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March 12, 2004

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Via U.S. Mail

Special Master Judah Gribetz
Holocaust Victim Assets Litigation
P.O. Box 8300
San Francisco, CA 94128-8300

In re: Holocaust Victim Assets Litigation

Dear Special Master Gribetz:

Disability Rights Advocates respectfully submits to the Court its
**Reply Submission in Support of Proposal for Cy Pres Award For the Class
of "People who are Physically or Mentally Disabled or Handicapped" From
the Allocation of Residual Unclaimed Funds.**

Very truly yours,

Kevin Knestrick

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ORIGINAL

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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF NEW YORK
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9 Case No. 96CV4849

10 IN RE: HOLOCAUST VICTIMS
11 ASSETS; WEISSHAUS, et al.

12 Plaintiffs,

13 v.

14 UNION BANK OF SWITZERLAND, et al.

15 Defendants.
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**REPLY SUBMISSION IN SUPPORT OF
CY PRES AWARD FOR THE CLASS OF
"PEOPLE WHO ARE PHYSICALLY OR
MENTALLY DISABLED OR
HANDICAPPED" FROM THE
ALLOCATION OF RESIDUAL
UNCLAIMED FUNDS**

**Hearing: April 29, 2004
(Appearance Requested)**

Judge: Honorable Edward Korman
Special Master: Judah Gribetz

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I. WHY THE *CY PRES* PROPOSAL IS JUST, APPROPRIATE AND NECESSARY FOR THIS UNIQUE CLASS2

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**DISABILITY RIGHTS ADVOCATES' REPLY SUBMISSION
TO PROPOSALS SUBMITTED TO THE COURT**

DRA respectfully submits this *Reply Submission* to comment upon proposals for the allocation and distribution of residual unclaimed funds, submitted in response to the Court's November 17, 2003 Order, that were posted on www.swissbanksclaims.com. Disability Rights Advocates ("DRA") has reviewed the proposals submitted to the Court, and herein asserts that information presented to the Court further supports DRA's *Proposal*¹ for a *cy pres* allocation of 2 to 3% of the total settlement funds to establish a Disability Fund, overseen by a Disability Advisory Board, to award grants to projects specifically designed to meet the needs of Holocaust survivors with disabilities and persons with disabilities who live in countries with known populations of Holocaust survivors.²

DRA submitted this *Proposal* on December 18, 2003. The *Proposal* directly addresses the criteria established by the Special Master in his October 2, 2003 *Interim Report*. DRA's *Proposal* estimates the number and location of disabled class members; assesses geographically which members of that group are most in need; analyzes the particular needs of the class of "people who are physically or mentally handicapped"; recommends a specific distribution scheme administered by an agency experienced with delivering the type of assistance requested; and provides a list of supporters endorsing the proposal.

DRA supported the *Proposal* with source data, including information from the World

¹ Proposal for *Cy Pres* Award for the Class of "People Who Are Physically or Mentally Disabled or Handicapped" From the Allocation of Residual Unclaimed Funds (Proposed Order and supporting Declarations filed concurrently), submitted to the Court on December 18, 2003.

² The specific details of the recommendation for the *cy pres* distribution for the class of victims with disabilities are set forth in the Proposed Order, which was attached as Exhibit A to DRA's *Proposal*. The funds would be distributed upon Court Order, with guidance from the Trustee and a Disability Advisory Board. Past experience has shown that projects are most effectively guided by representatives of the population they serve, and therefore the Advisory Board would be composed of people with disabilities and representatives of disability organizations. Such advisors will be well versed in allocating resources and implementing projects which make effective, positive and long-term improvement in the lives of people with disabilities. Priority will be given to projects that directly benefit Holocaust survivors with disabilities. Any remaining funds would be awarded to projects in countries with known population of Holocaust survivors, in order to address those areas in which the harms giving rise to the lawsuit were committed and where members of the victim class remain the most in need. The Trustee will award and distribute all Trust funds no later than three years after the inception of the Trust.

1 Bank, the United Nations, the United States State Department, the National Council on
2 Disability, the European Disability Forum, Amnesty International, and Mental Disability Rights
3 International. DRA's proposal was further supplemented by the expert opinions of Dr. Mitchell
4 LaPlante (Director, Disability Statistics Center, U.C.S.F., former U.N. expert – Committee on
5 Disability Statistics) and Dr. Hugh Gregory Gallagher.

6 DRA's *Proposal* and this *Reply Submission* respond to the distributions and allocations
7 that have taken place during these settlement proceedings. DRA's submissions respectfully
8 request that an allocation in the form of a *cy pres* remedy be awarded, in order to fairly and
9 adequately provide relief to the disabled, one of only five enumerated victim groups who are
10 members of the Looted Assets Class. As of the date of this submission, members of the disabled
11 victim group have not received distributions from this settlement proportionate to their harm,
12 their suffering, or their numbers. In this regard, the current distribution scheme has thus far not
13 adequately acknowledged and compensated Holocaust survivors with disabilities.

14 **I. WHY THE *CY PRES* PROPOSAL IS JUST, APPROPRIATE AND NECESSARY**
15 **FOR THIS UNIQUE CLASS**

16 The lack of targeted notice to the class of persons with disabilities has greatly contributed
17 to this failure to identify and provide assistance to members of the disabled victim class.
18 Inexplicitly, there were no provisions within the Notice Plan to account for the unique needs of
19 persons with disabilities. In so far as we have been able to determine, the Notice Plan, both as it
20 was written and as it was carried out, failed (a) to publish notice of this historic settlement in
21 even one disability-specific publication, (b) to work with even one disability organization, (c) to
22 provide notice in any alternative format (such as large print, audio formats or Braille), or (d) to
23 use any assistive technology whatsoever for people with disabilities, such as accessible
24 computers or telecommunications devices for the deaf.

25 Millions of dollars were allocated for targeted efforts to reach other victim groups, yet
26 despite the obvious needs of disabled survivors for tailored notification efforts, the Notice Plan
27 was not designed or calculated to reach members of this victim group. The omission of
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1 specifically designed notice for members of the disabled victim class has placed members of this
2 victim group at a unique disadvantage in these proceedings. This extraordinary oversight is
3 compounded by the inherent difficulty of reaching disabled survivors, who are widely scattered,
4 elderly and tend to be isolated within the societies in which they live.

