

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]

and

[REDACTED]

APPELLANTS

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 Dr. [REDACTED] (previously [REDACTED] and later also [REDACTED]), born on [REDACTED] 1938 in Warsaw (Poland). He is the grandson of [REDACTED] (also [REDACTED] or [REDACTED]) and [REDACTED]. [REDACTED] was born in 1897 in Warsaw. Both were killed in the Warsaw ghetto on 7th September 1942 together with their children [REDACTED], [REDACTED] and [REDACTED].

[REDACTED] was the co-owner of the glass factory “*Mikavit*” and held shares in several other businesses (“*Midi*”, “*Kara-Hortensia*” and “*Vitrum*”).

The Appellant is the son of [REDACTED] (previously [REDACTED]) and [REDACTED] (also [REDACTED] or [REDACTED]) [REDACTED], née [REDACTED]. [REDACTED] who was born in 1917 in Warsaw and was killed on 20th May 1943 at the Majdanek concentration camp. The Appellant and his father managed to escape from the Warsaw ghetto in April 1943 and hid in Warsaw outside the ghetto. They left Warsaw in August 1944 during the uprising in the Warsaw ghetto and hid in Opczno near Kielce until 1945 when Poland was liberated. In 1957 the Appellant left Poland and emigrated to Israel.

The Appellant names [REDACTED] (also [REDACTED]) and [REDACTED] as co-heirs and co-Claimants. [REDACTED] and [REDACTED] are sisters and the daughters of the late [REDACTED] who died in 1985.

[REDACTED] also submitted an appeal (see paragraph 10).

2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form dated 7th January 2002 to the International Commission on Holocaust Era Insurance Claims (ICHEIC), in which he claims that [REDACTED] and “[REDACTED]” issued policies of life insurance.
4. The ICHEIC processed the claim against [REDACTED] as claim number [REDACTED] and the claim against [REDACTED] as claim number [REDACTED]. The subject of this appeal is claim number [REDACTED].
5. [REDACTED] stated in its decision letter dated 18th October 2004 which was addressed also to the two co-Claimants of the Appellant: “*We are pleased to inform you that we are willing to offer to you, to Mr. [REDACTED] and to Ms. [REDACTED] within the framework of the German Foundation and ICHEIC procedures, a voluntary payment in the total amount of USD 6,000 (six thousand dollars) on the policy mentioned above [which is “Policy no. (unknown) issued to Mr. [REDACTED] by [REDACTED]’s independent Branch Office in Poland”]. This means a voluntary offer of USD 2,000 (two thousand dollars) for each one of you three*”.
6. The Appellant submitted an appeal to the Appeals Office dated 22nd November 2004, which was accompanied by an attachment setting out the reasons for the appeal.
7. The Appeals Office received the appeal form on 3rd December 2004 and mailed a copy to the Respondent.
8. [REDACTED] responded in a letter dated 30th December 2004 and requested the Appeals Panel for reasons it had set out before to “*to confirm our offer of October 18, 2004*”.

9. On 11th January 2005 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.
10. On 16th February 2005 the Appeals Office received another appeal form from the Appellant [REDACTED] in which her reasons for the appeal were set out in an attachment.
11. On 21st February 2005 the Appeals Office forwarded a copy of this appeal to [REDACTED].
12. [REDACTED] responded to this appeal in a letter dated 2nd March 2005 stating: “*We wholly recall hereby our submissions of December 30, 2004, and respectfully request to the Appeals Panel to confirm our offer of October 18, 2004, without granting any further interest*” (for further details see paragraph 22). Attached was a copy of the valuation sheet which had been attached to the decision letter dated 18th October 2004.
13. On 4th March 2005 the Appeals Office also informed the Appellant [REDACTED] 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.
14. No request for an oral hearing has been received from either party. The appeal proceeds on a “*documents only*” basis.
15. 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

16. The Appellant Dr. [REDACTED] 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 he states that the names of the issuing companies are “[REDACTED]” and “[REDACTED]” and that the policies he is claiming for were issued in Warsaw, Poland.
 - b) In section four, answering the question whether he can provide copies of any document or statement or other information substantiating the claim, he ticks the box “yes” and describes the documentation as follows: “*Letter in Polish language from my aunt to my father dated 1.VI.47 in which she pointed that my grandfather was insured in “[REDACTED]”*” .
 - c) In section five he states that he cannot give any detailed information about the policy. The only information he has is that the type of the insurance policy was a life insurance policy.

