UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

In re Holocaust Victim Assets Litigation	Master Docket No. CV-96-4849 (ERK)(MDG)
	Consolidated with CV-96-5161 and CV-96-461
This Document Relates to All Actions	

Declaration of Burt Neuborne in Connection With Services Rendered to the Plaintiff-Classes as Lead Settlement Counsel

1. My name is Burt Neuborne. I have served as a settlement counsel in this matter since the signing of the settlement agreement on January 26, 1999, and as Court-designated Lead Settlement Counsel since April 1, 1999. Prior to the execution of the settlement agreement, I had served since January, 1997, at the Court's request and with the consent of all counsel, as co-counsel for all plaintiffs, and had organized the plaintiffs' Executive Committee in February, 1997. On June 17, 1997, I submitted a Memorandum of Law articulating plaintiffs' legal theories.[1] On July 31, 1997, at the Court's request, I drafted and filed the four amended complaints that set forth the plaintiffs' claims for relief. On August 1, 1997, I participated in eight hours of oral argument before the Court in connection with defendants' voluminous motions to dismiss. During the ensuing 11 months, I participated fully in the negotiations between the parties held under the auspices of Stuart Eizenstat. On July 28, 1998, I urged the Court to become personally involved in the settlement negotiations herein, and

[1] A copy of the June 17, 1997 Memorandum of Law, which framed plaintiffs' theories of recovery, is submitted with this petition.

participated in the ensuing intensive negotiations that culminated on August 12, 1998 in the announcement of a $1.25 billion settlement in principle. I declined to seek a fee in connection with achieving the $1.25 billion settlement.[2]

2. (a) When it became clear that the complex and novel aspects of this unprecedented class action settlement required intense, ongoing legal attention, I reluctantly agreed, at the Court's urging, to serve as Lead Settlement Counsel.[3] Over the past six and one-half years, I have provided necessary legal services to the plaintiff-classes and the settlement fund on a daily basis. During my service as Lead Settlement Counsel, I have worn more than one hat. Immediately following the execution of the settlement agreement, I helped develop the plan for implementing the settlement, including the legal underpinnings of a bifurcated class action process, utilizing a Special Master to develop and recommend a plan of allocation and distribution. In my dealings with the defendant banks and with objectors to the settlement, I have functioned as an advocate for the class. In my dealings with the named-plaintiffs and class members, I

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[2]Under prevailing law governing the award of attorney's fees in "common fund" class actions, plaintiffs' counsel, who had played a significant role in establishing a "common fund" of $1.25 billion, would have been entitled to share a fee award of at least $15-$20 million. Three of the principal counsel for plaintiffs, Michael Hausfeld, Melvyn Weiss, and myself, waived attorney's fees for achieving the settlement. As the Court knows, several remaining counsel either submitted reduced fee applications, or had their applications substantially reduced by the Court, resulting in a total award of attorneys' fees of less than $7 million, of which more than $2 million was donated to charity or distributed to named-plaintiffs in the form of recognition payments.

[3]The Court may recall that I initially declined to serve as Lead Settlement Counsel, suggesting that the task be assigned to more experienced counsel with access to greater resources. When my co-counsel and the Court urged me to accept the responsibility, I agreed to serve. While I do not regret the decision to accept the Court's designation, service as Lead Settlement Counsel imposed substantial physical demands upon me that made it impossible to continue my successful private consulting law practice, and limited my scholarly and *pro bono* activities.

have functioned as an advisor and a source of information and guidance. In my dealings with the Court and Special Masters, I have functioned as the settlement fund's *de facto* general counsel, providing advice on an enormous array of legal issues ranging from Federal income taxation to Swiss immigration law.

(b) Once it became clear that service as Lead Settlement Counsel entailed a major commitment of time and intellectual energy, the Court determined that Lead Settlement Counsel should receive compensation from the settlement fund similar to the hourly lodestar compensation paid to the several Special Masters appointed by the Court to aid in the settlement's administration. I have refrained from seeking compensation until substantially completing my tasks. Since: (a) approximately $800 million has now been distributed or firmly allocated to the members of the plaintiff classes; and (b) the complex legal issues surrounding the structure and implementation of the settlement have now been resolved successfully, I believe that it is now appropriate to seek compensation for my services as Lead Settlement Counsel. Accordingly, I submit herewith quarterly statements covering my efforts over the past six and one-half years that parallel the billing practices utilized by the Special Masters during that period.

(c) As this petition and its supporting documents demonstrate, since the execution of the settlement agreement in January, 1999, I have expended many thousands of hours in providing necessary legal services to the plaintiff-classes. I note that any fee awarded by the Court will be payable from interest earned on the settlement principal, and will not diminish the amount of the original settlement of $1.25 billion. I also note that my services as Lead Settlement Counsel have played a material role in increasing the

settlement fund by approximately $50 million without regard to any relatively minor increase attributable to the insurance claims program. See *infra* at paragraph 11.

3. In addition to the quarterly statements that accompany this petition, a number of Exhibits are annexed hereto. Exhibit A consists of a chronological listing of the major legal tasks that I have performed as Lead Settlement Counsel since January, 1999. Exhibit B consists of a time-line reflecting my principal activities at various points during the administration of the settlement agreement. Exhibit C is a chronological summary of time-charges covering the period from January 1999-September 2005. I have made no effort to include the very substantial number of hours spent in speaking with and advising the literally hundreds of class members who have telephoned and visited me in connection with the settlement. The time-charges in Exhibit C describe the relevant legal task, and reflect the time required to perform it. Exhibit D consists of representative documents prepared during the past six and one-half years. I have made no effort to append even a fraction of the enormous volume of legal documents, memoranda, correspondence, and email correspondence that I have produced as Lead Settlement Counsel. Exhibit E is my *curriculum vitae.* Exhibit F is the memorandum of law submitted in June, 1997 that developed the legal theories supporting plaintiffs' claim for relief.

A Brief Summary of Legal Tasks Performed by Lead Settlement Counsel

4. (a) Thus far, in my role as Lead Settlement Counsel, I have defended sixteen appeals to the Second Circuit challenging one or another aspect of the settlement or its administration by the District Court, litigated three adversary proceedings in the District Court, appeared in at least ten District Court proceedings involving the administration of

the settlement agreement, petitioned Congress for relief on two occasions, conducted three extensive rounds of negotiations with the defendant banks resulting in amendments to the settlement agreement or stipulations resolving conflicts, and provided legal guidance concerning the structure and administration of the settlement on a daily basis.

(b) Seven of the sixteen appeals required full briefing and oral argument. *In re Holocaust Victim Assets Litig.*, 225 F.3d 191 (2nd Cir 2000)(upholding limited definition of settlement classes); *In re Holocaust Victim Assets Litig.*, 413 F.3d 183 (2nd Cir. 2001)(upholding Special Master's proposed allocation formula); *In re Holocaust Victim Assets Litig.*, 282 F.3d 103 (2nd Cir. 2002)(dismissing appeal from court-imposed self-identification requirement in connection with Slave Labor II releases; vacating and remanding on issue of after-acquired companies - issue resolved favorably by stipulation on remand); *In re Holocaust Victim Assets Litig.*, (HSF), __ F.3d __ (2nd Cir 2005) (upholding Looted Assets class *cy pres* allocation formula; rejecting challenge to structure of settlement); *In re Holocaust Victim Assets Litig.*, (Dubbin), __ F.3d ___ (2nd Cir. 2005) (upholding denial of attorneys fee to counsel for objector); *In re Holocaust Victim Assets Litig.*, (DRA), ___ F.3d ___ (2nd Cir. 2005) (upholding denial of *cy pres* payments to persons with no personal connection to Holocaust); and *In re Holocaust Victim Assets Litig.*, (Pink Triangle), ___ F.3d ___ (2nd Cir. 2005) (upholding denial of *cy pres* payments on group as opposed to individual basis). I filed an additional brief and declaration with the Second Circuit in connection with the unsuccessful effort of Robert Swift, a settlement counsel, to oppose the District Court's allocation and implementation decisions. *In re Holocaust Victim Assets Litig.*, (Swift), (unnumbered - referred to panel in 04-1898). ___ F3d at ___, n. 14.

(c) In addition, I filed plenary appellate briefs in the Second Circuit in opposition to two appeals that were withdrawn after the completion of briefing and prior to oral argument. *In re Holocaust Victim Assets Litig.*, (Ramsey Clark-Romani), 00-9593 (challenge to Looted Assets allocation formula)(withdrawn after full briefing); *In re Holocaust Victim Assets Litig.*, (Katz Estate), 04-9595 (challenge to cy pres administration of Looted Assets class)(withdrawn after full briefing).

(d) In addition to the above-described ten fully-briefed Second Circuit appeals, I defended four appeals to the Second Circuit that were withdrawn prior to briefing after extensive motion practice and/or discussion. *In re Holocaust Victim Assets Litig.*, (Weiss), 00-9217 (challenge to fairness of settlement)(withdrawn after extensive motion practice and discussion); *In re Holocaust Victim Assets Litig.*, (HSF), 00-9614 (challenge to allocation plan)(withdrawn after discussions); *In re Holocaust Victim Assets Litig.*, (Wolf-Dunaevsky), 00-9103 (challenge to adequacy of representation)(withdrawn after motion practice); and *In re Holocaust Victim Assets Litig.*, (Bloshteyn), 00-9613, 14, (challenge to allocation formula) (dismissed for non-prosecution after extensive discussions with appellants). A fifteenth appeal to the Second Circuit, *In re Holocaust Victim Assets Litig.*, (Schonbrun) (unnumbered)(challenge to fairness and allocation plan) was withdrawn after plaintiffs mounted a vigorous challenge to Schonbrun's authorization to challenge the settlement on behalf of his named clients. A sixteenth "contingent" objection and appeal filed by DRA (Wolinsky) challenging the notice given to disabled persons was withdrawn after substantial discussions concerning the governing law.

5. In addition to the sixteen appellate proceedings discussed in para 4, I litigated three substantial adversary District Court proceedings against the defendant banks. *In re Holocaust Victim Assets Litig.*, 256 F. Supp. 2d 313 (EDNY 2002)(directing banks to pay additional compound interest of $5 million on funds held in escrow account); *In re Holocaust Victim Assets Litig.*, 02-3314 (Block, J.)(motion to construe settlement agreement to exclude after-acquired companies from receiving slave labor II releases)(successfully resolved by stipulation permitting after-acquired companies to receive slave labor I, but not slave labor II, releases); *In re Holocaust Victim Assets Litig.*, (unnumbered)(Block, J.) (motion demanding access to additional information needed to administer the bank account claims process; and for leave to establish a NYC claims facility)(resolved successfully by negotiation after lodging motion papers with Court resulting in the June 10, 2004 Amendment 3 to the Settlement Agreement).

