THE SWISS BANKS HOLOCAUST SETTLEMENT

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The Swiss Banks Holocaust Settlement (In re Holocaust Victim Assets Litigation) is pending in the United States District Court, Eastern District of New York, before the Honorable Edward R. Korman (Presiding Judge) and Judah Gribetz (Special Master).

I. Introduction

On behalf of Chief Judge Edward R. Korman of the United States District Court and Special Master Judah Gribetz, I would like to thank you for this opportunity to speak today about our experiences in developing a plan of allocation and distribution for the $1.25 billion Settlement Fund in the Swiss Banks Holocaust Settlement, and in overseeing its implementation. It is worth noting that the settlement addresses crimes and injuries that occurred more than sixty years ago, involving documents and evidence located largely in Europe. Yet the effort to compensate some of these injuries is being addressed today under United States law and in a United States federal courthouse.

Before I begin, I would like to provide a brief update on distributions. As of the date of this conference, approximately $950 million has been distributed or allocated on behalf of some 400,000 claimants, nearly all of whom are Holocaust survivors (or in some instances, their heirs). The distributions have ranged from repayment of a Swiss bank account in the amount of approximately $22 million (to the heirs of what was once of Austria's largest sugar refineries – the company and nearly all of the family's assets were appropriated by the Nazis) – to a monthly food package delivered to an elderly survivor living alone in a village in the Ukraine, a package consisting of pasta, flour, beans, canned fish, rice, sugar and oil.

II. Common Themes

In my presentation today, I will try to focus on some elements of our distribution process which I believe may have particular relevance to conference participants as we examine options for compensating victims of today's atrocities in other parts of the world. Some aspects of the Swiss Banks Settlement are, of course, unique to our case because, as I have noted, it is indeed a United States court proceeding and specifically a class action lawsuit. Thus, our case is governed by United States law and subject to particular requirements for class actions.

On the other hand, many of the issues that we confronted in devising a plan for distributing and allocating the $1.25 billion Settlement Fund, and in overseeing its implementation, may be germane to other compensation programs. For example, the Victim Trust Fund for the International Criminal Court authorizes different options for reparations, including compensation to individual victims and family members, restitution of property, and community programs. We faced some of those same considerations. Should compensation be made to individuals? To groups? To family members? Should compensation take the form of

cash payments? A return of property? Is it appropriate to make compensation "in kind", i.e., to provide food, medicine and the like? Other issues which may be common to other programs include whether to compensate heirs; how to account for the lack of documents (which in many instances were deliberately destroyed by Swiss banks); and how to simplify the claims process, always seeking to favor the claimant.

Thus, my presentation today will focus on three themes which we believe may be useful to organizers of other compensation programs, particularly as they move beyond the theoretical concept of restitution and enter the implementation stage. First, given the limits of the fund and the desire to avoid *de minimus* payments, which people should be eligible for distributions? Second, given the legal constraints and the historical antecedents, which claims should receive priority? Third, given the age of the claimants, the passage of many decades and lack of records, and the limits of the fund, how to simplify the claims process while ensuring that only plausible claims are paid?

III. Background: The Swiss Banks Class Action Litigation, the Settlement Agreement, Notice and Approval of the Settlement

The Swiss Banks litigation and settlement have been the subject of several books and articles, as well as numerous judicial opinions and other court documents, and I refer you to them for a detailed description of the activities that resulted in the $1.25 billion settlement fund, since time constraints do not permit me to discuss these issues today.[1] Briefly, however, I note that the first lawsuit involving Switzerland's Holocaust-era activities was filed in October, 1996, and several more were filed thereafter. These lawsuits were consolidated in March, 1997, in the United States District Court for the Eastern District of New York, before the Hon. Edward R. Korman. The claims asserted included genocide, looting, laundering assets, crimes against humanity, breach of contract, unjust enrichment and others. The actions were brought as class action lawsuits, and the plaintiffs were represented by leading members of the United States class action bar, while the defendant Swiss banks also were represented by major law firms.