5 In addition to the problem of social isolation, the inherent characteristics of persons'
6 disabilities have presented barriers to effective notice. Due to the nature of their impairments,
7 many disabled people are unable to read or are able to read only with great difficulty, including
8 substantial numbers of people with learning and mental disabilities. Others have low levels of
9 literacy because they were excluded from education under Nazi Germany's regime. Still others
10 require special accommodations that were never made available or apparently even considered in
11 this case. Many survivors need special accommodations in the delivery of legal notice
12 (accommodations which are now routine in class-action notice communication), such as
13 notification in Braille for blind survivors, large type for the elderly, audio formats, and closed
14 caption notices for the deaf. The deaf community, as a result of the failure of public education
15 systems, has a notoriously low level of reading literacy. Even in the United States, the average
16 reading level for a deaf high school graduate is less than third grade. As a result, it is highly
17 unlikely that most deaf survivors regularly read the publications in which the legal notice of the
18 submission process was published (or that they could read and understand the notice and claim
19 documents).

20 All of these and many other factors—including institutionalization, low literacy rates,
21 deprivation of children, low levels of employment, segregation, high levels of poverty, lack of
22 education, special literacy needs, lack of news sources specifically targeted at disability groups,
23 insufficient networking, under funded and uncoordinated organizations, geographical dispersion,
24 and a sense of shame—are significant barriers to effective delivery of legal notice or claims
25 procedures for this group of claimants.

26 Given this set of circumstances, DRA appreciates the enormity of the task assigned to the
27 International Organization of Migration ("IOM") to locate individual Holocaust survivors
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1 persecuted because of their disability. Unfortunately, in its most recent proposal, IOM informed
2 the Court that it is currently providing aid to only five (5) disabled survivors.³ IOM
3 optimistically anticipates that 60 more disabled victims may become eligible for assistance as the
4 result of information derived from the Holocaust Victims Assets Programme (HVAP), and at
5 best hopes to provide assistance to an additional 150 disabled victims with the help of additional
6 research in its field offices.⁴

7 By way of contrast, approximately a quarter of a million people have received assistance
8 from this settlement and \$545 million has already either been distributed or allocated to class
9 members. Considering that the sum of \$1.25 billion (plus accrued interest) will eventually be
10 distributed, the level of assistance provided to disabled class members to date is tragically
11 insufficient, and is clearly not commensurate with the number of people who are members of this
12 victim group.

13 Justice requires that the Court ensure that the interests of disabled class members are not
14 compromised either by their unique circumstances or by the notice with respect to persons with
15 disabilities. This victim group is entitled to a share of settlement funds that fairly accounts for
16 their widespread persecution during the Holocaust as well as their continuing suffering. As
17 explained in DRA's *Proposal*, a *cy pres* approach will direct a fair percentage of the total
18 settlement funds to ensure that settlement funds inure to the benefit of as many disabled
19 survivors as possible. A final distribution of settlement proceeds without an allocation that
20 acknowledges the suffering of members of the disabled class would be inequitable and unjust.

21 DRA's proposal (which represents the consensus position of over 17 major disability
22 organizations worldwide) differs from other proposals submitted to the Court in that it
23 recognizes that humanitarian aid, at least as it is commonly defined, is not the primary need of
24 members of the disabled class. As disability leaders and groups have long recognized, projects
25 that address the systemic barriers faced by persons with disabilities will better fill the unique

26 ³ International Organization for Migration, *Proposal for the provision of humanitarian assistance to needy, elderly*
27 *Roma, Jehovah's Witness, disabled and homosexual survivors of Nazi persecution*, (2004).

28 ⁴ *Id.*

1 needs of the disability community, will complement the existing aid programs funded by this
2 Court, and will be the most effective and practical mechanism for improving the daily lives of
3 members of the disabled class. The inherent characteristics of persons with disabilities and the
4 unique set of circumstances with regard to the treatment of “the class of people who are
5 physically or mentally disabled or handicapped” throughout this litigation are distinguishing
6 features that provide powerful support for the award of a true *cy pres* remedy to benefit members
7 of the disabled class.

8 Neither DRA nor the disability groups represented here are alone in the view that the best
9 way to help members of the disability community is to provide assistance from a human rights
10 and equality perspective, rather than a social protection model based on charity and pity.⁵ By
11 supporting the funding of projects in this manner, the Court will be in accordance with the
12 international consensus regarding the best way to assist persons with disabilities. By funding
13 proposals that will enhance the independence and integration of men and women with
14 disabilities, the Court can lessen the effect of the so called double edged sword of humanitarian
15 aid with respect to persons with disabilities.⁶

16 DRA, and the disability organizations and individual survivors that it represents,
17 respectfully request that the Court supplement its ongoing efforts to identify Holocaust survivors
18 persecuted because of their disability, with the proposed *cy pres* remedy of a Disability Fund in
19 the amount of 2-3% of the total settlement fund, to be administered by a Disability Advisory
20 Board to fund projects to benefit Holocaust survivors and members of the disability community
21 where known populations of survivors live.

22 **II. INFORMATION CONTAINED IN PROPOSALS SUBMITTED TO THIS COURT**
23 **FURTHER SUPPORT DRA’S PROPOSED *CY PRES* REMEDY**

24 Many of the proposals submitted to the Court seeking distribution of the residual

25 _____
26 ⁵ See *Issues and Emerging Trends Related to the Advancement of Persons with Disabilities*, Report of the
Secretary General, U.N. Doc A/AC 265/2003/1 (2003).

27 ⁶ For a further explanation of the negative effects of humanitarian aid on the disability community, See David
28 Tobis, *Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe
and the Former Soviet Union*, The World Bank, at 24 (2000).

1 unclaimed funds support the basic findings and conclusions that DRA made in its own proposal.
2 Specifically, several of the proposals provide additional data and support the following important
3 propositions:

- 4 A. The greatest and most immediate need exists in the geographic areas of the
5 Former Soviet Union and Central and Eastern Europe. Class members in the
6 United States, Israel and the countries of Western Europe are also experiencing
7 need, but to a lesser degree;
- 8 B. Holocaust survivors are experiencing a high incidence of disability that is likely to
9 continue to increase in the coming years; and
- 10 C. While Holocaust survivors as a group are in desperate need of assistance, there is
11 considerable reason to believe that disabled survivors are among the neediest of
12 this group;
- 13 A. **Need Remains the Greatest in the Countries of the Former Soviet Union, and**
14 **Central and Eastern Europe; Substantial Needs Still Exist in the United**
15 **States, Israel and Western Europe**

16 For men and women with disabilities, the need for assistance to address systemic barriers
17 and the root causes of discrimination is the most pressing in the countries of the Former Soviet
18 Union, and Central and Eastern Europe. As DRA noted in its *Proposal*, the nations of Central
19 and Eastern Europe “remain like third world countries in their treatment of people with
20 disabilities.”⁷ Attitudinal barriers, frequent institutionalization, inaccessible architecture, and a
21 history of social, political and economic exclusion are the norm in this region of the world.
22 These social conditions reinforce debilitating “stereotypes and prejudices (which) continue to
23 precipitate discrimination and dehumanization” for persons living with disabilities within these
24 societies.⁸ Depressed economic conditions in this region further reduce the minimal care
25 provided by existing social safety nets. Throughout its *Proposal*, DRA reported numerous
26 examples of the types of dire societal conditions facing men and women with disabilities

27 ⁷ *Proposal* at 20.