6. In addition to the sixteen Second Circuit appeals, and the three adversary District Court proceedings before Judge Block, I prepared numerous documents and memoranda of law and appeared before Chief Judge Korman in connection with at least ten District Court proceedings involving the administration of the settlement. E.g. *In re Holocaust Victim Assets Litig.*, 105 F. Supp.139 (EDNY 2000)(opinion upholding fairness of settlement under Rule 23(e)); *In re Holocaust Victim Assets Litig.*, 2000 U.S. Dist LEXIS 20817 (EDNY November 22, 2000)(opinion upholding allocation plan); *In re Holocaust Victim Assets Litig.*, 270 F. Supp 2d 313 (EDNY 2002)(opinion setting attorneys fees; denying risk multiplier); *In re Holocaust Victim Assets Litig.*, 2003 U.S. Dist. LEXIS 20686 (EDNY November 17, 2003)(opinion allocating supplemental

distribution);[4] *In re Holocaust Victim Assets Litig.*, 302 F. Supp. 2d 89 (EDNY 2004), rehearing den., 311 F. Supp.2d 363 (EDNY) (rejecting objections to allocation of Looted Assets funds; rejecting fee application); *In re Holocaust Victim Assets Litig.*, 311 F. Supp.2d 407, reconsideration denied, 314 F. Supp. 155 (EDNY)(rejecting cy pres payments to gay and disabled communities). I participated, as well, in a day-long fairness hearing held by the District Court on November 29, 1999; an all-night telephone connection to the fairness hearing held in Jerusalem on December 14, 1999; a day-long hearing on November 20, 2000 on the Special Master's proposed plan of allocation; and a day-long hearing on April 29, 2004 on the possible allocation of residual funds.

7. In addition to the 29 formal court proceedings described in paragraphs 4, 5 and 6, I petitioned Congress on two occasions for legislative relief on behalf of the plaintiff-class. As the result of efforts by Melvyn Weiss and myself, Congress was persuaded in June, 2001, to enact special legislation retroactively exempting interest earned by the settlement fund from federal income taxation. See Sec. 803, H.R. Conf. Rep. 1836 (2001). The legislation resulted in an immediate federal income refund of more than $3 million in back-taxes, and relieved the settlement fund of federal income tax obligations that would have approximated $20 million over the period of administration. Ongoing efforts are also underway to persuade Congress to reverse the effect of the *Garamendi* decision by enacting legislation authorizing states to require insurance companies to disclose all unpaid Holocaust-eras insurance policies as a condition of doing business in the state.

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[4] See also the unreported memorandum and order of the Court, dated September 25, 2002, upholding proposed allocation of supplemental distribution.

8. In addition to the sixteen Second Circuit appeals, thirteen District Court proceedings, and two sustained Congressional lobbying efforts described above, I engaged in three prolonged negotiations with defendants.

(a) Over a nine month period, from January-November, 2000, I negotiated Amendment 2 to the settlement agreement dealing with looted art, accelerated payment of the settlement amount; access to information required to administer the bank account claims process, and a modest insurance claims process.

(b) Over a ten month period, from December 2002-September-2003, I negotiated a successful resolution of the dispute over the eligibility of after-acquired companies for slave labor II releases.

(c) Over an eight month period, from December 2003-July, 2004, I negotiated Amendment 3 to the settlement agreement providing for the establishment of a NYC claims facility, publication of several thousand additional bank account names, and access to additional information for CRT II officials. In the period since the execution of Amendment 3, I have continued to carry on extensive negotiations with the defendant banks, Swiss banking authorities, and the relevant accounting firms in an effort to implement the agreement.

9. Given the unprecedented nature of the Swiss bank settlement, I also found it necessary to expend substantial time seeking solutions to novel problems that did not involve litigating, lobbying, or negotiating with the banks. For example, I played a major role in designing the structure of the settlement, including the bifurcated proceedings that enabled the District Court to pass initially on the overall fairness of the settlement, followed by the development by the neutral Special Master of a proposed plan of

allocation for subsequent presentation to the settlement classes and the Court. Class members were asked to pre-commit to the outcome of such a fair allocation process under which they enjoyed "exit, loyalty and voice." I sought to avoid pitting the elderly members of the settlement classes against each other in an expensive and socially destructive adversary struggle for shares of the settlement. Instead, with the encouragement of the District Court, I assisted all members of the settlement classes in participating in a fair allocation process by expressing themselves directly to the Special Master and the Court. Class members who declined to pre-commit to such a process were given the right to opt out at the fairness hearing. Class members wishing to be separately represented in connection with the allocation process were encouraged to do so. While such an approach was novel, it permitted the administration of the settlement to go forward with reasonable expedition, in a fair manner at reasonable cost, and without creating artificial divisions within the victim community. However, precisely because such an approach was unorthodox, its development, implementation, and defense was time-consuming and extremely challenging.

10. Finally, the day-to-day responsibilities of acting as *de facto* general counsel to a $1.25 billion eleemosynary entity required constant attention, ranging from assistance in establishing and carrying out an initial notice program of unprecedented scope and complexity and a subsequent notice program of less ambitious scope;[5] establishing a mechanism for holding, investing and paying out settlement funds; monitoring the settlement's investments; developing, implementing, and overseeing a

[5] Principal credit for the successful implementation of the notice program is owed to Morris Ratner.

payment mechanism; assisting the Special Masters and the Court in resolving legal problems incident to the administration of the various claims processes, such as treatment of late claims, establishment of burdens of proof and presumptions, processing appeals, and establishing mechanics for distribution; monitoring invoices; assisting officials of CRT II to comply with Swiss law; providing counsel to the Court and Special Masters concerning the scope of their powers and responsibilities; describing the settlement to interested communities; and defending the settlement against unfair public criticism and ideological assault.

The Impact of Lead Counsel's Activities on the Size of the Settlement Fund

11. (a) A number of my legal activities have resulted in a substantial increase in the size of the settlement fund. For example, after hotly contested litigation before Judge Block, the class recovered an additional $5 million in compound interest payments from the defendant banks. *In re Holocaust Victim Assets Litig.*, 256 F. Supp. 2d 313 (EDNY 2002)(directing banks to pay additional compound interest of $5 million on funds held in escrow account). Similarly, the accelerated payment schedule agreed to by the defendants banks, negotiated as part of Amendment 2 to the settlement agreement, enabled the settlement fund to earn approximately $15-20 million in additional interest payments. In addition, Congress was persuaded to exempt all interest earned by the settlement from federal income taxation, thus achieving income tax savings for the settlement fund of approximately $20 million. A modest insurance claims program negotiated as part of Amendment 2 included a potential increase in the settlement fund of $50 million, although the actual increase will be much lower, approximating $1 million. Finally, opposition to fee petitions deemed to be excessive pared approximately $10 million in

attorney's fees from the fees payable from the settlement fund. Thus, if one considers the minimum economic benefit for each above-described activity, my work as Lead Settlement Counsel has played a substantial role in adding at least $50 million to the settlement fund.[6]

(b) Conversely, certain of my legal activities have prevented dilution of class members' *per capita* share of the settlement fund. For example, limiting the definition of the class to the five named targets or victims of Nazi persecution, prevented a massive influx of additional class members that would have dramatically diluted the funds available for existing class members. *In re Holocaust Victim Assets Litig.*, 225 F.3d 191 (2nd Cir 2000)(upholding definition of settlement classes). Similarly, defending the self identification requirement for Slave Labor II releases, and avoiding the issuance of Slave Labor II releases to after-acquired companies, prevented the possible massive influx of additional claimants. *In re Holocaust Victim Assets Litig.*, 282 F.3d 103 (2nd Cir. 2002)(dismissing appeal from court-imposed self-identification requirement in connection with Slave Labor II releases; vacating and remanding on issue of after-acquired companies - resolved favorably by stipulation on remand). Certain of my legal activities were designed to make possible the orderly and fair administration of the claims programs. *In re Holocaust Victim Assets Litig.*, 105 F. Supp.139 (EDNY 2000) (opinion upholding fairness of settlement under Rule 23(e)). For example, Amendments 2 and 3 to the settlement agreement, assure the flow of information to CRT II needed to administer the bank account claims process. While the flow of information is far from ideal, I do not

[6] Under prevailing common fund fee norms, substantial legal efforts that generate a $50 million benefit for a class generally receive compensation of at least $4-$6 million under a common fund theory.

believe that additional information could have been obtained without time-consuming and expensive litigation. Finally, certain of my legal activities were designed to permit the efficient and humane allocation and distribution of the settlement fund by making it possible to evolve a fair allocation plan without pitting elderly survivors against each other. *In re Holocaust Victim Assets Litig.*, 413 F.3d 183 (2nd Cir. 2001)(upholding Special Master's proposed allocation formula); *In re Holocaust Victim Assets Litig.*, (HSF), __ F.3d __ (2nd Cir 2005) (upholding Looted Assets class *cy pres* allocation formula; rejecting challenge to structure of settlement).

12. In short, I believe that my legal activities over the past six years and one-half justify an award of fees equivalent to a legal fee earned by a Special Master. The legal services for which I seek compensation were almost always provided at the specific request of the Court, permitting the Court to assess both the necessity for the services, the time reasonably expended in providing the services, and the quality of the services themselves. The remainder of this petition consists of a somewhat more detailed description of the factual and legal contexts surrounding the delivery of legal services to the plaintiff classes:

A. The Negotiation of Amendments No. 2 and No.3 to the Settlement Agreement

(December 15, 1999-November 20, 2000)(Amendment No. 2)
(March 2003-July 2004)(Amendment No. 3)

(1) At the direction of the Court, over an eleven month period from December 15, 1999-November 20, 2000, I negotiated, drafted, and implemented Amendment No. 2 to the Settlement Agreement in order to respond to several serious objections that had been raised to the settlement agreement as originally executed at the Fairness Hearings held in Brooklyn on November 29, 1999, and in Jerusalem on December 14, 1999.