- d) In sections six, seven and eight he names his grandfather [REDACTED] born in Warsaw (Poland) as policyholder, his grandmother [REDACTED] born in 1897 in Warsaw (Poland) as insured person and his mother [REDACTED], née [REDACTED] as beneficiary.
- e) In section nine asking “*Have you or anybody else participated in any compensation/restitution procedure for this claim (e.g. Deutsche Wiedergutmachung, Bundesentschädigungsgesetz (BEG) Bundesrückerstattungsgesetz (BRüG), US Foreign Claims Settlement Commission or other) ?*” he ticks the box “yes”, however, without answering the second question “*If yes, under which compensation scheme, how much was paid and to whom ?*”.
17. With his claim the Appellant Dr. [REDACTED] also submitted a fourth page of a handwritten letter. The summary translation of the letter states: “*The sender refers to the fact that parents had an insurance policy with ‘[REDACTED]’. There are only first names mentioned in this letter [REDACTED] ([REDACTED]), [REDACTED]and [REDACTED]. There isn’t any other information relating to any insurance company or insurance policy*”.
18. The Appellant Dr. [REDACTED] states in his appeal form that the only remaining beneficiaries are [REDACTED] and [REDACTED] , daughters of his aunt [REDACTED], and he himself and sets out the reasons for his appeal as follows: “*My grandfather was industrialist co-owner (together with Zygmunt Renglewski) of glass factory ‘Vitrum’ that included glass factory in Rokitno, Pinsk, Wilno and Thuszcz*”. He then adds that his grandfather also owned real estate and continues: “*Our family was expropriated of all above mentioned as a consequence of the Nazi invasion of Poland. I don’t have the number of the policy issued to [REDACTED] but I am convinced that its value was in accordance to his financial abilities*”.
19. With his statement the Appellant Dr. [REDACTED] sent a four-paged letter dated 1st June 1948 from [REDACTED] to [REDACTED] which mentions that [REDACTED]’s parents were insured with the Respondent.
20. The Appellant [REDACTED] sets out the reasons for her appeal as follows: “*According to item 19 in Annex A to the ICHEIC Agreement Concerning Holocaust Era Insurance Claims, [REDACTED] was obligated to include with its offer letter “all documents relevant to the claim and a valuation sheet showing how the sum was calculated”. Despite this obligation on [REDACTED] to provide me with copies of all documents relevant to the claim, the offer letter contained no such documents. I have not seen a copy of Mr. [REDACTED]’s original inquiry documents or evidence, if any, or any copy of [REDACTED]’s own records confirming the existence of the policy in question. Even if [REDACTED]’s ultimate decision to make us an offer was “voluntary”, I feel I have been deprived of my right to decide for myself given that [REDACTED] has provided no evidence or information explaining how it confirmed that the policy even existed. If it has such evidence. I would like to see it. I don’t have the financial details of the policy issued to [REDACTED], but I am convinced that its value would have been in accordance with his financial abilities, and I do not feel \$6,000 after 60 years is appropriate. My first-hand knowledge of the insured’s social stature and financial situation leads me to expect that his life was insured for a very significant amount. I cannot accept the legitimacy of [REDACTED]’ offer without more detailed documentation, material and specific details of how this claim was processed. Unless I receive a substantiated explanation explaining how [REDACTED] justifying the low amount of [REDACTED]’ offer in our case, I request the amount to which we are entitled be re-evaluated*”.

THE INVESTIGATION AND DECISION BY THE RESPONDENT

21. [REDACTED] made an offer of US\$ 6,000.00, to be paid in equal shares to the three co-heirs Dr. [REDACTED], [REDACTED] and [REDACTED], for the reasons set out in its decision letter dated 18th October 2004 and confirmed its decision in its letters in response to the appeals dated 30th December 2004 and 2nd March 2005 (see paragraphs 5, 8 and 12).
22. In its letter dated 2nd March 2005 [REDACTED] explained as to its inability to provide any documentation: *“We would like to confirm hereby that unfortunately – due to the expropriation and nationalization of our pre-war Polish independent branch office – [REDACTED] has nowadays no surviving record related to the claim at issue. Our offer was therefore exclusively based on the specific insured sum of this policy, and therefore the average value established by the Valuation Guidelines with regard to Poland must be applied. ...”*.

