

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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4 IN RE: :  
5 HOLOCAUST VICTIM ASSETS : CV-96-4849 (ERK)  
6 : November 29, 1999  
7 : Brooklyn, New York  
8 :  
9 -----X

10 TRANSCRIPT OF CIVIL CAUSE FOR FAIRNESS HEARING  
11 BEFORE THE HONORABLE EDWARD R. KORMAN  
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Plaintiff: ELIZABETH CABRASER, ESQ.  
15 MORRIS RATNER, ESQ.  
16 LISA LEEBOW, ESQ.  
17 IRWIN LEVIN, ESQ.  
18 RICHARD SHEVITZ, ESQ.  
19 WILLIAM MARKS, ESQ.  
20 BARRY FISHER, ESQ.  
21 ROBERT SWIFT, ESQ.  
22 DENIS SHIELDS, ESQ.  
23 STEPHEN WHINSTON, ESQ.  
24 MELVYN WEISS, ESQ.  
25 DEBORAH STRENAM, ESQ.  
STANELY CHESLEY, ESQ.  
PAUL DEMARCO, ESQ.  
JEANNE GEOPPINGER, ESQ.  
MARTIN MENDELSON, ESQ.  
MICHAEL HAUSFELD, ESQ.  
MEL URBACH, ESQ.  
EDWARD FAGAN, ESQ.

24 For the Defendant: ROGER WITTEN, ESQ.  
CAROL CLAYTON, ESQ.  
PETER CALAMARI, ESQ.  
PETER WIDMER, ESQ.

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5  
6 Audio Operator:

LOURDES VAZQUEZ  
7 BENARDETTE McEVOY  
8 DAWN WITKOWSKI  
9 JANET HAMILTON

10 Court Transcriber:

11 ROSALIE LOMBARDI  
12 2348 83rd Street  
13 Brooklyn, New York 11214  
14 (718) 266-1590  
15  
16  
17  
18  
19  
20  
21  
22  
23  
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1 THE CLERK: In Re: Holocaust Victim  
2 Assets, fairness hearing.

3 THE COURT: Good morning, ladies and  
4 gentlemen. When I usually preside over proceedings  
5 in this courtroom, it's full of immigrants who are  
6 about to take the oath of citizenship, and I always  
7 begin by saying that it's an honor and privilege to  
8 be able to preside over such a ceremony.

9 It is equally an honor and privilege for  
10 me to have participated in this case and to be here  
11 this morning to listen to you and to hear your views  
12 about the settlement of what has been known as the  
13 Swiss Bank cases.

14 The settlement is for approximately 1.25  
15 billion dollars, in addition to a 250-million-dollar  
16 humanitarian fund that was created by the Swiss  
17 banks, in addition to hundreds of millions of dollars  
18 that have been expended so far to locate the bank  
19 accounts in Switzerland.

20 We're going to first hear opening  
21 statements from Counsel, and then I will listen to  
22 everyone who has signed up to speak. We'll give  
23 everyone ten minutes. We'll continue for as long as  
24 we can and if need be, we'll continue tomorrow.

25 Mr. Ratner?

1 MR. RATNER: Your Honor, Special Master  
2 Gribetz, class members, may it please the Court. I  
3 am Morris Ratner from Lief, Cabraser, Hemen and  
4 Bernstein (ph), one of settlement class counsel for  
5 plaintiffs in this case.

6 With me are many settlement class counsel,  
7 who have worked on this case for years, who are  
8 ceding their time this morning and not speaking in  
9 opening comments, so that class members, yourselves,  
10 who have traveled from all over the world to be here  
11 today and speak to the Court, can have an opportunity  
12 to be heard.

13 Included among those settlement class  
14 counsel are my partner Elizabeth Cabraser, Mel Weiss  
15 from Milberg, Weiss, Michael Hausfeld from Cohen,  
16 Milstein in Washington, D.C., Steven Winston from  
17 Berger and Monteig (ph) in Philadelphia, Mel Urbach,  
18 attorney Ed Fagan from Fagan and Devino (ph), Irwin  
19 Levin and Richard Schevitz from Cohen and Malad (ph),  
20 Barry Fisher, an attorney from California, and Martin  
21 Mendelsohn from Washington D.C.

22 Other settlement class counsel will be  
23 speaking today, including Burt Neuborne, lead  
24 settlement class counsel, who will actually wait, and  
25 Bob Swift, who is another one of settlement class

1 counsel.

2 This litigation was commenced in 1996. It  
3 was a hard fight. In March of 1999, a 1.25-billion-  
4 dollar settlement agreement was reached and  
5 preliminarily approved by this Court. The Court  
6 approved a worldwide notice program of unprecedented  
7 scope in May of this year. That program commenced in  
8 June.

9 With us here today are the four court-  
10 appointed notice administrators who ran the notice  
11 program, including Jane Menard (ph) from Poorman  
12 Douglas (ph) Corporation, Todd Hilsey (ph) from  
13 Hilsoft (ph), Kathy Concella (ph) from Concella  
14 Communications and Jerry Benjamin from AB Data.

15 We had a five-pronged notice program, in  
16 which we reached millions of class members worldwide.  
17 First we published notice in more than 25 languages,  
18 in publications throughout the world. The notice  
19 described the terms of the settlement agreement and  
20 also contained an initial questionnaire for  
21 interested class members to complete, to provide  
22 information about themselves and their claims.

23 Second, we mailed notice to more than 1.5  
24 million persons, many of whom requested the notice  
25 after reading the published notice in newspapers

1 worldwide. Notice was published and mailed in more  
2 than 48 countries.

3 Third, we ran an earned media campaign.  
4 That is, we attempted to generate free media and get  
5 newspaper stories in local publications and national  
6 publications worldwide. We have counted more than  
7 1,300 such stories since the notice program  
8 commenced.

9 Fourth, we had an internet site, at which  
10 the settlement agreement could be accessed, and which  
11 was visited more than 330,000 times.

12 Fifth, and perhaps most uniquely in this  
13 case, we had a worldwide community outreach program,  
14 in which more than 3,900 organizations worldwide  
15 participated, actively going out to people's homes  
16 and places of worship, to reach the class members  
17 directly where they lived, to tell them about the  
18 proposed settlement, to give them an opportunity to  
19 comment and to give them initial questionnaires to  
20 complete.

21 On October 22, 1999, all persons who had  
22 comments or objections to the settlement were to have  
23 submitted written comments. Initial questionnaires  
24 completed by class members were not due on that date,  
25 but many were received by that date.

1           The Court is familiar with many of these  
2 statistics because of reports that we have filed. I  
3 am presenting this morning updated statistics, since  
4 we continue to receive comments and initial  
5 questionnaires.

6           To date, more than 450,000 initial  
7 questionnaires have been received from class members  
8 worldwide, indicating an interest in the settlement.  
9 And although several or some portion that we have yet  
10 to calculate of those persons are not class members,  
11 but merely people who wish to be class members but  
12 are not in the definition of the settlement classes,  
13 it indicates a widespread, worldwide interest in the  
14 proposed settlement..

15           In contrast, we have received to date only  
16 approximately 200 comments and objections in writing  
17 on the proposed settlement. Roughly half of those  
18 are from persons who are not settlement class  
19 members, not covered by the settlement, but wish that  
20 the settlement classes be expanded to include them.  
21 In addition, approximately 360 persons have asked to  
22 be excluded from the settlement classes. And again,  
23 many of those are not settlement class members. The  
24 statistics speak for themselves; support for the  
25 settlement is widespread.

1 I will now defer to my co-counsel, Bob  
2 Swift, after which we will hear from additional  
3 speakers, who will be using plaintiff's counsel's  
4 time slot.

5 MR. SWIFT: Your Honor, I apologize for  
6 having my back to you, and good morning, guests.

7 Messers Fagan, Witty (ph), Marks and  
8 myself together represent over 50,000 survivors and  
9 heirs, most of whom are class members in this  
10 litigation. They wholeheartedly support and endorse  
11 this settlement, with the exception of three persons  
12 who are objectors. From the tremendous response and  
13 the return of questionnaires, we see the overwhelming  
14 support for the settlement and the great good that  
15 this settlement can accomplish.

16 Of course, this settlement was not  
17 intended to and cannot be the sole source of  
18 compensation for financial abuses that occurred  
19 during World War II. 1.25 billion dollars is a  
20 substantial amount of money, but it can't approach  
21 the totality of financial harm that was visited  
22 during World War II.

23 Other litigation may provide that  
24 additional compensation for some class members and  
25 mostly non-class members. The Austrian Bank



1 settlement will provide some. More likely, the  
2 negotiations currently ongoing with Germany may  
3 provide fuller compensation for slave-enforced  
4 labors.

5 Had we not settled this case, survivors  
6 and their heirs were in jeopardy of receiving  
7 nothing. The central issue in the litigation was  
8 whether these Swiss banks had aided and abetted  
9 German financial abuses during World War II. As a  
10 quasi-human rights case, it presented many issues of  
11 first impression through our courts. And make no  
12 mistake: the human rights jurisprudence in this  
13 country and the world is still in its incipency.

14 Swiss banking secrecy and Swiss court  
15 aversion to U.S. discovery methods posed enormous  
16 obstacles to obtaining sufficient evidence. The  
17 destruction of documents during the war and the  
18 dislocation and loss of life prevent many survivors  
19 and heirs from coming forward today with very  
20 specific information.

21 This settlement was highly difficult and  
22 at times tortuous. There are widely divergent views  
23 on the quantification of damages and the settlement  
24 amount between the plaintiffs and the defendants.  
25 The settlement terms took 14 months of hard

1 bargaining, but fortunately there was the act of  
2 intervention of the United States, through Stuart  
3 Eisenstadt, then Deputy Secretary of State, the U.S.  
4 Congress, through Senator D'Amato, and finally this  
5 Court.

6           Though adversarial, the defendants and  
7 their counsel are to be commended for their  
8 professionalism and an enlightened approach to  
9 resolving this case.

10           Your Honor, on behalf of my clients and as  
11 a participant in this process, I commend this  
12 settlement to you as fair, reasonable and adequate.

13           MR. RATNER: Your Honor, if I may, the  
14 next speaker will be Stan Chesley, who is one of  
15 settlement class counsel.

16           MR. CHESLEY: May it please the Court,  
17 Counsel, ladies and gentlemen. I am very honored to  
18 be here today. My name is Stanley Chesley of the  
19 firm of Wade, Schneider, Belos and Chesley (ph), in  
20 Cincinnati, Ohio. Members of my firm who are with me  
21 today and who have been working on this are Paul  
22 Demarco and Jeanne Geoppinger.

23           We have been honored to represent the  
24 World Jewish Restitution Organization, which is an  
25 umbrella organization consisting of the following

1 organizations, who are supportive of this settlement.

2 The WJRO was founded in 1992 and the  
3 founding constituent organizations include the  
4 Conference on Jewish Material Claims Against Germany,  
5 which is known as the Claims Conference, and the  
6 Executive Director is here, Gideon Taylor, who you  
7 will hear from.

8 Jewish Agency for Israel. Most of you are  
9 familiar with the Jewish Agency, which is the quasi-  
10 government agency that is involved in the total well-  
11 being, safety, education and welfare and human  
12 services for the citizens of the State of Israel.

13 The World Zionist Organization, the World  
14 Jewish Congress and the Secretary General of the  
15 World Jewish Congress, Israel Singer, is here today  
16 and you will hear from him, and he is also the  
17 Executive Director of the WJRO.

18 The American Jewish Joint Distribution  
19 Committee. Many of you here in the audience know of  
20 them as The Joint. There isn't anybody in the Jewish  
21 world who has not heard of The Joint.

22 Bene B'rith (ph) International, American  
23 Gathering of Jewish Holocaust Survivors, and we are  
24 honored that Roman Kent, Chairman of the Board of the  
25 American Gathering of Jewish Holocaust Survivors is

1 here today and will speak to you for a few moments,  
2 in support of the settlement.

3 Center of Organizations of Holocaust  
4 Survivors in Israel, a good Israel organization which  
5 has joined and you will hear. They are a party in  
6 the Israel government and you will hear from Benjamin  
7 Fischhoff, who is the Chairman of the World Haggudeth  
8 (ph) Israel, who will speak to you.

9 Additionally, the European Jewish  
10 communities are part of the WJRO and you will also  
11 hear from Wolf Factor, Chairman of the Board,  
12 Foundation for Benefit of Holocaust victims in  
13 Israel, who is here, who has just come from Israel.

14 World Jewish Restitution Organization,  
15 your Honor, ladies and gentlemen, was founded in  
16 1992, the organizations I've read to you. The  
17 purpose was to centralize and coordinate efforts to  
18 recover Jewish assets of individuals, communities and  
19 organizations who became victims of national  
20 socialist rule and of the Holocaust.

21 It is with a great deal of pleasure, your  
22 Honor, that I am here today in support of this  
23 settlement, and I appreciate, your Honor, the  
24 opportunity to be one of the class counsel. I  
25 compliment everybody that has been involved in this

1 case and I join with Mr. Swift in complimenting the  
2 defendants.

3 In every litigation that I've ever been  
4 in, some almost 40 years, there is very, very strong  
5 adversity and fighting and conflict, and the issue is  
6 to try and resolve. Once a settlement is resolved,  
7 after hard bargaining, then we work together with the  
8 defendants. And I compliment the counsel for the  
9 defendants and the defendants in this endeavor.

10 Your Honor, I submit to you that this  
11 settlement is fair, reasonable and adequate and is a  
12 very, very important step forward in the issue of  
13 reparations. Your Honor, at this time, I would  
14 introduce Gideon Taylor and Israel Singer. Thank  
15 you, your Honor -- and the three persons I mentioned.

16 MR. TAYLOR: Judge Korman, Special Master  
17 Gribetz and members of the class and class counsel.  
18 We just felt it would be important for the record to  
19 mention a few words of the history of the involvement  
20 of the organized Jewish community in the negotiations  
21 leading to the settlement, for the record, for this  
22 Court and for the information and knowledge of class  
23 members.

24 The current round of negotiations  
25 involving the World Jewish Restitution Organization

1 were initiated between the Swiss Bankers Association  
2 and the WJRO, as it's known, in September of 1995.  
3 At the urging of the WJRO, Senator Alfonse D'Amato  
4 called a hearing of the Senate Banking Committee in  
5 April of 1996, following on a report that was  
6 originally released by the Swiss Bankers Association  
7 regarding dormant accounts.

8 Over the period of these discussions and  
9 negotiations, the WJRO released numerous historical  
10 documents to the press and for the information of the  
11 public. Letters of support and encouragement were  
12 received from the President of the United States and  
13 from many members of the administration and Congress  
14 of the United States.

15 Following on the Senate hearings, on May  
16 2nd, 1996, the Swiss Bankers Association and the WJRO  
17 established what became known as the Volker  
18 Commission, which was charged with the auditing of  
19 dormant Swiss bank accounts.

20 Thereafter, in November of 1996, at the  
21 request of WJRO, the Chairman of the House Banking  
22 Committee, Congressman James Leech (ph), held  
23 additional hearings on the question of Jewish assets  
24 deposited in Swiss banks. Subsequent discussions  
25 with the Swiss side led, in February of 1997, to the

1 establishment of the Swiss humanitarian fund for  
2 victims of the Holocaust.

3 In early 1997, representatives of WJRO met  
4 once again with Alan Hevessey (ph), Controller of the  
5 City of New York, who subsequently established an ad  
6 hoc committee, composed of approximately 800 public  
7 finance officers from across the country, to assess  
8 and to monitor progress by the Swiss banks on these  
9 issues.

10 In addition, the report of the task force  
11 of the United States government shared by current  
12 Deputy Secretary of the Treasury Stuart Eisenstadt,  
13 in May, 1997, at the international conference on Nazi  
14 gold held in London in December of that year, with  
15 the involvement of WJRO, highlighted the issue of  
16 gold from Nazi victims that was transferred through  
17 Switzerland.

18 Finally, in the lead-up to the conclusion  
19 of the discussions of this settlement, at the request  
20 of the President of WJRO, the Hevessey Committee  
21 agreed to place a moratorium on sanctions that had  
22 been planned at that time. This led to a series of  
23 negotiations, first chaired by Deputy Secretary  
24 Stuart Eisenstadt and then under the auspices of  
25 Judge Korman in this Court.

1           This finally led to the settlement that is  
2 before the Court, and following the settlement, the  
3 WJRO sought and received the endorsement for the  
4 settlement of the many Jewish organizations who  
5 subsequently endorsed the settlement and whose  
6 signatures are appended to the settlement agreement.  
7 Thank you.

8           MR. CHESLEY: Your Honor, I think I  
9 mentioned that Israel Singer is the Executive  
10 Director of the Claims Conference. If I omitted  
11 that, I meant to.

12           MR. SINGER: May it please the Court,  
13 ladies and gentlemen, your Honor, my name is Israel  
14 Singer. Thank you very much pro bono Counsel  
15 Chesley.

16           Colleagues, Holocaust survivors, friends,  
17 I speak here today in support of the settlement, with  
18 a heavy heart and with concern. There is no  
19 settlement which is sufficient. That has already  
20 been said. And the settlement which is not  
21 sufficient morally is not one which we are dealing  
22 with at this moment. We're dealing with the monetary  
23 aspects, the material aspects of the settlement that  
24 we are dealing with here today.

25           I'd like to thank particularly Judge



1 Korman and the Master Mr. Gribetz for making it  
2 possible today to deal with a specific aspect of a  
3 very, very difficult case.

4 We asked from the very outset that two  
5 issues be resolved here; moral and material  
6 restitution. We cannot resolve the issue of moral  
7 restitution in a courtroom. The issue of moral  
8 restitution cannot be fair because it's too late;  
9 it's 55 years late, and it's important to note that.

10 Every one of the people who worked on this  
11 case, Professor Neuborne, Mel Weiss, at every  
12 juncture made this a clear point. This was a moral  
13 case, not a material case. 1.25 billion dollars is a  
14 lot of money, there's no question about it. But the  
15 people who deserve to get it are not sitting in this  
16 courtroom, in very, very many cases, and that is why  
17 I rise with concern before we close this portion of  
18 the hearing, to say that moral restitution is not  
19 being concluded in this courtroom.

20 Where is it being concluded and why do I  
21 rise at this point to mention these points? I think  
22 that 55 years ago, a judicial hearing would have been  
23 a forum through which we could have raised some of  
24 the issues that we're dealing with, but there would  
25 have been other areas as well. Those areas were open

1 to us today, political avenues, judicial avenues, as  
2 well as the areas of public action.

3 We've changed the world, because some see  
4 the world as it is or as it was and they accept it,  
5 and others don't; they want to see it as it might be.  
6 Frankly, there is a group of persons sitting around  
7 this table, sitting in this room that didn't accept  
8 the world as it was.

9 Your Honor, we thank you for joining us.  
10 We thank you for making this possible. It's not just  
11 1.25 billion dollars that we're getting in this  
12 settlement for the people. It's not just 55,000  
13 accounts in Swiss banks that are being returned.  
14 It's not just, your Honor, that you participated in  
15 helping us get that back, but it's the neutrality of  
16 so many people in this country and in other  
17 countries, not merely in Switzerland, that didn't  
18 give us the opportunity to deal with this question 55  
19 years ago.

20 Switzerland is not in the dock in this  
21 case; it's the world. And I'm sorry to abuse this  
22 courtroom for another minute or so to take the  
23 opportunity to tell you that this is a case that has  
24 a moral basis, not only a material basis. We haven't  
25 gathered here today to discuss only whether the

1 amount of money is enough.

2           It's a very large amount of money. We  
3 can't judge whether it's enough, because the persons  
4 who can judge are dead. The persons who can judge  
5 aren't here. They placed their money in Swiss banks  
6 to try and protect themselves from ogres far worse  
7 than neutrality. They're not here today. They would  
8 tell us.

9           I would like to suggest to you that the  
10 other cases which we are trying to settle or trying  
11 to find another resolution to, in other courtrooms,  
12 in other bars of public opinion, before other  
13 political and other judicial places like this one,  
14 are as important or more important for the moral  
15 record.

16           Let me raise one point and with that I'll  
17 close. I ask you to consider one fact and one fact  
18 above all. As a result of this case, 5.4 million  
19 names of persons who died in the Holocaust came to  
20 light, names of the people, the places which they  
21 were killed in. This has changed history, because  
22 people can no longer claim that people didn't die.  
23 Holocaust revisionists can no longer claim that  
24 people didn't pass from the scene.

25           This historic point changes the way the

1 picture of history plays out and the way the future  
2 will play itself out. We did that as a result of the  
3 efforts of this trial, which turned out to be a  
4 settlement, because we found those names as a result  
5 of the fact that we wanted to know which people had  
6 accounts. We changed history through the Volker  
7 Commission. We changed history through the Bergier  
8 (ph) Commission. All of those were aspects of this  
9 case.

10 Yes, as a result of that, this case can be  
11 judged as having resulted in a fair resolution,  
12 because all those pieces together have changed the  
13 way the history of that period can be looked at.  
14 People died, people were killed, people were  
15 murdered. People had money, people placed money in  
16 those accounts. 55,000 accounts were found. Those  
17 people had heirs. Those heirs may receive that money  
18 back. This is the way history is adjudicated, not  
19 the way justice alone is adjudicated. And that's the  
20 way history in the future should be treated.

21 Thank you, your Honor, for your part.

22 Thank you, Mr. Gribetz, for your part.

23 Thank you, Counsels, for having worked  
24 together with us.

25 If this situation would have applied 55

1 years ago and this courtroom would have been  
2 available to us, the situation might have been  
3 different. Thank you.

4 MR. CHESLEY: Your Honor, at this time I  
5 have Roman Kent, who is Chairman of the Board of the  
6 American Gathering of Jewish Holocaust Survivors. He  
7 will address the Court and for the record.

8 Also, I might mention that the motto,  
9 which I think is so significant, of the American  
10 Gathering of Jewish Holocaust Survivors is "together  
11 from Holocaust to new life."

12 MR. KENT: Good morning, your Honor. It  
13 is difficult for me, number one, to speak in the  
14 courthouse. And then, number two, your Honor, it's  
15 very difficult for me to speak to you, not facing  
16 you, but I will try.

17 Just for the record, I'd like to state  
18 that I have received some special degrees in the  
19 large ghetto and Auschwitz and a few other  
20 concentration camps.

21 It is very important, not just for this  
22 Court alone, but for the history to show that even  
23 after 50 years, some justice, some morality can be  
24 restored to mankind. For me, as a Holocaust  
25 survivor, what we are doing here, it is not a

1 question of money.

2           It's a question that history had proven  
3 right now that Switzerland will no longer be known as  
4 a country of cuckoo clocks, skiing and neutrality.  
5 It finally came to light what was going on during the  
6 war, and it came to light that with proper  
7 investigation, certain facts can be uncovered, even  
8 50 or 60 years ago.

9           It is a fairness hearing. To tell your  
10 Honor that this is a fair settlement, I would be not  
11 telling the truth. But on the other hand, as Israel  
12 Singer before said, the people that should get the  
13 settlement, most of them are not alive.

14           We also have to understand, and I realize  
15 it, that we are not living in a perfect world. And  
16 therefore, in this imperfect world, I would say that  
17 this particular settlement, under the circumstances,  
18 is fair, because it gives the survivors who are old  
19 the ability to better their life in the last years of  
20 their existence.

21           I would, however, and I want to strongly  
22 emphasize that maybe it's one man's opinion, but I  
23 don't think so. I would like to say that this ,  
24 particular settlement would never be reached had it  
25 not been the work of Edgar Braufman (ph), Stu

1 Eisenstadt, Senator D'Amato, Alan Hevessey and his  
2 creation of the membership controllers society that  
3 said point blank that they will not do business here  
4 in the United States, the bank, if a proper  
5 settlement will not be arranged. So I must give  
6 credit where the credit is due.

7 I also would like to say to you, your  
8 Honor, that under no circumstances this settlement  
9 should give what I call a one-way street to heaven to  
10 the insurance companies. The insurance companies are  
11 subject to the International Committee of Insurances,  
12 which is chaired by former Secretary of State Stanley  
13 Egelberger (ph), and they should not get a blank,  
14 what you can call maybe legal closure, whatever it  
15 is, because they should be subject to the  
16 international insurance claims.

17 I would also be remiss if I would not say  
18 -- and I heard here statistics about 550 responses  
19 and it reminds me of an old story by Mark Twain, who  
20 said that there are three kinds of lies. There is a  
21 lie, a big lie and then there is statistics.

22 I know that from hundreds of people that I  
23 spoke to, they did not reply to the questionnaires,  
24 because they were so complicated, so many pages, that  
25 they didn't want to bother with it. So the statistic

1 here which I heard --

2 So finally I would like to say, I would  
3 like to really thank Stanley Chesley, who just told  
4 me we have to move along, but he deserves all the  
5 credit. He and his staff did very well.

6 Finally, I also must say that if the  
7 settlement is to be a settlement, and I hear it from  
8 many survivors, I have to say that there are many  
9 lawyers who were never exposed to life in  
10 concentration camps, but they write briefs about it.  
11 They are very eager to represent us and to make  
12 millions of dollars in the process.

13 This cannot happen, this must not happen.  
14 It must not happen that the lawyers are ashamed or  
15 unwilling or do not want even to show the timetable  
16 to the survivors or to the public, so that it could  
17 be transparent what they did, how they did. This  
18 must not happen.

19 I hope that this Court will see to it and  
20 I appreciate your time, your Honor, which you gave to  
21 it. I apologize if I spoke too long. Thank you.

22 MR. CHESLEY: Thank you very much, Mr.  
23 Kent.

24 At this time, Benjamin Fischhoff, Chairman  
25 of the World Haguda (ph) of Israel.



1 MR. FISCHOFF: My name is Benjamin  
2 Fischoff. I'm also a survivor, from the same town as  
3 Mr. Kent. Unfortunately, I lost my entire family,  
4 but I was one of the fortunate ones, that I survived  
5 by running away to Shanghai. I spent five years  
6 during the war.

7 Your Honor, I am a businessman, but I  
8 represent the World Haggadas Israel, which is the  
9 largest orthodox community in the world, here in the  
10 United States as well as Israel. I am a member of  
11 the WJRO and from the beginning I've been active,  
12 trying to help to come to some sort of settlement on  
13 this very painful subject.

14 I would like to thank the attorneys who  
15 worked so hard on this particular settlement. I  
16 confirm and I believe we have no other choice but to  
17 accept the fair settlement as swiftly as possible,  
18 because while we are here discussing the subject,  
19 unfortunately, since last year, we have lost 30,000 -  
20 40,000 of the survivors. The longer it will take,  
21 there will be no-one, unfortunately, to accept it.

22 Your Honor, in addition to the settlement,  
23 money settlement, we believe, the orthodox community  
24 believes that a large part of it is going to go and  
25 we hope it will go towards Jewish education, to

1 rebuild all these institutions and the communities  
2 that we have lost during the war, in addition to the  
3 six million people.