Amendment No. 2 modifies the original settlement agreement in four important ways in order to: (a) permit litigation against Swiss defendants to recover looted art; (b) partially fund the CRT II deposited assets claims program by accelerating the payment of the settlement amount; (c) provide for access to information in the possession of Swiss banks and other Swiss entities needed to administer the settlement's claims programs in a fair and efficient manner; and (d) establish a modest insurance claims program involving two Swiss insurance companies, Swiss Re and Swiss Life, while denying releases to any other Swiss insurance company.

(2) The negotiations that culminated in the signing of Amendment 2 to the settlement agreement were precipitated by four sets of objections to the settlement agreement as originally drafted, which were presented to the Court at the fairness hearings held on November 29, 1999 and December 14, 1999. The first set of objections centered on the impact of the settlement agreement on efforts to recover art objects looted by the Nazis and allegedly disposed of through Swiss intermediaries. Objectors expressed concern that the preclusive nature of the settlement agreement and accompanying releases would make it impossible to pursue Swiss defendants in efforts to recover looted art. At the Court's direction, I negotiated an amendment to the settlement agreement that explicitly authorized actions to recover looted art in the country from which the art was looted, or in the country where the art is currently located. Damage actions were precluded, but actions in the nature of replevin were explicitly authorized. Before agreeing to the venue restrictions, I conducted substantial research to determine whether the geographical restrictions would pose obstacles to effective litigation. I came to the conclusion that such restrictions merely mirrored existing forum non conveniens

doctrine, and would not prevent litigation to recover art temporarily on display in the United States. Once my concerns were allayed, I persuaded the objectors to agree reluctantly to the compromise language, and reported to the Court that the looted art issue had been resolved. I was careful to insert language permitting efforts to recover cultural patrimony, as well as traditional works of art. While the looted art issue was the least difficult of the outstanding issues, the complexity of the legal issues surrounding international efforts to recover looted art, coupled with the need for caution in adopting an agreement that might inadvertently cause difficulty to those seeking the return of looted art and cultural patrimony, required me to expend substantial time in legal research, negotiation, drafting, and persuasion before the issue could be resolved.

(3) The second issue precipitating Amendment No. 2 was a concern over the funding and structure of the CRT II claims process in Zurich that is designed to administer the deposited assets claims program. The first set of issues for negotiation and clarification involved the relationship of CRT II to the District Court. I had earlier expended considerable time in working out a structure pursuant to which the CRT II process, headed by Michael Bradfield and Paul Volcker as Special Masters, would function as an arm of the District Court in resolving deposited assets claims pursuant to rules and standards approved by the Court, with all decisions ultimately reviewable by the Court. Officials of CRT II, many of whom were holdovers from CRT I, insisted, however, that CRT II function as an independent entity, without reporting to the District Court. I explained that such a structure was legally untenable, and over an extended period of time, I persuaded the CRT II officials that they must operate subject to the plenary control of the District Court. The second issue was the funding of the CRT II

claims process. Once the Volcker Committee's Report was made public on December 8, 1999, it become clear that the CRT II claims process would be both crucial and extremely expensive. My initial response was to argue that the settlement agreement imposed the substantial cost of the CRT II claims process on the defendant-banks. The banks vigorously resisted, arguing that the settlement agreement provided that the settlement fund should bear the cost of the claims process. In fact, both sides had significant textual support in the settlement agreement for their respective positions, although I continue to believe that the plaintiffs' textual position was the stronger. After a meeting in chambers on February 3, 2000 with representatives of the Swiss banks, the Court urged me to seek a negotiated compromise, pursuant to which the banks would shoulder an appropriate share of the cost of the CRT II process. I engaged in a series of negotiations with the bank's counsel, and ultimately reached an agreement to accelerate the payment of the final settlement installment of $334 million by one year, and to place the accelerated payment in the Escrow Fund earning higher daily LIBOR interest rates, as opposed to a 3.78% rate set by the settlement agreement. We also agreed that the banks would pre-pay the interest that would have accrued on the fourth installment. The alteration in payment schedule was estimated to generate approximately $23 million in additional interest earnings for the settlement classes, thus providing the funds to pay a portion of the costs of CRT II. I vigorously sought additional funds from the banks in an effort to reach $30 in estimated benefits, but was unable to persuade the banks to increase their offer. After efforts to increase the banks' offer failed, I reported to the Court and recommended acceptance of the accelerated payment schedule as a partial means to fund CRT II. The Court accepted my recommendation.

(4) The third issue requiring resolution was access to information needed to administer the various settlement-class claims programs in a fair and efficient manner. During the negotiation of the original settlement agreement, the Swiss defendants, and the non-party Swiss releasees, had vigorously resisted any disclosures of information concerning bank accounts, the identities of refugees, the identities of Swiss companies utilizing slave labor, and information about Swiss banking connections with Nazi officials. Objectors correctly noted that in the absence of access to needed information, it would be impossible to administer a fair claims process. I urged the Court to use its coercive powers under Rule 23(d)(2) to direct all potential releasees to provide access to the necessary information on pain of being denied a release. The Court was reluctant to rely primarily on coercive tactics, in part because of legal uncertainty over the power of an American court to direct disclosure in Switzerland, and in part because extended litigation over coerced disclosure would delay payment of the settlement fund to elderly survivors. Accordingly, the Court directed me to negotiate an acceptable set of information access rules that would permit the fair administration of a claims program. Beginning in February, 2000, and continuing to this day, I have expended considerable time and energy in seeking to assure a flow of information to plaintiffs and to claims personnel needed to permit fair and efficient administration of the claims process. It is impossible to overstate the difficulty of the issue. In conducting the initial round of negotiations, I was forced to choose between seeking a detailed set of rules providing for publication of information concerning all accounts, and developing more informal, good faith methods of access to the needed information. I elected the latter course because I feared that a detailed set of rules would take far longer to negotiate, and would,

themselves, generate delay and result in constant friction. The issues were complicated by the apparent willingness of the banks to destroy highly relevant data, and the complete lack of trust that existed between the banks and the leadership of CRT II. The issues were made even more difficult by the banks' refusal to comply with Paul Volcker's request that CRT II be granted access to combined databases and information access regarding all surviving WW II bank account records. After six months of grinding daily negotiations, the parties evolved a system that provided for the immediate publication of information relating to 21,000 accounts, the establishment of a database of 36,000 accounts, consisting of those accounts identified by the Volcker audit as "probable or possible" unclaimed Holocaust-era accounts, and flexible, good faith access to additional information by the CRT II claims process on a case-by-case basis. A process for assuring the accuracy of published data was achieved, and a series of innovative devices emerged, such as the use of memoranda to files and hypotheticals, to establish guidelines for information access without losing flexibility. While the resulting information access criteria codified in Amendment No. 2 and the accompanying memorandum to files are far from ideal, the information access issue was sufficiently resolved to permit court approval of the settlement, and to begin a fair administration of the claims process.

(5) One important aspect of the ongoing information access issue was resolved when, at the Court's insistence, all Swiss entities seeking Slave Labor II releases were required to self-identify as a condition of receiving a release. The self-identification requirement was crucial to settlement's ability to administer a Slave Labor II claims program. The defendant banks vigorously opposed the self-identification requirement and eventually unsuccessfully challenged it in the Second Circuit.

(6) Given the complexity of the factual and legal issues surrounding information access to Swiss institutions, the legal uncertainty surrounding the Court's powers to direct disclosure in a foreign country, and the importance of information access to the success of the claims program, it was necessary to expend considerable time and effort in reaching the compromise codified in Amendment No. 2 and the accompanying memorandum to files setting forth the ground rules for information access. Indeed, it was eventually necessary to revisit the issue of information access in connection with the negotiation of Amendment 3 to the settlement agreement, dated June 10, 2004.

(7) The fourth issue requiring resolution was the status of insurance releases. The original settlement agreement appeared to contemplate releases to Swiss insurance companies, except for three named companies against whom litigation was pending in the United States. Objectors, including the Insurance Commissioner of Washington and Lawrence Eagleburger, argued that Swiss insurance companies should not be released in the absence of a claims program calculated to permit claimants to recover on unpaid policies. The Court instructed me to seek to resolve the insurance issue through negotiations. Since most of the relevant companies did not appear to be within the in personam jurisdiction of the United States courts, the issue was particularly difficult. I informed the defendants that the five settlement classes did not appear to include an insurance class, thus making it impossible to provide a release within the context of the settlement agreement as originally drafted. In response to my position, several Swiss insurance companies opened negotiations on the establishment of a claims process, and the joint payment of up to $100 million in insurance claims on a 50%-50% basis by the settlement fund and the Swiss companies, resulting in a potential addition to the

settlement fund of $50 million to be contributed by Swiss insurers. I was extremely skeptical about such an approach, but sought to make the system work in order to provide an opportunity for even a few victims to collect on unpaid Swiss insurance policies that would otherwise be unenforceable in an American court, and unknown to claimants elsewhere. After months of intensive negotiations, a modest program involving two Swiss insurers, Swiss Re and Swiss Life, with adequate surviving records dating from WW II needed to administer a fair insurance claims process was established. Other Swiss insurers who declined to cooperate in establishing a fair claims process, or who lacked surviving records needed to operate a claims program, were excluded from the program, and will not receive releases. The negotiation and implementation of the insurance aspect of the Swiss settlement was enormously time consuming, requiring several trips to Geneva to inspect the companies' records and extensive discussions aimed at establishing a fair and economically efficient claims process. The net result is a modest one, permitting a small number of victims to obtain payment on Swiss insurance policies issued by two cooperating companies - Swiss Re and Swiss Life - while leaving open the possibility of future action against non-cooperating Swiss insurers.

As the discussion supra demonstrates, the negotiation of Amendment No. 2 between January 1, 2000-August 9, 2000, and its implementation through November 20, 2000, required daily discussions between and among a large group of persons with strongly opposed views, and constant resort to negotiation and persuasion. As my time records reflect, I was continuously and intensively engaged in the negotiations for six extremely difficult months.

