

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]
[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] (formerly [REDACTED]), born on [REDACTED] 1925 in Warsaw (Poland). He is the son of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1899 in Latowicz (Poland) and died on 2nd October 1981 in Tel Aviv (Israel); [REDACTED] was born on [REDACTED] 1902 in Jeziorno (Poland) and died in the Warsaw Ghetto in April 1943. The Appellant had two sisters who both did not survive the Holocaust and also died in the Warsaw Ghetto in April 1943.

2. The Respondent is [REDACTED].
3. The Appellant submitted two claim forms dated 22nd November 2000 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] issued two policies of life insurance. The two claims were given claim numbers [REDACTED] and [REDACTED].
4. The ICHEIC submitted the claims to the Respondent. [REDACTED], dealing with both claims, stated in its decision letter dated 7th October 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 121,046.51 (one hundred twenty-one thousand and forty-six dollars and fifty-one cents) on the policies mentioned above (policies number [REDACTED] and [REDACTED])*”.
5. The Appellant submitted an appeal to the Appeals Office dated 29th January 2004, which was accompanied by an attachment setting out the reasons for the appeal and copies of documents from the claims process.
6. The Appeals Office received the appeal form on 19th February 2004 and mailed a copy to the Respondent on 20th February 2004.
7. [REDACTED] responded in a letter dated 10th March 2004 and requested the Appeals Panel for reasons it had set out before to “*confirm our payment offer of USD 121,046.51, without granting any further interest*”.
8. On 19th March 2004 the Appeals Office informed both parties that the appeal will be decided 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 his claims for the proceeds of life insurance policies in his claim forms (in the claim files there are two claim forms, one being a photocopy of the other. The two claim forms are almost identical (but clearly indicate that two policies are in question):
 - a) The Appellant claims that “[REDACTED]” was the company that issued the life insurance policy. He asserts that the policy was purchased in Warsaw, Poland.
 - b) In section four regarding documents the Appellant writes, “*1) letter from [REDACTED] dated 24/2/98 confirming their letter of 16/3/1948 to my father [REDACTED] regards*

the policies. 2) claim to Polish authorities dated 21st July 1961 signed by me ([REDACTED]) on behalf of my father”.

- c) In section five the policy numbers are stated as [REDACTED] and [REDACTED]. The currency is identified as dollars “(in gold)”. The insured sum(s) is (are) stated as 8,000 with the date of issue of 1935. It is stated that premiums were paid until August 1939.
- d) In section six the policyholder is identified as the Appellant’s father, [REDACTED], who was born on [REDACTED] 1899 in Latowicz (Poland) and died on 2nd October 1981 in Tel Aviv (Israel).

The two claim forms differ as follows:

- e) In section seven the insured persons are identified as the Appellant’s mother, [REDACTED] née [REDACTED], who was born on [REDACTED] 1902 in Jeziorno, Poland. The original of this claim form relates to claim file number [REDACTED].

The original claim form relating to claim file number [REDACTED] names as the insured person the Appellant’s father, [REDACTED], who was born on [REDACTED] 1899 in Latowicz, Poland.

- f) The beneficiary is identified as [REDACTED] in the original claim form relating to claim file number [REDACTED].

The original claim form relating to file number [REDACTED] identifies [REDACTED] as beneficiary.

Both claim forms are again identical in sections 9 to 11:

- g) In section eleven regarding “*further information*” the Appellant writes, “*I left Warsaw on 10th April 1940 with my father and came to Israel. My mother [REDACTED] and my two sisters perished in the Warsaw ghetto in April 1943. My father [REDACTED] died in 1981. I am the only survivor in the family*”.

12. The following documents are in both claim files. They are pre-ICHEIC correspondence:

- a) A copy of a letter dated 21st July 1961, which was sent to “[REDACTED]” (which institution, according to [REDACTED]’ letter of 24th February 1998, took over all of [REDACTED]’ business after the war in Poland). This letter is written in response to an announcement in the Israeli press and states that two policies, numbers [REDACTED] and [REDACTED] were taken out with [REDACTED] in the names of his father, [REDACTED], and his mother, [REDACTED]. It is stated that these policies were in the sum of 8,000 gold dollars each.
- b) A Letter from the Appellant to [REDACTED] dated 14th October 1997 concerning the policies issued to his parents before 1939 in Warsaw.
- c) A letter from [REDACTED] dated 24th February 1998 that confirms a letter sent by [REDACTED] to the Appellant’s father on 16th March 1948.

