

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]

Represented by
[REDACTED],
Bayside, Queens, New York,
United States of America

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] 1923 in Pyrgi (Pirgus), Kozani (Greece). She is the daughter of [REDACTED]. He was born in 1898 in Pyrgi (Pirgus), Kozani and was executed on 23rd April 1944, because he had, according to the Appellant, endeavoured to aid and protect persecuted Jews.

She is represented by her son [REDACTED].

2. The Respondent is [REDACTED].
3. The Appellant's son submitted a claim dated 29th March 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued a policy of life insurance to his grandfather.
4. The ICHEIC submitted the claim to the Respondent. [REDACTED] stated in its decision letter dated 5th June 2003 *“based on these facts we have evaluated your claim in accordance with the “Valuation Guidelines” which are part of the Agreement to show the current value of the policy. For your better understanding, we have attached a valuation sheet to explain the calculation. This calculation leads to a current value in the amount of € 4,225.83 for compensation. As you have declared that your mother, Mrs. [REDACTED], is still alive and the only legal heiress of Mr. [REDACTED] we assume that based on the proxy submitted by you, you are authorised to receive payment on your mother's behalf”*.
5. The Appellant submitted an appeal to the Appeals Office dated 5th September 2003, which was accompanied by an attachment setting out the reasons for the appeal and copies of documents, which already were submitted in the claims procedure.
6. The Appeals Office forwarded the appeal, which was received in the office on 2nd October 2003, to the Respondent on 13th October 2003.
7. [REDACTED] responded in a letter dated 20th October 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”*.
8. On 13th November 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 the Appellant's representative, [REDACTED], born on [REDACTED] 1957 in Athens, Greece identifies "[REDACTED]" as the insurance company that issued a life insurance policy to his grandfather [REDACTED].
- b) The question "*Was the policyholder and/or insured and/or beneficiary a victim of the Holocaust ?*" is answered with "yes".
- c) He states that the policy, a copy of which he attached, was purchased in Thessaloniki, Kozani, (Greece) and in answer to question 3.3 concerning other information he *writes*, "[REDACTED], [REDACTED], rue [REDACTED]".
- d) In section five he provides the policy number, [REDACTED] and states that the insured sum was 30,000 Gold Greek Drachmas. He states that the policy was taken out on 15th July 1927 and its date of maturity was 15th July 1942. He states that the amount of premium was 30,000 Gold Drachmas and that all premiums were paid to the best of his knowledge. He acknowledges that he approached the insurance company about the policy in 1992.
- e) In section six the policyholder is identified as [REDACTED], born in Kozani, Greece, the Appellant's father (and grandfather of her representative).
- f) In section seven the policyholder is identified as the Appellant's father (and grandfather of her representative).
- g) In section eight he identifies the beneficiary(ies) as "*his* (i.e. the policyholder's and insured) *children*" and answers question 8.1 "*Last name of beneficiary*" with "[REDACTED]", born on 12th December 1923 in Kozani (Greece). He further answers question 8.10 ("*If applicable date (day/month/year) and place of death of beneficiary – or best approximation*") with "12/12/1923". This is an obvious mistake in completing the claim form, as his mother [REDACTED] is still alive. He, finally, asserts that other living "heirs" of the beneficiary are his brother [REDACTED] and his sister [REDACTED].
- h) The question in section nine, asking "*Have you or anybody else participated in any compensation/restitution procedure for this claim ... ?*" is answered "*no, lived outside Germany*".
- i) He nominates the law firm, "[REDACTED]" in New York as his representative.

12. The Appellant's representative submitted documentation regarding the insurance company in general and the policy in question. The documents were in Greek, with some translations provided.

- a) A financial statement for 1925 for [REDACTED]. This shows assets totalling Goldmarks 220,659,050.