(8) The complex negotiations that resulted in Amendment No. 2 were particularly difficult since it was necessary to balance the often-conflicting views of numerous participants, including co-class counsel, officials of CRT II, officials of ICEP, participants in ICHEIC, the defendant banks and their counsel, Swiss banking regulators, New York State banking regulators, non-party-Swiss institutions, including the Swiss government and cantonal banks, the Special Master for Allocation and Distribution, and the Court. In fact, the negotiation and drafting of Amendment No. 2 consumed more than six months of intensive daily discussions with multiple parties culminating in the Court's approval of the settlement, as amended, on July 26, 2000, and the entry of a final order approving the settlement on August 9, 2000.

(9) Implementation of the provisions of Amendment No. 2 during the ensuing four months required two trips to Zurich in order to inspect surviving WW II records of participating Swiss insurance companies, and daily conferences with affected persons concerning access to needed information in the hands of Swiss authorities. The process culminated in the publication on the Internet of information relating to 21,000 Swiss bank accounts on February 5, 2001, and the ultimate cooperation of all non-party cantonal banks in providing needed information to the CRT II claims process. Excerpts from my contemporaneous time records reflecting the time necessarily expended in achieving and implementing Amendment No. 2 are set forth in Exhibit C.

(10) In addition to the substantive items in Amendment 2, the agreement resulted in a one year acceleration of payment of principal into the settlement fund enabling the fund to earn additional interest estimated at $15-$20 million to help fund the deposited assets claims process.

(11) While Amendment 2 provided access to sufficient information to begin a bank account claims process, it failed to resolve all questions of information access. I explicitly retained the right to seek additional information if the experience of administering the bank account claims process indicated that additional information was required. By mid-2003, officials of CRT II had informed me that serious flaws had emerged in the information access process that were rendering it difficult, if not impossible, to administer a fair and efficient bank account claims process. First, they argued that the initial publication of account information had been incomplete, since so-called Category III-B and Category IV accounts listed in the Volcker audit as "possibly" owned by Holocaust victims had not been published. The banks and Swiss banking authorities had refused permission to publish these names in February, 2001, arguing that they failed to demonstrate an adequate level of probability to justify publication. I did not pose a legal challenge to the refusal to publish in February 2001, reserving the right to seek additional publication if it appeared appropriate to do so. I did not wish, in 2001, to further delay publication of the agreed upon 21,000 names. Instead, I resolved to seek immediate publication of the 21,000 names, and deal with the excluded names if the failure to publish them appeared to pose problems to the fair administration of the settlement. In 2003, CRT II officials informed me that a significant number of accounts were being located that did not appear on the published list of 21,000 accounts. They also informed me that proportionately fewer claims were being filed to unpublished accounts, even though they were eligible for matching. I informed the banks that, given the CRT II's experience, publication of the entire list of Volcker accounts was necessary. The banks initially rejected any additional publication. After extensive negotiations,

including a trip to Zurich in February, 2004, the parties agreed in Amendment 3 to publish approximately 3,100 additional names. After extensive efforts to assemble and verify the lists, and to secure permission from Swiss banking authorities, the additional publication took place on January 12, 2005.

CRT II officials also expressed concern in early 2003 that working conditions in Switzerland were impeding the speedy completion of the claims process. Immigration regulations complicated the staffing of CRT II. Swiss labor law rendered it extremely expensive to operate more than one eight hour shift. And the difficulty of communicating with CRT II officials in Zurich complicated the day to day processing of claims. Accordingly, CRT II officials recommended the establishment of a satellite claims facility in New York City, linked by computer with the CRT II facility in Zurich. The plan was to permit both facilities to engage in the simultaneous processing of claims. Creation of such a satellite facility posed extremely difficult issues under Swiss privacy law because it was unprecedented for Swiss bank data to be transferred out of the country. After extensive negotiations with the banks and with Swiss banking authorities, the parties agreed in Amendment 3 to establish a secure New York claims facility linked to Switzerland by secure computer connections, and operating under Swiss law as if the facility were located in Switzerland. At my request, Judge Block issued an order providing for the security of all information in the New York facility. The facility was established during the summer of 2000, and is currently supplementing the work of the Zurich facility, although its efficiency has been significantly decreased by the unfortunate refusal of Swiss banking authorities to permit transmission to New York of information concerning accounts in non-party banks that is fully available to the Zurich CRT II

facility. I have informed the Swiss authorities that their failure to permit transmission of data concerning accounts in non-party banks may jeopardize the issuance of releases to non-party banks.

Third, CRT II officials informed me during 2003 that the process of matching bank account claims against a restricted database consisting of the accounts identified by the Volcker audit, as opposed to the so-called Total Accounts Database (TAD), consisting of all 4.1 million accounts from the relevant era for which information survived, might be causing a serious distortion in the claims process. CRT II officials indicated that a test conducted by HCPO had indicated that victim-owned accounts may have slipped through cracks in the criteria used by the Volcker audit to identify the accounts deemed "probably or possibly" owned by Holocaust victims. I conducted my own investigation and found that several criteria used by the Volcker audit to exclude accounts appeared highly problematic. For example, automatic exclusion of Swiss-address accounts appeared to eliminate numerous accounts for which victims utilized Swiss addresses to shield the accounts from discovery by Nazis. Similar concerns emerged over the categorical exclusion of accounts with addresses in London or New York, or other cities outside the control of the Reich. I was also concerned over categorical exclusion of accounts indicating post-WW II activity, since the activity ma y have been by unauthorized persons, or may have simply indicated efforts by family members to learn about an account. I became persuaded that the likelihood of under-inclusion in the restricted database required access to the TAD in order to assure that claims were being fairly processed. The banks initially rejected a demand for TAD access. After extensive negotiations, however, Amendment 3 provided for a series of

phased matches of plausible claims against TAD archives to insure that all sources of information are canvassed. After extensive negotiations between and among the banks, Swiss banking authorities, CRT II, and the relevant accounting firms, access has now been gained to the UBS TAD archive established by Price Waterhouse. Technical steps are now being taken to carry out the first experimental match. Characteristically, it was not possible to gain access to the PW archive without the credible threat of court action. Only after I prepared papers seeking a court order, and threatened to file them immediately, did PW allow access.

The banks' initial response to the request for additional publication, the establishment of a NYC claims facility, and access to the TAD was adamantly negative. It required almost a year of negotiations to achieve Amendment 3, which was signed on June 10, 2004. In fact, progress in the negotiations did not occur until I prepared a formal motion seeking all three items of relief, and filed the motion papers, consisting of extensive declarations and a substantial memorandum of law, with Judge Block in late 2003. Only when it became apparent that credible litigation was about to take place did the banks take steps to provide access to additional information.

When discussions failed, I prepared a series of motions, supported by extensive memoranda of law, designed to obtain increased access to needed information. After filing the motions and supporting legal memoranda, which were assigned to Judge Block, I traveled to Zurich in late February, 2004 and conferred with CRT II officials and the management of the defendant banks, seeking to improve access to needed information. Upon my return from Zurich, I engaged in intensive negotiations with the defendant banks for four months, culminating in Amendment No. 3 to the settlement agreement

providing for increased access by CRT II to information needed to resolve bank account claims. The agreement was signed on June 10, 2004, providing for a New York based claim facility connected to Zurich via computer, thus permitting substantial savings in operational costs; additional public notice of approximately 3,100 accounts; and CRT II access to a larger data base for use in processing promising claims. An accompanying confidentiality order was entered by Judge Block assuring that claims operations in New York City would be carried out in accordance with Swiss law. At my urging, Swiss banking authorities approved the new arrangement on July 21, 2004. In light of the successful negotiations, I then withdrew my motion before Judge Block. In the ensuing months, I worked closely with CRT II officials to implement Amendment 3, despite lack of cooperation from Swiss authorities, the relevant accounting firms, and the defendant banks. The New York City claims facility was successfully inaugurated but, despite the expenditure of substantial time and effort, Swiss banking authorities have refused to permit the transmission of non-party bank data to the New York facility, seriously eroding the facility's efficiency. After substantial effort, approximately 3,100 additional bank account names were published on January 13, 2005. Finally, after very difficult negotiations, including threat of Court action, CRT II officials were able to gain access to the UBS archive maintained by Price Waterhouse in order to begin the TAD match authorized by Amendment 3.Excerpts from my contemporary time records reflecting the time necessarily expended on negotiating Amendment No. 3 are set forth as Exhibit C.

B. Legal Representation in Connection with Contested Matters

The necessity for recurring in-court representation of the settlement classes stemmed from the unprecedented nature of a country-wide class action settlement, and the difficulty of establishing an allocation process that respected the dignity of the claimants, while avoiding socially destructive competition among categories of elderly Holocaust victims.

(1) I have represented the plaintiff classes in connection with the following contested matters which were briefly summarized above. The cases are described in somewhat more detail below.

(a) The first issue requiring in-court representation arose out of efforts in October and November 1999 by Polish Holocaust victims to intervene in the proceedings at the District Court level in order to object to the limitation on participation in the principal settlement classes to Jews, Jehovah's Witnesses, Sinti-Roma, homosexuals, and the disabled. In re Holocaust Victims Assets Litigation, 225 F.3d 191 (2nd Cir. 2000). The Polish intervenors-objectors argued that Eastern European Holocaust victims should be included in all settlement classes on the basis of national origin. At a hearing on November 22, 1999, the District Court explained that the huge number of additional "national origin" participants would overwhelm the limited settlement fund, which had not been negotiated on such a broad basis. The Court also explained that national origin victims were free to commence litigation on their own behalf, since they would not be precluded by the existing litigation.

The proposed- intervenors appealed to the Second Circuit from the District Court denial of their motion to intervene and to re-define the plaintiff-classes. After the filing of

appellate briefs and the delivery of oral argument by former-Congressman Paul McCloskey on August 9, 2000, the Second Circuit, on September 21, 2000, upheld the restriction of the plaintiff-classes to defined victims or targets of Nazi persecution. In re Holocaust Victims Assets Litigation, 225 F.3d 191 (2nd Cir. 2000). As the Second Circuit's opinion noted, the legal issues raised by the appeal were novel and difficult, requiring careful preparation and argument. Although the Supreme Court had dealt with settlement classes in other contexts, virtually no precedent existed on the power of class-counsel to shape the contours of the settlement class. Moreover, what law there was, dealt with efforts by class counsel to cast the class definition in unfairly broad terms. This appeal dealt with the power of class counsel to cast the class definition in narrow terms. Since the practical consequences to the settlement were immense - the inclusion of a virtually unlimited number of "national origin" persecutees would have massively diluted the *per capita* value of the settlement - I necessarily expended great care in the briefing and argument of the issue.

