

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] **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 Appellants are [REDACTED] and [REDACTED]. Their parents were [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was the son of [REDACTED] and [REDACTED], née [REDACTED]. The Appellants’ parents and brother [REDACTED] died in a concentration camp in Riga in 1942.
2. The Respondent is [REDACTED].
3. Each Appellant submitted a European Insurance Policy Claim Form, in which they claim the proceeds of insurance policies taken out by their parents and grandparents. ICHEIC assigned numbers [REDACTED] and [REDACTED] to these claim files. It appears that the claims are identical.

4. The Respondent issued a final decision letter on 13th June 2005 to [REDACTED] for claim number [REDACTED]. It explained that [REDACTED] was taken over by the Respondent, which is, therefore, responsible for policies issued by the former company [REDACTED]. It further stated that it had checked the registers and archives of [REDACTED] for Mr [REDACTED] and Mrs [REDACTED] and had not found any records for them. However, the Respondent added that the registers of [REDACTED] are not complete. In addition, the Respondent had contacted the German State Compensation and Restitution authorities and the regional tax office in Munich which disclosed documents revealing that Mr [REDACTED] had taken out life insurance policy number [REDACTED] with [REDACTED]. The Respondent also advised the Appellant that no information was available to reconstruct the terms of the policy and, therefore, offered the Appellant the minimum payment of US \$4,000 based on an average sum policy. The Respondent enclosed the relevant documents.
5. In a letter to the Appeals Office dated 23rd August 2005 the Respondent reiterated its reasons for using the average sum as a base value for a policy in Germany at the time: *“Since we do not know any other important technical data, such as the sum insured, the insurance term, and the premiums that were paid, it is not possible for us to calculate the offer in accordance with the German Federal Compensation Law.”* The Respondent set out its calculations. Concerning the Appellants’ grandparents, the Respondent stated that it had not find entries for these persons in its central register and that this register was complete as it contained every application received.
6. On 3rd August 2005 the Appeals Office received an appeal form that was signed by both Appellants. In a letter dated 20th July 2005 the Appellants set out their reasons for the appeal. The Appellants argued that the payment should be much higher since they are the only children of the policyholder and so many years had passed. Mr [REDACTED] added that he remembered accompanying his father when he went to pay the premiums. The Appellants stated that they had applied for compensation earlier but were denied due to the lack of information regarding the insured sum.
7. In a letter dated 31st July 2005 to the Respondent, the Appellants restated their reasons for the appeal. Concerning policies issued to their grandparents, they express that they remembered their grandfather talking about having taken measures to protect the financial security of his handicapped wife and daughter. They also stated that their grandfather was in a very good financial situation.
8. In a letter dated 11th October 2005 the Appellants requested an oral hearing. The Appellants emphasized that they were positive that their grandfather [REDACTED] had purchased insurance.
9. The oral hearing took place on 26th January 2006 in which both parties reiterated their previous statements as set out in their written submissions.
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 of 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 this Decision is made there.

LEGAL CONCLUSION

11. The first issue for determination is whether the Respondent's valuation of [REDACTED]' policy was in accordance with the Valuation Guidelines as set out in Annex D to the Agreement. Another issue for determination is whether the Appellants have met the burden of proof that their grandparents had taken out insurance from the Respondent.
12. Under the Agreement (see paragraph 4) the valuation of policies must be based solely on the Valuation Guidelines which form Annex D of the Agreement. In cases in which, as here, the amount of the policy cannot be determined, Section 7.1 of the Valuation Guidelines requires that the offer be based on a multiple of three times (3x) the average value for policies in the respective country as shown in Schedule 3 (Section 7.1 of the Valuation Guidelines).
13. For policies issued in Germany (within the boundaries of 1937) and denominated in German currency, for which the Federal Republic of Germany established programs of compensation after the war under the Bundesentschädigungsgesetz (BEG) or other programmes of compensation or restitution, the company must assess the claim (both the base value and the valuation up to 1969) as if it had been submitted to the BEG, using the same methods of valuation, and apply a multiplier to this value of 8X, Section 2.1 of the Valuation Guidelines.
14. According to Schedule 3 of the said Valuation Guidelines the average value of life insurance policies in Germany is Reichsmark 841. Three times RM 841 gives RM 2,523.00. This amount then, following the currency changes prescribed by law in 1948, must be converted from RM into DM by using the converting factor RM 10 = DM 1, which gives the amount of DM 253.30. That is the value to the end of 1969. To update the values for the end of the year 1969 to the end of the year 2000, pursuant to Step 2 No. 3 of Schedule 2, the 1969 value must be multiplied by 8. Eight times DM 253.30 is DM 2,018.40.
15. For offers made from January 2001 the value must be updated by agreed multipliers as shown in Schedule 2 (Section 2.2 of the Valuation Guidelines). According to Step 3 of Schedule 2 of the said Annex, additions must be made to the 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, 2004 and 2005 by a Memorandum of ICHEIC 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%; and 2005: 5% according to the month, in which the decision is made, plus two months, i.e. 8/12 of 5%), which leads to the amount of DM 2,127.39 for 2001, DM 2,233.76 for 2002, DM 2,339.86 for 2003, DM 2,456.85 for 2004, and DM 2,538.76 for 2005 which results in €1,298.05 on the basis of an exchange rate of DM 1.95583 = €1.00. A conversion of €1,298.05 to US dollars is US \$1,569.07 on the basis of an exchange rate of 1 Euro = 1.20879 US dollars.
16. Notwithstanding the above calculation, however, pursuant to Section 2.3 of the Valuation Guidelines each claimant shall receive in respect of any valid claim on a policy issued in Germany by a German company a minimum payment of at least US\$4,000 if the Claimant was a victim of the Holocaust.

17. The Respondent provided the Appellant with documentary evidence of the offer calculations in its final decision letter dated 13th June 2005. The offer made to the Appellant totalling US\$4,000 for an unknown policy by the Respondent is in accordance with the Valuation Guidelines.
18. The Valuation Guidelines are binding upon the parties as well as the Appeals Panel, and, consequently, no further award can be granted in the circumstances. Since the value of the policy is not known the calculation must be based on the average value of a policy issued in Germany.
19. With regard to insurance policies for [REDACTED] and [REDACTED] for whom [REDACTED] could not find an insurance contract, the main issue for determination 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 provides that to succeed in an appeal the Appellant 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.
20. 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. The Appellants did not provide any evidence for the existence of further life insurance policies. The Appellants stated that they are convinced that their grandfather purchased insurance to provide financial security to his wife and daughter, but neither provided evidence establishing that such financial security was, in fact, provided through insurance, nor identified an issuing insurance company. The Appellants have, therefore, not met their burden of proof and have not provided a sufficient basis upon which the Appeals Panel might conclude that it was the Respondent or any of its predecessors that issued policies to the Appellants’ grandparents.
21. Furthermore, it must be taken into account that the Respondent was not able to find the names of the Appellants’ grandparents in its registers. According to the Respondent’s statements, its central register contains every application ever received for an insurance policy between 1923 and 1976 and, unlike many other policy records from that time, this register remained intact and was not destroyed during the Second World War. (In this respect it differs from the case with the registers taken over from [REDACTED], which the Respondent admits are incomplete.) Since the Respondent, in conformity with ICHEIC procedures, was declared audit compliant there is no reason to believe these records may support the conclusion that a policy was issued

or application made for Appellants' grandparents. Therefore, [REDACTED]' decision regarding [REDACTED] and [REDACTED] must be confirmed.

IT IS THEREFORE HELD AND DECIDED:

The appeal is dismissed.

Dated this 7th day of February 2006

[REDACTED]