

**THE INTERNATIONAL COMMISSION
ON HOLOCAUST ERA INSURANCE CLAIMS**

Chairman:

Lawrence S Eagleburger

Vice Chairman:

Geoffrey E Fitchew

April 18, 2002

PRIVILEGED AND CONFIDENTIAL

**FIRST REPORT OF THE PRESIDENT OF THE APPEALS TRIBUNAL TO THE CHAIRMAN AND
VICE-CHAIRMAN OF THE COMMISSION**

I, Abraham J. Gafni, President of the Appeals Tribunal (the *Tribunal*) make this *First Report* to the Chairman and Vice-Chairman of the Commission relating to the *activities and conduct* of the Appeals Tribunal in accordance with the requirement to report as referenced in Article 1.8 of the ICHEIC Appeals Tribunal Rules of Procedure (hereinafter the *Rules*).

Period Of Report

1. This First Report covers the period 12th October 2001 to the present. The date 12th October 2001 was selected as the commencement date for this First Report as this was the date when the first Appeal Submission Agreement (ASA) was signed by both parties to an appeal.

Statistical Summary

2. As at the date of this First Report, the Tribunal has received thirty-nine ASA's. The ASA is the agreement which both parties to an appeal must sign if they are to submit their dispute to the Tribunal. Twenty-three of those ASA's relate to final company decisions made by Zurich and sixteen relate to final company decisions by AXA (15 by AXA Colonia and 1 by AXA France).
3. Of the thirty-nine ASA's received twenty-five have been sent to the relevant Member Company for countersignature to date. A question has been raised with respect to the other fourteen as to whether the Claimant has a procedurally valid appeal and these ASA's will be sent to the relevant Member Company in due course for ultimate determination by a duly appointed Arbitrator.
4. Arbitrators have been appointed in sixteen appeals, and have issued seven Awards. Two appeals have been adjourned or continued pending resolution of a policy issue discussed below, and one appeal is under consideration by the appointed Arbitrator. The other appeals are due for determination by an Arbitrator in the near future.
5. Four Awards have dismissed the Claimant's appeal and three Awards have found in favor of the Claimant.
6. The Rules (Article 3.5 (i)) also provide that when submitting an appeal a Claimant may present "new evidence" not previously considered by the Member Company. In the light of that "new evidence" the Member Company may alter its position with respect to the claim. In one appeal the Member Company had originally offered DM 1,220.870 but, in the light of the new evidence,

increased that offer to the sum of DM 10,114.30 (the equivalent of US\$ 5,171.30) which sum was accepted by the Claimant. In a second appeal the Member Company had originally declined to make any offer but after a “more critical review” of correspondence decided to make a first offer in the sum of US\$ 14,636.60.

7. The aggregate value to be paid to Claimants as a consequence of the *activities and conduct* of Tribunal to date is \$60,658.70.

Some General Trends and Specific Issues

8. All parties to each appeal have been given an opportunity to participate in the Appeal in accordance with Article 11 (3) of the Rules. Presently no party has availed itself of that opportunity, and thus, all Awards were issued on consideration of the “documents only” by a single Arbitrator.

9. The majority of appeals have not presented complicated issues for resolution with the exception of two appeals.

10. In one the Arbitrator was called upon to determine whether the Claimant’s uncorroborated evidence that the member company issued the insurance policy was plausible. The Arbitrator requested the parties to provide written responses to questions posed by him and upon consideration of those written responses and all of the evidence concluded that the Claimant had met the burden imposed by the Rules. The Arbitrator stated in his Award that he was satisfied that the Claimant’s;

- *statements have the necessary degree of particularity and authenticity to make them entirely credible in the circumstances of this case. They are based on her personal recollection, admittedly of events many years ago, but they indicate that her memories are both positive and clear. I have no hesitation in concluding that her assertion that a life policy was issued to her late father by “subsidiary” between the late 1920s and 1938/9 is correct. It is certainly plausible and, if it was relevant, I would also hold that it is probably true.*

11. In the other less routine appeal the Arbitrator was called upon to determine whether the Member Company had met its burden that the proceeds paid in or about 1948 constituted a full and final settlement, which, under the ICHEIC procedures, would bar any further consideration of the claim. The Arbitrator rejected this position finding that the payment did not represent a final settlement as a matter of law. The Arbitrator noted that he was satisfied;

- *with the representation of the Claimant that the acceptance of a certain payment by his mother did not reflect her agreement or satisfaction with the offer and the amount paid or that the discussions with the company reflected anything other than its informing her what she would be granted. That she may have been constrained to accept this **undisputed** amount due to her personal circumstances at the time does not mean that she was also knowingly and voluntarily releasing any other claims for sums which may have remained **disputed**. Certainly there were issues affecting her entitlement at that time which are unclear even today, including the uncertainty of the date of the insured’s death, when payments of the premiums ceased, the policy provisions allowing for its conversion and when the policy was, in fact, converted into paid-up status.*

12. The Arbitrator then made an Award allowing the appeal and valued the insurance proceeds at the difference between the paid up value of the policy, which had been paid, and the full sum insured.

Policy Issues For Resolution

13. Several appeals have come before Arbitrators which cannot satisfactorily be determined by them as they present unresolved policy issues. There are two specific examples;
 - Reference was made in paragraph 4 above to two appeals being adjourned or continued by order of the Arbitrator for a period of 3 months. These appeals relate to the unresolved issue of Zurich's liability for the Merkur portfolio issued in Slovakia. Early resolution of this policy issue will assist the Arbitrator in making a determination in each of those appeals.
 - In another appeal the Arbitrator was unable to make a final Award that disposed of all issues in the appeal. The Arbitrator found for the Claimant and allowed the appeal. However, when the Arbitrator attempted to value the policy he noted that the policy could only be valued on an average value basis for Germany in line with the BEG valuation methodology and that the resulting payment would be a sum of \$421.40. However, the Chairman's Decision Memorandum dated 17th September 2001 required minimum payments in excess of this amount but the companies are understood not to be applying this rule in the absence of an agreement with the German Foundation. Early resolution of this policy issue would assist the Arbitrator in making a final decision in this appeal.

General Comments

14. Thus far, as the number of appeals has been limited, I have appointed either the Vice President or myself as Arbitrator in each of the matters. This has not presented an undue burden for either of the Arbitrators at this time and assures the speedy disposition of the matter by an individual who is already intimately familiar with the established Rules of the Tribunal. Moreover it allows the two Arbitrators principally responsible for the administration of the Tribunal to become aware of and deal with policy, procedural and legal issues providing guidance for the future. If the volume of cases appealed increases dramatically, the number of arbitrators assigned will, of course, be increased.
15. Attached are copies of redacted Awards in their entirety relating to decisions published thus far as illustrative of the work of the Tribunal. It would not be my present intention to continue to distribute all future Awards but to attach a statistical summary of decisions rendered. The body of the Report would summarize those Appeals which have presented special issues for consideration by the Tribunal and the Commission. Of course, if you would prefer that the Report be presented in a different manner, I would be most pleased to accommodate such a request.

Respectfully,

Signed Abraham J Gafni

**The Honorable A J Gafni, President of the ICHEIC
Appeals Tribunal**