13. In the appeal form the Appellant gives his reasons for appeal as follows: “*The two policies were issued in 1929 for the amount of 8,000 dollars (...). The two (...) policies were in the name of my late mother who was killed with my two sisters in Warsaw in 1943 and my late father, who escaped from Warsaw together with me in 1940 and died in Israel in 1981. I am the only survivor of my family. (I will be 80 years old very soon). As stated by*

*[REDACTED] documents the premiums were paid up to including 1940. My father wrote to [REDACTED] on 07/03/1948 suggesting continuing payments on his policy but this was not accepted by [REDACTED] in their reply of 16/03/1948. Though [REDACTED] denied during all the years any responsibility and knowledge of the policies I received only lately a copy of the letter sent by my late father dated 7/03/1949 with the evaluation made by an employee of [REDACTED], handwritten on 16/03/1948 on a copy of this letter. According to [REDACTED] position they evaluated the policies, which were for \$ 8,000 each, converted to zloty at 5.4 to zloty to 1 USD and arrived at a evaluation of 43,200 zł. For each policy. On the handwritten proof of 16/03/1948 by a [REDACTED] employee on the letter sent by my late father it stated 43,200 to **zł.oro**. I don't have the evaluation of the zloty and Gold Zloty but my appeal on this point is that in no case the original sum of the policy of 1929 that was \$ 8,000 should be kept as a **minimum** and can only be increased in evaluation to Gold Dollars and should not be decreased. The [REDACTED] offer, dated 7/10/2003 based on 43,200 to zł. Multiplied by 0.1323 USD gives a value of 5,915. **Therefore my appeal is based on the original sum of \$ 8,000** as a minimum amount of the policy value. The premiums were paid up to 1940 and were based on the **original value** of the policy. Another reason for my appeal is the deduction for the existence of a loan on both policies. My late father wrote to [REDACTED] in 1948 concerning the two policies. His letter and its reply were in the files of [REDACTED] though in all replies they consistently said that they are checking the existence of the policies. It is only now they are claiming that there was a loan taken on each policy, one of 5,000 zł. And another of 7,000 zł. This information was not given to my father. Because of this my late father did not know and therefore he could not tell me about the loan. As a result, I asked [REDACTED] to prove the existence of the loans and if the loans were in fact taken, they have not been repaid before 1940. The fact is that the premiums were paid from 1929 until 1940 as shown in the files of [REDACTED]. ...”.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

14. [REDACTED], the Respondent, has made an offer of USD 121,046.51 for policy numbers [REDACTED] and [REDACTED] issued to the Appellant's father, [REDACTED] (with policy number [REDACTED] relating to the Appellant's mother [REDACTED], as insured person). [REDACTED] has submitted copies of three documents, one of which has handwritten notes made about the policies in question. It is on the basis of these notes that [REDACTED] has made its offer. These three documents are:
- a) A letter in Italian dated 16th March 1948 from [REDACTED] to the Appellant's father which states, *“with reference to your request regarding life insurance policy numbers 392 016 and 293 017, we are sorry to have to inform you that, following the Polish government's orders, our company had to cease its operations in Poland. The Polish government placed a notice in the newspapers inviting anyone who owned life insurance policies to declare their policies to the [REDACTED] office. May we therefore suggest that you contact this office for the information that concerns you. Its current address is: [REDACTED], Warszawa, ul. [REDACTED]”.*
 - b) A letter in Italian dated 7th March 1948 from the Appellant's father to [REDACTED]. This letter states, *“[REDACTED]'s and [REDACTED]'s Life Insurance Policies [REDACTED] Warsaw (Poland). With reference to the above-mentioned life insurance policies, may I suggest an arrangement that would give me the opportunity of continuing to be insured by your company. As regards my policy [REDACTED], I had paid the premium up until 1940 to your Warsaw branch (Via [REDACTED]). Because of the war I was not able to continue the payments and I had to leave Poland. My wife, Mrs [REDACTED], stayed in Poland and died there in 1943. I would therefore be*

grateful if you could let me know whether I can extend my policy number [REDACTED], paying you the difference for the time when I didn't pay the premium and whether you are willing to give me the credit for my wife's policy".

