting on a master's order, report, or recommendations." Fed. R. Civ. P. 53(f)(1). Thus,

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Footnote continued from previous page

13 *Id.* at 26. Of note, 124,000 *Europeans* were found eligible on a needs-based test for reimbursement from the Swiss Fund for Needy Victims.

14 *Id.* at 4.

15 *Id.* at 27.

16 *Id.*

before the Court takes any action with respect to the Gribetz Report or Junz Recommendation, it must provide the Looted Assets Class with adequate notice and opportunity to be heard in a manner consistent with past Class notice. In order to ensure the fairness of the Settlement Agreement and the allocation of funds, this Court instituted a process that was open and transparent, and that provided a voice to the class members. Indeed, this Court has emphasized the importance of providing class members with the opportunity to *directly* affect determinations regarding the allocation of funds. *See In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d at 150 (noting that once a draft Plan of Allocation is publicized, "class members will have an opportunity to communicate directly with me regarding it, again, without any intermediaries to dilute the class members' direct influence," such that "[t]heir comments will be addressed and/or incorporated in a final plan."). From the beginning, this Court embarked upon an ambitious and unprecedented plan to provide notice to class members and to give class members the opportunity to comment when their rights and claims were being determined. That same opportunity must be provided now if the Court is considering departing from its earlier course.

CONCLUSION

The critical question that this Court must now address is what to do with residual funds that have remained unclaimed. At its most fundamental, the choice is: (1) distribute such funds among plausible heirs of deposited asset owners, so that a substantial majority of such claimants receive more than the accounts were worth; or (2) distribute the excess funds to needy survivors. The State of Israel does not consider the question to be a close one. The Recommendation should be rejected.

Dated: February 13, 2009
New York, New York

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In Re: HOLOCAUST VICTIM ASSETS LITIGATION	Case No. 09-160 (ERK)(JO)
THIS DOCUMENT RELATES TO: In Re: CONSIDERATION OF SPECIAL MASTER HELEN JUNZ'S RECOMMENDATION FOR ADJUSTMENT OF DEPOSITED ASSETS CLASS PRESUMPTIVE VALUES	(Consolidated with CV 96-4849, CV 96-5161 and CV 97-461)

DECLARATION OF CHARLES H. MULLIN, Ph.D.

I, CHARLES H. MULLIN, declare as follows:

1. I am a Partner at Bates White, LLC. Bates White is an economic consulting firm. I have been retained by Arnold & Porter LLP on behalf of the State of Israel to assess Special Master Gribetz's December 19, 2008 report, the recommendation by Special Master Junz, and related documents. I have personal knowledge of the facts set forth in this declaration and the sources noted herein, and, if called as a witness, could and would testify competently to such facts under oath. Attached as Exhibit A is a true and correct copy of my CV.

2. I submit this Declaration in support of the Objections by the State of Israel to Special Master Gribetz's December 19, 2008 Report, and the Motion by the State of Israel for access to documents, data and information examined or utilized as part of Special Master Junz's recommendation, and for an interview with Special Master Junz.

3. I received my Ph.D. in economics from the University of Chicago and my B.A. in economics and mathematics from the University of California at Berkeley. I have taught courses in advanced statistical analysis and labor economics while on the faculty in the Department of Economics at Vanderbilt University and at the University of California at Los Angeles. I have published papers on applied and theoretical econometrics and labor economics in peer-reviewed journals. I specialize in statistical analysis and economic modeling. I have more than 15 years of experience providing econometric and statistical analysis in both the private and public sectors.

4. I am providing my services on a pro bono basis. Neither Bates White nor I are receiving any remuneration for the time I or any of my staff spend on this matter.

5. I have reviewed Special Master Gribetz's December 19, 2008 report regarding the Claims Resolution Tribunal (the "CRT") and all attachments including Special Master Junz's letter recommendations for a proposed adjustment of the Deposited Assets Class "presumptive values" in the context of the Settlement Agreement and Distribution Plan ("Junz Recommendation").

