



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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Case No. 09-160 (ERK)(JO)  
  
(Consolidated with CV 96-4849, CV 96-5161 and CV 97-461)

This Document Relates to: All Cases

CRT SPECIAL MASTER JUNZ' PROPOSAL FOR ADJUSTMENT  
OF DEPOSITED ASSETS CLASS PRESUMPTIVE VALUES: ADDITIONAL  
CONTEXTUAL ANALYSIS OF HER SUPPLEMENTAL REPORT

We submit this additional contextual analysis at the request of the Court, with reference to Claims Resolution Tribunal ("CRT") Special Master Helen Junz' recommendation to adjust the "presumptive values" as currently used by the CRT to award accounts for which no known value could be found. The Court has requested that Special Master Junz' recommendation be placed in the context of the Settlement Agreement and the Plan of Allocation and Distribution of Settlement Proceeds ("Distribution Plan"). This additional contextual analysis of Special Master Junz' report will be available on the Internet site for this settlement, [www.swissbankclaims.com](http://www.swissbankclaims.com), as well as the Court's docket. This document is intended to accompany and provide further context to Special Master Junz' letter of March 31, 2009, in which she addresses the objections *seriatim*.<sup>1</sup>

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 <sup>1</sup> See Letter of Special Master Helen B. Junz, March 31, 2009 (hereinafter "Junz Response"), annexed

Before turning to the analysis in some detail, it is important to note CRT Special Master Michael Bradfield's observations in connection with Special Master Junz' presumptive value recommendations. Special Master Bradfield not only has served (with Paul Volcker and later with Dr. Junz) as CRT Special Master since the inception of the claims process, "working initially to develop the rules and procedures" of the CRT claims resolution process, but he also was counsel to and "de facto staff director" of the Volcker Committee. As he explains: "Among other areas of responsibility, I supervised the work of the audit firms in connection with their investigation of Swiss bank accounts. Based on this experience, I am fully familiar with the work of the five major audit firms retained by ICEP to carry out its investigation, and with the purposes and results of the ICEP investigation."<sup>2</sup>

Given his unique role in these proceedings, Special Master Bradfield offers a singular perspective on the presumptive value recommendations:

[A]s the result of the ICEP investigation some 54,000 accounts of "probable or possible" Holocaust victims had been identified of which 30,000 had no valuation recorded in Swiss bank records. Accordingly, in the Recommendations section of the ICEP Report, the Committee unanimously proposed that the CRT should be the forum to be used for the adjudication of claims to these accounts, and that where account value information is fragmentary or lacking entirely, an "arbitrary solution will be required." In this situation, ICEP suggested the solution that was finally adopted: "Projection of data for known account values over a larger number of accounts as the base for calculating average

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(Footnote Continued from Previous Page.)

hereto as Exhibit A.

<sup>2</sup> See Letter of Michael Bradfield to Hon. Edward R. Korman, April 3, 2009 (hereinafter "Bradfield Letter"), at 1, annexed hereto as Exhibit C.

values is one possible approach to resolving this problem [citing Volcker Report, ¶84].”<sup>3</sup>

In fact, Special Master Junz has followed the Volcker Report’s suggestion. She has “project[ed] ... data for known account values over a larger number of accounts as the base for calculating average values.”

Special Master Bradfield further explained that the “proxy values recommended by PWC [Price Waterhouse Coopers] were based on the information that was available at the time that the calculations were done in 1999. PWC was appropriately cautious in the information that was used in particular because we were attempting to determine the average values of accounts held by Holocaust victims, not average values for the accounts of all depositors in Swiss banks.”<sup>4</sup> Now that the CRT has located new data as a result of its analysis of claims and accounts, Special Master Bradfield advises that:

It would be clearly inconsistent with the Settlement Agreement not to utilize the important information that has been revealed as a result of the CRP [Claims Resolution Process], especially information about account values. As Mr. Hydoski, who led the original effort to estimate account values, stated “such data would have been used in the 1999 calculations had it been available” [citing Letter of Frank Hydoski to the Hon. Edward R. Korman, December 1, 2008, at 2]. Accordingly, I support Dr. Junz’ recommendation on the use of the additional information available from the CRP to establish the Article 29 presumptive values to be used for the determination of awards where account valuation information is missing from Swiss bank records.<sup>5</sup>

Special Master Bradfield’s evaluation highlights the core issue in this case: the information relating to Swiss bank accounts has never been and will never be complete. There will never be a perfect universe of data from which average account values can be determined.

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<sup>3</sup> Bradfield Letter, at 2.

<sup>4</sup> *Id.*, at 3.

<sup>5</sup> *Id.*, at 4.

As the Volcker Committee, the Bergier Commission and the Court have explained for years now, millions of documents were destroyed; others were withheld; and still others have been made available only on a sporadic and unpredictable basis.

[F]rom the outset, the claims process for the Deposited Assets Class was shaped by several limitations significantly restricting the CRT's access to Holocaust-era bank records: (1) documentation relating to one-third of 6.8 million accounts had been destroyed; (2) of the still-remaining 4.1 million accounts, access generally was to be provided only to 36,000 accounts, the so-called "AHD"; (3) of the 36,000-account AHD, publication was limited to 21,000 accounts [which, after post-settlement litigation, eventually was increased to approximately 24,000 accounts]; (4) information relating to accounts in the AHD was required to be reviewed by a "Data Librarian" who would determine what information could be viewed by the CRT, and what was to be redacted in accordance with Swiss banking secrecy requirements; and (5) even for the 36,000 accounts in the AHD, not all bank records were available: some had been destroyed, while others were not included in the database provided to the CRT.<sup>6</sup>

It is impossible ever to know or recreate what was in all the accounts and what happened to them. The auditors' original presumptive value recommendations were intended to provide a starting point so that the claims process could get under way, compensating for the lack of data for many individual accounts by substituting average values compiled from the information that existed in 1999, when the auditors were asked to examine the issue.<sup>7</sup> Integrating valuation information obtained in the course of claims processing does not impinge upon the findings of the Volcker Committee. In fact, the opposite is true: the Volcker Report explicitly

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<sup>6</sup> Judah Gribetz and Shari C. Reig, "CRT Special Master Junz' Proposal for Adjustment of Presumptive Values in the Context of the Settlement Agreement and the Distribution Plan," December 19, 2008 (hereinafter, "Contextual Summary"), at 9.

<sup>7</sup> See Bradfield Letter, at 3 ("It was recognized at the time that the Article 29 valuations do not reflect precise reality, but were as reasonably close to it as was then possible given the information that was available at that time after the passage of so much time").

anticipated that meaningful data about account values would be revealed *after the audit had been completed, as a result of the claims process*:

[T]he [Volcker] Committee has developed approaches toward approximating fair current values for individual accounts in situations where the book values are known. The Committee, with the support of the banks, believes that these approaches provide a reasonable and fair basis for making awards to identified Holocaust victims in a manner that takes account of the fact that these funds were unavailable to victims or their heirs for decades. But this approach cannot reasonably be aggregated over accounts where neither the book value nor a legitimate claimant, or both, can now be identified. *Such a determination of the overall total must await the outcome of the claims resolution process.*<sup>8</sup>

As the Volcker Committee envisioned, the process that began with the auditors continues to this day. Special Master Junz explains:

This is not a static, but very much a dynamic endeavor. Where ICEP [the Independent Committee of Eminent Persons, also known as the Volcker Committee], through the work of their accounting firms, provided the lion's share of detection work, the search for additional accounts wrongfully retained or paid to Nazi authorities by the banks has, as directed by the Court, been an integral part of the CRT's workload. Thus, what has been found and learned over the past seven years is truly additional.<sup>9</sup>

In fact, the Court itself similarly recognized that "the Volcker Committee had only begun to identify and reveal the scope of the Deposited Assets Class":

A fair and efficient claims process in connection with the Deposited Assets Class must *build on* the fact that the Volcker Committee's auditors, despite the massive destruction of relevant records over the past 60 years, were able to identify the approximately 54,000 Swiss bank accounts [then deemed probably or possibly belonging to Nazi victims]." *In re Holocaust Victim Assets Litig., 105 F.Supp.2d at 154* (emphasis added). The words

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<sup>8</sup> Volcker Report, ¶ 36 (emphasis added); Junz Response, at 2.

<sup>9</sup> Junz Response, at 3.

“build on” were not chosen lightly. I recognized then, as I do today, that the Volcker Committee had only begun to identify and reveal the scope of the Deposited Assets Class.<sup>10</sup>

Because of the many restrictions imposed upon access to banking information, the data may never be complete. Even so, as Special Master Junz explains, “[t]he point is that the data the CRT works with are not a sample drawn from a much larger data base (such as employed by the US Census), but to all intents and purposes are all that is available.”<sup>11</sup> The CRT simply seeks to use what it has learned in the course of several years of claims processing. However, Dr. Charles Mullin, who has been requested by the State of Israel to provide his opinion on Dr. Junz’ recommendations, contends that because “new account information not previously available to the ICEP came through a different data generating process than the original sample,” the data somehow are less reliable.<sup>12</sup>

To take but one example of the significant information that Special Master Junz has incorporated into her recommendation, but that Dr. Mullin would disregard: After years of post-settlement litigation over access to bank records, in 2004 the defendant banks finally agreed to make available for publication some 3,000 additional accounts. Among these accounts were those that had been “taken from dormant accounts of murdered Polish and Hungarian citizens and [as a result of secret agreements beginning in 1949 were] transferred to Swiss citizens to ameliorate the claims these citizens were raising against the [then-Communist] Polish and

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<sup>10</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp.2d 301, 304-5 (E.D.N.Y. 2004) (emphasis in original), citing *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d 139, 154 (E.D.N.Y. 2000).

<sup>11</sup> Junz Response, at 3.

<sup>12</sup> Declaration of Charles H. Mullin, Ph.D. (annexed to the State of Israel Objections as Exhibit A), at ¶ 9.

Hungarian governments after their assets had been nationalized.”<sup>13</sup> It is not until these accounts were published in 2005, and the owners and heirs began to file claims, that the CRT finally was permitted by Swiss authorities to undertake a thorough investigation in connection with many of these accounts.<sup>14</sup>

As the Court and the Bergier Commission have emphasized, these Swiss accounts owned by Polish and Hungarian Nazi victims are especially important because the Swiss banks, in this case, had no trouble making a rare exception to their banking secrecy rules:

What is most striking about these secret agreements [between Switzerland and the respective Communist governments of Poland and Hungary] is that, as the Bergier Commission pointed out, “[s]urprisingly, it was now apparently possible to conduct an internal investigation so that a list of dormant accounts relating to these countries could be drawn up.” Bergier Report, at 450. Indeed, “[n]either private property rights nor banking secrecy had been a barrier to the release of these assets.” *Id.* at 451. Dr. [Gerhard] Weinberg [an eminent historian of the Nazi era] explained:

“[A]ccounts which previously have been announced in diplomatic negotiations as either not existing or incapable of being located, and which have been withheld from the heirs either for those reasons or because the heirs cannot produce documents acceptable to the financial institutions, can suddenly be identified, their contents removed, and legal title to the assets transferred to Swiss citizens whose claims against Poland or Hungary might hinder future profitable Swiss trade with those countries.”<sup>15</sup>

<sup>13</sup> *In re Holocaust Victim Assets Litig.*, 319 F. Supp.2d at 313.

<sup>14</sup> As the Court previously has explained, as a condition to access to bank files, the Swiss banks require that a “Data Librarian” must first review and redact the documents. The CRT cannot examine bank records relating to a particular account unless and until that account has “matched” to a claim. Thus, until the CRT has located a “match” to a bank account, the data relating to that account largely remain unavailable for review. *Id.*, 319 F.Supp.2d at 324 (describing role of Data Librarian in connection with accounts in the AHD); *see also* Junz Response, at 3 (“Under the Agreement, the CRT can only demand insight into bank documents when there is a match of the account in question to a registered claim”).

<sup>15</sup> *In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d at 314.



The historic significance of these Polish and Hungarian Swiss accounts -- which belonged to murdered Holocaust victims and were traded away by Switzerland so that its citizens could be compensated for business losses that had nothing to do with the Holocaust -- apparently has not been recognized by Dr. Mullin, as he contends that their values should not be taken into consideration because these accounts were not reviewed by the ICEP auditors. In the same manner, he would exclude value information about hundreds of other accounts that belonged to Holocaust victims simply because their value information was not recorded during the audit.

Dr. Junz' methodology and conclusions supplement the original presumptive values calculated by the ICEP auditors, which as the Volcker Report and Special Master Bradfield have made clear were based upon incomplete information. As explained in Dr. Junz' prior submissions, the Contextual Report, and again herein, the revised presumptive values are accurate because they take into consideration several fundamental circumstances affecting the database from which presumptive values are calculated: (1) the context of the auditors' recommendations; (2) the scrubbing process, which had a significant impact on the number of accounts deemed to have been "probably or possibly" related to Holocaust victims and thus on the average value of those accounts; (3) the new account data that has been revealed to the CRT only due to its persistent pursuit of information from the Swiss banks; and (4) Category 3 accounts, whose exclusion from the ICEP auditors' average value calculation was inappropriate.

#### **1. The Auditors' Recommendations in Context**

At the time the ICEP audit was nearing its conclusion, the setting for the auditors had changed significantly. The lawsuit against the Swiss banks had been settled in principle. A

Settlement Agreement was under negotiation, with a fixed Settlement Amount of \$1.25 billion. As a condition to executing the agreement, the defendant banks required “organizational endorsers” to express their support for the settlement, including indirectly the State of Israel through the World Jewish Restitution Organization (WJRO), which was one of the named plaintiffs and had been authorized by Israel to act on its behalf.<sup>16</sup> Thus, with pressure to bring the audit to conclusion given the impending settlement, and with the banks now somewhat less inclined to provide the auditors with full access to their Holocaust-era bank files, the auditors were required to conclude their work in the bank archives. As described in the Volcker Report: “After the settlement of the class action lawsuit in New York in August 1998, Swiss banks collectively took a more critical view of the investigation. This new critical attitude was reflected in a desire to circumscribe the scope of the audit, to limit the cost, and to obtain agreement on an early fixed date for its completion.”<sup>17</sup>

The auditors had not been focusing upon the values of the accounts they were examining, as detailed in the Volcker Report itself and as Special Master Junz previously has explained. Rather, their mandate was to determine which of the approximately 4.1 million still-existing Holocaust-era Swiss bank accounts “probably” or “possibly” belonged to victims of the Holocaust, and so should be subject to restitution. A more accurate determination of the account values, and the incorporation into the claims process of a great deal of other information about the accounts, was expected to come later as more and more data were revealed.

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<sup>16</sup> See September 10, 1995 Letter from then-Israeli Prime Minister Yitzhak Rabin to Edgar M. Bronfman, then-president of the WJRO, stating that as President of the WJRO, Bronfman “represent[ed] the Jewish people and the State of Israel” with respect to issues “of restitution of Jewish assets deposited in Switzerland....” The letter is annexed to the Volcker Report as Appendix B, at A-3.

<sup>17</sup> Volcker Report, Annex 3, at ¶ 65.

In establishing a claims process for those accounts for which valuation information had been destroyed or appeared to be unavailable based upon the auditors' reports, two options were available: to deny the claimants restitution even though the data was missing through no fault of their own, or, instead, to move forward with payment even with (albeit) incomplete information. Other Holocaust-related claims programs have taken the more restrictive approach, and have been unwilling to proceed with payment to Holocaust victims and heirs in the absence of a complete documentary record demonstrating precisely what the asset was worth and where that asset ended up. As Special Master Bradfield describes:

With the task assigned to CRT II [i.e. the Court-supervised CRT process the followed approval of the Settlement Agreement] of return to the members of the Deposited Assets Class the account values in Swiss banks that account owners or their heirs were not able to claim [after the Holocaust], and faced with numerous cases involving an account with a known Holocaust victim account owner and recognized heirs of that account owner, but with an unknown account value, a decision had to be made whether to withhold all compensation in the absence of knowledge about account value, or to establish an objective standard that can be used as a substitute for the value that was actually placed in the account by the account owner but is unknown today. Based on the recommendation of ICEP, Mr. Volcker and I, in our capacity as Special Masters, recommended the latter course to Judge Korman. This was a path breaking decision as all previous account restitution had been based on bank established account values.”<sup>18</sup>

Thus, on the issue of valuation and a variety of other matters, the Court has taken into consideration the unique circumstances of the Holocaust and has permitted claimants to rely upon favorable inferences in the absence of a complete documentary record, as warranted under United States law.<sup>19</sup>

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<sup>18</sup> Bradfield Letter, at 2.

<sup>19</sup> *In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d at 316-321 (discussing adverse inference).

