

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]

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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

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] (formerly [REDACTED]) was born on [REDACTED] 1920 in Budapest, Hungary. She is the daughter of [REDACTED] and [REDACTED], née [REDACTED]. [REDACTED] was born on [REDACTED] 1877 in Jászberény, Hungary and died in Jászberény in 1940. [REDACTED] was born on [REDACTED] 1894 in

Budapest and died in Auschwitz in 1944. The Appellant is also a survivor of the Auschwitz concentration camp.

2. The Respondent is [REDACTED] ([REDACTED]) as successor company to [REDACTED] and [REDACTED].
3. On 22nd September 2003, the Appellant submitted two claim forms to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming dowry insurance policies issued to her parents. She indicated the insurers as [REDACTED] and [REDACTED] in Hungary, and that she was the insured person and beneficiary under both policies. She stated that she was the sole heir. In section five of the second claim form, she stated that one of the dowry policies was due to mature on 9th November 1944.
4. The ICHEIC processed the claim forms under claim numbers [REDACTED] and [REDACTED] and submitted them to the Respondent.
5. The Respondent declined the Appellant's claim on 12th May 2005 stating that it could find no record of a policy or policies issued to her parties. It admitted however that its records were limited as the archives of its Eastern European subsidiaries were held locally and were no longer in their possession.
6. The Appellant appealed [REDACTED]' decision 29th July 2005 stating (translation):

“What is happening in this case is an example for the greatest cynicism. These amounts should have been paid out decades ago. Explanations such as “the companies were expropriated” or “the companies suffered damages during the war” cannot be accepted. It is well known that the people who were deported to the Nazi concentration camps ended up on the Auschwitz ramp in a single piece of clothes, where even that was removed from them. But they did not take with them either their files, or the exact description of their assets, or their insurance policies...

I hereby reject the negative decision of the Italian insurance companies, and the hypocritical decision of the German, Hungarian and French insurance companies as well, without understanding their documents; yet I know the essence of these and this mentality, it is just that I cannot accept the humanness thereof.”

7. [REDACTED] responded to the appeal on 7th October 2005 stating:

“The claims at issue relate to an Eastern European country where [REDACTED]'s former independent branch office, as well as the subsidiary “[REDACTED]” were completely nationalized and expropriated immediately after the end of World War II. As a consequence of that, the only complete archives of the insurance activities – which were kept locally in compliance with local laws, as well as the financial reserves covering the value of the policies – were subtracted to [REDACTED]'s control. Due to such nationalization and expropriation, [REDACTED] has nowadays no legal obligation with respect to the policies issued in that country and accepts to process the related claims on [a] humanitarian basis...

The only records related to the Eastern European activities which remained in [REDACTED]'s possession consist of very limited and fragmentary information, originally stored in [REDACTED]'s old headquarters in Trieste. These few records were then moved into the new Milan headquarters, thoroughly analyzed and recorded into one electronic database. The correctness and completeness of this process has been duly verified by the ICHEIC Peer Review Audit...

Unfortunately, with respect to the claims at issue, no supporting evidence of whatsoever contractual relationship has been either provided by the claimant, or found by [REDACTED] or by the ICHEIC. We have also repeated our researches before answering this appeal, and no record was found. This is the reason why we have to confirm the rejection of these claims...”.

8. On 20th October 2005 the Appeals Office informed both parties that the appeal would be on a “documents only” basis, unless it received a request from either party for an oral hearing within 14 days.
9. The Appellant requested an oral hearing on 28th October 2005. The hearing was conducted by way of telephone conference on 16th January 2006, in the English and Hungarian languages. The parties were [REDACTED], the Appellant, her daughter, [REDACTED] and [REDACTED] for the Respondent and [REDACTED] from the Appeals Office. [REDACTED] provided translation assistance.

During the course of the hearing, the Appellant emphasised that she and her family were forced to flee Budapest during the war, and that it was impossible to take any documents with them during deportation.

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 Panel Decision is made there.

CONCLUSIONS OF LAW

16. The main issue in this appeal is whether the Appellant has met the burden of proof set out in section 17 of the Appeal Guidelines (Annex E to the Agreement). This provides that to succeed in an appeal an Appellant must prove, 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.

24. 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 that a policy was issued by the company. The Agreement ensures that "*claimants will not be unduly prejudiced by a lack of records or a presumption of payment where proof is unavailable*" (Part B of Annex B to the Agreement).
25. In this case there is no doubt that the Appellant's family were Holocaust victims, or that the Appellant would be entitled to claim the proceeds of dowry policies issued to her parents as their heir.
26. However, even based on the Relaxed Standards of Proof, the Appellant has been unable to discharge the necessary burden of proving it is plausible that [REDACTED] and [REDACTED] issued the policies claimed. The Respondent was unable to find any evidence of these contractual relationships, despite conducting two searches of its limited archival records. Nor was the Appellant able to submit any documentary evidence, or sufficiently particular and persuasive anecdotal evidence to support her claim. Although [REDACTED] acknowledges the unique difficulties in bringing evidence in cases such as these, where so many years have passed and the necessary documentation has been lost, some corroborative evidence is still needed to discharge the burden of proof under section 17.2.1, even under the Relaxed Standards.
27. However, in conclusion, the Appeals Panel would like to convey its sympathy for the hardship and loss suffered by the Appellant's family during the Holocaust era, and the ongoing trauma experienced by the Appellant in bringing this appeal. [REDACTED] does not doubt the Appellant's sincerity, but is bound to determine the appeal strictly in accordance with the Appeal Guidelines and on the basis of the evidence submitted. In this case it is determined that insufficient evidence has been brought to establish the existence of the dowry policies. Accordingly, the appeal must be dismissed.

IT IS THEREFORE HELD AND DECIDED

The appeal is dismissed.

Dated this 23rd day of January 2006

[REDACTED]