

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 [REDACTED] (previously [REDACTED]) was born on [REDACTED] 1933 in Prague, Czechoslovakia. He is the son of [REDACTED] and [REDACTED] (née [REDACTED]). [REDACTED] was born [REDACTED] 1902 in Kolin, Czechoslovakia, and died on 24th April 1966 in Montreal, Canada. [REDACTED] was born on [REDACTED] 1907 in Frankfurt a.M., Germany, and died on 11th July 1981 in Montreal, Canada.
2. The Respondent is [REDACTED] ([REDACTED]).

3. The Appellant appointed [REDACTED] as his representative.
4. The Appellant submitted a claim form to the International Commission on Holocaust Era Insurance Claims (ICHEIC) on 2nd October 2000 claiming a life insurance policy purchased by his father in Prague.
5. The ICHEIC processed the claim form as an unnamed company claim and submitted the claim to the Respondent.
6. [REDACTED] located correspondence in its archives indicating that the Appellant's father held a contract for insurance with its Czech branch office. As the value of the policy was unknown, it offered the Appellant a payment of US\$6,000, based on the average value of policies issued in Czechoslovakia prior to WWII.
7. The Appellant submitted an Appeal Form to the Appeals Office dated 9th March 2005 appealing the offer.
8. The Respondent responded to the appeal on 3rd May 2005 stating that as there was no clear evidence for the value of the policy, the offer could only be based on the average value.
9. On 16th May 2005, the Appeals Office informed the parties that the appeal would be decided on a "*documents only*" basis unless it received a request for an oral hearing from either party within 14 days of receipt of the letter.
10. On 27th May 2005, the Appellant's representative requested an oral hearing. The oral hearing was postponed twice before taking place on 21st November 2005.
11. 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

12. The Appellant submitted an ICHEIC claim form dated 2nd October 2005 claiming a life insurance policy issued to his father [REDACTED] in Prague, Czechoslovakia. He named his father as the policyholder and the insured person, and his mother as the beneficiary.
13. The Appellant submitted biographical information with his claim form, including his photo ID and his mother's death certificate.
14. The Appellant named [REDACTED], [REDACTED] and [REDACTED] as other living heirs.
15. Following receipt of the Respondent's offer, the Appellant submitted an Appeal Form to the Appeals Office dated 9th March 2005. He enclosed a letter stating: "*[...][REDACTED] denied my claim but offered a voluntary payment in the amount of USD 6'000 [...] on my father's policy. I wish to appeal this decision, as it is in conflict with the rules established under the ICHEIC's Holocaust Era Insurance Claims Processing Guide ("ICHEIC*

Guidelines”). [REDACTED] supplied the attached two letters with its November 30, 2004 Letter. These letters, dated December 17, 1970 [...] and December 23, 1970 [...] appear to be written by [REDACTED], and make reference to a life insurance policy in my father’s name with a value “over 1 million Czech Koruna” (Lebensversicherung uber 1.000.000,00 – Kc.”).

Under the ICHEIC rules, including the “relaxed standards of proof,” I am entitled to a payment of at least \$336,576. [...] This would result in a total multiplier of 14.024 through April 1, 2005, or \$336,576 (\$24,000 times 14.024). This is a minimum payment amount because the policy was “over (uber) one million Koruna.” [...]

My father lived in that part of Czechoslovakia known as Bohemia and Moravia, where the Holocaust began in 1939. [...] The attached letter of December indicates that premiums were paid up through the end of 1938 or 1939. Consequently, it deemed to have been confiscated after the beginning of the Nazi Holocaust in Czechoslovakia. [...] The two letters enclosed from [REDACTED] at the same address establish the existence of a [REDACTED] policy as to which my father was the beneficiary or owner. [...] The [REDACTED] letter of December 17, 1970 establishes the terms of the insurance policy – a life insurance policy worth “over 1 million Czech Koruna” for which premiums were paid through 1939 or 1939.

With this information, the burden shifts under ICHEIC rules to the company to disprove the existence and terms of the policy. [...] In conclusion, this sworn statement demonstrates that (1) this claim relates to a life insurance policy in force between January 1, 1920 and May 8, 1945 which became due through death, maturity, or surrender; (2) the insurance policy was not paid, or was confiscated by the German Nazi regime or government authorities; (3) the policy was not covered by a decision of a German restitution or compensation authority; (4) the I am heir of my father [REDACTED], the policy beneficiary; (5) my father [REDACTED] was a Holocaust victim; and (6) I filed my claim for compensation to the ICHEIC to recover my father’s unpaid insurance assets in a timely manner under the German Agreement. Accordingly, I appeal the [REDACTED]/ICHEIC offer of \$6,000.”

16. The Appellant enclosed two letters with his Appeal Form which he received from the Respondent. The first was from the Bremen Compensation Authority to [REDACTED] dated 17th December 1970. It states that Mr. [REDACTED] has claimed compensation for expulsion and the loss of a life insurance policy to the value of 1,000,000.00 Czech Crowns. It requests information from [REDACTED] regarding the policy number and the premiums paid until the end of 1938 / March 1939.
17. The second letter dated 23rd December 1970 is the reply from [REDACTED] to the Compensation Authority. It states that [REDACTED] was unable to find any evidence of a contract of insurance with Mr [REDACTED].
18. During the oral hearing of 21st November 2005, the Appellant reiterated the arguments he submitted in his appeal. He provided evidence of his father’s wealth, stating that the value of the policy must have been higher than the average for policies issued in Czechoslovakia during the period.