I defended the decision by class counsel to limit participation in the settlement to the five defined victim groups that had suffered Nazi persecution on the grounds of religion, race or personal status, and to exclude persons from the class whose persecution was the result of national origin, politics. or economics. As class counsel, I had urged that the plaintiff-classes be increased to reflect the suffering of Sinti-Roma, gays, the disabled and Jehovah's Witnesses at the hands of the Nazis. I had opposed extending the class further because the settlement amount was not designed to reflect the losses suffered by all Nazi victims. The appeal raised novel and complex issues concerning the definition and scope of settlement classes, including the legal effect of pre-certification descriptions

of putative classes, and the ethical duties of class counsel to putative members of an uncertified class. The Second Circuit upheld the limited class definition, recognizing that the size of the settlement fund had been keyed to the losses suffered by the Jewish community, and that the "national origin" objectors retained the right to bring litigation on their own behalf.

(b) The second issue requiring in-court representation involved a challenge by a disability rights group (DRA) to the notice aspects of the settlement. The objectors argued before the District Court that insufficient notice had been given to the disabled members of the settlement classes, and suggested that a substantial payment be made to DRA for the benefit of the disabled community in lieu of additional proceedings. The District Court correctly characterized the objection as a thinly-disguised form of blackmail, and denied the objection. When the objectors appealed, I vigorously opposed the appeal, moving for expedition, and vigorously pressed the objectors to withdraw the appeal as unwarranted and divisive. After substantial discussion, the objections were withdrawn in July, 2000.

(c) The third issue requiring in-court representation involved a challenge to the fairness of the settlement filed on behalf of Dr. Thomas Weiss by his counsel, Samuel Dubbin. The Weiss objection challenged the amount of the settlement, the treatment of insurance claims, argued that adversary counsel was required for each separate class, and that opt-out should be delayed until the publication of a plan of allocation and distribution. During November, 1999, I responded to the Weiss objections in series of declarations and memoranda of law supporting the fairness of the settlement, and the settlement's non-adversarial, two-step structure. When the District Court denied the

objections and approved the settlement on July 26, 2000 (opinion) and August 9, 2000 (final order), Dr. Weiss appealed to the Second Circuit on September 8, 2000. Since all other appeals from the August 9, 2000 order upholding the settlement's fairness had been withdrawn by December, 2000, the Weiss/Dubbin appeal constituted the only obstacle to the achievement of the "settlement date," after which distributions to the class could begin. Moreover, when the District Court upheld the Special Master's Proposed Plan of Allocation on November 22, 2000, Mr. Dubbin filed a second appeal on behalf of survivors residing in the United States challenging the allocation plan's fairness.

I vigorously opposed the Weiss/Dubbin appeals. I moved for expedition, and when the appellant failed to comply with the Second Circuit's appellate timetable, I succeeded in having the first Weiss appeal dismissed, thereby permitting the District Court to issue its order implementing the distribution plan on December 8, 2000. In re Holocaust Victims Assets Litigation, 2000 U.S. App. LEXIS 29529 (2nd Cir. November 20, 2000)(dismissing appeal for failure to comply with calendar rules). I then engaged in motion practice in the Second Circuit in an effort to prevent reinstatement of the appeal. Eventually, the appeal was erroneously restored to the calendar. I thereupon sought expedited consideration of both appeals, resulting in a briefing schedule requiring the filing of a brief and appendix by Mr. Dubbin by May 15, 2001. After a conversation between Dr. Weiss and the Court in chambers shortly before the due date for the filing of his brief and appendix, Dr. Weiss agreed to withdraw his appeal unconditionally in return for a personal letter from me praising his efforts and expressing my personal but legally non-binding support for the expenditure of funds, if possible, in connection with a feasible and economically viable plan to permit elderly survivors to receive better health

care. No such plan has ever been submitted. The withdrawal of the Weiss/Dubbin appeal from the order upholding the settlement's fairness permitted the settlement to go into full force and effect as of May 30, 2001.

Although the Weiss/Dubbin appeal was ultimately withdrawn, I had no choice but to treat it as a major threat to the settlement. I anticipated a substantial brief challenging the unorthodox effort to provide a mutually respectful allocation process, and expended substantial time in preparing my responsive brief, and in persuading the appellant to withdraw the appeal.

(d) The fourth issue requiring in-court representation was the defense of the settlement against multiple objections raised at the two fairness hearings held on November 29 and December 14, 1999. In *In re Holocaust Victim Assets Litig.,* 105 F. Supp.2d 139 (EDNY 2000), in my capacity as Lead Settlement Counsel, I represented the plaintiff classes in connection with the Court's decision approving the settlement under Rule 23(e). I participated in two day-long fairness hearings on November, 29, 1999 (Brooklyn), and December 14, 1999 (by overnight telephone to Jerusalem), and submitted three declarations supporting the settlement's fairness and responding to objections posed to the settlement. The declarations set forth the legal and social reasons for the settlement's bifurcated structure and explained the roles of a neutral Special Master and a financially unconflicted Lead Settlement Counsel in the development and implementation of an allocation and distribution plan. In preparation for the fairness hearings, I reviewed hundreds of communications to the Court describing the class's response to the settlement, analyzed the stated objections, and conveyed my responses to the objections to the Court. Multiple objectors challenged the size of the settlement, the

fairness of the settlement classes, as well as the structure of the settlement. After the execution of Amendment No. 2 to the settlement, described supra, the District Court upheld the settlement on July 26, 2000, substantially accepting the positions articulated in my declarations. In re Holocaust Victims Assets Litigation, 105 F. Supp.2d 139 (E.D.N.Y. 2000).

In addition to contesting the objections in court, I sought to persuade critics and objectors of the fairness of the settlement, and was successful in persuading several potential objectors to withdraw their objections. As I have explained, I vigorously defended the settlement against any objector who declined to withdraw the objection. Given the potential for "hold up" present in the Swiss bank settlement, I was particularly aggressive in making it clear that no objector could expect to benefit financially from seeking to delay the settlement. Whenever possible, however, I sought to explain to an objector that his or her concerns were unwarranted, and sought to cooperate with any person who offered constructive criticism of the settlement arrangements.

(e) The sixth issue requiring in-court representation arose out of the publication of the Special Master's proposed plan of allocation and distribution on September 11, 2000. In *In re Holocaust Victim Assets Litig.*, 2000 WL 33241660 (EDNY, November 22, 2000), I represented the plaintiff classes in connection with the District Court's November 22, 2000 decision accepting the Special Master's recommendations on allocation and distribution. I participated in the day-long hearing on November 20, 2000 on the fairness of the proposed allocation plan, and submitted several declarations in support of the Special Master's proposed plan. In preparation for the hearing, I reviewed

the Special Master's proposed plan, reviewed the numerous comments responding to the plan, and provided the Court with my responses to the proposed comments.

The plan was challenged by several objectors at a fairness hearing held in the District Court on November 20, 2000, including Dr. Weiss, who claimed that it was procedurally flawed because separate adversary counsel had not been utilized, and the opt-out period had expired before publication of the allocation plan. Dr. Weiss also challenged the plan's allocation, arguing that insufficient funds were set aside for American survivors, and that excessive funds were allocated to the deposited assets class to the detriment of the looted assets class. Dr. Weiss withdrew his appeal from the allocation plan, as well as his appeal from the settlement's basic fairness, in mid-May, 2001, after discussing the matter with Chief Judge Korman, and receiving a personal non-legally binding letter from me.

(f) The seventh issue requiring in-court representation involved a challenge by several Roma-Sinti objectors to the Special Master's plan of allocation and distribution. The Roma-Sinti objectors, represented by former Attorney General Ramsey Clark, argued that the proposed distribution allocated too little to the looted assets class, and too much to the deposited assets class. The objectors claimed that the plan favored Jews at the expense of other victims. I was particularly upset by the Roma-Sinti objections because, for the first time in the settlement process, they openly pitted one racial group against another, and threatened to plunge the allocation process into an ugly round of recrimination and mutual disregard. At the fairness hearing on the allocation plan held on November 20, 2000, the Court rebuked one of the objectors who claimed that the allocation plan was racially discriminatory against Sinti-Roma. The District Court denied

the Roma-Sinti objection, and Mr. Clark appealed to the Second Circuit. When I was unable to persuade Mr. Clark to withdraw the appeal, I moved for an expedited appeal, and prepared for a major appellate battle over the allocation plan. Mr. Clark filed a massive appendix, and a 46 page appellate brief that was unique in failing to cite a single legal authority. I responded with a substantial appellate brief defending the settlement and the allocation plan. On the eve of oral argument, Mr. Clark, after meeting personally with the Court and after the Court offered his clients an opportunity to express their concerns personally to the Court, withdrew the Roma-Sinti appeal on July 6, 2001, in return for a non-legally binding letter from me expressing support for efforts to assist Sinti-Roma in the event funds were available to do so.

(g) The eighth issue requiring substantial in-court representation involved a challenge to the allocation provisions of the Special Master's plan affecting the looted assets class. The estate of Nathan Katz challenged the Court's decision to adopt a cy pres approach to the administration of the looted assets class, arguing that excessive funds were allocated to the deposited assets class to the detriment of the looted assets class. I fully briefed and argued the power of the Court to adopt a cy pres approach to the administration of the looted assets class. On July 26, 2001, the Second Circuit upheld the Special Master's allocation plan, ruling that the allocation of $800 million to the deposited assets class was justified by the relative strength of the class's legal and factual claims, and that the Court was empowered to adopt a cy pres approach to administration of the looted assets class. In re Holocaust Victims Assets Litigation, 413 F.3d 183 (2nd Cir. 2001).[7]

[7] On the eve of oral argument, the estate of Nathan Katz withdrew its appeal on or about July 12, 2001. The Circuit, nevertheless, explicitly approved the use of cy pres.

(h) the ninth and tenth issues requiring substantial in-court representation involved two similar challenges by victims to the allocation plan and to the role of the Conference on Jewish Material Claims Against Germany, one of which was led by Eliazar Bloshteyn and the other by Abraham Friedman. After the Court granted the Friedman appeal in forma pauperis status, and the Second Circuit appointed counsel for the appellants, court-appointed counsel for the challengers filed an aggressive brief attacking the notice plan utilized in connection with the consideration of the proposed plan of allocation, and the procedures surrounding the adoption of the allocation plan. I responded with a full brief on the merits defending both the procedures surrounding the adoption of the allocation plan, and its substantive criteria, including the use of the Claims Conference as an administrative organ. After oral argument, the Second Circuit affirmed the District Court on July 26, 2001, explicitly upholding the allocation plan and the decision to utilize the Claims Conference as an administrative aid to the Court. In re Holocaust Victims Assets Litigation, 413 F.3d 183 (2nd Cir. 2001).

