

SLAVE LABOR CLASS II

A. Definitions

The Settlement Agreement defines Slave Labor Class II as those “individuals who actually or allegedly performed Slave Labor at any facility or work site, wherever located, actually or allegedly owned, controlled, or operated by any corporation or other business concern headquartered, organized, or based in Switzerland or any affiliate thereof, and the individuals’ heirs, executors, administrators, and assigns, and who have at any time asserted, assert, or may in the future seek to assert Claims against any Releasee other than Settling Defendants, the Swiss National Bank, and Other Swiss Banks for any relief of any kind whatsoever relating to or arising in any way from such Slave Labor or Cloaked Assets or any effort to obtain redress in connection with Slave Labor or Cloaked Assets.”¹ Slave Labor Class II is the only settlement class that is not limited to “Victims or Targets of Nazi Persecution;” any individual who performed slave labor for a Swiss entity potentially is a member of the class.

The same definition of “slave labor” applies to this class as to Slave Labor Class I: “work for little or no remuneration actually or allegedly performed by individuals involuntarily at the insistence, direction, or under the auspices of the Nazi Regime.”² This definition encompasses work generally known as “forced labor” as well as the “extermination through labor” work more commonly referred to as “slave labor.”

¹ Settlement Agreement Section 8.2(d).

² Settlement Agreement Section 1.

B. Final Approval Orders

In his Memorandum and Order granting final approval to the Settlement Agreement, Chief Judge Korman noted that the entities whose slave laborers are potentially class members “consist almost entirely of affiliates or subsidiaries of Swiss entities that were incorporated in Germany and elsewhere.”³ For that reason, “members of the class – *e.g.*, those who were forced to perform slave labor for a Swiss company in Germany or elsewhere, but who had no reason to know at the time that the company was Swiss – may not be aware that they are in the class even if they have notice of the settlement.”⁴

Recognizing that problem, and the inability of the Swiss Federal Archives to identify more than a few of the slave labor users owned by Swiss entities, Chief Judge Korman directed all “Swiss entities that seek releases from Slave Labor Class II ... to identify themselves to the Special Master within 30 days of the date of this memorandum and order.” The court added: “The failure of Swiss entities seeking releases from Slave Labor Class II claims to identify themselves will result in the denial of a release and permit those who have claims against those entities to pursue such claims independently of this lawsuit.”⁵ Persons who may have performed slave labor for companies which did not properly identify themselves to the Special Master, or who did not comply with their good faith obligation to provide the names of

³ In re Holocaust Victim Assets Litig., 96 Civ. 4849 (ERK)(MDG), slip. op. at 40 (E.D.N.Y. July 26, 2000, corrected Aug. 2, 2000).

⁴ *Id.*

⁵ *Id.* at 41. Chief Judge Korman specifically exempted “three Swiss companies with respect to which the [Swiss Federal Archives] already had provided information...” but their exemption was specifically made “subject to compliance with their good faith duty to provide information in their possession regarding the names of these slave laborers.” Those entities, which the court did not name, are Maggi AG, a subsidiary of Nestle S.A.; Aluminum Walzwerke, a subsidiary of Alusuisse; and Georg Fischer. Literature provided by the Swiss Federal Archives to the Special Master
(footnote continued on next page)

former slave laborers in their possession, will not receive compensation under Slave Labor Class II.

C. The Relevant Swiss Entities

Chief Judge Korman's order appears to have prompted a great many Swiss corporations to examine the slave labor use of their wartime subsidiaries.

Within the thirty-day period fixed by the Court, the Special Master received correspondence from 37 Swiss entities, seeking releases for themselves and for hundreds of their subsidiary companies. The companies writing to the Special Master included small businesses bankrupted after the War as well as some of the largest industrial conglomerates in Switzerland, and they range across many disparate industries, including, prominently, firms manufacturing pharmaceuticals, aluminum and armaments, among other things.

Many of those companies pointed to their inadequate archives, because of war-related destruction, the sale of corporate assets, bankruptcy, the passage of time, and the like.⁶

establishes that all three entities employed forced laborers and prisoners of war at their facilities in Singen, Germany, near the Swiss border.

⁶ See, e.g., Letter of Heinrich Villiger, President of Villiger Sohne Holding AG, dated August 22, 2000 ("In the archives of the Villiger Sohne GmbH at Waldshut-Tiengen, there exist no files concerning the employees of the biggest manufacturing units of our group of that time located in Munich, as these two factories were entirely destroyed during an air-raid by the American Air Force in September 1943"); Letter of Barbara Stehli-Zollikofer and Gertrud Huber of Stehle Seiden AG, dated August 24, 2000 ("Unfortunately we have nearly no archives of this time as we are no longer a textile company"); Letter of Markus Stromeyer on behalf of Stromeyer & Co., received August 24, 2000 ("please be advised that the German Company fell bankrupt 1973 and all the books and records of the German Company were seized and archived by the German bankruptcy receiver at that time. Therefore, we do not have any access to the respective books and records") (all on file with the Special Master).

