

## THE APPEALS PANEL

Established under an Agreement dated 16<sup>th</sup> 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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THE APPEALS OFFICE, PO BOX 18230, LONDON EC1N 2XA, UNITED KINGDOM

Fax: ++ 44 (0) 207 269 7303

Chairman: Timothy J Sullivan— Panel Members: Rainer Faupel and Abraham J Gafni

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### 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 in Warsaw, Poland on 3<sup>rd</sup> June 1916 and presently resides in Israel. His is the son of [REDACTED] who was born in Warsaw in approximately 1892 and [REDACTED], née [REDACTED], who was born in Warsaw in approximately 1888. Both parents perished during the Holocaust.
2. The Respondent is [REDACTED] ([REDACTED]).
3. The Appellant submitted a claim form in November 2003 to the International Commission on Holocaust Era Insurance Claims (ICHEIC) claiming two life insurance policies taken out by his father with [REDACTED] and an unknown Swiss insurance company in Warsaw, Poland. He stated that the policies were issued in US Dollars or British Pounds.
4. The ICHEIC assigned claim numbers [REDACTED] and [REDACTED] because the Appellant named two insurance companies.

The ICHEIC processed the claims and submitted them to the Respondent, among other companies, for investigation.

5. On 22<sup>nd</sup> September 2005 the Respondent made an offer of US\$ 6,000 to the Appellant for a policy with an unknown value.

The Respondent provided the following relevant documents:

- (i) A letter dated 28<sup>th</sup> January 1963 from the Appellant to [REDACTED] Italy regarding his father's life insurance policy.
  - (ii) A letter dated 6<sup>th</sup> February 1963 from [REDACTED] Italy to the Appellant stating that it could not locate the insurance policy because the Polish branch office which kept all relevant documents has been nationalised.
6. The Appellant appealed this offer on 3<sup>rd</sup> November 2005. He emphasizes that he knew about this [REDACTED] insurance policy "*since he left Warsaw before the war*" and that the policy was issued in US dollars or British Pounds. The Appellant adds that the policyholder was a successful businessman who insured his family for a "*respectable sum of money*". Accordingly, he believes that the policy had a value of \$ 10,000.00. Furthermore, he was surprised that [REDACTED] kept correspondence from 1963 but was unable to locate the insurance policy at issue.
  7. [REDACTED] responded to the appeal on 21<sup>st</sup> December 2005 confirming its decision and asking the Appeals Panel to dismiss the appeal. The Respondent states that it decided to submit an offer "*exclusively on [a] humanitarian basis*" even though no documentary evidence – with the exception of the correspondence dating back to 1963 – was available. This exchange of correspondence could be located because [REDACTED] Italy has not been nationalised. Furthermore, the Respondent argues that "*the appellant's statement in respect of the alleged value of the supposed policy is completely new*" and "*therefore should not be regarded as reliable in any way*". Regarding the currency issue, [REDACTED] adds that the implementation of a Polish law in 1934 "*cancelled any possibility of entering into insurance policies denominated in foreign currencies, and ordered the compulsory conversion in Zloty of all such policies which had been issued in the past*".
  8. The appeal is governed by the Agreement concerning Holocaust Era Insurance Claims dated 16<sup>th</sup> 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 6<sup>th</sup> 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

9. The sole issue for determination relates to whether the Respondent's offer of US\$ 6,000.00 is correct.
10. As the existence of the policy was established under the relaxed standards of proof, and the value of the policy could not otherwise be determined, the Appeals Panel is required to

calculate such value according to the rules laid down in the Valuation Guidelines which are binding upon all parties to this Arbitration as well.

11. As the Respondent stated in its letters dated 22<sup>nd</sup> September and 21<sup>st</sup> December 2005, no information was known about the policy issued to the Appellant's father, including, in particular, its value and the Appellant's statements about such value are speculative at best. Therefore, the calculation could only be based on the average value of policies issued in Poland during the period, as specified in Schedule 3 of the Valuation Guidelines: Zloty 2425.00.
12. Pursuant to Section 7.1 of the Valuation Guidelines, a multiplier of 3 was applied to the average value to calculate the base value. This resulted in a base value of Zloty 7,275.00.
13. This value in Zloty 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 to the value of US\$ 962.48.
14. According to Step 2 of Schedule 2 this value has to be multiplied by 11.286 to give the value up to the end of 2000: US\$ 10,862.58.
15. Pursuant to Section 2.2 interest should then be added at the following rates to calculate the value of the policy up until November 2005 (being the month two months after the offer was made). The interest rates for 2001 and 2002 have been agreed under the Valuation Guidelines, and have been fixed for 2003, 2004 and 2005 by ICHEIC Memoranda (2001: 5.4%; 2002: 5%; 2003: 4.75%; 2004: 5%; 2005: 5%). A calculation on this basis leads to the amount of US\$ 11,449.16 for 2001; US\$ 12,021.61 for 2002; US\$ 12,592.64 for 2003; US\$ 13,222.27 for 2004 and US\$ 13,828.29 up until November 2005.
16. According to Section 7.1 of the Valuation Guidelines, this total amount of US\$ 13,828.29 is subjected to a maximum payment under the Agreement for policies of unknown value of US\$ 6,000.00. The Respondent therefore has to pay US\$ 6,000.00.
17. It is concluded that the Respondent's offer was in accordance with the Valuation Guidelines. As the Appeals Panel is bound to apply only the Valuation Guidelines in calculating the value of the policies, the Respondent's calculations must be affirmed as correct.

#### **IT IS THEREFORE HELD AND DECIDED**

The appeal is dismissed.

Dated this 3rd day of February 2006

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[REDACTED]