After extensive briefing and oral argument of the legal issues, Judge Korman responded in a manner that has been called "brilliant" by a member of the Redress Legal Advisory Committee, Professor Michael Bazyler. Judge Korman did not rule on the various legal motions to dismiss the claims. Instead, he encouraged the parties to commence negotiations in which the Court actively participated. The result of these discussions was an agreement in principle to settle the case for $1.25 billion, reached in August, 1998. Following several months of further negotiations, the Settlement Agreement was executed on January 26, 1999, and became final on March 30, 1999, upon the execution of "organizational endorsements" by seventeen major worldwide Jewish organizations as required under the terms of the Settlement Agreement.

Among other provisions, the Settlement Agreement sought the appointment of a Special Master to devise a plan for the allocation and distribution of the Settlement Fund. The Plaintiff's Executive Committee (i.e. several attorneys representing the class) unanimously endorsed Judge

[1] All significant court opinions, reports and other documents are available on the Internet at www.swissbankclaims.com.

Korman's proposal to appoint Judah Gribetz as Special Master on December 15, 1998. On March 31, 1999, Judge Korman issued an order appointing Judah Gribetz as Special Master. Special Master Gribetz's initial task was to develop a Proposed Distribution Plan in connection with the Settlement Agreement. I began to work with Special Master Gribetz at that time and subsequently was appointed by the Court as Deputy Special Master.

In devising the Proposed Distribution Plan, the starting point was the Settlement Agreement. The Settlement Agreement created five specific categories of claims – the "classes" – that could be compensated, and also designated specific categories of victims. The five classes are the Deposited Assets Class (those who deposited money and other assets in Swiss Banks prior to or during the Holocaust and who have not had their accounts returned to them); Slave Labor Class I (those who performed slave labor for German corporations whose profits were deposited with or transacted through Swiss banks and other financial institutions); Slave Labor Class II (those who performed slave labor for Swiss corporations); the Refugee Class (those who were denied entry into, expelled from, or mistreated while in Switzerland during the Holocaust era); and the Looted Assets Class (those whose property was looted by Nazis and then disposed of through Swiss banks and other institutions). With the exception of Slave Labor Class II, a class member must be a "Victim or Target of Nazi Persecution," a term defined under the Settlement Agreement as "any individual, corporation, partnership, sole proprietorship, unincorporated association, community, congregation, group, organization, or other entity persecuted or targeted for persecution by the Nazi Regime because they were or were believed to be Jewish, Romani, Jehovah's Witness, homosexual, physically or mentally handicapped."

In accordance with United States class action law, the Court was required to provide notice of the proposed settlement and to determine whether the settlement was fair. Beginning in June, 1999, worldwide notice of the settlement commenced, including mailings in 27 different languages to survivors, heirs and other interested persons. The parties sought written comments as well as relevant personal information from potential class members through "Initial Questionnaires," and approximately 600,000 Initial Questionnaires ultimately were received from around the world. As part of his analysis of the fairness of the settlement, Judge Korman presided over two "fairness hearings": one in New York on November 29, 1999 and the other in Israel by telephonic conference on December 14, 1999.

On July 26, 2000, Judge Korman determined that the proposed settlement of the class action was fair, reasonable and adequate and granted it final approval which, however, was conditioned upon the banks' compliance with a variety of requirements set forth in the Court's opinion, including good faith cooperation with the distribution process. On September 11, 2000, the Special Master filed the Proposed Distribution Plan, a two-volume, approximately 900-page document intended to provide all parties and interested observers, including reviewing courts, with a detailed rationale for each allocation recommendation. After a period of notice and public comment, and following a hearing on November 20, 2000, the Court adopted the Special Master's recommendations in their entirety by order dated November 22, 2000. Six appeals were filed from the Court's order approving the Distribution Plan; all but five were withdrawn. On July 26, 2001, the United States Court of Appeals for the Second Circuit upheld the District Court's decision.

IV. Implementing the Settlement: Three Key Issues

As noted previously, in formulating our allocation and distribution recommendations and now in overseeing their implementation, we believe that three issues are of particular relevance to other compensation programs. Although we were required to operate within the constraints of the framework imposed by the terms of the Settlement Agreement as well as the requirements of United States class action law, there was nevertheless room within that framework for what we hoped would be creative solutions to problems we assume may arise in other contexts. First, which people should be paid? Second, which claims should receive priority? Third, how could the claims process be simplified in favor of claimants, while ensuring payment of plausible claims?