4 Your Honor, we urge you to please accept  
5 the settlement as swiftly as possible. Thank you  
6 very much.

7 MR. CHESLEY: Thank you very much, Mr.  
8 Fischhoff.

9 At this time, your Honor, Mr. Wolf Factor  
10 from Israel, Chairman of the Board, Foundation for  
11 Benefit of Holocaust Victims in Israel.

12 MR. FACTOR: Your Honor, ladies and  
13 gentlemen, my name is Wolf Factor. I am a survivor  
14 from the concentration camps Auschwitz, Buchenwald  
15 and Grossrosen (ph).

16 Beside my name, there is another mark, B-  
17 7594, here on my wrist, which was embossed on me by  
18 the Nazi Germans. Today I am the Chairman of a  
19 foundation for Holocaust survivors and I am talking  
20 in their name and using my experience concerning the  
21 needs and how urgent those needs should be provided.

22 Considering the present situation of the  
23 Holocaust survivors, we are all for this agreement,  
24 when we are not talking about the fairness of it. If  
25 things might be postponed, all the help will be

1 brought to our graveyards.

2 Thousands of people in their wheelchairs  
3 are waiting. They are absolutely helpless. And if  
4 something should be done so time is life, it should  
5 be done here and now. Thank you.

6 MR. RATNER: Your Honor, we have one last  
7 speaker who will be using time for the plaintiff's  
8 counsel, who have moved for final approval of this  
9 proposed settlement. At the last minute, on  
10 Wednesday, the United States Department of Justice  
11 filed papers in support of the proposed settlement.  
12 Mr. James Gilligan will make a short presentation and  
13 then we would be happy to open the floor.

14 MR. GILLIGAN: Ladies and gentlemen,  
15 Counsel and may it please the Court, my name is James  
16 Gilligan. I'm an attorney with the Department of  
17 Justice, today representing the United States. I've  
18 been asked to appear today to express the United  
19 States's unqualified support for the parties' class  
20 action settlement.

21 (PAUSE IN PROCEEDINGS)

22 MR. GILLIGAN: Ladies and gentlemen, the  
23 United States endorses the parties' proposed  
24 settlement as fair, reasonable and adequate and  
25 unquestionably in the public interest.

1           Some two years ago, when the parties to  
2 this case asked Secretary Eisenstadt to facilitate  
3 their settlement efforts, he assumed that role with  
4 enthusiasm. For nearly four years, the U.S.  
5 government has spearheaded an international  
6 cooperative effort among world governments, foreign  
7 companies and non-governmental organizations, to  
8 document the Nazi confiscation of gold and other  
9 individual and communal property from persecuted  
10 religious and racial groups.

11           The United States has also acted to  
12 provide restitution for the targets of Nazi  
13 persecution who were deprived of their family assets,  
14 compelled to toil as slave-enforced laborers and  
15 otherwise victimized by the Nazi regime and its  
16 collaborators.

17           This U.S. government policy arises from  
18 the conviction that the international community can  
19 no longer fail to acknowledge or to act on its legal,  
20 moral and humanitarian obligations to the victims of  
21 the Holocaust whose family assets and communal  
22 properties were never returned or accounted for, and  
23 who otherwise have been denied a measure of justice  
24 for their suffering for more than 50 years.

25           The government's efforts also reflect the

1 belief that matters of Holocaust-era restitution,  
2 including matters of litigation, are best resolved  
3 through dialogue, negotiation and cooperation, rather  
4 than prolonging conflict and controversy, so that the  
5 survivors of Nazi atrocities might enjoy the fruits  
6 of any recovery in their remaining lifetimes.

7 The United States also has a foreign  
8 policy interest in the cooperative resolution of  
9 these matters, as many of the nations involved today  
10 are close friends and allies of our country.

11 In pursuit of these goals, therefore, the  
12 United States government has documented the role of  
13 wartime neutral countries in disposing of looted Nazi  
14 assets, has urged nations of central and eastern  
15 Europe to return Jewish and other communal property  
16 to its rightful owners and organized international  
17 conferences that have helped lead to the  
18 establishment of historical commissions in 17  
19 countries, to study their roles in connection with  
20 looted Nazi property, as well as the return of that  
21 property.

22 In cooperation with foreign governments,  
23 companies and non-governmental organizations, the  
24 United States has also helped form the international  
25 commission on Holocaust-era insurance claims and

1 arranged for the transfer of assets held by the  
2 Tripartite Gold Commission to the Nazi Persecutee  
3 Relief Fund.

4 In addition, the U.S. government has been  
5 deeply engaged in talks with the German and Israeli  
6 governments, as well as the governments of five  
7 central European nations, together with leading  
8 German companies, world Jewish organizations and  
9 class action attorneys, to resolve lawsuits seeking  
10 restitution for slave-enforced labor during the Nazi  
11 era.

12 All of these efforts and accomplishments  
13 have been the result of dialogue and cooperation that  
14 the U.S. government believes will bring a meaningful  
15 degree of justice more quickly and to more victims of  
16 Nazi atrocities than would prolonging litigation,  
17 conflict and controversy.

18 And so it was, when the parties to these  
19 Swiss bank cases sought assistance with their  
20 settlement talks, that the government welcomed the  
21 parties' request as a further opportunity to promote  
22 the goal of negotiated resolution to which the  
23 government has dedicated itself for the past four  
24 years.

25 To that end, Secretary Eisenstadt brought

1 the parties together for eight months of settlement  
2 discussions, discussions that established a framework  
3 for the resolution of this dispute. With the  
4 critical assistance of this Court, absent which no  
5 agreement might have been possible, that initial  
6 framework evolved into the proposed settlement now  
7 before the Court.

8 The United States supports approval of the  
9 settlement the parties have reached. It is fair and  
10 just and promotes the public interest, as expressed  
11 in the policy that the United States government has  
12 pursued for the past four years. Because the parties  
13 reached for common ground rather than prolong their  
14 difference, the elderly victims of the Holocaust will  
15 receive the benefits of this settlement in their  
16 lifetime and much more quickly than would have been  
17 possible had the litigation continued.

18 But of equal importance, the United States  
19 regards this settlement as an excellent example of  
20 how cooperation and the will to fulfil a moral  
21 obligation can lead to voluntary resolution of  
22 disputes over Holocaust-era claims.

23 The government anticipates that the  
24 settlement here, by force of its example, will  
25 promote the U.S. policy of negotiated settlement in

1 other cases and countries where Holocaust victims'  
2 claims for restitution have not yet been resolved.  
3 In particular, the United States is hopeful that this  
4 settlement will add a sense of urgency and  
5 possibility to resolving the pending class action  
6 claims of slave-enforced laborers who can no longer  
7 wait for years for justice to be done.

8 For these reasons, ladies and gentlemen,  
9 and your Honor, the United States respectfully  
10 requests that the Court approve the parties' proposed  
11 class action settlement.

12 MR. RATNER: Thank you, your Honor. We  
13 are done.

14 MR. NEUBORNE: Your Honor, my name is Burt  
15 Neuborne. I am one of the settlement counsel and  
16 counsel for the plaintiffs in this case.

17 I wanted to say just a very, very brief  
18 few words about the extraordinary dedication and  
19 commitment that I have observed in this case on the  
20 part of counsel for the plaintiffs and on the part of  
21 the World Jewish Restitution Organization, working  
22 together to try to achieve the best possible  
23 resolution.

24 Plaintiff's counsel supports this  
25 settlement, not because it's perfect, but because we



1 believe that it is the best that humans could do,  
2 working with institutions of human frailty, 55 years  
3 after the event.

4 The lawyers in this case worked so  
5 intensely for three years to try to bring this about,  
6 and again, not because we think it is the optimum  
7 solution. It is a compromise, but it is a compromise  
8 that we believe is in the best interests of the  
9 plaintiff class, because as you've heard, delay in  
10 these cases is simply unthinkable.

11 With the age of the class and the  
12 difficulty of the legal issues, we believe that a  
13 settlement, a negotiated settlement was the best  
14 possible way to deal with what is after all a  
15 lawsuit, not a moral question. The moral question is  
16 going to be dealt with outside of this courtroom. We  
17 did the best we could, dealing with the legal claims.

18 We're here today to hear from you. We  
19 would like to know from your criticisms your sense of  
20 the appropriateness of the settlement, so that before  
21 the settlement is approved, we can hear the voice of  
22 individuals who will be affected by it.

23 I should say, as a matter of the legal  
24 issues that are before the Court today, there are  
25 four questions: Were there serious legal questions

1 raised by this case?

2 And the answer is, of course. No-one can  
3 look at the complaint, no-one can look at the briefs  
4 and fail to be impressed at the power and legal  
5 significance of plaintiff's claims to be compensated  
6 by Swiss banks for activities that both deprived them  
7 of assets that had been deposited and prolonged  
8 suffering during the war. Plaintiff's legal claims  
9 are unquestionably powerful and unquestionably the  
10 type that should be dealt with in a court.

11 Second, were there serious defenses? The  
12 answer is, of course there were serious defenses;  
13 that's why we settled. The defenses ranged from  
14 legal defenses about whether or not some of the legal  
15 theories could be won and certainly won in a short  
16 period of time, and more importantly, factual  
17 defenses.

18 The difficulty of getting at the facts was  
19 extraordinary. The passage of time, the destruction  
20 of documents, the difficulty with dealing with Swiss  
21 law, making it hard to discover, forced the lawyers  
22 to operate, in a sense, with one hand tied behind our  
23 back in these factual questions. So the factual  
24 defenses to the legal theories forced us to take  
25 seriously the question that we had to settle,

1 especially given the age of the plaintiff class.

2 Third, was there arm's-length and  
3 adversary bargaining? I have bruises on my body that  
4 will demonstrate the arm's-length and adversarial  
5 bargaining that went on in this case. We bargained  
6 for 18 months, as vigorously as I have ever seen  
7 negotiations carried out. Secretary Eisenstadt  
8 assisted us. At the end, it was Judge Korman who  
9 finally found a formula that brought us together.  
10 But it is impossible to suggest that this was not the  
11 result of arm's-length bargaining.

12 The fourth question is, is the settlement  
13 structurally fair? We have attempted to design a  
14 settlement that is a model of structural fairness.  
15 It has four important components that assure  
16 structural fairness.

17 First, anyone who didn't like it could  
18 leave it. It had what is called exit. People could  
19 opt out. Very few did, and that is in some sense a  
20 vote of confidence in the settlement, by the large  
21 numbers of people who elected to participate, to send  
22 in questionnaires and the very, very small number of  
23 people who opted out.

24 Secondly, we provided for a voice, for  
25 participation. Before a dime is dispensed in this

1 case, the community, the beneficiaries of the  
2 settlement will be invited to present their ideas on  
3 distribution to a Special Master who is committed to  
4 attempting to evolve the fairest possible resolution  
5 of the distribution issues. Counsel are committed to  
6 assist in that process, with no preconception as to  
7 who should get what. It will be the fairest  
8 mechanism that we can put together.

9 Finally, loyalty. Counsel are intensely  
10 loyal to the class, with no self-interest, no  
11 contradictions. This is not the place to talk about  
12 fees. There will be a separate fee hearing, but you  
13 should know that the bulk of counsel in this case  
14 have chosen to accept no fees and are working without  
15 fee, in an effort to ensure that the class obtains  
16 the best possible result.

17 And finally, fair procedures. We could  
18 not have developed fairer procedures than we have  
19 worked in these cases. So on that basis, on the  
20 basis of their being a genuine lawsuit that had to be  
21 settled, settled quickly by arm's-length bargaining  
22 and has been the subject of a fair and open process,  
23 I urge the Court to accept the settlement as fair and  
24 reasonable.

25 I make one final observation, because I

1 think it's an observation that we shouldn't lose  
2 sight of. The Nazi evil was one of the great human  
3 catastrophes of history, and its effect on the Jewish  
4 people is one of the stories of dread that will be  
5 repeated for as long as there is history. But it was  
6 a universal evil that harmed others than Jews. And  
7 class counsel, in order to recognize that, insisted  
8 that Jehova's Witnesses, the disabled, gays and the  
9 Romany will share in the settlement as well.

10 And as we discuss the fairness of the  
11 settlement for the rest of this day, I hope that what  
12 we receive are constructive criticisms, because if  
13 you have ways to make it better, we want to hear it.  
14 If you have suggestions that we should have  
15 considered, we would like to hear it. But this is  
16 now your forum to tell us what you think of the  
17 settlement.

18 Thank you, your Honor.

19 MR. WITTEN: Good morning, your Honor.

20 May it please the Court, fellow counsel, ladies and  
21 gentlemen, my name is Roger Witten. I'm with the law  
22 firm of Wilmer, Cutler and Pickering in Washington  
23 D.C. and I represent the defendant Swiss banks in  
24 this case and speak in favor of approval of this  
25 settlement.

1           Your Honor, I have three main points, but  
2 before I turn to them, I want to thank my colleagues  
3 Mr. Swift and Mr. Chesley for their kind comments  
4 about the defense of this case, and I wish to say to  
5 them and to all of their colleagues, you have  
6 presented a very able, skillful and vigorous  
7 representation of the class members.

8           And I want to say to the class members in  
9 this audience that the combination of these lawyers  
10 and the WJRO and its lawyers have given you a set of  
11 champions that could not be matched in any other  
12 courtroom, in any other case.

13           My three main points, your Honor, are as  
14 follows. My first point is that many able and  
15 concerned people have stood a careful watch over this  
16 case and over the settlement of this case. They have  
17 unanimously agreed that this settlement is fair and  
18 should bring about what the settlement document calls  
19 for, complete closure and an end to confrontation  
20 with respect to the issues dealt with in the  
21 settlement.

22           I want to list those whom I have said have  
23 stood a careful watch over these proceedings. First  
24 of course is the Honorable Court. Judge Korman  
25 participated actively in the settlement negotiations

1 and was tremendously helpful and skillful in helping  
2 the parties overcome their differences.

3           Second, as you have heard, the United  
4 States government, through now Deputy Treasury  
5 Secretary Eisenstadt, participated actively in  
6 settlement discussions, over a period of many months.  
7 The U.S. government has advised this Court that the  
8 policy of the United States government is to pursue  
9 restitution for those who were victimized by the  
10 Nazis.

11           With that government policy in mind, the  
12 U.S. has formally advised this Court that "the  
13 settlement here will directly promote the public  
14 interest" and is "the very sort of outcome that U.S.  
15 policy seeks to achieve in matters of unresolved  
16 Holocaust-era claims."

17           Third, as has been mentioned, Senator  
18 D'Amato participated in the settlement negotiations  
19 as a champion for Holocaust victims, as reflected in  
20 his comments to the Court on August 12, 1998, when we  
21 reached an agreement in principal, and in his  
22 comments to the public outside the courthouse that  
23 day. Senator D'Amato has concluded that the  
24 settlement is eminently fair and brings closure to  
25 the questions raised about the role of Switzerland

1 during World War II.

2 Fourth, New York City Controller Alan  
3 Hevessey, whose representative Mr. Walman (ph) is in  
4 the audience, led a group of state and local public  
5 finance officials that monitored these negotiations.  
6 And on their behalf, he has publicly stated that the  
7 settlement is fully fair and reasonable.

8 Fifth and very, very importantly, the  
9 organized Jewish community and the organized survivor  
10 community, groups from all over the world, have  
11 formally and in writing endorsed this settlement as  
12 fair, adequate and reasonable, and have said in these  
13 documents that the settlement brings about complete  
14 closure and an end to confrontation with respect to  
15 the issues dealt with in the settlement.

16 Because of the importance and significance  
17 of their endorsements, I would like to take a moment  
18 of the Court's time to list those from whom  
19 endorsements have been received. Haggadeth Israel  
20 Organization, the American Gathering of Jewish  
21 Holocaust Survivors, the American Jewish Congress,  
22 the American Jewish Joint Distribution Committee, the  
23 Anti-defamation League, the Bene B'rith  
24 International, the Center of Organizations of  
25 Holocaust Survivors in Israel, the Conference of



1 Jewish Material Claims against Germany.

2 I'm listing organizations that have  
3 formally endorsed this settlement. The Council of  
4 Jews from Germany, the European Council of Jewish  
5 Communities, the European Jewish Congress, the Jewish  
6 Agency for Israel, the Simon Wesenthal Center, the  
7 World Jewish Congress, the World Jewish Restitution  
8 Organization, the World Zionist Organization, the  
9 Holocaust Educational Trust, the American Zionist  
10 Movement, the Anglo-Jewish Association, the Board of  
11 Deputies of British Jews, the Canadian Jewish  
12 Congress.

13 And I'm still listing organizations that  
14 have formally endorsed this settlement. The Central  
15 British Fund for World Jewish Relief, the Concer  
16 Representative des Institution Jewive de France (ph),  
17 the Delegacion Asociaciones Israelites Argentinas (ph),  
18 and easier to pronounce, the Executive Council of  
19 Australian Jury.

20 In addition, these plaintiff lawyers who  
21 represent the classes, many of whom are not accepting  
22 fees and who therefore have no direct financial  
23 interest in the outcome, all support the settlement.  
24 In addition, class members have overwhelmingly  
25 endorsed the settlements. With all due respect to

1 Mr. Kent and to Mark Twain, the statistics here are  
2 overwhelming in support of the settlement. Out of  
3 over 400,000 responses, a total of fewer than 500  
4 from class members have either opted out from or  
5 filed objections to this settlement.

6 Seldom have so many stood such a vigilant  
7 guard over the resolution of a lawsuit and seldom  
8 have the watchmen been so well-informed and so  
9 aggressive in their efforts to advance the interests  
10 of the settlement of classes.

11 It was in this very public arena that very  
12 vigorous, arm's-length bargaining has produced a  
13 settlement that has been acclaimed by all as fair,  
14 that serves the general judicial policy favoring  
15 settlements and that serves the specific United  
16 States domestic and foreign policy of resolving  
17 disputes like these involving claims of Holocaust  
18 victims, without confrontation and without  
19 litigation, but in cooperation. This settlement,  
20 your Honor, can and should be approved under Rule  
21 23(e) on this basis.

22 My second point, your Honor, is that the  
23 fairness, the adequacy and the reasonableness of this  
24 settlement must be measured against the practical  
25 alternatives to the settlement, in the real world.

1 The practical alternative to this settlement, I have  
2 to say, was prolonged, complex and difficult  
3 litigation, where the plaintiff's chance of success  
4 as a class was at best highly uncertain.

5 As the Court is aware, significant legal  
6 hurdles confronted the plaintiffs, particularly with  
7 regard to the so-called looted asset and slave labor  
8 allegations. The legal grounds for dismissal before  
9 any trial were presented to the Court in 1997. They  
10 spell out the grounds and the hurdles that were  
11 confronting the plaintiffs, and I don't need to  
12 burden the record today by repeating them.

13 But as Mr. Neuborne said, in addition to  
14 the significant legal hurdles concerning whether the  
15 case could proceed and claims were stated, there were  
16 significant issues about whether these classes could  
17 be certified for trial purposes. There were  
18 significant legal issues concerning whether  
19 discovery, and if so to what extent discovery could  
20 be taken to assemble the proof necessary to build  
21 this case.

22 In addition to these formidable legal  
23 hurdles, many plaintiffs confronted potentially  
24 insuperable obstacles with respect to the proof that  
25 is needed in a court proceeding, as opposed to in a

1 moral discussion, the proof needed in a court  
2 proceeding to prevail in this case.

3 It would not be enough to prove here in  
4 court injury at the hands of the Nazis. It would be  
5 required to trace that injury to a particular Swiss  
6 bank defendant. For many, for the reasons that have  
7 been stated by others, that would have been difficult  
8 at the end of this century to do.

9 Thus, the outcome of the litigation would  
10 have been quite uncertain and while the outcome would  
11 have been uncertain, one thing would have been quite  
12 certain, as others have said. The case would have  
13 taken years to litigate, and because it involves many  
14 unique legal issues, as Mr. Swift has said, appeals  
15 certainly would have been taken of many questions.

16 So at the end, it is far from clear that  
17 even if the plaintiffs succeeded in overcoming all  
18 these hurdles, their actual recovery would have been  
19 timely, and it's also unclear whether the recovery  
20 would have been as high as 1.25 billion dollars, the  
21 amount of the settlement.

22 It is possible that a win by the  
23 plaintiffs in court would have produced a judgment  
24 whose amount was less than the settlement amount.  
25 There are no guarantees in court. There are no

1 teams to assist with the search and the costs  
2 associated with those teams are at least as large as  
3 the external costs they have paid. The banks have  
4 devoted a lot of money and resources and time and  
5 effort to this cooperative search with the WJRO for  
6 evidence of accounts dating from World War II.

7 One expense that has been noted,  
8 interestingly enough, and that I plan to mention so I  
9 will mention it, was the agreement by the banks to  
10 contribute to the funding of the computerization of  
11 the Yad Vashem (ph) victim list. ~~Mr. Singer~~  
12 mentioned this, which will provide a lasting benefit  
13 to all of us over time.

14 In addition, the Swiss government  
15 established something called the Bergier Committee in  
16 1997. They did that through a statute that assembled  
17 a group of prominent historians to study and report  
18 to the public on the role of Switzerland during World  
19 War II. Thus far, the Bergier Committee has filed  
20 reports on looted gold. It will file other reports  
21 in the future and I think all concerned view the  
22 reports that have been filed as extremely searching  
23 and extremely candid and a contribution to the public  
24 and historians as well.

25 I should also add that the banks have

1 communicated very openly with the New York State  
2 Banking Department. That department has been  
3 conducting investigations into accounts in the United  
4 States in Swiss banks that could conceivably have  
5 been related to Holocaust victims. The banks have  
6 spent a considerable amount of money and devoted a  
7 considerable amount of time and resources to those  
8 efforts, and the banks have also cooperated fully  
9 with the New York Holocaust Claims Processing Office  
10 in searching for evidence of accounts in response to  
11 claims sent to that office.

12 For all of these reasons, we submit, your  
13 Honor, that the settlement fully meets the standards  
14 of Rule 23(e) and should be promptly approved. The  
15 settlement, as I began by saying, recites the belief  
16 of the plaintiffs, of the organizations that have  
17 endorsed the settlement, of the defendants and of  
18 others that the settlement does and should bring  
19 about complete closure with respect to the concerns  
20 and allegations relating to Switzerland's role in  
21 World War II, and thereby bring an end to all  
22 confrontation, here in court and elsewhere, relating  
23 to these issues.

24 We trust that the Court's prompt approval  
25 of the settlement will make this joint aspiration a

1 guarantees of victory and there are no guarantees of  
2 ability to recover a particular amount.

3 This is not an abstract thought. Just  
4 recently, in two other Holocaust cases, federal  
5 district judges in New Jersey have thrown the cases  
6 out before trial, and those decisions are quite  
7 consistent with earlier decisions by federal courts  
8 in cases called Prince and Kelbereen (ph) and Fishel  
9 (ph), dismissing cases brought on grounds similar to  
10 these.

11 By contrast, there is no risk to the class  
12 associated with this settlement. The amount is  
13 guaranteed. The fact that it will be paid on a  
14 timely basis is guaranteed, and that is so important  
15 given, as others have mentioned, the age of the  
16 survivors.

17 As a third and final point, your Honor, I  
18 want to comment on other important and forthcoming  
19 steps that the Swiss have taken outside of the court  
20 that bear in many ways on the fairness, the adequacy  
21 and the reasonableness of this settlement.

22 First, in early 1997, the defendant banks  
23 took the initiative of setting up what's been called  
24 the Swiss Humanitarian Fund. They and other Swiss  
25 entities, including the Swiss National Bank,

1 contributed 200 million dollars to this fund in early  
2 1997.

3 The idea was to provide funds that would  
4 help survivors who were in need and to do that  
5 promptly, so that they would not have to wait until  
6 the end of the Volker audit of Swiss banks and so  
7 they would not have to wait until the end of these  
8 proceedings.

9 A foundation was established in  
10 Switzerland. It includes leadership from the World  
11 Jewish Restitution Organization and was headed by Mr.  
12 Rolf Bloch (ph), who is a very prominent Swiss Jew.  
13 That foundation has largely distributed the 200  
14 million dollars over the past couple of years to  
15 needy Holocaust victims, without regard to whether  
16 they had proof of an account in Switzerland and  
17 without seeking any legal release of any kind.

18 Secondly, in mid-1966, before there was  
19 any litigation filed, the Swiss Bankers Association  
20 voluntarily offered to enter into an agreement with  
21 the WJRO to conduct a forensic audit of Swiss banks,  
22 to get to the bottom of the concern that Swiss banks  
23 had retained funds of Holocaust survivors.

24 The result was the formation of the  
25 Independent Committee of Eminent Persons, which is



1       chaired by Paul Volker and which many know as the  
2       Volker Committee. That committee has employed  
3       hundreds, literally hundreds of auditors from five  
4       leading accounting firms, who have performed an audit  
5       of almost every bank in Switzerland.

6               The work, as Mr. Singer said, is just  
7       being completed. We understand that the ICEP will  
8       issue its report in the next week or so. In the  
9       meantime, I caution all to view with skepticism some  
10      of the rumors and speculation that have been reported  
11      in the newspaper concerning the likely results of  
12      that report. We expect the report will be fair and  
13      balanced, and I am confident that there will be  
14      nothing in it that will raise any question about the  
15      fairness, the adequacy or the reasonableness of the  
16      settlement here.

17             It also bears mentioning, as Judge Korman  
18      has, that the Swiss banks paid for this entire audit.  
19      The amounts paid to the auditors and to the ICEP  
20      itself is in the order of 200 million dollars to  
21      perform the search and the evaluation of the many  
22      existing records relating to accounts from the  
23      wartime era.

24             In addition to paying the committee and  
25      the auditors, the banks assembled large internal

1 reality. Thank you, your Honor.

2 MR. WEISS: Your Honor, can I just add my  
3 name for a few minutes?

4 I wasn't going to say anything, but some  
5 of the comments from Mr. Witten compel me to say  
6 something. My name is Mel Weiss and I'm one of the  
7 class counsel. Mr. Hausfeld, Mr. Swift and myself  
8 were the lead negotiators, with Mr. Neuborne and Mr.  
9 Mendelsohn and the other counsel here working with us  
10 throughout this arduous negotiation.

11 Let there be no mistake about this. The  
12 Swiss government did not assist in getting this  
13 resolution. Indeed, the Swiss government fought  
14 against it. Don't let this settlement be a moral  
15 victory for the Swiss government. The banks put up  
16 this money against the will of the Swiss government,  
17 and there was a commission appointed by the Swiss  
18 government to look into the historical aspects of  
19 this that was disbanded as soon as the settlement was  
20 announced.

