

EXCERPTS FROM CLASS COUNSEL MEMO
TO JUDGE SEITZ IN SUPPORT OF PROPOSED SETTLEMENT OF
“HUNGARIAN GOLD TRAIN CASE”

From Memorandum in Support of Motion for Preliminary Approval, pp. 9-13:

Based on contact with class members and prior experience before the Court, there are three prefatory questions that class counsel would like to address:

(1) **Is \$25.5 million an acceptable compromise figure?**

For three reasons, class counsel believes that \$25.5 million is an acceptable compromise figure. The United States has interposed formidable factual and legal challenges to a class-wide recovery. The United States’ defenses include the 60 year age of the claims, the sovereign status of the United States, the lack of precise information on the contents of the train when the United States accepted custody of it in May 1945 and certain diplomatic agreements with Hungary and other nations. Successful resolution of these issues would likely take years and could extend beyond the expected lifetime of many eligible Hungarian victims of Nazi persecution. And, it is extremely possible that the United States would defeat class certification or even prevail on one of its defenses. There are real litigation risks presented.

Second, there is no certainty as to the value of the goods on the Gold Train when it came into the hands of the U.S. Army. There have been many widely-varying estimates of the value of the property on the Gold Train, both from the postwar era and more recently. No inventory was ever made of the property, much less a detailed appraisal, and therefore any estimate is somewhat speculative.¹ However, reputable experts who have intensively studied the Gold Train agree that post war rumors of extreme value are exaggerated. Much valuable cargo was taken off the train before it came into the possession of the United States. Plaintiffs’ historical expert, Gábor Kádár, in his book *Self-Financing Genocide*, estimated the value at \$6.5 to \$13 million in 1945 dollars, or approximately \$65 to \$130 million today, before the removal of certain valuable items, leaving a value of \$45 million to \$90 million in today’s dollars. The total recovery in this case is thus approximately 28 percent to 56 percent of the total value of the train’s worth according to those estimates. Professor Ronald Zweig, who also spent years studying the Gold Train and serves as defendant’s expert, has repeatedly written and stated that postwar estimates were highly exaggerated. Given the substantial factual and legal

¹ The value cited in Paragraph 11 of the First Amended Complaint, as amended, was based on a statement of the U.S. Army officer who observed the property in the warehouse. It is in the middle of the range of postwar estimates.

hurdles that would have had to be overcome before any recovery through further litigation, and the very real risk of no recovery at all, class counsel believes that the compromise figure of \$25.5 million represents a fair and reasonable, indeed outstanding, result.

Third, the settlement provides important non-monetary relief. The acknowledgment that the United States will issue, and the archive the settlement will finance are vital non-monetary terms that augment the monetary recovery, especially since this case is more about history than about money to most Class members.

(2) **Why has the settlement not provided for individual payment to individual class members as compensation?**

The settlement does not provide for direct payments to class members as compensation for property lost on the Gold Train. Instead the money will be used to fund social welfare programs benefiting eligible class members according to the plan of distribution. After years of litigation, the parties concluded that attempting to provide compensation payments directly to class members would be impractical because of the difficulties of determining which individuals had property on the Gold Train (or were heirs of such individuals) and the value of such property, and because the administrative costs of determining which class members would be eligible for such compensation payments could very well equal or exceed the total size of the settlement fund. In addition, given the size of the class, individual payments may not have amounted to more than a token amount. By contrast, agglomerating the funds in this fashion will provide maximum, tangible benefit where it will make the most difference to class members.

A proof of claims procedure would be futile. It is now nearly impossible for the vast majority of class members to show that (or even know whether) they or their family members had property on the Gold Train at the time it came into the possession of the U.S. Army in 1945, and if so, what property it was. Also claimants might have to establish that he/she is the correct person to assert that claim nearly 60 years later. Any claims procedure based on individual proof would thus face enormous practical difficulties, entail long delays, consume a huge amount of the available resources and might well yield disappointing results.

Any distribution on a “per claim” basis would face similar practical difficulties that could render such a procedure futile as well. There would be significant questions of eligibility (*e.g.*, How many claimants per family? Who can assert a claim?) Any “per claim” basis that included heirs would result in an extremely modest payment often with lengthy and expensive claims procedures to determine who is a proper claimant.

After extensive and repeated consultation with class members, class counsel determined to accept a plan of distribution designed to assist victims of the Holocaust from Hungary who are in need. Several factors supported that decision. An important element of the settlement is that the special fund is being allocated geographically according to the relative proportion of Hungarian Nazi victims, and will be distributed over a five year period. Therefore, all class members who are Nazi victims are potentially eligible to receive monetary benefits, because even those who are self-sufficient today may find themselves in need of assistance in the future.

The designations will be developed through a transparent process with input from many sources, will be available in advance of the opt-out date, and will be subject to the approval of the Court. And class members have full opt-out rights.

Class counsel believes that limiting distribution of the Special Fund to Hungarian Holocaust survivors in need, rather than making individual payments of small sums to all class members, and providing for the archiving and dissemination of the history of the looting of the Hungarian Jewish community, is the most justifiable and practicable settlement of this case to benefit the Class as a whole.

(3) What Benefits Do Heirs Receive?

Jewish Hungarian Nazi victims are eligible to receive welfare benefits through the settlement. Heirs cannot receive direct monetary benefits. As monetary consideration, heirs receive a \$500,000 *cy pres* award to a recipient institution for the compilation of an historical archive about the Gold Train and the looting of the Hungarian Jewish community during World War II. This archive will be available for years to come and will be a permanent memorial of the tragic events that gave rise to this case. In addition, heirs benefit by the issuance by the United States of a statement of acknowledgment about the events regarding the Gold Train. This acknowledgment is important for intangible but real reasons. Numerous survivors and heirs have repeatedly stressed the importance of this statement.

Finally, many heirs will benefit indirectly from the social welfare programs offered to victims of Nazi atrocities to the extent that it will lighten their burden in caring for elderly relatives in need. Counsel represent to the Court that in discussing possible settlement terms with class members, heirs cited the need for funds to care for elderly Hungarian Nazi victims who are in need today.