

THE APPEALS PANEL

Established under an Agreement dated 16th October, 2002 made by and among the Foundation “Remembrance, Responsibility, and Future”, the International Commission on Holocaust Era Insurance Claims, and the German Insurance Association

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

16 July, 2003

FIRST REPORT OF THE APPEALS PANEL TO THE FOUNDATION “REMEMBRANCE, RESPONSIBILITY, AND FUTURE”, THE GERMAN INSURANCE ASSOCIATION AND THE INTERNATIONAL COMMISSION ON HOLOCAUST ERA INSURANCE CLAIMS

By section 3.12 of Annex E, the Appeals Guidelines (the Appeals Guidelines) included in the Agreement dated 16th October, 2002 (the Agreement) made by and among the Foundation “Remembrance, Responsibility, and Future” (the Foundation), the International Commission on Holocaust Era Insurance Claims (the ICHEIC), and the German Insurance Association (the GDV) (jointly called the parties to the Agreement), the Appeals Panel is required to submit to the parties to the Agreement quarterly written reports on its appeals processing. These reports shall include the activities and the conduct in general and the expenses, costs and fees that it has incurred.

I—GENERAL

1. This First Report covers the period 18th December, 2002 to 30th June, 2003. The Appeals Panel acknowledges that this First Report covers a period greater than that specified and required by section 3.12 of the Appeal Guidelines. This is due to the time needed for the Appeals Panel to set up and establish its procedures. Future reports will be published quarterly in accordance with the Appeals Guidelines.
2. The Appeals Panel met on 18th December, 2002 in Williamsburg, Virginia, USA. The Appeals Panel also met in London, England on 24th—25th January, 3rd—4th March, and 25th—27th June, 2003. The Appeals Panel further met and discussed specific issues by way of several telephone conferences.

II—STATISTICAL SUMMARY

3. A Statistical Summary of the status of appeals in the Appeals Office for the Appeals Panel is set out in Annex 1 attached. Of the 15 Allianz appeals none is yet processed for the reasons set out in the section Audit Compliance and Appeal. Of the 18 RAS appeals 6 are “perfected” for the reasons set out in the section “Perfecting” Appeals and the remainder await receipt of a the Appeal Form signed by the claimant.

III—SPECIFIC ISSUES

Election of Chairman

4. Under section 3.3. of the Appeals Guidelines, the three members of the Appeals Panel are required to select a Chairman from among themselves. At its meeting on 18th December, 2002 the three Panel Members elected Timothy J Sullivan as its Chairman.

Location of the Appeals Office

5. By section 4 of the Appeals Guidelines the Appeals Panel is required to “determine its internal administrative procedures, which include the establishment of an appeals office, and accordingly enact its internal rules and administrative procedures after approval of the Foundation and ICHEIC. The Panel shall appoint an appeals office in an appropriate venue, having regard for cost, convenience and efficiency”.
6. In accordance with this provision the Appeals Panel has concluded that the administrative support for the Appeals Panel should in the interest of efficiency and cost saving be provided by an “Appeals Office” located in the London Office of the ICHEIC. It was agreed also that, though a clear distinction must be maintained at all times between work undertaken in the Appeals Office for the Appeals Panel and the Appeals Tribunal, the same Appeals Office should service the ICHEIC Appeals Tribunal as well as the Appeals Panel. . The details of the tasks of the Appeals Office as well as its independence in all matters regarding the appeals are covered by the Internal Rules and Guidelines (see No 7).

Internal Rules and Guidelines

7. The Appeals Panel agreed its Internal Rules and Guidelines on 4th March, 2003 and has obtained the necessary approval of the ICHEIC and the German Foundation in conformity with sections 3.7 and 4.1 of the Appeals Guidelines.