With regard to accounts with unknown values, this meant that “proxy” values would be used to determine the award amounts. These proxy values were integrated into the CRT Rules as presumptive values so that the claims process could get under way, but they were never set in stone as “true” averages. As noted previously, the Volcker Committee anticipated that the claims process would reveal and incorporate additional useful data.

2. **The current presumptive values are based upon a data set that included accounts that have long since been deleted from the database during the scrubbing process, which was supervised by the ICEP auditors.**

Throughout the period in which the average values were originally calculated so that the claims process could move forward, the Swiss banks were continuing to press for elimination of many accounts identified as “probably” or “possibly” to have belonged to Holocaust victims. This was the so-called “scrubbing” process, described by the Court in its 2004 opinion on the banks’ behavior, addressed by Special Master Junz in her reports, and summarized in the Contextual Analysis. Special Master Junz previously explained precisely why scrubbing produced differences in account values, but it bears repeating again.

To reiterate exactly what “scrubbing” means and why it is so important: the scrubbing process reduced the number of accounts deemed “probably” or “possibly” to have belonged to Holocaust victims by approximately 18,000 accounts. From the 53,886 accounts described in the Volcker Report, only 36,131 remained by the time the claims process began. These approximately 36,000 accounts were consolidated into an Account History Database (“AHD”), which was turned over to the CRT and against which claims are matched during the claims process.

Significantly, however, the presumptive values set forth in the CRT Rules are based on the average of known value accounts among the approximately 54,000 accounts that were identified *prior to* the scrubbing process, and not on the averages of known value accounts contained in the 36,131 accounts that remained *after* scrubbing and that were then compiled in the AHD. *In other words, the current presumptive values are derived from a set of data that the auditors themselves thereafter changed.* Again, approximately 18,000 of the total 54,000 accounts -- one third of the data -- were eliminated during the scrubbing. If the accounts that were eliminated were distributed randomly in the total population, their elimination would not necessarily have affected the averages. However, the accounts were not eliminated randomly. Specifically, of the 17,826 accounts eliminated, 12,854, or 72%, were accounts of known value. Their removal decreased the percentage of known value accounts in all categories from a pre-scrubbing 44% to a post-scrubbing 29%. Moreover, of the 17,826 accounts that were scrubbed, 16,029 (90%) were Category 3 accounts.<sup>20</sup> It must be clear even to those non-versed in statistics that this non-random elimination of approximately 18,000 accounts from a total of approximately 54,000 accounts -- an elimination of one-third of the data -- cannot be claimed to have had no impact on averages or other summary measures calculated from those data. In fact, because the data were not selected randomly, the impact on averages was severe, as detailed in Special Master Junz' submissions.

Accounts that had been included in the calculation of the "proxy" values (that became the presumptive values in the CRT Rules) were among those that were scrubbed (*i.e.*, eliminated from the data set). Of all scrubbed accounts, 2,708 were known value accounts in

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<sup>20</sup> See Letter of CRT Secretaries General Mary Carter and Dov Rubinstein to Hon. Edward R. Korman, April 8, 2009 ("CRT Letter"), at 5-6, annexed hereto as Exhibit C.

Categories 1 and 2, or approximately 35% of the total 7,797 known value accounts considered for the original presumptive value calculation.<sup>21</sup> In other words, even though 2,708 accounts, or approximately 35 percent of the known value Category 1 and 2 accounts, were eliminated from the AHD as part of the exercise which decreased the number of accounts from 54,000 to 36,000, their values continue to be reflected in the presumptive values in use today. The averages therefore no longer accurately reflect the accounts that actually remain in the AHD.

The impact on the presumptive values speaks for itself. As the following table indicates,<sup>22</sup> had the auditors calculated account averages based on the actual AHD delivered to the CRT at the start of the claims process -- which contained approximately 36,000 and not 54,000 accounts -- the presumptive values recommendations would have varied for every type of account, *even before any adjustments subsequently recommended by Special Master Junz to correct for the erroneous exclusion of Category 3 data and to incorporate the new account information revealed during claims review.*

ACCOUNT TYPE	Category 1 and 2 Accounts PRE-SCRUBBING		Category 1 and 2 Accounts POST-SCRUBBING	
	Number	Presumptive Value (based on Average)	Number	Average Value
Savings/Passbook Accounts	1,800	830.00	799	842.56
Unknown Account Type	3,009	3,950.00	1,527	1,413.91
Custody Accounts	397	13,000.00	373	19,876.48
Demand Deposits	2,461	2,140.00	2,368	1,693.60
Safe Deposit Boxes	42	1,240.00	14	7,240.28
Other Accounts	88	2,200.00	8	4,578.91
<b>TOTALS</b>	<b>7,797</b>		<b>5,089</b>	

<sup>21</sup> Junz Response, at 4.

<sup>22</sup> CRT Letter, at 6.

Most significantly, the presumptive values for custody accounts -- which constitute two-thirds of total payments to date<sup>23</sup> -- would have been set at approximately SF 20,000 rather than the SF 13,000 in use today.

Dr. Mullin observes that the "original 'presumptive values' were determined by the ICEP based upon a sample of 7,797 accounts with known values. The Junz Recommendation is based upon a sample of 6,945 accounts with known values in the AHD-plus."<sup>24</sup> Dr. Mullin further states that "[n]o explanation is provided for why the AHD-plus sample contains 852 fewer accounts than the ICEP sample."<sup>24</sup>

However, as Special Master Junz has explained, and as the above chart further demonstrates, the number of known-value accounts decreased by 35% after scrubbing (from 7,797 to 5,089), so that the number of known-value accounts studied by Special Master Junz (6,945) actually is *greater than* the number of such accounts available to the ICEP auditors in the post-scrubbed database. Special Master Junz' recommendations are based upon 6,945 known value accounts in the AHD-plus, which includes some 1,856 additional values not included in the original calculations.<sup>25</sup> These additional values, as detailed in her reports, are essential additions to the incomplete data set that was initially used to calculate the current presumptive values, and are described in more detail below.

The number of known value accounts, by account type, and their average values is shown in the table attached as Appendix One to the CRT Letter of April 8, 2009. As the CRT Letter explains, the table summarizes the progression of the number of accounts and their

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<sup>23</sup> Junz October 10, 2008 Report, at 3.

<sup>24</sup> Mullin Declaration, ¶ 17.

<sup>25</sup> Junz Response, at 4-5.

average value from the ICEP calculation through Special Master Junz' recommendations. The table shows the number and averages for pre-scrubbing Category 1 and 2 known value accounts (as calculated by the auditors and reflected in the current presumptive values); for *post*-scrubbing Category 1 and 2 known value accounts (reflecting the elimination of accounts during the scrubbing process); for *post*-scrubbing Category 1, 2, and 3 known value accounts (including Category 3 but not any additional accounts identified by the CRT); for *paid* known value accounts (not including known value accounts that have yet to be awarded); and for *post*-scrubbing Category 1, 2, 3, and 5 plus known value accounts (the so-called AHD-plus, upon which Special Master Junz' recommendations are based). The final column shows Special Master Junz' presumptive value recommendations.<sup>26</sup>

3. **The current presumptive values are based upon a data set that omitted accounts and account values that have been revealed during the claims process and that were unavailable at the time of the ICEP audit.**

Soon after her appointment as Special Master on April 14, 2004, Dr. Junz noted the discrepancy between accounts awarded at known value and those awarded at presumptive value.<sup>27</sup> Her analysis made clear that the claims resolution process was revealing significant information about the value of the accounts contained in the AHD, precisely as anticipated by the Volcker Committee and the ICEP auditors. This information has been added to the AHD to "fill in the blanks" contained in many account files.

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<sup>26</sup> CRT Letter, at 7 and Appendix One.

<sup>27</sup> See Junz Presumptive Value Memorandum of March 21, 2006, at 1.



In the normal course of its review of each and every account in the (post-scrubbed) AHD that matches a claim, the CRT examines not only the files prepared by the auditors in connection with the account, but also the underlying bank records. This process, while time-consuming, also has been highly worthwhile, because the CRT has been able to obtain a great deal of information about the accounts that was not made available in the truncated auditors' reports.

Critically, for purposes of the presumptive value analysis, the CRT has learned time and time again that many accounts reported by the auditors without any value information actually can be valued once the bank records are fully examined. As has been previously explained, *“more than one half of the accounts awarded under CRT II that were reported in the original AHD as having no known balance were found by the CRT in the course of its award determination to have values after all.”*<sup>28</sup>

The impact of this information cannot be overstated. What this means is that the data set that the auditors used to calculate presumptive values was both *over-inclusive* (in that it contained 18,000 accounts that subsequently were eliminated during the scrubbing process), and *under-inclusive* (in that it reported no values for accounts that, thanks to the diligence of the Special Master and CRT, actually have been found to have measurable values, and it omitted other accounts with values that have since been located). Obviously, if accounts originally were reported as of “unknown” value, they would not have been considered by the auditors when they estimated the original presumptive values; by definition, only known-value accounts went into the auditors' calculations. But if the unknown value accounts did in fact have identifiable values

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<sup>28</sup> Junz October 10, 2008 Report, at 7 (emphasis added); *see also* Junz Response, at 7.

-- as indeed many did, the claims process has shown -- then a presumptive value calculation that did not include these values *could not have been accurate*.

The number of account values reported during the ICEP audit varied by audit firm and by bank. A review of the number of values reported by firm reveals that, in particular, Arthur Andersen, which audited Credit Suisse, did not have access to all of the data that have since become available and so did not report account values for several hundred accounts that the claims process since has shown did, in fact, have values. As set forth in the CRT Letter:

[O]f the 23,509 known value accounts in the pre-scrubbed data set of approximately 54,000 accounts, only 8,715 accounts, or 37%, had been reported by Arthur Andersen. Of the 8,715 known value accounts reported by Arthur Andersen, only 1,290, or less than 15%, were reported as Category 1 or 2 accounts and therefore included in the calculation of the average values. This is particularly striking because Credit Suisse was the largest Swiss bank during the period between 1933 and 1945. This means that the vast majority of account values from Credit Suisse were not considered when the current presumptive values were calculated. Moreover, of all 8,715 known value accounts reported by Arthur Andersen, 8,382 or 96%, were reported as accounts of unknown type, rather than as custody accounts, demand deposit accounts, and so forth. These numbers strongly suggest that the limited information made available to Arthur Andersen during the audit caused that audit firm to significantly under-report the number of known value accounts in Categories 1 and 2. The lack of complete data also resulted in Arthur Andersen's inability in many cases to correctly identify the type of account reported, which necessarily impacted the calculations upon which the current presumptive values are based.<sup>29</sup>

The post-scrubbing numbers are even more revealing. Although 5,089 accounts of the 36,131 post-scrubbed AHD were reported to have had values, and Arthur Andersen reported 14,837 accounts, or 41% of the total accounts in the AHD, *not a single one of the accounts that*

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<sup>29</sup> CRT Letter, at 8-9.

*Arthur Andersen reported was reported with a known value.*<sup>30</sup> But the claims process has since revealed that a great many of these accounts do indeed have known values. Of the 1,442 accounts paid to date that were reported by Arthur Andersen (excluding sub-accounts), the CRT has found values for 457 accounts, or approximately 32%. If this rate is extrapolated to the total number of accounts in the AHD reported by Arthur Andersen (again, 14,837), one would expect to find 4,748 account values reported by Arthur Andersen (14,837 accounts times 32%). Instead, as noted above, Arthur Andersen reported no account values.<sup>31</sup> “By contrast, Price Waterhouse (PW), which audited UBS and its predecessors, reported a total of 12,779 accounts, or approximately 35% of the post-scrubbed AHD. PW reported values for over 45% of these accounts.”<sup>32</sup>

Special Master Junz has offered an explanation for the auditors’ -- mainly Arthur Andersen’s -- inability to report complete information about the audited accounts: she has observed that the auditors had a “difference[] in focus”<sup>33</sup> as compared with the CRT. Specifically, “the focus of the audit was on the discovery of the relevant accounts, and the recording of balance values and type of account information, though important, was not the primary objective, especially given the prevailing time and expenditure constraints.”<sup>34</sup> Thus,

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<sup>30</sup> CRT Letter, at 9-10. While some Arthur Andersen accounts in the AHD did include a value, none included a corresponding value date that would enable a 1945 value to be calculated. “Without a corresponding date for the reported account balance, there is insufficient information to determine the historic value of an account. For example, a savings account with a balance of \$500 absent withdrawals, would have a much higher value today if that balance date was as of ten years ago rather than as of yesterday, due to accumulation of interest.” *Id.*, at 9 n.11.

<sup>31</sup> CRT Letter, at 9-10.

<sup>32</sup> CRT Letter, at 10.

<sup>33</sup> Junz Response, at 7; *see also* Junz Presumptive Value Memorandum of March 21, 2006, at 2; Junz Updated Memorandum of May 14, 2007, Appendix I, at 1.

<sup>34</sup> Junz Response, at 7; *see also* Junz Presumptive Value Memorandum of March 21, 2006, at 15; Junz Updated Memorandum of May 14, 2007, Appendix I, at 3.

whereas the auditors were concentrating upon whether an account probably or possibly had belonged to a Nazi victim, the CRT in the normal course of award determinations scrutinizes the bank files to resolve a variety of other questions, including, among others, the type of the account, and its value. Clearly, the type and depth of the account information recorded by the auditors varied from audit firm to audit firm. Because the CRT only has access to accounts that match to claims, and only enters value information on accounts in the AHD following a close review of the account files that takes place during the claims resolution process, it is impossible to know all of the missing account values that were not captured by Arthur Andersen and the other auditors.<sup>35</sup> Nevertheless, the record today is far more complete than it was at the time of the ICEP audit. It is therefore entirely appropriate to include in the presumptive value analysis valuation information that was missing from the work product delivered by the auditors, but readily available in the underlying documents.

The CRT's review of the underlying bank records made available with the auditors' reports not only has revealed account values that were not reported by the auditors, but "also has revealed additional accounts owned by the same account owner (referred to by the CRT as 'sub-accounts') that were not reported by the auditors and thus not included in the AHD. To date, a

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<sup>35</sup> To the extent that Arthur Andersen's work was incomplete, the Court previously has taken note of the limitations imposed upon, or accepted by, the auditors in conducting the ICEP audit. See *In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d at 324 ("After completing two rounds of this 'scrubbing,' the auditors decided that of the 54,000 accounts previously identified, there were only 21,000 accounts that 'probably' belonged to Nazi victims, and 15,000 accounts that 'possibly' belonged to Nazi victims. The auditors arrived at this conclusion even though they were theoretically searching for the same excluding characteristics as they had sought when employed by the Volcker Committee"); see also *id.*, at 320 ("As an initial matter, the historical conclusions of the Volcker Committee must be understood in context - they were made by auditors who were seeking to identify accounts related to Holocaust victims. It was an 'exhaustive, detailed, independent search for victim accounts' [citation omitted]. Indeed, I have written that the Volcker Committee represented 'what is likely the most extensive audit in history.' *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d at 151. Yet that is precisely what it was - an audit performed by accountants. Their conclusions regarding historical fact merit less weight than those of the Bergier Commission").

total of 531 of these so-called sub-accounts have been awarded.”<sup>36</sup> Many of the bank records evidencing these additional accounts also contained information concerning the value of these accounts, and these have been considered in calculating the new presumptive value recommendations.

As to the process by which the CRT has discovered this missing information, one further point needs to be stressed. The CRT’s unearthing of additional account data has taken place as part of the CRT’s routine review of bank files connected to all accounts potentially matching to claims, not just for those accounts that appear to be of higher value. The CRT looks at all available bank records in the normal course of its review of every single potentially awardable account to which the CRT has been given access. This procedure is not new. Rather, it was envisioned from the outset that this mechanism would be a regular part of claims processing -- *even by the banks*. As a condition to the Court’s approval of the Settlement Agreement, the banks agreed that they would “provide reasonable access by claims personnel to the consolidated database [AHD] and to ICEP audit files prepared in connection with such accounts.”<sup>37</sup> This review process of bank files connected to potentially matched accounts has nothing to do with “voluntary assistance,” which is a separate procedure (more fully discussed below).<sup>38</sup>

As to the other methods by which the CRT has obtained additional information on the accounts in the AHD -- archival research, evaluation of claimant information, and “voluntary

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<sup>36</sup> CRT Letter, at 10.

<sup>37</sup> See Memorandum to the File, August 9, 2000, ¶ B(2).

<sup>38</sup> “Voluntary assistance” is a process distinct from the CRT’s routine review of underlying bank records in connection with all potentially matched claims. See Junz Response, at 8, n. 5; CRT Letter, at 14. In any event, as more fully discussed below, “voluntary assistance” does not adversely impact the data set (*see infra*).

assistance” -- these information-gathering methods similarly have not been “biased toward high-value accounts.”<sup>39</sup> The CRT does not “favor” claims which appear to be of higher value. In fact, the CRT has no way of knowing the value of any given account until it examines the claimant’s submissions and then performs additional research, including review of the underlying bank records as well as a variety of other sources.