21 That doesn't diminish this settlement and  
22 it doesn't diminish the need to approve it as being  
23 fair, reasonable and adequate as a financial  
24 resolution, so that we can get the money to the  
25 victims before they die. But don't ever let the

1 Swiss government get away with saying that they are  
2 absolved as a result of this. Thank you.

3 THE COURT: The first speaker is Greta  
4 Beer. Each speaker will have ten minutes.

5 MS. BEER: Good morning, your Honor,  
6 Counsel, ladies and gentlemen. My name is Greta  
7 Georgia Beer. I'm a little bit overcome, I'm awfully  
8 sorry.

9 Those who know me know that I started the  
10 ball rolling in 1995, when Peter Gumble (ph) of the  
11 Wall Street Journal called me. He knew that my  
12 mother and I had investigated in the 1960s in  
13 Switzerland, when Switzerland put up -- the banks of  
14 Switzerland put up an office in 11 Mignon (ph) Street  
15 in Bern, where they said they would open accounts,  
16 so-called Schaeffer (ph) numbered accounts.

17 At that time, in the 1960s, we went from  
18 bank to bank, to the official office, investigating.  
19 In 1995, Peter Gumble called me. He knew that I  
20 investigated with my mother and wrote them up about  
21 it. At the risk of being repetitious, my father  
22 owned the biggest textile mill in Romania, called  
23 Hurculus, Inc. (ph), 1,600 workers and 40 branch  
24 stores all over the country.

25 My father traveled and bought machinery in

1 the 1930s, Schubert and Solzer (ph) in Germany. It  
2 was a (ui) machine for thirty-some-thousand dollars,  
3 which he paid for. He could have never gotten the  
4 money out of Romania. It was under penalty of death.

5 He traveled to Egypt, bought Egyptian (ui)  
6 many, many times, all over Europe, and invariably he  
7 would go to Switzerland. He deposited money -- he  
8 was one of the first -- in so-called number, secret  
9 accounts, where you have a number, 12345, and behind  
10 that is a name. It was my father's name.

11 When we investigated and snooped around,  
12 of course many banks -- nobody was breathing down  
13 their neck. Many banks after that -- we were told,  
14 we are investigating and we will see, Mrs. Deviktish  
15 (ph) -- my father's name, Deviktish -- we will see  
16 and let you know, either in -- my mother lived at  
17 that time in (ui), Switzerland -- either in (ui) or  
18 in New York. We never heard from anybody. Then they  
19 closed up.

20 In 1995, I testified and the article in  
21 the Wall Street Journal made waves all over. I must  
22 say, I was the first one to start the whole thing. I  
23 testified under Senator D'Amato and there were no  
24 lawyers at the time, no organizations, nobody. I was  
25 just alone, under the aegis of the Jewish Congress,

1 and Senator D'Amato behaved very, very humanely and  
2 beautifully towards me.

3 I testified. I told the whole story, the  
4 way I know it, from my heart, without (ui), like  
5 today. It made waves. Behind me, Mr. Hans Beer (ph)  
6 was the representative of the Swiss banks, he himself  
7 of the Jewish faith, if that has any meaning or not,  
8 and he invited me to come to Switzerland. I came to  
9 Switzerland in the company of a lawyer assigned to me  
10 by Senator D'Amato and the Consul General of the  
11 United States, Sheldon Krepps (ph), who now resides  
12 in Washington D.C.. We became great friends.

13 We went from bank to bank. How could I  
14 have a number? Impossible. My father was very, very  
15 sick. Those who know my story, I don't want to  
16 repeat it. I approached my father. We asked for a  
17 power of attorney for my mother. In my hand, he  
18 signed it. He couldn't remember the numbers.

19 A few days later, my city where I was  
20 born, (ui) Romania, was taken, first by the Russians,  
21 then (ui) to the Germans (ui). On the second day,  
22 Eisenstadt knows, it's Ukraine. We lost real estate,  
23 but the money was never in Romania. It was in Swiss  
24 banks, in a so-called numbered Schaeffer account,  
25 which actually made the Swiss banks what they are

1 today, because people could deposit money from  
2 anyplace in the world. It was secret. Of course,  
3 the higher-ups knew about it.

4 Today, where do we stand? I raise my  
5 voice not only for me, for those behind me. May I  
6 just say, Judge Korman, when I started the whole  
7 thing, it was only in connection with numbered  
8 accounts, nothing else. Today, thanks to all those  
9 here and Counsel, there is some money. A billion  
10 sounds very high, very, very much to me, who lives  
11 today in Boston, in subsidized housing.

12 But how is it going to be distributed?  
13 Who is going to think about the human beings who are  
14 here, who have been fighting for years? It's coming  
15 up now Hanukkah and Christmas, and Jesus Christ sort  
16 of straddled both. I hope some justice will be done  
17 for us. We have fought for many, many years and as  
18 Mr. Singer said before, 55 years is a long time. In  
19 the name of my father, I do hope that (ui). Thank  
20 you.

21 THE COURT: Rabbi Morris Schmidman.

22 RABBI SCHMIDMAN: Your Honor, ladies and  
23 gentlemen, good people all. Thank you firstly for  
24 the opportunity for facing you. My apologies (ui).

25 This is the most awesome and perhaps

1 frightening experience that one can have, endeavoring  
2 to represent Holocaust victims and Holocaust  
3 survivors and survivor communities. It requires a  
4 great deal of personal humility, as well as prayer  
5 that one's words be appropriate to this particular  
6 occasion and to the cause that brings us all  
7 together.

8 I'd like to first commence with expressing  
9 on behalf of our organization, the World Council of  
10 Orthodox Jewish Communities, our appreciation to  
11 Judge Korman. I know many have said it, but as many  
12 as will continue to say it, it will still not be  
13 enough to express our appreciation to him, to Judah  
14 Gribetz, the court-appointed Special Master, for the  
15 very unique role he has in this historic mission, and  
16 overwhelmingly, to express our appreciation to the  
17 distinguished panel of attorneys that have  
18 represented the plaintiffs in this case.

19 There are not enough words to express our  
20 profound gratitude and appreciation to them, to the  
21 attorneys that represent our organization, Steve  
22 Whinston and Mel Urbach, for the phenomenal job they  
23 have done in our behalf, and for each one of these  
24 distinguished members of the Bar, who have given so  
25 much of their time and their energy and their

1 resources, and without them we would not be here  
2 today.

3 It is therefore exceedingly painful and  
4 distressing that I have read the comments of a  
5 spokesman for a Jewish organization, referring to  
6 this distinguished group as part of a feeding frenzy  
7 of fee grabbers and to demean them in the most  
8 vicious, malicious, false statements that could ever  
9 be heard, which dishonors both the survivors and the  
10 memory of the victims.

11 I am tempted to repeat the words of a  
12 distinguished Boston attorney in a memorable U.S.  
13 Senate hearing: "Have you no shame?" If there are  
14 comments to be made on this issue, then they should  
15 have been made in this forum, before this Court and  
16 not in the media.

17 This was the place to raise objections or  
18 will be the place to raise objections, but not to  
19 create an atmosphere of the public mind, as this  
20 distinguished and self-sacrificing group is outside  
21 the (ui) of what is proper professional and ethical  
22 conduct.

23 Your Honor, I represent the World Council  
24 of Orthodox Jewish Communities, which is here to  
25 state its endorsement of the proposal that is under



1 consideration. The World Council of Orthodox Jewish  
2 Communities was founded 50 years ago, by the  
3 congregational and communal leaders of a large number  
4 of the successors of prewar Jewish communities.

5 Currently, several hundred congregational  
6 and communal organizations are constituent members of  
7 and represented by the World Council, which in  
8 addition represents hundreds of constituent  
9 communities worldwide and tens of thousands of  
10 Holocaust survivors.

11 The World Council's broad mandate includes  
12 providing educational, financial, cultural and human  
13 services support to its constituents and the  
14 rebuilding of Jewish communal life as it existed  
15 throughout Europe before the Holocaust. It is also  
16 charged with the reclamation of assets belonging to  
17 its constituent members that lost during the  
18 Holocaust and to the pursuit of various restitution  
19 claims against various entities.

20 The answer to Hitler's plan to destroy the  
21 Jewish people and every trace of its religion and  
22 culture is effectively being given by survivor  
23 communities and organizations that are rebuilding in  
24 synagogues, schools and communal institutions in the  
25 United States and abroad, perpetuating the heritage

1 and traditions of their destroyed towns and  
2 communities.

3 To bring a small measure of comfort to an  
4 aging and sorrowfully diminishing survivor population  
5 and to support the rebuilding of the Jewish heritage  
6 and Jewish communal life as it existed throughout  
7 Europe before the Holocaust should be the mission of  
8 all those involved with restitution problems.

9 We have become a party to this lawsuit.  
10 We are a plaintiff and by designation of the Court a  
11 class representative. We have become a party to this  
12 lawsuit because for a long time, the orthodox Jewish  
13 community that we represent was disenfranchised from  
14 restitution settlements. It was not given the  
15 opportunity to participate in, nor was the work of  
16 its congregational community adequately supported.

17 Therefore, we were pleased to be able,  
18 through this lawsuit, to raise the issue of the  
19 communal property of the towns that were destroyed,  
20 of the synagogues that were burned and looted. In  
21 the beginning of the Nazi era, the first attack was  
22 against the synagogues and the religious way of life.  
23 Of those that have lost all of their properties,  
24 their religious objects and all of their  
25 institutions, and to find through this medium of this

1 Court an opportunity to find restitution for this  
2 communal property.

3 We have been involved in this litigation a  
4 long time. We have been involved in it by our own  
5 monitoring committee from the inceptions, by the  
6 testimony that we've given at Congressional hearings,  
7 by monitoring all phases of this case, by the  
8 findings, the motions to dismiss the negotiations,  
9 the settlement, the notices, et cetera, and we're  
10 here to support the settlement with a certainty.

11 As a Holocaust survivor who came to my  
12 office said, and I've spoken to thousands of them in  
13 the past few months, came to my office and, as is the  
14 desire of so many, to reveal their personal story.  
15 He came to one point and he raised the sleeve of his  
16 arm. He showed me his tattooed, death camp number.  
17 He said to me, you see that number? That represents  
18 oblivion. But every day, I put tfillen (ph) on my  
19 hand and I wrap the straps of the tfillen on my arm  
20 and it covers that number, and my tfillen represents  
21 eternal existence.

22 It is these people with these concepts  
23 whose needs we must speedily address, and we  
24 therefore think that what is proposed is appropriate.  
25 The words fair, just, reasonable, equitable have no

1 real meaning when applied to the Holocaust. There  
2 needs to be a new terminology, a new set of words, a  
3 new definition that could adequately comport to what  
4 the Holocaust meant to our time and to the history of  
5 mankind. But until that is created, having to live  
6 with the terminology that exists, we endorse this  
7 proposal as being real, even if it is not the ideal.

8 Your Honor, let me just read one thing to  
9 you and those who are here assembled. Listen to the  
10 haunting words of Eli Wiesel (ph). "Teachers and  
11 their pupils, mothers and their infants, rabbis and  
12 their followers, rich and poor, learned and  
13 illiterate, prince and beggar, all pushed inexorably  
14 toward death. Father, a young boy asks, is it  
15 painful to die? It is painful to die? The father  
16 replies, think of something else, my son; think of  
17 tomorrow."

18 We, those here and those similar to the  
19 people here, we are that tomorrow. In our hands and  
20 in our lifetime has been entrusted a precious  
21 mission, and we hope that as we close and participate  
22 collectively in closing this one page of this tragic  
23 history, we will open a new page, in which this  
24 generation rebuilds the heritage, the culture, the  
25 faith, the perdition, the language that some thought

1 would be obliterated and marked for oblivion. But we  
2 will continue and through our institutions will be  
3 the representatives of eternal existence. Thank you.

4 THE COURT: Mr. Sam Dubbin.

5 MR. DUBBIN: May it please the Court.

6 Your Honor, thank you very much for giving me this  
7 opportunity to address this hearing. Other guests,  
8 ladies and gentlemen --

9 THE COURT: Try and speak up.

10 MR. DUBBIN: My name is Sam Dubbin. I'm  
11 an attorney with the law firm of Greenberg, Traurig  
12 (ph). I represent fifteen Holocaust survivor  
13 organizations in the State of Florida, comprising in  
14 the neighborhood of 10,000 individuals; depending on  
15 the time of year, possibly even more. I also  
16 represent Dr. Thomas Weiss, a Miami Beach  
17 ophthalmologist who was a child Holocaust survivor,  
18 in claims against Swiss banks as well as insurance  
19 companies.

20 I wanted to begin by commending the Court  
21 and the parties for at least one important aspect of  
22 the settlement, which is the extent to which you have  
23 reached out to the Holocaust survivor community  
24 directly. That has been a very refreshing aspect,  
25 although as has been mentioned, much of the

1 documentation required is somewhat complicated. But  
2 I have specifically had communications with Mr.  
3 Gribetz and look forward to working with him on  
4 behalf of the survivor community in South Florida on  
5 the overall question of restitution and division of  
6 the money that would result from this settlement.

7 I only want to add, on behalf of the  
8 survivors in the State of Florida, who specifically  
9 recruited me to be their representative with regard  
10 primarily to the insurance question, but when the  
11 bank issue came forth and the notices started going  
12 out, made a point of making sure that we had an  
13 opportunity to at least weigh in here, that the  
14 number 1.25 billion we would be more comfortable with  
15 characterizing as perhaps necessary and pragmatic and  
16 would be reluctant to really use the term fair, under  
17 the circumstances.

18 My specific point today is to address one  
19 aspect of the settlement in particular, and that is  
20 the extent to which the settlement purports to  
21 release an infinite number of unnamed Swiss  
22 companies, particularly insurance companies, other  
23 than those which are enumerated in the settlement  
24 agreement as being involved with the International  
25 Commission on Insurance Claims.

1                   In the process of researching the whole  
2 question of Holocaust-era insurance, my client Dr.  
3 Weiss, who has done a lot of this research on his own  
4 account -- much of this has been recently discovered.  
5 We have found some very disturbing information about  
6 the extent to which the major Nazi-supportive  
7 insurance companies, Alliance (ph) and Munichre (ph),  
8 used a variety of dummy companies or real companies  
9 to cloak their real assets and resources, which is  
10 now documented in the U.S. archives, and which we  
11 have documentation for, again recently discovered,  
12 which I would be more than happy to submit.

13                   They used a variety of insurers and  
14 reinsurers, including many Swiss companies, many  
15 Swiss insurers and reinsurers, to cloak their actual  
16 financial holdings and interests. If I may, I'm  
17 going to quote from a report of the Office of  
18 Military Government for Germany, from September of  
19 1946. It noted the following with respect to  
20 Munichre and just one example of the Union  
21 Reinsurance Company of Zurich.

22                   Munichre had been accused and tried of  
23 failing to disclose its actual interest in at least  
24 24 different non-German businesses. Here is what the  
25 Office of Military Government said with respect to

1 just one of the cases that was brought to their  
2 attention, because what Munichre did was fail to  
3 disclose their actual holdings in a variety of these  
4 companies.

5 In rejecting Munichre's defense, which was  
6 that those were only security interests, in effect,  
7 to protect them against potential future reinsurance  
8 claims, the government said, "The most important  
9 reason for rejecting Munichre's lay in an analysis of  
10 its alleged savings clause. The shares of Elfenix  
11 (ph) it claims, as well as the shares of many other  
12 subsidiaries, were deposited with the Union  
13 Reinsurance Company of Zurich, which was 100% owned  
14 by Munichre, supposedly as security for Munichre's  
15 obligations toward the Swiss company.

16 "All of the contracts and correspondence  
17 in the company's files related to these shares,  
18 however, indicate that Munichre has divested itself  
19 from record ownership merely for the purpose of  
20 cloaking its ownership." Then Munichre again admits  
21 that the shares were not so transferred until a much  
22 later date.

23 Then it goes on to say that the infamous  
24 Dr. Schmidt, who we know to have been a Nazi official  
25 as well as president of many of these business



1 entities, then went and supposedly made disclosure of  
2 these claims. Then the government goes on to mention  
3 that when Dr. Schmidt submitted that schedule of  
4 claims and obligations toward union reinsurance, the  
5 values entered were generally too low and also  
6 included as an obligation Munichre's liability to pay  
7 a certain amount of shares, while no offsetting  
8 entries were made to the claims made.

9 In conclusion, the military government  
10 concluded that the overall considerations which  
11 called for Munichre to be convicted of these  
12 financial lies, which we now contend permeate or  
13 possibly permeate -- the problem with the settlement  
14 is we really don't know -- permeate the business,  
15 status, wealth and obligations of many of the  
16 entities that would be released under the present  
17 plan.

18 It says that the transfer of ownership  
19 rights of Munichre to the subsidiaries, particularly  
20 to Union Reinsurance, severely reduce the values that  
21 these other companies were credited with or held  
22 accountable for having with regard to Munichre's  
23 interests.

24 So the question presented by this, and I  
25 have other documents here that come to the same basic

1 conclusion, is why a blanket release of unnamed and  
2 unidentified companies, which we know from evidence  
3 in the archives may well have been beneficiaries of  
4 looted Jewish assets through the access in Nazi  
5 insurance trusts, without being even identified or  
6 held to account in any way, shape or form for what  
7 their responsibilities are.

8 I know that Commissioner Simm (ph) in the  
9 State of Washington and Chairman Egelberger (ph) have  
10 brought this question to the Court's attention. But  
11 particularly in light of some of the documents we  
12 have found, we felt on behalf of the Florida survivor  
13 community and Dr. Weiss in particular, we would urge  
14 you -- and I know Mr. Neuborne said if we have any  
15 problems with the settlement, please bring them to  
16 his attention.

17 I don't know what benefit accrues to  
18 survivors from what may be a big surprise at the end  
19 of the road, when we find out some of the companies  
20 not even identified today being released could well  
21 be as culpable as some of the ones who we've been  
22 talking about all these years. Thank you very much.

23 THE COURT: Sid Goldstein.

24 MR. GOLDSTEIN: Good morning, your Honor.

25 I want to thank you for giving me the opportunity to

1 present our situation. We are concerned with the  
2 ambiguousness of this settlement relating to our own  
3 particular case, which is not defined, the case of  
4 the looted art and furnishings.

5 If I read the class action of item 4, it  
6 is so broad it states nothing. My father-in-law, who  
7 was one of the leading art dealers in the world  
8 market, whose goods were taken, documented by the  
9 Einsatz (ph) group Rosenberg. In addition, the OSS,  
10 in a safe haven report, notified and made statement  
11 90% of all looted art and antiques were laundered in  
12 Switzerland for cash.

13 Most of this art, it's well-known and  
14 documented, was always through Swiss banks, where the  
15 buyers could see the goods. So as I stand here  
16 today, we have tried to settle here and have hit a  
17 blank wall. I'm asking the Court, can they define  
18 where would art claims come in? Thank you very much.

19 THE COURT: Does anybody want to respond  
20 to that?

21 Ms. Anne Weber.

22 MS. WEBER: Your Honor, my name is Anne  
23 Weber and I'm here as Chair of the Commission of (ui)  
24 in Europe, which is the expert representative body in  
25 Europe dealing with all matters relating to Nazi-

1 looted art and other cultural property, if I may be  
2 given an opportunity to respond to the comments of  
3 the last speaker.

4 The commission represents individual  
5 claimants from all over the world, Jewish and non-  
6 Jewish alike. We're trying to recover cultural  
7 property looted in Europe. We also, on behalf of the  
8 European Council of Jewish Communities, represent the  
9 35 countries of Europe on these matters.

10 The Commission for Looted Art in Europe is  
11 the sole representative organization to pursue  
12 restitution claims and to assist claimants in the  
13 recover of looted cultural property. As a result,  
14 we've built up a considerable body of expertise  
15 through our work in this complex and relatively new  
16 field.

17 I speak to you today, therefore, on behalf  
18 of all individuals whose cultural property, art,  
19 books, silver, statuary and Judaica was looted by the  
20 Nazis and who have still to recover it or even to  
21 discover what happened to it.

22 Our understanding, confirmed by  
23 consultation with lawyers in Switzerland, Israel,  
24 Britain and the United States, is that the settlement  
25 agreement will act to terminate all legal claims for

1 the return of art, looted art held by any Swiss  
2 entity, including for instance museums and art  
3 dealerships.

4 Professor Neuborne told us that it was not  
5 the intention of the settlement to insulate the  
6 current holder of a specific item of looted property  
7 from an otherwise existing legal duty to return it to  
8 its rightful owner, but he has acknowledged that his  
9 fellow counsel also believe that this will be the  
10 effect.

11 The settlement agreement as it currently  
12 stands will therefore, we believe, unconstitutionally  
13 and without their knowledge, forever deprive  
14 claimants for looted art and other cultural property  
15 of their legal rights to recover any of that property  
16 held by Swiss entities. We appear here today,  
17 therefore, on behalf of the claimants, to express our  
18 opposition to the settlement agreement and to ask  
19 that for these and the other reasons we shall be  
20 setting out, that cultural property be excluded from  
21 the agreement.

22 Before stating our legal objections, I  
23 would like to put the issue into a context and  
24 explain why, for reasons of history and justice, we  
25 are all so concerned about the impact of the

1 agreement.

2           It is only now, 55 years after the end of  
3 the war, that the process of recovery of looted art  
4 and other cultural property is really beginning. For  
5 all these years scattered survivors attempted, with  
6 little success and no institutional support, to find  
7 and recover their looted property. They were met  
8 with bureaucratic obstacles of every kind and with  
9 wilful obstruction from governments, museums and  
10 members of the art trade, many of whom actively  
11 concealed the location of the looted works.

12           But today a new climate prevails.  
13 Families have been heartened by the international  
14 commitments to justice endorsed by 45 nations,  
15 including Switzerland, at a conference hosted in  
16 Washington last year by the State Department. Those  
17 45 nations, including Switzerland, committed to  
18 identifying looted works in their possession and to  
19 working to reunite them with their rightful owners or  
20 their heirs.

21           As a result, each week brings forth new  
22 claimants, filled with renewed hope of recovery,  
23 though with an awareness that the twin processes of  
24 finding looted works and then recovering them will  
25 necessarily take some time.

1 International commitments were also made  
2 at Washington to establish the post-war fate of the  
3 looted property. This, too, will aid the efforts of  
4 recovery. We know that the trade in looted art and  
5 other cultural property did not stop with the end of  
6 the war, particularly in Switzerland, but has  
7 continued to the present day. No barriers were ever  
8 put in its way, with a result that looted works can  
9 be found throughout Switzerland and other countries,  
10 in the world's most reputable museums, galleries,  
11 private collections, sale rooms and auction houses.

12 The scale of the problem is huge. I sit  
13 on the British government committee supervising the  
14 work of our national museums and galleries in dealing  
15 with this issue. Approximately 25% of relevant works  
16 have question marks over their histories, and unlike  
17 Switzerland, Britain was not a major conduit for  
18 looted works.

19 For the individual claimants, paintings  
20 and other cultural property are quite different from  
21 other Holocaust-era assets and they cannot easily be  
22 computed in simple financial terms, as this  
23 settlement agreement would intend. They are unique  
24 items, a fact recognized legally by the British and  
25 American law.

1                   One of our claimants, a woman in her  
2 eighties, living alone in Italy, whose parents were  
3 murdered by the Nazis for their art, has been trying  
4 since May, 1945 to find and recover her parents'  
5 looted works. She would like the paintings back, she  
6 told me, so that she could at least have something to  
7 remind her of the life of her parents. Paintings are  
8 the last tangible reminders of a family's taste,  
9 personality and character, the lost landscape of  
10 lives that were utterly destroyed by the Nazis.

11                   The claimants are usually not wealthy  
12 people. Most of these families owned just one or two  
13 pictures. In one of our cases, a grandfather had  
14 given to each of his two daughters in Vienna a  
15 painting on their wedding day. One daughter was  
16 transported into Poland with her seven-year-old son,  
17 never to be seen again. The other daughter managed  
18 to survive, and until she died in 1983, never gave up  
19 looking for the painting her father gave to her  
20 murdered sister.

21                   A few weeks ago, a surviving family  
22 approached us for help. Last week, sixty years after  
23 it was taken by the Nazis, we discovered the location  
24 of a painting. It is hanging in Switzerland, in a  
25 public collection.



1 Under the terms of this settlement  
2 agreement, the family will, without their agreement  
3 or knowledge, be prevented from taking any legal  
4 steps to recover this painting, which means so much  
5 to them and which is so imbued with their tragic  
6 history, and which we believe it should be their  
7 legal right to claim. Yet, if we were to have found  
8 the painting in Germany or Austria or France, the  
9 family would be able to pursue such a claim.

10 This can be neither just nor fair, and as  
11 each week goes by, as more claimants come forward,  
12 and if the terms of the settlement agreement remain  
13 unchanged, more and more families will be discovering  
14 that their rights to recover their looted property  
15 that may at some later date turn out to be in  
16 Switzerland will have been lost, without their  
17 knowledge or consent.

18 We submit that the settlement agreement as  
19 it stands is invalid and (ui). It is a requirement  
20 that reasonable notice be given to people with a  
21 potential claim (ui), and we believe that the  
22 settlement agreement has failed to do this in  
23 relation to cultural property.

24 The notices distributed throughout the  
25 world, which set out information about the agreement,

1 do not and have not alerted claimants for cultural  
2 property that this agreement will affect them.  
3 Firstly, the notices consistently refer, and I quote,  
4 "to claims that people may have against the Swiss  
5 banks."

6 But, your Honor, you yourself began the  
7 proceedings today by referring to this as the Swiss  
8 banks case. The defendants throughout are referred  
9 to as Credit Suisse, UBS and SCC and so on. No art  
10 or art-related institution is ever mentioned. As a  
11 result, claimants generally and justifiably  
12 understand the settlement agreement to refer to  
13 financial claims against Swiss banks and other  
14 financial institutions.

15 We submit no claimant could possibly know  
16 from the settlement agreement and the notices that  
17 those released by it would include museums, art  
18 dealers and government agencies, either in the past  
19 or not in possession of looted art or other cultural  
20 property.

21 Until we alerted them, none of the other  
22 representative organizations in this cultural  
23 property field understood the impact of the  
24 settlement on cultural property claims, despite the  
25 worldwide publicity, nor, I might add, did Professor

1 Neuborne, who graciously acknowledged that he, too,  
2 was unaware of its implications until we wrote to  
3 him.

4           If the experts were not aware, nor those  
5 who drafted this agreement, how could the claimants  
6 know of the imminent loss of their rights, and  
7 therefore what validity can this aspect of the  
8 settlement have?

9           Secondly, we also believe the settlement  
10 provides no clear and adequate definition of the  
11 relevant settlement class, i.e. those who may have  
12 claims against the entities relating to assets looted  
13 or taken by the Nazi regime. Only once, in one sub-  
14 clause of the 37-page agreement is the word art  
15 mentioned. Nowhere are other types of cultural  
16 property referred to. In no part of the settlement  
17 agreement is there any clear definition of cultural  
18 property.

