

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 NUMBERS: [REDACTED]
[REDACTED]

BETWEEN

[REDACTED],
[REDACTED] AND
[REDACTED]

APPELLANTS

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 Appellants are [REDACTED], née [REDACTED], and [REDACTED] and [REDACTED] all of whom were born in Chust (at that time Czechoslovakia). They are the children of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1926, [REDACTED] was born on [REDACTED] 1921 and [REDACTED] was born on 6th December 1929. [REDACTED] was born on [REDACTED] 1897 in Selistea (Austria-Hungary) and died in May 1944 in the concentration camp at Auschwitz. The entire [REDACTED] family was deported to Auschwitz. In August or September 1944 their house and business in Chust burned down.

2. The Respondent is [REDACTED] ([REDACTED]) as successor of “[REDACTED]” ([REDACTED]).
3. The Appellants, represented by [REDACTED], submitted two claims dated 28th June 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which they claimed that “[REDACTED]” issued policies of fire insurance.
4. The ICHEIC gave those claims the numbers [REDACTED] and [REDACTED] and submitted them to the Respondent. [REDACTED] stated in its decision letter dated 17th March 2003 “*based on the information you provided and our search, no adequately supporting evidence of claims having possibly occurred under the policies’ conditions has emerged: and additionally regarding policy [REDACTED] no indication was made available as to the building/items thereby insured – and we are therefore declining your claims*”.
5. The Appellants submitted an appeal to the Appeals Office dated 8th July 2003, which was accompanied by an attachment setting out the reasons for the appeal and copies of further documents including pictures of their house and business.
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 22nd September 2003 to sign an amended appeal form.
8. On 30th September 2003 the Appeals Office received the new Appeal Form, which is dated 26th September 2003 and mailed a copy to the Respondent.
9. [REDACTED] responded in a letter dated 27th October 2003 in which it set out further reasons for the denial and requested the Appeals Panel for those reasons and for the 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*”.
10. On 7th 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.
11. The Appellants answered in a letter dated 20th November 2003, in which they responded to [REDACTED]’s assertion that the damages at their parent’s house and business was caused by war. They stated, “*The fire which destroyed our father’s house and building material business certainly came about for racist reasons*”.
12. In a letter dated 3rd December 2003 [REDACTED] remarked “*up to now, such details were not mentioned at all by the Appellant*”.

13. The Appellants responded in two further letters dated 11th December 2003 and 5th February 2004. In the last letter they wrote “*My brothers [REDACTED] and [REDACTED] are prepared to give their findings under oath at any time. They are willing to justify this matter by means of a telephone call*”.
14. On 9th March 2003 the Appeals Panel decided that there would be an oral hearing of the Appellants by telephone conference call on 15th March 2004 and that the interview would be conducted in German. The Appeals Office informed both parties about this decision by letter dated 10th March 2003.
15. The oral hearing took place on 15th March 2004. It was conducted in German and translated by an interpreter into English.
16. 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

17. The Appellants have submitted the following information in relation to the claims for the proceeds of a fire insurance policy.

Claim no. [REDACTED]

- a) It is stated that the fire insurance policy was purchased in Chust, Hungary from “[REDACTED]”.
- b) In answer to question 4 concerning documents the following is written, “*picture taken for 1944. 2 pictures taken after 1944 on which our living house that burned down on August or September 1944 is not visible. Declaration of Mr [REDACTED] and Mr [REDACTED], both born in Chust*”.
- c) In answer to question 5 concerning specific details about the policy, it is stated that the policy was a ‘*fire insurance policy*’ with policy number [REDACTED] for the insured sum of 10,000 Pengö, with a date of issue of 1941 and a date of maturity of 1951. According to the Appellants single payments were made on a ½ yearly-basis with an amount of premium of 52 Pengö and 60 Filler.
- d) The policyholder and beneficiary is identified as [REDACTED] and his wife born [REDACTED], with the “*insured person*” identified as “*the house of our parents*”.
- e) In answer to question 11 the following information is given, “our residential house in Chust, [REDACTED] was insured at the ‘[REDACTED]’ against fire, according to the enclosed policy from 1941 to 1951. We were deported to Auschwitz, according to our Christian neighbours, our residential house was burned down in August, or September 1944”.
- f) The following documents were submitted with the claim form:
 - (i) Three photocopies of photos of the property in question.