6. Based upon my review, the Junz Recommendation does not contain sufficient information to ascertain its merits or lack thereof. At least three additional sets of information, currently not included, are needed to complete such an assessment: (a) a thorough explanation of the data generating process that produced the sample being analyzed; (b) a discussion of the assumptions being invoked in order to extrapolate from the analysis sample to the population of interest; and (c) an assessment of the reliability of the resultant extrapolation. A more thorough description of the data generating process and the ability of third parties to directly analyze the data likely would allow for a comprehensive assessment of the Junz Recommendation. Even lacking this information, the Junz Recommendation raises many substantive questions about its methodological underpinnings.

7. First, the data relied upon by the Independent Committee of Eminent Persons (the "ICEP") to determine the "presumptive values" do not constitute a random sample. All accounts under SFr. 250 were excluded. The exclusion of these low-value accounts biases the estimate of the mean value of unknown accounts upward. Further, the data generating process appears skewed toward accounts that would have generated the most contemporaneous documentation. A reasonable assumption is that higher value accounts typically generated more documentation than lower value accounts. Therefore, higher value accounts are more likely to have had some of that documentation survive for the past 60 years and, hence, be known value accounts today. If this latter assumption holds, it exacerbates the upward bias in the estimate of the mean value of unknown accounts. Collectively, these issues strongly suggest that the original "presumptive values" already may overstate the true mean value of unknown value accounts.

8. In determining the original "presumptive values," the ICEP appears to have implicitly acknowledged the selection problems inherent in the data generating process when it concluded that the Category 3 accounts should be excluded from the analysis. Only 11% of the Category 3 accounts had a known value. In contrast, 77% of accounts in Category 1 and Category 2 had known values. The potential bias due to the data generating process declines rapidly with the percentage of known value accounts. When only 11% of the accounts have known values, the potential exists for the sample to overstate the true mean value of an account by almost ten-fold. In contrast, when 77% of accounts have a known value, the sample can overstate the true mean value by no more than 30% (1.3 times the true mean). No analysis presented in the Junz Recommendation alters this rationale for excluding the Category 3 accounts.

9. Second, new account information not previously available to the ICEP came through a different data generating process than the original sample. Importantly, that data

generating process appears biased toward high-value accounts relative to the data generating process used by the ICEP. In particular, the Account Historical Database-plus (the "AHD-plus") sample relied upon by the Junz Recommendation include account information provided by claimants. The ICEP sample did not consider claimant information.

10. Claimants produce account information only if (a) they possess the data and (b) they are motivated to do so. Given the economic incentive for holders of high-value accounts to produce documentation of those accounts (*i.e.*, large financial gains), the identification of many additional high-value accounts is not surprising. Similarly, given the lack of any economic incentive for holders of low-value accounts to produce documentation of those accounts (*i.e.*, no financial gain), the relative absence of additional low-value accounts is not surprising. Thus, the finding that accounts valued by claimant-supplied information, on average, exceed the "presumptive values" is the expected outcome and does not constitute a valid basis for increasing the "presumptive values."

11. The CRT also sought "voluntary assistance" from the banks on select accounts. Through this process, the CRT collected additional information on hundreds of accounts that had unknown values in the ICEP data. Thus, the "voluntary assistance" program is the source of many of the additional accounts considered in the Junz Recommendation. Despite the fact that these accounts appear to be a critical foundation for the Recommendation, it does not explain how the CRT determined for which accounts to seek additional information through "voluntary assistance." Due to the absence of any explanation for the genesis of this information, I cannot assess the statistical properties of these accounts or any conclusions based upon these accounts.

12. Although no statistical conclusions can be reached based on the information provided, the additional account information is illustrative. For example, the CRT requested that Credit Suisse search for additional information on 358 Custody accounts. This search produced

account value information for 239 accounts, of which 212 had previously been assigned the "presumptive value" of SFr. 13,000. The true value of 84 of those 212 accounts was more than the "presumptive value." Although not stated in the Junz Recommendation, one can infer that the true value of the remaining 118 accounts, or 60%, was less than the presumptive value. Thus, more than half of these accounts received compensation in excess of their true account value. Furthermore, if the Junz Recommendation were adopted, the "presumptive value" for these 118 accounts that have already received compensation in excess of their established value would be increased by an additional SFr. 18,000 (from SFr. 13,000 to SFr. 31,000), which translates to SFr. 225,000 at current value per account or a total of SFr. 26,550,000. The Recommendation does not discuss the merits underlying its proposal for such an increase regarding these 118 accounts.