19           Compared to the other settlement classes,  
20 this class, which relates to looted assets, is most  
21 indistinct. It is therefore scarcely surprising that  
22 the settlement agreement should have failed to alert  
23 these claimants of the situation facing them.

24           Even if, as Professor Neuborne has told  
25 us, the agreement was intended to deal solely with

1 claims for damages for the looting of property that  
2 can no longer be recovered because it no longer  
3 exists or is not readily identifiable, we would still  
4 oppose the agreement, firstly for the same reason  
5 that claimants for looted art and other cultural  
6 property are unaware of this and have not been made  
7 aware of it; secondly, because there is no  
8 specification of those entities who are release from  
9 liability by this agreement; and, thirdly and perhaps  
10 most importantly, because there is yet no  
11 determination of the facts (ui) such property. It is  
12 therefore impossible at this point to make any  
13 reasoned or reasonable claim or to be sure that any  
14 claimant would receive a reasonable sum from the  
15 settlement agreement in relation to such a claim.

16 In another case we have, where there is  
17 another painting in Switzerland, its value is about  
18 ten million dollars. There are hundreds of other  
19 cases, hundreds more to come, and thousands of looted  
20 art works that may be in Switzerland.

21 THE COURT: You can continue.

22 MS. WEBER: 125 such cases would eat up  
23 the settlement monies, were they to be available or  
24 give primacy to these claimants, which they do not.  
25 The settlement agreement makes no provision for such

1       sizable or numerous claims or to the qualitative  
2       difference of looted art claims, involving as they do  
3       unique objects, each with a unique history, issues of  
4       provenance, good faith (ui), statutes of limitations  
5       and so on.

6                 In relation to the role of Switzerland, it  
7       has become known recently that Switzerland was a  
8       major conduit for Nazi looted art during the war, and  
9       it has remained one of the key locations for trading  
10      and acquiring looted art, until the present day. But  
11      the details, the true historical record is not known.  
12      However, as I speak here today, the Swiss  
13      government's Bergier Commission is continuing the  
14      research begun over a year ago, into this very issue.  
15      So significant is the scale of what it is uncovering,  
16      so extensive the material and the findings that its  
17      report will run to five volumes when it is published,  
18      but that will not be until the end of 2001, two whole  
19      years from now.

20                It cannot surely be fair or just for a New  
21      York court to preempt the findings of this official  
22      Swiss government investigation that brings closure to  
23      the subject before any of the facts are established  
24      and opportunities for redress and restitution made  
25      available, as the Swiss Federal Office of Culture,

1 for example, has additionally committed to doing.

2 Further, the settlement agreement states  
3 that the counsel for the settling plaintiffs have  
4 conducted a thorough investigation of (ui) relating  
5 to the claims, have analyzed available information,  
6 have reviewed public information, have researched  
7 applicable law and have consulted with experts in  
8 order to establish the best possible relief,  
9 consistent with the interests of the settlement  
10 class.

11 In the case of cultural property in  
12 Switzerland, review of available information in  
13 consultation with experts does not appear to have  
14 taken place, and this must constitute further reason  
15 to invalidate the inclusion of cultural property in  
16 this settlement.

17 Your Honor, to summarize, if the Court is  
18 to decide that the 1.25 billion dollars is fair,  
19 reasonable and adequate and in the best interests of  
20 the class before the publication of the Bergier  
21 Commission's report, without the opportunity to  
22 evaluate the facts or quantify the claims, we believe  
23 that it is not possible to make this judgment in  
24 relation to cultural property, nor, as we have said,  
25 do we believe it to be constitutional or fair to cut

1 off the rights of those potential claimants who do  
2 not know and have not been aware that they have such  
3 rights.

4 If this settlement agreement prevails,  
5 unnamed people, unaware of their ownership rights,  
6 will in the future be forced to drop claims against  
7 other unnamed entities. Up to now, there has never  
8 been a sufficient remedy or protection, and claims  
9 cannot be asserted until looted works are found, and  
10 that could run for many years from now.

11 The settlement agreement also runs counter  
12 to the international understanding agreed at  
13 Washington last December, when the Swiss included  
14 agreed that all solutions in this area be, and I  
15 quote, "just and fair." It is ironic perhaps to say  
16 that this agreement was being reached at just the  
17 time that finishing touches were being put to a  
18 settlement agreement which is in effect doing exactly  
19 the opposite.

20 The United States's own Holocaust Victims  
21 Redress Act of 1998 states, and I quote, "that all  
22 governments should undertake good faith efforts to  
23 facilitate the return of private and public property,  
24 such as works of art, to the rightful owners, in  
25 cases where assets were confiscated from the claimant

1 during the period of Nazi rule."

2 The settlement agreement also stands in  
3 direct opposition to the Council of Europe's own  
4 position, whose member states, including Switzerland,  
5 just three weeks ago passed a unanimous resolution on  
6 the restitution of all looted cultural property to  
7 its rightful owners or their heirs.

8 Finally, as an organization of Europe, we  
9 submit that some parties most affected by this aspect  
10 of the settlement agreement are not able to be  
11 present here and will not therefore be able to be  
12 heard by the Court. We find it a matter of some  
13 concern that there will be a fairness hearing here in  
14 New York and there will be one in Jerusalem, but none  
15 in Europe, where there are many claimants and where  
16 the events under consideration took place.

17 We further object to the settlement  
18 agreement as attempting to limit the rights of  
19 potential (ui) claimants, not within the personal  
20 subject matter jurisdiction of the Court. Most of  
21 these potential claimants have no connection to New  
22 York. We contend that the Court should not act,  
23 therefore, to cut off such claimants.

24 For all these reasons and for the sake of  
25 the claimants who have been denied justice for all



1 these years, we ask that you act to prevent this new  
2 injustice being visited upon them, at just the time  
3 their hopes of recovery are being revived. We ask  
4 that art and other cultural property be definitively  
5 excluded from the settlement agreement.

6 THE COURT: I thank you for your statement  
7 and I'm going to give careful thought to the remarks  
8 that you made. I just wanted to ask you one  
9 question, so I can be sure of your position.

10 In terms of your criticism of the notice,  
11 I take it that you would be here voicing the same  
12 objections even if the notice were adequate. That  
13 is, we could do another notice and extend the opt-out  
14 date. If we did another notice and it was clear and  
15 we extended the opt-out date so that anybody who  
16 wished could opt out, from what I understood from the  
17 last part of your statement, you would still object.  
18 That wouldn't solve your objection.

19 MS. WEBER: You're right; it wouldn't  
20 solve the problem, because cases come forward every  
21 week. New cases come forward. It takes weeks,  
22 months, years in some cases to establish the  
23 whereabouts of looted works.

24 THE COURT: And to whom they belong.

25 MS. WEBER: And to whom they belong;

1 that's right. Governments throughout the world --  
2 for instance, in Britain and it's happening in the  
3 States (ui), that all the museums are checking their  
4 collections to establish how many of these works they  
5 have in them. This work began at the end of last  
6 year and will continue well into next year, and it  
7 will take many years after that to establish, as you  
8 say, to whom these works belong.

9 In Switzerland, the work is only just  
10 beginning. There are only two or three museums which  
11 have begun this process of identifying these works.  
12 Indeed, there is a meeting in Switzerland convened by  
13 the Federal Office of Culture next week, where all  
14 the museums are being asked to begin to carry out  
15 this work. So it shows that the work has not even  
16 begun there yet, so we have no idea what the state of  
17 the problem will be in Switzerland. That, combined  
18 with the Bergier Commission's research, which will be  
19 continuing well into the middle or towards the end of  
20 next year, which up to now (ui).

21 THE COURT: And the specific focus of your  
22 concern, as I understand it, is works of art or other  
23 property which will be a specific claim.

24 MS. WEBER: There may well also be  
25 communities, of course, because we represent

1 communities and there are communities where many  
2 works of art that belonged to the communities,  
3 Judaica, silver, whatever was taken from them. We're  
4 also trying to recover those. So it also would  
5 affect -- if one considers communities to be  
6 claimants, it also could affect communities like  
7 that.

8 THE COURT: Thank you very much.

9 MS. WEBER: Thank you.

10 THE COURT: Mark Dunaevsky.

11 MR. DUNAEVSKY: Good day, your Honor, Mr.  
12 Gribetz, Counsel. My name is Mark Dunaevsky. I'm an  
13 attorney from Chicago. Together with my co-counsel,  
14 Mr. Donald Staffland (ph), I represent Irving Wolf,  
15 Abraham Geller and Deena Geller (ph).

16 My clients are Holocaust survivors and  
17 members of the settlement class. Mr. Staffland and I  
18 have filed objections to the settlement in this case.  
19 Time today is short and I will not review all of the  
20 objections we filed. But without waiving any of our  
21 written objections, I am here today to address  
22 several of our most serious objections and to urge  
23 the Court not to approve the current settlement as it  
24 is currently constituted, unless the settlement is  
25 modified to take into account the objections we have

1 submitted that I will raise today, and the objections  
2 of all the other objectors who have submitted  
3 objections.

4 The first thing I should point out is that  
5 I am not here to object to the amount of the  
6 settlement. Everyone here, I think, wishes the  
7 settlement could have been greater, but every lawyer  
8 who has settled a case could say the same thing.

9 The first objection I wish to raise today  
10 is the participation of two entities, the World  
11 Jewish Restitution Organization, the WJRO, and the  
12 World Council of Orthodox Jewish Communities, Inc. in  
13 the settlement. These organizations add nothing to  
14 the representation of the settlement class. They add  
15 no credibility to the settlement. Indeed, they may  
16 even detract from the credibility of the settlement.

17 I don't think I am violating any  
18 attorney/client privilege by informing the Court that  
19 Mr. Wolf, in my conversations with him, has a special  
20 name for these organizations, the WJRO, its  
21 constituent organization, the Claim Conference and so  
22 on, and the World Council. Mr. Wolf calls these  
23 organizations, which claim to represent the interests  
24 of Holocaust survivors, the Uganot (ph), and I know  
25 other survivors share this sentiment.

1 I respectfully submit that the formal  
2 endorsement of the settlement by the various Jewish  
3 organizations we have heard from and which were  
4 mentioned mean nothing to members of the settlement  
5 class.

6 THE COURT: Let me tell you this. They  
7 may mean nothing to the members of the settlement  
8 class but they meant something to the defendants.  
9 Without those signatures, this case would not have  
10 settled. So in a sense what you're saying is not  
11 entirely accurate, because if you don't object to the  
12 amount of the settlement and the fact of the  
13 settlement, then you cannot ignore the role  
14 particularly that the World Jewish Congress and the  
15 World Jewish Restitution Organization played in  
16 bringing it about.

17 MR. DUNAEVSKY: They do add, however,  
18 nothing in terms of the settlement itself.

19 THE COURT: They may not, but you have to  
20 understand who the class representatives are is  
21 largely symbolic.

22 MR. DUNAEVSKY: Your Honor, I submit --

23 THE COURT: They're there and they have  
24 the right to be heard, but so do you.

25 MR. DUNAEVSKY: I will address the Court's

1 concern in a moment.

2 We now come to this other organization  
3 called the World Council of Orthodox Communities,  
4 Inc. A simple phone call to Albany, to the  
5 Department of State, informed me that the World  
6 Council was incorporated on April 26th, 1999, only  
7 two weeks before the date of the notice and some four  
8 months after the date of the settlement itself, at  
9 least the copy of the settlement that I was provided  
10 with.

11 They could not have participated in the  
12 settlement negotiations. Their aims, goals and  
13 purposes are not clearly known, and it has never been  
14 explained what they add to the settlement. Indeed,  
15 their name does not even appear in the settlement  
16 agreement.

17 Furthermore, and this is where I will  
18 address the Court's concerns, my clients fear that  
19 funds from the settlement will be diverted away from  
20 actual survivors, actual class members, to the  
21 coffers of these organizations.

22 THE COURT: That's a separate question.  
23 We're going to have a separate hearing on the method  
24 of allocation. But the fact that anybody here as a  
25 class representative or even as a plaintiff doesn't

1 give them any special status when it comes to the  
2 distribution of the money.

3 MR. DUNAEVSKY: Respectfully, your Honor,  
4 it does give them access, a privileged access to the  
5 allocation process.

6 THE COURT: It doesn't. Anyone who wishes  
7 to speak with the Special Master Judah Gribetz, he's  
8 available. He spent countless hours, I don't know  
9 how many hours, speaking to whoever wishes to be  
10 heard on the question of how the money should be  
11 distributed and allocated. Nobody has special access  
12 to him. There are people here who already alluded to  
13 the fact that they've spoken with him. There's no  
14 such thing as special access.

15 MR. DUNAEVSKY: Your Honor, I respectfully  
16 submit, and then I will go on, that attorneys for  
17 these organizations sat at this table together with  
18 attorneys for the plaintiff class.

19 THE COURT: You should have sued on behalf  
20 of your clients. You would have been sitting with  
21 them, too. They sued, the case was settled and  
22 they're here.

23 MR. DUNAEVSKY: I respectfully submit that  
24 at least in terms of the World Council, they did not  
25 sue.

1 THE COURT: They were a named plaintiff.

2 MR. DUNAEVSKY: Then I do not have the  
3 most current copy of -- the final copy of the  
4 complaint.

5 The named plaintiffs, however, are  
6 perfectly capable to represent the interests of the  
7 class, without the assistance of these organizations.  
8 We do urge the Court not to approve any settlement  
9 that includes the participation of these  
10 organizations or without explicit provision that  
11 these organizations receive nothing from the  
12 settlement fund.

13 The second objection I wish to address  
14 today is the breadth of the settlement. These  
15 objections were echoed by Mr. Dubbin representing  
16 tens of thousands, he say, survivors in Florida.  
17 They were echoed as well by the representative from  
18 the art community and from the Attorney General of  
19 Washington State.

20 The settlement will release, and I quote  
21 from the settlement notice, all claims relating in  
22 any way to the Holocaust, World War II and its  
23 prelude and aftermath. Victims or targets of Nazi  
24 persecution, transactions with or actions of the Nazi  
25 regime, treatments of refugees fleeing Nazi



1 persecution or any related cause or other thing,  
2 whatever, including without limitation all claims  
3 relating to the deposited assets, closed assets,  
4 slave labor or any prior or future effort to recover  
5 on such claims.

6 THE COURT: Swiss (ui).

7 MR. DUNAEVSKY: It's not that clear, your  
8 Honor.

9 THE COURT: If it's not that clear, we'll  
10 make it clear.

11 MR. DUNAEVSKY: Thank you, your Honor. My  
12 clients believe that the settlement and release of  
13 this great breadth will compromise and jeopardize the  
14 future efforts of Holocaust survivors to seek  
15 justice. Mr. Stafflin and I are in the process of  
16 preparing our own claim on behalf of our own clients,  
17 against German and other parties who have not so far  
18 been called to justice, either in this case or in the  
19 German slave labor cases.

20 Only last week, we have identified  
21 additional European companies which we believe will  
22 bear liability from their actions against Jews and  
23 others during the Holocaust of World War II. This  
24 broad settlement will jeopardize our client's quest  
25 for justice.

1 THE COURT: How?

2 MR. DUNAEVSKY: Your Honor, we're  
3 preparing a lawsuit requiring a great deal of  
4 historical research against corporations that built  
5 the concentration camps and the apparatus of  
6 genocide.

7 THE COURT: They're not covered by this  
8 agreement.

9 MR. DUNAEVSKY: We believe that the  
10 release as defined in the notice does cover many of  
11 these companies. The notice is far from clear; it is  
12 ambiguous and it is extremely broad, as you heard  
13 from Mr. Dubbin, from representatives of the art  
14 world and as the Attorney General of Washington State  
15 (ui).

16 THE COURT: Notice is separate from the  
17 settlement agreement itself. It's the settlement  
18 agreement that's the agreement.

19 MR. DUNAEVSKY: Your Honor, despite my  
20 efforts, I was not provided with a copy of the  
21 settlement agreement until a week and a half ago.

22 THE COURT: It's in the court file. It's  
23 on the internet. It's all over.

24 MR. DUNAEVSKY: Your Honor, I'm a Power  
25 Unit user. I could not download the agreement and

1 neither could my computer friends.

2 THE COURT: You can certainly xerox --

3 MR. DUNAEVSKY: We asked for a xerox. We  
4 were not provided a copy until a week and a half ago.

5 THE COURT: I don't want to argue with  
6 you.

7 MR. DUNAEVSKY: We urge the Court not to  
8 approve any settlement, unless the Court limits the  
9 release of those parties named in the complaint, and  
10 I will include the Swiss Bankers Association  
11 identified in the complaint and their affiliates,  
12 subsidiaries, assigns, employees and directors, the  
13 usual and typical language of release.

14 I would like to briefly address one  
15 further issue. Some have claimed that vigorously  
16 objecting to this settlement will delay or perhaps  
17 undermine the efforts to get survivors funds. This  
18 is not the case. It is not I, it is not my clients  
19 who would delay the efforts to get survivors funds.  
20 My suggestion, my objections, if taken into account,  
21 would not cost the Swiss banks one cent more. We are  
22 not objecting to the amount and they could be agreed  
23 to today if the Swiss banks would agree to as well.

24 Finally, in my last few seconds, Mr.  
25 Staffland and I, after reading the tardily-provided

1 settlement agreement and the thousands of pages of  
2 objections, have concluded that it's necessary,  
3 although regrettably, we were hesitant to do this, to  
4 ask to file a motion to intervene in this case, a  
5 copy of which was provided to the Court and served  
6 upon plaintiff's counsel. Thank you, your Honor.

7 THE COURT: When was it served?

8 MR. DUNAEVSKY: It was served this  
9 morning. I was not sure who would be here today.

10 MR. WITTEN: Would you serve us as well,  
11 please?

12 MR. DUNAEVSKY: Certainly.

13 Thank you, your Honor.

14 THE COURT: Laura Hoguet.

15 MS. HOGUET: Good morning, your Honor. My  
16 name is Laura Hoguet. My firm, Hoguet (ui), is a law  
17 firm in New York. We represent some claimants in art  
18 looting cases. I was asked to appear here by Ms.  
19 Weber's organization and on behalf of others who are  
20 seeking to recover specific works of art, in support  
21 of an exclusion from the class in this case,  
22 applicable to claimants who are seeking specific  
23 works of cultural property, including art.

24 We can appreciate that anybody who is  
25 struggling to make a big class action settlement on

1 both sides wants it to be as inclusive as possible.  
2 In this particular case, we think that the exclusion  
3 of claimants seeking specific works of art and  
4 cultural property would benefit not just the  
5 claimants but the administration of the claims  
6 process as well, Mr. Gibenz's job.

7 Art is different from financial claims.  
8 Most people think of this as the Swiss banks case and  
9 think of this case as having to do with financial  
10 settlement. People who are looking for looted art,  
11 are looking for a specific object or objects -- the  
12 law has always treated financial claims different  
13 from claims that can be the subject of a suit for  
14 specific performance or a claim for replevin. People  
15 have, in recent years, brought such suits and  
16 succeeded in recovering works of art that were stolen  
17 55 or 60 years ago.

18 To cut that off, to cut those claims off  
19 or trade them for some amount of money is not  
20 consistent with the legal principles that underlie  
21 art law. It's also not fair or equitable, for all of  
22 the reasons that Ms. Weber went into, which I will  
23 not repeat.

24 The process of recovering looted art is  
25 very active right now. Anybody can talk about the

1 reasons for it. One reason is probably the computer.  
2 The computerizing of descriptions of art and the  
3 history of art is resulting in matches of art with  
4 owners. People who don't know that they are  
5 claimants wake up one day and discover that they are  
6 a claimant, because they get a call from the art loss  
7 registry in London, saying that some piece of art  
8 that they or a relative put in a claim for 50 years  
9 ago has been found.

10 These people ought not be cut off, and the  
11 reason that it's such a concern is that most of the  
12 art, a great deal of it, who knows what percentage,  
13 did pass through Switzerland and somewhere in the  
14 chain has been in the hands of a Swiss dealer, will  
15 surface in the hands of a Swiss dealer, is in the  
16 hands of a Swiss collector, will end up with a Swiss  
17 dealer or pass through to the art world  
18 internationally.

19 Therefore, giving the Swiss institutions  
20 and dealers and entities an opportunity to cut off  
21 their liability in this process is unfair and ought  
22 to be carved out of this settlement.

23 I'm happy to answer any questions the  
24 Court may have.

25 THE COURT: Thank you very much.

1 Margaret Rosskamm.

2 MS. ROSSKAMM: I'm here as a sole survivor  
3 of a cousin who had a dormant account in Switzerland.  
4 I tried to settle this claim for a small amount,  
5 which I don't believe we're too ready to settle. I  
6 would like to have further research on this dormant  
7 account. My children and grandchildren (ui) account  
8 holder and his parents, and on their behalf I'm  
9 speaking. I should get a research on that bank  
10 account, I should get some money.

11 THE COURT: I think you should be aware  
12 that --

13 MS. ROSSKAMM: If you need any information  
14 of the account numbers, can I leave it?

15 THE COURT: You can leave it, but what I  
16 wanted to tell you is that research has been done,  
17 hundreds of millions of dollars' worth of research.  
18 I think on December 6th, the Volker Commission, which  
19 has been responsible for overseeing our research, is  
20 going to issue its report. I think it would be fair  
21 to say that what research can be done at this point  
22 has been done.

23 MS. ROSSKAMM: This cousin and his parents  
24 were considered wealthy people in Germany, and I'm  
25 sure there's more money at stake than they are

1 claiming there was.

2 THE COURT: You can leave whatever  
3 information you want.

4 MS. ROSSKAMM: Thank you.

5 THE COURT: Dr. Norbert Bikales.

6 DR. BIKALES: Your Honor, Special Master  
7 Gribetz, ladies and gentlemen, my name is Norbert  
8 Bikales. I live in McClain (ph), Virginia and I am  
9 not an attorney; I am a scientist by profession.

10 I am a Holocaust survivor from Germany,  
11 France and Switzerland, and I might add that in all  
12 of these countries, I was mistreated. As a child, I  
13 lost both of my parents in the Belzich (ph)  
14 concentration camp, extermination camp. I'm one of  
15 the claimants here, but I'm not here to represent my  
16 own case, to try to plead my personal case, but  
17 rather I am here to represent the Federation of  
18 Jewish Child Survivors of the Holocaust.

19 Let me define please what we mean by child  
20 survivors. Obviously, we are no longer children, but  
21 we were children during the period that we're talking  
22 about, the Holocaust. The Federation consists of 24  
23 groups of child survivors in the United States and an  
24 additional 18 groups in 13 other countries,  
25 including, I might say, eastern and central Europe.



1                   One of our members is the Swiss  
2 Association of Hidden Children. Our last general  
3 meeting was in September of this year, in Prague, in  
4 the Czech Republic, and our next meeting will be held  
5 in the year 2000, in Seattle.

6                   I'm here to tell you that the Federation  
7 supports the settlement, but that was a position that  
8 we took before hearing some of the comments,  
9 particularly with respect to art. I wish I had the  
10 input of my fellows on that one. The lady who spoke  
11 on behalf of the stolen art, in my opinion made a  
12 very compelling case. With that exception, we  
13 support the settlement.

14                   My comments deal primarily, not so much  
15 with the fairness of the settlement, but with how the  
16 settlement funds are to be used. To do this, let me  
17 just say a few words about our group, about the  
18 Federation.

19                   We are a very diverse group. We have  
20 members born in all kinds of countries, having  
21 survived the Holocaust by all kinds of means and in  
22 all kinds of conditions, ghettos and concentration  
23 camps, slave labor, hidden. Many of us were hidden,  
24 false papers, escaped to neutral countries. Almost  
25 all of us lost at least one parent and in most cases,

1 like my own, both.

2 We came to this wonderful country during  
3 various periods, a few before the war, even fewer  
4 during the war itself, but mostly we came after the  
5 end of the war and the liberation from Nazi  
6 persecution.

7 We have different levels of education. We  
8 have different views on religious practice. We have  
9 different views on education. We have different  
10 views on politics, on almost everything else. What  
11 unites us is the common experience of persecution and  
12 suffering in our childhoods and the subsequent  
13 effects of this experience on our lives, on our adult  
14 lives.

15 The word children appears in our title,  
16 but most of us are now in our late sixties or even  
17 seventies, and we're very much concerned about the  
18 problems of aging. We are entering the last phases  
19 of our lives.

20 In spite of our diverse membership, to  
21 which I have already referred, the Federation has  
22 asked me to convey to you three points. They deal,  
23 as I said, primarily with the distribution of the  
24 funds, if I may.

25 Number one, the amount of the settlement

1 is so small that it can in no way compensate for all  
2 of the enormous losses that the Jewish people  
3 suffered. Thus, it is our position that after  
4 payment to those who can document losses actually  
5 incurred in Switzerland, all of the remaining money  
6 from the settlement -- let me please repeat this.  
7 All of the remaining money from the settlement should  
8 be devoted solely, and I said solely, for the welfare  
9 of needy survivors.

10 Specifically, we have many members who are  
11 in poor health, others who have insufficient funds to  
12 live out their remaining days in dignity, et cetera.  
13 I have had the opportunity to visit central and  
14 eastern Europe recently, and our brothers there are  
15 in very sad condition, very sad financial and health  
16 conditions.

17 So that should be, in our view, the main  
18 concern of the settlement, to take care of the needy  
19 survivors, those who suffered during the Holocaust.  
20 These are the very people who should now be helped.  
21 That's my point number one.

22 Number two, and here I speak again on  
23 behalf of the Federation and personally, we  
24 specifically and vigorously oppose setting aside any  
25 funds to any religious organization for any purpose.

1 Our membership ranges from atheist to orthodox, with  
2 all shades in between. No single religious group can  
3 speak for all of us.

4 We firmly believe, and perhaps I'm  
5 overstepping my bounds here into a legal situation --  
6 we firmly believe, under the First Amendment of the  
7 U.S. Constitution, that it is not the province of a  
8 United States court to decide what constitutes  
9 "Jewish education," a subject on which we ourselves  
10 hold a variety of views.

11 Members of religious groups should be of  
12 course free to apply as individuals, as all other  
13 survivors, for their just share of the settlement,  
14 but we do not believe that any group should. Any  
15 person, orthodox or otherwise, is free to use the  
16 proceeds in any way that they choose, and they can  
17 certainly choose to support a religious cause, if  
18 they wish to do so. That's my point number two.

19 Number three, we of course have heard  
20 today and we have heard before, the circumstances  
21 that led up to the settlement and the suffering that  
22 our members and all survivors endured during the  
23 Holocaust.

24 Your Honor, I ask this Honorable Court to  
25 please ensure that legal fees be kept to a minimum.

1 If there ever was a case where pro bono should have a  
2 meaning, we believe this is it. I thank the Court  
3 for permitting me to make this brief statement.

