

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

DECISION

[REDACTED] 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] 1926 in Poznań (Poland). He is the son of [REDACTED] ([REDACTED]) [REDACTED] and [REDACTED] ([REDACTED]) [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1895 in Żarki (Poland) and died on 13th May 1942 in Kokand/Uzbekistan (USSR). [REDACTED] was born on [REDACTED] 1900 in Zawiercie (Poland) and died on 31st December 1980 in Tel Aviv (Israel).

The Appellant has a brother, Dr. [REDACTED], who lives in the United States of America.

The [REDACTED] family fled from the Nazis in 1939 and left behind their family home, possessions and the Appellant's father's business (textile wholesaling) in Poland. The family was Jewish and was wealthy. They were arrested by the Soviets and sent to a camp in the Archangelsk region and later to other camps in the USSR (Uljanovsk and Kokand). The Appellant's father and the Appellant's older brother died in 1942 from hunger and typhus.

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 7th June 2001 to the International Commission on Holocaust Era Insurance Claims (ICHEIC). It is claimed that "[REDACTED]" issued a life insurance policy to his father between 1930 and 1939.
4. The claim against [REDACTED] was processed as claim number [REDACTED]. The Appellant has another claim against [REDACTED] processed as claim number [REDACTED], however, this claim is not the subject of this appeal.
5. The ICHEIC submitted the claim to [REDACTED]. [REDACTED] denied the claim in its decision letter dated 24th September 2004 by stating that the Appellant's claim did not fulfil the Holocaust Victim status required under the Agreement.
6. On 18th November 2004 the Appeals Office received an appeal form with the Appellant's reasons for appealing. A copy of a letter dated 6th December 1966 that [REDACTED] had written to the Appellant's late mother that had been disclosed during the claims procedure was re-submitted with the appeal. The documentation was sent to [REDACTED].
7. [REDACTED] reiterated its position in a letter dated 14th December 2004 (paragraph 5 above) and referred to a letter written by the Appellant to [REDACTED] on 22nd September 2004. [REDACTED] considers that this letter shows that the hardships suffered by the Appellant's family were as a result of the Soviets during the war, and not by the Nazis.
8. On 21st December 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.

In conformity with Section 3.9 of the Appeal Guidelines (Annex E of the Agreement) and based upon the Appeals Panel's general decision dated 6th July 2004 this appeal was assigned to [REDACTED].

The seat of the Appeals Panel is Geneva, Switzerland and the 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 in the claim form:
 - a) In section three “[REDACTED] ([REDACTED]) [REDACTED]” is the insurance company that issued a life policy to his father in Poznań, Poland.
 - b) In section five the policy was issued between 1930 and 1939. The Appellant states that to the best of his knowledge all the premiums were paid, but payments were stopped because of “*the war of 1939 and the Holocaust.*” In response to question 5.11 asking if anybody has approached the insurance company about the policy, he writes: “*Yes, my late mother in 1966 and myself in 2001*”.
 - c) The policyholder and insured person is identified as [REDACTED] (also known as [REDACTED]) [REDACTED], the Appellant’s father. The beneficiary is identified in section eight as [REDACTED] née [REDACTED], the Appellant’s mother.
 - d) In section eleven he provides further information: “*I remember that my father was insured before the war by another insurance company in Trieste, Italy – [REDACTED] – and I have made a claim to you for compensation from [REDACTED] no. [REDACTED]. But recently I have found among my mother’s papers that in 1965 she made a claim for my father’s insurance with [REDACTED] also in Trieste in Italy. So I think now that maybe my father was insured in 2 companies, or maybe he changed the insurance companies – I don’t know exactly, but if my mother made a claim to [REDACTED], she must have known for sure that my father was insured by them. They also admit it in their letter to my mother No (3) attached herewith*”. He continues to list copies of correspondence between his mother and [REDACTED] in the 1960’s and between himself and [REDACTED] in 2001.
12. The Appellant’s letter dated 22nd September 2004 to [REDACTED] (paragraph 7) states: “*... I received you fax yesterday and following is the clarification: My late mother after the Holocaust, after we succeeded to get out from the Soviet Union, was confused and her mind was not very well. So she made a mistake about where and how my father died. The truth is that my father died from hunger and typhus in 1942 in Uzbekistan, Soviet Union. Also, my older brother [REDACTED] died there from typhus and hunger. But this was the result of the Holocaust by Germans and maybe this was the reason for my mother’s mistake. I do hope this clarification satisfies you and you will pay me the amount due to me as my father’s heir*”.
13. The Appellant provided the following reasons for his appeal on 17th November 2004: “*My father was insured by [REDACTED]. I saw the policy with my own eyes when I was 13 years old in Poznan, Poland. [REDACTED] ([REDACTED]) admitted that there was a “policy written by your husband with our society” in a letter to my late mother in 1966, answering her claim. I am writing letters to [REDACTED] demanding compensation for my father’s policy for 5 years now. I am trying again, but I don’t believe they’ll pay. They simply don’t want to pay. This is my last try, I am nearly 80 years old and ill and I need the money badly. I am attaching the above mentioned letter that [REDACTED] sent to my mother in 1966 (you can see at the end of the letter what they say about my father’s policy)*”.
14. A letter dated 30th November 1966 from [REDACTED] to [REDACTED] in which she writes: “*I am the widow of the late Mr [REDACTED] from 4, Tama Gentaska (illegible) Street, Poznan, Poland who was killed by the Germans in 1939 in Poland. My husband’s life was insured in your company and he was regularly paying the premiums until 1939.*”