13. More generally, if adopted, the Junz Recommendation would result in an additional U.S. $264.5 million being awarded. Of those funds, about 95% (U.S. $249.6 million) would be awarded to claimants for Custody accounts. As the 212 accounts discussed in the preceding paragraph illustrate, it is likely that more than half of those funds would be awarded on behalf of accounts for which compensation in excess of the true account value has already been paid.

14. In contrast to the interpretation presented in the Junz Recommendation, the accounts for which additional information has been found could be viewed as strengthening the empirical support for excluding Category 3, as well as these additional accounts. Under reasonable assumptions, the identification of additional high-value accounts would imply that the mean value among the remaining unknown accounts has not increased, but rather has decreased (*i.e.*, the highest value accounts have been removed).

15. The game show "Deal or No Deal" illustrates this principal. The show starts with 26 briefcases containing varying amounts of cash between $0.01 and $1,000,000. The contestant selects one briefcase without any knowledge concerning which briefcase contains how much cash. The average value of each of the 26 unknown briefcases is about $130,000. Suppose that three of the briefcases not selected by the contestant are opened and revealed to contain $500,000, $750,000 and $1,000,000. The average value of these known briefcases is $750,000. The average value of the remaining 23 briefcases of unknown value has not increased to $750,000. Instead, the average value of the 23 unknown briefcases has decreased to about $50,000. Thus, identifying high-value briefcases (or accounts) does not increase the average value of the remaining briefcases (or accounts), it decreases that average value.

16. Similar to the game show, if the original "presumptive values" were correct, then revealing the identity of select high-value accounts does not increase the average value of the remaining accounts. In contrast, the average value of the remaining unknown value accounts has decreased. Under this interpretation of the data, the "presumptive values" should not be increased.

17. Third, the original "presumptive values" were determined by the ICEP based upon a sample of 7,797 accounts with known values. The Junz Recommendation is based upon a sample of 6,945 accounts with known values in the AHD-plus. No explanation is provided for why the AHD-plus sample contains 852 fewer accounts than the ICEP sample. Instead, the Recommendation explains that new information became available regarding a number of accounts for which the values were previously unknown. Many of these additional accounts, which were excluded from the ICEP analysis, are included in the AHP-plus sample. Therefore, more than 850 accounts in ICEP sample must have been excluded from the AHP-plus sample.

No explanation has been provided for why or how these accounts included by the ICEP were dropped from the AHP-plus sample.

18. Fourth, the Junz Recommendation does not quantify of the margin of error (*e.g.*, standard errors) associated with the AHP-plus sample. In particular, the distribution of wealth within almost any large population is strongly skewed (*i.e.*, a small fraction of the population holds the vast majority of the wealth). For example, the United States Census Bureau states the following in a recent report on wealth:

> The distribution of wealth in the United States has a positive skew, with relatively few households holding a large proportion of the wealth. For this type of distribution, the median is the preferred measure of central tendency because it is less sensitive than the average (mean) to extreme outliers. The median provides a more accurate representation of the wealth and assets of the typical household. For example, in 2002, many more households had a net worth near the median of $58,905 than near the average of $187,125.[1]

19. As such, the frequency with which the few accounts associated with the wealthiest individuals appear in the sample can dramatically affect the mean. For example, the Recommendation relies upon the AHP-plus, which contains about 1,000 Custody accounts. Suppose the mean is SFr. 20,000. Then, the addition or subtraction of one wealthy individual worth SFr. 10,000,000 would change the estimated mean by SFr. 10,000 or one-half of the true mean. Thus, even though the AHP-plus sample contains about 1,000 Custody accounts, the reliability of the sample for the purpose of estimating the mean value of a Custody account may

[1] Gottschalck, Alfred O., "Net Worth and the Assets of Households: 2002" in Current Population Reports, April 2008, page 19. Also see www.census.gov/hhes/www/wealth/wealth.html for more details.

be quite low. In contrast, the reliability of the sample for estimating the median may be quite high (the median estimate is relatively unaffected by outliers).

