

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 [REDACTED]

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Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

PRIVILEGED AND CONFIDENTIAL

APPEAL NUMBER [REDACTED]

CLAIM NUMBER [REDACTED]

BETWEEN

[REDACTED]

APPELLANT

AND

[REDACTED]

RESPONDENT

PANEL DECISION

The Appeals Panel makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW and enters the following decision pursuant to section 10 of the Appeal Guidelines;

BACKGROUND

1. The Appellant is [REDACTED], who was born on [REDACTED] 1927 in Jaworzno, Poland. He is the son of [REDACTED], who was born in 1894 in Szczakowa (Poland) and died in Auschwitz in 1943.
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued a life insurance policy to his father [REDACTED].
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6th February 2003 that *“based on the information you provided, including the correspondence we had with you (our letter October 28th, 2002 and your reply November 6th, 2002), and our search, no supporting evidence of a contractual relationship with our company or any of our subsidiaries in Eastern Europe could be found, and we are therefore declining your claim.”*
5. The Appellant submitted an Appeal to the Appeals Office dated 3rd March 2003, in which he set out the reasons for the Appeal.
6. The Appeal Form received from the Appellant was an incorrect Appeal Form in that it did not contain a declaration of consent to the adjudication of the appeal by way of arbitration in Geneva Switzerland under Swiss federal law, a declaration of being bound to the Agreement Concerning Holocaust Era Insurance Claims dated 16th October 2002 made by and among the Foundation “Remembrance, Responsibility and the Future”, the ICHEIC and the [REDACTED] and to the Appeal Guidelines, a declaration of waiving any right to appeal such decision as provided in the Appeals Guidelines and in accordance with and subject to the conditions of Article 192 (1) of the Swiss Act on Private International Law and a declaration of waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents and employees, except as provided under Swiss law. By letter dated 7th May 2003 the Appeals Office requested the Appellant to sign a new Appeal Form.
7. On 16th June 2003 the Appeals Office received the new Appeal Form, which is dated 14th May 2003 and mailed a copy of it to [REDACTED].
8. [REDACTED] responded in a letter dated 4th July 2003 and requested the Appeals Panel for reasons it had set out before to *“reject the appeal submitted with respect to this claim and to confirm [REDACTED]’s previous decision on it”*.
9. By letter dated 21st July 2003 the Appeals Office sent a copy of this letter to the Appellant. It informed both parties that the Appeal will be on a *“documents only”* basis unless the Appeals Office receives a notification from either party requesting an oral hearing within 14 days of the date of receipt.
10. No request for an oral hearing has been received from either party and the Appeals Panel does not consider it necessary to order such a hearing and thus the Appeal proceeds on a *“documents only”* basis.
11. The Appeal is governed by the Agreement Concerning Holocaust Era Insurance Claims dated 16th October 2002 made between the Foundation “Remembrance, Responsibility and Future”, ICHEIC and the [REDACTED] (The Agreement) and its Annexes including, but not limited to, Annex E, the Appeal Guidelines.
12. The Seat of the Appeals Panel is Geneva, Switzerland, and the Panel Decision is made in that place.

THE CLAIM

13. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
- a. In answer to Question 3.1 of the Claim Form he states that the insurance company, which issued the policy was ” [REDACTED]”.
 - b. In answer to Questions 5.1, 5.3, 5.4 and 5.6 he states that his claim relates to a life insurance policy, issued in US \$ with an insured sum of 1,800 which would have reached maturity in 1942.
 - c. In answer to Question 5.7 of the Claim Form he states that he is not aware of any payment resulting out of the insurance policy.
 - d. In answer to Question 5.11 of the Claim Form (“*To the best of your knowledge, were all premiums paid ?*”), he states “*Yes, in Jaworzno to Mr. [REDACTED]*”.
 - e. In answer to Question 6.1 he states that the policyholder was his father [REDACTED].
 - f. In answer to Questions 7 and 8 of the Claim Form he states that he, the Appellant, was the insured and beneficiary and that he changed his former surname “[REDACTED]” into “[REDACTED]”.
14. In his Appeal Form the Appellant identifies the name of the insurance agent representing [REDACTED] as Mr. [REDACTED] living at Jaworzno (Poland) which is the Appellant’s birthplace. He further states that he had attempted to collect on the policy after the war but was informed that “all papers were destroyed”. The Appellant himself has not produced any documents evidencing the existence of the policy.
15. In his reasons for appeal of the decision which accompanied his Appeal Form [paragraph 3] the Appellant repeats his statements made in the Claim Form, points out that he changed his name after the war from [REDACTED] to [REDACTED] and reaffirms that the policy existed.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. ICHEIC submitted a copy of the Claim Form to [REDACTED]. By its provisional decision letter dated 6th February 2003 [REDACTED] informed the Appellant that it had “*carefully examined the information ... provided*” and “*also carried out a search of all the information available to us that could support your claim*”. [REDACTED] continued: “*however, our documentation is limited because the archives relating to the policies issued in Eastern Europe were held locally and are no longer in our possession*”. Based upon the “*information you provided and our search, no supporting evidence of a contractual relationship with our company or any of our subsidiaries in Eastern Europe could be found, and we are therefore declining your claim*”.
17. In a letter dated 4th July 2003 [REDACTED] repeated the above and confirmed its decision.