- (ii) A copy of ‘*authentication of signature*’ for [REDACTED] and [REDACTED].
- (iii) A copy of a declaration dated 24th April 2000 signed by [REDACTED] and [REDACTED] in which the following is declared, *“that our parents and the [REDACTED] family were good friends and visited each other very often till the time of the ghetto in 1944. We were close friends with the children of the above mentioned family and stayed often in each other’s house. We remember that [REDACTED] [REDACTED] lived in Hust, [REDACTED], till the ghetto. He had on the same address a business of wood and building materials. Till April 1944 the house as well as the business were fully intact. In May 1944 we were all deported to Auschwitz. Having survived the Holocaust, we remember clearly that the house and the business area were only a burned out ruin upon our return from the camps. According to Christian neighbours in August or September 1944, a fire broke out on those premises and burned down everything”*.
- (iv) A partial copy of a ‘*fire insurance policy*’ no. [REDACTED] from “[REDACTED]”. The policyholders are Mr. [REDACTED] and his wife (maiden name [REDACTED]). The policy is from 01 January 1941 to 01 January 1951, payment method: annually. The policy was issued 07 January 1941. The sum insured was 10,000 Pengo. It is stated in the translation that the insurance was for *“property of their own as listed below, against fire and lightning...”* On the lower half of the policy there is a table with figures. According to the translation this concerns house number [REDACTED] in the street [REDACTED]. Beside the word ‘industry’ it is marked ‘none’. The building is described as *“dwelling single storey pantry and back house dwelling...barn and stables”*.
- (v) Copies of 2 premium payments for fire insurance policy [REDACTED] (subject building), and fire insurance policy no. [REDACTED] (subject contents) from the year 1942. Both of these were made out to [REDACTED] [REDACTED].

Claim no. [REDACTED]

- a) It is stated that also this fire insurance policy was purchased in Chust, Hungary from “[REDACTED]”.
- b) In answer to question 5 (“*What do you know about the policy?*”) the following information is given: The policy number is given as [REDACTED], (policy number [REDACTED] has been crossed out) with an insured sum of 10,000 Pengö. The date of issue is given as 1939 and the date of maturity is given as 1949. The mode of premium payment is given as *“annual”* with an amount of 65.40 Pengö.
- c) In answer to questions 6, 7 and 8, the policyholder and beneficiary is named as [REDACTED], the father of the Appellants, with the insured person described as *“business of my father”*.
- d) In answer to question 11 concerning “further information” the Appellants write, “the business of our father in Hust [REDACTED] was insured at the ‘[REDACTED]’ against ‘Fire’ according to the enclosed policy from 1939-1949. We were deported to Auschwitz. According to the Christian neighbours the business of our father (wood and building material) all was burned down in August or September 1944”.

- e) In a letter dated 24th May 2000 to the ICHEIC the Appellants state that they have two fire insurance policies from ‘[REDACTED]’ *“Nr. Police. [REDACTED], issued in 1941 valid in 1950. The insured object was the residence of our family. The police was issued of both owners father and mother [REDACTED] and wife [REDACTED] born [REDACTED]. Nr. Police [REDACTED] of the name of my father [REDACTED] [REDACTED], issued in 1939 valid in 1949. This object was the business of my father.”*
- f) The following documents were submitted with the claim form:
- (i) Copies of passports of the Appellants.
 - (ii) Three copies of photographs of the property.
 - (iii) Authentication of signature of Mr [REDACTED] and Mr [REDACTED].
 - (iv) Declaration of Mr [REDACTED] and Mr [REDACTED] (see above explanation).
 - (v) Reminder to pay policy number [REDACTED], dated 04 April 1943.
 - (vi) Receipt for 28 Pengö and 60 Filler paid into the account number [REDACTED], stamped 1943. Although the translator states that the reference number is illegible, it is possible to read a number at the top which is: [REDACTED].
 - (vii) Partial copy of fire insurance policy for [REDACTED], [REDACTED] for the policy number [REDACTED] (which is stated by the translator as being [REDACTED]). The insured amount was 10,000 Pengö with an annual premium of 65.40 Pengö. The policy was taken out with from “[REDACTED]” and the translated document has the following information: *“Insurance for the below named, through the Hungarian directorate based on the offer submitted for [REDACTED] Esq. For property of his own as listed below, against fire and lightning with the conditions as defined in the present policy document and with further written insurance conditions if applicable. For 10 years from April 1939 to April 1949. For the amount of 10,000 pengö, in words: ten thousand Pengö. On 4th day of April 1940/1948 years. 9 instalments are payable at 65 each”*.
18. In their appeal form the Appellants summarize their statements made in the claim procedure and again list the documents submitted.
19. In a supporting statement, dated 8th July 2003, sent by the Claimants with the “old” appeal form they state they submitted their claims to [REDACTED] in Budapest in 1945.
20. Furthermore, in response to [REDACTED]’ letter of 27th October 2003 [REDACTED] writes, *“we wanted to stress that the above policies were also in effect in 1944, because up until the date of maturity we were still at home and our father always paid his premiums on time (fire insurance premiums were paid in advance). The damage was not caused by the war, because the Russian troops only marched through Hust without resistance in November 1944. Unfortunately we only found fragments of documents in 1945. We have sent photocopies of these. The fire, which destroyed our father’s house and building material business, certainly came about for racist reasons. Other Jewish properties were also burnt...”*.
21. In a statement, which the Appeals Office received on 15th December 2003 the Appellants again repeat that the fire was caused as a result of the Holocaust.
22. In a further statement made in a letter dated 5th February 2004 the Appellant [REDACTED] states that *“my brothers, [REDACTED] and [REDACTED], were in Chust shortly after the war and on this occasion dug up my father’s documents, buried in tins, and amongst them were the policies”*.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

