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December 17, 1999

Special Master Judah Gribetz
c/o Richards & O'Neil
885 Third Avenue
New York, NY 10022-4802

Re: In re Holocaust Victim Assets Litigation

Dear Special Master Gribetz

We represent name plaintiffs and class representatives the World Council of Orthodox Jewish Communities, Inc., in No. 97-0461, Lillie Ryba in No. 96-5161 and Miriam Stern in No. 96-4849. We were appointed to the Executive Committee by Judge Korman in 1997 and named as Settlement Class Counsel in 1999.

We have been studying the issues involved in a distribution plan for quite some time. When settlement negotiations first began with Defendants, we were part of a subcommittee established by the Executive Committee to research the law with regard to distribution issues and to raise various ideas for discussion. The subcommittee met several times before we ultimately decided to defer further work on a distribution plan until after a settlement was achieved.

After thoroughly discussing these matters with our clients, we are pleased to forward to you the attached proposed plan of distribution for your consideration. The distribution plan refers to an appendix. Because of the press of time and my absence from the country, we will be submitting the appendix separately to you next week. We would enjoy the opportunity to meet with you to discuss this matter further.

Sincerely,

Stephen A. Whinston /tc

Stephen A. Whinston

SAW/tc
Enclosure
307251

PLAN OF DISTRIBUTION FOR
IN RE HOLOCAUST VICTIM ASSETS LITIGATION

Proposed By The
World Council of Orthodox Jewish Communities

Presented By
Berger & Montague, P.C. and Law Offices of Mel Urbach

I. INTRODUCTION AND OVERVIEW

In settlement of three lawsuits, the Defendants have agreed to pay the sum of $1.25 billion into an escrow account. The settlement, which is subject to approval by the Court, does not prescribe how the funds are to be distributed. Rather, this is left to further consideration of the Court, which has appointed a Special Master to oversee such proceedings and to recommend a plan.

It goes without saying that any distribution plan must be logically related to and consistent with the claims made in the underlying litigation. The litigation was brought on behalf of a defined class and, consequently, the benefits of the settlement should accrue to that class. That is, **all settlement funds should be distributed to Holocaust survivors (and other class members).** There are two types of class members. The first, and most recognized, includes individuals and the businesses they controlled. The second, of which the World Council is an example, includes communities and communal organizations. When the Nazis and their allies took over a certain area, one of their first targets was Jewish institutions. Synagogues and communal facilities were desecrated, ransacked and often destroyed. This was part and parcel of Hitler's plan to destroy the Jews. The loot laundered through the Swiss banks included communal as well as individual property. These destroyed communities have been and are being rebuilt, some in their original locations, and others in transplanted sites around the world. The rebuilt communities bear a direct lineal connection to their European predecessors. Several examples of such communities are set forth in the Appendix. These communities are rebuilding not only buildings and institutions, but also the heritage and traditions of their predecessors. It is critical that any distribution plan adequately recognize that communal property was looted and

laundered through the Swiss banks and that communal claimants should therefore be a significant portion of any distribution plan.

Typically, class members' claims are easily documented and valued. For example, in a securities class action, records are readily available which would establish that a particular class member bought the stock in question on a certain date and at a certain price. This information can then be used to establish a rather straightforward distribution plan.

Here, however, we have an unusual situation where documentation of most claims will not be available, where valuation information will be largely anecdotal, and where class members will rarely be able to trace their losses to the Defendants. In these circumstances, courts have approved distribution plans that include a cy pres element to supplement individual distributions. The cy pres approach allows for the funds to be distributed to the intended beneficiaries in an indirect fashion and thereby avoids the need for documentation or proof of causation. In Section II of this Plan, we discuss the legal limitations on a distribution plan and the use of a cy pres distribution technique.

In Sections III-IX below, the World Council outlines its distribution plan. Any distribution plan must be fair and cost effective. The broad concepts which inform the proposal are as follows:

* Due to difficulties in documentation and proof of causation, it is appropriate to use a cy pres distribution for a significant portion of the fund, once it is assured that adequate payments to claimants (both individual and communal) may be made. We propose that one-third of the fund (33%) be set aside for cy pres purposes. In light of the age of the class members, any funds used for cy pres purposes should be drawn from the last payment to be made by

Defendants. See Section III, below.