Organization of the Appeals Office

8. The Appeals Panel also agreed on the organization and work-flow charts for the Appeals Office. It further agreed the content of the Pro-forma Case Summary intended to prepare the file for decisions of the Appeals Panel in individual cases. Finally, it agreed the appointment of an Interim Project Manager as proposed by ICHEIC and requested it to continue with the set up of the Appeals Office and to start the process of hiring a Legal Adviser and additional staff.

Amendment to the Appeal Form—Annex G to the Agreement

9. The Appeals Panel has given consideration to the nature of its dispute resolution process as set up under the Agreement and considered it was an arbitration under Swiss law though this was not expressly stipulated in the Agreement. In addition the Appeals Panel considered that certain terminology in the Appeal Form—Annex G to the Agreement was incorrect and that there were certain doubts as far as the waivers (no further appeal, immunity) were concerned. Accordingly,

the Appeal Panel requested the ICHEIC to ascertain the position under Swiss law.

10. Upon legal advice obtained by the ICHEIC it was confirmed that the appeals process established under the Agreement is an arbitration under Swiss law. Again upon legal advice received the Appeals Panel considered with regard to the waivers that an amendment to the Appeal Form—Annex G to the Agreement should be proposed to the parties to the Agreement to provide the necessary protection for the Appeals Panel and to make the Appeal Panel's decisions final.
11. By a letter agreement dated 14th March, 2003 the parties to the Appeal Form agreed the new text of the Appeal Form. Effectively the new text of the Appeal Form means that by signing the Appeal Form the Claimant consents to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law; agrees to be bound by the documents referenced in the Appeal form; waives any right to appeal the decision of the Appeals Panel in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law; and waives the right to make any claims against (i) the Appeals Panel, Members or Arbiters or (ii) the Appeals Office or its agents and employees, except as provided under Swiss law.

“Perfecting” Appeals

12. Though amendment to the Appeal Form, as referenced above, was necessary one consequence of the amendment is that the Appeals Office has received from claimants Appeal Forms which have been submitted using the originally agreed Appeal Form. Surprisingly, the Appeals Office has also received Appeal Forms from claimants which do not comport even to the originally agreed Appeal Form. The Appeals Panel has thus given consideration to the consequences of this for the parties to the appeal. The Appeals Panel decided that to correct this situation any Appeal Form received in the Appeals Office which does not comply with the amended version of the Appeal Form shall be retyped by the Appeals Office and sent to the claimant for the claimant to sign and return to the Appeals Office. By this procedure the Appeals Panel anticipate that the appeal will be “perfected” and can be processed.

Audit Compliance and Appeal

13. The Appeals Office has received Appeals Forms from claimants that relate to decision letters of a company that is not yet audit compliant. The Appeals Panel was informed that previously there had been discussions between ICHEIC and member companies and between the Contracting Parties in this matter, but noted at the same time that the Appeal Guidelines do not expressly deal with the question of the validity of decision letters or of appeals issued or filed before completion of the auditing process. The Appeals Panel has given consideration to this complicated issue.
14. The Appeals Panel has decided that it must process appeals received in the Appeals Office, irrespective of whether a company is audit compliant or otherwise and has directed the Appeals Office to send agreed standard letters to the parties to progress appeals received. In relation to how this issue impacts other appeal procedures the Appeals Panel did not reach a final conclusion and decided that it will consider this again at its next meeting.