23. In the final decision letter issued by [REDACTED] dated 17th March 2003, [REDACTED] 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”. [REDACTED] continues, “unfortunately we have to inform you that, based on the information you provided and our search, no adequately supporting evidence of claims having possibly occurred under the policies’ conditions has emerged: and additionally regarding policy [REDACTED] no indication was made available as to the building/items thereby insured – and we are therefore declining you claims”.
24. In a further statement submitted with regards to the Appeal Process dated 27th October 2003, [REDACTED] writes, “unfortunately with respect to the claims at issue, no documentation further to the one already submitted by the Appellant has been found by [REDACTED]. This is the reason why cannot produce to the Panel any additional document related to the claims at issue, because no such document is available. We would like to point out that, with respect to Mr [REDACTED]’s life insurance policy n. [REDACTED] has already in October 1999 addressed to the Appellant – under the ICHEIC claim n.[REDACTED] – a payment offer for USD 11.994, 52, then increased to USD 12 521.13 in March 2000. This sum was cashed by the Appellant in June 2001. On the contrary, the Appellant’s claims related to the two non-life insurance policies currently at issue have been rejected in accordance with the Agreement entered into on October 16, 2000 among the ICHEIC, the [REDACTED] and the [REDACTED], because of the lack of several requirements which the same Agreement regards as necessary for the eligibility of non—life insurance claims
- there is no sufficient evidence that the policies were still in force at the time of the event (Section 2, (2) (a) and Sect. 2, (3) (c) of the October 16, 2002 Agreement), as the presumption of premiums payment established with respect to life insurance policies cannot be applied to non-life contracts, in consideration of their completely different nature.
 - There is no sufficient information or evidence about when and how the damage or loss happened (Section 2, (3) (a) of the Agreement).
 - In any case, it must be regarded as highly probably that the claims under examination were caused by war (Section 2, (2) (a) of the Agreement), and therefore they cannot be regarded as eligible under the ICHEIC/[REDACTED] system. As a matter of fact, the period during which the Appellant maintains that the losses would have taken place (August-September 1944, according to the witnesses’ declaration) coincided with the marching of the Soviet army within that territory. Therefore, it is more than plausible that the losses were caused by war actions. On the contrary, it is very unlikely that these events could have been caused by racial or religious persecutions, as otherwise they would have taken place at the same time of the deportation (April-May 1944)”.
25. Finally in a statement submitted to the Appeals Office dated 3rd December 2003 in response to a letter sent by the Appellants, [REDACTED] writes “While we take note of the new assertions made by the Appellant (‘The fire...certainly came about for fascist reasons’), we have to remark that, up to now, such details were not mentioned at all by the Appellant, and even the declaration signed on April 24, 2000 by two Appellant’s witnesses did not indicate

any particular reason for this fire, and apparently described it as fire caused by accidental reasons ('a fire broke out on those premises and burned down everything'.) Therefore, there is no reliable evidence that this fire was caused by Holocaust-related reasons. Finally we wish to point out that [REDACTED] never got any compensation or reparation from the Hungarian State in respect of its pre-war local activities, which were completely nationalized and expropriated after the end of the war".

THE ISSUES FOR DETERMINATION

26. The Panel decided, pursuant to section 14.1 of the Appeal Guidelines (Annex E of the Agreement), for the purpose of the appeals procedure to consolidate claim numbers [REDACTED] and [REDACTED]. They were denied by the same decision letter and are appealed in one appeal form. They are “*related appeals*” submitted by the same claimant but relating to different policies, namely non-life insurance policies for two different objects.
27. The first issue for determination in this appeal is whether the Appellants have met their burden of proof as set out in the Appeal Guidelines (Annex E of the Agreement), section 17 (which have to be applied *mutates mutandis* according to section 2 (2) of the Agreement and section 1.3 of the Appeal Guidelines as the Appellants here are claiming the proceeds of a non-life insurance policy), which provides that to succeed in an appeal the Appellants 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.
28. 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.
29. Based upon the written assertions and statements during the oral hearing the Panel concluded that the Appellants have met their burden of proof. Their evidence has the requisite authenticity and particularity. There is no doubt that their father had taken out two fire insurance policies (number [REDACTED] and [REDACTED]) with “[REDACTED]”, a German company under the Agreement, which were in force between 1920 and 1945. The Appellants were able to provide fragments of these insurance policies together with copies of premium receipts showing that premiums were paid for policy number [REDACTED] at least until mid 1942 and for policy number [REDACTED] at least until mid or end of 1943. Even if – as the Appellants state – premium payments were stopped after their and their