A. Which people should be paid?

The initial question we faced in formulating our allocation and distribution recommendations was which people to compensate from the $1.25 billion Settlement Fund. Under the terms of the Settlement Agreement, not only Nazi victims but also their "heirs" theoretically were eligible for compensation. The term "heirs," however, was not defined in the Agreement, although the Agreement is governed by New York law. When we studied the law of New York, as well as that of many other jurisdictions, we learned that the definition of "heirs" is extremely broad, extending to distant second and third cousins many times removed. Given that there were approximately one million surviving victims of the Holocaust at the time we were considering these issues, the number of heirs clearly could reach several million. Moreover, the Settlement Agreement also posed another problem: it applied not only to individuals but, as noted previously, also to organizations, including religious and educational institutions as well as other communal groups.

It is clear that the purpose of these open-ended categories of potential claimants was to obtain the broadest possible releases. It should be noted that although there were only two defendants involved in the litigation – the two largest Swiss banks, Credit Suisse and UBS – virtually all Swiss business and governmental entities were included as "releasees" when the case settled. The releasees' intent was to ensure that virtually all Holocaust-era claims that could be asserted against them would be barred by this Settlement Agreement; thus, an effort was made to incorporate into the settlement all possible claims and all possible claimants.

However, United States class action law as well as simple common sense preclude "token" payments in a case such as this. In fact, Judge Korman has said publicly on a number of occasions that he does not want to just "sprinkle" money or give out "coupons" (as is the case in many United States class action settlements). Certainly no amount of money could ever compensate claims arising from the Holocaust, but the Court's objective at all times was to make the payments meaningful.

Thus, as to heirs, we looked to precedent to try to find a realistic and defensible option for limiting the potentially vast scope of the potential claimants. We studied the history of Holocaust compensation as well as other programs attempting to address human rights abuses. For example, we researched the history of German Holocaust-related compensation programs;

the United States' settlement of claims arising from the internment of Japanese-Americans during World War II; the settlement of claims by United States citizens imprisoned in Nazi concentration camps; and the post-War release of property frozen in the United States under the Trading with the Enemy Act.

We learned that whereas "property"-related compensation covers broad categories of heirs, including distant relatives, compensation for "personal injury" generally is limited to actual victims and their most immediate family members. Thus, for Deposited Assets Class claims alone (which seek the return of specific, identifiable property), payments are made to "heirs" using the broad definition noted previously. In accordance with the precedents we studied, payments for all other claims – for Slave Labor Classes I and II, the Refugee Class, and the Looted Assets Class[2] – are limited to survivors, except where the victim died on or after February 15, 1999.[3]

With respect to the second broad group of potential claimants – organizations – we recommended and the Court agreed that only the claims of individual survivors (and certain heirs) should be compensated. Clearly educational, religious and other institutions sustained immense losses at the hands of the Nazis. Nevertheless, with perhaps one million surviving Nazi victims, we felt compelled to recommend that the Court undertake a kind of "triage" by paying human beings first. The community seems to have accepted this decision, recognizing that for the Settlement Fund to have any real meaning, its benefits should be conserved to assist the elderly survivors who suffered personally at the hands of the Nazis.

B. Which claims should be prioritized?

The Settlement Agreement created five classes of compensable claims: Deposited Assets, Slave Labor Class I, Slave Labor Class II, the Refugee Class, and the Looted Assets Class. Nevertheless, under United States law, not all class action claims are to be treated equally. Indeed, as the United States Court of Appeals for the Second Circuit held in this very case: "Any allocation of a settlement of this magnitude and comprising such different types of claims must be based, at least in part, on the comparative strengths and weaknesses of the asserted legal claims."[4]

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[2] Although the Looted Assets Class ostensibly also involved "property" claims, this class presented other unique problems and required a different approach to compensation, as more fully discussed below.

[3] February 15, 1999 was the date selected by the German Foundation "Remembrance, Responsibility and the Future" (the German Slave Labor Foundation), which was negotiated at approximately the same time that we were formulating our own distribution recommendations in the Swiss Banks case. To minimize confusion among survivors and for administrative efficiency, we attempted to adhere as closely as possible to the German Foundation procedures.