(i) The eleventh issue requiring substantial in-court legal representation arose out of a dispute between the parties over the appropriate interest rate payable on settlement funds held in the Escrow Agreement pursuant to Amendment 1 to the Settlement Agreement. *In re Holocaust Victim Assets Litig.*, 256 F. Supp.2d 150 (EDNY 2003). The parties had agreed that the settlement assets, eventually totaling $1.25 billion, were to be held in an Escrow Fund that appeared to pay a higher rate of interest (daily LIBOR) than the Settlement Fund (3.78% compounded). After paying compound interest on the settlement funds held in the Escrow Account in order to obtain the benefit of daily LIBOR interest rates from November 1998-March 2001, on March 15, 2001, the

defendant banks announced that simple interest was payable on the Escrow Account funds, precipitating a multi-million dollar disagreement over interest payments. When, during the summer of 2001, the settlement assets were transferred from the defendant banks to accounts with Citibank and HSBC, the defendant banks unilaterally retained the disputed interest, making it necessary to litigate the matter. When the Court recused itself, the matter was referred to Judge Block. The parties vigorously litigated the interest issues before Judge Block, resulting in a plenary decision directing defendants to pay compound interest on the escrow account. In accordance with Judge Block's ruling, the defendants transferred more than $5 million in additional funds to the settlement class during July, 2003. *In re Holocaust Victim Assets Litig.*, 256 F. Supp.2d 150 (EDNY 2003).

The defendant banks argued that the terms of the escrow agreement provided for the payment of simple interest. The settlement agreement had provided for compound interest at 3.78% on unpaid balances. However, the original interest provisions had been complicated by Amendment 1 to the settlement agreement providing for an escrow account governed by daily LIBOR rates which, at the time, were much higher than the 3.78% unpaid balance figure. When the parties negotiated the accelerated payment of the settlement funds in Amendment 2 to the settlement agreement, the accelerated payments were placed into the escrow account to allow the settlement to earn the higher LIBOR rate of interest. Initially, the banks calculated the interest on funds in the escrow fund on a compound basis. However, once the settlement was found to be fair, when the time came to shift the settlement funds from the escrow agreement to accounts controlled by the settlement classes, the banks argued that the escrow fund had earned simple interest.

As Lead Settlement Counsel, I arranged for the immediate transfer of the settlement assets from the escrow fund at Credit Suisse to accounts controlled by the settlement class and the Court at Citibank and HSBC. I reserved the right to challenge the banks' interest calculations. Once the funds had been transferred, I moved to compel the banks to pay additional interest calculated on a compound basis The matter was vigorously litigated. The banks argued that the plain meaning of the escrow agreement provided for simple interest. I argued that the language was intended to provide for compound interest. I introduced evidence of the custom of the trade in New York banking circles, and stressed the behavior of the bank in initially calculating the interest on a compound basis. Judge Block's comprehensive opinion found that compound interest was payable. The litigation resulted in an additional payment of approximately $5 million to the settlement fund. In preparation for the proceedings, I engaged in extensive review of the documentary record, prepared a substantial declaration and memorandum of law in support of plaintiffs' position, and presented oral argument before Judge Block. The decision was non-appealable under the terms of the settlement agreement. *In re Holocaust Victim Assets Litig.*, 256 F. Supp.2d 150 (EDNY 2003).

(j) The twelfth issue requiring substantial in-court representation involved a dispute over the scope of the Slave Labor II class. On July 26, 2000 and August 9, 2000, the Court required prospective Slave Labor II releasees to self-identify with the Court in order to qualify for a Slave Labor II release. In re Holocaust Victims Assets Litigation, 105 F. Supp.2d 139 (E.D.N.Y. 2000). On November 22, 2000, the Court accepted the recommendation of the Special Master that Slave Labor II releasees must have been Swiss-owned at the time slave labor was utilized. In re Holocaust Victims Assets

Litigation, 2000 U.S. Dist. LEXIS 20817 (E.D.N.Y. November 22, 2000). On April 4, 2001, the Court issued a list of qualifying Slave Labor II releasees. See In re Holocaust Victims Assets Litigation, 2001 WL419967 (E.D.N.Y. April 4, 2001). The defendant banks appealed to the Second Circuit, arguing that the District Court lacked power to direct self-identification, and that after-acquired companies that did not become Swiss until after WW II qualified for Slave Labor II releases. The issue was of substantial practical significance since membership in the Slave Labor II class is potentially unlimited because it is not confined to persons belonging to the five defined victim groups. In the absence of a self-identification requirement, it would have been impossible to develop a notice program calculated to give notice to the potentially unlimited Slave Labor II class. Moreover, in the absence of self-identification, it would have been impossible to administer a Slave Labor II claims program.

After an exchange of briefs and full oral argument, the Second Circuit dismissed the portion of the appeal challenging the Court's power to require self-identification of prospective Slave Labor II releasees, accepting my argument that the time to appeal had expired. In re Holocaust Victims Assets Litigation, 283 F.3d 103 (2nd Cir. 2002). The Second Circuit accepted my argument that the time to appeal from the self-identification requirement began to run on November 22, 2000, when it was first announced by the Court, and not on April 4, 2001, when it was applied for the first time. Since the banks did not appeal until April 28, 2001, the Second Circuit dismissed the appeal as jurisdictionally defective, resulting in the *de facto* affirmance of the self-identification requirement.

The Second Circuit also ruled, however, that the banks' companion appeal on the eligibility of after-acquired companies for Slave Labor II releases was timely. The banks argued that a company that was German-owned during WW II, but had been acquired by Swiss interests after the war, qualified for an unlimited Slave labor II release, as opposed to a Slave Labor I release limited to victims belonging to the five victim groups. The District Court ruled that unlimited Slave Labor II releases were available only to companies that were Swiss owned during WW II. The Second Circuit reasoned that the time to appeal had been extended by the District Court's request in December, 2000 for objections to its after-acquired ruling. Once again, the issue was of substantial practical significance since the potentially unlimited size of the Slave Labor II class, coupled with the large number of German companies that had been acquired by Swiss interests in the years since WWII, rendered the prospect of a massive increase in the number of covered companies a threat to the structural stability of the settlement.

On the merits, the Second Circuit ruled that the language of the agreement was ambiguous, and remanded for a hearing on the parties' intentions. The District Court recused itself on remand, and the matter was referred to Judge Block. I filed a substantial brief and supporting declaration with Judge Block on October 28, 2002 seeking a determination that, under the plain meaning of the agreement, a Slave Labor II releasee must have been Swiss owned at the point slave labor was utilized. I urged the defendant banks to abandon the effort to obtain Slave Labor II releases for after-acquired companies. Instead, I urged them to accept a limited Slave Labor I release. Once the banks had an opportunity to review the materials, they agreed to a stipulation requiring that a Swiss company have been Swiss-owned during WW II in order to receive a full

Slave Labor II release. Pursuant to the stipulation, companies that became Swiss-owned after WW II are eligible for a Slave Labor I release, which releases them from claims by members of the five victim groups, but does not release them from claims by other victims. The successful result assured that the Slave Labor II class would not impose an unanticipated drain on the class's resources, and was fully consistent with the settlement class's position from the outset of the controversy.

(k) The thirteenth issue requiring substantial in-court representation involves a challenge by certain survivors residing in the United States to the allocation formula utilized by the Court in connection with the *cy pres* administration of the Looted Assets class. The District Court ruled in November, 2000 that the Looted Assets class was incapable of individualized administration because of its enormous size and the difficulty of proving whether assets looted by Nazis were disposed of through Switzerland. Instead, the Court adopted a *cy pres* plan under which the assets allocated to the looted assets class were dedicated to the support of those survivors most in need. The Court conducted an extensive investigation and allocated 90% of looted assets funds to Jewish survivors, and 10% of the funds to impoverished non-Jewish survivors, primarily Sinti-Roma. The Court then allocated 75% of the funds allocated for Jewish survivors to extremely poor survivors residing in the former Soviet Union, 14% to survivors in Israel, 4% to survivors in Eastern Europe, 4% to survivors in the United States, 3% to survivors in western Europe, and the rest to survivors elsewhere in the world. The Court reaffirmed the allocation in connection with supplemental distributions that took place in September, 2002, and November 2003.

(l) In *In re Holocaust Victim Assets Litig.*, __ F.3d __ (2nd Cir. September 9, 2005), certain class members residing in the United States challenged the District Court's *cy pres* allocation formula in the Second Circuit, seeking a greater share of settlement assets. The challengers argued that assets allocated to the Looted Assets class for the relief of poor survivors should be distributed on the basis of a national population quota, and then distributed to poor survivors residing in each country. The District Court had ruled that the funds should be allocated and distributed on the basis of the whereabouts of the poorest survivors. Prior to the Second Circuit appeal, I had engaged in extensive discussions with persons seeking *cy pres* payments from the settlement funds, including the government of Israel, representatives of American survivors, representatives of British survivors, and affected individuals, in an effort to persuade them to accept the District Court's ruling as both equitable and just. Numerous potential objectors agreed to defer to the District Court's judgment. Unfortunately, a group of survivors represented by Samuel Dubbin insisted on challenging the allocation formula in the Second Circuit. The Second Circuit affirmed the District Court's use of an allocation formula keyed to the whereabouts of the poorest survivors, noting that neither legal nor equitable support existed for the rival plan. *In re Holocaust Victim Assets Litig.*, __ F.3d __ (2nd Cir. September 9, 2005).

