

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

22nd October 2003

SECOND 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) 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

This Second Report covers the period 1st July, 2003 to 30th September, 2003. The Appeals Panel met on 14th and 15th August, 2003 in London, England. The Appeals Panel further met and discussed specific issues by way of several telephone conferences.

II—STATISTICAL SUMMARY

A Statistical Summary of the status of appeals in the Appeals Office for the Appeals Panel is set out in Annex 1 attached.

III—SPECIFIC ISSUES

1. Decisions on claims against Allianz

The Appeals Panel in its London meeting resolved that it is obliged to deal with appeals from decision letters sent out to claimants prior to the completion of audit compliance and may not postpone the handling of such appeals generally. To protect the rights of claimants and companies the Appeals Office will write to ICHEIC requesting information on whether the ongoing audit of the company is likely to impact the appeal in question. In cases where ICHEIC replies that the audit issues are likely to impact the appeal the Appeals Panel may defer a decision. Alternatively, where ICHEIC replies that audit issues are not likely to impact the appeal the Appeals Panel may proceed. However, in both circumstances the parties to the appeal will be given an opportunity to make written submissions to the Appeals Panel concerning the procedural decision taken by the Appeals Panel.

2. Appeals without preceding claim

The Appeals Office has received an appeal from a decision on a claim submitted directly to the insurance company. Consequently, the claim has not been processed through the ICHEIC claims process. The Appeals Panel has decided that appeals, which follow a “direct” claim, must be processed by it because the company - by sending the Appeal Form and the Appellant by signing the Appeal Form - have submitted to arbitration by the Appeals Panel.

3. “Deleted waivers”

In several cases claimants were sent (old) Appeal Forms in which the sentences relating to legal immunities under Swiss Law were stricken. The Appeals Panel decided it will not accept any Appeal Form, which has its waivers amended or deleted. It agreed on the following approach;

- (i) If an old Appeal Form that requires perfection is received within the 120 days period for filing an appeal and the waivers are amended or deleted the Appeals Office will send a new Appeal Form to the Appellant or his representative.
- (ii) If a perfected Appeal Form or a new Appeal Form is received with waivers amended or deleted the Appeals Office will inform the claimant that he must complete an Appeal Form with no changes to it and that he must act in haste if he is not to run the risk of a procedural time bar to his appeal. This is because the 120 days deadline does run from the date of receipt of the company’s decision.
- (iii) If the perfected Appeal Form or a new Appeal Form with waivers amended or deleted is received close to the 120 day deadline, the Appeals Office will telephone or fax the Appellant or his representative to provide an opportunity for the Appellant or the representative to submit a new Appeal Form with the waivers intact before the 120 time period has expired.

To avoid the amending or deletion of provisions in the appeal form Companies will be asked to include in their decision letter to the claimants notice that amendment or deletion of the waivers, and other changes to the Appeal Form may risk the invalidation of the appeal.

4. Amendment of Appeal Forms

The Appeal Form, as agreed in Annex G of the Agreement, prescribes in the new wording agreed among the Parties on 16th April 2003, that appeals have be sent to the following post box;

THE APPEALS OFFICE,
TNT, LHR/LGW/62345/001,
Int. Business Reply Service,
I.B.R.S./C.C.R.I. Numero 1746,
1110 VG SCHIPHOL,
PAYS-BAS,
NETHERLANDS

The Appeals Panel was made aware

- (1) that it takes 3-4 weeks (in case of sending via Schiphol) or even 4-6 weeks (in case of sending via Rotterdam which was the original address) for the appeals to be received from the Netherlands in the Appeals Office in London and
- (2) that there is no possibility in the Netherlands to state exactly the date of arrival of the appeals in the Dutch post box address. Both facts are regarded as very unsatisfactory, the first because it means unnecessary prolongation of the procedure, the second because the question whether an appeal was filed within the 120 days time limit is dependent on the date of receipt of the appeal.

The Appeals Panel therefore asked the Contracting Parties to agree that the Appeal Form in the future prescribes that appeals be sent to the following Post Box

THE APPEALS OFFICE
PO Box 18230
London
EC1N 2XA
United Kingdom

The parties to the Agreement have agreed to this change and the GDV has informed the companies about the change of address in an e-mail dated 17th September. In addition the GDV has provided the new Appeal Form showing the new address to all companies and asked them to use only this form from now on.

5. Amendment of the Internal Rules and Guidelines

Pursuant to §§ 3.7 and 4.1 of the Appeal Guidelines the Appeals Panel has on 17 October 2003 agreed the following Supplementary Procedural Rules which have been submitted for approval to the Foundation and ICHEIC:

- (1) In appropriate cases, when an oral hearing has been requested by one of the parties, the Panel, by unanimous decision, may authorise one of its Members to hear the case in place of the whole Panel, and to take any necessary action.
- (2) In appropriate cases the Panel, by unanimous decision, may authorise one of its Members to take any other preliminary action on behalf of the whole Panel to make the case ready for decision by the Panel, including requests for further information from the parties, queries to authorities, and similar action.
- (3) A decision of the Panel which is agreed via electronic communication among the Panel Members will be deemed signed by all Panel Members (§ 10.5 Appeal Guidelines) the day when the last signature of the Panel Members on a hardcopy of the agreed text is received in the Appeals Office by fax. After that the Appeals Office shall act according to § 24.1 Appeal Guidelines.

The ICHEIC, the GDV and the Foundation have agreed to this amendment.

6. Staff

The Appeals Office has also had new appointees and personnel changes since the last Report.

continues to oversee administrative matters with the assistance of
who joined the Office in August 2003.

In July 2003 took over the task of Principal Legal Adviser.

In August 2003 left employment with ICHEIC after four years of hard
work as Principal Legal Adviser.

In July 2003 became Legal Advisor.

has been employed as a Case Analyst since August 2003.

has been employed as a Case Analyst since September 2003.

IV—SUMMARY OF THE APPEALS PANEL EXPENSES COSTS AND FEES

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. These figures have been provided by ICHEIC’s accounting office.

It was agreed with ICHEIC at the last Appeals Panel meeting that costs will be apportioned between the Appeals Tribunal and the Appeals Panel according to the following rules;

- Appeals Office staff salaries will be apportioned per individual according to an estimate of the percentage of time spent on a quarterly basis
- Arbitrator fees will be allocated on a per case basis based on complexity
- Travel and meeting costs will be specifically allocated

- Translation and other costs will be apportioned according to the same percentages as the staff salary apportionment

V—NEXT MEETING

The Appeals Panel decided that it will meet again in Williamsburg, Virginia (USA) on 16th and 17th October 2003.

London, 22nd October, 2003

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member

ANNEX 1 – APPEALS STATISTICAL SUMMARY

The following summarises the status of appeals received to date;

Total appeals received	64
Total by company	
• Allianz	24
• AXA	1
• Barmenia	1
• GDV	3
• RAS	32
• Victoria	3
Number sent to Appeals Panel	12
Number of closed appeals	1
Value of awards	\$0
Inquiries received	3

ANNEX 2 – FINANCIAL SUMMARY

Total costs to date for the Appeals Panel are \$463,609.32. These costs can be broken down as follows;

Staff wages	\$ 90,755.48
Maintenance office machines	\$ 1,146.27
Arbitrator	\$194,360.82
Professional & Consulting fees	\$87,433.17
Translations	\$3,027.16
Other expenses	\$2,279.94
Office expenses	\$278.88
Mail & printing	\$130.61
Communication	\$277.19
Travel staff	\$105.52
Meeting	\$1,356.21
Consultant travel	\$72,958.06
Legal fees	\$9,500.00