

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]

THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

Fax: ++ 44 (0) 207 269 7303

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], née [REDACTED], born on [REDACTED] 1926 in Łódź (Poland). She was also known under the name [REDACTED]. She is the daughter of [REDACTED] and [REDACTED]. [REDACTED] was born in 1892 or 1893; [REDACTED] was born on [REDACTED] 1896 in Łódź.

The Appellant’s mother had a sister, [REDACTED], who was born on [REDACTED] 1894 in Łódź and died of tuberculosis in 1941 in the ghetto of Łódź. She was an employee of [REDACTED] and worked at the office in [REDACTED] as a deputy manager.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim dated 15th January 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which she claims that [REDACTED] issued an insurance policy.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 6th February 2003 *“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 May 2003, which was accompanied by an attachment setting 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 waiving any right to appeal such decision as provided in the Appeal 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 waiving the right to make any claims against the Appeals Panel, Members or Arbiters or the Appeals Office or its agents or employees, except as provided under Swiss law.
7. The Appeals Office requested the Appellant by letter dated 2nd July 2003 to sign an amended appeal form.
8. After no response arrived, the Appeals Office called the Appellant on 22nd April 2004 to find out whether the above-mentioned letter of the Office had reached the Appellant. The Appellant informed the Office that she had never received a letter dated 2nd July 2003. The Appeals Office informed the Respondent and re-sent the letter requesting that she sign a new appeal form on the same day.
9. On 4th May 2004 the Appeals Office received the new appeal form, which was dated 28th April 2004, and mailed a copy to the Respondent on 5th May 2004.
10. [REDACTED] responded in a letter dated 25th May 2004 and requested the Appeals Panel for reasons it had set out before to reject the appeal. [REDACTED] wrote: *“Unfortunately, with respect to the claim at issue, no supporting evidence of a contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. This is the reason why we have to confirm the rejection of this claim, and also the reason for our impossibility to produce to the Panel any document related to the claim at issue, because no such document is available”*.
11. On 26th May 2004 the Appeals Office informed both parties that the appeal will be on a *“documents only”* basis unless it received notification from either party requesting an oral hearing within 14 days of the date after receipt of this letter.
12. On 6th June 2004 the Appeals Office received a fax from the Appellant with a request for an oral hearing. By fax dated 7th June 2004 the Appeals Office informed the Respondent.

13. On 17th June 2004 the Appeals Panel decided that there would be an oral hearing of the Appellant by setting up a telephone conference call on 5th July 2004, 16.45 (Israel time) and that the interview will be conducted in German. The Appeals Office informed both parties about this decision by letter dated 18th June 2004.
14. The oral hearing took place on 5th July 2004. It was conducted in German and translated by an interpreter into English.
15. The appeal is governed by 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 its Annexes, including, but not limited to Annex E, the Appeal Guidelines.

The seat of the Appeals Panel is Geneva, Switzerland and the Panel Decision is made there.

THE CLAIM

16. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy in her claim form:
 - a) The Appellant identified [REDACTED] as the company that issued the policy.
 - b) With regard to question 3.3 concerning other information, which might support the search the Appellant writes: “[REDACTED] was deputy manager of the above company’s branch in Łódź [REDACTED]”.
 - c) In section four regarding documents the Appellant writes, “she has worked for this company for many years. P.F.E a letter from this insurance company, including all her details”.
 - d) In section five with regard to the type of insurance policy the Appellant writes, “I have no details. I suppose that, since she had a high rank job in this company, they insured her”.
 - e) The policyholder is identified as [REDACTED], the Appellant’s aunt, who was born on [REDACTED] 1894.
 - f) In section seven it would appear that the Appellant identifies her aunt as the insured person although her name was not entered.
 - g) In section nine regarding “compensation”, the Appellant states that no application was made, and writes, “we had no grounds for a claim to Germany. P.F.E a letter from the insurance company asked them to confirm that she was employed there”.
 - h) In section eleven regarding further information she writes, “I remember clearly the office in [REDACTED] Street very well indeed. I used to visit there on my way home from school and on holidays and when there were parades. When there were processions in [REDACTED] Street (Łódź’s main thoroughfare), I used to come with my Aunt [REDACTED] to watch the festivities from the windows of the office with the other office workers as they passed along the street. At home, they were very proud indeed that my Aunt [REDACTED] had attained a high position in the office, despite being Jewish (an Italian company!!). She must have been highly paid, because she kept the home going single-handedly – a large flat with three rooms, kitchen, bathroom and

toilet, my sick [REDACTED]father, my [REDACTED]mother and her young sister, who did not work for some reason”.

17. The Appellant submitted the following documents:

- a) A copy of her birth certificate.
- b) A copy of the birth certificate of [REDACTED], the Appellant’s mother.
- c) A copy of the marriage certificate of the Appellant’s parents.
- d) A copy of a letter dated 22nd November 1994 from [REDACTED] to the Appellant, which states, “*we are sorry to have to tell you that, after a thorough search of our records, we only managed to find the following notes: [REDACTED], [REDACTED]. Born on [REDACTED] 1894. Hired on 15.04.1921. Left on 28.02.1940. We are not able to give you any further information because the lady was an employee of our Łódź branch in Poland and there were no other documents deposited at head office*”.
- e) A copy of the Appellant’s marriage certificate.
- f) An extract from the yellow pages or telephone book in Polish with the following name highlighted: “[REDACTED]’ Wloska Sp. Akc. [REDACTED] [REDACTED] str”.
- g) An extract from a register of the inmates of the Łódź Ghetto with the following highlighted:
[REDACTED] [REDACTED] Clerk 26 [REDACTED] Street (?) [REDACTED]
Street (?)
[REDACTED] [REDACTED] Civil Servant [REDACTED] Street (?) [REDACTED]
Street (?)
[REDACTED], [REDACTED] [REDACTED] Office Office official 36 [REDACTED]
Street (?) [REDACTED] Street died on 4th July 1942”.