20. Finally, the Junz Recommendation indicates that the ICEP considered valuation scenarios using both the mean and the median value of unknown accounts. Due to the skewed nature of wealth distributions, the vast majority of accounts can be expected to be worth less than the average account value.

21. Thus, by selecting the mean value instead of the median value to determine the "presumptive values," the ICEP chose to overcompensate the majority of accounts with unknown value. It would be useful to understand the ICEP's rationale for this decision, as that rationale may be tied to the decision to exclude Category 3. It is possible that the ICEP explicitly chose to exclude Category 3 and determine the "presumptive values" based upon the mean of the remaining known accounts instead of including Category 3 and determining the "presumptive values" based upon the median of the known accounts. Under this scenario, including Category 3 in the analysis, as is done in the Junz Recommendation, would warrant revisiting the choice between the mean and the median.

22. Provided with the following information, I would be able to complete a review of the Recommendation and likely reach a conclusion regarding its merits:

a. The ICEP sample of known value accounts (personal identifying information could be removed).

b. The AHP-plus sample of known value accounts (personal identifying information could be removed).

c. A list of accounts included in the ICEP sample that were excluded from the AHP-plus sample, as well as an explanation for why they were excluded.

d. A list of accounts included in both samples for which the known information has been update in the AHP-plus sample, as well as an explanation for why the information was updated.

e. A list of accounts included in the AHP-plus sample for which no information was previously known, as well as an explanation for how the new information was collected.

f. An explanation for how the CRT selected accounts for which they sought additional information through "voluntary assistance."

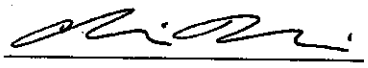
g. An explanation for why the ICEP chose the mean instead of the median as its measure of central tendency.

h. An explanation for how outliers (extremely high-value accounts) were selected for exclusion from the analysis.

i. Sensitivity analysis performed in support of the Recommendation.

j. In addition to the aforementioned information, the ability to speak with Special Master Gribetz and Special Master Junz concerning the Recommendation would be helpful.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct. Dated this 12th day of February, 2009.



Charles H. Mullin, Ph.D.

EXHIBIT A

BATES • WHITE

Charles H. Mullin, Ph.D.

Partner

Summary of experience

Dr. Mullin is a Partner with Bates White, LLC and a recognized expert on statistical and econometric analysis, economic and microsimulation modeling, and asbestos-related matters. Dr. Mullin provides advice and expert analysis on liability issues involving insurance coverage, bankruptcies, and due diligence for mergers, acquisitions, and spin-offs. He has authored numerous expert reports and provided expert testimony in insurance matters, as well as provided due diligence reports for corporate transactions. He has designed and implemented statistically reliable sampling schemes in multiple contexts. In addition to Dr. Mullin's retentions as an expert, Dr. Mullin is frequently invited to speak at industry conferences.

Dr. Mullin received his Ph.D. in economics from the University of Chicago and his B.A. in economics and mathematics from the University of California at Berkeley. He taught courses in advanced statistical economic analysis and labor economics while on the faculty in the Department of Economics at Vanderbilt University and at the University of California at Los Angeles. Dr. Mullin published papers on applied and theoretical econometrics and labor economics in peer-reviewed journals. Dr. Mullin specializes in statistical analysis and economic modeling. He has more than 15 years of experience providing this expertise in both the private and public sectors.