After the war I wrote many letters to the Polish authorities asking them to help me in receiving the insurance payment due to me and finally I received a letter from the Polish Institute of Insurance (a copy of which I attach herewith). In the above letter I am informed that according to the clause included in the policy the company is responsible for its obligations “by all its assets which are located in the boundaries of the Polish Republic, and also those outside these boundaries.”

15. A copy of a letter dated 1965 from the PZU to [REDACTED] was submitted and states: *“Following the submission of your claim regarding pre-war life insurance policy with ‘[REDACTED]’ – the PZU liquidation office would like to clarify the following: Due to insufficient funds left by the liquidated ‘[REDACTED]’, no compensation can be paid to holders of insurance policies issued in Poland. As there is a paragraph in the general terms and conditions saying that ‘the company is responsible for its obligations with all assets both within the borders of the Republic of Poland and outside’ you might like to contact the head office of ‘[REDACTED]’ – directly.*

THE INVESTIGATION AND DECISION BY THE RESPONDENT

16. [REDACTED] wrote a letter dated 6th December 1966 to the Appellant’s mother, [REDACTED], and states: *“We acknowledge receipt of your letter of the 30th November 1966 with enclosure, contents of which we have duly taken note. As you are already well aware, we have been cut out since 1945 from any interference in the administration of that which used to be our Polish portfolio; not only so, but we have never been allowed and are afraid shall never be allowed to try in loco a reconstruction of our portfolio as it was by the end of the war. By order of a Polish law which dated back to pre-war times we – as all foreign companies- were obliged to keep in Poland with our Warsaw Management, without any exception, the documents relating to the policies issued by us in the territory of that country and among the documents there were also the various filing-records with the assistance of which it might have been possible to go back to the first origin of the policies. You will fully understand from the above that we are shut out of any whatsoever inquiries of the sort.”* The letter provides further explanation that as a result of the war all [REDACTED] records in Poland were expropriated and regrets that [REDACTED] is prevented from settling *“in Poland the policy written by your husband with our Society.”*
17. [REDACTED] declined the claim in its final decision letter dated 24th September 2004 and stated: *“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. We have to inform you that, based on the information you provided and our search, your claim does not comply with the Holocaust Victim requirement called for by the Agreement of October 16, 2002; therefore your case falls out of the German Foundation framework, and we cannot but decline your claim.”*
18. In a letter dated 14th December 2004 written in response to the appeal [REDACTED] stated that records for Eastern European countries, such as Poland, were very limited and fragmentary and that: *“ ... the hardships suffered by the Appellant’s family were of the same kind which occurred to many victims of World War II, and more particularly that they were caused by the Soviets. Therefore this claim does not comply with the Holocaust victim requirement specified in the Tripartite Agreement of October 16, 2002”.*

THE ISSUES FOR DETERMINATION

19. Analysing the correspondence from the mid 1960’s between the Appellant’s mother [REDACTED] and PZU it is plausible that [REDACTED] issued a policy to the

Appellant's father. This has not been disputed by [REDACTED]. The Appellant has met his burden of proof as to the existence of a policy with [REDACTED].

