

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

Chairman: Lawrence S Eagleburger

PRIVILEGED AND CONFIDENTIAL

14th January 2004

**FIFTH REPORT OF THE PRESIDENT OF THE APPEALS TRIBUNAL TO THE
CHAIRMAN OF THE COMMISSION DATED 31ST DECEMBER 2003**

I, Abraham J. Gafni, President of the Appeals Tribunal (“the Tribunal”) make this Fifth Report to the 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 (“the Rules”).

Period of Report

This Fifth Report covers the period 24th September 2003, being the date of my Fourth Report, to 31st December 2003.

Publication of Awards

The Tribunal has been informed that at the ICHEIC's annual meeting on 29th October 2003, questions were raised about the accessibility of decisions, and that there were specific requests to publish the decisions on the ICHEIC website or to make them otherwise available in a private manner. The ICHEIC Chairman requested the Tribunal's views on this matter and suggested that the Quarterly Reports highlight any general trends or lessons that can be learned without identifying individual cases.

In its reports, the Tribunal has always set out, in general terms, the bases upon which the Awards were made or Appeals were dismissed. Where appropriate, individual issues have been highlighted, particularly if they required further action by the ICHEIC. The suggestion that individual opinions be published, however, raises the problem of breach of confidentiality which the Tribunal is obliged to protect. While it is true that it is possible to redact opinions, the mere elimination of names will not sufficiently assure such confidentiality. From the Tribunal's prior experience, it is clear that effective redaction would require significant employee time and cost, all of which are currently unavailable. The Tribunal will, of course, continue to provide as much information as is appropriate so that the ICHEIC is sufficiently aware of the activities of the Tribunal. In addition, it will consider and is prepared to accept suggestions on how to improve its reporting in a manner consistent with the concerns expressed above.

Statistical Summary

The following summarises the status of appeals received to date:

Total appeals received	252
Total appeals received by company	
• Allianz (including AGF)	2
• AXA (France and Germany)	35
• Generali ¹	1
• RAS	184
• Zurich ²	30
Total closed appeals	92
Number of awards	33
Value of awards	\$325,641
Number of dismissed appeals	50
Dismissed on jurisdictional reasons	7
Dismissed on failure to meet standards of proof	34
Dismissed on company proving its defence that policy was paid, compensated or restituted earlier	9
Number of consent awards	9
Value of consent awards	\$46,079

From 31st December 2003 to 14th January 2004 a further 7 Tribunal Awards have been published to the parties. The statistics for these Awards will be included in the next report.

Arbitrators

As the Tribunal statistics reflect, there has been an acceleration in the number of appeals being lodged by Appellants. It has, therefore, become necessary to appoint five new Arbitrators since the Fourth Report to assist with the resolution of appeals.

Following are the names of all of the Arbitrators:

NAME	NATIONALITY
1) Hon. Abraham J. Gafni (President)	United States
2) Sir Anthony Evans (Vice President)	United Kingdom
3)	United Kingdom
4)	United States
5)	Israel
6)	United States
7)	Israel
8)	Switzerland
9)	Sweden
10)	United Kingdom

¹ The Appeals Office received an appeal form that should have been sent to Generali Trust Fund (GTF). It was discovered that GTF had ruled on this appeal.

² The Fourth Report states that Zurich had 29 appeals. The correct total was 30. Currently, there are no pending Zurich appeals.

- 11) United States
- 12) United States
- 13) Canada
- 14) Israel
- 15) United States

It appears that it will become necessary to appoint additional arbitrators as it is anticipated that the number of appeals will continue to escalate.

Member Company Consent & Waiver Forms

It appears that in three appeals, Appellants have not been paid within the 28 day time frame directed by the Arbitrators in the Awards. Rather, the companies have requested that the Appellants sign Consent & Waiver forms prior to payment. The Tribunal is informed that there are ongoing discussions among the Foundation, ICHEIC and the GDV concerning this issue. The Tribunal is concerned about the request for such additional signing by Appellants as such are not generally required in the case of an actual arbitration Award as distinguished from a settlement of a claim between an insurance company and Claimant.

Humanitarian Payments Process pursuant to 8A of the MOU

Since the Fourth Report it has become apparent that the 8A process is being moved forward. As a consequence, when an Arbitrator is satisfied that a policy was issued by a Member Company, but not satisfied that the Respondent was the issuing company, a recommendation to the 8A process may be made. Recently, in two Awards Tribunal Arbitrators have recommended that the Appellants be considered within the 8A process.

Historical Expert

In an appeal presently being considered, pursuant to a request of an Arbitrator, it has become necessary to appoint an Historical Expert. The Respondent Member Company has raised the argument that the Appellant is not a Holocaust Victim as defined by the ICHEIC rules. This is the first Tribunal appeal where this issue has been raised. Chairman Eagleburger is in the process of appointing an Historical Expert and the appeal has been stayed pending resolution of this issue.

Change of address

The Secretariat has brought to the attention of the Tribunal that Appeal Submission Agreements are still being sent to Appellants with the Appeals Office incorrect address. The TNT PO Box addresses in Rotterdam and Schipol have been replaced by PO Box 18230 London, EC1N 2XA. This change was necessitated by the fact that it often took more than a month for mail to be received by the Appeals Office when sent to the TNT addresses. Consequently, Member Companies are requested to ensure that the Appeals Office correct address is noted on all outgoing mail to Appellants so that the appeals process may be resolved expeditiously and efficiently.

Respectfully,

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