Beneath this letter are handwritten notes in Italian that read in the English translation:

"policy [REDACTED] insured person ("Assic.") [REDACTED], née (nata) [REDACTED]]

policyholder ("Contr."): [REDACTED]]

Gold Złoty ("Zł. Oro") 43,200] [REDACTED]

(illegible) 26/8/29 Loan ("Prestito") 7000]

(illegible) 26/8/49

Policy [REDACTED]/P P insured person ("Assic.") and policyholder ("Contraente."): [REDACTED]

[REDACTED]

Gold Złoty ("Zł. Oro") 43,200

(illegible) 26/8/29 Loan ("Prestito") 5000

(illegible) 26/8/49

Reply: 16.3.48

Record: 3799"

- c) A list of contracts, which, according to the Respondent, were issued by [REDACTED]'s former Polish Branch Office and for which premiums were paid up to 1940. Under serial numbers [REDACTED] and [REDACTED] are the policy numbers [REDACTED] and [REDACTED] with the insured person identified as [REDACTED]. According to this document, premiums on both policies were paid until 26th May 1940.
15. With regard to the valuation of the policies [REDACTED] states in a letter dated 18th March 2004: "a) the two policies were not both issued in the name of the Appellant's later mother, as it is declared in the statement of grounds for appeal: as a matter of fact, while the policy n. [REDACTED] had [REDACTED] as policyholder and [REDACTED] as insured person, the policy n. [REDACTED] had [REDACTED] as both policyholder and insured person, and therefore this second policy must be regarded as a survivor's policy and its value calculated starting from the Paid Up Value as at 1945 (because the premiums must be considered paid up to the date, according to the presumption fixed by the Valuation Guideline, art. 3.5). These features of the policies are clearly showed by the handwritten notes made in 1948 by a [REDACTED]'s employee on the letter dated March 7, 1948 sent by the same [REDACTED] (enclosed to our offer letter: 'contr.' and 'Assic' are shortenings respectively standing for 'contraente' and 'assicurato' that is 'policyholder' and 'insured person'). b) The same handwritten note – the most complete and reliable source of information about these policies, on which our payment offer was based – provides a clear demonstration of the existence of a loan taken out on each policy and indicated by the mention 'prestito' (respectively for zloty 7000 and Zloty 5000). These loans must have been necessarily taken out within the pre-war period of regular fulfilment of the contract, as after the suspension of the premiums payment it would not have been possible to obtain any loan at all. Therefore, they can be rightfully deducted from the base value of both the policies".

THE ISSUES FOR DETERMINATION

16. 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 are the subject of 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.
17. The only issue for determination is whether the calculation [REDACTED] made is correct.

VALUATION

18. Under the Tripartite Agreement (see paragraph 10), which is binding upon the Appeals Panel as well as the parties, the valuation of policies must be based solely on the Valuation Guidelines, which form Annex D of the said Agreement
19. The valuation of a claim includes pursuant to section 1.2 and 1.3 of the Valuation Guidelines 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.
20. 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 dates of the insured events, which in this case are the maturity date (policy number [REDACTED]) and the date of death of [REDACTED] (policy number [REDACTED]).
21. Pursuant to Section 6.2 of the Valuation Guidelines offers on policies in Eastern European countries generally are to be made in US dollars and the current value of a policy is determined in accordance with the steps outlined in Schedule 2 of the Valuation Guidelines. With regard to policies issued in dollars and not converted into the local currency, however, the base value remains in dollars.
22. Here the policies were converted into Złoty by the Polish law No. 509 of 7th July 1934, because they were policies in US dollars, which had not matured before July 1934. Pursuant to Article 33 of this law “*all obligations arising from insurance contracts expressed in foreign currencies, without the reservations referred to in Article 5, are subject to conversion to Polish currency pursuant to an average exchange rate in April and May 1934, listed on the Warsaw money exchange. For obligations subject to conversion expressed in United States of North America dollars, the exchange rate has been fixed at 5.40 Zlotys to one dollar*”. Article 5 deals with payment in foreign gold coins or in gold equivalent of a foreign monetary unit and is of no importance in this case, because pursuant to section 7.3 of the Valuation Guidelines policies issued with a link to the price of gold must be treated as if they had been issued in the nominal currency. Therefore the base value has to be calculated in Złoty, which is (US \$ 8,000 x 5,40 zloty/US \$ =) 43,200 Złoty (per policy).