20. The Agreement concerning Holocaust Era Insurance Claims dated 16th October 2002 covers, according to its introductory language, "*the settlement of individual claims on unpaid or confiscated and not otherwise compensated policies of German insurance companies in connection with National Socialist injustice*". Losses and deprivations not connected with National Socialist injustice and specifically the Holocaust are not covered by the Agreement. Therefore, the sole issue for determination in this Appeal is whether the policyholder and or Appellant are a Holocaust victim.
21. For purposes of the Agreement, "*Holocaust victim*" means "*anyone who, as a result of racial, religious, political or ideological persecution by organs of the German National Socialist Regime, was deprived of his/her life or freedom; suffered damage to his/her mental or physical health; was deprived of his/her economic livelihood; suffered loss or deprivation of financial or other assets; or suffered any other loss or damage to his/her property....*".
22. The deemed date for the start of the Nazi persecution and Holocaust era in Poland according to Schedule 1 of the Valuation Guidelines (Annex D of the Agreement) is the year 1939. The Appellant's family fled Poland in 1939 from the German National Socialist Regime. The family was Jewish. During the family's escape, they were imprisoned by the Soviets and sent to USSR camps where the policyholder (the Appellant's father) and Appellant's brother both died of typhus and starvation. The Soviets imprisoned the family. However, the underlying reason for why the family fled Poland must be examined. The family left Poland because of persecution suffered initially at the hands of the Nazis, not the Soviets. The Appellant states that the Nazis looted their home and business and forced them to leave. The family suffered religious persecution and subsequent losses of finances, property, and other assets, and were deprived of their economic livelihood by the Nazis. Therefore the family are Holocaust victims within the terms of the definition (paragraph 21).

VALUATION

19. In determining the present value of the policy, the existence of which was established under the relaxed standards of proof, the Appeals Panel must value the policy according to the Valuation Guidelines (Annex D of the Agreement). Since the value of the policy cannot be determined Section 7.1 of the Valuation Guidelines is relevant and it states 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). Appropriate multipliers must be applied but the payment offered shall not exceed US\$6,000.00 per policy (capped amount).
20. For policies issued in Poland the average value set out in Schedule 3 is 2425 Zloty, which has, according to Schedule 3 and Section 7.1, to be multiplied by 3 to get the base value of Zloty 7275.
21. This value in Zloty corresponds according to Section 6.2 and the discounted exchange rate of US\$0.1323 in Step 1 of Schedule 2 calculates the value of US\$962.48.
22. According to Step 2 of Schedule 2 this dollar value has to be multiplied by 11.286 to give the value up to the end of the year 2000. This results in a value of US\$10,862.58 by end 2000
23. According to Step 3 of Schedule 2 additions are made to the dollar value from the end of 2000 and 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 been 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 %; 2005: 5 % according to the month, in which the decision is made, plus two months, i.e. 10/12 of 5 %), which leads to the amount of US\$11449.16 for 2001, US\$12021.62 for 2002, US\$12592.65 for 2003, US\$13222.28 for 2004 and US\$13773.21 for 2005.

24. The amount of US\$13773.21 for the policy is, according to Section 7.1 of Annex D, subject to a capped amount of US\$6,000.00. [REDACTED] therefore must pay US\$6,000.00.

IT IS THEREFORE HELD AND DECIDED:

The appeal is allowed and [REDACTED] must pay the sum of US\$3,000 each to the following heirs no later than by the last day of the second month from the date of this Decision, by 31st October 2005:

- 1) The Appellant, [REDACTED] residing at [REDACTED][REDACTED][REDACTED], Israel;
- 2) The Appellant's brother, Dr [REDACTED], [REDACTED], [REDACTED], MD [REDACTED], United States of America.

Dated this 16th day of August 2005

[REDACTED]