As Dr. Junz points out, while claimant data has augmented the CRT’s data, the bulk of the CRT’s new information about the accounts actually has come from the review of underlying bank documents as described above. In fact, the AHD has been augmented with 745 known-value accounts not included in the AHD (pre-scrubbed or post-scrubbed), just from studying the bank records alone.<sup>40</sup>

The CRT also makes extensive use of data from European archives. “Based upon archival research, the 2005 publication alone included the names of account owners of 906 additional accounts beyond those contained in the original AHD (pre- or post-scrubbed): 354 accounts from German and Austrian archival sources (primarily consisting of asset registrations filed pursuant to a 1938 Nazi decree); and 552 accounts from records from the Swiss Federal Archive. These accounts are only a portion of the additional accounts documented in archival sources that were added as appropriate to the AHD. As true for the underlying bank records, many of these archival documents evidencing these accounts also contain value information, and this information has been used to calculate the new presumptive values.”<sup>41</sup> As Special Master

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<sup>39</sup> Mullin Declaration, ¶ 9.

<sup>40</sup> CRT Letter, at 8.

<sup>41</sup> CRT Letter, at 10. *See also id.*, at 7 n.8 (“It was expected that the CRT would identify awardable accounts not identified during the ICEP audit. Thus, Article 22(3) of the Rules Governing the Claims Resolution Process states: ‘Notwithstanding prior provisions, the CRT may make an Award in a case in which the Claimant plausibly establishes a right to an

Junz explains, although the data are new (as compared to the information the auditors had on hand), these data were generated in the same manner as the information already contained in the ICEP database.<sup>42</sup>

A single case may show more clearly the type of information that was not part of the ICEP auditors' review but was revealed during the claims process and utilized by Special Master Junz in her reexamination of presumptive values. In a decision dated November 18, 2004, the Court approved an award to the accounts of Liselotte Löhner and Eva Löhner in the amount of US \$2,127,372.88.<sup>43</sup> In that case, the Claimant identified the Account Owners as the young children of her mother's sister and her husband, Fritz Löhner. According to research conducted by the CRT, in the 1920s, Fritz Löhner was one of the most sought-after lyricists and writers in Vienna. Later, he teamed with the well-known composer Franz Lehár, with whom he wrote several operettas, including "*Das Land des Lächelns*" ("The Country of Smiles") (1929). The copyright for these musical successes made Löhner a millionaire. Löhner was also the author of "*Freunde, das Leben ist lebenswert*" ("Friends, life is worth living"), which became one of the most popular songs in Germany in the 1940s.

On March 13, 1938, immediately after the *Anschluss*, Löhner was arrested and interned in the prison on Elisabethpromenade in Vienna. On April 1, 1938 he was deported in

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(Footnote Continued from Previous Page.)

account that falls within the CRT's jurisdiction but which, for whatever reasons, was not identified during the ICEP investigation and therefore cannot be subject to Matching and/or Research.' Such accounts are added to the AHD by the CRT and are tracked for internal reporting purposes in categories labeled 5 and above, depending upon the source of the information that documents the existence of the account").

<sup>42</sup> Junz Response, at 8.

<sup>43</sup> See *In re Accounts of Liselotte Löhner and Eva Löhner*, available at [www.swissbankclaims.com](http://www.swissbankclaims.com) and [www.crt-ii.org](http://www.crt-ii.org).

the “*Prominenten-Transport Nr. 1*” (the first transport, specially reserved for prominent persons) to the concentration camp at Dachau. In September 1938 he was deported to Buchenwald. There, he wrote, together with the composer Hermann Leopoldi, the “Buchenwald March,” which was played every morning during the prisoners’ roll-call and as they marched to work.<sup>44</sup> In captivity, Löhner continued to hope that his former friend and colleague, Fritz Lehár, would help secure his release. Instead, Lehár quickly adapted himself to the new political situation, and developed good contacts with the Nazi party. In 1940, Lehár celebrated his seventieth birthday in the Vienna Opera by conducting, in the presence of Adolf Hitler himself (who listed Lehár as one of his favourite composers), “*Das Land des Lächelns.*” The name of the operetta’s co-writer and Lehár’s former friend was conveniently dropped from the program.

In 1942, Löhner’s wife Helene, their two young daughters, and Helene’s mother were deported to Minsk, where they were killed. In 1942, Fritz Löhner was deported to Auschwitz-Monowitz, where he was a slave laborer building a factory for *IG Farben*. One day, five directors of *IG Farben* saw Fritz Löhner working too slowly, and commented that “the Jew there could work faster” (“*Der Jude da könnte auch schneller arbeiten*”), which proved to be his

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<sup>44</sup> "O Buchenwald, ich kann dich nicht vergessen,  
weil du mein Schicksal bist.  
Wer dich verließ, der kann es erst ermessen,  
wie wundervoll die Freiheit ist!  
O Buchenwald, wir jammern nicht und klagen,  
und was auch unser Schicksal sei,  
wir wollen trotzdem ja zum Leben sagen,  
denn einmal kommt der Tag, da sind wir frei."

Oh Buchenwald, I cannot forget you,  
Because you are my destiny  
Whoever leaves you, only then can he measure  
How wonderful freedom is!  
Oh Buchenwald, we do not moan or complain  
And whatever our fate may be  
We will still say Yes to life,  
Because someday we will be free!

See [www.sfb.de/fernsehen/kulturreport/o30204\\_5.html](http://www.sfb.de/fernsehen/kulturreport/o30204_5.html) (last visited October 23, 2004). See also “Reich Refugee Hails U.S. Soil With Kiss; Vienna Comedian 9 Months in Nazi Camps,” *The New York Times*, March 21, 1939, at 8. The article describes the arrival of Hermann Leopoldi in New York in 1939. The article quotes Mr. Leopoldi: “The worst thing about the camps is that nobody knows what is going to happen to him. While I was in the camps I composed a work -- ‘March for Prisoners.’ The words were written by another prisoner, Dr. Fritz Beda [an alternate name for Löhner], who was the librettist for Franz Lehár.”



death sentence. A *Kapo* (a leader of a work unit) beat Fritz Löhner to death on December 4, 1942. His official cause of death was listed as old age ("*Altersschwäche*").

The auditors reported four accounts held by Liselotte and Eva Löhner at three banks: two accounts reported by Arthur Andersen at Credit Suisse, one account reported by KPMG at the former UBS, and one account reported by KPMG at the former *Eidgenössische Bank Beteiligungs- und Finanzgesellschaft* ("EIBA"). The two accounts reported by KPMG were reported as Category 1 accounts, with account values, but the accounts reported by Arthur Andersen were reported as Category 3 accounts, without values. Although the victim information was the same for all accounts (specifically, the asset declaration in Fritz Löhner's 1938 census documents mentions both the Credit Suisse accounts and the EIBA account), the account at the former EIBA was reported as a Category 1 account and its value was used by the auditors in calculating the averages, but the accounts at Credit Suisse were reported as Category 3 accounts. Thus, even if values had been reported for those accounts, they would have been excluded from the auditors' average calculations, and would continue to be excluded from the calculations of averages if Dr. Mullin's argument prevailed.

Moreover, by examining the 1938 asset declaration filed by Fritz Löhner, the CRT was able to discern the value of these two Credit Suisse accounts, which was missing from the Arthur Andersen files. Further, upon review of the bank records, the CRT identified an additional account held at the former EIBA that had a value recorded in the bank records. The value of this account, as well as the other accounts, was also contained in Fritz Löhner's 1938 asset declaration.<sup>45</sup> Although this information was missing from the auditors' files handed over

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<sup>45</sup> In re *Accounts of Liselotte Löhner and Eva Löhner*.

to the CRT at the start of the audit, the CRT was able to “fill in the blanks” and award the accounts. Special Master Junz used these known account values, among others, in reevaluating the auditors’ original presumptive value calculations.

With regard to Dr. Mullin’s statement about the alleged bias in claimant-provided documents -- that “[c]laimants produce account information only if (a) they possess the data and (b) they are motivated to do so”<sup>46</sup> -- many claimant awards (all available on the Internet) actually reflect the opposite. They are based upon evidence of Holocaust-era Swiss bank accounts contained in letterheads of businesses, or upon documents showing accounts opened by refugees who entered into Switzerland. The average value of these awards is well *below*, not above, the average value of all awards paid to date.<sup>47</sup>

Dr. Mullin’s observation about the motivations of claimants to Holocaust-era assets is not borne out by the CRT claims process. Certainly Dr. Mullin cannot mean to suggest that claimants file claims solely for the money, but unfortunately that is what he implies when he states that “[g]iven the economic incentive for holders of high-value accounts to produce documentation of these accounts (*i.e.*, large financial gains), the identification of many additional high-value accounts is not surprising. Similarly, given the lack of any economic incentive for holders of low-value accounts to produce documentation of those accounts (*i.e.*, no financial gain), the relative absence of additional low-value accounts is not surprising.”<sup>48</sup>

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<sup>46</sup> Mullin Declaration, at ¶ 10.

<sup>47</sup> See Junz Response, at 7 (“The documents submitted more often than not often evidence only minimal amounts on deposit, certainly less than the average award amount”).

<sup>48</sup> Mullin Declaration, at ¶ 10.

In a decade of interacting on a daily basis with Holocaust survivors, the CRT has understood that what the claimants are seeking is the recognition that during the Holocaust, something was stolen from them and never returned. The amount of the award is almost beside the point.<sup>49</sup> As the Claimant in the Löhner case described above so poignantly wrote in her Initial Questionnaire, which served as her claim: “How can one tell these tales of horror in these short explanations?” She wrote that she lost many relatives in the Holocaust, and that of particular concern to her were her maternal grandmother, who lived with Helene Löhner and the Claimant’s two cousins, whose father was Fritz Löhner. The Claimant wrote that her grandmother and Helene, Eva, and Liselotte Löhner “disappeared in the middle of the night, and with all attempts to locate them, to date I do not know how they died, or where, and what happened to all their possessions.” In a letter of appreciation, the Claimant later wrote:

On behalf of my cousin ... and myself, I wish to exten[d] my gratitude for your help in bringing this case to conclusion. Many thanks for the endless hours of research necessary to access these dormant accounts of our dear little cousins who perished at the age of 11 and 13 yrs. due to the cruelty of monsters. Thank you for persevering, in spite of hitting many dead end roads, which resulted in this large award. With mixed emotions, we are so very grateful. Please keep up your wonderful work.<sup>50</sup>

Another element of the contention that the reevaluated account data are biased upward is the claim that when the data were initially assessed, they were already skewed toward

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<sup>49</sup> See, e.g., Jane Schapiro, “A longing to be heard and understood - Acknowledgment is the first step toward establishing a human connection,” Christian Science Monitor, March 2, 2009 (“What the Swiss bankers failed to realize was that even something as everyday as a bank account offers testimony to another’s existence.”); see also Junz Response, at 7 (“[T]he motivation for claimants with accounts of what [Dr. Mullin] considers ‘low’ value content may be much stronger, because the award of an account even at minimum value may be sufficient to significantly improve claimants’ quality of life. I can attest to this personally based on correspondence from successful claimants, who with the proceeds could aid in the college education of a grandchild or afford a higher grade assisted-living accommodation than was previously possible”).

<sup>50</sup> Claimant letter, December 30, 2004 (on file with the CRT).

higher value accounts, because the ICEP data did not consist of a random sample since all accounts under SF 250 were excluded.<sup>51</sup> Initially, if this statement in fact were accurate, then to the extent that there was any objection to the exclusion of accounts under SF 250, it was not raised when the original presumptive values were adopted in 2001. It is unclear why Special Master Junz' analysis would be any less accurate than the auditors' when the same low-account data allegedly have been excluded from both sets of presumptive value calculations.

However, Dr. Mullin's statement in fact is not accurate. As detailed in the Volcker Report, not all accounts under SF 250 were excluded, only "small-balance *savings accounts* under SFr. 250, which evidence indicated were not typically held by non-residents of Switzerland."<sup>52</sup> There are five other categories of accounts in addition to "savings accounts," none of which excluded accounts under SF 250: demand deposits; custody accounts; safe deposit boxes; unknown types of accounts; and accounts classified as "other" types.

In any event, as the Volcker Report makes clear, the savings accounts were not excluded because of their small balances, but because the evidence indicated that they most likely were held by Swiss residents rather than Holocaust victims. In fact, savings accounts with small balances that have a more likely relationship to Holocaust victims were *not* excluded. Thus, despite this "exclusion," a total of "508 of the total 3,258 known value savings accounts, or 16%, contained in the (post-scrubbed) AHD had reported values of SF 250 or less. Of these 508 savings accounts with a known value below SF 250, 465, or 92%, are in Category 1, 2, or 3, and their values are therefore included" in Special Master Junz' average value calculations.<sup>53</sup> In

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<sup>51</sup> Mullin Declaration, at ¶ 7.

<sup>52</sup> Junz Response, at 5, citing Volcker Report, Annex 3, ¶40.

<sup>53</sup> Junz Response, at 5; CRT Letter, at 14.

any event, of all six account types, the average value for savings accounts is the lowest, despite the small savings account exclusion. These considerations make it clear that contrary to Dr. Mullin's assertion, the partial exclusion by ICEP of small savings accounts did not bias the average value of that account type upward.

Finally, with respect to "Voluntary Assistance," the data the CRT has obtained from the defendant banks via this mechanism has not skewed the results. Initially, it should be noted that there appears to be an implication that the CRT's pursuit of Voluntary Assistance is somehow inappropriate. To the contrary, it is in accordance with the Court's directives in approving the Settlement Agreement. The Court made it clear from the very outset that the banks' cooperation in good faith with the claims process has been a condition to their obtaining releases under the settlement.<sup>54</sup> Subsequently, the Court-approved Second Memorandum to the Files, which resolved post-settlement litigation concerning the bank accounts, specifically recognized that "Voluntary Assistance" was to continue as part of the resolution of Deposited Assets claims.<sup>55</sup>

As described above, when resolving a claim to an account, the CRT examines not only the files prepared by the auditors in connection with the account, but also the underlying bank records. In many cases, these bank records are incomplete. The incomplete records make it especially difficult to determine the identity of the account owner, and this has prompted the majority of the requests for Voluntary Assistance (which are simply requests to the defendant

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<sup>54</sup> *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d at 158.

<sup>55</sup> *See* Second Memorandum to the Files, June 10, 2004, ¶ 3(e); *see also* Memorandum to the File, August 9, 2000, ¶ B(3).

banks to provide the CRT with any additional data that the bank files may contain about particular matched accounts, beyond the data collected as part of the audit).

The missing bank records also often contain information about the account itself, including its type and value. It was clear in the course of the audit that these additional records could become available, and the CRT was instructed by the auditors to ask for such records in specific sorts of cases in which the auditors determined a likelihood, based upon the source of the record they had accessed, that additional records exist. In fact, PW incorporated a standard memorandum to file regarding “additional documentation potentially located in the Bank’s corresponding account file folders” in a significant number of the accounts it reported. The memorandum points out:

PwC performed a sample test of folders not presented by the Bank during the “scrubbing” process to ascertain the volume of additional documents found by the Bank. Based on that sample test, the Bank folders contained additional documents for over 50% of the accounts in Categories 1 – 4. These documents included, inter alia, account holder signatures, addresses and deposit amounts. In cases where the account in Cat 1 – 4 was from a Bank-prepared database..., the Bank, in most cases, found the original document used to support the account.

PwC would recommend that if the CRT-II reviews this folder during the Claims Adjudication process, it should request from the Bank to have access to any additional documents located in the corresponding Bank files.<sup>56</sup>

Indeed, these were precisely the types of cases for which the CRT requested Voluntary Assistance from UBS, and for which, in turn, UBS responded in several hundred cases with additional documents that led not only to better identification of account owners but also to a better understanding of the account type at issue, its contents, and disposition.

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<sup>56</sup> CRT Letter, at 15; Junz Response, at 9.

With regard to Credit Suisse, Voluntary Assistance was “less forthcoming.”<sup>57</sup>

However, eventually Credit Suisse did provide additional underlying account documents that were originally not contained in the auditors’ files. Such documents included custody account identification cards (“*Leitkarte*”) and custody account portfolio holding cards

(“*Depotvalorenkarten*”) for each security held within custody accounts held at certain branches of the bank, and which provided account value information for over two hundred accounts.

