

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

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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], born on [REDACTED] 1929 in Warsaw (Poland). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born [REDACTED] 1891 in Warsaw and died on 14th May 1954 in Tel Aviv (Israel); [REDACTED]'s date of birth is unknown, the place of birth is Warsaw and she died on 18th October 1979 in Israel. The Appellant had a brother, [REDACTED], who died. [REDACTED] was married to [REDACTED]; their children are [REDACTED] and [REDACTED], née [REDACTED].
2. The Respondent is [REDACTED].

3. The Appellant submitted a claim dated 16th April 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued policies of life insurance.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 13th June 2003: *“We are pleased to inform you that we are willing to offer you, within the framework of the German Foundation and ICHEIC procedures, a voluntary payment in the amount of USD 3,864.00 (three thousand eight hundred and sixty-four dollars and eighty cents) on the policy mentioned above (policy number [REDACTED] and [REDACTED])”*. A copy of the policy number [REDACTED] shows that *“this policy (number [REDACTED]) has been issued in place of invalidated policy no. [REDACTED]”*.
5. The Appellant submitted an appeal to the Appeals Office dated 10th August 2003, which was accompanied by an attachment setting out the reasons for the appeal. This appeal was filed as a copy of the original appeal form and arrived at the Appeals Office on 18th September 2003.
6. The Appeals Office forwarded a copy of the copy to the Respondent and asked the Appellant in a letter dated 1st October 2003 to send the signed hardcopy. This document arrived at the Appeals Office on 7th October 2003.
7. [REDACTED] responded in a letter dated 14th October 2003 and asked 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 humanitarian offer of USD 3,864.80, without granting any further interest”*.
8. On 22nd October 2003 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.
9. No request for an oral hearing has been received from either party. The appeal proceeds on a *“documents only”* basis.
10. 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

11. The Appellant has submitted the following information in relation to the claim for the proceeds of a life insurance policy.
 - a) In the Claim Form he identified *“[REDACTED]”* as the insurance company that issued a policy to his father.
 - b) He further states that the policy was purchased in Warsaw, Poland and that it was a life insurance and endowment policy. A copy of the policy, showing that it was a life insurance, was submitted.

- c) Further details of the policy are:
 - (i) Policy number: [REDACTED]
 - (ii) Currency: zloty in gold
 - (iii) Sum insured: 3,500
 - (iv) Date of issue: 1st December 1931
 - (v) Date of maturity: 1st December 1946
- d) The question “*Are you aware of any payments resulting out of the insurance policy ?*” is answered with “*no*”; the question “*To the best of your knowledge, were all premiums paid ?*” is answered with “*yes*”.
- e) [REDACTED], the Appellant’s father, born on 20th July 1891 is identified as the policyholder and insured person.
- f) The beneficiary is identified as [REDACTED], the Appellant’s mother.
- g) The question “*Do you know of any other living heirs of the policyholder?*” is answered with “*My brother [REDACTED]’s heirs: [REDACTED] – his wife, [REDACTED] – son, [REDACTED] ([REDACTED]) – daughter c/o Adv. [REDACTED] [REDACTED], Tel Aviv 64734*”.

12. In his “*Reasons for Appeal of Decision*” the Appellant submitted a statement in which he maintains the valuation made by [REDACTED] is incorrect. In particular, he draws reference to terms of the contract Art. 11 (2) and states “*in case of war the insured sum is being raised to 50,000 zloty in gold instead of 3,500 zloty in gold, therefore I am entitled to 50,000 - 850 = 49,150 zloty in gold*”. The Appellant further states “*The policy was supposed to be paid in coins of golden zloty. The only zloty coins are coins of 20 zloty each issued in 1925. The selling price of each coin, as appears on the Internet (page attached) is \$ 425 each. Therefore I am entitled to $2650:20 \times 425 = 56,312.5$ or $49,150:20 \times 425 = 1,044,437.5$* ”. He attached the above-mentioned page from the Internet and also submitted Polish documents containing general insurance conditions.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