28 ⁸ *Id.* at 21.

1 throughout this region and in countries such as Russia, Hungary, Romania, Bulgaria, and
2 Poland.⁹

3 DRA's *Proposal* accounts for the needs of persons with disabilities in this region of the
4 world by recommending that the Disability Fund prioritize the distribution of funds based upon
5 geographic areas. As the Proposed Order DRA submitted to the Court explains: "(g)iven the
6 pattern of distributions to Holocaust survivors thus far in the settlement and identification of
7 geographic areas where disabled Holocaust survivors are most in need, the Court anticipates that
8 the funding for proposals that will benefit persons with disabilities will be apportioned
9 geographically in approximately the following percentages: Central and Eastern Europe
10 (including the countries within the former Soviet Union) (65%), Western Europe (10%), Israel
11 (10%), the United States (10%) and other (5%)".¹⁰ DRA believes that this proportional
12 allocation fairly addresses the relative degree of need in the various countries where Holocaust
13 survivors live. Distributions along these geographical lines will help begin the process of
14 comprehensively addressing the discriminatory societal conditions that continue to exist for
15 persons with disabilities throughout the world.

16 Further support for this allocation can be found in other proposals submitted to the Court.
17 For example, the proposal submitted by the American Jewish Joint Distribution Committee
18 ("JDC"), included the *Brandeis Study*, which reported findings regarding Jewish survivors with
19 disabilities in four countries of the former Soviet Union (Russia, Ukraine, Belarus, Moldova), as
20 well as Israel and the United States.¹¹ The *Brandeis Study's* "key finding in (its) analyses (was)
21 that Nazi victims in the FSU are clearly more disadvantaged than victims in the United States in
22 Israel."¹² The *Brandeis Study* concluded that "the lack of an adequate and effective social safety

23 ⁹ See *Proposal* at 20-27.

24 ¹⁰ See *Proposed Order* at 4, attached as Exhibit A to the *Proposal*.

25 ¹¹ *Presentation on the Condition and Needs of Jewish Victims of Nazi Persecution in the Former Soviet Union*, The
26 American Jewish Joint Distribution Committee (JDC); and *Jewish Elderly Nazi Victims: A Synthesis of
27 Comparative Information On Hardship and Need in the United States, Israel and the Former Soviet Union*
(hereafter the "*Brandeis Study*").

28 ¹² *Brandeis Study* at 4.

1 net in the FSU countries results in extreme hardship among Nazi victims.”¹³

2 The JDC reported similar conditions in the countries of Central and Eastern Europe
3 (defined by the JDC as Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic,
4 Hungary, Macedonia, Poland, Romania, Slovakia, and Slovenia). JDC suggested that virtually
5 all (Jewish) survivors in the region are needy, noting the following: Survivors lack family
6 networks to support and care for them; current medical and welfare infrastructures cannot
7 provide adequate care; social safety nets have collapsed as the result of the geo-political reforms;
8 victims suffer from chronic illnesses, conditions and severe depression and have often lost the
9 support of their family members.¹⁴ In addition, macro-economic conditions have made the need
10 in the countries of Central and Eastern Europe particularly pressing.

11 While the *Brandeis Study* recognized that the most immediate need exists in the countries
12 of the Former Soviet Union and Central and Eastern Europe, it also recognized that substantial
13 need also exists in the more developed nations of the United States and Israel.¹⁵ Several other
14 proposals support this conclusion as well.¹⁶ Taken together as a group, the overall assessment of
15 need in the proposals submitted to the Court roughly mirrors DRA’s proposed pattern of
16 allocation throughout the various regions that Holocaust survivors live.

17 **B. The Incidence of Disability is Very High and Increasing Among Holocaust**
18 **Survivors in Central and Eastern Europe, the Former Soviet Union, Israel,**
19 **and the United States**

20 DRA previously informed the Court that “(o)ne aspect of the Holocaust survivor
21 population that is certain is that the class of persons who are Holocaust survivors with disabilities
22 has undoubtedly enlarged in the decades since the Holocaust took place...conditions of the
23 Holocaust also are certain to have created an increased rate of disability of psychological,

24 ¹³ Id. at 41.

25 ¹⁴ *Presentation on the Condition and Needs of Jewish Victims of Nazi Persecution in Central and Eastern Europe*,
American Jewish Joint Distribution Committee, (2003).

26 ¹⁵ *Brandeis Study* at 4.

27 ¹⁶ See, for example, proposals from entities such as: *UJA Federation of New York; United Jewish Communities;*
American Gathering of Jewish Holocaust Survivors; Foundation for the Benefit of Holocaust Victims in Israel;
28 *and World Jewish Restitution Organization.*

1 emotional, and physical dimensions.”¹⁷

2 Additional evidence of this high rate of disability is provided by several of the proposals
3 submitted to the Court. As an example, the *Brandeis Study* reported the following alarming
4 levels of disability in the countries it studied:

- 5 • Russia (54% disabled to some degree; 66% vision impaired; 24 % hearing impaired);
- 6 • Ukraine (23% disabled to some degree; 55% vision impaired; 24% hearing impaired);
- 7 • Belarus (33% disabled to some degree; 45% vision impaired; 21% hearing impaired);
- 8 • Moldova (22% disabled to some degree; 69% vision impaired; 29% hearing impaired);
- 9 • Israel (21% unable to perform one ADL; 29% vision impaired; 29 % hearing impaired);
- 10 • United States (26% live in households in which someone has a disability).¹⁸

11
12 Given the advanced average age of Holocaust survivors, and the escalating prevalence of
13 disability as age increases, DRA believes that the forgoing statistics are actually understated. In
14 any event, while the *Brandeis Study* is not exhaustive and only focuses upon the Jewish
15 population served by Hesed centers, these statistics indicate that the Jewish population of
16 Holocaust survivors are experiencing a high rate of disability, particularly in the countries of the
17 Former Soviet Union. It is reasonable to assume that the overall number of survivors who have
18 an increased incidence of disability is even higher if one includes the populations of the four
19 remaining groups of the Looted Assets Class, (i.e. Roma, Jehovah’s Witnesses, Homosexual, and
20 Disabled) who have all likely experienced increased incidence of disability in the years
21 following the Holocaust.

22 **C. Holocaust Survivors with Disabilities are Among the Neediest in the World**

23 In order to fairly allocate the residual unclaimed funds that remain, the Court asked that
24 proposals explain why the target group to be served by their proposal is in need. DRA submitted
25 information from numerous sources in support of the proposition that Holocaust survivors with

26
27 ¹⁷ Proposal at 19.