* The remaining two-thirds of the fund (67%), which should be devoted to direct payments to class members and should be further subdivided, with set amounts allocated to deposited asset claims, looted asset claims, slave labor claims and refugee claims. We propose that the subfunds be initially established in the following proportions: 7% for deposited asset claims; 5% for slave labor claims; 1% for refugee claims; and 54% for looted assets claims.

* A claims procedure should be established to validate deposited assets claims. Because of difficulties in valuation, approved claims should be valued at categorical amounts representing the value for an average individual account and an average business account. Any amounts remaining in the deposited assets subfund should overflow into the looted assets subfund. See Section IV, below.

* An application procedure should be sufficient to qualify a class member for a payment from the slave labor subfund. Because of difficulties in proving a link between particular slave labor employers and the Defendants and in establishing particular values for these claims, this fund should be divided equally on a per capita basis. See Section V below.

* An application procedure should be sufficient to qualify a class member for a payment from the refugee subfund. Due to the uncertainty regarding the number of valid claimants in this category and the difficulty in valuation, the fund should be distributed per capita up to a capped individual amount of $1,000. Any excess funds should overflow into the looted assets subfund. See Section VI below.

* An application procedure should be sufficient to qualify a class member for a payment from the looted asset subfund. Due to difficulties in valuation and the expense of an

individual valuation process, approved claims should be valued in a categorical fashion, with individual claims being valued at 1, high individual and commercial claims at 2, and community and high commercial claims at 3. Under strict limitations, claimants who believe their claims can be individually valued should be given an opportunity to present a claim to that effect. The subfund would then be distributed accordingly. See Section VII below.

Unfortunately, it can be expected that undeserving individuals will seek to participate in this distribution. Consequently, there must be some cost-effective monitoring system put in place. Our proposal for ongoing auditing of the claims process is set forth in Section VIII.

II. LEGAL CONSIDERATIONS

It is a bedrock principle that a settlement fund can be used only to benefit the class. In virtually every case where cash is involved, that benefit consists of direct payments to class members. It is only under specific and unusual circumstances that cash payments can be used for other purposes under the doctrine of cy pres. To meet that narrow exception, the settlement proponents must demonstrate that the fund cannot be distributed practicably to class members and that the proposed use provides an indirect benefit limited to the class. See Mace v. Van Ru Credit Corp., 103 F.3d 338, 345 (9th Cir. 1997)("Cy pres recovery is thus ideal for circumstances in which it is difficult or impossible to identify the person to whom damages should be assigned or distributed. . . [T]here is no reason, when the injured parties can be identified, to deny them even a small recovery in favor of disbursements through some other means.").

One of the functions of the Court in evaluating a class action settlement is to act as a fiduciary to the class to insure that the funds are distributed in a way that benefits class members

in a fair way. The Court has the power to reject any expenditure which it concludes is improper or does not fairly benefit the class.

The court in In re Matzo Products Lit., 156 F.R.D. 600 (D.N.J. 1994), has thoroughly outlined the limited circumstances when settlement funds can be used for purposes other that direct distribution to class members and the payment of approved fees and expenses. There, in the context of an anti-trust class action, the proposed settlement called for the distribution of matzo to charities. The court first recognized that the cy pres rule permitted distributions for the "indirect benefit of the class where actual distribution to class members is not feasible." Id. at 605. Typically, this occurs where there are unclaimed funds, where class members cannot be identified, or where the distributions would be so small as to be uneconomical. Id.