parent's deportation to the concentration camp at Auschwitz, this, nevertheless, does not affect the existence of the insurance contract. Moreover, the Respondent could present no evidence to support any contention that the insured event occurred after the period covered by the paid premiums. However, even if there are unpaid premiums covering the period of the insured event, this case should be treated as are life insurance cases by making deductions pursuant to section 3.3 of the Valuation Guidelines. As life insurance contracts do not expire because of non-paid premiums so too non-life insurance contracts should remain valid even if premiums could no longer be paid, because the policyholders were imprisoned in concentration camps, lost their incomes because of persecution or were forced to hide. There is no justification for treating non-life insurance contracts differently from life insurance contracts in this regard. The Respondent's assertions in its letter dated 27th October 2003 about non-paid premiums until the occurrence of the insured event are merely speculative on its part and do not reflect that premiums for fire insurances commonly are paid in advance. Further, there is no indication that these fire insurance policies covered damages for other than the house and business building of the late [REDACTED], as no one stated that he owned more than these two buildings. There is also no doubt that the Appellants and their parents were Holocaust victims as defined in Section 14 (Glossary) of the Agreement dated 16th October 2002 and that the Appellants, as heirs of their father, would be the persons entitled to the proceeds of the policies.

30. The remaining difficult question is whether the fire damage was caused by war in general or whether it can be attributed to racial or religious persecution. The Panel concludes that the Appellants have met their burden of proof in this regard. While it is true that many material losses were caused directly by war, it is equally true that not all damage occurring during wartime were consequences of armed conflict. In many regions, the property of Jews was destroyed for racist reasons. There is no evidence that at the end of World War II there were major clashes in the Chust area; this makes it unlikely that defending or attacking armed forces caused the fire. Therefore, the mere assertion of the Respondent that the damages were caused by war does not negate the plausibility of the Appellant's assertion that the losses were caused by the anti-Semitic actions of neighbours. This, in addition, is supported to a certain extent by the testimony of two persons who visited the place shortly after the war. The Appellants provided written statements by [REDACTED] and [REDACTED] who both confirmed, based upon what they were told by Christian neighbours, that in August or September 1944 a fire broke out on the premises and burned everything. All three Appellants stated during the oral hearing in a way convincing to the Panel that they understood that the fires were not the result of war damage but reflected an attempt to cover up the looting which occurred after their family had been deported to Auschwitz.

VALUATION

31. Pursuant to section 1.1 of the Valuation Guidelines these Guidelines are intended as a guideline for those assigning values to valid claims on Holocaust Era life insurance policies. The Contracting Parties to the Agreement did not agree on specific provisions on non life insurance policies. However, the Panel regards these Guidelines as applicable also on non-life insurance claims, because it makes no difference whether an Appellant has a claim for payment out of a life or a non-life insurance contract. In both cases he would have a claim for payment of a certain sum, which must be recalculated when being paid out under the provisions of the Agreement.
32. 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.

33. 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 its occurrence (the fire in August or September 1944). The value at that time was 10,000 Pengö for each policy.
34. No deductions as mentioned in section 3.3. of the said Guidelines, need be made, because there is no valid suggestion that premiums were not fully paid until the insured event occurred. A deduction could only be made if the company had evidence of unpaid premiums. If the company – as is the case here – has no records it shall make no deductions, if the insured occurrence happened before May 1945 (section 3.3.2 Guidelines).
35. The value of the two policies in Pengö (2 x 10,000) corresponds, according to section 6.2 of the said Annex and the discounted exchange rate of US\$ 0.1376 laid down in Step 1 of Schedule 2 of the said Annex, to the value of US\$ 2,752.
36. According to Step 2 of Schedule 2 of the said Annex this dollar value must be multiplied by 11.286 resulting in a value to the end of 2000. This was US\$ 31,059.072 by end 2000.
37. According 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. 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 which had consulted with the Foundation and the [REDACTED] as the other parties of 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. 6/12 of 5.0 %), which results in the amounts of US\$ 32,736.261888 for 2001, US\$ 34,373.0749824 for 2002, US\$ 36,005.796044064 for 2003 and US\$ 36,905.9409451656 for 2004.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

1. The appeal succeeds.
2. [REDACTED] shall pay the Appellants the sum of US\$ 36,905.94 no later than the last day of the second month following the month of the decision, which is 31st July 2004, such sum to be shared in equal parts (1/3) among the Appellants.

Dated this 1st day of May 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member