28 ¹⁸ *Brandeis Study* at 37-38.

1 disabilities suffer from extreme poverty, are routinely neglected, segregated and marginalized by
2 the societies in which they live, and are therefore deserving of the assistance that a *cy pres*
3 remedy from this settlement will provide. The repeating cycle of poverty experienced by
4 individuals with disabilities has had a negative influence on the overall advancement of persons
5 with disabilities as a group, limiting their options, preventing their integration into the societies
6 in which they live, and contributing to their lesser sense of well-being. Moreover, the problems
7 faced by survivors with disabilities are compounded by the life-long-lasting effects of the
8 persecution they suffered during the Nazi regime.

9 DRA's *Proposal* cited numerous sources which have studied the basic link between
10 disability and poverty. These studies universally acknowledge that persons with disabilities in
11 the developing world are among the "poorest of the poor." Stienstra, Fricke, and Aubin, *Baseline*
12 *Assessment: Inclusion and Disability in World Bank Activities* 2002).¹⁹ Other studies,
13 specifically aimed at understanding the link between poverty and disability, have concluded that
14 "disabled people are poorer, as a group, than the general population and that people living in
15 poverty are more likely than others to be disabled." Ann Elwan, *Poverty and Disability: A*
16 *Survey of the Literature*, World Bank Social Protection Discussion Paper No. 9932 (1999).²⁰
17 Other multi-national organizations have similarly noted that "disabled people are among the
18 most vulnerable groups to poverty." European Disability Forum, *Disability and Social Exclusion*
19 *in the European Union* (2002).²¹

20 Given the link between disability and poverty among members of the general population,
21 it is realistic to assume that men and women with disabilities within the survivor population can
22 be expected to suffer from more poverty and distress than survivors who have not acquired a
23 disability. The resulting level of poverty is extreme, because survivors as a group are already
24 greatly affected by poverty compared to non-victim groups. For example, one proposal which
25 provided comparative data between survivors and the general population noted that in the United

26 ¹⁹ See *Proposal* at 18.

27 ²⁰ *Id.*

28 ²¹ *Id.* at 22.

1 States, the median income for (Jewish) victims is \$15,700 when compared to non-victims
2 average of \$40,800.²² That same proposal noted that victims are 5 times more likely to be living
3 below the poverty level than non-victims.²³

4 In addition to the poverty experienced by disabled survivors, another indication of their
5 relative need compared to other victim groups is their depressed sense of well being. One study
6 submitted to the Court reported that (t)he overall sense of emotional well being of the disabled
7 victims as measured by the 28 GHQ scale (which examines areas such as depression, anxiety,
8 life satisfaction and sleep disorders) appears to be lower than that of the general elderly
9 population.²⁴

10 Information provided in DRA's proposal reporting the level of poverty that persons with
11 disabilities experience as compared to the general population, taken together with information
12 provided by proposals submitted to the Court regarding the poverty experienced by Holocaust
13 survivors in general, supports the conclusion that disabled survivors are among the most in need
14 among all Holocaust survivors.

15 **D. DRA's Proposal Provides a Remedy that is an Appropriate**
16 **Acknowledgement of the Nazi Persecution of People with Disabilities**

17 DRA's *Proposal* is unique among the submitted proposals because it is the only proposal
18 that exclusively represents the interests of survivors with disabilities and the disability
19 community as a whole.²⁵ As such, DRA reiterates the importance of addressing the systemic
20 barriers that exist throughout the societies in which survivors with disabilities live in order to
21 directly benefit those survivors and combat the conditions which made the persecution of this
22 victim group possible at the earliest stages of the Holocaust. DRA's proposal is also unique in

23 ²² *Nazi Victims Now Living in the United States*, A United Jewish Communities Report, at 8 (2003).

24 ²³ *Id.* at 10.

25 ²⁴ J. Brodsky, Y. King, *A survey of Disabled Victims of Nazi Persecution and Disabled Veterans of War Against the Nazis* at 4, (hereafter, *Brodsky Study*).

26 ²⁵ Other proposals submitted to the Court represent the interests of disabled survivors in specific regions and for
27 very specific programs (See *Rodeph Chesed Volunteer Ambulette Transport Inc.*; *Computer Sciences for the Blind*; State of Israel, Minister of Finance, *Bureau for the Rehabilitation of Holocaust Survivors*).

1 that it empowers leaders of the disability victim group to make decisions about where the need is
2 greatest so that the particular remedy that is funded can be best tailored to address the conditions
3 that foster discrimination and persecution.

4 DRA's *Proposal* will further promote the integration of persons with disabilities within
5 their larger society. Through this societal integration, those Holocaust survivors who remain
6 alive will be able to personally convey the horrors and lessons to be learned from their
7 experience during the Holocaust, thereby ensuring that the Holocaust experience for persons
8 with disabilities is never forgotten. Indeed, one study of Holocaust Survivors residing in Israel
9 has shown that 80 % of survivors desire to share their experience with others.²⁶ The *cy pres*
10 remedy that DRA has proposed will help break down the barriers that inhibit the advancement of
11 persons with disabilities by funding projects that will provide disabled survivors with an
12 opportunity to more easily venture into the community, helping them overcome the societal
13 conditions that contribute to their social isolation.

14 Because of budgetary constraints, particularly in those countries undergoing the transition
15 to market based economies, funding for systemic changes that will benefit survivors with
16 disabilities are often placed at the end of a long line of social concerns. This contemporary
17 attitude is tragic, because the willingness to delay changes that will protect the basic human
18 rights of persons with disabilities is symptomatic of the discrimination this group continues to
19 suffer on a daily basis, fueled by attitudes of willful ignorance, purposeful neglect, fear and
20 disdain.

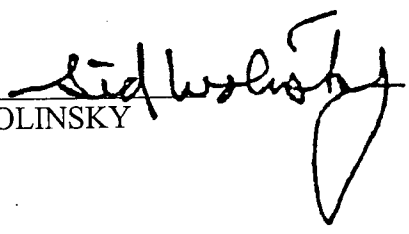
21 Programs funded by DRA's proposal seek a better future, that will not only ensure that
22 the extreme persecution of the Holocaust never takes place again, but that will also usher in a
23 new day that provides dignity and equality for the disabled victim group that has for its entire
24 history been marginalized by every society. Funding for the *cy pres* remedy proposed here is

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²⁶ See *Brodsky Study* at 6.

1 particularly appropriate because of the historic opportunity to implement societal changes that
2 will benefit the most vulnerable group of the Looted Assets Class to perpetual and ongoing
3 discrimination and persecution.

4
5 Dated: March 12, 2004 Respectfully Submitted,

6
7 
8 SID WOLINSKY

9
10
11
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: HOLOCAUST VICTIMS
ASSETS; WEISSHAUS, et al.