In Six Mexican Workers v. Arizona Citrus Growers, 904 F.2d 134 (9th Cir. 1990), the parties settled unfair labor practices claims of Mexican migrant workers. Following distribution to identified class members, plaintiffs' counsel proposed that unclaimed funds be provided to the InterAmerican Foundation for distribution to workers in Mexico. The court recognized that the cy pres doctrine would be applicable where "the cost of separately proving and distributing each class member's damages may so outweigh the potential recovery . . ." Id. at 1305. However, the court rejected its specific application as being not being targeted to the plaintiff class. The proposed use of funds "benefits a group far too remote from the plaintiff class. Even where cy pres is considered, it will be rejected when the proposed distribution fails to provide the 'next best' distribution." Id. at 1308.

In Shultz v. Champion Intl. Corp., 821 F. Supp. 520 (E.D. Tenn. 1993), riparian property owners brought a class action alleging pollution of a river. The parties negotiated a settlement

which provided that the entire settlement amount, $6.5 million, would go to a "charitable fund to benefit the landowners and their communities, through environmental, educational or other charitable activities." Id. at 521. The court found that the amount of the settlement was fair and adequate, but that the use of the proceeds was not. The court urged the parties to revise the agreement to provide direct benefits to class members.

> The balance of the settlement fund [after appropriate deductions for attorneys' fees and costs] would be distributed directly to the class members. The Court does not think placing the money in an endowment fund would be fair to the class for several reasons. For one thing, it is difficult to envision ways to spend the monies that would proportionately benefit all the members of the class. For another, the class members entered into this litigation with the idea that they would recover money damages for the 'loss of value of the land and/or the incidental damages attributable to land use.' They should not have their modest recovery involuntarily placed in a charity even if the charity would be beneficial to the community.

The Second Circuit has established very narrow boundaries around the use of class action settlement funds for purposes other than direct distributions to class members. In In re Agent Orange Product Liability Lit., 818 F.2d 179 (2d Cir. 1987), the court was asked to approve a settlement which provided for direct benefits to the most severely injured members of the class and which set aside 25% of the settlement fund for a "class assistance foundation" which would support projects benefitting the entire class. Id. at 184.[1] The court noted that it had previously

[1]The district court adopted the partial indirect benefit concept because a direct benefit to the entire class "has the appeal of simplicity but the individual sums allocated would be too small to provide an appreciable benefit." In re Agent Orange Product Liability Lit., 611 F. Supp. 1396, 1400 (E.D.N.Y. 1986). As noted above, this is an accepted rationale for a cy pres distribution. The court also noted that the "foundation will fund services on behalf of the class as a whole . . .[and] will provide useful and meaningful benefits to those class members not eligible for direct individual awards." Id. at1410.

rejected aspects of settlements which proposed that benefits be provided to people who may be injured in the future and to class members who had already been fully compensated. The proposed use of the fund to provide indirect benefits to the class in Agent Orange was approved[2] only because the beneficiaries of the foundation were "essentially equivalent to the class that claims injury," id. at 185, and because the type of benefits to be provided were "consistent with the nature of the underlying action," id. at 186.

We believe that many of the same considerations present in Agent Orange which justified the partial use of cy pres distribution techniques are also present here with regard to the looted asset and slave labor claims. In Agent Orange, the court had before it a class which had been injured but which lacked proof as to causation. The medical evidence before the court was insufficient, in the court's view, to clearly establish that Agent Orange had caused the specific injuries suffered by the Vietnam veterans. Here, the class members also have been injured (in terms of having been looted or enslaved), but cannot prove that the Defendants specifically benefitted from or were involved in the actionable conduct. In Agent Orange, individual adjudication of claims would have been expensive and would have resulted in minimal payments to claimants. Here, it would also be cost-prohibitive to consider individual claims and most payments would also be of a minimal value.

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[2]Although the court approved of indirect benefits in concept, it rejected the district court's mechanism of using a foundation which was independent of the Court. On remand, the district court replaced the foundation with a "class assistance program" wherein the court retained the ultimate responsibility to "select projects, advance money, and exercise the oversight to ensure that the money is being spent as planned." In re Agent Orange Product Liability Lit., 689 F. Supp. 1250, 1274 (E.D.N.Y. 1988).

