

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:
HOLOCAUST VICTIM ASSETS
LITIGATION

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

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MEMORANDUM & ORDER

This Document Relates to: All Cases :
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KORMAN, C.J.

On July 26, 2000, I filed a comprehensive opinion approving the settlement agreement in this case. In re Holocaust Victim Assets Litigation, 105 F.Supp.2d 139 (E.D.N.Y. 2000). This opinion sets forth in detail the history of this case and the relevant terms of a settlement pursuant to which the defendants agreed to pay \$1.25 billion to settle the lawsuit to compensate certain classes of victims of Nazi persecution whose injuries were either caused by, or exacerbated by, the alleged behavior of the Swiss bank defendants and other Swiss entities. I now write to address the recommendations of the Special Master with respect to the allocation of the \$1.25 billion settlement fund. I assume familiarity with the underlying facts and the details of the Proposed Plan of Allocation and Distribution of Settlement Proceeds (“Proposed Plan”).

Briefly, on March 31, 1999, in accordance with the terms of the Settlement Agreement, I appointed a Special Master “to develop a proposed plan of allocation and distribution of the Settlement

Fund, employing open and equitable procedures to ensure fair consideration of all proposals for allocation and distribution.” Settlement Agreement ¶ 7.1. “The decision [of the parties] to utilize a Special Master to propose a plan of allocation and distribution was motivated by a desire to spare Holocaust survivors from being forced into an adversarial relationship that would have required them to squabble over a settlement fund that, while substantial, is necessarily insufficient to do full justice to all members of each plaintiff class. It was hoped that a neutral Special Master, acting with the guidance of the affected community, could conduct a serious inquiry into the facts and law, and propose a plan of allocation and distribution that would do non-adversarial justice to the claims of all class members.” Submission of Lead Settlement Counsel in Support of Special Master’s Proposed Plan of Allocation at ¶ 3.

I appointed Judah Gribetz to be the Special Master. He is an extraordinarily able lawyer with a long record of distinguished public service. He has served as Counsel to the Governor of the State of New York and as Deputy Mayor of the City of New York. He has contributed his time and energy to charitable and community organizations too numerous to recite. Most importantly, he has a deep understanding of all issues related to the Holocaust. He is a member of the Board of the Museum of Jewish Heritage -- A Living Memorial to the Holocaust, which is located in New York. He is also the author of The Timetables of Jewish History (1993).

On September 11, 2000, the Special Master filed his Proposed Plan. Notice of the Proposed Plan was mailed on a rolling basis, starting in early September, 2000, in 21 different languages. See Report of Settlement Class Counsel Regarding Implementation of Proposed Plan of Allocation at Ex. A. 173, 380 copies of the full text of the Special Master’s 38-page summary of the Proposed Plan, along with the more

concise and condensed Notice were sent to Jewish, Jehovah's Witness, and Roma community organizations, world-wide. Id. at 1.

In addition, copies of the Notice were mailed to all of the persons who had submitted correspondence or an Initial Questionnaire, in the appropriate language. Excluding duplicates, the Notice of the Proposed Plan was mailed to 472, 692 persons. Id. at 2. Notice was also posted on the Swiss Bank Claims website (www.swissbankclaims.com), and the entire Proposed Plan was posted on that site as well, including all annexes. In response to the internet posting, and/or in response to organizational outreach efforts, an additional 30,469 persons requested and were mailed copies of the Notice of the Proposed Plan. Id. In total, 675,541 notices were distributed to persons and organizations. Id.

In response to the notice program described above, approximately 754 communications were received by the Notice Administrator. Id. A small number of additional persons or organizations responded in writing directly to the Court. A portion of the communications received in response to the notice of the Proposed Plan were sent by organizations purporting to represent multiple persons, or were sent in the form of petitions signed by many people. It is unclear how many of the persons who signed such petitions are actually members of the Settlement Classes, or submitted Questionnaires. It is known, however, that the overwhelming majority of the Settlement Class members – more than 99 percent – did not submit any comment regarding the Proposed Plan and presumably had no objection.

Of the 754 persons who submitted comments to the Notice Administrator, 561 could be matched with an Initial Questionnaire; 193 could not be matched with an Initial Questionnaire. Id. Of the 561 matches that could be made to an Initial Questionnaire, 415 were from claimants who identified as Jewish, 116 were from persons who did not identify themselves as a Victim or Target of Nazi Persecution. Id.

Six were from persons who identified themselves as being or representing physically disabled. Id. Fifteen were from Romani. Id. Eight were from Jehovah's witnesses. Id. Of the comments that could be matched to a Questionnaire (561), 437 included Looted Assets claims, 90 included Deposited Asset claims, 212 included Slave Labor claims, and 24 included Refugee claims. Id. Roughly 40 percent of the persons who commented on the Proposed Plan, and who also submitted a Questionnaire, were survivors; the rest were heirs. Id.

