

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE: :
HOLOCAUST VICTIM ASSETS :
LITIGATION :
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This document relates to: All Cases :
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Case No. CV 96-4849 (ERK)(MDG)
(Consolidated with CV 96-5161 and
CV 97-461)

MEMORANDUM & ORDER

KORMAN, C.J.

My opinion of December 8, 2000, implementing the Plan of Allocation and Distribution (the "Plan") for the Settlement Fund in the Holocaust Victim Assets case, provided for Special Masters Paul A. Volcker and Michael Bradfield to submit, for my approval, a draft of final rules to govern the Claim Resolution Tribunal in its conduct of the Deposited Assets claims process. On February 1, 2001, the Special Masters submitted a draft of these Rules.

These draft Rules are a prerequisite to the beginning of the claims resolution process for the Deposited Assets Class with the publication of 21,000 accounts in Swiss banks that were determined by the Independent Committee of Eminent Persons ("ICEP") to have a "probable" relationship to Nazi victims. We are now at this point as a result of an Agreement of January 26, 1999 (as amended) settling this litigation, its approval as fair, reasonable and adequate in my amended Final Order and Judgement of August 2, 2000, In Re Holocaust Assets Litigation, 105 F.Supp.2d 139 (E.D.N.Y. 2000), and the approval of Special Master Judah Gribetz's proposed Plan of Allocation and Distribution of the Settlement Fund on November 22, 2000.

The Settlement Agreement, as amended and approved, provides that the Claims Resolution Tribunal - established in Switzerland in 1997 to adjudicate claims to dormant accounts in Swiss

banks of foreigners which were published at that time – will carry out a claims resolution process to perform functions relating to the fair and equitable distribution of the Settlement Fund. For awards adjudicated by the Tribunal, the approved Plan sets aside up to \$800 million of the \$1.25 billion Settlement Fund for this purpose.

On December 8, 2000, I appointed Messrs. Volcker and Bradfield as Special Masters to establish, organize and supervise the Claims Resolution Process using the Claims Resolution Tribunal provided for in the Settlement Agreement and in the Plan, and to carry out all other tasks necessary to establish and implement the Claims Resolution Process. As part of this task, as noted above, they were charged with proposing Rules to Govern the Claims Resolution Process. They conducted discussions with interested parties on drafts of the Rules, and held a well-attended public hearing on January 19, 2001, receiving statements from seven persons making comments on the proposed Rules.

I have reviewed the draft Rules including the provisions on publication of accounts, availability of bank data for the claims resolution process, the procedures for adjudicating claims based on a relaxed standard of proof, and the criteria for making awards. I have given special attention to those provisions of the Rules that base awards on certain presumptions when a claimant has carried the burden of proof to warrant an award, but the amount in the account is unknown and/or information is missing on whether the account owner received the proceeds of the account. I find these provisions to be appropriate, but again endorse the provisions of the Plan which provide for an initial payment of 35 percent of such awards and payment of up to an additional 65 percent after all deposited assets awards have been paid.

I have also given particular attention to the provisions of the Rules on the availability of bank records to the claims resolution process. The availability of information from bank records that was

compiled by the ICEP auditors is critical to a fair claims resolution process. In my Final Order and Judgment of August 2, 2000, as amended, I welcomed the commitment of the defendant banks to create a centralized electronic data base relating to their share of the "probable and possible" accounts identified by ICEP, and to permit the claims resolution process to have access to Swiss address accounts included in the bank records established by the ICEP auditors. I also noted my concern about the possibility that other banks with accounts in these categories would not make their records available to the same extent as the defendant banks, and that by so doing they would withhold from class members the information necessary to claim the benefits to which class members are entitled under the Settlement. Such conduct would violate the duty of those banks to cooperate in good faith with the implementation of the Settlement Agreement and place in jeopardy the releases they seek. I have been informed by the defendant banks that all banks with such ICEP auditor records have agreed commendably to make such records available for the claims resolution process.

The Rules establish detailed provisions for making the Bank records compiled by the ICEP auditors available for the claims resolution process. These provisions include not only the publication of the ICEP designated 21,000 "probable" accounts, but also access to the 36,000 total centralized and consolidated database of all of the ICEP identified "probable and possible" accounts. In addition, access to all 4.1 million accounts compiled by the ICEP auditors is also provided for in three specific situations based on a reasoned and satisfactory determination:

- (a) where there has been a match to the 36,000 accounts "probable and possible" database, and the likelihood of an award, in order to determine if the matched account owner had other accounts at the same or other banks;
- (b) where the account owner is said to have given the bank a Swiss address; and

(c) where a Tribunal Claims Judge, in a written opinion, supported by a Senior Appeals Judge, determines that the Claimant has identified an account of a Nazi victim that is likely to be found on the databases of the 4.1 million accounts.

These provisions, which are neither specifically authorized or prohibited by the Settlement Agreement, are considered by the Special Masters as essential for a fair claims process. I agree. Their inclusion in the Rules, with the consent of the defendant banks, has been facilitated by the addition of Appendix A to the Rules that establishes detailed arrangements for protection of the confidentiality of bank data, the redaction of data unrelated to claimed accounts, and the names of intermediaries. I am informed by the Special Masters that the defendant banks have commendably agreed that all the ICEP auditor compiled records for their banks would be made available for the claims resolution process as provided in the Rules.

Because of the importance of the availability of these records to the fairness of the claims resolution process, I call on all Swiss banks holding ICEP auditor compiled records to act as "Participating Banks" as provided for in the Rules. Moreover, for the same reasons as stated in my Final Order and Judgment of August 2000, as amended, it may be inappropriate to extend the benefits of the Settlement Agreement to those banks that do not participate in the good faith implementation of the Settlement as "Participating Banks." I need not resolve this issue at this point. Instead, I include this caveat to insure that my approval of the Rules not be interpreted as sanctioning conduct that is inconsistent with the duty of good faith.