In addition to these recognized legal bases for utilizing a partial cy pres method of distribution, this case presents a unique circumstance which militates in support of this approach. Based on the enormous loss of life involved in the Holocaust, it is clear that entire families were killed with no surviving relatives. Thus, a material portion of the deposited assets and looted assets must be attributed to people who died in the Holocaust and left no heirs. Similarly, significant numbers of slave laborers and persons attempting to seek refuge in Switzerland died and left no heirs. Yet these claims are being extinguished by the settlement here. Considerations of equity require that the heirless claims be recognized in some fashion. A cy pres distribution is one way of accomplishing that end. All these circumstances therefore justify the use of cy pres distributions as a supplemental method to individual distributions.

III. THE CY PRES SUBFUND

The key issues involved in considering a cy pres distribution are: the size of the subfund; the purposes for which such funds may be used; and how such funds are to be administered. As with most issues involved in devising a plan of distribution, the Agent Orange opinions provide guidance on all these matters.

A. The Cy Pres Subfund Should Constitute 33% of the Settlement Amount And Should Be Funded From the Last Installments.

It is estimated that well over 50% of the Jews of Europe were killed in the Holocaust. If we were proceeding on a purely statistical basis, it might make sense to allocate a similar percentage of the settlement to the cy pres category. However, recognition and compassion for living survivors of the Holocaust (as well as other class members) requires that a majority of the

fund directly benefit individual class members. Agent Orange similarly commands this result.

While there is therefore no magic formula to determine precisely what portion of the fund to set aside for cy pres purposes, we recommend 33%. This proportion is large enough to recognize the enormity of the heirless claims but small enough to allow for meaningful distributions to living class members.

In recognition of the priority ascribed to direct distributions and in recognition of the age of class members, it is vital that direct payments be the first priority for any settlement fund distribution. Since the settlement agreement allows Defendants to pay in installments, we strongly urge that the cy pres portion of the distribution be funded from the last payments to be made by Defendants.[3] This would also have the advantage of providing sufficient lead time for the creation of appropriate procedures and parameters for the cy pres fund before it is funded.

B. Purposes of the Cy Pres Fund Should be Carefully Delineated.

The distribution plan must establish clear guidelines for the use of the cy pres fund. Certain legal requirements are clear. The cy pres fund must be limited to an indirect form of distribution to class members. As discussed in Section I, above, courts have rejected indirect distribution plans which extend benefits to those significantly beyond the class definition or provide benefits which are unrelated to the underlying claims in the litigation. This settlement was brought, and settled, on behalf of a defined class of persons, communities and other entities which has been certified by the Court. All indirect distributions must be for the benefit of the

[3]Under the proposal made here, the total amount of the cy pres fund would be $ 412.5 million. This would be funded by $ 78.5 million out of the third installment of $ 333 million due in November 2000 and the entire fourth installment of $ 334 million due in November 2001.

certified class.[4]

The use of the indirect distributions must be related to the claims asserted in the litigation. Here, Plaintiffs complained primarily of the conversion of deposited assets and profiting from transactions in looted assets. These assets would have been used by their owners (individuals, communities and entities) to support themselves and their activities. Consequently, the cy pres portion of the settlement should be devoted to the funding of similar activities. The most efficient way to use the indirect method of distribution is to fund these activities through existing social service or communal organizations. The settlement fund should not be used to create new organizations for these purposes. Examples of activities which could be funded through the indirect benefit method would include, for individuals:

* The basic necessities of life, such as food, shelter and clothing.

* The cost of education.

* Health care costs.

Claims relating to communal assets, which were asserted by the World Council on behalf of a class of entities similarly situated, are deserving of separate mention. Jewish communal entities were the subject of intense looting and destruction. German control of an area inevitably lead to the looting of valuable religious articles from synagogues and communal organizations. Examples of such instances have been presented to the Court on previous occasions and are

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[4]Agent Orange recognizes that it may be impracticable to insist on a rigid and inflexible limitation of indirect benefits to class members. There, the court approved of indirect distributions benefitting Vietnam veterans in general, without the need to demonstrate that each recipient of indirect benefits was injured by, or even exposed to, Agent Orange. However, it is clear that the primary focus of the indirect benefit program in Agent Orange was the class of Vietnam veterans exposed to the chemical.

attached hereto for the Special Master. Therefore, the beneficiaries of any cy pres distribution program must also include communal organizations. The purposes of such indirect distributions would include:

* Maintenance of community property and organizations.
* Support of community institutions, including of an educational or religious nature.