[4] *In re Holocaust Victim Assets Litig.*, 413 F.3d 183, 186 (2d Cir. 2001) (*reissued as a published opinion July 1, 2005*).

In devising the allocation and distribution recommendations, it was imperative to recognize that the Deposited Assets Class claims were unique, historically and legally. They were the foundation of the lawsuits, the focus of public pressure, and the reason for the settlement.

Efforts to recover bank accounts deposited in Switzerland by individuals who ultimately would become Holocaust victims began just after the War, and continued unsuccessfully over the decades. Periodically, the Swiss banks would conduct internal "surveys" to find "dormant" Holocaust victim accounts. These surveys produced just a few hundred accounts. In 1996, due to mounting pressure from Holocaust victims and heirs, and renewed media attention, a new investigation of Swiss accounts took place following Switzerland's agreement to relax its bank secrecy rules, this time headed by Paul Volcker, former Chairman of the United States Federal Reserve Board. The commission, also known as the Independent Committee of Eminent Persons or "ICEP," had two main objectives as stated in its final report: to "identify accounts in Swiss banks of victims of Nazi persecution that have lain dormant since World War II or have otherwise not been made available to those victims or their heirs" and "to assess the treatment of the accounts of victims of Nazi persecution by Swiss banks."

On December 6, 1999, the Volcker Committee released its final report. Its research showed that some 6.8 million Swiss bank accounts were open or opened during the relevant period of 1933-1945. Of these, documents relating to approximately 2.7 million accounts had been destroyed. Thus, records relating to approximately 4.1 million Holocaust-era Swiss accounts still exist (i.e., accounts that were open or opened during the period 1933 to 1945). The Volcker Committee recommended that these 4.1 million accounts should be consolidated into a "Total Accounts Database" (TAD) for use in a claims process.

The Committee audited approximately 300,000 of the still-existing accounts and determined that 53,886 of these accounts had a "probable or possible relationship to victims of Nazi persecution." The approximately 54,000 accounts constitute the Accounts History Database ("AHD"). The Volcker Committee further recommended that 25,000 of the 54,000 AHD accounts should be published. The Volcker Committee concluded that the value of the accounts in the AHD was approximately $643 million to $1.36 billion, including interest.

On the same date that the Volcker Committee released its report, the Swiss Federal Banking Commission ("SFBC") announced that it was solely responsible for decisions on publishing further lists of accounts and that it would conduct further analysis. In March 2000 the SFBC announced that it had authorized the Swiss Banks to "publish [21,000, reduced by the banks, auditors and Volcker Committee from the initial figure of 25,000] accounts that are deemed by the Volcker Committee to have a probability of being related to victims of the Holocaust" and to "create a central database containing [the approximately 54,000 accounts, subsequently reduced to approximately 36,000 accounts, which] the Volcker Committee considers to be probably or possibly related to Holocaust victims." The SFBC declined to adopt the Volcker Committee's recommendation to create a Total Accounts Database for all 4.1 million accounts that existed in Swiss Banks in the relevant 1933-1945 period.

In addition to the Volcker Committee inquiry, a second major investigation was under way at approximately the same time: that of the Bergier Commission, which had been

established by the Swiss Parliament on December 13, 1996 to "examine the period prior to, during and immediately after the Second World War," specifically investigating how money and assets found their way into Switzerland in connection with Nazi politics. On March 22, 2002, the Bergier Commission issued its final report as well as a number of detailed studies of the behavior of the Swiss banks and other institutions during the Holocaust period. In particular, the Bergier Commission observed that the Swiss Banks had permitted account owners to transfer their accounts to Nazi entities although the owners were under duress ("forced transfers"); the Commission also analyzed the banks' post-War failure to adequately survey dormant accounts or locate heirs of unclaimed accounts.

This Final Report of the Bergier Commission, coupled with the defendant banks' ongoing objections to elements of the distribution process – although the banks had no standing to object to that process under the terms of the Settlement Agreement – compelled the Court to write a remarkably direct and forceful opinion in 2004 which summarized the entire history of the Swiss banks' activities in connection with Holocaust-era accounts. Among other things, the Court, drawing upon the Bergier Commission's findings, explained how the banks had cooperated with each other to avoid customer inquiries after the War. The Court described the banks' history of document destruction and their determination to advise customers that they were not obligated to maintain documents for more than ten years, even when the relevant documents still existed, and even when they knew that Holocaust victims were asking for these accounts.