Others pointed out that while they did not believe their wartime subsidiaries had employed slave labor, they were entitled to a release because they could not rule out the possibility.⁷

A number of companies, however, sent detailed research to the Special Master, specifically identifying subsidiaries which, according to their records, employed forced laborers or prisoners of war in German manufacturing facilities. Several firms enclosed lists of names of forced workers discovered in the course of their research. A number of others advised that their research is continuing, and promised to forward reports, particularly names of forced laborers, as their respective investigations progress.⁸ Thus, for example, Nestle S.A. identified seven German subsidiaries where it understood slave labor was exploited, Novartis identified two locations owned by its predecessor where slave labor was performed, ABB Ltd. f/k/a/ Brown Boveri & Cie identified six subsidiaries where “it was either ascertained, likely or possible that forced or slave laborers were employed,”⁹ and Alusuisse Group named five German subsidiaries which “employed forced laborers assigned to them.”¹⁰ A detailed summary of the

⁷ See, e.g., Letter of Flavio Romerio, attorney for Danzas Holding AG, dated August 25, 2000 (“Danzas conducted its own research to determine whether or not its affiliates in Germany and Axis-occupied countries employed forced or slave labor. We have identified no positive indication that any of [Danzas’ subsidiaries] employed slave or forced labor, but cannot entirely rule out this possibility”); Letter of W. Degen and Dr. P. Gregg of Gaba Holding, dated August 22, 2000 (“On the basis of the condition of the files, we cannot judge with certainty whether we employed those types of persons; however, we also cannot explicitly rule it out”) (all on file with the Special Master).

⁸ As noted above, the Court made clear that to receive an effective Release, a Swiss entity must do more than simply identify itself and request one. The entities must “believe that it was likely or probable” that their German subsidiaries employed slave labor, and any release is expressly made “subject to compliance with [the Releasees’] good faith duty to provide information in their possession regarding the names of these slave laborers.” In re Holocaust Victim Assets Litigation, at 41, 44.

⁹ See Letter of Beat Hess, Senior Vice President and General Counsel of ABB Ltd. dated August 24, 2000 (on file with the Special Master).

¹⁰ See Letter of Sergio Marchionne, Chief Executive Officer and Christine Menz, Vice President of Alusuisse Group, AG, dated August 24, 2000 (on file with the Special Master).

correspondence to the Special Master from companies seeking a release from Slave Labor Class II is annexed hereto this Annex as Exhibit 1.

Many of the companies which identified their subsidiaries as having employed slave laborers had not previously acknowledged or had not previously been reported to have engaged in such practices. In that regard, Chief Judge Korman's direction that companies seeking a release must promptly identify themselves clearly contributed to a greater understanding of the scope of slave labor use by companies owned by Swiss entities, enabling the Special Master to formulate a recommendation for allocation and distribution to this class.

D. Recent Press Reports

In addition to the corporate self-examinations discussed above, Chief Judge Korman's directive appears to have prompted additional public discussion of the employment by Swiss firms of forced laborers. On August 24, 2000, the National Swiss Press Agency released a news report entitled "*Firms with Swiss Capital and Forced Labor in Germany*," written by its Head of Operations, Roderick von Kauffungen (hereinafter, the "von Kauffungen Report").

Von Kauffungen researched slave labor use by Swiss-owned companies. His study was admittedly incomplete: "Many middle and smaller sized enterprises have not been included. As well, Swiss enterprises in Alsace and Vorarlberg were not investigated."¹¹ He noted that records were not always easy to obtain: "Firm and bureaucratic archives were bombed, disposed or, destroyed. Others are molding in damp cellars. Large archives have not yet been evaluated."¹² While in "large enterprises, the lists of names of foreign workers are often

¹¹ von Kauffungen Report, at 2 (translation obtained by the Special Master).

¹² *Id.* at 4.

relatively quickly able to be found,” “in smaller enterprises the search proves more difficult. Workers from the West can be determined through residence registration offices, social insurance agencies, and local health insurance institutions. The workers from the East, for whom a tax was owed to the state, can be found among the lists of the tax offices.”¹³

Based on the evidence von Kauffungen uncovered, the National Swiss Press Agency estimated that “firms in Germany with Swiss capital employed over 11,000 forced laborers,” adding that “[i]t must nevertheless be assumed that the actual numbers are greater.”¹⁴

According to von Kauffungen, three Swiss employers, Aluminium-Industrie Gemeinschaft,¹⁵ Brown Boveri & Cie, and Georg Fischer together accounted for the employment of 8,709 forced workers.¹⁶ For a number of companies, von Kauffungen discovered the existence of name lists. Georg Fischer, for example, commissioned a historian who compiled a “computerized database” containing the names of 1,707 forced laborers at its Singen facility.¹⁷ A study of Aluminium GmbH Rheinfelden apparently identified 2,879 forced laborers by name.¹⁸ As noted above, other employers sent name lists directly to the Special Master. If von Kauffungen is correct, the names of a substantial proportion of the approximately 11,000 forced laborers can be assembled without great difficulty.¹⁹

¹³ *Id.* at 5.

¹⁴ *Id.* at 2. A table listing the Swiss entities mentioned by von Kauffunger as having utilized forced or prisoner of war labor is attached as Exhibit 2.

¹⁵ This company is now known as Alusuisse Group AG.

¹⁶ von Kauffungen Report, at 2.

¹⁷ *Id.* at 29.

¹⁸ *Id.* at 21.

¹⁹ The Special Master will contact the sources identified by von Kauffungen to obtain name lists.

E. Conclusion

Although Slave Labor Class II now appears to consist of more than the “extremely small number of persons”²⁰ first represented to the Court to have been “forced to perform slave labor for a Swiss company in Germany or elsewhere,” the National Swiss Press Agency’s estimate that there may have been more than 11,000 slave laborers does not appear unreasonable. It is hoped that, in the future, the firms which identified themselves as probably having exploited slave labor will perform additional research which will identify the names of more class members. In the meantime, however, the available information persuades the Special Master to recommend an individualized claims process for Slave Labor Class II. The proposed distribution mechanism is discussed in detail in the Special Master’s Proposal.

²⁰ In re Holocaust Victim Assets Litig., at 39.