Because communal claims are so significant, and because such indirect funding would also benefit individuals within these communities who are also class members, a specified portion of the cy pres fund should be set aside for community applicants. The World Council recommends that this portion be initially set at one-fourth (25%) of the cy pres subfund.

C. Administrative Issues

The fund for indirect benefits would work similar to a foundation, in that it would make grants for the purposes outlined in its charter. The fund would be administered by a court-appointed committee, representative of the various elements of the class who should be its beneficiaries. A sunset provision should be incorporated to insure that the settlement benefits flow to the class within a reasonable period of time.

1. The Fund Should Be A Grantor Not a Service Provider.

The fund would function similar to a granting agency. By this, we envision an open procedure whereby existing entities may apply to the fund for allocations to accomplish specific tasks or to support certain existing or proposed activities. Examples individual-directed projects may include funding of educational scholarships for heirs of Holocaust victims, meals on wheels programs to benefit home-bound Holocaust survivors, or funding of assisted living arrangements

for Holocaust survivors or their heirs. Examples of communal-directed projects may include the maintenance of cemeteries in Europe where class members are buried, or support of institutions in which class members or their heirs participate.

While these are simply illustrations, the important point is that the fund should not develop its own infrastructure as a service provider itself. This would result in enormous administrative expenses and would duplicate existing agencies. Similarly, the fund should not be in the business of entertaining applications from individuals. This, again, would impose a significant administrative burden on the fund to evaluate individual cases and make judgments regarding what is appropriate for individuals in widely varying circumstances. This is more properly the role of existing social welfare organizations who are experienced in these analyses.

2. The Fund Should be Under Court Supervision , With Recommendations Funding Being Presented To a Court-Appointed Governing Body.

Agent Orange directed that the Court remain the ultimate authority for the disbursement of any funds, even in the cy pres context. At the same time, however, it authorized the Court to appoint a body to be in charge of the operation of the fund. The governing body should reflect all aspects of the certified settlement class, a majority of whom should be class members. Other members of the governing body could be selected from among counsel, academia or other professions. The fund should have as a consultant an individual with experience in the consideration and review of grant applications to advise the governing board regarding grant procedures and applications.

Subject to court approval, the governing body would invite funding proposals within set time periods. It would then consider the proposals and file recommendations with the Court as to

the projects and amounts to be funded. The Court would be the ultimate decision-maker, as Agent Orange requires.

An important element of the funding process is to insure that the allocated funds are properly spent. Therefore, the governing board should provide a means to audit or monitor the grants approved by the Court.

3. The Fund Should Complete Its Work Within A Reasonable Period Of Time.

There are two models for a granting agency. One has an indefinite existence and therefore expends only the income earned from investing the principal amount of funds. A second is a time-limited model where all the funds, including principal and interest are expended within a specified period of time. We support the latter model for several reasons. First, complete expenditure within a reasonable period of time would act to insure that as much benefit as possible is conferred on the actual class members. Second, this fund is being created in the context of litigation. Since ongoing court supervision is required, it would be inappropriate to make the fund into an open ended, permanent institution. Finally, expenditure of the corpus would maximize the benefits received.

We believe a five (5) year sunset provision should be built into the fund structure. This time period concentrates benefits in the near future and allows potential grantees the opportunity to develop carefully considered projects and to build on initial successes. A shorter period would further increase immediate benefits to the class but might result in favoritism to existing grantees or compel rash expenditures.

The governing body and the Court should be under no compulsion to grant at any level. At the time the fund terminates, any unspent funds would be subject to further court order and

could perhaps be used for supplemental individual payments.