This, then, was the historical background to the Deposited Assets claims: decades of misconduct during and after the War. As to the legal backdrop, the Volcker Committee investigation had revealed that even with massive document destruction, millions of Holocaust-era records did still exist and valuation of existing accounts was still possible. In addition, these claims were quite straightforward under United States law, drawing upon standard theories of breach of contract and unjust enrichment.

Our distribution recommendations therefore placed greatest priority upon establishing an individualized claims process for Deposited Assets Class claims, a recommendation that Judge Korman adopted and that the Court of Appeals later upheld.[5] As previously noted, the Volcker Committee had calculated that the total value of the accounts "probably" or "possibly" belonging to Nazi victims was in the range of between $643 million to $1.36 billion, including interest and at present-day values (i.e. potentially worth more than the $1.25 billion Settlement Fund). Yet it was unlikely that all of the Holocaust-victim accounts would be successfully claimed. Therefore, the Distribution Plan recommended that the amount available to the Deposited Assets Class be capped at $800 million. The remaining $425 million would be available for distribution to surviving members of the other four classes: Slave Labor Class I, Slave Labor Class II, the Refugee Class and the Looted Assets Class. Payments of Deposited Assets Class claims would be based upon individualized review of the existing bank records as well as examination of claim forms, archival records, and a wide variety of other sources. Every effort would be made to

[5] The "existence and estimated value of the claimed deposit accounts was established by extensive forensic accounting …. [T]hese claims are based on well-established legal principles, have the ability of being proved with concrete documentation, and are readily valuated in terms of time and inflation …. [B]y contrast, the claims of the other four classes are 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 valuate." *In re Holocaust Victim Assets Litig.*, 413 F.3d at 186.

determine and return to claimants the actual value of their deposits (multiplied by interest); if the actual value was unavailable, then the Volcker Committee's estimates of average account values, depending upon the type of account, would be used.

The question that we still confronted, however, was how to minimize the administrative burdens and account for the lack of records, while ensuring that only plausible claims were paid. I address that concern, and how we sought to resolve it, below.

C. How to simplify the claims process while paying plausible claims?

Given the passage of more than sixty years since the Holocaust, the fading of memories, and the destruction of documents, we believed it was imperative to find a way to simplify the claims processes while still seeking to ensure that compensation would be made only to those with plausible claims. In the absence of that element of plausibility, the Settlement Fund would be depleted and those who sustained losses during the Holocaust would lose whatever satisfaction they might have obtained from finally seeing their specific injuries recognized in some tangible form. Yet if the evidentiary bar was raised too high, virtually no one would be entitled to compensation. Thus, we tried to strike a balance by heavily favoring the claimant while requiring certain minimum levels of proof, depending upon the class and the nature of the claim. I provide three examples below.

1. The Deposited Assets Class and the "Adverse Inference"

I have already described the factual backdrop to the Deposited Assets Class claims process. On the one hand, there had been massive and often deliberate destruction of bank records relating to Holocaust-era accounts: there were no records for 2.7 million accounts (i.e. over one-third of the deposits), and those records that did remain were sometimes sparse. On the other hand, millions of other records continue to exist, and these are sufficient to show that an account had been open or opened during the Holocaust era; who owned the account; how much it had been worth; and other information. What often is missing from these records, however, is evidence showing whether the account had been closed, and if so, by whom. We knew from the findings of the Volcker Committee and the Bergier Commission that the absence of this data was not surprising, given the banks' history of compliance with forced transfers (i.e., "authorized" transfers by account owners actually made under Nazi duress), as well as the banks' post-War record of closing out accounts by taking them into bank profits.

The solution to this evidentiary dilemma was actually quite straightforward, requiring only that the Court apply a standard principle under United States law and presumably available under other legal systems as well, that of "spoliation." That principle provides that a party who has caused the destruction of documents, and who knew or should have known that the documents would be relevant to litigation, should be held responsible for their destruction. An "adverse inference" may be taken against that party, in that it will be presumed that the evidence destroyed would have been unfavorable to the person causing its destruction.