4 THE COURT: Mr. Leo Rechter.

5 MR. RECHTER: Your Honor, thank you for  
6 permitting me to speak here. I am speaking on behalf  
7 of the National Association of Jewish Holocaust  
8 Survivors who were children or teenagers during the  
9 war. We are a sister organization of the Federation,  
10 which consists of small groups. We are a little  
11 larger and we are located mainly here in New York.

12 I will not take up too much of your time,  
13 but I would like to address myself to some of the  
14 remarks that they made today. We are supporting the  
15 agreement. We feel that under the circumstances, as  
16 was explained, there is no other solution. Even  
17 though we were children at one point during the  
18 terrible years, right now time is passing by. Only  
19 two days ago, I had to go to a funeral of one of our  
20 best friends (ui).

21 We support the organization, but it hurt  
22 me this morning very much when one attorney after  
23 another was talking about fair, reasonable and  
24 adequate. Fair, reasonable and adequate? And the  
25 Swiss lawyer was telling us complete closure. You

1 want complete closure? Bring me back my father,  
2 bring me back my uncle, bring me back my whole family  
3 in Poland.

4 It's not fair. Like someone said here, we  
5 are pragmatists; we have to accept what is offered;  
6 we know there is not much time. So we settle. This  
7 is a settlement, but by all means, don't call it fair  
8 or adequate. It can never be complete closure.

9 Why are we settling? Why are we in favor  
10 of settlement? Because not like somebody said, the  
11 overwhelming majority of survivors are in favor of  
12 the settlement. They are not in favor of the  
13 settlement. They are sick and tired of the  
14 shenanigans which have been going on for years and  
15 years and years and of every lawyer jumping in to get  
16 his share.

17 We appreciate their legal efforts on  
18 behalf of us and we appreciate all the help we got  
19 from the Jewish Restitution Organization and from Mr.  
20 Braufman and from the World Jewish Congress. We  
21 appreciate all that.

22 We don't think it was necessary to have  
23 that many lawyers for this particular case. I don't  
24 see why it was necessary, and everybody submitting  
25 claims four million, for four and a half million, and

1 here two lawyers, terrific lawyers, the effort they  
2 put in -- one is asking for four million and one is  
3 asking for four and a half million. And we should be  
4 grateful for them? What are the survivors going to  
5 get in the best of cases, after all this is  
6 distributed?

7 Your Honor, we had submitted proposals for  
8 the allocation to you and to Master Gribetz, and we  
9 feel that there should not be (ui) survivors.  
10 Everybody who lost some assets one way or another  
11 should be entitled to a share. Either way, it's not  
12 going to help much.

13 There are very needy survivors all over  
14 the world. I know, because I was one of the  
15 interviewers of the (ui) Foundation. I interviewed  
16 people in Washington Heights that were living in  
17 tenements with (ui) chairs and tables, and I  
18 interviewed people in Rego Park that were on dialysis  
19 and could not afford even the monthly payments for  
20 the (ui).

21 And now the money is going to come in  
22 handy to all of them and we want to settle it as fast  
23 as possible. But in the best of cases, nobody is  
24 going to get rich, and I wish that after all this is  
25 over, we should publicize what the survivors got and  
:

1 what some of the other parties that are involved,  
2 what they are getting or what they are asking for.

3 I also would like to mention that somebody  
4 mentioned here that a substantial portion of the  
5 proceeds should go for Jewish educational  
6 institutions. As my colleague Norbert Bikales said  
7 before, this should be up to the members, to all the  
8 survivors, not up to somebody to tell us who we have  
9 to give to and what we should give.

10 Statistically, there are more yeshivas in  
11 existence now than there were before the war. So  
12 there is a good chance that Jewish education will  
13 come through. I come from an orthodox family and I  
14 believe very much in the tradition and I believe very  
15 much in orthodoxy, but each one should be free to  
16 pursue his religion the way he wants.

17 Finally, we also oppose -- our  
18 organization opposes very strongly any kind of  
19 deduction, as was mentioned, of 25% for social  
20 agencies and another 20% for education and for  
21 memorials. I don't know whose names would be  
22 attached to those memorials.

23 Initially, as you know, we submitted a  
24 proposal, quite a number of years ago, that we also  
25 would like to see the medical needs of all survivors



1 being taken care of by those proceeds. But since we  
2 are a democratic organization, we also asked the  
3 membership what they might think about it, and let me  
4 tell you that unfortunately, the membership of child  
5 survivors are very disappointed and very disgusted of  
6 the large American Jewish organizations. They had  
7 very bad experiences in the past. They are perhaps  
8 no longer justified, but this is the case.

9 Over 1,500 people that we queried,  
10 everybody practically -- we didn't get a negative  
11 response -- signed petitions against any kind of  
12 deduction, be it 25%, 45% or whatever the case might  
13 be. All the petitions are available for your  
14 perusal, your Honor. We very strongly feel about  
15 that.

16 During the war, we had no voice over what  
17 was happening to ourselves. Now we have amongst us,  
18 as you know, doctors, professors, chairs of Holocaust  
19 studies. We even have two Secretaries of State and a  
20 head of the Board of Trade of Chicago. We have  
21 talented people and we think that the Holocaust  
22 survivors should have been involved far more in all  
23 the negotiations than they actually were.

24 The delegate or the counsel from  
25 Switzerland mentioned that long list of names of

1 organizations that support the settlement. We also  
2 support the settlement. We never realized that among  
3 all those names you mentioned, there are only two  
4 organizations of Holocaust survivors or three, and we  
5 feel that was very unfair in the past, and we hope  
6 that in the future, everybody will take cognizance  
7 that although you can get away with it right now  
8 because you have the power and the influence, that  
9 this not just, not in the eyes of the survivors.

10 Thank you.

11 THE COURT: We have two more speakers and  
12 then we'll break for lunch. Senator Carl Kruger.

13 SENATOR KRUGER: Good morning, your Honor.  
14 My name is Carl Kruger. I represent the 21st  
15 Senatorial District of Kings County.

16 This morning we're presented with both  
17 opportunity and with challenge. Your Honor is faced  
18 with a dilemma, to try to weigh, as you always do,  
19 equity and justice. And quite frankly, at the end of  
20 the day, my constituency, which represents probably  
21 the largest concentration of Holocaust survivors,  
22 certainly in the metropolitan area and perhaps in the  
23 country, are deeply perplexed. We're deeply  
24 concerned and quite frankly, we're moved by not only  
25 what happens here but with the events of years past

1 and years yet to come.

2 Survivors today are eighty and ninety  
3 years old. The funds that are presented to them  
4 today dwindle as they age in the process and as their  
5 golden years move on, and their ability to use the  
6 few dollars that may come out of this allocated  
7 settlement becomes more a question of preserving a  
8 quality of life than somehow or other trying to  
9 infuse a life.

10 People lost their families. They lost  
11 their business, they lost their homes. But most  
12 importantly, they in most instances even lost their  
13 will to live. Today they're faced with the  
14 opportunity to say that this government and the  
15 organizations that have fought so vigorously for so  
16 long to try to make some right into what was  
17 obviously such a terrible wrong cannot really do  
18 that, to the extent that these families now have to  
19 use the few dollars that come out of this settlement  
20 to supply themselves with, as one of the prior people  
21 that gave testimony here this morning are talking  
22 about, medical care, food, sustenance, a rent  
23 subsidy, the kinds of things that this money was  
24 never intended for but ultimately will be used.

25 As the attorneys argue, we seem to feel

1 like this a low-key chorus. Everybody is arguing in  
2 the background, while the main players remain on  
3 stage. We ask you, at least I ask you, that the  
4 broad sentiment in my community is to create a fund,  
5 create a fund, a pool of available resources that  
6 people can tap and use so that their life can be made  
7 a little bit more secure and the quality can be  
8 raised somewhat in their golden years.

9 We certainly cannot ask at this point for  
10 justice, because justice is not even an issue. We  
11 ask your Honor to distribute equity, to distribute  
12 fairness, to try to do the right thing by people that  
13 otherwise can't speak for themselves. So today is  
14 historic. It presents challenge, it presents  
15 opportunity and it presents for your Honor a unique  
16 circumstance, a circumstance that will never be  
17 duplicated in the annals of our history. Thank you.

18 THE COURT: Judith Hager.

19 MS. HAGER: His Honor, my name is Rabbizin  
20 (ph) Judith Hager and I was admitted to (ui) in New  
21 York. I was preaching Jewish philosophy.

22 I represent an institution which is a  
23 yeshiva and a settlement, which is called Kiergot  
24 Chidushe Harim. Before speaking about the angst and  
25 why we are asking for help, I would like to tell you

1 what I felt on this shabbes. On this shabbes, we  
2 read from the book of Obadiah and Davtela (ph) and  
3 the prophet says in sentence 17, "And in Zion shall  
4 be remandments, and there shall be holiness and the  
5 house of Jacob will inherit their inheritance." It's  
6 the great privilege of the United States that the  
7 fulfillment of the prophecy of Obadiah is done  
8 through the United States court.

9 Your Honor, the Kiergot Chidushe Harim is  
10 named after the great genius and pious grand rabbi.  
11 Harim is the initials of Harad Itzak Meil (ph).  
12 There were thousands of synagogues which were all  
13 over Poland after this name of Rabbi Isaac Meil, who  
14 were dealing with his ideas, with his writings, and  
15 they had a very special way -- I would say a special  
16 way in the terminology of holiness, kindness, of  
17 purity, of very high intelligence.

18 Most of those people were business people  
19 and were very successful. By the way, to remind my  
20 own grandfather (ui). Thousands of them were bearing  
21 the name of these synagogues Chidushe Harim silver  
22 Torah ornaments, (ui), shabbes and yomkov (ph)  
23 candles, Hanukkah candles, and all of this was melted  
24 and given to the Swiss banks.

25 There were a lot of other documents that

1 were there, like the Sifra (ph) Torah itself,  
2 thousands of them, which we don't know where they  
3 went, and also this society was the queen of Judaism  
4 in all Poland. Nothing is remain from all those  
5 glory.

6 The voices of those that went to the gas  
7 chambers and those (ui) which were a crown and a  
8 symbol of a way of life to all Jews, all over Europe,  
9 from England to Germany to Italy and even in Yemen,  
10 the voice of those Jews came, in the way that they  
11 lived and the values that they were carrying. While  
12 going to those gas chambers, I'm asking myself, what  
13 did they think at the last moment?

14 We know that you can today destroy the  
15 world with one button, just pushing one button. So  
16 the greatness is really not the power of conquering  
17 or destroying a world, which the Nazis should have  
18 known. This is no such great thing if someone  
19 doesn't have any weapon and you come and you attack  
20 him and you kill him.

21 The greatest greatness of the Jews and the  
22 real hero is the one that doesn't give up his values  
23 at the last moment of his life. Those people who  
24 went to the gas chambers screaming and believing that  
25 their values will continue someplace and there will

1 come a day that people will pay revenge.

2 We are not looking for revenge; we are  
3 looking for justice. What does it mean, justice?  
4 Justice means -- our rabbi say, if you want take  
5 revenge from someone, if you kill him, that's not  
6 revenge. You say, I'll beat him, I'll give him back  
7 punishment. But the real revenge is when you're  
8 carrying on a greater quality, you develop a greater  
9 standard of your own morals, of your own behavior.  
10 It takes from you courage, it takes from you a lot of  
11 patience, but this is the revenge.

12 Now I think that the remandments that  
13 Obadiah spoke, the remandments in Zion of those  
14 thousands and thousands of Jews, that their voice is  
15 not heard anymore, (ui) is to help the Kiergot  
16 Chidushe Harim to develop and to continue in this  
17 great belief and the great values.

18 To the Swiss banks I would like to say,  
19 you didn't behave right while not admitting. As I  
20 hear it, the last man didn't want to admit what you  
21 owe. Again, in our Torah it's written daminn.  
22 Daminn means blood and daminn means money. So I  
23 don't think that billions of billions of dollars that  
24 would have been given to all of those people that ask  
25 will compensate for the evil that was done.

1           No-one of the Nazi or Swiss banks should  
2 think that they are finished with compensation and  
3 that they don't deserve anything to be punished. But  
4 we are too little, too small to give the right  
5 punishment for something that never happened in  
6 history before.

7           I myself meticulously was researching the  
8 Holocaust and I came to some conclusions this is not  
9 the place to say. But the real revenge for what has  
10 been done is only given in the hands of God. He  
11 created the (ui) and the prophets always speaks about  
12 it. God will lead us to the right way of life and we  
13 will see what is the right revenge for all those  
14 deeds.

15           But as I said, the greatest revenge will  
16 be by continuing our straight line, continuing  
17 bringing the children, our next generation in the  
18 right ways, in the Jewish way, which was the light of  
19 the world and will be the light of the world, as  
20 being the chosen people.

21           Again, I want to thank United States for  
22 this great opportunity she gave people to speak out.  
23 It's not a matter of how much pennies or how much  
24 dollars or how much millions you have; it's the great  
25 opportunity to speak out, even 55 years later, and I



1 think that even 1,000 years later, our generations to  
2 come will continue to speak and to value it -- the  
3 evil and to continue in the path of helping each  
4 other.

5 So I would like, your Honor -- I put in  
6 the papers what are the aims of Kiergot Chidushe  
7 Harim. They need a lot of help to continue on those  
8 research that they're doing, to continue to help  
9 couples to live in the Kiergot. Kiergot is a  
10 settlement. They would like to continue to have  
11 computer and to build up their own children in the  
12 right way, to build an (ui), to build a park. The  
13 memory of all those thousands that were gone should  
14 remain forever. Thank you.

15 THE COURT: We'll break for lunch for a  
16 half hour. We'll be able to have another eight to  
17 ten speakers.

18 (Break)

19 THE COURT: The next speaker is Steve  
20 Placek. We'll just go on to Naomi Nagel and Alice  
21 Fisher.

22 MS. NAGEL: Good afternoon, your Honor.  
23 Good afternoon, ladies and gentlemen. My name is  
24 Naomi Nagel. I am a sole survivor from my parents.  
25 My parents were originally from Czechoslovakia and

1 when the Nazis came in, they fled to -- they wanted  
2 to flee to England but they never made it. They went  
3 to south of France, where I was born. Then I was  
4 two-and-a-half and three years old. First my father  
5 was taken and then my mother to Auschwitz.

6 My mother placed me in a cloister before  
7 she was taken to Auschwitz, where my life was saved.  
8 After the war, when I was almost seven years old, my  
9 aunts found me and they took me to Hungary, where we  
10 discovered papers from my parents, the letters what  
11 they wrote to my grandmother and my father's sisters.  
12 That was the number of the -- my father was a very  
13 successful traveler for a big firm and he used to go  
14 to Europe to sell cattle all over.

15 Whenever he was in Europe, he used to go  
16 to Switzerland and that was money in Sweizeviche  
17 Kapitanstalle (ph) in Basel. My relatives had the  
18 number of the account and I was trying for the last  
19 15 years to get it back, which I never succeeded.  
20 Now I joined the class action and I feel that the  
21 settlement is fair and reasonable.

22 I just feel that those people like me, who  
23 have an account number and all the documents, they  
24 should get first, because that's what my father left  
25 me. It's my money. I feel that that's why we should

1 be number one and then all the other causes. That's  
2 all. Thank you very much.

3 THE COURT: Thank you.

4 Alice Fisher.

5 MS. FISHER: My name is Alice Fisher. I  
6 have here (ui). I have to comment on some of the  
7 matters I heard here. This settlement is by no means  
8 sufficient or fair or reasonable. I heard here that  
9 it's overwhelming. This I never heard from anybody.  
10 Nobody thinks that it's (ui) endorse, but we have no  
11 choice. Look around our faces here. Considering our  
12 ages, we have no other choice but to accept. But for  
13 six million people, this is by no means fair or  
14 sufficient. And about the communication of the Swiss  
15 banks, I can tell you my communication, how they  
16 communicated with me.

17 My father was a very wealthy businessman.  
18 I come from Czechoslovakia. It was occupied by the  
19 end of 1938 by the Hungarians. And because our area  
20 was politically very insecure, so all the Hungarian  
21 and Czech Jews went periodically to Switzerland to  
22 make assurances for the children and deposit their  
23 life savings.

24 My father represented the (ui) German  
25 company Singer Eskachech (ph) company. Every

1 business trip, he stopped in Switzerland to put the  
2 money. From 1934, the secret law came out that you  
3 can deposit money under a number only. Inside they  
4 had the name, because it was illegal to take out  
5 money from the country.

6 From 1934 until 1944, many Hungarian and  
7 Czech Jews, all of the (ui) Jews that I know there  
8 deposited their money. In the list that came out,  
9 not one of the Hungarian or Czechoslovakian Jews'  
10 names was there.

11 THE COURT: That's not the final list you  
12 have; that's just the first list.

13 MS. FISHER: Okay. Let's hope that (ui).  
14 Thank you, your Honor.

15 In the ghetto (ui) ghetto in April of '44  
16 from Hungary. My father was taken out and beaten by  
17 the Germans twice because they knew that he was a  
18 wealthy businessman. This was the system of the  
19 Germans. Before the killing, they first interrogate.  
20 They torture the victim, they should reveal where  
21 they keep the money.

22 My father came back. He was a 44- or 45-  
23 year-old man. We are not talking here about old  
24 people. He came back bloody from the interrogation.  
25 Many Hungarian Jews, perhaps under duress, revealed

1 their numbers and (ui) documentation that many Nazis  
2 came in in '45 and '46, in Switzerland.

3 I do not want to go into details, but  
4 after -- my father was taken and deported, half dead  
5 already, to Mauthausen concentration camp. There he  
6 worked for eight months slave labor with my 14-year-  
7 old brother and after this, three weeks before  
8 liberation, they killed them. This was a death march  
9 in Mauthausen concentration camp. My little 9-year-  
10 old brother was thrown in the gas showers in  
11 Auschwitz. My 39-year-old mother went with him. She  
12 could have perhaps survived. I was in Baden Baden  
13 concentration camp and I survived all alone.

14 So those noble Swiss, after the war, when  
15 we came to them, (ui) all alone, took advantage from  
16 (ui) of the family is dead. I brought the death  
17 certificate in because in Israel, after the war, the  
18 Israeli government provided an office -- from '48,  
19 there was an office in (ui), near Jerusalem,  
20 searching for relatives. In end of '49, they found  
21 records in Mauthausen concentration camp that my  
22 father was -- of course, the Germans, whoever they  
23 killed, it was recorded that they died in typhus.

24 So I had a death certificate of my father  
25 and I produced this, so they had -- I have here all

1 the copies of the letters with Swiss banks I  
2 corresponded. I didn't start this now. I started  
3 this over 20 years ago, when I could afford a lawyer.

4 After the concentration camps, we still  
5 struggled and we still struggle. Our lives are not  
6 like my parents planned it for us. I came out from a  
7 very rich home, but the Holocaust shattered my life  
8 and ruined it, still today. And now I hear about the  
9 communications of the Swiss banks.

10 My father provided for us well and he  
11 taught us in the ghetto that you have a future after  
12 the war in Switzerland. He trusted the Swiss banks  
13 (ui) and the Swiss, what did they do? Now we know  
14 that they financed Hitler's warfare.

15 They prolonged the war by this and all the  
16 Hungarians, they are responsible for the deaths of  
17 all the Hungarian Jews. By us, the Holocaust started  
18 only in middle of '44. In March '44, we were still  
19 in our homes. Hitler marched into us only March,  
20 1944. And in May/June '44, Adolf Eichmann, Hitler's  
21 right-hand man, was already ready to make deals with  
22 the head of the Zionist Organization, Adolf Kasmir  
23 (ph), for thousand (ui) or thousand Jews.

24 I don't remember the exact figures,  
25 because they were bankrupt. They could not continue

1 the Holocaust. The Russians were advancing from the  
2 east and the allies started bombing already, so the  
3 Holocaust could not have gone on to '45, if not for  
4 the Swiss money and the Swiss -- this is the (ui) --  
5 the Swiss paid them our money for our (ui). So our  
6 parents and our brothers were killed. The Hungarian  
7 Jews could have been spared.

8           So this is not a fair deal, considering  
9 for how many people they did it. Anyhow, as you  
10 heard here, this is not just a material issue; this  
11 is a moral issue. And the moral side of it is that  
12 at least this hearing is a part of the moral side of  
13 it. This puts the Holocaust on the map against all  
14 the denials. So with this, I am satisfied, at least,  
15 that my parents and brothers' memory will not be  
16 assaulted like they were.

17           But with the Swiss I communicated for many  
18 years and I spent -- I invested in this a lot of  
19 money, because I have here the letters that every  
20 bank requested 500 francs for search. Then the  
21 answer is, there is no information. I had a lawyer  
22 in the '70s and in the '80s, in Basel one and in  
23 Zurich one. After a few years of search, they sent  
24 me back the power of attorney that I sent them, with  
25 a bill of course for their fees.

1                   And they wrote me a letter, Mrs. Fisher,  
2 we cannot ask for more money from us, because I pay  
3 for each one 500 francs, because we see that the  
4 banks hide under the law of secrecy and don't want to  
5 give any information. The law of secrecy from '34  
6 that was supposed to protect us, now they make it  
7 work against us and we could not achieve anything  
8 until the Banking Committee of the U.S. government  
9 was involved with this.

10                   In 1996, when I went with Mr. Fagan, who  
11 is my lawyer, to the House of Representatives in  
12 Washington, then the deal started rolling, because as  
13 private citizens, we couldn't achieve anything. So I  
14 really believe in the United States justice, that  
15 some measure of justice will be done, because justice  
16 cannot be done for a crime like this one. These are  
17 atrocities that (ui) for this. But a measure of  
18 justice, perhaps, for the victims and for the  
19 survivors.

20                   I heard here also from one of the speakers  
21 that those that are entitled to this money are not  
22 sitting here anymore. Too many of them are not here,  
23 but some of us are still here. Please, do not select  
24 heirs for us. We are still here. We will give our  
25 own charities and we are giving our own charities.



1           It is not fair to select percentages to  
2 organizations or to charities. We give as any other  
3 Jew. Why should a Holocaust survivor be assigned a  
4 special percentage to give? Every Jew, every human  
5 being has to give. This is for the Holocaust  
6 survivors and we are still here. Look at our faces  
7 not for long, so this is why we have to accept this  
8 deal, because the Swiss banks left us no choice.

9           But when I hear the word contribution or  
10 fund, then this is really very -- this is adding  
11 insult to injury, because German companies don't give  
12 any contributions to me. This is my money. I never  
13 applied for the (ui) Germans, despite that no-one  
14 suffered as much as I did, no-one lost as much as I  
15 did. Many lost as I did, yes, but no more. I lost  
16 all my family and I come from a very wealthy home.

17           Our home was full of art, objects. The  
18 German officer in the elegant uniform just came into  
19 our house and just pointed to (ui). My grand piano  
20 was taken, everything. They stripped us naked (ui).  
21 They took the greatest property in the world and now  
22 you see one billion and a quarter. This is just a  
23 fraction of the interest that they make from our  
24 money. And it's our money, because my father put it  
25 in for my name and for my children's name.

1 I will give my own charity and I really  
2 ask that it's not a contribution. It's not a fund.  
3 I don't want funds and I don't want contributions  
4 from banks. They don't have to go collect the money  
5 for us. They should give us back our money that we  
6 put in our for our life's safekeeping.

7 Please, your Honor, I hope that you can  
8 differentiate between all those that started this  
9 thing, this matter already years ago, because with  
10 this mailing that you did now that cost so much  
11 money, this mailing only encouraged, I am afraid to  
12 say, people that are not legitimate Holocaust  
13 survivors. Because as groups, this money is not for  
14 persecution.

15 I heard him mention many names of groups.  
16 They were persecuted by the Germans, yes, but if they  
17 had Swiss accounts, they are entitled to it, but not  
18 as a group. As a group, they were persecuted but not  
19 taking the money. So I just ask you -- God should  
20 really give you the wisdom, your Honor, Judge Korman  
21 and Master Gribetz -- God should give you the wisdom  
22 to know how to distribute this money. First the bank  
23 accounts and then those that are really entitled for  
24 the looters and robbery of the Germans first and then  
25 the Swiss.

1 I thank you very much, Judge Korman and  
2 Master Gribetz and all the honorable attorneys, for  
3 all your time and effort that you've given this  
4 matter.

5 THE COURT: Thank you.

6 David Handwoho.

7 MR. HANDWOHO: Your Honor, my name is  
8 David Handwoho. I'm a Holocaust survivor. I also  
9 participated in the uprising in the Warsaw ghetto. I  
10 was in various camps. For four and a half years,  
11 I've been in camps, in and out, working camps as well  
12 as the concentration camps.

13 I have spent my whole years from one camp  
14 to the other. I was also in Auschwitz, I was in  
15 Lydanek, I was in Berkenau (ph), I was in Dura (ph).  
16 I was also in Gleibitz (ph) and from Gleibitz I went  
17 to Dura, Albestadt (ph), Termene (ph) and so on,  
18 until we got to Libik (ph).

19 At Libik, we were ordered on a ship. The  
20 name of the ship was Capricorna (ph). On this ship  
21 were 9,700 inmates from various countries, and I saw  
22 -- I was on the top when the Americans came and I put  
23 (ui) in the middle of the ship. The ship got  
24 engulfed in fire and I managed to grab a piece of  
25 thick wood and throw it into the ocean. And then I

1 went on that piece of wood and I paddled to shore.  
2 You could see from a distance the shore. I came over  
3 and there were the British and I was liberated by the  
4 British.

5           Going back to the camps, your Honor, let  
6 me tell you something. Whatever you see on  
7 television, whatever you read, you only know maybe  
8 10% of what went on in the camps, because a normal  
9 person could never comprehend what really happened in  
10 the camps. You lived from minute to minute. You  
11 survived this minute; then you had to look to survive  
12 the next minute.

13           Then you had to know every trick the  
14 Germans had. If you got hit by a German, you had to  
15 (ui) right away, make him show where he struck, and  
16 then pick up the tool and start working. If you  
17 don't, he'll hit you as hard as he could until you're  
18 dead. So those tricks, you had to know.

19           Since I've been an old timer Holocaust  
20 survivor, I learned the hard way those tricks, and  
21 that's why I'm able to stay here and talk to you  
22 about the atrocities. I lost 180 people from my  
23 family, who perished. I'm the only survivor, your  
24 Honor, but I cannot see that there's so many do-  
25 gooders, sitting with their hands ready to gobble up

1 to the (ui) the money that it's entitled to us. We  
2 are the ones who suffered. There is no-one in the  
3 world that can give us the amount of money what we  
4 went through. But still, everybody wants to have his  
5 piece.

6 Your Honor, I beg you, you have a lot of  
7 thing to do about it. I talk to your heart, as a  
8 Judge. Your Honor, I believe in the judicial system  
9 of America. Please, use your influence and see to it  
10 that justice is being done. Thank you.