On the basis of my review of the proposed Rules, I conclude that they accomplish the objective of providing a detailed and comprehensive plan for receiving and adjudicating the claims of Deposited Assets Class Claimants and for a fair, equitable, and expeditious resolution of their

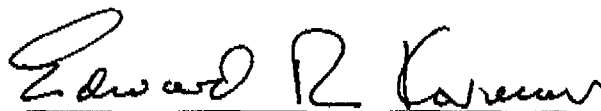
individual claims. They are hereby approved for implementation by the Claims Resolution Tribunal under the supervision and monitoring by Special Masters Volcker and Bradfield.

With the approval of the Rules, the claims resolution process can begin with the publication of the "probable" accounts on February 5, 2001. Claimants will now have a six months period to submit claims, and decisions on claims and awards to claimants with meritorious claims will start immediately thereafter.

Conclusion

The Holocaust Victims Asset litigation and its settlement covers numerous important issues. Nevertheless, one of its most essential components is the unpaid deposited assets class. It is with great satisfaction that the process of resolving the claims of this class can now commence. It should now move forward rapidly to a conclusion, making a record that will justify closing the book on this problem of the past that still troubles us so acutely today.

SO ORDERED.



Edward R. Korman
United States District Judge

Brooklyn, New York
February 5, 2001

Press Release

The Claims Resolution Process Begins

Special Masters Paul A. Volcker and Michael Bradfield today announced the worldwide publication on the Internet of a list of names of the people who owned some 21,000 accounts in Swiss banks during the years from 1933 to 1945 and were “probably or possibly” victims of Nazi persecution. The publication of the list, together with the distribution of forms for making claims, begins a claims resolution process that will provide awards to victims, or their heirs, establishing ownership of Swiss bank accounts. The existing Claims Resolution Tribunal (“CRT”) in Zurich will evaluate and decide on claims. Up to \$800 million from the \$1.25 billion Settlement Fund established by the settlement of the Holocaust Victim Assets Litigation will be available for payment awards.

Mr. Volcker said: “This day has been a long time in coming, but we are in the last chapter of the review of the handling by Swiss banks of funds of Holocaust victims. Claimants should provide the most complete information that they can about the accounts that they or their relatives now claim. With these materials in hand, the CRT can begin the process on analyzing claims and making award.”

In deciding upon claims, the CRT will have the substantial resource of records on accounts in Swiss bank from the 1935-1945 that period that were compiled by the auditors who carried out the investigation conducted by the Independent Committee of Eminent Persons (“ICEP”). In addition to the 21,000 accounts published today, the ICEP auditors compiled records on another 15,000 accounts where there is evidence of a possible relationship to Nazi victims, but not as compelling as for the published accounts. In addition, there is an ICEP auditor compiled database of about 4.0 million accounts that existed during the relevant 1939-45 period that can be used in the claims resolution process if there is a reasoned and satisfactory basis for doing so.

The Rules to govern the CRT process were approved last week by Judge Korman, the presiding Judge in the Holocaust Victims Assets case. Mr. Volcker said: “Assuming voluntary cooperation by all banks, the Rules make it possible to fully use the data resources from the ICEP investigation. This has been made possible by developing a method for using this data in a way that assures that Swiss law requirements on the confidentiality and privacy of bank records can be preserved.”

A major effort has been made to provide full information about the claims resolution program to potential claimants. An information packet that includes a claim form and instructions has been mailed for arrival today to 82,000 people who had responded to a

questionnaire indicating that they had a claims to a Swiss account from the relevant period. The information packet includes directions for obtaining help in filling out the form from volunteers organizations. The 21,000 account list, the claim form and instructions, and other information about the claims resolution process, can be viewed and downloaded from various websites on the Internet. These include the official publication website of the Swiss Banks Association (www.dormantaccounts.ch), the web site of the CRT (www.crt-ii.org) and the website of the Holocaust Victims Assets Litigation (www.swissbankclaims.com).

As of February 2000, the ICEP auditors identified approximately 46,000 accounts in Categories 1 - 4, 26,000 of which were judged as deserving of publication given the evidence of a probable relationship. Since that time, the number of accounts for publication, have been refined to approximately 21,000 and the total number of accounts judged to be "probably or possibly" related to Holocaust victims is now listed at 36,000. Account totals have been reduced by 9,999 accounts. Further research has established that 3,503 of the earlier identified accounts were active after 1945. Another 2,589 accounts were of the owners that had a non Axis domicile or were closed before the account owner's home country was invaded by Axis forces. Some 1,435 accounts were found to be duplicates.

The careful review process of new information about accounts brought to the ICEP auditors for their decision has provided some additional assurance that the accounts that have survived this review have been appropriately characterized as "probably or possibly" those of victims of Nazi persecution.

In concluding its earlier work, the Independent Committee of Eminent Persons noted that the investigation had been

"a long, expensive, and difficult process, filled with frustration and emotion The Committee is satisfied that its work has now developed the record of the Swiss banks with respect to the funds of victims of Nazi persecution with as much detail, objectivity, and accuracy as the passage of time permits. A framework can be established for providing a measure of justice to those whose claims have for too long been denied."

The Special Masters also announced that an Advisory Committee, chaired by Mr. Israel Singer, Secretary General of the World Jewish Congress, is being appointed to advise the Special Masters on their work.

Mr. Volcker, in summarizing the new work, said "With the Claims Resolution Process now underway, crucially unfinished business can finally be completed, drawing a final line under this contentious and difficult matter.