

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], nee [REDACTED], who was born on [REDACTED] 1923 in Subotica (Yugoslavia). She is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born on [REDACTED] 1898 in Subotica and died on 20th March 1945 in Siegendorf (Austria).
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim to the International Commission on Holocaust Era Insurance Claims (ICHEIC), by which she claims that [REDACTED] issued a life insurance policy to her father.
4. The ICHEIC submitted the claim to the Respondent as the legal successor to [REDACTED]. [REDACTED] stated in its decision letter dated 6th February 2003 that *“based on 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.”*
5. The Appellant submitted an Appeal to the Appeals Office dated 21st February 2003, which was accompanied by an attachment.
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.
7. By letter dated 18th June 2003 the Appeals Office requested the Appellant to sign a new Appeal Form. On 7th August 2003 the Appeals Office received the new Appeal Form, which is dated 27th June 2003. The ICHEIC mailed a copy of it to [REDACTED] at the same day.
8. [REDACTED] responded in a letter dated 20th August 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 26th August 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. On 1st September 2003 the Appeals Office received a fax from the Appellant with a request for an oral hearing in Hebrew, German or French, as the Appellant does not speak English. By letter dated 4th September 2003 the Appeals Office acknowledged receipt of the request for an oral hearing and informed the Respondent of that request. The Respondent informed the Appeals Office by fax dated 8th September 2003 that it wants to take part in this hearing.
11. On 12th September 2003 the Appeals Panel decided that there would be an oral hearing of the Appellant by setting up a telephone conference call on Thursday, 16th October 2003, 16.45 (Israeli time) and that the interview will be conducted in German. The Appeals Office informed both parties about this decision by letter dated 12th September 2003.
12. The oral hearing took place on 16th October 2003. It was conducted in German and translated by an interpreter into English.

13. 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.
14. The Seat of the Appeals Panel is Geneva, Switzerland, and the Panel Decision is made in that place.

THE CLAIM

15. The Appellant has submitted the following information in relation to the Claim for the proceeds of a life insurance policy. In answer to Question 3.1 of the Claim Form she identifies [REDACTED] as the name of the company that issued a life insurance policy. As the place where the insurance policy was purchased she names Subotica, the town where her father was born and lived until 1943 when he was enlisted in forced labour service and deported. As policyholder she names her father [REDACTED] and herself as insured and beneficiary. She is not aware of any payment resulting out of the insurance policy. The Appellant is not able to state policy number, currency, sum insured, date of issue, date of maturity or any other terms and conditions of the policy. She identifies her father’s employer as “*Mr. [REDACTED], who was the director of the [REDACTED] insurance company in Subotica*”. In answer to Question 11 she states: “*My father worked at the [REDACTED] Insurance Company in Subotica until he was deported*”.
16. There is a letter on the Claim File dated 5th March 2003, which was written in Hungarian and sent to the ICHEIC. In this letter the Appellant states that her father worked in Subotica for the [REDACTED] insurance company and that he was deported in 1943 to forced labour camps, where he died. In another letter dated 22nd February 2003, which is written in Hungarian too and which the Appellant also sent to the ICHEIC, she states: “*My father, [REDACTED], worked at the [REDACTED] insurance company, in Subotica. ... My father worked at [REDACTED] for 10 years. I cannot imagine him not having insurance. My parents got divorced when I was 5 years old. I was brought up by my mother*”.
17. The Appellant sets out the reasons for her Appeal by repeating what she already said in the Claim procedure.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

18. A copy of the Claim Form was submitted by the ICHEIC to the Respondent. In its decision letter dated 6th February 2003 [REDACTED] informed the Appellant “*we have carefully examined the information you provided. We have also carried out a search of all the information available to us that could support your claim. However, our documentation is limited because the archives relating to policies issued in Eastern Europe were held locally and are no longer in our possession*”. They further informed her that “*based on 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*”.

19. In a letter dated 20th August 2003 [REDACTED] repeated the above said and confirmed its decision.

THE ISSUES FOR DETERMINATION

20. The first issue for determination in this Appeal is whether the Appellant has met her 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.