11 THE COURT: Thank you.

12 Eliezer Blaustein.

13 THE CLERK: Can we have the Russian  
14 interpreter, please?

15 MR. BLAUSTEIN: Deeply respected Judge  
16 Korman, ladies and gentlemen, my name is Eliezer  
17 Blaustein. I'm from Ukraine. I was born in Odessa,  
18 in August 17, 1932. I live in Brooklyn (ui) years.  
19 I have a little English and you excuse me for my  
20 Russian interpreter.

21 THE COURT: There's an interpreter.

22 MR. BLAUSTEIN: I think it is necessary to  
23 tell the Court the falling about the fairness, about  
24 the fairness of this settlement, the settlement  
25 between the Swiss banks and Jews, the survivors of

1 Holocaust and their heirs.

2           October 22nd, 1999 was the date  
3 established by the Court. That date was established  
4 for registration of information about the  
5 distribution of funds and also the claims and the  
6 time when the claims would be filed in the Court.  
7 This time is not enough.

8           Hundreds, maybe thousands of people, and  
9 not only in America, but also in the Republics of  
10 former Soviet Union, victims and survivors of  
11 Holocaust and their heirs, were deprived of the  
12 opportunity to file an original application, because  
13 there was not enough time and also not enough  
14 applications were mailed.

15           THE COURT: I think there is a  
16 misunderstanding. The questionnaires that had to be  
17 filed by the 22nd were what we would describe as  
18 informational. First of all, we're still accepting  
19 those that have come in after the 22nd, and you did  
20 not have to file the questionnaire in order to be  
21 eligible for whatever plan of allocation was made.  
22 So even if somebody did not file one of these  
23 questionnaires, they still could be eligible.

24           MR. BLAUSTEIN: I understand, but I don't  
25 have -- but I just don't have a chance to apply, to

1 submit this application.

2 THE COURT: You could submit it. This is  
3 not a date where if you didn't submit it, you're not  
4 eligible to participate.

5 MR. BLAUSTEIN: I would like just to give  
6 an example. This is the example of what I said  
7 before. November 19th, this year, newspaper Forwards  
8 (ph) published a small notice and that notice said,  
9 and I quote, "About new 44,000 accounts opened by  
10 Jews before or during Holocaust, page 3. Jewish  
11 organization kiosk only November of 1999 started this  
12 work to help people to fill out applications for  
13 Russian-speaking Jews, people who don't speak  
14 English."

15 As a result, many, and I would like stress  
16 this word many -- I don't know exactly how many, but  
17 many potential plaintiffs up until now can't bring  
18 into the Court for the Court's consideration their  
19 material loss. So it is very difficult for the Court  
20 to establish the real size or the real amount of  
21 their material damage.

22 And the second: This form which was sent  
23 to us, that form does not indicate on what period the  
24 amount which was stolen, which was hidden and which  
25 was lost should be estimated. So the plaintiffs --

1 let's say the fourth category as far as the  
2 settlement, could not determine and could not notify  
3 the Court the amount of the material damage which was  
4 caused to them, and I stress these words, the  
5 material damage.

6 The amount of 1.25 millions of dollars,  
7 which Swiss (ui) agreed to return to their victims  
8 and survivors of Holocaust isn't adequate, isn't  
9 adequate to the material damage, and it isn't also  
10 adequate to the health and the life of hundreds of  
11 thousands of Jews of the former Soviet Union.

12 Six million Jews of eastern Europe and the  
13 former Soviet Union, in ghettos and concentration  
14 camps, in evacuations -- it is impossible to estimate  
15 it in monetary form. I think that (ui) in 1.25  
16 million dollars, which was suggested to your  
17 consideration, your Honor, is not a compensation, but  
18 just not enough amount of money, money of the Jews  
19 which were hidden in Holocaust and which were stolen  
20 and besides money, also jewelry and some other stolen  
21 property hidden by Swiss banks and their heirs after  
22 the Second World War.

23 And I am finishing. To my mind, Swiss  
24 banks must carry not only moral responsibility in  
25 front of the Jews of Europe and former Soviet Union



1 and their heirs, and their heirs in the United States  
2 and Canada, in Australia, but also in front of them  
3 United Nations. The sum which was given for your  
4 consideration, in our opinion is not fair and is not  
5 adequate.

6 By the way, for 60 years, there was a very  
7 substantial interest which was accumulated in Swiss  
8 banks. Alongside, we think it is possible to ask  
9 you, your Honor, to approve the settlement and to  
10 approve that amount of 1.25 billion dollars as a  
11 first branch. It is like the first original step of  
12 compensation, and to start in this year to distribute  
13 the money among the survivors of Holocaust and among  
14 their heirs. And only God knows how long these  
15 people will still be alive.

16 And our suggestion about the distribution  
17 or about the plan of the distribution of those funds  
18 will be given to you, Mr. Gribetz -- will be given to  
19 you in the (ui) order. Thank you for your attention.

20 THE COURT: Lea Kartyn.

21 MS. KARTYN: Your Honor, my name is Lea  
22 Kartyn. I came from Israel. I've been residing  
23 there for seven years.

24 I address you here, not only for myself,  
25 but also my countrymen who live in a town called

1 Ashkelon (ph). They are also plaintiffs in the class  
2 action suit against Swiss banks. I was asked to  
3 express hope that the respectful Court will approve  
4 this settlement, although it's not very adequate in  
5 terms of the amount of claim, but we victims of  
6 Holocaust don't have much time to wait.

7 I express my gratitude to all involved in  
8 this suit, the individuals and the organizations, for  
9 the fact that they were able to find evidence of the  
10 cooperation of Swiss banks with Nazi Germany, and so  
11 they were able to find accounts in the Swiss banks  
12 which were hidden. I also express my gratitude to  
13 all attorneys who were involved in preparing this  
14 claim, especially the ones who refused to charge for  
15 this claim. I ask the others to follow their  
16 example.

17 I understand that the claim amount is far  
18 from adequate, but nevertheless we support this  
19 agreement, but we're asking the Court to include the  
20 corrected dates, the corrected dates of compensation,  
21 so that the very first distribution of the  
22 compensation would take place in June of the  
23 following year, and the final distribution should not  
24 take place longer than a year from that date.

25 I'm a plaintiff in this action. I lived

1 in Odessa and all my properties and my family  
2 properties, my father's property, who was a movie  
3 director. My parents inherited gold rubles from  
4 their parents, which was significant amount, who in  
5 turn inherited their money from the Russian traders  
6 of the first and second degree, the art, antiques and  
7 jewelries, which were hidden, of course, for this  
8 reason, from the Soviet authorities, in the basement  
9 of our apartment, and they were forced to leave all  
10 their possessions because they had to flee Odessa.

11 Not only I experienced a material loss  
12 because of the damage of my properties, but also  
13 physical. During the evacuation from Odessa by ship,  
14 my ship was bombed by the Nazi planes. I was thrown  
15 out to the sea. I was rescued, but because of the  
16 tremendous number of injuries, I lost my vision. By  
17 accident, instead of arriving to the place of  
18 evacuation, I ended up in Leningrad, now called St.  
19 Petersburg two days prior the German blockade. I  
20 survived the Leningrad blockade, lost my health  
21 because I experienced hunger, and then I was  
22 evacuated to the central (ui).

23 There are a lot of people like me who  
24 suffered because of Holocaust. We all need material  
25 and moral health. We also need help in reinstating

1 our health and reinstating our social needs. We  
2 don't have much time to live.

3 I'd like to support those who presented  
4 their comments today about the fact that religious  
5 groups should withdraw their claims from this  
6 agreement. This money should be returned to those  
7 who lost them. Religious groups and the educational  
8 groups should follow the Torah's rules. They should  
9 express their pity to the victims. Help in bringing  
10 up a future religious leader should come from  
11 different sources. Thank you for your attention.

12 THE COURT: Thank you.

13 THE CLERK: Mr. Kartyn.

14 MR. KARTYN: May I address you?

15 THE COURT: Yes.

16 MR. KARTYN: Your Honor, ladies and  
17 gentlemen, I'm sure today's hearing will be entered  
18 in the history of jurisprudence. I, as a Second  
19 World War veteran, listening to these speeches today,  
20 felt like I'm listening to the Nuremberg process all  
21 over again. That's why it's impossible to make a  
22 mistake when you're going to decide the fate of this.

23 Although you've heard a lot of different  
24 opinions, I just want to support those speakers who  
25 talked about religious organizations such as yeshiva.

1 When we found out about it from the Israeli radio,  
2 all war veterans, Holocaust victims and survivors  
3 were shocked. A lot of universities could envy  
4 yeshiva the nations.

5 And I'm addressing not as much you, your  
6 Honor, but to the attorneys and the administrations  
7 who represent those. I just want to tell them please  
8 think what you doing. The compensation has to go to  
9 Holocaust victims. Of course, the young people who  
10 studies and other universities don't know much about  
11 wars, about the war which took not six days, not four  
12 months, but four years. That's why I'm asking them  
13 to withdraw their claim, because the money should go  
14 to the Holocaust survivors only. Thank you.

15 THE COURT: David Tannenbaum.

16 MR. TANNENBAUM: My name is David  
17 Tannenbaum. I'm a survivor and I spent all my best  
18 few years, teenage years in three famous  
19 concentration camps, Bleidernech (ph), Plaschoff (ph)  
20 and Klausenberg (ph). Your Honor, gentlemen, ladies,  
21 I present myself to you other survivors.

22 The reason I'm here is because our opinion  
23 is that this settlement is very unfair, because as we  
24 know, the whole world is trying to erase the fact of  
25 the Holocaust, (ui) Auschwitz (ui), while the Swiss

1 government does not want to recognize the settlement,  
2 because if a government will recognize it, they will  
3 admit to the guilt. If a bank institution does, it's  
4 a humane thing.

5 I want to stress three points, which were  
6 sent by application. Really, I and my brother  
7 survivors, we really don't understand how people,  
8 intelligent people, which they do probably -- made up  
9 those applications -- that for instance, for (ui).

10 We know I'm sure -- there's been plenty in  
11 the press and television and in the history of the  
12 Holocaust -- that the Germans surrounded a town and  
13 they went around to the houses in the streets and  
14 they chased everybody under stress, under the whip,  
15 chased everybody out into the town square, and from  
16 there into cattle trains and were sent away, nowhere  
17 that we know until really this day.

18 I'll take up my area, which we trying to  
19 find out that there was Belzets (ph) and Saribourg  
20 (ph). The conditions which those people died we knew  
21 later. People were brought to Belzets. That was not  
22 actually a camp. That was just an area where people  
23 were sitting in bunches. They got undressed and they  
24 were waiting and transport brought them to Saribourg,  
25 where they were gassed.

1 Under the conditions those people lived, I  
2 will not describe it, because the human mind I don't  
3 think can comprehend it and can describe it. The  
4 fact is Dr. Michael Birenbaum (ph) -- he's got a book  
5 out, Witness to the Holocaust, in which there's a  
6 testament of the guy which was the commandant of  
7 Saribourg.

8 I take up those things and another thing  
9 here, to bring out the time of death, the place of  
10 death. We know that from my area, they were sent to  
11 -- but we really don't know exactly the time when  
12 they were put into the gas chamber or the time or the  
13 day when they were brought into the gas chambers.  
14 Some transports waited naked on the outside for days,  
15 until they got into line to get to Saribourg.

16 I myself started all these things here,  
17 although I am one survivor myself, but I tried -- all  
18 my life, Holocaust was my side job. I myself -- I  
19 want to bring out one other thing, how I survived.  
20 In the course, they put us compared to other (ui).  
21 All along, everything was Jews. The Jew was always  
22 separated from all the things, until the last minute,  
23 in the last camp, and the camp was already have to be  
24 evacuated and the allies was surrounding the area.

25 The first thing was the Judinraus (ph) and

1 the camp was -- the guards left the camp and they  
2 left everybody else. But the Judin, the Jews were  
3 out, because we had a special yellow strip and they  
4 know -- the block leader, he knew who was Jewish from  
5 -- they had an account of us.

6 We went on the transport, which then  
7 became a death march. There was left over -- they  
8 liberated maybe 40 of us. From a couple thousand,  
9 there was 400 (ui). With all that, that they want to  
10 buy -- we came to an area and we were surrounded and  
11 the guards left us. That was all Jews, because all  
12 the others were left in the camp for the Swedish Red  
13 Cross to take over.

14 This is history; I'm not telling a story.  
15 We were in the woods and the guards left us alone.  
16 That meant that we were -- we didn't believe it but  
17 we were liberated. We never dreamed of that. We  
18 were waiting in farmers' pig stalls, hiding again.  
19 They came in about four or five hours later and they  
20 took us out.

21 There was 57 young boys and they were all  
22 shot. I was safe. I was the last one in line and  
23 the tanks came around, so they were (ui). I  
24 personally caught the other guy, one of the guys. I  
25 brought them to justice. I was the only surviving



1 witness and he was hanged. I got the whole case from  
2 the military tribunal in Dachau.

3 Therefore, we don't see how we could agree  
4 that somebody could buy off and say, we give you so  
5 much and forget about it and no claims, nothing,  
6 nothing happened. We erasing the Holocaust. That's  
7 my opinion and that's why survivors (ui). We get  
8 money, we get a certain amount of money and forget  
9 about whatever happened, whatever parents -- I lost  
10 my whole family. I had three brothers, two sisters,  
11 father and mother, uncles, aunts, two brothers who  
12 were highly educated. One was in (ui) yeshiva until  
13 the war. One was in another high school, an artist.

14 We were together (ui) in the last camp.  
15 They sent him away and he died in Mauthausen. I  
16 happen to know because there were other people who  
17 survived. They knew him. They knew when he died.  
18 The oldest brother was shot while trying to escape.  
19 People who survived told me he ran away and they  
20 brought him back there.

21 Therefore, your Honor, I think -- I  
22 believe -- I'm here in this country 15 years -- that  
23 there is justice and there is understanding. It was  
24 in our name, in the survivors' name which all the  
25 settlement was made. I think that you can see we

1 cannot live our lives out -- pawn themselves off for  
2 a certain amount of money. It's not the money that  
3 I'm asking, more or less; I don't care. There's \$500  
4 which they gave. I didn't take it.

5 I bought my Hanukkah lamp in Warsaw,  
6 Poland two years ago, which I paid \$4,500. I brought  
7 it here. If you people want to see it, I'll show it  
8 to you.

9 (PAUSE IN PROCEEDINGS)

10 MR. TANNENBAUM: That's something which I  
11 paid for as a gift. I always got punished because I  
12 unscrewed the lines, the lines of Judah. For 18  
13 years, I was telling my daughter -- she just  
14 graduated Georgetown and I lit this in Georgetown  
15 with Michael Birenbaum. He was that time (ui). So  
16 for 18 years I've been telling her, is that Hanukkiah  
17 (ph)? That's not the Hanukkiah. That's something  
18 which I had. After 18 years, I came and I brought  
19 this. She was going to school, so the rabbi invited  
20 me and I came and I lit this.

21 This is what I wanted to say. Thank you  
22 for listening and I hope that people (ui) will  
23 understand why we have the grievance for us.

24 THE COURT: Roman Kwaitkowski.

25 MR. FISHER: He's outside. Why don't you

1 take the next one?

2 THE COURT: Yaron Schwartz.

3 MR. SCHWARTZ: Your Honor, ladies and  
4 gentlemen, my name is Yaron Schwartz and I was born  
5 in Israel. I am the son of Holocaust survivor,  
6 representing my sister, my brother and my mother.  
7 However, I think that I speak for a lot of other  
8 people my age and generation.

9 We grew up without any relatives from my  
10 father's side of the family. My father spent all his  
11 time, energy and money to fight hostile European  
12 bureaucrats, bureaucracies, institutions and courts,  
13 trying to claim his dignity, humanity and property.  
14 Unfortunately, to this day, and after 40 years of  
15 trying, his efforts are unsuccessful. The horrible  
16 Bible quote, "You are the killer; now you are the  
17 heir, too" became the tragic reality facing him and  
18 hundreds of thousands of other victims.

19 I do have much sympathy and a lot of  
20 respect to the survivors that I heard before, and  
21 they spoke in favor of the settlement. However, I  
22 must object to the proposed settlement. There is one  
23 thing common to all of us here; we are all tired,  
24 very tired. You're looking at the face here; people  
25 are tired. They're tired to hear about it, they're

1 tired to speak about it, but that's not an excuse to  
2 accept it. We should wash our face and get back to  
3 the battle.

4 The proposed settlement ignores hundreds  
5 of thousands of second generation Holocaust  
6 survivors, who were robbed and stripped by post-war  
7 Swiss bureaucrats, bankers, officials and  
8 institutions, of a normal, happy childhood and better  
9 quality of life during the last 55 years.

10 The proposed settlement amount is totally  
11 unproportional (sic) to the money and property looted  
12 and is not representing any punishment for the years  
13 of deception and evidence destruction exercised by  
14 the Swiss banks, companies and entities involved.  
15 The proposed settlement amount is grossly  
16 insufficient and unfair, even without knowledge of  
17 how many victims are actually participating in the  
18 class. I heard today the number of 400,000. I don't  
19 know how many are qualified, but it just proved my  
20 point.

21 Switzerland proudly presents itself as a  
22 neutral country, founder of the Red Cross, defender  
23 of democratic values, oasis of peace and harmony, is  
24 in reality unmasked as a self-centered, mercantile  
25 nation that prospered from its dealings with Hitler,

1 showed no sympathy for his victims and emerged  
2 untouched and richer from the conflict that  
3 devastated its neighbors.

4           Accepting the settlement amount instead of  
5 going for a trial would amount to participating in  
6 the cover-up, the laundering of crimes, the rewriting  
7 of history facts, criminal mischarge of justice and  
8 lost opportunity to right the wrong.

9           This Court should order, in addition to  
10 immediate, full, complete finance compensation to all  
11 the victims, that the Swiss banks, companies and  
12 entities involved must be responsible for founding  
13 special educational centers all over Switzerland,  
14 free to the public, that will tell the story, the  
15 true story of neutral Swiss, before, during and after  
16 the war.

17           Switzerland ambassador to Washington urged  
18 his government to wage war against allegations that  
19 Swiss banks have failed to account for missing funds.  
20 In 1961, nearly 40 years ago, my father visited in  
21 person the Swiss National Bank in Zurich, asking to  
22 be allowed to look into available numeral lists of  
23 deposits, where the depositors did not come forward  
24 since the end of Second World War, and/or to allow  
25 him to submit a family list for inspection, checking,

1 search and so on. The application was rejected; he  
2 was simply thrown out. He was not the only one. We  
3 heard about many of them today, too.

4 The neutrals asked for war and they should  
5 get war. I urge this Court to move to trial. I have  
6 a brother from my father's second marriage, who is  
7 living in Israel now. His name is Schlomo (ph) and  
8 he's 12 years old. For the last several years,  
9 Schlomo helped my father to write Hebrew letters and  
10 memos on this endless battle.

11 I want to ask the Swiss gentlemen in this  
12 courtroom and elsewhere and get an answer if  
13 possible, if this is the way that they spend their  
14 quality, valuable, precious time with their daughters  
15 and sons of this age.

16 I'm claiming my lost childhood given to  
17 this (ui) and emotional, unavailable father. The  
18 deep impact of such painful childhood memories shape  
19 the adult life and characters of my sister, brother  
20 and myself. We are second generation Holocaust  
21 survivors and we're still paying the price.

22 1.25 billion is a big number; it's a huge  
23 number. Most people cannot understand this number or  
24 digest this number. However, the settlement amount  
25 for this case is a very small number. The magnitude

1 of this case -- for a case in this magnitude, it's an  
2 insulting number.

3 I want to remind everybody that there is  
4 an issue moral here and I want to throw the challenge  
5 to the Jewish nation and to the non-Jewish people.  
6 We should get our forces together and finance the  
7 needy and get the needs and the people that have the  
8 time clock ticking away and continue the battle and  
9 achieve some sort of recognition and the truth to  
10 come out.

11 I don't see the defendants' attorneys --  
12 you can recognize yourself. You can deliver a small  
13 message to the Swiss government. The Yadveshem (ph)  
14 money that's supposed to go to fund the computers, if  
15 they can spend it on a trip to Israel, to Yadveshem,  
16 it would be much more helpful. Thank you.

17 THE COURT: Is Roman Kwaitkowski here yet?

18 MR. FISHER: Your Honor, I'm Barry Fisher,  
19 one of the settlement class counsel. I'm just going  
20 to briefly introduce Mr. Kwaitkowski.

21 I've been working particularly with the  
22 non-Jewish Holocaust-era victim groups, including the  
23 Jehovah's Witnesses and the Romany people, so-called  
24 gypsies, who were victims, like the Jews, as a matter  
25 of race.

1 Romany groups, including the UNNGO  
2 International Romany Union and others, support the  
3 settlement. Here today representing the Romany voice  
4 is Mr. Kwaitkowi, who is the President of the Polish  
5 Association of Roma, whose family after the war  
6 returned to their family home, which happened to be  
7 in the town of Auschwitz, where he now resides.

8 Mr. Kwaitkowski?

9 MR. KWAITKOWSKI: Your Honor, ladies and  
10 gentlemen, my name is Roman Kwaitkowski. I'm the  
11 Chairman of the Associations of Romas in Poland. I  
12 live in Auschwitz.

13 I would like to thank you for giving me  
14 the opportunity to address all of you. I would also  
15 like to thank Judge Korman, all the attorneys and  
16 also our attorney, Mr. Barry Fisher. I would like to  
17 thank all of the Romas who support this settlement.  
18 I hope that Mr. Gribetz became familiar with our  
19 losses and our proposals about distribution.

20 During the Holocaust, half a million Romas  
21 lost their lives. Although they were wanderers, they  
22 also were owners of their own properties. We  
23 received information from the media that the Romas  
24 were included in this settlement. In connection with  
25 that, we invested plenty of efforts to inform all of



1 the Roman areas about this case. We are very happy  
2 to know that this time, nobody forgot about us.  
3 Thank you.

4 THE COURT: Ernest Lobet.

5 MR. LOBET: Your Honor, Master Gribetz,  
6 thank you for giving me an opportunity to appear  
7 before you. I am a relative Johnny-come-lately to  
8 these proceedings. I am a Holocaust survivor of the  
9 Auschwitz concentration camp, Dura and also  
10 Nordhausen (ph). I think I have standing to appear  
11 before you, by virtue of the fact that I also spent  
12 my time as a slave laborer at the Auschwitz  
13 concentration camp, working for the I.G. Farben  
14 works.

15 Whether this makes me a class action  
16 member, I really do not know. I know that in 1938, I  
17 tried with my family, carrying silver chandeliers and  
18 a menorah and some gold rings to the headquarters of  
19 the German Gestapo in Breslau, Germany, my home town.

20 And whether this money was ever melted  
21 down and ultimately found its way into the Swiss  
22 banks, neither I nor anybody else will ever know.  
23 Whether my efforts at the Auschwitz concentration  
24 camp as a slave laborer, which were of course not  
25 compensated, were ever or ever came for the benefit

1 of Swiss subsidiaries, because I.G. Farben of course  
2 did have subsidiaries in Switzerland, neither I or  
3 the Special Master or anybody else will ever know.

4 So I have to assume that the vast majority  
5 of the class members, unless they had accounts or  
6 their relatives had accounts, belong to the vast  
7 class of applicants who really cannot establish a  
8 nexus to the Swiss bank money. Nevertheless, this  
9 money is here and I presume that ultimately, a  
10 decision will be made that all these people who filed  
11 applications, myself included, will be included in  
12 the class of members to be compensated in one way or  
13 another.

14 I have no quarrel with the settlement. I  
15 do not say it is fair, because fairness is a relative  
16 term. No amount of money can possibly be fair under  
17 those circumstances, but I'm quite sure it is the  
18 very best that could be done by the groups that  
19 negotiated for the settlement. The world is not  
20 perfect and the people that negotiated I'm sure tried  
21 their very best, and I think they deserve our  
22 cooperation and ~~deserve~~ that they be supported and  
23 the settlement be approved.

24 There are, however, two issues that I  
25 would like to address. They have been addressed

1 before, one briefly by Dr. Norbert Bikales. The  
2 question really is before this Court, now that this  
3 money is available, how is it going to be  
4 distributed?

5 And out of the woodwork come many  
6 claimants who claim to have some nexus to this money,  
7 but the fact is, I believe, that this money should  
8 only go to those people that are still alive and that  
9 are in dire need of being supported by these funds.  
10 That means both in the way of health and funeral  
11 expenses and in the cases of people that are really  
12 needy, and that can be established by income tax  
13 returns, that these people benefit by this fund.

14 No money, I feel, should be given to any  
15 organization, be it religious or otherwise, because I  
16 do not believe that this money should really go to  
17 them, regardless of how laudable their purpose.

18 Your Honor, as was pointed out by Dr.  
19 Norbert Bikales, we are a huge group of totally  
20 divergent people. True, many of us, the vast  
21 majority probably, are Jewish. But within the Jewish  
22 group there are again vast differences, from reformed  
23 and liberal to the super-orthodox.

24 Who is going to decide, among all these  
25 different clans, who should be entitled, what

1 constitutes education, what is in the best interests  
2 of our children? I do not believe that really can be  
3 done. Therefore, I personally believe that none of  
4 the organizations should benefit by it.

5           There are those that believe that  
6 religious education should be paramount. I do not  
7 believe that. There are those that believe that  
8 institutions and synagogues and museums should be  
9 established and helped. I do not believe that.  
10 There are those that believe that religion plays an  
11 all-important role, but it does not for me, your  
12 Honor. And I do not want to be blasphemous, but as  
13 far as I'm concerned, I did not see the Almighty  
14 stand at the ramp in Auschwitz when the selections  
15 were made.

16           Therefore, to issue number one, where  
17 should this money go, I and many of the survivors  
18 that I'm in touch with believe it should only go to  
19 the needy survivors who truly need the money. I  
20 personally do not need the money and I know many of  
21 my friends that have come to this country and have  
22 prospered here are not in dire need to need this  
23 money. The maximum amount should be going to those  
24 that truly need it.

25           Your Honor, I came to this country and I

1 became a lawyer, and I'm a lawyer in New York today.  
2 I really have not done very much when it came to the  
3 Holocaust, since I decided, together with many, many  
4 of my fellow survivors, to draw a big, big line under  
5 my past and to forget about anything that had  
6 happened before.

7           Therefore, it is only in the last year  
8 that I've become somewhat active in the movement, and  
9 I want to address myself to an issue that has been  
10 touched here, but only barely, but that I feel very  
11 strongly about, and that issue is the fees that  
12 should be paid to the legal establishment, meaning  
13 those attorneys who believe that they're entitled to  
14 special fees for the work that they did for the class  
15 that they represent.