Establishment of a Pool of Arbiters

15. Section 3.8 of the Appeal Guidelines provides that to “assist the Panel in deciding appeals, a pool of Arbiters shall be established”. Subsections 3.8.1 through 3.8.3 of the Agreement provide a mechanism whereby the parties to the Agreement and the members of the Appeals Panel can “submit names of potential arbiters”. As is set out in the Appeals Guidelines this procedure, including possible rejections of names, will take a minimum of 75 days.
16. Section 3.9 provides that when the Appeals Panel “has determined by majority decision that its initial tranche of decisions have created a range of reliable precedents, it may decide to authorize the Chairman to transfer the decision on any appeal case to a single member of the Panel or an appointed Arbiter”. The Appeals Panel has as yet taken no decision on when to move to single arbiters.
17. Nevertheless, the Appeals Panel is aware that when it determines that it will appoint single arbiters to determine appeals, it will require a readily accessible pool of Arbiters. Accordingly, to avoid delay, the Appeals Panel has invited the parties to the Agreement to collate a list of potential arbiters, prepared to undertake work at the rate of remuneration specified, for submission to the Appeals Panel upon request by it. A current resume or curriculum vitae and contact details should be obtained for each of the proposed arbiters.
18. The Appeals Panel has decided that for standard appeals, that is a single claim, with little or no documentary evidence with simple issues for determination, the rate of arbiter remuneration will be \$400. For non-standard appeals, that is single or multiple claims, with documentary evidence, with one or more issues for determination, the rate for arbiter remuneration will be \$800. The rates are the same as for the ICHEIC Tribunal. The Appeals Panel has determined that it will retain conduct of all “complex” appeals which are those appeals involving multiple complex or novel issues.

The Pre Funding Agreement

19. By the Procedure for Pre-Funding of the Payments of Claims agreement dated 19th March, 2003 and made between by and among the parties to the Agreement the ICHEIC is entitled to review any decision letter, offer or denial, and in relation to offers is entitled to raise queries in relation to the decision. This right to raise queries is terminated by a number of events, one of which is the claimant filing the appeal. Under section 17.1 of the Appeals Guidelines the Appeals Panel is required to “admit all evidence, including information, statements and documents presented by the parties and any other information available”. In the light of this duty upon the Appeals Panel the Appeals Panel has determined that it shall receive, for consideration in the appeal, copies of any correspondence initiated prior to the filing of the appeal relating to the ICHEIC review review under the Pre-Funding Agreement. for consideration in the appeal. Accordingly, the Appeals Panel has directed the Appeals Office to write to the ICHEIC, upon the filing of an appeal, giving notice of the filing of the appeal, requesting pointing at the end of the review, and asking for copies of any review correspondence to be sent to the Appeals Panel. Copies will go to the company or the GDV with the request to comment on the outcome of the review if they so desire. In this manner the Appeals Panel will ensure compliance the provisions of section 17.1 of the Appeals Guidelines.

IV—A SUMMARY OF THE APPEALS PANEL EXPENSES COSTS AND FEES.

20. As set out above the Quarterly Report shall include a financial summary of “the expenses, costs and fees” incurred by the Appeals Panel and this is set out in Annex 2 attached.

V—Next Meeting

21. The Appeals Panel decided that it will meet again in London on 14th and 15th August, 2003.

London, 16 July, 2003

The Appeals Panel

Timothy Sullivan

Rainer Faupel

Abraham Gafni

Dr. Timothy Sullivan,
Chairman

Dr. Rainer Faupel,
Panel Member

His Honor Judge A J Gafni,
Panel Member

ANNEX 1 – APPEALS STATUS STATISTICAL SUMMARY

The following summarizes the status of appeals received to date;

Total appeals received	34
Total appeals received by company	
• Allianz	15
• RAS	18
• GDV	1
Number sent to Appeals Panel	0
Number of closed Appeals	0
Value of awards	0

ANNEX 2 – FINANCIAL SUMMARY¹

Total costs to date for the Appeals Panel, including the time of the Principal Legal Adviser in handling appeals, are \$231,993 broken down as follows;

• Appeals Office Set Up Costs	\$61,982.
• Arbitrator fees	\$120,545
• Travel costs (these do not include most of the costs for the June meeting)	\$43,516
• Meeting costs	\$1,108
• Principal legal adviser	\$4,842
Total	\$231,993

1 The Appeals Panel will consider at its next meeting how the apportionment of costs between the ICHEIC Appeals Tribunal and the Appeals Panel should be calculated and reported and the Appeals Panel next report will address this issue.