These documents were not included in the original ICEP files because of an input error regarding the source of the documents, in other words, an oversight.<sup>58</sup>

Dr. Mullin asserts that current presumptive values already “overpay” account owners, and therefore criticizes the CRT’s incorporation of the additional account information provided by Credit Suisse only last year:

... Thus, more than half of these accounts received compensation in excess of their *true* (emphasis added) account value. Furthermore, if the Junz Recommendation were adopted, the “presumptive value” for these 118 accounts that have already received compensation in excess of their established value would be increased by an additional SFr. 18,000...<sup>59</sup>

In fact, based upon evaluation of the bank records to which the CRT has access, the Court has made it clear that bank information cannot be fully relied upon to provide the true value of an account given the well-documented behavior of the banks not only in destroying information, but also in deducting fees and other charges from accounts. The Court accordingly determined that the CRT in awarding accounts of unknown value or of a value below the presumptive value for the type of account in question would award that presumptive value (Art.

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<sup>57</sup> CRT Letter, at 15.

<sup>58</sup> *Id.*, at 16.

<sup>59</sup> Mullin Declaration, at ¶ 12.

29 of the “Rules”). Therefore, Dr. Mullin’s definition of the “true” and “established” value of an account differs fundamentally from that determined by the Court.<sup>60</sup>

Dr. Mullin’s analysis of the “mean” versus “median” similarly requires further scrutiny. As Dr. Junz explains in her March 31, 2009 response, with regard to the distribution of the data in the AHD-plus, Dr. Mullin comments in the abstract on their likely shape, even though Dr. Junz reported in her October 10, 2008 analysis that there is a log normal distribution, skewed to the right. Table 1 in Dr. Junz’ October 10, 2008 report provides these statistical properties. Though the standard deviation is not shown in the Table, as Dr. Junz reports, it was calculated and used in combination with the skewness co-efficient to determine “outliers,” i.e., observations the inclusion of which in the calculation of the averages would have had an unduly large effect. This treatment of “outliers” thus moots the example Dr. Mullin presents of the dramatic effect a single high-value observation can have on the mean of a data set.<sup>61</sup>

Dr. Junz explains that the key issue is what the distribution of the missing data looks like as compared to the distribution of the known data set. If it is believed that the data are a random sample of the total universe, “then there is no reason to think that the mean will be biased. In other words, if we assume that the missing data will have the same profile as the data we have on hand, it is proper to use the mean. If, however, we believe that we already have captured most of the high-value observations, then the median will provide a better approximation of the missing data. Conversely, if the lower value observations are overrepresented in the available data set, the median will wildly understate the true situation

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<sup>60</sup> See Junz Response, at 10-11.

<sup>61</sup> Junz Response, at 13.



regarding the missing data.”<sup>62</sup> Dr. Junz’ analysis has shown that “it is more likely that higher value accounts were missing from ICEP’s data in Categories 1, 2, and 4 than that lower values were missing from Category 3. Nevertheless, as one could not equally conclusively determine the shape of the missing data population, it was thought only prudent to assume that missing data would be randomly distributed with respect to the known data. In either case, the use of the mean is warranted.”<sup>63</sup>

As noted above, there will never be a perfect picture of the universe of accounts that were wrongfully denied to Holocaust victims and their heirs, because the claims process only has access to a limited number of accounts, and to a limited amount of information about those accounts. However, as the claims resolution process nears its end, the data set upon which the average values can be calculated is coming as close to completion as it will ever be. There is no reason not to adjust the data set – as the ICEP auditors already did in the scrubbing process – by utilizing values of accounts obtained during the course of the claims resolution process.

**4. The exclusion of Category 3 accounts from the average value estimates was premised upon data that no longer hold true.**

As discussed at length in the December 19, 2008 Contextual Summary and in Special Master Junz’ reports, the auditors’ decision to exclude Category 3 accounts in determining presumptive values was based upon data that have since changed significantly.

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

The auditors were overly cautious in excluding Category 3 accounts because they were uncertain whether the accounts belonged to Holocaust victims. The claims process has shown that in fact, they did. Because of the terms of the Settlement Agreement, which provides for compensation only to “victims or targets of Nazi persecution,” accounts are not awarded if they did not belong to Holocaust victims. However incomplete the information about the account owners may have been at the time the auditors assessed these accounts, the claimants and the CRT have filled in many of the gaps. The CRT has studied all kinds of documents concerning the owners of the accounts -- 1938 census forms, Yad Vashem records, manuscripts, photographs, family histories, and countless other records -- and the documents leave no doubt as to the fate of the owners of Category 3 accounts that have been awarded: they were victims of the Nazis just as were owners of Category 1 and 2 accounts. Both the raw number of the Category 3 accounts that have been paid and the percentage of awarded Category 3 accounts among all awarded accounts provide strong evidence that all Category 3 accounts are much more likely to have belonged to Holocaust victims than assumed by the ICEP auditors.

Second, the claims process has further revealed that rather than the known value accounts in Category 3 missing a large number of low-value accounts, and thus being improperly skewed toward high-values, Categories 1 and 2 may be missing a large number of high-value accounts and thus may be improperly skewed toward those with low values. In other words, it appears that a considerable number of high-value Category 1 and 2 accounts are missing from the AHD because the documentation for these accounts either was destroyed, or was not properly recorded in the audit (as described above) or has turned out to be obtainable from other sources.<sup>64</sup>

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<sup>64</sup> Junz Presumptive Value Memorandum of March 21, 2006, at 11; *see also* Junz Response, at 12.

Moreover, within the actual 36,131-account AHD presented at the start of the claims process, the percentage of known-value accounts in Categories 1 and 2 decreased significantly. Although the auditors were impressed by the fact that some 70% of Category 1 accounts and 80% of Category 2 accounts had known values, these statistics were based on the pre-scrubbed AHD of 54,000 accounts. In reality, in the 36,131-account post-scrubbed AHD, “*only 37% of Category 1 accounts (not 70%) and 64% of Category 2 accounts (not 80%) had known values.*”<sup>65</sup>

It has been suggested that the Volcker Report indicates that Special Master Junz’ inclusion of Category 3 values is “no[t] reliable,’ ‘inaccurate,’ and ‘misleading.’”<sup>66</sup> However, the Volcker Report did not analyze “Category 3” accounts in connection with “presumptive values.” The Volcker Report downplayed the significance of the Category 3 accounts for a very different reason: to tamp down possible criticism of the \$1.25 billion settlement amount, which appeared to be too low in light of the results of the audit when Category 3 values were taken into consideration.

None of this is new. The Court itself addressed precisely this issue in determining whether the settlement was fair. Although the Volcker Report indicated, on the one hand, that it was inappropriate to include Category 3 account values to “approximate[] ... fair current values for accounts due victims,”<sup>67</sup> the Report on the other hand also specified just how large that sum would be if Category 3 accounts were taken into consideration. As the Court has explained:

“The significance of the report of the Volcker Committee, which included three members appointed by the Swiss Bankers Association, is that it provided legal and moral legitimacy to the

<sup>65</sup> CRT Letter, at 12 (emphasis added).

<sup>66</sup> State of Israel Objections, at 14, citing “Volcker Report, Annex 4, at 72, 75, Table 20, n. \*\*.”

<sup>67</sup> Volcker Report, Annex 4, ¶40.

claims asserted here on behalf of the members of the Deposited Assets Class. The findings suggest that the value of deposited assets held by the Swiss banks could exceed the \$1.25 billion settlement amount. See Volcker Report Annex 4 ¶¶ 41-42 & n.23. [FN 2] Indeed, it is only the successful campaign that the Swiss banks waged to prevent disclosure before records were destroyed, Volcker Report ¶¶ 41(b), 48, that gave rise to the legal and practical impediments to the successful litigation of this case by the vast majority of individuals to whom money is justly due.”<sup>68</sup>

The text of footnote 2 of the Court’s opinion reads as follows:

“This portion of the Volcker Report estimated the present value of certain categories of accounts, in Swiss francs, which it derived from mean and median values of known accounts. In concluding that the total value of accounts appears to exceed \$1.25 billion, I have converted the Volcker Committee’s figures (derived from the mean value of known accounts) to U.S. dollars using the currency exchange rate in effect at the close of trading last week. While the total estimated value of accounts derived from the median of known accounts, as opposed to the mean value, is less than \$1.25 billion, both the mean and median figures may significantly understate the account values for reasons that need not be detailed here.”<sup>69</sup>

Ironically, the Court quoted from the very page of the Volcker Report that is now claimed to stand in opposition to Special Master Junz’ decision to include Category 3 account data in her analysis: Volcker Report, Annex 4, page 72 (¶¶ 41-42).

Fully cognizant of the internal debate within the Volcker Committee concerning Category 3 -- which resulted in the Committee’s relegation of the Category 3 data to a footnote -- the Court nevertheless quite deliberately took into consideration the value of the Category 3 accounts in evaluating whether the settlement amount was sufficient. Due to the uncertain



<sup>68</sup> *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d at 153-154. See also *In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d at 318 (estimating the value of just one component of the Holocaust-era assets lost in Swiss banks, “forced transfers,” at “\$1.7 billion in today’s dollars”).

<sup>69</sup> *In re Holocaust Victim Assets Litig.*, 105 F.Supp.2d at 154 n.2.

outcome of litigation, the age of the claimants, and a variety of other factors, the Court determined the amount of the settlement to be acceptable. However, as shown previously, the Court emphasized then and now that the Deposited Assets Class claims are at the heart of the lawsuit. Special Master Junz has demonstrated that these claims have not yet been adequately compensated.

Dated: New York, New York  
April 9, 2009

Respectfully submitted,

Judah Gribetz  
Shari C. Reig

# **EXHIBIT A**

Helen B. Junz  
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Switzerland

March 31, 2009

The Honorable Edward R. Korman  
United States District Judge  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Response to the Declaration of Charles H. Mullin, Ph.D.  
attached as Exhibit A to the February 13, 2009 "Objections by the State of Israel"

Dear Judge Korman:

I submit this response to the Declaration of Charles Mullin, Ph.D., attached as Exhibit A (the "Mullin Declaration") to the February 13, 2009 "Objections by the State of Israel" submitted in connection with the matter "In re: Consideration of Special Master Helen Junz' Recommendation for Adjustment of Deposited Assets Class Presumptive Values."(sic). This response is also intended to relate to the considerations in Mullin's declaration as they appear in the State of Israel's document.

In his Declaration Charles Mullin seeks to review my recommendation to the Court that the current set of presumptive values, used by the CRT to pay out awards to accounts of unknown value, be adjusted to reflect the full data knowledge available to CRT after some seven years of claims resolution experience. In his review Mullin states that the underlying information provided in the set of documents relating to the recommendation was not sufficient to form a balanced view of it. He, nevertheless, goes on to posit a set of assertions, which then are reformulated as generally unsupported conclusions, to show that the data underlying the recommendation are biased in an upward direction.

Much of what is put forward as purportedly considered criticism stems from a misreading, misinterpretation and/or glossing over of the material made available in my various submissions to the Court on this matter, starting with a complete misunderstanding not only of the data on which the CRT bases its work, but sadly also of the process and the premises it is built on. Because of the deep misunderstandings of the basic premises, I will address these first, though anyone involved in these issues should be thoroughly familiar with them. I then will take up the individual data base- and statistical analysis-related points set out in paragraphs 7-21 of the Mullin document.

The central point, not at all understood by Mullin is that the claims resolution process does not, and cannot, deal with a finite set of data. As made very clear by the Independent Committee of Eminent Persons (hereinafter "ICEP" or "Volcker Committee") in their Report as well as by the Court and numerous observers and analysts of the question of Holocaust-era accounts in Swiss banks, we will never with any measure of certainty know how many accounts and what total amounts actually are involved. The Volcker Committee stated explicitly that what they had accomplished sufficed to start the claims resolution process, but that a better insight into the amounts involved would need to "await the outcome of the claims resolution process."<sup>1</sup> Nevertheless, a core point of Mullin's review is that any

"identification of high-value data accounts would imply that the mean value among the remaining unknown accounts has not increased, but rather has decreased..." (Mullin, para. 15).

Mullin rests this conclusion on the example of the television game show "Deal or No Deal," in which there is a finite set of data, in this case a set of 26 briefcases containing varying amounts of cash ranging from one cent to one million dollars. In other words, in this game show the values of the briefcases fit within a pre-fixed set of value parameters, namely \$ 0.01 and \$ 1,000,000 and the value contained in each briefcase is known (though not revealed to the contestants). Thus, there are a finite number of briefcases of known value, so that the average value of the set as a whole never changes, though obviously, if one of the contestants draws the \$ 1,000,000, the mean value of the remainder is much diminished. Mullin's use of this example demonstrates his deep misunderstanding of the claims resolution process and the data underlying both the current presumptive values and my recommendation.

First, it should be clear that the claims resolution process is not a TV game show with the CRT, as the presenter, masterminding the award of a fixed sum of money to Claimants competing for a finite number of accounts, so that each award of an above average value account, reduces the average value of the remaining accounts (Mullin, para. 14-16). On the contrary, as stated above, there unfortunately is neither a finite set of accounts nor does the value of the accounts fall within a known set of parameters, i.e. our data set has no set ceiling for the value of the accounts (though, of course, there is an agreed total in the Settlement Plan for awards to the Deposited Assets Class, which it is recognized may fall above or below actual awardable amounts). Finally, not all account values are known, in fact the majority is unknown so that the majority of awards needs to rely on proxy values. Thus, fairness to all claimants dictates that as many of the account information gaps, including their values, be and continue to be filled. And this is precisely what defines the objective of the Volcker Committee's work.

Thus the objective of the Volcker Committee (or ICEP) and of the claims resolution process as such has been to identify to the fullest extent possible all accounts –

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<sup>1</sup> ICEP, *Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks*, December 1999, p. 12.



and as feasible their values - in Swiss banks that belonged to Holocaust victims and that were withheld from their rightful owners (or their heirs), so that these assets could be returned to them. This is not a static, but very much a dynamic endeavor. Where ICEP, through the work of their accounting firms, provided the lion's share of the detection work, the search for additional accounts wrongfully retained or paid to Nazi authorities by the banks has, as directed by the Court, been an integral part of the CRT's workload. Thus, what has been found and learned over the past seven years is truly additional. The thought that each positive result of the continuous search for assets owned by Holocaust victims, as manifested in their return to their rightful owners, is like picking a raisin out of a cake so that, if a large raisin is picked - i.e. a high value account awarded - only smaller raisins are left and thus the average size of the remaining raisins is reduced, is patently absurd.

Second, anything more than a cursory perusal of the material reviewed by Mullin, should have given him the explanation of the nature and structure of the CRT's data base, including how it relates to the ICEP data. The point is that the data the CRT works with are not a sample drawn from a much larger data base (such as employed by the US Census), but to all intents and purposes are all that is available. Thus, while their descriptive adequacy may be a matter of theory, practicality dictates their use, a point of course also recognized by the ICEP auditors. As noted below, they were well aware that they had not been able to uncover all the information that could be found and advised the CRT to seek additional assistance from the banks to flesh out the information they themselves had been able to hand on. But as it turned out even such assistance, while improving matters, could do so only in part. If the CRT's experience in working with the bank information ICEP was able to locate is correct, then there is still a mass of value and other account information in the bank files that is not accessible to the CRT under the legal strictures imposed in the Settlement Agreement. Under the Agreement, the CRT can only demand insight into bank documents when there is a match of the account in question to a registered claim. A veritable Catch-22 situation, which explains in part the importance of the Court's efforts to negotiate an additional release of account owner names for publication - an effort that resulted in the publication of the 2005 list - and which also more than justifies the time and effort spent in searching non-bank sources for account documentation and related information. In sum, the CRT's expanded data base is to all intents and purposes all there is and a lack of understanding of this fact can, as in this case, lead only to faulty conclusions.

I dwelled on Mullin's the "Deal or no Deal" analogy not the least because its mistaken use permeates virtually all his other points of criticism. In what follows I address each of these, starting with his statement that no explanation is provided for the reduction in the number of known value accounts from 7,797 in the ICEP data to 6,945 in the current data (Mullin, para. 17). This is a critical point in Mullin's review, which again stems from his misunderstanding of both the ICEP data and the data upon which the new presumptive value recommendation is based. I will then turn, as necessary, to Mullin's other points.

Mullin argues that no explanation is provided for the reduction in the number of known value accounts from 7,797 in the ICEP data to 6,945 in the current data. According to Mullin, given that the CRT added additional value information to its data base,

“...more than 850 accounts in ICEP sample (sic) must have been excluded from the AHP-plus (sic) sample.” (Mullin, para. 17)

This is simply incorrect. As set out in detail in my note to the Court, dated March 21, 2006 (and included also as Exhibit A in the Gribetz/Reig submission of December 19, 2008, (hereinafter “2006 Note”), and repeated in summary form in later submissions, the ICEP numbers are based on an examination of 53,886 accounts deemed by the Committee to have probably or possibly been owned by Holocaust victims. Almost 18,000 of these accounts were excluded during the so-called “scrubbing” process.<sup>2</sup> Thus, the CRT was handed a data base containing only 36,131 accounts, which is called the Account History Database, or “AHD.” (2006 Note, Section II, and especially Section II (B) “Analysis,” pp. 11 ff.)