16           Your Honor, I was in Germany last fall, at  
17 a meeting of Holocaust survivors. I met many of my  
18 former inmates. When I told them that I had become  
19 an attorney in New York, I found it difficult to  
20 believe the derision and contempt that the profession  
21 had earned among these people.

22           I have always been proud of being an  
23 attorney, of being a lawyer, and I was very, very  
24 disappointed to see that the vast majority of the  
25 people that I spoke with, people that I was in camp

1 with, really believe that we are nothing but a bunch  
2 of greedy people, for whom the Holocaust settlement,  
3 whether it be with the Swiss banks or with the German  
4 industrial networks, is nothing more than a way to  
5 enrich ourselves.

6 There are many, many lawyers who have  
7 given their all, I understand, in these negotiations,  
8 working pro bono, without requesting any specific  
9 compensation. But I understand that there is a small  
10 group of attorneys who have or are about to submit  
11 requests for fees that are truly outrageous. I have  
12 seen some letter that says that these fees that have  
13 been requested amounting to 22.5 million dollars out  
14 of one thousand 250 million dollars (sic) are truly  
15 peanuts, a very small sum.

16 Your Honor, I believe that this is not  
17 true, because those fees are the ones that will  
18 become an issue in the newspapers and the press and  
19 in the media, and it will be pointed out that this  
20 entire Holocaust settlement is nothing more but a  
21 scheme by attorneys to enrich themselves. This  
22 should not be allowed to happen.

23 I beseech your Honor, and I understand it  
24 is in your power to make this decision, to very  
25 carefully look into this issue of legal fees, of

1 requests, that each lawyer submit time statements,  
2 time sheets, showing exactly how he spent his time  
3 and what he requests of this Court to allow him for  
4 his work and why.

5 I believe that by and large, my own belief  
6 as an attorney, that the attorneys who worked on this  
7 should in fact work pro bono and should only be  
8 compensated to the extent that they in fact have  
9 spent money out of pocket. But those that feel that  
10 they should ask for large fees and therefore enrich  
11 themselves, in contradiction of what the Holocaust  
12 settlement should be, should not get away with that,  
13 and I feel that this Court should be very, very  
14 careful when making this decision, because it will  
15 loom very large when this settlement is ultimately  
16 settled.

17 Thank you very much, your Honor.

18 THE COURT: Yakov Goodman.

19 THE CLERK: Can we have the Russian  
20 interpreter?

21 MR. GOODMAN: Your Honor, Mr. Gribetz, the  
22 first thing I would like to say is to express my  
23 gratitude to Mr. Braufman, Rabbi Singer, Mr. Steiner  
24 (ph), and other people who committed themselves to  
25 spending a tremendous amount of time in order to

1 bring this case to court.

2 My name is Yakov Goodman. I'm the  
3 President of Worldwide Organization of Byelorussia  
4 (ph) Jews. And unfortunately, I'm the only person  
5 who represents the organization who has Jews in the  
6 former Soviet Union. There are 4,000 members in  
7 Byelorussia and about 1,000 members in the United  
8 States, in Israel and in Canada.

9 As I stated previously, the people who  
10 worked in order to 1.5 billion dollars almost  
11 concluded a tremendous amount of work. You, your  
12 Honor, in my opinion, have much more difficult work.  
13 You will have to come to a conclusion that almost  
14 everybody has to be satisfied.

15 This settlement is very important and  
16 extremely painful for almost all former Soviet Jews,  
17 because Soviet Jews became victims of Nazism. Then  
18 they became victims of communism. And at the end,  
19 they haven't received anything, they haven't received  
20 even what was received by Jews from the claims  
21 conference.

22 Unfortunately, this politics still goes  
23 on. Seven million which were allocated in '96 and  
24 '97 have not reached them; only five have -- excuse  
25 me, only two have reached them. We encounter a



1 tremendous number of unjust cases when we communicate  
2 with the claims conference, when it comes to our  
3 Jews.

4           The same thing happened with the fund  
5 which was organized in Switzerland three years ago.  
6 Two sisters applied to that fund; both of them were  
7 in the evacuation together. One sister received  
8 help, another one didn't. We're not talking about  
9 \$500. We're talking about justice; Justice is the  
10 word which was pronounced a lot today. I believe  
11 that one of the reasons is the discrimination of the  
12 Russian Jews when it comes to preparing the list of  
13 documents needed, distributing the applications, et  
14 cetera.

15           Unfortunately, it happened so that I am  
16 the one who is addressing this issue now, and I'm the  
17 one who is bringing out the question about the  
18 condition of the Jews who are left there in the  
19 former Soviet Union. We are prepared to send our  
20 representatives when the discussions on the funds  
21 distribution will take place, because that money is  
22 ours, our parents', our grandparents'.

23           Our grandparents paid those contributions  
24 which were imposed on the ghettos. They were robbed  
25 before they were killed. Unfortunately, the

1 situation could be described something to the effect  
2 that the dead ones cannot speak and the live ones are  
3 not willing to listen.

4 From our point of view, we feel that the  
5 money should be divided into three directions. There  
6 is enough money to spend for people who went through  
7 the horrors of war and who need that money now. The  
8 ones who buried in the graves there do have the right  
9 to have some money spent on them by building memorial  
10 or put a small stone above their graves.

11 I grew up in a small town, Moze (ph), in  
12 the south of Byelorussia. Five thousand Jews were  
13 killed only there. There are five graves. None of  
14 those graves have even a stone or a fence around  
15 them. Those Jews repeated the act of heroism of the  
16 Masada heroes. A few dozens of people decided to  
17 burn themselves and everybody else, but not to give  
18 in to the enemies. The youngest was seven years old,  
19 the oldest was eighty. On the place, one could find  
20 today burned wood and that's it.

21 Another problem is we lost two million  
22 souls after the war because of the assimilation.  
23 This money will be enough in order to either prevent  
24 or bring it down to zero, the process of  
25 assimilation. If we are not going to stop this

1 process of assimilation, then what we live for and  
2 why do we leave them?

3 The question about the attorneys' fees.  
4 If those gold rings and gold teeth which were torn  
5 out of Jews were placed here on the table, I don't  
6 think any of the attorneys would have the nerve to  
7 reach for them. Maybe I'm too naive, but that's what  
8 those attorneys want to reach for.

9 In the Talmud, there is a verse that a  
10 judge who brings peace to people creates peace.  
11 Albert Stein said that when he characterized Jews as  
12 a nation, he said that Jews want to have justice,  
13 basically, in their lives. And I think not only  
14 people who are present here today but also those  
15 millions who are not here, they all hope and wish and  
16 desire that you, your Honor, will come to the right  
17 conclusion. Thank you.

18 THE COURT: Christoph Meli.

19 MR. CHESLEY: My name is Christoph Meli  
20 and I used to work at the Union Bank of Switzerland.  
21 I was the bank guard who in January, 1997 discovered  
22 that certain Holocaust-era documents were being  
23 destroyed. I saved some documents from destruction.  
24 I could not save them all.

25 Because of this single incident, I found





1 myself in the middle of an international, legal,  
2 political and moral dispute. I had no idea what I  
3 had stumbled into, but after a very short time, as an  
4 outsider, I realized that one very important thing  
5 was going on. What I realized was that the claims  
6 and the demands of Holocaust victims were not taken  
7 seriously or were ever addressed.

8 Because of this case, finally Holocaust  
9 victims get rights and get their rights back and  
10 justice. I do not pretend to understand all of the  
11 horrors of the Holocaust or what the Swiss bankers  
12 did or did not do. I have gotten some understanding  
13 of what the Holocaust victims wanted out of this  
14 case.

15 I have traveled all over the world,  
16 speaking to Jewish communities, both before and after  
17 the settlement was announced. What I have learned  
18 from survivors is that they are grateful to the  
19 Court, to the Deputy Secretary Eisenstadt, Senator  
20 Alfonse D'Amato, Control Hevessey, the plaintiffs'  
21 lawyers and the Jewish organizations who helped  
22 conclude this settlement.

23 I'm grateful to God that he put me in this  
24 position to do the right thing on the right time, but  
25 sometimes my wife tells me, you did the wrong thing

1 on the wrong place. I only wish I could do more and  
2 I will promise for survivors that everything that I  
3 learned (ui) I want to go on. I want to continue  
4 helping survivors with their claims for compensation  
5 against other known Swiss companies. Hopefully, this  
6 settlement is only a beginning and not an end for  
7 restitution claims of Holocaust victims and their  
8 heirs.

9 Then another thing: I believe we have to  
10 finish this fight, because when we go on in five  
11 years, we are here again and people like her are not  
12 anymore here. Like Esther Shapiro -- she only had  
13 one year to spend her money. I don't want that we  
14 have again many people lost. They're still alive yet  
15 and I think it's time to ending this. Thanks.

16 THE COURT: Maurice Deluity.

17 MR. DELUITY: Good afternoon, your Honor.  
18 The Honorable Judge Korman, thank you for granting me  
19 a chance to voice an opinion in this public hearing,  
20 on the issue of the Swiss bank money settlement. I  
21 wish you (ui), heavenly guidance and King Solomon's  
22 wisdom in judging the distribution of this  
23 settlement.

24 My thanks also go to distinguished  
25 appointed Special Master Mr. Gribetz and chairman of

1 a resettlement in the east, but instead we were one  
2 of the first transports to arrive at the infamous  
3 Auschwitz/Berkenau location for the final solution of  
4 the Jews. That was shortly after the Vansi (ph)  
5 Conference.

6 The location could be called hell on  
7 earth. The transport, except for a few young men and  
8 women, including myself, who were selected for the  
9 concentration camp work -- the rest of them perished  
10 that night, of blessed memory (ui).

11 Mind you, while the killings were being  
12 carried out, all possessions, valuables, et cetera  
13 were gathered, shipped to warehouses to be sorted for  
14 the purposes of conversion into various products.  
15 All personal valuables was the gold, including the  
16 crowns removed from the victims, and personal jewelry  
17 were shipped to special locations for business  
18 transactions, perhaps some to Switzerland or other  
19 so-called neutral countries.

20 Case in point about the victims' assets.  
21 I have to mention that my father of blessed memory  
22 was an expert grain merchant. As soon as the Einsatz  
23 group entered my town, they confiscated my family  
24 business plus valuables. At one point I released my  
25 father held as a hostage and I was shipped to a



1 civilian slave labor camp, guarded by military  
2 police, for about a year, and returned to join the  
3 transport to Burchenau/Auschwitz.

4 With some luck, I had a chance to work in  
5 the (ui) as a wood worker. That was the first part,  
6 until the evacuation and the unforgettable march  
7 Gleibetz (ph), Buchenwald, Ordruf (ph) and then my  
8 escape from (ui) train with an epidemic of dysentery  
9 on here.

10 Let me get back to the confiscation of the  
11 valuables. The products produced in that industrial  
12 complex included where I worked. That means the  
13 Bunau (ph). There was synthetic rubber, chemicals,  
14 zyclon gas used for the gas chambers, to kill the  
15 Jews. The question comes in, what did they do with  
16 my labor? Who was responsible for it?

17 The point of mentioning those facts stems  
18 from understanding the categories in the  
19 questionnaire of settlement eligibility. It  
20 questions as follows. I took my questionnaire to Mel  
21 Weiss's office, who I have to compliment as one of  
22 those pro bono attorneys, who were unable to answer  
23 my questions. They told me, why don't you bring it  
24 up at the public hearing?

25 A) How can I substantiate records of the

1 confiscated family assets and whether they were  
2 connected with the Swiss? It's like telling to bring  
3 my parents' death certificate from Auschwitz.

4 B) My slave labor time for large German  
5 corporations at Bunau. How can I tell which ones  
6 were involved in business with the Swiss?

7 C) Any (ui) eligible for slave labor  
8 compensation? Is the length of time which I was over  
9 there, two years in the Bunau/Auschwitz and worked  
10 for those companies and about one year prior to the  
11 concentration camp, at a camp called Unhovo (ph),  
12 under civilian administration, guarded by German  
13 armed guards. Would it be the same as those that  
14 only worked a short time or several months?

15 Your Honor, this is what I said before.  
16 The question perhaps is bigger than all of us. My  
17 point of view regarding acceptance of the settlement  
18 discussion is as follows. Since the general  
19 survivors are at their twilight, it makes no sense to  
20 object to this settlement now. An unforeseen delay  
21 do not serve the survivors' purpose. It will not  
22 affect the attorneys' fees but it will affect the  
23 chance of many survivors to receive the benefits  
24 while they're still alive.

25 Furthermore, to those who object to the

1 settlement, I would say the time to object was at the  
2 bargaining table, with the U.S. government  
3 participation and suggesting economic sanctions, and  
4 to stay firm. At this point, it makes no sense to  
5 object.

6 Before I conclude, I would like to get  
7 back to one issue regarding the settlement. Your  
8 Honor, with so many people have spoken about various  
9 ways to deal with the distribution of the settlement,  
10 there is one basic issue of great urgency. It's  
11 preservation of the health of those who are dying  
12 right now.

13 Some of them cannot afford even to buy  
14 prescriptions. The HMOs today -- it's a fighting  
15 battle. I have experienced it recently with my wife  
16 at the hospital. This is one of the issues that  
17 should be settled at once and part of the fund should  
18 be reserved for that purpose, to see health care in  
19 whichever form, an insurance policy for a number of  
20 years or prescriptions, because the money part will  
21 not amount to anything.

22 Thank you for listening and giving the  
23 time.

24 THE COURT: Liz Berney.

25 MS. BERNEY: Hi, my name is Elizabeth

1 Berney. I'm one of the many pro bono attorneys with  
2 some involvement in this matter. I also have sort of  
3 a personal connection to it. My father was a last  
4 minute refugee from Germany. Many other members of  
5 the family perished and were killed by the Nazis.

6 I think that one thing that we should  
7 think about is how the whole Holocaust got started.  
8 It didn't start with the killings. It started with  
9 the dehumanization of individuals. My father often  
10 spoke to us about his initial -- his childhood in  
11 Germany and how there were more and more restrictions  
12 placed on Jews over the years. You couldn't go to a  
13 swimming pool, you couldn't go to school, you  
14 couldn't hold a bank account, you couldn't take money  
15 out of your bank account; it was sealed. Every day,  
16 there were horrible caricatures of Jews in the  
17 Stermer (ph) and all of the newspapers.

18 I think that a lot of what this case is  
19 about is not just the money; it's trying to restore  
20 individual dignity to survivors who have had their  
21 needs and just ordinary rights to hold property -- to  
22 receive their property back restored to them.

23 In 1998, a group of approximately 70  
24 survivors, including the woman who was the initial  
25 lead plaintiff in the case, hired myself and co-

1 counsel to represent their viewpoints on the approval  
2 of the settlement, the distribution issue and several  
3 other matters. The lead plaintiff is no longer  
4 involved in the group but many of the other survivors  
5 are.

6 We held a series of meetings to discuss  
7 the views of survivors, as to what they wanted to  
8 have and how they felt about the settlement. They  
9 were really remarkable in many ways. Something that  
10 came out in these meetings was very similar to what  
11 we've been hearing here today; that survivors really  
12 feel that this is their money, that it doesn't belong  
13 to organizations, that they can give their own  
14 charity if they see fit, that their human dignity was  
15 trampled on, that they have a right to receive their  
16 accounts back and that the health needs and dignity  
17 of survivors in their later years are the prime  
18 concern of survivors.

19 Not only did the members of the group who  
20 came to the meetings agree with this, they all signed  
21 a one-page settlement regarding their views on these  
22 issues, and I believe some of the members of the  
23 group also went around and obtained the signatures of  
24 several hundred other people to this viewpoint, which  
25 we heard expressed here today by Alice Fisher,

1 Senator Carl Kruger, Norbert Bikales, Leo Rechter and  
2 other survivors.

3 The general consensus of everybody in the  
4 group is that the settlement is wholly inadequate.  
5 There is a belief that much evidence was not brought  
6 out to the world's attention regarding the massive  
7 access that existed and that you can never fully  
8 compensate Jews and others involved for the huge  
9 losses that were involved.

10 Some of the evidence that apparently did  
11 not come to light included couriers. The ninety-  
12 year-old courier had been found by some of the  
13 survivors, who had carried money to the Swiss banks  
14 from Czechoslovakia and Hungary and Romania, and  
15 these people's testimony apparently was not taken.

16 I know there's a lot of concern about  
17 survivors that -- several issues concerning the  
18 adequacy of the settlement were not brought to light.  
19 Nonetheless, as you've heard expressed here today,  
20 the survivors felt that they had to go along with the  
21 settlement. They were too old, there were too many  
22 people in dire straits to question it and to oppose  
23 it.

24 The distribution proposal that the  
25 survivors favored would be an enhanced distribution

1 for anyone with provable accounts, 70% of what  
2 remained to go to -- to be distributed evenly amongst  
3 survivors and their heirs, another 25% to be set  
4 aside for ill survivors' medical care and a maximum  
5 of 5% for all administrative expenses.

6 The survivors were also concerned about  
7 the entity that receives the distribution, and  
8 although signing the statements, asked that the Court  
9 appoint a receiver consisting of survivors, along  
10 with professionals such as accountants to affect the  
11 distribution. There is a feeling that this is a  
12 basic human dignity, an individual survivor issue,  
13 that organizations and others should not be placed in  
14 charge of effecting the distribution, that the  
15 distribution really needs to be effected by the  
16 survivors themselves.

17 Finally, the survivors had a discussion  
18 and reached a consensus on the attorneys' fee issue,  
19 what they felt about that. Of course, they're in  
20 favor of whoever will serve pro bono doing that. But  
21 there was also a concern that attorneys be encouraged  
22 to take on these cases and that reasonable  
23 compensation be effected to those who asked for it.

24 They ask that that be capped at \$150 an  
25 hour, that in no circumstance should it go above

1 that, that no-one should be asking for a percentage  
2 of the settlement. They felt that this middle of the  
3 road position would best serve their interests and  
4 encourage attorneys to continue to represent  
5 survivors' interests in other Holocaust cases.

6 Finally, a very important point is that  
7 the survivors insist on a complete accounting of the  
8 distribution, a point which has been raised here a  
9 number of times today.

10 To add a few more words about the human  
11 dignity issue, I think that there were a number of  
12 other aspects of this case that -- a number of other  
13 things that this case did that no-one has really  
14 spoken about today. In the course of these meetings  
15 and all the hearings that have been held to date, it  
16 brought survivors together to speak with one another,  
17 give each other support, which I think has been  
18 remarkably cathartic.

19 It has also brought survivors face to face  
20 with people in the European press, with young  
21 Europeans in a very positive way. We had a lot of  
22 press people come to our meetings. I think there are  
23 a lot of bridges that need to be healed between the  
24 survivor population and Jewish population and  
25 Europeans, and this case has actually done a lot in



1 that regard. There's much more that can be done.

2 I think the Swiss banks and all of the  
3 Swiss people should be asking themselves, what else  
4 can we do, not whether we've closed the books for  
5 good now, but can we send kids over, teenagers over  
6 perhaps to help survivors who are having health  
7 problems. What else can we do here to be of benefit  
8 and to be of help. Thank you.

9 THE COURT: Izea Katzap.

10 THE CLERK: Can we have the Russian  
11 interpreter, please?

12 MR. KATZAP: Good afternoon. I am Dr.  
13 Katzap. I am the President of the Holocaust  
14 Survivors from the Former Soviet Union and the  
15 Territorial Former Soviet Union.

16 I wrote you a letter but it was in  
17 Russian, in the Russian papers -- I have here 657  
18 signatures of the people accept my opinion on this  
19 case. This is the letters. I'm sorry. Because this  
20 was write in Russian, I want to talk in Russian. I  
21 will read it in English, what I've written in  
22 Russian, so people here in the courtroom will  
23 understand.

24 Your Honor, Professor Heberny (ph) -- the  
25 questionnaires which we received were translated. We

1 received them in September and they were distributed  
2 among survivors. The questionnaires were received by  
3 more than a thousand survivors on September 30th of  
4 this year. I just want to let you know that all  
5 information we have received was distributed among  
6 the survivors and the information from the claims  
7 conference and the World Congress was delivered to  
8 people.

9 I would like to read you what I've written  
10 about these questions. I was born in Besaradia (ph),  
11 in Romania. The Jews from those regions, Besaradia  
12 and Romania and Buchavena (ph), they were allowed to  
13 have accounts in Swiss banks, and even the smallest  
14 business there had to have an account in Swiss bank.

15 But we were children at that time and we  
16 couldn't remember anything and we couldn't have any  
17 documents at that time. Yes, we are just live  
18 witnesses of Holocaust. The (ui) surrounded us.  
19 They burned us, they buried Jews alive, they drowned  
20 them in River Nester (ph), they threw them out of  
21 their houses and they shot thousands of people.

22 Prior to that, they will strip them naked,  
23 will tear their teeth out, the ones which had gold  
24 over, rob them and move their properties. Everybody  
25 who was able ran away without even thinking of their

1 property or documents, because everybody wants to  
2 save his or her life.

3           When fascists reached Leningrad, Moscow  
4 and Stalingrad, they killed more than three million  
5 Jews. Where is their property, the ones who were put  
6 into ghettos and concentration camps, and where's the  
7 property of those who was able to run behind the  
8 front line?

9           When people were burned alive and buried  
10 alive, when they were killed in Badayar (ph) and  
11 hundreds of other places, do you think the Nazis  
12 would give them documents of their properties which  
13 were taken from them? When we were forced to do all  
14 kind of works, do you think they paid us or they told  
15 us who we're working for?

16           The Holocaust in the territory of the  
17 Soviet Union began after the Nazis realized that the  
18 world was silent. Nobody was interested in a Jewish  
19 question and the lives of those Jews. And then Nazis  
20 began to build factories of death.

21           Raul Hilberg (ph) -- he was a historian of  
22 the Holocaust and author of the book called  
23 Destruction of the European Jews. He said that today  
24 in Moscow is more than one hundred million pages, but  
25 it's not open until this time. The (ui) in 1945,

1 they took us to Moscow, and it's right. It is  
2 absolute secret. Until this day, it's not open and  
3 we don't know. If we will open these papers, we will  
4 see what it's right. We will see that it was killed  
5 not six million but much, much more.

6 In my town (ui) -- this is Bokavena -- in  
7 one day, the (ui) Chenchesko (ph), he sent 50,000  
8 people to Tresistre (ph), but back it's come only 50.  
9 From Verahui (ph), also Romania, was transported to  
10 (ui) 26,000 people. Alive after this, only 179  
11 people. We don't know what is with the things and  
12 what is with the accounts. I am sure that these  
13 people in Romania, they used to have accounts in the  
14 Swiss banks.

15 Switzerland was silent and it covered --  
16 it hid the accounts of the killed people. It helped  
17 Nazis to commit their crimes by financing them. It  
18 also saved robbed properties. For Switzerland's  
19 actions for destroyed Jewish lives, for burned towns  
20 and villages, for robberies, Switzerland has to pay,  
21 as well as Germany, Romania, Italy and other  
22 countries.

23 Money from this fund, 1.25 billion  
24 dollars, must be returned directly to the former --  
25 to the Holocaust victims. They shouldn't be robbed

1 for a second time. Holocaust survivors from the  
2 former Soviet Union are in a really bad condition.  
3 These people are elderly, ill, lonely. They lived  
4 through horrible years. They don't have full medical  
5 coverage. They need money and their living  
6 conditions are bad.

7 The money they receive from the (ui), it's  
8 only enough to pay the rent. I am asking to help  
9 them in this time, because it's going to be late  
10 later, because 10% of survivors (ui). The Holocaust  
11 survivors from the former Soviet Union, for the last  
12 six months, 200 people died.

13 I ask for justice. I think we have to  
14 help the Holocaust survivors. We have to think about  
15 their medical care, to help them with the medical  
16 care. What we have to remember who was killed and we  
17 have to make research. We have to help the  
18 remembrance of these people that was killed in the  
19 (ui) and the concentration camps at the time of the  
20 Holocaust. We want also your help to open the  
21 hundred million pages (ui) history of the Holocaust  
22 and of the territory of the former Soviet Union.  
23 Thank you very much.

24 THE COURT: Thank you.

25 Fira Stukelman. Sorry. Norman Rosenbaum.

1 MR. ROSENBAUM: Your Honor, Special Master  
2 Gribetz, Counsel, ladies and gentlemen. I appear  
3 here today as the pro bono legal counsel for the  
4 Australian Asian Pacific Jewish Restitution  
5 Committee, which provides assistance, representation,  
6 advice and advocacy to those people seeking  
7 restitution arising out of the Holocaust. In  
8 particular, one claimant, Judith Goldberger,  
9 specifically requested that we assist her in  
10 providing representation before your Honor today.

11 Her comments and objections in regard to  
12 the settlement in part have already been addressed  
13 this morning and I won't labor those, other than to  
14 endorse wholeheartedly the objections put to you by  
15 Ms. Weber from the European Commission for Art, in  
16 terms of the unacceptable width of the settlement  
17 class to include assets generally, and in my  
18 submission, that would go to undermine the very  
19 object of what the various pieces of litigation which  
20 have now been amalgamated before your Honor first  
21 were set out to achieve.

22 The only point I would like to add to what  
23 Ms. Weber said this morning is that when we're  
24 talking about art, in Australia, in the Asian Pacific  
25 area, we have already experienced, in Duneden (ph),

1 New Zealand, where since 1996 there has already been  
2 uncovered one significant piece of Holocaust looted  
3 art, which my submission is demonstrative of the fact  
4 that the ramifications which flow from the Holocaust  
5 extend far beyond the United States and Europe, even  
6 to small countries and small Jewish communities such  
7 as New Zealand.

8 Our experience in Australia has been  
9 something similar; that numerous people are able to  
10 articulate with specificity pieces, not only art in  
11 the traditional ways in which we identify that word,  
12 but more importantly, artifacts, pieces of gold,  
13 jewelry, which cannot be dismissed as being simply  
14 gold, statuettes, coin collections of significance,  
15 stamp collections, et cetera.

16 In my submission, the propositions put by  
17 Ms. Weber this morning, when it comes to art and the  
18 width of the settlement class, should be confined to  
19 ensure that those people whose legitimate rights to  
20 specific artifacts and pieces of art-work are not  
21 compromised in any way, as would possibly be the case  
22 with the settlement class as they're currently  
23 drafted.

24 The second point in terms of the width of  
25 classes really comes to the inability to ascertain

1 with any type of accuracy the general aspects of the  
2 releases which are provided within the settlement.  
3 The reality is that many people just can't work out  
4 whether in fact by remaining within the Swiss bank  
5 settlement, they will inadvertently compromise  
6 another possible claim they will have.