- b) A document dated 1927 issued by [REDACTED] which states, *“I received the sum of 2,309.50 of insurance value of 30,000 Drs from Mr [REDACTED] [REDACTED]. [REDACTED] to cover the Company’s transmittal expenses for his requested insurance policy in accordance with the schedule of prices [REDACTED] duration 15 years”*.
 - c) A clarification of [REDACTED]’s insurance terms and conditions.
 - d) A table of dividends for policy [REDACTED] for the insured amount of 30,000 Drachmas.
 - e) A copy of the policy [REDACTED] issued by [REDACTED] to [REDACTED] for the insured amount of 30,000 Drachmas. The policy was taken out on 15th July 1927 and had a maturity date of 15th July 1942.
 - f) General terms and conditions of insurance.
 - g) Copies of receipts for the premiums from 1927 until 1942.
 - h) A copy of a letter dated 29th December 1992 concerning policy [REDACTED]. This letter was sent by [REDACTED] and informs a Mr [REDACTED], *“the coverage resources for these types of contract were transferred in 1943 to the Greek company [REDACTED]’ and we would therefore ask you to approach the company concerned”*.
13. The Appellant’s representative submitted a statement providing the reasons for appealing the decision made by [REDACTED]. In this statement, dated August 2003, he gives (details below) further information about his grandfather’s life and death, asserts that the valuation provided by [REDACTED] is incorrect, disputing the conversion into Lira. Furthermore, he is of the belief that there was a provision for dividends within the policy and this is owed to his family. Finally, he points out that there was a provision for death during wartime, which [REDACTED] neglected. More generally, he disputes the offered payment and, implicitly, the fairness of the Valuation Guidelines upon which the calculation of the Respondent is based; in this connection he also makes reference to the fact that his well documented case was one of those which have led to the class action and, later, to the Executive Agreement and the Foundation Law which, among others, resulted in the Tripartite Agreement mentioned in no. 10 above.
- a) He gives background information concerning the circumstances of his grandfather’s death by writing *“Mr. [REDACTED], his wife, siblings, and two cousins lost their lives, were executed, standing up for what they believed was the moral and right thing to do, to aid and protect Jewish people from murderous Nazis”*.
 - b) He challenges [REDACTED]’s calculation as follows: *“After reviewing [REDACTED]’s offer of compensation, our Policy, and relevant documentation, we have identified several strong objections to the sum of the offer, the assumptions made in the offer, the implications of [REDACTED]’s statements within it, and the method used for calculation of the offer. ... We do not accept the method of valuation that [REDACTED] has used to arrive at their figure. It is in no way connected to the Policy or the original solicitation used by [REDACTED] to gain Mr. [REDACTED] as a customer”*.
 - c) He disputes the conversion from Drachma to Lira stating *“References in the solicitation for the Policy are in terms of millions British Pounds, Gold Deutsche Marks, and Greek Drachma. This was at a time when these currencies were on par in terms of value and*

buying power. British Pounds and Gold Deutsche Marks are presented as guarantees for the insurance policy in relation to the financials and assets of [REDACTED], as well as guaranteeing their funds as deposited to British and German Banks and held in their respective currencies. Their literature states they have been in business since 1853 and affirms that their financial stability in British Pounds and Gold Deutsche Marks renders their Policy a stable investment. ... These financial implications coupled with their statements of payouts above and beyond competitive Policies during the period after WWI were the foundations of the agreement to purchase this Policy. We refute this calculation based on Italian Lira, as the company itself had not made any representation of this currency previously or in the Policy. Italian Lira are not referenced anywhere in the Policy. This calculation is merely a transparent attempt by [REDACTED] to avoid fulfilling its contractual obligation under the Policy terms. They are using a weak currency, and unfair calculation methods to devalue the Policy. Even in 1992, when [REDACTED] was contacted, their arguments never referred to Italian Lira – only to Greek Drachma”.

- d) *As far as dividends are concerned he points out: “According to the Policy there is a provision for dividends. According to our records the dividends were 5,770.05 Greek Drachma at the date of the record. We want and expect the same treatment that any [REDACTED] Policy holder benefits from – adherence to the provisions of our Policy Agreement – especially since we are some of their oldest customers. There is no explicit cap or limitation on the dividends in the Policy. [REDACTED] must come current to the date they pay us”.*
 - e) *As to the wartime provision he writes: “The Policy has a provision for death during wartime – a war clause. It stipulates that the payout of the policy is calculated based on a percentage from a monetary pool assigned to each war affected country for its Policyholders. The family was never contacted or paid under this provision either”.*
14. *Summarizing he states: “[REDACTED] has not held up its end under the terms of our policy, a policy fully paid up by Mr. [REDACTED]. They have, in fact, used various means of deception to directly avoid paying on the Policy and continue to some 59 years later. Case in point, when attempts were made by [REDACTED] to contact [REDACTED] in 1956 she was stonewalled and told by representatives that the company was defunct. This was false, as we know, and the company is in fact still in existence. Case in point, in 1992 [REDACTED], in Thessalonica, Greece, was contacted and said they were a ‘different’ company using the same name. Case in point, [REDACTED] has provided conflicting information in reference to the war clause monetary pool. In 1992 their contention was that the Policy itself was sold to a company called [REDACTED], which later proved to be non-existent. Even had it existed, transfer of the policy would have been illegal without prior notice or consent from Mr. [REDACTED] or his family. Regardless, their later contention was that the payout pool had been somehow bought out or transferred to [REDACTED] Bank (according to an oral statement by Mr. [REDACTED] from [REDACTED]). Case in point, the Policy provisions outline specific means through which replacement policies are given in case of loss, theft, fire, etc. This implies that [REDACTED] keeps complete and detailed archives of its policies and customers. In fact [REDACTED] has submitted only copies of our copies with the offer, despite their explicit assertion that they “have searched intensively in [their] records and in relevant archives for information”, and “have found evidence in [their] company archives” etc. Also they did not even submit a copy of the full policy as required by ICHEIC regulations. They only submitted the first page of the policy with the offer in order to avoid dealing with the actual provisions of policy from the subsequent pages. These are just some examples of how [REDACTED] is trying to shirk its responsibility to pay this policy”.*

15. A subsequent statement was submitted by the Appellant's representative and received by the Appeals Office on 18th December 2003. In this statement he reiterates his objection to the valuation by [REDACTED].