IV. THE DEPOSITED ASSETS SUBFUND

We have recommended that 7% of the settlement, or $ 87.5 million,[5] be set aside as the maximum amount to be paid to deposited asset claimants. The purpose of this subfund is to provide a means of compensation for those class members whose accounts are not uncovered through the ICEP (Volcker Committee) process and for those who believe the ICEP process has resulted in an unfair and inaccurate determination of the amount they should receive.

These are not hypothetical situations, as the following two examples illustrate. Class member Milan Arent was born in former Czechoslovakia in the early 1930s. His father, Richard, was a wealthy businessman. As the Nazi threat drew near, the elder Mr. Arent developed a "chain-link" network to remove significant amounts of money and valuable assets to Switzerland. Various people, including employees, friends and Milan Arent, moved small packages filled with money or valuables from one place to another until it reached a Swiss bank where it was deposited in a secret numbered account. Milan Arent was told the number of that account by his father on his deathbed, but remembers only four of the digits. To date, the Swiss have not been able to locate the account.

Max Sperber is the cousin of Manes Sperber, whose account was identified in the October 1997 listing published by the Swiss Bankers' Association. Through the ICEP process,

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[5]Because of the inclusion of certain ICEP distributions within the settlement amount, the funds available for various purposes can only be expressed accurately on a percentage basis. As the qualified ICEP distributions increase, the amount available for allocation under a distribution plan will decrease. The numbers used in this proposal assume no qualifying ICEP distributions.

the account documentation has been disclosed to Mr. Sperber. It purports to demonstrate that the account totaled less than 50 Swiss francs. Given the hazards involved for Jews to get money out of Germany and the simple expense of traveling to Switzerland, Mr. Sperber believes that this amount greatly underestimates the true amount at which this account should be valued.

The Deposited Assets Subfund would provide a forum for those such as Mr. Arent and Mr. Sperber to make their claims. We envision the process to be as follows:

1. The Distribution Plan would advise all class members that this Subfund was created and that applications must be submitted by a date certain.

2. The applications would be reviewed by plaintiffs' counsel or their designees. Additional information could be sought by the reviewer or submitted by the claimant.

3. If deemed to be credible, the claim would be approved. Rejected claims would be disallowed.

4. Approved claims would be valued at categorical amounts. During the course of the litigation, Plaintiffs retained experts to analyze the potential worth of deposited assets claims. Based on historical information, these experts opined that due to the legal difficulties involved in depositing assets in Switzerland, particularly for Jews, and the difficulties in traveling there, a certain minimal amount must logically be assumed for Swiss accounts opened by class members. That amount, in 1939 terms is $3,000, which translates into approximately $30,000 today. Business or commercial accounts should be valued at a higher amount. We would set that amount at $60,000.

5. Unless valuation documentation is provided, the approved claims should be initially valued at $30,000 for individual claims and $60,000 for commercial accounts (less any amounts

paid through the ICEP process). If the funds within the Deposited Assets Subfund are sufficient, these amounts should be distributed. If this Subfund is oversubscribed, the payment amounts should be reduced proportionately. If the Subfund is undersubscribed, any surplus should flow into the Looted Assets Subfund.

V. THE SLAVE LABOR SUBFUND

We have recommended that 5% of the settlement, or $62.5 million, be set aside for this claim. The primary reason for this low apportionment is the weakness of the underlying legal claim. Counsel's opinion regarding the legal strength or weakness of a claim is a valid factor to be considered in the design of a distribution plan.

Although the Class definition references the slave labor employer having transacted business with the Swiss banks, class members would not be able to establish this fact. Given the extent of the Swiss Banks' wartime transactions with the German government and German companies, it should be assumed that all slave labor employers transacted business with the Defendants.

Involuntary labor of one form or another was nearly universal among inmates of concentration camps. In many cases, the individual did not know the name of the employer, which could have been any one of a number of governmental or private entities. Consequently, as long as the class member affirms that he or she performed slave labor and identifies a time and location that is historically valid, the claim should be deemed valid.