18. In answering a letter dated 19th August 2003, in which the Appeals Panel asked [REDACTED], whether it or its predecessor companies issued any policies denominated in the currency of US \$ (United States Dollars) in Poland between 1920 and 1945, [REDACTED] responded on 2nd September 2003: “... we would like to inform you that – as a consequence of the nationalisation and complete expropriation of its Polish independent branch office and subsidiary (“[REDACTED]”) – [REDACTED] has nowadays no internal record of any insurance policy issued in Poland and denominated in U.S. Dollars. On the other hand, in few cases ... some evidence of Polish insurance policies denominated in U.S. Dollars has been submitted by the claimants. We would like to recall that, on the basis of the Polish law n. 509 of June 12, 1934, it became impossible to enter into insurance policies denominated in foreign currencies, and the same law provided for the compulsory conversion of all the contracts already in force, the compulsory conversion rate for the U.S Dollars being: 1 USD = 5,4 Zloty.”

THE ISSUES FOR DETERMINATION

19. The first issue for determination in this Appeal is, whether the Appellant has met his burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), Section 17, which provides that to succeed in an Appeal the Appellant must establish, based on the Relaxed Standards of Proof, that it is plausible:
- 17.2.1 that the claim relates to a life insurance policy in force between 1st January 1920 and 8th May 1945, and issued by or belonging to a specific German company (as defined in the Glossary to this Agreement) and which has become due through death, maturity or surrender;
 - 17.2.2 that the claimant is the person who was entitled to the proceeds of that policy upon the occurrence of the insured event, or is otherwise entitled in accordance with Section 2 (1) (d) of the Agreement and pursuant to the Succession Guidelines (Annex C); and
 - 17.2.3 that either the policy beneficiary or the policyholder or the insured life who is named in the claim was a Holocaust victim as defined in Section 14 of the Agreement.
20. The Appellant has succeeded in establishing the existence of a life insurance policy issued by [REDACTED].
21. Where the relevant German company can trace no written record of a policy, the burden upon the Appellant to establish that a policy existed is a heavy one, even when the burden is limited to establishing that the assertion is “plausible” rather than “probable”. Where the Appellant does not submit any documentary evidence in support of the claim, the Appellant’s assertions must have the necessary degree of particularity and authenticity to make it credible in the circumstances of this case that a policy was issued by the German company.
22. The particularity and authenticity of the Appellant’s statements persuade the Panel that it is credible in the circumstances of the case that [REDACTED] issued a policy of insurance to the Appellant’s father. The fact that he, from the very beginning of the proceedings, gave the name of the local representative selling the insurance is of specific importance because he

must have been aware that such a detail might be possible to check even without the policy file in question.