Plaintiffs,

v.

UNION BANK OF SWITZERLAND, et al.

Defendants.

Case No. 96CV4849

**REPLY SUBMISSION IN SUPPORT OF
CY PRES AWARD FOR THE CLASS OF
“PEOPLE WHO ARE PHYSICALLY OR
MENTALLY DISABLED OR
HANDICAPPED” FROM THE
ALLOCATION OF RESIDUAL
UNCLAIMED FUNDS**

**Hearing: April 29, 2004
(Appearance Requested)**

Judge: Honorable Edward Korman
Special Master: Judah Gribetz

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**DISABILITY RIGHTS ADVOCATES' REPLY SUBMISSION
TO PROPOSALS SUBMITTED TO THE COURT**

DRA respectfully submits this *Reply Submission* to comment upon proposals for the allocation and distribution of residual unclaimed funds, submitted in response to the Court's November 17, 2003 Order, that were posted on www.swissbanksclaims.com. Disability Rights Advocates ("DRA") has reviewed the proposals submitted to the Court, and herein asserts that information presented to the Court further supports DRA's *Proposal*¹ for a *cy pres* allocation of 2 to 3% of the total settlement funds to establish a Disability Fund, overseen by a Disability Advisory Board, to award grants to projects specifically designed to meet the needs of Holocaust survivors with disabilities and persons with disabilities who live in countries with known populations of Holocaust survivors.²

DRA submitted this *Proposal* on December 18, 2003. The *Proposal* directly addresses the criteria established by the Special Master in his October 2, 2003 *Interim Report*. DRA's *Proposal* estimates the number and location of disabled class members; assesses geographically which members of that group are most in need; analyzes the particular needs of the class of "people who are physically or mentally handicapped"; recommends a specific distribution scheme administered by an agency experienced with delivering the type of assistance requested; and provides a list of supporters endorsing the proposal.

DRA supported the *Proposal* with source data, including information from the World

¹ Proposal for *Cy Pres* Award for the Class of "People Who Are Physically or Mentally Disabled or Handicapped" From the Allocation of Residual Unclaimed Funds (Proposed Order and supporting Declarations filed concurrently), submitted to the Court on December 18, 2003.

² The specific details of the recommendation for the *cy pres* distribution for the class of victims with disabilities are set forth in the Proposed Order, which was attached as Exhibit A to DRA's *Proposal*. The funds would be distributed upon Court Order, with guidance from the Trustee and a Disability Advisory Board. Past experience has shown that projects are most effectively guided by representatives of the population they serve, and therefore the Advisory Board would be composed of people with disabilities and representatives of disability organizations. Such advisors will be well versed in allocating resources and implementing projects which make effective, positive and long-term improvement in the lives of people with disabilities. Priority will be given to projects that directly benefit Holocaust survivors with disabilities. Any remaining funds would be awarded to projects in countries with known population of Holocaust survivors, in order to address those areas in which the harms giving rise to the lawsuit were committed and where members of the victim class remain the most in need. The Trustee will award and distribute all Trust funds no later than three years after the inception of the Trust.

1 Bank, the United Nations, the United States State Department, the National Council on
2 Disability, the European Disability Forum, Amnesty International, and Mental Disability Rights
3 International. DRA's proposal was further supplemented by the expert opinions of Dr. Mitchell
4 LaPlante (Director, Disability Statistics Center, U.C.S.F., former U.N. expert – Committee on
5 Disability Statistics) and Dr. Hugh Gregory Gallagher.

6 DRA's *Proposal* and this *Reply Submission* respond to the distributions and allocations
7 that have taken place during these settlement proceedings. DRA's submissions respectfully
8 request that an allocation in the form of a *cy pres* remedy be awarded, in order to fairly and
9 adequately provide relief to the disabled, one of only five enumerated victim groups who are
10 members of the Looted Assets Class. As of the date of this submission, members of the disabled
11 victim group have not received distributions from this settlement proportionate to their harm,
12 their suffering, or their numbers. In this regard, the current distribution scheme has thus far not
13 adequately acknowledged and compensated Holocaust survivors with disabilities.

14 **I. WHY THE *CY PRES* PROPOSAL IS JUST, APPROPRIATE AND NECESSARY**
15 **FOR THIS UNIQUE CLASS**

16 The lack of targeted notice to the class of persons with disabilities has greatly contributed
17 to this failure to identify and provide assistance to members of the disabled victim class.
18 Inexplicitly, there were no provisions within the Notice Plan to account for the unique needs of
19 persons with disabilities. In so far as we have been able to determine, the Notice Plan, both as it
20 was written and as it was carried out, failed (a) to publish notice of this historic settlement in
21 even one disability-specific publication, (b) to work with even one disability organization, (c) to
22 provide notice in any alternative format (such as large print, audio formats or Braille), or (d) to
23 use any assistive technology whatsoever for people with disabilities, such as accessible
24 computers or telecommunications devices for the deaf.

25 Millions of dollars were allocated for targeted efforts to reach other victim groups, yet
26 despite the obvious needs of disabled survivors for tailored notification efforts, the Notice Plan
27 was not designed or calculated to reach members of this victim group. The omission of
28

1 specifically designed notice for members of the disabled victim class has placed members of this
2 victim group at a unique disadvantage in these proceedings. This extraordinary oversight is
3 compounded by the inherent difficulty of reaching disabled survivors, who are widely scattered,
4 elderly and tend to be isolated within the societies in which they live.

5 In addition to the problem of social isolation, the inherent characteristics of persons'
6 disabilities have presented barriers to effective notice. Due to the nature of their impairments,
7 many disabled people are unable to read or are able to read only with great difficulty, including
8 substantial numbers of people with learning and mental disabilities. Others have low levels of
9 literacy because they were excluded from education under Nazi Germany's regime. Still others
10 require special accommodations that were never made available or apparently even considered in
11 this case. Many survivors need special accommodations in the delivery of legal notice
12 (accommodations which are now routine in class-action notice communication), such as
13 notification in Braille for blind survivors, large type for the elderly, audio formats, and closed
14 caption notices for the deaf. The deaf community, as a result of the failure of public education
15 systems, has a notoriously low level of reading literacy. Even in the United States, the average
16 reading level for a deaf high school graduate is less than third grade. As a result, it is highly
17 unlikely that most deaf survivors regularly read the publications in which the legal notice of the
18 submission process was published (or that they could read and understand the notice and claim
19 documents).

20 All of these and many other factors—including institutionalization, low literacy rates,
21 deprivation of children, low levels of employment, segregation, high levels of poverty, lack of
22 education, special literacy needs, lack of news sources specifically targeted at disability groups,
23 insufficient networking, under funded and uncoordinated organizations, geographical dispersion,
24 and a sense of shame—are significant barriers to effective delivery of legal notice or claims
25 procedures for this group of claimants.