21. The Appellant has succeeded in establishing that a life insurance policy issued by [REDACTED] existed.

22. Where no written record of a policy can be traced by the relevant German company 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 Member Company.

23. The Panel has concluded that the Appellant has met her burden of proof in that her evidence has the requisite authenticity and particularity. The Appellant has named the company that issued the insurance and the place where the insurance was issued. In the oral hearing, confronted for the first time with precise questions of that kind, she gave further details on the sources of her information. Regarding this additional information the Panel is convinced that the Appellant’s father was an employee of [REDACTED]. The Appellant could name Mr. [REDACTED] as the director of the [REDACTED] insurance company in Subotica at those times, who is also known to the Respondent as an employee of “[REDACTED]”. She told the Panel convincingly that she knew him personally as well as his son, [REDACTED], to whom, according to her oral statement, she talked later about the insurance matter and who could confirm, that her father was employed at “[REDACTED]”. It is credible that her father had taken out a life insurance policy at that company, at which he was employed. The Panel has not failed to notice, that the Appellant did not live together with her father after her parents were divorced at a time when the Appellant was only five years old. However, the Appellant

could explain, how she nevertheless got to know details from her father's living circumstances. She lived after the divorce of her parents at her grandmother's house, which was – according to the details given in the Claim Form – from 1938 until 1941 in Beograd and later on in Subotica. But she also mentioned in the oral hearing that she had further contact with her father after her parents divorce. In the 1940's the Appellant, who is born in 1923, was old enough to understand details about insurance policies and to evaluate the importance of such information and remember it. The Panel is satisfied that it is plausible under section 17.2.1 above that the policy was in force between 1920 and 1945, as the information the Appellant received must have been received in that period of time. Her father was sent to slave labour camps, where he died on 20th March 1945. It is also plausible under section 17.2.2 above that the Appellant is the person entitled to the proceeds of the policy as the beneficiary of the insurance contract. Finally, there are no doubts that the policyholder and the Appellant are within the definition of Holocaust victim as set out in section 14 of the Agreement by reason that the policyholder and the Appellant were deported to a camp during the Holocaust. In these circumstances the Panel concludes this appeal in favour of the Appellant.

24. [REDACTED]'s statement that it has not found a match with 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 no valid defence against the plausibility of the Appellant's assertions.

VALUATION

25. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel had to calculate according to the rules laid down in the Valuation Guidelines (Annex D of the Agreement). Under section 7.1 of the Valuation Guidelines where a claimant satisfies that a policy existed, which was unpaid, and names the company that issued the policy, but the amount of the policy – as it is the case here - cannot be determined, the offer of the company shall be based on a multiple of three times (3X) the average value for policies in the respective country (shown in Schedule 3 of the said Annex). According to the same provision the appropriate multipliers then have to be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).
26. For policies issued in Yugoslavia between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Dinar 24,080, which has, according to Schedule 3 and section 7.1 of the said Annex, to be multiplied by 3 to get the base value of Dinar 72,240.
27. This value in Dinar corresponds according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.01594 laid down in Step 1 of Schedule 2 of the said Annex to the value of US\$ 1,151.5056.
28. According to Step 2 of Schedule 2 of the said Annex this dollar value has to be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$ 12,995.8922016 by end 2000.
29. According to Step 3 of Schedule 2 of the said Annex additions have to be made to the dollar value up to the end of 2000 for the subsequent years (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 12/12 of 4.75

%), which leads to the amount of US\$ 13,697.6703804864 for 2001, US\$ 14,382.55389951072 for 2002 and US\$ 15,065.7252097374792 for 2003.

30. This total amount of US\$ 15,065.73 of the policy in question is, according to section 7.1 of the said Annex, subject to a capped amount of US\$ 6,000. The respondent therefore has to pay the amount of US\$ 6,000.

THE APPEAL PANEL THEREFORE HOLDS AND DECIDES

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of **US \$ 6,000** within 60 days from the date of this Decision.

Dated this 17th day of October 2003

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member