23. The Appellant has specified the name of the local representative selling the insurance, the company that issued the insurance, the policyholder, insured and beneficiary, the insured sum, the date of maturity and the place where the insurance was issued. The Panel is satisfied that it is plausible under Section 17.2.1 above that the policy was in force between 1920 and 1945. Further, it is plausible under Section 17.2.2 above that the Appellant is the person entitled to the proceeds of the policy as the only heir of [REDACTED] and is beneficiary of the insurance policy. Finally, there is no doubt that the policyholder was a Holocaust victim as set out in Section 14 of the Agreement as he died in the concentration camp of Auschwitz during the Holocaust. In the circumstances the Appeals Panel finds in favour of the Appellant.
24. [REDACTED]'s statement that it has not found a match in its records and that those archives relating to policies issued in Eastern Europe were held locally and nowadays are no longer in its possession is not a sufficient defence against the plausibility of the Appellant's assertion. Also the Appellant's statement that the policy was issued in US Dollars has not been disproved, as [REDACTED] has not been able to rule out that it issued US-Dollars-policies in Poland.

VALUATION

25. The Panel is satisfied that the Appellant met his burden of proof with regard to his statements that the insured sum was US \$ 1,800 and that the date of maturity was 1942. Even though his statements concerning the insured sum and the date of maturity are "uncorroborated", the Relaxed Standards of Proof, as applied here, satisfy his burden of proof. In cases, in which all written evidence has vanished the Appellant can only state what he remembers. That Appellant is able to state not only a certain insured sum but also a currency different from the currency used in the country where the policy was issued and a date of maturity provide, together with the name of the representative selling the insurance, the particularity that makes the Appellant's statements plausible.
26. The valuation of a claim includes pursuant to section 1.2 and 1.3 of the Valuation Guidelines (Annex D) two phases - the first is the assignment of a base value to a policy, the second is the application of appropriate multipliers to the base value to produce the current value.
27. The base value of a policy, according to section 1.2 of the said Guidelines, is the value that the policy would have had at the date of the insured event, which in this case is maturity at the end of the policy in 1942. The value at that time was US\$ 1,800.
28. No deductions, as mentioned in section 3.3 of the said Guidelines, have to be made, because there is no suggestion that premiums were not fully paid. On the contrary, the Appellant states in answering question 5.11 of the Claim Form ("*To the best of your knowledge, were all premiums paid ?*") "*Yes, in Jaworzno to Mr. [REDACTED]*".
29. The current value of a policy, according to section 6 of the said Guidelines, is the base value increased by agreed factors to allow for changes in currency, economic circumstances and interest during the years from the insured event to the present day. For policies issued in

Eastern Europe account has also been taken of the fact that insurance companies were nationalized or liquidated under the instructions of post war governments.

30. Pursuant to Section 6.2 of the Valuation Guidelines (Annex D) offers on policies in Eastern European countries generally have to be made in US dollars and the current value of a policy is determined in accordance with the steps outlined in Schedule 2 of the said Guidelines. But only for policies issued in dollars and not converted into the local currency, the base value remains in dollars.
31. Here the policy was converted into zloty by the Polish law No. 509 of 7th July 1934, because it was a policy in dollars, which had not matured before July 1934. Pursuant to Article 33 of this law *“all obligations arising from insurance contracts expressed in foreign currencies, without the reservations referred to in Article 5, are subject to conversion to Polish currency pursuant to an average exchange rate in April and May 1934, listed on the Warsaw money exchange. For obligations subject to conversion expressed in United States of North America dollars, the exchange rate has been fixed at 5.40 zlotys to one dollar”*. Article 5 deals with payment in foreign gold coins or in gold equivalent of a foreign monetary unit and is of no importance in the case that must be decided here. Therefore the base value has to be calculated in zloty, which is (US \$ 1,800 x 5,40 zloty/US \$ =) 9,720 zloty.
32. This value in Zloty corresponds pursuant to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.1323 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 1,285.956.
33. Pursuant to Step 2 of Schedule 2 of the said Annex this dollar value must be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 14,513.299416 by end 2000.
34. Pursuant to Step 3 of Schedule 2 of the said Annex additions must be made to the dollar value up to the end of 2000 for the subsequent years (2001:5.4 %; 2002: 5 %; 2003: 4.75 % pursuant to the month in which the decision is made, plus two twelfth, i.e. 14/12 of 4.75 %), which leads to the amount of US\$ 15,297.017584464 for 2001, US\$ 16,061.8684636872 for 2002 and US\$ 16,951.9155470220533 for 2003.

THE APPEAL PANEL THEREFORE HOLDS AND DECIDES

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of **US\$ 16,951.92** within 60 days from the date of this Decision.

Dated this 17th day of December 2003

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member