The world-wide nature of the response attests to the success of the program of the notice of the Proposed Plan. Only 152 of the comments were from persons or organizations residing in the United States; 92 were from Israel. Id. Most were from Eastern Europe and the former Soviet Union. Of the 754 comments, 360 were in Russian, and 115 were in Hungarian. Id. In addition to these informal submissions, a number of formal submissions and objections were filed. Professor Burt Neuborne, who has so ably served as plaintiff's lead counsel, filed a compelling response to those objections. On November 20, 2000, I conducted a public hearing on the plan at which approximately forty persons spoke either for themselves or on behalf of other individuals or organizations. After carefully considering all of the comments and objections, I adopt the Plan as submitted by the Special Master.

In introducing his recommendations, the Special Master observes that he "has endeavored to present a Proposal that is not only fair and equitable, but also as meaningful as possible given the number of potential claimants and the limited sum to be divided among them." Proposed Plan at 3. I believe that the Special Master has succeeded in this endeavor. The Proposed Plan is the result of more than one year of extensive historical and factual research, reflecting the myriad complexities posed by the Special's Master's assignment: to recommend the division of a \$1.25 billion fund among hundreds of thousands of

Nazi victims as well as millions of other claimants, each of whom the Settlement Agreement mandates must fall within at least one of five settlement classes and, for four classes, at least one “victim or target” group.

I believe that the Special Master’s recommendations on behalf of each of the five settlement classes -- Deposited Assets, Looted Assets, Slave Labor I, Slave Labor II and Refugees – and on behalf of each of the five “victim or target” groups – Jewish, Roma, Jehovah’s Witness, homosexual and disabled Nazi victims – are carefully reasoned and well supported.

As contemplated by the Settlement Agreement, the Proposed Plan appropriately places priority upon returning to their rightful owners “the sums that Swiss banks have been holding for them for more than half a century,” Proposed Plan at 12. The Proposed Plan properly allocates a substantial portion of the Settlement Fund to the Deposited Assets Class in accordance with the findings of the Volcker Committee, whose report I have previously observed “provided legal and moral legitimacy to the claims asserted here on behalf of the members of the Deposited Assets Class,” and whose findings “suggest that the value of deposited assets held by the Swiss banks could exceed the \$1.25 billion settlement amount.” In re Holocaust Victims Assets Litigation, 105 F.Supp.2d at 153. Bearing in mind that any amount allocated to the Deposited Assets Class may be too low, on the one hand – because of the high values the Volcker Report has placed on the unclaimed accounts – and too high, on the other hand – because the passage of time has rendered it impossible to locate each owner of an unclaimed account – the Proposed Plan allocates approximately two-thirds of the Settlement Fund to the Deposited Assets Class.

This recommendation provides for immediate distributions among the members of each of the other four classes, and also enables the Court to redistribute among the class members any amounts not

claimed under the \$800 million Deposited Assets allocation. Moreover, as the Special Master explains in his report:

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

Special Master’s Proposal at 19-20 (footnotes omitted).

I noted at the outset, quoting from Professor Neuborne, that the parties hoped that “a neutral Special Master, acting with the guidance of the affected community, could conduct a serious inquiry into the facts and law, and propose a plan of allocation and distribution that would do non-adversarial justice to the claims of all class members.” Submission of Lead Settlement Counsel in Support of Special Master’s Proposed Plan of Allocation at ¶ 3. I agree with Professor Neuborne’s conclusion that: “The Special Master was remarkably successful in inviting and obtaining the guidance of interested members of the community. He conferred widely with an extraordinary array of persons who expressed a desire to provide advice or guidance on the fairest way to allocate the settlement proceeds. The openness and transparency of his deliberations adds immeasurably to the moral and legal persuasiveness of his proposed plan of allocation.” Submission of Lead Settlement Counsel in Support of Special Master’s Proposed Plan of Allocation at ¶ 4.

Conclusion

For the foregoing reasons, and for all of the reasons set forth in the Proposed Plan, incorporated herein by reference, I adopt the Proposed Plan in its entirety. Because of my desire to proceed as expeditiously as possible, I also adopt Professor Neuborne's cogent and detailed responses to the objections voiced to the Plan without separately addressing each of them here. I may file a supplemental memorandum addressing some of these objections.

Finally, I echo Professor Neuborne's acknowledgment of the work of the Special Master, and his staff. As Professor Neuborne observes in his submission:

[O]n behalf of the settlement classes, and plaintiffs' counsel, I offer heartfelt thanks and appreciation to Mr. Gribetz and his devoted staff, especially Shari C. Reig, Ted Poretz and Alyson M. Weiss, for the successful completion of a task that enables the swift and fair distribution of the settlement fund, while respecting the dignity and individuality of every survivor.

Id. at ¶ 24.

SO ORDERED.

Edward R. Korman
United States District Judge

Brooklyn, New York
November 22, 2000