As applied to the Deposited Assets Class claims process under Rules adopted by the Court, the claimant is entitled to an adverse inference and thus receives the benefit of the doubt. In the absence of bank records or other evidence to the contrary, where there is no information showing what happened to the account, the CRT presumes that it was closed improperly. It is assumed that the account owner did not receive the proceeds, and the claimant (the account owner or his/her heir) receives an award. As of the date of this Conference, the average Deposited Assets Class award is approximately $135,000.

The spoliation/adverse inference principle also has been utilized in another way: it underlies the Court's decision to accept our recommendation to authorize awards on the basis of "Plausible Undocumented" claims. Given that the Swiss banks destroyed the records for over one-third of Holocaust-era accounts, and also given limitations on access even to the still-existing accounts,[6] it would be unfair to penalize claimants for whom bank records cannot be located. Thus, each of the approximately 105,000 Deposited Assets Class claims has been carefully reviewed by claims administrators. Those determined to be plausible in accordance with fixed criteria including the nature of the relationship between the claimant and the account owner, the account owner's connection to Switzerland, the claimant's (or owner's) prior attempt(s) to retrieve his accounts from Switzerland, and other factors, receive compensation in the amount of $5,000.

2. The Looted Assets Class and the "Cy Pres" Remedy

As we considered options for the Looted Assets Class, we were confronted with several realities. On the one hand, the class was potentially vast, because unquestionably all Nazi victims were looted, whether by German officials, local authorities, or their own neighbors. Looting took place whether the victim had fled to safety or had been murdered in a concentration camp. On the other hand, there is no responsible way to determine what property was lost, to whom, in what amount, and where it ended up. Yet the Settlement Agreement required some connection to Switzerland. Thus, if we had recommended an individualized claims facility, few if any claimants would have had sufficient proof to demonstrate what they had lost, what it had been worth, and most significantly, whether it had been transacted through Switzerland. Further, the administrative costs of such a process would have overburdened the Settlement Fund. Alternatively, if we had disregarded the "Swiss connection" and simply divided payments pro rata among all eligible claimants, compensation would be *de minimus*.

Instead, we proposed and the Court adopted a third option: the distribution of Looted Assets Class compensation under a *cy pres* remedy. Under United States class action law, the *cy pres* doctrine (meaning "the next best thing" or "as near as possible") permits the Court to authorize compensation other than direct cash payments to class members. The United States Court of Appeals for the Second Circuit – the jurisdiction in which this matter is pending – has held in the context of the Vietnam-era *Agent Orange* product liability class action that where a settlement fund cannot "satisfy the claimed losses of every class member," it is "equitable to

[6] These limitations on access include restrictions on viewing certain account data; the requirement that various data be redacted before claims administrators can review particular bank records; and, as noted previously, lack of full access to the "Total Accounts Database" (the 4.1 million accounts that still exist).

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."[7]

Therefore, the Looted Assets Class compensation program, unlike the programs for the other four classes, is not based upon individualized proof of claims but, rather, provides for assistance to the very neediest Holocaust survivor – all of whom are presumed to have been looted. Using existing charitable agencies in most cases (but in the case of Roma victims often requiring the establishment of new systems), the Court has allocated $205 million for multi-year humanitarian assistance programs around the world, with particular emphasis upon the very neediest victims in the former Soviet Union and Central and Eastern Europe. "Claimants" must show only that they were Nazi victims and that they are needy, not that they were looted or what they lost. "Need" is based upon demographic, mortality and social welfare data, including the existence of social safety nets. As of the date of the Conference, over 200,000 of the neediest Nazi victims have received humanitarian aid funded by the Court, especially food, medicine and winter relief.

3. Slave Labor Class I: Presumption of a Swiss Connection to the Proceeds of Slave Labor

The third and final example of our attempt to simplify the claims process is our recommendation for Slave Labor Class I. Once again, we were confronted with the language of the Settlement Agreement, which apparently required former slave laborers to show that the proceeds of their labor were transacted through Swiss banks or other entities. While there are hundreds of thousands of surviving former slave laborers, many do not even know the name of the company they worked for, much less where the profits of their labor ended up.