The accounts eliminated during the scrubbing obviously also included known value accounts in Categories 1 and 2 – the categories upon which the current presumptive values are based.<sup>3</sup> Of all scrubbed accounts, 2,708 were known value accounts in Categories 1 and 2, almost 35% of the total 7,797 known value accounts considered for the original presumptive value calculation. Mullin’s assertion that in using the AHD-plus as the base for considering the revision of the current set of presumptive values, we must have excluded – without explanation – 852 original ICEP accounts, shows that he failed to understand that the scrubbing process itself, which was completed by the ICEP auditors, eliminated over three times that many known values from the relevant ICEP data set, i.e. a total of 2,708 Category 1 and 2 known-value accounts. As explained thoroughly in my submissions to the Court, as the CRT received only post-scrubbing data, it was handed a total of 5,089 Category 1 and 2 known value accounts; and for the calculations underlying my recommendation, these 5,089 accounts have been augmented with known values of Category 3 accounts, as well as with value information obtained during the claims resolution process. My final report, dated October 10, 2008 (hereinafter the “2008 Note”), is based upon 6,945 known value accounts in the “AHD

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<sup>2</sup> *In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d at 324 (“[T]he conservative estimate of 54,000 relevant accounts was met with surprise and disfavor by the SBA [Swiss Banking Association] and the Swiss Federal Banking Commission (‘SFBC’). The SBA and SFBC thus turned to the same auditors the Volcker Committee had employed and asked them to further ‘scrub’ the accounts the auditors had identified. The banks came forward with additional information from bank records and asked the auditors to once again eliminate from the list accounts that were opened after 1945, accounts that had closing dates before the dates of occupation, accounts with any activity after 1945, and duplicate accounts from the list of probable and possible accounts”).

<sup>3</sup> The ICEP auditors categorized accounts identified in their research on a sliding scale from a high degree of probability to a reasonable possibility of having a relationship to victims of Nazi persecution. As detailed in the ICEP Report, they grouped the accounts in four categories. See ICEP Report, para. 20 – 26, pp. 65- 66. The characteristics of the accounts in each category are summarized in the table attached to this report.

plus,”<sup>4</sup> that is, 1,856 *additional* values not included in the original calculations, not 852 *fewer* values. These additional values are essential corrections and/or additions to the data set that was initially used to calculate the current set of presumptive values.

Although Mullin criticizes my revision of the presumptive values currently in use, he does not appear to be satisfied with the values established by the ICEP auditors either (although neither he nor the State of Israel ever filed an objection to them). Thus, he argues that the ICEP data on which the presumptive values are based do not constitute a random sample, and that they were already skewed toward higher values. He gives two reasons for this assertion: (1) all accounts under SF 250 were excluded; and (2) documentation relating to higher value accounts is more likely to have survived than lower value documentation (Mullin para. 7). Both “reasons” are patently in error.

Mullin’s statement regarding the exclusion of accounts under SF 250 is simply incorrect as should have been apparent to him if he had read either the ICEP Report or my submissions to the Court. As detailed in the ICEP Report, not all accounts under SF 250 were excluded, only “*further [post-January, 1999] small-balance savings accounts under SFr. 250, which evidence indicated were not typically held by non-residents of Switzerland*” (ICEP, para. 40, p. 50, emphasis added). Thus, the ICEP Report makes clear that such savings accounts were not excluded because of their small balance, but because the evidence indicated that they most likely were held by Swiss residents rather than by Holocaust victims. In fact, savings accounts with small balances that have a more likely relationship to Holocaust victims were not excluded. Thus, despite this “exclusion,” fully 508 out of the total 3,258 known value savings accounts, or 16%, contained in the (post-scrubbed) AHD had reported values of SF 250 or less. Of these 508 savings accounts with a known value below SF 250, 465, or 92%, are in Category 1, 2, or 3, and their values are therefore included in my average value calculations. Finally, it should be noted that of the 182 savings accounts awarded to date 54, or 30 percent, had a 1945 awardable value below SF 250. These considerations make clear that not only was Mullin in error in asserting that all accounts below SF 250 had been excluded, but also that the partial exclusion by ICEP of small savings accounts did not even bias the average value of that account type.

Savings accounts are but one of six types of accounts classified by the auditors, the others being custody accounts, demand deposit accounts, safe deposit boxes, accounts of unknown type, and accounts designated as “other” types. No value information of any kind (not even negative values) was excluded by the ICEP investigation from the five types of non-savings accounts. Thus, the data in the original set of 36,131 accounts handed to the CRT by ICEP, included the following numbers of accounts under SF 250: for savings accounts 529 out of 3,315 known value accounts (16%); for demand deposits 1,805 out of 3,497 (52%); for custody accounts 24 out of 924 (3%); for unknown type of accounts 2,150 out of 3,313 (65%); for other type of accounts 5 out of 36 (14%) and for

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<sup>4</sup> As defined in my previous submissions, the “AHD plus” consists of the accounts included in the original Account History Database (“AHD”) compiled by the ICEP auditors, together with additional accounts identified during the claims resolution process, but excluding Category 4. I define the database of all accounts, including Category 4 accounts, as the “Total AHD plus.”

safe deposit accounts 0 out of 5. In as much as SF 250 would for the non-savings types of account normally have been a relatively low value, the inclusion – rather than their asserted exclusion – also negates Mullin’s assertion, that it is a “...reasonable assumption that.....higher value accounts are more likely to have had some documentation survive” also is not borne out by the facts.

Mullin contends, as his second reason for his view that the ICEP averages are skewed toward higher values, that

“higher value accounts typically generated more documentation than lower value accounts. Therefore, higher value accounts are more likely to have had some of that documentation survive for the past 60 years and, hence, be known value accounts today.” (Mullin, para. 7).

This “reason” is even more erroneously based than his first one. It is pure conjecture not supported by any documentation available to the CRT. First, the available bank information on book values relates overwhelmingly to the aforementioned savings accounts. As detailed in my previous submissions, of the 36,131 accounts in the post-scrubbed AHD, only 10,655 (in all categories), or less than 30%, had a known value. Of these, 2,443 were savings accounts in Category 4. As also detailed in my earlier submissions, these Category 4 accounts were excluded in the averages calculated by the ICEP auditors and in my own, due mainly to the weakness of their relationship to Holocaust victims. It is also worthwhile noting here that in the “scrubbing” process (the elimination of about one-third of the accounts originally identified by ICEP), the banks would have had no incentive to eliminate low-value accounts, rather the opposite.

Mullin asserts that my presumptive value recommendation must be biased in an upward direction because it is based in part upon additional data not included in the ICEP data. Specifically:

“...new account information not previously available to the ICEP came through a different data generating process than the original sample. Importantly, that data generating process appears biased toward high-value accounts relative to the data generating process used by the ICEP. In particular, the Account Historical Database-plus...sample relied upon by the Junz Recommendation include (sic) account information provided by claimants. The ICEP sample did not consider claimant information.” (Mullin, para. 9).

Mullin further argues that claimants would have no incentive, “i.e., no financial gain” (Mullin para. 10), to put forward documentation for low value accounts and that surviving documentation in the hands of claimants is more likely to relate to high value accounts rather than low value accounts.

I have already shown that Mullin’s assertion that surviving bank documentation is more likely to relate to high value accounts than low value accounts is wrong (see *supra*).

With respect to claimants' motivation in providing information, Mullin's "conclusion" is again based on pure assertion and ignores the reality of the claims resolution experience. Perhaps this is because he has more experience dealing with commercial litigation involving businesses interested only in profit, rather than with Holocaust survivors and their families. In any event, documentation submitted by claimants evidencing the existence of Holocaust-era Swiss bank accounts is usually sparse and lacking in any value information. For example, awards have been based upon Holocaust-era letterhead showing Swiss bank accounts held by claimants' relatives. While such letterhead establishes a connection between a claimant's relative and a Holocaust-era Swiss bank account, it provides no information as to the type or value of the account. Several awards have also been based upon documents submitted by claimants whose relatives entered Switzerland as refugees and who were forced, upon entry, to deposit their assets in so-called refugee accounts. The documents submitted more often than not evidence only minimal amounts on deposit, certainly less than the average award amount. And of course there are other examples. Mullin does not appear to understand that while claimants obviously will seek to recover high value assets, the motivation for claimants with accounts of what he considers "low" value content may be much stronger, because the award of an account even at minimum value may be sufficient to significantly improve claimants' quality of life. I can attest to this personally based on correspondence from successful claimants, who with the proceeds could aid in the college education of a grandchild or afford a higher grade assisted-living accommodation than was previously possible.

Mullin is also wrong in assuming that the bulk of the additional value data comes from claimants. In fact, most of the additional value data has come from the CRT's review of the underlying bank documents not available to claimants. In its claim review work, the CRT has found that many accounts classified by the auditors as of unknown value actually could be valued based upon information contained in the banks' records. Thus, as I noted in one of my submissions, of the 881 known value Category 1-4 accounts awarded as of the date of the submission, more than half (461) had known values that had not been reported by the auditors (2006 Note, Table 5, p. 16 and text pp. 15 ff.). This observation has held to date with 54 percent of awarded known value accounts based on value information not originally reported by the ICEP auditors. The CRT's review also revealed that the classification as to the type of account was mistaken in many cases and that the banks' records also evidenced more accounts held by the same owner (so-called "sub-accounts") than were reported by the auditors.

I addressed the likely reason for such oversights in my previous submissions. I observed that the auditors had a "difference[] in focus" as compared with the CRT. (2006 Note, at 2; 2007 Note, Appendix 1, at 1) Specifically, "the focus of the audit was on the discovery of the relevant accounts, and the recording of balance values and type of account information, though important, was not the primary objective, especially given the prevailing time and expenditure constraints." (2006 Note, at 15; 2007 Note, Appendix 1, at 3) Thus, whereas the auditors' primary focus was on whether an account probably or possibly had belonged to a Nazi victim, the CRT further scrutinizes the bank files to determine the account's awardability and value. Mullin offers no rational

explanation why such information should not be used to determine both individual award amounts and average values.

Similarly, Mullin also would dismiss the integration of new account information added to the CRT's data base from archival sources, because of his concern regarding the "different data generating process." (Mullin, para. 9) In fact, the search in archives in Europe and the United States for additional information on the existence and content of accounts held by Holocaust victims in Swiss bank accounts in fact commenced, at the request of Paul Volcker and Michael Bradfield, well before the handover of the ICEP data base to the CRT in 2001. It became an integral part of the auditing process and the auditors routinely integrated archival account information into their data base. This search continued throughout the subsequent period and resulted in several thousand files being scanned. These files are of considerable value in identifying account owners and in many cases attest to the existence and often also to the content of Swiss bank accounts held by Holocaust victims during the relevant period.

More recently, such account information augmented the 2005 publication list of account owners' names significantly. In fact, the 2005 list drew on information on 552 accounts evidenced in records from the Swiss archives and 354 accounts from German and Austrian archives for a total of 906 additional accounts. To be clear, these archival data were generated in the exact same manner as the data already contained in the ICEP database. Mullin's objections to their inclusion are simply baseless. It is equally clear that without such information far fewer Claimants would have met with success. Furthermore, there is no indication whatsoever that this additional information imparted an undue upward tendency to the overall account information. If we discard the Mullin "raisin in the cake" proposition as being descriptive in any way of this dynamic process, it is clear that the additional information expanded the knowledge we have about the structure, content and ownership of Swiss accounts held by Holocaust victims. In particular, it expanded the knowledge base relevant to our universe, namely the Claimant population.

Mullin's rejection of the inclusion of account information obtained through Voluntary Assistance (hereafter "VA") by the banks<sup>5</sup>, especially the information made – belatedly – available by *Crédit Suisse* is particularly ill-taken. He simply dismisses this information

"Due to the absence of any explanation of the genesis of this information I cannot assess the statistical properties of these accounts or any conclusions based upon these accounts." (Mullin, para. 11)

His comments ignore the long-standing and consistent behavior of Swiss banks that is typified by their withholding information. The Court has commented on this at length and the extent and the consequences of this behavior pattern should be familiar. In short,

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<sup>5</sup> Article 6 of the Rules Governing the Claims Resolution Process specifies that, in order to obtain information to resolve claims to accounts, the CRT may seek the "voluntary assistance" of bank that may have information in their files on such accounts. This process is referred to as "Voluntary Assistance."

much valuable information that should have been discovered in the auditing process was not – the difficulties that would have been faced by the auditors are mirrored in those experienced by the Bergier Commission’s dormant account research team as documented in their Report, vol. 15 of the Commission’s publications. However, as the Bergier Commission was mandated by the Swiss authorities, it is likely that the ICEP teams’ experience was yet more difficult, they being perceived as engaged in a wholly adversary activity by the banks. This was demonstrated inter alia when the banks, during the scrubbing exercise, suddenly surfaced additional information to support their requests to eliminate certain accounts from the data base. As described in the 2006 Note, p.15, but apparently escaping Mullin’s attention, a test search by the Price Waterhouse team found such information to be sufficiently important to lead them

“...to recommend that the CRT should request access from the bank to any additional information in the bank’s corresponding files.”

I then went on to say: “Indeed the CRT, in the course of its claim reviews, has requested such additional documentation.” Hence, the need for voluntary assistance was not only recognized by the ICEP auditors, but seeking it was actually recommended. Thus, any additional information should be seen as augmenting the knowledge base rather than perverting it as Mullin asserts.

In arguing against incorporating information obtained through VA, Mullin makes a specific point of the additional account information provided by *Crédit Suisse* last year. (Mullin, para. 12) He notes that value information was obtained for 212 accounts that had previously been assigned the presumptive value. Of these, he notes that the “true value” of 84 accounts was more than the presumptive value and therefore infers that the “true value” of the remaining 118 accounts, or 60%, was less than the presumptive value. Thus, according to Mullin, “more than half of these accounts received compensation in excess of their true account value.” (Mullin, para. 12)

Here, Mullin conflates two different arguments that have nothing to do with each other: one argument that additional account values not contained in the ICEP data set should not be used in calculating new averages, and another argument (not previously discussed or even made transparent here) implying that Article 29 of the CRT’s Rules is arbitrary and incorrect. Article 29 provides that if the amount in an account is below the presumptive value for that type of account, the award amount shall be determined to be the presumptive value for that account type, in the absence of plausible evidence to the contrary.

Mullin offers no reason for his first argument, *i.e.*, that these values should not be used in calculating the new averages. Indeed, *Crédit Suisse* itself explained that this account value information was not included in the information reported by the auditors because of an oversight relating to the source of the documents at issue. Clearly, Mullin appears to believe that if the ICEP auditors had received this information on time, they would not have included it – there being no other reason why anyone would argue that correction of an oversight, such as that in the case of *Crédit Suisse*, should be excluded.

Moreover, it is clear that the new presumptive value calculations are based on the known values of all 212 accounts, not just the 84 accounts the values of which were higher than the current presumptive values. In other words, both low and high values were included in the calculation of the new averages. There simply is no bias either in the data generating process or in the values used in the calculation of the averages. As before, a reading of my 2008 Note, which explains in considerable detail the genesis and import of the additional *Crédit Suisse* data, could have obviated Mullin's comments in this respect.

Mullin's real focus here is on his second argument, which, even if he could proffer a cogent reason for it, has no place in the current discussion regarding the calculation of averages. The policy set forth in Article 29 of the Rules predates all discussion regarding any revision of the current presumptive values. It stems from a proposal dated 23 May 2002, at a time when Michael Bradfield and Paul Volcker served as Special Masters to the Deposited Assets class,<sup>6</sup> regarding what can be considered the "true" value of an account and what reliance should be placed on the bank information relating to the documented values. In the cover letter to Court proposing the rule, Special Master Bradfield cited the conclusions of both the ICEP Report and the Bergier Report, the latter just having been released. Special Master Bradfield wrote:

The ICEP and Bergier Reports reveal that the Swiss banks and their employees took advantage of the accounts of victims of Nazi persecution – including by charging excessive fees to the accounts and by taking account balances for their own use. Both Reports state that the banks levied fees, special charges, and commissions against such accounts, invested them in the bank's own notes, and suspended interest payments on accounts. The Bergier Report adds that the banks wanted the dormant accounts to disappear and that they made decisions to manage them in the best interest of the bank. Staff Study No. 15 of the Bergier Commission indicates that it was the intent of the banks to rid themselves of the nuisance of dormant accounts. In this respect, the Staff Study states:

'[t]he goal of the management of dormant accounts was, inter alia, to diminish the number of such assets as much as possible. Without interest payment, deposits eroded over time until they became worthless and could be closed.' (Study No. 15, pp. 400 – 401)

With regard to accounts for which evidence indicates that the assets were improperly transferred to the Reich, as is the case for the majority of the *Crédit Suisse* custody accounts that were amended based upon the additional information obtained late in the claims resolution process, I point out that given the past behavior of the banks and

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<sup>6</sup> Mr. Volcker later resigned as Special Master to focus on other projects. Shortly thereafter, I was appointed Special Master, along with Mr. Bradfield, who continues to serve in this position.



the “oversights” that occurred during the audit, it is by no means clear that the CRT has all records regarding the content of these accounts at the time they were pillaged. At best, we know that the accounts contained *at least* the assets described in the documents made available to the CRT. We have no way of knowing whether the accounts actually contained additional assets, records of which were either destroyed or were “overlooked” during the investigation of the bank.