(m) The fourteenth issue requiring substantial in-court representation involved a challenge by Disability Rights Advocates to the refusal by the District Court to award a *cy pres* payment to the disabled community in memory of disabled persons who suffered persecution during the Holocaust. DRA argued that the relatively few disabled survivors located thus far requires that an additional cy pres payment be made to the community. In

addition, DRA sought to resurrect the objections to notice given to the disabled that it withdrew in July, 2001. The District Court ruled, first, that many recipients of payments from the settlement fund had, in fact, become disabled as they aged; and, second, that it was improper to divert settlement assets from persons with a direct connection to the Holocaust to members of the disabled community who lacked any connection with the Holocaust. The Second Circuit appeal was preceded by intensive discussion with appellants seeking to resolve objections to the notice program and to resolve issues without litigation. In *In re Holocaust Victim Assets Litig.*, ___ F.3d ___ (2nd Cir. 2005), the Second Circuit affirmed the ruling of the District Court, noting that no victim group, as such, has a legal claim on the settlement assets. Rather the assets belong to individuals with a common heritage of persecution because of race, religion or personal status.

(n) The fifteenth issue requiring substantial in-court representation involves a challenge by a consortium of homosexual rights organization, the Pink Triangle, to the District Court's refusal to award a cy pres payment to the gay community in memory of homosexual victims of Nazi persecution. In *In re Holocaust Victim Assets Litig.*, __ F.3d (2nd Cir. 2005), representatives of the gay and lesbian community sought a *cy pres* award of several million dollars based on the difficulty of locating actual gay and lesbian survivors of the Holocaust. The objectors argued that many qualifying victims were reluctant to disclose their past sexual preferences. The District Court acknowledged the difficulty in locating current gay and lesbian survivors, but declined to shift settlement assets to persons with no personal connection to the Holocaust. The Second Circuit appeal was preceded by intensive discussion with appellants. The Second Circuit affirmed the ruling of the District Court.

(o) The sixteenth issue requiring substantial in-court representation involves a challenge by Samuel Dubbin, a lawyer who has represented challengers to the Court's rulings, to the District Court's refusal to award him a common fund fee. The District Court ruled that Mr. Dubbin's activities had not conferred a benefit on the plaintiff-class. Counsel for the objector argued that he was entitled to a substantial fee. The Second Circuit affirmed the District Court's ruling. *In re Holocaust Victim Assets Litig.*, ___ F.3d (2nd Cir. 2005).

(p) The seventeenth issue requiring substantial in court representation involved calculation of the attorneys' fees payable to plaintiffs' counsel. Although three principal lawyers had waived fees for obtaining the settlement, numerous applications were filed by class counsel and persons unconnected with the litigation, seeking fees in excess of $10 million. At the Court's request, I reviewed all fee applications, and made recommendations to the Court. All told, I filed responses to attorneys' fees requests that totaled more than $20 million. I argued that the special circumstances of the case required fee applications to satisfy the stringent requirements of 42 U.S.C. 1988, requiring lawyers to confine fee applications to time actually expended that actually advanced the litigation. The net result of such a stringent view of fees has been a modest fee structure totaling less that ½ of 1% of the settlement fund.

In *In re Holocaust Victim Assets Litig.*, 270 F. Supp.2d 313 (EDNY 2002), at the Court's request, I represented the plaintiff classes in connection with proceedings denying risk multipliers to certain class counsel and setting the ground rules for compensation of plaintiffs' counsel. I participated in the fee hearing and submitted multiple declarations assessing the several fee applications of counsel. I argued against

the appropriateness of risk multipliers in a case, like this one, where qualified *pro bono* counsel were prepared to litigate the matter without fee. In preparation for the proceedings, I reviewed multiple fee applications from numerous attorneys. Once the Court's opinion was issued, I continued to review pending fee applications, including resolving the fee application of Edward Fagan, in connection with which substantial payments were made by Mr. Fagan to named-plaintiffs in the form of recognition payments. The resolution of Mr. Fagan's fee application raised difficult questions of conflict of interest law, since, during the negotiation phase, he simultaneously represented the class and an individual with potentially conflicting interests. The issues were resolved to the benefit of the class.

(q) In summary, among the specific legal tasks that I have performed are: (1) defending the basic structure of the settlement at two Fairness Hearings held on November 29, 1999 in Brooklyn, and December 14, 1999 in Jerusalem (by telephone), ultimately resulting in the issuance of an opinion and order by the District Court dated July 26, 2000, and August 9, 2000, respectively, upholding the settlement's fairness;[8] (2) defending the Special Master's Proposed Plan of Allocation and Distribution at a hearing held on November 20, 2000, resulting in an opinion and two orders dated November 22, 2000 and December 8, 2000, respectively, upholding the plan of allocation and directing its implementation;[9] (3) opposing intervention and challenges to the settlement structure

[8] The District Court's fairness opinion upholding the settlement under Rule 23(e) is reported at In re Holocaust Victims Assets Litigation, 105 F. Supp.2d 139 (E.D.N.Y. 2000).

[9] The District Court's opinion upholding the Special Master's Proposed Plan of Allocation and Distribution is reported at In re Holocaust Victims Assets Litigation, 2000 U.S. Dist. LEXIS 20817 (E.D.N.Y. November 22, 2000).

by multiple objectors at a hearing held on November 22, 1999; (4) defending multiple appeals to the Second Circuit from various orders rejecting challenges to the settlement in the District Court, including the preparation and filing of plenary appellate briefs defending: (a) the definition of the plaintiff classes,[10] (b) the allocation plan,[11] (c) the cy pres administration of the looted assets class,[12] (d) the scope of the Slave Labor II class;[13] and (e) denial of attorneys fees to counsel for an objector.[14] (5) delivering seven oral arguments in the Second Circuit; (6) receiving seven Second Circuit opinions upholding the definition of the plaintiff-class, upholding the allocation plan, dismissing the appeal from the Court's requirement of self-identification by prospective Slave Labor II releasees, upholding the *cy pres* allocation formula; and affirming the District Court's fee denial; (7) engaging in extensive appellate motion practice and negotiation resulting

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[10] The Second Circuit opinion upholding the definition of the plaintiff-classes is reported at In re Holocaust Victims Assets Litigation, 225 F.3d 191 (2nd Cir. 2000).

[11] The Second Circuit first opinion upholding the Special Master's Proposed Plan of Allocation and Distribution is reported at In re Holocaust Victims Assets Litigation, 413 F.3d 183 (2nd Cir. 2001). The Circuit' subsequent three opinions opinion rejecting challenges to the *cy pres* allocation formula are reported at In re Holocaust Victims Assets Litigation,___ F.3d ___, _____, and ____(2nd Cir. 2005).

[12] Id.

[13] The Second Circuit opinion dismissing the appeal from the District Court's requirement of self-identification as a precondition for a Slave Labor II release, and remanding for additional exploration of the parties' intentions concerning the Slave labor II status of after-acquired companies is reported at In re Holocaust Victims Assets Litigation, 283 F.3d 103 (2nd Cir. 2002).

[14] See In re Holocaust Victims Assets Litigation, __ F3d ___ (2nd Cir. 2005).

in the withdrawal or dismissal of five appeals,[15] (8) prosecuting three collateral proceedings before Judge Block involving the scope of the Slave Labor II class, the interest rate on funds held in the Escrow Fund, and access to data in possession of the defendant banks; and (9) reviewing claims for attorneys' fees, and making recommendations to the Court concerning the appropriate fee structure;[16]

The legal issues raised by the challenges in the District Court and the Second Circuit appeals were extremely difficult because of the unprecedented scope of the settlement, and the commitment of both the Court and plaintiffs' counsel to a settlement structure that minimized the traditional use of adversary process in order to avoid pitting elderly survivors against each other as adversaries at the close of their lives. The approach was excellent social policy, but required an intensive legal defense. Excerpts from my contemporary time records reflecting the time expended on my legal representation of the class in connection with litigated matters are set forth as Exhibit C.

C. Ongoing Legal Advice and Counsel

As the Court has noted, since the signing of the settlement agreement, I have functioned as general counsel to the settlement process. In the six and one-half years since February 1, 1999, I have provided legal advice to the Court, to the Special Masters,

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[15] See, e.g., In re Holocaust Victims Assets Litigation, 2000 U.S. App. LEXIS 29529 (2nd Cir. November 20, 2000)(dismissing appeal for failure to comply with calendar rules).

[16] See In re Holocaust Victims Assets Litigation, 2002 U.S. Dist. LEXIS 20195 (E.D.N.Y. October 23, 2002)(denying risk multiplier). The dismissed or withdrawn appeals include a challenge by Sinti-Roma objectors to the allocation plan (Ramsey Clark); a challenge by United States' survivors to the allocation plan (Dubbin/Weiss); a challenge to the use of *cy pres* in connection with the Looted Assets class (Katz Estate); a challenge by disabled survivors to the notice plan (Wolinsky); and a challenge to the qualifications of class counsel in the income tax area(Dunaevsky).

and to the institutions administering the claims programs on a vast array of issues ranging from Swiss privacy law, to the wording of releases, to the law of presumptions, to theories of valuation, to the myriad of issues that have arisen in an attempt to implement Amendments 2 and 3 to the settlement agreement. Scarcely a day goes by without an issue of law arising that requires attention. For example, at the time of the drafting of this paragraph, I was engaged in dealing with a Canadian search firm concerning its refusal to disclose the identities of its clients, Price Waterhouse and UBS concerning access to the TAD archive, ICHEIC, the German Foundation and Swiss Life concerning the Swiss insurance program, lawyers for the State of Israel concerning residual distributions, ICHEIC concerning its humanitarian fund, CRT II concerning potential revaluations of certain awards, Credit Suisse concerning improved voluntary cooperation, Swiss banking authorities concerning the refusal to permit transmission of certain data to the New York City claims facility, review of the compensation of vendors, review of the investment portfolio and legal issues raised by the potential distribution of residual funds. Excerpts from my time records set forth in Exhibit C illustrate the breadth and magnitude of the advisory responsibility

D. Advice and Communication with Class Members

In the six years and one-half since February 1, 1999, I have assisted literally hundreds of members of the settlement classes in understanding the settlement, filing claims, raising concerns with the Special Masters, and communicating with the Court. I speak by conference call each month with a group of survivor leaders in an effort to keep them informed of the issues raised during the settlement's administration. I have expended substantial time in drafting interim reports to the community permitting

interested persons to assess the progress of the settlement and to raise informed questions concerning its implementation.