Slave labor claims should not be valued. The nature of the claim itself and the administrative cost and difficulty in drawing distinctions based on duration, location or condition

of labor mandate that these claims be treated equally. Thus, the distribution from this subfund should be derived by dividing the total number of valid slave labor claims into the available subfund.

VI. THE REFUGEE SUBFUND

We have recommended that 1% of the settlement, or $12.5 million, be allocated to the Refugee Subfund. The claims at issue are of two varieties: class members denied entry into Switzerland and class members granted entry but mistreated while in Switzerland. These claims were not part of the original or amended complaints. Since the settlement was reached, we have been contacted by at least one person who fits into this category.

The reasons for the low apportionment to this subfund are numerous: the conduct in issue does not pertain to the Defendants; the claim was not included in the complaints; the legal basis for such a claim even against a third party is uncertain to say the least; and the number of affected individuals is unknown. However, since the claims are being released, some distribution is appropriate.

A distinction can be made between the two types of claims subsumed in this category. People allowed into Switzerland at least escaped the concentration camps and likely death, no matter how harsh their treatment once they arrived into Switzerland. Those denied entry into Switzerland were left exposed to the full brunt of Nazi terror. The latter claims should therefore be valued higher than the former.

These claims cannot be valued individually in an objective and cost-effective manner. Therefore, they should be treated categorically. The categorical values should be relatively low

for the reasons discussed above. We recommend that class members denied entry into Switzerland be allocated no more than $1,000 each while those admitted into Switzerland but mistreated be allocated no more than $500 each. If the cumulated claims exceed the amount within the subfund, they should be reduced proportionately. If the cumulated claims do not reach the full amount allocated to the subfund any excess should overflow into the Looted Assets Subfund.

VII. THE LOOTED ASSETS SUBFUND

We have recommended that 54% of the settlement amount, or $675 million, plus any unspent funds in the other subfunds, be allocated to pay claims for looted assets. We derived the 54% number as a remainder after allocating what we believed to be fair percentages to the subfunds discussed above.

The looted asset claims were clearly the most significant claims, from both a legal and factual perspective, in the litigation. They include the most egregious aspect of Defendants' conduct, the knowing trafficking in precious metals stolen by the Nazis, including the infamous "Melmer" gold, which was composed of resmelted gold from the dental work, eyeglasses, and wedding rings of class members killed in the Holocaust. The facts regarding Defendants' trafficking in Melmer gold has been established by Defendants' own historical review.

Looting of Jews and Jewish institutions was routinely the first step undertaken by the Nazis and their allies when they took control of an area. It can be expected that every class member will have a claim for looted assets. Although the class definition requires a link between the looted assets and the Swiss banks, we cannot expect class members to have evidence of this

link. Rather, the chain of custody is provided by historical sources which detail the extent of the transactions between various German governmental entities and the Swiss banks. From this, it is fair to infer that every looted asset qualifies as one falling within the class definition.[6]

By and large, class members' ability to value their looted asset claims will be anecdotal and undocumented. Valuing these claims would be administratively time consuming and expensive. Other class members, however, may have a higher quality of information regarding their looted assets. For example, in the post-War period, Germany established a limited reparations program aimed specifically at certain categories of looted assets. One such category, known in German as "Schmuck- und Edelmetallgegenstanden" (gold and precious metals), required claimants to specify categories of gold, silver, jewelry and other items that were looted. After review by the appropriate German agency, minimal amounts were paid on such claims. An example of such a claim is attached hereto. In addition, certain class members may have retained detailed records or contemporaneous accounts of assets that were looted. An example of such an account is attached hereto.

As noted above, there are three categories of class members who may file looted asset claims: individuals, commercial entities, and communities/organizations. Because individual valuation of looted assets claims is impractical from the standpoint of efficiency, and cost effectiveness and objectivity, such claims should be valued categorically. We propose the

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[6]To be sure, individual Germans kept some assets looted from Jews. However, there is no way to isolate which class members were affected by individual looting as opposed to institutional looting, and no way to determine which institutionally looted property was laundered through Swiss banks as opposed to some other means. The only rational and cost-effective approach, therefore, is to assume that all looted assets were the subject of a transaction with a Swiss Bank.

following procedures.