In adopting Special Master Bradfield’s recommendation, the Court, based upon the historical findings and given the well-documented behavior of the banks and consistent with its practice of applying presumptions favorable to claimants, concluded that information contained in bank records cannot be relied upon to provide *full* account values. Mullin and the State of Israel may disagree with this policy, but neither challenged it when it was introduced in May 2002.

In his argument that the ICEP data set does not constitute a random sample, Mullin states that the ICEP auditors implicitly acknowledged that the averages were skewed toward a higher value by excluding Category 3 account values. He contends that ICEP was correct in excluding Category 3 account values from its presumptive value calculations (Mullin, para. 8), and that the additional information that has been added to the ICEP data set “could be viewed as strengthening the empirical support for excluding Category 3, as well as these additional accounts.” (Mullin, para. 14) He supports this argument with the “Deal or No Deal” metaphor, which, as I have already shown, is based upon an entirely different set of premises and therefore not appropriate to this discussion.

In his argument that Category 3 account values should be excluded, Mullin also refers to the distribution of known account values in Categories 1, 2 and 3. He notes that, in the original ICEP data, there were higher shares of known value accounts in Categories 1 and 2 than in Category 3, and that the statistical potential for error in establishing a proxy value for Category 3 is therefore greater than that for Categories 1 and 2. He states this as follows (Mullin, para. 8):

“...When only 11% of the accounts have known values, the potential exists for the sample to overstate the true mean value of an account by almost ten-fold. In contrast, when 77% of accounts have a known value, the sample can overstate the true mean value by no more than 30%....”

Leaving the validity of this statement aside, I note that Mullin focuses only on the potential for statistical error to overstate the true mean value of an account and ignores the potential for that value being understated. He then goes on to say:

“No analysis presented in the Junz Recommendation alters this rationale for excluding the Category 3 accounts.”

As tedious as it may be for the reader, I yet again have to point out a proper reading of the documentation would have found extensive analysis underpinning the recommendation to include Category 3 accounts in the calculation of presumptive values.

As noted above, my 2006 Note, in Section II and especially in subsection B. Analysis, p.11ff., makes clear in considerable detail that the pre- and post scrubbing ICEP data bases (post-scrubbing as noted above is the data base handed to the CRT as the AHD) differ fundamentally because not only was about one-third of the original observations eliminated, but in the process of this elimination changes were also made in the classification as well as in the assignment of unknown value/known value of remaining accounts. The combined effect was, among other things, a drop in the known value account ratio for Categories 1 and 2, from 75 percent in the pre-scrubbing ICEP database to 51 percent post-scrubbing (see the 2006 Note, p.14).

Moreover, one of the reasons for the auditors' exclusion of Category 3 from their average value calculation was what they considered to be large discontinuities in those values, as compared to the values of accounts in Categories 1 and 2. Thus, the ICEP Report notes that "a large portion of the funds are clustered in relatively few custody accounts." (para. 42, p. 72) However, my 2008 Note presents, in addition to the reasoning provided in my prior Notes, yet further evidence supporting the inclusion of Category 3 in the presumptive value calculations (see p.7-8). Obviously, it makes no sense to quote the entire analysis here, but a couple of telling sentences should moot much of the assertions made by Mullin:

"Although the addition of account information from sources outside the audit did much to help anchor Category 3 values within the overall range, the data also show that the purportedly lesser discontinuities in the values of accounts in Categories 1 and 2, which were a main reason in the auditors' decision to exclude Category 3 from their proxy calculations, no longer hold. In particular, the auditors' finding that "the known balances in category 3 were much larger than the known balances in categories 1 [and] 2..." and that "...the relatively few values in category 3 were skewing the data..." is no longer supported by the CRT's data set."

Mullin asserts that, by choosing the mean of the known values for their presumptive value calculations, the ICEP auditors "chose to overcompensate the majority of accounts with unknown value" and that it "is possible that ICEP explicitly chose to exclude Category 3 and determine 'presumptive values' based upon the mean of the remaining known accounts instead of including Category 3 accounts and determining the 'presumptive values' based upon the median of the known accounts." (Mullin, para. 21) This, he writes, is "[d]ue to the skewed nature of wealth distribution," meaning "the vast majority of accounts can be expected to be worth less than the average [mean] account value." (Mullin p. 20) Mullin has no basis in fact for this assertion, which is why he notably prefaces it with the words "it is possible," but uses it to argue that because the distribution of the account value data imparts an upward skew to the mean value, the inclusion of Category 3 in the calculation of averages "as is done in the Junz recommendation, would warrant revisiting the choice between the mean and the median." (Mullin, para. 21) and that in setting out the basis of my recommendation I do "...not quantify the margin of error (e.g. the standard errors) associated with the AHP-plus [sic] sample." (Mullin, para. 18).

With regard to the distribution of the data in the AHD-plus, Mullin comments in the abstract on their likely shape. However, in my 2008 Note I explicitly state on p. 8 that the data were found to have a log normal distribution, skewed to the right and go on to discuss its properties. Table 1 on that page provides these statistical properties. Though the standard deviation is not shown in the Table, it was calculated and used in combination with the skewness coefficient to determine “outliers”, *i.e.* observations the inclusion of which in the calculation of the averages would have had an unduly large effect. All this is explained in detail in the 2008 Note, in particular in footnote 27 on p. 12 and referred to in the text on p.8. This treatment of “outliers” obviously moots the example Mullin presents of the dramatic effect a single high-value observation can have on the mean of a data set (Mullin, para. 19) and shows his criticism – that my recommendation does not quantify the margin of error or adequately address the problem of outliers – to be baseless.

What is of importance here is what we think the distribution of the missing data looks like as compared to that of our known data set. If we believe that the data we have represent a random sample of the total universe, then there is no reason to think that the mean will be biased. In other words, if we assume that the missing data will have the same profile as the data we have on hand, it is proper to use the mean. If, however, we believe that we already have captured most of the high-value observations, then the median will provide a better approximation of the missing data. Conversely, if the lower value observations are overrepresented in the available data set, the median will wildly understate the true situation regarding the missing data.

It may well be that Mullin, given that his focus on his “raisin in the cake” assertion leads him to the erroneous view that all, or most of the high-value accounts are already represented, accepts my exposition above, and therefore concludes that it would mandate the use of the median. However, our analysis has shown conclusively that it is more likely that higher value accounts were missing from ICEP’s data in Categories 1, 2, and 4 than that lower values were missing from Category 3. Nevertheless, as one could not equally conclusively determine the shape of the missing data population, it was thought only prudent to assume that missing data would be randomly distributed with respect to the known data. In either case, the use of the mean is warranted.

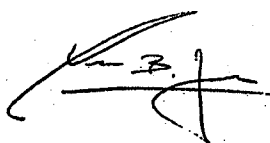
In sum, there is no substantive argumentation in Mullin’s Declaration that would lead to a reconsideration of my recommendation to the Court. Moreover, the answers to his objections could to all intents and purposes have been found in the materials on this issue that were made available by the Court.

Finally, in closing, I return to Mullin’s central metaphor of the television show “Deal or No Deal.” Let us remember that we are not dealing with a television game show in which cash-hungry contestants chase a fast dollar from a shadowy, benevolent figure behind a curtain, offering them money in a game of calculation and risk. Rather, we are dealing with the hard-earned assets of Holocaust victims, who sought to safeguard their holdings in what they thought was a safe haven, only to have them turned over to their

persecutors or withheld from their heirs. In the years since, most of the documentation regarding the value of these assets has been destroyed. In assigning a value to unknown value accounts, and, consequently, the amount to be returned to so many claimants, it is essential that as many relevant known value accounts as possible be examined and utilized in the calculation of averages. A refusal to consider such information can only serve to once again deprive the rightful owners of these assets their long-overdue return.

Given the above, if there is seen to be merit in a meeting to answer genuine questions, I assume this can be arranged together with colleagues in Zurich, where the data reside.

Sincerely,

A handwritten signature in black ink, appearing to be 'K. B. J.', written over a horizontal line.

<b>Overview of ICEP Categories of Accounts</b>	
<b>Characteristics of Each Category</b>	
<b>Category 1</b>	<b>Category 2</b>
<ul style="list-style-type: none"> <li>• Matched Foreign Accounts</li> <li>• Open in Relevant Period</li> <li>• Some with Evidence of Persecution</li> <li>• Dormant, Suspended, or Closed to Profit, Closed by Fees, Closed and Paid to Nazi Authorities or Closed Unknown by Whom</li> <li>• Evidence of Inactivity after WWII</li> </ul>	<ul style="list-style-type: none"> <li>• Unmatched Foreign Accounts</li> <li>• Open in Relevant Period</li> <li>• Residence : Axis or Axis Occupied Country</li> <li>• Some with Evidence of Persecution or Inactivity</li> <li>• Open and Dormant, Suspended, or Closed to Profit, Closed by Fees, Closed and Paid to Nazi Authorities or Closed Unknown by Whom</li> <li>• Ten years of Dormancy After WWII</li> </ul>
<b>Category 3</b>	<b>Category 4</b>
<ul style="list-style-type: none"> <li>• Matched Foreign Accounts</li> <li>• Open in Relevant Period</li> <li>• Residence: Axis or Axis Occupied Country</li> <li>• Closed Unknown by Whom</li> <li>• Absence of Evidence of Inactivity</li> </ul>	<ul style="list-style-type: none"> <li>• Mainly Foreign Accounts, Unmatched, and Specific Country of Residence Unknown</li> <li>• Open in Relevant Period</li> <li>• Some with Evidence of Persecution or Inactivity</li> <li>• Open and Dormant, Suspended, or Closed to Profit, Closed by Fees, Closed and Paid to Nazi Authorities or Closed Unknown by Whom</li> </ul>

\* This table is reproduced from the ICEP Report, at 66, Table 13.

# **EXHIBIT B**

Michael Bradfield  
Special Master  
Holocaust Victim Assets Litigation  
Case No. CV 96-4849  
51 Louisiana Avenue, N.W.  
Washington, D.C. 20001  
(202) 879-4697  
(202) 626-1700 - fax

April 3, 2009

The Honorable Edward R. Korman  
United States District Judge  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza, East  
Brooklyn, NY 11201

Dear Judge Korman:

You have asked me to review the recommendation of CRT Special Master Helen Junz to increase the presumptive values now in use in the Deposited Assets Class claims process. Special Master Junz recommended that the additional information about the valuation of the accounts of Holocaust Victims in Swiss banks in the period from 1933 to 1945 that has been developed as a result of the adjudication of claims should be taken into account in determining presumptive values, with awards already issued adjusted accordingly. I agree with this recommendation, and this letter explains the reasons for my agreement with it.

As the Court is aware, I have a degree of expertise and experience with respect to this matter since I have served since the inception of Claims Resolution Process ("CRP") under the Settlement Agreement, as CRT Special Master working initially to develop the rules and procedures of CRP, then as liaison between CRT II and the Court, and since 2005 I have focused mainly on analysis of appeals of CRT decisions and preparing recommendation on such cases for decision by the Court.

Since the foundation for the use of presumptive values in the CRP can be found in the work of the Independent Committee of Eminent Persons ("ICEP") or the "Volcker Committee") chaired by Mr. Paul A. Volcker, it is relevant to point out, in commenting on the Objections, that I served as de facto staff director and counsel to the Volcker Committee. Among other areas of responsibility, I supervised the work of the audit firms in connection with their investigation of Swiss bank accounts.

Based on this experience, I am fully familiar with the work of the five major audit firms retained by ICEP to carry out its investigation, and with the purposes and results of the ICEP investigation. As stated in its Final Report "The Guiding principle of this endeavor has been to find out as much of the truth about the fate of these victims'

accounts, dating from before or during World War II, and their treatment by Swiss banks, as is now feasible, given the passage of half a century.” As it proceeded with its work, ICEP recognized that to accomplish its goals there had to be a formal procedure established to adjudicate claims. Consequently, ICEP was instrumental in establishing the first Claims Resolution Tribunal (“CRT I”) that was assigned the task of resolving claims to dormant accounts that the Swiss banks had themselves identified as those of Holocaust victims and published in 1997 at the urging of ICEP. There was no need for presumptive values with respect to these accounts because all awards were made on the basis of bank record values and were then adjusted for current value. If the bank record showed no value, there was no award.

However, as the result of the ICEP investigation some 54,000 accounts of “probable or possible” Holocaust victims had been identified of which 30,000 had no valuation recorded in Swiss bank records. Accordingly, in the Recommendations section of the ICEP Report, the Committee unanimously proposed that the CRT should be the forum to be used for the adjudication of claims to these accounts, and that where account value information is fragmentary or lacking entirely, an “arbitrary solution will be required.” In this situation, ICEP suggested the solution that was finally adopted: “Projection of data for known account values over a larger number of accounts as the base for calculating average values is one possible approach to resolving this problem.”<sup>1</sup>

In the process for establishing the rules for CRT II, the problem of whether presumptive values for accounts identified by the ICEP auditors as not having values in Swiss bank records had to be resolved. With the task assigned to CRT II of return to the members of the Deposited Assets Class the account values in Swiss banks that account owners or their heirs were not able to claim, and faced with numerous cases involving an account with a known Holocaust victim account owner and recognized heirs of that account owner, but with an unknown account value, a decision had to be made whether to withhold all compensation in the absence of knowledge about account value, or to establish an objective standard that can be used as a substitute for the value that was actually placed in the account by the account owner but is unknown today.

Based on the recommendation of ICEP, Mr. Volcker and I, in our capacity as Special Masters, recommended the latter course to Judge Korman. This was a path breaking decision as all previous account restitution had been based on bank established account values. To provide an independent and objective valuation, in the summer of 1999, we asked Mr. Frank Hydoski, the team leader of the PricewaterhouseCoopers team that had audited Swiss Bank Corporation, to develop recommended proxy values that could be used for determining the adjusted value of accounts without known balances. The PricewaterhouseCoopers recommendations were incorporated into the draft CRT II Rules and submitted to Judge Korman for approval.

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<sup>1</sup> Volcker Report, ¶84.



The Court adopted this recommendation, and Article 29 of the Rules provides that, unless there is plausible evidence to the contrary, when the amount in the account is unknown for the identified accounts, the value of the account shall be determined by the average value of an account of the same type that actually existed in 1945 in Switzerland, with this provision later amended with Court approval to provide the same treatment for accounts for which the Swiss bank records indicate values below average values.. It was recognized at the time that the Article 29 valuations do not reflect precise reality, but were as reasonably close to it as was then possible given the information that was available at that time after the passage of so much time.

The proxy values recommended by PWC were based on the information that was available at the time that the calculations were done in 1999. PWC was appropriately cautious in the information that was used in particular because we were attempting to determine the average values of accounts held by Holocaust victims, not average values for the accounts of all depositors in Swiss banks. However, we were working with information that could not allow us to determine with certainty whether or not the identified account owners were Holocaust victims but only that it was "probable or possible" that they were such victims. Moreover, the Category 3 accounts that were left out of the average value calculation on the recommendation of PWC suffered from the additional problems that they did not have evidence of (1) activity or inactivity in the accounts after 1945, (2) the beneficiary of the account on closing, or (3) a unique name match, criteria that were used in the "probable or possible" Holocaust victim status determination.<sup>2</sup>

Now additional information is available from the CRP. Claimants come forward with credible information about the value of the accounts that they claim. Other information was been made available based on the voluntary cooperation of banks. The only selectivity comes from the initiative of the claimants or the initiative of the banks. In my extensive experience, I am not aware of any cases where claimants have withheld information about value.

This is particularly the case where the claimant knows the account has a low value since a claim to an account of less than average value qualifies for average value. The common situation is the opposite: claimants receiving average value appeal awards because they believe their wealthy relative had deposited much more than average value in their Swiss account. And where claims are made that accounts have a high value, CRT II, and the appeals process for such claims, do not accept them unless there is clear evidence of their accuracy.

