

07-1380-CV

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In Re: Assicurazioni Generali S.p.A. Holocaust Insurance Litigation

**JACK RUBIN, ALEX MOSKOVIC, DAVID MERMELSTEIN,
IRENE MERMELSTEIN, FRED TAUCHER AND HANS LINDENBAUM,**
Objectors-Appellants

v.

ASSICURAZIONI GENERALI S.p.A.
Defendant-Appellee,

and

**SAMUEL HERSLY, AGNES HEYMAN, PAOLA ORREFICE KULP and
EUGENIA SCHENKER,**
Plaintiffs-Appellees

**On Appeal from the United States District Court
for the Southern District of New York**

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JURISDICTIONAL STATEMENT

This is an appeal from a judgment entered following an Order approving a class action settlement and dismissing plaintiffs' complaints. Pursuant to this Court's Summary Order of October 2, 2007, SJA-6, the district court, Judge George B. Daniels of the United States District Court for the Southern District of New York presiding, held a Rule 23(e) fairness hearing, approved the class action settlement, and entered judgment on January 7, 2008. SJA-1. This Court retained appellate jurisdiction and permitted the parties to file supplemental briefs, indicating in the Summary Order that it would then consider this matter without further oral argument.

SUPPLEMENTAL STATEMENT OF THE CASE

This Court's Summary Order of October 2, 2007 identified a single component of the 2006 class notice program as appearing to be "inadequate" since it did not include original mailed notice to putative class members known to Generali. This Court then directed the lower court to cause written class notice to be mailed to class members whose names are known by Generali, and set deadlines for compliance. SJA-7.

The district court conducted a hearing on October 23, 2007 to consider whether the proposed new class notice was accurate. Over the objection of the

Objectors, the district court approved the content of class notice and directed that it be mailed to the list of persons to be provided by Generali. SJA-8.

Class Counsel mailed written class notice to the list provided by Generali by November 21, 2007, five (5) days in advance of the deadline. SJA-18. Generali's counsel attested to the completeness of the compilation of possible class members known to Generali. SJA-11-13. A.B. Data Ltd, the notice vendor, attested to the details of the mailing. SJA-16. The worldwide mailing was sent to 49,326 individuals¹ via first class mail in one of 12 different languages; to 13 individuals via e-mail because an address was lacking; and to 97 attorneys and other claimant representatives via first class mail on behalf of 3,155 individuals for whom addresses were lacking or who had contacted Generali through these representatives or attorneys. SJA-18. Although not required by this Court's Order, the Class' website (www.nazierainsurancesettlement) was updated with the new notice in 15 languages. SJA-19. The notice and website also advised class members how they could search for family records at the Bad Arolsen Archive which the 11 Allied Powers opened to the public on November 28, 2007.

In response to the mailing and website, more than 5,500 additional mailings by possible class members (a large portion of which were duplicative of earlier filed claim forms) were timely received by Generali; 256 optouts were received

¹ Of these, over 23,000 were individuals who had already submitted claim forms.

(SJA-20)(SJA-37); and 4 objections were received in addition to the objections of Objectors herein. The website was visited over 23,000 times and documents were download 21,000 times. SJA-37. Thus, the total number of claims submitted by class members now exceeds 35,000. ASA-78; SJA-37.

The district court conducted a fairness hearing on January 7, 2008 and heard argument on the objections. The district court found “that the notice that was sent out was consistent with the Second Circuit’s remand and mandate,” and “it was reasonable and adequate to provide notice to individuals as to the potential settlement and was sufficient to explain the terms of that settlement and to lay out what options and the reasonable consequences of either filing a claim, determining not to file a claim or determining to opt out from the settlement.” SJA-64. The court further found the compensation the Class will receive is “substantial.” *Id.* Concluding that the Settlement was “fair, reasonable and adequate,” the court entered judgment that day. SJA-66; SJA-1.

ARGUMENT

A. The Settlement Is Fair, Reasonable and Adequate

Without repeating the Class’ earlier arguments, it bears emphasis that the Settlement avoids the risks and uncertainties of continued litigation. At the time of settlement, this litigation had been dismissed and was on appeal. *See In re Assicurazioni Generali S.p.A. Holocaust Insurance Litigation*, 340 F.Supp.2d 494,

497 (S.D.N.Y. 2004); SJA-64. Other Holocaust lawsuits have likewise been dismissed on various grounds. *See* List in Appellees' initial Br. at 21. This Settlement presents what the district court described as the "last best hope" Holocaust survivors and heirs will have to recover on insurance policies issued over 63 years ago. SJA-65. The Settlement was achieved through arm's length negotiations after 10 years of litigation. SJA-38. Class Counsel obtained the best terms possible for the Class given the strengths and weaknesses of the litigation. This is not a limited fund settlement as were the Holocaust settlements with the Swiss banks, Germany and Austria. "This settlement agreement provides no limited fund from which claims will be paid. Instead, the agreement provides that Generali shall pay all valid claims submitted." A-566. A successful claimant in this case will receive the full value of a Holocaust Era policy under valuation guidelines agreed upon in this Settlement and the amount of his recovery is not dependent on an uncertain number of successful claims being submitted. ASA-36-40. Generali, in good faith reliance on the ultimate approval of this Settlement, has already paid out over \$35 million for unfunded ICHEIC claims. SJA-38. The overwhelming number of class members support the Settlement and want to have their claims processed. As the district court stated at the February 27, 2007 fairness hearing (A-568):

Those who wish to reject this settlement on principle or to continue to pursue the odds of possible further litigation should be guided by their own conscience and conviction. However, the vast majority of