26 Given this set of circumstances, DRA appreciates the enormity of the task assigned to the
27 International Organization of Migration ("IOM") to locate individual Holocaust survivors
28

1 persecuted because of their disability. Unfortunately, in its most recent proposal, IOM informed
2 the Court that it is currently providing aid to only five (5) disabled survivors.³ IOM
3 optimistically anticipates that 60 more disabled victims may become eligible for assistance as the
4 result of information derived from the Holocaust Victims Assets Programme (HVAP), and at
5 best hopes to provide assistance to an additional 150 disabled victims with the help of additional
6 research in its field offices.⁴

7 By way of contrast, approximately a quarter of a million people have received assistance
8 from this settlement and \$545 million has already either been distributed or allocated to class
9 members. Considering that the sum of \$1.25 billion (plus accrued interest) will eventually be
10 distributed, the level of assistance provided to disabled class members to date is tragically
11 insufficient, and is clearly not commensurate with the number of people who are members of this
12 victim group.

13 Justice requires that the Court ensure that the interests of disabled class members are not
14 compromised either by their unique circumstances or by the notice with respect to persons with
15 disabilities. This victim group is entitled to a share of settlement funds that fairly accounts for
16 their widespread persecution during the Holocaust as well as their continuing suffering. As
17 explained in DRA's *Proposal*, a *cy pres* approach will direct a fair percentage of the total
18 settlement funds to ensure that settlement funds inure to the benefit of as many disabled
19 survivors as possible. A final distribution of settlement proceeds without an allocation that
20 acknowledges the suffering of members of the disabled class would be inequitable and unjust.

21 DRA's proposal (which represents the consensus position of over 17 major disability
22 organizations worldwide) differs from other proposals submitted to the Court in that it
23 recognizes that humanitarian aid, at least as it is commonly defined, is not the primary need of
24 members of the disabled class. As disability leaders and groups have long recognized, projects
25 that address the systemic barriers faced by persons with disabilities will better fill the unique

26 ³ International Organization for Migration, *Proposal for the provision of humanitarian assistance to needy, elderly*
27 *Roma, Jehovah's Witness, disabled and homosexual survivors of Nazi persecution*, (2004).

28 ⁴ *Id.*

1 needs of the disability community, will complement the existing aid programs funded by this
2 Court, and will be the most effective and practical mechanism for improving the daily lives of
3 members of the disabled class. The inherent characteristics of persons with disabilities and the
4 unique set of circumstances with regard to the treatment of “the class of people who are
5 physically or mentally disabled or handicapped” throughout this litigation are distinguishing
6 features that provide powerful support for the award of a true *cy pres* remedy to benefit members
7 of the disabled class.

8 Neither DRA nor the disability groups represented here are alone in the view that the best
9 way to help members of the disability community is to provide assistance from a human rights
10 and equality perspective, rather than a social protection model based on charity and pity.⁵ By
11 supporting the funding of projects in this manner, the Court will be in accordance with the
12 international consensus regarding the best way to assist persons with disabilities. By funding
13 proposals that will enhance the independence and integration of men and women with
14 disabilities, the Court can lessen the effect of the so called double edged sword of humanitarian
15 aid with respect to persons with disabilities.⁶

16 DRA, and the disability organizations and individual survivors that it represents,
17 respectfully request that the Court supplement its ongoing efforts to identify Holocaust survivors
18 persecuted because of their disability, with the proposed *cy pres* remedy of a Disability Fund in
19 the amount of 2-3% of the total settlement fund, to be administered by a Disability Advisory
20 Board to fund projects to benefit Holocaust survivors and members of the disability community
21 where known populations of survivors live.

22 **II. INFORMATION CONTAINED IN PROPOSALS SUBMITTED TO THIS COURT**
23 **FURTHER SUPPORT DRA’S PROPOSED *CY PRES* REMEDY**

24 Many of the proposals submitted to the Court seeking distribution of the residual

25 _____
26 ⁵ See *Issues and Emerging Trends Related to the Advancement of Persons with Disabilities*, Report of the
Secretary General, U.N. Doc A/AC 265/2003/1 (2003).

27 ⁶ For a further explanation of the negative effects of humanitarian aid on the disability community, See David
28 Tobis, *Moving from Residential Institutions to Community-Based Social Services in Central and Eastern Europe
and the Former Soviet Union*, The World Bank, at 24 (2000).

1 unclaimed funds support the basic findings and conclusions that DRA made in its own proposal.
2 Specifically, several of the proposals provide additional data and support the following important
3 propositions:

- 4 A. The greatest and most immediate need exists in the geographic areas of the
5 Former Soviet Union and Central and Eastern Europe. Class members in the
6 United States, Israel and the countries of Western Europe are also experiencing
7 need, but to a lesser degree;
- 8 B. Holocaust survivors are experiencing a high incidence of disability that is likely to
9 continue to increase in the coming years; and
- 10 C. While Holocaust survivors as a group are in desperate need of assistance, there is
11 considerable reason to believe that disabled survivors are among the neediest of
12 this group;
- 13 A. **Need Remains the Greatest in the Countries of the Former Soviet Union, and**
14 **Central and Eastern Europe; Substantial Needs Still Exist in the United**
15 **States, Israel and Western Europe**

16 For men and women with disabilities, the need for assistance to address systemic barriers
17 and the root causes of discrimination is the most pressing in the countries of the Former Soviet
18 Union, and Central and Eastern Europe. As DRA noted in its *Proposal*, the nations of Central
19 and Eastern Europe “remain like third world countries in their treatment of people with
20 disabilities.”⁷ Attitudinal barriers, frequent institutionalization, inaccessible architecture, and a
21 history of social, political and economic exclusion are the norm in this region of the world.
22 These social conditions reinforce debilitating “stereotypes and prejudices (which) continue to
23 precipitate discrimination and dehumanization” for persons living with disabilities within these
24 societies.⁸ Depressed economic conditions in this region further reduce the minimal care
25 provided by existing social safety nets. Throughout its *Proposal*, DRA reported numerous
26 examples of the types of dire societal conditions facing men and women with disabilities

27 ⁷ *Proposal* at 20.

28 ⁸ *Id.* at 21.