THE RESPONDENT’S INVESTIGATION AND DECISION

19. In its letter dated 30th November 2004 [REDACTED] stated: “Although your inquiry has not been addressed to any specific insurance company, we have found among our records some trace of a contractual relationship incurred between your late father, Mr. [REDACTED], and the [REDACTED]’s Czechoslovakian independent Branch Office. [...]

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 of USD 6,000 [...] on the policy mentioned above.”

20. In its response to the appeal dated 3rd May 2005 [REDACTED] stated: *“The contents of the letters dated December 17 and December 23, 1970 – [...] deemed to be related to the Appellant’s father in spite of the difference in the dates of birth – cannot be construed as the Statement of Grounds for Appeal would suggest: as a matter of fact, the December 17, 1970 letter by the Ausgleichsamt in Bremen (which is not a [REDACTED]’s branch office, but rather a German compensation office) shows no certainty about the same existence of the policy (they do ask for a confirmation about this basic point!), and the information concerning the supposed policy is quoted as it had been probable suggested by the applicant, who at that time could no longer be Mr. [REDACTED]– died in 1966 -, while the application must have been submitted by a relative of his. Consistently with the above, [REDACTED]’s letter of December 23, 1970 did not confirm in any way the existence of the policy, while it indicated that possible records had to be searched in Czechoslovakia [...].*

Therefore, our voluntary offer was made – exclusively on humanitarian grounds, and in the impossibility of finding more detailed records – in spite of the uncertainty surrounding both i) the existence of a policy issued to a Mr. “[REDACTED], born on [REDACTED]/1902”, and ii) the exact coincidence between this person and the Mr. “[REDACTED], born on [REDACTED]/1902” mentioned in the claim form.

Furthermore, the approximate insured sum tentatively supposed by the Ausgleichsamt appellant, and quoted in the December 17, 1970 letter, is completely unreliable for the reasons already outlined in the calculation sheet attached to our payment offer. In any case, the calculation of any offer in this case must take into account that we face a survivor’s policy, whose value should be calculated on the basis of its “paid-up value”. As there would be no information available for the calculation of such paid-up value, the amount to be offered should be in any case based on the average value established by the German Foundation – ICHEIC Valuation Guidelines in respect of Czechoslovakia.

For the reasons outlined above, we respectfully request to the Appeals Panel to confirm our voluntary offer of November 30, 2004.”

21. [REDACTED] reiterated these arguments during the oral hearing of 21st November 2005.

THE ISSUES FOR DETERMINATION

22. The sole issue for determination in this appeal relates to [REDACTED]’s valuation of the policy. [REDACTED] accepted in its decision letter of 30th November 2004 that its Czech branch probably issued a contract of life insurance to the Appellant’s father prior to WWII. It was able to locate a letter in its archives from the Bremen Compensation Authority dated 17th December 1970 which referred to a claim by the late Mr [REDACTED] for a policy *“über 1,000,000.00 Kc”* [translated to mean “for 1,000,000.00 Czech Crowns”].
23. However, it did not accept the value of the policy mentioned in the letter. As no other details about the policy were known, [REDACTED] based its calculations on the average sum for policies issued in Czechoslovakia during that era, as stipulated by the Schedule 3 of the Valuation Guidelines, Annex D to the Agreement.
24. It is the view of [REDACTED] that [REDACTED]’s approach was correct in this instance. Apart from the letter of the Compensation Authority, there was no other evidence to support

the contention that the policy was valued at 1,000,000.00 Czech Crowns. Secondly, as [REDACTED] highlighted during the appeal, the letter stated only that which had been claimed by the policyholder. It was not evidence of the policy's value as such.

25. [REDACTED] notes that more convincing and persuasive evidence would need to be submitted to establish a policy of this value. Although the Appellant's father was clearly a wealthy man, the purported value of 1,000,000.00 Czech Crowns far exceeds that of the average for policies issued in Czechoslovakia during this time. To form the basis for calculations, concrete and convincingly evidence would have been needed to be provided, even based on the Relaxed Standards of Proof

26. Pursuant to section 7.1 of the Valuation Guidelines, [REDACTED] calculated its offer as follows:

The base value was calculated on the basis of 3 times the average value of policies issued in Czechoslovakia during the period (Kcs. 12,070) as specified in Schedule 3 of the Valuation Guidelines: Kcs. 36 210.

According to Step 1 of Schedule 2, the base value was then multiplied by 0.024 to calculate the value of the policy in US dollars: US \$869.04.

In accordance with Step 2, the dollar value was then multiplied by 11.286 to give the value of the policy up to the end of the year 2000: US \$9,807.99.

In accordance with Step 3, interest was then calculated at the following rates: 2001: 5.4%; 2002: 5%; 2003: 4.75%; 2004: 5% and 2005: 5% up until two months after the offer was made.

A calculation on this basis led to a total of US \$11,988.03 up until January 2005. The offer was then capped at US \$6000 in accordance with section 7.1 of the Valuation Guidelines.

27. Therefore, the calculations were made in accordance with the Valuation Guidelines. The appeal must be dismissed.

IT IS THEREFORE HELD AND DECIDED:

1. The appeal is dismissed;
2. [REDACTED] shall pay the Appellant US \$6000 in accordance with its offer of 30th November 2004.

Dated this 19th day of December 2005

[REDACTED]