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. The Respondent, in its final decision letter of 5th June 2003, confirmed the existence of the policy numbered [REDACTED] taken out by the Claimant's grandfather and stated that it had found evidence in its company archive. However, in a statement submitted to the Appeals Office dated 20th October 2003, it writes, "*the offer was based solely on the copy of the policy submitted by the claimant himself and the relevant enclosures which enabled us to identify the policy as part of the former portfolio of [REDACTED] in Greece. However, we ourselves cannot find any reference to this specific policy in the few records still available with us and can thus not provide further documents to the Appeals Panel...The valuation of the claim was made in strict adherence to the rules relating to the valuation of Greek policies of the 'Agreement' dd 16th October 2002. We explicitly refer mainly to the rules in Annex D, Subsection 6.1, Schedules 2 and 5 as well as to the decision memorandum of ICHEIC dd 6th July 2000.*"

THE ISSUES FOR DETERMINATION

17. Since the existence of a policy and the entitlement of the Appellant, [REDACTED], to the proceeds of this policy as the heir of [REDACTED] are not in question, the only issue for determination in this case is whether the sum of € 4,225.83 offered by [REDACTED] is correctly calculated according to the Valuation Guidelines (Annex D).
18. Pursuant to section 4(3) of the Agreement dated 16th October 2002 the subject of an appeal may be limited to whether the Valuation Guidelines have been correctly applied in calculating an offer made to the Claimant.

VALUATION

19. Under the Tripartite Agreement (see paragraphs 10 and 13 above), which is binding upon the Parties to the Appeal and the Appeals Panel itself, the valuation of policies and any decision by the Panel must be based solely on the Valuation Guidelines, which form Annex D of the said Agreement. There is, as the Parties to the Tripartite Agreement have agreed, no basis in the Agreement or the Valuation Guidelines supporting the calculations presented by the Appellant as set out above (paragraphs 13 and 14) and no room for different calculations following the Appellant's reasoning. The Appellant apparently regards the Valuation Guidelines as unfair. Legally speaking, this amounts to questions of the validity of the Valuation Guidelines. This question, according to section 2.2.1 of the Appeal Guidelines, is not within the jurisdiction of the Appeals Panel.
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 here, the insured person or the policyholder died during the Holocaust era, which starts for Greece according to Schedule 1 of the Valuation Guidelines in the year 1941, the base value at the date of the insured event is the full sum insured minus any specific deduction as defined in section 3.3 of the Valuation Guidelines (section 3.2 of the Valuation Guidelines). Here, there are no deductions, which must be made for loans taken out during the life of the policy but before the beginning of the Holocaust era and not repaid, for premiums not paid subject to the conditions listed in section 3.3.2 of the Valuation Guidelines or for compensation related to specific policy and paid under post war arrangement, because there is no indication that loans had been taken out, which could lead to deductions, and the Appellant stated that all premiums were paid and no compensation or restitution procedures took place.
22. Pursuant to section 6 of the Valuation Guidelines the current value of a policy 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. The current value of offers on policies issued in these countries is calculated in accordance with the steps outlined in Schedule 2 of the Valuation Guidelines.
23. 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.
24. Thus, the calculation must be based on a base value of Drachmas 30,000.
25. According to Step 2.2 of the Schedule 2 for Greece, the policy sum insured must be converted to Italian Lire at the average rate of exchange for the year of issue of the policy. The net sum due from the insured event has the multipliers for Italy applied to it. The exchange rates between the Drachma and the Lira are shown in Schedule 5. The conversion rate of Drachma into Lira for 1927, the year in which the policy was issued, is 1 Drachma = 0.255 Lira. The base value converted from Drachma into Lira gives the equivalent of Lire 7,650.
26. This sum, pursuant to Step 1 of Schedule 2, must be multiplied by the multiplier to be used in step 1 as described in the valuation guide from the date of the insured event, which here is the insured's death in 1942. The multiplier for 1942 for Italy is 936.8. This leads to the amount of Lire 7,166,520 by the end of 2000.
27. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the Valuation Guidelines, additions must be made to the valuation to the value up 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 by a memorandum of the ICHEIC which has consulted with the Foundation and the [REDACTED] as the other parties to the Agreement (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 %), which results in the amount of Lire 7,553,512.08 for 2001, Lire 7,931,187.684 for 2002 and Lire 8,182,341.96066 for June 2003, which was the equivalent of € 4,226.17962268089 on the basis of an exchange rate of Lire 0.0005165 = € 1.

28. The Appeals Panel accepts that – from the Appellant’s point of view – there are reasons for criticizing in his specific case the results of the valuation of his policy when calculated according to the Valuation Guidelines. However, as already explained above (paragraph 19) the Appeals Panel is bound by the Agreement and its Annexes, among others by the Valuation Guidelines, which were negotiated and agreed upon by the Three Parties and which have to be considered when making a decision on a claim or an appeal.
29. The Appeals Panel concludes that for the reasons set out above the offer made by the Respondent is correct and that the Respondent – irrespective of the dismissal of the appeal – must pay the sum offered in its decision letter dated 5th June 2003.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

The appeal is dismissed.

Dated this 14th day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member