1 throughout this region and in countries such as Russia, Hungary, Romania, Bulgaria, and
2 Poland.⁹

3 DRA's *Proposal* accounts for the needs of persons with disabilities in this region of the
4 world by recommending that the Disability Fund prioritize the distribution of funds based upon
5 geographic areas. As the Proposed Order DRA submitted to the Court explains: "(g)iven the
6 pattern of distributions to Holocaust survivors thus far in the settlement and identification of
7 geographic areas where disabled Holocaust survivors are most in need, the Court anticipates that
8 the funding for proposals that will benefit persons with disabilities will be apportioned
9 geographically in approximately the following percentages: Central and Eastern Europe
10 (including the countries within the former Soviet Union) (65%), Western Europe (10%), Israel
11 (10%), the United States (10%) and other (5%)".¹⁰ DRA believes that this proportional
12 allocation fairly addresses the relative degree of need in the various countries where Holocaust
13 survivors live. Distributions along these geographical lines will help begin the process of
14 comprehensively addressing the discriminatory societal conditions that continue to exist for
15 persons with disabilities throughout the world.

16 Further support for this allocation can be found in other proposals submitted to the Court.
17 For example, the proposal submitted by the American Jewish Joint Distribution Committee
18 ("JDC"), included the *Brandeis Study*, which reported findings regarding Jewish survivors with
19 disabilities in four countries of the former Soviet Union (Russia, Ukraine, Belarus, Moldova), as
20 well as Israel and the United States.¹¹ The *Brandeis Study's* "key finding in (its) analyses (was)
21 that Nazi victims in the FSU are clearly more disadvantaged than victims in the United States in
22 Israel."¹² The *Brandeis Study* concluded that "the lack of an adequate and effective social safety

23 ⁹ See *Proposal* at 20-27.

24 ¹⁰ See *Proposed Order* at 4, attached as Exhibit A to the *Proposal*.

25 ¹¹ *Presentation on the Condition and Needs of Jewish Victims of Nazi Persecution in the Former Soviet Union*, The
26 American Jewish Joint Distribution Committee (JDC); and *Jewish Elderly Nazi Victims: A Synthesis of
Comparative Information On Hardship and Need in the United States, Israel and the Former Soviet Union*
(hereafter the "*Brandeis Study*").

27 ¹² *Brandeis Study* at 4.
28

1 net in the FSU countries results in extreme hardship among Nazi victims.”¹³

2 The JDC reported similar conditions in the countries of Central and Eastern Europe
3 (defined by the JDC as Albania, Bosnia-Herzegovina, Bulgaria, Croatia, Czech Republic,
4 Hungary, Macedonia, Poland, Romania, Slovakia, and Slovenia). JDC suggested that virtually
5 all (Jewish) survivors in the region are needy, noting the following: Survivors lack family
6 networks to support and care for them; current medical and welfare infrastructures cannot
7 provide adequate care; social safety nets have collapsed as the result of the geo-political reforms;
8 victims suffer from chronic illnesses, conditions and severe depression and have often lost the
9 support of their family members.¹⁴ In addition, macro-economic conditions have made the need
10 in the countries of Central and Eastern Europe particularly pressing.

11 While the *Brandeis Study* recognized that the most immediate need exists in the countries
12 of the Former Soviet Union and Central and Eastern Europe, it also recognized that substantial
13 need also exists in the more developed nations of the United States and Israel.¹⁵ Several other
14 proposals support this conclusion as well.¹⁶ Taken together as a group, the overall assessment of
15 need in the proposals submitted to the Court roughly mirrors DRA’s proposed pattern of
16 allocation throughout the various regions that Holocaust survivors live.

17 **B. The Incidence of Disability is Very High and Increasing Among Holocaust**
18 **Survivors in Central and Eastern Europe, the Former Soviet Union, Israel,**
19 **and the United States**

20 DRA previously informed the Court that “(o)ne aspect of the Holocaust survivor
21 population that is certain is that the class of persons who are Holocaust survivors with disabilities
22 has undoubtedly enlarged in the decades since the Holocaust took place...conditions of the
23 Holocaust also are certain to have created an increased rate of disability of psychological,

24 ¹³ Id. at 41.

25 ¹⁴ *Presentation on the Condition and Needs of Jewish Victims of Nazi Persecution in Central and Eastern Europe*,
American Jewish Joint Distribution Committee, (2003).

26 ¹⁵ *Brandeis Study* at 4.

27 ¹⁶ See, for example, proposals from entities such as: *UJA Federation of New York; United Jewish Communities;*
28 *American Gathering of Jewish Holocaust Survivors; Foundation for the Benefit of Holocaust Victims in Israel;*
and World Jewish Restitution Organization.

1 emotional, and physical dimensions.”¹⁷

2 Additional evidence of this high rate of disability is provided by several of the proposals
3 submitted to the Court. As an example, the *Brandeis Study* reported the following alarming
4 levels of disability in the countries it studied:

- 5 • Russia (54% disabled to some degree; 66% vision impaired; 24 % hearing impaired);
- 6 • Ukraine (23% disabled to some degree; 55% vision impaired; 24% hearing impaired);
- 7 • Belarus (33% disabled to some degree; 45% vision impaired; 21% hearing impaired);
- 8 • Moldova (22% disabled to some degree; 69% vision impaired; 29% hearing impaired);
- 9 • Israel (21% unable to perform one ADL; 29% vision impaired; 29 % hearing impaired);
- 10 • United States (26% live in households in which someone has a disability).¹⁸

11
12 Given the advanced average age of Holocaust survivors, and the escalating prevalence of
13 disability as age increases, DRA believes that the forgoing statistics are actually understated. In
14 any event, while the *Brandeis Study* is not exhaustive and only focuses upon the Jewish
15 population served by Hesed centers, these statistics indicate that the Jewish population of
16 Holocaust survivors are experiencing a high rate of disability, particularly in the countries of the
17 Former Soviet Union. It is reasonable to assume that the overall number of survivors who have
18 an increased incidence of disability is even higher if one includes the populations of the four
19 remaining groups of the Looted Assets Class, (i.e. Roma, Jehovah’s Witnesses, Homosexual, and
20 Disabled) who have all likely experienced increased incidence of disability in the years
21 following the Holocaust.

22 **C. Holocaust Survivors with Disabilities are Among the Neediest in the World**

23 In order to fairly allocate the residual unclaimed funds that remain, the Court asked that
24 proposals explain why the target group to be served by their proposal is in need. DRA submitted
25 information from numerous sources in support of the proposition that Holocaust survivors with
26

27 ¹⁷ *Proposal* at 19.

28 ¹⁸ *Brandeis Study* at 37-38.

1 disabilities suffer from extreme poverty, are routinely neglected, segregated and marginalized by
2 the societies in which they live, and are therefore deserving of the assistance that a *cy pres*
3 remedy from this settlement will provide. The repeating cycle of poverty experienced by
4 individuals with disabilities has had a negative influence on the overall advancement of persons
5 with disabilities as a group, limiting their options, preventing their integration into the societies
6 in which they live, and contributing to their lesser sense of well-being. Moreover, the problems
7 faced by survivors with disabilities are compounded by the life-long-lasting effects of the
8 persecution they suffered during the Nazi regime.