18. In a statement submitted with her old appeal form dated 11th May 2003 the Claimant writes, “*I’m [REDACTED], the last and only relic of [REDACTED] and [REDACTED]’s families. [REDACTED] was my aunt, my mother’s sister. She had two brothers, [REDACTED] who was an Electric Engineer...the second brother, [REDACTED], was a Laryngologist doctor, married and had one son, [REDACTED]...In our original claiming letter I attached [REDACTED]’s birth card (1894), found in the National Archive of Łódź. [REDACTED] used to live with us in the Łódź Ghetto (Dec. 1939-Jul. 1942) till the day she died of Tuberculosis. Before 1939, she used to live with her parents in our neighborhood, the same street [REDACTED], only few blocks away. In our original claiming letter I attached a paper of Łódź Ghetto registration of inhabitants. She was not married and thus she did not have any children. [REDACTED] (my aunt) loved me so much as I was her daughter. Her last words to me, when she was taken to hospital (on [REDACTED] street) was: ‘you was the sun in my life’. I was so close to her either, that every year on May 3rd (since when I was 4 or 5 years old, till the war began at 1939) she took with me with her to the office ([REDACTED] street from the side of [REDACTED] Hotel) to watch through the windows Independence Day marching. She was the director deputy of the insurance company, branch of ‘[REDACTED]’ in Trieste Italy, and you can figure out that she was in a very*

high position for Jewish women that days. Her education was complete high school. Therefore, she obviously must have a personal high life insurance policy suit her position in that insurance company...to summarize that, it's assumed to be about 15-17 years of working there, until 1939 then we entered the Ghetto and [REDACTED] joint to live with us”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

19. In the decision letter dated 6th February 2003 the Respondent writes: *“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. Unfortunately we have to inform you 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 declining your claim”.*

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. 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 is not able to submit any documentary evidence in support of the claim, the Appellant’s assertion 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 company.

22. The Panel has concluded that the Appellant has met her burden of proof in that her evidence has the requisite authenticity and particularity and, in addition, is to an important extent

backed by written evidence. The Appellant's aunt was, as proven by written evidence supplied by [REDACTED] itself, an employee at the Łódź branch of [REDACTED] for 19 years. According to the Appellant's statements she was the deputy manager. In the oral hearing the Appellant confirmed this and pointed out that this was at the time a remarkable professional achievement for a Jewish woman. The Respondent confirmed in a letter dated 22nd November 1994 that [REDACTED], the Appellant's aunt, worked between 15th April 1921 and 28th February 1940 for [REDACTED] at the Łódź branch in Poland. The Panel believes it to be highly unlikely and contrary to all reasonable experience that such a person would not have a life insurance contract with the insurance company by which she was employed. Under the circumstances, the long time employment with the insurance company makes sufficiently plausible the existence of such a policy.

23. Further the Panel has concluded that the Appellant is the person who is entitled to the proceeds of the insurance policy. Her aunt died without leaving children of her own and the Appellant is the only heir.
24. Finally, there is no doubt that the Appellant and her aunt are Holocaust victims as defined in Section 14 (Glossary – Holocaust victim) of the above named Agreement (paragraph 15).

VALUATION

25. As the value of the policy found by the Appeals Panel to have existed could not otherwise be determined, the Appeals Panel was required to calculate such value in accordance with the rules laid down in the Valuation Guidelines (Annex D of the Agreement). Under section 7.1 of the Valuation Guidelines where a claimant establishes ... 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 must be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).
26. For policies issued in Poland between 1920 and 1945 the average value set out in Schedule 3 of the said Annex is Żłoty 2,425 which must, according to Schedule 3 and section 7.1 of the said Annex, be multiplied by 3 to arrive at the base value of Żłoty 7,275.
27. This value in Żłoty corresponds according 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 a value of US\$ 962.4825.
28. According to Step 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\$ 10,862.577495.
29. According to Step 3 of Schedule 2 of the said Annex additions must be made to the dollar value at the end of 2000 for subsequent years. These interest rates have been agreed in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC issued after consultation with the Foundation and the [REDACTED] as the other parties to the Agreement (2001: 5.4%; 2002: 5.0%; 2003: 4.75%; 2004: 5.0% according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5.0%), which leads to the amount of US\$ 11,449.156680 for 2001, US\$ 12,021.614514 for 2002, US\$ 12,592.6412034 for 2003 and US\$ 13,117.334586875 for 2004.

30. The amount of US\$ 13,117.334586875 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 must pay US\$ 6,000.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The Appeal succeeds.
2. [REDACTED] shall pay the Appellant the sum of US\$ 6,000 no later than the last day of the second month following the month of the decision, which is the 31st October 2004.

Dated this 1st day of August 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member