As noted above, one of the main reasons for the cautious approach to valuation adopted by PWC was the lack of information on account owner Holocaust victim status. Now we know that for all the accounts for which additional value information has been made available and have been awarded, the account owner was a Holocaust victim. Given that the basic qualification for an award is that the account owner was a victim of

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<sup>2</sup> Volcker Report, ¶74-75

Nazi persecution, and that the task assigned to CRT II is to return to the members of the Deposited Assets Class the account values in Swiss banks that account owners or their heirs were not able to claim, it seems inconceivable to me that it can be possible to leave out from the calculation of average values the account of any person who CRT II determines qualifies as a Holocaust victim.

It would be clearly inconsistent with the Settlement Agreement not to utilize the important information that has been revealed as a result of the CRP, especially information about account values. As Mr. Hydoski, who led the original effort to estimate account values, stated "such data would have been used in the 1999 calculations had it been available."<sup>3</sup> Accordingly, I support Dr. Junz' recommendation on the use of the additional information available from the CRP to establish the Article 29 presumptive values to be used for the determination of awards where account valuation information is missing from Swiss bank records.

Respectfully submitted,

A handwritten signature in cursive script that reads "Michael Bradfield". The signature is written in black ink and is positioned above the printed name.

Michael Bradfield

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<sup>3</sup> Letter of Frank Hydoski to the Hon. Edward R. Korman, December 1, 2008, at 2.

# EXHIBIT C

# CLAIMS RESOLUTION TRIBUNAL

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Badenerstrasse 141, P.O. Box 9564, 8036 Zurich, Switzerland  
Tel. +41 44 298 54 54, Fax: +41 44 298 54 55, www.crt-ii.org

The Honorable Edward R. Korman  
United States District Judge  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201  
United States

April 8, 2009

Dear Judge Korman:

We submit this report at the request of the Court, with reference to Claims Resolution Tribunal ("CRT") Special Master Helen Junz' recommendation to adjust the presumptive values currently used by the CRT to award accounts for which no known values are available.

After Special Master Junz first observed the discrepancy between accounts awarded at known value and those awarded at presumptive value shortly after her appointment as Special Master on April 14, 2004, she coordinated with the CRT on an ongoing basis to obtain detailed information about accounts in the Account History Database ("AHD"). We have provided Special Master Junz with detailed information concerning (1) the AHD that had been provided to the CRT by the auditors at the inception of the claims process (consisting of 36,131 accounts); (2) the AHD augmented by the CRT with additional accounts identified during the claims resolution process (the "Total AHD-Plus")<sup>1</sup>; and (3) information available to us regarding the pre-scrubbed database of approximately 54,000 accounts upon which the ICEP auditors based their calculations to derive the average values still in use today. We also provided Special Master Junz with extensive data concerning the accounts that have been awarded during the claims process. Of course, Special Master Junz herself is familiar with

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<sup>1</sup> Special Master Junz identifies the total number of accounts in all ICEP categories as the "Total AHD-plus." See Special Master Junz Memorandum, October 10, 2008, at 2, n. 4, and discussion, *infra*. This number changes as sub-accounts (described *infra*) and additional accounts are added to the AHD, as appropriate. As of this writing, the total number of accounts (in all categories) in the Total AHD-plus is 38,810. Special Master Junz bases her presumptive value recommendations on the "AHD-plus," which she identifies as the augmented AHD, excluding ICEP Category 4 accounts. As of her October 10, 2008 note to the Court, it consisted of 26,362 accounts (excluding Category 4 accounts).

these accounts as a result of her role in analyzing Deposited Assets Class claims on behalf of the Court.

This report is intended to accompany Special Master Junz' letter of March 31, 2009 (the "Junz Response"), in which she addresses the objections raised in the declaration of Charles Mullin, Ph.D.<sup>2</sup> It provides further background information concerning a number of issues discussed in Special Master Junz' reports: the appropriateness of Dr. Mullin's "Deal or No Deal" analogy; the scrubbing process; the process by which the CRT analyzes accounts potentially matching to claims and the results of this process; and the absence of bias toward high-value accounts.

**1. The Game "Deal or No Deal" is Not Analogous to the Calculation of Average Values**

Dr. Mullin analogizes the calculation of average values based upon the known value data available to the CRT to the television game show "Deal or No Deal," in which a contestant selects one briefcase out of a set of 26 briefcases containing varying amounts of cash between \$0.01 and \$1,000,000. Dr. Mullin argues that, as in the game show, the identification of additional high value accounts implies that the mean value among the remaining unknown accounts has not increased, but has rather decreased. This game show is a central metaphor in his declaration.

Dr. Mullin chose an easily understood metaphor, based on a popular game show, to illustrate supposed defects in the sampling plan. The metaphor is evocative, but its statistical accuracy must be evaluated. His example is known in the statistical community as "sampling without replacement."<sup>3</sup> The underlying model is that, when an item is taken away from a set, it is no longer available. So, removing high-value items lowers the average of those

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<sup>2</sup> See Letter of Special Master Helen B. Junz, March 31, 2009 (hereinafter "Junz Response").

<sup>3</sup> In addition to standard statistics texts, several websites provide overviews of sampling with and without replacement. See, e.g., <http://www.ma.utexas.edu/users/parker/sampling/repl.htm>, [http://en.wikipedia.org/wiki/Simple\\_random\\_sample](http://en.wikipedia.org/wiki/Simple_random_sample), and [http://www.aiaccess.net/English/Glossaries/GlosMod/e\\_gm\\_replacement.htm](http://www.aiaccess.net/English/Glossaries/GlosMod/e_gm_replacement.htm).

remaining, and *vice versa*. Although this is an evocative metaphor, it mischaracterizes the sampling plan of the data used in calculating average account values, and consequently overstates the sampling bias involved. In simple language, the way in which the bank account data were sampled bears no resemblance to the guiding metaphor in Dr. Mullin's report, and so readers may be grossly misled by that conceptualization.

To be clear, the rules of the television game show in no way reflect the claims resolution process. In the game show, the values of the suitcases are known to fit within certain value parameters, namely, between \$0.01 and \$1,000,000. Although these values are not revealed to the contestant or to the audience, all the values are known. There are a finite number of suitcases, and taken together, the average value of the suitcases never changes. In contrast, during the claims resolution process, both accounts and account values have been and continue to be added to the data set. Moreover, the values of the accounts do not fall within certain value parameters. There is no set ceiling for the account values. Finally, not all account values are known – in fact, that is precisely the point.

Let us take a hypothetical: Assume the contestant in "Deal or No Deal" is told that no value information is available for 13 of the 26 suitcases, and that no value parameters are available. The contestant is told that if at the end of the process she/he had selected a suitcase with no value information, she/he would be awarded the average value of the known value suitcases she/he had revealed. Not knowing value parameters, the contestant would have no incentive to stop revealing suitcases until all the known values are revealed, in order to ascertain the true average value and in the knowledge that any high values contained in the yet-to-be-revealed known value cases would increase the average. While no such incentive for a higher value underpins the presumptive value recommendations, the method remains the same – in order to ascertain the "true" average of the unknown value suitcases (accounts), it is necessary to reveal as many of the known value suitcases (accounts) as possible.

## 2. Article 29 Presumptive Values and the Scrubbing Process

In a report dated 6 December 1999, the Independent Committee of Eminent Persons (“ICEP” or the “Volcker Committee” after its chairman, Paul A. Volcker) published the results of its multi-year investigation of Holocaust-era Swiss bank accounts. Five major auditing firms took part in the investigation, including Price Waterhouse (“PW”), led by senior partner Frank Hydoski. As part of the Volcker Committee investigation, PW examined valuation data in connection with the 54,000 accounts identified at that time as probably or possibly belonging to Holocaust victims. The accounts were categorized into four categories, based upon their likely relationship to Holocaust victims. PW’s methodology is detailed in Mr. Hydoski’s memorandum, dated 18 July 2002, to Special Master Michael Bradfield, in response to Special Master Bradfield’s request for a summary of the analysis PW had performed to estimate the total value of accounts in Categories 1 through 4 (the “Hydoski Memorandum”). PW derived “proxy values” to use as the adjusted values of accounts for which no known account balance was available. To derive these proxy values, in the fall of 1999, PW collected information about accounts in Categories 1 through 4 from the other ICEP auditing firms.

According to the Hydoski Memorandum, at the time PW collected this information, the total number of accounts identified by the ICEP auditors was 53,957;<sup>4</sup> of those, approximately 24,000 had known balances. For those accounts with balance dates after 1945, PW adjusted the values to approximate 1945 values by adding fees associated with the type of account back into the account balance for each year after 1945, and, depending upon the type of account, by subtracting interest payments for the relevant accounts for each year after

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<sup>4</sup> According to the Hydoski Memorandum, this was the number of accounts as of November 8, 1999. The published ICEP Report refers to 53,886 accounts. See ICEP Report, at 7. The number of accounts changed during the reporting process.

1945.<sup>5</sup> No adjustment was made for account balances prior to 1945. PW then used Statistical Analysis Software to compute mean, median, and upper and lower quartile values for the 24,000 known value accounts, by account type.

Mr. Hydoski explained that, in calculating the average values, PW used the account values, by account type, of 7,797 known value Category 1 and 2 accounts. PW calculated the mean, median, and upper and lower quartile values by account type. The mean values were selected as the appropriate averages per account type. In fact, these are the values currently in use today.<sup>6</sup>

As detailed in the Court's 2004 opinion detailing the behavior of the Swiss banks, prior to publication in 2001, in the so-called "scrubbing" process, the banks presented to the respective audit firms accounts that they believed should be removed from Categories 1 through 4.<sup>7</sup> Accounts presented for scrubbing included duplicate accounts and accounts that, in the banks' opinion, showed evidence of proper account closure. The audit firms reviewed the accounts presented to them, and if they agreed, they removed the accounts from Categories 1 through 4 and hence from ultimate inclusion in the AHD. As a result of the scrubbing process, the total number of accounts in Categories 1 through 4 decreased from approximately 54,000 to 36,131, a difference of approximately 18,000 accounts, or 33% percent of the total accounts originally identified. Based upon the Hydoski Memorandum, of the approximately 18,000 scrubbed accounts, 12,854, or 72% percent, had known values. In

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<sup>5</sup> Later, after recognizing that interest often was not paid to Victim accounts, the Court ordered that such interest not be subtracted from award amounts absent evidence in the bank records that interest was, in fact, paid.

<sup>6</sup> The use of those values, together with the adjusted value of the known value accounts, resulted in an estimated total value of all approximately 54,000 accounts of 2.4 billion Swiss Francs, as of November 1999. At the prevailing exchange rate of US \$1.00 to SF 1.5543, the estimated total value was equivalent to approximately 1.5 billion US dollars as of that date.

<sup>7</sup> *In re Holocaust Victim Assets Litig.*, 319 F.Supp.2d 301, 324 (EDNY 2004) ("The banks came forward with additional information from bank records and asked the auditors to once again eliminate from the list accounts that were opened after 1945, accounts that had closing dates before the dates of occupation, accounts with any activity after 1945, and duplicate accounts from the list of probable and possible accounts").



other words, approximately three-fourths of the accounts that were scrubbed had known values. Their removal decreased the percentage of known value accounts in all categories from a pre-scrubbing 44% to a post-scrubbing 29%. Moreover, of the 17,826 accounts that were scrubbed, 16,029, or 90%, were Category 3 accounts, even though Category 3 accounts made up only 57% of the total number of pre-scrubbed accounts. Clearly, the accounts that were scrubbed were not eliminated randomly.

Accounts that had been included in the calculation of the “proxy” values (*i.e.*, the current presumptive values) were among those that were eliminated from the data set. Based upon the Hydoski Memorandum and the final data presented to the CRT, of all scrubbed accounts, 2,708 were known value accounts in Categories 1 and 2, or approximately 35% of the total 7,797 known value accounts considered for the original presumptive value calculation. Although 2,708 accounts, or approximately 35% of the known value Category 1 and 2 accounts, were eliminated from the AHD as part of the exercise which decreased the number of accounts from 54,000 to 36,000, their values continue to be reflected in the presumptive values in use today. As the following table indicates, had the auditors calculated account averages based on the 36,131-account AHD delivered to the CRT at the start of the claims process (rather than the 53,957 account database which existed prior to scrubbing), the averages would have varied for every type of account.

ACCOUNT TYPE	Category 1 and 2 Accounts PRE-SCRUBBING		Category 1 and 2 Accounts POST-SCRUBBING	
	Number	Presumptive Value Based on Average	Number	Average Value
Savings/Passbook Accounts	1,800	830.00	799	842.56
Demand Deposits	2,461	2,140.00	2,368	1,693.60
Custody Accounts	397	13,000.00	373	19,876.48
Safe Deposit Boxes	42	1,240.00	14	7,240.28
Unknown Account Type	3,009	3,950.00	1,527	1,413.91
Other Accounts	88	2,200.00	8	4,578.91
<b>TOTALS</b>	<b>7,797</b>		<b>5,089</b>	

Since the beginning of the claims resolution process, the CRT has augmented the AHD with accounts and account values identified during the course of its work (*see* discussion below).<sup>8</sup> As of the date of this writing, the Total AHD-plus contains 38,810 accounts. Of these, there are 6,945 known value accounts in ICEP Categories 1, 2, and 3 and in the CRT-added Categories 5 and above (identified by Special Master Junz as the “AHD-plus”). These are the values upon which Special Master Junz bases her analysis. The number of known-value accounts studied by Special Master Junz (6,945) therefore is actually greater than the number of known-value Category 1 and 2 accounts contained in the original post-scrubbed AHD, upon which the ICEP auditors made their analysis (5,089).

The number of known value accounts, by account type, and their average values is shown in the table attached as Appendix One to this document. The table conveniently summarizes the progression of number of accounts and their average value from the ICEP calculation through Special Master Junz’ recommendations. The table shows the number and averages for pre-scrubbing Category 1 and 2 known value accounts (as calculated by the auditors and reflected in the current presumptive values); for *post*-scrubbing Category 1 and 2 known value accounts (reflecting the elimination of accounts during the scrubbing process); for *post*-scrubbing Category 1, 2, and 3 known value accounts (including Category 3 but not any additional accounts identified by the CRT); for *paid* known value accounts (not including known value accounts that have yet to be awarded); and for *post*-scrubbing Category 1, 2, 3, and 5 plus known value accounts (the so-called AHD-plus, upon which Special Master Junz’ recommendations are based). The final column shows Special Master Junz’ presumptive value recommendations.

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<sup>8</sup> It was expected that the CRT would identify awardable accounts not identified during the ICEP audit. Thus, Article 22(3) of the Rules Governing the Claims Resolution Process states: “Notwithstanding prior provisions, the CRT may make an Award in a case in which the Claimant plausibly establishes a right to an account that falls within the CRT’s jurisdiction but which, for whatever reasons, was not identified during the ICEP investigation and therefore cannot be subject to Matching and/or Research.” Such accounts are added to the AHD by the CRT and are tracked for internal reporting purposes in categories labeled 5 and above, depending upon the source of the information that documents the existence of the account.

**3. The Method and Results of the CRT's Review of Bank Files as Part of the Claims Process**

During the course of the claim resolution process, the CRT reviews all accounts that potentially match a claim. The review encompasses not only the reports prepared by the auditors in connection with the account, but also the underlying bank records. The CRT has been able to obtain a great deal of information about the accounts that was not made available in the truncated auditors' reports. This procedure is in accordance with the banks' agreement, as part of the Court's approval of the Settlement, to "provide reasonable access by claims personnel to the consolidated database [AHD] and to ICEP audit files prepared in connection with such accounts."<sup>9</sup>

The bulk of the CRT's new information about the accounts has come from this process of reviewing underlying bank documents. Many accounts reported by the auditors without any value information actually can be valued once the bank records are fully examined. In fact, from the bank records alone, the AHD has been augmented with 745 known values not included in the AHD. Moreover, as Special Master Junz explained in her March 31, 2009 response, to date, 54 percent of awarded known value accounts were based on value information not originally reported by the ICEP auditors.<sup>10</sup>

**a. Variances by Audit Firm**

Based upon the Hydoski Memorandum, the number of account values reported during the ICEP audit varied by audit firm and by bank. In particular, Arthur Andersen ("AA"), which audited Credit Suisse, did not report account values for several hundred accounts, although the claims process since has shown that these accounts did, in fact, have values. Thus, of the 23,509 known value accounts in the pre-scrubbed data set of approximately 54,000 accounts, only 8,715 accounts, or 37%, had been reported by Arthur Andersen. Of

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<sup>9</sup> See Memorandum to the File, August 9, 2000, ¶ B(2).