E. Participation in the Notice Program

From February 1, 1999-May 1, 1999, with the invaluable assistance of Morris Ratner, I oversaw the establishment and successful implementation of an unprecedented worldwide notice program, and the preparation and distribution of more than one million questionnaires directed to members of the plaintiff-classes. 583,000 questionnaires were completed and returned to the Court, demonstrating overwhelming support for the settlement. While much of the work on the notice program was carried out by Morris Ratner, I participated fully in all decisions, and reviewed and edited every aspect of the notice program, including the long form and short form means of communicating with members of the plaintiff class, and the questionnaire. Once the notice materials were completed, I addressed large gatherings of Holocaust survivors in New York City, Westchester, New Jersey, Chicago, Los Angeles, and Palermo, Italy,[17] explaining the nature of the settlement and the mechanism for filing claims. I prepared written materials describing the settlement, and arranged for its distribution to institutions serving large numbers of potential claimants. I carried out closed-circuit television briefings of community leaders in virtually every American city with a significant survivor population, explaining the terms of the settlement to them and providing guidance on the

[17] I accepted an invitation from the Palermo Jewish community to lecture on the Holocaust cases at the University of Palermo on June 5, 2000. I do not seek fees in connection with the lecture. My travel and lodging expenses were paid by the University of Palermo.

completion of claim forms and questionnaires. Finally, in a series of four lectures, I trained 100 law students at NYU to assist homebound survivors in completing the necessary claim forms. I prepared videotaped versions of my training lectures for use by law students at several law schools in cities with large survivor populations. . Excerpts of my contemporary time records reflecting the time expended on the notice program and the training of persons to assist victims are set forth as Exhibit C.

In connection with the supplemental publication of 3,100 additional names of potential bank account holders on January 12, 2005, I reviewed the proposed notice plan, participated in its revision, drafted necessary press materials and participated in a series of press conferences designed to inform class members of the additional opportunity to file bank account claims.

F. Development of the Settlement's Administrative Structure

During February, March and April, 1999, I participated in a series of discussions with co-counsel, especially Mel Weiss and Michael Hausfeld, on the structure of the settlement process. The discussions culminated in the decision to adopt a bifurcated settlement process, permitting the settlement classes to approve the fundamental fairness of the $1.25 billion settlement and the contours of the five plaintiff-classes prior to the adoption of a detailed plan of allocation and distribution to be proposed by a neutral Special Master. Given the unique nature of this class action settlement, there were almost no precedents to guide us in developing a fair and practicable settlement structure. The structure adopted minimized the use of adversary process between and among the five settlement classes in connection with the development of an allocation plan in order to avoid pitting categories of survivors against each other in a struggle for limited funds.

Instead, class counsel recommended a more collegial settlement process, pursuant to which the members of the plaintiff classes were provided with "exit, loyalty and voice" in connection with the development of an allocation plan. Pursuant to the plan, all settlement counsel were expected to assist any class member in approaching the Special Master, the Special Master was expected to function as a neutral arbiter in proposing a just allocation plan, the proposed allocation plan was to undergo scrutiny by the members of the plaintiff-classes, who would then be free to challenge any aspect of the plan before the District Court. Class members who were dissatisfied with the procedures for establishing an allocation plan were free to opt out of the settlement. However, once a member of the plaintiff-class agreed to the procedures by declining to opt out, the class member would be bound by the final allocation plan adopted by the District Court, and would not have a second opportunity to opt out. In effect, class members were asked to commit to a fair process, as opposed to a particular outcome. Given the lack of precedent, and the substantial sums involved, I expended a great deal of time in researching and thinking through a settlement structure that was unorthodox, but that appeared to fit the needs of the class more closely that a traditional adversary process. The plan was overwhelmingly endorsed by the plaintiff classes, and provided an innovative framework for carrying out the settlement without embittering the lives of many survivors by forcing them to act in an adversary mode against other survivors. Most importantly, the structure has worked, providing a practicable framework for the administration of the settlement Excerpts from my contemporary time records reflecting the time expended in developing the settlement's structure are set forth as Exhibit C.

G. Securing a Federal Income Tax Exemption

Beginning in February, 2000 and culminating in early June, 2001, together with Mel Weiss, I worked to secure an exemption from federal income taxes for the very substantial interest income earned by the $1.25 billion settlement fund, and for all distributions to beneficiaries. I drafted several proposed statutes and repeatedly discussed the issue with the staffs of numerous members of Congress. I worked closely with the staff of Senators Fitzgerald and Schumer in preparing both legal and policy memoranda on the merits of federal income tax exemption for the settlement fund. I traveled to Washington, D.C. on several occasions to brief Congressional staffers. Despite my vigorous efforts, however, my efforts would not have been successful were it not for the extraordinary efforts of Mel Weiss, who was ultimately successful in persuading the leadership of both the Democratic and Republican Parties to support the tax exemption. On June 12, 2002, Mr. Weiss persuaded members of Congress engaged in adopting the 2001 budget to adopt a version of the tax exemption for the Swiss bank settlement fund that I had drafted. Moreover, he persuaded Congress to adopt it retroactively, freeing the settlement fund from all federal income tax liability and paving the way for a substantial tax refund of more than $3 million. The exemption from federal income taxation for all interest earned by a $1.25 billion fund over a period of at least seven-eight years provides an ongoing material financial benefit to the plaintiff classes valued conservatively at a minimum of $20 million. Much of the credit for obtaining the income tax exemption should go to Mr. Weiss, who persuaded the Congressional leadership to support the exemption.

Accordingly, I recommend that Mr. Weiss, who has waived fees for his efforts in achieving the settlement, be awarded an appropriate fee in recognition of his extremely valuable post-settlement services to the class in persuading Congress to award tax exempt status to the settlement fund. Mr. Weiss has indicated that he wishes any such fee to be donated in equal shares to the Jewish Foundation for the Righteous, and the Public Interest Loan Forgiveness Fund at New York University Law School, enabling graduates who work at relatively low-paying jobs serving the public interest to have a percentage of their student loans forgiven for each year that they devote to such relatively low-paying, but socially important, legal practice. Mr. Weiss has stipulated that preference in receiving the loan forgiveness funds be given to descendants of Holocaust victims, or to persons engaged in assisting Holocaust victims. Excerpts from my contemporary time records reflecting time expended on seeking tax exempt status for the settlement fund are set forth in Exhibit C.

H. Monitoring the Administration of the Settlement

Throughout my tenure as Lead Settlement Counsel, but with increasing intensity since July, 2001, I have monitored the administration of the settlement to assure the proper and efficient distribution of funds to eligible recipients. Although I do not have primary responsibility for the supervision of the claims processes involving the five plaintiff classes, I have regularly reviewed the standards and practices associated with the processing of claims by members of the deposited assets class, the Slave Labor I and II classes, the refugee class, and the looted assets class. I have engaged in intensive discussions with interested parties over the fairness of various rules governing allocation and distribution, especially the evidentiary rules and presumptions governing the CRT II

deposited assets claims process, and the modest insurance claims process, and have expended substantial time assisting individual claimants in filing appropriate claims with the appropriate claims program. During July and August 2001, I arranged for the transfer of the settlement fund's assets from the Credit Suisse Escrow Fund to accounts under the exclusive direction and control of the class and the District Court at Citibank and HSBC. Following the transfer of funds, I have expended substantial time in assuring that the Swiss banks pay appropriate interest on deposited funds. I have expended substantial time in contingency planning for a possible secondary distribution in the event that CRT II is unable to identify the owners of a portion of the $800 million set aside for the deposited assets class. I have successfully sought to foster collaborative efforts between the Swiss bank settlement fund and the German Foundation "Remembrance, Responsibility and the Future" to minimize administrative costs. With the assistance of Deborah Sturman and Melvyn Weiss, I review and approve all distributions from the settlement fund before signing an authorization for the transfer of funds. Finally, in close consultation with the Court, I monitor the investment strategy of the settlement fund, and, with the benefit of advice from the settlement fund's financial advisors, I participate in decisions to alter the fund's investment strategy in an effort to maximize return with minimal risk to the fund. Perhaps most importantly, I monitor those groups investigating the past to gain a greater understanding of the Holocaust. For example, I closely monitored the findings of the Volcker Committee and the Bergier Commission, and sought to convey those finding to the general public. Finally, I play a significant role in the appeals processes in connection with the refugee class, the two slave labor classes, and the deposited assets class. I helped develop the appeals process and will make

recommendations to the Court in connection with each appeal. Excerpts from my contemporary time records reflecting time expended on monitoring the settlement and planning for a possible secondary distribution are set forth as Exhibit C.

I. Defending the Settlement in the Public Arena

Throughout my tenure as Lead Settlement Counsel, I have defended the settlement from attacks by critics. I have engaged in intensive discussions with many objectors and potential objectors, persuading many of the principal objectors to withdraw their appeals and objections in the interest of solidarity with the victims, and dissuading many others from filing any objections at all. In addition, appellate motion practice and vigorous discussions caused the withdrawal of several other appeals prior to the briefing stage.

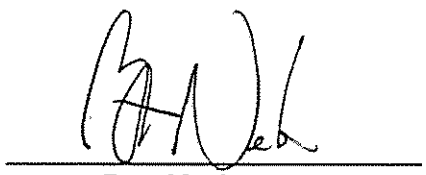
I have written widely in defense of the settlement in an effort to assure that the historical record accurately reflects the scope of Holocaust-related suffering. Excerpts from my contemporary time records reflecting time expended on public defense of the settlement agreement against attacks from critics who seek to characterize it as blackmail, and in publicly defending and disseminating the factual determinations and legal conclusions concerning Swiss behavior during WW II upon which the settlement agreement is premised are annexed as Exhibit C.

WHEREFORE, on the basis of this declaration, excerpts from my contemporaneous time records, additions to the common fund traceable to my efforts, and the personal knowledge of the Court concerning the extent and quality of my activities as Lead Settlement Counsel, I respectfully request that the Court approve the payment of

appropriate fees in connection with my post-settlement representation of the plaintiff-classes.

In addition, I request an order authorizing payment of an appropriate fee to Melvyn Weiss in connection with his post-settlement success in persuading Congress to grant the settlement fund tax exempt status, and for the other invaluable post-settlement services that he has rendered to the settlement fund as a settlement counsel. Mr. Weiss asks that his post-settlement fee be payable in equal shares to the Jewish Foundation for the Righteous and the Public Interest Loan Forgiveness Fund at NYU Law School, with preference in the use of the funds to be given to descendants of victims of the Holocaust, or to students who are committed to providing legal services to victims of the Holocaust..

Dated: November 1, 2005
New York, New York



Burt Neuborne