THE ISSUES FOR DETERMINATION

23. The main issue for determination is whether the valuation made by [REDACTED] is correct.
24. A minor issue for determination is whether [REDACTED] provided all documents it must provide according to the Agreement (see paragraph 15) and its Annexes.
25. In her *“grounds for appeal”* the Appellant [REDACTED] quotes a provision, namely *“item 19 in Annex A to the ICHEIC Agreement Concerning Holocaust Era Insurance Claims”* (see paragraph 20), which defines which documents must be attached to a decision letter in which an offer is made. This provision reads: *“If the company makes an offer to the Claimant, its letter will include a document of waiver and release (Annex F). It will also include copies of all documents relevant to the claim and a valuation sheet showing how the sum has been calculated”*.

[REDACTED] had enclosed the waiver. [REDACTED] is pursuant to this provision not obliged to include copies of any documents which were sent by the Claimant or Claimants. The documents this provision refers to are only such documents which are in possession of the company and unknown to the Claimant or Claimants. Finally, [REDACTED] sent a calculation sheet which, however, does not comply with the provision in question. The valuation sheet only gives a few known data about the policy and, instead of setting out the calculation, only summarizes the result as follows: *“In compliance with the German Foundation/ICHEIC Valuation Guidelines, as the insured sum of the policy is unknown, the base value must be grounded on the average market value established by the Valuation Guidelines; with respect to Poland it leads to the current value of USD 6,000*. This sum takes into consideration both the severe devaluation of Eastern European currencies during and after the world war II, and the interest related to the elapse of so many years since the policy matured”*. The asterisk gives the following additional explanation: *“This sum must be equally shared among Mr. [REDACTED], Mr. [REDACTED] [this should read Mrs. [REDACTED]] and Ms. [REDACTED]”*. A valuation sheet which only sets out the result without making it clear how the result was calculated is insufficient. However, this can only lead to a decision in an appeals procedure which differs from the decision made by the company, if the summarized result of the calculation is wrong. This is not the case as set out below.

VALUATION

26. Under the Tripartite Agreement (see paragraph 15) the valuation of policies must be based solely on the Valuation Guidelines (Annex D of the Agreement).
27. As the value of the policy could not otherwise be determined, it is required to calculate such value in accordance with Section 7.1 of the Valuation Guidelines which provides: where a claimant establishes ... that a policy existed, which was unpaid, and names the company that issued the policy, but the amount of the policy – as it is the case here – cannot be determined, 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 of the said Annex). According to the same provision the appropriate multipliers then must be applied but the payment offered shall not exceed US\$ 6,000 per policy (capped amount).
28. For policies issued in Poland between 1920 and 1945 the average value set out in Schedule 3 of the Valuation Guidelines is Żłoty 2,425 which must, according to Schedule 3 and section 7.1 of Valuation Guidelines, be multiplied by 3 to arrive at the base value of Żłoty 7,275.
29. This value in Żłoty 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\$ 962.4825.
30. According to Step 2 of the Valuation Guidelines, 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\$ 10,862.577495.
31. According to Step 3 of Schedule 2 of the Valuation Guidelines additions must be made to the dollar value at the end of 2000 for 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 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%; 2004: 5.0% according to the month, in which the decision is made, plus two months, i.e. 12/12 of 5.0%), which leads to the amount of US\$ 11,449.156680 for 2001, US\$ 12,021.614514 for 2002, US\$ 12,592.6412034 for 2003 and US\$ 13,222.27326357 for 2004.
32. The amount of US\$ 13,117.334586875 of the policy in question is, according to section 7.1 of the said Annex, subject to a capped amount of US\$ 6,000. The Respondent therefore must pay US\$ 6,000 be divided among the Appellant Dr. [REDACTED], S[REDACTED] and [REDACTED] in equal parts.
33. It is acknowledged that – from the Appellants' point of view and given the financial circumstances of their grandfather – there are reasons to question the results of the valuation of the policy applying the Valuation Guidelines. However, as already explained above (paragraph 26), the Appeals Panel is bound by the Agreement and its Annexes, including, among others, the Valuation Guidelines. They were negotiated and agreed upon by the three Parties to the Agreement and must be applied when making a decision on a claim or an appeal. The Valuation Guidelines are binding upon Panel decisions as well as upon the parties to an appeal. Therefore, a calculation based on an unverified assumption that the

policy taken out by their grandfather must have had a much higher insured sum, as suggested by the Appellants, cannot be made.

Appellants: Dr. [REDACTED] and [REDACTED]	Appeal No.: [REDACTED]	Claim No.: [REDACTED]
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IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 9th day of May 2005

[REDACTED]