Areas of expertise

- Econometric analysis
- Statistics and statistical analysis
- Economic modeling
- Microsimulation modeling

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Selected experience

- Authored expert report on behalf of multiple insurance companies in the matter *Continental Insurance Company, et al. v. Honeywell International, Inc.*, No. MRS-L-1523-00 (Superior Court of New Jersey Morris County)
- Authored expert report and provided deposition testimony on behalf of insurance company in the matter *National Service Industries, Inc. v. Appalachian Insurance Company*, No. E-22807 (Georgia Fulton City Superior Court).
- Authored expert report, provided deposition testimony and testified on behalf of policyholder in the matter of *Imo Industries, Inc. v. Transamerica Corp., et al.*, Docket No. L-2140-03 (Superior Court of New Jersey, Mercer County).
- Authored due diligence reports on asbestos and silica issues for corporate transactions that assessed potential future tort expenditures and evaluated the insurance assets that may provide coverage for those tort expenditures.
- Authored expert report and provided deposition testimony on behalf of insurance company in the matter of *Degussa Corporation v. Century Indemnity Company and First State Insurance Company*, Docket No. UNN-L-2163-03 (Superior Court of New Jersey, Union County).
- Authored expert report and provided deposition testimony on behalf of insurance joint defense group in the matter of *Foster Wheeler L.L.C. v. Affiliated FM Insurance Co., et al.*; Index No. 600777/01 (N.Y.S., New York City).
- Authored expert reports, provided deposition testimony, and testified on behalf of Argonaut Insurance Company in several reinsurance arbitrations.
- Coauthored a report on the economic viability of the Trust Fund proposed under S.852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005, that highlights how compensation criteria specified for the proposed Fund would change the number and composition of claims relative to the current tort environment.
- Authored expert report and provided deposition testimony to address the fraction of expenditures associated with a company's asbestos installation operations on behalf of defendants in *Owens Corning v. Birmingham Fire Insurance Company of Pennsylvania,* No. C10200104929 (Ohio Ct. of Common Pleas, Lucas County).

- Assisted with settlement negotiations by analyzing the total value of a national refractory company's products and non-products coverage associated with claims for both asbestos and potential silica liabilities.
- Evaluated future liabilities and projected insurance recoveries under various scenarios, such as geographic constraints regarding a regional insulation contractor and supply company.
- Authored expert report focused on the design and implementation of claims file samples in *Hercules Incorporated v. OneBeacon America Insurance Company,* No. 02C-11-237 (Del. Super. Ct., New Castle County).
- Served on behalf of the U.S. Department of Labor in providing statistical analysis for discriminatory hiring cases and assessing damages.
- Analyzed demand-side management programs for utility companies. Evaluated different contract structures, software development options, and returns on subsidization programs.
- Investigated potential collusion and redlining by auto-insurance companies on behalf of the Office of the Chicago Mayor.

Industry presentations

- BVR Legal/Mealey's Bad Faith Litigation Conference, November 6-7, 2008: "Damages in a Bad Faith Case."
- West Legalworks, Insurance and Reinsurance Allocation 2008: A Comprehensive Workshop, June 12, 2008: "Emerging Issues and Important Developments."
- West Legalworks, Insurance and Reinsurance Allocation, November 7, 2007: "Impact of Underlining Litigation Developments."
- Mealey's Publications, Mealey's National Asbestos Litigation SuperConference, September 26, 2007: "Removing the Asbestos Overhang—Is There an Alternative to Asbestos Bankruptcy?"
- Mealey's Publications, Asbestos Bankruptcy Conference June 8, 2007: "Another Chapter in Asbestos Bankruptcy Litigation: What Does the Future Hold?"
- West Legalworks, The Insurance and Reinsurance Allocation Superbowl 2007, March 20, 2007: "Impact of Underlining Litigation Developments."

- Mealey's Publications, Silica & Asbestos Claims Conference: What Effect Will Investigations into Fraudulent Suits Have on the Litigation? November 11, 2006: "Quantifying the Risk: The Impact Investigations into Fraudulent Silica/Asbestos Suits Will Have on the Rate of Filing and Value of Current & Future Claims."
- Mealey's Teleconference: Asbestos Legislation - Is a Solution to the Crisis Around the Corner? July 20, 2006: "How State and Federal Tort-Reform Efforts Are Changing the Asbestos Litigation Landscape."
- American Conference Institute's (ACI) 7th Annual Litigating, Settling and Managing Asbestos Claims, June 15, 2006: "Asbestos Legislative Initiatives for Federal and State Tort Reform."
- American Legislative Exchange Council, 2005 States and Nation Policy Summit, December 2005: "The FAIR Act: An Economic Analysis."
- Mealey's Publications, All Sums: Reallocation & Settlement Credits Conference, November 7, 2005: "The Impact of Different Approaches to Settlement Credits."
- American Enterprise Institute, Industry Roundtable Discussion, April 21, 2005: "Assessing the Merits of Reallocation."
- American Law and Economics Association, Annual Meeting, May 2004: "The Effect of Joint and Several Liability on the Incentive of Defendants to Declare Bankruptcy: Evidence from Asbestos Litigation."