7 As Mr. Sam Dubbin put this morning with  
8 regard to the insurance cases, which because of the  
9 generality and the lack of specificity attributed to  
10 some of the releases, inadvertently, people who would  
11 have otherwise pursuable and achievable pieces of  
12 litigation against specific insurance companies and  
13 we believe non-Swiss banks, who at this point in time  
14 certainly appear to fall within the definition of  
15 having been controlled by Swiss entities at the time,  
16 whose claims are based on fully documented accounts  
17 which they were able to take with them from Europe,  
18 that those claims would be inadvertently compromised  
19 because of the lack of specificity.

20 Your Honor, you asked Ms. Weber this  
21 morning whether in fact if a second opportunity was  
22 given to opt out, would that cure, at least in part  
23 or address at least in part the concerns she raised  
24 with you.

25 In my submission, if indeed we are able to



1 extend with specificity the releases which are  
2 provided for under the settlement, it would be  
3 appropriate to give people a second opportunity to  
4 opt out, if for no other reason than at this point in  
5 time many people have made application to be part of  
6 this settlement class for no other reason than that  
7 the letter from Professor Neuborne urged them to do  
8 so, as did the introductory words on the information  
9 questionnaire: If in doubt, please apply.

10 While nobody can criticize such an  
11 approach, at this point in time, we wouldn't want  
12 such approach, in my submission, to compromise  
13 another claim they could have which they had never  
14 contemplated as ever arising within the Swiss bank  
15 settlement per se.

16 The second area of objection which we've  
17 been asked to put to your Honor today is in the  
18 determination of the fairness of the actual  
19 settlement amount per se. I've heard many eloquent  
20 speakers here this morning speak as to the fairness.  
21 I for one am unable to advise any people who come to  
22 me whether it's fair. I certainly do not envy your  
23 Honor having that job before him.

24 There is a time at which the figure of  
25 1.25 billion dollars was struck. The Volker

1 Committee had not at that stage formulated its report  
2 and we had no idea that the amount of accounts to  
3 finally be admitted to by the Swiss banks would  
4 number some 55,000, that being the figure which I  
5 heard Dr. Singer put to your Honor this morning.

6 It is imperative, in my submission, that  
7 when you're evaluating the adequacy and fairness of  
8 the 1.25 billion figure, that that report be taken  
9 into account, that it not be taken into account  
10 merely on face value alone, that it be critically  
11 evaluated.

12 When one thinks of Swiss bank accounts of  
13 any point of time, but particularly at that point of  
14 time, the reports that we've read in the media to  
15 suggest that people would have Swiss bank accounts  
16 for two and three francs or 30 Swiss francs or 300  
17 Swiss francs that would exist today is ludicrous.

18 Indeed, when the Volker Committee report  
19 is published, as I think I heard your Honor refer to  
20 in the coming week, that we look at that report  
21 critically and extrapolate from that report really  
22 what's gone on in 55 years, and not just to accept at  
23 face value what that report says to us, but to take a  
24 look very carefully whether in fact those charged  
25 with the responsibility of carrying out a forensic

1       audit would stand up to scrutiny if they themselves  
2       had their particular means and examinations looked at  
3       carefully.

4               The reality is if one takes 55,000 and  
5       divides it into the 1.25 billion dollars available,  
6       my rough calculations come to just under \$23,000 per  
7       account. Your Honor, when one takes a look at  
8       \$23,000 and looks at a history of time of 55 years  
9       which has elapsed, one must wonder why anybody would  
10      have had a Swiss bank account and how amounts of 200  
11      and 300 Swiss francs or even ten or twenty Swiss  
12      francs, as we know some people have already been  
13      advised by the Volker Committee their accounts amount  
14      to. Nevertheless, I believe information will be  
15      contained within that report which will play an  
16      important place in your evaluation process of the  
17      adequacy, fairness and justice of that amount.

18              It's somewhat ironic when we heard this  
19      morning from the representative of the Justice  
20      Department, when he spoke about the importance of  
21      this process as given to cooperation. Because  
22      ironically, when the plaintiffs' counsel were placed  
23      in the position of having to negotiate the 1.25-  
24      billion-dollar amount, the knowledge of the existence  
25      of those 55,000 accounts was not with them,

1 unfortunately. Indeed, it was something within the  
2 defense counsels' knowledge, something within the  
3 Swiss banks' knowledge and something which had been  
4 within their knowledge for some considerable time.

5 Your Honor, the last point which I wish to  
6 bring to your attention is that Ms. Goldberger, in  
7 the course of making inquiries about German slave  
8 labor, answered an advertisement from a Melbourne  
9 firm of barristers and solicitors. That firm of  
10 Melbourne barristers and solicitors had sent to her a  
11 questionnaire and information about attorneys' fees,  
12 if they were to undertake her claim and represent her  
13 in regard to German slave labor restitution.

14 That claim form which was sent to her  
15 makes reference to Swiss banks. It also makes  
16 reference to one of the plaintiff counsel involved  
17 here as being involved, but more importantly,  
18 includes a contract for contingency fees.

19 It's inappropriate to name the counsel at  
20 this table because it's unfair. There is no reason  
21 to believe that -- the counsel's name may have been  
22 employed but not to their knowledge. But I do  
23 believe in assessing the appropriateness of any  
24 counsels' fees, attorneys' fees in this matter, that  
25 that document be taken into account, the matter be

1 investigated and that not only the question of  
2 contingency fees be discounted, but more importantly,  
3 you will see from the document itself, a copy of  
4 which I've already forwarded to Special Master  
5 Gribetz, and I'll leave an extra copy for your Honor,  
6 that the actual document itself misrepresents and is  
7 deceiving and unfortunately relies on the lack of  
8 familiarity with the law, let alone the specialties  
9 of the class action process.

10 As a pro bono counsel, I suppose it's rare  
11 to endorse any counsel's applications for fees. But  
12 at the same time, I do believe it is important, as I  
13 heard previously said this afternoon, that counsel  
14 who undertake such cases as this be encouraged to do  
15 so.

16 But at the same time, it has to be a fair  
17 and reasonable allocation of fees and it has to be  
18 something which must in this very sensitive  
19 situation, in my submission, be something which those  
20 survivors and the heirs of survivors understand as  
21 being a proper and true reflection of the benefit  
22 which they have received from the very hard work of  
23 lawyers. Thank you, your Honor.

24 THE COURT: Yakov Polishchuk.

25 THE CLERK: Can we have the Russian

1 interpreter, please?

2 MR. POLISHCHUK: Honorable Court, ladies  
3 and gentlemen, my name is Polishchuk, Yakov. I was  
4 born in Kiev, Ukraine. I won't tell you much about  
5 my biography. You can find it in "Schindler's List".  
6 One thing I will tell you. When fascists attacked  
7 Kiev, walked into Kiev city, and it was September  
8 29th, more than 100,000 Jews were destroyed in  
9 Babiyar (ph).

10 In 1943, I found myself in concentration  
11 camp Dachau. Everybody know for a long time the  
12 situation, the horrible situation which was in  
13 concentration camps. Eleven million people were  
14 destroyed, were killed and perished the day after.  
15 Among them, they were just citizens from occupied  
16 territories and military men. Four million out of  
17 six million were Jews, and these people were  
18 destroyed in concentration camps of Swenson (ph),  
19 Mydanek (ph), Treblinka.

20 I ask you, ladies and gentlemen, and you,  
21 your Honor, to distribute that amount of money of  
22 1.25 billion dollars in a fair way. Take into  
23 consideration a human approach to distribute it  
24 reasonably and to take into consideration the fact  
25 that some people worked for large industrial

1 enterprises which also were employed by concentration  
2 camps. 600,000 people passed through -- were  
3 prisoners of that concentration camp and 31,000 of  
4 them were killed, were destroyed.

5 That concentration camp sent into its  
6 branches, sent to different branches people to work  
7 for industrial enterprises, at plants and factories,  
8 people who were basically slaves of concentration  
9 camps and who worked at different types of horrible  
10 jobs. And one of the teams -- and I was a slave of  
11 that team. It's a team of Nuendorf (ph). It was a  
12 very hard and exhausting work. They fed us terribly.  
13 People -- they were exhausted and they couldn't that  
14 horrible conditions and they died; they perished.

15 I ask you, your Honor, to pay special  
16 attention to the slavery conditions which fascists or  
17 Nazi animals -- the profits which they extract on our  
18 labor, and then they sent it to different  
19 enterprises. And I ask you to distribute that amount  
20 of money in a fair, reasonable way, adequate way.

21 After the liberation, at the Stalinesque  
22 regime, I worked in mines of Ukraine, of (ui). I  
23 worked there for two years in the mines. If this  
24 money would be distributed justfully, in a lawful  
25 way, I will be very, very grateful to the Judge and

1 to people who assisted him. Thank you so much for  
2 your attention.

3 THE COURT: Thank you.

4 Ronald Coleman. Ronald Coleman. Grunya  
5 Klebanov.

6 THE CLERK: Russian interpreter, please.

7 MS. KLEBANOV: Your Honor, ladies and  
8 gentlemen, it is after 5:00 already and I understand  
9 that you are a little bit tired. But please, I would  
10 like you to listen to me very attentively.

11 My name is Grunya Klebanov and my dead  
12 husband's name was Hyam (ph) Klebanov. Me and my  
13 husband twice were victims. The first time, we were  
14 victims of fascist occupation. We flee and we ran  
15 away in order to save our lives. We flee in summer  
16 clothes. We didn't take any belongings with us. In  
17 addition, they were bombing. Bombs were falling on  
18 our heads. This time, on the road you could see a  
19 lot of corpses just laying around, people who, like  
20 us, were running for their lives but they died.  
21 Among the people was my sister. She died, she  
22 perished.

23 The second time, we were victims when we  
24 flee communist regime. Once it came that the Jews  
25 got the possibility to go abroad from that regime, to



1 escape that regime -- I'm a doctor and I worked 38  
2 years as a doctor. This time, me and my husband was  
3 allowed to take from the Soviet Union, while we were  
4 coming here to this country, only two suitcases, 20  
5 kilograms or 40 pounds each. Was it allowed to take  
6 some valuables with us? No, it wasn't.

7 We came here at an older age and we  
8 couldn't bring much valuable stuff with us. Also, I  
9 couldn't (ui) my diploma in order, I could get a job  
10 here, as far as my specialty. So me and my husband  
11 had to apply for SSI and collect public assistance  
12 from the government, and it was essential to us, to  
13 pay our bills, to pay the rent and just basic things,  
14 providing our life. Your know what? We had no money  
15 to put to the bank or to accumulate some savings in  
16 the bank.

17 Currently, I am a member of international  
18 organization of Jews who are originally born in  
19 Byelorussia, and I am here, your Honor, to ask you to  
20 reach the conclusion or to make the decision and a  
21 decision which would include something that happened  
22 to my late husband, Hyam Klebanov. And very shortly,  
23 I will tell you what happened to him.

24 My late husband Hyam Klebanov applied to  
25 get compensation from Germany. In his application,

1 my husband stated that he had to leave his native  
2 town of Gomul (ph), because it was threatened by  
3 fascist occupation. Then he moved to central Asia;  
4 to be specific, to Kazakstan (ph). And over there,  
5 he found a job first at the construction site and  
6 then at the factory which produced aluminum for the  
7 planes.

8 He was a specialist of a very high rate,  
9 of a very high scale, so he was not supposed to go to  
10 the Army or to go to the front, to become a soldier.  
11 Claims conference sent a response to the application  
12 of my husband that they didn't believe that he didn't  
13 (ui). They explained their refusal by his age. They  
14 said that on that time, he was only 23 years old.

15 My husband was a very honest person and in  
16 his application, he stated the truth. It took us  
17 more than a year until we found two people, one in  
18 Pennsylvania and one in Baltimore. These were the  
19 people who spent the whole war with him, working at  
20 the same plant. These people testified under oath  
21 and their testimony was notarized and then sent to  
22 claims conference.

23 Then we got a response from them. The  
24 response stated that witnesses' testimony just don't  
25 count. Things which showed me most -- my husband was

1 very frustrated and upset and aggravated about it,  
2 because they portrayed him to be a liar, as if he  
3 wanted to get some money which he had no right to  
4 have at all. Otherwise, they just accused him to be  
5 a thief.

6 They also wrote there, please don't bother  
7 us again. We gave you two refusals and this is  
8 enough, this is final. In their reports, claims  
9 conference states all the time that they help people  
10 to get or to obtain necessary documents from the  
11 former Soviet Union, but in the case with my husband,  
12 this is just not true. Then we wrote to a few  
13 different organizations, but we didn't get any answer  
14 at all. And claim court, they should have given an  
15 answer.

16 Finally, our friend went on a business  
17 trip to Russia and from Russia, he brought us a paper  
18 from the Red Cross, from the Russian Red Cross. And  
19 it was written in the paper that yes, indeed, my  
20 husband was evacuated in Kazakstan, from Gomil (ph)  
21 to Kazakstan. But even that document claims  
22 conference did not want to accept, referring to the  
23 fact that more than 18 months passed already and the  
24 case was closed. But all to do just to admit that  
25 they do wrong, to admit that they mistake, to

1 apologize and to give us the check, which we were  
2 supposed to have and which we had the right to have.

3 I ask you again, your Honor -- your Honor,  
4 I am asking you to make a decision and to find such a  
5 solution that things which happened to my husband  
6 would never, ever happen again to nobody from the  
7 Russian community, because I know that the similar  
8 things, they took place already not even once. And  
9 the last letter which I sent about that case, I sent  
10 to a person by the name of Mr. Taylor. I mailed the  
11 letter November 9th of this year. Up until now,  
12 there is no answer.

13 I am 80 years old and it can happen that I  
14 will never see the justice. What happened to my  
15 husband should never, ever happen again to anybody,  
16 in the distribution of that amount of money. And two  
17 more words.

18 I have relatives in Minsk and they have a  
19 very terrible hardship. Sometimes they have a choice  
20 what to buy, either some food or some medication.  
21 They were also evacuated, they also lost their  
22 property. And the claims conference transferred the  
23 money, but the money lost somewhere in the way. So  
24 all they get is a few parcels a year, and every  
25 parcel costs around seven dollars.

1                   Please distribute the money in a fair way.  
2 Thank you.

3                   THE COURT: Daniel Urbina.

4                   MR. URBINA: Good evening, your Honor,  
5 Counsellors, survivors of the Holocaust and ladies  
6 and gentlemen.

7                   I came here today from Venezuela to speak  
8 in favor of my mother-in-law, a Polish woman who now  
9 is a Venezuelan citizen. Her name is Danuta  
10 Estanisova Vnusek Zeika (ph). She is about 75 years  
11 old. Her health is not pretty good, so she couldn't  
12 come here, and her social status -- also, she's a  
13 very poor woman.

14                   When I applied with her questionnaire, I  
15 helped her to fill in the forms and I sent them, I  
16 didn't have an answer from the notice administrator.  
17 I tried via internet to make some questions and I  
18 didn't have any answers. So finally, I decided to  
19 come here myself and talk to you, talk to all of you,  
20 because I believe she deserves to have a share in  
21 this.

22                   She suffered enormously. She is not Jew.  
23 I've seen that most of the survivors have something  
24 to do with Jews. But she told me that her father,  
25 Visenta Vnusek (ph), died because he was helping some

1 Jews. He was living in Grohof Podolasky (ph), in  
2 Poland, and one night or several nights, he helped  
3 Jews. He gave them food. They stayed overnight.  
4 Some people betrayed him from the community, so he  
5 was arrested by the Nazis and he was taken into --  
6 first to Podolasky and then to Versol (ph), where he  
7 died afterwards in a concentration camp.

8 Her mother, Adela Vnusek Zeika, was also  
9 killed with her baby in her arms. One of her  
10 brothers escaped to the northwest part and he joined  
11 the resistance to fight against Nazis. He managed to  
12 cross the line and he went to Russia, where he joined  
13 the Russian Army to fight against the Nazis. He  
14 seems to have been killed during the war.

15 My mother-in-law Danuta Vnusek was taken  
16 by horse to Germany, and she was forced to work as a  
17 slave in Mangen (ph), Germany between 1942 and 1945.  
18 She was only 17 years old when she was taken and she  
19 had no family at all. She told me that they didn't  
20 even give them food. She remembers escaping during  
21 the night or the evenings to (ui) nearby to eat some  
22 carrots and onions, because they were hungry and they  
23 were forced to work many hours per day.

24 I think she deserves, since she's so poor  
25 -- she's brought to birth eleven sons and daughters,

1 and I think she deserves something. I know it's a  
2 moral issue and it's not necessarily an economical  
3 issue, but I still believe she really deserves a  
4 share on this.

5           Unfortunately, she cannot prove this. All  
6 we have -- I have tried to search and all we have is  
7 a person who might be living in Venezuela, too. Her  
8 name is Stephanie Misgeviks (ph). I'm trying to  
9 locate her in Caracas. That's a very large city and  
10 until now, I haven't found a way to reach her.

11           But there is something besides this --  
12 what she wanted me to say here was that she was in  
13 favor of the agreement, because she's an old woman.  
14 She is sick, she is poor, and many, many people must  
15 be in the same way nowadays, so it's a matter of  
16 time. I believe it's a matter of time. I think that  
17 money must be paid as soon as it is possible, and I  
18 understand that's your, Judge Edward Korman,  
19 responsibility.

20           But there is something which really -- and  
21 this is another thing that brings -- I mean, I'm  
22 curious about it, because if what I have found in my  
23 search is true, from what I've understood, some of  
24 the releases of the Swiss banks belongs to Jews.  
25 That's something which really breaks my attention,

1 because it seems to like -- Jews have money in Swiss  
2 banks and they're going to give that money back to  
3 Jews.

4 So it looks like there are two Jewish  
5 parties involved in this problem. And okay, Danuta  
6 is not a Jew; she's a Catholic. But anyway, it looks  
7 like it's a religious kind of thing, finally, at the  
8 end. So this is interesting, and I just wanted to  
9 mention this here, because I don't know what else is  
10 behind this.

11 When I was searching, I read a lot of  
12 information about some Jewish families who somehow  
13 helped Adolf Hitler before the war, and I couldn't  
14 believe this. So I don't know, really. It's  
15 something that somebody said here that maybe it could  
16 be interesting, if someone tries to search, to  
17 investigate deeper in this stuff.

18 Anyway, I really thank you for listening  
19 to me and I hope somehow Danuta Vnusek could get at  
20 least a repayment or whatever because of all her  
21 suffering. She doesn't have a family back in Poland,  
22 as far as she knows. So she went to Venezuela  
23 because a friend -- not even a friend. This was an  
24 acquaintance who offered to include her in the  
25 passport. So she went to Venezuela and things there



1 are not so easy, so she hasn't had that much  
2 opportunities to have any kind of wealth. I hope  
3 this would help her somehow.

4 Thank you very much for listening to me.  
5 Thank you, your Honor.

6 THE COURT: Lawrence Schonbrun is the last  
7 speaker.

8 MR. RATNER: Can you just give me one  
9 second, your Honor?

10 (PAUSE IN PROCEEDINGS)

11 MR. SCHONBRUN: Good evening, your Honor,  
12 class counsel --

13 MR. RATNER: Lawrence, hang on. Just for  
14 the record, before you begin.

15 MR. SCHONBRUN: Surely.

16 MR. RATNER: I just wanted to put on the  
17 record our understanding that you do not intend, on  
18 behalf of your clients, to prosecute any appeals from  
19 the settlement.

20 MR. SCHONBRUN: That's correct.

21 MR. RATNER: Thank you.

22 MR. SCHONBRUN: Good evening, your Honor,  
23 Counsel, Mr. Gribetz, ladies and gentlemen who are  
24 still here, and to class members, wherever they may  
25 be.

1           Your Honor, my name is Lawrence Schonbrun.  
2           I am representing two plaintiff class member  
3           objectors, Steven Zuber (ph) and Henry Smith. I am  
4           going to be speaking in the first person today, your  
5           Honor, because I am also a member of this class. I  
6           want to acknowledge that I have publicly opposed the  
7           use of the class action mechanism to settle what I  
8           have called claims of historical grievance.

9           Having said that, your Honor, I am going  
10          to take Professor Neuborne's advice. I am going to  
11          work to see that the plan of distribution is  
12          adequate. I have questioned the propriety of the  
13          legal basis for this action in written objections  
14          that I have filed. I hope you will address them.

15          After having heard all the testimony from  
16          class members today, it seems inappropriate to talk  
17          about the legal basis, the legal justification for  
18          this Court having jurisdiction over this case and  
19          entertaining these claims, and I think it's that  
20          feeling of inappropriateness that I have that causes  
21          me concern about the propriety of this case.

22          Your Honor, unfortunately, my experience  
23          with class actions has been on the negative side. I  
24          have perhaps seen a lot of the bad things that happen  
25          when class actions go wrong. And as a class member,

1 I just didn't feel I could remain silent on these  
2 issues.

3 Your Honor, I am concerned about the lack  
4 of information being given class members on the  
5 question of the distribution. Many, many class  
6 members have talked to you today about their concern  
7 about the distribution. On the one hand, we are  
8 called respected class members, but on the other,  
9 we're not being told about how this money is going to  
10 be divided until after the settlement is approved,  
11 and while it's not clear to me, perhaps only after  
12 the fee is approved. John Coffey (ph) has referred  
13 to this kind of procedure, if you'll pardon the  
14 expression, as forcing class members to buy a pig in  
15 a poke.

16 I believe that what's going on here is  
17 that Counsel and the Court, perhaps with the best of  
18 intentions, are concerned that when the plan of  
19 distribution of this settlement is made aware to  
20 class members -- if I read the numbers correctly,  
21 roughly one billion dollars divided by 400,000  
22 claimants is \$2,500 per claimant.

23 It's clearly insufficient and my concern  
24 is that rather than raising hostility from class  
25 members when they find out who is getting what out of

1 the settlement, a tactical decision has been made not  
2 to announce who is going to get what out of this  
3 settlement until after it's been approved.

4 I think it's a mistake and an injustice  
5 not to let class members know. I think one has to  
6 bite the bullet and let class members know exactly  
7 who is getting what out of this, so there isn't a lot  
8 of disappointment. I think merely saying it's going  
9 to be a fair distribution is insufficient. This is a  
10 zero-sum game. There's a fixed sum of money here,  
11 and I think we have an obligation to these class  
12 members whose suffering we've heard about, to trust  
13 them and to let them know exactly who is getting  
14 what.

15 Your Honor, based on my experience, I have  
16 some concrete suggestions. Number one, that you only  
17 provisionally approve this settlement. Number two,  
18 that you speed up the hearing on the distribution.  
19 Number three, that you not approve the fee until the  
20 class is made aware, individual class members,  
21 exactly what they're going to be getting.

22 I don't say this because I don't want  
23 attorneys to get reasonable fees. If indeed class  
24 members, after getting their allotment from this  
25 settlement, feel the attorneys have earned their

1 fees, then they will be certainly able to say so.  
2 But I don't think the situation should be reversed,  
3 where any decision is made prior to a distributions,  
4 and I don't think any approval should be made of the  
5 settlement until the distribution information is  
6 being made aware to class members.

7 Your Honor, class counsel talk about the  
8 full disclosure being required of the Swiss banks.  
9 There is a provision in this settlement that seeks to  
10 keep amounts of money and identities of claimants  
11 secret or anonymous. I disagree with it in  
12 principal. But more importantly, it's an issue of  
13 distribution and allocation, and I would request that  
14 you take that provision out of the settlement and  
15 that you treat it with the plan of distribution and  
16 allocation, and that the presumption going into this  
17 is that every dollar, every dime that is being given  
18 to anyone out of this settlement is a matter of  
19 public record.

20 Of course, if there's someone who wants to  
21 file a sealing order with respect to a particular  
22 allotment, that's one thing. But in principle, the  
23 provision of this settlement that provides for  
24 anonymous payments from the settlement fund, I think  
25 should be taken out of it.

1                   Number two, there's --

2                   THE COURT: These are awards by the claims  
3                   restitution tribunal that are being paid.

4                   MR. SCHONBRUN: Correct.

5                   THE COURT: You're certainly right as to  
6                   the amounts. The only reason for keeping anything  
7                   else secret is to protect the privacy of people who  
8                   may want to have it protected. But these are  
9                   judicial proceedings in which these amount are being  
10                  adjudicated. They're quasi-judicial proceedings, I  
11                  should say. Nobody is simply writing a check out of  
12                  the settlement fund, anonymously.

13                  MR. SCHONBRUN: I understand that, but  
14                  what I understand is that provision doesn't require  
15                  that the identity and the amount of the money be made  
16                  public.

17                  THE COURT: Certainly the amount of money,  
18                  to be sure.

19                  MR. SCHONBRUN: Your Honor, the other  
20                  point that I raise for you is this issue in the  
21                  settlement agreement with regard to what I consider  
22                  to be a freedom of speech issue. I believe there is  
23                  a provision in the settlement agreement that states  
24                  that class members, upon receiving an allotment from  
25                  this settlement, are not permitted to publicly claim

1 -- to dispute the amount or in essence to try to  
2 organize, perhaps, some kind of whatever objection  
3 after the fact.

4 I believe that's a free speech issue. I  
5 believe it's beyond the province of the Court to do  
6 that, and I would ask that you address that aspect of  
7 the settlement as well, hold that one in abeyance  
8 until more thought is given to it.

9 Finally, on this question of the class  
10 action aspects of this, I would request, in an  
11 attempt to make this a viable class action, that you  
12 obtain declarations from these representative class  
13 plaintiffs. I asked about them. There are no  
14 declarations from any of these representative class  
15 plaintiffs, as I understand it, under oath, stating  
16 why it is they're able to represent the class.

17 I don't think you can make a finding of  
18 adequacy until you have these declarations, and I am  
19 concerned about your statement that they're just  
20 symbolic. In one sense, they are symbolic,  
21 particularly in the sense that they're often retained  
22 by class action attorneys. But in terms of the  
23 proper functioning of the class action mechanism, you  
24 have an obligation to make a determination of  
25 adequacy.

1           THE COURT: I was simply speaking about an  
2 objection that was directed to one or two of the  
3 class representatives that were actually -- one of  
4 which was added after the settlement was agreed to.  
5 It isn't clear to me what the significance of it is.

6           MR. SCHONBRUN: Your Honor, in closing, I  
7 would like to say this. This is a very important  
8 proceeding, the main reason being that this  
9 proceeding is creating an additional historical  
10 legacy for the Holocaust. I think it's important  
11 that the fairness of these allocations to individual  
12 class members and the amount of the attorneys' fee be  
13 given the highest priority.

14           I would ask that in reviewing the  
15 propriety of the legal argument that I have made with  
16 regard to the class action mechanism being used to  
17 resolve these claims, that you address the two  
18 decisions by the Third Circuit District Court Judges  
19 in those two cases. Again, I have worked in class  
20 action area and I don't how class counsel can say  
21 that those decisions aren't relevant to the issue  
22 which you're deciding. Thank you very much.

23           THE COURT: Thank you. I appreciate your  
24 thoughtful presentation.

25           Thank you all. Good evening.



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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

  
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Lisa Barron

  
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Date