1. Class members would be invited to submit claim forms for looted asset claims. Those who have already submitted Initial Questionnaires would be advised that such questionnaires would be treated as claim forms.

2. Plaintiffs' counsel or their agents would evaluate the claim forms and assign them into one of the following categories:

a. Standard individual. These would include all undocumented claims and documented[7] claims which are not of a high value.

b. High individual. These would include all documented claims of a distinctly higher value.

c. Standard commercial: These would include all undocumented commercial claims or those documented commercial claims which do not appear to rise to a high value.

d. High commercial: These would include all documented claims of a distinctly higher value.

e. Standard community: These would include all community claims which are either undocumented or documented which do not appear to rise to a high value.

f. High community: These would include all documented claims of a distinctly higher value.

3. Categorized claims would be assigned values as follows:

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[7]In this context, "documented" refers either to claims officially submitted to a governmental or nongovernmental claims entity or supported in a convincing and credible manner.

a. Low individual claims – 1;

b. High individual, low commercial and low community claims – 2;

c. High commercial and high community claims – 4.

4. The total number of "points" would be divided into the funds available for distribution from the initial subfund allocation, to arrive at the distribution amounts.

5. A supplemental distribution would be made in the same manner from the overflow funds, if any, derived from undistributed amounts in any of the other subfunds.

VIII. THE INTEGRITY OF THE DISTRIBUTION MUST BE MONITORED

There will be a great number of claimants. Already, it has been reported that over 400,000 Initial Questionnaires have been returned. Since most claims here will be undocumented, the opportunity for fraudulent claims is something that cannot be ignored. The Initial Questionnaire, developed in consultation with Dr. Michael Birenbaum of the Shoah Foundation, and others, sought information to guard against such fraudulent claims. Specifically, Dr. Birenbaum suggested that asking information regarding dates and places would be the best way to uncover false claims. Of course, for such a system to work, a trained individual would have to review each and every claim form. While this is one option which could be pursued, the volume of claim forms and the multiplicity of languages may make such a task uneconomical. This should be explored further.

If the review of each form is cost prohibitive, an alternative would be to employ a sampling technique. A statistician would determine the number of claims within a particular

category[8] which would need to be reviewed in order to reach a conclusion that all the claims within that category were valid. The appropriate number of claims within each category would then be randomly selected and reviewed by trained personnel for validity and credibility. If a particular sample were deemed valid, no further review of other claim forms in that group would be needed. If a particular sample were not deemed valid, then further review would be required.

Whatever method is selected, class members have an intense interest in assuring that distributions are made only to qualified claimants.

IX. DIRECT HEIRS SHOULD BE INCLUDED IN THE DISTRIBUTIONS

A motivation to maximize payments to living Holocaust survivors and concerns about overly expanding the number of claimants and adjudicating intra-family disputes have led some to suggest that heirs should not benefit from the direct payments to be made. We strongly oppose that concept. The cases were each brought on behalf of living Victims of Nazi Persecution and their heirs. The certified classes also include heirs. It is therefore improper to exclude heirs from the direct distributions.

The passage of time is a further reason not to exclude heirs. It is certainly a tragedy that it took the Swiss Banks over 50 years to finally face up to their conduct during World War II. Many people with valid claims against the Swiss Banks have died during that time. Indeed, many (including several of our clients) have died since the lawsuits were filed or even since the settlement was reached. Property rights, such as those involved in the Deposited Assets and

[8]The most logical categories would be geographic, either in terms of specific countries or, for larger countries, areas within countries.

Looted Assets categories, clearly devise to heirs under common law. It would be grossly unfair to allow the death of a Holocaust victim to extinguish the claims of his or her heirs.

On the other hand, certain limitations on the definition of heirs would seem appropriate. This has been the path chosen in settlements of other World War II-era claims. For example, in the legislative settlement with Japanese-Americans who were confined in detention camps in the United States during World War II, Congress allowed benefits to devise to spouses, children and grandchildren. We endorse this model.

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