We studied the economic history of the Holocaust, an area that continues to develop as new information and documentation become available. We learned that slave labor was pervasive across all of Nazi-occupied and Nazi-allied Europe, and that literally thousands of enterprises made use of slaves during the Holocaust. We further learned that there were extensive ties among German slave labor-using companies, the Nazi government, and Swiss financial institutions. In particular, after months of negotiations with the defendant banks and the assistance of the Volcker Committee and the Swiss Federal Archives, we obtained a copy of the 1945 "Frozen Assets List" – representing a freeze of German assets instituted by Swiss authorities at the behest of the Allies, undertaken as the impending Allied victory was becoming clear. The list demonstrates that hundreds of German companies known to have used slave labor, as well as the German government itself, held Swiss bank accounts as of 1945.

Accordingly, we recommended and the Court adopted the presumption that the proceeds of all slave labor were transacted through Switzerland. The Court further presumed, based upon the historical evidence, that all who performed slave labor for the Nazi regime (assuming they were also "Victims or Targets of Nazi Persecution," as previously described) were members of

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[7] *In re Agent Orange Product Liability Litig.*, 818 F.2d 145, 158 (2d Cir. 1987); *see also In re Holocaust Victim Assets Litig.*, 424 F.3d 132, 141 n.10 (2d Cir. 2005); *In re Holocaust Victim Assets Litig.*, 302 F.Supp.2d 89, 96-97 (E.D.N.Y. 2004).

"Slave Labor Class I" and so were entitled to compensation. There was no need for an elderly Holocaust victim to prove where she had worked, what she did, or for how long, and certainly no need to show where the profits from her labor had gone.

The significance of that presumption was that it enabled the Court also to adopt our further recommendation essentially to "piggyback" on the claims processes that were about to be implemented by the German Foundation to compensate slave and forced laborers for the Nazi regime. Rather than require Holocaust victims to understand and adhere to two essentially parallel claims programs, we utilized the same administrative agencies and methodologies, including even the same claim forms, to streamline procedures and conserve administrative expenses. As a result, as of the date of this Conference, the Court, through its agents (the Conference on Jewish Material Claims Against Germany and the International Organization for Migration) has been able to compensate more than 195,000 former slave laborers, for a total of more than $283 million.

V. Concluding Remarks

One element of our compensation program is perhaps incapable of replication: the fortuity that the case is pending before a jurist as compassionate and courageous as the Hon. Edward R. Korman, who was willing to tackle and overcome what others might have viewed as insoluble dilemmas to bring some measure of justice to survivors of the Holocaust. Other courts have declined to take on this task. For example, slave laborers tried to sue German companies in the 1960s. A case against the major slave labor-using enterprise IG Farben was rejected in 1966. The United States District Court in that case held that the "span between the doing of the damage and the application of the claimed assuagement is too vague. The time is too long. The identity of the alleged tort feasors is too indefinite. The procedure sought – adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in a European area by a government then in power – is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed."[8]

We have had the great privilege over these years to have learned something of the personal histories of thousands of individual survivors of the Holocaust. We became acquainted with one of the more poignant and ironic of these stories while reviewing proposed awards for claimants with plausible undocumented Deposited Assets Class claims. In the fall of 2006, the Court authorized an award of $5,000 to a Holocaust survivor who plausibly had demonstrated that her family had had a Swiss bank account that was never returned. She also had been a former slave laborer and had received a separate payment under Slave Labor Class I. Her daughter is a professor and she sent us her research concerning resistance efforts in the concentration camps. Her mother (the claimant) and aunt had been saved by this "resistance" – by the concentration camp inmates who, at great personal risk, had warned them to lie about their ages, about whether they were twins, and so forth, to avoid "selection" and thus avoid immediate death in the gas chambers.

[8] *Kelberine v. Societe Internationale, Etc.*, 363 F.2d 989, 995 (D.C. Cir. 1966).

The professor's mother – who received compensation under the Swiss Banks settlement because of the difficult claims process Judge Korman was willing to undertake – happens to have been one of the plaintiffs in the IG Farben case: the very case that was dismissed in 1966 because the claims seemingly presented so many obstacles. Now, forty years later, this Holocaust survivor finally has received some measure of compensation for what happened to her in Europe in the 1940s, because a United States federal judge concluded in the 1990s that justice was long overdue.