13. In the decision letter sent by [REDACTED] dated 13th June 2003, [REDACTED] refers to policy no. [REDACTED], and writes, without mentioning other possible heirs, “*we are pleased to inform you that we are willing to offer you, within the framework of the German Foundation and ICHEIC procedures, a voluntary payment in the amount of USD 3,864.80 on the policy mentioned above*”. [REDACTED] continues, “*Because [REDACTED]’s branch offices in Eastern Europe were expropriated after World War II, [REDACTED] has no legal obligations with respect to the above policy. However, we believe that compassion and morality mandate that the unspeakable injustices inflicted upon victims of the Holocaust not be forgotten...[REDACTED] agrees that, if any error in the calculation that would affect the amount you are entitled to received, it will pay you any increase due (but will not seek a decrease in payment) in the amount now offered, and it will make voluntary payments to you on any other known policy entitled to further payments under ICHEIC guidelines.*”

14. In a further statement issued by [REDACTED] in response to the Appeal Process, 14th October 2003, [REDACTED] writes, “*the claim at issue relates to an Eastern European country where [REDACTED]’s former independent branch office was completely nationalized and expropriated immediately after the end of World War II. As a consequence of that, the only complete archives of the insurance activities – which were kept locally in compliance with local laws, as well as the financial reserves covering the value of the policies – were subtracted to [REDACTED]’s control. Due to the nationalization and expropriation of its former independent branch office, [REDACTED] has nowadays no legal obligation with respect to the policies issued in that country by this former independent branch office, and accepts to process the related claims only on humanitarian basis, within the framework of the German Foundation and ICHEIC system... Unfortunately with respect to the claim at issue no internal record has been found, and this is the reason for our impossibility to produce to the Panel any related documentation. Our humanitarian payment offer of USD 3864,80 – dated June 13, 2003 – was therefore solely based on the documentation submitted by the payment. Such payment offer has been calculated in strict compliance with the ICHEIC/German Foundation Valuation Guidelines (Annex D to the Tripartite Agreement of October 16, 2002), which clearly provide for: (a) the equalization of Golden Zloty to Zloty (‘policies issued with a link to the price of gold should be treated as if they had been issued in the nominal currency’ – Art. 7.3); (b) the valuation of the survivors’ policies (the policyholder/insured person/beneficiary died in 1954; the policy matured in December 1946) on the basis of their ‘paid up value’ (Art. 3.5), which must be calculated regarding the premiums as paid up to end of the war – although the premiums payment was interrupted well before”.*

THE ISSUES FOR DETERMINATION

15. Since the existence of a policy and the entitlement of the Appellant to the proceeds of this policy as heir (one of three heirs) of his parents are not in question, the main issue for determination is whether the sum of US\$ 3,864,80 offered by [REDACTED] is correctly calculated according to the Valuation Guidelines (Annex D). This will be set out under the caption “*Valuation*” below.
16. First, it has to be determined that the Appellant is not the only person entitled to the proceeds of the insurance policy.
17. Where it appears that a third person may be entitled to part of the proceeds of an insurance policy claimed in the appeal, the decision of the Panel shall reflect any such entitlement and the Panel may order the payment of the appropriate amount to any such third person out of the sum awarded by the Panel (section 19.2 Appeals Guidelines).
18. The Panel must apply in matters concerning the right of the Claimant to succeed to or inherit the benefits of an insurance policy (the “Proceeds”) from the person who was entitled to the Proceeds at the insured event (the “Deceased Person”) the Succession Guidelines as set out in Annex C of the Agreement. The Appellant states that beneficiary of the life insurance policy was his mother, the late [REDACTED], who was the policyholder’s and insured’s wife. If there is issue and no spouse (category A1-A3 of the Succession Guidelines) all proceeds are distributed to issue as provided in Paragraph 2(i) of

the Succession Guidelines. Where the Proceeds or part of the Proceeds are to be divided in accordance with this Paragraph 2 (i), those proceeds shall be divided into as many equal shares as there are (a) living members of the nearest generation of issue then living; and (b) deceased members of that generation who leave issue then living. Thus, the Appellant and his (late) brother [REDACTED] would have been entitled equally. Since brother [REDACTED] died in the meantime, according to section 2 (ii) each living member of the nearest generation receives one share and the share of each deceased member of that generation who leaves issue shall be divided in the same manner. Thus, the Appellant's (late) brother's share must be distributed between his two children [REDACTED] and [REDACTED], née [REDACTED], which means a share of ½ for the Appellant and ¼ each for his nephew and niece; the decision of the Respondent must be rectified accordingly.