9 DRA's *Proposal* cited numerous sources which have studied the basic link between
10 disability and poverty. These studies universally acknowledge that persons with disabilities in
11 the developing world are among the "poorest of the poor." Stienstra, Fricke, and Aubin, *Baseline*
12 *Assessment: Inclusion and Disability in World Bank Activities* 2002).¹⁹ Other studies,
13 specifically aimed at understanding the link between poverty and disability, have concluded that
14 "disabled people are poorer, as a group, than the general population and that people living in
15 poverty are more likely than others to be disabled." Ann Elwan, *Poverty and Disability: A*
16 *Survey of the Literature*, World Bank Social Protection Discussion Paper No. 9932 (1999).²⁰
17 Other multi-national organizations have similarly noted that "disabled people are among the
18 most vulnerable groups to poverty." European Disability Forum, *Disability and Social Exclusion*
19 *in the European Union* (2002).²¹

20 Given the link between disability and poverty among members of the general population,
21 it is realistic to assume that men and women with disabilities within the survivor population can
22 be expected to suffer from more poverty and distress than survivors who have not acquired a
23 disability. The resulting level of poverty is extreme, because survivors as a group are already
24 greatly affected by poverty compared to non-victim groups. For example, one proposal which
25 provided comparative data between survivors and the general population noted that in the United

26 ¹⁹ See *Proposal* at 18.

27 ²⁰ *Id.*

28 ²¹ *Id.* at 22.

1 States, the median income for (Jewish) victims is \$15,700 when compared to non-victims
2 average of \$40,800.²² That same proposal noted that victims are 5 times more likely to be living
3 below the poverty level than non-victims.²³

4 In addition to the poverty experienced by disabled survivors, another indication of their
5 relative need compared to other victim groups is their depressed sense of well being. One study
6 submitted to the Court reported that (t)he overall sense of emotional well being of the disabled
7 victims as measured by the 28 GHQ scale (which examines areas such as depression, anxiety,
8 life satisfaction and sleep disorders) appears to be lower than that of the general elderly
9 population.²⁴

10 Information provided in DRA's proposal reporting the level of poverty that persons with
11 disabilities experience as compared to the general population, taken together with information
12 provided by proposals submitted to the Court regarding the poverty experienced by Holocaust
13 survivors in general, supports the conclusion that disabled survivors are among the most in need
14 among all Holocaust survivors.

15 **D. DRA's Proposal Provides a Remedy that is an Appropriate**
16 **Acknowledgement of the Nazi Persecution of People with Disabilities**

17 DRA's *Proposal* is unique among the submitted proposals because it is the only proposal
18 that exclusively represents the interests of survivors with disabilities and the disability
19 community as a whole.²⁵ As such, DRA reiterates the importance of addressing the systemic
20 barriers that exist throughout the societies in which survivors with disabilities live in order to
21 directly benefit those survivors and combat the conditions which made the persecution of this
22 victim group possible at the earliest stages of the Holocaust. DRA's proposal is also unique in

23 ²² *Nazi Victims Now Living in the United States*, A United Jewish Communities Report, at 8 (2003).

24 ²³ *Id.* at 10.

25 ²⁴ J. Brodsky, Y. King, *A survey of Disabled Victims of Nazi Persecution and Disabled Veterans of War Against the Nazis* at 4, (hereafter, *Brodsky Study*).

26 ²⁵ Other proposals submitted to the Court represent the interests of disabled survivors in specific regions and for
27 very specific programs (See *Rodeph Chesed Volunteer Ambulette Transport Inc.*; *Computer Sciences for the Blind*; State of Israel, Minister of Finance, *Bureau for the Rehabilitation of Holocaust Survivors*).

1 that it empowers leaders of the disability victim group to make decisions about where the need is
2 greatest so that the particular remedy that is funded can be best tailored to address the conditions
3 that foster discrimination and persecution.

4 DRA's *Proposal* will further promote the integration of persons with disabilities within
5 their larger society. Through this societal integration, those Holocaust survivors who remain
6 alive will be able to personally convey the horrors and lessons to be learned from their
7 experience during the Holocaust, thereby ensuring that the Holocaust experience for persons
8 with disabilities is never forgotten. Indeed, one study of Holocaust Survivors residing in Israel
9 has shown that 80 % of survivors desire to share their experience with others.²⁶ The *cy pres*
10 remedy that DRA has proposed will help break down the barriers that inhibit the advancement of
11 persons with disabilities by funding projects that will provide disabled survivors with an
12 opportunity to more easily venture into the community, helping them overcome the societal
13 conditions that contribute to their social isolation.

14 Because of budgetary constraints, particularly in those countries undergoing the transition
15 to market based economies, funding for systemic changes that will benefit survivors with
16 disabilities are often placed at the end of a long line of social concerns. This contemporary
17 attitude is tragic, because the willingness to delay changes that will protect the basic human
18 rights of persons with disabilities is symptomatic of the discrimination this group continues to
19 suffer on a daily basis, fueled by attitudes of willful ignorance, purposeful neglect, fear and
20 disdain.

21 Programs funded by DRA's proposal seek a better future, that will not only ensure that
22 the extreme persecution of the Holocaust never takes place again, but that will also usher in a
23 new day that provides dignity and equality for the disabled victim group that has for its entire
24 history been marginalized by every society. Funding for the *cy pres* remedy proposed here is

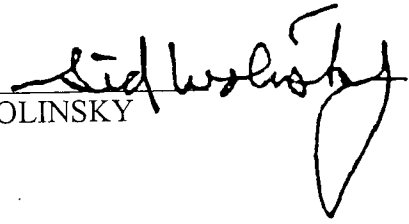
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28 ²⁶ See *Brodsky Study* at 6.

1 particularly appropriate because of the historic opportunity to implement societal changes that
2 will benefit the most vulnerable group of the Looted Assets Class to perpetual and ongoing
3 discrimination and persecution.

4
5 Dated: March 12, 2004

Respectfully Submitted,

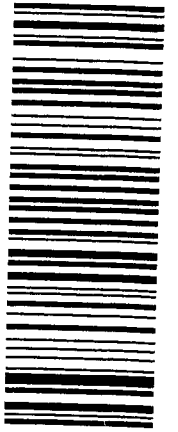
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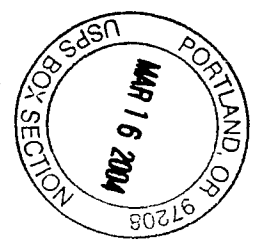
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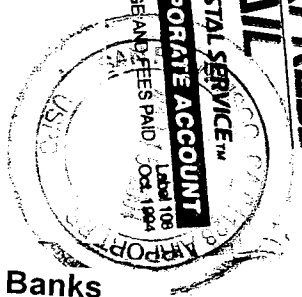
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