

The Prague Post  
May 08, 2003  
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## **Holocaust: Concentration camp survivors demand insurance benefits**

Jakub "Jack" Weiss was starved, beaten and shot at the Auschwitz and Muhlendorf concentration camps before he was liberated and returned home to Vrable, Czechoslovakia, in 1945.

Hospitalized with his veins failing him, the 17-year-old Weiss and his siblings remembered that their father, who had been killed at Auschwitz, had taken out a 10,000 Czechoslovak Kc (then around \$365) life-insurance policy in 1928 with Italian insurer Assicurazioni Generali SpA.

Without a death certificate and a copy of the policy, however, the family was refused any benefits from the insurance company's Prague office. With no money, Weiss, who weighed just 35 kilograms (77 pounds) at the time, was thrown out of the hospital. He was, he says, "sent home to die."

Almost 60 years later, Weiss, a 75-year-old retired watchmaker living in Toronto, Canada, is one of 13 Czech and other Central European plaintiffs suing Generali in what is shaping up to be the latest, and possibly last, round of insurance-related Holocaust litigation.

Weiss is among hundreds of thousands of people who were denied life-insurance benefits after the war because they lacked death certificates, according to a series of class-action lawsuits that have resulted in hundreds of millions of dollars in settlements from insurance companies.

Since 1998, Swiss banks and German corporations have spent close to \$7 billion in Holocaust-related settlements.

Weiss' case will largely hinge on whether he will be able to litigate his private claim in California. In contrast to courts in the Czech Republic and many U.S. states, California law allows the plaintiffs to be awarded punitive and emotional distress damages. California also requires insurance companies to unseal their Holocaust-era insurance policies. Generali is insisting that the case must be argued under Czech law, which would not likely support compensation for Weiss, according to his attorney.

"I just want a little bit of justice," says Weiss, who said he was offered \$2,033 by Generali to settle his claim.

### Millions at stake

For plaintiffs such as Weiss, taking on Generali is an opportunity to put the past behind them. It is also a chance to punish a company they say profited off their misery.

At stake, says William Shernoff, the Claremont, California, attorney representing the plaintiffs, are hundreds of thousands, and possibly millions, of dollars per claim.

For Generali, the last major European insurer not to settle Holocaust-related suits, the risks are great.

If the private cases against Generali, which are currently consolidated in New York Federal Court, are

allowed to move forward in California -- outside the realm of the International Commission of Holocaust-Era Insurance Claims -- it could trigger a wave of lawsuits that could potentially cost Generali billions of dollars.

To avoid that situation, Generali's legal team is arguing a "nationalization" defense. Generali contends that because the communist government here took control of the insurance industry following World War II, it is the responsibility of the Czech government, not Generali, to assume liability for the claims. It is also the position of Generali that any lawsuit should be litigated under Czech law.

That decision now rests in New York with U.S. District Court Judge Michael Mukasey, who will decide which court has jurisdiction over the suits. Weiss and his fellow plaintiffs could be allowed to proceed in a Los Angeles courtroom because they either live there or they have family residing in the state.

The U.S. Supreme Court could also have a say in the outcome. The court heard oral arguments April 23 and appeared ready to call California's Holocaust relief law unconstitutional. The law requires wholesale disclosure of insurance data.

### Unsettled claims

Shernoff, a partner with Shernoff Bidart & Darras, first took on Generali when he represented the estate of Mor Stern, a Czechoslovak Jew who died in the gas chamber at Auschwitz.

That case, the first individual suit filed against a European insurer for a Holocaust-related life-insurance policy, was settled for an undisclosed sum in 1999, but since then Shernoff has been contacted by other families seeking to collect on their policies.

Shernoff says it is highly likely that thousands of people in the Czech Republic and elsewhere have unsettled claims and don't even know it.

"No one really knows except Generali," he said. "I think it is substantial."

Shernoff said he has not been in contact with the Czech government, but he said he plans to get in touch with Czech experts to "help prove that Generali engaged in bad-faith conduct."

Once we get the green light for trial, I will probably come over there," he says.

Shernoff rejects the notion of nationalization, calling it a phony defense and a specious argument.

"Just because the Prague office was nationalized, it doesn't mean the policyholder shouldn't benefit," he says. "If the Prague office burns down does that mean Generali doesn't have to pay its policies?" he asked.

Shernoff also scoffed at a statement by Generali's attorney, who argued that policies were already paid out to the Nazis, so the actual policyholders could not be paid.

"That is such an outrageous position, I can't imagine they will stick to that," he says.

Shernoff's main concern for now is whether the cases will be able to move forward under California law. If it is decided that Czech law is the governing authority, he says they would potentially be worthless given the statute-of-limitations laws here.

'No liability'

Generali's lead counsel, Kenneth Bialkin, a partner in the New York office of Skadden, Arps, Slate, Meagher & Flom, a global law firm, says plaintiffs such as Weiss simply do not want to accept that a claims process has been set up to compensate them.

Generali has contributed \$100 million to the International Commission of Holocaust-Era Insurance Claims, and Bialkin says 90 percent of claimants have received offers calculated on commission standards and most have accepted.

"It is a question of more money," he says. "They are hoping they will hit the jackpot," Bialkin says.

The international commission was set up as the result of a \$5.1 billion agreement in 2000 between the United States and Germany to compensate Holocaust victims. German companies and Generali agreed to contribute \$275 million to the fund for life-insurance claims.

Since its inception, however, the commission has been criticized for issuing minimal payments. So far it has paid out just \$38.2 million to 3,006 claimants.

Citing the company's contribution to the commission, Bialkin says Generali has already made a good-faith effort to pay the claims even though the company is not legally liable to do so since its offices were taken over first by the Nazis and later by the communists.

"Generali had no business or assets in Prague [after the war]," Bialkin says. "It had no liability because it was assumed by the state insurance company. [The Czech government] was responsible for meeting the policy obligations."

"The policies were purchased in Czechoslovakia by Czech people at a Czech office of an Italian insurance company," Bialkin adds. "We are not the address to come to for the policy."

Bialkin says it is still up to the judge in New York to decide which law applies.

Meanwhile, Weiss says he is angry that Generali failed to honor its obligations when his "life was on a string."

He says he is also insulted that Generali has cast its Holocaust contribution in terms of a goodwill gesture.

"I don't want goodwill. I want what is coming to me," he says.

He says that without the lawsuits, Generali would never have done anything.

"It left a mark on me for the rest of my life," Weiss says of his treatment by Generali. "I waited 60 years. I can wait longer," he says. "Now they have to answer."