VALUATION

19. Under the Tripartite Agreement (see para. 14 above) the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the said Agreement. There is no basis in the Agreement or the Valuation Guidelines for a calculation like the one put forward by the Appellant which has led him, by applying collector prices for old gold coins, to a figure of US\$ 1,044,437.50
20. The valuation of a claim includes, pursuant to section 1.2 of the Valuation Guidelines, two phases. The first is the assignment of a base value to a policy, depending on the terms of the contract, the history of the payment of premiums etc. and the circumstances of the insured event (death of the insured or maturity of the policy). The base value of a policy is, pursuant to section 1.3 of the Valuation Guidelines, the value that the policy would have had at the date of the insured event (on death of the insured person or on maturity at the end of the policy). The second phase in the valuation of a claim is the application of appropriate multipliers to the base value to produce the current value.
21. If, as is the case here, the insured person and the policy holder survived after 1945 (and premiums after that date had not been paid), the base value is, pursuant to section 3.5 of the Valuation Guidelines, the "paid up" value of the policy as assessed by the company (which will deem premium payments to have stopped in 1945) and subject to any further adjustments required by sections 3.3.1 and 3.3.3 of the said Guidelines.
22. Pursuant to section 7.3 of the Valuation Guidelines policies issued with a link to the price of gold should be treated as if they had been issued in the nominal currency.
23. Since here no "una tantum premium" was paid, but, according to the insurance policy, the premium was paid in a monthly instalment of Zł. 21.07, deductions from the insured sum of Zł 3,500 for unpaid premiums must be made. As there is no proof of any premium payments, and specifically no proof of premium payments after 1945, there is no objection to the calculation of the Respondent, which, following 3.5 of the Valuation Guidelines, took as base value the "paid up" value with premium payments deemed stopped in 1945. Deductions are justified for 7 months in 1945 and 11 months in 1946. Thus, deductions for non-paid premiums of (18 x Zł. 23.58 =) Zł. 424.44 are justified. This leads to a sum of Zł. 3,075.56, which is the paid up value. Further deductions totalling Zł.850.00 must be made pursuant to section 3.3.1 of the Valuation Guidelines since the policy was encumbered with this sum for loans made to the insured. This leads to a base value of Zł. 2,225.56.
24. As far as the Appellant's reference to Art.11 (2) of the contract ("*Military service during wartime*"), which provides that in case of the insured is serving in the armed forces during

wartime the insured sum is to be raised, this is not relevant for the calculation. There is no evidence that the Appellant's father was serving in the army during the war.

25. The value of Zł. 2,225.56 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 a value of US\$ 294.441588.
26. 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\$ 3,323.067762168 by the end of 2000.
27. According to Step 3 of Schedule 2 of the said Annex additions must be made to the dollar value to the end of 2000 for the subsequent years. These interest rates have been agreed upon in the Valuation Guidelines for 2001 and 2002 and have been fixed for 2003 and 2004 by a Memorandum of ICHEIC which has been circulated to the other two parties of the Agreement, the Foundation and [REDACTED] (2001: 5.4 %; 2002: 5.0 %; 2003: 4.75 % according to the month, in which the decision is made, plus two months, i.e. 8/12 of 4.75 %). A calculation on this basis leads to the amount of US\$ 3,503.513421325072 for 2001, US\$ 3,678.6390923913256 for 2002 and US\$ 3,795.129330317050910667 for 2003 (based on the date of the offer, which is June 2003 plus two twelfths additional interest).
28. The amount offered by [REDACTED] (US\$ 3,864.80) is differently calculated. However, pursuant to section 19.2 of the Valuation Guidelines, the Panel may render an award for smaller or larger amounts than claimed, provided that no award shall be for a sum lower than any sum already offered by the relevant German company. As [REDACTED] offered a higher sum this higher offered must be paid and be distributed between the Appellant (1/2) and the children of his late brother (1/4 each).

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal is dismissed.
2. The decision made by [REDACTED] is amended to require that the offer of US\$ 3,864.80 be divided among the Appellant (1/2) and his nephew [REDACTED] (1/4) and his niece [REDACTED], née [REDACTED] (1/4).

Dated this 4th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member