<sup>10</sup> Junz March 31, 2009 Response, at 7.

the 8,715 known value accounts reported by Arthur Andersen, only 1,290, or less than 15%, were reported as Category 1 or 2 accounts and therefore included in the calculation of the average values. This is particularly striking because Credit Suisse was the largest Swiss bank during the period between 1933 and 1945. This means that the vast majority of account values from Credit Suisse were not considered when the current presumptive values were calculated. Moreover, of all 8,715 known value accounts reported by Arthur Andersen, 8,382 or 96%, were reported as accounts of unknown type, rather than as custody accounts, demand deposit accounts, and so forth. These numbers strongly suggest that the limited information made available to Arthur Andersen during the audit caused that audit firm to significantly under-report the number of known value accounts in Categories 1 and 2. The lack of complete data also resulted in Arthur Andersen's inability in many cases to correctly identify the type of account reported, which necessarily impacted the calculations upon which the current presumptive values are based.

With respect to the post-scrubbing numbers and according to queries run on the data, although 5,089 accounts of the 36,131 post-scrubbed AHD were reported to have had values, and AA reported 14,837 accounts, or 41% of the total accounts in the AHD, none of the accounts that AA reported was reported with a known value.<sup>11</sup> However, of the 1,442 accounts paid to date that were reported by Arthur Andersen (excluding sub-accounts), the CRT in fact has found values for 457 accounts, or approximately 32%. By extrapolating this rate to the total number of accounts in the AHD reported by Arthur Andersen (14,837), it would be expected that 4,748 account values would have been reported by Arthur Andersen (14,837 accounts times 32%). However, as noted, Arthur Andersen reported no account

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<sup>11</sup> Some AA accounts in the AHD did include a value. However, they did not include a corresponding value date that would enable a 1945 value to be calculated. Without a corresponding date for the reported account balance, there is insufficient information to determine the historic value of an account. For example, a savings account with a balance of \$500 absent withdrawals, would have a much higher value today if that balance date was as of ten years ago rather than as of yesterday, due to accumulation of interest.

values. By contrast, Price Waterhouse (PW), which audited UBS and its predecessors, reported a total of 12,779 accounts, or approximately 35% of the post-scrubbed AHD. PW reported values for over 45% of these accounts.

**b. Sub-Accounts**

The CRT's review of the underlying bank records made available with the auditors' files also has revealed additional accounts owned by the same account owner (referred to by the CRT as "sub-accounts") that were not reported by the auditors and thus not included in the AHD. To date, a total of 531 of these so-called sub-accounts have been awarded. Many bank records evidencing these additional accounts also contained evidence of the value of these accounts.

**c. Data from Archival Sources**

The CRT also makes extensive use of information obtained from European archives. Based upon archival research, the 2005 publication alone included the names of account owners of 906 additional accounts beyond those contained in the original AHD (pre- or post-scrubbed): 354 accounts from German and Austrian archival sources (primarily consisting of asset registrations filed pursuant to a 1938 Nazi decree); and 552 accounts from records from the Swiss Federal Archive. These accounts are only a portion of the additional accounts documented in archival sources were added as appropriate to the AHD. As true for the underlying bank records, many of these archival documents evidencing these accounts also contain value information, and this information has been used to calculate the new presumptive values.

**4. The Valuation Data Are Not Skewed Toward Higher-Value Accounts**

Dr. Mullin argues that the data relied on by ICEP to determine the presumptive values are already biased upward because certain account values were excluded from their

calculation, and that the “data generating process” by which new account information not previously available to ICEP “appears biased toward high-value accounts.” (Declaration of Charles Mullin, Ph.D., para. 9) Both assertions are without merit.

**a. Account Value Does Not Determine Whether Account Documentation Survived**

Dr. Mullin contends that the ICEP averages are skewed toward higher values because “higher value accounts typically generated more documentation than lower value accounts. Therefore, higher value accounts are more likely to have had some of that documentation survive for the past 60 years and, hence, be known value accounts today.” (Declaration of Charles Mullin, Ph.D., para. 7) This is pure conjecture and is not supported by the actual documents made available to the CRT. First, it is not the *volume* of documentation that makes its survival more or less likely, but rather the *type* of documentation. As referenced in the ICEP Report, most *transactional* records (including, for example, balance statements) relating to Holocaust-era accounts are no longer available. (ICEP Report, p. 6, para. 22 – 23) However, account opening or closing records were more likely to survive, because systematic destruction of such records by the banks without detection would “be difficult, if not impossible.” Thus, a cursory review of the awards published on the CRT’s website – [www.crt-ii.org](http://www.crt-ii.org) – shows that the bank documents for most awards consist of account opening or closing cards (without additional information, including balance information) or printouts from the banks’ database reflecting information from such cards.

Second, if Dr. Mullin’s assertion is true, namely, that “higher value accounts are more likely to have had some of that documentation survive for the past 60 years and, hence, be known value accounts today,” (Declaration of Charles Mullin, Ph.D., para. 7) one would expect that documentation relating to the majority of the accounts in the AHD would contain value information, because these are the accounts for which records still exist, in contrast to

the 2.7 million accounts estimated by ICEP for which no account records now exist. Quite the opposite is true. As detailed in Special Master Junz' response of March 31, 2009, of the 36,131 accounts in the post-scrubbed AHD, only 10,655 (in all categories), or less than 30%, had known value. Of these, 2,434 were known value savings accounts in Category 4.<sup>12</sup>

**b. The Inclusion of Category 3 Accounts does Not Skew the Average Upward**

Dr. Mullin argues that Category 3 account values should be excluded from the calculation of average values, and refers to the distribution of known account values in Categories 1, 2 and 3. He notes that, in the original ICEP data, there were a higher share of known value accounts in Categories 1 and 2 than in Category 3. However, Dr. Mullin fails to recognize that during the scrubbing process, the percentage share of known value accounts by ICEP category changed dramatically. In the ICEP data set of 53,886 accounts, approximately 70% of Category 1 accounts and 80% of Category 2 accounts had known values. After scrubbing, of the 36,131 accounts in the AHD, only 37% of Category 1 accounts (not 70%) and 64% of Category 2 accounts (not 80%) had known values.

Moreover, as the post-scrubbing numbers show, and as detailed in Special Master Junz' various submissions, including her March 31, 2009 response, during the claims resolution process, a significant number of account values were ascertained for Category 3 accounts. In fact, if we assume that some 4,748 Credit Suisse accounts reported without value actually have values, as described above (*see supra*, p. 10), and knowing from CRT database queries that 47% of all accounts reported by Arthur Andersen were categorized as Category 3 accounts, we may expect that at least 2,232 additional Category 3 accounts do, in fact, have values that simply were not available for reporting by Arthur Andersen (not considering additional values available in accounts reported by other auditing firms). As

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<sup>12</sup> Junz, March 31, 2009 Response, at 6.

Special Master Junz has noted, the value information obtained during the claims resolution process anchors the Category 3 values within the overall range.

**c. The Use of the Mean Does Not Skew the Averages toward Higher Values**

Dr. Mullin argues that the use of the mean skews the averages toward higher values. (Declaration of Charles Mullin, Ph.D., para. 18 – 20) Special Master Junz refutes his argument in her March 31, 2009 response. It is also interesting to note that Dr. Mullin's assertion that the use of the mean skews the averages toward higher values only holds true if the data is distributed with a "right tail," *i.e.*, if the majority of the known account values are low value and only a few high account values exist that skew the mean. Dr. Mullin implies that the median, rather than the mean should be used to calculate the averages, because he expects the distribution of the account values to have a right tail, again, that the high values are outliers that skew the mean. But this contradicts his earlier assertion that documentation evidencing high account values more likely survived. If high account values more likely survived, we should expect the account value data to be distributed with a left tail, *i.e.*, that the *low* values are the outliers. But if in fact the use of the mean skews the averages toward higher values, then the bulk of the known value accounts should be *low* value, not *high* value. Dr. Mullin does not suggest that he makes the latter argument in the alternative and offers no explanation for this contradiction.

**d. The Effect of Small Savings Accounts**

Dr. Mullin argues that the presumptive values calculated by the ICEP auditors are already biased upward because the auditors excluded account balances below SF 250.00. In fact, only small balance *savings* accounts were excluded, not any of the five other account types. Such accounts were excluded because it was believed, at the time of the audit, that



such accounts were not likely to be held by non-residents of Switzerland.<sup>13</sup> Moreover, some savings accounts with small balances were not excluded. Thus, a total of 508 of the total 3,258 known value savings accounts, or 16%, contained in the (post-scrubbed) AHD had reported values of SF 250 or less. Of these 508 savings accounts with a known value below SF 250, 465, or 92%, are in Category 1, 2, or 3, and their values are therefore included in Special Master Junz' average value calculations.

**e. The Effect of Voluntary Assistance**

Dr. Mullin also argues that the value information obtained through the process of "Voluntary Assistance" is biased toward high value accounts. Voluntary Assistance is the process by which the CRT requests the defendant banks to provide the CRT with any additional data that the bank files may contain about particular matched accounts, beyond the data collected as part of the audit. However, the data the CRT has obtained from the defendant banks via this mechanism do not show any bias toward high value accounts and therefore do not bias the average calculations upward. As described above, when resolving a claim to an account, the CRT examines both the reports prepared by the auditors in connection with the account, as well as the underlying bank records. In many cases, these bank records are incomplete. The incomplete records make it especially difficult to determine the identity of the account owner, and this has prompted the majority of the requests for Voluntary Assistance. The CRT's internal records show that, to date, additional documents have been obtained through Voluntary Assistance for 1,366 accounts. Of those, the documents for 601 accounts, or 44%, showed that the claimant's relative was not the account owner, and no award was forthcoming. For the remaining 765 accounts, only 157

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<sup>13</sup> During the course of the claims resolution process, the CRT's experience has been that such accounts were, in fact, often held by Holocaust victims. A wealth of anecdotal evidence strongly suggests that the passbook savings account was a preferred type of account among Nazi persecutees, especially because the passbook could be physically given to family members attempting to flee Nazi persecution.

(11% of the total accounts for which Voluntary Assistance was received) were paid at known values exceeding the averages for the type of account awarded. These numbers reflect the importance of Voluntary Assistance not in determining the value of an account, but rather the identity of the account owner and the account's ultimate disposition.

In specific sorts of cases in which the auditors determined a likelihood, based upon the source of the record they had accessed, that additional records exist, the CRT was specifically instructed by the auditors to ask for additional records. Thus as Special Master Junz noted in her March 22, 2006 submission, PW incorporated a standard memorandum to file regarding "additional documentation potentially located in the Bank's corresponding account file folders" in a significant number of the accounts it reported. The memorandum explains:

PwC performed a sample test of folders not presented by the Bank during the "scrubbing" process to ascertain the volume of additional documents found by the Bank. Based on that sample test, the Bank folders contained additional documents for over 50% of the accounts in Categories 1 – 4. These documents included, inter alia, account holder signatures, addresses and deposit amounts. In cases where the account in Cat 1 – 4 was from a Bank-prepared database..., the Bank, in most cases, found the original document used to support the account.

PwC would recommend that if the CRT-II reviews this folder during the Claims Adjudication process, it should request from the Bank to have access to any additional documents located in the corresponding Bank files.

When the CRT requested Voluntary Assistance from UBS in connection with these types of accounts, UBS responded in several hundred cases with additional documents that greatly assisted the claims resolution process. This information led the CRT to a better identification of the account owners, as well as a better understanding of the account type at issue, its contents, and disposition, where available.

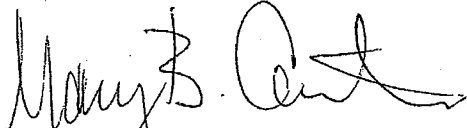
Voluntary Assistance from Credit Suisse was less forthcoming, but eventually Credit

Suisse did provide some assistance to the CRT in the form of documents such as custody account identification cards ("*Leitkarte*") and custody account portfolio holding cards ("*Depotvalorenkarten*") for each security held within custody accounts held at certain branches of the bank. This provided account value information for over two hundred accounts. The documents were not included in the original ICEP files because of oversight: there had been an input error regarding the source of the documents.

There is no indication that the information obtained from UBS through Voluntary Assistance revealed account values either significantly higher or lower than values contained in documents already contained in the audit files. In so far that the Voluntary Assistance from Credit Suisse largely took the form of custody account identification cards and custody account portfolio holding cards for each security held within custody accounts, the value information was limited mostly to this account type. As Dr. Mullin himself pointed out, however, of the 212 accounts for which the CRT obtained such information, only 84 required an upward adjustment from their original award amount. Thus, the majority of the account values obtained through Voluntary Assistance at this bank reflected not an upward bias, but rather a downward bias in terms of value. Of course, all values obtained through Voluntary Assistance – both those above and those below the presumptive values at which the accounts were originally awarded – were used in calculating the averages, so no bias can be attributed to this process.

We remain available to answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mary B. Carter". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mary B. Carter  
Secretary General

A handwritten signature in black ink, appearing to read "Dov Rubinstein". The signature is cursive and somewhat stylized, with the first name being more prominent.

Dov Rubinstein  
Secretary General

Appendix One

	A		B		C		D		E		F
	ICEP Auditors - Original AHD (53,957): Avg. Values of Cat. 1/2 only		Post-Scrubbed AHD (36,131): Avg. Values of Cat. 1/2 only*		Post-Scrubbed AHD (36,131): Avg. Values of Cat. 1, 2, 3*		AHD-Plus Paid Only (through Batch 184): Avg. Values of Cat. 1,2,3,5+**		Total AHD-Plus Awarded/Unawarded (38,624): Avg. Values of Cat. 1,2,3, 5+***		Special Master Junz Recommendations
	Number of Known-Value Accounts (Cat. 1/2 only)	Average Value	Number of Known-Value Accounts (Cat. 1/2 Only)	Average Value	Number of Known-Value Accounts (Cat. 1,2,3)	Average Value	Number of Known-Value Accounts	Average Value	Number of Known-Value Accounts	Average Value	Recommended Presumptive Value
Savings	1,800	830	799	843	824	1,050	132	901	912	892	900
Demand	2,461	2,140	2,368	1,694	2,541	3,163	540	3,005	2,821	2,477	2,500
Custody	397	13,000	373	19,876	479	23,454	365	42,313	892	31,000	31,000
Safe Deposit	42	1,240	14	7,240	33	7,363	12	10,353	38	5,306	5,300
Unknown	3,009	3,950	1,527	1,414	1,983	2,751	449	5,229	2,245	2,961	3,950
Other	88	2,200	8	4,579	50	10,297	3	3,505	37	3,908	3,900
<b>TOTAL</b>	<b>7,797</b>		<b>5,089</b>		<b>5,910</b>		<b>1,501</b>		<b>6,945</b>		

\* Does not exclude any outliers

\*\* Through Batch 184. Excludes a total of 26 outliers, negative value, and zero value accounts.

\*\*\* Through Batch 172. Excludes 14 outliers and all negative and zero value accounts.

**COLUMN A:** This column reflects the average values as calculated by the ICEP auditors. The averages were based on 7,797 Category 1 and 2 known value accounts out of a total of 53,957 accounts. These average values are no longer appropriate because they included account values that were later deleted during the scrubbing process, and do not include account values that should be included, *i.e.*, Category 3 accounts and accounts later identified during the claims resolution process (so-called "Category 5+" accounts and sub-accounts).

**COLUMN B:** This column reflects average values if they had been calculated after scrubbing exactly as the auditors had done previously, *i.e.*, using only known value accounts from Category 1 and Category 2. After scrubbing, the number of known value accounts in these two categories went down by 2,708, from 7,797 to 5,089 accounts. The total number of accounts decreased by 17,826, from 53,957 to 36,131. The scrubbing eliminated the excess accounts, but the averages are not appropriate because the totals do not include account values that should be included, *i.e.*, Category 3, Category 5+ accounts, and sub-accounts.

**COLUMN C:** This column reflects average values if they had been calculated after scrubbing using not only Category 1 and Category 2 known account values, but also using Category 3 account values. The number of known values used in the calculation thereby increases by 821, from 5,089 to 5,910. The averages are not appropriate, because they do not include accounts identified during the claims resolution process (Category 5+ and sub-accounts).

**COLUMN D:** This column reflects the average values of known value accounts that have been awarded through Batch 184. This is a smaller sub-set of Column E (which includes all known value accounts). These values are higher than the averages reflected in Column E.

**COLUMN E:** This column reflects the average values that exclude the scrubbed accounts and include Category 3 accounts and accounts identified during the claims resolution process. The number of known values used in the calculation increases from Column C by 1,035 values, from 5,910 to 6,945. These figures are based on numbers available through Batch 172. Note that these include all known value accounts in this group, both awarded and non-awarded. The Total AHD-Plus consists of 38,624 accounts in all four ICEP categories, as well as accounts added by the CRT. The averages are based upon known value accounts in the AHD-Plus, which consists of 26,362 accounts in ICEP categories 1, 2, and 3 and accounts added by the CRT (categories 5 and above).

**COLUMN F:** This column shows the new presumptive value recommendations put forth by Special Master Junz. The new presumptive value recommendations are based upon the averages shown in Column E (both awarded and non-awarded account values).