

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

Chairman:

Lawrence S Eagleburger

Vice Chairman:

Geoffrey E Fitchew

24 September, 2002

PRIVILEGED AND CONFIDENTIAL

**SECOND 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 *Second 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 Second Report covers the period April 18, 2002, being the date of my First Report, to the present.

Statistical Summary

2. As at the date of this Second Report, the Tribunal has received 58 Appeal Submission Agreements (ASA's). Twenty seven ASA's relate to final decisions rendered by Zurich, and 31 relate to decisions rendered by the AXA Group of Companies [AXA Germany and AXA France]. Since my First Report, therefore, only 19 additional ASA's have been received in a 22 week period.
3. The status of the 58 appeals is as follows: Arbitrators have been appointed in 39 appeals, and have issued 18 Awards. Thirteen Awards have dismissed the appeal and 5 Awards have found in favor of Appellant. Of the remainder, 6 appeals are deemed invalid by reason of procedural irregularity. Each appellant has had a letter from the Appeals Office informing the Appellant of the procedural irregularity and no action has been taken since by reason that Appellant has failed to reply to the Appeal Office. Four appeals are deemed valid but the Appellant has failed to submit a Statement of Grounds of Appeal in compliance with the Rules. The Appeals Office has written to Appellants asking them for a Statement of Grounds of Appeal but no reply has been received to date and these appeals are regarded as pending. Two appeals have been settled before appointment of an Arbitrator. Five appeals require documentation preparation by the Appeals Office so that I may review the appeal for purposes of selecting an Arbitrator. Two ASA's are with the relevant Member Company for counter signature and return.
4. Of the 13 Awards rendered in favor of the Member Company, 8 have been based on the failure of Appellant to meet the Standards of Proof and 5 have been based on the Member Company proving its defense that the policy or policies were paid, compensated or restituted earlier.
5. The aggregate value to be paid to Appellants as a consequence of the activities and conduct of Tribunal to date is **\$96,368.97**.

6. Six Awards are overdue. The average length of overdue time for these Awards is around 30 days. It must be noted that all of these appeals involve what has been an unresolved policy issue. As that policy issue appears close to resolution, I am satisfied that these overdue Awards will be decided promptly.
7. The average length of time from the appointment of the Arbitrator to Final Award is 92 days. This includes the period during which the parties determine whether they want to participate in the proceeding. The longest appeal period was 240 days. This involved an appeal in which one of the parties wished to participate in the appeal and arrangements for participation were a contributing factor to the length of time from arbitrator appointment to Final Award. The shortest period is 32 days. It is anticipated that this average is likely to increase once the data with regard to the six overdue Awards are taken into account.

A Specific Issue

8. In one of the redacted decisions attached it will be noted that one Member Company denied a Claim on the ground that the BEG had earlier rendered a decision in which the Appellant and others received an indemnification payment. A review of the evidence made clear, however, that the earlier BEG decision did not relate to the specific policies which were the subject of the Claim. The arbitrator found that the Member Companies denial on this ground could not be sustained. It is recommended that Member Companies be reminded of the ICHEIC rule which, as paraphrased, reflects that the “specific policy” which is the subject of the claim must have been the subject of an earlier decision by the BEG for the claim to be denied. Where the specific policy is not the subject of the earlier BEG decision, the claim is not barred from consideration under the Commission’s process.

Policy Issues For Resolution

9. Several common themes of concern relating to issues such as minimum payments and blocked accounts have arisen under earlier versions of the Valuation Guidelines. It is my understanding that new provisions relating to these issues may be included in updated versions of the Valuation Guidelines. One issue that is not currently considered by the Valuation Guidelines, however, is the valuation of “pension insurance” which is life insurance under the Commission’s framework. In one award, the arbitrator, faced with this question, relied on Article 24 of the Rules which provides that the *Arbitrator(s) shall determine the substance of any dispute, matter or issue raised in an Appeal that is not governed by the Succession Guidelines or the Valuation Guidelines in accordance with principles of equity and justice.* Applying that Rule the arbitrator was able to determine the value of the “pension”. To avoid future doubt a rule for the valuation of a “pension” might be agreed upon and incorporated in updated versions of the Valuation Guidelines.
10. As with the First Report I have attached to this Report redacted versions of the Awards. They are voluminous but I recognize that the wider community of Commissioners, Alternates and Observers may be interested in reviewing them. Whether the copying and distribution of such voluminous material is warranted, however, is, I believe, a matter for your consideration and such action as you deem appropriate.

Respectfully,

Signed _____

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