Professional experience

Prior to joining Bates White, Dr. Mullin worked at Chicago Partners providing damage assessment for antitrust matters. Previously, he worked at Quantum Consulting conducting demand-side management for utility companies. In addition to his professional experience, Dr. Mullin was on the faculty in the Department of Economics at Vanderbilt University and the University of California at Los Angeles.

Education

- Ph.D., Economics, University of Chicago
- B.A., Mathematics and Economics, University of California at Berkeley

Publications

- Mullin, C. H., and C. Bates. "State of the Asbestos Litigation Environment — October 2008" *Mealey's Litigation Report: Asbestos* Volume 23, Number 19 (Nov. 2008).
- Mullin, C. H., and C. Bates. "The Bankruptcy Wave of 2000—Companies Sunk by an Ocean of Recruited Asbestos Claims" *Mealey's Litigation Report: Asbestos* Volume 21, Number 24 (Jan. 2007).
- Mullin, C. H., and C. Bates. "Having Your Tort And Eating It Too?" *Mealey's Asbestos Bankruptcy Report* Volume 6, no.4 (Nov. 2006).
- Mullin, C. H. "Identification and Estimation with Contaminated Data: When Do Covariate Data Sharpen Inference?" *Journal of Econometrics* 130, no. 2 (Feb. 2006).
- Mullin, C. H., and D. Reiley. "Recombinant Estimation for Normal-Form Games, with Applications to Auctions and Bargaining." *Games and Economic Behavior* 54, no. 1 (Jan. 2006).
- Mullin, C. H. "Bounding Treatment Effects with Contaminated and Censored Data: Assessing the Impact of Early Childbearing on Children." *Advances in Economic Analysis & Policy* 5, no. 1, Article 8 (Dec. 2005).
- Mullin, C. H., K. A. Marr, and J. J. Siegfried. "Undergraduate Financial Aid and Subsequent Alumni Giving Behavior." *The Quarterly Review of Economics and Finance* 45, no. 1 (Feb. 2005).
- Mullin, C. H., and A. Mani. "Choosing the Right Pond: Social Approval and Occupational Choice." *Journal of Labor Economics* 22, no. 4 (Oct. 2004).
- Mullin, C. H., and A. Malani. "Assessing the Merits of Reallocation." *American Law & Economics Association Annual Meetings. American Law & Economics Association 14th Annual Meeting,* May 3, 2004.
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- Mullin, C. H. and J. J. Siegfried. "Grants Today, Gift Tomorrow." *Currents*, April 2001.
- Mullin, C. H., C. Hill, V. J. Hotz, and J. K. Scholz. "EITC Eligibility, Participation, and Compliance Rates for AFDC Households: Evidence from the California Caseload." May 1999, prepared for the State of California.
- Mullin, C. H., V. J. Hotz, and S. Sanders. "Bounding Causal Effects Using Data from a Contaminated Natural Experiment: Analyzing the Effects of Teenage Childbearing." *Review of Economic Studies*, October 1997.

Grants

- 2004–2007: Principal Investigator (with V. J. Hotz and J. K. Scholz), National Science Foundation Grant, "Tax Policy and Low-Wage Labor Markets: New Work on Employment, Effectiveness and Administration."
- 2000–2001: Principal Investigator (with V. J. Hotz and J. K. Scholz), Grant to the University of Wisconsin–Madison from Assistant Secretary of Planning and Evaluation, U. S. Department of Health and Human Services.
- 1997–1998: National Institute of Health Predoctoral Training Grant

Professional associations

- American Bar Association
- American Economic Association
- American Law and Economics Association
- Econometric Society
- Society of Labor Economists