Policy number [REDACTED]

23. This policy matured in 1943, the year when the insured person, [REDACTED], died.

24. If the insured person or the policyholder died during the Holocaust Era (as [REDACTED] did in this case in 1943), the base value at the date of the insured event is the full sum insured less any specific deduction (section 3.2 of the Valuation Guidelines). The loan of Złoty 7,000.00 must be deducted pursuant to section 3.3.1. of the Valuation Guidelines which results in a sum of Złoty 36,200.00. Based upon the old documents presented by [REDACTED], the Appeals Panel is, contrary to the assertions of the Appellant who claims not to be aware of such loan, convinced that a loan of Złoty 7,000.00 was taken out before the war.
25. This value in Złoty corresponds, according to section 6.2 of the Valuation Guidelines and the discounted exchange rate of US\$ 0.1323 laid down in Step 1 of Schedule 2 of the Valuation Guidelines, to a value of US\$ 4,789.26.
26. Pursuant to Step 2 of the said Annex, this dollar value must be multiplied by 11.286 to give the value to the end of the year 2000. This results in a value of US\$ 54,051.58836.
27. Pursuant to Step 3 of Schedule 2 of the Valuation Guidelines 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 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 % according to the month, in which the decision is made, plus two months, i.e. 12/12 of 4.75%), which results in the amounts of US\$ 56,970.37413144 for 2001, US\$ 59,818.892838012 for 2002 and US\$ 62,660.29024781757 for 2003.

Policy number [REDACTED]

28. This policy matured on 26th August 1949 as the handwritten remarks on the letter dated 7th March 1948 show [see paragraph 14b)].
29. If the insured person and the policy holder, as in this case [REDACTED], survived after 1945 and premiums had not been paid, as is proven by the above mentioned letter dated 7th March 1948, the base value is 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. (section 3.5 of the Valuation Guidelines). The paid up value as assessed by the company is Złoty 38,732.00. The loan of Złoty 5,000.00 must be deducted pursuant to section 3.3.1. of the Valuation Guidelines which results in a sum of Złoty 33,732.00. Based upon the old documents presented by [REDACTED], the Appeals Panel is, contrary to the assertions of the Appellant who claims not to be aware of such loan, convinced that a loan of Złoty 5,000.00 was taken out before the war.
30. This value in Złoty corresponds, according to section 6.2 of the Valuation Guidelines and the discounted exchange rate of US\$ 0.1323 laid down in Step 1 of Schedule 2 of the Valuation Guidelines, to a value of US\$ 4,462.7436.
31. Pursuant to Step 2 of the said Annex, this dollar value must be multiplied by 11.286 to give the value to the end of the year 2000. This results in a value of US\$ 50,366.5242696.
32. Pursuant to Step 3 of Schedule 2 of the Valuation Guidelines 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 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 % according to the month, in which the decision is made, plus two months, i.e. 12/12

of 4.75%), which results in the amounts of US\$ 53,086.3[REDACTED]801584 for 2001, US\$ 55,740.63240916632 for 2002 and US\$ 58,388.3124486017202 for 2003.

33. According to the calculations set out above, the Respondent must pay US\$ (62,660.29 + US\$ 58,388.31 =) 121,048.60 which corresponds, with minor differences, to the offer made by the Respondent in the appealed decision letter.
34. The Appeals Panel is aware that, except for the loans not taken into account by the Appellant but rightly deducted by [REDACTED], from the Appellant's point of view there might be reasons to criticize the results of the valuation of the policy when calculated according to the Valuation Guidelines, especially with regard to the old currency conversions. However, as explained above (paragraph 18) the Appeals Panel, as well as the Appellant by signing the Appeal Form, is bound by the Agreement and its Annexes, including the Valuation Guidelines. The Panel may not substitute a calculation pursuant to those Guidelines with the calculation suggested by the Appellant in his reasons for appeal.

THE APPEALS PANEL THEREFORE HOLDS AND DECIDES:

[REDACTED] shall pay the Appellant in addition to the sum already offered (US\$ 121,046.51) a sum of further US\$ 2.54 no later than the last day of the second month following the month of the decision, which is the 31st December 2004.

Dated this 20th day of October 2004

The Appeals Panel

Timothy J. Sullivan
Chairman

Rainer Faupel
Panel Member

Abraham J. Gafni
Panel Member