

THE INTERNATIONAL COMMISSION
ON HOLOCAUST ERA INSURANCE CLAIMS

Chairman:

Lawrence S Eagleburger

Vice Chairman:

Geoffrey E Fitchew

12 March, 2003

PRIVILEGED AND CONFIDENTIAL

**THIRD 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 *Third 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 Third Report covers the period September 24, 2002, being the date of my Second Report, to the present.
2. This Third Report differs from my earlier Reports in that I do not propose in this Report and in the future to attach redacted copies of the Awards, as their preparation is time consuming and involves distribution of voluminous material. Significant issues which have arisen in Awards, however, will be discussed in my Reports.

Statistical Summary

3. As at the date of this Third Report, the Tribunal has received 68 Appeal Submission Agreements (ASA's). Thirty-one ASA's relate to final decisions rendered by Zurich, 36 relate to decisions rendered by the AXA Group of Companies [AXA Germany and AXA France] and one relates to a decision by Allianz, which is an "extraordinary" appeal limited to a particular Claimant. Since my Second Report, therefore, only ten additional ASA's have been received in a 23-week period.
4. The status of the 68 appeals is as follows:
 - **Forty Six** appeals are closed. The Arbitrators have issued 41 Awards. Twenty-Eight Awards have dismissed the appeal and 13 Awards have found in favor of Appellant. In addition 5 appeals have been settled before appointment of an Arbitrator. Of the 28 Awards rendered in favor of the Member Company, 22 have been based on the failure of Appellant to meet the Standards of Proof and 6 have been based on the Member Company proving its defense that the policy or policies were paid, compensated or restituted earlier.
 - **Sixteen** appeals are pending, generally involving either requests by the Arbitrator for further information or in connection with procedural irregularities.

- **Six** appeals are deemed invalid by reason of procedural irregularity. The Appeals Office has advised each Appellant of the procedural irregularity by letter. No further action has been taken because no Appellant so notified has replied to the Appeals Office.
5. The aggregate value awarded to Appellants as a consequence of the activities and conduct of Tribunal to date is **US \$174,624.11**.
 6. The average length of time from when there is a signed arbitration agreement pursuant to which both parties agree to submit their dispute to arbitration to the date of Award is 187 days. This period is too long but is due, in great part, to the complexity of a number of appeals referenced in paragraph 7 and the delay this complexity has caused in the rendering of decisions.
 7. On 3rd February, 2003 one of the Tribunal's arbitrators published 8 Awards relating to 10 Claims in appeals involving final decisions made by a Member Company in which the Member Company denied liability on the grounds that the portfolio of insurance was transferred from its predecessor company to a company subsequently nationalised by an Eastern European government for which ICHEIC could identify no successor willing to pay valid claims. The arbitrator concluded, in an Annex attached to each Award, that Jews who had held insurance policies "had effectively been deprived of their property rights, including their contractual rights under insurance policies" by discriminatory legislation and if the "Jewish policyholder was already deprived of his rights" then it cannot be said that those rights could be transferred to another company. Accordingly, any transfer subsequent to the deprivation of rights was ineffective. The resolution of these appeals may be a matter of general interest to Commissioners, Alternates and Observers and if the Chairman and Vice Chairman so requests, I will, subject to issues of confidentiality, produce a copy of the redacted Annex for circulation with this Report.

Respectfully,

Signed _____

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